

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

About *article 2*

article 2 aims at the practical implementation of human rights. In this it recalls article 2 of the International Covenant on Civil and Political Rights (ICCPR), which reads,

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.

This is a neglected but integral article of the ICCPR. If a state signs up to an international treaty on human rights, it must implement those rights and ensure adequate remedies for persons whose rights have been violated. Mere talk of rights and formal ratification of international agreements has no meaning. Rights are given meaning when they are implemented locally.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

Some persons may misunderstand this as legalism. Those from countries with developed democracies and functioning legal systems especially may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

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Introduction: Endemic torture and the collapse of policing in Sri Lanka

Editorial board, *article 2*

This is the second special report released by the Asian Legal Resource Centre in *article 2* on torture and policing in Sri Lanka. 'Torture committed by the police in Sri Lanka', released in August 2001 (vol. 1, no. 4), was the first serious attempt at recording the routine use of torture by police there. It was widely received and publicised within the country and internationally. At that time, there was no public discussion on torture in Sri Lanka. The situation has since changed dramatically. Torture by the police is now almost daily reported in newspapers, television, radio, and other media. Public actions have been held against torturers. Heavy pressure has been placed upon defective state institutions. The judiciary is under attack for its failure to deal effectively with the problem. Internationally, the United Nations Special Rapporteur on torture, Special Rapporteur on the independence of judges and lawyers, and Human Rights Committee, among others, have all commented on the practice and made recommendations for change. The government of Sri Lanka has come under global criticism.

Despite these intense efforts, torture by the police continues to be endemic in Sri Lanka. In fact, that it has now received such widespread attention and yet continues unabated speaks to an immense crisis of policing in the country. The police force in Sri Lanka as it now exists is in no position to protect the rule of law and citizens' rights; on the contrary, it is a profound threat to the security of both.

The contents of this report

All of the 31 cases—involving 46 victims of 29 police stations and two other state institutions—contained in this report indicate a collapse of disciplinary control and basic procedures in the Sri Lankan police force. Among them, two recent stories are particularly disturbing. In one, an officer at Matale police station poured boiling water on his victim (case no. 28). In the other, an officer at Welipenna ordered a detainee believed to be suffering from tuberculosis to spit into the mouth of another detainee

(case no. 29). These officers are obviously psychologically unbalanced, and yet they are allowed to function as criminal investigators, exercising enormous power over the people they arrest. That such officers retain their posts even after their cases have been reported to the highest authorities suggests a degree of tolerance of such behaviour that is difficult to comprehend.

Apart from the cases of torture, this report contains a number of important sections and appendices. It opens with the first part of a detailed report on state-sponsored violence in Sri Lanka submitted to the United Nations Human Rights Committee by the Asian Legal Resource Centre (ALRC) and World Organisation Against Torture (OMCT). Following the cases, Basil Fernando comments on aspects of the current situation. After his remarks are the general recommendations ALRC and OMCT submitted to the Human Rights Committee in their report on state-sponsored violence in Sri Lanka. Five appendices follow. The first consists of the draft complaint procedure for implementation of article 155G(2) of the 17th Amendment to the Constitution of Sri Lanka submitted by the Asian Human Rights Commission (AHRC) to the National Police Commission (NPC). The second contains extracts from the concluding observations of the United Nations Human Rights Committee on the periodic report of Sri Lanka in 2003. The third describes a public hearing about the torture of children held in December 2003. The fourth reproduces a pamphlet by local human rights organisation, Janasansadaya, on the rights of victims of crime. The fifth, on guarantees for individuals deprived of their liberty, is drawn from the most recent report of the Special Rapporteur on torture.

The purpose of this report

The contents of this report are not controversial. The Attorney General of Sri Lanka has himself publicly accepted that the lack of proper law enforcement in the country is due to institutional problems. He has admitted that his department is understaffed and is the cause of delays. He has also pointed to the shortage of courts as a cause for delays. In fact, no one would deny that these delays have become intolerable. There is also a consensus, even in the police force, that forensic and police training facilities are grossly inadequate, bordering on primitive. Likewise, there is general agreement that torture serves no legitimate purpose, and must be eliminated.

Despite all this, there are at present no ideas on how to make the necessary changes. The purpose of this report is to argue that those responsible for bringing about changes, among them the NPC, National Human Rights Commission and civil society organisations, must now put their energy into making a strategy for effective police reforms and elimination of torture. This must include putting serious pressure on the government, and all political parties, to provide adequate resources for this task.

Under international law, torture is considered one of the most heinous of crimes. In some countries, perpetrators are punished with life imprisonment, and victims receive huge compensation

payments. By these standards, both on paper and in terms of judicial precedent, the law in Sri Lanka falls far behind. Although the Convention against Torture Act (No. 22 of 1994) prescribes a mandatory seven-year sentence, there is undue hesitation about applying the law. This must end. Judicial attitudes about torture can have a strong effect on the wider society. It follows that efforts by the Sri Lankan judiciary to bring domestic law into line with international developments in this area are long overdue.

Acknowledgments

As previously, this publication is the result of hard work by many local organisations and concerned persons, some of whom can be mentioned as follows: Centre for Rule of Law, Families of the Disappeared (Kalape Api), Human Rights and Development Centre (SETIK), Janasansadaya (People's Forum), and People against Torture (PAT). Our appreciation also goes to ALRC's partner organisation in Europe, OMCT, for its assistance in bringing these issues to the international community. Finally, thanks to Anju Srivastava for her assistance during initial preparations of the material in this report.

It is the willingness of the victims and their loved ones that has made all this work possible. The government of Sri Lanka, and even the Department of the Attorney General, has in the past claimed that victims of torture have been unwilling to come forward and fight for their rights. This has not been the experience of ALRC and its partners in Sri Lanka. As manifest by this and the previous report, victims are not only coming forward to reveal their stories; they are also enduring intense harassment—even risking life and limb—in their struggles for justice. The sheer determination of these persons makes this report possible and gives rise to the hope that change *can* be brought about to end the torture and attendant abuses persisting in Sri Lankan police stations. Our highest appreciation goes to all these persons who, despite suffering so badly, have asserted their dignity by demanding that justice be done.

New members join *article 2* editorial board

This edition, three new members join the *article 2* editorial board. **Kishali Pinto-Jayawardena** is a lawyer, writer and rights activist who has been active in the struggle against police abuses in Sri Lanka. **Dr Jayantha de Almeida Guneratne** is a Law Commissioner and senior lawyer who was a member of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Sri Lanka. **Ali Saleem** is the United Nations liaison and police reforms officer of the Asian Legal Resource Centre, based in Hong Kong. The editorial board warmly welcomes these new members and expects that their contributions will further enhance the work of *article 2*.

State-sponsored violence in Sri Lanka

Asian Legal Resource Centre &
World Organisation Against Torture

Introduction

The Asian Legal Resource Centre (ALRC) is a regional, independent non-governmental organization (NGO) with General Consultative Status with the Economic and Social Council of the United Nations. Its mission is to promote and protect human rights through strengthening the rule of law and administration of justice at national and local levels and effective implementation of international human rights treaties at the national and local levels.

The World Organisation Against Torture (OMCT) is the largest international coalition of non-governmental organisations fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman or degrading treatment.

This document focuses on some of the more basic issues relating to the implementation of the International Covenant on Civil and Political Rights (ICCPR) in the Democratic Socialist Republic of Sri Lanka (Sri Lanka).

Sri Lanka acceded to the ICCPR in 1980. It presented periodic reports to the Human Rights Committee (HRC) in 1983, 1990, 1994 and the latest on 18 September 2002. Although Sri Lanka has been a party to the ICCPR for over 22 years, Sri Lanka has failed to effectively implement some of the principle provisions of the ICCPR. In fact, the shortcomings mentioned in this report are of such fundamental nature that they have affected the rule of law and the basic democratic framework of Sri Lanka.

This is the edited text of the first part of the alternative report to the United Nations Human Rights Committee by the Asian Legal Resource Centre (ALRC) and World Organisation Against Torture (OMCT) on 30 September 2003. It was based on the work and research of ALRC and OMCT together with the following organisations in Sri Lanka: Centre for Rule of Law, Families of the Disappeared (Kalape Api), Human Rights and Development Centre (SETIK), Janasansadaya (People's Forum), and People against Torture.

Often analysis of human rights in Sri Lanka is premised on the assumption that violations of rights are mostly due to the civil strife in the North and the East and that consequently, the resolution of this problem is the most important way to improve this situation. Close observation of the sequence of events that led to the breakdown of law and order in Sri Lanka demonstrates that such an assumption is not only simplistic but also fatally flawed. It can even be argued that without a serious attempt to improve the institutional framework of the rule of law and democracy in the country as a whole, no lasting solution can be found to the conflict in the North and the East of the country. In fact, the cease-fire agreement that has existed in recent months shows that in order to make further progress, it is essential to deal with the country's longstanding problems relating to the rule of law. Also, for people in other parts of the country—where the vast majority of the population lives—delays in dealing with the denial of basic rights due to institutional failures have caused tremendous insecurity. The following comments reveal the basic institutional failures that need to be addressed if Sri Lanka is to comply with its obligations under the ICCPR.

I. Article 2 of the ICCPR: Effective implementation

Under article 2 of the ICCPR, state parties are under an obligation to make legislative, judicial and administrative measures to see to the implementation of the ICCPR. This obligation is a very practical one. It means that institutions must be created and provided with resources for implementation of the rights enshrined in the ICCPR.

1. Policing system

One of the basic institutions necessary for carrying out the obligations under the ICCPR by the state party is a proper policing system. Where the policing system is fundamentally flawed, none of the rights in the ICCPR can be realised. In Sri Lanka the policing system is seriously flawed. The reasons for this have been acknowledged by government-appointed commissions themselves, such as the Justice Soertsz Commission of 1946, Basnayaka Commission of 1970, Jayalath Committee of 1995, and Commissions of Inquiry into Involuntary Removal and Disappearance of (Certain) Persons (Commissions on Disappearances), appointed in 1994, final reports made in 2001. Many other official documents have also acknowledged the serious defects of the policing system. The creation of the National Police Commission (NPC) under the 17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka (the Constitution) was in order to depoliticise the police force. The newly appointed NPC has on several occasions pointed to problems in the police force. The defects of the system identified by these commissions are as follows:

a. Militarization of the police system, by its use for riot control purposes, and later for control of civil conflict. For over 30 years, since the early 1970's, Sri Lanka has gone through a period of violence which has transformed the Sri Lankan police force from a crime detection and law enforcement agency to an insurgency suppression mechanism. As shown in the reports published by the Commissions on Disappearances, police stations have functioned as detention centres, torture chambers, and places where many thousands of persons disappeared. The police stations throughout the country have been used for these purposes. A profound transformation of the system took place as a result. The extreme forms of torture used against suspected insurgents became habit within police stations, and extreme forms of torture are now being used on persons suspected of petty theft, or even those arrested because of mistaken identity. Some examples may illustrate the existing situation. The Supreme Court has found that officers of Wattala Police Station tortured a person named Waragodamudalige Gerald Mervyn Perera (Supreme Court Fundamental Rights Application SCFR 328/2002), arrested because of mistaken identity, to such an extent that within a few hours he suffered renal failure and had to be on a life support system for two weeks. Furthermore, there was serious damage to his arms due to hanging from the ceiling of the police station. In the case of a 17-year-old boy named B G Chamila Bandara Jayaratne (AHRC UA-35-2003, and Supreme Court Fundamental Rights Application No. SCFR 484/2003), he was tortured between 20 and 28 July 2003 by officers attached to the Ankumbura Police, by hanging him by his thumbs. Doctors later declared that he had lost the use of his left arm completely and it cannot be cured. The method of torture used was described in an affidavit signed by the young victim thus:

Then my hands were swung behind my back and my thumbs tied together with a cord, and then they put a fibre cord between my thumbs and hung me from a beam on the ceiling. One officer pulled the fibre cord so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numb. Then the OIC [Officer in Charge] kept hitting me on my legs and soles with the wicket stumps used for cricket.

Similar forms of torture were also used in the case of Galappathy Guruge Gresha de Silva (32) (*article 2*, vol. 1, no. 4, August 2002, p. 24), who also lost use of both his arms due to such torture. Reports are received from all over the country of similar types of torture, which clearly show that the habits formed in the past in dealing with insurgents are now being commonly and routinely used at police stations. Thus, a central issue in relation to article 2 of the ICCPR is how to stop such methods and create a police force committed to the rule of law. When the police force itself is seen to be blatantly breaking the law, it is not possible for the State Party to implement its obligations under the ICCPR.

Yet another result of the long period of civil conflict relates to the keeping of information books and other records at police stations. The extent of tampering with official books came under criticism by the Supreme Court in the case of Kemasiri Kumara Caldera:

I may add that the manner in which the GCIBs [Grave Crimes Information Books], RIBs [Register/Investigation Books] etc. have been altered with impunity and utter disregard of the law makes one wonder whether the supervising ASPs [Assistant Superintendents of Police] and SPs [Superintendents of Police] are derelict in the discharge of their duties or in the alternative condone such acts. In a case in which I pronounced judgment a few days ago too, I found that the GCIB had been altered, and therefore it appears that, that was not an isolated instance. Thus, the police force appears to be full of such errant officers. The question is what is the 5th Respondent Inspector General of Police doing about it? In my view, it is unsafe for a Court to accept a certified copy of any statement or notes recorded by the police without comparing it with the original. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law, We may ask with Juvenal, *quis custodiet ipsos custodiet?* Who is to guard the guards themselves?

[Justice Edussuriya with two other Supreme Court judges agreeing in the case of Kemasiri Kumara Caldera (SCFR Application No. 343/99)]

Furthermore, it was widely publicised by the media in July 2003 that at the Negombo Police Station two information books were kept, one containing original statements, and another containing manipulated records created by some police officers. The latter was often produced for official purposes, and thus the actual contents were falsified.

Politicization of the police

b. The politicization of the police was the acknowledged reason for bringing about the 17th Amendment to the Constitution. The politicization of the police disrupts the commanding structure within the police force. The very meaning of politicization of the police is that the politicians have begun to play a commanding role within the police force through their interference. This means that the normal principles of an organization driven by a unified command system have been seriously disrupted. The NPC has on many occasions declared that it would stop this process and that the police force would be brought within an internal command system ('No more political interference with police transfers, NPC Chief', by Jayampathy Jayasinghe, *Daily News*, 31 March 2003). This objective needs to be achieved if the obligations under the ICCPR are to be respected and observed by the State Parties.

Lost competence in criminal investigations

c. Loss of competence in criminal investigations results in fabrication of cases against innocent persons, as substitutes for the real culprits. A study done by ALRC (*article 2*, vol. 1, no. 4, August 2002) on custodial deaths and torture in police stations during recent years clearly established a pattern of implicating innocent persons in serious crimes as a substitute for the actual criminals, whom the police have failed to detect. Often when many uninvestigated crimes are piled up at a police station,

innocent persons are arrested and forced to confess to crimes that they know nothing about. Often unresolved crimes lead to strong public protest. On the other hand, when charges are filed against someone it appears as if a crime has been resolved, and this may even lead to promotions.

- In the well-known case of a murder of a 76-year-old Catholic priest named Fr Aba Costa on 10 May 2001, Kurukulasuriya Pradeep Niranjana (30) and another male named Gamini were arrested by the police within three days and allegedly severely assaulted. Thereafter, they were charged with the murder and kept in remand for a long time. After almost two years the Attorney General withdrew the charges against the accused on 21 February 2003, as the actual criminals had reportedly been found. It has also been revealed that some senior police officers in the area were involved in the crime. (Television programme “Thumbprints”, broadcast by Rupavahini, a national television station in Sri Lanka.)
- Waragodamudalige Gerald Mervyn Perera (39) (Supreme Court Fundamental Rights Application SCFR 328/2002) was arrested and tortured on 3 June 2002 by officers attached to the Wattala Police Station and implicated in a triple murder case that the Supreme Court held was a case of mistaken identity.
- Mulakandage Lasantha Jagath Kumara (23) (Supreme Court Fundamental Rights Application SCFR 471/2000) was tortured between 12 and 17 June 2000 by officers attached to the Payagala Police Station. Due to injuries suffered at the police station the victim later died on 20 June 2000. On 8 August 2003 the Supreme Court held that the police had tortured the victim. The arrest and detention at the police station was for the purpose of making the victim responsible for several unresolved crimes.
- Lalith Rajapakse (17) (AHRC UA-19-2002) was severely beaten on 19 and 20 April 2002 by officers attached to the Kandana Police Station to the extent of causing him to lose consciousness for about three weeks. He was implicated in two petty theft cases without even any complaint against him by anyone, and without any evidence.
- Galappathy Guruge Gresha de Silva (32) (AHRC UA-20-2002) was arrested and tortured on 22 March 2002 by officers attached to the Habaraduwa Police Station with a view to implicate him in a murder case.
- Bandula Rajapakse, R. P. Sampath Rasika Kumara, Ranaweera and Chaminda Dissanayake (*article 2*, vol. 1, no. 4, August 2002, p. 24) were arrested and tortured on 19 and 20 February 2002 by officers attached to the Ja-ela Police Station. They were made scapegoats in an inquiry into the loss of 46 reels of cloth from a company store without police having any evidence against them.
- Ehalagoda Gedara Thennakoon Banda (36) (AHRC UA-25-2002)

was arrested and tortured on 12 June 2002 by officers attached to the Wilgamuwa Police Station and later released without any case. This was an attempt to implicate him in some illicit liquor charges, without any evidence.

- Eric Antunia Kramer (AHRC UA-36-2002) was arrested and tortured on 28 and 29 May 2002 by officers attached to the Mutwal Police Station, again in an attempt to implicate him for a robbery at the company where he worked without any evidence against him. He was not charged with any offence later.
- Ten-year-old T K Hiran Rasika and 12-year-old E A Kusum Madusanka (AHRC UA-30-2002) were arrested and tortured on the 8 July 2002 by officers attached to the Hiniduma Police Station. This was a case of trying to implicate these children regarding a petty theft in a school canteen, without having any evidence to support such a claim.
- V G G Chaminda Premalal (AHRC UA-31-2002), a 16-year-old student, was arrested and tortured on 9 and 10 July 2002 by officers attached to the Aralaganvila Police Station, again being an attempt to implicate him on a petty theft case without any evidence.

The following cases were also attempts to fish for evidence of undetected crimes by torturing persons against whom there were no grounds for suspicion:

- Subasinghe Aarachchige Nihal Subasinghe (40) (AHRC UA-01-2003), tortured by officers attached to the Keselwatte Police Station, Panadura;
- Korala Gamage Sujith Dharmasiri (23) (AHRC UA-02-2003), tortured between 1 and 8 January 2003 by officers attached to the Kaluthara South Police Station;
- Anuruddha Kusum Kumara (15) (AHRC UA-01-2003), tortured on 29 December 2002 by officers attached to the Wellawa Police Station, Kurunegala District;
- Bambarenda Gamage Suraj Prasanna (17) (AHRC UA-05-2003), tortured on 8 January 2003 by officers attached to the Matugama Police Station;
- K T Kumarasinghe alias Sunil (33) (AHRC UA-05a-2003), tortured from 1 to 4 April 2003 by officers attached to the Galagedara Police Station;
- Hetti Kankanamge Chandana Jagath Kumar (23) and Ajith Shantha Kumana Peli (32) (AHRC UA-13-2003), tortured on 13 May 2003 by officers attached to Biyagama Police Station;
- B G Chamila Bandara Jayaratne (17) (AHRC UA-35-2003), tortured from 20 to 28 July 2003 by police at Ankumbura Police Station;
- Bandula Padmakumara (14) and Saman Kumara (17) (AHRC UA-41-2003), tortured between 20 and 28 July 2003 by officers

attached to the Ankumbura Police Station;

- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003), tortured between 26 and 28 August 2003 by officers attached to the Wattedgama Police Station;
- Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003), tortured by officers attached to the Kadawata Police Station (though the police have claimed this was a suicide inside the police station, the mother of the victim has openly challenged the post mortem inquiry and has buried her son's body in the home garden with a view to getting an impartial inquiry and to prevent the body being stolen by the police);
- Padukkage Nishantha Thushara Perera (23) (AHRC UA-45-2003), tortured between 7 and 10 September 2003 by officers attached to the Divulapitiya Police Station;
- Mohamed Ameer Mohamed Riswan (23), Suppaiya Ravichandran (23) and Abdul Karim Mohamed Roshan Latief (30), tortured between 30 August and 6 September 2003 by officers attached to the Wattala Police Station and Peliyagoda Police Regional Headquarters; and,
- Dawundage Pushpakumara (14), tortured on 1 September 2003 by officers of the Saliyawewa Police Post, attached to the Putlam Police Station.

d. Torture of children, with regards to which, see the above section for details of cases.

e. Extrajudicial killings and custodial deaths, as follows:

- T A Premachandra (46) (AHRC UA-07-2003), shot and killed on 1 February 2003 by officers attached to the Kalutara South Police Station;
- Yoga Clement Benjamin (47) (AHRC UA-12-2003), shot and killed on 27 February 2003 by officers attached to the Kalutara South Police Station;
- Sunil Hemachandra (28) (AHRC UA-34-2003) tortured to death on the 26 June 2003 by officers attached to the Moragahahena Police Station;
- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003), tortured to death between 26 and 28 August 2003 by officers attached to the Wattedgama Police Station;
- Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003), tortured to death by officers attached to the Kadawata Police Station; and,
- Okanda Hevage Jinadasa (50) (AHRC UA-48-2003), who was assaulted and died of injuries inflicted by officers attached to the Okkampitiya Police Post in Moneragala District, on 5 September 2003.

Torture of children

Extrajudicial killings and custodial deaths

No disciplinary procedure

f. The loss of the disciplinary process of the police has led the Supreme Court of Sri Lanka to make the following observations:

The number of credible complaints of torture and cruel, inhuman and degrading treatment whilst in Police custody shows no decline. The duty imposed by Article 4(d) [of the Constitution] to respect, secure and advance fundamental rights, including freedom from torture, extends to all organs of government, and the Head of the Police can claim no exemption. At least, he may make arrangements for surprise visits by specially appointed Police officers, and/or officers and representatives of the [National] Human Rights Commission, and/or local community leaders who would be authorized to interview and to report on the treatment and conditions of detention of persons in custody. A prolonged failure to give effective directions designed to prevent violations of Article 11, and to ensure the proper investigation of those which nevertheless take place followed by disciplinary or criminal proceedings, may well justify the inference of acquiescence and condemnation (if not also of approval and authorization).

[Justice Mark Fernando, with other two judges agreeing, in Gerald Mervin Perera's case, SCFR 328/2002]

In a statement issued by the NHRC (National Human Rights Commission) of Sri Lanka on 4 September 2003, an agreement arrived at by the NHRC with the IGP (Inspector General of Police) mentioned the following item:

The NHRC agreed to draft guidelines together with the NPC and the IGP (Inspector General of Police) for the interdiction of officers who are found to have violated fundamental rights by the Supreme Court [translated from Sinhala].

Meanwhile the NPC is also engaged in drafting a public complaint procedure under Article 155G(2) of the Constitution to entertain, investigate and redress complaints against police. However, while these measures are pending, at the moment no procedure is operative to take disciplinary action against the police. In the absence of a proper and impartial disciplinary process, investigations against the police are left in the hands of other police officers. Usually, a higher-ranking police officer such as Assistant Superintendent of Police (ASP), Superintendent of Police (SP) or Deputy Inspector General of Police (DIG) is assigned to investigate such complaints. It is quite well known that these officers try to work out some compromise rather than properly investigate a complaint. Often complainants are even threatened to withdraw complaints. Knowing that internal procedures for complaints against the police are ineffective, officers feel quite safe to commit violations. A circular issued by the IGP in September 2003 states that higher officers such as Officers in Charge (OICs) of police, ASPs and others will be held liable for custodial deaths and torture taking place at police stations. However, there is no procedure at the moment to hold such officers liable.

