

Nobody's children: Juveniles of Conflict Affected Districts of India



ASIAN CENTRE FOR HUMAN RIGHTS



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1. Executive summary and recommendations

In the wake of the gruesome rape of a young woman on 16th December 2012 in Delhi, a heated debate has been raging at national level with respect to lowering the age of juveniles to 16 years. On 27th February 2013, the Minister for Women and Child Development told the Rajya Sabha, *“We are not changing the age of juvenile as defined in the juvenile justice act, as it may hurt the larger interests of children in the country. All those under 18 years of age are juvenile.”* The Criminal Law (Amendment) Bill, 2013 passed in the Lok Sabha on 19 March 2013 retained the age of consent for sex to 18 years.

However, there are 197 districts in India which are officially notified as affected by internal armed conflicts and the edifice of the juvenile justice does not exist in these districts. Children, irrespective of their age, in these districts are treated as adult. They are routinely subjected to gross human rights violations including arbitrary arrest and detention, torture, extrajudicial executions and sexual assaults as part of the counter-insurgency operations. Juveniles in these districts are denied access to juvenile justice unlike their counterparts in rest of the country.

The 197 districts which have been notified as conflict affected include: 71 districts notified as “disturbed” under the Armed Forces Special Powers Act (AFSPA) in Assam¹, Arunachal Pradesh², Manipur³, Meghalaya⁴, Nagaland⁵ and Tripura⁶ in the north east India and 20 out of 22 districts in Jammu and Kashmir; and 106 districts declared as Left Wing Extremism (LWE) affected in nine states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal.

i. State of juvenile justice in conflict afflicted districts

Out of 197 conflict afflicted districts, 151 districts i.e. 76.64% of the total conflict afflicted districts do not have Observation Homes and Special Homes. This implies that juveniles who are taken into custody are kept in police lock up or camps of the army and para-military forces in clear violation of the Juvenile Justice (Care and Protection of Children) Act, 2000 [JJ(C&PC) Act] and the UN Convention on the Rights of the Child. This is despite the fact that Sub sections of (1) and (2) of Section 8 of the Juvenile Justice Act, 2000 provide for establishment of “Observation Homes”/ Certification of Fit Institutions in every district or a group of district “for the

¹ Entire state of Assam with 27 districts is notified as disturbed

² Three districts are notified as disturbed in Arunachal Pradesh while eight districts share border with Assam.

³ Entire state of Manipur with nine districts, except Imphal Municipality area, is notified as disturbed

⁴ As per the notification of the Ministry of Home Affairs, ‘Disturbed Area’ under the AFSPA include areas that fall within a 20-km belt in Arunachal Pradesh and Meghalaya along their border with Assam. Five districts of Meghalaya share border with Assam.

⁵ Entire state of Nagaland with 11 districts is notified as disturbed

⁶ In Tripura, 34 out of 70 police Stations in eight districts are notified as fully disturbed and six police stations as partially disturbed

temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act”.

Among these States, the worst are Jammu and Kashmir which has only two Observation Homes, and Manipur which has only one Observation Cum Special Home. This denies access to justice to many juveniles detained from other districts as they need to be produced before the respective Juvenile Justice Boards (JJB) or courts in the case of Jammu and Kashmir.

In conflict afflicted districts, the Juvenile Justice Boards (JJBs) exist on paper while their functioning remains deplorable. The Government of Manipur had submitted false information to the Ministry of Women and Child Development that nine JJBs had been operating in the State while in reality only one JJB was functioning. As the State government failed to establish the JJBs, the Project Approval Board (PAB) in its 35th Meeting under Integrated Child Protection Scheme (ICPS) held on 17 January 2012 had no other option but to decide not to grant further funds for the nine JJBs for the current Financial Year 2012- 2013 until a report on the functioning of JJBs with complete details of members, pendency, etc are submitted by the State Government. In Jharkhand, there were over 3,500 cases pending before various JJBs in the state as on 11 July 2012⁷ while the Observation Home for Boys established in the LWE affected Palamau district was converted into a girl's residential school - Kasturba Gandhi Balika Vidyalaya, and the juveniles were shifted to the Observation Home, Ranchi, which is about 165 km away. This requires travel arrangements to be made for the juveniles to come to Palamau district and be produced before the Juvenile Justice Board, which invariably delays justice.⁸ In Assam, replies received from JJBs under the Right to Information Act showed that not a single review of the pendency of cases before the JJBs has been conducted by the Chief Metropolitan Magistrate or Chief Judicial Magistrate in Kokrajhar district⁹; Dibrugarh district¹⁰; Darrang district¹¹; Lakhimpur district¹²; Udalguri district¹³; Dhubri district¹⁴; Goalpara district¹⁵; Barpeta district¹⁶; Golaghat district¹⁷; Morigaon district¹⁸; Chirang district¹⁹; Dhemaji district²⁰ and Nagaon district²¹ from date of their constitution till 30th March 2012. Reviews were held only in Bongaigaon district (12 reviews)²²; in Jorhat district (1 review on

7. Justice for delinquents on Tatia radar, The Telegraph, 11 July 2012

8. Girls study in home for boys - Palamau's gender-bender shocks panel, The Telegraph, 2 June 2012

9. Reply dated 23.3.2012 from Principal Magistrate, JJB, Kokrajhar

10. Replies received from Dibrugarh District Child Protection Unit on 22nd March 2012

11. Replies received from Darrang District Child Protection Committee on 28th March 2012

12. Replies from Lakhimpur district Child Protection Committee on 29th March 2012

13. Replies received from JJB, Udalguri district on 26th March 2012

14. Replies received from Dhubri District Social Welfare Officer on 27th March 2012

15. Replies received from the Office of the District and Session Judge, Goalpara district, on 30th March 2012

16. Replies received from Barpeta District Probation Officer on 2nd April 2012

17. Replies received from District Child Protection Officer, Golaghat district on 10th April 2012

18. Replies received from the JJB, Morigaon district on 12th April 2012

19. Replies received from Chirang District Social Welfare Officer on 25th April 2012

20. RTI reply dated 3rd May 2012 from District Social Welfare Officer, Dhemaji

21. Replies received from District Child Protection Officer, Nagaon on 11th April 2012

22. Replies received from the Principal Magistrate, Bongaigaon on 1st April 2012

23.03.2010)²³; in Sonitpur district (2 reviews)²⁴ while in case of Sivsagar district, RTI reply vaguely stated “reviewed and monitored time to time”.²⁵

ii. Violations of juveniles’ rights in conflict affected districts

Children in the conflict affected districts are subjected to arbitrary arrest and detention including under the national security laws, torture, extrajudicial executions and sexual violence. In many cases, the perpetrators got away by producing “No Objection Certificate” from villagers or victims stating that they had not committed any offence.

a. Arbitrary arrest, detention and torture

In this report, Asian Centre for Human Rights (ACHR) cited 15 cases of arbitrary arrest, detention and torture. Though crimes of arbitrary arrest, detention and torture are difficult to establish, ACHR has obtained compensation in at least three cases (two of which are highlighted below) to establish the patterns of violence against children.

Case 1: Illegal detention and torture of Soumen Mohanty, Orissa²⁶

On 17 November 2010, Soumen Mohanty (17 years), son of Mr. Sudhir Charan Mohanty of Netaji Nagar was arrested in connection with Madhupatana police station case No. 218 dated 17.11.2010 under Sections 506/34 of Indian Penal Code and Sections 3 & 5 of the Explosive Substances Act in Cuttack, Orissa. On 23 November 2010, ACHR filed a complaint with the NHRC which forwarded it to the Orissa Human Rights Commission (OHRC) for taking necessary action. The Police submitted misleading report and this was challenged by the ACHR. Thereafter, the OHRC asked its Director (Investigation) to conduct an independent inquiry and the inquiry report dated 6.11.2012 was submitted.

The Director (Investigation) of the OHRC found that “(i) Juvenile Soumen Mohanty was taken into detention at Madhupatana poolice station on 17.11.2010 between 7.30 pm to 8.30 pm and interrogated by the police in connection with Madhupatana Police Station case no. 218 of 2010; (ii) Soumen Mohanty was “tortured physically and mentally by ASI Satyanarayan Senapati in presence of Inspector Jayant Kumar Mohapatra and Sub-Inspector, S.B. Jena, (iii) It was ASI Satyanarayan Senapati who assaulted Soumen Mohanty for which he is liable to be prosecuted under sections 341/323 IPC; (iv) Inspector Jayant Kumar Mohapatra is liable for illegal detention of Soumen Mohanty for more than 40 hours under sections 342/341/323/109 IPC; and (v) Police records were manipulated showing that Soumen Mohanty was arrested on 18.11.2010 at 8.30 pm to cover up the illegal action of Inspector Jayant

²³ Replies received from Jorhat District Child Protection Officer on 10th April 2012

²⁴ Replies received from the Sonitpur District Child Protection Unit on 27th March 2012

²⁵ Replies from Principal Magistrate, JJB, Sivsagar on 30th March 2012

²⁶ ACHR complaint to Orissa Human Rights Commission dated 23 November 2010, Case No. 2149 of 2010

Kumar Mohapatra and ASI Satyanarayan Senapati which amounts to misconduct and dereliction of duty.”

The Orissa Human Rights Commission also found that when Soumen Mohanty was produced before the CJM-cum-Principal, Juvenile Justice Board (JJB), Cuttack on 19.11.2010, the JJB observed as follows: “Soumen Mohanty complains of ill-treatment by police while in custody. He has shown his right hand where marks of assault are visible.” Therefore, the OHRC accepted the report of the Director Investigation on 23rd November 2012 and awarded compensation of Rs 50,000 /- (Rupees fifty thousand) to the victim. The Commission directed the authorities to decide about the action to be taken against the erring officials for having assaulted Soumen Mohanty and manipulated the records.

Case 2: Illegal detention and torture of a minor, Assam²⁷

On 16 August 2009, 12-year-old Dipak Saikia (name changed) of Sanitpur village was tortured by Manuj Boruah, Officer In-Charge at the Sungajan police station in Golaghat district, Assam. On 16 August 2009 at about 11 am, a group of about six police personnel entered the house of the victim and dragged him out without giving any reason. He was taken to the Sungajan police station and on reaching the police station, he was ordered to sit on the floor of the verandah. Mr Manuj Boruah, Officer In-Charge of the police station tied the minor’s hands on his back with a chain and tortured him. The victim was beaten up with a stick repeatedly on his body including in the thigh, knees, feet, sole, back, arms, elbows and ears. The Officer-In-Charge also asked the minor to keep his hand on his table and was beaten on the nails. He was again hit on the head, neck and nose until Dipak became unconscious. Pursuant to a complaint filed with the NHRC by ACHR, the Superintendent of Police, Golaghat district, vide communication dated 07.12.2010 submitted a report to the NHRC confirming that the accused Sub Inspector Manuj Baruah directed his subordinate police officials to pick up the victim from his home at 10.00 am, caned him and detained him in the police station. The report of the SP further stated that accused police officer willfully omitted to make necessary entries in the General Diary of the police station, pertaining to the whole episode including the picking up of the victim, his illegal detention and subsequent release. The report further stated that a Departmental Disciplinary Proceeding has been drawn up against the accused officer for criminal misconduct and dereliction of duty. The NHRC ordered the state government to provide a compensation of Rs. 50,000 to the victim. On 20 April 2012, the NHRC closed the case after the Joint Secretary to the Government of Assam, Political (A) Department vide communication dated 7.4.2012 informed that payment of compensation amounting to Rs. 50,000/- was paid through cheque to the victim.

Special focus: Arrests in J&K including under the Public Safety Act

Children continue to be arrested under the Public Safety Act (PSA) of Jammu and Kashmir which provides for preventive detention upto two years without trial in the

²⁷ ACHR complaint to NHRC dated 12 November 2009, NHRC Case No. 135/3/22/09-10

name of public safety. The six emblematic cases of detention of juveniles in J&K under the Public Safety Act are given below:

Case 1: On 7 February 2011, Faizan Rafeeq Hakeem was arrested for his alleged involvement in “stone-throwing.” He was 14 years, eight months and 11 days old at the time of his arrest. He was booked under the PSA and shifted to Kotbalwal Jail. Finally, Chief Minister Omar Abdullah ordered his release. Hakeem was released on 5 April 2011.²⁸

Case 2: In May 2011, Murtaza Manzoor, aged 17 years, was released from jail after the High Court intervened and found his imprisonment to be unlawful. He was locked up for more than three months in administrative detention under the PSA.²⁹

Case 3: On 17 June 2010, 15-year-old Sheikh Akram, son of Sheikh Zulfikar of Jogilanker Rainawari. Akram and a student of Class 8th was arrested under the Public Safety Act after allegedly attending the funeral procession of Tufail Mattoo. After his arrest, Akram was granted bail by the Principal District and Sessions Court but in order to foil the bail, on 3 July 2010, District Magistrate of Srinagar Meraj Ahmad Kakroo issued orders to book him under PSA and was sent to Kote Bhalwal jail.³⁰

Case 4: In November 2010, Harris Rasheed Langoo (15 years), a class 9th student, was arrested from his home at Malik Sahab Hawal for alleged involvement in stone pelting and detained under the PSA. Harris was granted bail twice by the court but continued to be detained. The first bail was granted almost a week after the arrest but police detained him on a new charge. The second bail was granted on 15 November 2010 but he was detained in a new charge.³¹

Case 5: Omar Maqbool, aged 13 years, was detained on 27 October 2010 under the PSA and faced similar trauma of re-arrest like Harris Rasheed Langoo.³²

Case 6: Mushtaq Ahmad Sheikh, aged 14 years, was detained without evidence on 9 April 2010. He was granted bail after eight days, but was re-arrested on 21 April 2010. He was finally released on 10 February 2011.³³

b. Extrajudicial killings of children

Children are routinely picked up and extrajudicially killed including in alleged fake encounters. In this report, ACHR provided 15 cases of extrajudicial execution of children. In a number of cases, extrajudicial executions have been established by the National Human Rights Commission. Two emblematic cases are given below:

²⁸ In J&K, juvenile age is 16 yrs, but minors booked under PSA also, The Indian Express, 3 February 2013 available at <http://www.indianexpress.com/news/in-j-k-juvenile-age-is-16-yrs-but-minors-booked-under-psa-also/1068604/0>

²⁹ Juveniles suffer in Jammu and Kashmir, The Pioneer, 8 July 2011

³⁰ 15-yr old booked under PSA, Samaan Lateef, posted Kashmir Global Posted on Sunday, 07/11/2010 – 13:08, available at <http://www.kashmirglobal.com/?p=1115>,

³¹ Minor booked on stone pelting charges, The Kashmir Times, 17 November 2010

³² Juveniles suffer in Jammu and Kashmir, The Pioneer, 8 July 2011

³³ Juveniles suffer in Jammu and Kashmir, The Pioneer, 8 July 2011

Case 1: Killing of Rakhai Gaur (13) by CRPF, Assam³⁴

On 8 December 2011 morning, Cobra commandoes of the Central Reserve Police Force reportedly shot dead 13-year-old Rakhai Gaur at his village, Malasi Namkhi Gaur village under Dolamara police station in Karbi Anglong district of Assam. On 9 December 2011, ACHR filed a complaint with the NHRC urging its immediate and appropriate intervention. NHRC registered the complaint (Case NO.348/3/8/2011-PF) and issued notice to Director General, CRPF, New Delhi and Superintendent of Police, Karbi Anglong district, Assam calling for reports within four weeks. The state government of Assam paid a compensation of Rs.300,000 (three lakhs) to the next of kin of the deceased from the Chief Minister's Relief fund and in view of this, the NHRC closed the case.

Case 2: Killing of 15-year-old Jatan Reang by Assam Rifles, Assam³⁵

On the night of 14 May 2010, Jatan Reang (15 years) was killed in firing by the personnel of 14th Assam Rifles and arbitrarily arrested four other tribal villagers at Gudgudi village under Katli Chara Police Station in Hailakandi district, Assam. The five tribal villagers including the deceased (Jatan Reang) were returning from Boirabi bazaar when they were ambushed by the 14th Assam Rifles from North Tripura over a bridge at Gudgudi village at around 10 PM on 14 May 2010. The 14th Assam Rifles personnel opened fire indiscriminately without any provocation and killed Jatan Reang although they were unarmed and innocent. Following the killing of Jatan Reang, the Assam Rifles personnel arrested the four other Reang tribal villagers and handed them over to Katli Chara police station. On 23 July 2010 ACHR filed a complaint with the NHRC urging its immediate and appropriate intervention. The NHRC registered the complaint as Case No.170/3/21/2010-PF/UC and issued notice to the Secretary, Ministry of Home Affairs, Government of India. During the course of proceeding, the NHRC received the Magisterial Enquiry Report, Investigation Report of the Superintendent of Police, Hailakandi, and the Post-Mortem Report. The reports confirmed that the minor was fired at from point blank range by a jawan and injured his right thigh. But, the minor was not provided medical care and he died on account of excessive bleeding. The NHRC directed the Ministry of Home Affairs to pay a compensation of Rs. 500,000 to the next of kin of the deceased.

c. Sexual violence

Children especially the girls face sexual violence from the law enforcement personnel in the conflict affected areas. ACHR cites two cases below.

Case 1: On 23 February 2011, a 15-year-old minor tribal girl was raped by a personnel of Tripura State Rifles (TSR) identified as Tejendra Barui at Nandakumarpara village in Khawai subdivision in West Tripura district, Tripura. The accused was deployed in the

³⁴. ACHR's complaint to NHRC, 9 December 2011, NHRC Case No 348/3/8/2011-PF

³⁵. ACHR complaint to NHRC dated 23 July 2010, NHRC Case No. 170/3/21/2010-PF/UC

Village Committee Election for the Tripura Tribal Areas Autonomous District Council. According to the family members, the accused TSR personnel dragged the victim to a nearby jungle forcefully when she was returning home from her relatives' house and raped her. On 25 February 2011, ACHR filed a complaint with the NCPCR which was registered as Case No. TR-19023/21623/2010-11/COMP. Pursuant to NCPCR's intervention, the District Magistrate and Collector, West Tripura district vide letter dated 13 May 2011 informed the NCPCR that a compensation of Rs.40,000 was recommended to two victims under the Tripura Victim Compensation Fund Rules, 2007. On 21 June 2012, ACHR further intervened with the NCPCR to ensure that the compensation is enhanced.³⁶

Case 2: In April 2011, a 14-year-old mentally challenged girl was raped by a Central Reserve Police Force (CRPF) personnel near the CRPF camp in Warangal district, Andhra Pradesh. The victim was an inmate of a Shelter Home run by an NGO. The matter came to light only when the victim was admitted to a local hospital and gave birth to a premature baby on 5 November 2011.³⁷ ACHR filed a complaint with the NHRC on 14 November 2011. The NHRC directed the Director General, CRPF, New Delhi and Superintendent of Police, Warangal district to submit reports. In compliance, the Director General, CRPF submitted a report which stated that during investigation the Caretaker of the Home revealed that a CRPF Constable had raped the girl in the month of April 2011 as a result the victim might have become pregnant. An FIR No. 256/2011 dated 29.12.2011 was also registered under Section 376 IPC at Kakatya University Campus police station, Warangal against an unidentified CRPF personnel and Caretaker of the Home. The NHRC vide its proceedings dated 13 April 2012 directed the CRPF to submit a further report regarding the status of action taken.

iii. Nobody's children

The Government of India denies existence of armed conflicts in India. In its first periodic report (2011) on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict states, *“Even though India does not face armed conflict, there are legislative provisions that prevent involvement of children in armed conflict and provide care and protection to children affected by armed conflict.”* This statement of the Government of India is not true.

The Ministry of Women and Child Development launched Integrated Child Protection Scheme (ICPS) from 2009-10 aimed at building a protective environment for children in difficult circumstances. The Jammu and Kashmir government has astoundingly refused to avail the ICPS while the remaining States have not submitted any proposal to augment the juvenile justice system in the conflict affected districts. Under the ICPS, the Ministry of Women and Child Development supports activities placed by the State Governments which invariably ignore the conflict affected districts.

³⁶. ACHR's complaint to NCPCR dated 25 February 2011

³⁷. ACHR complaint to NHRC dated 14 November 2011

The National Commission for Protection of Child Rights, among others, at the request of the Asian Centre for Human Rights started a process for drafting “*Standard Operating Procedure (SOP) for dealing with arrest, detention & death in custody and in encounter of children in Internal Security Situations*” in June 2012 and a consultation was held on 29 July 2012. The NCPCR is yet to finalise the same and a mere statement of the legal procedures is unlikely to help.

The UNICEF’s Child Protection Programme in India focuses mainly on three areas of intervention: child labour, child trafficking, and children in difficult circumstances. Its website fails to provide any information as to the work undertaken in the conflict affected districts.

