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**PREVALENCE OF TORTURE IN SRI LANKA;
PERSISTING PROBLEMS AND OUTSTANDING
ISSUES**

**An alternative report to the Committee Against Torture
presented by the
Law & Society Trust, Sri Lanka
And
Asian Human Rights Commission, Hong Kong**

7 October 2005

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A. INTRODUCTION - THE GENERAL CONTEXT OF THE ISSUES

1. Reporting on the Phenomenon of Torture

1.1 The Law & Society Trust (LST) was established in 1982 as a Trust under the Trusts Ordinance. It was subsequently incorporated in 1990 under the provisions of the Companies Act No. 17 of 1982. The Trust works chiefly to use the law as a tool for social change and uses workshops, publications and training programmes to achieve this objective. Working towards the promotion and protection of human rights is also an important aspect of the Trust's work in regard to which it publishes a Sri Lanka: State of Human Rights report on an annual basis in an attempt to assess the human rights situation in the country. This is done by examining the international obligations of the government to the citizenry in terms of the international conventions Sri Lanka is a signatory to. The three programme areas of the Trust are Legal Research & Advocacy Programme, Socio Economic Rights Programme and the Conflict related Human Rights programme. Its programmes have a specific relationship to law and legal advocacy with the objective of building bridges between legal theory and ongoing practical initiatives and developments in the legal system in Sri Lanka.

1.2 The Asian Human Rights Commission (AHRC) is a regional, independent non-governmental organization whose mission is to: promote and protect human rights by strengthening the rule of law, further administration of justice at national and local levels; and promote effective implementation of international human rights treaties at the national and local levels.

1.3 This Report focuses on some of the more basic issues relating to the implementation of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment / Punishment ('the Convention') in the Democratic Socialist Republic of Sri Lanka ("Sri Lanka"). *

* The Report was compiled under the overall guidance of Director, Legal Unit, LST, Kishali Pinto-Jayawardena and Executive Director, AHRC, Basil Fernando. The interviews relevant to the period were conducted by attorney-at-law, Shyamalie Puvimanasinghe. Individual perspectives in this report have been collated from a National Workshop held in Sri Lanka by the Law & Society Trust under its South Asian NGOs and the UN Human Rights Treaty Regime Project (Treaty Bodies Programme) in August 2004, Sri Lanka with the collaboration of the Asian Human Rights Commission (AHRC) and the World Organisation Against Torture (OMCT)

- 1.4 Sri Lanka acceded to the Convention in 1994 and consequently adopted enabling legislation under the Convention (viz. The Convention Against Torture and other Inhuman and Degrading Punishment Act No 22 of 1994, hereafter the Torture Act).
- 1.5 Sri Lanka also acceded to the ICCPR in 1980 and to the Optional Protocol to the ICCPR in October 1997. These treaties are two of the plethora of international treaties that the Sri Lankan State has thought fit to submit to in recent years. However, while these developments are encouraging, ratifying international human rights treaties and enacting domestic enabling legislation has not *per se* guaranteed the protection and promotion of the basic rights contained in the covenants in the absence of appropriate mechanisms of implementation within the country.
- 1.6 A real and pronounced commitment towards protecting human rights of its citizens continues to be absent in the actual implementation of the obligations inherent in these treaties. Thus, the ratification of international treaties has failed to detract from the stark reality of flagrant human rights violations and the breakdown of the rule of law within the country.
- 1.7 In its Concluding Observations in 1998 consequent to consideration of Sri Lanka's 1st Periodic Report, the Committee Against Torture recommended that Sri Lanka "*initiate... independent investigations...of alleged torture.*" Reflecting similar concerns, in paragraph 9 of its Concluding Observations made in November, 2003, the UN Human Rights Committee expressed concern about the persistent reports of torture and cruel inhuman or degrading treatment / punishment of detainees by law enforcement officials and members of the armed forces. The Committee recommended that the state party "*adopt legislative and other measures to prevent such violations... and ensure effective enforcement of the legislation.*"¹
- 1.8 Since these Observations and Recommendations however, little appears to have changed as far as ground realities are concerned. While in early 2003, the Supreme Court observed in one case that "the number of credible complaints of torture and cruel, inhuman and degrading treatment (showed) no decline"², this trend has shown no appreciable signs of decline.

¹ See respectively Committee Against Torture, Concluding Observations on Sri Lanka, UN Doc. A/53/44, paras. 243-257, 19 May 1998 and Concluding Observation No 9 of the UN-Human Rights Committee after Consideration of Sri Lanka's 4th and 5th Periodic Reports, (CCPR/CO/79/LKA) Human Rights Committee, seventy ninth session.

²per Justice M.D.H. Fernando in Sanjeeva vs Suraweera, 2003 [1] SriLR, 317

1.9 Cases of torture during 2003 for example, included numerous complaints of brutal assault. These included a labourer assaulted with batons and sticks while in army detention, the cleaner of a van assaulted after being blindfolded, an Attorney-at-Law pulled out of his car and assaulted, a reserve police constable subjected to assault by a reserve sub inspector, another Attorney-at-Law who was a by-stander at a protest demonstration (and not a participant) shot at close range, and an alleged army deserter tortured to the extent that he died in police custody.³ Such cases revealed a wide range of circumstances in which such treatment had been meted out by the police or service personnel – the very people who are expected to protect and safeguard the fundamental rights of members of a society.