2. Judicial administration:

The lack of a public prosecutor's department

Another institution that needs reorganisation if there is to be any change in the practices ensuring impunity, is the Attorney General's (AG's) Department. The most important step would be to separate the public prosecution function from the AG's Department and create a public prosecutor's office. Numerous bodies have recommended this in the past, including the Justice Soertsz Commission (1946), Basnayake Commission (1970) and Jayalath Committee (1995). In 1973 the position was created with the introduction of Administration of Justice Act, but abolished after 1977. If the inherent inefficiency in the present set up is to be negated, a separate department for the public prosecutor needs to be created wherein prosecuting functions could be more thoroughly specialized and pursued. If the existing obstacle for proper prosecution were changed it would remove one of the major impediments to the rule of law in Sri Lanka. Without the development of an independent public prosecutor's department it is quite unlikely that a suitable prosecution for dealing with serious crimes can be instituted. This is particularly so in relation to crimes where the alleged perpetrators are police and other state officers. The AG's Department presently has a close connection with investigating police officers in crimes that are being prosecuted, as the Department depends entirely on the police for investigations. Thus, close cooperation between investigators and the prosecutors is inevitable. Some of these very same police officers or their colleagues are often accused of torture, custodial deaths and the like. Naturally, in such circumstances, conflicts of interest—or public perception of conflicts of interest—arise.

Some units have been created under the AG's Department for the prosecution of state officers, for example, the Disappearances Investigation Unit (DIU), established in November 1997, and the Prosecution of Torture Perpetrators Unit (PTPU), established more recently. (These units function under the direction of the AG's Department. While they may be free to investigate when direction is given to do so, they do not have the power to initiate investigations independently, on receipt of reliable complaints. Further prosecution into matters entirely depends on the discretion of the AG's Department). However, these units suffer from the same general defect as the Attorney General's Department. For example, though the Presidential Commissions recommended prosecution of a large number of persons, only a handful of cases were filed and some of them were even lost due to the defects of prosecution. Due to much delay in prosecution, such as a 12-year delay before vital witnesses make their statements in court, the prosecution has been abandoned. (ALRC Written Statement to the United Nations Commission on Human Rights, "Enforced or involuntary disappearances in Sri Lanka", E/CN.4/2003/NGO/88). Even in torture cases where complaints are made immediately after the incident, often the investigations begin quite some time later, thereby creating doubts about the

credibility of evidence and identification. The general impression is that such investigations and prosecutions are delayed or otherwise hampered by the unwillingness of the state to prosecute state agents. That investigations by such units are often conducted only due to pressure, particularly from the international community, is also a common criticism.

3. Legal provisions for curbing bribery and corruption

Studies by Transparency International (Sri Lanka) have exposed many defects relating to the Commission to Investigate Allegations of Bribery and Corruption (the Bribery Commission). The following observations are relevant in this regard:

**Investigating officers
of the Bribery
Commission drawn
from the police**

a. The investigating officers of the Bribery Commission have to be drawn from the Police Department itself. This raises doubts about the credibility of the Bribery Commission, particularly its capacity to investigate bribery and corruption within the police force, and among politicians who patronize the police. The Bribery Commission does not have the capacity to recruit personnel on its own. The study of successful models, such as the Independent Commission Against Corruption (ICAC) of Hong Kong Special Administration Region of the People's Republic of China, clearly shows that one of the most important elements for a successful monitoring institution is that it is completely independent of the police. Particularly in its early years establishing effective control over corruption, the ICAC concentrated on creating accountability within the police force. Given the historical circumstances of policing in Sri Lanka, as described above, it is counterproductive to have police officers work as investigators in the Bribery Commission. The 2001 annual report of the Bribery Commission, which was issued very recently, showed that for that year there had not been any successful prosecutions for corruption or bribery.

**Bribery Commission
lacks financial
independence**

b. The Bribery Commission also lacks financial independence. The Bribery Commission has to depend upon the Treasury for its funds and thus the executive subjects it to indirect control. There are no mechanisms to guarantee its independence by way of receiving necessary funds without executive control. A properly functioning corruption control agency needs adequate funding for investigations, prosecutions and education. In dealing with fraud and corruption, it needs modern technology and forensic facilities. In fact, given the limited funding available to the Bribery Commission, it can be said that it is not equipped to deal with bribery and corruption in the country except by way of some symbolic investigations and prosecutions. The Bribery Commission has not convinced the country that it can carry out its mandate.

**Bribery Commission
malfunctioning
due to obsolete
legal provisions**

c. Due to some obsolete legal provisions, the Bribery Commission has not been able to function when a vacancy for a commissioner is not filled. As a result, the Bribery Commission was not functioning for a considerable time pending appointment of a new commissioner.

d. The proper functioning of a corruption control agency requires different talents for different functions such as investigations, prosecutions, public education, public relations and management. The limited structure that exists under the present law does not fulfil these requirements.

**Proper functioning
corruption control
agency requires
range of talents**

e. The public perception is that there is no real political will to establish a genuinely powerful corruption-control agency in the country. The existing structure allows only for a symbolic institution without the real capacity and resources to control corruption to any significant degree.

**Public perception
that no political will
exists to control
corruption**

The implementation of article 2 of the ICCPR is seriously hampered by the defects in the three institutions described above. One result has been the State Party's failure to implement many of the recommendations made by United Nations bodies in the past.

II. Article 6 of the ICCPR: Right to life, and disappearances

Article 6 of the ICCPR guarantees the inherent right to life of every human being: the law shall protect this right, and no one shall be arbitrarily deprived of his or her life. In contravention of this right there have been large-scale enforced or involuntary disappearances in Sri Lanka. According to recent NHRC publications, enforced and involuntary disappearances since 1995 have amounted to around 20,000 persons. This number includes some government soldiers too. However, the largest number was among Tamil youth.

As for the South, Presidential Commissions have disclosed how disappearances often began with arrests by state officers, went on to torture, and eventually the killing and dumping of bodies. The sheer number of people killed like this in Sri Lanka exceeds the number of deaths being dealt with by some of the international tribunals now in operation in other parts of the world. That Sri Lanka today has a staggering number of enforced or involuntary disappearances is now a matter of public record. The report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances ("the Working Group") (E/CN.4/2000/64/Add.1) states that

Three regional Presidential Commissions of Inquiry into Involuntary Removal of Persons set up in 1994 submitted their reports to the President of the Republic on the 3 September 1997. The Commissions investigated a total of 27,526 complaints and found evidence of disappearances in 16,742 cases. A further 10,135 complaints submitted to the Commissions by relatives and witnesses remained to be investigated by the present (fourth) Presidential Commission of Inquiry.

The Government of Sri Lanka has failed to implement most of the recommendations made by the Working Group in its December 1999 report (E/CN.4/2000/64/Add.1).

The Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) (Sessional Paper No. I - 2001) dated March 2001 stated that it had been given 10,136 complaints to investigate that with regards to which “no investigations [had] commenced” by earlier Commissions. The Final Report also stated that at least a further 16,305 cases had been brought to the Commission’s attention that it was not empowered to investigate (Ch. VII, p. 45), making the number of disappearances in Sri Lanka one of the largest in any country in modern times.

Yet while this gross violation of human rights has been assessed, to date no measures have been proposed to adequately deal with it, neither by international nor domestic agencies. The lack of genuine initiatives by the authorities to prosecute the perpetrators of enforced and involuntary disappearances has demoralised the families and loved ones of the victims. Such reluctance to act according to law and punish the perpetrators has also reinforced the general loss of faith in the rule of law and law enforcement agencies in Sri Lanka, especially the AG’s Department, which acts as the chief prosecuting authority. Meanwhile, as the Government of Sri Lanka has ignored most recommendations coming from the Working Group and also all of the domestic Commissions of Inquiry—which even named some of the persons to be investigated further and prosecuted—disappearances have continued; the NHRC is investigating new cases.

The number of cases the AG’s Department claims to have filed against the perpetrators of this crime against humanity has fallen short of the cases of persons named to have sufficient evidence against them for prosecution by the Commissions of Inquiry. In fact, the Working Group itself has stated that its recommendations have not been implemented. The performance of the AG’s Department in this matter is a serious disappointment to the family members of the disappeared and local and international human rights organisations. The fact that it has been about 10 years since these horrendous crimes occurred and yet there has been no significant success in prosecution speaks for the inability and unwillingness of the AG’s Department to deal effectively and efficiently with the issue. The only reason for not taking action seems to be political: specifically, unwillingness to deal with senior police, military and political figures responsible for causing these disappearances. Thus, though there is a special unit for prosecution of offenders relating to disappearances, it has no liberty to take the action requested by the Commissions of Inquiry.

There are no excuses for committing crimes against humanity. Sooner or later these crimes need to be dealt with, delivering justice according to internationally established norms and standards. It should also be noted that the present crisis in law enforcement agencies such as the police is a direct result of the era when mass disappearances were carried out. It is

common knowledge that many law enforcement officers and politicians who carried out these crimes remain at large. This situation makes ordinary folk lose faith in the justice system.

III. Article 7 of the ICCPR: Freedom from torture

1. General situation

In August 2002, ALRC published the 'Special report on torture committed by the police in Sri Lanka' (*article 2*, vol. 1, no. 4), concentrating on cases of torture arising out of criminal investigations. The Special Rapporteur on torture, Mr Theo van Boven has also dealt at length with complaints of torture in Sri Lanka in the supplement to his latest report (E/CN.4/2003/68/Add.1, Paras. 1486-1695).

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (No. 22 of 1994) was enacted in Sri Lanka under international pressure. However, despite numerous complaints by victims of torture, no effective action has been taken. It is true that the PTPU was established under the AG's Department and that a few cases (the exact number is not known as the AG's Department has not published a list) have been filed by the PTPU. However, to date, there has not been a single trial or conviction. The usual process has been that once a case is filed, it is reported to international bodies, including the United Nations. Thereafter, the matter remains pending. In principle, these cases should be prosecuted only by the High Court. However, sometimes cases are filed in the Magistrates Courts and kept pending. Proper implementation of Act No.22 of 1994 is in the hands of the AG and his Department. Therefore, failures in prosecution must be attributed to this department. It is believed that there have been no cases successfully prosecuted under this Act, despite the government stating that there have been 10 convictions in paragraph 174 of its State Report. The government should be asked to list those convictions. Furthermore, the government should be asked of what offences the accused were convicted, give details of cases and sentences, and explain why this information is not known to the human rights organisations that have been following such cases closely.

Children who have suffered violence have to make complaints in the same way as adults, at police stations. Counseling, assistance with recovery, and reintegration are largely absent, and children who make complaints face serious difficulties at police stations and schools. Nevertheless, today more and more parents and children do make complaints.

2. Types of torture

The types of torture taking place in Sri Lanka include the following:

- Sitting on the spine or beating the spine, thereby dislocating disks in the spine, resulting in full or partial paralysis;
- Hitting on the head, or sometimes keeping books on the head and hitting with a pole, causing fractures and brain injuries;
- Tying the hands behind the back, tying the thumbs together, pulling a cord through the thumbs and hanging the person from the ceiling, causing temporary or permanent loss of use of the arms;
- Tying the hands and legs and putting a pole through the legs in a way that a person can be rolled round, while beating on the head and soles of the feet;
- Beating while hanging, causing renal failure and other serious injuries;
- Hitting on the genitals;
- Inserting genitals into drawers and slamming them closed;
- Pumping high-pressure water through fire hose pipes onto the genitals;
- Inserting PVC pipes and other objects like glass bottles into the vagina;
- Beating on the ear, causing full or partial hearing loss;
- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles of the feet with a post;
- Forcing the fingers into glass bottles, making it very difficult to remove them;
- Threatening to kill;
- Threatening to rape; and,
- Threatening to implant drugs and file cases in courts for possession of drugs, which carry high penalties.

Judging by documentation of torture cases filed, and from the Supreme Court judgements on non-criminal torture cases, these forms of torture usually take place at police stations.

3. Threats to those who make complaints

Persons who make complaints against torture come under severe threat from the perpetrators. This happens in almost all cases. In the case of Lalith Rajapakse, after his initial complaint, there was a plot to poison him. He had to make complaints to the NHRC and other authorities. The Asian Human Rights Commission (AHRC) intervened by writing letters and appeals to save the grandfather's and victim's lives. The victim had to live in hiding for about 5 months. Even now he has to be kept protected. In the case of Gerald Perera, he and his fellow workman received death threats. In the case of Dawundage Pushpakumara, attempts were made by the officers of Saliyawewa Police Post to

prevent the child from getting medical treatment. Only through the intervention of the National Child Protection Authority was the child taken to Colombo to get treatment. After that the police officers and a prominent politician threatened to burn down the house of the family if the complaints to NHRC, NPC and other authorities were not withdrawn. In the case of Chamila Bandara, his family was constantly threatened by the OIC of the Ankumbura Police. The victim is now hiding. In fact, such situations arise in almost all cases after complaints have been made. One of the reasons for this is that despite the complaints, police officers, particularly OICs, remain at their posts. OICs have enormous power in their localities. Some remain in their police stations even after the Supreme Court has found them guilty of having tortured a person. For example, the officer in charge of Wattala Police Station was found to have violated the fundamental rights of Gerald Perera, but he is still OIC of the same station. All other OICs named in the above cases are also still there. The Committee is urged to take this matter up with the Government of Sri Lanka and ensure protection for those who make complaints against the police.

4. Compensation

There have been a few (non-criminal) cases in the Supreme Court that show some effort to give compensation equivalent to the seriousness of the crime of torture. In such cases, the quantum of compensation has improved. However, in the majority of cases, compensation granted does not reflect the gravity attached to the violation of rights guaranteed under article 7 of the ICCPR. Most awards are of between US\$100 and US\$500. In some cases, despite the fact that the victim has died after the assault, the quantum awarded has been around US\$250 (for example the case of Josephine Mary Kanmany, on behalf of Anthonypille Jesudasen, SCFR 807/1999). Act No. 22 of 1994 states that the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is part of the law in Sri Lanka. However, the Supreme Court has not yet reflected this in its judgments on violations of article 11 of the Constitution, which is the same as article 7 of the ICCPR.

Furthermore, the trauma associated with torture has not yet been given much attention by the state. Facilities for treatment of trauma and adequate rehabilitation are practically non-existent.

5. Assessing the main causes of police torture

As mentioned above, the major cause for the use of torture by the police today is the breakdown of the policing system from the early 1970s up to about 2002. As a result, the following things have happened:

- a. The police command structure has broken down. The higher authorities in the police are perceived as inefficient or corrupt.
- b. OICs, the real authorities within police stations, are incompetent, inefficient and are often accused of being corrupt.
- c. There is a lack of training in proper methods of criminal investigation and a lack of forensic facilities. In such circumstances, torture is perceived not only as a legitimate means with which to investigate, but also as necessary.
- d. Facing an increase in crime and more public pressure to deal with crimes, and having no real capacity to do so, often police engage in torture to create substitutes for actual criminals and answer public criticism. As a result, many innocent people get severely tortured and killed.
- e. A recent survey by Transparency International pointed out that the public perceives the police to be the most corrupt institution within the country. It is well known that police will torture someone at the request of an opponent.
- f. Disciplinary procedure has been almost completely lost. The only punishment resorted to is transfer when there is public criticism. Dismissal for misconduct hardly ever takes place.
- g. There is no proper and impartial public complaint mechanism. Complaints against the police are usually referred to higher police officers for investigations. It is quite well known that these officers try to work out some compromise, rather than properly investigate a complaint. Often complainants are threatened. As a result the police officers know that no serious threat will come to them due to complaints. Psychologically, the officers develop an attitude of having complete impunity. The NHRC, which could have dealt with the complaints against torture in the past, had up to recently failed to adopt a serious approach to deal with torture. It has not had a system for preliminary investigations. Its agents' concern has been to settle cases, and they have exerted pressure on victims to accept settlements for such small sums as US\$10. In August 2003 the NHRC chairperson stated that she has instructed her staff to stop making settlements and to seriously investigate torture cases. Another move underway is the implementation of constitutional provisions requiring the NPC to establish a public complaint procedure to entertain, investigate and redress complaints against the police. AHRC has submitted a draft for such a procedure to the NPC, which is under consideration.

6. Delays in decision-making in fundamental rights applications, and prosecutions under Act No. 22 of 1994

Though article 126 of the Constitution was to provide an expeditious remedy for violations of fundamental rights, the actual time taken for final determination is still too long. Though an application has to be filed within a month of the violation, the final determination usually takes two or more years. Victims of

brutal torture at the hands of police officers and other state agents are thus required to wait too long before the final determination of their cases. Meanwhile, the alleged perpetrators continue to hold office. Torture victims in almost all cases come under heavy pressure to give up or settle cases. They also live in great fear of reprisals for having filed such cases against the police. Thus, any delay in hearing such complaints helps to perpetuate the violations.

The filing of criminal cases under Act No. 22 of 1994 takes even longer. Of the 59 cases submitted by Police Special Investigation Teams to the AG's Department in 2002, only 10 cases have been filed in courts; the rest of the files are with the AG's Department (*Lakbima*, 11 September 2003). This is despite claims by the AG's Department that it is prosecuting offenders under the Act. Despite the many claims filed during earlier years and as stated above, to date there are no known successful prosecutions under the Act.

7. Negative role of the AG's Department in compensating torture

As a matter of principle the AG's Department does not appear for respondents in fundamental rights applications under article 126. Though this is positive, representatives of the AG's Department at the end may urge the court to reduce the amount of compensation granted. This does not conform to principles of international law on compensation. Even in cases where the AG's Department admits violations of rights, as for example in the case of torture, illegal arrest and imprisonment of Kurukulasuriya Pradeep Niranjana, remanded for 21 months after being falsely charged, the AG takes no steps to compensate the victim.

8. Complaints of negligence at post mortem and other inquiries by state medical officers

In many cases of torture it has been revealed that there are serious doubts about the professionalism of some of the District Medical Officers (DMOs) and Judicial Medical Officers (JMOs).

In the case of M K Lasantha Jagath Kumara, who was produced before a DMO the day before his death, the DMO did not examine him properly or prescribe immediate medical attention.

In the case of Sunil Hemachandra, who died due to injuries suffered from torture in police custody, several eyewitnesses saw him being severely beaten by the police. However, the medical report left out the possibility of injuries due to assault and speculated on the possibility of a fall due to fits caused by an illness. He was 32 years of age and had no history of epilepsy or any serious illness. His family specifically denies that he ever had any fits at all, and strongly believes that the medical examination was not carried out professionally.

In the case of Garlin Kankanamge Sanjeewa, whom the police allege committed suicide inside the police station, his family has seriously doubted the verdict of the medical officer and even kept the dead body buried in the family garden with the hope of getting an impartial medical inquiry. The family alleges that even the sketch of the body as it was found was fabricated. Furthermore, observers have challenged the possibility of an adult male being able to hang himself with the belt that the police allege he used. Further evidence points to there being two other persons inside the same police cell at the time of alleged hanging, but they having seen nothing at all has also increased suspicion.

In the case of B G Chamila Bandara Jayaratne, the Kandy Hospital did not even produce him before a JMO for examination, despite having recorded the allegation of torture by the police. He was discharged without any treatment and it was only possible for him to get treatment after he had been readmitted to Peradeniya Teaching Hospital, where after examination doctors declared that he had permanently lost the use of his left arm.

Many such complaints about failures by DMOs and JMOs are being received by human rights organisations. However, there are still a number of state medical officers who carry out their duties with great care and professionalism.

IV. Administration of justice

1. Ratification of international treaties

Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) on 2 February 1994. Sri Lanka has neither signed nor ratified the Rome Statutes.

2. Legal definition of torture

Several provisions in Act No. 22 of 1994 do not fully comply with the CAT. The following observations by Amnesty International are relevant:

The Torture Act passed by Sri Lanka's parliament in November 1994 and certified on 20 December 1994 makes torture punishable by imprisonment for a term not less than seven years and not exceeding ten years and a fine. Regrettably, however, several provisions in the UN Convention against Torture were not fully implemented in the Torture Act which uses a more restrictive definition of "torture" than that contained in the UN Convention against Torture.

As stated above, the UN Convention against Torture defines "torture" as "any act by which severe pain or suffering ... is intentionally inflicted on a person for such purposes as..." (emphasis added). In subsection (1) of Article 2 of the Torture Act, however, the causing of "suffering" is not explicitly made part of the definition of "torture", and the purposes for which torture is inflicted are listed in an exclusive (rather than inclusive) way by use of the wording "for any of the following purpose[s]". Thus, torture for other purposes, such as sadism alone, are not defined as a crime under this Act.

In addition, subsection (3) of Article 2 of the Torture Act stipulates that “the subjection 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 the Act. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences (see also below).

Article 3 of the UN Convention against Torture, which provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, has not been given effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in another country cannot invoke this provision to contest their return to that country. The failure to include this prohibition in the Act is a matter of deep concern because Article 3 of the UN Convention against Torture, in contrast to the UN Convention relating to the Status of Refugees, applies to all persons and not only to asylum seekers. “The Committee against Torture in May 1998 recommended a review of the Torture Act in respect of each of the above three concerns. “Prior to the coming into force of the Torture Act, perpetrators of torture could be prosecuted under Sections 310 to 329 of the Penal Code which define the offence of causing hurt and an aggravated form of causing hurt, referred to as “grievous hurt” in order to try and extract information or a confession which may lead to the detection of an offence or to compel the restoration of property or satisfaction of a claim. Such an offence of grievous hurt is punishable by imprisonment for up to ten years and a fine (no minimum punishment is stipulated).

[SRI LANKA: *Torture in Custody*, by Amnesty International, AI INDEX: ASA 37/010/1999, 1 June 1999]

In many of the cases cited in this report, the type of injuries suffered by the victims would have qualified as cases to be prosecuted under provisions for “grievous hurt” or even “attempted murder”, where the prescribed punishment is greater than under Act No. 22 of 1994.

In fact despite criticisms by the Committee against Torture and international human rights organisations, no attempt has been made to bring Sri Lanka’s anti-torture legislation into conformity with the CAT. In fact, there is no such draft law before the Law Commission in Sri Lanka.

3. National institutions (the National Human Rights Commission)

Though the NHRC has been in existence for over 10 years, it has not been able to win the confidence of the people in its capacity to promote and protect human rights. AHRC and ALRC have in the past made a series of recommendations in this regard.

The NHRC opened many branches in different parts of the country. This was a welcome move and it created a lot of expectations. However, experience with these offices has so far not been encouraging, and in some instances very negative. For

example, NGOs have complained about the regional coordinator of the Kandy office, for close collaboration with the police. People against Torture and Janasansaya have made this complaint. They have also complained that the officer has given a press interview trying to discourage people from making complaints to NGOs on human rights violations. Despite the complaints, this officer continues to be the coordinator of the Kandy office. Proper reorganisation of the regional offices and appointment of competent persons committed to human rights can improve the human rights situation in different parts of the country. Further, complaints against officers must be properly investigated.

V. Article 14 of the ICCPR: Right to a fair trial

Fair trial guarantees have frequently been severely curtailed since 1971. The consistent use of emergency regulations and anti-terrorism laws has significantly limited the importance of the courts and diminished the value of lawyers as defenders. As a result, the scope of fair trial guarantees has been diminished. Added to this, law enforcement agencies acquired so much power that the legal profession often had to adjust to a situation of fear, or a situation in which the possibility of exercising their rights as lawyers was denied. A resigned mentality has now developed in response. Confessions have been allowed in the courts irrespective of how they have been obtained. Much-valued due process rights seem no longer to be important.

The very system of protection that is the basis of the ICCPR is endangered by such developments. This threat must be faced seriously. The proposed Prevention of Organized Crimes Bill is an example of how even the law can be changed to legitimize growing restrictions of basic guarantees to fair trial. Some conservatives have even suggested replacing criminal trials with arbitration. With increasing pressure to prosecute violators of human rights there is much more pressure from some quarters, such as powerful politicians and higher up policemen, to reduce the possibilities of fair trial in favour of such arbitration. Thus it is the very heart of the ICCPR's principles that is now being threatened.

Special Cases

1. Case of Michael Anthony Emmanuel Fernando

The former UN Special Rapporteur on the independence of judges and lawyers has characterised this case as an "act of injustice done by the Supreme Court of Sri Lanka". On 6 April 2003, a layman and a human rights defender, Michael Anthony Emmanuel Fernando (Tony) was sentenced to one-year's imprisonment by the Chief Justice of the Supreme Court of Sri Lanka and two other judges for alleged contempt of court, without holding any inquiry into the matter. Tony is alleged to have disturbed the court. Tony, in fact, insisted on being heard before his case was dismissed. Besides, Tony had made a written application that the Chief Justice should not hear his case. Later

a revision application was filed against this judgment, requesting that the case be referred to a five-judge bench. The basis of the revision application was that the court judgment was wrong in law, *per incuriam*. However, the same three judges heard the application for the leave to proceed and did not refer it to a five-judge sitting as requested. The judgment on the revision application was set for 2 June 2003 and has not been delivered as yet.

