



## **Stakeholders Submission concerning the Universal Periodic Review of Sri Lanka**

### **Submitted by the Asian Human Rights Commission and the Rule of Law Forum, Sri Lanka**

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The Asian Human Rights Commission (AHRC) was founded in 1986 by a prominent group of jurists and human rights activists in Asia. The AHRC is an independent, non-governmental body, which seeks to promote greater awareness and realisation of human rights in the Asian region, and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations. AHRC promotes civil and political rights, as well as economic, social and cultural rights.

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The Rule of Law Forum is a Sri Lankan organization devoted to the promotion of the rule of law. It is devoted to research and education and is focused on the improvement of the administration of justice. It promotes reform of police, prosecution and judicial institutions to meet the requirements of Article 2 of ICCPR. It engages in popularizing the UN conventions relating to human rights.

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## **1. Violations of article 7 of the ICCPR -- torture and cruel and inhuman treatment**

1.1 The following is a list of cases from 2009 to 2011 where article 7 of the ICCPR on torture and cruel and inhuman treatment has been violated by the Sri Lankan police force.

(a) Case of Narahenpita Sisil Weerasinghe-On the 30<sup>th</sup> December 2011 police officers attached to the Wattala Police Station falsely accused Mr. Weerasinghe of robbery. When he denied they started beating him. He was taken to Wattala Police Station where they continued to torture him. He was falsely charged with indecent behaviour and fined Rs. 1,500/=.Mr. Complaints have been filed with HRC, IGP, AG, SIU, CID, Senior Superintendent of Police of the Western Province (North) and the Officer-in-Charge (OIC) of the Wattala Police Station. No investigations have been initiated.

(b) Case of Udaya Pushparaja Nithyaraja -On the 20<sup>th</sup> September 2011 police officers attached to Jaffna Headquarters Police Station illegally arrested Mr. Nithyaraja and severely assaulted him in front of the Magistrate of Jaffna while the court was in session. The magistrate made the responsible policemen appear before the court, but no investigations have been initiated.

(c).Case of Perumal Sivakumara-On the 22<sup>nd</sup> August 2011 officers attached to the STF of the SriLankan police officers assaulted Mr. Perumal who was a well-known civil rights activist. He was severely beaten by the police officers and later admitted to Puttalam Base Hospital where he died from his injuries. Complaints were filed with law enforcements agencies, but no investigations have been initiated.

(d) Case of Kirigalbadage Sanath Kumara-On the 24<sup>th</sup> August 2011 police officers of the Kirindiwala Police Station came to Mr. Kumara's house to investigate a complaint lodged against him even though the matter had been settled by the Mediation Board. He was arrested and severely tortured. Complaints were filed with the OIC. No investigations have been initiated.

(e) Case of Jayasinghe Chathura Manohara-On the 10<sup>th</sup> July 2011 police officers at Pitabaddara Police Station illegally arrested Mr. Manohara and tortured him, because he criticized the police for failing to arrest a couple of thieves. Later he was charged with two false allegations. Complaints were filed to the HRC, SSP Matara, IGP and the Deputy IGP (DIG) Southern Province. No investigations have been initiated.

(f) Case of Dissanayake Chandana-On the 15<sup>th</sup> June 2011 police officers attached to the Kosmodara Police Station came to Mr. Chandana house and wanted to search the premises. Mr. Chandana refused to allow them access as they had no search warrant. The police assaulted him and later took him to the police station and accused him on fabricated charges. Complaints were filed to the HRC. No investigations have been initiated.

(g) Case of Sugath Chandima-On the 17<sup>th</sup> February 2011 Mr. Chandima was brought to the police station by his employer, because he was accused of stealing a mobile phone. He was tortured by the police officers attached to the Panadura Police Station. Complaints were filed to the HRC. No investigations have been initiated.

