

Submission

By **Barak Human Rights Protection Committee (BHRPC)**
to the United Nations Special Rapporteur
on extrajudicial, summary or arbitrary executions
regarding the situation in Barak valley of Assam (India)

To

Mr Christof Heyns

The Special Rapporteur on extrajudicial, summary or arbitrary executions,
Office of the High Commissioner for Human Rights – Palais Wilson
United Nations Office at Geneva
CH 1211 Geneva 10
Switzerland

At Guwahati on 28 March 2012 during his first ever country visit of India on
fact-finding mission

**Subject: Situation of extrajudicial, summary or arbitrary executions in Barak
valley**

Dear Sir,

Barak Human Rights Protection Committee (BHRPC) expresses heartfelt gratitude for your visit to India and particularly for holding this regional consultation with human rights defenders working in North East India in the field of extrajudicial, summary or arbitrary executions and with the families of the victims.

Introduction:

The BHRPC is a human rights group that endeavours to generate awareness of human rights among all stakeholders, monitors and documents cases of violations including extrajudicial, summary or arbitrary executions and offers legal interventions for adequate reparation, rehabilitation and justice on behalf of the victims. Geographically its works mainly focus on the southern part of the state of Assam in India comprised of the districts of Cachar, Karimganj and Hailakandi known as Barak valley.

The valley is inhabited by about four million people, roughly 75% of whom are Bengali speaking. The rest is comprised of Hindi, Manipuri, Bishnupria etc. Geographically the area is separated from the main land Assam by Meghalaya and North Cachar hills. It is a remote and isolated area. There is a palpable perception double marginalization among the people living in the valley. The valley is a part of the North East and as such is neglected by the mainland Indians and the central government in every respect. And due to the geographical isolation and cultural differences from the mainland Assam it is also felt that the state government of Assam very negligently treats the people and the territory. The people are educationally,

financially and politically very backward. Corruption and nepotism are accepted as a way of life. It is very hard to find semblance of the rule of law here. Lawlessness reigns supreme.

The area is relatively peaceful, though it sits in the conflict zone of North East India. But, politicians indirectly nurture small armed groups of anti social elements or maintain nexus with them. It is now not a secret that there is a strong nexus between politicians, bureaucrats and such armed groups. The rule of law is easily trampled upon by this nexus, and thus they run the area as they wish.

In this backdrop the BHRPC is struggling for practical realisation of universally recognised human rights as enshrined in the Universal Declaration of Human Rights, 1948 and other international instruments to which India is a state party and the rights enumerated in the Constitution of India by means of peaceful legal and democratic methods. In this endeavour the BHRPC documented numerous cases of extrajudicial, summary or arbitrary executions. Here are a few representative cases:

Cases:

1. Ikbal Hussain: victim of the latest case of extrajudicial execution in Assam documented by BHRC

The latest civilian victim of extrajudicial execution in the northeast state of Assam was Ikbal Hussain Laskar – who was tortured to death by army men on October 9, 2010. The state had counted more than 150 extrajudicial civilian deaths in 2009.

According to information received by the BHRPC, soldiers of Indian Army illegally raided a family at midnight and took Ikbal forcefully after severe physical assault and then torture continued resulting in his death. Ikbal Hussain Laskar, 42, belonged to the village of Chiparsangan, Part – III, under Algapur Police Station of Hailakandi district, Assam. He was tortured to death on 9 October, 2010 by the Army personnel belonging to 117/36 Artillery Field Regiment/ DTY COB, Manipur, Hailakandi, Assam.

According to Home Ministry's annual report in 2009, 368 people, including 152 civilians, were killed in 424 incidents in Assam. Civilian deaths are the natural result of the slow intensity war in north east India that has wide prevalence for quite a long time. Extrajudicial execution is arbitrary deprivation of life by denying right to life and right to a fair trial. It is a kind of capital punishment by the state authorities without the Court's verdict after a fair trial. Such executions are witnesses in north east India especially Assam and Manipur for decades under the umbrella Act called the Armed Forces (Special Powers) Act, 1958. Instances of extra judicial executions in the state of Assam and Manipur are going on without much visible remedy.

According to the field study conducted by BHRPC the sequence leading to the death of Ikbal indicates extrajudicial execution. The incident narrated by BHRPC is that on 9 October, 2010 at around 3:30 am when Ikbal was sleeping in his residence with his family members including his wife and 3 daughters. Suddenly he woke up hearing the sounds of someone calling him and knocking at the gate of his house. The caller identified as police officer and said that he wanted to ask something to Ikbal. Ikbal

came out and opened the gate of his verandah. Instead of asking any questions, the visitor identifying as police caught him by the hand and dragged him toward the north side of the building where 5 other soldiers in uniforms started beating and kicking him without any rhyme and reason. Ikbal was stunned with these sudden unexpected developments and it took some time for him to realize the situation. He started crying and screaming in despair. Family members too became shocked at the developments and urged the soldiers in uniform to stop beating Ikbal. Then the family members realized that their house is cordoned off by about fifteen soldiers. Neighbors started rushing to the spot but were denied entry by gun men who were posted at the entrance.

The soldiers tortured Ikbal severely and then forced him to wash his face and change dress. Then they forcefully boarded him in a vehicle that they brought and continued to beat him.

Ikbal's wife Parul Begum Laskar, aged about 38, daughters Adiba Ikbal Laskar (also known as Salmi) (19), Tahmima Ikbal Laskar aka Sammi (14) and Ajuba Ikbal Laskar aka Simi (9) informed members of BHRPC that when they were beseeching the army to stop the infliction of brutalities on Ikbal they were shown guns and asked to keep silence. The family also informed BHRPC that the army forced them to put their signature on a piece of paper where something was written but were not allowed to read the contents. They were also warned not to approach the police or file any complaint, otherwise they will have to face dire consequences, the raiding army told them. The army personnel took away two mobile sets, of which one was having a SIM card with phone No. +919707142785, one torch light and one mobile charger. The army gave them two mobile numbers 09508548935 and 094013210458 for contact.

The incident of Ikbal's illegal detention was witnessed by several family members including Labib Ahmed Laskar (38), brother of Ikbal. He informed the BHRPC that when he rushed toward his brother's house from his adjacent house at midnight hearing hue and cry, he was stopped at gun point by the army. He saw his brother was being beaten by the army from a distance of 15 feet. He saw his brother was severely injured; as a result, he was rendered unable even to walk toward the army vehicle. The Army came with two vehicles (TATA Sumo).

When army took away Ikbal, the villagers tried to contact the Officer-in-Charge (OC) of Algapur Police Station Mr. Baktar Uddin over the phone. The OC informed them that he was ignorant about the operation. Then the family members approached the former Minister of Assam Mr. Shahidul Alom Choudhury. Mr. Choudhury then called the army of Manipur camp at around 7am. The army personnel told him that they had arrested Ikbal on wrong information and that he would be released soon. He then again called the army at around 12 noon on that day i.e, 9 October and got the same reply.

