



# ASIAN LEGAL RESOURCE CENTRE

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## Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review concerning human rights in Sri Lanka

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### 1. Introduction

- 1.1. Sri Lanka is today witnessing a total collapse of the rule of law, with citizens' human rights and basic freedoms being violated with flagrant impunity. Torture continues to be widely practiced in police stations and other detention facilities around the country. Abductions and disappearances—which plagued the country in the late 1980s and early 90s—have re-emerged and are occurring on a large scale in the south, north and the east. However, only cursory if any investigations and inquiries have been conducted into these crimes, with the perpetrators typically allowed to escape unpunished.
- 1.2. The situation has deteriorated to such an extent, that in recent times there have been repeated appeals for international human rights monitoring in Sri Lanka. This call has been made by both local and international groups and individuals, notably by Louise Arbour, the UN High Commissioner for Human Rights, and Manfred Novak, the UN Special Rapporteur on Torture, after their respective missions to the country in October 2007.<sup>i</sup> Nonetheless, the government has been vehemently opposing all suggestions for a UN field presence in Sri Lanka on the basis that such international monitoring amounts to a threat to its sovereignty.
- 1.3. The Asian Legal Resource Centre (ALRC) and its sister-organisation, the Asian Human Rights Commission (AHRC), have consistently maintained that if a State has the capacity and will to carry out investigations into gross violations of human rights occurring within its jurisdiction, there is no requirement for international intervention. The government and its mouthpieces insist that Sri Lanka has the required capacity to deal with the prevailing situation and that the UN is required only to provide technical assistance. However, by consistently failing to conduct credible investigations and, in fact, deliberately obstructing them, the State has shown that it lacks not so much the capacity but the requisite will to safeguard the rights of its citizens.

### 2. Police Torture

- 2.1. The ALRC and AHRC have previously persistently highlighted the systematic and endemic use of police torture on ordinary Sri Lankans for varied reasons or even in the absence of reason. In a 2006 publication titled “*An X-ray of the Sri Lankan policing system and torture of the poor*” the organisation revealed details of 63 cases of custodial killing and torture that took place during the previous two years; together with in-depth analyses of the phenomenon. The AHRC has also issued hundreds of Urgent Appeals regarding cases of torture by the Sri Lanka police. This is however only the tip of the iceberg, with the vast majority of incidents remaining unreported due to fear, intimidation, the lack of a credible complaint mechanism, the absence of witness protection and a host of other factors.
- 2.2. In 2007, the organization issued 47 urgent appeals on police torture.<sup>ii</sup> In all 47 cases, police complaints were lodged by the victims or human rights organisations on their behalf. In all cases complaints were also made to the Inspector General of Police, Human Rights Commission of Sri Lanka, the Attorney General's Department and sometimes the National Police Commission. However, the ALRC and AHRC are unaware of any serious investigations into any of these allegations leading to prosecutions under the Convention against Torture Act No. 22 of 1994. In previous years there have been some investigations by the Special Inquiry Unit (SIU) of Sri Lanka Police Department; however, the ALRC not aware of any inquiries into allegations of torture reported last year.

- 2.3. As for the Human Rights Commission it has lost its credibility and cannot be considered as being a competent body capable of investigating and inquiring into these allegations. The National Police Commission is politicized and defunct, and the office of the Attorney General has simply become the spokesperson for the government, with many actors having made critical comments concerning its independence and integrity in recent times.<sup>iii</sup>
- 2.4. Instead of taking remedial actions, the higher police officials have begun to appeal to the public to understand the situation and refrain from demoralizing their police officers through public criticism. The claim is that due to terrorism and the increase in organised crime, the duties of the police have become more arduous and consequently they are unable to observe the niceties of proper policing. The refusal of the police authorities to enforce discipline among its cadres and the dismal failure of the political authorities to ensure accountability remain the foremost reasons for the constant and continuing practice of torture as well as other forms of rights violations. 2007 saw a further degeneration in the police force.