(h) Case of Marasingha Maithree Narada-On the 27<sup>th</sup> February 2011 police officers at Negombo Police station illegally arrested Mr. Narada and severely tortured him. Fabricated charges were levelled against him and later he was released on bail. Complaints were filed to the HRC, the IGP and other relevant authorities. No investigations have been initiated.

(i) Case of Vettuwel Wijayakumar-On the 11<sup>th</sup> December 2010 police officers at Bulathsinhala Police Station arrested Mr. Wijayakumar and tortured him into signing a false confession. Complaints were filed to the IGP, HRC and NPC. No investigations have been initiated.

(j) Case of W. A. Lasantha Pradeep Wijeratna-On the 15<sup>th</sup> August 2010 police officers attached to the CID questioned Mr. Wijeratna on his plans to migrate to Australia. He was tortured subsequently and accused of committing fabricated crimes. Complaints were filed to the HRC, the NPC and the IGP. No investigations have been initiated.

(k) Case of Alhaj Farook Mohamad Ikram-On the 17<sup>th</sup> June 2010 police officers attached to Balagolla Police Station arbitrarily arrested Mr. Ikram and took him to the police station. While in detention he was assaulted by the police. Complaints were filed to the Deputy Inspector General of Police, the Inspector General of Police and HRC. No investigations have been initiated.

(l) Case of Anthony Ayya Devaraj-On the 7<sup>th</sup> June 2010 police officers at Matugama Police Station, Kaluthara district tortured Mr. Devaraj and pushed him into a pond full of leeches after he helped the police with identifying a suspect. He was illegally arrested and accused of committing fabricated crimes. Complaints were filed to the IGP, NPC, SSP Kalutara and the HRC. No investigations have been initiated

(m) Case of Koronchilage Aruna Rohana-On the 4<sup>th</sup> June 2010 police officers attached to Anamaduwa Police Station illegally arrested, detained and tortured Mr. Rohana aged 17. He had been involved in a fight with a fellow student. Complaints were filed to the HRC, IGP, NPC, the OIC Police station of Anamaduwa, the AG, and National Child Protection Agency (NCPA). No investigations have been initiated.

(n) Case of Suthisa Jayalath and Mr. W V Mahendra Uppalawanna-On the 20<sup>th</sup> May 2010 police officers at Welipanna Police Station illegally arrested and assaulted Mr. Jayalath and Mr. Uppalawanna in public. They were brought to the police station and hung from a beam. Complaints were filed to the ASP, the NPC and the HRC. No investigations have been initiated.

(o) Case of Karasinghe Appuhami On the 30<sup>rd</sup> April 2010 Kolonna police illegally arrested Mr. Appuhami and tortured him while in police custody. He

was taken to the hospital for treatment, but the police refused to admit him. He was taken back to the police station and later released. After filing a complaint on the torture he suffered by the hands of the police he was charged with fabricated crimes. Complaints filed to the IGP, DIG (Sabaragamuwa), SSP (Rathnapura), NPC and the HRC. No investigations have been initiated.

(p) Case of Wannu Athapaththu Kumara - On the 29<sup>th</sup> October 2009 police officers attached to Galgamuwa police station arbitrarily arrested Mr. Kumara and severely tortured him for two days. Complaints have been filed to the HRC, IGP, NPC and the Attorney General. No investigations have been initiated.

(q) Case of Tharidu Nishan - On the 28<sup>th</sup> March 2009 police officers Akuressa police took Mr. Nishan into custody and tortured him. He was later released, but forced to report at the police station every Sunday. Complaints were filed to the HRC. No investigations have been initiated.

(r) Case of Loku Naramgodage Shantha - On the 2<sup>nd</sup> March 2009 Sub Inspector of Police attached to Meegahatenna Police accused Mr. Shantha of theft and he was taken into custody and assaulted. Later he was taken to the police station. Complaints were filed to the HRC, NPC, IGP, Attorney General and Senior Superintendent of Police Kalutara. No investigations have been initiated.