Several individuals tried to help the family. Mr. Anwar Uddin Barlaskar, a retired district judge, Mr. Labib and Mr. Sabib met the Superintendent of Police (SP) of Hailakandi at around 8:30am on behalf of the victim family and the villagers. The SP informed about the operation assuring follow up. The SP also told them a meeting of Army officers, district police and district administration was held the previous day

where it was made sure that there would be no operation without any prior information to the police. They then met the District Magistrate of Hailakandi at his residence. He also expressed his ignorance about the operation and he committed that he would find out the victim. At around 1pm some army personnel came to the victim's house and asked for any earlier medical records of the victim related to any heart or abdomen problems. But there were no such records. At that time they also informed the family that the victim was at the Silchar Medical College and Hospital, Silchar and his health condition was deteriorating. The victim's family then went to the SMCH and found him dead at 3pm.

With the death of an innocent civilian like Ikbal, local people started protesting it and thousands of people gathered at Chiparsangan area and blocked the road. The SP Mr. Hemanta Bhattacharya and the DM Mr. Tapan Chandra Goswami came at Chiparsangan and assured of a judicial enquiry including the post mortem examination would be conducted at day time and it would also be video recorded. At these promises the public lifted the blockade. The next day, 10th October, at about 5:30 pm, after the post mortem was held, the dead body was handed over to the family.

The BHRPC members also met Mr. Abdul Basit Choudhury, Officer-in-Charge, Algapur Police Station (reinstated) at the house of the victim and collected information about the case. The OC informed that a case was filed by the victim's wife Parul Laskar which was registered as Algapur PS case no.243/10 dated 09/10/10 under sections 302, 365 and 310 of the Indian Penal Code, 1861 and another case was also filed by Lieutenant Naveen Kumar which was registered as Algapur PS case no. 244/10 dated 09/10/10 under sections 489b and 489c, IPC. The OC was made the investigating officer of the case that was registered regarding the incident. He told that a home guard named Abdul Shukkur Barbhuiya from Kathlichera PS accompanied the army and he is the main witness of the incident. The OC also told that the army took the victim to the army camp, then to a primary hospital and then to the S. K. Roy Civil Hospital of Hailakandi and ultimately to the SMC Hospital where he was declared dead. The latter described that the accused Ikbal was found to keep some fake currencies and that the complainant had taken him to the said hospitals and there was nothing mentioned about the death.

Mrs. Parul Laskar (38), wife of Ikbal is a social activist and she is the counselor of the family counseling centre run by Assam Enviro-Legal Protection Society. Lt. Ikbal Hussain Laskar was one of the 7 brothers, very loving and adorable by the family members who share a joint family. Ikbal and Labib have recently constructed a new house as joint family property but his untimely brutal murder deprived him from enjoying his family life in the newly constructed house.

The BHRPC filed a complaint at the National Human Rights Commission (NHRC) regarding the case. The NHRC registered the complaint and assigned case number 178/3/21/2011-AF and on the basis of the report sent by the district Superintendent of Police another case was registered as 300/3/21/2010-AF. The NHRC clubbed both the cases together and issued notice to the Ministry of Defence asking for a report. At the receipt of the report the NHRC observed that "*... a letter dated 26.9.2011 has been received from Under Secretary to the Government of India, Ministry of Defence, New Delhi. Perusal of the same reveals that two writ petitions in this case have been filed*

by the wife and mother of deceased Iqbal Hussain Laskar before Guwahati High Court. The counter affidavits have been filed by the Army Authorities before the High Court and the matter is at the stage of hearing. The Commission has considered the report. Two writ petitions are pending in the High Court regarding the same incident. The matter is subjudice. ...” And the case was closed. (Copy of the case status as on 09-25-11 and 20-03-12 are annexed herewith as Annexure 1A and Annexure 1B respectively)

2. Car driver Fakhrul Islam ‘beaten to death by Assam police’ for speeding

This is a case of extra-legal killing by the local police in Hailakandi district of Assam. A car driver named Fakhrul Islam was beaten to death apparently because he refused to stop his vehicle when ordered by the police. The police officers, led by the District Superintendent of Police, Mr. Maheshchand Sharma, chased the victim, Mr. Fakhrul Islam Mazumder, in their vehicle for a while before apprehending him. When Fakhrul stopped his vehicle, the police pulled him out, assaulted him with rifle butts until he was unable to move and threw him into a nearby lake. It is not known whether Fakhrul died of drowning or from the assault. The entire incident happened in full public view.

According to the report of the BHRPC, the incident happened on 13 September at about 8 pm on National Highway 154 near Bakrihaor.

The deceased, Fakhrul, aged about 26 years, son of Muzammil Ai Mazumder of Ward number 11, Hailakandi Town, Assam was coming from Silchar to Hailakandi driving a car with vehicle identification number AS-11C-9494 along National Highway 154. When he reached Bakrihaor, he was signalled to stop his car to give way for a convoy of police vehicles in which Mr. Maheshchand Sharma, the District Superintendent of Police was travelling.

The police vehicles were coming from the opposite direction in which the victim was travelling. It is common in India for the police to stop vehicles on the street for the police to travel at high speeds without traffic blocks, even if it is not an emergency. Drivers usually comply fearing abuse, assault and fabricated traffic offences charged upon them. However, Fakhrul refused to stop his car and drove past the police vehicle convoy, an act that apparently infuriated the police officers.

It is reported that the police officers chased Fakhrul’s car for a short distance and soon intercepted his vehicle. According to eyewitnesses, Mr. Akram Uddin Laskar, Mr. Selim Uddin, and Mr. Bahar Uddin and many other people from the locality, the police then forced Fakhrul to come out of the car. When he came out of the vehicle, the police started beating Fakhrul severely with rifle butts. Five to six police officers took turns to assault Fakhrul. When they stopped for a minute, Fakhrul gathering strength, tried to run away.

The officers chased Fakhrul on foot for a short distance and stopped him again and continued assaulting him. This time however, they did not stop until they threw Fakhrul into the Bakrihaor Lake, which is by the roadside. The officers then left the scene. The incident caused traffic jam for a while. No one dared to intervene in the police action however, as they were afraid of the police.

Fakhrul's body did not surface till 1 pm the next day. A large crowd gathered around the lake till the body was brought out from the water. Those gathered include Mr. Rahul Roy, Member of Assam State Legislative Assembly (MLA) from Algapur constituency, Mr. Selim Uddin, MLA and Mr. Shahidul Alom Choudhury, a former minister of the Assam state government.

The crowd soon started shouting slogans against the police and temporarily prevented the police from taking the body for autopsy. Fearing violence, the political leaders present at the scene guaranteed that they would ensure stern actions taken against the police officers responsible for the crime. They also guaranteed that the entire autopsy would be video recorded.

On 15 September, the Progressive Students' and Youth Front and the District Drivers' Association called for a general strike in protest of the murder. In response, the district administration ordered a magisterial inquiry into the incident and ordered the Superintendent of Police to be on leave and stay away from office temporarily. In follow-up, a complaint was lodged at the Hailakandi Police Station against the police officer, with an expectation that a criminal case will be registered and an investigation undertaken.

However upon enquiry, it is learned that the police is trying to influence the investigation to absolve from their responsibility in committing the crime. It is also feared that the witnesses will be threatened by the police, and under intimidation, they would not depose in the inquiry.