### **3. Police Killings**

- 3.1. A recent phenomenon in Sri Lanka has been the increase in the number of killings in police custody by policemen who then claim self defence to justify the deaths. The frequency of such occurrences, the astonishing predictability of events leading to the deaths as well as the ready acceptance of the policemen's version of events without further inquiries by the police authorities, political hierarchy or the courts raises consternation. For instance, in October 2007 alone there were reports from Gampaha, Modara and Weligama where suspects had been arrested and later shot dead by the police, who claimed the killing was necessitated when the suspects either attacked the police or attempted to escape. In Wadduwa, the police claimed that while being taken in a boat on the Bolgoda Lake, a suspect jumped overboard and committed suicide, although no proper investigation has been launched into this.<sup>iv</sup>
- 3.2. One case that received extensive publicity was the police killing of the two alleged suspects in the Delgoda family decimation case, in which five members including children were killed—claiming reasons of self defence.<sup>v</sup> Subsequent to the incident however, villagers confided to human rights organisations that one suspect was beaten to death at the police station and the other was shot dead in some remote place, with both bodies being brought and dumped at the place of the alleged police shooting. The villagers also strongly believed that there were other suspects in the family massacre who were still at large.
- 3.3. In all these cases of death in police custody, the magistrates accepted the police version of events and entered verdicts of justifiable homicide. The magistrates have summarily decided on the cases without proper investigations having been conducted into the incidents and before the cases could be brought to trial at a high court. For all intents and purposes the cases have been closed and no inquiries into the causes of death will ever be conducted. Such increasingly frequent deaths indicate that the higher police authorities approve of such practices. The failure of the government and parliament to take any visible or effective action regarding this disturbing trend and to question the practice also suggests that there is direct or indirect political approval of such killings.
- 3.4. The former Inspector General of Police (IGP) publicly approved this practice; the present IGP has also spoken about stopping crime by 'hook or by crook'. Neither was taken to task by the government or parliament for their irresponsible statements. In countries such as Bangladesh and India where shootings by the police have come to the notice of the judiciary, the Supreme Court as well as other courts have evolved means to intervene and rigorously tested the police. In Sri Lanka there have been no such attempts and the practice goes on unchallenged.

### **4. Disappearances**

- 4.1. Since early 2006, abductions and forced disappearances have become part of life in the south, north and the east of Sri Lanka, with more than 1000 people reportedly having been disappeared or later found dead during the first eight months of 2007 alone. Sri Lanka is undoubtedly amongst the world's worst violators in terms of disappearances at present. Among the victims are media personnel, members of the clergy, parliamentarians, businessmen, humanitarian workers and academics. A few victims have been released but only after allegedly paying large sums of money or being severely warned not to pursue their

activities or divulge information about their captors. The vast majority, however, have disappeared without a trace.

- 4.2. This is not the first time Sri Lanka has been plagued with mass disappearances. In 1971 and again in the late 1980s, large-scale disappearances have taken place. Between 1987 and 1991, an estimated 30,000 (official) to 60,000 (unofficial) people were forcibly disappeared, allegedly after being abducted or illegally taken into custody by members of the law enforcement agencies and the armed forces. However, with a few exceptions, hardly any investigations, inquiries or prosecutions have been conducted into these incidents. In all likelihood, a significant majority of perpetrators continue to serve in official capacities without having been made accountable in any way for their grave crimes.
- 4.3. It has been the position of the ALRC that such mass disappearances can occur only when there is explicit or implied approval by the regime in power. Such serious violations of the law can take place only with a guarantee to perpetrators that their crimes will not be investigated or prosecuted. It is now common knowledge that such an assurance was the cornerstone of the relationship between the political regime and the police and military during past atrocities. At present, there is an entrenched political and legal culture discouraging investigation and prosecution of disappearances and other gross abuses of human rights in the country.
- 4.4. The criminal justice system is only allowed to operate insofar as it does not impede or come into conflict with this unwritten agreement between those in power and the police and military. It is this agreement to prevent investigations that has created massive obstacles to the functioning of the local criminal investigation system—to such an extent that the system has become dysfunctional. Diligent officers of the Criminal Investigation Division (CID), who are motivated by their professional obligations and breach this agreement, have been severely penalized. It is believed that many persons' careers within the investigation field have suffered serious setbacks, either due to their lack of understanding of these rules or due to their defiance of these rules in the pursuit of the best traditions of their profession. Currently, investigations into cases where state agencies are involved are perceived as an act of great disloyalty to the police and the military.
- 4.5. Why have the political authorities in Sri Lanka created such a forbidden area relating to criminal investigations? It is understood that it is because the military, which has been used by various regimes for their own purposes, have acquired 'rights' to obstruct any attempt at such investigations. Serious investigations into disappearances are perceived by the political authorities as being potentially capable of causing an enormous rift between them and the military. The current political system, which was established under a new constitution in 1978, cannot survive if serious investigations into police and military conduct take place.