It is clear that juveniles in conflict affected districts do not seem to be anybody’s priority and they are being denied the equal access to juvenile justice as being provided to their counterparts in the rest of the country.

iv. Recommendations:

Asian Centre for Human Rights recommends the following:

- the Ministry of Women and Child Development and the State Governments must undertake initiative and allocate financial resources to establish all the institutions as provided under the Juveniles Justice (Care and Protection of Children) Act in all the 197 conflict affected districts;
- the National Commission for Protection of Child Rights must **develop** “Standard Operating Procedures” which shall specify the responsibility to the District Magistrate and the State Police, Central para-military officers and the army to submit the monthly report with respect to implementation of the Juveniles Justice (Care and Protection of Children) Act in case of arrest, detention, torture, rape, extrajudicial executions, etc;
- the UNICEF must include children from these 197 districts in its programme on children in difficult circumstances;
- the State Government of Jammu and Kashmir must issue an order prohibiting arrest of children under Public Safety Act; and
- the State Government of Jammu and Kashmir must sign the Memorandum of Understanding with the Ministry of Women and Child Development for implementation of the Integrated Child Protection Scheme.

Suhas Chakma

Director

2. India's conflict affected districts

The Government of India in its first periodic report (2011) on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict states, *“Even though India does not face armed conflict, there are legislative provisions that prevent involvement of children in armed conflict and provide care and protection to children affected by armed conflict.”*

There is no doubt that this statement of the Government of India before the UN Committee on the Rights of the Child is a lie. The Ministry of Home Affairs (MHA) in the latest Annual Report for the year 2011-12 stated, *“The operations against the Left Wing Extremists continued. The security forces achieved some notable successes in arresting/neutralizing elements of the top leadership. However, this is a long drawn out battle and needs to be persevered with both in terms of operations against the armed elements as well as the all round development of LWE affected areas.”*³⁸ As per the MHA, a total of 13,846 civilians and 4,807 security force personnel have been killed in Jammu and Kashmir (upto 31.12.2011) since inception of militancy in the state.³⁹ In the North East, 219 Security forces personnel and 1392 civilians have been killed in the conflicts during 2007-2011.⁴⁰ Further, at least 3,240 persons have been killed in the conflict with the Naxalites during 2008-2011 in more than nine states namely Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Uttar Pradesh, West Bengal, etc.⁴¹ The International Committee for Red Cross (ICRC) mandated to monitor the situation in conflict affected areas operates in Jammu and Kashmir.

According to the Ministry of Home Affairs, 17 out of 28 States are affected by internal armed conflicts. These States include Jammu and Kashmir, seven northeastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura; and nine LWE affected states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal.

In the north east region, 71 districts in six states of Assam (27), Arunachal Pradesh (11), Manipur (9), Meghalaya (5), Nagaland (11) and Tripura (8) are notified as “disturbed” and the draconian AFSPA is enforced. The disturbed districts are all the 27 districts of Assam namely Barpeta, Bongaigaon, Cachar, Chirang, Darrang, Dhemaji, Dhubri, Dibrugarh, Dima Hasao, Goalpara, Golaghat, Hailakandi, Jorhat, Karbi

³⁸ Ministry of Home Affairs, Annual Report 2011-2012, P 6, available at [http://www.mha.nic.in/pdfs/AR\(E\)1112.pdf](http://www.mha.nic.in/pdfs/AR(E)1112.pdf)

³⁹ Ministry of Home Affairs, Annual Report 2011-2012, P 7, available at [http://www.mha.nic.in/pdfs/AR\(E\)1112.pdf](http://www.mha.nic.in/pdfs/AR(E)1112.pdf)

⁴⁰ These include 93 Security Forces (SFs) and 755 civilians in Assam; 11 SFs and 29 civilians in Meghalaya; 12 SFs and 35 civilians in Tripura; 5 SFs and 26 civilians in Arunachal Pradesh; 4 SFs and 137 civilians in Nagaland; 4 SFs and 3 civilians in Mizoram; and 90 SFs and 407 civilians in Manipur. Figures available at Ministry of Home Affairs, Annual Report 2011-12, pp 349-350, available at [http://www.mha.nic.in/pdfs/AR\(E\)1112.pdf](http://www.mha.nic.in/pdfs/AR(E)1112.pdf)

⁴¹ Ministry of Home Affairs, Annual Report 2011-12, p 30, available at [http://www.mha.nic.in/pdfs/AR\(E\)1112.pdf](http://www.mha.nic.in/pdfs/AR(E)1112.pdf)

Anglong, Karimganj, Kokrajhar, Lakhimpur, Morigaon, Nagaon, Nalbari, Sivasagar, Sonitpur, Tinsukia, Kamrup Rural, Kamrup Metropolitan, Baksa and Udalguri; all the 11 districts of Nagaland namely Dimapur, Kiphire, Kohima, Longleng, Mokokchung, Mon, Peren, Phek, Tuensang, Wokha and Zunheboto; all the nine districts, except Imphal Municipality area, in Manipur namely Bishnupur, Chandel, Churachandpur, Imphal East, Imphal West, Senapati, Tamenglong, Thoubal and Ukhrul; eleven districts of Arunachal Pradesh namely Changlang, Longding, Tirap, West Kameng, East Kameng, Papumpare, Lower Subansiri, West Siang, East Siang, Lower Dibang Valley and Lohit; five districts of Meghalaya namely West Garo Hills, East Garo Hills, West Khasi Hills, Ribhoi and Jaintia Hills and 34 out of 70 police stations are notified as fully disturbed and six police stations as partially disturbed in eight districts of Dhalai, Khowai, Gomati, Sipahijala, Unakoti, West Tripura, South Tripura and North Tripura.

In Jammu and Kashmir, 20 out of 22 districts are notified as disturbed. The 20 districts notified as disturbed are Kathua, Samba, Jammu, Rajouri, Reasi, Udhampur, Ramban, Doda, Kistwar, Poonch, Anantanag, Kulgam, Pulwama, Shopian, Budgam, Srinagar, Ganderbal, Bandipora, Barumallah and Kupwara.

As many as 106 districts out of 316 districts in nine states in mainland India have been identified as LWE affected by the Ministry of Home Affairs, Government of India. These nine states are Andhra Pradesh (16 LWE affected districts out of 23 districts), Bihar (22 LWE affected districts out of 38 districts), Chhattisgarh (16 LWE affected out of 27 districts), Jharkhand (21 LWE affected out of 24 districts), Madhya Pradesh (1 LWE affected out of 50 districts), Maharashtra (4 LWE affected out of 35 districts) Orissa (19 LWE affected out of 30 districts), Uttar Pradesh (3 LWE affected districts out of 75 districts) and West Bengal (4 LWE affected districts out of 19 districts).⁴²

⁴² http://mha.nic.in/uniquepage.asp?Id_Pk=540

3. Applicability of the Juvenile Justice (Care and Protection of Children) Act in conflict affected areas

In 1992, the Government of India ratified the UN Convention on the Rights of the Child which prescribes standards to be adhered to by all state Parties in securing the best interest of the child. India enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 [hereinafter referred to as JJ(C&PC) Act] and launched various schemes for welfare of such children including the Integrated Children Protection Scheme (ICPS). The JJ(C&PC) Act was further amended in 2006 and 2011.

The implementation of the JJ(C&PC) Act has been tardy across the country.

The Supreme Court of India in its order dated 22 January 2010 in the case of *Bachpan Bachao Andolan Vs Union of India & Others* directed all the State Governments to properly implement the JJ(C&PC) Act and constitute Child Welfare Committees, Juvenile Justice Boards and Special Juvenile Police Units in each district and also appointed the National Commission for Protection of Child Rights (NCPCR) as nodal agency to monitor the implementation of the directions of the court given from time to time.

However, the Supreme Court's efforts do not seem to be bearing the desired results as implementation of the JJ(C&PC) Act remained far from satisfactory across the country. The implementation of the JJ(C&PC) Act in particular with respect to juveniles in conflict with law in areas affected by conflict/Left Wing Extremism is dismal. The institutions defined under the JJ(C&PC) Act such as Juvenile Justice Boards, Observation Homes, Special Homes, Juvenile Special Police Units etc do not exist in the disturbed areas/conflict situations and there is little knowledge about the JJ(C&PC) Act amongst the law enforcement personnel operating in conflict situations.

The situation is further compounded by application of special security legislations such as the Armed Forces Special Powers Act, 1958 which does not differentiate between children and adults.

i. J&K: Juveniles denied justice unlike their counterparts in rest of the country

The basic premise of national and international law pertaining to juveniles is the specific requirement of children in conflict with law and their requirement for special protections. The Government of India sought to incorporate these provisions under the JJ(C&PC) Act of 2000 which replaced the flawed Juvenile Justice Act of 1986.

However, the JJ(C&PC) Act of 2000 has no jurisdiction in Jammu and Kashmir (J&K). Article 370 of the Indian Constitution provides that unless the J&K government extends Indian law by an Act of the State Legislature, the law is not applicable in J&K.

While the J&K government extended all the laws considered draconian including the Armed Forces Special Powers Act, it failed to show the same level of alacrity with regard to the juvenile justice.

The JJ(C&PC) Act was enacted in India in 1986, but it took more than a decade for the J&K legislature to enact the Jammu and Kashmir Juvenile Justice Act, 1997. It took another decade until 2007 to adopt the Rules accompanying the Act meaning that the Act remained unimplemented. Even though the rules were framed in 2007, the State government took no action to set up juvenile homes, Juvenile Justice Boards and State Juvenile Police Units.

Juveniles in conflict with law do not get the benefit of the JJ(C&PC) Act in Jammu and Kashmir. Under the 1997 J&K Juvenile Justice Act, those who are over 16 years are not regarded as juveniles. Minors in pre-trial detention are assumed to be adults and are routinely detained with adult criminals, placing them at very high risk of abuse. In the absence of JJBs, trials are conducted by normal courts.

In 2009 a Public Interest Litigation was filed before the J&K High Court to direct the State government to implement the 1997 J&K Juvenile Justice Act. In June 2010, the J&K High Court directed the state government to implement the 1997 Juvenile Justice Act in three months. The Court observed that “even though the Act was passed in 1997, and its rules were framed in 2007, the provisions of the Act and the rules have not been implemented.”⁴³ Little has been done to comply with the said order. All successive governments failed to ensure respect for juvenile justice and even failed to implement the flawed J&K Juvenile Justice Act, 2007.

In 2009, India’s Ministry of Women and Child Development launched ‘Integrated Child Protection Scheme’ with the aim of ensuring compliance with the United Nations Convention on the Rights of the Child with respect to the children in conflict with law. However, the juveniles have been deprived of the benefit of this central scheme. In February 2010, Ministry of Women and Child Development recommended the State of J&K “to take necessary action for carrying out amendments to the Jammu & Kashmir Juvenile Justice Act, 1997 and Rules, 2007, to bring them at par with the Central Act before they commence implementation of ICPS”.⁴⁴ In its 2010-11 Annual Report, the Ministry of Women and Child Development stated, “By and large, all the States /UTs except the State of Jammu & Kashmir and the UT of Andaman & Nicobar Islands are on board for implementation of the Scheme (ICPS)”. The State government of J&K has failed to take any concrete measures until today.

Following widespread criticism, the J&K government had decided to frame a new law to replace the “flawed and obsolete” J&K Juvenile Justice Act, 1997 in 2011. However, the Bill to amend the J&K Juvenile Justice Act, 1997 hit a road block and could not be tabled in the Assembly at the end of 2012.

⁴³ Implement Juvenile Justice Act: Court to Govt, The Greater Kashmir, 19 June 2010 available at: <http://www.greaterkashmir.com/news/2010/Jun/19/implement-juvenile-justice-act-court-to-govt-27.asp>

⁴⁴ Available at http://wcd.nic.in/agenda16062010/agenda_16062010_item4.pdf

ii. AFSPA Vs JJ(C&PC) Act

The Armed Forces Special Powers Act, 1958 (AFSPA) remains in force in seven North Eastern States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura as well as in the state of Jammu and Kashmir. The repeal of the AFSPA has been recommended by the UN Human Rights Committee, UN Committee on the Elimination of All Forms of Racial Discrimination as well as the UN Human Rights Council under its Universal Periodic Review. At national level, Justice Jeevan Reddy Committee to Review the Armed Forces Special Powers Act and the Second Administrative Reforms Committee too recommended its repeal.

Yet, the AFSPA remains in the statute book as according to current Finance Minister Mr P Chidambaram, the Ministry of Defence and the Army have been opposing its amendments. Obviously, there is little civilian control over the military in the largest democratic country.

Section 4 of the AFSPA empowers non-commissioned officer or any other person of equivalent rank in the armed forces, among others, to (a) “after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances”; (b) “arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest”; (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest; and (d) “enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary”.

The Army and the para-military forces have been using the AFSPA indiscriminately including against the children. When the Armed Forces Special Powers Act was enacted in 1958, there were no juvenile laws in the country or at international level. International human rights standards on administration of juvenile justice *inter alia* United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) of 1989, United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) of 1990 too were not developed.

Increasingly, universal consensus developed that children are not only entitled to the protection of all human rights instruments but they are also entitled to added protections and special protections. The universal consensus underlined that on matters relating to children, specific laws relating to children shall prevail. This overriding principle is set forth under Article 3(1) of the United Nations Convention on the Rights of the Child which provides that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”.

By ratifying the UN Convention on the Rights of the Child on 11 December 1992, India accepted the legal responsibility to implement universal consensus on the rights of the child. Following the ratification of the Convention on the Rights of the Child, India adopted the JJ(C&PC) Act, 2000 to replace the archaic Juvenile Justice Act of 1986. The JJ(C&PC) Act has been defined as “an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment”.

The Statement of Objects and Reasons provided in the Juvenile Justice (Protection and Care of Children) Bill were to achieve the following objectives: (i) to lay down the basic principles of administering justice to a juvenile or the child in the Bill; (ii) to make the juvenile justice system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults; (iii) to bring the juvenile law in conformity with the United Nations Convention on the rights of the Child; (iv) to prescribe a uniform age of eighteen years for both boys and girls; (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months; (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation; (vii) to create special juvenile police units with a humane approach through sensitisation and training of police personnel; (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts; (ix) to minimise the stigma and in keeping with the development needs of the juvenile or the child, to separate the Bill into two parts - one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection; and (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

The preamble of the Act provides as follows: “*Whereas the Constitution has, in several provisions, including clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and*

47, imposed on the State a primary responsibility of ensuring that all the needs, of children are met and that their basic human rights are fully protected; And whereas, the General Assembly of the United Nations has adopted the Convention on the rights of the Child on the 20th November, 1989; And whereas, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child; And whereas, the Convention on the rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings; And whereas, the government of India has ratified the Convention on the 11th December, 1992; And whereas, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations rules for the Protection of juveniles Deprived of their Liberty (1990), and all other relevant international instruments.”

Section 4(1) of JJ(C&PC) Act, 2000 set out the overriding principles of the Act by including a non-obstante clause which states: ‘*Notwithstanding anything contained in any other law for the time being in force, the provisions of the Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under any such law*’.

In a number of judgements, the Supreme Court upheld the supremacy of the JJ(C&PC) Act over all other legislations including those legislations which have non-obstante clause such as the Prevention of Terrorism Act, 2002 and offences carrying death penalty.

In the case of the Prevention of Terrorism Act of 2002, the supremacy of the JJ(C&PC) Act, 2000 was upheld. The Madras High Court in its judgement in the W.P.No. 4511 of 2003 *Prabakaran represented by his maternal aunt Nagammal Vs State of Tamilnadu and Anr* while underlining the supremacy of the JJ(C&PC) Act stated the following:

*“29. Both Acts, viz., JJ(C&PC) Act and the POTA are special Acts passed by the Parliament. Both contain a surfeit of non obstante clauses having overriding effect. But then juveniles have been given a special place in the scheme of things. Our country, as already noted, has been a party to various international conventions and agreements and invoking Article 253 of the Constitution enacted various Acts with children as the prime theme and ensured that all their needs are met and their basic human rights are protected. We have created greater responsibilities in ourselves when it comes to juveniles in conflict with law. The various sections in JJ(C&PC) Act already referred to vouch for the same. As pointed out in *MUNNA v. STATE OF UP* [19 82 (1) SCC 545]. The law is very much concerned to see that juveniles do not come into contact with hardened criminals and their chances of reformation are not blighted by contact with criminal offenders. The law throws a cloak of protection round juveniles and seeks to isolate them from criminal offenders, because the emphasis placed by the law is not on incarceration but on reformation. How anxious is the law to protect young children from contamination with hardened criminals is*

also apparent from Section 27 of the Act which provides, subject only to a few limited and exceptional cases referred to in the proviso, that notwithstanding anything contained to the contrary, no court can sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. It would thus be seen that even where a child is convicted of an offence, he is not to be sent to a prison but he may be committed to an approved school under Section 29 or either discharged or committed to suitable custody under Section 30. Even where a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment which under the provisions of the Act it is authorised to inflict is sufficient, Section 32 provides that the offender shall not be sent to jail but shall be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State government. Section 33 sets out various methods of dealing with children charged with offences. But in no case except the exceptional ones mentioned in the act, a child can be sent to jail.”

The above enunciation was made by the Supreme Court with reference to U.P. Children Act, 1951, and at a time when even Central Act JJ act, 1986 had not been enacted. It will apply with greater force in the present context. JJ(C&PC) Act no doubt reached the statute book two years earlier to the POTA. It is possible to argue that at the time POTA was passed Parliament was aware of the presence of JJ(C&PC) Act as law, that still it chose to introduce Sec.56 conferring overriding powers under POTA and that therefore POTA should prevail. As pointed out in the LIC case as between ID Act and LIC Act, so far as nationalisation and insurance business are concerned the latter Act is a special legislation but when it comes to particular problem of disputes between employer and employees, or investigation and adjudication of such disputes it makes way to ID Act. By the same logic, JJ(C&PC) Act dealing as it does with ‘Alpha to Omega’ of the problems facing juveniles and juveniles in conflict with law providing as it does for specialised approach towards the prevention and treatment of juvenile delinquency in its full range is a special law and will prevail over POTA which is a mere special law compared to JJ(C&PC) Act. JJ(C&PC) Act is the monarch of all that it surveys, in its field. Both are special but JJ(C&PC) Act is more special (apologies to George Orwell).

30. May be the offence committed by the juvenile is shocking like murder or rape but as pointed out in KRISHNA BHAGWAN v. STATE OF BIHAR [AIR 1989 PATNA 217 (FB)] (though under the earlier Act), the appropriate provision in the Act is quite conscious of such situations. Section 7 of JJ(C&PC) Act enjoins the Magistrate, who is not empowered under the Act to exercise the powers of the Board and before whom the juvenile or child is brought, to forward the child to the competent authority. Section 12 provides that if the release of the juvenile on bail is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would, defeat the ends of justice. If a Board is satisfied that a juvenile has committed an offence it may allow the juvenile to go home with an advice or admonition or direct him to participate in

group counselling; community service, etc.; direct him to be released on probation as also order such directives as it may think fit. The Board may also make the terms and conditions of supervision and furnish copy to the juvenile, parent, guardian or other person or fit institution. Thus, welfare of the juvenile is the prime concern of the law makers. The legislature had intended that the juvenile should be extended special care, treatment, development and rehabilitation. The Act overwhelmingly contemplates total separation of juveniles from the mainstream offenders. Under no circumstance should the juvenile have anything to do with them.

31. From the foregoing it follows that the POTA Court in the present case has exceeded its jurisdiction and trespassed into another territory and the mischief has to be undone. What the learned Sessions Judge, Krishnagiri, has done is correct and that can be justified under Section 6 as contended by Mr. Chandru. The Sessions Judge had exercised the powers conferred on the Board when the proceeding came before him 'otherwise'.

32. The writ petition stands allowed. The petitioner shall be proceeded against only under JJ(C&PC) Act.”

In the case of Ramdeo Chauhan, the Gauhati High Court confirmed the death sentence awarded to him by the trial court considering the case as the rarest of rare deserving death penalty for the murder of a civil engineer and his family in 1992.⁴⁵ Even the Supreme Court confirmed the death sentence.⁴⁶ In 2010, the Supreme Court however finally upheld the grant of clemency by the Governor of State of Assam in accordance with a recommendation by the National Human Rights Commission (NHRC), acknowledging NHRC's wider role for promotion of human rights as Chauhan was a juvenile at the time of commission of the crime.⁴⁷ In a unique case of its kind, the Supreme Court admitted repeated mistakes in not dealing properly with an appeal against the death sentence of Ramdeo Chauhan.⁴⁸ The Supreme Court, granted liberty to Ramdeo Chauhan to claim juvenility in appropriate forum. Pursuant to this, Ramdeo Chauhan moved an application claiming juvenility before the Juvenile Justice Board, Morigaon district but determination of the application was inordinately delayed.⁴⁹ On 3 July 2011, child rights activist Minna Kabir wrote a letter to the Chief Justice of the Gauhati High Court seeking intervention to expedite the proceedings before the JJB, Morigaon, on Chauhan's application claiming juvenility. The Gauhati High Court *suo motu* converted Ms. Kabir's letter into a public interest litigation (No.39/2011). In the judgement dated 9 August 2011, a bench comprising Justice Amitava Roy and Justice C.R. Sharma held that “*on a rational and judicious*

⁴⁵ A long wait for freedom, 12 September 2011, The Tehelka.Com, available at: http://www.tehelka.com/story_main50.asp?filename=Ws120911LAW.asp

⁴⁶ SC apologises for teen death verdict, The Asian Age, 8 December 2010

⁴⁷ Supreme Court acts to prevent travesty of Justice!, available at: <http://www.hrln.org/hrln/child-rights/pils-a-cases/693-supreme-court-acts-to-prevent-travesty-of-justice.html>

⁴⁸ SC apologises for teen death verdict, The Asian Age, 8 December 2010

⁴⁹ Supreme Court acts to prevent travesty of Justice!, available at: <http://www.hrln.org/hrln/child-rights/pils-a-cases/693-supreme-court-acts-to-prevent-travesty-of-justice.html>

assessment of the evidence available on record as well as the authorities cited at the Bar, we are of the unhesitant opinion that the accused applicant was a juvenile as defined in section 2(k) of the Act on the date of the commission of the offence i.e. 8.3.1992 and is thus entitled to be treated as a juvenile in conflict with law vis-à-vis the charges and was entitled at all relevant points of time to be dealt with as such.” The court finally ordered that Ramdeo Chouhan @ Rajnath Chouhan be released forthwith from custody.⁵⁰

Unlike the POTA and many other special laws, the AFSPA does not have ‘non obstante clause’ except with respect to prosecution of the armed forces under Section 6 which provides that “*No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act*”. Despite such unambiguous supremacy of the JJ(C&PC) Act, in the states where the AFSPA is imposed, the army, paramilitary forces and the police frequently detain, torture and sometimes kill children in fake encounters on suspicion of associating with extremists.