The former Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, made the following press statement on 28 May 2003 about this case:

I am pleased to learn that the petition for review of the decision of the Supreme Court in the Michael Fernando case would be heard by the same Court on June 2-3 2003. However, the delay in filing the petition for review and the subsequent delay on the part of the Supreme Court fixing a date for hearing are matters of concern. Where the liberty of the subject is involved, particularly in this case where Mr. Fernando was subjected to grave injustice brought about by a flawed judicial process, one would expect the Supreme Court to move swiftly to remedy the same injustice. Four months during which period Mr. Fernando was incarcerated must necessarily be viewed as an inordinate delay. Nevertheless, I urge the Supreme Court not to delay this matter any further, hear the petition, set aside the patently flawed decision delivered on February 6, 2003 whereby Mr. Fernando was convicted and sentenced to one year imprisonment for contempt for court.

2. Case of Kurukulasuriya Pradeep Niranjana

Kurukulasuriya Pradeep Niranjana was arrested on 13 May 2001 and kept in remand prison until 21 February 2003 under the charge of murdering a 76-year-old Catholic priest, Fr Alfred Bernard Costa, on 10 May 2001. This was a gruesome murder where the priest was stabbed 27 times and was strangled to death. The death was highly publicised throughout the country. On 21 February 2003, the AG released Kurukulasuriya Pradeep Niranjana without any charges. Kurukulasuriya Pradeep Niranjana has also complained that he was severely beaten to get him to confess to the murder. He has also alleged that as a result of the allegation he was badly treated in remand prison. His family, including four children, has suffered greatly due to the accusation. Living in a Catholic area, to be charged with the murder of a senior priest led to the whole family being ostracised. On releasing him without charges, no compensation has been paid for torture, illegal arrest, detention for a prolonged time, and for the humiliation suffered by him and his family. It is respectfully submitted that the Human Rights Committee should look into failures similar to this case where the state has not accepted responsibility.

3. Cases of Garlin Kankanamge Sanjeewa and Sunil Hemachandra

In both these cases the families have publicly expressed doubts about the objectivity of inquests done by medical officers. In the case of Garlin Kankanamge Sanjeewa, who was pronounced to have hanged himself with his trouser belt inside the Kadawatte

Police Station, his mother dug a grave at her own home premises for the purpose of pursuing a new examination by different doctors. Print and public media also gave a lot of coverage to expose the impossibility of the death having occurred in the manner described by the police. In the case of Sunil Hemachandra, three eyewitnesses gave evidence that they saw the victim being severely beaten by some officers of the Moragahahena Police. The family also gave evidence that the young man did not have any history of a grave illness, particularly excluding epilepsy and fits. However, the medical report did not mention anything about injuries to the head caused due to assault, but did mention the possibility of a fall due to fits. This case also received a lot of media attention, and cartoons were published in some papers ridiculing the findings of the medical officers. In both cases, families have called for public inquiries into the propriety with which the inquests were conducted, but there has been no response by the authorities.

Recent cases of torture and killing committed by the police in Sri Lanka

Asian Human Rights Commission

Police in Sri Lanka committed the following cases of torture and killing between January 2003 and February 2004. The 31 cases and 46 victims of 29 police stations referred to here do not amount to the total number of cases received by the Asian Human Rights Commission in the said period, as some cases have been excluded from this report due to factual inconsistencies or other deficiencies.

All but one of the cases have been reported and acted upon through the Urgent Appeals (UA) programme of the Asian Human Rights Commission. The UA number and date of issue in each case is given in the column notes. Inquiries are pending in most cases.

Glossary

Police officers

IGP	Inspector General of Police
DIG	Deputy Inspector General
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
NHRC	National Human Rights Commission
NPC	National Police Commission

VICTIM
Koralagamage S D

POLICE STATION
Kaluthara South

DATES
1-9 January 2003

URGENT APPEAL
UA-02-2003
9 January 2003

1. Koralagamage S D: Illegally detained and allegedly tortured for a week

Police of Kaluthara South CID arrested KORALAGAMAGE Sujith Dharmasiri (23), an army deserter, on 1 January 2003 and held him until January 9, during which time he was allegedly tortured. IP P L Abeysinghe and several other police officers took him while he was attending a funeral, and kept him in custody illegally for the week. Although his mother went to the police station daily from January 2, she was abused with filthy language and chased away on every occasion until January 7, when she was finally permitted access to her son. On January 8, she was challenged, "Try if you can to get him out by complaining to the NHRC. We will see that he will not get bail." After that she was again chased away. Nonetheless, the family sought intervention by the NHRC and local human rights groups, and after Sujith went missing for a short period on January 9, he was produced before a magistrate.

According to the family, Sujith was being deliberately kept somewhere outside the police station. During that time, the police took him to a doctor and attempted to get a medical report to the effect that there were no injuries on his body. However, Sujith told the doctor he was assaulted severely. The police then went to a magistrate and applied to hold Sujith on the grounds that he was needed for an identification parade. Without seeing or questioning Sujith, the magistrate reportedly remanded him until January 20. He was subsequently bailed out, and has since filed a fundamental rights application in the Supreme Court against the police for torture, illegal arrest and illegal detention.

VICTIM
Bambardene Gamage S P

POLICE STATION
Matugama

DATE
8 January 2003

URGENT APPEAL
UA-05A-2003
17 January 2003

2. Bambardene Gamage S P: Child beaten and humiliated for alleged theft

SI Romiyal of the Matugama police station entered the house of 17-year-old BAMBARENDE GAMAGE Suraj Prasanna together with another officer and arrested him around 1pm on 8 January 2003. SI Romiyal then allegedly began hitting Suraj in the face and asking him whether he was the one that stole the money from the temple till, after which he pulled off his T-shirt and used it to tie his hands behind his back. He then continued to beat Suraj while dragging him along the road to a Dolphine van (licence plate 56-5183), which he then used to take the boy to the Matugama police station. After putting him in a cell, the sub-inspector reportedly took hold of Suraj's hair and beat his face against the iron bars. A number of other officers took turns hitting his face against the bars with his hair. At about 4pm, Suraj was taken out of the cell and made to crawl on his knees for fifteen minutes, during which time SI Romiyal beat him with his hands and feet and ordered him to kneel and worship other police officers by holding their feet.

The police released Suraj at about 4:30pm with the strict warning that if he returned home before dusk he would be killed. Through fear, the boy stayed near a shop until about 8pm, after

which time he returned home, narrated the whole incident and was admitted to the Wattawe government hospital. He was treated there until January 10, after which time he was transferred to Nagoda General Hospital for further treatment.

3. T A Premachandra: Shot dead because of alleged traffic offence

On 1 February 2003 at about 10:30pm, T A Premachandra, a father of two children, was driving his motorized trishaw home from his work as an electrician at the Ceylon Electricity Board, with two companions in the back. Two officers of the police traffic unit at Kaluthara South overtook the vehicle from the left on their motorcycle and shot the driver in the head with a T-56 rifle. The bullet entered the victim's head near his left ear and came out at his right eye, killing him instantly. The vehicle crashed into a lamppost and overturned, causing severe injuries to the two men in the back. When one of them tried to use his mobile phone to call his family for help, the police reportedly kicked him and confiscated the phone. A jeep from the Kaluthara South police station arrived shortly and took the two injured and the dead man to the Base Hospital at Nagoda, where the dead body was handed over to the hospital, while the two injured were taken to the police station and arrested. They were not even given water till the post mortem examination was conducted the following day, February 2, after which time they were allowed to enter the hospital.

The two police officers responsible said that the driver was shot because he refused to stop when ordered to do so. They claimed to have been acting on information received from Wadduwa police station that the said vehicle had been involved in an accident with a van. They also claimed that the shot was fired at the tire of the vehicle but due to ruts on the road it went astray. ASP Jayantha Kulathilaka, heading the post mortem investigation, told journalists that the police had acted within the law. The case has been investigated further, but the results have not been made public.

4. M A Fernando: “Get up, you are just pretending”

While presenting his petition before the Supreme Court of Sri Lanka, Michael Anthony FERNANDO was sentenced to one year in prison for contempt of court by the same judge against whom he was bringing a petition. For full details of the case, please see *Sri Lanka Legal Reforms and Human Rights*, (vol. 1, no. 3, October 2003), and regular updates on the AHRC website (www.ahrchk.net).

On 6 February 2003, while Mr Fernando was presenting a writ before the Supreme Court of Sri Lanka he was convicted for contempt of court and sentenced to one-year rigorous imprisonment. One of the presiding judges was a respondent to Mr Fernando's claim. After Mr Fernando was taken to Welikada Prison he was hospitalized there due to a serious asthmatic condition. As his health worsened, he was taken to the Intensive Care Unit of the General Hospital. On February 8, he was taken

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VICTIM
T A Premachandra

POLICE STATION
Kaluthara South

DATE
1 February 2003

URGENT APPEAL
UA-07-2003
7 February 2003

4

VICTIM
M A Fernando

PRISON
Welikada

DATES
6-17 February 2003

URGENT APPEAL
UA-09A-2003
22 February 2003

out of that unit and put in Ward 44, but there he was not given a bed and was instead made to sleep on the floor with his leg chained, as required by the prison authorities. Two prison guards stayed with him. Due to sleeping on the floor, he developed a chill and his condition again worsened. He was placed on a bed, but tossing and turning, he fell and injured himself. Then, although he was suffering pain all over his body, he was transferred back to the prison. Between 2 and 5pm on February 10, as he was being taken back to prison, he was beaten and kicked by the prison guards on the roadside and in the van used to carry him. On February 16 he submitted a complaint, as follows, which takes up the story.

On 10 February 2003, I had an asthma attack again. By then, I was discharged from the hospital. Because of the unbearable pain from the asthma attack, I turned on the bed, and I fell. The pain in my back due to the fall was very severe, making it very difficult for me to get up. One hospital servant began to shout, "These prisoners do not want to leave, even when they are all right. It is a terrible headache to us"...

Then the prison guards prepared to take me to the prison. I got up and shouted, "I cannot [go] as my back is severely in pain."

Then a person wearing khaki trousers, a white shirt and boots asked, "Aren't you the person from Dehiwela? We know who you are. Get up, get up. You are just acting. We will look after you."

However, since I could not get up, I remained without moving.

Then the prison guards carried me out of the hospital to a vehicle. I was put down by the road near the hospital, and the prison guards began to assault me in front of my father. The person who assaulted me was the one in plainclothes...

When I was shouting in pain, my father (Oswald Emmanuel Fernando) came forward and begged the prison guards, saying, "You cannot take him except in an ambulance."

The person in plainclothes did not listen to any of that. He caught me by the neck and pushed me inside the police van.

My father shouted, "Ayyo, they are trying to kill my son."

People at the ward gathered around the van hearing my father's cries. The only prisoner in the van was myself. Other than me, there was a prison officer, two guards and the driver.

The person who pushed me into the van kicked me very hard and slapped me on both cheeks. I knelt down inside the van. Then I was kicked several times on my spinal cord with his boots. I felt frightened that I would be killed. I shouted and begged, saying, "Do not kill me"...

When the van reached the prison premises, the same person said, "You have no sickness. Get down without pretending", and he gave me a few kicks. I felt as if my spinal cord had been broken. I simply could not get up. I told him I couldn't get up.

Then I was put on a stretcher, which looked like those used for carrying corpses, and taken to a nearby extremely foul-smelling toilet and told, "If you cannot get up, stay there." Though I shouted many times "I cannot bear the terrible foul smell; take me away from here", no one helped. They were saying, "You have no illness. You are pretending."

Meanwhile, some prisoners came and told me to get up, to not pretend, and they harassed me. I felt that these prisoners came at the instigation of someone else. I begged them not to harass me. I may have been kept near the toilet for more than 24 hours.

Then I wanted to go to the toilet. I shouted, asking for help. However, no one helped me. “You are lying. Get up and go to the toilet”, someone cried from afar. As I could not bear the pain, I excreted there. I also found it very difficult to urinate. Though I shouted again to remove me from that spot, no one came to help me.

Then someone came and removed all of my clothes, making me completely naked. He said, “If you find it difficult to stay like this, get up and come.” I stayed a further 24 hours near the same toilet.

Then I refused to eat or drink and observed a fast, demanding that I be given medical treatment...

Then my urine became blood red. My blood was passing with my urine, and the prison authorities became fearful. They brought me back to the intensive care ward of the hospital [Ward 72] on February 17, at night. I was brought in a van as I was told that the prison does not have ambulances. I was told that however serious the prisoner’s condition was, this is how a person would be brought to the hospital.

At the hospital, I told the doctor about all of the cruelty and torture. I was told that what I had said was not recorded in the bed-head ticket—maybe because it was thought that it is not good to record that prison officers have treated a patient in this way...

Since Mr Fernando’s release from prison on 17 October 2003 he has been subjected to continuous threats due to his active campaigning for his rights. He has filed several cases against the prison guards who tortured him, however the dates for hearings have been postponed. He has also filed a communication before the United Nations Human Rights Committee challenging the validity of the Supreme Court Judgement as having no basis in law and as a violation of his fundamental rights. AHRC also presented Mr Fernando its inaugural Human Rights Defenders Award coinciding with his release. The former Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumararswamy, has publicly denounced the Supreme Court judgement against Mr Fernando as an “act of injustice”. He had complained about death threats to the local authorities as well as to the Human Rights Committee.

Although on 9 January 2004 the Human Rights Committee instructed the Sri Lankan government to take all necessary measures to “protect the life, safety and personal integrity” of Mr Fernando, the government has failed to do so. On February 2, a group of unknown persons made an attempt on Mr Fernando’s life. As he was walking out of his house in the morning, a man ran up and sprayed chloroform onto his face, while a van pulled up nearby to take him away. He managed to escape by running in the opposite direction and hid in a shop managed by a friend. He was then taken to Kalubowila Hospital for treatment, and after his discharge on February 7, wrote the following:

From February 2, two armed police officers who has come under the instruction of the Ministry of Defence provided me with security at the hospital. They were there till I was discharged on February 7. They brought me back home, then they told me that they had instructions to give protection only at the hospital and till I was brought back home. They said there is nothing more that they can do and that if I need further protection I should talk to higher-ups and get such protection. Since then I have had no communication from the Ministry of Defence or any one else. I am in a completely helpless position. I cannot attend to my daily work or even help my family. I have to go from place to place looking for shelter like a fugitive.

...

I am frightened to think of what would have happened to me if the conspirators succeeded in taking me to the van and had taken me away. There were altogether three persons in the Van, which was waiting to take me. So, far no one has been arrested, though many statements were taken down from me. Though the UN Human Rights Committee has issued Interim Measures to the Government of Sri Lanka to take action to protect my life and those of my family and report to the HRC by 9th February 2004, I am completely without protection now. I have to live in hiding. I call upon everyone to intervene on my behalf to find protection for me.

In a letter of February 13 to the Attorney General Mr Fernando has also written that

I have no personal enemies. The only people who I can think of who would be behind such a conspiracy are those affected by the cases filed on the basis of my complaints. This is further confirmed by the fact that the threats I received before the 2 February 2004 incident were from people who wanted me to withdraw the cases in the magistrates court in Colombo, the Supreme Court and the UN Human Rights Committee. The investigators should give serious attention to this matter.

On March 2, the Australian government expressed concern over the case of Mr Fernando, and directed its High Commission in Colombo to make inquiries.

5

VICTIM

Sathasivam R

POLICE STATIONS

1. **Methigiriya**
2. **Polonaruwa**
3. **Kaduruwela**

DATES

24 November 2001;
8 February 2003

5. Sathasivam R:

“No female in this universe could bear it”

Four officers from Methigiriya police station came for 23-year-old SATHASIVAM Rathykala while she was on duty as a casual attendant at Pollonaruwa General Hospital on 24 November 2001. They asked her to come and make a statement, and took her to their jeep. Once in the jeep they began slapping and kicking her, and abusing her with filthy language. Once at the police station they handed her over to CID personnel of Polonaruwa police station. Ms Sathasivam describes what happens next as follows:

Twelve CID personnel took me into a dark room where I was alone and there weren't any females, either police or civilians. In the room they assaulted me, hit me with clubs and ropes, and trampled me all over my body with boots. They removed all my clothes except my panties and brassiere. I begged them to free me and give my clothes back, and I also told them that I was totally innocent.

Then they removed my remaining clothes, and I was completely nude. They were all under the influence of liquor, and the whole room smelt of it. Then they started burning with cigarette butts all over my body and blew the smoke on my face.

After doing all this unbearable torture the 12 of them raped me one after another. When I started groaning in unbearable pain and I was able to feel that I was profusely bleeding and my body was swelled up, one of them gave me a glass of milk tea. Feeling so thirsty, I took the glass of tea, but no sooner had I taken it than I was feeling giddy and the whole room was turning. Then I fell unconscious.

When I came to, I found myself on a bed in a different room, all alone and completely nude. A few minutes later the same CID personnel came and mixed chilli powder with water and poured it into my eyes. When I started shouting in agony they forced rags into my mouth.

Then they threatened to kill me. They wanted me to admit that I belonged to the LTTE (Liberation Tigers of Tamil Eelam) cadre, and I was to be used by them to throw a bomb at Minister Maithripala. Then they recorded my statement in Sinhala.

As I couldn't bear the agony and unbearable pain as a result of the severe torture, and also fearing further torture, I was compelled to admit to all they wanted of me according to their version, of which I never even dreamt. They wrote all what they wanted and never read the statement recorded by them, neither in Tamil or Sinhala, and forced me to sign it. Out of fear and the threat of further torture I signed against my will.

At about 10pm on this day, after taking down my statement, the 12 of them came and raped me over and over again. They were drunk and I was completely nude, sleeping all alone in that room.

The next day, November 24, they blindfolded me, tied my hands, and took me in a jeep to my village. The 12 CID personnel who caused maximum damage to me came in the same jeep to my village. Reaching my house they scolded me in unbearable filthy language, and wanted me to show to them where the LTTE cadres were living. When I begged them that I knew absolutely nothing about them they brought me back to the police station.

On November 25 they handed me over to the Kaduruwela police. At this time the Kaduruwela police humiliated me more than I could bear by asking irrelevant questions while I was very badly hurt mentally and physically. No female in this universe could bear such questions and remarks made by them. They continued accusing me of being LTTE and that I was hiding the facts. I was kept in solitary confinement there for one month. I was almost going mad and I even wanted to put an end to my life. But, I thought I must live and explain all these atrocities to the authorities concerned, so that other women in Sri Lanka would not have to bear similar incidents.

Although the Kaduruwela police knew I was innocent, they didn't want me to expose them so they sent me to the Magistrates Court at Polonaruwa on 14 March 2002, and from there I was taken to the Anuradhapura Prison. Out of the 12 CID personnel who tortured me and raped me, four accompanied me to the prison. On the way they told me not to divulge the incident, and threatened to kill me if I did.

Ms Sathasivam was later transferred to Welikada remand prison. Meanwhile, the police fabricated and submitted three cases against her in the high courts. She did not undergo a proper

medical examination until after one was ordered by a high court judge on 30 August 2002, at which time she told the JMO and other medical staff all the details of what had happened to her at the police station.

Ms Sathasivam was subsequently released on bail and on 20 November 2002 made a complaint to the NHRC. Since then, she has experienced continual harassment by the police. On 8 February 2003 she made another complaint to the NHRC about an event the day before, when two men on a motorcycle, one of whom was among the 12 perpetrators, stopped next to her and her mother as they were walking along the road. The officer told Ms Sathasivam to come to the CID office and forced her to accept 20 rupees for the fare. He told her that if she didn't come they would come and arrest her. Meanwhile, the charges against Ms Sathasivam are still pending in the high court.

6

VICTIM

Y C Benjamin

POLICE STATION

Kaluthara South

DATE

26 February 2003

URGENT APPEAL

UA-12-2003

7 March 2003

6. Y C Benjamin:

Victim of relentless police harassment

Until April 2002, Yoga Clement BENJAMIN, a 47-year-old father of three, sold illicit alcohol. In those days he had reportedly bribed SI Sunil Perera and several other officers at Kaluthara South police station. In addition to this business, he had a pig farm. After that date, although he stopped selling alcohol and took to selling vegetables, the police still collected bribes from him, including getting pork free of charge. After June 2002, when Mr Benjamin refused to supply pork for a wedding, the police became hostile towards him and he decided to sell the piggery. However, he became the subject of police threats and conflicts over the payment of bribes continued.

On 5 February 2003, two police officers from the Kaluthara South came to collect bribes. When Mr Benjamin refused to pay, the two allegedly beat him. At about 7:30pm on the same day, SI Perera arrived with a group of men and threatened Mr Benjamin, calling him *dhemalaa* (a derogatory term for a Tamil person), and telling him that he would not be allowed to reside there any more. At 10:30pm on the same day, another sub-inspector and about ten police officers in plain clothes arrived at the house in a Fargo van, carrying swords and wooden poles. They broke into the house and abused Mr Benjamin's wife and daughter in foul language, destroyed furniture, and took away a gold chain with two sovereigns. They also broke the glass on their wedding photo and took the picture with them. When the family went to complain at the police station they were scolded and chased away.

On February 7, the same group arrived at about 2:30am and entering the house from the back door threatened to kill the family. At 9:30am the family complained to the NHRC. At 2:30pm on the same day, a big group of police arrived at the house and destroyed all the furniture. At 5pm, they found Mr Benjamin and an officer in plain clothes started to hit him with a steel pole. His son intervened, resulting in a fight. The family then fled.

On February 9 the family went with Mr Nanda Mapalagama Godagama, attached to the Galle Court, to make a complaint to the IGP. However, on February 19 Mr Benjamin's son was arrested and falsely charged at the Kaluthara South police station.

On February 22 a neighbour called the officers of Kaluthara South over a land dispute. At about 4:30pm, the police arrived again, in the neighbour's van, as well as their own vehicles. They confiscated Mr Benjamin's motorcycle and appeared to leave. The neighbour then called for Mr Benjamin to come out. When he did, some police appeared and shot at him and his son. However, on this occasion he escaped unhurt.

Finally, on February 26 the police shot and killed Mr Benjamin while he was walking on the road. The police claimed to have acted in 'self defence', and allege that a pistol was found next to the victim. However, Mr Benjamin had never previously owned or used a gun, and the series of incidents leading up to the killing suggest that it was a calculated murder.

7. S Hemachandra: Death for winning lottery

Sunil HEMACHANDRA, a 32-year-old rubber tapper, won Rs.3,003,100 (US\$30,030) in a lottery on 29 June 2003. A few days later, hearing the news, some police officers visited his house and tried to extort money from him, without success.

According to the family, at about 12:15am on July 24, police from Moragahahena station again came to the house, and arrested Mr Hemachandra without charge. When his family went to the police station the next morning, July 25, they found him lying unconscious in a cell, bleeding from the nose. They claim that according to an eyewitness account, OIC Maheepala, PC Muthubanda and PC Wijemanna savagely beat Mr Hemachandra. He was taken to the Horana Hospital and then transferred to the National Hospital in Colombo. However, he died in hospital on July 26.

According to the Moragahahena police, Mr Hemachandra was arrested along with another person, Chanaka, who was wanted by them. When he objected to the arrest, he was also taken to the police station and locked up, police said. An officer from the station spoke on radio that Mr Hemachandra had an epileptic fit and collapsed while at the station. However, he has no history of any illness. The DIG-Western Province South, K P P Pathirana, meanwhile told journalists that the man had fallen and hit his head because he was drunk.

A complaint regarding the arrest, torture and death was made to the ASP-Horanam, but he failed to take any action. Furthermore, according to newspapers, the ASP was assigned to conduct inquiries into this case, along with the police officers from Moragahahena police station allegedly responsible for the death. The matter has now come before the Department of the Attorney General, and inquiries are reportedly continuing.

7

VICTIM
S Hemachandra

POLICE STATION
Moragahahena

DATES
24-26 July 2003

URGENT APPEAL
UA-34-2003
28 July 2003

VICTIM
C Bandara Jayaratne

POLICE STATION
Ankumbura

DATES
20–28 July 2003

URGENT APPEAL
UA-39-2003
11 August 2003

Meanwhile, the victim's mother and sister have filed a fundamental rights application in the Supreme Court, which is due to be heard in March 2004.

8. C Bandara Jayaratne:

“Tell the truth, otherwise we will kill you”

B G Chamila BANDARA JAYARATNE, a 17-year-old high school graduate, was hung from a ceiling and beaten by the police, causing serious injury to his left arm. He describes what happened to him as follows:

At around 4:30–5pm of 20 July 2003, one civilian personnel attached to the Ankumbura police station (Kandy) came to my family's house. At that time I was the only one at home. He told me to come with him and took me to a waiting police jeep. There a police officer, whose name I later learnt is Sgt Premasiri, took hold of me and gave me several blows, saying, “You have scolded someone who helped us to catch some thieves!” He hit me hard on the face and body about ten times, then handcuffed me.

