

# article

- 2(3). Each State Party to the present Covenant undertakes:
- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - c) To ensure that the competent authorities shall enforce such remedies when granted.

of the International Covenant on Civil and Political Rights

## **International Covenant on Civil and Political Rights (ICCPR)**

### ***Article 2***

**1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

**2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

**3. Each State Party to the present Covenant undertakes:**

**(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;**

**(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;**

**(c) To ensure that the competent authorities shall enforce such remedies when granted.**

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# Introduction: Torture committed by the police in Sri Lanka

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Editorial Board, *article 2*

**T**he special report by the Asian Legal Resource Centre published in this edition of *article 2*, is on a central issue for the effective rule of law in Sri Lanka, and Asia-wide: policing. What it illustrates is that in Sri Lanka policing has so degenerated that it has become a manifest threat to the rule of law. What it calls for is a fundamental change in practices at all levels of policing in the country.

That the Sri Lankan police force is in trouble is no revelation. There is hardly anyone who would openly deny this. However, in spite of that, it has not become a topical issue. Why not? The underlying assumption is that there is no point in talking about it because nothing will come from it, as things have degenerated too far. A sense of helplessness has given rise to a sense of resignation. But for a great many people in Sri Lanka the situation has become unbearable, and it is in this condition that hope for a solution to the problem lies.

This report is the first serious attempt at recording the routine use of torture by police in Sri Lanka. Previous reports have dealt with torture as a weapon of civil war, and during emergency periods, but none have considered how the cumulative effects of these events has contributed to a culture of barbarity in policing at all levels throughout the entire country. The 22 case studies in this report involving 38 victims have been deliberately chosen because they all arose out of—at most—day-to-day criminal investigations. They depict a systemic crisis of immense proportions that is not confined to a particular part of policing or region. This is in spite of the fact that the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994—which is reproduced in full in this edition—makes torture by a state officer a serious offence punishable for not less than a seven-year sentence. That such an endemic problem exists does not diminish the dangerous situation existing in ‘special’ situations. It only demonstrates that these are the standards of ‘normal’ policing in Sri Lanka

from which the far worse conditions in exceptional circumstances arise. Although these case studies and the related systemic ills are specific to Sri Lanka, the Asian Legal Resource Centre (ALRC) has ample reason to believe that they are—to one degree or another—of relevance to many, if not most, police systems in Asia.\*

Apart from the abovementioned case studies and anti-torture legislation, this report contains a number of other relevant items. In a commentary on the police crisis in Sri Lanka, Basil Fernando, Executive Director of ALRC, traces the growth of the crisis and raises and challenges some popular misconceptions about the use of torture. Two letters by ALRC's sister organisation, the Asian Human Rights Commission (AHRC) to the Sri Lankan Minister of Interior follow: the first addresses the general problem of lawlessness in police stations, the second was written subsequent to a recent precedent-setting decision by the Supreme Court of Sri Lanka, instructing the Attorney General to consider proceedings against police perpetrators of torture under Act No 22 of 1994. Finally, it contains extensive recommendations for relevant parties to address the police crisis and concomitant widespread use of torture in Sri Lanka. It also has an appendix by Dwight Newman on the principles underlying prevention of torture and their implementation in Sri Lanka.

The contents of this report are the manifestation of work by a number of organisations that ALRC wishes to thank: Janasansadaya, which is devoted to the elimination of torture; People Against Torture, a coalition of several groups involved in advocacy work, and the Commission for Justice, Peace and Human Development, Human Rights Secretariat (SETIK), as well as a number of individuals who have enthusiastically collected information and demonstrated the possibilities of solidarity work to build one of the best publicity and media campaigns on human rights and the prevention of torture ever mounted in Sri Lanka. Finally, above all else, our gratitude goes to the victims themselves, who dared to transform their painful experiences and contribute to the prevention of similar experiences for others. Their courage to speak out demands a suitable response from the state and the community, to guarantee that no others will suffer as they have done.

**End Note**

\* See *article 2*, vol. 1, no. 3 for a focus on policing in India.

# **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994**

[Certified on 20<sup>th</sup> December, 1994]

Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of December 23, 1994

L.D. - O 8/94

AN ACT TO GIVE EFFECT TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS a Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, was signed in New York on December 10, 1984:

AND WHEREAS by an instrument of accession dated December 14, 1993, and deposited with the Secretary-General of the United Nations Organization, on January 3, 1994, Sri Lanka has acceded to the aforesaid Convention:

AND WHEREAS the aforesaid Convention has entered into force for Sri Lanka with effect from February 2, 1994:

AND WHEREAS it has become necessary to make legislative provision to give effect to Sri Lanka's obligations under the aforesaid Convention:

NOW therefore be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

1. This Act may be cited as the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

2. (1) Any person who tortures any other person shall be guilty of an offence under this Act.

(2) Any person who -

- (a) attempts to commit;
- (b) aids and abets in committing;
- (c) conspires to commit,

an offence under subsection (1), shall be guilty of an offence under this Act.

(3) The subsection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence under subsection (1).

(4) A person guilty of an offence under this Act shall on conviction after trial by the High Court be punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees.

(5) An offence under this Act shall be a cognizable offence and a non-bailable offence, within the meaning, and for the purposes, of the Code of Criminal Procedure Act, No.15 of 1979.

3. For the avoidance of doubts it is hereby declared that the fact that any act constituting an offence under this Act was committed -

(a) at a time when there was a state of war, threat of war, internal political instability or any public emergency;

(b) on an order of a superior officer or a public authority, shall not be a defence to such offence.

4. (1) The High Court of Sri Lanka shall have the jurisdiction to hear and try an offence under this Act committed in any place outside the territory of Sri Lanka by any person, in any case where-

(a) the offender whether he is a citizen of Sri Lanka or not, is in Sri Lanka, or on board a ship or aircraft registered in Sri Lanka;

(b) the person alleged to have committed the offence is a citizen of Sri Lanka; or

(b) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka.

(2) The jurisdiction of the High Court of Sri Lanka in respect of an offence under this Act committed by a person who is not a citizen of Sri Lanka, outside the territory of Sri Lanka, shall be exercised by the High Court holden in the Judicial Zone nominated by the Chief Justice, by a direction in writing under his hand.

5. A confession otherwise inadmissible in any criminal proceedings shall be admissible in any proceedings instituted under this Act, for the purpose only of proving the fact that such confession was made.

6. Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, then he shall be entitled to communicate without delay with the nearest appropriate representative of the State of which he is a national or if he is a stateless person, the nearest appropriate representative of the State where he usually resides.

7. (1) Where a person is arrested for an offence under this Act, the Minister in charge of the subject of Foreign Affairs shall inform the relevant authorities in any other State having jurisdiction over that offence, of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition that person, for that offence.

(2) Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of any State for the extradition of any person. accused or convicted of the offence of torture, the Minister in charge of the subject of Foreign Affairs shall, on behalf of the Government of Sri Lanka, forthwith inform the Government of the requesting State, of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person, for that offence.

(3) Where it is decided that no order should be made under the Extradition Law, No. 8 of 1977, for the extradition of any person accused or convicted of the offence of torture pursuant to a request for his extradition made under that Law, by the Government of any State, the case shall be submitted to the relevant authorities, so that prosecution for the offence which such person is accused of, or other appropriate action may be considered.

8. The Extradition Law, No. 8 of 1977, is hereby amended in the manner set out in the Schedule to this Act.

9. (1) Where there is an extradition arrangement in force between the Government of Sri Lanka and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Law, No.8 of 1977, to include provision for extradition in respect of the offence of torture as defined in the Convention, and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention.

(2) Where there is no extradition arrangement made by the Government of Sri Lanka with any State, in force on the date of the commencement of this Act, the Minister may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Law, No.8 of 1977, as an extradition arrangement made by the Government of Sri Lanka with the Government of that State, providing for extradition in respect of the offence of torture as defined in the Convention and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention.

10. The Government shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any State as may be necessary in connection with criminal proceeding instituted in that State against any person, in respect of the offence of torture.

11. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.



12. In this Act, unless the context otherwise requires -

“Convention” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment signed in New York on December 10, 1984;

“public officer” means a person who holds any paid office under the Republic;

“torture” with its grammatical variations and cognate expressions. means any act which causes severe pain, whether physical or mental, to any other person, being an act which is - (a) done for any of the following purposes that is to say - (i) obtaining from such other person or a third person, any information or confession; or (ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed ; or (iii) intimidating or coercing such other person or a third person; or done for any reason based on discrimination, and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.

#### SCHEDULE [Section 8]

Amendment to the Extradition Law, No. 8 of 1977

The schedule to the Extradition Law, No. 8 of 1977, is hereby amended by the insertion immediately before Part B thereof, of the following: -

“(39) torture”.

# Case studies of torture committed by the police in Sri Lanka

## Asian Human Rights Commission

**T**here are a huge number of torture cases in Sri Lanka every year. Below are a few that the Asian Human Rights Commission has selected to illustrate the epidemic. The following cases are just a small fraction of the total number, however, they are useful as they all suggest a pattern, as follows.

- (a) The most common method of criminal investigation is torture.
- (b) When questioned, perpetrator police officers are almost always unrepentant and state that this is the way criminal investigations are conducted.
- (c) Torture is used with the knowledge and approval of higher officers. With a few exceptions, the policy is to permit and encourage torture.
- (d) Police discipline has been undermined due to this policy, and there is tacit agreement to ignore and pooh-pooh complaints by victims and their families or advocates.
- (e) Act No 22 of 1994 makes torture by a state officer a serious offence punishable for not less than a seven-year mandatory sentence, but this law is ignored.

### Glossary

#### *Police officers*

IGP	Inspector General of Police
DIG	Deputy Inspector General
SSP	Senior Superintendent of Police
ASP	Assistant Superintendent of Police
OIC	Officer in Charge
IP	Inspector of Police
SI	Sub Inspector
Sgt	Sergeant
PC	Police Constable

#### *Medical officers*

DMO	District Medical Officer
JMO	Judicial Medical Officer

#### *Institutions*

AHRC	Asian Human Rights Commission
ALRC	Asian Legal Resource Centre
CID	Criminal Investigation Department
NHRC	National Human Rights Commission

- (f) The responsibility for implementation of the Act is with the Attorney General who in a report to international bodies has said that there is a special unit to conduct investigation under the Act. However, there is no known case of an indictment or conviction. As torture is a non-bailable offence, if there were cases it would not be difficult to find out.
- (g) There is no established policy to compensate victims of torture. Sometimes compensation is granted but is insignificant by international standards.
- (h) The consequences of all the above are an inordinate escalation in acts of torture, their level of barbarity and concomitant brutality.

For this study we have chosen routine cases happening in ordinary police stations (police stations where the routine business of criminal investigation takes place) to ordinary people, and have deliberately avoided references to cases in areas where there is civil strife, conflict or security operations. These cases from ordinary police stations indicate how intense the practice of torture can be in areas devoid of extenuating circumstances. However it should be noted that under any circumstances Act No 22 of 1994 states that neither war, nor civil strife or a superior's orders are excuses for committing torture.

**1. Angeline Roshana Michael: Tortured over a wristwatch**

At around 7:30pm on 3 December 2000 a group of people arrived at the house of **Angaline Roshana MICHAEL**, 25-years-old, in Narahenpita by private vehicle. One of them later identified as the OIC Crimes of **NARAHENPITA Police Station, IP Selvin SALEH** called for Angaline Roshana to go to the police station. This person did not wear any police uniform nor did he inform Roshana or her family about the reason for her arrest. Her family members protested and even asked how were they to know that Angeline was, in fact, being taken to the station. The OIC then threatened to break their teeth, and forcibly took her to the vehicle and left.

Angeline was then taken to a house where she had part-time employment washing clothes. At the house, she was told that some items in the house, including a valuable wristwatch, were missing. When she said that she knew nothing about these items, she was then told to go search and find them. She was forcibly kept in the house for about five hours. Meanwhile, members of the family of the house and the OIC drank liquor and enjoyed themselves.

At about 12:30am, she was brought to the Narahenpita Police Station where she was assaulted by three officers armed with a rubber hose, a wooden club and another object with wires around it. She was also laid on a table and the soles of her feet were hit. The assault continued up to around 2am. She was also forced to sign a confession. She was detained at the station on December

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VICTIM  
**Angeline Roshana  
MICHAEL**

PERPETRATOR  
**IP Selvin SALEH**

POLICE STATION  
**Narahenpita**

4 & 5, and the police often threatened to hang her up and beat her. These threats were usually made when the lady of the house where the wristwatch had allegedly gone missing visited the station.

During the day, a lawyer from the Human Rights Institute, W R Sanjeewa, visited the police station and asked for her to be produced in court. Dr Nalin Swaris, an associate member of ALRC, was approached by Angeline's family and also visited the police station and talked to the OIC. When Dr Swaris asked the OIC to respect Angeline Roshana's legal rights, the officer replied that "the laws of the country are too weak". When asked when she would be produced in court, the OIC only cynically smiled. However due to frequent interventions on her case by her parents, Mr Sanjeewa, Dr Swaris and others, she was produced before a magistrate, to whom she complained of being tortured. The magistrate ordered her to be produced before a JMO, who recorded several injuries, as follows:

1. Contusion 4 by 3" lateral and postero-lateral left shoulder area.
2. Contusion 2" by 2" back of the upper left arm close to the arm pit.
3. Contusion 3" by 1" obliquely across the back of mid-left upper arm
4. Contusion 3" by 3" lateral right shoulders area
5. Contusion 3" 1/1/2" the mid left buttock
6. Contusion 2, 1/2" diameter lower left buttock extending down to the upper left thigh
7. Contusion 3" by 1, 1/2 lower right buttock

The JMO concluded that all the injuries were caused by assault with blunt objects like a rubber hose, wooden club etc., and that the age of the injuries matched the date and time that Angeline Roshana claimed to have been assaulted.

Witnesses also submitted affidavits on her behalf. IP Saleh denied that he had tortured her or otherwise violated her rights. A magistrate in Colombo subsequently dismissed the case of theft filed against her by the Narahenpita Police Station.

Angeline Roshana submitted a fundamental rights application to the Supreme Court with the assistance of AHRC, and was represented in court by W R Sanjeewa. The OIC invoked the names of powerful persons to support his case and further stated that the complaint against Angeline was initiated by the daughter of one of the President's counsel. Vivika Siriwardene de Silva, a state counsel, also appeared for the defence when the fundamental rights application first came before the Supreme Court. On an earlier occasion the Supreme Court was informed by the alleged perpetrator that the Attorney General's Department would not

assist the defence in this case as the matter was one of torture, and he produced a letter to that effect. It is not clear as to how this earlier decision was reversed.

Notwithstanding, on 2 August 2002 the Supreme Court vindicated Angeline Roshana by handing down a judgement in her favour. The court held that the police had violated her rights guaranteed under Articles 11, 13(1) and 13(2) of the Constitution. In the judgement delivered by Justice Mark Fernando the court awarded her compensation of 100,000 rupees (US\$1,172). The court's judgement included the following remarks:

The Petitioner [Angeline Roshana] seeks relief from this Court for the alleged infringement of her fundamental rights under Articles 11, 13(1) and 13(2), by reason of her arrest by the 1st Respondent the Officer-in-Charge (Crimes) of the Narahenpita Police [IP Selvin Saleh] at about 8.00 p.m. on 3.12.2000; her detention in Police custody thereafter until she was produced before a Magistrate shortly before noon on 5.12.2000; and the cruel inhuman and degrading treatment to which she was subjected whilst in Police custody.

...

The principal issue is whether the Petitioner was arrested at 5.10 p.m. on the 4th [or 8p.m. on the 3rd, as attested to by the Petitioner]. If so there was by then a complaint of theft against her, which would probably have given rise to a reasonable suspicion justifying arrest. The Petitioner did not allege any assault after 5.10 p.m., and she was produced in Court within 24 hours. If she had been arrested at that time this application has to be dismissed.

There are several reasons why the 1st Respondent's version is unacceptable, while the Petitioner's is credible.

The Petitioner's position that the Complainant came with two Police officers in civils on the 3rd night is amply corroborated by her neighbour and her mother, and is inherently probable. It is to some extent confirmed by the Complainant's statement that she "got down" the Petitioner to her residence. It is of course, possible that the Complainant "got her down" in some other way - by sending a message, or sending some one else - but there is no evidence of any such thing. Her only other employee was away on leave. The Petitioner was hardly likely to have come alone and gone back alone, at that time of the night.

The supporting affidavits establish that at several subsequent points of time the Petitioner was observed to be in Police custody - at the Complainant's residence and at the Police station. As against those, the 1st Respondent has failed to submit affidavits from the Complainant or any member of her family, or from Tissera or any other Police Officer.

Finally, the 1st Respondent's affidavit is not worthy of credit. He averred that he set out to investigate with two officers, although his "Out" entry refers only to one. He gave the time of arrest as 5.10 hours which his Counsel says was a mistake for 5.10 p.m. He did not explain how he came to use a private vehicle, for over eight hours - from 10.00 am till 6.30 p.m. Who was the owner of that vehicle, and who drove it? Why did he make it available? Were official vehicles not available? Besides, the 1st Respondent does not explain why it took him over seven hours to arrest the Petitioner. Considering that the Complainant had already delayed fifteen hours to make a complaint, it was essential that he should have acted promptly to question the suspect and to try to recover the watch.

Further, the Petitioner had averred that the 1st Respondent and a Police party had searched her house at 1.30 p.m. The 1st Respondent simply denied that, and said nothing whatever about a search but his notes, purportedly written at 5.10 p.m., do refer to a search before arrest.

In an attempt to explain the delay in arresting the Petitioner, his Counsel referred to the 1st Respondent's "In" entry which mentioned a telephone call, supposed to have been received at 11.30 am on the 4th to the effect that a suspect who was already under arrest on a charge of rape had pointed out the scene of the alleged offence, and that the 1st Respondent had gone to the scene of the alleged offence, and made his observations. That was a matter that should have been averred in the affidavit, and it is unsafe to rely on the Police statements and notes, which are by no means the best evidence, as substantive evidence. However, in the certified copy of his notes produced by the 1st Respondent, the portion relating to the period between 11.30 am and 5.10 p.m. has been omitted. The delay has not been satisfactorily explained. It is far more likely that entries were made to cover up an illegal arrest on the 3rd.

I hold that the 1st Respondent's claim that he had arrested the Petitioner on 4.12.2000 was false, and I hold that the Petitioner has established beyond reasonable doubt that the 1st Respondent arrested her at about 8.00 p.m. on the 3rd although there was then no complaint which could have given rise to a reasonable suspicion of theft. Further, the 1st Respondent failed to make a correct entry in regard to her arrest, and subjected her to cruel, inhuman and degrading treatment. In direct consequence of his failure to make a correct entry, the Petitioner was detained for a period in excess of that permitted by law. I grant the Petitioner a declaration that her fundamental rights under Articles 11, 13(1) and 13(2) have been infringed by the 1st Respondent, and I award her compensation and costs in a sum of Rs 100,000 payable on or before 30.9.2002, of which Rs 70,000 shall be paid by the State and Rs 30,000 by the 1st Respondent personally.

The Prosecution of Torture Victim's Unit has also inquired into Angeline Roshana's complaint of torture, and has filed an indictment against IP Saleh and another officer. Meanwhile, IP Saleh has fled the country for an unknown destination.

## **2. Nandini Herat: Beaten and raped in custody**

**Herat Pathirannehelage Nandini Sriyalatha HERAT** is a 39-year-old unmarried woman who was arrested by several police officers from Wariapola in civilian clothes on 8 March 2002. She was arrested at her home in the presence of her family and was kept for two days in the **WARIAPOLA Police Station**, during which time she was severely tortured.

The forms of torture included stripping her naked and inserting a pipe-like object in her vagina, which made her bleed and caused immense pain. Once she was produced in court, she complained to the magistrate, who ordered an inquiry.

Her own hand-written statement is as follows (translated from Sinhala).