⁵⁰. Judgement dated 9 August 2011 in public interest litigation (No.39/2011); available at: <http://ghconline.nic.in/Judgment/PIL392011.pdf>

4. Critical analysis of the ICPS vis-à-vis conflict affected states

The Ministry of Women and Child Development, Government of India launched Integrated Child Protection Scheme (ICPS) in 2009-10 to bring several existing child protection programmes under one umbrella. For Jammu and Kashmir and North Eastern States, the ratio for financial contribution by the Central Government and the State government is 90:10.

The implementation of the ICPS in conflict affected state of Manipur and Assam is in shamble. The central scheme could not be launched in the state of Jammu and Kashmir because of the refusal of the State Government to undertake any programme. The situation is similar in the LWE districts.

i. Manipur

On 9 November 2009, the State Government of Manipur signed the Memorandum of Understanding with the Ministry of Women and Child Development for implementation of the IPCS in the State. However, the implementation of the IPCS in Manipur is in shambles and marked by blatant mis-utilisation of the funds meant for the children which stands exposed from the official records.

The state government has been obtaining funds from the central government for the Juvenile Justice Boards (JJBs) by misrepresenting facts.

Manipur has nine districts. The State Government claimed before the PAB for ICPS of Ministry of Women and Child Development that JJBs have been set up in all the nine districts and all the JJBs are functioning. On the basis of this claim the PAB for ICPS have been approving grants for the nine JJBs.

A total of Rs. 26,60,250/- was meant for JJBs during 2009-10 and 2010-11. These included Rs. 11,81,250/- during 2009-10 and Rs. 14,79,000/- in 2010-10. The details are given in the table below:

F/Years	Non-Recurring (in Rs.)	Recurring (in Rs.)	Total (in Rs.)	Central Share (in Rs.)	State Share (in Rs.)
2009-10	7,65,000	4,16,250	11,81,250	10,63,125	1,18,125
2010-11	0	14,79,000	14,79,000	13,31,000	1,48,000
Total	7,65,000	18,95,250	26,60,250	23,94,125	2,66,125

However, the claim of the state government that the JJBs are functioning is false. The JJBs are merely notified. The state government even failed to appoint Principal

Magistrates in the JJBs as required under the JJ(C&PC) Act. There were no supporting staffs as well in the JJBs. Principal Magistrate had been appointed in only one JJB. Therefore, only one JJB was functioning in practice. A JJB is required to have three members including the Principal Magistrate and the presence of the Principal Magistrates is mandatory.

The state government even befooled the Ministry by claiming that the nine JJBs meet thrice a week. As per the JJ(C&PC) Act the sittings of the JJBs are to be held “in the premises of an Observation Home or, at a place in proximity to the observation home or, at a suitable premise in any institution run under the Act, and in no circumstances shall the Board operate from within any court premises”. It is surprising as to where the JJBs hold its sitting in the absence of juveniles and Observation Homes. There is only one government Observation Home for the entire state. Further, it is doubtful as to how the sittings are conducted in the absence of Principal Magistrates, staffs and few juveniles. There were only four juveniles at the lone Government Observation Home as in June 2012. In this context, it is stated that a number of cases have come to notice where the juveniles are sent to jails, police stations or camps.

Further, the state government obtained the grant for rent component of the JJBs during 2010-11 by lying to the Ministry. The rent component was approved despite the fact that the PAB for ICPS during the 14th meeting on 22 February 2011 did not approve the rent component for the JJBs during 2010-11 as the JJBs were not functioning in rented premises.

The question remains as to how the funds were utilized given that only one JJB is functional out of the total nine JJBs in the state. The failure of the state government to submit the complete details of members and supporting staffs, pendency of cases, number of sittings, etc in the JJBs indicates that the grants for JJBs, except one, were misappropriated and/or siphoned off.

ii. Assam

Assam has been consistently ranking top in juvenile delinquency among the eight north eastern states and in 2011, Assam topped the list with 405 cases.⁵¹

Despite Assam remaining at the top in the list of juvenile offences among the eight north eastern states of India, there is acute shortage of homes for juveniles in conflict with the law. Assam with 27 districts is the second largest but the most populated state in the north east India but there are only 4 juvenile homes run by the state located in Kamrup, Cachar, Nagaon and Jorhat district.⁵²

⁵¹ Crime in India 2011, National Crime Records Bureau

⁵² Information received from the State Child Protection Society, Assam, under the RTI Act, in December 2011

Due to lack of juvenile homes the existing homes have to accommodate juvenile from other districts. For example, the Jorhat Observation Home set up in 1987 caters to over nine other districts besides Jorhat - Golaghat, Karbi Anglong, Dibrugarh, Tinsukia, Sivasagar, Lakhimpur, Darrang, Udalguri and Sonitpur.⁵³

There is a lack of priority to construct juvenile homes in the rest of districts, majority of which are seriously affected by insurgency. This is clear from the budgetary allocation under the ICPS. For example, Rs. 1,25,41,000 was allocated for construction of three children homes including one observation home in Lakhimpur district and one special home in Jorhat district during 2012-13.⁵⁴ There was no budgetary allocation under the ICPS for construction of homes for juveniles in conflict with law during the previous years.

Surprisingly, budgetary allocation under the ICPS for the maintenance of the 27 JJBs have been provided regularly⁵⁵ despite that the functioning of the JJBs remain suspects.

The lack of adequate number of juvenile homes in Assam remains a stumbling block to reformation of juveniles in conflict with law.

iii. Jammu and Kashmir

Jammu and Kashmir is governed by the Jammu and Kashmir Juvenile Justice Act, 1997 drafted based on India's obsolete Juvenile Justice Act of 1986 which has since been replaced by the JJ(C&PC) Act in 2000. It took one decade for the Jammu and Kashmir to adopt the Rules accompanying the Act meaning that the Act remained unimplemented. Even through the rules were framed in 2007, the State government took no action to set up juvenile homes, observation homes and Juvenile Justice Boards as required by the Act. All successive governments failed to ensure respect for juvenile justice. Juveniles are tried in normal courts in contravention with India's national law and international obligations. Currently, there are only two Observation Homes at Jammu and Srinagar.

In February 2010, the Ministry of Women and Child Development recommended the State of Jammu and Kashmir "to take necessary action for carrying out amendments to the Jammu & Kashmir Juvenile Justice Act, 1997 and Rules, 2007, to bring them at par with the Central Act before they commence implementation of ICPS".⁵⁶ In its 2010-11 Annual Report, the Ministry of Women and Child Development stated, "By and large, all the States /UTs except the State of Jammu & Kashmir and the UT of Andaman & Nicobar Islands are on board for implementation of the Scheme (ICPS)". The State government of J&K has failed sign the MoU with the Ministry of Women and Child Development to introduce ICPS as on date and the juveniles in the state continue to be deprived of the protection measures under the ICPS.

⁵³ Govt move to free juveniles, The Telegraph, 30 August 2011

⁵⁴ <http://wcd.nic.in/icpsmon/pdf/sanctions/assamdt10072012.pdf>

⁵⁵ <http://wcd.nic.in/icpsmon/pdf/sanctions/assamdt10072012.pdf>

⁵⁶ Available at http://wcd.nic.in/agenda16062010/agenda_16062010_item4.pdf

iv. LWE affected states: Lack of priority under ICPS

Implementation of the ICPS in the Left Wing Extremist affected districts remains equally deplorable.

Chhattisgarh has 27 districts, of which 16 districts have been identified as LWE affected namely Bastar, Bijapur, Dantewada, Jashpur, Kanker, Korea (Baikunthpur), Narayanpur, Rajnandgaon, Sarguja, Dhamtari, Mahasamund, Gariyaband Balod, Sukma, Kondagaon and Balrampur.⁵⁷ The Chhattisgarh Government signed MoU with the Centre on 5 August 2009 for implementation of the ICPS. As per information submitted to the Project Approval Board of the Ministry of Women and Child Development, there are eight juvenile homes in six districts including three LWE districts of Baster, Sarguja and Rajnandgaon. During the 60th PAB meeting under the ICPS, the state government proposed to construct two Observation Homes in Raigarh and Korba districts. The PAB accepted the proposal and approved grants as per ICPS norms. There was no proposal from the state government to construct juvenile homes in LWE affected districts.⁵⁸

The lack of priority is reflected by the failure of the other LWE affected state governments to submit proposal to the Project Approval Board for construction of juvenile homes. Andhra Pradesh did not propose for any of the remaining 10 LWE affected districts during the PAB meeting under the ICPS on 11 July 2012.⁵⁹ Four districts in West Bengal have been identified LWE affected and there are no juvenile homes in these districts. Yet, the state did not propose any juvenile homes during the PAB meeting under ICPS held on 17 January 2012.⁶⁰ Worst, state government of Orissa failed to submit proposal even with respect to districts not affected by LWE during the PAB meeting under ICPS held on 9 November 2012.⁶¹ Currently, juvenile homes are located in only two LWE affected districts of Ganjam and Sundergarh while 17 districts have been identified as LWE affected out of 30 districts of Orissa.⁶²

The neglect towards the juveniles is the worst in Jharkhand. About 21 out of the 24 districts in the state are LWE affected. However, there are only 10 Observation Homes, all located in LWE affected districts of Hazaribagh, Bokaro, Dhanbad, Gumla, Simdega, Ranchi, Deogarh, East Singhbhum, West Singhbhum and Dumka.⁶³ There were over 3,500 cases pending before various JJBs in the state as on 11 July 2012.⁶⁴ Clearly, these juvenile homes are far from adequate.

⁵⁷ <http://mha.nic.in/pdfs/NM-SRE-Scheme.pdf>

⁵⁸ <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/CHHT27nov2012.pdf>

⁵⁹ <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/Andhara%20Pradesh%20Final%20PAB%20minutes%202012-13.pdf>

⁶⁰ <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/Final%20Minutes%20PAB%20meeting%20West%20Bengal%202012-2013.pdf>

⁶¹ <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/ODIdt9nov2012.pdf>

⁶² <http://mha.nic.in/pdfs/NM-SRE-Scheme.pdf>

⁶³ Government Run Observation Homes & Children Homes of Jharkhand, Social Welfare Department, Jharkhand, <http://socialwelfarejhar.com/grun.pdf>

⁶⁴ Justice for delinquents on Tatia radar, The Telegraph, 11 July 2012

However, instead of constructing more juvenile homes, the State Government of Jharkhand has been misusing the Observation Homes. The Observation Home for Boys established in LWE affected Palamau district was converted into a girl's residential school - Kasturba Gandhi Balika Vidyalaya. As a result, the juveniles were shifted to the Observation Home, Ranchi, which is about 165 km away. This requires travel arrangements to be made for the juveniles to come to Palamau and produced before Juvenile Justice Board, which invariably delays justice.⁶⁵

In the absence of adequate juvenile homes, all child offenders from the rest of the districts are lodged in the observation homes in the nearest to these 10 districts.

⁶⁵ Girls study in home for boys - Palamau's gender-bender shocks panel, The Telegraph, 2 June 2012

5. Implementation of the JJ(C&PC) Act in districts affected by armed conflicts

The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to provide a juvenile justice system for juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto.

The criminal justice system as available for adults is not considered suitable for juveniles. Yet, juvenile in conflict with the law continued to be tried and convicted as adult. While Jammu and Kashmir Juvenile Justice Act, 1997 treats children below the age of 16 years as minors, the situation is dismal in Assam despite the application of the central law.

Further, most law enforcement personnel are not conversant with the JJ(C&PC) Act which add to the problem. Police often record the age of minors as 18 years or more upon being apprehended and produce before normal courts. For example, it was found that Assam police recorded the age of at least 60 juveniles in conflict with law as 18 years or more though they were later declared as juveniles when their age was determined. The age determination process which is dependent upon production of certificates, medical opinion and in some cases through the opinion of the magistrate, contributed to the lengthening of the time of disposal of cases.⁶⁶ Not many police officials are conversant with the provisions of the JJ(C&PC) Act and this more often resulted in framing charges under Indian Penal Code than the provisions of the JJ(C&PC) Act in cases of juveniles in conflict with law.⁶⁷

i. The State of Special Homes/Observation Homes

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for three types of homes: (a) Observation Home for reception of any juvenile in conflict with law (JCL) during the pendency of any inquiry regarding them under the JJ Act; (b) Special Homes for reception and rehabilitation of JCL; and (c) Children Home for reception and rehabilitation of child in need of care and protection (CNCP).

Sub sections of (1) and (2) of Section 8 of the JJ(C&PC) Act provide for establishment of "Observation Homes"/ Certification of Fit Institutions in every district or a group of district "for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act". While Sub section (1) of Section 9 of the JJ(C&PC) Act provides that "Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations,

⁶⁶ Police yet to be well-versed in juvenile justice system, The Assam Tribune, 13 October 2009

⁶⁷ Juvenile crimes on the rise in State, The Tribune, 31 January 2008

special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act". Sub-section (2) states that the state government may certify any other institutions as Special Home if it finds them "fit" for the reception of juvenile in conflict with law.

A large number of districts in the country are insurgency and Left Wing Extremism affected. The army and the paramilitary forces are deployed in these districts for counter insurgency and anti-Naxal operations.

a. Absence of juvenile homes and plight of juveniles

There are currently 197 districts which have been notified as "disturbed" under the AFSPA and declared affected by Left Wing Extremist violence in 16 states. Out of 197 districts, 151 districts i.e. 76.64% of the armed affected districts do not have Observation Homes or Special Homes. This implies that children who are taken into custody are kept in police lock up or camps of the Army and para-military forces in clear violation of the JJ(C&PC) Act and the UN Convention on the Rights of the Child. This is despite the fact that Sub sections of (1) and (2) of Section 8 of the JJ(C&PC) Act provides for establishment of "Observation Homes"/ Certification of Fit Institutions in every district or a group of district "for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act".

List of 151 conflict affected Districts in 16 States with no Observation and Special Homes

SL No.	States/Districts
ASSAM	
1	Baksa
2	Barpeta
3	Bongaigaon
4	Cachar
5	Chirang
6	Darrang
7	Dhemaji
8	Dhubri
9	Dibrugarh
10	Dima Hasao
11	Goalpara
12	Golaghat

SL No.	States/Districts
13	Hailakandi
14	Kamrup Rural
15	Karbi Anglong
16	Karimganj
17	Kokrajhar
18	Morigaon
19	Nalbari
20	Sivasagar
21	Sonitpur
22	Tinsukia
23	Udalguri
ARUNACHAL PRADESH	
24	Changlang

SL No.	States/Districts
25	East Kameng
26	Lohit
27	Longding
28	Lower Dibang Valley
29	Lower Subansiri
30	Papumpare
31	Tirap
32	West Kameng
33	West Siang
MEGHALAYA	
34	East Garo Hills
35	Jaintia Hills
36	Ribhoi
37	West Khasi Hills
MANIPUR	
38	Bishnupur
39	Chandel
40	Churachandpur
41	Imphal East
42	Senapati
43	Tamenglong
44	Thoubal
45	Ukhrul
NAGALAND	
46	Kiphire
47	Longleng
48	Peren
49	Tuensang
50	Zunheboto
TRIPURA	
51	Dhalai
52	Gomati
53	Khowai

SL No.	States/Districts
54	North Tripura
55	Shiphajjala
56	South Tripura
57	Unakoti
JAMMU & KASHMIR	
58	Anantnag
59	Bandipora
60	Baramulla
61	Budgam
62	Doda
63	Ganderbal
64	Kathua
65	Kulgam
66	Kupwara
67	Kishtwar
68	Poonch
69	Pulwama
70	Ramban
71	Rajouri
72	Reasi
73	Samba
74	Shopian
75	Udhampur
ANDHRA PRADESH	
76	Adilabad
77	Guntur
78	Karimnagar
79	Khammam
80	Medak
81	Mehboobnagar
82	Nalgonda
83	Prakasam

SL No.	States/Districts
84	Srikakulam
85	Vizianagaram
BIHAR	
86	Arwal
87	Aurangabad
88	Banka
89	Begusarai
90	East Champaran
91	Jamui
92	Jehanabad
93	Kaimur
94	Khagaria
95	Lakhisarai
96	Nalanda
97	Nawada
98	Rohtas
99	Sheohar
100	Sitamarhi
101	Vaishali
CHHATTISGARH	
102	Balod
103	Balrampur
104	Bijapur
105	Dantewada
106	Dhamtari
107	Gariyaband
108	Jashpur
109	Kanker
110	Kondagaon
111	Korea (Baikunthpur)

SL No.	States/Districts
112	Mahasamund
113	Narayanpur
114	Sukma
JHARKHAND	
115	Chatra
116	Garhwa
117	Giridih
118	Khunti
119	Koderma
120	Latehar
121	Lohardagga
122	Palamau
123	Pakur
124	Ramgarh
125	Saraikela-Kharaswan
MADHYA PRADESH	
126	Balaghat
MAHARASHTRA	
127	Aheri
128	Gondia
ORISSA	
129	Bargarh
130	Bolangir
131	Deogarh
132	Dhenkanal
133	Gajapati
134	Jajpur
135	Kalahandi
136	Kandhamal
137	Keonjhar

SL No.	States/Districts
138	Koraput
139	Malkangiri
140	Mayurbhanj
141	Nayagarh
142	Navrangpur
143	Nuapada
144	Rayagada
145	Sambhalpur

SL No.	States/Districts
UTTAR PRADESH	
146	Chandauli
147	Sonebhadra
WEST BENGAL	
148	Bankura
149	Birbhum
150	Purulia
151	West Midnapore

The situation of juveniles remained dismal in conflict affected districts, whether declared as “disturbed” under the AFSPA or notified as LWE. Children suspected of or accused of illegal activities are regularly apprehended, tortured and detained in police stations/jails and seldom produced before the Juvenile Justice Boards, while in several cases they were also killed in alleged fake encounters in clear violations of the JJ(C&PC) Act and international human rights law.

The absence of juvenile homes only contributes to their suffering and question the seriousness of both the Central and state governments in the implementation of the JJ(C&PC) Act in conflicts affected areas.

b. State of the existing JJ Homes

The conditions of the existing juvenile homes in conflict affected districts are far from satisfactory. Out of 197 conflict affected districts, only 46 districts have a total of 58 juvenile homes – 47 Observation Homes and 11 Special Homes.

Out of 197 districts, only 46 districts have juvenile homes as shown in the table given below.