(s) Case of Sunil Shantha - On the 1<sup>st</sup> March 2009 police Officers attached to Meegahatenna police assaulted Mr. Shantha and took him to the Meegahatenna police station. At the police station he was severely tortured. Complaints were filed to the HRC, NPC; IGP, Attorney General and Senior Superintendent of Police Kalutara. No investigations have been initiated.

(t) Case of Samarawickrama Dayananda - On the 17<sup>th</sup> February 2009 police officers attached to the Minuwangoda Police Station held the parents of Mr. Dayananda hostage until Mr. Dayananda turned himself in. At the police station the father of Mr. Dayananda was tortured. When the son turned himself in he was also tortured. Complaints were filed to the HRC and NPC. No investigations have been initiated.

1.2 In the 2008 UPR review the Government of Sri Lanka received several country recommendations urging the government to implement the recommendations of the Special Rapporteur on the question of torture and increase its efforts to strengthen legal safeguards for eliminating all forms of ill treatment or torture in prisons and detention centers. The government refrained from commenting on these recommendations and no action has been taken to curb the widespread use of torture in Sri Lanka that continues unabated.

1.3 In Sri Lanka torture by the police is the most prevalent form of torture. It has come to the attention of the Rule of Law Forum that the practice of torture and ill-treatment by the police happens on a daily basis. In numerous reports civil

society has documented that torture is practiced in all police stations and in all detention centers throughout Sri Lanka.

- 1.4 In a report published in 2011 titled “Police Torture Cases: Sri Lanka 1998-2011” the Asian Human Rights Commission reports that it has registered a total of 1500 reported cases of police torture in the period from 1998 to 2011. The report provides a detailed account of the proceedings in 323 of the most serious cases of torture. The report offers valuable insight into the circumstances under which torture takes place. In numerous cases victims are randomly selected, arrested and detained by the police for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges. Often the police target innocent people from a poorer socio-economic background. In the absence of a state-sponsored legal aid scheme the members of the weakest social groups rarely have the resources at hand to hold the police accountable for the abuse.
- 1.5 Torture in Sri Lanka is a widespread phenomenon and a systematic practice. It is important to keep in mind that the reported cases only are the tip of the iceberg. The vast majority of incidents remain unreported. Fear, intimidation, the lack of credible complaint mechanisms, the absence of witness protection and a host of other factors all contribute to a culture of silence on police torture in Sri Lanka.
- 1.6 The civil society’s extensive documentation of thousands of cases of torture by the police sits uncomfortably with the “zero tolerance” policy on torture advocated by the Government. The state of Sri Lanka has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), but the legal framework in place is not working in the manner intended. Investigations into acts of torture carried out by state authorities have come to an absolute halt. In present day Sri Lanka, the CAT convention is not worth the paper it is written on.
- 1.7 The Sri Lankan judicial system has failed at holding the police accountable for their transgressions. The legal aftermath of the reported cases of torture and ill-treatment illustrates that an investigation into acts of torture is the exception rather than the rule. In most reported torture case where the police are the perpetrators complaints are lodged by the victims or by human rights organisations on their behalf. Complaints are also made to the Inspector General of the Police, the Human Rights Commission of Sri Lanka, the Attorney General’s Department and sometimes the National Police Commission. To our knowledge, there have been no serious investigations into any of the allegations, which could lead to prosecution under the Convention against Torture Act No. 22 of 1994. Nor has the Special Inquiry Unit (SIU) of the Sri Lanka Police Department carried out any investigations into the allegations of torture. As long as there are no credible investigations into acts of torture committed by state officials the government’s “zero tolerance policy” is of little value.
- 1.8 The Sri Lankan government has failed in providing torture victims with means of redress and the introduction of a National Action Plan does not change this

sorry state of affairs. The National Action Plan for the Protection and Promotion of Human Rights drafted by the Sri Lankan authorities in 2009 includes the issue of torture, but the government has not disclosed how the National Action Plan will be implemented. Also the National Action Plan does not present a solution to the fact that acts of torture are committed with impunity and is therefore found lacking.