I was brought to the Wariapola Police Station on 8 March 2002 around 6:15pm. [The police] came to our home in a white coloured vehicle. There were four people dressed in civilian clothes. Because I was bathing at the time, they asked my father if Nandini was at home. Hearing that I peeped from the wall near the well. Because I saw someone known to me I

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VICTIM  
**Herat Pathirannehelage  
Nandani Sriyalatha  
HERAT**

ALLEGED PERPETRATORS  
**1. Officer RATNATHILEKE  
2. Officer Ananda  
3. WPC #2212**

POLICE STATION  
**Wariapola**

wrapped a towel above by bathing clothes and went there. One of them was examining my younger sister's identity card. His name is **WARNAKULASURIYA**. He said they needed to record a statement by me. When I asked about what, they did not tell me. Warnakulasuriya, the OIC Crimes and a person I did not know came inside our house. They did not give me room to put on my clothes. When I asked **RATHNATILEKE**, who was standing at the door, to move away as I wanted to dress he did not do so.

My mother came to the vehicle to accompany me. But they did not allow her to get into the vehicle. When I was getting into the vehicle I saw a person with his head covered by a white sheet. I do not know who he was. They brought me [to the station] and made me sit on a bench. At that time there were no women present. 10-15 minutes later an elderly woman arrived. Between 7:15 and 7:30pm **Ananda** arrived. He was dressed in *gurupata* trousers and a white tee shirt. He said that today had been good for getting a bite. I asked that I be taken home. I was not given any food or drink that evening. I asked several times why I was brought there but I was not told the reason. Around 8:30pm Ananda, Rathnatileke and Warnakulasuriya arrived. I heard the reserve policeman calling out to some individuals and to a woman. Those three were very drunk. Warnasuriya first beat me with a pole. I felt my left arm becoming lifeless. I felt faint. Ananda removed my clothes. I asked him not to remove my clothes. I screamed. After my clothes were removed. Someone struck me a blow from behind. I could not recognise who it was. Ananda put something like a tube into my vagina. Warnakulasuriya kept my mouth shut with his hand. Rathnathileke stood by the front door and watched. At that time the back door was closed. [He said] "This is only a foretaste. It is tomorrow that the job will be done."

Blood was pouring from my vagina and I felt a sharp pain in my underbelly. The blood was dripping onto the cement floor. Ananda called the woman and told her to cut a piece from my towel and bring it. The woman brought the towel. Ananda tore it in half and gave me one piece. I wore it. With the other piece he wiped the blood on the floor. After that he asked Rathnatieleke something. I did not hear what he said. I heard Rathnatileke say "Put it in Cupboard 4 of the Crimes Division. Tomorrow let us throw it far away." A little while later because I felt sick I slept right there. I vomited around 5.30am. The OIC told the woman to wash the vomit. "Can't say if the ASP might come round", he said. I asked the OIC for medicine and to send me to hospital. He paid no attention to that but gave me a blow. He scolded me with raw filth. After a short while I went to the OIC's room and asked again why I was brought there. Then Rathnaileke said, "You have no house to go now; they have given it the works also." I could not think about anything at that time. Around 10:30 that morning the OIC beat me again with a large pole. At that time I was terribly sick. The OIC Crimes asked him not to beat me. After that I was not beaten. By that time I was in a semi-conscious state.

The following night the woman who was locked up with me gave me tea and two snacks from what had been brought for her. There were some others also locked up. I cannot remember who they were. I heard them talking, but I have no memory of what was said. The next morning Warnakulasuriya took me to the Crimes Section, opened a big book and told me, "Sign your statement." At that time no statement had been recorded from me, therefore I hesitated to sign it. But because **WPC #2212** kicked me hard from behind and because I could not endure any more pain and because I was terribly hungry, I thought whatever might happen it does not matter and signed the statement.

Around 12:30 that day I was forcibly taken again in a white coloured vehicle. I refused to get in and did not get in. I was forced into the vehicle. Inside the van was the driver of the vehicle and Warnakulasuriya dressed in civilian clothes. Rathnatileke was dressed in uniform. There was another constable in civies. The vehicle went along Nikaveratiya Road. It stopped near a large Mara tree and Rathnatileke and Warnakulasuriya went there. There were officers in civilian clothes standing by the door of the vehicle. After that I was taken to the Wariapola courthouse. While I was in the van Warnakulasuriya went inside the courthouse. He came back after 5 to 10 minutes. I remember that he had a paper in his hand. After that I was taken to the Wariapola hospital. I told a doctor about my sick condition. Though he asked me to sit down there was nothing there to sit on. Rathnatileke and Warnakulasuriya were there all the time. On the way to Kurunegala the vehicle stopped near several shops.

I was handed over to the Kurunegala Prison. Till I came to the prison I had had nothing to eat. They gave me food brought from Kurunegala. On March 10 I was taken to hospital. [Then after making a complaint to the warden of prison] on March 13, 14 and 15 I was taken to the hospital for visits. On March 17 around 3pm I was examined in the orthopedic section of the hospital. I am still being taken to hospital. On the day I was brought to court I made a public statement to the lady magistrate.

Nandini has been unable to go to private doctors or to pursue investigations into the case of her own accord as she is being kept in prison in remand. Her father has been severely threatened by the local police and higher officers not to pursue the complaint. Lawyers are reluctant to help the victim's family because of fear of repercussions. Nonetheless, Nandini made a similar statement to the magistrate of the Wariapola Magistrate's Court, who issued the following order:

While the police have the right to arrest an accused and investigate and take a statement from him about the relevant happenings, the police have no power to inhumanely assault anyone. I order Deputy Inspector General Wayaba to investigate this matter and submit a complete report to this court. I order the registrar of this court to send a copy of this order to the Deputy Inspector General of Police.

The Prosecution of Torture Perpetrators Unit of the Attorney General's department forwarded the information provided by AHRC on this case to CID and asked CID to conduct a criminal investigation into the allegations. The letter from the Attorney General's department further stated that upon completion of the criminal investigation, the investigative material should be studied to consider the institution of criminal proceedings against the perpetrators.

At the start of August, the five officers—including the OIC—of the Wariapola Police Station were charged before the Wariapola Magistrate's Court. The DIG in charge of the Wayaba area filed the charges. However, the charges are merely causing simple and grievous hurt to Nandini. These are comparatively less serious offences than charges of rape or torture. What is more, the gravity of state officers inflicting torture on a civilian has been brought down to merely physical hurt caused by one civilian to another. The officers pleaded not guilty to the charges. When a bail application was made on behalf of the police officers, Priyantha



Gamage, the attorney who appeared for Nandini, objected to bail on the grounds that the officers were still holding their positions, and also that they would be likely to interfere with the witnesses and to harass them. Mr Gamage also stated that the police officers should have been charged for torture under Act No 22 of 1994, and the offences under that Act are unbailable. The magistrate granted 10 000 rupees bail for each of the accused. She also ordered that their passports be impounded and the immigration and airport authorities be informed of this order. The magistrate severely warned the accused not to harass the witnesses. She also stated that it was embarrassing to have the same officers who prosecute others to appear in court as the accused. Therefore she requested that the Judicial Service Commission assign a different court to hear this case. The next hearing has been fixed for 1 October 2002.

There has been strong pressure locally and from outside to bring the culprits to justice. A huge crowd of villagers came to court to witness the case. Many people expressed frustration with the accused police officers, as they continue to be in service after being charged with a criminal offence. In fact, the law requires that any government officer charged with a criminal offence should be interdicted from service till the end of the case.

In another dramatic development, the accused police officers were reported in the press to be engaged in a campaign to oust the DIG who filed the charges against them, with the help of some powerful local politicians. The Minister of Women's Affairs, who lives very close to the police station where Nandini was tortured and sexually harassed, has throughout tried to defend the police officers. When asked by the BBC Sinhala service whether she talked to the victim to find out her side of the story, she said only that she had promised to talk to the victim. However, the Minister has not yet spoken to the victim. Instead, it is widely believed that she is simply trying to protect the police officers.

AHRC has since sent a letter to the Prime Minister, the Attorney General and DIG Wayaba, requesting the filing of charges against the police officers for committing the offence of torture as defined under Act No 22 of 1994.

This case recalls that of **HEWAGE Ranjini Rupika**, who was tortured on 11 September 2001 by **IP SAMARASINGHE** of **MATHUGAMA Police Station**. The police came to her home looking for her husband, and when she replied that he was not at home she was hit with wooden poles and kicked in the belly. When she cried that she was pregnant, the assaults were continued. Then she was taken into a jeep where there were others. She was then taken in the jeep for about two hours, after which she was kept at the police station.

She began to bleed at about 9:30pm and complained to the woman warden. Nothing was done to help her. On September 15 she was handed over to her mother and mother in law. She was instructed to come to the Mathugama Magistrate's Court on

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VICTIM  
**HEWAGE Ranjini Rupika**  
ALLEGED PERPETRATOR  
**IP SAMARASINGHE**  
POLICE STATION  
**Mathugama**

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September 21. Her family took her to the Pimbura District Hospital. She was kept at the hospital for three days, to stop the bleeding. She was advised by the doctor not to get down from bed and to take complete rest. Thus, she could not go to the court on September 21 as instructed. She started bleeding again on September 23, and was again taken to the same hospital from where she was immediately dispatched to Kaluthara General Hospital (Nagoda) by ambulance. As it was not possible to stop to the bleeding of the womb, the womb was washed and she lost the child. She was three months pregnant at the time.

### 3. Lalith Rajapakse: “Minimum force”

19-year-old **S Lalith RAJAPAKSE** was taken to hospital in an unconscious state by police officers of the **KANDANA Police Station** on 20 April 2002. He had been arrested two days earlier and was tortured on April 18 and 19. His condition was described in the interim medical report as most likely due to assault. The JMO’s report, which was submitted later, notes the following injuries:

1. Healing scab abrasion 2 inches x 3 inches on the right scapular region;
2. Healing scab abrasion 1 inch x 1 inch on the back of the right elbow;
3. Healing scab abrasion 2 inches x 1 1/2 inches on the front of the right chest;
4. Contusion 2 inches x 3 inches on the back of the left hand;
5. Contusion 2 inches x 3 inches on the front of the left forearm;
6. Contusion 1 inch x 1 1/2 inches on the medical side of the left hand;
7. Contusion 1 inch x 2 inches on the lateral side of the left hand;
8. Contusion 2 inches x 2 inches on the sole of the left foot;
9. Contusion 2 inches x 1 inch on the sole of the right foot ; and,
10. Cerebral contusion.

The last injury is described in the report as ‘grievous’, that is, sufficient to cause death.

Lalith Rajapakse was arrested on the night of April 18 at about 10pm by several police officers of the Kandana Police Station. When he was arrested, he was hit with a boot on his forehead by one officer and beaten with the wooden handle of an axe on the back and other parts of his body and dragged to a jeep waiting outside his house. He was then taken to the Kandana Police Station and put inside a cell. On the evening and night of April 19, several police officers hit him all over his body after he was put on a bench. He was severely hit on his soles with blunt instruments. In addition, books were placed on his head, and these books were vigorously hit with blunt instruments. He was then bathed in water. On April 20 at about 10am, his grandfather, Elaris, found

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VICTIM

**S Lalith RAJAPAKSE**

ALLEGED PERPETRATORS

**1. IP N D B ATTANAYAKE**

**2. SI PEIRIS**

**3. PC WLJERATNE**

**(#311125)**

POLICE STATION

**Kandana**

his grandson's body lying on the floor of the cell in the Kandana Police Station, and he appeared to be dead. Elaris immediately sought the help of a local politician (Member of Parliament Jayalath Jayawardene) who made inquiries. When Elaris returned to the police station he was told that Lalith had been taken to Ragama General Hospital. At the hospital, Elaris found Lalith on a stretcher, still in a state of apparent unconsciousness. Later in the day on April 20 Elaris and Lalith's mother learned that he had been taken from Ragama General Hospital to the National Hospital in Colombo.

Lalith remained in a completely unconscious condition for 15 days from April 20. He began to recover slowly after this period of time and began to speak, sometimes with clarity, only after May 13. On May 15, he was transferred to the remand hospital in Welikade.

After sending Lalith to the hospital, the police had to create an explanation of how the suspect came to have these injuries. For this purpose, they opened three files, two relating to robbery charges and one attempt to resist arrest, which resulted in the police claiming that they needed to use "minimum force" to subdue the victim. Then the police officers took these files to an acting magistrate and, without producing the suspect before the magistrate, got an order to remand him in custody. On this basis, Lalith was in remand custody until May 17. On that day, when an application was made for bail, the magistrate vacated this order on the basis that the original order, made without producing the suspect, was illegal.

A complaint on behalf of Lalith Rajapakse was made to the magistrate of the Wattala Magistrate's Court under Act No 22 of 1994. It respectfully requested that the matter be brought to the notice of the Attorney General of Sri Lanka and be investigated and prosecuted by the special unit functioning under the Attorney General for the enforcement of the Act. The court granted leave to appeal and ordered the respondents be given notice.

The Supreme Court of Sri Lanka has also issued leave to proceed in a fundamental rights application on the case. The petitioner is W R Sanjeewa, attorney at law, on behalf of S Lalith Rajapakse. The respondents are **IP N D B ATTANAYAKE**, OIC Kandana; **SI PEIRIS** and **PC WIJERATNE (#311125)**, both of whom are officers attached to the same police station; the IGP and the Attorney General.

On August 1 the Attorney General also ordered the Prosecution of Torture Victim's Unit to initiate an inquiry into Lalith Rajapakse's case. The CID recorded his statement, and that of other witnesses, on the same day.

Since complaints have been made, the police have threatened Lalith's family. A certain Madu Madurawala visited a dry fish trader, Lal Appuhamy, who has a long time acquaintance with Elaris, with a message from the OIC Kandana:

- (a) Tell Lal Appuhamy to put poison on the dry fish that will be purchased by Elaris, who has refused to withdraw the complaints made on behalf of Lalith Rajapakse of torture by the Kandana police;
- (b) Inform of any place that Elaris may be going to have liquor, so that people can be told to put poison in Elaris's drinks;
- (c) Gangs will come and destroy Elaris's house; and,
- (d) A contract has been given to a person at Hunupitiya to kill Lal Appuhamy [if he fails].

Meanwhile, messages were sent for Lal Appuhamy to come to Kandana Police Station. He was brought on one occasion by force, but was rescued by the intervention a lawyer.

This kind of beating, with blunt weapons, and subsequent intimidation of relatives and associates of the victim, is occurring with alarming regularity in Sri Lanka. In a similar incident, **MULLAKANDAGE Lasantha Jagath Kumara**, a 23-year-old soldier, living in Payagala with his wife and child, was beaten to death. Officers of the **PAYAGALA Police Station** arrested him on 12 June 2000, and illegally detained him for five days, during which time he was subjected to torture and abuse. He was produced before the Kaluthara Magistrate's Court on June 17 and remanded in custody. Due to continued severe assaults, he died at Welikada Prison on June 20.

The JMO who conducted the autopsy ruled that the death was due to damage caused to muscles and tissue by blunt weapons, which rendered the kidneys ineffective. The magistrate who held the enquiry into the death was of the opinion that this was a homicide. An enquiry into this death was held at the Colombo Magistrate's Court. The police failed to even appear in court for six months, in order that an investigation may be undertaken into the case. Subsequently, the investigation was handed over to the DIG South.

The suspects are all police personnel belonging to Payagala Police Station including **OIC IDDAMALGODA and IP Prasanna**. The police officers investigating this murder and presenting materials before court are all protecting their fellow police personnel. They have invariably presented incorrect materials before court. Evidence given by witnesses has not been recorded, while some witnesses have been threatened. The police have since submitted a report on this murder to the Attorney General. This report too is full of incorrect material. No response has been received from the Attorney General's Department as yet. The magistrate has not issued orders to arrest the suspects.

#### **4. Gerald Perera: Surviving on life support\***

**Waragodamudalige Gerald Mervyn PERERA** a 39-year-old father of two children was tortured by eight police officers at the **WATTALA Police Station** (Colombo), resulting in him being put on a life-support system.

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VICTIM  
**MULLAKANDAGE Lasantha Jagath Kumara**

ALLEGED PERPETRATORS  
**1. OIC IDDAMALGODA**  
**2. IP Prasanna**

POLICE STATION  
**Payagala**

On 3 June 2002 after finishing his work at the Colombo Dockyard around 9am, Gerald Perera went to his mother's place at Alwis Town. Having spent some time there, around 11am he went by bus to Ekala. At Ekala he bought some groceries to take home and then took the Gampaha bus go to his home at Gonagaha. Around 12:45pm he got off at the Welikada junction and started walking towards his home.

Suddenly, two persons dressed in civilian clothes grabbed him by the hands and took him to a jeep that was parked nearby, saying, "It's you we want. We were waiting till you came", and pushed him into the jeep. Seeing his wife and three-year-old son inside the jeep, Gerald asked, "Where is our daughter?" Sobbing she replied, "They did not allow me to fetch her from the pre-school." Realising that the men in the jeep were police officers, Gerald Perera pleaded with them, "Please collect my daughter and drop the three of them at my sister's house in Alwis town." This request was not heeded. His wife and son were dropped on the roadside and he was taken away blindfolded. He was not given any reason for his arrest, let alone a warrant issued by a court of law. Ten officers were present at the time of the arrest and none of them wore police uniforms. He was taken into the Wattala Police Station and was brutally assaulted by the officers attached to this station, namely, **OIC Sena SURaweera; SI Kosala NAVARATNE, OIC Crimes, SI Suresh GUNARATNE** and several other police officers.

Gerald Perera's hands were tied behind his back, his eyes were blindfolded and he was hung from a beam and brutally tortured for about one hour. He was severely beaten with an iron bar on his back, legs, abdomen, and other body parts. Thereafter he was untied and brought upstairs. He was laid on the floor and his hands were burnt with matches. He was questioned about a murder case of which he knew nothing, and was kept at the station on the night of June 3.

Around 10am on June 4, his brother Ranjit Perera visited the station along with the Chairman and Vice Chairman of the Pradeshiya Sabha (Provincial Council) and inquired about him from the OIC. They were told that Gerald Perera had been taken into custody due to false information relating to a triple homicide.

Gerald Perera was released from the police station on the morning of June 4. Complaining of severe pains, he was taken to Yakkala Wickramarachchi Ayurvedic Hospital. The doctor who examined him advised that he should be taken to an emergency hospital as he was in a serious condition. He was then taken to Nawaloka Hospital in Colombo. While in the hospital Gerald Perera made a statement to an officer from another police station about the torture. To date, whether or not he will survive the injuries remains uncertain.

The victim's wife has written a testimony on his case. Extracts follow:

VICTIM

**Waragodamudalige  
Gerald Mervyn PERERA**

ALLEGED PERPETRATORS

1. **OIC Sena SURaweera**
2. **SI Kosala NAVARATNE**
3. **OIC Crimes**
4. **SI Suresh GUNARATNE**

POLICE STATION

**Wattala**

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My name is Pathma Wickremaratne. I am the wife of Gerald Perera, who is at the moment undergoing treatment in the intensive care unit of the private hospital in Nawaloka.

I am the mother of two children who are respectively 5 and 3 years old. My husband is an employee of the Colombo Dockyard...

On June 3 this year, my husband was returning home after working his shift from noon of June 2 until 9am on June 3. While walking home, some police officers of the Wattala Police Station, dressed in civilian clothes, took him by jeep to the Wattala Police Station on suspicion of having committed murder. At the station, his hands were tied behind his back, and he was suspended from a beam. He was mercilessly beaten with wooden poles and an iron rod in order to extract a confession of murder from him. As the murders were committed at about 2:30pm on June 2, my husband was at work [at that time].

The next morning the police released him, saying that they had arrested the wrong person and that it was a case of mistaken identity. My husband though was suffering intense pain throughout his body. We took him to a local doctor who said that his condition is very serious and that he must be admitted immediately to a hospital with modern emergency care facilities.