The Hongkong based rights body Asian Human Rights Commission has also documented the case and issued an urgent appeal. (Copy of the urgent appeal is annexed herewith and marked as Annexure-II)

3. Security personnel killed an innocent passer-by by firing indiscriminately at a market place in Assam

Personnel of the Central Reserve Police Force (CRPF), a para-military force of the government of India deployed heavily in North Eastern states to provide aid to the state governments in maintaining public order, killed an innocent person on 23 May 2010 by firing without warning and indiscriminately at Panchaboti (known also as Jamalpar), a small market place within the area of Dholai Police Station (PS) in the district of Cachar, Assam, while trying to arrest two other persons reportedly acting on a tip-off. No investigation into the killing is ordered. Police, instead, registered a case against the deceased person incorporating his name in the First Information Report (FIR) filed against the two arrestees. There are fears that post mortem report can also be tempered. Impunity for such frequent extra-judicial killings is taken for granted in this part of India.

After receiving information, the BHRPC formed a team for finding facts about the incidents. The team visited Bidruhipar, the village where the deceased lived which falls under Sonai PS in Cachar (Assam), spoken with his wife, children, brothers, other relatives and fellow villagers. The team also visited Panchaboti, where the incident occurred and other related areas. They spoke to some eye witnesses and local

police officers. The account given here is based on the facts gathered in this way by the BHRPC.

Panchaboti is like a small market place where there are 19/20 shops of various kinds and people from the adjacent villages come for buying or selling household things and for other related purposes. A gathering of 40/50 persons are normally found there. The deceased Iskandar Ali Barbhuiya (aged about 42, son of late Abdul Matlib Barbhuiya) lived at a nearby village Bidruhipar (about 4 km away to the north eastern direction from Panchaboti separated by the river Sonai) under the Sonai PS. He was a small businessman primarily dealing with betel nuts. He would buy row betel nuts from markets and small village firms and sell them after processing. He was the sole earning member of a family of 6 comprising of his wife Monijun Nesa (aged about 38), son Rajib Hussain Barbhuiya (aged about 13) and daughters Jasmin Begum Barbhuiya (aged about 11), Yasmin Begum Barbhuiya (aged about 7) and Najmin Begum Barbhuiya (aged about 4). According to the villagers and the police officials, he was a peace loving person never involved in any crime or immoral acts and he had nothing against him in the police record.

At about 11 pm on the fateful day of 23 May he left his house telling his wife that he was going to the Panchaboti area to collect betel nuts which he would keep at the house of a friend for he intended to visit his sister Champarun Nesa at Krishnapur, Amraghat, though he expressed doubts that he would get time for the visit. He asked his wife not to worry if he did not return that day.

The persons who were present at the time of shooting by the CRPF at Panchaboti state that they heard and saw a group of 11/12 CRPF personnel from A147 Battalion led by Mr Muatoshi Dubichu, Deputy Inspector of Police and in-charge of Shachinpur Camp (Shachinpur comes under Dholai PS), who came there sometime ago, suddenly started firing indiscriminately at about 4.30 pm and people ran helter-skelter in panic. Most of them entered nearby shops and houses and closed the doors. Some of them saw Iskandar running over a small field towards the river Sonai, a tributary of the river Barak. He jumped into the river while CRPF were shooting at him. There was absolutely no provocation of any kind for the CRPF to open fire. The witnesses say that CRPF did not warn the people by any means before starting firing. It was not known at that time what happened to Iskandar. But the CRPF arrested Moniruddin Barbhuiya (aged about 32, son of Abdul Majid Barbhuiya of village Bidruhipar, PS Sonai, Cachar, Assam) and Abdul Khalik (aged about 25, son of Siraj Uddin of village Sundari Part-II, PS Sonai, Cachar, Assam) for whose arrest they came.

The CRPF claimed that they were on a routine patrolling at that time and they observed suspicious behaviour on the part of Moniruddin, Abdul Khalik and Iskandar. They challenged them and when the suspects started running away they opened fire and shot 7 rounds at them. As a result they succeeded in arresting two persons while another (meaning the deceased Iskandar) ran away. They did not know what happened to the later. But they found a country made 9 mm pistol and four pieces of bullets with Moniruddin. According to the CRPF, they are ordinary criminals and did not belong to any organisation. The CRPF handed over the two arrestees to the Palonghat police out post under Dholai PS at about 9 pm that day. Dholai police registered a case against Moniruddin, Abdul Khalik and another (meaning Iskandar but without naming) (vide Dholai PS Case No. 99/2010 dated 23 May 2010) under

section 47 of the Arms Act, 1959. On 24 May the Officer-in-Charge (OC) of Dholai PS produced the accused before a magistrate praying for police custody for them which was granted for 7 days. Then they were sent to the judicial custody and at the time of writing this report they are still in jail.

According to the police sources, Moniruddin stated that he is a labourer and worked in Mizoram for a few months. One day in Mizoram when he went to a river to bath there he found a pistol lying there. He picked it up and was trying to sell it. Iskandar is nothing to do with them.

When in the night on 23 May Iskandar did not return home his wife Monijun was not worried and she thought that he had gone to his sister's house at Krishnapur as she was told. The next day (24 May) Badrul Mia, a neighbour, asked Monijun if she was aware of an incident of firing at Panchaboti the day before where her husband went and whether he returned home or not. She became worried and contacted her sister-in-law at Krishnapur over the phone who told that Moniruddin did not visit her. Then she contacted each and every relatives of her husband but everybody expressed ignorance about the whereabouts of Iskandar. She along with her sister-in-law Sitarun Nesa went to the Sonai PS on 25 May and informed the police in writing that her husband was missing since the day before. It was entered in the General diary of the PS vide GD Entry 601 dated 25 May 2010.

At about 1 pm on 26 May some people of village Sundari Part-II (situated at a distance of about 2 km from Panchaboti) saw a dead body adrift in the river Sonai and informed Kachudaram police out post under Sonai PS. Police, first from the out post and then from the PS, came at about 3 pm and send the body to the Silchar Medical College and Hospital, Silchar for autopsy. At about 11 pm on 27 May the police handed over the body to Monijun. His relatives and fellow villagers performed the last rites at about 2.30 pm.

The persons who performed the pre-funeral ritual bathing of the body state that they saw two holes caused by bullets on the body; one on the waist and the other on the left side of the neck. Report of the autopsy has not been yet provided to the family. Monijun and other villagers fear that perhaps they want to change the report and that is why they are not giving it to her. The BHRPC is trying to access the report.

The local people did not believe the CRPF story. They say that it is possible that Moniruddin and Abdul Khalik were trying to sell the pistol. Probably they fixed the place and time for transaction with the purported buyer to complete the sale at Panchaboti on 23 May. According to them, it is not a case of routine patrol as the CRPF claim but it is probable that the CRPF somehow came to know of the transaction and accordingly they came to nab them red handed. But lack of professionalism and respect for the rights of the general citizens provoked them to open fire when they saw the suspects and it claimed an innocent life in the form of Iskandar. They emphatically say that Iskandar had nothing whatsoever to do with Moniruddin and his activities. He is the victim of carelessness of the security forces for the lives of innocent people. The story which is being told by the CRPF accusing Iskandar of being a partner or accomplice or involved with any other way with Moniruddin or his pistol is a typical attempt of covering up their guilt of killing him

and it is gross injustice to the unfortunate soul of the deceased and his wife and children to stigmatise them in this way.

Mr. Kutub Ahmed Mazumder, a then member of Assam Legislative Assembly representing the Sonai Constituency also told the BHRPC that he knew Iskandar personally and he was a very good person. He visited the widow on 30 May.