1.10 Re-iterating these concerns, statutory bodies monitoring the domestic observance of human rights standards have pointed out that torture is not an isolated phenomenon confined to a few rogue policemen but is rather an ‘endemic’ problem.

"Furthermore, our discussions with the police and other individuals and agencies have revealed that the police had not really been trained in basic investigative skills. For some reason, the training was more of a paramilitary nature. Torture is often a short cut to getting information, and as a result it is systematic and widespread."

"We are not talking about isolated cases of rogue policemen: we are talking about the routine use of torture as a method of investigation. It requires fundamental structural changes to the police force to eradicate these practices."

"We also don't have a clear policy on protection and that is something that has been raised, but again we don't have enough resources. We intervene to make the police provide protection. At the end, the NHRC as an informal body makes recommendations." ⁴

1.11 Efforts on the part of State bodies to check these violations have remained *ad hoc* and reactive rather than systematic, pro-active and effective. Although there exists an Inter

³ *Konesalingam vs. Major Muthalif and Others*, S.C. (FR) No. 555/2001, S.C. Minutes of 10th February, 2003. *Shanmugarajah vs. Dilruk, S.I., Vavuniya*, S.C. (FR) No. 47/2002, S.C. Minutes of 10th February, 2003, *Adhikary and Adhikary vs. Amerasinghe and Others*, S.C. (FR) No. 251/2002, S.C. Minutes of 14th February, 2003, *Ekanayake vs. Weerawasam*, S.C. (FR) No. 34/2002, S.C. Minutes of 17th March, 2003 *Sujeewa Arjuna Senasinghe vs. Karunatileke and Others*, S.C. (FR) No. 431/2000, S.C. Minutes of 17th March, 2003. *Silva vs. Iddamalgoda* (F.R.) Application, 2003 [2] SriLR, 63, *Harindra Shashika Kumara vs. D.I.G. De Fonseka and Others*, S.C. (FR) No. 462/2001, S.C. Minutes of 17th March, 2003.

⁴ Vide annexure 4 - interview by the London based REDRESS with Chairperson of Sri Lanka's National Human Rights Commission, Dr Radhika Coomaraswamy in the Reperation Report Issue 5 May 2005, a bi-annual journal of the Redress Trust

Ministerial Working Group (IMWG) on Human Rights set up by the Ministry of Foreign Affairs to consider implementation and recommendations made by the Treaty Bodies, torture continues to be committed in an almost unabated manner by State officials at police stations and elsewhere across the country.

2. A Brief Background Note on Protecting Torture Victims

2.1 In theory, there is a process in place to hear urgent appeals by victims of torture, once the Police Department, the Attorney General's Department and the relevant authorities receive these urgent appeals. These entities are, in turn, obliged to submit a report to the Inter Ministerial Working Group (IMWG) on Human Rights issues that has been constituted by the Foreign Ministry. Officers of the said departments usually meet about once or twice a month and at such meetings, they are obliged to inform the IMWG of the action they have taken regarding the urgent appeals. The IMWG is co-chaired by the Ministers of Foreign Affairs and Defence. Senior officials from the police, the armed forces and other law & order agencies also participate.

2.2 In the past, the extraordinary security situation was cited as the reason - and the excuse - for the violation of basic human rights of persons within the country. Emergency laws, (primarily Regulations promulgated in terms of the Public Security Ordinance and provisions of the Prevention Against Terrorism Act No 48 of 1979 (as amended), (hereafter the PTA), gave extraordinary powers of arrest and detention to state officers and often facilitated acts of torture.

2.3 However, even when these laws were no longer in force during the period under review, safeguards against abuse of powers of arrest and detention provided by the ordinary law, that allow detention of a person only up to twenty four hours and prescribe magisterial scrutiny of further detention, were often bypassed. **This manifested a deeply troubling transference of an 'impunity mindset' earlier claimed by the police and the forces in respect of crimes against the State, now applied to the maintenance of ordinary law and order.**

2.4 An important feature of the vast majority of cases of police brutality in Sri Lanka is that they do not involve serious crimes. Rather, people are subjected to inhuman treatment and / or punishment in regard to frivolous crimes such as petty theft or trading and/or distilling illicit liquor.

2.5 Sometimes persons are tortured for no crime at all but instead, for example, for asking the reasons for being arrested, being 'too smart' with police officers or as an outlet for the sadistic pleasure of irate or drunken policemen. Woefully lacking proper investigative skills, police officers arrest individuals purportedly in relation to acts that amount to offences under the law, but with no real evidence against them. Instead law enforcement officers subject suspects to gross forms of torture with the intention of 'hammering out' a confession or with the aim of 'fabricating evidence against them'⁵.