## **5. Constitutional Crisis**

- 5.1. Another way to deter investigations and inquiries into the escalating number of abuses has been to undermine the legitimacy of key institutions established for the protection and promotion of human rights.
- 5.2. Over the decades, politicization of the public service has led to State institutions being replete with inefficiencies and corruption. In 2001, the 17<sup>th</sup> Amendment to the Constitution was unanimously supported by all political parties for the purpose of depoliticizing the public sector. The law established or provided for seven independent commissions for vital public functions, including the National Police Commission (NPC) and the Human Rights Commission (HRC). It also provided for a ten-member Constitutional Council tasked with making suitable appointments to the commissions and other key positions.
- 5.3. When the term of the Constitutional Council expired and several vacancies arose in the commissions, the President failed to appoint the Council and on the basis that the minority parties were delaying in naming their nominee, went ahead with making political appointments to the commissions. This not only completely nullified the very purpose of the 17th Amendment—depoliticization of the public services—but was also in blatant violation of the Constitution. When these appointments were challenged before the Supreme Court, the apex court invoked Article 35 of the Constitution and held that the courts were

powerless to question the acts of the President. Recently all minority parties finally agreed and submitted their nomination to the President. But the CC has still not been appointed.

- 5.4. Ever since its independence was compromised, the HRCSL has dismally failed to implement international norms and standards relating to the observance of human rights by the State. For instance, no sooner than political appointments to the HRCSL were made, it took a decision to abandon inquiries into around 2000 disappearances—reportedly to avoid the government having to pay compensation to the victims’ families. It has also imposed an information blackout on its regional offices, notably its sub-office in Jaffna, making these offices’ information unavailable to local and international organizations, which significantly impedes the understanding of the ongoing human rights situation in the affected areas, notably the north of the country. This blackout by the central office is nothing less than an attempt to cover up the gravity of the human rights situation

## **6. Compromised Position of the Attorney General**

- 6.1. The Attorney General’s Department is no longer perceived as an independent entity. For instance the international observer groups (IIGEP)<sup>vi</sup> overseeing the Presidential Commission of Inquiry (CoI), which has been appointed to inquire into 16 cases of gross human rights violations, has issued three public statements raising serious concerns about the conduct of the premier prosecution body.<sup>vii</sup>
- 6.2. In fact, the department’s independence has been compromised for some time. When the disappearances of tens of thousands of persons and other forms of human rights violations were taking place during successive regimes, the Attorney General was a mere spectator; when controversial emergency regulations were enacted (and continue to be made) that include provisions contravening basic international human rights law, norms and standards, the department has not gone on record opposing them. Therefore, the department now lacks the moral credibility that is essential to the functioning of a public prosecutor’s organisation.
- 6.3. For instance, as the premier prosecution agency the Attorney General’s department (AG) is required to prosecute all cases on the basis of legal criterion. However, in recent times the position has drastically changed with political convenience becoming the most important factor in prosecutions. Regarding the 30,000 acknowledged disappearances in the south in the late 1980s, there have been no successful prosecutions into even the limited number of cases recommended to be prosecuted by the Commissions appointed to inquire into enforced disappearances.
- 6.4. The government seems firmly resolved not to intervene to limit the present crisis in the country, insisting instead that rights violations are inevitable when eliminating terrorism. This is the unfortunate approach that the Sri Lankan government has adopted on many occasions at various international fora. Formulating responses of denial has become amongst the main functions of officers of the AG’s Department. When a professional agency committed to enforcing the rule of law engages in such exercises of falsification, it adversely affects the very nature of the institution itself.
- 6.5. Sri Lankans are currently faced with an onslaught of rights abuses and have been rendered helpless. When they attempt to evoke provisions available in the local law detailing procedures for recording complaints, criminal investigations and prosecution, they encounter a brick wall of denial, inefficiency and inaction. After exhausting all means to find legal redress locally they begin—through the intervention of concerned human rights organisations and individuals—to take their grievances to the UN human rights agencies. However the Supreme Court judgement in the Singarasa case<sup>viii</sup> has denied the people one of the last vestiges of hope; that is taking individual complaints to before the UN-Human Rights Committee. The apex court concluded that Sri Lanka’s accession to the ICCPR Optional Protocol was inconsistent with the country’s constitution and therefore individuals cannot seek to vindicate and enforce rights through the UN-HRC.
- 6.6. The placing of citizens in this helpless situation without a remedy, locally or internationally, is being portrayed as a matter of sovereignty. To portray international human rights monitoring as interference in sovereignty completely belies the fact that the sovereignty of the people has already been lost through violence, intimidation and collapse of the rule of law—something that has been lost on the government.