Hundreds of people of the neighbouring villages gathered on 28 May at Hatikhal, a convenient meeting place for the people living at neighbouring villages, and held a condolence meeting which was presided over by Nazrul Islam Ahmed, vice president of Sonai Anchalik Panchayat (Anchalik Panchayat is the middle layer of the three layer local government system consisting of Gaon Panchayat, Anchalik Panchayat and Zila Parishad) where resolutions passed; 1. Condemning the killing of Iskandar terming it as an intentional murder of a law-abiding and peace loving citizen by power fuddled unscrupulous security forces, 2. Condoling the family for their loss, and 3. Demanding compensation and prosecution of the responsible CRPF personnel.

Monijun filed a complaint before the Chief Judicial Magistrate, Cachar on 29 May praying for directing the police for proper investigation of the murder under section 302 of the Indian Penal Code, 1860. The complaint was forwarded to the Sonai PS and was registered as an FIR vide Sonai PS Case No. 126/10 dated 4 May 2010.

The BHRPC also wrote to the authorities including the president, prime minister of India and the chairpersons of the National Human Rights Commission and the Assam State Human Rights Commission.

The ASHRC observed that it transpired from the complaint that the allegations involve the CRPF and it, being para-military armed forces of the union, has been included in List I (Union List) of the Seventh Schedule to the Constitution. As such, since the matter is relatable to the entry in List I of the Seventh Schedule of the Constitution, this Commission has no jurisdiction to proceed with the inquiry as per provisions of section 21(5) of the Protection of Human Rights Act, 1993. The case is accordingly closed. (Copy of the order is annexed and marked as Annexure-III A)

Although the NHRC also registered a case assigning number 134/3/2/2010/OC, it dismissed the case saying that the complaint was also sent to other authorities and they were expected to take appropriate action in this matter. Hence, no action is called for. (Copy of the order is annexed and marked as Annexure-IIIB)

An Additional District Magistrate (executive) conducted an inquiry but the report was never made public and no further action was taken.

4. Fake encounter killing of Jamir Uddin by the Central Reserve Police Force personnel in Assam

In a home invasion 5 Central Reserve Police Force personnel belonging to Gharmura Camp of E-147 company at about 10 am on 22 Oct, 2007 shot dead one Jamir Uddin Laskar, about 35 years of age, of village Bainchera (also known as Bhaichera) under the Katlichera Police Station in Hailakandi, Assam. At the time of the incident the deceased was collecting grass to graze his cattle from a paddy field near his house

where five CRPF men accompanied by one Rizwan Uddin, who is known to be a CRPF informer, accosted him. His wife Anowara Begum, sister Sazna Begum and neighbour Moizun Nesa came to the place of occurrence after getting information. They saw and heard Rezwan Uddin was asking the men in uniform to shot Jamir Uddin pointing his fingers towards the latter who was dumbfounded at the sight. At that moment Sazna and Anowara started to cry and beseech the men with arms to spare the life of Jamir Uddin at which they were beaten, kicked, abused and humiliated. At the instance of Rezwan Uddin the CRPF fired a shot targeting Jamir Uddin which was missed, the second shot also missed but the third bullet hit on the back of the target, who had already started to run away, and piercing his chest exited. The critically injured victim was sent to the Silchar Medical College and Hospital, Silchar where he was declared dead at 6-30 P.M that day.

The BHRPC filed a complaint at the ASHRC. The commission after registering the case as AHRC Case No. 6646/2008 asked the district Superintendent of Police for a report. The SP caused an inquiry by a Deputy Superintendent of Police who only recorded some testimonies from the witnesses and did not draw any conclusion. The BHRPC in its comment to the ASHRC stated that if a reasonable conclusion is drawn from all the testimonies it became clear that this was indeed an extra-judicial killing later staged as encounter. The ASHRC did not respond the comments. (Copy of the inquiry report conducted by the DSP is annexed and marked as Annexure IV)

5. Death of Mr. Moyfar Raja in police custody due to torture in Assam

A vegetable vendor named Moyfar Raja, aged about 45 years, son of late Tajamul Ali, of Village Baldabaldi Part-II, P.O. Jamira under the police outpost of Jamira within the jurisdiction of Katlichera Police Station in Hailakandi, Assam was arrested at about 11am on 10 June, 2008 by Pijush Kanti Roy, in-charge of Jamira outpost and allegedly was tortured to death at 5 pm the same day. This information was published in local newspapers on 11 June, 2008.

Having learnt from the newspapers about the incidence, Barak Human Rights Protection Committee formed a fact-finding team. The facts stated herein are based on the preliminary report of that team.

Moyfar Raja, the deceased belonged to the poorest stratum of the society. He worked as a daily wage labourer and sometimes as a vegetable vendor. He was supporting his wife, 3 sons and 3 daughters. According to his relatives and neighbours, he was generally a peace loving and law abiding citizen, though there was a police case pending against him.

Family members of the deceased stated that he, as usual went to Jamira Bazar in the morning on 10 June, 2008 to sell his vegetables. They were later informed that a police team comprising of constable Bashir Uddin and Home Guard Nijam Uddin Laskar led by Sub-Inspector Pijush Kanti Roy, in-charge of Jamira Outpost picked him up. According to them, the police team was going somewhere else but when they saw Mr Raja they nabbed him. Legal procedure of arrest was not observed properly. Requirements of arrest issued by the Supreme Court of India in D K Basu Vs. State of West Bengal (AIR 1997 SC 610) were not fulfilled. The guidelines regarding arrest issued by the National Human Rights Commission also were not complied with. Even

'arrest memo' was not prepared, it was revealed during the said fact-finding efforts of BHRPC.

Family members of the deceased and his other companion vegetable vendors alleged that the police team started to beat him with cane sticks in front of them. They continued to do so along the way to the police outpost and even in the lock-up. At about 2 pm when his condition became critical due to a serious head injury sustained during the beatings by police, he was taken to Jamira Primary Health Centre. Doctors at the health centre referred him to Hailakandi Sontosh Kumar Roy Civil Hospital due to the seriousness of his condition. Dr. Rehana Begum, a doctor at the H S K R Civil Hospital states that the deceased was received at the hospital at about 5 pm and he was found in coma and it was also observed that he had a serious injury in the head. He died on the stretcher while he was being taken to the ward.

On the other hand, the police alleged that the deceased was wanted in connection with Katlichera police station case No. 70/03 which was registered under sections 147, 148, 149, 323, 427 and 302 of the Indian Penal Code, 1860. There was also a non-bailable warrant against the deceased issued by the Additional Chief Judicial Magistrate of Hailakandi in connection with G R Case No. 545/03, which was registered as a result of the said FIR. Constable Bashir Uddin and home guard Niajm Uddin laskar alleged that soon after the arrest the deceased complained of his ill-health. But there is no answer to the question as to why the deceased was not sent for medical examination and treatment as law also mandates it.

It appears that there were serious charges against the deceased. But allegations of offences, howsoever serious they may be, do not render a person bereft of his basic human rights. Crimes on the person of an accused or suspect are equally prohibited as in the case of any other persons. Facts alleged before the BHRPC team prima facie establish a case of torture and murder attracting punishment under section 302 and 34 of the IPC. Such cases fall under sections 154 and 174 of the Code of Criminal Procedure, 1973. Section 154 mandates the officer-in-charge of a police station to register an FIR on receiving information about commission of a cognizable offence and section 174 enjoins upon such officer a duty to report the case to the nearest magistrate if he receives information that "a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some person has committed an offence" relating to the death. This procedure is prescribed by law to ensure impartial and prompt investigation into the incidence and thus to facilitate the prosecution and conviction of the offender.