I was put in the police jeep, and saw one of my cousins, Upali, was also there. There were two uniformed officers in the jeep, and one kept the butt of his gun on Upali's head. He said, “You tell the truth, otherwise we will kill you.” Another boy was also in the jeep. We were then taken to the Ankumbura police station.

Inside the station, SI Senevirathna held me, bent my head, and hit me very hard on my spine. Then he hit me on my face with his boots and pushed my head against the wall. I was taken to a hall inside the station, and handcuffed to a bedpost. I was verbally abused in crude language and told by the same officer that he would come at midnight and if I didn't tell the truth, he would teach me a lesson. However, nobody came at that time.

The next morning, at about 9am the OIC of the police station came and told me to tell the truth or I would be assaulted. I was then taken to another place where there was a bed, and the OIC told me to remove my shirt and lie face down on the bed. There were several officers present. One person, who was not wearing a uniform, sat on my back. Someone held tight onto my legs. Then the OIC and another officer hit the soles of my feet. The OIC hit me with a cricket stump and the other officer hit me with a cane. I was told to admit to thievery. I said that I didn't know anything about any theft. They continued to hit me. Then petrol was put into a polythene bag and poured out, after which the polythene bag was tied onto my face. I was told that if I didn't tell the truth, I would be burnt. I was hit for about one hour more. I was told to get off the bed and to keep jumping, but because I did not jump high enough, the OIC hit me with a pole. I said that I didn't know about any thefts. Then the OIC said that, “No one knows you have been arrested”, and called out, “Let's kill him.” He told the others to hang me from the ceiling beam.

My hands were swung behind my back and my thumbs tied together with a string, then they put a rope between my thumbs and hung me from a ceiling beam. One officer pulled the rope so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numb. The OIC kept hitting me on my legs and soles with the cricket stumps. He hit me on my thighs, and asked me who my friends were. Because of the unbearable pain I gave him names and said, “Though I didn't do any thefts I am willing to admit to anything.” The

OIC said, “That won’t do. Till you tell us about all the thefts you have done, one by one, we will keep you hanging—we will tie a stone to your legs.”

After that I admitted to every theft they told me about, one after the other, just to escape this unbearable situation. The police officers then told me that they would take me to a jewelry shop at Ambathenna. I was told to say that I had stolen two rings and a chain. After about half an hour, four police officers put me along with another person in a jeep and took us to my friend Saliya’s house. Saliya was brought to the jeep. He asked me why I did all this but I didn’t say anything. We were all taken to Ambathenna. The police pointed towards a person and told me to say that I had given the stolen items to him. I was again threatened that I would be hung up by one hand. I did as I was told. Although I didn’t know the person at all, that person was also taken to the police station with Saliya and I. I later learned that another friend was also brought to the police station. I was brought before these persons and asked whether they had also engaged in the robberies. Because of fear, I did not dare to answer. They told me that I could be made a state witness if I said that the other two had committed the thefts, but they said I was not to tell anyone that they had tortured me. If a doctor asked me, I was to say that the handcuffs damaged my hands. I was told that if I mentioned anything about the torture there would be trouble in the future. The OIC said that “everything is in our hands” and “don’t get things messed up”.

On July 27, Upali, my friends and I had our fingerprints taken. After that, we were made to sign in the middle of a page among four or five empty pages. At about 6pm we were all taken near the Ankumbura Government Hospital and while we waited in the jeep, officers went in and brought some papers back to us. We were not taken to the doctor. We were later taken to the magistrate’s official house. The police told the magistrate something and then we were taken to the Bogambara prison, where Saliya and Upali were detained. Three others and I were taken to the remand prison at Rajaveediya. When I was admitted to the prison I informed the prison authorities about the injuries I had suffered at the hands of the police and requested treatment. I was given some tablets but no medical examination was done. I was also not kept in the prison hospital. On July 28 my mother was finally able to meet me there. I was released on bail on July 30.

On July 31, I was admitted to the General Hospital in Kandy and was under treatment for six days. The doctors told me that due to the torture the damage to my left arm is likely to be permanent. When I went to the police post of the General Hospital of Kandy to make a complaint about the torture, the request was refused and I was told to make the complaint at the Ankumbura police station. On August 11 I was readmitted to hospital, and told that I will have to have an operation to try to correct the injuries caused by the torture.

Chamila and his family have since been forced into hiding after they made complaints about the case, and filed a fundamental rights application in the Supreme Court. The case also has received enormous publicity in Sri Lanka. A local human rights organisation is protecting Chamila. The alleged perpetrators have meanwhile coerced local criminals into intimidating the family, and police have directly threatened Chamila’s mother.

The family has learned that the OIC and other alleged perpetrators have attempted to fabricate a case against Chamila by forcing some boys to testify that the victim's injuries were caused by a fall. Several of the boys have already retracted their statements, taken under duress.

Chamila attended the UN Human Rights Committee session held in Geneva at the end of October 2003 as part of a delegation from ALRC and the World Council Against Torture (OMCT). When the Human Rights Committee met the delegation, Chamila narrated his case to the Committee. On the next date of the session, the Committee inquired about Chamila's allegations with the Sri Lankan government delegation. One of the delegates stated to the Committee that the allegations were completely false. The basis of this statement was a report filed by the Kandy Area Coordinator of the NHRC. This report was compiled without even taking a statement from Chamila or his family, and without referring to the medical certificates. AHRC immediately demanded that the chairperson of the NHRC dismiss the area coordinator without delay. The NHRC then reopened the inquiry and named its Director of Investigations as the inquiring officer. A further inquiry was initiated into the conduct of the Kandy Area Coordinator. Shortly thereafter, several local human rights organisations took exception to the manner in which the reopened inquiry was being conducted. Thereafter an independent inquirer, Dr Irvine Jayasuriya, was appointed to conduct both inquiries, which are still continuing.

OMCT organised for a specialist to examine Chamila while in Geneva. The doctor concluded that the injuries he had sustained were consistent with his allegations of torture. Fortunately, the doctor was able to report that Chamila is likely to be able to make a recovery due to his youth and good health. Had such torture been inflicted on an older person, it is almost certain that the injuries would have been permanent, as suggested by the doctors who did the initial examination.

Chamila Bandara was not the only child being tortured by the police at Ankumbura between 20 and 28 July 2003. Bandula Padma Kumara and Saman Kumara, two brothers aged 14 and 17 respectively experienced similar treatment from the same police. On July 20, Bandula was arrested for allegedly stealing a bunch of bananas. After his arrest, his mother was refused access to him. His brother was arrested at home at about 7pm on July 22. Both boys were kept at the police station until July 28, when they were remanded in custody by a magistrate after police fabricated cases against them through the use of torture. The torture included hanging by the thumbs and being pulled on the legs, and a practice cynically described as *dharma chakka* ('Wheel of Law'; a Buddhist doctrine). In this method, the victim's arms are tied to the knees so the body forms a circle; a pole is inserted between the arms and body and the person is rotated on this while being beaten on the soles of the feet.

9-10

VICTIMS

1. Bandula P Kumara
2. Saman Kumara

POLICE STATION
Ankumbura

DATES
20-28 July 2003

URGENT APPEAL
UA-41-2003
22 August 2003

The boys were released on bail on August 15; the case is continuing.

9. Garlin Kankanamge S: Body buried in garden in hope of second post mortem

GARLIN KANKANAMGE Sanjeewa, a 25-year-old soldier, was going home on 27 August 2003 when officers of the Kadawatha police station arrested him on allegations of robbery. The next day he was dead in a cell. The police claimed he had hanged himself with the belt of his trousers. However, Mr Garlin's mother said that her son's feet were on the floor of the cell when she saw his hanging body, although the sketch made by police does not show his death this way. She also claims to have seen blood flowing from the lower part of her son's body, and a wound on one of his arms. The family has insisted that a proper and impartial inquiry be held and a second inquest take place, because they do not accept the post mortem conducted in the police station. On September 1 they buried the body in a private garden out of fear that the police would come to try to take it and destroy the evidence of their actions.

As Mr Garlin was a soldier, the military police conducted an inquiry into this case. In their report, a copy of which was issued to his mother, the inquirers cast doubts about the police version of events. Despite this report, the police authorities are not known to have undertaken any further inquiry into the case, after interdicting the two police officers on duty at the time for negligence over the alleged suicide.

Around the same date as Mr Garlin lost his life, 60-year-old R M Loku BANDA had a dispute with two villagers about a road construction. Police from Maturata station intervened and took Mr Banda away. He was later found dead in his cell. Although the reason for his death has not yet been revealed, local human rights groups alleged torture. His son has complained to the authorities, but an investigation has not yet begun. Meanwhile, the family has lodged a fundamental rights application in the Supreme Court.

10. R Dhanapalasingham, R Saravanaraj & M Prabhakaran: An accident leads to assault

While Ramaiya DHANAPALASINGHAM, aged 23, Ramaiya SARAVANARAJ, aged 26, and his brother Muragaiya PRABHAKARAN, aged 25, were walking from the town of Bogawantalawa towards Chapelton between 5 and 6pm on 7 July 2003, two motorized trishaws came at high speed from the opposite direction. The first one hit Mr Dhanapalasingham, throwing him off the road. Since the vehicle failed to stop after the accident, the men went to make a complaint at the Bagawantalawa police station. But before they arrived at the station, three police in civilian clothing stepped down from a jeep with batons and poles and began assaulting them. The men came to understand that one was the OIC of the Bagawantalawa police.

11

VICTIM
Garlin Kankanamge S

POLICE STATION
Kadawatha

DATES
27-28 August 2003

URGENT APPEAL
UA-43-2003
2 September 2003

12

VICTIM
R M Loku Banda

POLICE STATION
Maturata

DATE
28 August 2003

URGENT APPEAL
UA-43-2003
2 September 2003

13-15

VICTIMS
1. R Dhanapalasingham
2. R Saravanaraj
3. M Prabhakaran

POLICE STATION
Bagawantalawa

DATES
7 July 2003

URGENT APPEAL
UA-46-2003
10 September 2003

Following the assault, they were then taken to the police station and beaten again. At about 10pm, a doctor arrived and after a discussion with the OIC, examined Mr Saravanaraj. According to Mr Saravanaraj, the OIC warned him not to tell the doctor that the police had assaulted him, but rather to blame it on the trishaw driver. While being examined, the OIC held a pistol against his brother and threatened to shoot him if he told the doctor what had really happened. According to Mr Saravanaraj, the doctor did not ask him anything anyhow, and did not examine the wounds on his back caused by beatings with a pole, nor the injuries sustained by his brother. The men were subsequently taken for treatment to the hospital, but while there when the men's parents, the chairperson of the District Council, and a local trade union representative tried to visit them the OIC chased them all away and told them they could come to see things in the court. After they were remanded in custody, a neighbour brought them food for the night but had hot water thrown at him.

On July 8, the OIC forced the men to sign a document, which was later submitted as evidence to the Magistrate Court at Hatton. In the complaint, the police allege that the three men assaulted the trishaw driver. The men's lawyer pointed out that the three were actually assaulted by the police, and had Mr Saravanaraj lift his shirt to show the wounds on his back. However, the magistrate was not interested and instead asked the police why the guns given to them were not used on such occasions. The men were then remanded for a further 14 days. While at Bogambara prison, Mr Dhanapalasingham was kept in the hospital ward for three days of treatment on the wounds he sustained at the hands of the police.

After the men were bailed out, they were admitted to the Nuwaraeliya hospital and remained there for four days, during which time they made a statement to the police officer on duty. However, efforts to make a complaint to the SP-Hatton have been unsuccessful. The ASP also refused to accept their complaint, but when presented with evidence by a representative of a local human rights group he recorded separate statements from each of the three men. The case is continuing, and has also been reported to the NPC and NHRC.

16

VICTIM

Okanda Hevage J

POLICE POST

Okkampitiya

DATE

5 September 2003

URGENT APPEAL

UA-48-2003

11 September 2003

11: Okanda Hevage J:

Beaten to death over 284ml of alcohol

On 5 September 2003, OKANDA HEVAGE Jinadasa, a 50-year-old mason and father of five, was returning home by bicycle after work. Two civil personnel attached to the Okkampitiya police post stopped him and searched his belongings. They found two packets of illicit liquor, equalling 284ml. They beat him and brought him to the police post, where they reportedly beat him again with fists and posts, and squeezed his testicles and neck until he died. Police personnel took his dead body to the

Okkampitiya government rural hospital, making a pretense that he was unconscious. A doctor examined the body and pronounced that he had died before arrival.

The police have said that Mr Okanda fell from a chair and died. The Monaragala magistrate who held the inquiry on September 7 ordered the body be sent to Karapitiya [Galle] Teaching Hospital for an autopsy. The JMO who did the autopsy reported that he found injuries on the body caused by blunt weapons. He further stated that Mr Okanda's death was not due to these injuries, and reserved his decision on the cause of death till further investigation was completed. The case is continuing.

12. M Riswan, S Ravichandran & A Latief: Beaten with a brick and broomstick

On 30 August 2003 at about 12:30pm 23-year-old Suppaiya RAVICHANDRAN was driving a motorized trishaw carrying 23-year-old Mohamad Ameer Mohamad RISWAN and 30-year-old Abdul Karim Mohamad Roshan LATIEF. They were stopped by a van containing about six plain-clothes police officers from Wattala station. The police forced the men into the van, blindfolded them and took them to the police station.

At about 7pm several police officers, particularly SI Navaratne, severely assaulted the men. The assault continued during the next day, and that night they were taken to the office of the DIG-North Colombo at Peliyagoda, which is the police headquarters for the area. There a senior officer assaulted the men on their legs, stomachs, chests and hands, and forced them to confess to involvement in a robbery about which they knew nothing. When the men pleaded innocence the officer assaulted them with a brick, and when he beat Mr Riswan on the ears with the brick, the victim began to bleed from the nose. After the brick broke into pieces an officer from Wattala brought an old broomstick, which the senior officer used until it also broke. All the men suffered severe injuries, especially Mr. Latief, who was continuously assaulted for about 30 minutes. He was also stabbed with the broken end of the broomstick and was bleeding from the chest. Mr Latief was again attacked the following night, and he alleges that he was tortured while hung from a beam.

On September 1, the men were brought back to the Wattala police station, where they were locked up. They were given only some water while in the cell. That evening, their family members came to the police station to meet them, as did three officers of the NHRC, after receiving a complaint from the family. They took written statements and also noted their injuries. They ordered the police to produce the men before a JMO, and the police obliged. After the JMO's examination, the victims were produced before a magistrate, from whom the police obtained a detention order so as to investigate alleged involvement in the drug trade. However, throughout the torture the police reportedly never questioned the men about such activity. Rather, it was only after the NHRC visit that SI Navaratne told the men that since they complained to the NHRC they would be implicated for possession

17-19

VICTIMS

1. M Riswan
2. S Ravichandran
3. A Latief

POLICE STATIONS

1. Wattala
2. Peliyagoda

DATES

- 30 August –
1 September 2003

URGENT APPEAL

- UA-49-2003
15 September 2003

VICTIM

Dawundage P

POLICE POST

Saliyawewa, Puttalam

DATES

1-2 September 2003

URGENT APPEAL

UA-50-2003**17 September 2003**

of narcotic drugs. The men have since been charged with theft, and drug-related offences, which they deny. Mr Latief and Mr Riswan have since filed fundamental rights applications in the Supreme Court.

13. Dawundage P: “It is good that you came, otherwise I would have been killed”

At around 10:30pm on 1 September 2003, about six police officers from the Saliyawewa police post in Puttalam, dressed in civilian clothes, came to the house of 14-year-old DAWUNDAGE Pushpakumara’s sister and threatened to shoot their cousin, Nishantha, if Pushpakumara did not go with them. They grabbed his neck and pushed him into their van, where he saw four bottles of liquor. According to Nishantha, the police officers went to Puspakumara’s house from the house of one Jayathilaka, where they had drunk liquor and threatened to shoot Nishantha if he did not show them Pushpakumara’s house.

Inside the van several police officers assaulted Pushpakumara, telling him to confess to stealing a gold chain. They took him to Saliyawewa police post and threw him into a cell. Then they tied his hands behind him and hung him on a beam, and the OIC and several others assaulted him. Then they put him in a room full of ants with his hands still tied.

When his parents went to police station to see their son, they saw Pushpakumara hanging from a beam with his hands tied behind him with a fiber cord. His mother asked an officer to get access to her son, but a police officer told her that the OIC was not there and to come the next day. Meanwhile about ten to fifteen persons claiming to be the owners of the chain came to the police station and threatened to get the police to harm her son if he did not return the chain. The police officers did not react to any of the threats.

The next morning, Pushpakumara was allowed to speak with his mother and sister, and he showed them his wounded hands, legs, head and chest. He added, “It is good that you came last night, otherwise I would have been killed.” The OIC asked Pushpakumara whether he took the chain and he said no. Then the OIC allowed him to go home with his mother. After Pushpakumara went back home, he complained of headaches, and fainted. The next morning the General Hospital of Puttalam admitted him.

On September 5 the police officers told the mother and sister that Pushpakumara was not a thief and the real culprit had been arrested. The police officer told them to remove Pushpakumara from the hospital and asked the supposed owner of the chain to give one thousand rupees to the mother. Then two police officers and the owner of the chain took the mother and sister to the General Hospital, Puttalam at about 7-8pm. There, the police forced Pushpakumara to leave the hospital, fearing that if there was a medical record of his injuries it could be used against them in court.

Pushpakumara fell very ill at home, and the next day a person told him the thief was going to be released and that he would be re-arrested, so he should go back to the hospital. However, due to police pressure the hospital would not admit him. Attempts to get help from the child welfare office also failed for fear of the police. A human rights organization reached the family and tried to take the child to a hospital outside the area. The National Child Protection Authority was informed of the situation and took Pushpakumara to a hospital in Colombo, where he was treated. Meanwhile, a complaint was filed on his behalf in the Supreme Court.

The family has since come under severe pressure from the police to stop making complaints. Police officers of the Saliyawewa police post, as well as prominent politicians, threatened to burn the family's house if they pursue the matter. Pushpakumara has been taken under the protection of a local human rights organisation, and his parents have since been forced to flee their home, fearing for their lives.

14. Kurukulasuriya P N: Tortured, then imprisoned for 21 months

Rev Fr Alfred Bernard Costa was killed on the night of 10 May 2001 at his mission house in Thillanduwa, Negombo. On May 13, Negombo Police arrested Kotagalage Gamini, and after gathering information from him arrested KURUKULASURIYA Pradeep Niranjana, a 30-year-old worker and father of four.

As soon as Mr Kurukulasuriya entered the Negombo police station, the police asked him whether he knew Kotagalage Gamini, and he told them he had only heard of him. Then he saw Mr Kotagalage there, who told Mr Kurukulasuriya to tell the truth about killing Fr Costa. He shouted at Mr Kotagalage that he did not know anything about this. He realized that the police were falsely and purposefully implicating him and pleaded his innocence.

The policemen began torturing Mr Kurukulasuriya. They mutilated his hands and fingers and then they hung him upside down with his legs tied, while four policemen, supervised by IP Nishanth, hit him with cricket wickets on his back, legs, and soles of his feet.

At about 8pm the police took Mr Kurukulasuriya to the house of Acting Magistrate Godfrey Cooray at Kandana. In the meantime his wife had come to look for him but could not enter the police station; people yelled that she was the wife of a priest's murderer. She could hear Niranjana begging not to be tortured. Then she went to the ASP's office and pleaded her husband's innocence, but the ASP did not respond.

Meanwhile, the police took Mr Kurukulasuriya to Negombo Remand Prison, but did not register him as an inmate. Jailer Somaratne the next day beat him on a table while naked. After

21

VICTIM
Kurukulasuriya P N

POLICE STATION
Negombo

DATES
**13 May 2001 –
21 February 2003**

URGENT APPEAL
**UA-51-2003
18 September 2003**

that the staff registered his name, and then another jailer named Senadeera tortured him, saying he murdered a priest. Then they took Niranjana to court, where the magistrate recorded his statement. Subsequently the Central Intelligence Bureau took over the investigation and ASP Priyantha Jayakody took him to Police Headquarters in Colombo and again recorded his statement. After that he was returned to remand where he languished until February 2003.

On 21 February 2003, the magistrate released Mr Kurukulasuriya on instructions from the Attorney General, and said there would be no legal action against him. For 21 months Mr Kurukulasuriya stayed in the remand prison and during this time people abused and defamed his family such that his children could not even enroll in school. They were also excommunicated from the church. Now Mr Kurukulasuriya suffers from the after-effects of torture and cannot work outdoors to support his family.

22

VICTIM
Kurupanawa Gamage N

POLICE STATION
Udugama

DATES
17-21 August 2003

URGENT APPEAL
UA-52-2003
22 September 2003

15. Kurupanawa Gamage N: Beaten and framed

Around 7-8pm on 17 August 2003, officers of the Udugama police station arrested KURUPANAWA GAMAGE Nihal near Kondalawatta Bridge, while going to the lake for a bath. Six or seven people wearing civilian clothes came and asked whether he was Nihal or not. Even before he answered, one later identified as SI Wijekoon immediately began to assault him with a pole, until the pole broke and Mr Kurupanawa was on the ground. Then SI Wijekoon and other officers continued by kicking his legs, face, back and other parts of his body, breaking his nose and causing bleeding from his nose and face. Although Mr Kurupanawa's brother arrived on the scene and pleaded for the police to stop, they did not do so.

After the police took Mr Kurupanawa to Udugama police station he bled constantly, so three officers took him to Udugama District Hospital. The doctor who examined him advised that he be hospitalized immediately. Mr Kurupanawa was admitted to the hospital and two police officers remained with him. While there, SI Wijekoon and another officer from Udugama station forced him to put his thumb print on a bottle and also forced him to sign some documents. They did not explain what the documents were about, and under any circumstances Mr Kurupanawa was only semi-conscious, and at that time thought he was dying.

The next day two police officers forced Mr Kurupanawa to leave the hospital and go with them to a magistrate. The magistrate ordered him remanded for 14 days, but Mr Kurupanawa did not even know the charges against him. When he was brought to the prison at Galle, he asked the prison officers to be sent back to hospital for medical treatment, however, they ignored his complaints.

On August 21, Mr Kurupanawa's relatives succeeded in bailing him out. He then went back to the Udugama District Hospital. The doctor who examined him told him that his condition was serious and that he should be hospitalized immediately. He was

admitted to the Teaching Hospital at Karapitiya and discharged on August 27, after being advised to get further treatment. According to the medical report given by the JMO K I Premathilaka, Mr Kurupanawa had the following injuries to his head:

1. 3cm horizontal lacerated injury on the left side of the parietal region
3cm from the mid line and 11cm above the left ear
2. Bilateral black eye below the eyes
3. 6cm circular in swelling on the left parietal region

The family has complained to the ASP-Udagama.

16. C P S Anthony & C J Lafaber: Victims of a dispute over two plastic cups

On 5 September 2003, 29-year-old technician Conganige Pradeep Surendra ANTHONY and 23-year-old hairdresser Christopher Junius LAFABER were helping a friend, Anthony Jurie, manage his stall at a church fete. At about 10pm two drunk officers from the Mutwal police station came to the stall to get two plastic cups. When a dispute broke out over the cups, the police abused and slapped Mr Jurie, and asked him, "Are you selling these cups to the police?" Mr Jurie then went to Mutwal police station with his son, but the officer there refused to record a complaint. After that, he went at about midnight to Police Headquarters in Colombo Fort to lodge a complaint.

Meanwhile, Mr Anthony and Mr Lafaber stayed at the stall. After Mr Jurie had gone SI Sujith Ganganath and three other officers drove up to the stall and arrested the two men without charging them or explaining anything. They took them back to the police station and began to beat them with hands and feet. The two men asked why they were being beaten, but the blows just continued until they couldn't stand any longer. SI Sujith Ganganatha then hit Pradeep's nose with the handle of his pistol, causing bleeding from both nostrils, after which he was told to go and wash away the blood. The two men were then put in a cell.

At about 3am the police took Mr Anthony and Mr Lafaber to a DMO in Ragama, who instructed the police to admit Mr Anthony to a hospital. They then took the two men to the Accident Ward of the National Hospital in Colombo. Mr Lafaber was kept in the vehicle, while Mr Anthony was taken inside and X-rayed, but brought back despite advice by doctors that he be kept in the hospital as his nose was fractured. The two men were brought back to the Mutwal police station, and when family members came they were told that the men were not there and chased away.