States	Disturbed/ AFSPA-LWE affected districts	SL No.	No. of Govt run OHs/ Sp-Hs	Name of Govt run OHs/Sp- Hs
Jammu & Kashmir	Srinagar	1	1	1. Observation Home for Boys, Harwan
	Jammu	2	1	1. Observation Home for Boys, R S Pura
Assam	Jorhat	3	2	1. Observation Home for Boys Lichubari, Jorhat 2. Special School/ Home for Boys, Lichubari, Jorhat

	Kamrup	4	2	1. Observation Home for Girls, Jalukbari Sundarbori Guwahati 2. Observation Home for Boys, Bamunigaon, Boko-23
	Nagaon	5	1	1. Observation Home for Girls, Nagaon Panigaon, Itachali, Nagaon,
	Silchar	6	1	1. Observation Home for Boys, Silchar
Arunachal Pradesh	East Siang	7	1	1. Juvenile Delinquent Home for Boys, Pasighat
Manipur	Imphal West	8	2	1. Observation Cum Special Home, Takyel Social Welfare Complex, Imphal
Meghalaya	West Garo Hills	9	1	Observation Home for Boys, Tura
Nagaland	Dimapur	10	2	1. Observation Home (Boys & Girls), Pherima, Dimapur 2. Special Home (Boys & Girls), Pherima, Dimapur
	Kohima	11	1	1. Observation Home (Boys & Girls), Kohima
	Mokokchung	12	1	1. Observation Home (Boys & Girls), Mokokchung
	Mon	13	1	1. Observation Home (Boys and Girls), Mon
	Phek	14	1	1. Special Home (Boys & Girls), Phek
	Wokha	15	1	1. Observation Home (Boys & Girls), Wokha
Tripura	West Tripura	16	2	1. Observation Home (Boys & Girls), Narsingarh, Agartala 2. Special Home (Boys & Girls), Narsingarh, Agartala
Andhra Pradesh	Anantapur	17	1	1. Observation Home for Boys, D.No.6-1-957, Lakshmi Nagar, Anantapur
	East Godavari	18	1	1. Observation Home for Boys, D.No.69-20-1, Bhaskarnagar, Near CTRI, Rajahmundry - 533 105
	Kurnool	19	1	1. Observation Home for Boys, H.No.17/198, Plot No.12, Doctors colony, Kurnool - 518 002

	Visakhapatnam	20	4	<ol style="list-style-type: none"> 1. Observation Home for Girls, Plot No.52, Sairam building, Eenadu Layout, Nr Vignan Girls Hostel, Sagarnagar, Visakhapatnam – 43 2. Special Home for Girls, Plot No.52, Sairam building, Eenadu Layout, Nr Vignan Girls Hostel, Sagarnagar, Visakhapatnam – 43 3. Observation Home for Boys, D.No:50-49-36, TPT Colony, Seethammadhara (NE), Visakhapatnam 4. Special Home for Boys, D. No. 1-105-12, Plot No 26, Sector-8, MVP Colony, Visakhapatnam-17
	Warangal	21	1	1. Observation Home for Boys, Nr Regional Eye Hospital, Behind Central Prison, Autonagar, Warangal
	Nizamabad	22	1	1. Observation Home for Boys, Beside A.P., Residential (Urdu medium) school Nargam, Nizamabad - 503 001
Bihar	Bhojpur	23	1	1. Observation Home, Pakdi Road, Arrah, Bhojpur
	Gaya	24	1	1. Observation Home for Boys, Jail Campus, Gaya
	Munger	25	1	1. Observation Home for Boys, Seol Bhawan, Babua Ghat, Munger
	Patna	26	2	<ol style="list-style-type: none"> 1. Observation Home for Boys, Gayghat, Patna 2. Special Home for Boys, Gayghat, Patna
	West Champaran	27	1	1. Observation Home for Boys, Mohalla Chhawani, Chanpatiya Road, Bettiah, West Champaran
	Muzaffarpur	28	1	1. Observation Home, Khudiram Bose Central Jail Campus, Muzaffarpur
Chhattisgarh	Bastar	29	1	1. Observation Home for Boys, Baster
	Rajnandgaon	30	1	1. Observation Home for Girls, Rajnandgaon
	Sarguja	31	1	1. Observation Home for Boys, Sarguja

Jharkhand	Bokaro	32	1	1. Observation Home, Near Jail, Bokaro,
	Dhanbad	33	1	1. Observation Home, Dhanbad
	Gumla	34	1	1. Observation Home, Jashpur Road, Gumla
	Hazaribagh	35	1	1. Observation Home, Near Jail, Hazaribagh
	East Singhbhum	36	1	1. Observation Home & Children Home for Boys, Karandih, Near Central Jail, East Singhbhum
	Ranchi	37	1	1. Observation Home, Dumardaga, Ranchi
	Simdega	38	1	1. Observation Home, Simdega
	Dumka	39	1	1. Observation Home, Dumka
	Deogarh	40	1	1. Observation Home & Children Home for Girls, Kalyanpur, Deogarh
	West Singhbhum	41	1	1. Observation Home, Chaibasa, West Singhbhum
Maharashtra	Chandrapur	42	1	1. Observation Home/Children Home for Boys, Rajmalji, Pugliya Nagar, Chandrapur
	Gadchiroli	43	1	1. Observation Home/Children Home for Boys, Rajnanaji Govardhan's Bldg, MIDC Rd, Sakul Campus, Gadchiroli
Orissa	Ganjam	44	4	1. Observation Home for Boys, Berhempur 2. Observation Home for Girls, Berhempur 3. Special Home for Girls, Berhempur 4. Special Home for Boys, Berhempur
	Sundargarh	45	2	1. Observation Home for Boys, Rourkela 2. Special Home for Boys, Rourkela
Uttar Pradesh	Mirzapur	46	1	1. Observation Home for Girls, Lohdikala, Mirzapur
Total	46	46	58	47 Observation Home & 11 Special Homes

i. Jammu and Kashmir

There are only two Observation Homes in Jammu and Kashmir namely R S Pora Observation Home at Jammu and Children cum Observation Home for Boys at Harwan in Srinagar. While there are no juvenile homes for juvenile girls and they are being detained in police stations and jails.

The condition of both the juvenile homes is dismal. The infrastructure of the Children cum Observation Home for Boys at Harwan, which was recently constructed, meets the standards but the heavy grilled gates gives an impression that juveniles are kept in a jail. Not all juveniles were provided with tooth-brush and they had to use a common towel for use by all. The Home was not provided with any vehicle to take care of any emergency situation. The staff lacks reorientation on the entitlements of the children in institutional care settings. As in June 2012, 12 juveniles were lodged in the home. Some of them were lodged for pelting stones, while at least one was innocent and lodged for being bystanders. The complex has no playground to cater to their requirement of play, recreation and physical activity.⁶⁸

The situation is no better in the Observation Home at R S Pura, Jammu. During a field visit to the Home in mid-2010 ACHR found the home in bad shape requiring immediate upgradation including services. The home could not meet the educational and recreational needs of juveniles. There was lack of staff and other essential support and facilities. Juveniles were not being produced before the Courts.⁶⁹

ii. Manipur

Manipur has nine districts but there are only two government-run juvenile homes, one Observation Home and one Special Home. Both the homes are housed in one complex at Takyelpat in Imphal West district.⁷⁰ The lone Government Observation cum Special Home, Takyelpat in Imphal West district was underutilized. There were only four inmates as on June 2012. The Home, established on 14 August 1992, has a capacity of 50 inmates.⁷¹

The lack of inmates in the Observation Homes can be related to non implementation of the provisions of the JJ(C&PC) Act in letter and spirit. The juveniles in conflict with law are produced before the normal courts which sent them to jails.

iii. Assam

Assam with 27 districts is the second largest but the most populated state in the north east India. The geographical coverage of the Government run juvenile homes are limited to only four districts namely Kamrup, Jorhat, Nagaon and Cachar.⁷² These four districts have five homes - four Observation Homes - two each for boys and girls, and one Special Home at Jorhat district. Juveniles in conflict with law have been

⁶⁸ Report on NCPDR Visit to Kashmir Region of Jammu & Kashmir, 24-28 June 2012

⁶⁹ Juveniles of Jammu and Kashmir: Unequal before the Law & Denied justice in Custody, ACHR, 16 November 2011

⁷⁰ Information received from Keisam Pradeep, Manipur Alliance for Child Rights

⁷¹ Information received from Keisam Pradeep, Manipur Alliance for Child Rights

⁷² Minutes of the 45th PAB Meeting under ICPS held on 11th July 2012 to discuss the financial proposal of Assam; available at: <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/Minutes%20Assam%20Final.pdf>

deprived of protection measures in 23 districts namely Baksa, Barpeta, Bongaigaon, Chirang, Darrang, Dhemaji, Dhubri, Dibrugarh, Dima Haso (North Cachar Hills), Goalpara, Golaghat, Hailakandi, Karbi Anglong, Karimganj, Kokrajhar, Lakhimpur, Morigaon, Nalbari, Sibsagar, Sonitpur, Tinsukia, and Udalguri.

These homes are miserably inadequate as it is practically impossible for these homes to cater to needs of such huge and geographically diverse areas covered in rest of the districts. As a result, the four existing Observation Homes have to cater to juveniles from other districts. For example, the Jorhat Observation Home set up in 1987 caters to at least nine districts - Golaghat, Karbi Anglong, Dibrugarh, Tinsukia, Sivasagar, Lakhimpur, Darrang, Udalguri and Sonitpur.⁷³ Lack of adequate juvenile homes remains a stumbling block to reformation of juveniles in conflict with law. Adequate correctional and reform measures are necessary for juveniles who commit the same crime repeatedly and become hardened.

The absence of juvenile homes makes it difficult to reach out to the juveniles in vulnerable and worst insurgency affected districts. For example, government managed juvenile homes are conspicuously absent in worst insurgency affected and trafficking prone districts like Dhubri, Kokrajhar, Baksa, Chirang, Bongaigaon, Karbi Anglong, Tinsukia, Dibrugarh, Goalpara, Lakhimpur, Sibsagar, Golaghat, Sonitpur, Darrang, Dhemaji, Karimganj, Hailakandi, Cachar Hills and Morigaon districts.

Two juvenile homes - one Observation Home in Lakhimpur district and one Special Home in Jorhat district are being constructed during 2012-13.⁷⁴ The conditions of the existing juveniles homes are not satisfactory as they lack staff, basic facilities etc.

During 2011, as per NCRB statistics, 427 juveniles were arrested and produced before various JJBs in Assam. Of these, 42 juveniles were placed under care of Fit Institutions and cases of 61 juveniles were pending disposal at the end of the year. While 41 were sent to Special Homes. This sits uneasily with the information provided to the Ministry of Women and Child Development by the state government. As per the information there is no Special Home in the state and the new one is under construction presently. Therefore, it is not known where the 41 juveniles are being kept in the absence of Special Home.⁷⁵

iv. Arunachal Pradesh, Meghalaya, Nagaland & Tripura

There are 10 districts of Arunachal Pradesh namely Changlang, Tirap and Longding; and West Kameng, East Kameng, Papumpare, Lower Subansiri, West Siang, Lower Dibang Valley and Lohit (bordering Assam) which are notified as disturbed but do not have juvenile home. For the entire state with 17 districts there is only one Juvenile Home in East Siang District with the total capacity of 20 inmates. In the absence of juvenile homes in the conflict afflicted districts, the juveniles had to be detained at police stations or jails.⁷⁶

⁷³ Govt move to free juveniles, The Telegraph, 30 August 2011

⁷⁴ <http://wcd.nic.in/icpsmon/pdf/sanctions/assamtdt10072012.pdf>

⁷⁵ Crime in India, 2011, NCRB

⁷⁶ <http://wcd.nic.in/projsanc/jjimpstatus-100310.pdf>

In Meghalaya, the AFSPA is in force in five districts bordering Assam namely West Garo Hills, East Garo Hills, West Khasi Hills, Ribhoi and Jaintia Hills. Out of these districts, only West Garo Hill Districts has an Observation Home for Boys at Tura with capacity of 26 inmates.

In comparison to all conflict and LWE affected districts, the situation is better in Nagaland. There are eleven districts namely Dimapur, Kiphire, Kohima, Longleng, Mokokchung, Mon, Peren, Phek, Tuensang, Wokha and Zunheboto. Six out of 11 districts namely Kohima, Mokokchung, Phek, Wokha, Mon and Dimapur have seven government run juvenile homes. These included five Observation Homes at Dimapur, Kohima, Mokokchung, Wokha and Mon; and two Special Homes at Dimapur and Phek districts.⁷⁷

Currently, Tripura has eight districts with creation of four new districts in 2012. There are only two juvenile homes, both located in West Tripura district. The remaining districts have no juvenile homes.⁷⁸

v. LWE affected districts

The Ministry of Home Affairs, Government of India has identified 106 districts out of 316 districts in nine states in mainland India as Left Wing Extremism affected. These nine states are Andhra Pradesh (16 LWE affected districts out of 23 districts), Bihar (22 LWE affected districts out of 38 districts), Chhattisgarh (16 LWE affected out of 27 districts), Jharkhand (21 LWE affected out of 24 districts), Madhya Pradesh (1 LWE affected out of 50 districts), Maharashtra (4 LWE affected out of 35 districts) Orissa (19 LWE affected out of 30 districts), Uttar Pradesh (3 LWE affected districts out of 75 districts) and West Bengal (4 LWE affected districts out of 19 districts).⁷⁹

Out of 30 districts, 19 districts of **Orissa** are identified as LWE affected. Only two districts namely Ganjam and Sundargarh, both LWE affected, have juvenile homes. Ganjam district has four juvenile homes – two Observation Homes, one each for Boys and Girls, and two Special Homes, one each for Boys and Girls, all located at Berhampur. There are two juvenile homes for boys – one Observation Home and one Special Home both located at Rourkela under Sundargarh district.

These juvenile homes in two districts are highly inadequate and as a result the juveniles from the rest of the districts are lodged in these homes. For example, the Observation and Special Home (Combined), Rourkela in Sundargarh had to cater inmates from 10 districts namely - Mayurbhaj, Keonjhar, Deogarh, Jharsuguda, Sambalpur, Dhenkanal, Angul, Bargarh, Bolangir and Sonepur. Similarly, the Observation Home at Berhampur had to cater to inmates from the remaining districts.

⁷⁷ Minutes of 55th PAB meeting under ICPS held on 25 October 2012, <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/ngadtd25102012.pdf>

⁷⁸ Draft Minutes of 59th PAB Meeting under ICPS held on 27.11.2012 for Tripura, <http://wcd.nic.in/icpsmon/pdf/PAB-Minutes/TRI27nov2012.pdf>

⁷⁹ http://mha.nic.in/uniquepage.asp?Id_Pk=540

These juvenile homes appear to be newly constructed as per information submitted by the state government to the Ministry of Women and Child Development. Previously, there was a combined Government Observation Home, Special Home and Children's Home for Boys at Berhampur in Ganjam district and a combined Observation cum Special Home for Boys at Rourkela, Sundargarh district run from the Special Jail Rourkela, having a 10ft high wall to divide the jail inmates and juveniles in conflict with law.

ACHR conducted fact finding visits to both the districts and found the condition of the homes deplorable. In its on-the-spot investigation to the Govt Observation Home, Special Home and Children's Home (Combined) for Boys at Berhampur from 29 September 2010 to 1 October 2010, ACHR, among others, found that the home was overcrowded and lacked basic facilities like drinking water, adequate bathrooms, medical care, proper education and recreation facilities and staff.

Similarly, the condition of Observation & Special Home, Rourkela was found dismal during a visit by ACHR in January 2011-February 2011. The Home was overcrowded and was lacking in staff, hygiene etc.

Following the fact finding visits, ACHR filed complaints with the Orissa Human Rights Commission and NCPCR. The authorities in their reports submitted to these Commissions admitted the deplorable conditions of the juvenile homes in both the districts and assured to shift the juvenile homes in new buildings.

In **Andhra Pradesh**, out of 16 LWE affected districts, only six districts namely Anantapur, East Godavari, Kurnool, Visakhapatnam, Warangal, and Nizamabad have nine juvenile homes. These include seven Observation Homes and two Special Homes.

Out of 38 districts of **Bihar**, 22 districts are LWE affected. But there are only six juvenile homes located in five LWE districts namely Bhojpur, Gaya, Munger, Patna and West Champaran. The juvenile homes include four Observation Homes and one Special Home. During 2011, as per NCRB statistics, 1126 juveniles were arrested and produced before various JJBs in Bihar. Of these, 66 juveniles were placed under care of Fit Institutions, cases of 258 juveniles were pending disposal at the end of the year and 464 juveniles were sent to Special Homes. However, there is only one Special Home in Bihar. This lone Special Home cannot cater to 464 juveniles. This means that they were either kept in jails or somewhere else but not in Special Homes.⁸⁰

Chhattisgarh, the epicenter of the Naxal violence, has 16 LWE affected out of total 27 districts. There are only three Observation Homes located in three out of the 16 LWE affected district. The districts are Bastar, Rajnandgaon and Sarguja. Out of the three homes, one is for juvenile girls. There are no Special Homes in the rest LWE affected districts. Worst LWE affected districts such as Dantewada have no juvenile home.

⁸⁰ Crime in India, 2011, NRCB

During 2011, as per NCRB statistics, 2692 juveniles were arrested and produced before various JJBs in Chhattisgarh. Of these, 126 juveniles were placed under care of Fit Institutions, cases of 1309 juveniles were pending disposal at the end of the year and 681 juveniles were sent to Special Homes.⁸¹ However, six Observation Homes including three in LWE affected districts is grossly inadequate. This implies that 1309 juveniles whose cases were pending trial had to be lodged in these six Observation Homes with each home accommodating more than 200 juveniles. Similarly, two Special Homes located in Durg and Bilaspur districts had to accommodate more than 300 juveniles. Clearly, the juveniles had to live in overcrowded conditions.

In **Jharkhand**, 21 districts have been identified as LWE affected out of total 24 districts. However, there are only 10 Observation Homes, all located in LWE affected districts of Hazaribagh, Bokaro, Dhanbad, Gumla, Simdega, Ranchi, Deogarh, East Singhbhum, West Singhbhum and Dumka.⁸² The remaining districts including 14 LWE affected districts have no juvenile homes. Clearly, these juvenile homes are far from adequate. In the absence of adequate juvenile homes, all child offenders from the rest of the districts are lodged in the observation homes in the nearest to these 10 districts.

There were over 3500 cases pending before various JJBs in the state as on 11 July 2012.⁸³ In July 2012, the large number of pending cases prompted the Jharkhand High Court to seek a detailed report from the state government on the state of observation homes.⁸⁴ With large number of pending cases and lack of juvenile homes it would not be a difficult task to fathom the condition of the existing homes.

The situation is worse with respect to juveniles who have been found guilty after completion of the trials as there are no special homes in Jharkhand. However, as per NCRB statistics, 116 juveniles were sent to Special Homes in the state during 2011.⁸⁵ It is not clear as to whether these juveniles were sent.

Maharashtra has four LWE affected districts out of 35 districts. Two of the four districts namely Chandrapur and Gadchiroli have Observation Homes.

Uttar Pradesh has 75 districts of which three districts have been identified as LWE affected. Of the three affected districts only Mizapur district has constituted an Observation Home for Girls located at Lohdikala.

West Bengal has four LWE affected districts out of 19 districts and **Madhya Pradesh** has one district identified as LWE affected out of 50 districts. However, there are no juvenile homes in the affected districts of both the states.

⁸¹ Crime in India, 2011, NCRB

⁸² Government Run Observation Homes & Children Homes of Jharkhand, Social Welfare Department, Jharkhand, <http://socialwelfarejhar.com/grun.pdf>

⁸³ Justice for delinquents on Tatia radar, The Telegraph, 11 July 2012

⁸⁴ Justice for delinquents on Tatia radar, The Telegraph, 11 July 2012

⁸⁵ Crime in India, 2011, NCRB

6. Violation of the rights of the juveniles in conflict affected area

There are consistent and credible reports of violations of the rights of the juveniles in areas affected by conflicts and unrest. The law enforcement personnel remained unaware of the provisions of the JJ(C&PC) Act of 2000. Juveniles/children have been consistently arrested, detained and tortured. In many cases, they have also become victims of extrajudicial executions or encounter killings. Asian Centre for Human Rights has taken up a number of cases of violations of the rights of the juveniles with the National Human Rights Institutions. These cases by no means indicate the actual extent of the violations of the JJ(C&PC) Act in the conflict affected states. But these cases as cited below show that understanding and application of the JJ(C&PC) Act is yet to be ingrained and institutionalized. In many cases, the perpetrators got away by producing “No Objection Certificate” from villagers or victims stating that they had not committed any offence.

i. Arbitrary arrest, illegal detention and torture

Juveniles should be arrested, detained and tried as juveniles. Yet juveniles in conflict affected districts have been consistently arrested, detained and tried as adults.

The detention of juveniles in judicial custody or police custody is a clear violation of the Section 10 (1) and Section 7A of the JJ(C&PC) Act. Section 10(1) of the JJ(C&PC) Act provides that

“As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.”

The law enforcement personnel often arbitrarily pick up the children/juveniles and detain them in the police stations and jails. Due to the conflict situation, the provisions of the JJ(C&PC) Act are never applied. Many of the children are merely picked up on the suspicion of having links with armed opposition groups (AOGs).

The situation is further compounded by lack of Special Homes and Observation Homes. While the JJBs are only on paper, the Special Juvenile Police Units (SJPUs) in all the states are still non-functional as the increasing cases suggest.

Since 2003, ACHR has taken up a number of cases of violations of the rights of the juveniles with the National Human Rights Institutions. These cases by no means indicate the actual extent of the violations of the JJ(C&PC) Act in Manipur.

Case 1: Illegal detention of three minors in Manipur

Nothing clearly demonstrates the blatant and willful violation of the provisions of the JJ(C&PC) Act, 2000 than the recent case of illegal detention of three minors allegedly in conflict with law which was investigated by a team of the National Commission for Protection of Child Rights and Asian Centre for Human Rights during its two-day visit to Manipur from 18 – 20 May 2012. This case is under consideration of the NCPCR pursuant to a complaint filed by the Asian Centre for Human Rights.

As the facts and circumstances of the case reveal the rights of the victims as provided under the JJ(C&PC) Act, 2000 were repeatedly violated at every stage. The irony is that it was not only the Assam Rifles (AR) and the police but also the Magistrate and the lawyer who were active participants to the violations of the rights of the victimized juveniles in question.

From 14 February to 1 March 2012, four persons including three minors identified as Sonkhopao Mate (15 years), Ngamminlun Mate (17 years) and Ngambom Haokip (17 years) were arbitrary arrested and illegally detained in the custody of 36th Assam Rifles and at Lamphel police station in Imphal. Later, they were sent to judicial custody at Sajiwa Central Prison in clear violation of the provisions of the JJ(C&PC) Act, 2000.