This incidence of custodial death amounts to extra judicial killing, which flagrantly violates rule of law, basic features of the Indian Constitution and Articles 21 and 22 of the Constitution as interpreted by the Supreme Court of India.

The BHRPC sent an appeal to the president of India asking for an inquiry into the incident and adequate reparation to the family of the victim. In response, the secretariat of the president asked the chief secretary of Assam to take appropriate actions. But, there is no information till date about any actions regarding the case. (Copy of the letter of BHRPC to the Chief Secretary is made Annexure V to this submission)

6. A senior citizen beaten to death in his home in Assam by raiding police

In a brutal show of police power, the Assam Police mercilessly beat up Faizuddin Ahmed, an elderly respectable person of village Latakhat under Dhula police station in Darrang district of Assam, during a raid at his home on 11 July 2009. Ahmed succumbed to the assault and died on the spot.

As done by other co-accused, the 74-year-old man did not go into hiding when a police team barged into his house at about 10 pm purportedly in search of three persons including him accused in a case. The family members of the deceased stated that when they insisted that he should avoid the police and answer the charge against him in the court he maintained that there was no need to go into hiding as he was innocent.

The case against him and two other persons was false and filed maliciously because he tried to intervene in a dispute involving his co-villagers to settle it amicably, say some local people. One of the parties to the dispute was not happy with him and they filed a false case against him. It is this case in connection with which the police raided his house.

According to the information, the raiding police team demanded ten thousand rupees from him because he made them to visit his house in the night as there is a case against him. If there was no case they would not have to toil so much. It is he who is responsible for accusations against him and he had to pay for it, the policemen allegedly said. The elderly person pleaded his innocence repeatedly and told them that if they insist he could only pay them rupees two thousand. At this offer the men in uniform got infuriated and started to beat him, sources claim. The aged fragile body could not withstand the brutal assaults and succumbed at the spot.

According to the reports, the local people assembled at Faizuddin's house and gheraoed the police team, immediately after the incident. They demanded exemplary punishment against the guilty police officers.

A case has been registered against the raiding police personnel in Dhula police station bearing No. 157/2009 and the Superintendent of Police for Darrang district Imdadul Hussain ordered to arrest the Sub-Inspector who led the erring team.

A case was also registered by the ASHRC, but till date there is information about any actions in terms of prosecution of the perpetrators and reparation to family of the victim.

7. Death of Motahir Ali caused by torture in police custody in Assam

On 21 September 2007, the Assam state police tortured and killed Mr. Motahir Ali Tapadar, a 38-year-old labourer, from Bhatgram village residing under the jurisdiction of Katigorah Police Station in Cachar district of Assam. The police officers tortured Motahir first inside a Police Patrol Post, and later in full public view, at a government health centre in front of the public and the doctor treating him. The police killed Motahir since he was unable to pay bribes to the police.

A magistrate inquired about the incident and the report was kept hidden by the government. The BHRPC obtained the Magisterial Inquiry Report, after lot of effort and using the Right to Information Act, 2005 (RTI). The content of the report exposes the criminal nature of the police officers involved in the incident.

Portions from the report as recorded by the inquiring magistrate, the Additional District Magistrate (ADM) of Cachar, is reproduced below since they can explain well the incident and the criminal involvement of the police officers that resulted in the murder of an innocent person:

‘A petty quarrel between Mr. Motahir Ali and his neighbour Mr. Sahab Uddin took place at about 11am on 20 September 2007 in front of their houses concerning a minor quarrel between the children from the two neighbouring houses over toys or games resulting in an argument between the elders that led to the scuffle. Sahab and Motahir went to the Police Patrol Post at Kalain and lodged a complaint against each other. Mr. Narayan Tamuli, the Assistant Sub Inspector (ASI) who was also the officer in-charge of Kalain PP accompanied by his constables arrived at the respective houses of the complainants and took them to the PP and detained them at the patrol post.’

‘Some persons from Bhatgram and the relatives of the detainees went to the patrol post with a request to bail the detainees out and to settle the case amicably. Alimun Nesa, Motahir’s wife took food to the patrol post for her husband in the evening. Motahir was quite fine at the time. Alimun met officer Tamuli and pleaded for the release of her husband from police custody, stating the background of the argument. Tamuli demanded Rs. 10,000 from her as bribe to release Motahir. She informed Tamuli that they are too poor to raise the money. However, Alimun informed Motahir that she could collect Rs. 500 or Rs. 600 from her neighbours and give it to Tamuli.’

‘Tamuli refused to accept any lesser amount than what he initially demanded and denied to release Motahir. On the same night Tamuli and his subordinate officers tortured Motahir. On the next day morning Alimun again went to the patrol post and found her husband lying on the lockup floor. He could hardly move or speak. Motahir could somehow express to his wife that he was brutally beaten and kicked by the police officers on the previous night and that he feared that he is badly injured in his abdomen. He further told to his wife that there is no chance of him surviving another day since he was seriously injured from the torture.

‘When Motahir’s condition deteriorated Tamuli dragged him into three-wheeler (auto rickshaw) and took him to Kalain Primary Health Centre (PHC). At the PHC, Tamuli and his subordinate officers, police constables stationed under Tamuli at Kalain patrol post, continued their brutal assault upon Motahir in front of the doctor and the hospital staff. The public present at the PHC witnessed the assault and tried to dissuade the police but they failed. Dr. Badal Das, the doctor in-charge of the PHC reportedly examined Motahir and after discussion with Tamuli, decided to send Motahir to Silchar Medical College and Hospital (SMCH) for treatment but he died on the way.’

The report further says: ‘[i]t is revealed from the hearing that Motahir was a day labourer and the family had a hand to mouth existence. His family consisted of his

wife and three minor children. His wife was expecting another child at the time of the incident. Motahir was a peace loving man and there were no former public complaints against him. It is stated by Alimun, the helpless widow of Motahir that a minor quarrel amongst the neighbours' children over toys developed into an insignificant scuffle between the elders – resulting in the filing of a police case and arrest of Motahir by the Kalain police. The inhuman torture inflicted upon Motahir for non-payment of the bribe and the brutality by the police in public and the subsequent death of a simple day labourer in the Kalian PHC before the noon of 21 September 2007 in front of the doctor of the hospital and his staff is a bitter experience for the people of Kalain.' [Emphasis added].

'One Mr. Ramzan Ali, Constable under Tamuli administered the point of his lathi (stick) at the abdomen of Motahir while he was admitted at the Kalain PHC resulting in total silence of the body [sic] of Motahir. It is stated the constable's last stroke made the way or caused the circumstances for demise of Motahir.'

The report concludes that 'the police at Kalain patrol post was pro-active in committing brutalities upon Motahir simply for the reason that the deceased's family could not afford payment of bribes to the police officers...'

Regarding the consequent arson and destruction of public properties by the angry public, the Magistrate states that: 'the news of death spread at Kalain and adjacent areas and the public in the locality got infuriated. Hundreds of local people gathered at around 2pm in front of the patrol post and Gaon Panchayath Office and shouted slogans and pelted stones at the patrol post. Police tried to gain control over the situation with their existing force but could not succeed. Then the police opened fire injuring one person but there was no casualty though it is claimed that 80 rounds were fired to disperse the angry crowd.'