At about 1pm on September 6 the police took Mr Anthony and Mr Lafaber to a magistrate at Hulftsdorp and fabricated a story about a clash between the two men and some other persons who escaped—hence the men's wounds. The two men were released

23-24

VICTIMS

**1. C P S Anthony
2. C J Lafaber**

POLICE STATION
Mutwal

DATES

5-6 September 2003

URGENT APPEAL

**UA-58-2003
3 October 2003**

VICTIM

Raman Pillai K

POLICE STATION

Katugastota

DATES

6–16 September 2003

URGENT APPEAL

UA-59-2003**6 October 2003**

on bail, after which they went to complain at Police Headquarters. On September 24 ASP Nanayakkara held an inquiry into the complaint, and took statements from all three of the men involved. The case is continuing.

17. Raman Pillai K: Robbery victim tortured

On 6 September 2003, unidentified robbers attacked 42-year-old RAMAN PILLAI Kesam Nayar Ashokan while he was carrying the money from the till of a wine store where he was working as cashier. The robbers put him inside a van and used some chemicals on his face, which made him unconscious.

When he regained his consciousness, Mr Raman found himself inside a police jeep. Around 8:30pm, he was brought to the Katugastota police station and was questioned. He told the police that he was robbed. Around 9:30pm his employer arrived at the police station. After the owner talked to the police for about 10–15 minutes, the police accused Mr Raman of stealing the money and assaulted him while asking questions. Then they put him in a cell, and later took him to a doctor at Katugastota hospital, and then to the DMO. After examining him, the DMO said that a chemical like chloroform had been used on him, and that the police should take him somewhere with better facilities for an examination. However, the police brought Mr Raman back to the station and returned him to a cell.

According to Mr Raman, the police then took him upstairs and removed his clothes. They ordered him to lie down and blindfolded his eyes. Then, they beat him hard with something that felt like a cane or a pole. The police kept asking him whether he took the money, and where he put it. They threatened to push him out from upstairs and kill him. One officer told him to tell the truth while hitting his soles and feet. Then the police forced him to jump up and down. They also told him to carry a police officer and walk stamping his feet heavily on the ground. After that, a police officer hit his nose with a baton. He again forced the victim to lie down and three civil personnel sat heavily on his back, while the police again hit him on the soles.

Later, the police put Mr Raman back in a cell. Then they forced him to sign a statement about which he knew nothing. They took him to a magistrate, who ordered that he be remanded. While in remand, he had difficulties breathing and had severe pain in his back and soles. He was bailed out only on September 16, and received medical treatment at a private clinic on September 17 and 18. However, his condition became worse and he was hospitalized at the Peradeniya General Hospital on September 22. While in hospital, his family received threats from some unknown persons.

18. Dope Pathiranalage L: Hung by the thumbs

On 22 October 2003, police attached to Bentota police station brutally tortured DOPE PATHIRANALAGE Lasantha Priyankara, a 33-year-old labourer and father of two. At about 1:30pm that day, he had gone to the police station to inquire why some police had come looking for him. When he asked the OIC why he was wanted, the OIC, SI Silva and two other policemen took him to a back room, without any explanation. At the time, all of them were wearing civilian clothes.

As soon as they entered the room, all of them started to assault Mr Dope. They used a cricket bat, wooden clubs and a rubber hose. While they assaulted him, they kept asking him whether he had broken into a house and stolen some goods. As he denied this, the OIC and others stripped him, tied his thumbs together and hung him up by them. While in that position, all four policemen assaulted him again. He repeatedly stated his innocence—even in that position—and then the police brought him down, untied him, and threatened to kill him. The OIC pressed his trousers and T-shirt to Mr Dope's face, until he was nearly suffocated. When they failed to get a confession, the police twisted his arms behind his back, tied his thumbs together and hung him up again. They renewed their assault, and SI Silva started to stab Mr Dope's belly with a broken bottle. They continued this until he fell unconscious.

After that Mr Dope was taken to a rural hospital several kilometers away, bypassing Bentota Government Hospital. He was given a saline injection and brought back to the police station. Then the OIC told him to go back home. Mr Dope told them that he could not even move, and showed them blood still coming from his wounds. Then the police took him to the Bentota Government Hospital. While he was in the police vehicle, the OIC went inside and spoke with the DMO. After some time, the OIC brought some medicine and gave it to him. Then, the police told him to get out of the vehicle and go home. He went back home with great difficulty, after which his family took him for treatment.

19. S P Wijekone: Seven-year-old tortured over shop theft

At about 4:30pm on 29 July 2003, OIC Wijeratne and two other policemen of Polipithigama went to the house of 7-year-old Wijekone Mudiyansele Sujith Priyantha WIJEKONE, in a vehicle belonging to the Polpithigama Multi Purpose Cooperative Society, and looked for him. Sujith's mother was not at home, so the OIC sent someone to bring her to the house. After she arrived, the OIC said that he wanted to take Sujith to the police station because he had broken into a cooperative shop and stolen some goods. His mother protested his innocence, but the OIC told her to bring her son and his sister to the police station before 7am the next day.

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VICTIM
Dope Pathiranalage L

POLICE STATION
Bentota

DATES
22 October 2003

URGENT APPEAL
**UA-68-2003
28 October 2003**

27

VICTIM
S P Wijekone

POLICE STATION
Polipithigama

DATES
30-31 July 2003

URGENT APPEAL
**UA-69-2003
31 October 2003**

As she could not refuse, the mother took her two children to Polpithigama police station the next day. A constable questioned the children until 1pm. Then the OIC took Sujith into his room alone. His mother heard her son scream, but was helpless. The OIC kept Sujith for about one hour. Later Sujith told his mother that the OIC had beaten and threatened him. In the afternoon the police took Sujith and his sister in a police vehicle and searched for a 13-year-old boy called Aruna. After arresting Aruna, the police released Sujith's sister. At about 7:30pm they put Sujith and Aruna into a cell. When Sujith's mother protested the treatment of her son, the police turned her away.

On the morning of July 31, Sujith's mother came to the police station again and saw Aruna's family there also. OIC Wijeratne told them that he would release the two boys if they would pay for the goods stolen. They refused, and at about 3:30pm went to an attorney. After the attorney intervened, the OIC agreed to bring the two boys before the magistrate at Mahava. At midnight the magistrate released the two boys on bail. At the time of the Urgent Appeal his mother reported that Sujith had not yet recovered from the trauma caused by this torture, and was refusing to go to school.

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VICTIM

Hikkuduwa Liyanage S

POLICE STATION

Rathgama

DATES

12-19 September 2003

URGENT APPEAL

UA-70-2003

3 November 2003

20. Hikkaduwa Liyanage S: Innocent boy endures week of agony

HIKKADUWA LIYANAGE Sandun Kumara, aged 16, had to leave school after his father's death to support his family, and started work at a factory owned by a Mr Piyasena in early August 2003. However, he later left this work and went to Ampara.

On 10 September 2003, Sandun's aunt was informed that the Rathgama police were looking for him. He came back home and went to the Rathgama police station on the morning of September 12. The police questioned him until 3pm and threatened him to reveal the whereabouts of stolen goods, about which he knew nothing. Then they released him and told him to come back the next day.

At about 1pm on September 13, Sarath and Bandula Silva, family members of Mr Piyasena, came with their brothers to the Sandun's house, to take him to the police station. They told him it was only to record a statement and promised to return him within an hour. However, they took him to Mr Piyasena's house instead, and called the police station saying that they had caught the thief. After that, at around 3pm they brought him to the Rathgama police station, and handed him over to SI (Crimes) J T Ramyasiri.

Sarath and Bandula Silva, their brothers, and some police officers took Sandun to the backyard of the police station. SI J T Ramyasiri held him by his T-shirt collar and lifted him off the ground, demanding he reveal the whereabouts of the goods that he had stolen. He kicked Sandun's legs and dropped him onto his back. Then, he trampled him with his shoes, and hung him up on a tree by the waistband of his trousers before dropping him onto the ground.

While the police assaulted Sandun, Bandula Silva spoke to the police inspector. After that, at about 5pm Bandula and Sarath Silva and their brothers took Sandun together with some officers in civilian clothes to Piyasena Mudalali's house. There they served alcohol, cigarettes and food to the police. While they were drinking, the police officers assured the brothers that they would get the lost items from Sandun. Then, they threatened him that they knew what to do to him if he did not tell them the whereabouts of the stolen goods. All of them returned to the police station at about 6:30pm. The police took the victim to a cell containing beds with iron railings and handcuffed one of his hands to one. They gave him some food, but no water.

The next day, September 14, the police took Sandun to another small building further away from the backyard of the police station, where there were beds and a bathroom. The officers ordered him to remove his clothes and applied chilli powder to his genitals while he begged them to stop. After that, they wrapped his head and face with his T-shirt and poured water on it, suffocating him. They held the T-shirt for about one minute and repeated it about four times at two to three minute intervals. After that, they freed his hands and ordered him to face the wall. They then beat his back, buttocks and legs with their hands and wooden sticks. After assaulting him, they put him back in the cell, where he was handcuffed to a bed again.

At about noon, the police officers took Sandun to a cemetery in front of the navy camp at Boosse, near his home, and ordered him to dig a grave. Then, they immersed him in a water pit. Bandula and Sarath Silva and their brothers were present in their white van nearby. Sandun was brought back to the police station at about 1:30pm and was cuffed to the bed again. Several police officers took turns assaulting him with hands and wooden sticks. At about 4pm, the police took him inside the small building again, removed his clothes, repeated the suffocation torture, and assaulted him.

On September 15, the police repeated the torture. He was also dragged along sandy cement floors until his feet were bleeding. That evening, Sgt Silva and another officer took Sandun to the beach behind the police station and ordered him to run. They threatened to shoot him, and then assaulted him with a stick while he was handcuffed. The assaults continued into September 16.

At about 12:30pm on September 17, the victim's mother was permitted to meet her son for the first time since he was taken into police custody. She noticed how he walked with great difficulty, had a black eye, and his skin below the ankles was swollen and red. His elbows and knees were wounded, and he could sit only on the edge of the chair. After seeing her son's serious condition, she requested the police to provide him medical attention, which was denied. That evening, Sgt Silva hit Sandun's head against a wall, and struck his ears with his shoes about five times. He also kicked and trampled his legs.

The police produced Sandun in court on September 19, and then sent him to the Kithulampitiya Remand Home. The officers of the remand home admitted him to the Karapitiya Teaching Hospital on September 21, where he was treated and discharged, but readmitted on September 23 because of severe headaches, chest pains and hearing loss.

On September 24, Sandun was produced in the Galle Magistrates Court and released on bail. His family has since filed complaints with the NHRC, NPC and in the Supreme Court, which has ordered the NPC to investigate. However, since making the complaints they have received death threats. The perpetrators are all still serving at the Rathgama station, and the family fears for their security.

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VICTIM

S L Kulathunga

POLICE STATION
Nivithigala

DATES

10–12 November 2003

URGENT APPEAL

UA-72-2003

13 November 2003

21. S L Kulathunga:

Public outcry after custodial death

Three officers in civilian clothes, led by Sgt G W Siripala, arrested and beat 29-year-old Samarathunga Liyana Arachchige KULATHUNGA on 10 November 2003 at the front of his family house in Nivithigala, for 'indecent behaviour'. Mr Kulathunga was taken to the Nivithigala police station, where he was reportedly assaulted and suffered serious head-injuries. However, PC Sugath claimed he was injured when jumping from the police jeep on the way to a medical test. On November 11 they admitted him to Wathupitiya Base Hospital.

When the local people heard about the assault, it provoked a huge outcry. Thousands of persons gathered around the police station, cut down trees, barricaded the road and burnt tires to express their anger. Around one thousand persons also gathered at the hospital. However, Mr Kulathunga was transferred to the National Hospital in Colombo, where he died of his injuries on November 12.

On November 13 Mr Kulathunga's father told the Additional City Coroner M Ashroff Rummy that his son had been savagely beaten in front of him. He claims that around 6:30pm on the day of the arrest he heard his son shouting to someone not to kill him at the front of their house. "I saw two policemen beating my son on his head and neck. Thereafter they bent him and hit him on his back," he reported. "When I attempted to save him a policeman beat me on my shoulder and I ran away in fear." Around 15 other villagers witnessed the attack, including his brother, however they did not assist Mr Kulathunga out of fear that they would also be assaulted.

Inquiries into the case are reportedly continuing.

22. S J Pallekanda: Accused of car theft

On 6 December 2003, officer Hemantha and other police from the Katugastota police station came to the house of P M Hemapala in Pallewatta, Pitawala, Nawalapitiya and searched for his 22-year-old son Shiron Jeewantha PALLEKANDA. As he was not at home, they took his photo from the house and told his father to

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VICTIM

S J Pallekanda

POLICE STATION
Katugastota

DATES

7–10 December 2003

URGENT APPEAL

UA-80-2003

10 December 2003

sign a statement, the contents of which they did not explain. Then they told him to bring his son to the station on December 7. He replied that his son could not go because he had been told to report to the Kekirawa police station on Sunday. The officers told him to bring his son in the afternoon.

Mr Pallekanda went to report to the Kekirawa police station at about 11am on December 7, with his father. The police kept him until 7:30pm, on request of the Katugastota police. Around 7:30pm the police from the Katugastota arrested him on suspicion of vehicle theft, and took him back to their station. His father followed them in a lorry, and then went home.

The next day, December 8, when Mr Pallekanda's brother went to see him around 4pm, he found that his brother had been severely beaten. He came back home and informed his father, who arrived at the station around 7:30am the following morning, December 9. His son told him that he had been severely beaten and vomited as a result, after which he had been taken to a private doctor but not given any proper treatment. The police told the father that they could not produce Mr Pallekanda before a magistrate because their investigation was incomplete. An hour later, he came back to the station with a lawyer, and the police promised the lawyer that they would produce the victim in court on December 10. The father came to visit again around noon, and an officer told him that his son had been taken into a room to record a statement. Then the father heard his son cry out. After Mr Pallekanda came out he told his father that the police were beating him in the room. When the father complained, the officers threatened him that they would remand his son if he came to the police station again. At the time of the Urgent Appeal being issued, Mr Pallekanda was still in custody.

23: Bamunuarachchi Pathiranalage S: Hung from the ceiling

At 10:30am on 1 November 2003, two police officers in civilian clothes from the Kuliypitiya police station arrested BAMUNUARACHCHI PATHIRANALAGE Sathkumara at his friend's house. The police did not give any reason for his arrest. On the way to the police station, they collected a woman whom Mr Bamunuarachchi recognised as living nearby his friend's house.

At the police station, the officers took Mr Bamunuarachchi into a room and ordered him to remove his shirt, belt, and wristwatch. Then they started to beat him severely with a wooden pole. They asked whether he had broken into a house and stolen some goods, of which he knew nothing. Later he found out that a burglary had occurred at the woman's house.

The police ordered Mr Bamunuarachchi to lie on the floor and beat the soles of his feet hard for ten minutes. After that, they put his hands behind his back and hung him from a ceiling beam by a nylon rope. Officer Pushpakumara and another policeman then swung him for 45 minutes, causing extreme pain to his

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VICTIM
**Bamunuarachchi
Pathiranalage S**

POLICE STATION
Kuliypitiya

DATE
1 November 2003

URGENT APPEAL
**UA-78-2003
11 December 2003**

shoulders and arms. After he was removed from the beam, the police officers ordered Mr Bamunuarachchi to jump up and down and run outside, also causing him great pain after the torture.

After that, a policewoman took Mr Bamunuarachchi's money and bought some medicine for him. He was released at 6:45pm, at which time they warned him not to go for hospital treatment, lest records of his injuries be produced. Nonetheless, his brother took him to the Kuliyaipitiya Hospital and he was kept there until November 4. While there, the police officer on duty at the hospital took a statement from him about the torture. A JMO also examined him and took a report. His brother has also made a complaint to the DIG-Kurunegala, who asked him to report the case to the regional ASP, and promised to take action within 10 days. However, at the time of writing the Urgent Appeal no serious steps had been taken to bring the perpetrators to justice.

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VICTIM
Nishantha Kumara

EXCISE STATION
Bulathsinhala

DATE
3 December 2003

URGENT APPEAL
UA-83-2003
19 December 2003

24: Nishantha Kumara: Fifteen-year-old beaten for failure to locate illicit alcohol seller

At 11:30am on 3 December 2003, four officers from the Department of Excise came to 15-year-old Nishantha Kumara's house in a cab. One officer called Nalaka was in uniform, and the others were in civilian clothes. At that time Nishantha was at home for lunch after working in the paddy fields. The officers immediately handcuffed him and asked him whether he knew a person called Chutte, an illicit alcohol seller. The officers accompanied Nishantha to search for Chutte, however they could not find him. Then the officers took Nishantha to a near by forest, and on the way there, the officers beat him. They then put his hand on a stone and pounded it.

After that Nishantha was brought back to his house, by which time his father was there. The officers then took both of them to the forest, and Nishantha's father was forced to take a barrel to the place where the cab was parked. Then the officers forced Nishantha and his father to sign some forms, about which they knew nothing. Nishantha's aunt, who came to see him at that time, also had to put her signature on the forms. After that, the officers threatened to charge Nishantha with possession of illicit alcohol if somebody did not come to certify the forms. The officers also threatened to take Nishantha's aunt if they were unable to appear before the court.

Nishantha was admitted to the government hospital of Pimbura on the same day. He was discharged after three days, although his hand had not yet healed. He has lodged a complaint with the police, however, they have not taken any serious steps to investigate this case.

25. Ashoka P Kumara, Saman Puspakumara, N Ratnayaka, W P Piyadasa, Nilantha K Rajapakse, Chaminda Sureshkumar, U N Jayantha Premalal & S Niyamaka: Victims of New Year's revelry

On 31 December 2003 four policemen in civilian clothes from the Gokarella police station came to Baddegama village in Madahapola and sought information about illicit liquor. They approached 20-year-old Ashoka Pradeep Kumara and 17-year-old Saman Puspakumara and asked, "Where do you get illicit liquor?" When the men said that they don't get it, the policemen severely assaulted them and took them to their vehicle, later abandoning them. The two were hospitalised in the rural hospital at Polgolla, but the following day, 1 January 2004, they were forcibly dismissed. Saman was admitted to Kandy Hospital on January 6. According to the doctor's examination, his lower abdomen was damaged and he was complaining of dizziness due to blows on the head. The doctor recorded his statement describing torture by the police.

In the meantime, at about 5pm on December 31, Saman's mother went to the Gokarella police station to lodge a complaint. When she met OIC Janaka Manapperuma, he said that he was not aware of the incident. At that moment, there were over 200 people at the police station having a New Year party. Most were policemen, retired policemen and their friends. Most were also drunk. Among them was IP Weeraratne, who is a suspect in a pending murder case who has nonetheless stayed on in the police service. Under his leadership, most of the people at the party went to the village.

Arriving at the village, this group of some 200 policemen and their supporters mercilessly assaulted the villagers with poles and cycle chains. They went inside the only shop and destroyed its contents. The villagers could not resist because the policemen were armed with rifles. The OIC came later with the torture victim's mother and saw what was happening, but could not stop the assault. Five persons were seriously injured during the attack: R M Newton RATNAYAKA, a 29-year-old amputee, was pushed to the ground and trampled; U N Jayantha Premalal was also beaten on the stomach and shoulders; Nilantha Kumara Rajapakse was seriously injured in the right ear; W P Piyadasa, aged 70, was dragged along the ground, causing serious injuries to his knees, hands and face; and Chaminda Sureshkumar was also wounded.

The police arrested Premalal, Rajapakse, and one S A Somaratne, and charged them with obstructing police actions against illicit brewing. However, the people in the village had in fact been conducting an anti-drug and anti-alcohol campaign, and had themselves organised many activities to prevent thefts and other social problems in the village.

VICTIMS

1. Ashoka P Kumara
2. Saman Puspakumara
3. N Ratnayaka
4. W P Piyadasa
5. Nilantha K Rajapakse
6. Chaminda Sureshkumar
7. U N Jayantha Premalal
8. S Niyamaka

POLICE STATION
Gokarella

DATE
31 December 2003

URGENT APPEAL
UA-02-2004
9 January 2004

After arresting the three men, the police took them to a private medical centre at Ibbagamuwa. The doctor who examined them told the police that Premalal and Kumar should be admitted to hospital. However IP Weeraratne took all three to the Gokarella police station and locked up Somaratne before taking the other two to the rural hospital at Polgolla, in Ibbagamuwa. The next day the police produced Somaratne before a magistrate and remanded him at Kegalle Prison. However, the doctor at Polgolla did not want to admit the two injured men as their conditions were serious and the hospital not equipped for such cases. She gave the hospital ambulance and requested the police go to the Teaching Hospital in Kurunegala. The men were taken under guard and admitted. On January 1, Premalal was operated on, but Rajapakse did not receive proper treatment. On January 2, the Kurunegala magistrate came to the hospital and ordered the men remanded at the Prison Hospital in Kegalle. On January 8 all three appeared at the Kurunegal Magistrates Court and were granted bail. The next hearing will be held on 25 March 2004. After being released, Premalal re-entered the Teaching Hospital at Kurunegala. Rajapakse went to Colombo to have his ear examined.

Meanwhile, after the arrests 25 villagers and the abbot of the Buddhist temple had gone to the police station to ask for the men to be released. The police allowed only three people and the monk to go inside, and only the monk could speak to the OIC. The OIC told the monk that if he had any complaints, he should refer the matter to the ASP, who had just arrived for the New Year party. However, the ASP said that he had come for a celebration, not to entertain complaints, and promised he would come to the village with two typewriters at 11am the following day to inquire into the incident. Unfortunately, he did not keep his commitment. The villagers went to the police station again to lodge their complaint, but the police did not take any action.

After this the villagers selected five representatives to report the incident to the NPC and NHRC in Colombo, and officials from NHRC came to investigate. However, because of this visit and media attention, the police at the Gokarella station have come to the village and threatened the people to withdraw their complaints. They also stopped the bus service to the village. The villagers have also reported the incident to the DIG of North Western Province, and he appointed ASP Charles Wijewardene for further inquiries.

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VICTIM
D G Premathilaka

POLICE STATION
Katugastota

DATES
8-9 January 2004

URGENT APPEAL
UA-03-2004
12 January 2004

26. D G Premathilaka:

“It’s you we’re searching for!”

Around 8:30pm on 8 January 2004, D G Premathilaka and his wife went to buy some biscuits for their little daughter from the local shop. On the way, someone shouted, “It’s you we’re searching for!” and suddenly some people started to assault him. He was hit hard on the head and face, then pulled into a van and driven away, while his wife was by the roadside.

The next morning, January 9, his wife received a call that her husband was at the Katugastota police station. She sent her brother there to get the facts. Upon arrival, he saw Mr Premathilaka collapsed on the floor in the remand cell. After signing a paper, he could bring his brother home. According to Premathilaka, some of the police had severely assaulted him at the station.

That afternoon, the family admitted Premathilaka to the Kandy Public Hospital. However, about 1:30pm the next day, January 10, the hospital forcibly discharged him, saying he had no serious injuries, even though he complained of a severe headache and inability to move his neck. There were also some wounds on his legs and arms. After being discharged, he was admitted to the Peradeniya Hospital.

Speaking to a local human rights group, Premathilaka explained that he had previously been involved in illegal liquor sales, but had left the business. After he gave it up, the police, angered by him no longer paying the bribes necessary to conduct such business, fabricated charges against him. According to Premathilaka, they were further angered when he pleaded innocence in court, and the attack seems to have been punishment.

27. Tennakoon Mudiyansele G: Beaten over a missing bicycle

On the evening of 31 December 2003, TENNAKOON MUDIYANSELE Gunsekera, a 39-year-old waiter and father of three was sleeping in front of the Chandrasena Hotel after work. Around 10:30pm six drunk policemen attached to the Mahiyanganaya police station came to look for a policeman's bicycle parked near the hotel. When they could not find it, they woke up Mr Tennakoon and questioned him. When he could not answer, they surrounded him and severely assaulted him with wooden bats. When he fell to the ground, they trampled him.

The following evening, 1 January 2004, Mr Tennakoon's wife found her husband lying on the ground in the marketplace. She later went to Mahiyanganaya police station to lodge a complaint, but the police tried to hush up the case by offering her 500 Rupees, and refused to record her complaint.

Mr Tennakoon was hospitalized in Mahiyanganaya and his statement taken by the police officer on duty at the hospital, at the request of the DMO. His ribs have been damaged due to the attack, and he finds it difficult to breathe and lie down. A local human rights organisation has helped his wife send letters to the NPC, NHRC and DIG-Uva.