At about 7.30 pm on 14 February 2012, Sonkhopao Mate, Ngamminlun Mate, Ngambom Haokip and Paokholet Haokip (38 years), two other boys and three girls were having Maggi noodles and chatting at the residence of Sonkhopao's cousin who is also his next door neighbour. At that time, Jamkhothang Mate, father of Sonkhopao came there accompanied by some personnel of the 36th Assam Rifles based at Sehlon village under Khengjoy Block of Chandel district. He asked the children to come out of the house and all eight children followed the order. They saw that the house was rounded up by some AR personnel who were armed and had asked the children to accompany them. The children were neither informed as to why they were being taken to the AR camp nor allowed to talk to their family members. Then 36th Assam Rifles personnel took them to the camp, where one civilian Gajendra Singh pointed his finger at the three minors and one adult villager stating that they are the one who murdered his friend and business partner Mangal Ram. Gajendra Singh and the deceased were running a civil canteen (Variety store) under the 36th AR and their canteen was situated inside the AR camp at Sehlon village.

Only at that point of time, the children came to know that they were picked up by the AR in connection with the alleged murder of late Mangal Ram. While two boys and three girls were released and allowed to go home, the three minors and the adult villager as identified by Gajendra Singh were detained the whole night at a small bunker inside the Assam Rifles' camp fully guarded by armed personnel. During the whole night, the AR personnel allegedly denied the victims food and water. It was only in the next morning i.e. on 15 February 2012 that their family members fetched

some food and water for the victims. The Assam Rifles blatantly violated Section 10 of the JJ(C&PC) Act as they have no authority under the JJ(C&PC) Act to apprehend a juvenile under any circumstance. Section 10 provides that any juvenile in conflict with the law can only be apprehended by the police who are required to place the juvenile apprehended under the charge of a Special Juvenile Police Unit (SJP) or a designated police officer. Proviso to Section 10 (as amended in 2006) provides that “in no case a juvenile in conflict with law shall be placed in a police lock up or lodged in a jail”. Therefore, it is not only the arrest by the Assam Rifles but detention of the victims by the AR in a bunker in their camp constitutes another blatant violation of section 10 of the JJ(C&PC) Act.

By depriving the victims of food and water and detaining them at a place unfit for normal human dwelling, the AR also committed an offence under Section 23 of the JJ(C&PC) Act. Willful deprivation of food and water and sleep are acts of cruelty and are therefore punishable under Section 23 which provides that “*whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.*”

At about 1.30 pm on 15 February 2012, two policemen arrived at the AR Camp. They were taken inside the camp and came out after a while. The policemen neither met the victims nor the villagers who had gathered outside the AR camp. The AR personnel then instructed the victims to seat at one of their vehicles (409 model). As many as 10-12 armed AR personnel accompanied the victims in the same vehicle while 4-6 other AR personnel were following the bigger vehicle in a small vehicle. However, the victims were clueless as to where they were being taken to as neither the policemen nor the AR personnel informed them. On the way, the AR personnel would stop at most of the AR camps situated on the highway and have some refreshments as well as to attend nature's call. But the victims were even denied water not to mention any food. They were allegedly beaten up when they said they were hungry. They were not even allowed to attend nature's call. Adding insult to the injury, the AR personnel would inform their colleagues posted at the AR camps on the way that they were taking four murderers/killers to the central jail in Imphal. Then only the victims could guess that they were being actually taken to Imphal.

The AR and the police were duty bound under Section 13 of the JJ(C&PC) Act, 2000 to inform the parents or guardians of the victims of the grounds of arrest and ask them to appear before the Juvenile Justice Board before whom the victims would appear. They were also required to give similar information to the Probation Officer in order to enable him to obtain information regarding the antecedents and family background of the juveniles and other material circumstances likely to be of assistance to the JJB for making the inquiry. The AR and the police again committed an offence under

Section 23 of the JJ(C&PC) Act, 2000 by assaulting the victims, denying the victims to attend nature's call as well as food and water during the journey to Imphal.

Around 1.30 – 2.00 am the victims reached Imphal and were taken to Lamphel police station in Imphal West district and put into the lock-up. During that night they were not given any food. Only in the next morning i.e. 17 February 2012, Sankhopao's relative who lives in Imphal brought some food. They were detained at Lamphel Police station lock-up for 8 days (16-23 February 2012). No food was served to them while in detention at Lamphel Police Station. Sankhopao's relative brought them food. The police again violated Proviso to Section 10 of the JJ(C&PC) Act provides that "*in no case a juvenile in conflict with law shall be placed in a police up or lodged in a jail*" as they put the victims in the police lock up.

The police further committed an offence under Section 23 of the JJ(C&PC) Act by depriving the victims of food and water for the whole night. Deprivation of food and water to the victims who were tired and starved a whole day are nothing but acts of cruelty as provided under this section and are therefore punishable.

While under detention in police custody, Sonkhopao fainted once and fell on the floor. Police took him to 1st Manipur Rifles' Hospital in Imphal. He was also once taken for check up to Regional Institute of Medical Sciences but police did not give him any record of his medical treatment.

The victims were produced once before the Chief Judicial Magistrate, Imphal West, while in detention at the Lamphel Police Station lock up. In the court, the Investigation Officer and another policeman asked all three minor boys their age. As Sonkhopao replied that he was 15 years-old, police told him that since children cannot be sent to jail they have mentioned his age as 18 years. Police also stay until they arrest the culprit (murderer of late Mangal Ram), they be required in their custody. The Magistrate also asked their age, occupation and address and after their replies, she told them that since they (the court and police) have to carry out several legal formalities all of the victims are required to go to jail for some days.

The Magistrate failed to discharge the duties as provided under Section 7 of the JJ(C&PC) Act, 2000. Under Sub-section 1 of this section, the Magistrate was required to record her opinion pertaining to age of the victims and forward them as well as the record of proceedings to the relevant JJB for inquiry under sub-section (2). Under Section 7A(1), as amended in 2006, the Magistrate was duty bound to make an inquiry to determine the age of the victims.

The failure of the Magistrate to discharge her duties in accordance with Sections 7 and 7A landed the victims to the Sajiwa central jail.

Sadly, when the lawyer moved the bail application No.5 of 2012 before the Chief Judicial Magistrate, the age of Sonkhopao Mate, Ngamminlun Mate and Ngambom Haokip were given as 18 years!

On 24 February 2012, they were shifted to Sajiwa Central jail where they were lodged till their release on bail on 2 March 2012.

In the meanwhile, the investigation into the murder of Mangal Ram (FIR No. 2(2) of 2012 registered at the Molcham Police Station under Sections 302/34/195/203 of Indian Penal Code was continuing. After investigation, the Police arrested Gajendra Singh, who pointed fingers to the juvenile, and three others were for the murder of civilian canteen owner late Mangal Ram. They have been arrested and sent to jail. It is clear that the arrested juveniles had nothing to do with the murder case but had to undergo the trauma.

Sonkhopao who is studying in Class VII in Samaritan School in Sugnu under Chakpikarong sub-division of Chandel district has resumed his schooling. But, his elder brother Ngamminlun Mate and his cousin Ngambom Haokip have dropped out from school.

Case 2: Illegal detention of school boy in Arunachal Pradesh⁸⁶

On 2 August 2012, 16-year-old Kulo Chakma, resident of Shukhanala village in Changlang district of Arunachal Pradesh, was arbitrarily arrested on mere suspicion of being involved in a theft case and taken to Diyun Police station where he was illegally detained. The victim was not produced before JJB and continued to be illegally detained and tortured to extract a confession. The victim was produced before the local executive magistrate court only on 6 August 2012. On 14 September 2012, the NHRC directed the Director General of Police (DGP), Arunachal Pradesh to submit action taken report within four weeks. However, the DGP failed to submit report following which a reminder was issued on 6 November 2012.

Case 3: Illegal detention of Bikram Kumar (16), Jharkhand⁸⁷

On 15 February 2011, 16-year-old Master Bikram Kumar, son of Madheshwar Singh, was arrested on the alleged charge of electricity theft and illegally detained at the Dhanbad Jail in Dhanbad district in Jharkhand. The victim, a student of Class Xth standard, was handed over to the police by the Jharkhand State Electricity Board on the alleged charge of electricity theft. In the First Information Report (FIR) registered by the police the age of the victim was showed as 45 years. The victim's family had informed both the police and Jharkhand State Electricity Board that Master Bikram Kumar was a minor and aged only 16 years. However, the police paid no heed and without verifying the age of the victim sent him to Dhanbad Jail. The case is pending adjudication at the NCPCR.

⁸⁶. ACHR complaint to NHRC dated 9 August 2012, NHRC Case No. 18/2/4/2012

⁸⁷. ACHR complaint to NCPCR dated 1 March 2011, NCPCR Case No. JH-11011/21667/2010-11

Case 4: Torture of a tribal student by CRPF, Jharkhand⁸⁸

On 23 December 2010, a tribal student Raju Ranjan Singh, son of Kailash Kharwar, resident of Binda village under Bhandaria police station was allegedly tortured by Central Reserve Police Force (CRPF) personnel at Binda Ghati in Garhwa district of Jharkhand. The accused CRPF personnel severely beat the victim on the suspicion of being a Maoist when he was returning home after attending his classes. The accused CRPF personnel left the injured victim on the spot without providing any treatment. The case is pending with the NCPCR.

Case 5: Illegal detention and torture of Soumen Mohanty, Orissa⁸⁹

On 17 November 2010, Master Soumen Mohanty (17 years), son of Mr. Sudhir Charan Mohanty of Netaji Nagar was picked up and tortured by Mr. Satyanarayan Senapati, Assistant Sub-Inspector at Madhupatna police station in Cuttack district of Orissa. The victim was subjected to physical and mental torture during his illegal detention of more than 48 hours. The victim was also forced to confess to the offence, whatever, asked by Satyanarayan Senapati. The victim was detained without any FIR or arrest warrant against him. Though the victim was detained on 17 November 2010, the police records showed that he was arrested on 18 November 2010 in connection with Madhupatana police station case No. 218 dated 17.11.2010 under Sections 506/34 IPC and Sections 3 & 5 of the Explosive Substances Act.

On 23 November 2010, ACHR filed a complaint with the NHRC which forwarded the same to Orissa Human Rights Commission for taking necessary action. On 23 November 2012, the Division Bench comprising the Chairperson and a Member of the Orissa Human Rights Commission found three police officers namely Assistant Sub-Inspector (ASI) Satyanarayan Senapati, Inspector Jayant Kumar Mohapatra and Sub-Inspector S. B. Jena guilty of illegally detaining and torturing Master Soumen Mohanty at the Madhupatana Police Station in Cuttack and manipulating police records to cover up the illegalities committed by them.

After the police submitted misleading reports which were challenged by the Asian Centre for Human Rights, the Orissa Human Rights Commission asked its Director Investigation to conduct an independent inquiry and the enquiry report dated 6.11.2012 was submitted. The enquiry report of the Director Investigation, OHRC, had the following findings:

- Juvenile Soumen Mohanty was taken into detention at Madhupatana police station on 17.11.2010 between 7.30 pm to 8.30 pm and interrogated by the police in connection with Madhupatana p.s. case no. 218 of 2010.

⁸⁸. ACHR complaint to NCPCR dated 3 January 2011, JH-11015/20121/2010-11

⁸⁹. ACHR complaint to Orissa Human Rights Commission dated 23 November 2010, Case No. 2149 of 2010

- Soumen Mohanty was “tortured physically and mentally by ASI Satyanarayan Senapati in presence of Inspector Jayant Kumar Mohapatra and Sub-Inspector, S.B. Jena” (investigating officer in Madhupatana p.s. case no. 218 of 2010)
- It was ASI Satyanarayan Senapati who assaulted Soumen Mohanty for which he is liable to be prosecuted under sections 341/323 IPC;
- Inspector Jayant Kumar Mohapatra is liable for illegal detention of Soumen Mohanty for more than 40 hours under sections 342/341/323/109 IPC;
- “Police records were manipulated showing that Soumen Mohanty was arrested on 18.11.2010 at 8.30 pm to cover up the illegal action of Inspector Jayant Kumar Mohapatra and ASI Satyanarayan Senapati which amounts to misconduct and dereliction of duty.”

The Orissa Human Rights Commission also found that when Soumen Mohanty was produced before the CJM-cum-Principal Juvenile Justice Board (JJB), Cuttack on 19.11.2010, the JJB observed as follows: “Soumen Mohanty complaints of ill-treatment by police while in custody. He has shown his right hand where marks of assault are visible.” Saila Behera, Director, Child Line and member of the JJB, Cuttack stated in her evidence that she was present in the JJB hearing on 19.11.2010 and she noticed marks of bruises on the arms of Soumen Mohanty. Dr Rajesh Kumar Sahu, Medical Officer, Circle Jail Hospital, Berampur stated that he examined Soumen Mohanty on 20.11.2010 and detected “multiple scratches, abrasions of varying sizes and shapes over back of right arm. According to him the time of injury was within 2-3 days and the injuries could be due to hitting by some blunt objects such as lathi or fist.”

Therefore, the OHRC accepted the report of the Director Investigation and passed the following order dated 23rd November 2012:

“In view of what has been stated above, as Soumen Mohanty was detained at Madhupatna police station from 17.11.2010 evening till he was produced before the Juvenile Justice Board on 19.11.2010, it is a clear case of violation of the Constitutional provision under Article 22(2). For such illegal detention and assault on Soumen Mohanty, the State Government is liable to pay compensation of Rs 50,000 /- (Rupees fifty thousand) to him.

The Commission further holds that the police have manipulated the records to show as if Soumen Mohanty was arrested on 18.11.2010 whereas he was actually detained in the police station from 17.11.2010 evening.

Whether the erring police officers should be criminally prosecuted for having assaulted Soumen Mohanty and manipulated the records, it is for the Departmental authorities to take a decision on it.”

Case 6: Illegal detention of three minor school girls in jail, Jharkhand⁹⁰

On 30 October 2010, three minor school girls were arrested by the police and sent to jail in Khunti district of Jharkhand. The girls were arrested from an encounter site between the police and the Maoists. The girls were charged under the Unlawful Activities (Prevention) Act, the Arms Act and the Explosives Act. The girls were treated as adults without verification of their age. They were neither produced before the Juvenile Justice Board to facilitate their stay in the juvenile home but remanded to judicial custody and sent to the Khunti jail. The National Commission for Protection of Child Rights intervened into the matter following a complaint received from an NGO and asked the District Collector of Khunti district for immediate action in the case.

Case 7: Illegal detention of three minors, Nagaland⁹¹

On 22-23 October 2010, three children were illegally detained and tortured in the custody of East police station and Women Cell in Dimapur district of Nagaland. The three minor victims aged 11, 12 and 13 years respectively were daily rag pickers and students of National Child Labour Project (NCLP), a school run by the Government of India. They were accused of stealing a dog from a restaurant owner. On 22 October 2010, the owner of the restaurant called the police and the minors were tortured to obtain a confession. During questioning, the minors were allegedly stabbed with ball pen, burnt with cigarettes and one of them was trampled on the toe by the police with boots. Later, the minors were brought to the East Police station where they were again beaten up before being transferred to Women Cell on the same night. The minors were repeatedly subjected to torture and kept them without any food at the Women Cell the entire night. On 23 October 2010 evening, the Women Cell handed over the minors to the owner of the restaurant where they were further subjected to torture. A dog was also allegedly let loose on a minor and was bitten off. The case is pending adjudication at the NCPCR.

Case 8: Tortured to death of Omar Qayoum Bhat in police custody, J&K⁹²

On 25 August 2010, 17-year-old Omar Qayoum Bhat, son of Abdul Qayoum Bhat, died due to alleged torture at the Soura Police Station in Srinagar, Jammu & Kashmir. The deceased, a resident of Malik Sahab, Soura, was picked up by police during a protest on 20 August 2010. The deceased's family members alleged that Omar Qayoum Bhat was detained for a night at the police station and subjected to torture and administered electric shocks. According to the doctors of S K Institute of Medical Science, the deceased had suffered severe internal injuries including in the liver, lungs and intestinal injuries.

⁹⁰ Information available at: <http://www.sify.com/news/child-rights-panel-comes-to-rescue-of-jailed-jharkhand-girls-news-national-kmwskgbagdf.html>

⁹¹ ACHR complaint to NCPCR dated 15 March 2011, NCPCR Case No. NL-11016/22095/2010-11

⁹² ACHR complaint to NHRC dated 27 August 2010, NHRC Case No. 156/9/13/2010-AD

On 27 August 2012, ACHR filed a complaint with the NHRC which was registered as Case No. 156/9/13/2010-AD. The state government was asked to submit report. However, the state government repeatedly failed to submit reports despite several communications issued by the NHRC. Peeved at the non-compliance with its order, the NHRC issued conditional summon to the Deputy Commissioner, Srinagar, Jammu and Kashmir to appear personally before the NHRC or submit reports on 14 February 2013. In its latest proceedings dated 11 December 2012, the NHRC stated as under:

“This proceeding shall be read in continuation of the earlier proceeding of the Commission dated 17.10.2012. The desired report has not been received from the concerned authority despite several communications. The Commission views the matter seriously. Issue summon to Deputy Commissioner, Srinagar, J&K, to appear personally and produce before the Commission on 14-2-13, a report whether any ex-gratia monetary relief has been paid to the next of kin of deceased Umar Qayoom who died on 25.8.2010. Further a complete report of inquest proceeding and final cause of death of above person be also produced. Enclose with the summon, a copy of the communication dated 1.6.2012 issued by the Commission. If the desired report is received by the Commission before the stipulated date, the personal appearance of the above officer shall be dispensed with.”

Case 9: Illegal detention and torture of a minor boy by police, Manipur⁹³

On 3 April 2010, a minor (name withheld), a student of Class Xth standard, was arrested along with one Paonam Purnima Singh (60 years) in connection with a case of elopement and taken to the Moirang police station in Bishnupur district. Both the victims including the minor were produced before the court of Chief Judicial Magistrate. Surprisingly, the Judicial Magistrate remanded the minor to police custody following which the minor was detained at the Moirang police station. At night, a Manipur Police Commando identified as Robinson posted at Kumbi police station and a Security Inspector of Loktak Development Authority, Linjalian came to the Moirang police station and subjected both the victims to severe beating. Both the victims sustained injuries. Asian Centre for Human Rights intervened in the matter with the National Human Rights Commission but the NHRC forwarded the case to virtually defunct Manipur State Human Rights Commission which failed to take effective step in the matter. The case is still pending.

Case 10: Illegal detention of Sunil Bisoyi in jail, Orissa⁹⁴

In March 2010, 16-year-old Sunil Bisoyi was arrested in a case of murder and allegedly detained at Behrampur jail in Orissa. The minor was allegedly kept in a jail till he was transferred to an Observation Home on 27 March 2010. The police claimed the minor

⁹³. ACHR's complaint to NHRC, 5 April 2010, NHRC Case No. 27/14/1/2010/OC

⁹⁴. ACHR complaint to NCPCR dated 1 July 2010, NCPCR Case No. OR-11011/16149/10-COMP

was apprehended on 26 March 2010 and produced before the Juvenile Justice Board on the next day which sent him to the Observation Home. In May 2010, Sunil Bisoyi was granted bail by the JJB for being a minor. However, Sunil Bisoyi continued to be lodged at the Observation Home, Berhampur due to lack of a bailer.

Pursuant to a complaint filed with the NCPCR on 1 July 2010, the NCPCR directed the concerned authorities to submit a report on the matter. In compliance, a report was submitted by the Collector and District Magistrate, Ganjam which denied the allegation of illegal detention of the minor. As the allegation of illegal detention was denied ACHR decided to conduct a fact finding which confirmed that the minor was illegally detained at the jail before being shifted to the Observation Home and the finding was submitted to the NCPCR. Thereafter, NCPCR directed its State Representative to cross check the report of the District Magistrate, Ganjam. The NCPCR State Representative found the report of the District Magistrate to be true. ACHR challenged the findings of the NCPCR State Representative in its comments submitted to NCPCR on 1 March 2012. The matter is currently pending for adjudication by NCPCR.

Case 11: Illegal arrest and detention of 15 minor tribal children in jail, Orissa⁹⁵

On 20 November 2009, 15 minor tribal children, all of them under 14 years of age, residents of Narayanpatna Block in Koraput district of Orissa, were arrested for protesting against the police firing in which two tribals were killed and lodged in the Koraput District Jail in violation of the Juvenile Justice (Care and Protection) Act, 2000. The police claimed that the children were arrested because they were armed and taking part in criminal activities. They were neither produced before the JJB nor were their age taken into account by the police as well the jail officials. The children were forced to share space with hardened criminals in the jail. At the time of filing the complaint with NCPCR on 5 July 2010 the children continued to be illegally detained at the jail. Pursuant to NCPCR intervention an enquiry was conducted by the District Collector and Magistrate, Koraput and a report dated 9 July 2010 was submitted to the NCPCR.