'The patrol post caught fire and it was completely gutted. Nearby GP office of Kalain also caught fire and was burned to ashes resulting in the loss of public documents and properties. There was little attempt to save the public properties and it was left at the whims of the excited public who took their own course of action.' The magistrate added, "[h]owever, the actual cause of fire in both the offices are yet to be ascertained."

Commenting on the report, Mr. Neharul Ahmed Mazumder, Secretary General of BHRPC, said: '[s]o far as the conclusion of the inquiry concerning the death of Motahir Ali is concerned the BHRPC is substantially in agreement with the findings. However the organisation sticks to its own findings regarding the incidents of the aftermath.' He points to the BHRPC fact-finding report that observed: 'hundreds of local people gathered at 2pm around the patrol post and started shouting slogans demanding arrest of Narain Tamuliiv. Police charged them with sticks and rifle butts which further infuriated the crowd and they started pelting stones at the police. Police then opened fire and fired 80 rounds. In the firing there was only one severe injury. Mr. Shahidur Rahman, aged 17 years, who was watching the incident from the roof of a two-storied house, was injured badly in his left leg. He was admitted to SMCH. Being terrified by such heavy firing the crowd dispersed.'

‘Then the police themselves set fire on patrol post and burnt it down in order to distract the attention of people from the murder and hush it up. The propaganda that after the death of Motahir Ali the outraged people set on fire the patrol post is false and intentional.’

The report further says: ‘the terrified public at first were silent. Nobody dared to speak anything about the incident initially. Subsequently a large number of people requesting anonymity claimed that some men arranged by the police had set on fire the patrol post. They raise two arguments to substantiate this claim. First, although there was only one person who was hit and injured among the police, the police fired eighty rounds to disperse the mob and no mob can withstand such a large quantity of firing. The mob dispersed and fled after a few rounds of firing. Secondly, the fire was first found at the backside of the patrol post. If the mob had set fire the patrol post they would have done so from the front because they were there. Moreover, there is a marsh behind the patrol post which prevented the mob from accessing the patrol post from the back side.’

The police registered a First Information Report (FIR) against one Mr. Faruk Ahmed and other five-hundred unidentified persons and fabricated charges against them including attempt to murder and causing obstruction to the police in the performance of their lawful duty, invoking among other legal provisions, Section 307 of the Indian Penal Code, 1860 (IPC). The police in connection with this false case, raided, assaulted, abused and humiliated the family members, relatives and fellow villagers of the victim. Even they arrested three innocent persons, namely Mr. Faruk Ahmed, Mr. Ibajul Hoque and Mr. Imamul Hoque, who were subsequently released on bail by the Guwahati High Court.

When, Mr. Saidur Rahmen, the person injured in the police firing, recovered a little and was released from the SMCH, the police arrested him again. There are good reasons to believe that the police might not have burnt the patrol post themselves but they did so with the help of hired criminals. In fact, the incident of burning down the patrol post is intriguing and indicative of a deeper and larger conspiracy. The manner in which the police was desperately over-active in hounding the people in relation to the case despite requests from various quarters not to harass and arrest the innocent people, is indicative of such a conspiracy.

At the intervention of BHRPC and based on the complaint of Alimun Nesa, a case was registered at Katigora Police Station as Katigora PS Case No. 484/07, dated 4 October, 2007 under Section 302 (murder) read with Section 34 (conspiracy to commit a crime) of the IPC against Tamuli, Assistant Sub Inspector Mr. Promod Nath and Police Constable Mr. Ramzan Ali Choudhury. The accused applied for an anticipatory bail at the Guwahati High Court and the court granted them an ‘interim bail’ with the direction to the accused to surrender before the trial court. At their appearance before the trial court all the three accused were remanded to judicial custody on 11 March, 2008. Later they were released on bail by the High Court. v

The Superintendent of Police (SP) of Cachar stated on 18 July 2008 that the investigation of the case is almost complete and the final case diary will be submitted soon to the court. It needs to be seen what duration constitutes this ‘soon’? vi

In a subsequent petition, the Guwahati High Court ordered that '[i]t is directed that if the case is not forwarded to the Crime Investigation Department (CID) the same shall be done immediately and the CID shall investigate the case in prompt and proper manner.' vii

Does not the word 'prompt' mean 'without delay'? How much time constitutes 'delay'?

The BHRPC also submitted a complaint regarding the case before the Assam Human Rights Commission on 6 December, 2007. The Commission registered a case vide Case No. 6404/2007 dated 18 July 2008 and issued a notice to the state government asking for a report. The Commission sent a letter to the BHRPC with the report asking for its comments on the findings in the report. viii

The BHRPC on 3 December, 2008 sent its comments expressing its agreement regarding the conclusion drawn in the Magisterial Inquiry Report about the facts and circumstances concerning the death of Motahir and requested the Commission to allow an interim relief to the relatives of the victim by way of compensation and urged to recommend the prosecution of the perpetrators of the crime as it is the mandate of the Commission to do so under its constituting statute, the Protection of Human Rights Act, 1993.

The BHRPC, however, disagreed with the findings in the Magisterial Inquiry regarding its observations about setting fire on the police post and the GP office, the police firing on the people, registering of false case against them, the arrest of many protestors in connection with that false case and the harassment of many others. The BHRPC requested the Commission to conduct an independent investigation into these issues. But since then Commission did not respond, despite the BHRPC sending repeated reminders.

It was later known that a departmental inquiry into the incident was conducted by Mr. R.C Tayal, Inspector General of Police (IGP) and that the inquiry report was submitted to the government on 22 September, 2007. Pursuant to the report, the three accused were placed under suspension on 11 March 2008^{ix} and a departmental proceeding initiated against them on 21 March 2008. But nobody knows what happened to the proceedings and when and how the accused police officers got reinstated to the service. They were soon promoted. (Copy of inquiry report is made Annexure VI to this submission)

8. Extra-judicial killing of Hashmat Ali by Assam police in his house

A daily wage labourer named Hashmat Ali, son of Imam Uddin of Vill. Burunga Part-1 under the Katigorha Police Station in the district of Cachar, Assam was killed by police personnel of Kalain Outpost in the intervening night between 40 April & 1st May'2007. It was not a case of mere shootout but it was a pre-planned action of home invasion. In-charge of Kalain outpost Sub Inspector Sewa Sinha led the invading police team which at about 11-30 pm attacked the house of the deceased and ferociously made their way into the rooms breaking the doors. They started breaking utensils and furniture and abusing, beating and humiliating the inmates of the house including women and children. Being terrified the deceased desperately jumped

through the window and ran towards the paddy field. When he was about 200 metres away constable Tapan Hazarika opened fire and shot three rounds. Neighbours of the deceased testified that they heard three times the sound of firing. The deceased died on the spot. Police, without informing the family members, brought him to the Silchar Medical College & Hospital, Silchar. The doctors of SMCH declared him dead. The widow of the deceased was informed in the next day that her husband was getting treatment at SMCH. When she reached the Hospital the performance of autopsy of the body of her husband was complete.