We rushed him to the Nawaloka Hospital where he was admitted to the intensive care unit. On June 14, my husband's condition became critical, and he lapsed into unconsciousness. He is now on a life-support system due to renal failure because of the injuries inflicted on him.

My husband is on the kitchen staff of the Colombo Dockyard. He was able to support our little family in modest comfort with his salary. We rushed my husband to a private hospital for emergency treatment. The hospital bills to date, excluding the fees of the specialists, have risen to more than 500,000 rupees (US\$5,859). I do not have the means to pay such huge bills. The members of our family will have to sell the little property we have to pay them, and we will fall into destitution. My husband's kidneys are only 10 percent functional and are supported by a kidney machine. If my husband's renal failure becomes chronic, he will die. I will then be widowed, and my children will lose their father, our family's breadwinner.

This terrible tragedy has overcome us because the police did not do a proper investigation and took my husband away on a mistaken identity.

My husband is a God-fearing and law-abiding person, respected by the community and loved by his fellow employees at the Colombo dockyard. Since June 4, I have been keeping vigil every day at the hospital outside of the intensive care unit, praying and hoping my husband will regain consciousness and recover from his massive injuries.

AHRC has demanded that the government of Sri Lanka guarantee that all medical care is supplied to this torture victim. If the victim does not survive the crime committed by the police officers involved will be one of murder. A fundamental rights violation application has also been filed on Gerald Perera's behalf with the assistance of AHRC. Pressure is being brought by some officers to have their names removed from this application.

On 17 June 2002 three judges of the Supreme Court heard submissions of the petitioner in a fundamental rights violation case. At the time the petition was being made Gerald Perera was still unconscious on life support system. The court granted leave to proceed. Meanwhile, when the BBC Sinhala Service interviewed a police officer regarding the case he said that they used only “minimum force” on Gerald Perera. Around 500 residents of the area where he used to live also organised a protest meeting and demonstrations over this act of violence. The BBC Sinhala service quoted an organiser of the demonstration as saying that complaints have been made to the Prime Minister, the IGP, Chief Justice, and opposition party leaders. The case has also been taken up by the World Organization Against Torture (OMCT).

### **5. V K Swarnarehka: Murdered by fellow police officers**

**V K Swarnarhka** was a healthy 30-year-old police officer at **VAVUNIYA Police Station**. She left home on 8 March 1993 to report to work and by noon the next day her family was called to come and collect her body, with a message that she committed suicide. The family was not called to be present at the post-mortem inquiry or even to identify the body. All that was done by the police themselves by the time body was handed over to the family.

The investigating doctor identified cause of death as a cardio-respiratory failure following ingestion of insecticide. He did not send any samples for toxicological analysis. The family was suspicious and went to the nearby magistrate’s court to call for exhumation of the body. The court debated the issue for one year before a new magistrate arrived and made an order for exhumation. A second doctor issued a report declaring a lack of evidence of insecticide and ordering parts of the body be sent for toxicological analysis. He deferred his final findings till he discussed them with the doctor who made the first inquiry. The government analyst’s department reported negatively on the presence of any poisonous element. The doctor however, after talking to the doctor who did the first inquiry, opined that the first report was correct. All three medical reports were sent to the medical college for expert opinion. A professor of forensic science gave his view that the first doctor should have sent the body parts for toxicological analysis and that there was no evidence of death by taking insecticide. On the available evidence it was not possible to determine whether death was due to suicide, homicide or just for natural reasons.

This debate on medical reports has gone on for nine years now. It is obvious that this healthy young woman’s death was never suspected to be due to natural reasons. If suicide is excluded, the other possibility is homicide. There are many reasons that have made the family believe that this is a case of homicide. The last thing known about the deceased person’s whereabouts was a telephone call from the local police station by the ASP asking Swarnarehka to come to his office immediate with a divided skirt worn by athletes. She had obeyed the orders and reported

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VICTIM  
**V K Swarnarehka**

ALLEGED PERPETRATOR  
**OIC - Police Station**

POLICE STATION  
**Vavuniya**

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accordingly. Within two hours she was dead. Within the next two hours, the postmortem, embalming and everything was done, without any information to, or participation by, the family. The police have not answered the questions of the family about the details of the death and were very hostile to the family. The family has heard conflicting versions about the death from different officers. The family believes that higher-ranking police officers have made secret inquiries about the death and have hushed up the findings.

This is a case where the only persons who know about the death are the police officers of this particular station. The family believes there were over 40 officers, including women, at the station. Only through rigorous interrogation of the police officers can what really took place be found out. The suicide story, which has been discounted, casts suspicion that there has been police complicity.

The case should have been referred for inquiry to the CID. However, for over nine years now no inquiry had been undertaken. The family has written to every one, including the Attorney General and the NHRC. However, there has been no attempt to assure the family that justice will be done.

The case is similar to that of **D M A DISSANAYAKE**. In his case, the magistrate of the court at Vavuniya held on 22 January 2001 that, "According to the available evidence before inquest proceedings that the death of the deceased Basnayake Mudiyanseelage Ariyathilake Dissanayake PC 33921 attached to **VAVUNIYA Police [Station]** has been caused by gunshot injuries in suspicious circumstances". The court ordered proceedings to arrest the suspects and produce them before the court. The court criticized the poor police investigation on the death of police personnel. The court directed DIG Vanni to pay personal attention to this inquiry. The court further directed that the Registrar forward the findings to the DIG, IGP and Attorney General for special instructions.

The findings were based on the following facts, summed up in the court order. The deceased was admitted to the General Hospital, Anuradhapura, with a firearm injury on 28 October 1999, and died on November 12. The deceased made a 'dying declaration' to his father Dissanayake Mudiyanseelage Gunathilake, to the effect that he had been fired upon from the back. According to the postmortem examination the death was "due to firearm injuries to the abdomen". Further, the consultant surgeon recorded his findings as death due to an "entry wound, back of chest".

No police investigation team visited the hospital to record his statement. It surprised the court that police personnel had been injured and admitted to hospital with gunshot injuries without proper investigation by the Police Headquarters, Vavuniya, and their superiors. The parents and lover of the deceased made allegations against Police Headquarters Vavuniya to indicate that "the police have not recorded the statement from his son or lover



respectively [and] did not hold investigation between the incident took place and his death (15 days)". The court accepted the allegation and instructed that the Police Headquarters should respond. Despite the magistrate's order, no inquiry has taken place and no one has been arrested.

## 6. K A Samarasinghe: Physical and mental incapacitation

**Kodithuwakku Arachchige SAMARASINGHE** was allegedly tortured throughout the day of 11 November 2001 at the **BADURALIYA Police Station**, Kaluthara. He was kept in the station till November 14. On the night of 11 November he was taken out of his cell and—handcuffed behind his back—beaten with wooden sticks, causing injuries to his buttocks, thighs, feet, knees and dislocation of his left shoulder. The following morning he was again taken from the cell, slapped on the head and ears, beaten behind the knees and on the buttocks with broomsticks. Police also forced him to drink illicit liquor by pouring it down his nostrils. As a result he lost consciousness. He was then taken to the mental hospital in Mulleriyawa. Due to the wounds and his mother's representation that he had been tortured, the mental hospital refused to admit him. He was then taken to the Kaluthara General Hospital (Nagoda), and was admitted. He regained consciousness on November 16, and was hospitalised till November 22, however, the wounds were not cured and he took Ayurvedic treatment to address persistent problems.

On December 3 a human rights NGO based in Panadura, Janasansadaya, took K A Samarasinghe to the NHRC and through the Commission produced him before a JMO in Colombo. The JMO noted the presence of scars on his left cheek, back, right arm and forearm, wrists, right thigh, lower right leg, knees and right foot, and swelling of the left foot with "restriction of movements of ankle and the toes"; x-rays revealed a fracture in his left foot. The JMO found that the scars were consistent with beating and with "struggling on a rough surface, rough manhandling, and assaulting with rough blunt weapons", handcuffing, falls and prolonged kneeling, such that, "Aging of the scars and fracture was consistent with the history given by the patient."

After examination the JMO referred him to the Orthopedic Clinic at Colombo General Hospital and from there he was referred back to the Kaluthara General Hospital. He was again admitted to the hospital from December 4 till 10. Complaints have been filed at the NHRC. As result of torture he has lost the capacity to work as a carpenter, his former occupation.

K A Samarasinghe has named the OIC Baduraliya and **SI DAMMIKA** as the persons who tortured him. No steps have been taken by the Attorney General's department to file criminal charges against the perpetrators.

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VICTIM  
**Kodithuwakku  
Arachchige  
SAMARASINGHE**

ALLEGED PERPETRATORS  
**1. OIC - Police Station  
2. SI Dammika**

POLICE STATION  
**Baduraliya**

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VICTIM  
**Galappathi Guruge  
 Gresha DE SILVA**

ALLEGED PERPETRATORS  
**1. OIC SATISGAMAGE  
 2. SI ARIYARATNE  
 3. SI LEKAMVASAM  
 4. Sgt CHANDRASOMA**

POLICE STATION  
**Habaraduwa**

## 7. Gresha de Silva: On orders from above

**Galappathi Guruge Gresha DE SILVA** was the 32-year-old manager of the Green Garden Hotel, Katugoda. He was taken into police custody on 22 March 2002, together with one Buddhika, a relative of his, by police officers from **HABARADUWA Police Station**. They were taken to the Habaraduwa Police Station in a police jeep. Both were told to sit on a bench while the OIC of the Police Station talked to someone over the telephone. Gresha heard him saying, "We have brought in Gresha. Okay, Sir! Right Sir."

Then Gresha was told, "Tell the truth, if you want to be saved." The officer was talking about a murder that took place on March 9. Gresha answered, "On that day I was with a group of tourists at Nuwara-Eliya. I do not know anything about this."

Then the OIC took Gresha to the police barracks at Ahangama. His clothes were removed by force. His hands were tied behind his back. He was hung from the beams. He was beaten with wooden poles and pipes by **OIC SATISGAMAGE, SI ARIYARATNE, SI LEKAMVASAM, Sgt CHANDRASOMA**, and others in civilian clothes. He was hung and beaten five times the same way by the same persons, and was also hung by the fingers. He asked for water and was told, "When you tell the truth, the water will be given." He asked, "How can I tell something that I do not know?" He was not given water.

He was brought back to Habaraduwa Police Station. Buddhika had been released by then. Gresha found his hands to be numb and he could not even take any food with them. Some sympathetic officers told Buddhika that Gresha was assaulted on "orders from above". Attorney Chandrika Ranmalla visited Gresha on the same night and was told the whole story.

Gresha was released at noon of March 23. He was hospitalized from March 23 to April 11. He was examined by Prof Niriella, a well-known forensic specialist, and was told that the loss of use of both hands is likely to be permanent.

Gresha has made a complaint to the Police Station at Galle through his lawyer Kumara Bandara. A representative from the Deputy Inspector General recorded a statement from him while he was in hospital, but to date no action has been taken.

## 8. Anura Wejesiri: A corpse with two hearts and four lungs

On 11 January 2001 **Anura WIJESIRI** was visited by his brother, Jagodege Ranjit Wejisiri, while in custody at **INGIRIYA Police Station**. Anura said that he had been assaulted by the police on the previous night and was likely to be assaulted again that night. He named the two people who assaulted him as **Sgts Lal and Ranjith**.

Sgt Ranjit's father-in-law also visited Anura's mother and told her of the arrest of her son and that he had been assaulted. He told her to pay 10 000 rupees to the police to have her son released.

VICTIM  
**Anura WIJESIRI**

ALLEGED PERPETRATORS  
**1. Sgt Lal  
 2. Sgt Ranjith**

POLICE STATION  
**Ingiriya**

She said that she did not have the money. The next day she learned that her son had been killed in the police station. Later the family was informed that, according to the police, Anura had hanged himself inside his cell.

The DMO made a report stating the cause of death as suicide. At the coroner's inquest, the brother of the deceased told that the deceased pleaded to have him saved from the police assaults. The family obtained an order from the magistrate for a second post-mortem to be done by a JMO. During the post-mortem, the JMO found two hearts and four lungs inside the corpse. The family suspects that the body was in the hospital mortuary at the time the magistrate gave an order for the second post-mortem inquiry. In order to subvert the second post-mortem, the dead body was reopened, and body parts taken from other dead bodies were put inside Anura's dead body, and his body was closed again.

It is now more than one year since Anura's death, but the mystery has not been solved. Unfortunately, it is not likely to be solved, either. The reason for this is that no one is investigating the case, although it falls under the scope of Act No 22 of 1994, and furthermore, is a brutal murder, the investigation of which has been blatantly sabotaged.

### **9. Namal Fernando: Victim of *rajakariya***

On 6 October 2001 at about 8pm, three police officers and some others in uniform came to the house of **Namal FERNANDO**, 37, a full time social worker and father of three from Pitipana Duwa, Negombo. The officers arrived in a white van. Inside the van was Sunanda Appuhamy, who identified Namal. The police took Namal away, saying it was their *rajakariya* (state duty) to do so. The police gave neither Namal nor his family any reason for his arrest. At this stage Namal's wife and brother also were put into the van and they were driven to the house of Herman Sarath Fernando, a friend of Namal, at Wennupuwa. As Sarath Fernando was not at home the police guarded the house and waited for about three hours. At this stage attorney Chaminda Silva arrived and took down the numbers of all police officers. The OIC was **MATHEW** of the **MUNDALAMA Police Station**. After that, Namal was put into another police van and taken to Puttlam.

At about 12:45am the van stopped at Madampe and the police drank liquor inside the van. At this stage someone in civilian dress hit Namal in the face three times with his fist, causing him to shout in pain. Then the Van was driven to Mundalama Police Station, about 70km away from Negombo, where one police officer used his fists and feet to assault Namal and then put him inside a police cell.

A Catholic priest, Gerald Jayawardene, came to the police station with a group of others and inquired about the reason for Namal's arrest. The were told by the police officer who had assaulted Namal that Namal had threatened him by putting a pistol against his head. Namal was put back inside the cell and kept there for another half an hour. After that the OIC and four

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VICTIM  
**Namal FERNANDO**  
ALLEGED PERPETRATOR  
**OIC MATHEW**  
POLICE STATION  
**Mundalama**

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other officers got into a jeep and took Namal to Wennupuwa. They stopped the jeep near Sarath Fernando's house and took Namal out towards the house and assaulted him. Then Namal was pressed to the ground by two police officers. They put their feet on both sides of Namal's shoulders while another officer pointed a gun at him. Another officer shouted, "*Yakko* (you devil)! Unload that gun!" Then the officer holding the gun said that if the gun fired he would say he had shot because the prisoner had tried to escape.

Again they put Namal back into police jeep and took him to the Green Villa Guesthouse at Haldaduwana. The officer in charge got out of the jeep there and the other police officers took Namal to another house and hit his chest and knees with the butt of a T-56 firearm. Due to severe pain Namal involuntarily evacuated his bowels. Thereafter he was taken to the office of the SSP Chilaw and on the October 7 was taken back to Mundalama Police Station. Later Sarath Fernando was also brought to the station and a Catholic nun, Sister Benedict, visited Namal there also.

After that the OIC showed a statement to Namal and Sarath, which they signed in fear, though the content was not read to them. At 2:30pm Namal was taken to the hospital at Mundalama and a doctor examined him. At 3:30pm a police officer took statements from Namal and Sarath and told them that they had been taken into custody regarding a robbery that had taken place at Marrinawatte. Only at that stage was Namal informed of the charges. At 8:30pm, Namal was produced before a magistrate and was remanded in custody. Next day, however, he was released without charge. It appears that his arrest was a case of mistaken identity. Namal was sent to Ragama Hospital for treatment.

### **10. Bandula Rajapakse, R P Sampath Rasika Kumara, Ranaweera & Chaminda Dissanayake: Company scapegoats**

In February 2002 four employees of the North Pole Lanka (Pvt) Ltd were arrested by police from the **JA-ELA Police Station** over the loss of 46 rolls of cloth from the company stores. They were **Bandula RAJAPAKSE** (forklift operator), **R P Sampath Rasika Kumara** (officer in charge of the stores), **RANAWEERA** (security guard), and **Chaminda DISSANAYAKE** (an executive officer). After several days in detention the four persons all repeatedly denied any involvement in the theft, which trade unionists believe is a case of the management trying to shift the blame onto the workers, rather than accept responsibility personally.

Thereafter, on February 19 & 20 the four men were savagely assaulted, allegedly at the instigation of OIC Crimes **IP SURIYAKUMARA**, by two police officers not yet identified. The policemen attacked the three suspects using rubber hose and PVC pipes on their backsides, for 15 minutes. Before the attack the suspects were ordered to keep their hands on the wall; when

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VICTIMS

1. **Bandula RAJAPAKSE**
2. **R P Sampath Rasika Kumara**
3. **RANAWEERA**
4. **Chaminda DISSANAYAKE**

ALLEGED PERPETRATOR  
**IP SURIYAKUMARA**

POLICE STATION  
**Ja-ela**

Rasika turned the other way he got blows on the knees and fingers as well. Ranaweera got blows only from the PVC pipe. Chaminda was spared much of the assault, but was kicked by a policeman.

Hearing of the violence, about 1000 persons organised by the trade union movement picketed the front of the police station. With popular pressure mounting, the suspects were taken to a DMO at night, and thereafter produced before a magistrate. Four lawyers appearing for the suspects moved for bail, which the magistrate granted and then ordered the suspects be produced before a JMO.

AHRC has requested the DIG Sri Lanka, B M Liyanage, to conduct a criminal investigation and proceed in this case under Act No 22 of 1994 to prosecute the culprits. AHRC has also asked that OIC Suriyakumara, the alleged instigator of not only this but many other regular acts of torture at Ja-ela Police Station, be suspended pending the results of the inquiry.

Indeed, **JA-ELA Police Station** has become notorious for its acts of brutality against ordinary people, which in part explains the outrage felt after this most recent incident. In an earlier case that AHRC has been made aware of, one **Amarasinghe Morris Elmo DE SILVA**, a naval officer, went to the police station on the morning of 9 January 2001 with his wife and her cousin, to see his wife's uncle, who was in custody. A **PC Sugath** started uttering filthy words to his wife and her cousin. Elmo politely told the police officer not to talk to the women like that. Then Constable Sugath took him by the tee shirt neck and asked, "Who the hell are you to teach me how to talk?" He dragged Elmo inside the police station and slapped him twice. Then his wife and her sister began to cry out loud and they were pushed aside. Elmo was put in a cell. At 12:30pm PC Sugath and some other police officers took him out of the cell. One of them put one of his hands between the victim's legs and tightly held his neck with the other. Then PC Sugath, **IP SURIYAKUMARA, IP PUSHAPAKUMARA** and several others hit him with their hands, feet, belts and hose pipes. IP Pushapakumara ordered him to take off his clothes, after which he was tied with his tee shirt and his soles beaten with belts and hose. The police officers then used offensive language about naval officers, and forced Elmo to lie face down so they could sit on his back and continue to beat him. Finally, he was forced to sign some documents that he did not know the contents of.

On January 10 a naval legal officer and medical officer came to the station and examined Elmo de Silva. A complaint was lodged against the police officers at Je-ela Police Station itself and the ASP's office at Peliagoda. Then the victim was put into a ward at the Ja-ela Hospital. The same evening he was taken to a magistrate and four charges were brought against him. Till then he did not know that he had been charged with anything at all. The magistrate ordered a JMO to examine him and submit a report, after which he was sent to the Negombo General Hospital, where he stayed till January 16, with pains in the chest and abdomen where he had been hit. He was taken back to the magistrate on

VICTIM  
**Amarasinghe Morris Elmo  
DE SILVA**

ALLEGED PERPETRATORS  
**1. IP SURIYAKUMARA  
2. IP PUSHAPAKUMARA  
3. PC Sugath**

POLICE STATION  
**Ja-ela**

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that day and bail granted, after which he remained at the hospital for another two days. In this case also a complaint was made to the NHRC. On 20 May 2002 a fundamental rights petition was submitted to the Supreme Court against the officers who beat him, the OIC Ja-ela, the IGP and the Attorney General, on the grounds that his arrest and detention were illegal.