The report, though lacks in scope and findings, established that at least four juveniles (names withheld) were found to be minors and illegally detained at the jail. They were produced before the JJB at Jeypore as per the order of JMFC, Laxmipur. The age determination of the juveniles have been conducted as per provisions laid down in the Juvenile Justice Act/Rules and as per the findings four juveniles were found to be minors and they were shifted to the Observation Home cum Special Home, Berhampur in Ganjam district. The report also stated that the Superintendent, District Jail, Koraput and Superintendent, Observation Home were advised to provide adequate legal aid to the four juveniles. The NCPCR disposed of the case as the case is subjudice before

⁹⁵ ACHR complaint to NCPCR dated 5 July 2010, NCPCR Case No.OR-12016/11461/10/Comp

the JJB. The report did not disclose any information as to whether any action has been taken against the police and jail officials for the illegal detention!

Case 12: Illegal detention of two minors by the Assam Rifles, Manipur⁹⁶

According to information received by Asian Centre for Human Rights, on 17 November 2009 at about 3 pm, Master Sougrakpam Ingo was taking part in a football tournament held at Moreh football ground. Suddenly, a team of 31st Assam Rifles came in one private van and two auto-rickshaws. The Assam Rifles (AR) team rushed into the football ground and picked up Master Sougrakpam Ingo without giving any reason. The crowd watching the football match tried to stop the AR from taking away Master Sougrakpam Ingo. But, the AR personnel threatened them pointing their guns. Thereafter, AR whisked away Master Sougrakpam Ingo to their camp at Moreh. In the camp, AR blind folded Master Sougrakpam Ingo and tied his left hand with a rope which was held by one of the AR personnel. Thereafter, AR personnel started beating him up with club and rifle butts. Later, AR personnel threatened Master Sougrakpam Ingo to admit that he is an activist of proscribed United National Liberation Front (UNLF). Master Sougrakpam Ingo denied and stated that he is a student. Then the AR personnel told him to produce his school Identity Card (ID). Master Sougrakpam Ingo told that he kept his ID at home. Then, AR personnel told Master Ingo to run from the camp. But Master Sougrakpam Ingo, fearing that he would be killed in encounter, refused to comply and requested the AR to release him in the football ground.

In the meanwhile, the residents of Moreh rushed towards AR camp to enquire about Master Sougrakpam Ingo. In protest, they reportedly dismantled the billboard belonging to AR. The AR dispersed them by resorting to beating. Two youths namely, Mr Thangjam Sunil and Master Thangjam Robert were chased by the AR personnel. Mr Sunil and Master Robert tried to enter the Moreh Police Station while they were being chased at. But the Police closed their gate and did not allow them to enter. Later, both of them were caught by the AR personnel who beat and kicked them with boots in front of the police station for allegedly dismantling their billboard. Thereafter, the AR personnel took them to their camp.

In the camp, both Mr Sunil and Master Robert were blind folded with their hand tied at the back. Mr Sunil was beaten with club and rifle butts. One AR personnel kicked Mr Sunil at his nose which resulted in bleeding from his nose. Master Robert too was severely beaten up all over his body with club and rifle butts. He was made to lie down on the ground and hit on the soles with club several times.

The AR personnel continued to illegally detain all the three - Master Sougrakpam Ingo, Mr Sunil and Master Robert till the evening. In the evening, some community

⁹⁶ ACHR's complaint to NHRC, 5 February 2010, NHRC Case as No.14/14/2/2010-PF

leaders went to the AR camp for the release of the three. Following this, the AR personnel took the three to Moreh Police Station. Subsequently, they were released without any charge after the AR personnel made them sign on blank papers.

In response to the notice issued by the NHRC following a complaint filed by ACHR, the Superintendent of Police (SP), Chandel district, Manipur submitted a report on 28.04.2010 while Colonel G.S. (Ops.), Assam Rifles filed its reply on 29.05.2010.

The Assam Rifles while denying the allegation of illegal detention stated that the apprehended persons were detained only for about two hours. Both the reports denied allegations of torture/harassment. The Assam Rifles obtained “no harassment certificates” from the victims.

Both the reports ignored the age of the victims and there was no effort to verify the age of the victims. This is despite the fact the Sougrakpam Ingo was playing an under- 15 football tournament namely Leishangthem Shantikumar Memorial Under-15 Football Tournament at Eastern Shine School from where he was arrested. Further, Sougrakpam Ingo was a student of Class IX at the time of his arrest. The age of other two of the victims – Sunil and Thangjam Robert was 17 years at the time of the incident. In fact, the reports showed their age as major.

The reports of the Superintendent of Police (SP), Chandel district established beyond doubt that the three victims were illegally detained for six and a half hours at the Assam Rifles Camp, Moreh not for more than six hours as against about two hours claimed by the 31st Assam Rifles.

Later, ACHR came to know the State government ordered a Magisterial Enquiry into the matter that was submitted to the NHRC. However, the Magisterial Enquiry Report (MER) was not shared with ACHR and the NHRC closed the case on the basis of the MER which mentioned that the three students were not illegally detained or tortured. Pertinently, the MER stated “*Sensing public discontentment and possible escalating agitation, the 31st AR authorities hurriedly verified the antecedents of the apprehended persons from available school records. As nothing adverse was found against any of the apprehended persons, they were released from custody....*” This suggests that MER admitted that the victims were school students.

The NHRC closed the case with the suggestion for more coordination between the civil authorities and the armed forces!

Case 13: Illegal detention and torture of a minor, Assam⁹⁷

On 16 August 2009, 12-year-old Dipankar Saikia of Sanitpur village was tortured by Manuj Boruah, Officer In-Charge at the Sungajan police station in Golaghat district of Assam. On 16 August 2009 at about 11 am, a group of about six police personnel entered the house of the victim and dragged him out without giving any reason. He

⁹⁷ ACHR complaint to NHRC dated 12 November 2009, NHRC Case No. 135/3/22/09-10

was taken to the Sungajan police station and on reaching the police station, he was ordered to sit on the floor of the verandah. Mr Manuj Boruah, Officer In-Charge of the police station tied the minor's hands on his back with a chain and tortured him. He was beaten up with a stick repeatedly on his body including in the thigh, knees, feet, sole, back, arms, elbows and ears. The Officer-In-Charge also asked the minor to keep his hand on the table and was then beaten on the nails. He was again hit on the head, neck and nose until Master Dipankar became unconscious. Pursuant to a complaint filed with the National Human Rights Commission (NHRC), the Superintendent of Police, Golaghat district, vide communication dated 07.12.2010 submitted a report to the NHRC confirming that the accused Sub Inspector Manuj Baruah directed his subordinate police officials to pick up the victim from his home at 10.00 o'clock caned him and detained him in the police station. The report of the SP further stated that accused police officer willfully omitted to make necessary entries in the General Diary of the police station, pertaining to the whole episode including the picking up of the victim, his illegal detention and subsequent release. The report further stated that a Departmental Disciplinary Proceeding has been drawn up against the accused officer for criminal misconduct and dereliction of duty. The NHRC ordered the state government to provide a compensation of Rs. 50,000 to the victim. On 20 April 2012, the NHRC closed the case after the Joint Secretary to the Government of Assam, Political (A) Department vide communication dated 7.4.2012 informed that payment of compensation amounting to Rs. 50,000/- was paid through cheque to victim Sri Dipankar Saikia.

Case 14: Illegal detention of an 11-year-old girl at a police station, Manipur⁹⁸

In August 2009, an 11-year-old girl (name withheld), daughter of S. Dewan of Nongmaikhong Mayai Leikai, was illegally detained for five days at Mayang Imphal Police Station in Imphal. The victim, studying in 6th Standard, was picked up on the morning of 14 August 2009 by a combined team of Imphal West Police Commandos and personnel of the 12th Maratha Light Infantry of the Indian Army from her home. The combined team had gone to the house to arrest her parents who were accused of providing assistance to a banned group. As the victim's parents are not present, the personnel subjected the victim to questioning the whereabouts of her parents. The victim could not stand the questioning and fainted. Thereafter, the combined team whisked her away on the pretext of taking her to hospital. However, the combined team handed her over to the Mayang police station. In the police station, the victim was further subjected to interrogation. She even could not take food out of fear. Finally, the victim was released on 18 August 2009.

On 19 August 2009, the minor girl was admitted to Regional Institute of Medical Sciences (RIMS) with complaints of fear, breathlessness, palpitation, increase pulse rate, sleep disorder, self withdrawal symptom, unresponsiveness, etc. In its

⁹⁸. ACHR's complaint to NCPCR, 5 February 2010

psychological report, the Department of Clinical Psychology, RIMS recommended that the girl would require psychotherapy and counselling from time to time as long as she is not settled down in a conducive environment.

In its report to the NCPCR, the police claimed that the girl was kept in the police station with good intentions and noble human behavior to save the life of the girl who was in distress. The girl child could have been lodged in a Children Home till she was handed over to her relatives.

The case demonstrates the total lack of knowledge or willful violations of the Juvenile Justice (Protection and Care of Children) Act, 2000, not to mention about its implementation amongst the law enforcement personnel.

Case 15: Illegal detention and torture of two minors, Assam⁹⁹

On 21 June 2009, two minors viz. Lakhinda Hazarika and Kumud Phukan of Duworisiga village were tortured by police at Nitaiphukuri outpost in Sivasagar district of Assam. The victims were picked up on 11 June 2009 by a police team led by Jitumoni Boro, Officer-in-charge of Nitaiphukuri police outpost on the accusation of theft. Both the victims were detained in the police station, stripped and tortured throughout the night. The police allegedly rubbed chillies on their bodies and forced it down their throats. The chillies, locally called as ‘bhot jolokia or naga jolokia’, are reportedly the hottest chillies in the world.

Pursuant a complaint filed on 30 June 2009, the NHRC called reports from the state government. In response to the NHRC's directives, the Superintendent of Police (SP), Sivasagar submitted a report stating that there was no evidence to show that Kumud Phukan was a minor at the time of detention. He did not make such claim before the Magistrate when he was produced before the court. The SP also refuted the allegations of infliction of torture to both the boys. However, the NHRC rejected this claim and stated as under:

“In the complaint it is emphatically alleged that both the boys were tortured by putting chilly powder on their eyes and anus. The Medical Officer concerned has reported in both the perfunctory injury reports that no injury was found on the body of the boys. The SP, Sivasagar has admitted in his earlier report that the boys were illegally detained in lock-up on the outpost throughout the night. It can obviously be assumed that the police officer who on the instance of Biren Phukan and Smt. Sabita Phukan, could illegally detain the two boys, throughout the night without registration of any case, would have inflicted torture also on them. However, in absence of the positive evidence nothing can be said about the mode of torture. The medical reports with no injury could have been managed by the police official concerned on 24.6.2009 i.e. after three days of the earlier occurrence/ incident. And also it is quite

⁹⁹. ACHR complaint to NHRC dated 30 June 2009

natural that they might not have an opportunity before the doctor to point out their torture by the police. Moreover in earlier incident they were not produced before a Magistrate. The allegation of arrest of both the boys when they were not named in the Demow P.S. case crime no. 75/09 u/s 457/380 IPC, nor had any criminal history and investigation resulting in FR also go to show the prejudice/ malafide on the part of the police official concerned. Regarding illegal detention of the boys, SP, Sivasagar has in his report dated 2.9.2009 admitted that on enquiry it was established that Lakhindra Hazarika and Kumud Phukan were brought to Nitaipukhuri outpost and were kept for the night and released on the next day after a mutual agreement between the complainant and the accused. This clearly shows that SI, Jitumoni Borah, I/C Nitaipukhuri outpost kept Lakhindra Hazarika and Kumud Phukan in illegal detention through out the night without justification and released them on the next day, after inflicting torture on them as observed above. It is thus established that both the boys were illegally detained in the lock-up and were tortured, by the I.C. Nitaipukhuri SI, Jitumoni Borah, for which the State of Assam is vicariously liable.”

Accordingly, the NHRC issued a notice u/s 18 of the Protection of Human Rights Act, 1993 to the Government of Assam through its Chief Secretary to show cause as to why recommendation for payment of appropriate relief to the victims Lakhindra Hazarika and Kumud Phukan should not be made. From the latest status of the case available with the NHRC, it seems that the state government is yet to submit its response to the NHRC.

a. Special focus: Arrest in J&K including under the Public Safety Act

Children continue to be arrested under the Public Safety Act of Jammu and Kashmir which provides for preventive detention upto two years without trial in the name of public safety. The uprising in the Kashmir valley that started in June 2010 brought to the fore as to how juveniles in conflict with law are denied the rights and protections that the children are entitled to in the rest of India. The uprising itself was triggered by the death of a juvenile, 17-year-old Tufail Mattoo, after being hit by a tear gas shell near Rajouri Kadal area in Srinagar on 11 June 2010.

The cases of detention of juveniles including under the Public Safety Act are given below:

Case 1: On 19 November 2012, a class 9 student, Danish Farooq Wani of Purshiyar Habba Kadal, Srinagar, was arrested under sections 152, 138, 148, and 147 of the Ranbir Penal Code (RPC) after police accused him of “stone-pelting.” After three days of detention, he was produced in court, which ordered his release on bail. Farooq was re-arrested on November 23 under sections 307, 285, 336 of the RPC for “attempt to murder” for his alleged involvement in a petrol bomb attack. Though Farooq’s family

claimed he was a minor, police insisted he was 16 years old and thus not a juvenile. Farooq was finally released on bail on 4 December 2012, after a sustained campaign against his arrest by rights groups.¹⁰⁰

Case 2: In October 2011, Mohsin Majeed Shah, 12 years, was granted bail by 2nd Additional Sessions Judge Srinagar, another 12-year-old boy, Burhan Nazir was granted bail by Principal Sessions Judge Srinagar. The accused minors were arrested by the police under the sections 148, 152, 336, 332 of Ranbir Penal Code which relate to the offences like stone pelting and damage to property.¹⁰¹

Case 3: In October 2011, Sajad and Zubair were detained in police custody on charges of sedition, arson and attempt to murder. They were booked under section 152 of Ranbir Penal Code for waging war against the state, Section 307 for attempt to murder and section 336 for arson.¹⁰²

Case 4: On 7 February 2011, Faizan Rafeeq Hakeem was arrested for his alleged involvement in “stone-throwing.” He was 14 years, eight months and 11 days old at the time of his arrest. He was booked under the Public Safety Act and shifted to Kotbalwal Jail. Finally, Chief Minister Omar Abdullah ordered his release. Hakeem was released on 5 April 2011.¹⁰³

Case 5: In May 2011, Murtaza Manzoor, aged 17 years, was released from jail after the High Court intervened and found his imprisonment to be unlawful. He was locked up for more than three months in administrative detention.¹⁰⁴

Case 6: On 17 June 2010, 15-year-old Sheikh Akram, son of Sheikh Zulfikar of Jogilanker Rainawari and a student Class 8th was arrested under the Public Safety Act after allegedly attending the funeral procession of Tufail Mattoo. After his arrest, Akram was granted bail by the Principal District and Sessions Court but in order to foil the bail, on 3 July 2010, District Magistrate of Srinagar Meraj Ahmad Kakroo issued orders to book him under Public Safety Act. He was sent to Kote Bhalwal jail.¹⁰⁵

Case 7: In November 2010, Harris Rasheed Langoo (15 years), a class 9th student, was arrested from his home at Malik Sahab Hawal for alleged involvement in stone pelting. Harris was granted bail twice by the court but continued to be detained. The

¹⁰⁰ In J&K, juvenile age is 16 yrs, but minors booked under PSA also, The Indian Express, 3 February 2013 available at <http://www.indianexpress.com/news/in-j-k-juvenile-age-is-16-yrs-but-minors-booked-under-psa-also/1068604/0>

¹⁰¹ Court grants bail to 2 minors, The Greater Kashmir, 5 November 2011

¹⁰² Court extends judicial remand of 4 juveniles, 2 granted bail, The Kashmir Times, 5 November 2011

¹⁰³ In J&K, juvenile age is 16 yrs, but minors booked under PSA also, The Indian Express, 3 February 2013 available at <http://www.indianexpress.com/news/in-j-k-juvenile-age-is-16-yrs-but-minors-booked-under-psa-also/1068604/0>

¹⁰⁴ Juveniles suffer in Jammu and Kashmir, The Pioneer, 8 July 2011

¹⁰⁵ 15-yr old booked under PSA, Samaan Lateef, posted Kashmir Global Posted on Sunday, 07/11/2010 – 13:08, available at <http://www.kashmirglobal.com/?p=1115>,

first bail was granted almost a week after the arrest but police detained him on a new charge. The second bail was granted on 15 November 2010 but he was detained in a new charge.¹⁰⁶

Case 8: Omar Maqbool, aged 13 years, was detained on 27 October 2010 under the PSA and faced similar trauma of re-arrest like Harris Rasheed Langoo.¹⁰⁷

Case 9: Mushtaq Ahmad Sheikh, aged 14 years, was detained without evidence on 9 April 2010. He was granted bail after eight days, but was re-arrested on 21 April 2010. He was finally released on 10 February 2011.¹⁰⁸

ii. Extrajudicial killings of children

Children are routinely picked up and extrajudicially killed including in alleged fake encounters in particular in Manipur. During the fact finding visit of the National Commission for Protection of Child Rights and Asian Centre for Human Rights visit to Manipur from 18–20 May 2012, human rights organizations submitted a list of 92 cases of extrajudicial executions of children.

Asian Centre for Human Rights has regularly been intervening in a number of cases with the national human rights institutions. The following case studies explain the situation in the conflict affected states.

Case 1: Killing of Ahanthem Amajao (16 years), Manipur¹⁰⁹

On 29 January 2012, Ahanthem Amujao (16 years), s/o Ahanthem Basanta of Sawombung Gate Maning Leikai, Imphal East district, was killed by Manipur Police Commandos in an alleged encounter at Khuman Lampak Palli in Imphal West District. Ahanthem, a school drop-out, worked as a mason to help his parents to meet a square meal for the family. On 27 January 2012 at around 4.30 pm, the deceased left his home but never returned. As the deceased did not return, relatives began searching for him. On 30 January 2012, police informed family members that Ahanthem was killed in an encounter between a team of Imphal West Police Commandos and insurgents at Khuman Lampak Palli on 29 January 2012.

The family members and the locals stated that the deceased was never associated in any form with any armed group and alleged that he was tortured and killed in a fake encounter. According to the family, the body of the deceased bore marks of torture as his right arm and left hand were twisted and badly fractured. Autopsy was done at RIMS, Lamphelpat on 31 January 2012 but the report was denied to the family.

Following the visit of NCPCR and ACHR, in May 2012, the state government ordered a magisterial enquiry into the alleged encounter death of Ahanthem Amujao.

¹⁰⁶ Minor booked on stone pelting charges, *The Kashmir Times*, 17 November 2010

¹⁰⁷ Juveniles suffer in Jammu and Kashmir, *The Pioneer*, 8 July 2011

¹⁰⁸ Juveniles suffer in Jammu and Kashmir, *The Pioneer*, 8 July 2011

¹⁰⁹ Field visit of NCPCR and ACHR to Manipur, May 2012

However, the details and particulars provided in the notification about the deceased were incorrect. The age of the deceased was given as 18 years even though the deceased was born on 5 December 1995 i.e. 16 years and one month as per the school records.

Case 2: Killing of Rakhai Gaur (13) by CRPF, Assam¹¹⁰

On 8 December 2011 morning, Cobra commandoes of the Central Reserve Police Force reportedly shot dead 13-year-old Rakhai Gaur at his village, Malasi Namkhi Gaur village under Dolamara police station in Karbi Anglong district of Assam. On 9 December 2011, ACHR filed a complaint with the National Human Rights Commission urging its immediate and appropriate intervention. NHRC registered the complaint as Case NO.348/3/8/2011-PF and issued notice to Director General, CRPF, New Delhi and Superintendent of Police, Karbi Anglong district, Assam calling for reports within four weeks. The state government of Assam paid a compensation of Rs.300,000 (three lakhs) to the next of kin of the deceased from the Chief Minister's Relief fund and in view of this, the NHRC closed the case.

Case 3: Tortured to death of Billoo (17) in police custody, J&K¹¹¹

On 30 August 2009, 17-year-old Billoo, a resident of Ludhiana in Punjab, died at the lock-up of Adhkuwari Police Station in Reasi district of Jammu and Kashmir. The minor was picked up by the police for questioning in connection with a theft and pick-pocketing case. The police claimed that Billoo committed suicide by hanging himself in the lock-up of the police station. However, the family of the deceased and the residents of the region alleged that Billoo was tortured to death during questioning in police custody.

The NHRC also took suo-moto cognizance of the case, but ACHR was made a party to the case after a complaint was filed on 1 September 2009. The NHRC directed its Director General (Investigation) to collect reports. The post-mortem examination of the dead body of Billu was done on 31.10.2009 by a team of doctors. However, no injury was found on any part of the body including neck. The opinion regarding cause of death was reserved till the receipt of FSL and pathological examination report of the viscera. A magisterial enquiry conducted by SDM, Bhawan, Katra who concluded as under:

“It is abundantly clear that the deceased was arrested by the police without any reason, kept in illegal confinement and was not let off despite requests by the relative/friend who were accompanying the deceased. Besides this, it seems that the police has tampered with the evidence as the crime scene was not preserved properly. In charge of Police Post Adhkumari and other

¹¹⁰. ACHR's complaint to NHRC, 9 December 2011, NHRC Case No 348/3/8/2011-PF

¹¹¹. ACHR complaint to NHRC dated 1 September 2009, NHRC Case No. 81/9/0/09-10-AD or 76/95/09-10-AD

police officials, namely, HC Deepak Ram (Munshi PP), SGCT Bishan Dutt (Constable on duty in lockup), RSI/345 & SGCT Suraj Singh RSI/247 posted at PP Adhkumari could not explain the valid reason for arrest of the deceased. The above police personnel posted at PP Adhkumari cannot disown the responsibility of the custodial killing of Billu s/o Kamal Kumar Gupta r/o Pattian Colony, Ludhiana, Punjab who was young, innocent and bread earning member of his family and was going to have a darshan of the holy Goddess at Bhawan. Thus there are sufficient reason to believe that in charge PP, Head Constable Sh Deepak Ram (Munshi PP), SGCT Bishan Dutt (Constable on duty in lockup) TSI/345 and SGCT Suraj Singh RSI/247 posted at PP Adhkumari acted in most rude and cruel manner and a case of custodial killing under relevant provisions of Cr.P.C. to be registered to meet the ends of justice.”