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VICTIM
**Tennakoon
Mudiyansele G**

POLICE STATION
Mahiyanganaya

DATE
31 December 2003

URGENT APPEAL
**UA-04-2004
13 January 2004**

VICTIM

Jayasekara Vithanage S

POLICE STATION

Matale

DATES

5-6 January 2004

URGENT APPEAL

UA-07-2004**26 January 2004****28. Jayasekara Vithanage S: “I will make sure that you will no longer have a normal sex life”**

On 7 December 2003 JAYASEKARA VITHANAGE Saman Priyankara, a 32-year-old poultry farm owner and father of two, went to Matale police station after being called by the officer assigned to his village. The officer told him that there was a complaint against him by some local authorities regarding the dredging of sand for his new house. However, the concerned personnel did not come to the station, and eventually the officer asked him some questions and told him he was doing nothing illegal. He then had Mr Jayasekara buy a bottle of glue and two pens, and give 500 Rupees, after which he prepared a document and gave it to Mr Jayasekara to sign, while assuring him it would end the matter. Although Mr Jayasekara did not understand the document, he signed it out of fear and with the assurance that he could continue to dredge the amount of sand he needed. Then the officer told him that he would come to the village on December 13, at which time Mr Jayasekara could dredge the sand.

Mr Jayasekara went home, and on December 13 dredged some sand as he was assured he could, and noticed the police officer in the village. However, the officer then approached him and told him to stop dredging at once, to which Mr Jayasekara replied that the officer had told him he could do so. After that, the officer began hanging about at the front of his house, and out of nervousness Mr Jayasekara called the ASP-Matale to inform him that he was being intimidated. The ASP asked him to come to the office to complain. When, at around 5pm, a group of officers from Matale police station arrived at the house by jeep, Mr Jayasekara's wife told them that her husband had gone to the ASP's office to lodge a complaint. One officer asked about the details of the complaint, and she explained. The officer then spoke to the police station using the house telephone, and stated that the problem was only about sand dredging, and not about a theft. After that the police left.

At about 4:30pm on 5 January 2004, SI Panagoda, a sergeant, and three other officers in civilian clothing from the Matale police station arrived at Mr Jayasekara's home. They entered the house and told Mr Jayasekara that they needed to take him to the police station. When he asked why, he was given no reason and nor was he charged. Instead, SI Panagoda hit him on his cheek and back, handcuffed him and told him to get into the jeep.

When they arrived at Matale police station, the police took Mr Jayasekara, still handcuffed, into SI Panagoda's room. There, SI Panagoda told the officer assigned to Mr Jayasekara's village to plug in an electric kettle. After some time the officer came back with a large jug of boiling water and a small cup. SI Panagoda approached Mr Jayasekara and told him that they would take revenge on him for arguing with their colleague, and while ordering him to tell the truth began pouring the boiling water very slowly down his right leg. Doing this, the officer pouring the boiling water told Mr Jayasekara that he would see to it that he

would not have a normal sex life in the future. The water in the jug took about 10 minutes to finish, during which time Mr Jayasekara begged the officers not to go on with the torture. After that the officer assigned to his village removed the handcuffs and put him in a cell, where he removed his sarong and checked the burns. Then Mr Jayasekara saw that the whole of his thigh was covered with blisters. The policeman then gave him a bottle of medicinal oil and told him to apply it to the wound. After that, Mr Jayasekara was left in the cell for the whole night, during which time he was given no food, water or other medication.

At around 12:30pm the next day, January 6, Mr Jayasekara was taken from the cell and told to leave the police station by the rear door. There, SI Panagoda warned him not to report the incident or seek medical help for the wound, or he would be killed. He also said that the police would keep a watch on him, and visit his home often to check. Mr Jayasekara went home, and out of fear complied with the police instructions. The officers also followed through with the warning, visiting his home several times in uniform, and a number of other times in civilian clothes.

Finally, at around 12:30pm on January 20, SI Panagoda himself and another officer came looking for Mr Jayasekara at a time that his mother was conducting an alms giving. Mr Jayasekara hid in the house, and SI Panagoda called out that but for the alms-giving event, he would not have spared Mr Jayasekara that day. After that, Mr Jayasekara made a written complaint to the ASP's office, and approached a photographer to document his wounds. On January 21 he went into Kandy General Hospital, where he was treated and examined by a JMO. On January 22 he complained to the Kandy Police Station while on his way home, and on January 30 the ASP called him to his office in Matale on January 31 to take a statement. The NPC Officer in Kandy has also investigated the case, and according to its chairman has "initiated necessary action" against three police officers. Mr Jayasekara filed a fundamental rights application in the Supreme Court on February 2.

29. Koralaliyanage P:

"This is where your heart is and I am hitting so that you will die in two months"

KORALALIYANAGE Palitha Tissa Kumara is a prominent artisan and 31-year-old father of two engaged in restoring two houses in Galle Fort in their original 17th century style. He took leave from this work on 2 February 2004 and returned to his house at Halwala, Matugama that night.

About 8.30am the next day, February 3, a police jeep and Pajero arrived at Mr Koralaliyanage's house. There were four officers in the jeep and six officers in the Pajero. SI Silva got out of the Pajero and called for Mr Kumara. He told him to come to the Welipenna police station and help to make the police emblem for Independence Day celebrations on February 4. Mr Koralaliyanage put on his shirt and came out as instructed. But

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VICTIM
Koralaliyanage P

POLICE STATION
Welipenna

DATES
3-6 February 2004

URGENT APPEAL
UA-18-2004
13 February 2004

when he reached the Pajero, SI Silva took his pistol and hit him on the chin three times, drawing blood. Then he booted Mr Koralaliyanage's back and told him to get in. Mr Koralaliyanage was pushed underneath a seat, and the car proceeded. The two vehicles went to the house of Galathara Don Shantha at Galathra junction. Mr Galathara was also brought out of his house, and put in the jeep. Several other young people were picked up on the way back to Welipenna police station.

After arriving at the police station, the police took Mr Koralaliyanage to SI Silva's room, and he was told to sit on the floor. The other persons were taken to the cells. A little later, Mr Galathara was brought in and made to sit opposite Mr Koralaliyanage. Then SI Silva took a cricket post and started hitting Mr Koralaliyanage repeatedly, between the shoulders. While hitting him, he told Mr Galathara, "Look—this is how the others will also be treated." He pulled up Mr Koralaliyanage and kept hitting him hard all over his body. Then he told Mr Koralaliyanage, "Give the bombs, give the weapons, and tell about the robberies you have committed." Mr Koralaliyanage said he knew nothing about weapons or bombs, and begged the officer to stop hitting him. However, the beating went on for possibly two hours, and in that time Mr Koralaliyanage recalls being hit about 80 times, on all parts of his body, soaking his clothes with blood. The blows were at times so forceful and wild that the officer also hit and smashed an electric bulb on the ceiling. Throughout this time, Mr Galathara was watching in terror. Mr Koralaliyanage noticed that he had involuntarily urinated on seeing the manner in which Mr Koralaliyanage was beaten up. After this, other officers became concerned at the relentless beating and savagery of the attack. Another came in and said to SI Silva, "Are you trying to kill this man? Stop this hitting." However, he did not stop. Then the officer left and came back with about eight other officers, and one of them pulled the cricket post out of SI Silva's hands.

At this stage SI Silva left and came back with a person named Sarath who according to him had tuberculosis. The officer forced Mr Koralaliyanage to open his mouth and had Sarath spit into it, telling Mr Koralaliyanage that he would also get tuberculosis and die. Mr Koralaliyanage pleaded not to do this, saying that he would catch the disease and spread it to his wife and children, but to not avail. On seeing this, the officer who had already intervened brought a bottle of water and told the petitioner to wash his mouth. At this stage Mr Koralaliyanage began to lose consciousness. After a while, he found himself in a cell. There, at a later time the same officer brought a mattress for him to sleep on, but about 30 minutes after SI Silva showed up took it away.

Mr Koralaliyanage was first kept in the cell for about three days. In that time he often vomited, and could not eat or drink. He could not even urinate in the corner hole, despite attempts by Mr Galathara, who was locked in the same cell, to help him. Each time he tried to stand up, severe pain in his right ear caused

dizziness and disorientation. On the third day SI Silva came and told Mr Koralaliyanage to get up, raise his arms and bend down. Mr Koralaliyanage found it very difficult, and so the officer punched him in the chest about 13 times, and once in the face. While punching him he said, pointing, "This is where your heart is and I am hitting so that you will die in two months." On another occasion SI Silva came and handcuffed Mr Koralaliyanage to a bar of the cell door, and then pulled the door up and down, injuring his wrist.

During these three days, Mr Koralaliyanage's wife was able to visit him on February 4 and 5, and give some medicine to treat his wounds. The officer who had earlier intervened in his case also brought surgical spirit. Also, on February 5 40-50 persons were brought to the police station at various times and shown the detainees. Two cameramen in civilian clothes also came and took separate photographs of the detainees.

On February 5, the third day of detention, some other officers took Mr Koralaliyanage to Itthapana District Hospital. The doctor who examined him refused to admit him because his injuries were too serious. The police brought him back to the station and then again took him to the hospital, to be examined by another doctor, who also said he could not be admitted there. After that the police took Mr Koralaliyanage to the Wetthewa Government Hospital, where he was likewise refused admission. But while there, a lawyer came and met him and talked to the police officers, after which he followed them back to the station. The lawyer demanded the police bring Mr Koralaliyanage before a magistrate, and waited for some time at the station. However, eventually he came to the cell and told Mr Koralaliyanage that it did not seem that the police would bring him before a magistrate and because of other commitments he had to leave.

That night SI Silva came back to the cell and took a grenade out of its packing. Then he pulled Mr Koralaliyanage's hand through the bars and took his thumbprint with warm ceiling wax, which he in turn he planted on the grenade. He took down Mr Koralaliyanage's personal details and came back with a statement that he forced him to sign, without explaining anything of the contents. He also fingerprinted Mr Koralaliyanage.

In the morning of February 6 Mr Koralaliyanage was again taken to Wetthawa Government Hospital, but he received no treatment and was kept handcuffed while the police went to get a signature on some documents from one person there. Then the officers brought him back to the police station. At about 5.30pm he was taken to an office in the Magistrates Court of Matugama, where he was produced with several others before an acting magistrate. Mr Koralaliyanage told the acting magistrate that he was severely assaulted and that his thumbprint had been planted on a grenade, and asked for medical treatment. A lawyer appearing on his behalf requested that he be examined by a JMO, which the acting magistrate duly recorded. After the hearing, Mr Koralaliyanage was taken to

Kalutara Remand Prison and admitted to the prison hospital. On February 10 he was again brought before a magistrate, and on February 12 he was taken to a JMO at the General Hospital of Colombo. Several doctors examined and noted his injuries, took X-rays and photographs. The JMO has instructed that he be brought for further examinations.

Two cases have been filed against Mr Koralaliyanage, for possession of a grenade and for robbery. At the time of this report, he is in Kalutara Remand Prison. Meanwhile, he has lodged a fundamental rights application in the Supreme Court.

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VICTIM
**D G Athula Saman
Kumara**

POLICE STATION
Katugastota

DATES
16-20 February 2004

URGENT APPEAL
**UA-20-2004
20 February 2004**

30. D G Athula Saman Kumara: Taken from the marketplace

On 16 February 2004, a group of police officers came to the wholesale market at Katugastota, in Kandy, where D G Athula Saman Kumara was carrying out his business, and took him to the Katugastota police station. His wife went to see him in the evening of the same day and found that her husband was severely wounded by torture conducted by the police officers. Kumara told his wife that the police did not give any reason for his arrest, or make any record. Later that night his wife went to see him again and saw her husband suffering in great pain caused by the torture. At the time of this report, Kumara was still in detention and his full circumstances unknown. His wife has lodged complaints with the NHRC and NPC in Colombo and sought urgent intervention to get medical treatment for her husband.

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VICTIM
Bellanavithanage S Y

POLICE STATION
Baduraliya

DATES
22 February 2004

URGENT APPEAL
**UA-24-2004
2 March 2004**

31. Bellanavithanage S Y: Shot dead because of a family quarrel

On 22 February 2004, four officers of Baduraliya police station led by SI Dammika went to investigate a complaint of a family quarrel at the house of Ayasha Damayanthi, the sister of 22-year-old BELLANAVITHANAGE Sanath Yasaratne. Finding no one at the house, they were returning to the station when they saw Mr Bellanavithanage at a shop. Recognising him, PC Suriyaarachchi approached him to question him about the complaint. While investigating him, PC Suriyaarachchi reportedly started to beat Mr Bellanavithanage hard with his truncheon. The victim tried to escape the blows by running away. Another officer fired two shots and Mr Yasaratne fell in the street. According to the many eyewitnesses, the police abandoned Mr Bellanavithanage and did nothing to help him. Later, his brother and several other people took him to the Wattaewa Hospital. However, he died while being transferred to the General Hospital in Colombo.

A postmortem inquiry by the JMO at Nagoda Hospital has confirmed that the death was caused by gunshot. A magisterial inquiry has not yet been held. The victim's family wants an inquiry, however they fear that the perpetrators will attempt to make up a false story to avoid liability for the death.

Torturing and killing the innocent

Basil Fernando, Executive Director,
Asian Legal Resource Centre

What characterises victims of torture by the police in Sri Lanka? First, they are poor people. Secondly, they are innocent of whatever they have been accused.

Why are the poor always victims of torture? Clearly it is because the police have for a long time believed that they can do anything to the poor without serious repercussions. If an affluent person is abused, repercussions are guaranteed. If a serious criminal is tortured, even worse can be expected. But a poor person can apparently be beaten, raped or killed without fear of consequences.

That the victims are innocent is manifest by the fact that despite the police using all their energies to fabricate cases, they fail. The police are of course concerned with covering themselves when their superiors raise questions, when inquiries result, and in the event that the victim or family members bring a case to court. Inquiries from further afield, including those by the United Nations Special Rapporteur on torture, give further impetus to fabrication. Yet, despite their efforts, police have been unable to prove torture victims guilty of any crimes of which they have been accused.

Why is it that innocent persons are arrested and tortured? In most cases, police need substitutes for crimes where they have been unable to identify and arrest the real culprits. Officers in Charge of police stations are under pressure from their superiors to take effective action on reported crimes. Higher-ranking officers are under pressure from the public and politicians to show results. Under all this pressure, when police cannot produce real results, they attempt to produce anything at all.

Deaths in custody

“There has been no attempt to lay down guidelines for proper inquiries into deaths in custody”

In this report, ‘Endemic torture and the collapse of policing in Sri Lanka’, there are several cases of deaths at the hands of the police. While torture survivors may live to tell what happened to them later, only those inside a police station at the time of a death know the truth. Most of them are police. There may also be other detainees, but usually they are justifiably scared to speak about what they have witnessed. As for police witnesses, there is almost always a bond of secrecy between them, even when some officers may not have approved of what was done to a prisoner. Thus, the families of persons who die in custody are severely disadvantaged when pursuing their cases, or even simply trying to find out the truth.

In Sri Lanka there has been no attempt either by the police authorities or the judiciary to lay down guidelines for proper inquiries into deaths in police custody. Added to this is a police culture from the not so distant past when tens of thousands of disappearances after arrest occurred because procedures permitted disposal of bodies without legal accountability. By examining some of the cases in this report, the impediments faced by family members of the deceased are apparent.

Garlin Kankanamge Sanjeewa (case no. 9)

In a sworn affidavit, Sanjeewa’s mother states that the police came in the early morning and told her that her son had been arrested, asking her to go with them immediately. However, she later discovered that her son was already dead by the time they came to her. Had she been informed of the death prior to accompanying the police to the station, she would have told other relatives and gone to the inquiry prepared. Instead, she was kept waiting at the police station without being told of his death, and only when doctors and a judge arrived was she shown his body hanging from a beam in the cell. She could do nothing more than protest the police version of events. She had no time to get support from a lawyer or anyone else. Within a short time the inquiry was closed, with only the police account of what happened on record. To overturn the findings of this first inquiry, Sanjeewa’s mother would have to fight an uphill battle in the courts. She is a poor widow without the means to do so. All that she could do was to have her son buried on a relative’s property, to keep his body safe from tampering by the police in the hope that she might get a second inquiry.

Had this woman been properly informed about her son’s death as early as possible, and given sufficient time to attend the inquiry with support from others, including a lawyer, she would have had a chance to challenge the police version of the death. Instead, the persons whom she suspects murdered her son manipulated her presence in order to have her identify his body in the presence of the officials needed to close the case. This was her only function at an inquiry that then expedited disposal of the matter in accordance with the wishes of the police.

Where is the propriety in quickly disposing of deaths in custody cases? Quick disposals of these cases only serve police designs and create further public suspicion about their behaviour. Generally what happens when a death like this occurs is that high-ranking police officers and other powerful officials in the area converge on the police station to clean things up as quickly as they can, leaving very little room for outsiders. Very often, the family of the victim is the last to know what has been decided.

“Family members are being treated not as important witnesses for the prosecution, but as if they are the accused”

T A Premachandra (case no. 3)

In this case the victim was shot for allegedly refusing to stop his three-wheeler when ordered to do so by two police officers. Similar stories are often heard. But when are the police justified in shooting into a passing vehicle? What instructions are there for how police should act in such instances? In this case no charge has been made that the victim was a dangerous criminal wanted by the police or that he may have been carrying weapons with which he would have attacked them. In fact, no criminal record of any sort has been established against him. The police officers could have followed the vehicle and stopped it if necessary via other means. The explanation that they were shooting at the tires of the vehicle and the bullet ricocheted is not borne out by the evidence. A satisfactory explanation is yet to be given.

S Hemachandra (case no. 7)

Sunil Hemachandra's good luck at winning a lottery turned sour when he died in police custody. According to the police, he died from a fall, which may have been caused by drunkenness or a fit. However, a person arrested together with the victim claims that he was assaulted at the station. The autopsy was initially organised by officers of the police station where Sunil died. After public outrage about the death, the inquiry was taken over by another unit. However, when the case came into the court, the police applied to refer the matter to the Attorney General. At the time of writing, it remains pending. This result has caused some confusion for the family of the victim, which was not given any reason for the transfer of the case to the Attorney General. The family members, who are in fact complainants in this case, are being treated not as important witnesses for the prosecution, but as if they are the accused. They feel like the case is proceeding *against* them, instead of the perpetrators of the alleged murder.

To dispel the widespread impression that in such cases the alleged murderers are also acting as judges, the following general steps ought to be taken when a person dies at the hands of the police.

- a. The nearest relatives to the victim should be informed of the death in writing immediately afterwards.
- b. The National Police Commission (NPC) and National Human Rights Commission (NHRC) should also be informed of the death without delay. As these agencies have area officers, those

“A section of opinion-makers from the upper classes and media seem willing to ignore what is taking place”

personnel should be informed in writing and invited to attend any inquiry. They should then submit their own independent reports to their respective agencies.

- c. The relatives of the victim should be given sufficient time to attend any inquiry, with adequate safety, and be allowed legal representation.
- d. In all cases, the inquiry into the death should be handed immediately to an officer outside the police station, and preferably outside the area of the Assistant Superintendent of Police (ASP) under whom the station is situated. This is because of the common perception that in most instances ASPs connive with their subordinates and feel obliged to protect them.
- e. Autopsies should be videotaped. This is now done in many countries. It is no longer expensive, and can enhance the credibility of the inquiries as well as be useful when a case goes for review.
- f. The Department of the Attorney General should act promptly on cases it receives and help the prosecution to proceed without delay, in order to avoid confusing and discouraging witnesses, especially family members of the deceased.

What remains to be done

A change in this situation can come about only if civil society organisations take up this issue of torture and deaths in custody resolutely, and generate public discourse. As the victims of custodial death are, like victims of torture, from extremely poor backgrounds, they are not in a position to begin such public debate. Civil society organisations must be blamed for their failure to take up this issue, instead often preferring to deal only with the concerns of more affluent people. The NPC and NHRC have also failed to adequately address deaths in police custody in Sri Lanka.

As the poor and innocent are tortured and killed without reason in police stations throughout the country, the business of policing has lost all credibility among the population. The cynical remarks made constantly in private conversations are a damning indictment of this institution, speaking to its utter degradation in the eyes of the public.

What makes this worse is that a section of opinion-makers from the upper classes and in the media seem willing to ignore what is taking place, despite their hue and cry about the increase of crime in the country. It is as if there is silent conspiracy against the establishing of a credible criminal investigation system in Sri Lanka, lest it hurt the status quo of recent decades.

All this makes the government's failure to take effective steps to eliminate torture even more reprehensible. It can be said without any exaggeration that the government of Sri Lanka has

turned a blind eye to the whole issue of torture, despite enormous local and international pressure. Neither the President nor the Prime Minister has made a single statement condemning torture.

In light of the above, there needs to be serious reexamination of the role of the Attorney General. The Prosecution of Torture Perpetrators Unit (PTPU) was set up under his department some ten years ago in response to strong international and local pressure. When it began its work, the PTPU functioned efficiently and conducted investigations properly. However, the department has been slow to take up prosecutions, with adverse results. Now the PTPU investigations are slow, and no one knows when an actual prosecution will occur. The Attorney General blames delays on inadequate staffing. Whatever the reason, the result is that perpetrators of torture continue to feel safe in the belief that no serious repercussions will follow their wrongful actions.

As for the Inspector General of Police, NPC and NHRC, to date they have not gone beyond piecemeal gestures. It is as if there is a pervasive fear about trying to bring discipline into the police. It is a fear that any attempt to address police discipline seriously may lead to resistance from the rank and file. As manifest in this and ALRC's earlier report (*article 2*, vol. 1, no. 4, August 2002), the innocent victims are the ones who pay the price for this fear. The cases reported here are but a small fraction of the total abuse occurring daily throughout the country. The victims in these cases were lucky enough to meet with committed lawyers or local support groups prepared to help them tell their stories and fight their cases. Thousands of others know these stories just as well, but have been unable to tell them.

Finally, all United Nations agencies and concerned parties in the international community should try to understand the nature of this torture routinely taking place in Sri Lanka. Many persons coming from international agencies, especially those from more developed countries, still struggle to comprehend this type of torture. These persons are accustomed to regarding the police as a reasonable institution trying, on the whole, to act in a friendly and responsible manner towards the majority of citizens. Such persons think of torture as an exceptional activity committed by a few bad officers, which no institution can completely eliminate. But this is not what is taking place in Sri Lanka. What has been described here is the routine targeting of the poor and innocent by an institution that considers such acts necessary because it no longer has any sense of proper policing. And that is an institution in dire need of reform.

“It is as if there is a pervasive fear about trying to bring discipline into the police ”

General recommendations to the UN Human Rights Committee on torture in Sri Lanka

Asian Legal Resource Centre &
World Organisation Against Torture

1. Review the implementation of article 2 of the ICCPR [International Covenant on Civil and Political Rights] by the State party [Sri Lanka] by examining the institutions of the police, prosecutions under the AG [Attorney General] and the functioning of the Bribery Commission.
- 2a. Review the implementation of Act No. 22 of 1994 [Convention against Torture Act] and the work of the Prosecution of Torture Perpetrators Unit functioning under the AG's Department, with a view to improving its capacity in investigations, and particularly its use of documentary evidence. Unlike in many other criminal cases, there can be lots of documentary evidence in torture cases, in the books maintained by police indicating who was at a police station at a given time, and giving information about duties of police officers. Also circumstantial evidence can be used, as in other cases. For example, when a torture victim is blindfolded inside a police station, he can identify those who blindfolded him, but not those who beat him up. In Gerald Mervin Perera's case, (SCFR 328/2002), he identified those who hung him before he was blindfolded, however, no one has been prosecuted on the grounds that he has been unable to identify who actually beat him while blindfolded. Thus, a huge advantage is given to torture perpetrators, as they can choose the place and manner of torture. This Unit also does not use the legal provision that every one who is aware of a crime must report the matter. When torture is taking place in a police station, it is known

This is the edited text of the general recommendations of the alternative report to the United Nations Human Rights Committee by the Asian Legal Resource Centre (ALRC) and World Organisation Against Torture (OMCT) on 30 September 2003. It was based on the work and research of ALRC and OMCT together with the following organisations in Sri Lanka: Centre for Rule of Law, Families of the Disappeared (Kalape Api), Human Rights and Development Centre (SETIK), Janasansadaya (People's Forum), and People against Torture.

to every one there. However, witnesses have not been compelled to reveal what they know.