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VICTIM  
**Uchitha Thushara  
Kumara**  
ALLEGED PERPETRATOR  
**OIC - Police Station**  
POLICE STATION  
**Ja-ela**

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Similarly, **Uchitha Thushara Kumara**, a 33-year-old father of two, was tortured to death by police at **JA-ELA Police Station** on 24 March 2001. Officers from the station had arrested him just that morning, using a warrant for a minor offence. He was sent to the remand prison in Negombo on the evening of the same day.

On the March 26, when his family made inquires about him, they learned that he had died and that remand authorities had informed the Ja-ela police about the death, with an instruction to inform the family. To that date, no such communication has yet been made by the police.

The magistrate of the area visited the remand prison to see the body and made an order for it to be sent for examination by the JMO of Ragama Hospital. This examination was completed and the sealed report sent to court. The family found out that the medical officer's report stated that the death was due to internal injuries, understood to have been caused to the victim while he was still in Ja-ela Police Station.

### **11. R P Kavinda: “Are you the dog who says he’s from the army?”**

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VICTIM  
**RAJAPAKSE PATHIRAGE  
Kavinda**  
ALLEGED PERPETRATOR  
**OIC - Police Station**  
POLICE STATION  
**Padukka**

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On 29 January 2001, **RAJAPAKSE PATHIRAGE Kavinda**, a disabled lance corporal, was traveling as a pillion passenger on a motorbike when he was stopped at about 11:30am by a police officer of the **PADUKKA Police Station**, at Padukka Junction, for not wearing a helmet. He explained that he was rushing to get an urgent loan from a government office and that he was a disabled officer of the Sri Lankan Army. The two fell into an argument, and instead of letting him go on his way, the police officer assaulted him and then radioed his colleagues for back up while Pathirage lay on the ground. Four officers came in a jeep and assaulted him with clubs. Pathirage pleaded for the police to stop, begging that he was already disabled, but the police ignored his pleas.

R P Kavinda was then taken to the Padukka Police Station in the jeep. At the police station he was pulled before the OIC who in public view asked, “Are you the dog who says he is from the army? (*Thoda armye ke kiyana balla?*) You do not know what the police are like! (*Tho danne nae policeye hati!*)”, and boxed him hard on his ears. Then the OIC said, “You should show respect for the police certificate that you took to get into the army!” and began to assault Pathirage. He was then pulled inside and beaten all over his body by six police officers with clubs, fists and feet—including kicks to the lower abdomen—and also verbally assaulted.

After the beatings, the police took him to Padukka Hospital where the doctor did not even bother to examine him, but just asked his age. On January 31 he was brought before a magistrate and remanded for 14 days. On the morning of February 1 he was brought from remand prison to a doctor at MO Base Hospital, Avissawella. The medical report found injuries to Pathirage's face, limbs and abdomen, including "both eardrums showing fresh perforations", consistent with the assault described above. As a result, Pathirage suffered impaired hearing and pain in both ears, dizzy spells, headaches and pains in the abdomen. On February 28 he was admitted to the National Hospital in Colombo, where he was kept under observation until March 14.

The victim has identified most of the police officers who have tortured him. Despite availability of strong medical and other evidence, the Attorney General has not yet taken action to file charges of torture.

## 12. Tennekoon Banda: "Where is the toddy?"

**Ehalagoda Gedara TENNEKOON Banda**, a 36-year-old farmer and father of three children, was arrested at his home in Perakanatte, Wilgamuwa, at about 7:30pm on 12 June 2002 by two police officers from the **WILGAMUWA Police Station**. He was then taken and mercilessly assaulted during the night by **SI Nalin GUNAWARDENE** and **PC RATNAYAKE (#2304)**. While being tortured he was asked, "Where is the *kassipu* (toddy) and *dagara* (a raw material used to make toddy)?" These questions indicate that the police may have been given a tip-off by someone that Tennekoon Banda was engaged in the illicit liquor business. Coming from a deeply Buddhist family with a brother who is a monk, Tennekoon Banda had not been involved in any such activity. While being tortured, he told the police officers that he had had surgery twice not long ago and showed the marks on his lower abdomen. However, this made no impression on the police, as they continued to beat him.

At about noon on June 13, the police released Tennekoon Banda to his wife and his sister's son, in a critical condition. He was not charged with anything. He could not eat, could not talk and could not walk. He was admitted to the Kolongoda Government Hospital where he was treated until June 21. The admitting doctor recorded his injuries as including contusions on the inside of his upper lip, on the back of his shoulder, on his forehead, and on both hands. The JMO's report is still awaited. Because of the torture, this farmer will now be unable to do his work for a considerable period of time.

This case bears a resemblance to another recently reported in the media of **A R L Ananda**, a 50-year-old farmer granted leave by the Supreme Court to proceed in a fundamental rights petition after allegedly being tortured and falsely charged by toddy-hunting police. A R L Ananda alleges that on 3 June 2002, **Sgts WITHARANA** and **MENDIS** of the **DENIYAYA Police Station** came to his home in civvies and aimed a pistol at him, asking for toddy.

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VICTIM  
**Ehalagoda Gedara  
TENNEKOON Banda**

ALLEGED PERPETRATORS  
**1. SI Nalin GUNAWARDENE  
2. PC RATNAYAKE  
(#2304)**

POLICE STATION  
**Wilgamuwa**

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VICTIM  
**A R L Ananda**

ALLEGED PERPETRATORS  
**1. Sgt WITHARANA  
2. Sgt MENDIS**

POLICE STATION  
**Deniyaya**

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The officers then began to beat him in the presence of his wife, brothers and six children in a humiliating manner, when he told them he had no toddy. The police officers then ordered him to come to the police station, where his signature was obtained on a blank document, under threat. Later that night, he was released from police custody, with a warning that he should not make any complaint to any higher authority.

After his release, A R L Ananda was admitted to Deniyaya Base Hospital for seven days. He was also compelled to obtain Ayurvedic treatment. On leaving the hospital, he made a complaint to the ASP of Weligama-Akuressa area. In response, on June 5, the OIC Deniyaya filed a plaint against A R L Ananda in the Morawaka Magistrate's Court, charging him with the illegal possession of 80 drums of toddy. He pleaded not guilty to the charge and alleged it was an attempt to cover up the torture.

In granting leave to proceed with the case, the Supreme Court bench also directed the Registrar to call for medical reports from the hospital where petitioner A R L Ananda was warded after he was allegedly attacked by the police officers. The court further ordered the DIG of Southern Province to forward a copy of the report submitted by him to the court. That case has been fixed for hearing on September 26.

### **13. Eric Kramer: "Tell the truth or you will be killed"**

**Eric Antunia KRAMER**, a 43-year-old father of three, of Katunayake in Colombo, is a welding mechanic for Ceylon Grain Elevators Ltd. The company, which produces poultry food and is owned by a Singapore national, has employed him since 1995.

At about 4:30pm on 28 May 2002, Eric Kramer was asked by Mr. Piyadasa, a company security officer, to identify two oxygen cylinders that he used for welding, which Eric did. Two other members of the company, Neil Jayaweera and Stanley Christopher, and a police subinspector from the Mutuwal police station also questioned him inside an office of the company's security division. They asked how these oxygen cylinders, that may have been used in an attempted burglary on the company's money safe, were found on the fourth floor of the building. Eric responded that he did not know. At about 6pm he was taken to the **MUTUWAL Police Station** in a jeep.

After being in detention for about an hour, the OIC Crimes, the SI who arrested Eric and two other officers wearing civilian clothes began to torture him. The SI beat him with all over his body except his head with a leather belt, and the OIC Crimes slapped him and kicked him twice. He was then held by his hair and taken near the window, to show Stanley Christopher that he was being beaten by all four of the police officers.

Afterwards, Eric was taken to another room by the SI and two other officers, told to lie down and beaten on the soles of his feet and all over his body with a leather belt and wooden poles for

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VICTIM  
**Eric Antunia KRAMER**

ALLEGED PERPETRATOR  
**OIC - Police Station**

POLICE STATION  
**Mutuwal**



about two hours. At about 2am on May 29, the OIC Crimes became drunk and put a leather belt around Eric's neck, tightened it and threatened him: "Tell the truth, or you will be killed." The next day, May 30, he was released at about 9:45pm.

On June 3, Eric Kramer was taken to the Weralabadda Police Station where a statement was recorded by a police officer named Perera, and he was kept there overnight. He was questioned by the OIC of that police station at about 10am on June 4. At about 5pm, this officer told him that he was no longer a suspect in any investigation.

Eric Kramer is still suffering from the torture inflicted on him, as he cannot walk properly because of the beatings on the soles of his feet and he has chest pains. He has gone to a private hospital where he has received medical tests, and the medical investigation is continuing. Meanwhile, he has made a complaint to the Chief Justice and other authorities.

#### **14. Susil Jayalath: A mysterious fall**

**UDUWA WIDANELAGE Susil Jayalath**, a 19-year-old of Sapugaskanda, was arrested by the local police with two other people. According to the family, when the police arrested him he was drinking from a coconut in an area where the police had made a raid against drug-users. The family maintains that the boy did not use any drugs and in fact he did not even smoke.

Precisely what happened to Susil after his arrest remains a mystery. What is certain, however, is that he died on 29 June 2002 while in custody of the **SAPUGASKANDA Police Station**. The medical report issued by doctors at Colombo North Teaching Hospital indicates that injuries to his lower body were consistent with blunt force type injuries sustained due to direct blows. The lower injury is consistent with an injury sustained due to kicking and the upper injury is consistent with injury due to a direct blow on the back with a blunt weapon such as a wooden pole.

However according to the medical report, his death was not caused by these injuries, rather, the report observed:

The injuries to the head, back and the elbow mentioned above, when taken together, are consistent with injuries sustained due to the body forcibly coming into contact with a hard, rough surface (such as tarred-road) following a backward fall with some amount of movement thereafter.

The family claims that the boy was thrown out of the van in which the police were taking him. The police claim he jumped. What is not in dispute is that prior to either being thrown from the van or jumping from it, Susil Jayalath was in police custody, and had been beaten by the arresting officers. On receipt of the medical report, the magistrate at Gampaha Magistrate's Court issued instructions for a full inquiry. To date the case has not

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VICTIM  
**UDUWA WIDANELAGE  
Susil Jayalath**

ALLEGED PERPETRATOR  
**OIC - Police Station**

POLICE STATION  
**Sapugaskanda**

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yet undergone a criminal investigation as required by the criminal procedure law or a judicial inquiry as required under the law.

This case has led to the largest protest by the people of the Sapugaskanda area in recent times. The police had to be removed from the area, and the military had to be deployed to bring the situation under control. The protest showed a very deep-seated resentment by the people against the practices of the police.

### **15. T K Hiran Rasika & E A Kasun Madusanka: Torture of children**

On 8 July 2002 two children studying at Millika Mahavidyala (High School), were arrested by officers attached to the **HINIDUMA Police Station** investigating a theft from the school canteen. The two were 10-year-old **T K Hiran Rasika**, from grade 5, and 12-year-old **E A Kasun Madusanka**, from grade 8.

According to Hiran, the brother of the school canteen officer, Gamachige Saman, came to his house at about 6pm on 8 July 2002 and called for him to go to the Hiniduma Police Station regarding some thefts. Hiran refused to go, and shortly after Gamachige came back with two officers from the police station who were not in uniform. They took Hiran and Kasun to the police station together. As they went, one of the two police officers pulled Hiran by his ear and hair and said, "Kasun broke into the canteen, no? (*Kasun cantena kaduwa, neda?*)". They went together with the canteen officer and his brother.

At the police station the boys were told to admit their involvement in the theft. Two officers began assaulting Hiran, telling him to say that Kasun broke into the school canteen. They also tortured Kasun, demanding that he admit to breaking into the school canteen. The boys were first made to kneel on the floor inside a room at the police station and were told to stretch out their arms, while heavy objects covered with police uniforms were placed on his hands. After some time, they were told to get up and hold both ears and to keep on jumping. Thereafter, Hiran was hit with clubs on his legs, thighs, and the back of his body. Objects were inserted under his fingernails. His hair was pulled with pliers. His penis was pulled several times, he was hung up by the legs, and the soles of his feet were beaten with a club. Kasun was also hit with clubs on his legs, thighs, and the back of his body, then his testicles were put inside a drawer and the drawer closed. His fingernails were pulled. The police assault took place from about 6:15pm to 12pm, when, due to intense pain and suffering, Kasun became willing to admit to breaking into the canteen. However Hiran refused to admit to witnessing him having done it, so the assaults continued until he finally also agreed to do as the police instructed. Throughout the ordeal the boys yelled and screamed, but no other police officers came to investigate.

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VICTIMS

1. **T K Hiran Rasika**
2. **E A Kasun Madusanka**

ALLEGED PERPETRATOR  
**OIC - Police Station**

POLICE STATION  
**Hiniduma**

The boys were released without charge around noon on July 9. They were both taken to Hiniduma Police Hospital and then the Karapitiya Teaching Hospital at Galle, where they were treated until July 27. However both are suffering ongoing ill-effects from the torture, physical and psychological.

Hiran Rasika and his father have submitted a fundamental rights petition to the Supreme Court with the assistance of W R Sanjeewa. The respondents are the OIC Hiniduma, the ASP Galle, the IGP, Attorney General, school principal, Palitha Hettigama, and school canteen manager, Shirromi Deepika and his brother. Hiran's father maintains that not only was his son not charged with any offence, but also at no time was his family informed of the arrest. In fact, Hiran was never detained with the intention of charges being laid against him, but rather to have him confess against his schoolmate.

The incident has been reported on television and in other mass media. A leading newspaper, *Divayina*, questioned why the police were called to investigate the theft. It recalled the incident in Ambilipitiya where 28 school children disappeared after a school principal conspired with some soldiers to assist him with his private dispute. Meanwhile, the ASP Galle, rather than ordering a prompt inquiry into the incident in order to punish the perpetrators, has reportedly said on the radio that the two torturers have since been transferred elsewhere.

### **16. Chaminda Premelal: “We will kill you and throw you away”**

**V G G Chaminda Premalal**, a 16-year-old grade 11 student at Dibulagala Mahavidyalaya (High School), Polonnaruwa, was arrested by several officers of **ARALAGANVILA Police Station** while he was at home on 9 July 2002, at about 7:40pm. The arresting officers said that he was being taken for questioning over several theft cases. At the station, he was told that he was responsible for breaking into a hair salon and some houses in the area, which he denied. He was then beaten with a PVC pipe on his back, including his spinal cord, and on the soles of his feet. His head was pushed hard against a wall several times. He was then pushed onto the floor, and the officers trampled upon his body. He was held at the station overnight.

The following day, July 10, he was taken to the upper floor of the station by two police officers of the Crimes Division, **Lalith RAJAMANTRI** and **Nihal**, who were drunk, and several other officers. They showed him a rope and said, “We will hang you up; we will kill and throw you away. You know we can escape. We can say that you ran away on the way. We will break your hands and legs. We will hit you in a way you will die in a month.” After that they continued to assault him. During the assault, Chaminda yelled and screamed, but no other officers came to investigate. Finally he shouted, “Don't hit me. My head is aching. I will admit to anything.”

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VICTIM

**V G G Chaminda Premalal**

ALLEGED PERPETRATORS

**1. Officer Lalith  
RAJAMANTRI**

**2. Officer Nihal**

POLICE STATION  
**Aralaganvila**

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Then the torture stopped. He was taken home, but his personal belongings, including the bicycle he uses to go to school, a screwdriver and a calculator were kept in police custody. He was taken back to the police station and held there. The next day he came before a magistrate, and was ordered released on bail.

As a result of being tortured, the soles of Chaminda Premalal's feet are swollen, and he has pain in his spine. He faints periodically and has headaches, vomits, and is confused. He has been treated at the hospital in Aralaganvila. A fundamental rights application has been lodged on his case in the Supreme Court, against the police involved in the assault, the OIC Aralaganvila, the SSP Polonnaruwa, the IGP and the Attorney General.

### **17. Maldeni Piyaratne: Beaten to death in under 45 minutes**

**MALDENI KANKANAMAGE Piyaratne**, a 33-year-old father of one, obtained a special degree in zoology in 1996. After graduation, he worked as a research assistant on a project conducted by the International Water Management Institute (IWMI) in collaboration with the University of Peradeniya Department of Zoology.

On 29 June 2002 Maldeni was admitted to Peradeniya Teaching Hospital with a fever. Before admission to the hospital, blood tests were taken and test reports showed that the blood was normal. After admission, blood samples were again taken and sent for a report, which was received on July 3. His wife, Nilmini Herat, visited him at the hospital that morning, and he had been quite normal and talked to her in the usual way.

At about 10:30am on July 3, one of Maldeni Piyaratne's colleagues, Ranasinghe, called Nilmini to say that her husband was being beaten by the police near the Gatabe Temple. This colleague, who had been passing the place on a bus, had seen Piyaratne being beaten and had left the bus to intervene. The colleague told the police of his and Maldeni's identity and asked them not to beat him. At this time, Maldeni still had a canula attached to his hand and was wearing the sarong he had on in the hospital. Both of these indicated that he was an in-patient, however despite this and Ranasinghe's assurances, he was chased away, and Maldeni Piyaratne was taken to the nearby **PERADENIYA Police Station**.

Ranasinghe rushed to the university and came back to the police station with Prof Parakkrama Karunaratne to intervene on his colleague's behalf. The time it took for the two men to return to the police station was no more than 30 minutes, however by the time they arrived it was being washed clean of blood, and they were told by the police that Maldeni had been taken to hospital. At this time Nilmini Herat also arrived and saw the blood being washed off. The whole incident, ending in the victim's death, had taken only approximately 45 minutes. This suggests extremely brutal types of assault.

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VICTIM  
**MALDENI KANKANAMAGE  
Piyaratne**

ALLEGED PERPETRATOR  
**OIC BOVELA**

POLICE STATION  
**Peradeniya**

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Nilmini Herat rushed to Paradeniya Teaching Hospital and saw her husband on a trolley. There were wounds on his hands and face, and he was bleeding; he was still alive. His hands and feet remained bound with iron cuffs. According to her, the doctors had attempted to give him oxygen but were hampered by the chains on his hands and feet. The police went back to the station to get the keys for the locks, but by the time they returned, Maldeni was dead.

Nilmini Herat immediately lodged a complaint stating that the Paradeniya police were responsible for her husband's death. The OIC Paradeniya is **K M S BOVELA**. A post-mortem inquiry conducted by the JMO at Kandy Hospital revealed injuries to the head as well as other parts of the body.

There is speculation as to how Piyaratne came to be out of the hospital not long after his wife had seen him sitting and talking normally. Some injection may have been administered to him, causing mental disorientation. However, no explanation has been offered or confirmed. In fact, there has been no inquiry into the matter at all. The reasons for the police actions remain completely unknown. The victim's wife feels that there has been an attempt to hush-up the incident, particularly as in this case not only the police but also the hospital authorities are answerable. In the latter's case, the question is one of negligence, for failing to be adequately responsible for a patient in their care.

This case has also been taken up by the American Association for the Advancement of Science (AAAS) Science and Human Rights Program, which is concerned with human rights violations committed against scientists and medical practitioners.

### **18. Arthur Vithange & Anusha Vithana: "You will both be put in the house and burned"**

**Arthur VITHANAGE**, 60-years-old, and **Anusha VITHANA**, 20-years-old, are a father and daughter living in Ovitigala, Mathugama. At about 1pm on 30 June 2002, a group of police officers from **MATHUGAMA Police Station** arrived at their house in a police jeep. Only the driver wore a uniform. **SI THENNEKONE** entered the property and in reference to Arthur Vithanage's son began saying, "You prostitute dog (*Tho vesa balla*), where is Jayantha?" Arthur Vithanage was beaten with a club and dragged to the back of the house. While he was dragged he fell down several times. He was pulled up each time he fell down and was beaten. As the father was being beaten, his daughter Anusha ran towards him. **Sgt VITHANA** hit her with a baton saying, "Go, prostitute girl, find your brother (*Palayan vesa kelle, ayyawa gihin hoyapan*)".