1.9 As for the National Human Rights Commission its mandate is limited and its activities cannot replace a thorough criminal investigation. Furthermore, at the moment it does not function at full capacity and its independence has frequently been questioned.

1.10 Perpetrators of torture enjoy absolute impunity. The lack of internal discipline within the police force is partly to blame for this state of affairs. The hierarchical order embodied in the command responsibility doctrine is not operating effectively in Sri Lanka. A police officer guilty of torture will not be held accountable for his transgressions by his superiors. The police authorities continue to neglect enforcing discipline among its cadres and this is one of main reasons behind the continued use of torture that is still in practice in Sri Lankan society.

## **2. Violation of Article 9 of the ICCPR relating to illegal arrest and detention**

2.1 After the 2008 UPR, UNHRC forwarded several recommendations to the state of Sri Lanka regarding the protection of citizens' rights in the context of illegal arrests and detention. Despite these formal recommendations, the situation has deteriorated and illegal arrests are reported at police stations across the country.

2.2 There have been hundreds of cases in the past decade regarding illegal arrests and arbitrary detentions in locations across the country. Most if not all of the cases demonstrate that state authorities often act illegally when arresting and detaining civilians. In most of the cases, the state agency did not supply the victim with a reason for the arrest. This is a serious violation of Sri Lanka's legal code and departs from both domestic and international standards regarding arrest and detention.

2.3 In a series of cases police officers have shot the arrestees before or during the arrest. Inevitably, this resulted in a number of extrajudicial killings. Reports state that the arrestees shot at did not object to their arrest or intimidate the police officers. This amounts to a clear disrespect of civilian liberties and the basic human rights of the Sri Lankan people.

2.4 According to the Criminal Procedure Code, police officers are not permitted to use their weapons while they are in the process of arresting a person, unless there is credible evidence that the arrestee has committed a crime that can be punished with the death penalty. However, the incidents reported demonstrate that police officers have, on numerous occasions, shot innocent people before the arrest was made or during the arrest, even though the arrestee was not obstructing the arrest procedure in any way.

- 2.5 There have been numerous cases over the past few years where arrestees have been extra-judicially killed while in custody of the police. In many cases, the police took the detained arrestee to an isolated location where she or he was then killed. These victims did not have access to a fair trial. The police are then known to issue a communiqué stating that the arrestee attempted to attack the officers, and that she or he was shot as a measure of self-defense on the part of the officers. It is difficult to understand how a handcuffed person could attack a police officer, but this remains the set of circumstances that is used as an explanation by the police.
- 2.6 Arrest and arbitrary detention is a dangerous sequence of events, as police officers often are involved in killing innocent civilians while they are in detention. This illegal procedure has been used to bypass the judicial process, and constitutes a violation of civil liberties and basic human rights of the Sri Lankan people.
- 2.7 Sri Lanka's domestic laws allow for the arrest of suspects when there is reasonable suspicion to believe that the person in question has committed a crime. The necessity of reasonable suspicion has been repeatedly stressed by the Supreme Court in a number of rights violation applications in which innocent people were arrested without reasonable doubt.
- 2.8 The Rule of Law Forum has observed that the Sri Lankan police demonstrate disrespect for procedural law and regularly violate the liberty of innocent people. The police have adopted a practice to respond to complaints reported to the police stations, in which they search for a suitable substitute perpetrator to prove that they have taken care of the complaint. In abandoning their fundamental responsibility to investigate each and every complaint, they do injustice to both the complainant and the unwitting substitute perpetrator of the crime. Indeed, the substitute perpetrator is often tortured, with officers coercing these civilians to admit to crimes that they have not committed. This process is an ad-hoc, illegal procedure which has been adopted into mainstream police use; it does not speak to a lack of personnel or resources within the policing system.
- 2.9 The Rule of Law Forum has come to know of several cases in which detainees have not been allowed access to legal representation. Police officers, including the Officer-in-Charge (OIC) of the station, have not allowed the detainee to seek legal counsel. In one case, when a lawyer visited the police station to meet with his client, he was subjected to torture by the police officers at the station. The issue was raised in the Supreme Court in 2011 and a circular was issued by the Inspector General of Police (IGP) detailing the guidelines that officers must abide by with respect to legal counsel. These guidelines have not been respected.
- 2.10 Over the past few years, the Rule of Law Forum has been informed of a number of serious cases involving arbitrary, prolonged detentions. According to state officials, the majority of these detainees are being held under suspicion of involvement with terrorist organizations. However, it has often been reported that these detainees were arrested in mass while protesting publicly against the government. Suspects are often arrested under the Prevention of Terrorism