The BHRPC filed a complaint at the ASHRC which registered a case and asked the District Magistrate of Cachar for a report of the circumstances that led to the death of Hashmat Ali. The DM caused an inquiry by an executive magistrate who concluded that officer Sewa Singh wanted to catch hold of Hashmat Ali at any cost at the instance of another person and this over enthusiasm ultimately resulted in the death of Hashmat Ali. Officer Singh simply misused his powers and his actions were in excess to the duties assigned to a police officers and not done in good faith. Had Mr. Singh applied his mind judiciously while discharging his duties, the incident causing the death of Hashmat Ali could have been averted. (Copy of the report is attached herewith as Annexure VII)

9. Killed, Buried and Vanished: Custodial death of Islamul Hoque Choudhury

23 year old Islamul Hoque Choudhury (Son of Haji Sarif Uddin Choudhury) was killed in a staged encounter on 20 May, 2000 at Panichowki under Sonai police station in the district of Cachar of the Indian state of Assam.

On 19 June 2000 Islamul Hoque Choudhury was at Banskandi bazaar and the neighbourhood area looking for the motor cycle of his brother which was lost the day before. He went there after receiving information that the cycle had been seen in this area. After a day long search he could see two men riding the lost cycle came to the bazaar. When he asked them where they found this cycle the bikers started to punch him. They also raised hue and cry shouting alarm of pick-pocket. People in the marked gathered, caught Islamul and searched him but found nothing except 20 rupees.

In the meantime some police men from Banskandi police out post came in a jeep and arrested him at 8pm. Another person named Ripon Laskar arrested by police was in the jeep. Later, an ezahar was filed in the Bnaskandi police out post under Lakhipur police station signed by Foizur Rahman and Salim of Banskandi. Both these complainants claimed in the ezahar that Islamul Hoque and Ripon Laskar were trying to kidnap them from Silghat ferry, a nearby river ferry and that the two arrested persons had links with the Peoples United Liberation Force (PULF), an extremist organisation allegedly based in Manipur.

According to Haji Sarif Uddin Choudhury, during the interrogation both the arrested persons were subjected to severe torture and Ripon Laskar succumbed to the resulting injuries in the night itself on the spot. Higher police officers were informed of the incident and it was decided that an encounter must be staged to avoid public wrath. For the purpose a team was formed headed by Mr. Hareswar Brahma, the Sub-Divisional Police Officer (SDPO) of Lakhipur Sub-Division, Mr. Choudhury claims.

In the dead of night some police personnel from Banskandi out post, Officer In-charge (O/C) of Lakhipur police station and the said SDPO went to Dhanehori taking with them Islamul Hoque and the body of Ripon Laskar in a jeep. There they purportedly searched the house of one Sukkur Uddin but nothing objectionable could be recovered from his house. Thereafter they rushed to Panichowki, a village in the foot of the Bhuvan Hills about 50 kilo metres away from Silchar, the district head quarter. On the way to Panichowki they met another police team belonging to Sonai police station, which were patrolling during night hours. The Lakhipur police team took Sonai police party with them and proceeded to Panichowki rest house, a house maintained and used by Forest Department, where they reached at about 3pm on 20 June 2000.

Some villagers of Panichowki state that on 20 June 2000 in the early morning a few gun fires were heard and when they came out of their houses at the sound they saw a police party in and around of Panichowki rest house. One of them, namely Karunamoy Das, by profession a pan-collector, (pan is a leaf used with betel nuts found in the hilly jungles) states that at the time of firing he was very near to the place of occurrence. He noticed the incident and as per his statement when police were beating the arrested person he was begging to the police for his life by requesting them to hand over to Jail instead of beating and torturing. But the police did not give any heed and lastly they shot him dead.

The next day both the dead bodies were sent to Sonai police station and after conducting post mortem examination at Silchar Medical College and Hospital (SMCH), Silchar the officer in the police station handed over the dead bodies to the relatives. The relatives of Islamul and his local people buried his body on 21 June 2000 observing religious rites.

The local media carried the police story for a few days with usual journalistic exaggerations that police arrested two high profile extremists belonging to PULF from Banskandi daily market at 8pm on 19 June 2000 and brought them to the police station for further interrogation. The I/C (In-Charge) of Banskandi out-post conveyed the information to the SDPO, Lakhipur who along with O/C, Lakhipur took part in the interrogation. On the basis of interrogation and with a view to unearthing further facts they along with arrested persons proceeded to Dhanehori and thereafter to Panichowki. At Dhanehori the police searched the house of one Sukkur Uddin on the basis of the information extracted from the arrested persons but they recovered nothing objectionable from his house. Thereafter they rushed to Panichowki for the same purpose along with another police team from Sonai police station. Both the police teams reached Panichowki rest house at about 3pm on 20 June 2000. The police party asked both the arrested persons to head them towards the hideouts of the PULF extremists. As they were passing through the premises of the Panichowki rest house all on a sudden firing from the nearby jungle began and both arrested persons who were leading them died due to cross firing. Police further add in their statements that had they not been trained up for self defence they would have been killed due to extremist's firing. According to police the following two reasons were responsible for the death of two arrested persons:

1. They were leading the police party and naturally they were going in advance.
2. They lacked the training of self protection.

But the father of the victim Haji Sarif Uddin Choudhury started his fight for justice. He succeeded to compel the District Magistrate of Cachar to order a magisterial inquiry into the incident after 3 months on 19 September 2000. The report of the inquiry never saw the light of the day. Nevertheless, the BHRPC managed to get access to an unauthenticated copy of the report of the inquiry. Although there are many questions remained unanswered in the report the Magistrate found that ‘firing took place behind the rest house where both the accused succumbed to the injuries’. He also found “*reason to believe that there was no firing from jungle or extremist side and firing which took place at Panichowki in the early morning of 20-6-2k was only from police side.*” The report goes on: “*During the whole operation of the nights of 19-6-2k and 20-6-2k the Sr. Police Officer, i. e., SDPO, Lakhipur was present along with other police personnel who could have guided his party to avert from such killing.*”

The Magistrate concludes: “*I, therefore, find Sri Hareshwar Brahma, SDPO, Lakhipur to have committed guilt and excess during the operation.*” (Copy of the report is made Annexure VIII to this submission)

But no prosecution initiated against the SDPO and his team.

A complaint was also filed with the Assam Human Rights Commission (AHRC) and accordingly a case was registered vide. AHRC Case No. 3451 of 2001. The AHRC after about six years found that a prima facie case of human rights violations exists and observed that “*it was not only a fake encounter but there was also gross negligence on the part of the police for not giving full protection to both the deceased persons*” and awarded an interim compensation of rupees fifty thousand by its judgment and order dated 14-06-2006. But the judgment is mysteriously silent on the question of prosecution of the violators. Whereas under section 18 (a) (ii) the AHRC is empowered to recommend to the concerned government or authority to initiate proceedings for prosecution against the concerned person or persons where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant.

Brief analysis:

These few representative cases clearly show the abysmal state of lawlessness which people live in. Life here is virtually “*solitary, poor, nasty, brutish and short*” (as was claimed by Thomas Hobbes in his *The Leviathan*) for some people, particularly those who belong to the vulnerable groups such as minority communities, working class.

The alleged perpetrators in some of the cases belong to the armed forces of India whether regular military or para-military operating invariably under the Armed Forces (Special Power) Act, 1958. The Act empowers members of the armed forces to use lethal force against civilians even to the causing of death on mere suspicion that they may act in breach of any law or any order along with the power to enter into any dwelling places by breaking their entrance and search and seize anything without warrant and arrest any person without warrant and keep the arrestees in custody for unspecified times without charge in the valley along with the rest of Assam and parts of some other North East Indian states and Jammu and Kashmir. The AFSPA also

places the army above the law, constitution and judiciary for acts claimed to be done under the Act by barring institution of prosecution, suits or any judicial procedure in any court in India.