## 7. Recommendations

The ALRC believes that while the Government of Sri Lanka has a deplorable track-record concerning the implementation of recommendations made by local and international actors, it is vital for the people of Sri Lanka and the international community to continue to press for change in the country and accountability concerning all violations. The declaration by the government that human rights violations are inevitable in the fight against terrorism should not be accepted as an outright justification concerning ongoing abuses. The following are some specific recommendations concerning which pressure is urgently required. The members of the international community are urged to take all measures to ensure that:

- 7.1. The offer made by the High Commissioner for Human Rights in her December 10, 2007 statement is accepted and immediate provisions are made for a UN human rights monitoring mission to Sri Lanka. The main objective of an international monitoring mission is to revive the internal capacity of the State, and therefore restore the sovereignty of the people of Sri Lanka.
- 7.2. State obligations under the ICCPR Optional Protocol are complied with, notably through the prompt enactment of legislation to enable the views of the Human Rights Committee to become implementable in Sri Lanka. In the light of the Supreme Court decision in the Singarasa's case, the enactment of such legislation is urgently required.
- 7.3. The acute problems inherent in the policing system pertaining to criminal investigations, command responsibility, discipline and depoliticization of the police force are immediately addressed.
- 7.4. Legislation is enacted that clearly defines the role of the Attorney General in cases of criminal prosecutions. An alternative would be to establish an independent public prosecutor's office vested with prosecutorial powers concerning all serious crimes.
- 7.5. Clear instructions are issued to magistrates hearing cases of suspicious deaths, particularly deaths at the hand of law enforcement agencies.
- 7.6. The government is prevented from enacting emergency or anti-terrorism laws that deprive judges of some of the most essential powers required to safeguard the liberty of persons.
- 7.7. The enactment of a clear and comprehensive witness protection law, which creates obligations concerning the protection and supervisory duties of all agencies, including the prosecution and judiciary. The law must also clearly lay out the organizational responsibilities for maintaining a witness protection programme. The creation of an authentic witness protection scheme is perhaps the primary way in which a difference to the present situation can be made.

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<sup>i</sup> The statements made by Louise Arbour and Manfred Novak at the conclusion of their respective missions to Sri Lanka in October 2007 may be found on AHRC's website at <http://www.hrsolidarity.net/mainfile.php/2007vol17no06/2590/> and <http://www.hrsolidarity.net/mainfile.php/2007vol17no06/2589/>

<sup>ii</sup> For further details of Urgent Appeals and statements issued on the crisis in Sri Lanka by the AHRC see <http://www.srilankahr.net/>

<sup>iii</sup> See sections 5 and 6 below.

<sup>iv</sup> All these cases occurred in areas that are situated in or around the country's main city, Colombo. It is understood that there are many more such cases occurring around the country and that those mentioned here only represent a fraction of those occurring in reality.

<sup>v</sup> The officer in charge of the Megahawatte police in his report to the Magistrate's Court of Gampaha described events leading to the shooting as follows:

*"...when the police went to find the weapons a bomb, hidden in that place was taken [by the two suspects] to kill the police officers. On the orders of Sub Inspector Nishanka, PC27273 Wijeratna and PC 34334 Gunwardena shot with their T56 [light] sub-machine guns bearing number 28030808 and 29041767. After the shooting as the two suspects had been wounded they were taken to hospital where they died."*

<sup>vi</sup> The International Independent Group of Eminent Persons (IIGEP) was appointed by the President of Sri Lanka to observe the proceedings of the Commission.

<sup>vii</sup> Inter alia the IIGEP has stated as follows: *"We are concerned about the role of the Attorney General's Department as legal counsel to the Commission. The Attorney General's Department is the Chief Legal Adviser to the Government of Sri Lanka. Members of the Attorney General's Department have been involved in the original investigations into those cases subject to further investigation by the Commission itself. As such, members of the Attorney General's Department may find that they are investigating themselves. Furthermore, it is possible that they be called as material witnesses before the Commission. We consider these to be serious conflicts of interest, which lack transparency and compromise national and international standards of independence and impartiality that are central to the credibility and public confidence of the Commission."*

<sup>viii</sup> The entire judgment of the Supreme Court in the Singarasa case maybe found on the AHRC's website at [http://www.srilankahr.net/pdf/sc\\_judgement1.pdf](http://www.srilankahr.net/pdf/sc_judgement1.pdf)