(Temporary Provisions) Act No. 48 of 1979 (PTA) and Emergency Regulations (ER).

- 2.11 The emergency regulations allow state authorities to arrest innocent people who have not committed any crime, on the vague suspicion that they might be involved in a crime in the future. These emergency regulations have allowed for the occurrence of the most reprehensible human rights violations in Sri Lankan history. Although the Sri Lankan government has denounced the misuse of emergency regulations, detainees are now often held under the PTA.
- 2.12 During the conflict between the Sri Lankan state and the Liberation Tigers of Tamil Elam (LTTE) and other arms groups, state authorities arrested more than twenty thousand innocent civilians. At no point were the exact numbers of the arrested and detained revealed, nor were family members allowed access to the detention centers where their relatives were being held.
- 2.13 Civil rights and international human rights organizations have repeatedly called on the Sri Lankan government to release lists of the arrested with details of the length of detention and reason for detention, but the state has continuously failed to do so. The detention centers where people are held are unknown, and although people are occasionally released, the state has refused to reveal the exact number of people detained within detention centers.
- 2.14 The arbitrary arrests and detentions of thousands of people in unknown locations have resulted in chaos in the country. Moreover, those who seek justice against the abductions, disappearances and extrajudicial killings of their loved ones are unable to gain closure on the incidents.
- 2.15 Even after the Sri Lankan government announced that they would not enforce emergency regulations, hundreds of detainees have been held under PTA provisions and kept in remand prison.
- 2.16 Thousands of detainees have been detained without access to legal counsel. The officers of the Terrorism Investigation Division (TID) of the Sri Lankan police have been accused for purposely delaying these cases in court.
- 2.17 After the TID has concluded its investigations, the case files are submitted to the Attorney General's Department for further examination when indictment is being considered, or approval for release. Out of the thousands of innocent detainees who wait interminably to be released, it is only in a few hundred cases that people are allowed to go home.
- 2.18 Even after an indictment is filed by the Attorney General in the relevant High Court, detainees often have to wait for several years in remand prison as the court concludes the criminal trial. Many people have suffered greatly as they wait for legal proceedings to inch forward, a situation that has been worsened by the constant transfers of presiding judges and prosecutors. Due to the lack of laws which protect victims of crimes as well as witnesses to these crimes, victims and witnesses often face acts of violence by perpetrators.