Some other cases of extra-judicial execution noted above were perpetrated by the state police who operate under a state version of the AFSPA titled the Assam Disturbed Areas Act, 1955. Along with these special security laws with draconian provisions and laws like the Unlawful Activities Prevention Act, the regular law that governs the policing in Assam is the Assam Police Act, 2007, which was enacted apparently to comply with the requirements of the directives issued by the Supreme Court of India in Prakash Singh and Others vs. Union of India (also known as the police reform case), in essence conform more with the colonial-era Police Act of 1861. The colonial police law was not aimed to provide democratic policing. It meant to create a repressive force subservient to ruling class and devoid of any accountability to the law and people.

After decades of public pressure, lack of political will and continued poor policing, a police reform process is finally underway in India as the apex court stepped in. On 22 September 2006, the Supreme Court delivered a historic judgment in Prakash Singh and Others vs. Union of India and Others instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform.

The directives were aimed to ensure functional autonomy of the police and their accountability to the law. For ensuring functional autonomy the Supreme Court directed 1. to establish a State Security Commission to i. ensure that the state government does not exercise unwarranted influence or pressure on the police; lay down broad policy guidelines aimed at promoting efficient, effective, responsive and accountable policing, in accordance with the law; give directions for the performance of the preventive tasks and service oriented functions of the police; evaluate the performance of the state police and prepare a report on police performance to be placed before the state legislature.

2. The second directive was aimed at ensuring fair selection of Director General of Police (DGP) and guarantee of his tenure.

3. Security of tenure is similarly important for other police officers on operational duties in the field. In order to help them withstand undue political interference, have time to properly understand the needs of their jurisdictions and do justice to their jobs, the Supreme Court provides for a minimum tenure of two years for the following categories of officers:

- Inspector General of Police (in charge of a Zone)
- Deputy Inspector General of Police (in charge of a Range)
- Superintendent of Police (in charge of a District)
- Station House Officer (in charge of a Police Station)

4. To counter the prevailing practice of subjective appointments, transfers and promotions, the Supreme Court provides for the creation of a Police Establishment Board. In effect, the Board brings these crucial service related matters largely under police control. Notably, a trend in international best practice is that government has a role in appointing and managing senior police leadership, but service related matters

of other ranks remain internal matters. Experience in India shows that this statutory demarcation is absolutely required in order to decrease corruption and undue patronage, given the prevailing illegitimate political interference in decisions regarding police appointments, transfers and promotions.

5. the Supreme Court directed the Central Government to establish a National Security Commission for Central Police Organisations and Central Para-Military Forces.

For ensuring accountability the Supreme Court directed the governments to set up:

6. Police Complaints Authority and

7. To separate investigation and law and order function of police.

The Commonwealth Initiative for Human Rights (CHRI), a regional human rights organization which was also one of the interveners in the Prakash Shingh case, after an analysis of the newly enacted Assam Police Act says that the Act only partially complies with the directives:

State Security Commission was established but the composition is not as per the Supreme Court directive. The Act has also weakened the mandate of the commission and has made its recommendation non-binding.

The second directive regarding selection process of the DGP and guarantee of his tenure not complied.

Directive regarding guarantee of tenure of the police officers on the field are also not complied. Only one year of tenure is guaranteed to the Superintendent of Police in charge of a district and Officer-in-Charge of a police station with vague grounds for premature removal.

Police Establishment Board was set up but the mandate was not adhered to. DGP has also been given the power to transfer any officer up to the rank of Inspector "as deemed appropriate to meet any contingency", contrary to the directive.

The Central Government did not establish National Security Commission in utter contempt of the judgment.

The Assam Police Act, 2007 establishes Police Accountability Commission to enquire into public complaints supported by sworn statement against the police personnel for serious misconduct and perform such other functions. But the Chairperson and members of the Commission are appointed directly by the government. This can, at best, be called partial compliance.

Half hearted attempts can also be seen regarding separation of investigation from law and order function of the police. Special Crime Investigation Unit has been set up in urban police stations but there is no specific section on separation of between law and order and crime investigation.

This deliberate attempt to bypass the Supreme Court directives prompted the petitioner in the case former Assam director-general of police Prakash Singh to describe the Assam Police Act, 2007, as a fraud on the people of the state. He was speaking at a seminar jointly organised by the commission and the Assam State Legal Services Authority at the Assam Administrative Staff College, Guwahati. According to him, the government had violated the letter and spirit of the apex court guidelines by passing the act without conforming to these guidelines.

The Act needs drastic amendment to be brought in conformity with the Supreme Court guidelines and to be compatible with International Human Rights Standards. More importantly the role of the police needs to be redefined *"taking into account the emerging challenges of policing and security of the State, the imperatives of good governance, and respect for human rights"*.

The cases cited also highlight another huge challenge to the civil and political rights in Assam which is non-adherence and non-implementation of laws and other instruments that are meant to protect such rights. The Supreme Court guidelines in DK Basu case, and NHRPC guidelines regarding arrest, custodial deaths have the potential to drastically reduce the number of extra-judicial executions if implemented properly. The DK Basu guidelines are only implemented in papers. In rural police stations the guidelines are not even hung in a language eligible to the public at a conspicuous place.

It may be noted that in many of the cases mentioned no magisterial inquiry was conducted in contravention of the statutory mandate of section 176 of the Code of Criminal Procedure, 1973. In the cases where such inquiries are conducted the magistrates employed were not judicial ones as is mandate of the law. Although even the executive magistrates when found in their inquiries the guilt of the accused police personnel established beyond doubt, neither prosecution has been started nor has any compensation been provided to the kin of the deceased. Apart from legal immunity provided by security legislations such as the Armed Forces (Special Power) Act, 1958, the Assam Disturbed Areas Act, 1955 there is a regime of de facto impunity guaranteed to the violators which is responsible for the increase of the cases of extrajudicial killings.

Recommendations:

The BHRPC, in the circumstances, urge you to recommend to the authorities in India:

1. To repeal the Armed Forces (Special Power) Act, 1958;
2. To repeal the Assam Disturbed Areas Act, 1955;
3. To make the Unlawful Activities Prevention Act, 1967 compatible with international human rights standards by amending the Act;
4. To bring the Assam Police Act, 2007 in conformity with the directives of the Supreme Court of India through amendment;

5. To amend the Protection of Human Rights Act, 1993 to extend the jurisdiction of both the state and national human rights commissions to conduct independent inquiries into cases of alleged human rights violations by the armed forces and to lengthen the limitation period of one year to five years;
6. To constitute an independent commission headed by a retired chief justice of a high court or the supreme eligible to be appointed as the chief justice of India with adequate numbers of members from the civil society to conduct time-bound inquiries into all allegations of extrajudicial, summary or arbitrary executions leading to the initiation of prosecution and provision of adequate reparation;
7. To constitute special courts to conduct trial of all cases of extrajudicial, summary or arbitrary executions under direct monitoring of the Supreme Court of India; and
8. Any other recommendations deemed fit.

Looking forward to your actions in this regard,

With warm regards,

Yours sincerely,

Waliullah Ahmed Laskar
Director, Law and Legal Affairs
Barak Human Rights Protection Committee
Guwahati, Assam