Arthur Vithanage was dragged into the back of the house and beaten by both SI Thennekone and Sgt Ajith Vithana. The officers remarked, "Let us beat and break the leg of this old fellow, then his son will come running from where ever he is." When his daughter again intervened saying, "Do not hit my father", SI Thennekone hit her and pushed her. Arthur was then dragged to

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#### VICTIMS

1. **Arthur VITHANAGE**
2. **Anusha VITHANAGE**

#### ALLEGED PERPETRATORS

1. **SI THENNEKONE**
2. **Sgt VITHANA**
3. **PC LIYANAGE (#26166)**
4. **PC Anil (#13543)**

#### POLICE STATION

**Mathugama**

the police jeep while being beaten by Sgt Vithana, who shouted, “Get in, you son of a prostitute,” and pushed him inside. He was beaten further inside the police jeep, and his head was pushed onto an iron bar. Sgt Vithana further threatened Anusha, “This old fellow and you will both be put inside the house and burned.” SI Thennekone threatened to rape and kill her, saying, “We will kill her after playing with her (*Api mekiwa maranne mekith ekka selamkarala evealwela*).”

Arthur Vithanage was taken to the Mathugama Police Station, where Sgt Vithana continued beating him. **PC LIYANAGE (#26166)** and **PC Anil (#13543)**—who had travelled together with the party in the jeep—also beat him, in the presence of about 15 others. Then he was put inside a police cell. He was taken out at about 12:30pm the next day, July 1. He was threatened that his son’s hands and legs would be broken. He was told to sign a statement and then put back in the police cell again. He was produced before the Mathugama Magistrate’s Court at about 2pm the same day, with the charge of helping a suspect escape, and the magistrate gave him bail.

Arthur Vithanage was hospitalised the same day, until July 3. While in hospital he made a complaint to the hospital police. Later he made complaints to the ASP Kaluthara, the IGP and the NHRC. The Kaluthara General Hospital medical report indicated “grievous injuries... sufficient in the ordinary course of nature to cause death” inflicted with a blunt weapon. A fundamental rights application on his case has also been lodged in the Supreme Court, against the police officers involved in the assault, the OIC of the police station, the IGP and the Attorney General.

### **19. S A Piyadasa, S A Milantha & Aruna Kumara: “A good meal”**

**SUBASINGHE AARACHCHIGE Piyadasa** is a retired civil servant, married with three children, who now sells coconuts for a living. At about 8am on 30 July 2002, S A Piyadasa went to the Diamond Jubilee School to meet his grandson. At that time he became involved in a dispute with the security watchman of the school premises. Then a few teachers from the school intervened and settled the matter. Piyadasa’s son, **S A Milantha**, who was at home at that time, learned about the dispute and came to the school, as their home is only about 500 metres away. After that they went home together.

After S A Piyadasa arrived home he got ready to go to cut coconut. It was about 9am when five persons arrived at his home from the **PANADURA Police Station**. Two of them wore police uniforms and the other three were in civilian clothes. One of the persons in civilian clothes asked him, “Who is Piyadasa?” He replied that it was him. Later he learned that the person who questioned him is known as “**Major**”. He then asked him where his son was. S A Milantha stepped out of the house. They called him to the compound in front of the house and told him to stay beside S A Piyadasa. They also called Piyadasa’s son in law, **Aruna**

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#### VICTIMS

- 1. SUBASINGHE AARACHCHIGE Piyadasa**
- 2. S A Milantha**
- 3. Aruna Kumara**

#### ALLEGED PERPETRATORS

- 1. “Major”**
- 2. “Boxer” JAYASINGHE**

POLICE STATION  
**Panadura**

**Kumara**, who was at home at that time, saying, "You too come here." Saying that, the "Major" took a stick and assaulted him with it. After that they removed the tee shirt of S A Milantha and used it to tie his hands behind his back. Then "Major" assaulted all three of them with the stick. The other four persons surrounded them and also started beating them. As they were being beaten, Piyadasa's wife and daughter watched from within the house.

Continuing to assault them, the police officers loaded all three into the jeep. They were taken to the school and told to get down. They were brought near the school gate and the police started beating them, asking, "Will you come to this school again?" The police ordered Piyadasa and Milantha to kneel down and pay respect (by putting hands together and bowing) to the peon of the school, Gamini. Since they could not tolerate the beatings, they did so. After that the police ordered Piyadasa and Milantha to kneel down in the middle of the road. They ordered Aruna to leave. Then they ordered the two men to walk on their knees towards Galle Road. While they were walking on their knees, the police continued to beat them. They walked like this for about 100 metres. Then the police assaulted them again with a stick and took them into the jeep.

From there the two men were taken to the Criminal Division of the Panadura Police Station and after they arrived there the "Major" remarked, "This is a good meal." Inside they were assaulted again. They were told to place their hands on a table and their hands were beaten with a stick. When that beating was coming to an end the police officer known as "**Boxer**" **JAYASINGHE** began beating S A Piyadasa on the head with a rubber pipe, causing him to become dizzy, so that he was made to kneel down. After that "Boxer" Jayasinghe beat S A Milantha with the rubber hose. Then a policemen who was had been typing in the room began beating him also. "Boxer" Jayasinghe ordered Milantha to beat his father's feet. When he hit his feet only mildly, "Boxer" Jayasinghe began beating Milantha. After that he was forced to beat his father hard, who told his son, "Beat me, and there is no sin for that." At no point was an attempt made to record a statement from them or question them in a normal manner, and no complaint was made by anyone, nor any other evidence on the basis of which they would be suspected of any offences was told or explained to them.

After about one hour of this treatment, both of them were locked up in a cell. At about 3pm, "Boxer" Jayasinghe and another police officer took the two men to Panadura Hospital. S A Piyadasa told the doctor that he has been beaten and showed the wounds to the doctor, but the doctor ignored them. After that he and his son were brought back to the cell in the police station. At night S A Piyadasa cried out in pain, and for lack of medical treatment. At about 4:15pm the next day, July 31, both of them were released on bail. "Boxer" Jayasinghe threatened that if they were to go to a

hospital, their house would be burnt. Because of that they did not go to hospital. Instead, on August 1, they got treatment from an Ayurvedic doctor.

Due to the threats by the police and financial difficulties, S A Piyadasa did not make any complaint about the assault by the police. On August 7, however, they were brought before the NHRC after their case had become known. Having made a complaint there, on August 8 they went to the Police Headquarters and complained, after which Piyadasa was interned for three days while examined by the Pandura DMO. The doctor discovered that a bone in his lower left arm was broken and bones in the right arm were broken and crushed. Piyadasa then made a further complaint to the DIG Panadura. A fundamental rights application has also been lodged with the Supreme Court, against the police involved in the assault, the OIC Panadura, the IGP Panadura Division and IGP of Police Headquarters, and the Attorney General.

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VICTIM  
**H FONSEKA**

ALLEGED PERPETRATOR  
**“Boxer” JAYASINGHE**

POLICE STATION  
**Panadura**

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This is not the first reported instance of brutality by **“Boxer” JAYASINGHE** of **PANADURA Police Station**. On 4 June 2002 he also recorded as having arrested one **H FONSEKA** and thrown him twice into the Panadura River. H Fonseka managed to escape the first time he was thrown in, was caught and again thrown into the river by “Boxer” Jayasinghe. Some people intervened and saved him. He was unconscious when he was saved, and would surely have drowned but for their assistance. The medical report of June 6 from Panadura Base Hospital mentioned several injuries due to the attempted drowning. A complaint of attempted murder has been made in this case, but no action has been taken. It has also been brought to the attention of the NHRC.

## **20. H K Sampath: “I will plant bombs in your house and implicate you”**

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VICTIM  
**HETTIARACHCHIGE  
Krishantha Sampath**

ALLEGED PERPETRATOR  
**IP Indrajith**

POLICE STATION  
**Panadura**

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**HETTIARACHCHIGE Krishantha Sampath** is a 22-year-old vegetable seller, and is the sole income earner in his six-member family. At about 11am on 1 August 2002, six unidentified police officers from the **PANADURA Police Station** came to the Petitioner and told him, “We have to take a statement from you, get into the jeep.” Four of the six officers did not have uniforms on. The policemen also asked Krishantha, “Who were your friends who broke into the house opposite of yours?” When Krishantha said that he did not know about that the police officers told him, “Let us look into that at the police station.”

At the Panadura Police Station Krishantha was ordered to sit on a bench till about 2:30pm. Then an out of uniform police officer took him into a container in the police station compound. There he began severely beating Krishantha with his fists, on his cheeks, head and stomach. While beating him, the police officer used obscenities, and said, “Tell me who your friends are who broke into the house.” After beating Krishantha for about 10 minutes, he ordered him to sit on the bench in the police station again. He was subsequently forced to sign a statement, and released from the police station at about 5:45pm.



At about 2am on 3 August 2002, around five policemen from the Panadura Police Station again came in to take Krishantha from his house. None of the police officers wore uniforms, and none informed him of their identities, nor what he was being arrested for. None of them showed a warrant for his arrest. The police officers told Krishantha's parents that he would be sent back home after giving a statement. Then they threatened the parents not to follow them to the police station, saying that if they did, they would cut off the tongue and then the head of their son, or would beat him till he become insane or mentally ill. Krishantha's arrest was also witnessed by his neighbour, who has submitted an affidavit on what occurred.

Krishantha was taken back to the station by jeep, and after passing through a number of junctions arrived there at about 3:30am. After the jeep arrived in the compound, Krishantha was taken out of it. One **IP Indrajith** immediately began to beat his cheeks and head with his fists. Then he was told to sit on the floor of the station and IP Indrajith assaulted him severely using a rubber hose. He then squeezed Krishantha's neck tight and dragged him by it to a cell and threatened him, saying, "I will hang you up and beat you, I will plant bombs in your house and implicate you for that and file cases against you."

At about 8am on August 3, Krishantha's aunt came to visit him. Krishantha informed her that IP Indrajith had beaten him. At about 9am Shiran de Silva was also shown to him. Shiran De Silva asked Krishantha about some things and then signed for his bail. Shiran de Silva is a former village security officer. Later Krishantha learned that his aunt had complained before the NHRC. Subsequently, NHRC staff spoke to the OIC Panadura and the latter agreed to release the detainee on bail. After his release, he was admitted to Kalubowila General Hospital, where he stayed from August 3 to 6.

On August 5 about five police officers from Panadura Police Station visited Krishantha at the hospital and questioned him about the incident, recorded a statement and obtained his signature for it. He has since lodged a fundamental rights petition in the Supreme Court against IP Indrajith, the OIC Panadura, the IGP and the Attorney General.

## **21. Janaka & Tilan Perera: Assaulted without knowing why**

**Kasturi Arrchige Janaka PERERA** and **Mahamarakkalge Tilan PERERA** are brothers-in-law who live in the same residence in Panadura. At about 5pm on 28 June 2002, **PC Lal GUNATHILAKA** and seven other police officers arrived at their home with two motor cycles and a three-wheeler. Several of the officers immediately assaulted both the men, hitting and kicking them, dragging them along the road and finally putting them in the three-wheeler. At the time, none of the police officers were wearing uniforms or anything to identify them as police officers in any other way.

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VICTIMS

1. **Kasturi Arrchige Janaka PERERA**
2. **Mahamarakkalge Tilan PERERA**

ALLEGED PERPETRATORS

1. **PC Lal GUNATHILAKA**
2. **SI LIYANARACHCHI**

POLICE STATION  
**Panadura**

Janaka and Tilan Perera were taken to the **PANADURA Police Station** without being told the reason for their arrest. At the station, they were again assaulted by several police officers led by PC Lal, after which, at about 10:30pm two officers took them to the Panadura Hospital. A medical officer examined the men and advised that they needed to be hospitalised for further treatment. The two officers refused to allow them to be hospitalised. They were then taken back to the police station and further assaulted by several officers. They were then put inside a police cell and spent the night there.

At about 6:30pm on June 29 the two men were brought out of the cell and produced before **SI LIYANARACHCHI**, who swore at them obscenely, threatened to break their hands and legs, and to kill them. After this they were forced to sign statements, the contents of which were not explained to them. At no point were they informed of why they had been detained. They were subsequently granted bail and told to appear at the Panadura Magistrate's Court on July 2, after which they were again released on bail.

Janaka Perera went directly to the Panadura Base Hospital after his release from the police station and was warded there until midday on July 1. He made a statement to the hospital police post while there. After leaving the hospital he began to vomit blood, and he again went for medical help, at the Kalubowila Teaching Hospital, from where he was directed to go to the National Hospital in Colombo for special treatment. Thereafter, his nose was operated on several times. Tilan Perera has been taking Ayurvedic treatment. The men have since lodged a fundamental rights application with the Supreme Court, against PC Lal, SI Liyanarchi, the OIC Panadura, the IGP and the Attorney General.

## **22. Ejan Moulana: "Give the items!"**

**Shazyed Mohomad Issas Hussane MOULANA** is the owner of the Shek Medical Centre situated at Thakiya Junction, Bandaragama. On 9 July 2002, two men with T-56 guns and **IP Prasanna SILVA**, the OIC of **KESELWATTE Police Station**, entered his house at about 10:30pm, where he was sitting with his assistant, Baba. They came in a police jeep and a van, but none were wearing uniforms. The OIC put a revolver in Baba's mouth and said, "Give the items! (*Buditika deepan!*)" IP Prasanna turned and asked Ejan, "Are you Ejan Moulana?" to which he replied that he was. The OIC then began using obscene language and threatened him, "If you don't want to get beaten up give the two vehicles worth thirty lakhs (300,000 rupees) and the other thing." As Ejan did not know what the officer was talking about he was shocked and just stayed motionless, not knowing how to reply. IP Prasanna then hit him with his hand and began to search all over the house, opened the cupboards and taking things out, throwing them onto the floor. He beat Ejan repeatedly and banged his head against a wall six times.

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VICTIM  
**Shazyed Mohomad Issas  
Hussane MOULANA**

ALLEGED PERPETRATOR  
**IP Prasanna SILVA**

POLICE STATION  
**Keselwatte**

Thereafter the two victims were put inside a van and taken to the Shek Medical Centre. The assailants searched the medical centre, pulling things out of cupboards and looked everywhere. IP Prasanna then pushed Ejan into a wall, pushed his head against it and assaulted him repeatedly. Altogether this event took about 30 minutes. Afterwards, Ejan Moulana was taken to the Keselwatte Police Station, assaulted again, and told to tell the truth or otherwise he would be hung up and beaten. After this he was put in a cell. Finally, he was released at 1:30pm on July 11, after being forced to sign a document, the contents of which were not revealed to him.

After being released Ejan Moulana went to his sister's house at Panadura and then entered the Panadura Hospital. He made a statement to the Panadura hospital police post. He was discharged from the hospital at about 4pm on July 12. He was advised to take further treatment. He later learned that the police officers entering his house had earlier told people in the village that he was a thief, however no charges have been laid against him, nor to his knowledge, complaints made by anyone. Nor has any magistrate issued an arrest warrant for either of the victims of this incident. Ejan Moulana has made complaints to the OIC Panadura, SPP Panadura and NHRC. A fundamental rights application has also been made to the Supreme Court against IP Prasanna, the IGP and Attorney General.

The OIC of **KESELWATTE Police Station, IP Prasanna SILVA**, has more than one recorded assault against him. It is known that at around 12:30pm on 2 May 2001, one **Ajith Nawaratne BANDARA** was taken into custody by Keselwatte police personnel, and subsequently assaulted by IP Prasanna Silva, **Sgt Palitha PERERA, security assistant SUNIL and jeep driver UPASIRI**, among others. Subsequently, the assailants—except for the OIC—took Ajith to the Panadura Hospital DMO's official residence, but the doctor did not examine him. The DMO simply gave the police a form, which was filled out on the boot of the car, and then handed back to the DMO. Ajith was then taken to a house at Wellabeda, Panadura, and left in the company of the assistant outside, while the other two went inside the house and came out with a document. That house turned out to be the bungalow of the local magistrate. The magistrate did not examine Ajith nor question him. Later he was taken to the remand cells. On May 4 he was presented before the court on charges of possessing heroin, and was bailed out. He entered Kalubowila Hospital on the same day, and was there for five days recuperating from his injuries. Complaints made to the OIC Panadura and to the NHRC to take action in this case have so far been unfruitful.

#### End Note

\* Gerald Perera's case was referred to by Dr Nalin Swaris, 'Between the blinds: Torture and the human reed', *article 2*, vol. 1, No 3, June 2002.

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VICTIM  
**Ajith Nawaratne  
BANDARA**

ALLEGED PERPETRATORS  
**1. IP Prasanna SILVA  
2. Sgt Palitha PERERA  
3. SUNIL  
4. UPASIRI**

POLICE STATION  
**Keselwatte**

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# Trying to understand the police crisis in Sri Lanka\*

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Basil Fernando

**T**he case studies of torture committed by the police in Sri Lanka outlined in this special report are exceptional when compared to cases of torture in other countries, in that they all relate to inquiries over common crimes, or mere grievances between a police officer and his victim. They indicate a severe crisis in the way the Sri Lankan police conduct criminal investigations. Under the law, there are prescribed procedures for criminal investigations. These procedures seem to be completely ignored.

The type of assaults committed also show that police officers are not making an attempt at all to collect information relating to crimes in an independent or rational manner, as the law requires them. In all these cases, and many others, the very first thing the police seem to do is to beat people mercilessly with the hope some information may come out from suspects. However, the frequently extraordinary level of torture makes the victim incapable of remaining normal.

Gerald Perera's case demonstrates the problem very clearly. The police were inquiring into a triple murder that had taken place some time before his arrest. The police apparently were under enormous pressure to show the results of the investigations into this very serious crime. They were unable to deal with forensic evidence. They were also not qualified in the use of rational methods for discovering information. They seem to have been arresting people on unverified information. All these added together resulted in some major consequences. One of the first persons to be arrested in this triple murder case was a three-wheel taxi driver. He was harassed into admitting involvement in the crime. He has since attempted to commit suicide, unable to bear the harassment and accusations, about which he knew nothing. He was a pious Catholic and became horrified. Unable to face his neighborhood community and family, he took pesticide. He has been saved, and there has been no official allegation at all against him of any involvement in the crime. This incident was highly publicised, yet even at that stage, the higher officers did

not evaluate the quality of the criminal investigation that was going on. The same investigating officers remained at their posts to carry out another horrible experiment.

The second victim was Gerald Perera, who also has subsequently been declared absolutely innocent. In his case, as so many others, no evidence of any sort existed against him at the time of arrest. Someone's casual remark was enough. No statements were recorded from anyone making accusations. A belief that beating people is the path to discovering the truth was all that these criminal investigators went by. It is on that basis that AHRC has stated that there needs to be a serious inquiry into the manner in which criminal investigations are conducted at police stations.

Most disconcerting is the popular perceptions that develop among the people regarding police stations. The atmosphere in police stations is one of terror, and that does not in any way help to obtain the type of cooperation from the public that is very essential for criminal investigations. On the one hand, there is an extreme breakdown of cooperation between the public and the police. On the other hand, as a result, there is even more torture, which results in a further loss of confidence and contact with the people. The criminal investigator thus functions in a vacuum.

### **Is torture committed due to the pressures under which police work?**

There may be many factors contributing to the pressures on police officers to engage in torture. Some of these pressures are as follows:

#### **1. Personal obligations**

In the case of Angeline Roshana Michael, the police officer who engaged in the torture was the friend of a very rich family. The lady of the family complained of the loss of a gold watch and suspected the part-time domestic helper as the thief. The officer set about getting the watch back by first using verbal threats and then torture. He was trying to do a favour to his friends. In fact, the complainants were present for some time when the police tortured the victim. They were allowed to observe the abuse.