The Commission considered the magisterial enquiry report and vide its proceedings dated 1.4.2011 directed the Chief Secretary, Government of Jammu & Kashmir to show cause as to why monetary relief may not be paid to the next of kin of Billu (aged 17 years) who died on 30.8.2009 in the custody of PS Adhkumari, specially when the MER shows that he was illegally arrested in a petty case of theft. The NHRC also asked the Chief Secretary to inform as to what action was taken against the guilty police personnel as the Magistrate has recommended for initiating criminal proceedings against the delinquent police personnel. Pursuant to repeated reminders by the NHRC, a report dated 25.11.2011 was submitted by the Under Secretary (Home Department) to Government of J&K which stated that I/C police post namely Suram Chand, HC Deepak Kumar and I/C Lockup SGCT Bishan Dutt have been placed under suspension and departmental enquiry was going on against them. However, the report did not mention whether any criminal case was registered against the delinquent police officials.

The NHRC observed that “No steps for their prosecution for the death of a boy due to torture in police custody have been taken so far. No cause has been shown as to why suitable monetary relief may not awarded against the State Government of Jammu & Kashmir for the death of the above boy by police torture in illegal police custody. The magisterial enquiry report makes out a serious case of violation of human rights to life and liberty of a young boy by police officials of J&K (public servants). The incident deserves a strong action against the delinquent police officials including their prosecution by the State Government and award of adequate monetary relief/compensation to the next of kin of the family members of the deceased against the State Government for misdeeds/brutal conduct of its police officials.”

The matter has been put up before the Division Bench of the NHRC and pending for final orders.

Case 4: Killing of 16-year-old girl, Chhattisgarh¹¹²

On 6 July 2011, Meena Khalko (16), resident of Kharcha village in Surguja district, Chhattisgarh, was killed by the police in an alleged encounter with the Maoists in the district. The police claimed that the girl was killed in an encounter. However, it was alleged that there was no encounter and the victim was found wearing civilian clothes and not uniform. A TV reporter who visited the the village found no evidence of an encounter. There was no spent shell, blood stains or physical signs of an exchange of fire. The TV reporter also interviewed a doctor charged with conducting the post-mortem, who stated that the girl was shot twice from a distance of about 50 meters. The Chief Minister ordered an enquiry into the incident.

Case 5: Killing of Md Alimuddin (17 years) by the Army, Manipur¹¹³

On 6 July 2010, 17-year-old Md. Alimuddin, son of Salimuddin was killed by the troops of the 12th Maratha Light Infantry at Ikop Lake Maibam Pali in Imphal East district. The deceased was a resident of Kyanmgei Muslim Awang Leikai, but residing at Hatta Golapati area at the time of his death.

The security forces claimed that the deceased was a suspected underground cadre and killed in an encounter. It was further claimed that a 9 mm pistol loaded with four bullets, a Chinese hand grenade and a mobile handset were found in possession of the deceased.

However, family members of the deceased refuted the security forces' version that Md Alimuddinn was an underground cadre. According to them, Md Alimuddin went out from his Hatta Golapati house in the morning of 5 July 2010 and killed in a fake encounter.

Case 6: Killing of 15-year-old Jatan Reang by Assam Rifles, Assam¹¹⁴

On the night of 14 May 2010, Master Jatan Reang (15 years) was killed in firing by the personnel of 14th Assam Rifles and arbitrary arrested four other tribal villagers at Gudgudi village under Katli Chara Police Station in Hailakandi district of Assam. The five tribal villagers including the deceased Jatan Reang were returning from Boirabi bazaar when they were ambushed by the 14th Assam Rifles from North Tripura over a bridge at Gudgudi village at around 10 PM on 14 May 2010. The 14th Assam Rifles personnel opened fire indiscriminately without any provocation and killed Jatan Reang although they were unarmed and innocent. Following the killing of Jatan Reang, the Assam Rifles personnel arrested the four other Reang tribal villagers and handed them over to Katli Chara police station. On 23 July 2010 ACHR filed a complaint with the National Human Rights Commission urging its immediate and appropriate intervention. The NHRC registered the complaint as Case No.170/3/21/2010-PF/

¹¹² Probe girl's encounter, says Congress, *The Hindu*, 11 July 2011

¹¹³ Information received from Centre for Organization Research and Education (CORE), Manipur

¹¹⁴ ACHR complaint to NHRC dated 23 July 2010, NHRC Case No. 170/3/21/2010-PF/UC

UC and issued notice to the Secretary, Ministry of Home Affairs, Government of India. During the course of proceeding, the NHRC received the Magisterial Enquiry Report (MER), Investigation Report of the Superintendent of Police, Hailakandi, and the Post-Mortem Report (PMR). The reports confirmed that the minor was fired at from point blank range by a jawan and injured his right thigh. But, the minor was not provided medical care and he died on account of excessive bleeding. The NHRC directed the Ministry of Home Affairs to pay a compensation of Rs. 500,000 to the next of kin of the deceased.

Case 7: Killing of two minors by the Assam Rifles, Manipur¹¹⁵

On 31 October 2009, at around 11 pm, the personnel of the 28th Assam Rifles personnel killed seven persons, including two minors, in an alleged encounter at Andro Sanapat under Yairipok police station in Imphal East district. A press release by the Public Relation Officer, Inspector General Assam Rifles (South) stated that seven suspected underground cadres were gunned down in an encounter at Andro Sanapat area. According to the press release, on getting information about presence of underground cadres in the area, troops of the 28th Assam Rifles launched cordon-search operation during which an encounter ensued between the Assam Rifles and about 10-15 armed underground suspects at around 11 pm of 31 October 2009. While seven were killed, the rest managed to escape in the dark. Of the seven, five victims were identified as Oinam Girani alias Anand (21 years), son of Oinam Yaima; Oinam Maipaksana alias Pakpa (20 years), son of Oinam Bhima; Laishram Boycha (18 years), son of (late) L. Kumar; Salam Ratankumar alias Nanao (17 years), son of S. Thambalgou of Tendongyang; and Chingangbam Gogo (17 years), son of (late) Tombi of Loitang Khunou.

The family members of the two minor victims (Salam Ratankumar alias Nanao and Chingangbam Gogo) strongly refuted the allegation that they were involved in underground activities and claimed that they were killed in a fake encounter. Salam Ratankumar's family stated that he had left home after he had a quarrel with his father some 10 days ago. The families of Salam Ratankumar and Chingangbam Gogo also alleged that they found dresses and foot wears different from what the victims wore at the time of leaving home, and "their bodies had oversized and undersized camouflage trousers and hunting boots which did not fit them". Similarly, the family members of Oinam Girani and Oinam Maipaksana (who were cousins) alleged that they were abducted from their homes at Ishikha Mayai Leikai under Imphal East police station by some unknown persons suspected to be security forces in civil dresses who came in white Maruti Van and a Jeep on the night of 22 October 2009. Boycha's family also claimed that he left his home on 22 October 2009 to work as labourer in construction of a bridge at Heirok in Thoubal district. Interestingly, some hours prior to the killings, some journalists received an SMS sent by an unidentified person informing that some

¹¹⁵ Human Rights Initiative (HRI), Manipur, "Human Rights Special Report Manipur- 2009", page Nos. 12-13, available at <http://humanrightsmipur.files.wordpress.com/2012/03/manipur-hrspl-rprt.pdf>

persons were being brought in the Andro Army Post to be killed soon and alerted the locals for an urgent action to stop the killings.

Case 8: Killing of 13-year old tribal boy, Jharkhand¹¹⁶

On 19 March 2009, 13-year-old tribal boy identified as Budharam Munda was killed when a police patrol party opened fire at some tribals including the deceased in Khunti forest under Murhu police station in Ranchi district of Jharkhand. The deceased had gone to the forest with three others to collect mahua. Another person was injured. The injured victim, who was admitted to the surgical intensive care unit of RIMS, stated that the police fired at them without warning. While Gangu Munda was hit on the stomach, Budharam Munda was hit on the head and died on the spot. The police claimed that the police patrol team was not responsible for the incident and blamed the Maoists for the incident.

The NHRC closed the case on the basis of the report submitted by Senior Superintendent of Police (SSP), Khunti which denied the involvement of the police in the incident. However, the report of SSP was not shared with ACHR.

Case 9: Killing of 13-year-old Md Azad, Manipur¹¹⁷

Md Azad, 13-year-old and a student of Class VII, was killed by a combined team of police commandos and the Assam Rifles in an alleged encounter at Phoubakchao village in Imphal West district on 4 March 2009.

The Superintendent of Police (SP), Thoubal claimed that the combined team had gone to Phoubakchao village in search of militants belonging to Peoples United Liberation Front following a tip-off. The deceased Md Azad had fired at the team and was killed in retaliation. The SP further stated that the security forces have recovered a 9mm pistol with three live rounds from the deceased's possession.

However, the deceased's family alleged that Md Azad was killed after arrest and the police had placed the weapon near the deceased's body to show that he was killed in an encounter.

Following NHRC's intervention, the state government of Manipur through its Home Department had issued a notification dated 3.2.2012 directing the District Magistrate, Imphal West to conduct a magisterial enquiry. However, the District Magistrate is yet to submit the magisterial enquiry report to the NHRC.

The NHRC in its latest proceedings directed the following:

“This proceeding shall be read in continuation of the earlier proceeding of the Commission dated 28.3.2012. The desired report has not been received from the concerned authority despite sending several communications. The

¹¹⁶. ACHR's complaint to NHRC dated 24 March 2009

¹¹⁷. ACHR complaint to NHRC dated 6 March 2009, NHRC Case No. 46/14/4/08-09-AD

Commission views the matter seriously. Issue summons to DM & SP Imphal West District, Manipur to produce before the Commission on 24-7-2012, a copy of magisterial enquiry report regarding the alleged killing of Mohammed Azad aged about 13 years s/o Mohammed Wahid Ali in alleged encounter at Phoubakchao Chatrakhon by police and security forces on 4.3.2009 (Crime no. 16(3)/09 u/s 307/384/400/34 IPC and 25 Arms Act PS Mayang, Imphal). If the desired report is received by the Commission before the stipulated date, the personal appearance of the above officers shall be dispensed with.”

However, no report has been submitted to the NHRC. In its proceedings dated 12 November 2012, the NHRC issued reminder to SP, Imphal West District, Manipur to send a complete report of investigation of crime no. 16(3)2009 u/s 307/384/400 IPC and Section 25 (1-C) Arms Act, PS Mayang, Imphal within two weeks.

Case 10: Killing of Soram Rojit, Manipur¹¹⁸

Soram Rojit, a class XII student, was allegedly extrajudicially killed by the police at Hatta Golapati in Imphal district of Manipur on 15 February 2008. The police had claimed that the deceased was a militant and killed in an encounter.

However, the villagers stated that Soram Rojit was a school student and had no links with militants and was killed in a fake encounter.

The Superintendent of Police, Imphal East district submitted a letter dated 3 January 2011 to the NHRC which revealed that no magisterial enquiry has been ordered by the state government.

As the matter pertains to the alleged extrajudicial killing, the NHRC on 22 February 2011 directed the state government of Manipur and District Magistrate, Imphal East to immediately order a magisterial enquiry and submit the copy of the report to the NHRC within four weeks failing which measure under Section 13 of the Protection of Human Rights Act, 1993 will be resorted. However, the magisterial report is yet to be submitted to the NHRC.

Case 11: Killing of 16-year-old Md Sabir Ahamad by the Army, Manipur¹¹⁹

On 14 October 2007 Md Sabir Ahamad (16-years), son of Md Salimuddin of Iron Chesaba Idigah Leirak in Thoubal district, was allegedly killed by the personnel of 22nd Maratha Light Infantry. The deceased, a Class XIth student, went out with his aunt Tulalei Begum to a shop after the Eid-Ul-Fitter celebration. But on the way, the minor was detained by the personnel of 22nd Maratha Light Infantry and taken towards the southern side of Irong Chirai suspension Bridge and shot dead from point blank range.

¹¹⁸. ACHR complaint to NHRC dated 25 February 2008, NHRC Case No. 53/14/4/07-08

¹¹⁹. ACHR complaint to NHRC dated 20 October 2007, NHRC Case No. 35/14/12/07-08-PF/UC

The security forces claimed that the deceased was killed in firing by members of a militant group. However, the local people including deceased's aunt Tulalei Begum refuted the claim of the security forces and alleged that Sabir Ahamad was killed by the security forces.

The Ministry of Defence submitted a report to the NHRC reiterating the army's version of the incident which stated that the deceased was killed by the militants, not by the army. However, the statements of the deceased's family members including the deceased's aunt were not recorded during investigation. This was despite the fact that the family members including the deceased's aunt who were witnesses to the incident had refuted the army's version and alleged that the minor was shot dead by the army from point blank range.

On 17 February 2011, the NHRC sent a letter to Tulalei Begum, aunt of the deceased asking her to send an affidavit containing the details regarding the death of her nephew Sabir Ahamad within four weeks. However, Tulalei Begum being ignorant about the legal procedures could not submit the affidavit. The NHRC closed the case on that ground the victim has nothing to urge for.

Case 12: Killing of 15-year-old Md Razak Khan, Manipur¹²⁰

On 13 September 2007, 15-year-old Md Razak Khan, resident of Lilong Leihaokhong, was allegedly extrajudicially killed by the combined team of Manipur Police Commandos and 32nd Assam Rifles at Leihaokhong Maru under Lilong police station in Thoubal district.

The security forces claimed that the deceased was a member of the proscribed United National Liberation Front and killed in an encounter. However, the family members of the deceased alleged that Md Razak Khan was picked up from his home by the combined team and later killed in a fake encounter.

The NHRC issued notices to the Secretary (Home), Ministry of Home Affairs, Chief Secretary, Govt. of Manipur, District Magistrate, Thoubal and Superintendent of Police, Thoubal to take appropriate action as per guidelines laid down by the Commission in the letter dated 2.12.2003 on the Chairperson, NHRC to the Chief Ministers of all States and submit requisite reports within four weeks. However, all the concerned authorities failed to submit the requisite reports including the magisterial enquiry in violation of the NHRC order.

Case 13: Killing of Muhammad Ma bool Dar (17), J&K¹²¹

On the evening of 20 October 2006, Muhammad Maqbool Dar (17), s/o Mohammad Ramzan, was allegedly killed after he was picked up by the soldiers of 53rd Rashtriya Rifles posted at the Kanidajan Army camp from his house at Mohandpora village

¹²⁰. ACHR complaint to NHRC dated 20 September 2007, NHRC Case No. 31/14/12/07-08-PF

¹²¹. ACHR complaint to NHRC dated 23 October 2006, NHRC Case No. 1189/9/2006-2007-AD

in Budgam district of Jammu and Kashmir. According to Mohammad Ramzan, the soldiers of 53rd Rashtriya Rifles came to his house and arbitrarily took away his son Muhammad Maqbool Dar without listening to the pleas of the members of the family. The villagers of Mohandpora went to the Kanidajan army camp along with the police to seek release of Muhammad Maqbool Dar, but the army refused to hear them and instead allegedly beat up the villagers.

On 21 October 2006, the army returned the dead body of Muhammad Maqbool Dar to his family. Defence spokesman Lt Colonel A K Mathur reportedly stated that Muhammad Maqbool Dar was taken into army custody on 20 October 2006 because he was an “overground Hizb worker who had a pistol”. According to Lt Colonel A K Mathur, on the morning of 21 October 2006, Dar complained of illness and was taken to the hospital where the doctors declared him dead.

But the villagers claimed that the deceased was the breadwinner in the family and in no way associated with any armed opposition group. Even the Station House Officer of Charar Police Station, Muhammad Ashraf reportedly stated that the police had found Dar to be “innocent” after a police investigation some fifteen days ago and released him after four-day police custody.

Case 14: Killing of 9-year-old girl by CRPF, Manipur¹²²

On 18 January 2005, three persons including two civilians - Lourembam Maipak (55) and Thokchom Puspa (9) d/o Th. Sobita were killed by the personnel of the 132nd Central Reserve Police Force (CRPF) at Wangoo Nongyaikhong Mapal Chingongleimakhong, Thoubal district. The CRPF who were patrolling the area which was a public place reportedly opened indiscriminate fire after unidentified men fired at them. Asian Centre for Human Rights filed a complaint with the NHRC on 20 January 2005.

In its report submitted to the NHRC, the Superintendent of Police (SP), Thoubal confirmed the killing of three persons including two civilians - Lourembam Maipak (55) and Thokchom Puspa (9) daughter of Th. Sobita allegedly in an encounter between 132nd CRPF and the armed groups.

The report of the SP further stated that since no complaint or report from any body was received by the district police, no proper legal action could have been taken up in time.

The NHRC concluded that apart from an alleged extremist Naoroibam Baboi alias Taobi, two civilians – Lourembam Maipak and Ms. Thokchom Puspha – were also killed in that encounter. On the basis of this, the NHRC recommended to the Secretary, MHA to consider proving compensation to the next of kin of the two civilian deceased.

¹²² ACHR complaint to NHRC dated 20 January 2005, NHRC Case No. 35/14/2004-2005-PF

The NHRC however failed to follow up implementation of its recommendation.

Case 15: Killing of 15-year-old Sanasam Ngongo Meitei, Manipur¹²³

On 11 January 2005 at around 11 pm, three persons identified as Saikhom Samungou (20 years), s/o of late Saikhom Amuyaima of Nongbrang Awang Leikai, Sanasam Ngongo Meitei (15 years), s/o Sanasam Naba of Nongbrang Makha Leikai, and Thiyam Sunder (23 years), s/o late Thiyam Nabachandra of Thiyam Khunjao Awang Leikai were killed in an alleged encounter by a joint team of 28th Assam Rifles and the Manipur Police commandos at Bonghol Khullen near Nongpok Keithelmanbi, about 18 kms north east of Yairipok Police Station in Thoubal district of Manipur.

A Press Information Bureau, Defence Wing handout claimed that all of them were cadres of the banned United National Liberation Front (UNLF). The handout claimed that based on intelligence report that a group of militants were harassing the local villagers by forcibly taking away rations and other essential commodities in the areas of Bonghol Khullen and Chandrakhong, the Assam Rifles along with police commandos launched a joint operation. In the operation, the three 'militants' were killed and one AK-47 Rifle and two Chinese made grenades besides a huge quantity of live ammunition were recovered from them.

However, the villagers claimed that Saikhom Samungou (20 years) and Sanasam Ngongo Meitei (15 years) were students. The police also confirmed that only Thiyam Sunder (23 years) was an UNLF activist.

On 14 January 2005, ACHR filed a complaint with the NHRC for its intervention. The NHRC registered the complaint as case No. 37/14/2004-2005-AF.

In its reports submitted to the National Human Rights Commission the police admitted that Sanasam Ngongo Meitei (15 years) and Saikhom Samungou Singh (20 years) who were killed in the encounter were "innocent civilians." The Ministry of Defence in its report also admitted that two of the three killed by the security forces were civilians, but it continued to refer all the three as "militants" and "terrorists."

The NHRC directed the Ministry of Defence to provide compensation to the next of kin of the two innocent victims including the minor. On 10 December 2008, the Ministry submitted the proof of payment of Rs 100,000 paid to the next of kin of the each of the two civilians killed in the encounter.

iii. Sexual violence

Girl regularly face sexual violence from the law enforcement personnel in the conflict affected areas. Some of the cases are cited below.