- 2.19 The AHRC has reported several cases over the past year wherein detainees have been tortured by officers within the TID in locations across the country. After the suspect is tortured for several months, or even years, they are forced to sign blank or forged documents. The blank or forged documents were then used as confessions, and this was used as evidence with which to prosecute detainees in the High Court. In some cases, the suspects were threatened with death if they did not sign, or promised release if they did sign the papers.
- 2.20 The legal provisions of the PTA and the emergency regulations are regularly subject to misuse. The detainees were not required to undergo a medical exam to confirm that they had not been tortured when they signed the documents. On many occasions, detainees were forced to sign the documents while they were being tortured, rather than under the supervision of the Assistant Superintendent of Police (ASP.)
- 2.21 The state has repeatedly requested permission for detainees to communicate with their relatives and loved ones. Even when members of Parliament have requested permission to visit the detention centers, they have been refused. The only prison in which families are allowed to visit is Welikada Remand Prison, where visitors are allowed once a month.
- 2.22 State officers directly ignored the orders of the President in 2005 when he spoke about safeguarding the basic rights of civilians at the time of arrest and detention. A notice should be issued to the arrestees' next of kin. The identity of each arresting officer, including their name, rank and police station should be included on this notice.
- 2.23 The AHRC has issued several Urgent Appeals regarding cases in which detainees were tortured and suffered physical injuries as a result of the torture. Even though these injuries necessitated medical attention, the police refused to provide medical treatment to detainees. In one case which the AHRC reported in 2011, a detainee who was in severe condition was brought to a nearby hospital. Despite the detainees' request for medical treatment and advice of the doctor to admit the detainee for treatment, he was brought back to the prison.
- 2.24 Police officers are reluctant to take detainees to a hospital for medical treatment since they fear that the physical evidence of their torture will be recorded. Many detainees have died in custody after their gunshot or other wounds went untreated.
- 2.25 The AHRC has recorded numerous statements of detainees who were arrested and produced before courts days later. The fact that these detainees were not told the reason for their arrest and detention is a clear violation of their fundamental rights enshrined within the Sri Lankan Constitution. Indeed, the Constitution states that detention of an arrestee for more than 24 hours without appropriate indication as to the crime committed is a violation of the arrestees' rights. As such, police officers often keep detainees at the police station or detention center, but purposely do not record the particulars of the crime or information regarding the detainee in any official records. Usually, the information is recorded a few

hours before the detainee is produced before the Magistrate. This practice violates the rights of the detainees.

### **3. Recommendations:**

- a) Torture by the police is only one symptom among many which indicates that Sri Lanka is a country where people no longer respect the rule of law. This calls for a fundamental change in the criminal justice system. Important in this regard is a change in the Constitution of 1978 that placed the executive above the judiciary. In order to counter this alarming trend the judiciary needs to be re-empowered, so it once again can play the role required in order for Sri Lanka to be a functioning democracy.
- b) In the 2008 UPR review the Government of Sri Lanka promised that a Witness and Victim Protection Bill would be introduced in Parliament shortly and measures would be taken to implement the legislation including the establishment of the necessary institutions. The Witness Protection Bill is yet to be implemented. Ensuring that witnesses enjoy a modicum of protection is crucial in the fight against torture. Only when victims and witnesses feel safe will they come forward and testify against state officials. At present the legal process is paralyzed by the absence of a witness protection scheme. The government should make good on its promise and actively lobby for the passing of this law.
- c) Establish a special investigation unit which will investigate the cases of detainees who have been arrested and detained under the PTA.
- d) Adopt a policy of quickly holding and finishing criminal trials for those detainees who have been detained for prolonged periods of time.
- e) Adopt a special departmental order for those police officers who are involved in criminal investigations, so as to ensure that they follow the legal provisions of the CPC and DO exactly.
- f) Impose and follow through on the provisions within the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act).
- g) Enact an act on codifying the rights of the arrestees at the time of arrest and after the arrests including: 1) the right to know the reason for the arrest 2) procedural steps to be followed by the officers who have done the arrest 3) protection for the detainee 4) the right to a fair trial without delay 5) medical facilities, if necessary, for the detainees 6) permission for lawyers and relatives to visit the detainees in prison.
- h) Enact a law pertaining to procedures regarding the handling of firearms by law enforcement officers, including officers involved in criminal investigations.
- i) Take meaningful measures to curb the existing delays within the judicial system so as to ensure the rights of innocent civilians to a fair trial.
- j) Repeal the PTA and strengthen the administration of Sri Lanka's criminal justice system
- k) Create a strict order that requires the maintenance of official records on arrests and detention.
- l) Create a strict order which requires records to be maintained under official supervision, to ensure that there is no tampering.