In the case of Eric Kramer, the police were trying to oblige some staff members of a company. These people were trying to find out who made an attempt to cut open one of their safes. Eric was tortured without any evidence against him. In fact, the purpose of the torture was to find something against him. In this case too, police officers allowed the torture to be witnessed by the staff members of the company: "See, we have done our part of the job", was the message given.

Such personal favours may not be purely personal. They can be in conjunction with bribery or political pressures too. It is common enough to hear of arrests and assaults made on payment.

**“ The atmosphere in police stations is one of terror ”**

**“The connivance of the superior officers is evident from the fact that when complaints are made against torture, no prompt action is taken”**

## **2. Gang behaviour**

Another remarkable feature of these cases is that the police seem to be acting as a gang, rather than people doing independent work on criminal investigations. Led by one or two persons they engage in beating the suspects like thugs. Torture typically takes place at night and is done by more than one person. In many cases the officers involved get drunk as they engage in the act.

In the case of Gerald Perera, about eight people participated in torturing him. He was hung up and assaulted by a group of police. The case of Gresha De Silva was similar. He too was hung up and beaten by a group. The beating was stopped when the officers obeyed a superior's command. When he was to be taken down, they obeyed. When the body was to be hung up and assaulted they did that also.

In the case of Nandini Sriyalatha Herat the behavior of a male gang was very evident. One officer, on seeing the woman as their victim for that particular evening said, “Today we have a good bite.” They all participated in beating the woman, stripping her, and watched while one officer put a pipe-like object into her vagina. They continued to beat her even after that. At a later stage when one officer wanted to beat her up again, another signaled him not to and he stopped. Thus, the group did work according to commands.

In the case of Lalith Rajapakse too it was just routine behaviour of a gang at that police station to spend the evening beating up people. A similar pattern is shown in cases from the Ja-ela Police Station. When the case of Angeline Roshana came to light it was revealed by a woman warden—who did not want to be named—that within the few days before Angeline's incident two other women were brought to the same police station and stripped, hung and beaten up. Such seems to be the evening pleasures of these officers.

## **3. Orders of superiors**

In the case of Gresha de Silva, he clearly remembers that when he was brought to the police station, the OIC took a telephone call and reported to someone that Gresha had arrived. It was after this conversation that Gresha was taken away and tortured. Gresha was later told by the officers who tortured him that it was on orders from above that he was arrested. They admitted that he was innocent.

Evidence of such direct orders are few. In most cases police seem to act independently and without directly informing whoever has been arrested on how they are conducting the investigation. However, there seems to be tacit approval by immediate superiors. The common practice of torture taking place in the evenings cannot be a secret to higher officers. The departmental orders do prescribe rules for very rigid supervision by superior officers. The connivance of the superior officers is evident from the fact that when complaints are made about torture, no prompt action is taken. Action is taken only when there is strong external pressure. In

the case of Lalith Rajapakse, even after huge exposure, the superior officers did not proceed against the alleged culprits. When the officers concerned filed fabricated cases against him, the superior officers did not examine these records and did not try to stop the mockery of justice.

A retired Senior DIG recently commented in private that there was an understanding in “the good old days”, meaning till the nineties, that when a person was tortured it had to be done under the supervision of a senior officer. The idea had been to prevent uncontrolled torture, which may create problems for the victim and the department. There was no absolute prohibition against torture. Instead there was a basic belief that successful investigation into crime was impossible without torture. Thus, the gruesome torture that now occurs with such frequency has its origin in the acceptance of ‘controlled’ torture by the higher authorities. Clearly, there is tradition of approval of torture by senior officers. Thus, these cases are not exceptions but part of institutional practices.

#### **4. Pressure of publicity**

Crime receives a lot of publicity in Sri Lanka. This may also be bringing some pressure on the police. The media highlights when crimes are not resolved. At the time of torture of Gerald Perera, officers of Wattala Police Station were investigating a triple murder. At the time of Gresha de Silva’s torture, the police at Habaraduwa Police Station were investigating another murder which had received a lot of publicity.

Under such circumstances, the police may want to create the impression that they have resolved the problem by getting a confession. The arrest of a person also receives publicity, whether the person is actually the culprit or not. With that, public criticism against police dies down and sometimes police officers even get promotions. Whether the actual culprits are found or someone is merely accused of the crime are two different things. It satisfies the police if someone is accused and prosecuted.

However, it must also be noted that many cases recorded by AHRC are not related to highly publicised crimes. In fact, some may not be related to any crime at all. Lalith Rajapakse’s case is one such instance. The case was fabricated after the event, in order to create an excuse to use “minimum force”.

Closer study of the idea that pressures on the police result in torture show that it does not sufficiently explain such common usage of torture, as well as the severity of torture. It does offer some explanation, but not a sufficient one.

The presumption behind these explanations is that police officers are seriously investigating crimes, though they make mistakes and even grave mistakes. Is this correct about the police officers of present day? How much interest do they have in criminal investigations? How much time will they spend on such investigations? Do they have more pressing concerns than crime

**“The gruesome torture that now occurs with such frequency has its origin in the acceptance of ‘controlled’ torture by the higher authorities”**

**“How has torture become the cheapest method of criminal investigation? By relying on cheap labour”**

investigations, for example, making extra-money by several means each day? Do they spend as little time each day for investigation into crimes, so that they may have more time for other things? In short what is the behavioral pattern of a modern police officer? Are we seeing officially full-time, but really part-time employed officers whose main interest lies in pursuing extra incomes? Has there developed an understanding among the higher and lower ranks keeping the appearances of policing while safeguarding each other's outside interests?

**“Torture is the cheapest method of criminal investigation”**

One of the most common justifications of torture is that it is the cheapest method of criminal investigation. Though not expressed openly, this view is shared by the state, though publicly—and particularly for international audiences—it expresses the opposite view.

How has torture become the cheapest method of criminal investigation? By relying on cheap labour. The average police officer in Sri Lanka counts among the least educated persons in the country. Becoming a lawyer, doctor, or even a teacher takes years of education. Achieving some prominence in these or another profession requires many years of patient practice. No such basic education is necessary to be a police officer. (This is not to deny there are handful at the top who have a basic degree, and a few with longer training.) Those police officers with hardly any basic skills associated with an inquiring mind are the investigators of crime under normal circumstances. Their sensibilities are so underdeveloped that engaging in acts of brutality does not create much of a problem for them. “The rougher the person, the better”, is an underlying principle of selection, though this is not openly expressed. The recruitment, use and manipulation of cheap labour are primary elements of policing in Sri Lanka. The result is that no real selection criteria are applied in practice, though they may be used for publicity purposes.

Professional training of police in many countries now takes several years, after which they are selected on the basis of particular criteria. In some countries it takes three to four years. No such expense needs to be spent when the aim is simply to use cheap labour for policing. Just three months of ‘training’, if any—most of which is spent on physical exercises—is all there is. In fact, this may be a matter of policy. How can a better-trained officer adjust to the rough and brutal practices that go on in police stations?

Both the elements of cheap labour and inadequate training explain why it is difficult for the institution to impose a high degree of discipline on the average police officer. The subject is not really capable of such discipline. Thus cheap labour implies a high degree of tolerance of corruption within the police institution.



Under such circumstances, nothing more than cheap investigations can be expected. Cheap labour in policing means use of muscle, rather than the mind. Thus, the whole police institution becomes a monster that challenges every principle of decent social dealings and shows its fist to everyone, saying, "If you have us cheap, you have no grounds to complain about what we do."

**"No one can catch us"**

Torture victims and their supporters who seek redress are told by police officers and their associates time and again, "Do not strike your head on a stone. No one can do us any harm." The knowledge that law enforcement officers have of the weak nature of the law enforcement system in Sri Lanka gives them the assurance that their misdeeds will not be discovered and that to escape criminal liability is not difficult. The "catch me if you can" game goes on all the time. Awareness of the difficulties that a victim will have in getting redress gives a police officer the psychological assurance necessary to continue to commit violence against the citizenry.

Added to this is the taste of blood acquired during the period from 1971: the Emergency Regulations and later anti-terrorist laws lifted all legal safeguards against extra-judicial killings and the cruelest forms of torture and other endemic violations of rights. The killing of arrested persons became so common that in the late eighties and early nineties over 30,000 people simply disappeared, sucked through detention centres-cum-torture chambers into mass graves and other anonymous sites. It was the security forces—both police and military, with criminal collaborators—that were used for that purpose. Although those terrible times have been accounted for in official reports, adequate recording and examination is yet to occur.

Having tasted blood, the habits of normal law enforcement gave way to the brutal use of force. This practice will continue if deliberate action is not taken to purposefully eliminate it. That in turn will be possible only if Sri Lankans themselves take the initiative and demand that their law enforcement agencies respect the rule of law, and in so doing, respect they the people.

**End Note**

\* This is edited text of a series of articles currently appearing in the weekly e-newsletter on Sri Lankan human rights issues, *Jana Sammathaya*, of AHRC. To subscribe, visit the AHRC website, [www.ahrchk.net](http://www.ahrchk.net), or email AHRC, [ahrchk@ahrchk.org](mailto:ahrchk@ahrchk.org), and put "Subscribe to Jana Sammathaya" as the subject.

**“Having tasted blood, the habits of normal law enforcement gave way to the brutal use of force”**

# **Letters to the Minister of Interior: 1. Criminals working in police stations;<sup>1</sup> 2. Precedent-setting Supreme Court judgement<sup>2</sup>**

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Asian Human Rights Commission

3 June 2002

Minister of Interior  
Ministry of Interior  
Colombo  
SRI LANKA  
Fax: 941 387 526

Dear Minister Amaratunga:

## **Reports of criminals in Sri Lankan police stations working as police officers**

In Sri Lanka, torture and other cruel, inhuman, degrading treatment or punishment is a serious crime with a mandatory minimum sentence of imprisonment for seven years through the prescriptions of Act No 22 of 1994. Yet there are hundreds of people accused of this crime functioning as police officers of various ranks. The people against whom declarations regarding the commission of torture have been made by the Supreme Court of Sri Lanka itself are very many. Almost every month more people are added to these lists. However, these people continue to function as law enforcement officers, ignoring the law of the land mentioned above, all disciplinary procedures and Sri Lanka's international obligations as a signatory to several covenants and conventions.

In just the month of May 2002 itself, we have learned of several gruesome stories of torture:

The case of Lalith Rajapakse, for example, who suffered brutal torture at the hands of the police in the Kandana police station is unbelievable and shocking. He remained unconscious for more than 15 days after he had been sent to the hospital from the Kandana police station. His condition has been described as

traumatic encephalitis due to assault. He is recovering very slowly and will continue to suffer all his life. The more brutal aspect of this case is that, while this young man was undergoing such suffering, the officers who allegedly caused these injuries fabricated and filed three cases against him in the magistrate's court in Wattala. All of this violence is allowed to happen in a police station that is supposed to protect the rights of people and provide security. There are similar stories about the conditions in France before the French Revolution. A novel about Sri Lanka by Leonard Woolf, *Village in the Jungle*, also describes this type of cruelty, and it is unfortunately continuing into the 21st century as well. In this case though, police officers have added something new to past episodes: they have obtained an order to remand the torture victim, who was in an unconscious condition, without even producing the victim in court! When the magistrate discovered this situation almost one month later, he vacated the order as an order that had been illegally obtained. After all of this, the officers still continue to wear uniforms and function as police officers!

**“ Violence is allowed to happen in a police station that is supposed to protect the rights of people and provide security ”**

Lalith Rajapakse's case, however, is not an exception, as is shown by the case of Gresha de Silva. In this case, the victim was hung and tortured by several officers in the Habaraduwa police station. The victim has now lost the use of both hands, and the medical opinion is that this loss will be permanent.

Then there is the case of W M Ariyathilaka who was killed in the China Bay police station. The police tried to make it appear though that the victim had committed suicide. However, the medical opinion clearly is that the victim had been strangled. Finger marks were present, and the medical officer recorded external and internal injuries.

In addition, there is a case from Wariapola, the case of Nandini Herat, who was sexually abused and tortured in the Wariapola police station while she was detained at the police station for more than three days. Her father has lodged a complaint.

These are just a few cases, which tragically indicate that a state of terror exists in police stations in spite of the enactment of Act No 22 of 1994.

The illegal acts that several officers attached to the Kandana police station have done in the case of Lalith Rajapakse illustrate the wrongs involved in these other cases. These wrongs are listed below.

- 1) Police entered a house without a warrant.
- 2) The police arrested an innocent man.
- 3) The police used brutal torture, a serious crime under Act No 22 of 1994.
- 4) The unconscious body of the victim was left in a police cell without any attempt to take him to a hospital for about 12 hours. It was only after a local member of Parliament intervened at about 11 a.m. on April 20 that the unconscious body

was taken to a hospital. Thus, from the night of April 19 to about noon on April 20, the unconscious body of the victim remained in the police cell of the Kandana police station unattended.

**“The police officers fabricated a story to explain the arrest and how the victim was injured by the use of minimum force”**

- 5) In the hours following the use of torture on the victim, the police officers fabricated a story to explain the arrest and how the victim was injured by the use of minimum force. They fabricated three reports. Two were preliminary reports already existing in the court, i.e., complaints of two robberies in which no one has been identified as the perpetrators. The police introduced the victim as the perpetrator without any evidence at all to implicate him. (In fact, when contacted by the family of the victim, the complainant of these two cases has categorically stated that they do not in way suspect the victim as the one responsible for their losses.) A third report was a direct fabrication in the statements of the police officers that the victim resisted arrest by four police officers and that they thus used minimum force. They introduced a knife taken from their police station collection as the knife that the victim tried to use on the four policemen.
- 6) Several hours after the victim was hospitalised the police officers took their fabricated reports to an acting magistrate and told him that a very dangerous criminal had been arrested and in this way obtained an order to pass the victim to remand custody without taking the magistrate to see the victim. Had the acting magistrate been informed that the victim was in an unconscious condition, he would have wanted to see the victim and would have recorded the patient's condition. Thus, a number of serious wrongs were committed:
  - a) Applied for and obtained an illegal order for detention on April 20 without producing the suspect before the magistrate (on May 16, 2002, when the magistrate was made aware of this fact by lawyers representing the suspect, he nullified and vacated the order made on April 20);
  - b) Placed completely false information before the court;
  - c) Filed three fabricated cases in court;
  - d) Caused the illegal detention of the suspect from April 20 to May 17, 2002.
- 7) From April 20 to May 17, several additional reports seeking further detention were filed.
- 8) On May 17, 2002, the police continued making fabricated stories by producing a knife as the one that the suspect tried to use and which justified the use of minimum force.
- 9) On the same day, a submission made by the officer in charge (OIC) of the police station to the magistrate continued providing completely false information to the court, offering the fabricated stories as the truth. The information included a false story about the medical information pertaining to the suspect,

which the OIC claimed was based on discussions with the doctors. The OIC's facts were the very opposite of what was in the medical reports submitted to the court, however. The record of the OIC's statement exists in the case records in the magistrate's court.

- 10) At no stage did the police officers concerned, including the OIC, show any remorse for the heinous crime of torture, the false information provided to the court and the fabrication of cases.
- 11) These officers are still continuing to work at the same police station, and no action has been taken against them. The actions that should have been taken are:
  - a) Arrest of the officers for offences under Act No 22 of 1994 and the filing of charges in a high court;
  - b) A criminal investigation into attempted murder of the victim;
  - c) Criminal action for providing false information and misleading the court to actions that the court itself later vacated as they had been obtained illegally;
  - d) An investigation into the fabrication of cases;
  - e) DISCIPLINARY ACTION ON ALL THESE MATTERS AND THE SUSPENSION OF THE OFFICERS FROM EMPLOYMENT PENDING THE FINALISATION OF INQUIRIES.

The strongest evidence exists for taking such actions. This evidence includes the following:

- 1) In case reports B/3120/02, B/3060/02 and B3121/02, the police officers admitted making the arrest;
- 2) The police admitted the use of force, which police claim to be minimum force;
- 3) The police reported to the court that it is from their custody that the victim was sent to the hospital;
- 4) The medical report has already been filed in court and included in the case record indicating the serious condition of the victim;
- 5) The magistrate has ordered the original order made on April 20 to be vacated as it has been obtained illegally.

This is in addition to the evidence of the witnesses.

We urge you to make provisions for speedy criminal and disciplinary inquiries into these cases and to clean the police force of criminals. The country is clearly facing a breakdown of law and order. Even in cases where children are kidnapped, people do not trust the police now to be of any help to them. At the end of May, the parents of a kidnapped child paid Rs. 2.5 million

**“At no stage did the police officers concerned show any remorse for the heinous crime of torture”**

[US\$29,294] to kidnappers to save their child instead of relying on the police. This is no surprise when criminals are allowed to function as police officers.

It is time to face this fact: if there is to be any change of this situation, criminal actions under Act No 22 of 1994 and immediate disciplinary actions are a dire need.

Thank you for urgently considering this important matter.

Yours sincerely,

PARK Jae-man  
Programme Coordinator--Urgent Appeals Programme  
Asian Human Rights Commission

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9 September 2002

Hon. Mr. John Amaratunga  
Minister of Interior  
Ministry of Interior  
Colombo  
SRI LANKA  
Fax: 941 387 526

Dear Sir,

**Re: Judgement of the Supreme Court in the case of  
Yogalingam Vijitha**

Pursuant to a letter of 3 June 2002, in which it was brought to your notice that persons who should be tried for serious crimes are continuing to serve as law enforcement officers, the Asian Human Rights Commission (AHRC)—a regional non-government organization working for the promotion and protection of human rights—would like to draw your attention to the judgement of the Supreme Court in the case of Yogalingam Vijitha (Application F.R. No. 186/2001). AHRC considers the decision of the Supreme Court in this case to be of the utmost importance, as it sets a precedent in steps towards effective implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Yogalingam Vijitha, a 27-year-old woman, was illegally detained, and horribly raped and tortured by seven officers of the Negombo Police led by Reserve SI Wijesekara from 21 to 28 June 2000. The policemen arrested her on trumped-up charges of being an LTTE suicide bomber after she refused to become a second wife to a married man. During the terrible ordeal that followed her arrest,

she was beaten all over her body with a club; hit on the ears; smothered with a shopping bag containing chilli powder mixed with petrol; wrapped semi naked in a shopping bag containing chilli powder and petrol; pinned down on a table while policemen inserted pins under the nails of all her fingers and toes; assaulted with a club and wires; trampled with boots; and hung up and assaulted with a club. When she refused to sign a forced confession, she had a plantain flower soaked in chilli forced in and out of her vagina for about 15 minutes, at which point she lost consciousness. When she came to, she signed the prepared documents, as she was unable to bear the torture any longer. On June 28 she was then transferred to the Terrorist Investigation Division, where she was further assaulted under the direction of SI Saman Karunaratne. Only on September 21 was she remanded under Section 7(2) of the Prevention of Terrorism Act at the Negombo Remand Prison. By that time she was suffering from extreme physical and psychological stress that left her unable to function as a normal human being.

**“The beneficiaries of a neglect to act will be the criminal elements in the country and within the police force itself”**

On 23 August 2002, the Supreme Court ruled that there had been a grievous violation of Yogalingam Vijitha’s fundamental rights under Article 13 (1), (2) and Article 11 of the Constitution. In awarding a sum of Rs. 250,000 in compensation and costs—out of which Rs. 150,000 is to be paid by the police officers of the Negombo Police and the balance by the State—the Court noted that the facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting and offend one’s sense of human decency and dignity particularly at the present time when every endeavor is being made to promote and protect human rights. Most importantly, the Supreme Court for the first time directed the Attorney General “to consider taking steps under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, Act No. 22 of 1994, against the respondents and others who are responsible for acts of torture perpetrated on the petitioners”.