- 2b. Recommend the Supreme Court issue instructions to magistrates in the country on dealing with complaints relating to torture by the suspects and accused brought before them. Magistrates are the initial judicial officers to come across torture suspects, and they could make a great difference if they deal with complaints relating to torture with sufficient care and diligence. The present procedure is clearly inadequate. At best what happens is that a magistrate will order a medical examination of the alleged victim. However, in the very first instance a magistrate can make his or her own observations on the condition of a torture victim. For example, if a victim is brought before a magistrate in an almost paralysed condition, as in the case of Lalith Rajapakse (AHRC UA-19-2002) it is quite easy for the magistrate to note down the condition of the victim. There are many persons brought with many types of physical injuries. The victims should also be separated from the police at the time they are questioned about torture at the police station. Victims who come directly from the police station after being severely beaten are naturally afraid of their tormentors. When questioned before them, victims sometimes state that they fell or came about their injuries in some natural way. Furthermore, other than getting medical reports on the alleged victim, the magistrate should bring cases of alleged torture to the notice of the NPC [National Police Commission] and higher police authorities, and demand investigations be made and reports submitted to the court on such allegations. Often the victims of torture are subjected to fabricated cases filed against them, as shown in this report. Where such allegations are made to a magistrate, preliminary inquiries should be held about such allegations immediately. Instructions from the Supreme Court on such matters could be very useful in providing an effective remedy to the victims of torture, and act as a deterrent to officers engaging in acts of torture. Furthermore, all judicial officers, particularly the counsels from the AG's Department, should be exposed to international law and jurisprudence on torture. The gravity attached to the offence of torture should be instilled into them, and in matters such as compensation the principles that should be applied should also be part of their instructions.
3. The submissions made [in this report] clearly demonstrate that the major reason for torture lies in the policing system as it exists now. Without major police reform it will not be possible to overcome the present institutional difficulties that, among other things, make torture a routine habit at police stations. Among such police reforms, the criminal investigations division should be separated from law and order and peacekeeping functions. The criminal investigation division must be strengthened by recruitment of competent persons, both by way of education as well as experience. This division must also be equipped with forensic facilities and

modern technological know-how. Above all, this division must have adequate resources and professional independence to carry out the criminal investigations without fear. The present system of criminal investigation under the existing Criminal Procedure Code gives undue importance to the OICs [Officers in Charge] of police stations in conducting criminal investigations. Given the nature of the police stations situated in various localities, OICs of police stations have manifold duties other than the conduct of criminal investigations. Thus, suitable changes must be made to reduce the importance of the OIC of a police station in criminal investigations. Police stations should be used more for receiving initial complaints of crimes, and then more serious crimes should be handed over to special units run under the criminal investigation department, outside the police stations.

4. Review the recommendations made to the Government of Sri Lanka to prosecute offenders via several UN bodies, in particular the Committee against Torture (CAT) and the UN Working Group on Enforced or Involuntary Disappearances. A review committee should be set up, consisting of one representative each from the National Human Rights Commission (NHRC), NPC and AG's Department, to review progress of such prosecutions. The families of victims should be informed of the progress of such prosecutions and lawyers for such families, or organisations representing the victims, should be given access to such information.
5. As an effective measure towards eliminating impunity, recommend the establishment of a public prosecutor's office in Sri Lanka.
6. Review the Prevention of Organized Crime Bill in terms of the international obligations of Government of Sri Lanka under the ICCPR, and recommend it be repealed altogether. The proposed bill would encourage torture, increase extrajudicial killings, and make the very unacceptable situation of policing as described above even more intolerable.
7. Recommend better training of police officers in forensic science and investigation skills, and the reorganization of police services as an alternative way to deal with crime. This matter has been discussed with the NHRC and NPC. A Strategic plan must be developed with an agreed timeframe within which to achieve this end. The NHRC is reportedly willing to help in fundraising for this purpose. A clear policy statement on this matter from the government would help to expedite the matter.
8. Recommend the speedy implementation of the 17th Amendment to the Constitution of Sri Lanka, by the appointment of commissions and facilities to begin work in accordance with said amendment. The 17th Amendment is perhaps the most important constitutional development of recent years, envisaged to remove political control from the

country's major national institutions. The appointment of the Constitutional Council has paved the way for the operation of the 17th Amendment. The Constitutional Council has also laid down some criteria for appointment of public officers. However, several of the commissions suggested under the 17th Amendment have not been appointed. In fact, there is a constitutional vacuum due to the lack of relevant institutions. Therefore the speedy appointment of these commissions is necessary for proper constitutional governance in Sri Lanka. The Human Rights Committee should recommend the speedy appointment of these commissions, and provision of adequate resources for such commissions to function effectively.

9. Everyone welcomed the appointment of the NPC at the end of 2002. In fact, it created some optimism about the possibilities for dealing with the extreme crisis in the policing system. However, resources have come to the NPC very slowly, and it does not yet have a strategic plan for its effective development and functioning. If the initial enthusiasm generated by the appointment of the NPC is to be kept alive, such a plan is very much needed. A welcome move was the appointment by the NPC of seven area coordinators to investigate complaints relating to the police. If they are to function properly they need to be given proper guidelines for investigations, training and resources. The most urgent need in relation to the NPC is the establishment of the public complaint procedure under article 155G(2) of the Constitution. The Human Rights Committee should specifically make recommendations relating to the speedy establishment of the public complaint procedure of the NPC.
10. Recommend that the Government of Sri Lanka examine the widespread fear of being killed spread in all parts of the country, and find ways to bring to an end the attendant paralyzing fear affecting the exercise of all rights, in particular those rights guaranteed under articles 19 and 25 of the ICCPR.
11. Closely consider widespread criticism of the judiciary in Sri Lanka and make suitable recommendations for its speedy reform. Pay special attention to the case of Michael Anthony Emmanuel Fernando. The recent premature resignation of the senior-most judge in the Supreme Court, Justice Mark Fernando, is widely seen by the public as a protest against the very serious breakdown of the judiciary. Lawyers and others are now demanding rapid action for change.
12. Recommend that the NHRC play a greater role in safeguarding and promoting the rule of law in the Sri Lanka.
13. Recommend that the section on human rights in the Constitution of Sri Lanka be amended to include the right to life as a basic right. The present Constitution does not include the right to life. For this purpose it is not necessary to wait until a completely new Constitution is adopted. This amendment can be carried out by agreement of all political

parties, as no political party in parliament at the moment disagrees with this proposal. Any delay in recognising right to life has serious implications for the defence of this right.

14. Recommend that enforced or involuntary disappearances be declared a criminal offence in Sri Lanka, defined in terms of the Rome Statute of the International Criminal Court. The perpetrators of enforced or involuntary disappearances took advantage of the absence of such a law, since they could be tried only for the crime of kidnapping.
15. As an interim measure to allow immediate judicial intervention into possible cases of enforced or involuntary disappearances, recommend that the law relating to habeas corpus action be amended to permit applications to the nearest magistrate's court—or any other court—during any time of the day, as is done in several other countries.
16. Assess the extent to which the Committee's recommendations relating to enforced or involuntary disappearances, and the recommendations of the Working Group on Enforced or Involuntary Disappearances, have been implemented by Sri Lanka. Given the lack of significant progress to date, the Committee may also propose specific ways for the Government of Sri Lanka to address the issue of disappearances, and take steps to guarantee cooperation and compliance. In this regard, it is important to assess the progress of successful prosecution of perpetrators of enforced or involuntary disappearances by the AG's Department, both in terms of expediency and effectiveness. It is imperative to establish benchmarks on successful prosecutions and, if necessary, provide international assistance by way of UN agencies or otherwise.
17. Given the nature of the mandate of the Working Group on Enforced or Involuntary Disappearances and its limitations, the Committee needs to take a more proactive role in providing effective and efficient redress to the victims of enforced or involuntary disappearances in Sri Lanka. Sri Lanka today has one of the highest numbers of enforced or involuntary disappearances in the world. Therefore, the Committee is urged to take up this matter with the Government of Sri Lanka as a priority.
18. One of the root causes of torture is bribery and corruption. The development of an effective functioning bribery and anti-corruption commission is urgently needed. The present system of bribery control is outdated and obsolete. A powerful commission, like the Independent Commission Against Corruption (ICAC) in Hong Kong SAR, should be thought of as an alternative to the present system. The practice of having police officers investigate offences under the Bribery Commission should be discontinued forthwith as a preliminary step towards making the existing mechanism more effective. The Commission itself must produce a strategic plan for its

own development in order to fulfil the task of eliminating bribery and corruption. Accordingly, the Committee should make recommendations for the development of an effective bribery and corruption control system in the country.

19. Recommend that the State prosecute with vigour the many cases of rape by the armed forces that have gone unreported and unpunished.
20. Recommend that the State announce its intention to seriously evaluate the mooted policy change according to which death sentences imposed by a court would be carried out and would not be commuted to life imprisonment even if the judge who heard the case, the AG and the Minister of Justice unanimously recommended commuting the sentence.

Appendix I: Draft complaint procedure for implementation of article 155G(2) of the 17th Amendment to the Constitution of Sri Lanka

Asian Human Rights Commission

Explanatory Note

The 17th Amendment to the Constitution of Sri Lanka, insofar as it provides in Article 155G(2) for the mechanism of complaints against the police, is a unique provision compared with any other legal procedures:

- a. Other complaint procedures provide only for internal inquiries;
- b. Under article 155G(1), disciplinary control of the police service belongs to the Commission. Thus control of all aspects of procedures for public complaints is the responsibility of the Commission.

The creation of procedures is a constitutional obligation that has yet to be realised. Although ASPs [Assistant Superintendents of Police], DIGs [Deputy Inspector Generals] and the like have, so far, had the duty of investigation of complaints, disciplinary procedures in the police have been arbitrary and ad hoc. The following submission is a working template that seeks to fulfill the mandate of article 155G(2) of the 17th Amendment.

With reference to the scope of the submissions, the procedure is not related to all aspects of police discipline, but rather confined to complaints by aggrieved parties and public complaints. Thus issues of disobedience to superiors and other internal matters are not part of this procedure, though in other jurisdictions these are taken together. This implies that our draft can exclude these aspects.

This draft complaint procedure for the implementation of article 155G(2) of the 17th Amendment to the Constitution of Sri Lanka was duly submitted to Mr Ranjith Abeyesuriya PC, Chairman of the National Police Commission, on 2 December 2003.

Preamble: Principles of the Amendment

Whereas the 17th Amendment to the Constitution of Sri Lanka was passed by the Parliament of Sri Lanka in order to bring about greater transparency and accountability in public institutions and in the process of governance, in order that citizens' rights be safeguarded, particularly in so far as restoring law and order and public confidence in the rule of law is concerned;

Whereas the Police Commission was created under the 17th Amendment as foresaid, to engage in reform of the police service by functioning as an independent inquiry body into public complaints against the service as a whole, as well as individual police officers;

Whereas the 17th Amendment, by virtue of article 155G(2) imposes a specific duty on the Police Commission to establish procedures to entertain and investigate public complaints or complaints of aggrieved persons against an individual police officer or the police service and provide redress in accordance with law;

Whereas there is tremendous public concern about the police force in general and its capacity to enforce law and order in the context of a severe deterioration of discipline, inadequate training and prevalence of practices of torture by the police resulting in public confidence in an independent police service deteriorating to an extent that threatens the very foundations of law and order in Sri Lanka;

And given therefore, that an urgent need exists for the establishing of systematic and transparent procedures under article 155G(2), in order that public complaints are entertained, investigated and redressed in the manner required by the Constitution;

These following Rules are established by the Police Commission under article 155G(2) of the Constitution.

Chapter 1: Entertainment of complaints

1.1 Public complaints and complaints by aggrieved parties against offender(s) regarding specific incidents

1. Any person, persons or body of persons, who are personally aggrieved or who may become aware of any action or inaction on the part of any police officer or officers leading to a violation of statutory and/or constitutional and/or public duties imposed on such officer or officers or involving a violation of the rights of any person, may complain to the Commission in the manner hereinafter provided for;

2. Such action/inaction or violation of statutory and/or constitutional duties and/or public duties by police officer/s in respect of which a complaint may be lodged as aforesaid, includes particularly;

- a) Death of a person in police care or custody;
- b) Allegations of torture and/or cruel, inhuman or degrading treatment and/or injury to a member of the public in police care/ custody and by any action of a police official;
- c) Road traffic incidents in which a police vehicle is involved;
- d) Shooting incidents in which a police officer discharges a firearm in the course of a police operation;
- e) Allegations of bribery or corruption involving police officers;
- f) Miscarriage of justice resulting from misconduct by a police officer;

This would include:

- (i) Refusal/ failure/postponement to record a statement sought to be made to the police;
- (ii) Undue delay in making available certified copies of statements made to the police by any person on payment of the usual charges. Explanation: a lapse of more than 48 hours shall be regarded as an 'undue delay' unless the Officer-in-Charge of the relevant police station or any officer under delegation of authority by such Officer-in-Charge gives in writing the reasons for any delay beyond the stipulated period which may be brought to the notice of the Commission which shall inquire into the said alleged cause for the delay.
- (iii) Discouraging complainants or witnesses from making statements;
- (iv) Use of abusive words, threats or intimidation on complainants or witnesses;
- (v) Chasing away complainants/witnesses who come to make complaints or statements;
- (vi) Failure to maintain records, including erasing or otherwise altering records;
- (vii) Making deliberate distortions in statements recorded;
- (viii) Failure to read the statements over to the signatories before getting the signatures;
- (ix) Exhibiting partiality towards members of political parties in the carrying out of official duties;
- (x) Making false reports and statements to court;
- (xi) Deliberate fabrication of cases;
- (xii) Negligence in filing cases without evidence;
- (xiii) Failure and/or refusal on the part of any police officer to co-operate with any Attorney-at-Law looking after the interests of his or her client and/or any attempt to deny a person his or her unfettered right to obtain legal representation.

g) Any alleged misconduct and/or breach of discipline (vide Annexure I to these Rules) on the part of a police officer or officers;

h) Racist and/or discriminatory and/or sexist conduct by police officers or conduct which offends the constitutional guarantee of equality before the law;

i) Arrestable offences allegedly committed by a police officer;

j) Any dereliction of the mandatory duties imposed on police officers by virtue of Section 56 of the Police Ordinance;

k) Any attempt to deny any individual the freedom of speech or freedom to engage in a lawful occupation, profession and business;

l) Any attempt to coerce/intimidate/subvert a medical officer or any other public officer into submitting false documents or engage in dereliction of that officer's duties;

m) In relation to arrests:

(i) Failure to make notes on each stage of the arrest;

(ii) Failure to wear a uniform or identification items as police officers;

(iii) Failure to use official transport with identification marks as a police vehicle;

(iv) Failure to inform the reasons for arrest

Provided that where a complaint is pending investigation by a police officer, the complainant will have a right of appeal to the Police Commission if reasons are provided for in writing by the complainant as to why investigations have been unsatisfactory and such reasons are accepted by the Police Commission or an officer delegated by the Police Commission.

1.2. Public complaints and complaints by aggrieved parties against the police service

Individuals or organisations may submit complaints relating to general deficiencies or concerns in the police service.

These may relate to general issues of police "mis-management and abuse of power in the public sphere" pertaining to a particular locality or in general. For example, the prevalence of torture in a particular police station may be the subject of such a complaint. Similarly, misbehaviour by police officers in a particular area or acts or omissions by police officers in a specific area, absence of some services generally expected from the police, such as an immediate police response to crimes in a locality, and similar violations, such as a number of fabricated cases and delayed investigations and alike are issues of police "mis-management and abuse of power in public sphere" pertaining to a particular area that can come under this category.

Public inquiries undertaken by the Police Commission on its own initiative or by the request or order of the courts, or at the request of the state with regard to the police service in general may come under this category.

1.3 Submission and entertainment of complaints

1. Where the complaints are to be made: Complaints can be made at the head office and local offices of the Police Commission.

2. The manner in which complaints could be made: Complaints could be made (a) through the post, (b) by fax, (c) by telephone, (d) in person, (e) by electronic mail.

3. What is necessary for a complaint: The complaint should be made in the manner set out in the First Schedule to these Rules.

1.4 Automatic complaints system

All Officers-in-Charge of police stations, ASPs and/or DIGs and/or SPs [Superintendents of Police] shall refer to the Commission all cases specified in the following categories regardless of whether there has been a complaint or not:

- a) Deaths in police care or custody;
- b) Fatal road traffic incidents in which a police vehicle is involved;
- c) Shooting incidents in which a police officer discharges a firearm in the course of a police operation;
- d) Allegations of corruption involving police officers;
- e) Miscarriages of justice resulting allegedly from misconduct by a police officer;
- f) Allegations of racist and/or discriminatory and/or sexist conduct by police officers;
- g) An arrestable offence allegedly committed by a police officer; and
- h) Allegations of torture and injury of a person in police custody or care and by any action of a police officer.

1.5 Pro-active role of the Police Commission

The Police Commission may undertake suo moto investigations into all or any of the instances set out in subsection 1.4 above.

1.6 Registering, documenting and (archiving is separate of registration and documentation) of complaints

How to register and document a complaint: There should be guidelines as to how the complaints are registered and documented.

a) If the complaint has been made orally, it should be reduced to writing and read to the complainant who would sign himself to attest the contents of the written complaint.

b) Written complaints received directly or by post or electronic means should be stamped by the receiving officer, indicating the time and date received.

c) All complaints should be registered on a register of complaints with a unique number, which will be the case number for further follow-up. The complainant must be informed of the unique number for further follow-up.

d) The copies of complaints should also be maintained on a computerised database in which the same unique numbering system should be followed and should also include proceeding tracking information indicating current status and responsible officer.

e) Care should be taken to maintain cross-referencing with regard to complaints received, in order that similar complaints received with regard to police officer/s under subsections 1.1, 1.2 and 1.4 can be cumulatively evaluated by the Police Commission at a given time and/or referred to by a member of the public upon authorisation given to that effect by the Police Commission.

f) All steps towards the protection of records must be followed. The Police Commission should draft regulations relating to the protection of documents which would allow aggrieved parties and/or members of the public access to completed case records upon permission given by the Police Commission.

How the complaints will be archived: The Police Commission should also issue guidelines as to how these complaints will be maintained and protected, either through protection of written records or use of electronic recording.

Chapter 2: Procedure relating to the investigation of complaints and disciplinary inquiries thereto

2.1 Procedure relating to investigations against particular police officers under Section 1.1 and/or the automatic complaints procedure under Section 1.4

STAGE ONE

a) Immediate inquiries (Quick Response) to intervene and stop an ongoing violation against a person to ensure his/her protection and to record the initial statements and observation.

b) Inquiries to determine whether there is a prima facie case to proceed with,

c) Comprehensive fact-finding inquiries to collect all the evidence relating to the complaint.

STAGE TWO

a) Recommendations made to appropriate prosecutorial authority for the purpose of instituting criminal action against the perpetrators;

b) Where findings of such investigation indicate a breach of statutory and/or constitutional and/or public duty on the part of any police officer, the provisions of subsection 2.2 shall apply mutatis mutandis.

STAGE ONE

Immediate inquiries (Quick Response) to intervene on an ongoing violation against a person to ensure his or her protection and to record the initial statements and observation.

Duties of the First Response Officer

- On reception of the complaint, he will visit the premises where the alleged violation has taken place or continues to take place

- He will record the statements of the victims and the alleged perpetrators and make observations on the condition of the victim/s and record such observations.

He/she will issue such instructions as required for the protection of the victim such as immediate medical attention when required, or relocation of the victim to stop re-victimisation by the perpetrators, and recommend such other measures as to ensure protection of the victim, family and witnesses.

- a) Inquiries to determine whether there is a prima facie case to proceed with,

Duties of a Police Commission authorized officer

An authorized officer(s) will go through the available evidence and make a determination as to whether there is a prima facie case to proceed with. Where the determination is not to proceed with further investigation, the reason for such determination should be recorded by the authorized officer. Any such recommendation must be conveyed to the complainant.

- b) Comprehensive fact-finding inquiries to collect all the evidence relating to the complaint.

An authorized Special Investigation Unit should conduct a comprehensive investigation,

Duties of investigators

- Recording all the statements of witnesses available;
- Viewing/examining and copying necessary records;
- Making photographs and causing forensic examination as required by the circumstances
- Referring the case for an expert opinion as and when required;
- Taking all other necessary steps to ensure that all the available evidence has been collected.

- At the end of the investigations, to review the evidence and make recommendations and submit the file for subsequent action by the Police Commission.

STAGE TWO

Recommendations made to appropriate prosecutorial authority for the purpose of instituting criminal action against the perpetrators.

- Where the Police Commission is satisfied that evidence of a criminal offense or offences exist under the prevalent law the Police Commission will refer the matter for investigation to the relevant authorities with the observation of the Police Commission that a prima facie case exists against the alleged perpetrators. An information note should be conveyed to the complainant.

- The Police Commission should follow up such reference and obtain reports on the progress of such investigations and subsequent prosecutions.

- Such reports should be made available for public scrutiny at the offices of the Police Commission unless the said reports are excluded from public scrutiny on express orders of the Police Commission.

2.2. Procedure relating to complaints that constitute breaches of public and/or statutory and/or constitutional duties

Explanation: Breach of public and/or statutory and/or constitutional duties shall include actions of police officers prohibited in terms of sub-sections (f), (g), (i), (j), (k), (l) and (m) of Section (02) of Section 1.1 above and shall also include adverse findings against any police officer by the Supreme Court in the exercise of its fundamental rights jurisdiction under Article 126 of the Constitution and willful refusal and/or failure of any police officer to comply with a request made by the Police Commission (or an officer delegated by the Police Commission) in pursuance of investigations carried out under these Rules read with the duties imposed upon such police officer under Section 3.1 of these Rules.

Upon a complaint being received to this effect or upon such breach being disclosed during investigations conducted under the preceding sub-section of these Rules, an officer of the Police Commission will record all the relevant statements and collect all evidence of acts of police officer/s that are categorised as breaches of Public and/or Statutory and/or Constitutional Duties, as defined above, within two months of the said complaint being received or disclosed, and will refer the report therein to a Committee of the Police Commission for inquiry.

- On the basis of the comprehensive investigation contemplated in the preceding sub-section, the Police Commission will conduct a disciplinary inquiry into whether

disciplinary action should be taken against the alleged perpetrators, during which inquiry, the alleged perpetrators will be charge sheeted and interdicted from service.

- The inquiry will be conducted within two months of the preliminary report being submitted to the Police Commission and will be conducted by a three-member panel of the Police Commission presided over by the Chairman or by a member of the Police Commission with authority delegated thereto by the Chairman of the Police Commission.

- The complainant and/or affected persons thereto will be notified by the Police Commission of the said inquiry. The alleged perpetrators will be given the right to defend themselves as required by law.

- After the inquiry, the Committee of the Police Commission shall make their findings in writing to the Police Commission.

- On the basis of such findings, the Police Commission will take appropriate disciplinary action as provided by law. Such a decision must be conveyed in writing to the complainants, the perpetrators and the IGP [Inspector General of Police].

- A right of appeal from such a decision of the Police Commission will exist to the Administrative Appeals Tribunal established under article 59 of the Constitution.

2.3 Procedure relating to investigation of complaints against the police service under Section 1.2

Procedure relating to complaints against the police service

a) Upon the receipt of complaints against the police service, the Police Commission shall delegate the complaint to an officer of the Special Investigation Unit of the Police Commission for follow up action.

b) Such officers shall record all the statements of witnesses available, view/examine and copy necessary records, make photographs and cause forensic examination as required by the circumstances, refer the case for an expert opinion as and when required, and take all other necessary steps to ensure that all the available evidence has been collected.

c) At the end of the investigations, which shall not be longer than a period of three months, the officer shall submit the report to the Police Commission.

d) Provided that, if a written request is made to the Police Commission for an extension of this time period for explainable reasons, such extensions may be granted for one month at a time, provided that the entire time period shall not extend for more than six months.

e) Upon the receipt of the report, a three member Committee of the Police Commission shall deliberate upon the report and shall cause the same to be notified to the complainant. Written

representations may be called for by the public under the hand of the Secretary to the Police Commission if such is considered to be necessary. Such views may be furnished in writing or the committee of the Police Commission may also make available time for oral representations.

f) Such deliberations shall be in public unless the Police Commission sets down in writing, the reasons why it should be held in camera.

g) The report of such sub-committee of the Police Commission shall be submitted to the Police Commission sitting as a body within three months of the complaint being made along with the findings and/or recommendations of the said committee and the Police Commission shall, within two months of the report being submitted, authorise the implementation of the same with suitable modifications.

h) The findings of the Police Commission shall, along with the investigative report, be filed in the offices of the Police Commission to enable public scrutiny unless reasons are given in writing by the Police Commission as to why the report and/or the findings cannot be made public.