Case 1: On the night of 27 October 2010, a 14 year-old girl (name withheld) was raped by Officer-in-Charge of Kamalpur police station Dilip Guha at his official residence at

¹²³ ACHR's complaint to NHRC, 14 January 2005, NHRC Case No. 37/14/2004-2005-AF

Kamalpur in Dhalai district of Tripura. The victim, a resident of Kalyanpur, used to work as a domestic helper in an affluent family at Kalyanpur in West Tripura district. On 27 October 2010, the victim was taken to the official residence of the accused by a woman identified as Minati Das on the pretext of visiting Kamalpur. Later in the night, the minor victim was forced to drink liquor by the accused police officer and Minati Das and was raped repeatedly by the accused police officer. A complaint was filed with the NCPCR which was registered as Case No. TR-19034/2010-11/COMP. The case is pending.¹²⁴

Case 2: On 23 February 2011, a 15-year-old minor tribal girl (name withheld) was raped by a personnel of Tripura State Rifles (TSR) identified as Tejendra Barui at Nandakumarpara village in Khowai subdivision in West Tripura district of Tripura. The accused was deployed in the Village Committee Election for the Tripura Tribal Areas Autonomous District Council. According to the family members, the accused TSR personnel dragged the victim to a nearby jungle forcefully when she was returning home from her relatives' house and raped her. On 25 February 2011, ACHR filed a complaint with the NCPCR which was registered as Case No. TR-19023/21623/2010-11/COMP. Pursuant to NCPCR intervention, the District Magistrate and Collector, West Tripura district vide letter date 13 May 2011 informed NCPCR that the a compensation of Rs.40,000 was recommended to two victims under the Tripura Victim Compensation Fund Rules, 2007. On 21 June 2012, ACHR further intervened with the NCPCR to ensure that the compensation is raised.¹²⁵

Case 3: In April 2011, a 14-year-old mentally challenged girl was raped by a Central Reserve Police Force (CRPF) personnel near the CRPF camp in Warangal district of Andhra Pradesh. The victim was an inmate of a Shelter Home run by an NGO. The matter came to light only when the victim was admitted to a local hospital and gave birth to a premature baby on 5 November 2011.¹²⁶ ACHR filed a complaint with the NHRC on 14 November 2011. The NHRC directed the Director General, CRPF, New Delhi and Superintendent of Police, Warangal district to submit reports. In compliance, the Director General, CRPF submitted a report which stated that during investigation the Caretaker of the Home revealed that a CRPF Constable had raped the girl in the month of April 2011 as a result the victim might have become pregnant. An FIR No. 256/2011 dated 29.12.2011 was also registered under Section 376 IPC at Kakatya University Campus police station, Warangal against an unidentified CRPF personnel and Caretaker of the Home. The NHRC vide its proceedings dated 13 April 2012 directed the CRPF to submit a further report as to the status of action taken.

Case 4: On 29 April 2011, two minor girls, aged 15 and 17 years respectively, of Patharri village were raped by two police personnel identified as Lekhraj Sonwani and Suresh Kumar Baiga near the Counter Terrorism and Jungle Warfare (CTJW) College

¹²⁴ ACHR's complaint to NCPCR, dated 29 October 2010

¹²⁵ ACHR's complaint to NCPCR dated 25 February 2011

¹²⁶ ACHR complaint to NHRC dated 14 November 2011

in Kanker district of Chhattisgarh. The accused were attached to the Counter CTJW. The accused allegedly raped the girls when they went to the nearby jungles to attend nature's call.¹²⁷

Case 5: On the night of 11 November 2011, a 15-year-old minor girl was raped by a police constable identified as Rana Kishore Debbarma attached to Manu Police station in Dhalai district, Tripura. The victim used to stay as paying guest at the house of one woman home guard under Manu police station. The victim was alone in the house when she was raped. Pursuant to a complaint filed by ACHR, the NHRC issued notice to Director General of Police, Tripura calling for report. In compliance, reports were submitted which stated that allegation of rape was established by the medical report. The accused policeman was suspended, arrested and sent to judicial custody. Departmental proceedings were also initiated against the accused. In its proceedings dated 16 August 2012, the NHRC while closing the case as the same was sub-judice observed - *‘Apart from the criminal prosecution of the accused police Constable for the offence of rape, etc., a departmental action has also been taken against him. Due to the intervention of the Commission, all necessary legal actions have been taken by the concerned authorities for protection of the human rights of life, liberty and dignity of the victim girl.’*¹²⁸

¹²⁷. ACHR complaint to NHRC dated 6 May 2011

¹²⁸. ACHR complaint to NHRC dated 22 November 2011

Annexure-I: List of 197 districts affected by armed conflicts in 16 States with the Status of the Juvenile Justice Boards and Juvenile Homes

SL No.	States/Districts	JJBs	No. of Juvenile Homes
ASSAM			
1	Baksa	JJB	Nil
2	Barpeta	JJB	Nil
3	Bongaigaon	JJB	Nil
4	Cachar	JJB	Nil
5	Chirang	JJB	Nil
6	Darrang	JJB	Nil
7	Dhemaji	JJB	Nil
8	Dhubri	JJB	Nil
9	Dibrugarh	JJB	Nil
10	Dima Hasao	JJB	Nil
11	Goalpara	JJB	Nil
12	Golaghat	JJB	Nil
13	Hailakandi	JJB	Nil
14	Jorhat	JJB	2
15	Kamrup Rural	JJB	
16	Kamrup Metropolitan	JJB	2
17	Karbi Anglong	JJB	Nil
18	Karimganj	JJB	Nil
19	Kokrajhar	JJB	Nil
20	Lakhimpur	JJB	1
21	Morigaon	JJB	Nil
22	Nagaon	JJB	1
23	Nalbari	JJB	Nil
24	Sivasagar	JJB	Nil
25	Sonitpur	JJB	Nil
26	Tinsukia	JJB	Nil
27	Udalguri	JJB	Nil

SL No.	States/Districts	JJBs	No. of Juvenile Homes
ARUNACHAL PRADESH			
28	Changlang	JJB	Nil
29	Longding	JJB	Nil
30	Tirap	JJB	Nil
31	West Kameng	JJB	Nil
32	East Kameng	JJB	Nil
33	Papumpare	JJB	Nil
34	Lower Subansuri	JJB	Nil
35	West Siang	JJB	Nil
36	East Siang	JJB	1
37	Lower Dibang Valley	JJB	Nil
38	Lohit	JJB	Nil
MANIPUR			
39	Bishnupur	JJB	Nil
40	Chandel	JJB	Nil
41	Churachandpur	JJB	Nil
42	Imphal East	JJB	Nil
43	Imphal West	JJB	2
44	Senapati	JJB	Nil
45	Tamenglong	JJB	Nil
46	Thoubal	JJB	Nil
47	Ukhrul	JJB	Nil
MEGHALAYA			
48	West Garo Hills	JJB	1
49	East Garo Hills	JJB	Nil
50	West Khasi Hills	JJB	Nil
51	Ribhoi	JJB	Nil
52	Jaintia Hills	JJB	Nil
NAGALAND			
53	Dimapur	JJB	2
54	Kiphire	JJB	Nil
55	Kohima	JJB	1

SL No.	States/Districts	JJBs	No. of Juvenile Homes
56	Longleng	JJB	Nil
57	Mokokchung	JJB	1
58	Mon	JJB	1
59	Peren	JJB	Nil
60	Phek	JJB	1
61	Tuensang	JJB	Nil
62	Wokha	JJB	1
63	Zunheboto	JJB	Nil
TRIPURA			
64	Dhalai	JJB	Nil
65	North Tripura	JJB	Nil
66	South Tripura	JJB	Nil
67	West Tripura	JJB	2
68	Khowai	Nil	Nil
69	Gomati	Nil	Nil
70	Unakoti	Nil	Nil
71	Shipahijala	Nil	Nil
JAMMU & KASHMIR			
72	Anantnag	Nil	Nil
73	Bandipora	Nil	Nil
74	Baramulla	Nil	Nil
75	Budgam	Nil	Nil
76	Doda	Nil	Nil
77	Ganderbal	Nil	Nil
78	Jammu	Nil	1
79	Kathua	Nil	Nil
80	Kulgam	Nil	Nil
81	Kupwara	Nil	Nil
82	Kishtwar	Nil	Nil
83	Poonch	Nil	Nil
84	Pulwama	Nil	Nil
85	Ramban	Nil	Nil
86	Rajouri	Nil	Nil

SL No.	States/Districts	JJBs	No. of Juvenile Homes
87	Reasi	Nil	Nil
88	Samba	Nil	Nil
89	Shopian	Nil	Nil
90	Srinagar	Nil	1
91	Udhampur	Nil	Nil
LWE DISTRICTS IN NINE STATES			
ANDHRA PRADESH			
92	Anantapur	JJB	1
93	Adilabad	JJB	Nil
94	East Godavari	JJB	1
95	Guntur	JJB	Nil
96	Karimnagar	JJB	Nil
97	Khammam	JJB	Nil
98	Kurnool	JJB	1
99	Medak	JJB	Nil
100	Mehboobnagar	JJB	Nil
101	Nalgonda	JJB	Nil
102	Prakasam	JJB	Nil
103	Srikakulam	JJB	Nil
104	Visakhapatnam	JJB	4
105	Vizianagaram	JJB	Nil
106	Warangal	JJB	1
107	Nizamabad	JJB	1
BIHAR			
108	Arwal	JJB	Nil
109	Aurangabad	JJB	Nil
110	Bhojpur	JJB	1
111	East Champaran	JJB	Nil
112	Gaya	JJB	1
113	Jamui	JJB	Nil
114	Jehanabad	JJB	Nil
115	Kaimur	JJB	Nil

SL No.	States/Districts	JJBs	No. of Juvenile Homes
116	Munger	JJB	1
117	Nalanda	JJB	Nil
118	Nawada	JJB	Nil
119	Patna	JJB	2
120	Rohtas	JJB	Nil
121	Sitamarhi	JJB	Nil
122	West Champaran	JJB	1
123	Muzaffarpur	JJB	1
124	Sheohar	JJB	Nil
125	Vaishali	JJB	Nil
126	Banka	JJB	Nil
127	Lakhisarai	JJB	Nil
128	Begusarai	JJB	Nil
129	Khagaria	JJB	Nil
CHHATTISGARH			
130	Bastar	JJB	1
131	Bijapur	Unknown	Nil
132	Dantewada	JJB	Nil
133	Jashpur	JJB	Nil
134	Kanker	JJB	Nil
135	Korea (Baikunthpur)	JJB	Nil
136	Narayanpur	Unknown	Nil
137	Rajnandgaon	JJB	1
138	Sarguja	JJB	1
139	Dhamtari	JJB	Nil
140	Mahasamund	Unknown	Nil
141	Gariyaband	Unknown	Nil
142	Balod	Unknown	Nil
143	Sukma	Unknown	Nil
144	Kondagaon	Unknown	Nil
145	Balrampur	Unknown	Nil

SL No.	States/Districts	JJBs	No. of Juvenile Homes
JHARKHAND			
146	Bokaro	JJB	1
147	Chatra	JJB	Nil
148	Dhanbad	JJB	1
149	East Singhbhum	JJB	1
150	Garhwa	JJB	Nil
151	Giridih	JJB	Nil
152	Gumla	JJB	1
153	Hazaribagh	JJB	1
154	Koderma	JJB	Nil
155	Latehar	Nil	Nil
156	Lohardagga	JJB	Nil
157	Palamu	JJB	Nil
158	Ranchi	JJB	1
159	Simdega	JJB	1
160	Saraikela-Kharaswan	JJB	Nil
161	West Singhbhum	JJB	1
162	Khunti	JJB	Nil
163	Ramgarh	Nil	Nil
164	Dumka	JJB	1
165	Deoghar	JJB	1
166	Pakur	JJB	Nil
MADHYA PRADESH			
167	Balaghat	JJB	Nil
MAHARASHTRA			
168	Chandrapur	JJB	1
169	Gadchiroli	JJB	1
170	Gondia	JJB	Nil
171	Aheri	JJB	Nil
ORISSA			
172	Gajapati	JJB	Nil
173	Ganjam	JJB	4
174	Keonjhar	JJB	Nil

SL No.	States/Districts	JJBs	No. of Juvenile Homes
175	Koraput	JJB	Nil
176	Malkangiri	JJB	Nil
177	Mayurbhanj	JJB	Nil
178	Navrangpur	JJB	Nil
179	Rayagada	JJB	Nil
180	Sambhalpur	JJB	Nil
181	Sundargarh	JJB	2
182	Nayagarh	JJB	Nil
183	Kandhamal	JJB	Nil
184	Deogarh	JJB	Nil
185	Jajpur	JJB	Nil
186	Dhenkanal	JJB	Nil
187	Kalahandi	JJB	Nil
188	Nuapada	JJB	Nil
189	Bargarh	JJB	Nil
190	Bolangir	JJB	Nil
UTTAR PRADESH			
191	Chandauli	JJB	Nil
192	Mirzapur	JJB	1
193	Sonebhadra	JJB	Nil
WEST BENGAL			
194	Bankura	JJB	Nil
195	West Midnapore	JJB	Nil
196	Purulia	JJB	Nil
197	Birbhum	JJB	Nil

Annexure-II: Order of the Orissa Human Rights Commission in the case of illegal detention and torture of Soumen Mohanty

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHAWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-7

O.H.R.C. CASE NO.2149 of 2010

Suhas Chakma

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.... Petitioner

23rd November, 2012

ORDER

Suhas Chakma, Director, National campaign for Prevention of Torture, New Delhi submitted a complaint before the National Human Rights Commission (NHRC in brief) alleging that a juvenile Soumen Mohanty by name was tortured by Satyanarayan Senapati, Asst. Sub-Inspector at Madhupatana police station in Cuttack to secure a confession from him. He was detained at the police station on 17.11.2010 but the police records were shown as if he was arrested on 18.11.2010. The NHRC transferred the said complaint to this Commission under section 13(6) of the Protection of Human Rights Act, 1993 for disposal.

On being noticed, the Deputy Commissioner of Police, Cuttack in letter no.1273/DHRPC dated 07.04.2011 submitted report stating that juveniles Soumen Mohanty and Pinu alias Soumya Ranjan Sethy were apprehended on 18.11.2010 at 8.00 p.m. in connection with Madhupatana p.s. case no.218 dated 17.11.2010 under sections 506/34 IPC and sections 3 & 5 of the Explosive Substances Act. They were brought to Madhupatana p.s. for further course of investigation by the Investigating Officer, S.B. Jena. On the next day i.e. 19.11.2010 the juveniles were produced in the court of CJM-cum-Principal J.J.Board, Cuttack. As their bail application was rejected, they were sent to Observation Home, Berhampur. The Deputy Commissioner of Police in his report stated that the juveniles were not ill-treated at the police station.



Contd.P/2

A copy of the enquiry report was sent to the petitioner for his response. The petitioner submitted response dated 20.06.2011 disputing the contents of the report.

The Commission on consideration of the enquiry report and the response in its order dated 14.07.2011 observed that since basic facts are in serious dispute, it is necessary to get the matter enquired into by its own Investigation Wing. Accordingly, the Director Investigation was requested to conduct enquiry and submit the enquiry report. The Director Investigation examined relevant witnesses and submitted enquiry report dated 6.11.2012. He has held as follows;

- i) Juvenile Soumen Mohanty was taken to Madhupatana p.s. by his father Sudhir Charan Mohanty on 17.11.2010 between 7.30 p.m. to 8.30 p.m. Soumen Mohanty was detained there and was interrogated by the police in connection with Madhupatana p.s. case no.218 of 2010.
- ii) Soumen Mohanty was tortured physically and mentally by ASI Satyanarayan Senapati in presence of Inspector Jayant Kumar Mohapatra and Sub-Inspector, S.B.Jena (I.O. in the aforesaid Madhupatana p.s. case).
- iii) Soumen Mohanty was detained at the police station from 17.11.2010 till he was produced in the Court of CJM-cum-Principal J.J. Board, Cuttack on 19.11.2010.
- iv) It was the ASI Satyanarayan Senapati who assaulted Soumen Mohanty for which he is liable to be prosecuted under sections 341/323 IPC.
- v) Inspector Jayant Kumar Mohapatra of Mahupatna p.s. is liable for illegal detention of Soumen Mohanty for more than 40 hours under sections 342/341/323/109 IPC.

- vi) Police records were manipulated showing that Soumen Mohanty was arrested on 18.11.2010 at 8.30 p.m. to cover up the illegal action of Inspector Jayant Kumar Mohapatra and ASI Satyanarayan Senapati which amounts to misconduct and dereliction of duty.

The Commission perused the statements recorded during the enquiry conducted by the Director Investigation. Sudhir Charan Mohanty is the father of the juvenile Soumen Mohanty. He is a Junior Warrant Officer in the Indian Air Force. He stated that on 17.11.2010 evening his friend Ajay Kumar Barik informed him over telephone that IIC, Madhupatana p.s. wanted the presence of Soumen Mohanty at Madhupatana p.s. in connection with Netaji Nagar bombing case. He accordingly went to Madhupatana p.s. along with his son Soumen Mohanty and produced him before the IIC. As directed by the IIC, he (Sudhir Charan Mohanty) waited outside the p.s. building for about one hour. The IIC called him later and advised him to go back home leaving Soumen at the police station for further interrogation. The IIC assured him that Soumen would be released later on and instructed him to come to the police station on the following morning to take his son back. Accordingly he came back to his house and while he was resting, at about 11.30 p.m., the IIC called him from his cell phone and directed him to deposit the cell phone of Soumen at the police station. He accordingly took the cell phone of Soumen and handed it over to the IIC. On the next day (18.11.2010) he went to the police station and waited there. The IIC told him that police was searching for culprits and as soon as the culprits were arrested, Soumen would be released. In the meantime, he contacted his advocate Sourya Sundar Das who informed the members of Child Home, Cuttack about the incident. The members of Child Home reached at the Madhupatna p.s. on 18.11.2010 at about 2.00 p.m. On 19.11.2010 he went to the police station on being called by the IIC who told him that he was going to forward his son to Court.



Contd.P/4.

Soumen Mohanty in his statement corroborated the version of his father and stated that he was taken by his father to the police station. While he was inside the chamber of the IIC, "Senapati Babu" who had put one star on his uniform shirt and one Jena Babu with two stars asked him to disclose the name of the accused persons who were involved in Netaji Nagar case. When he pleaded his ignorance, "Senapati Babu" abused him in obscene language and assaulted on his leg and back severely by means of a lathi. After some time he brought another long lathi from one Havildar and again assaulted on all over his body by means of it.

The co-juvenile Pinu alias Soumya Ranjan Sethy in his evidence stated that "Senapati Babu" who had put one star on his uniform assaulted Soumen Mohanty.

Ajay Kumar Barik in his statement deposed that in the evening of 17.11.2010, the then IIC of Madhupatana p.s. (J.K.Mohapatra) informed him over his cell phone bearing no.9437025699 that he was suspecting the hands of the son of Sudhir Mohanty in the Netaji Nagar bombing incident. The IIC requested him to inform Sudhir Mohanty to produce his son Soumen at the police station. He accordingly informed Sudhir Mohanty who as per the instruction took his son to Madhupatana p.s. and produced him before the IIC on 17.11.2010. This witness (Ajay Kumar Barik) is an independent witness and there is no reason as to why the Commission would disbelieve him.

Saila Behera, Director, Child Line and member of Juvenile Justice Board, Cuttack stated in her evidence that father of Soumen Mohanty told her that his son (Soumen) was detained at the Madhupatana p.s. from 17.11.2010 evening. She is also an independent witness.

On careful assessment of the evidence mentioned above, the Commission is inclined to agree with the Director Investigation that Soumen Mohanty was detained at Madhupatna p.s. from 17.11.2010 evening and was produced before the CJM-cum-Principal J.J. Board, Cuttack on 19.11.2010.

Contd.P/5.



Soumen Mohanty when was produced before the Juvenile Justice Board on 19.11.2010 complained of ill-treatment by the police while in custody. He had shown his right hand to the Juvenile Justice Board and marks of assault on his right hand were visible. It is observed by the Juvenile Justice Board as follows;

“Soumen Mohanty complains of ill-treatment by police while in custody. He has shown his right hand where marks of assault are visible”

The Juvenile Justice Board also noted that the counsel of Soumen Mohanty submitted that he (Soumen Mohanty) was apprehended by the police on 17.11.2010 at 9.00 p.m. and was brutally assaulted by the police.

Saila Behera in her statement stated that she being one of the members of the Juvenile Justice Board was present on 19.11.2010 and she noticed marks of bruises on the arms of Soumen Mohanty.

Dr. Rajesh Kumar Sahu, Medical Officer, Circle Jail Hospital, Berhampur stated that he examined Soumen Moahnty on 20.11.2010 and detected multiple scratches, abrasions of varying sizes and shapes over back of right arm. According to him the time of injury was within 2-3 days and the injuries could be due to hitting by some blunt objects such as lathi or fist.

From the above the Commission unhesitatingly holds that Soumen Mohanty was assaulted at Madhupatana police station by the ASI Satyanarayan Senapati. Soumen Mohanty has clearly identified him to be the person who assaulted him.

In view of what has been stated above, as Soumen Mohanty was detained at Madhupatna police station from 17.11.2010 evening till he was produced before the Juvenile Justice Board on 19.11.2010, it is a clear case of violation of the Constitutional provision under Article 22(2). For such illegal detention and assault on Soumen Mohanty, the State Government is liable to pay compensation of Rs.50,000/- (Rupees fifty thousand) to him.

Contd.P/6.



The Commission further holds that the police have manipulated the records to show as if Soumen Mohanty was arrested on 18.11.2010 whereas he was actually detained in the police station from 17.11.2010 evening.

Whether the erring police officers should be criminally prosecuted for having assaulted Soumen Mohanty and manipulated the records, it is for the Departmental authorities to take a decision on it.

Copy of the order be sent to the Principal Secretary to Government, Home Department. He be requested to take necessary steps for payment of the above compensation amount to Soumen Mohanty within four weeks of receipt of this order and report compliance.

Put up this case on 29.1.13 awaiting report from the Home Department.

 Member Odisha Human Rights Commission Bhubaneswar	 Chairperson Odisha Human Rights Commission Bhubaneswar
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