Accordingly, I am writing to you to remind you of the obligation that your Ministry and the Department of the Police have to respond to this ground-breaking judgement immediately, and punish the perpetrators in a manner that the public will be satisfied that adequate action has been taken to redress such cruelty in accordance with the decision of the highest court in Sri Lanka. At this moment in history, hesitancy on you and your ministry’s part will only lead to similar violations of fundamental human rights and further deterioration of public confidence in the police and the rule of law. The beneficiaries of neglect to act firmly on your part will be the criminal elements in the country and within the police force itself. I urge you to at once:

1. Punish and dismiss the police officers who have perpetrated this crime;

“It is a disgrace to see that even after Supreme Court decisions are being handed down no action is being taken”

2. File further criminal charges against the perpetrators, who abused legal process and power by fabricating charges, irrespective of whether or not the Attorney General proceeds against them under Act No. 22 of 1994; and
3. Pay adequate compensation to the victim in acknowledgement of the State's failure to protect her. The sum ordered by the Supreme Court is only a symbolic recognition of the State's responsibility. It must now pay adequate compensation in accordance with its responsibility as a party to several international human rights treaties.

It is a disgrace, nationally and internationally, to see that even after Supreme Court decisions are being handed down in Sri Lanka no action is being taken against state officers found guilty of having committed heinous violations of domestic and international laws. Until the police are rid of criminal elements, it will be impossible to control crime and to ensure security for the people of your country. Failure to act will create further disillusionment in your ministry and the rule of law in Sri Lanka.

Yours sincerely,

PARK Jae-man  
Programme Coordinator--Urgent Appeals Programme  
Asian Human Rights Commission

Cc. Hon. Mr. K.C. Kamalasesan, Attorney General of Sri Lanka

**End Notes**

<sup>1</sup> On 3 June 2002 the Asian Human Rights Commission sent this letter to the Sri Lankan Minister of Interior, Mr. John Amaratunga

<sup>2</sup> This is a revised version of a letter dated 9 September 2002 by the Asian Human Rights Commission sent to the Sri Lankan Minister of Interior, Mr. John Amaratunga regarding the Supreme Court decision on the case of Yogalingam Vijitha.



## **Recommendations to address the use of torture by the police in Sri Lanka**

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Asian Legal Resource Centre

**T**he Asian Legal Resource Centre (ALRC) makes the following recommendations to address the endemic and systemic use of torture by the police in Sri Lanka.

### **To the Government of Sri Lanka:**

1. Ensure strict compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994, by prosecuting all cases of torture perpetrated by state officers. To this end, provide the Prosecution of Torture Perpetrators Unit, functioning under the Attorney General's department, with the necessary personnel or material resources to investigate and prosecute according to its mandate.
2. Establish a special unit for immediate and adequate compensation of torture victims, in line with international standards and state obligations under international human rights agreements.
3. Direct the Inspector General of Police to propose special practical measures by which to impose and maintain discipline in the police force, and let the public know of such measures.
4. Declare a three-year transitional period for the effective restoration of discipline in the police force, and for that purpose appoint a judicial committee to supervise discipline among the police with powers to take corrective action. The committee's mandate would last for at least the three years

of the transitional period. It could report directly to the Constitutional Council appointed under the 17<sup>th</sup> Amendment to the Constitution.

**To the Attorney General of Sri Lanka:**

1. Prioritise, as a matter of policy, effective law enforcement, rather than the farce that exists now. To this end, implement a policy on prosecutions that is capable of restoring police discipline, and pay special attention to consistently pursuing and reviewing this policy for at least three years.
2. Enforce the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994 with rigour and enthusiasm. To this end, seek and find resources to improve the Prosecution of Torture Perpetrators Unit, so that it can win public confidence and trust.
3. Demonstrate that there is no ambiguity in the state policy to eliminate torture.
4. Assist development of policy towards adequate compensation for victims of torture in keeping with international standards and state obligations under international human rights agreements.

**To the National Human Rights Commission of Sri Lanka:**

1. Decisively abandon the practice of seeking settlements for torture cases and instead undertake serious preliminary investigations in order to pursue an aggressive policy to ensure prosecution.\*
2. Improve knowledge of international law on human rights, particularly relating to the prevention of torture.
3. Expand human rights education, particularly by constant and regular use of mass media, including radio and television.
4. Provide all police officers with a copy of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994, and teach police about it. Assist police officers of higher ranks to train lower ranks on prevention of torture.
5. Help to develop a policy for adequate compensation of victims, and an effective legal aid system.
6. Build closer links with civilian groups to encourage professionals such as lawyers and doctors to take a more active role in promoting human rights, particularly the elimination of torture.
7. Improve staff skills and seek more resources for that purpose.

### **To Sri Lankan lawyers:**

1. Resist police pressure in courts, particularly in magistrates' courts, which is used so readily to discourage lawyers from appearing for torture victims.
2. Help to develop a more effective legal aid system, which will assist the victims of torture to be represented by more senior lawyers. To this end, study examples of legal aid systems in other countries.
3. Resolve to fight and eliminate torture through more *pro bono* work, via organisations and as individuals, out of an awareness that the very dignity of the legal profession is at stake, given that the systemic practice of torture undermines the foundations of both its principles and practice.

### **To Sri Lankan medical doctors:**

1. Demonstrate high standards of professionalism in conducting investigations and helping victims, and waive charges where possible to alleviate the unnecessary suffering of torture victims.
2. Study and remedy cases where doctors are known to have acted unethically, such as by giving inaccurate or incorrect reports in cases of torture without proper examinations.

### **To United Nations agencies:**

1. The United Nations Rapporteur on Torture and Committee on Torture must regard Sri Lanka as a place of special concern, given the prevalence of torture and the need to eliminate it. To this end, they must oversee effective implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994, and assist the state to improve the prosecutor's function presently exercised through the Attorney General's department.
2. Insist, as a matter of policy, on measures to eliminate torture and to reform the law enforcement agencies in Sri Lanka.
3. Provide material assistance to improve civil policing, such as by way of improved forensic skills, improved internal supervision of discipline in the police, and opportunities for exposure to more advanced policing systems.
4. Offer financial and other assistance to establish a comprehensive solidarity network to assist victims, particularly in legal aid, paralegal work and immediate assistance to families.

### **To international donor agencies:**

1. Constantly raise the need to eliminate torture and reform the police with the Government of Sri Lanka, and to these ends assist it technically and financially, with proper su-

pervision

2. Make the international community aware of the endemic and systemic torture practiced in Sri Lanka.
3. Offer financial and other assistance to establish a comprehensive solidarity network to assist victims, particularly in legal aid, paralegal work and immediate assistance to families.
4. Assist the National Human Rights Commission in particular, to ensure that it significantly alters and improves the way it deals with complaints regarding torture.

**To the people of Sri Lanka and their organisations:**

1. Prioritise the elimination of torture in all demands to the government, in all areas of life, whether with regards to social or rural development, peace, law and order, freedom of speech and association, or any other aspect of life and human rights. To this end, make the same demands to the government as outlined by ALRC above.
2. Initiate nationwide instruction on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994, so that every household and every person will know the law regarding torture and will be equipped to take action whenever and wherever it occurs.
3. Establish a nationwide network to protect every person from police violence, and to assist peaceful policing. This solidarity network must have the following functions:
  - a. Immediate intervention when any case of torture is known;
  - b. Assistance of the victims, including medical care, security and immediate financial needs;
  - c. Reporting of torture as soon as possible;
  - d. Protection of victims and their families against police retaliation after complaints are made;
  - e. Provision of effective legal aid, including adequate payments for lawyers, and the creation of paralegal groups capable of doing preliminary work to collect and present evidence;
  - f. Opening up of society on the issue of torture, and constant public opinion-making on issues relating to torture; and
  - g. Constant critiquing of all public institutions related to this issue.

**End Note**

\* On this recommendation, see further, 'The National Human Rights Commission of Sri Lanka and its role in ensuring the enforcement of the Convention Against Torture under Act 22 of 1994', *article 2*, vol. 1, no. 3, pp. 23-6.

# Appendix: Preventing torture, in principle and in Sri Lanka<sup>1</sup>

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Dwight Newman

## The absolute prohibition on torture

The absolute prohibition on torture is beyond question. Article 2 of the Convention Against Torture clearly instructs that states must not engage in or permit torture:

- (1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- (2) No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
- (3) An order from a superior officer or a public authority may not be invoked as a justification of torture.

The Convention defines torture broadly:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

But the prohibition is not contained only within the Convention Against Torture. The 1949 Geneva Conventions, signed by most of the world's states, prohibit torture in international conflicts and, in their common article 3 containing basic humanitarian standards, in non-international armed conflicts. Torture is prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, and other key international human rights instruments. Even for states not signatories to these agreements, torture is prohibited. Torture is a *jus cogens* norm of customary international law, meaning that it applies without any treaty, with no exceptions, and with no derogation permitted (meaning that states cannot

change this legal obligation). This has been widely recognised by scholars and legal authorities and is implicit in the terms in which the world community has rejected torture. Torture is universally condemned, and no state publicly supports it.

**“The abolition of torture was a complex process based not just on moral argument but also on systemic changes”**

### **The historical abolition of torture in Europe**

Many European countries abolished torture in the late 1700s or early 1800s. In 1754 a landmark work by Cesare Beccaria, *On Crimes and Punishment*, criticised elements of the justice system that included the practice of torture, and called for a more enlightened way of dealing with crime. While there was a major moral element to his criticism, Beccaria also took a scientific approach that foreshadowed the terms in which utilitarians like Jeremy Bentham (who acknowledged the great influence of Beccaria on his work) would argue for penal reform. Today, utilitarianism is often criticised as theoretically allowing for gross abuses like torture, and Bentham is infamous for having referred to human rights as “nonsense upon stilts”, but in Beccaria’s analysis it was very clear that torture was not just morally wrong—it was also ludicrous from a scientific penological point of view.

In chapter 16 of his text, Beccaria began with a moral question: by what right could we ever punish someone with torture when there is still doubt about the person’s guilt? But he also criticised the supposed usefulness of torture. Torture could create so much pain that one would do anything to get out of it, including confessing to crimes of which one was innocent. Thus, Beccaria said, “All distinctions between the guilty and the innocent disappear as a consequence of the very means which was meant to discover them.” Indeed, if anything, the innocent were made worse off than the guilty, for criminals would have the chance to be acquitted by withstanding torture, whereas innocent persons would always suffer unjustly. Thus, torture for investigative purposes was both immoral and irrational. Beccaria also criticised torture as excessive and difficult to control. Again, there was a moral element to his criticism, as he asked, “What reader of history does not shudder with horror at the barbaric and useless tortures that so-called wise men have cold-bloodedly invented and put into operation?”

Beccaria’s refusal to accept torture (which was also made by other Enlightenment writers, such as Montesquieu and Voltaire) attracted the interest of his contemporaries. People had certainly criticised it in the past, but Beccaria’s text came at a time when other factors contributed to a movement against torture. First, there was increasing judicial discretion in sentencing and the use of incarceration as punishment in place of the death penalty. Second, there were major changes in the law of evidence away from the extraction of confessions that made it easier to abolish torture. So the abolition of torture was a complex process based not just on moral argument but also on systemic changes.

Of course, it should be noted that even as European powers were abolishing torture at home, their colonial forces were often still using torture. The nature of colonial governance was such as to grant colonial rulers absolute power, and this facilitated abuses of authority that included torture. Colonized peoples were legally powerless against these abuses, and if they opposed them through revolutionary movements, this gave rulers all the more supposed reason to use torture. Police forces in colonies were a new type of institution without clear conventional restraints as existed, for instance, in Britain, based on centuries of experience. The lack of established restraints on police forces may also have been important in facilitating their use of torture.

**“Modern torture differs from that in the past in that, although states secretly see it as appropriate they officially deny it”**

### **The modern face of torture**

Even after they abolished torture in the 1700s and 1800s, European countries returned to its use in the 1900s, often claiming ‘state security’ reasons. Nazi Germany and Stalinist Russia are gross examples of totalitarian states that used torture as part of the state security apparatus. The military dictatorship in Greece after World War II also used torture allegedly for state security purposes. And even democratic countries that claimed to be facing serious security situations fell back into the use of torture. France turned to torture in Algeria in the 1950s, and the United Kingdom used it at various points in Ireland. It should not be surprising, then, to see that there was open public discussion in the United States after September 11 on the potential use of torture in the ‘war against terrorism’. Once some threat, real or perceived, is established, a state that prioritises its security is soon in a situation where torture can become tempting. This is especially the case once state ideology makes it possible to cast some group from within as part of the enemy.

Evans and Morgan have set out the features of the modern form of torture in very generalised terms.<sup>2</sup> They see it as having reemerged in the service of new state ideals, shaped by new technologies of power, and linked with globalised violence. Torture is used for a variety of purposes, both to get a response (such as information) from an individual victim and to send a message of terror to dissenting groups by punishing some people. It is generally, though not exclusively, status-related and directed against marginalised groups. The time of initial police custody is the time of greatest vulnerability. According to Evans and Morgan, modern torture differs from that in the past in that, although states secretly see it as appropriate in dealing with crime and terrorism, they officially deny it. So torture is secret rather than open, and hidden rather than rule-governed. This makes it difficult to struggle against, because it first needs to be exposed. In the end, modern torture functions as a tactic of state control that limits democratic participation.

The UN Special Rapporteur on Torture has referred to particular factors as facilitating and encouraging torture. Some of these have been consistent themes since the Special Rapporteur’s mandate was begun. The Special Rapporteur’s first report in 1986

**“Incommunicado detention is the most important determining factor as to whether an individual is at risk of torture”**

recommended certain steps to deal with torture: criminal prosecution of perpetrators; exclusion of evidence extracted under torture; restrictions on incommunicado detention; protections of habeas corpus; interrogation restricted to official centres; recording of interrogations where possible; training of security personnel; regular visits to detainees by a commission dealing with conditions of detention, to include medical personnel; judicial inquiries into any reported cases of torture; compensation for torture victims and their families; and restrictions on the trade of material and equipment used for torture.<sup>3</sup> Recently, the Special Rapporteur has drawn special attention to incommunicado detention and impunity. The Special Rapporteur’s 1999 Report states that “incommunicado detention is the most important determining factor as to whether an individual is at risk of torture”.<sup>4</sup> The report goes on to note that among other factors, “impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture”.<sup>5</sup>

### **Torture in Asia**

Walter Kaelin, vice-president of the Association for the Prevention of Torture, delivered the concluding remarks at the South Asia Seminar on the Prevention of Torture in Kathmandu, Nepal on 9 September 2000. He listed key factors that have been conducive to torture in South Asian countries:

1. Anti-terrorist, emergency, and similar laws;
2. The practice of not registering an arrest at the time when it is carried out, of not promptly informing relatives about an arrest, of not conducting and registering medical examinations of those arrested, of not allowing arrested persons to access a lawyer or even of using forms of deprivation of liberty that amount to detention but are not recognized as such;
3. Delayed decisions about the granting of compensation to victims of torture and ill-treatment;
4. Weak supervision of higher police and administration of prison agencies, corruption, and legal or de facto impunity of perpetrators; [and]
5. Lack of political will and action to combat and eradicate the practice of torture.<sup>6</sup>

AHRC has highlighted a number of factors conducive to the occurrence of torture in Asia. These include:

1. Undemocratic and non-transparent government;
2. Police or military not under government control (including due to low salaries or corruption);
3. Organised crime operating with impunity;
4. An inability to organise citizens’ groups to oppose torture;
5. Perpetrators of torture not tried or removed from society;



6. Cultural or religious support for torture; and
7. Undemocratic legislation to prevent human rights advocates from speaking out against torture.<sup>7</sup>

In both of the above lists, some factors can be broken down further. For instance, to merely say that there is a 'lack of political will' does not tell us anything about how to end the lack of will. Non-prosecution of perpetrators also needs to be considered further, to establish why there is non-prosecution. However, these outlines illustrate the broad extenuating circumstances that contribute to the use of torture in Asia.

## **Torture in Sri Lanka**

### **The law and impunity**

Sri Lanka has legislation directed against torture and police brutality, including specific anti-torture legislation and other laws such as the law of evidence, designed to try to discourage torture. Nonetheless, there is no question that widespread torture is perpetrated in Sri Lanka. AHRC has documented dozens of cases of torture in ordinary criminal investigations, let alone torture committed during anti-terrorism or military operations. Amnesty International's 2002 Report on Sri Lanka notes that, "Torture continued to be reported on an almost daily basis."<sup>8</sup> Sri Lanka's President has even reportedly admitted that the government continues to violate human rights and victimise people.<sup>9</sup>

The key piece of legislation against torture in Sri Lanka is Act No 22 of 1994, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, under which every act of torture is supposed to be a very serious offence for which the perpetrator should be prosecuted and imprisoned for at least seven years. Formally, Sri Lanka has a powerful law against torture, but to date despite numerous cases with solid evidence there has never been a case brought under Act No 22 of 1994.

A law alone does not mean that a practice will end, particularly if it is facilitated or encouraged in other ways. Sri Lanka's police tasted blood when involved in the tens of thousands of disappearances that have been documented in Sri Lanka. While there were always laws against murder, other aspects of the law facilitated these disappearances. This was particularly the case when officers over a certain rank were given the authority to dispose of dead bodies without any coroner's report, which effectively authorised them to perpetrate disappearances. While a formal law against murder existed, other factors in the system were actually facilitating and encouraging disappearances.

Sri Lanka's law of evidence is also designed to inhibit torture. Historically, England's criminal justice system was less dependent on confessions than elsewhere in Europe, and this discouraged torture. Under the common law, confessions were not even usable as evidence. Only by way of the 1898 Criminal Evidence Act did English statute give criminal suspects the option of confessing to

**“ Sri Lanka's President has even reportedly admitted that the government continues to violate human rights ”**

**“Although the law is supposed to prevent the police from gaining an advantage through torture, they find the means to one nonetheless”**

the police. Sri Lanka generally adheres to a legal position on confessions comparable to the old English position, one designed to help limit police brutality. Under section 25(1) of Sri Lanka’s Evidence Ordinance, “No confession made to a police officer shall be proved against a person accused of any offence.” Under section 26(1), “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.” In other words, confessions that the police extract by any means should not be useful to them, and they should not have an incentive to torture for the sake of extracting a confession.

A number of conditions in Sri Lanka mitigate the protective elements of the law on evidence. One is that it applies only in ordinary criminal circumstances. Section 17 of Sri Lanka’s Prevention of Terrorism Act, to be discussed further below, overrides these sections of the Evidence Ordinance in the circumstances covered by that legislation. However, at least in ordinary criminal cases, it would seem that the Evidence Ordinance should remove the incentive to torture for the sake of extracting a confession. In reality, though, the police can still gain an advantage from extracting a confession. Some observers note that information extracted through torture—the most common method of criminal investigation—can serve as a shortcut to other witnesses and evidence (and the police may be using torture only against a prospective witness).<sup>10</sup> When the police are dealing with persons who do not know their legal rights, they can also use confession as a powerful tool to obtain a plea bargain. So although the law is supposed to prevent the police from gaining an advantage through torture, they find the means to one nonetheless.

### **Incommunicado detention**

Incommunicado detention, as noted in above, has been recognised as an important factor in facilitating torture. Forms of incommunicado detention exist in Sri Lanka, formally in military operations and less formally but just as readily in the ordinary criminal scenario.

Sri Lanka’s Prevention of Terrorism Act, No 48 of 1979 allows for incommunicado detention of up to seventy-two hours, after which the relevant Minister may order a detention of up to three months “in such place and subject to such conditions as may be determined by the Minister” (section 9). The detention can be extended three months at a time for up to eighteen months with no judicial involvement. Such orders “shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise” (section 10). There are further detention possibilities under the Emergency Regulations.