Chapter 3: The powers of the Police Commission, its public accountability and matters incidental thereto

3.1. The accessibility of information for an effective completion of investigations

For investigations to be thorough, the Police Commission will need open access to all relevant information.

In terms of the power given to the Police Commission under article 155G(2) to investigate complaints against any police officer or the police service, which has been given effect to in these Rules read together with the MOU [Memorandum of Understanding] entered into between the IGP (or the acting IGP) and the Police Commission, all police officers are under a legal obligation to

a) Produce and/or give access to the Police Commission documents or other material as called for;

b) Allow members of the Police Commission to take away the actual or copies of the documents or other material; and

c) Allow entry to police premises.

Explanatory Note: Breach of these duties will result in disciplinary sanctions being visited on the errant police officer by the Police Commission acting under Section 2.2 of these Rules

1. The Police Commission should have full access, when appropriate, to all necessary information from both the public and private sector.

2. Simultaneously, the Police Commission should abide by the following guidelines when handling the information.

3. The Police Commission in its dealings with the complainant should have the discretion to disclose information from the investigation of complaints subject only to a harm test.

4. The Police Commission should have the freedom to use information received from reports and other documents from the police force, after excluding sensitive or demonstrably confidential material, to compile guidance, promotional and other material for the purpose of continuous improvement in the complaints procedure and in raising the public awareness and understanding of the complaints procedure.

3.2 The Police Commission and its response to the complainant/s

1. Once the investigatory process mandated with regard to all complaints against a police officer is complete, the complainant/s should be sent a full written account of the investigation, setting out the way the investigation had been conducted, a summary of the evidence, the conclusions, which include the proposed action to be taken against the officer concerned, reasons for those conclusions and any action taken to prevent a recurrence.

2. If necessary, a member of the Police Commission should meet the complainant or the family of the complainant, and explain the results of the investigation and findings.

3.3. Duty of fairness on the part of Police Commission officers and prohibition on collusion with the police in any form or manner whatsoever

1. All officers of the Police Commission shall be under a duty to act fairly in entertaining, acting upon or investigating complaints as mandated under Sections 1 and 2 of these Rules.

2. Any officer of the Police Commission found colluding with any police officer or officers in any form or manner whatsoever in the carrying out of their duties as contemplated by these Rules will be immediately suspended from work and upon inquiry being held, will be forthwith dismissed from the service of the Police Commission.

3.4. Police Commission and public accountability

The Police Commission should not only be unbiased, but must be perceived by the public to be unbiased. To ensure transparency and maintain the public confidence the Police Commission

1. The Police Commission should present an annual report of its activities through means that will be accessible to the public.

2. Police Commission finances should generally be produced and made available.

3. The Police Commission should provide an opportunity to assess the public confidence in it, through public debates and surveys.

ANNEXURES

ANNEXURE I

Breaches of discipline would include:

Violation of duties imposed by the Establishment Code of the Government of the Democratic Socialist Republic of Sri Lanka

Volume II

Issued by the Secretary to the Ministry in charge of the subject of Public Administrators, 1999

The First Schedule of Offences Committed by Public Officers

1. Non-allegiance to the Constitution of the Democratic Socialist Republic of Sri Lanka.
2. Act or cause to act in such manner as to bring the Democratic Socialist Republic of Sri Lanka into disrepute.
3. Anti-government or terrorist or criminal offences.
4. Bribery or Corruption.
5. Being drunk or smelling of liquor within duty hours or within Government premises.
6. Use or be in possession of narcotic drugs within hours or within Government premises.
7. Misappropriate or cause another to misappropriate public funds.
8. Misappropriate government resources or cause such misappropriation or causes destruction or depreciation of government resources willfully or negligently.
9. Act or cause to act negligently or inadvertently or willfully in such manner as to harm government interests.
10. Act in such manner as to bring the public service into disrepute.
11. Divulge information that may harm the State, the State Service or other State Institution or make available or cause to make available State documents or copies thereof of outside parties without the permission of an appropriate authority.
12. Alter, distort, destroy or fudge State documents.
13. Conduct oneself or act in such manner as to obstruct a public officer in the discharge of his duties, or insult, or cause or threaten to cause bodily harm to a public officer.
14. Refuse to carry out lawful orders given by a senior officer or insubordination.

“Public hearings can be used in the fight against discrimination and the struggle for equality of the Dalits”

15. Any violation of provisions of the Establishments Cord, Financial Regulations, Public Service Commission Circulars, Public Administration Circulars, Treasury Circulars, Departmental handbooks or Manuals or wilfully, inadvertently or negligently act in act in circumvention of such provisions.

16. Aid and abet, or cause to commit the above offences.

The Second Schedule of Offences Committed by Public Officers

Offences, though not falling within the First Schedule above, are caused owing to the inefficiency, incompetence, inadvertence, lack of integrity, improper negligence and indiscipline of an officer.

Explanatory Note

Disciplinary control: What does this involve?

It involves a clear understanding of what are the breaches of discipline. Thus,

1. The Police Commission, as well as all members of the police service, should know what constitute breaches of discipline in the police force and what are the consequences of each type of discipline that is breached.

2. For this to happen it is necessary to write it down; acts which will lead to disciplinary actions and possible punishments must be written down to avoid uncertainty and confusion. This is not difficult and the list needs not to be too long; however, breaches of discipline common to Sri Lankan police must be included in such a listing.

3. The procedure of entering complaints, inquiring and redress must also be written down.

ANNEXURE II

Rules relating to arrest laid down by the Indian Supreme Court in case of D K Basu vs State of West Bengal

We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter-signed by the arrestee and shall contain the time and date of arrest.

3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board.

...

37) Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the Country, having territorial jurisdiction over the matter.

38) The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier ...

Appendix II: Relevant concluding observations of the UN Human Rights Committee on the periodic report of Sri Lanka, 2003

While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the [International] Covenant [on Civil and Political Rights], or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in Chapter III of the Constitution even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16(1) of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (articles 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist.

This appendix consists of extracts from the concluding observations of the United Nations Human Rights Committee on the periodic report of Sri Lanka examined at its seventy-ninth session (CCPR/CO/79/LKA [future]). During its deliberations, the Committee also assessed the shadow report, 'State sponsored violence in Sri Lanka' by the Asian Legal Resource Centre and World Organisation Against Torture, and heard from a delegation from these two organisations that included torture victim Chamila Bandara.

The State party [Sri Lanka] should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant.

The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in Chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4(1) of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13(6) of the Constitution).

The State party should bring the provisions of Chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.

The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished. The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (article 2 of the Covenant).

The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by state security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators. The National Police Commission complaints procedure should be implemented as soon as possible. The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases. The capacity of the National

Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened.

The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see paragraph 9 above), creates an environment that is conducive to a culture of impunity.

The State party is urged to implement fully the right to life and physical integrity of all persons (Art 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the UN Working Group on Enforced or Involuntary Disappearances and the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.

While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (article 7).

The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.

...

The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (articles 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sec. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sec.9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defense cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The

Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

The State party is urged to ensure that all legislation and other measure enacted taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the PTA designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.

...

The Committee notes with concern that overcrowding remains a serious problem in many penitentiary institutions, with the inevitable adverse impact on conditions of detention in these facilities (article 10).

The State party should pursue appropriate steps to reduce overcrowding in prisons, including through resorting to alternative forms of punishment. The National Human Rights Commission should be granted sufficient resources to allow it to monitor prison conditions effectively.

The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges.

The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.

Appendix III: A public hearing on the torture of children

Human Rights Correspondence School,
Asian Human Rights Commission

On 9 December 2003, eight children gave evidence at a public hearing held in Colombo, Sri Lanka. The presiding panel consisted of two well-known lawyers and a torture victim. The purpose of this public hearing was to provide an opportunity for children and their families to express their grievances openly regarding torture. In previous months, many cases of children being tortured at Sri Lankan police stations have surfaced. This shocking phenomenon has not received the special attention it deserves; this hearing was an attempt to channel public attention towards this important problem.

At the hearing, the victims themselves together with their families expressed their grievances. The forum also provided an opportunity to other individuals, institutions and groups to express their views. After a four hour session, the panel gave its concluding observations, stating that all child victims were from poor families and were completely innocent. The police who had committed torture appeared to be acting on the instigation of influential persons. The victims were not treated as children by the police, but as criminals. The state agencies, including the National Human Rights Commission, have completely failed to provide any assistance to these children. The only assistance came from a number of committed civil society groups.

The event was organised by Janasansadaya, People against Torture, Families of the Disappeared, Setik, Centre for Rule of Law and Home for the Victims of Torture, as well as several other organisations, in collaboration with the Asian Human Rights Commission.

The panelists were Sunil Cooray, a Senior Attorney, former president of the Vigil Lanka Movement and author of a text on administrative law in Sri Lanka; J.C. Weliamuna, a Senior Attorney and the Chairperson of the Sri Lankan Chapter of

This text is adapted from Lesson Series 32 of the Human Rights Correspondence School (Asian Human Rights Commission), 'A public hearing on the torture of children, Sri Lanka'.

Transparency International; and Grissha de Silva, a hotel manager and a torture victim who was subjected to torture out of mistaken identity.

The meeting hall was packed and the audience reacted strongly to the stories that were related by the child victims.

Mr. J.C. Weliamuna made the concluding observations after listening to the victims, their mothers and also comments by the audience. The summary of his observations is as follows:

- a) All the victims were from poor families.
- b) All the children who gave evidence were arrested for no reason.
- c) Even after torture, the police could not find any evidence against the children.
- d) At the time of committing torture, none of the policemen involved were wearing their uniforms.
- e) The higher-ranking officers of the police are quite aware that their subordinate officers engage in torture, but do not take any serious action to prevent such practices by junior officers.
- f) There are third parties involved, including the wealthy, the Mudalali class, politicians and the like, who encourage the police to torture. In return the police receive power, money and support from these groups.
- g) The service rendered to the victims by hospital authorities when they sought medical assistance is highly questionable. Those authorities failed to fulfil their professional obligations and often also failed to report the torture to the legal authorities. Instead, they appear to work hand in hand with the police.
- h) The victims do not appear to trust state organisations such as the National Human Rights Commission and the National Police Commission. The National Human Rights Commission takes months (and sometimes years) before addressing and acting upon human rights cases. It also frequently advises the victims to take their cases before the Supreme Court. This places the victims in a tight corner against the perpetrators. Additionally, the National Police Commission has failed to put into place the intended public complaint procedure for the entertaining of, inquiring into and providing of redress for complaints against the police.
- i) People turn to NGOs for help, and in all these instances it was the NGOs that took the initiative to protect the rights of these persons.

The observations of the panel clearly point to the police implicating innocent children without any reason other than the fact that they come from poor families. The question then is why such a choice is made; for some reason, the police do not want to arrest the actual culprits and so try to find substitutes.

“The panel’s observations point to the police implicating innocent children without any reason other than that they are poor”

“Police officers feel assured that there are no repercussions if they harass the children of the poor”

The next question that arises is why would the police fear to arrest the actual culprits? It is not difficult to suggest some answers:

- The real culprits, if they are interfered with, may retaliate in a dangerous way against the police. There is no such danger if the victims are innocent and powerless persons.
- The real culprits may bribe the police, which the poorer victims are unable to do. Also, believing in their own innocence, the victims may feel that by stating their innocence they will be released. It is only later that the poor victims realise the cynical reality of what they have experienced.
- The actual culprits have social connections; it is commonly said that local politicians intervene on behalf of such persons, as they are supporters of various political parties.
- Within the social fabric of a Sri Lankan village, there is a close association between the police and ‘more important persons’, which can even include local monks or priests. None of these persons intervene on behalf of the poorest in their community. Often, the plight of the poor and their families is ignored.
- Even if the real culprits are actually caught, they are able to obtain legal services quite quickly. Lawyers and others with influence make representations to higher authorities quite efficiently. The poor do not have access to such services.
- In short, police officers feel assured that there are no repercussions if they harass the children of the poor. Thus there is nothing to restrain them from doing whatever they wish to these persons.

Appendix IV: Rights of the victims of crime

Janasansadaya

The victims of crime have the right to make complaints by telephone or any other speedy means as quickly as possible. This right implies that the complaint receiving mechanism in the police must be efficient, fast and professionally competent.

The victims of crime have the right for speedy investigation into crimes. This implies that the police investigators must visit the scene of the crime immediately, and all evidence must be collected without delay. The investigators must be educationally qualified and professionally trained persons of integrity who will not initiate an investigation due to extraneous reasons or pressures.

The victims of crime have the right for their cases to be filed in court as soon as possible.

The victims of crime have the right not to have cases dismissed due to the negligence of prosecuting officers. For example, if the police do not attend court on the dates required, fail to display items of evidentiary value, or do not file reports in due course they violate the victims rights.

The victims of crime have the right for their cases to be handled by educationally qualified and professionally competent prosecutors. In the cases of serious crimes the victims have the right to proper services from state counsels under the Department of the Attorney General. The Department's workload should not be an excuse for delaying the filing of cases before High Courts. The rights of the victims of crime outweigh administrative problems. These administrative problems should be dealt with in a manner that will not be detrimental to the rights of the victims of crime.

This is the text of a pamphlet recently published by Janasansadaya (People's Forum), for public distribution.

The victims of crime have the right to see that those officers who act in a way to deny them justice are punished. This implies that state must pay compensation to the victims of crimes where criminal investigators and prosecutors, due to their negligence, prevent the victims of crimes from obtaining justice.

The victims of crime have the right to have actual criminals arrested and prosecuted and not be bluffed by the arrest and prosecution of innocent persons as substitutes for actual criminals.

The victims of crime have the right that the police be free from links with criminal elements. They must not be corrupt and must be absolutely committed to maintain law and order.

The victims of crime have the right to a disciplined police force under the control of competent high-ranking officers. The police must wear their uniforms and other identification marks, for example, their unit names. They should at all times be polite and act in a manner required of public servants.

The victims of crime have the right not to be compromised by illegal police activities. They have the right not to feel that due to their complaints people have been tortured or otherwise treated inhumanely. They have the right not to feel guilty for having initiated cruel acts such as torture, extra-judicial killings, disappearances and illegal arrests done in their names by errant law enforcement officers.

REFORM THE PROSECUTION SYSTEM IN SRI LANKA!

People against Torture, SETIK, Torture Victims Forum, Kurunegala District Human Rights Forum, Families of the Disappeared, Right to Life, Rule of Law Centre, Asian Human Rights Commission—Hong Kong, Janasansadaya (People's Forum)

For information: 81/2 Arthur V. Dias Mawatha, Panadura, Tel: 038-22-35919

Appendix V: Guarantees for individuals deprived of their liberty

Professor Theo van Boven,
UN Special Rapporteur on torture

Arrests without proper procedures may open the door to further human rights abuses, including torture. The Special Rapporteur notes that to prevent such abuses, law enforcement officials should clearly identify themselves or, at least, the unit to which they belong. Their vehicles should be clearly identifiable and carry number plates at all times. Information on any arrest, including the reasons for the arrest, the time and place of the arrest, and the identity of the officers involved should be duly recorded. As specified in article 9 (2) of the International Covenant on Civil and Political Rights (ICCPR) and principles 13 and 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles on Detention), the arrested persons shall be informed, at the time of arrest, of the reasons for their arrest and of their rights, including safeguards against torture or ill-treatment.

**Proper procedures
for arrest**

Further, relatives or a third person of the arrested person's choice shall be notified at the time of arrest, detention, imprisonment or transfer. Reference is made to principle 16 of the Body of Principles on Detention and rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. The Special Rapporteur also refers to his recommendation, included in his last report to the Commission on Human Rights: "In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours" (E/CN.4/2003/68, para. 26 (g)). With regard to the notification of detention of children, special safeguards should apply in accordance with

**Notifying relatives
at time of arrest**

This material is taken from the third part of the 2004 advance edited version of the report of the United Nations High Commission for Human Rights Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Professor Theo van Boven (E/CN.4/2004/56). It consists of paragraphs 30 to 43 of that report. The column text in this report was not contained in the original.

principle 16 (3) of the Body of Principles on Detention and rule 10 (1) of the Standard Minimum Rules for the Treatment of Prisoners. As far as the detention of foreign citizens is concerned, the Special Rapporteur would like to refer to article 16 (7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which states that the consular authorities of the State of origin of a detained foreigner shall be informed without delay of his or her arrest or detention. This safeguard is also reflected in article 36 (1) (b) of the Vienna Convention on Consular Relations and in principle 16 (2) of the Body of Principles on Detention.

**Prompt access
to a lawyer**

The Special Rapporteur frequently receives allegations according to which persons in custody do not have prompt access, if at all, to a lawyer. The Special Rapporteur is concerned that this situation, often combined with the non-respect of other safeguards, may facilitate acts of torture or other forms of ill-treatment. In this respect, the Special Rapporteur refers to article 14 of ICCPR and principle 17 of the Body of Principles on Detention. Further, in its general comment No. 20, the Human Rights Committee has stated: “the protection of the detainee also requires that prompt and regular access be given to ... lawyers” (para. 11). The Commission on Human Rights, in resolution 1994/37, has also stressed “[t]hat the right to have access to a lawyer is one of the basic rights of a person who is deprived of his liberty and that restrictions on this right should therefore be exceptional and always subject to judicial control”. The Special Rapporteur would like to recall that “legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention Security personnel who do not honour such provisions should be disciplined. In exceptional circumstances, under which it is contended that prompt contact with a detainee’s lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association” (ibid.).

**Forced confessions
inadmissible**

The Special Rapporteur has observed that incidents of torture or other forms of ill-treatment frequently occur in the period immediately following deprivation of liberty and during interrogation. The Special Rapporteur recalls that, in compliance with article 15 of the Convention against Torture, confessions made as a result of torture shall not be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

**Proper procedures
for interrogation**

Some basic guarantees shall be applied to avoid torture during interrogation. In accordance with article 11 (combined with article 16) of the Convention against Torture, interrogation rules, instructions, methods and practices shall be kept under systematic review with a view to preventing cases of torture and other forms of cruel, inhuman or degrading treatment. Reference is made to principle 23 of the Body of Principles on Detention according to which the duration of interrogations, the intervals

between each interrogation and the identity of the officials conducting the interrogation shall be recorded. The information recorded shall be available to the interrogated person and, when provided by the law, to his or her counsel. As the Special Rapporteur has previously recommended, “each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded, and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. That practice should be forbidden. Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted” (ibid.).

In relation to guarantees during interrogation, the Special Rapporteur is of the opinion that, as provided by article 10 of the Convention against Torture, interrogators should receive training in order to ensure that they have the necessary skills to conduct interrogations and interview victims and witnesses. The Special Rapporteur fully supports the measures proposed by Amnesty International according to which these skills shall include the abilities to “gather all available evidence in a case before interviewing a suspect; plan an interview based on that evidence so that an effective interview can be conducted; treat an interview as a means of gathering more information or evidence rather than as a means of securing a confession; conduct an interview in a manner that respects the suspects’ rights; analyse information obtained during the interview, and carry out any further investigation into the case suggested by that analysis; check any admission or confession made by the suspect against available evidence; and evaluate each interview with a view to learning from each experience and developing interviewing and investigative skills further”.

The Special Rapporteur considers that prompt and independent medical examination upon a person’s admission to a place of detention, as provided by rule 24 of the Standard Minimum Rules and principle 24 of the Body of Principles on Detention, constitutes one of the basic safeguards against ill-treatment. The Special Rapporteur reiterates his recommendation that “at the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention” (ibid.). Further, in accordance with, inter alia, article 6 of the United Nations Code of Conduct for Law Enforcement Officials, rules 22 to 26 of the Standard Minimum Rules and principle 24 of the

Training of interrogators

Prompt and independent medical examinations

Body of Principles on Detention, the protection of the health of persons in custody shall be ensured during the whole period of detention.

**Incommunicado
detention illegal**

The safeguards described above are particularly undermined when the detained persons are kept in incommunicado detention or at undisclosed places of detention. The Commission on Human Rights has repeatedly made pronouncements on this matter. In its resolution 2003/38 (para. 14), the Commission “reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person”. The Human Rights Committee, in general comment No. 20, has also stressed that “provisions should ... be made against incommunicado detention” (para. 11). The Special Rapporteur refers to a previous report to the General Assembly (A/54/426), in which the former Special Rapporteur, Sir Nigel Rodley, stated that incommunicado detention is the most important determining factor as to whether an individual is at risk of torture. The present Special Rapporteur reiterates the recommendation of his two predecessors and urges all States to declare incommunicado detention illegal.

**Secret detention
places illegal**

Incommunicado detention is aggravated when individuals are held in secret places of detention. The Special Rapporteur reiterates that “the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court” (ibid., para. 26 (e)).

**Prompt and
effective access to a
judicial authority**

Another key safeguard to prevent incidents of torture or other forms of ill-treatment is the prompt and effective access of individuals deprived of their liberty to a judicial or other competent authority. As the previous Special Rapporteur recalled in a report, prompt judicial intervention serves as guarantee that there will be no breach of the non-derogable right not to be subjected to torture or other forms of ill-treatment (see A/54/426, paragraph 42). This safeguard is reflected in article 9 of ICCPR and principles 11, 32 and 37 of the Body of Principles on Detention. The judicial or other competent authority shall review the lawfulness of the detention as well as monitor that the detained individual is entitled to all his/her rights, including the right not to be subjected to torture or other forms of ill-treatment. The Special Rapporteur refers to his general recommendation in which he states that “provisions should give all detained persons the ability to challenge the lawfulness of the detention, e.g. through habeas corpus or amparo. Such procedures should function expeditiously” (E/CN.4/2003/68, para. 26 (i)).

In the exercise of his functions, the Special Rapporteur continues to receive allegations that no adequate measures have been taken after complaints of torture have been brought to the attention of the competent authorities. The Special Rapporteur is concerned that this may facilitate cases of impunity and jeopardizes the right to seek and receive remedy. The Special Rapporteur again draws the attention of the Commission to the recommendation he made in this connection: "When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment. Serious consideration should also be given to the creation of witness protection programmes for witnesses to incidents of torture and similar ill-treatment which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken. A complaint that is determined to be well founded should result in compensation being paid to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemptions from criminal responsibility for torturers, such as amnesty laws (including laws in the name of national reconciliation or the consolidation of democracy and peace), indemnity laws, etc. should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes. In that context, countries should be guided by the principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Principles) as a useful

tool in the effort to combat torture” (ibid., para. 26 (k)). The Special Rapporteur strongly recommends that States consistently implement the Istanbul Principles.

Humane detention conditions

The Special Rapporteur points out again that inappropriate conditions of detention may amount to a form of torture or other forms of ill-treatment. He underlines the principle codified in article 10 of ICCPR which states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. This principle has been interpreted as “a norm of general international law not subject to derogation” by the Human Rights Committee in its general comment No. 29 on article 4 (para. 13 (a)). The Human Rights Committee has developed its views on the meaning of this principle in its general comment No. 21.

Prompt access to medical care

Persons deprived of their liberty shall have access to prompt and adequate medical care. In his report to the Commission on Human Rights at its forty-third session (E/CN.4/1987/13), the then Special Rapporteur on torture, Peter Kooijmans, presented a brief study on the role of medical personnel and torture. The Standard Minimum Rules, in particular rules 22, 24, 25, 26, 52 and 82, as well as principle 24 of the Body of Principles on Detention, provide for a set of medical guarantees. They should be read in conjunction with the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in 1982, the Declaration of Tokyo adopted by the World Medical Association in 1975 and the Declaration of Malta on Hunger Strikers, also adopted by the World Medical Association in 1992.

Visiting rights

With regard to access to the outside world, the Special Rapporteur reiterates that persons deprived of their liberty shall be permitted to have contact with, and receive regular visits from, their relatives, lawyers and doctors and, when security requirements so permit, third parties such as human rights organizations or other persons of their choice. In accordance with principle 19 of the Body of Principles on Detention, access to the outside world can only be denied on reasonable conditions and restrictions as specified by law or lawful regulations. The Special Rapporteur notes that such access is not only a basic guarantee to prevent incidents of torture and other forms of ill-treatment, but also forms part of the right to family and private life enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of ICCPR. In the light of the interpretation given by the Human Rights Committee in general comment No. 16, “interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant” (para. 3).

The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement (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.
- 15.4.a 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.
- 15.4.c 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.
- 15.4.d 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.

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