This legislation introduced torture into Sri Lankan society on a massive scale, such that it thoroughly permeated the practices of ordinary criminal policing. In theory, the police are not supposed to hold suspects incommunicado. In reality, there is a period

during which they do so, and it is during this time of initial custody that torture takes place. In case after case where there is a fundamental rights application before the Sri Lankan Supreme Court alleging a breach of article 11 constitutional rights against torture, there is a simultaneous claim for breach of other rights. The other rights breached almost invariably include article 13(2) concerning the mode of arrest. Victims are routinely arrested in some improper way, with no notice of their rights, and often by police officers in civilian clothing who do not handle the case in an official manner. Relatives may only have seen the person dragged off in a jeep. The detainee will not have access to legal or medical personnel. The police officers will have ample opportunity to make use of torture techniques before any formal mechanisms of legality are involved. All this amounts to incommunicado detention.

**“There is very limited independent oversight of the police in Sri Lanka”**

### **No independent monitoring of the police**

There is very limited independent oversight of the police in Sri Lanka. Following earlier government reports on police reform that had recommended oversight mechanisms, panels were established to hear complaints, but these were still made up mostly of police personnel. Today Sri Lanka has the National Human Rights Commission, but there are concerns about its approach in torture cases. In particular, it has often proceeded toward settlement rather than helping to pursue full public inquiry and criminal prosecution. This keeps torture cases secret and indirectly leads away from, rather than towards, full accountability. AHRC has objected to this practice. For now, it means that the National Human Rights Commission is playing a less vibrant role than it could in terms of providing some independent oversight of the police.<sup>11</sup>

Recent government-commissioned reports on the disappearances that were perpetrated in Sri Lanka, a different issue but one raising the same concerns, have also stressed the need for an independent monitor of the police. They have urged the keeping of careful custody records, the creation of a lay visitor panel to help monitor detention, and the establishment of an independent investigations and prosecutions unit to deal with complaints against the police. In frank recognition that much needs to be done to give individuals any power at all to complain against the state, they have also called for the establishment of citizens' advisory offices and state funding for habeas corpus applications by persons in detention.<sup>12</sup> This last point is particularly important. All the rights that exist formally and in theory will do no good if there is no access to justice for the impoverished and disempowered citizens of Sri Lanka.

### **The military role and nature of the police**

Another factor that can facilitate and encourage torture is an overly militarised police force, especially if it is immune from oversight. This factor too is present in Sri Lanka. Given the civil strife in Sri Lankan society over the last decades, security forces

have faced enormous challenges, which have contributed to militarisation. However, looking further back in Sri Lankan history reveals that the militarisation of the Sri Lankan police forces has deeper historical roots.

**“A characteristic of the Sri Lankan police related to its military nature is its lack of investigative skills”**

Throughout the 1900s, Sri Lanka's police forces were called upon to serve in riot control and paramilitary operations. Government-commissioned studies recognised this as having affected the character of the police. The 1946 Commission Report on the police discusses how the police had fallen into a 'riot complex' after the police had been "shaped and trained mainly to meet the emergency of riots", with an emphasis placed on military parades and drills which "occupied most of the time of members of the Force".<sup>13</sup> The 1970 Commission Report again mentioned too much effort going into military parades and drills, as well as overly military-style uniforms.<sup>14</sup> The 1995 Committee Report also noted concerns about the police being turned into a military force, including, in response to recent civil strife, through the specific creation of full-fledged paramilitary police units.<sup>15</sup> Thus, official government studies have recognised that Sri Lanka's police forces have become increasingly militarised from the early 1900s on. Similarly, the Sri Lanka Police Force also sees itself in this frame, as described on its website:

Currently, the Police are engaged in a para-military role, dominating the areas recaptured from the terrorists. This has necessitated the Police to undergo a special training to use highly sophisticated weapons. The Special Task Force (STF), the elite Para-military Unit of the Police set up in 1983 is totally committed to the military operations and they dominate a major portion of the Eastern Province. They also play a significant role in providing VIP security.

The Police Force today has deployed almost 30,000 Police personnel to face the challenges posed by the terrorists in the Northern and Eastern Provinces. This is in addition to their normal commitments of law enforcement in the rest of the island.<sup>16</sup>

Military-type attitudes among police officers represent a breach of an important separation between different kinds of security forces that should function in different ways. Thus, the militarisation of the Sri Lankan police is a likely factor contributing to its use of torture.

### **Lack of investigative skills**

A characteristic of the Sri Lankan police related to its military nature is its lack of investigative skills. This is not surprising. The police have been recruited and trained as soldiers. To be an investigator of crimes involves different skills than to be a soldier. Sri Lanka's Commission of Inquiry Into Involuntary Removal or Disappearances of Persons has noted this: "The long years of recruitment and training of [police] recruits as assistance to the military in border areas has resulted in a police force sadly deficient in the requisite skills in investigation."<sup>17</sup>

The official statistics of the Sri Lanka Police Force show that it solved only 2174 of 4281 serious crimes reported in the first six months of 2001, or around 51 percent.<sup>18</sup> This figure includes

as 'solved' those cases where the police were able to beat a confession out of someone who might well have been innocent. It also hides large regional variations, with some police divisions reporting official rates of crimes solved as less than 20 percent.

Police officers who lack the skills to investigate crime in other ways will feel driven to try to coerce confessions out of suspects. Confessions may become the only means of proof, as was the case in medieval Europe, but not because the law does not allow other means, but rather because the police are not skilled to deal with other kinds of evidence. By not facing the requirements of a police force directly, a society can revert to feudalism in its criminal justice system.

### **Gang behaviour**

AHRC has used the term 'gang behavior' in describing the conduct of Sri Lankan police forces. This has stemmed from a particular pattern in the conduct of the police, which when working in a group facilitates and encourages torture. Torturers can then try to rationalise their behaviour by saying that they were not alone in conducting the abuse. There is something about police officers conducting interrogations in larger groups that can help break the restraints on torture. Where Sri Lankan police officers conduct interrogations in groups of eight or more, torture is prevalent.

The Sri Lankan police function like a gang in another way as well. This is in the protection they are able to give to their members and the impunity they thus attempt to assure to perpetrators of abuses. For instance, Senior Deputy Inspector General H M G B Kotakadeniya recently accused his own police force's officers of being involved in underworld activities such as the running of brothels and drug trafficking. The response from the Inspector General of Police was not to say that such activities must be investigated and rooted out but to deny that they exist and to begin to make threats against the Deputy Inspector General who had revealed them.<sup>19</sup> This is the kind of self-protective instinct that seems to be regularly at work in the Sri Lankan police forces.

Why do complaints that police officers have engaged in torture go nowhere? In some cases, the senior gang members may have actually ordered the torture. But even if superior officers have ordered torture, they do not interfere with it. In many cases AHRC has documented, torture victims were screaming from the pain. Anyone in the police station would have heard and known that someone was suffering. Even if superior officers were not in the interrogation room, they knew that torture was being perpetrated. When complaints do not move forward, when officers are not disciplined, when police structures are not working to see officers criminally charged, superior officers are protecting their junior 'gang members' rather than the people and the law of Sri Lanka.

Various mechanisms of impunity, of course, work to protect officers who have been accused of torture. The police may engage in outright thuggery, either by themselves or through their

**“When police structures are not working superior officers are protecting their junior ‘gang members’”**

“Support outside the police for their use of torture is important for its perpetuation”

associates. They may, more subtly, alter their records in attempts to cover up what has gone on. More subtly yet, they may attempt to alter the evidence in the hope it will withstand the limited scrutiny they might expect. One way to do this is to try to hold on to detainees for a few days so that their wounds have time to heal. They may also seek to generate their own medical evidence, which can be put on the record as the ‘official’ version.

All this is part of how the ‘gang’ works. It tolerates no dissent. It orders torture in some cases and tolerates it in others. When people come around to ask questions, the gang finds ways to threaten them or to try to deceive them, and thereby secures its impunity through a variety of means.

### **Public consciousness of torture and overcoming impunity**

Support outside the police for their use of torture is important for its perpetuation. According to some observers, one of the factors making it toughest to overcome torture is that even the more informed and educated segments of society tacitly approve of torture as a method of criminal investigation.<sup>20</sup> This may be especially the case among the so-called ‘educated’ segments of society, as torture is generally used against persons from lower classes and castes. The ordinary people understand the pain of torture, for it is perpetrated on their communities. The elites are unlikely to have the same understanding.

In recognition of this problem, a growing struggle is now underway in the Sri Lankan courts that is raising public consciousness on torture and also beginning to overcome impunity for those who have perpetrated these abuses. Over the past months, there have been a number of successful claims for compensation under fundamental rights applications before the Supreme Court. The judges are clearly having their collective consciousness raised and are trying to send a message to the state that this conduct must end, making orders for increasing amounts of compensation and becoming more direct about ordering criminal investigations of perpetrators. This positive development is now gaining public attention. Among the cases that have been settled by the Supreme Court in 2002 are the following:

24 January – Justices Mark Fernando, Ameer Ismail, and C V Wigneswaran recognised rape in custody as torture for which the state is responsible, and awarded Rs 150,000 compensation and costs payable by the state to a woman who was raped in custody at the Maradana Checkpoint. The state also indicated it would file criminal proceedings against two police constables and a soldier (‘Rape victim gets Rs. 150,000: Suspects to be charged’, *Daily Mirror* 25 January 2002).

28 February – Justices P Edussuriya, C V Wigneswaran and Asoka de Silva awarded compensation of Rs 25,000 to M D W Norman after he was arrested and assaulted by Kirulapona OIC

Inspector Edirisinghe and six other officers before being released four hours later. The arrest was based on complaints from the OIC's relative (*Daily Mirror*, 1 March 2002).

1 May - The Supreme Court bench, headed by Chief Justice Sarath N Silva, criticised the torture of suspects in police custody. This was in the context of a fundamental rights petition against the Ampara Special Investigating Unit by a Tamil youth in Batticaloa ('SC takes tough stand on torture', *Daily Mirror*, 2 May 2002).

2 May - The Supreme Court ordered Rs 25,000 compensation to a Trincomalee resident, V Vijayakumar, who was blindfolded and tortured by the police of the Counter Subversive Unit in November 2000 ('State to pay for torture', *Daily Mirror*, 3 May 2002).

12 May - Justices Mark Fernando, Ameer Ismail and C V Wigneswaran awarded Rs 25,000 compensation to K H Samankumar, a father of three children who was tortured during a six-month period of detention by the Terrorism Investigation Department. The Supreme Court also directed the Attorney General to consider withdrawing the indictment that had been brought based on the confession extracted ('Supreme Court awards Rs 25,000 to victim', *Daily Mirror*, 13 May 2002).

24 June - Justice Dr Shirani A Bandaranayake (Chief Justice Sarath N Silva and Justice Ameer Ismail concurring) awarded Rs 25,000 compensation and Rs 5,000 as costs payable by the state to lance corporal W A D Nilusha Hemali, who had been tortured by other army officers after she refused to make a statement against another army officer against whom they had a grudge ('Compensation to a woman soldier', *Daily Mirror*, 25 June 2002).

31 July - Justices Mark Fernando, D P S Gunasekera and Hector S Yapa made compensation orders against top police, holding that the former Director of the Criminal Investigations Department, DIG Punya De Silva, and SSP Bandula Wickremesinghe had violated the fundamental rights of R A Saranapala through illegal arrest, detention, and assault. Each was ordered to pay Rs 50,000 personally, and the state another Rs 50,000. The Court also ordered a disciplinary hearing against the officers ('Top policemen ordered to pay compensation', *Daily Mirror*, 1 August 2002).

2 August - Justice Fernando (Justices Gunasekera and Wigneswaran concurring) made an order of Rs 70,000 compensation by the police and Rs 30,000 by the Officer In Charge (OIC) who violated the fundamental rights of Angeline Roshana by illegally arresting and beating her on the complaint of her employer alleging theft of a gold watch (SC [FR] No 1/2001, 2 August 2002).

21 August - The Supreme Court granted leave to proceed in the case of Gamaarachchige Kasun Madushanka and Shiran Sashika, two boys tortured by the Hiniduma police. The children's

mothers are seeking Rs 1,000,000 in compensation. The hearing will be on 22 October 2002 'SC grants leave in torture case', *Daily Mirror*, 22 August 2002).

**“The two children  
tortured by the  
Hiniduma police  
were hung and  
beaten”**

23 August – Justice D P S Gunasekera (Justices Mark Fernando and Ameer Ismail concurring) ordered Rs 250,000 compensation and costs to Y Vijitha in a sexual torture case. Of this, Rs 150,000 is to be paid by Reserve Inspector Wijesekera of Negombo police, Sub Inspector Saman Karunaratne of the Terrorist Investigation Department and Inspector Solanga Arachige Muditha of Negombo police in equal shares. The other Rs 100,000 is to be paid by the state. The Court also ordered the Attorney General to consider taking steps under Act No 22 of 1994 against police personnel and others responsible ('Sexual torture victim gets Rs 250,000 compensation', *Sunday Times*, 25 August 2002).

These last two cases above were particularly horrific examples of torture. The two children tortured by the Hiniduma police were hung and beaten, had their hair pulled with pliers, and had pins driven under their fingernails to try to get them to confess to stealing money from a canteen. The sexual torture of Y Vijitha was a gruesome example of the kind of crime being perpetrated, as outlined in the petition to the Supreme Court:

Whilst she was inside the garage the police accused her of being a LTTE suicide bomber and assaulted her with a club on her knees, chest, abdomen and back which caused unbearable pain. After assaulting her she had been put into a cell at the Negombo Police Station and had been detained there till 28.6.2000 on a Detention Order R2, issued by Daya Jayasundera, D.I.G, Western Province, (Northern Range) under Regulation 19(2) of the Emergency Regulations for 90 days. Whilst in detention between 21.6.2000 and 26.6.2000 she had been subjected to torture. The petitioner alleges that her ear studs had been removed and [her ears] slapped with force. Her face had been covered with a shopping bag containing chili powder mixed with petrol, which led her to suffocate. On one occasion she had been asked to remove all her clothes except her underwear and the brassier and her face had been covered with a shopping bag containing chili powder and petrol after which she felt a burning sensation all over her body. She had been asked to lie flat on a table and while four policemen were holding her, pressed to the table, four other policemen had pricked paper pins under the nails of the fingers and toes. She had been assaulted with a club and wires and when she fell down she was trampled with boots. On another occasion she had been hung and whilst she was hanging been assaulted with a club all over her body.

On or about 25.6.2000 the policemen who were torturing her had asked her to place her signature on some statements prepared by them and when she refused to sign, one policeman had shown a plantain flower soaked in chili and had said it would be introduced to her vagina unless she signed the papers. When she refused to sign she had been asked to remove her blouse and cover her eyes with it and had been asked to lie on the table. Whilst she was lying down on the table four policemen had held her hands and held legs apart and the plantain flower had been inserted by force into her vagina and pulled out for about 15 minutes. She had experienced tremendous pain and a burning sensation. She had become unconscious and after a few minutes she had been asked to lie on the table till 9:30 p.m. After some time, some sheets of paper typed in Sinhala had been brought by them and she had been asked to place her signature on



them. Being unable to bear the torture she had signed them. The contents of the documents she signed had neither been read nor explained to her. After sometime she had been she had been put into the cell with strict instructions that she should not wash her genital region. When she was crying in pain inside the cell one policeman on duty had shown mercy on her and by about mid night had been permitted to use the toilet. The acts of torture meted out to her as set out above has affected her physically and psychologically and her matrimonial prospects had been shattered as a result of the mental and physical trauma that she had undergone at the hands of the police. She states that she is suffering from depression, loss of sleep, loss of appetite, loss of concentration, fear and nervousness.<sup>21</sup>

The struggle in Sri Lanka's courts thus goes on against the most inhumane acts imaginable. As more cases are reported, public consciousness is raised, and the judges become more willing to send a message to the perpetrators of these terrible acts and the state mechanisms that allow them to do so.

The situation has come far from when AHRC began campaigning on torture in Sri Lanka. There is now some recognition of the laws the country has available to prevent torture. Torture may continue despite the existence of a law against it, but this does not mean that the law is useless. On the contrary, groups in other states might consider campaigning for similar laws against torture. Once the law is there, the efforts of groups campaigning to prevent torture can move to a new level. No longer must they demand that the government follow an international standard; they can instead demand simply that it follow the national law. To whatever extent the courts are functioning properly, such a law can also provide a vehicle to bring torture issues before the courts and bring a new source of pressure on the government to end torture. Such legislation will not end torture on its own, but it can be a major tool for advocates and a way forward.

**“Once the law is there, the efforts of groups campaigning to prevent torture can move to a new level”**

## End Notes

<sup>1</sup> Editor's note: The following text consists of edited extracts from a monograph by Dwight Newman, postgraduate student, Oxford University, entitled 'Patterns of torture: Circumstances facilitating torture in Sri Lanka and Malaysia', soon to be released by the Asian Human Rights Commission.

<sup>2</sup> Malcolm D Evans & Rod Morgan, *Preventing torture*, Oxford University Press, Oxford, 1998, pp. 52-60.

<sup>3</sup> Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report by the Special Rapporteur, Commission on Human Rights, 42nd Sess., Agenda Item 10 (a), U.N. Doc. E/CN.4/1986/15, 1986.

<sup>4</sup> Special Rapporteur of the Commission on Human Rights, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1 October 1999, U.N. Doc. A/54/426, 1999, para. 42.

<sup>5</sup> Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999, para. 48.

<sup>6</sup> Full text of remarks at <http://www.apr.ch/asia/nepal.htm>.

<sup>7</sup> AHRC Human Rights Correspondence School, *Lesson Series 07: Torture and other cruel, inhuman or degrading treatment or punishment*, Lesson 2, <http://www.hrschool.org/mainfile.php/modules/160>.

<sup>8</sup> See the Amnesty International website, <http://web.amnesty.org/web/ar2002.nsf/asa/sri+lanka!Open>.

<sup>9</sup> 'Govt violating human rights, President tells all', *Daily Mirror*, 29 June 2002.

<sup>10</sup> 'Statement of the seminar', in *Decline of fair trial in Asia: Papers from an Asian seminar on fair trial*, AHRC, Hong Kong SAR, 2000, p. 17. Anthony Fernando, 'Fair trial issues in Sri Lanka', in *Decline of fair trial in Asia*, p. 228.

<sup>11</sup> See AHRC Statement of 2 June 2002, published in *article 2*, vol. 1, no. 3.

<sup>12</sup> Final Report of the Commission of Inquiry Into Involuntary Removal or Disappearances of Persons, Sessional Paper No. V-1997, chs. 8 and 14, [http://www.disappearances.org/mainfile.php/final\\_report\\_srilanka](http://www.disappearances.org/mainfile.php/final_report_srilanka).

<sup>13</sup> Report of the Police Report, Sessional Paper VIII, February 1947.

<sup>14</sup> Final Report of the Police Commission, Department of the Government Printer, Ceylon, July 1970, pp. 17, 111.

<sup>15</sup> Sri Lanka Police Service: Suggestions for Improving Its Efficiency and Effectiveness, Report of the Committee Appointed in 24-02-1995, ch. 1, pts. 3.iv & 3.xii.

<sup>16</sup> See <http://www.police.lk/history.html>.

<sup>17</sup> Final Report of the Commission of Inquiry Into Involuntary Removal or Disappearances of Persons, Sessional Paper No. V-1997, ch. 8, [http://www.disappearances.org/mainfile.php/final\\_report\\_srilanka](http://www.disappearances.org/mainfile.php/final_report_srilanka).

<sup>18</sup> See <http://www.police.lk/divisions/crimestat2001.html>.

<sup>19</sup> *Daily Mirror*, 5 July 2002.

<sup>20</sup> Anthony Fernando, 'Fair trial issues in Sri Lanka', in *The decline of fair trial in Asia*, pp. 228-29.

<sup>21</sup> See <http://asiafolkschoolonline.ahrchk.net/js/mainfile.php/0117/98>.

## **The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement ([www.ahrchk.net/charter](http://www.ahrchk.net/charter))**

- 15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.
- 15.4a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.
- 15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.
- 15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.
- 15.4d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

## **In this issue of *article 2***

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- Recommendations to address the use of torture by the police in Sri Lanka

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- Preventing torture, in principle and in Sri Lanka

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ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

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