2.6 Also, though complaints of police brutality emerge in relation to individuals from varying societal levels, including lawyers, private sector executives, schoolteachers and other public officials, they impact more cruelly on the marginalised and destitute segments of our society. Hence torture is often reported in its most brutal form, from remote villages where the police wield considerable power and authority and where victims lack the political or economic clout to fight back the injustice committed upon them and their families. While amounting to a severe breakdown of the rule of law by the custodians of the law, this reality negates the argument advanced by some, that human rights violations occur only during a period when the country is faced with a threat to its sovereignty.

2.7 Further, the notion that torture is inflicted to carry out investigations has been relegated to a mere myth given recent studies that indicate that more than 80% of the cases filed are not by criminals but rather by innocent people such as children and by-passers who had been tortured for no reason.⁶ However the commission of such heinous acts by the law enforcement officials may well be the by-product of a gradual brutalisation and militarisation of the police and armed forces of the country since the early 1970s when they were used for riot control purposes and later for control of civil conflicts.

The Sri Lanka Army

2.8 Inasmuch as the Sri Lanka Army is in question, due to the necessity for mass scale recruitment of cadre at the height of the war, screening of personnel by obtaining police and NIB reports was done away with. With the cessation of hostilities prevalent today, the

⁵ Vide also the observation that "the perpetrators of torture are often logical, highly placed officials...most often in an advantageous and superior position," K. Thiranagama, attorney-at-law/activist and victim of torture practices, speaking at the LST_South Asian Treaty Bodies Programme national workshop, 2004

⁶ See case reports of the AHRC at <http://www.ahrchk.net/ua/mainfile.php/2003/> "

process of screening has been reactivated. Rights education was introduced into army training programmes in 1991 and an accelerated programme began in 1997.⁷

2.9 The doctrine of command responsibility is embodied in the Army Disciplinary Regulations with several sections of the Army Regulations Act stating that military leaders must act speedily but only according to standing operational procedures and their actions must be legitimate to the extent that they tally with the short term goals of the mission as well as with the long term goals of the nation. Soldiers are informed that it is their duty only to obey *lawful* orders and not *any* orders.⁸

2.10 The extent to which these instructions are obeyed at a practical level is, of course, another matter altogether. The current cessation of hostilities has resulted in the decrease of reported violations of rights by army personnel. However, the inability of the State to displace the atmosphere of impunity for past abuses (excepting rare instances where accountability has been imposed as discussed below) has made the possibility of the recurrence of such abuse if and when hostilities resume, very likely.

The Policing System

2.11 Where Sri Lanka's policing system is concerned, what the country has presently, is more a system of military style social control than a sophisticated crime investigation institution. It would indeed not be very far from the truth to say that the majority of the present police resemble paramilitary units instead of a professional police force *per se*.

2.12 One reason for the emergence of militaristic style policing is that, due to the pressures of a two decade long conflict between the Government and the LTTE, persons were recruited to the police force in large numbers with little attention given to their qualifications or suitability. Thereafter these new recruits were afforded around three months of training, mostly in the handling of arms, before being posted to the North and East of the country. Most of its cadre received little or no training in criminal investigative methods. Hence, the only method of solving crime that they were familiar with, was to use extreme forms of torture in the hope of obtaining information from the suspects. The admission of confessions to police officers above the rank of an ASP (provided that such confessions were voluntary

⁷ Discussions with Brigadier Mohanthi Peiris, legal division of the Sri Lanka Army, 15/08/2004

⁸ *ibid*

which burden was however on the accused to prove) in terms of the PTA made the use of these methods even easier.

2.13 Accordingly, the prevalent policing system became one that relied on untrained human resources at the bottom of the system to carry out most of the arduous tasks of investigations. Even the methods of recording statements continues to be positively primitive with observations being made by the Supreme Court to the effect that tampering with the official record has become a habit on the part of police officers⁹

3. Cause for Optimism – Where the Victims Speak Out!

3.1 Whereas, a few years ago, victims of torture were reluctant to complain about the injustices committed against them, this fear is gradually declining with many victims as well as their families willing to come forward and publicise their grievances. The question is whether the various state organs that are in charge of safeguarding citizens' rights can measure up to the expectations of the people.

3.2 Several common features of police brutality as practiced in Sri Lanka and revealed by victims' complaints¹⁰ in the period 2003 – 2004 could be listed as follows:

- The proliferating illicit liquor business in the country is one that is often beneficial to police officers, as such business can only be carried out by paying bribes to the police. Therefore, when the sellers of liquor give up their business, some police officers lose their source of extra- income and many are the instances where former illicit liquor sellers, who subsequently gave up their business, have been severely punished by police officers;
- Sometimes the police are themselves actively involved in this lucrative business and induce people to distil liquor on their behalf and under their protection. They are then angered when the distillers decide to give up their illegal activities and take revenge by torturing and fabricating cases against them;

⁹ Vide *Kemasiri Kumara Caldera's Case* (S.C (F.R.) Application No. 343/99), SCM 6/11/2001.

¹⁰ Analysis of the factual content of cases documented by the AHRC, supra note 6 and reports of the United Nations Special Rapporteur on Torture E/CN.4/2005/62/Add.1, 30 March 2005, COMMISSION ON HUMAN RIGHTS, Sixty-first session.

- Affluent and/or powerful individuals of an area may pay large sums of money to the police to arrest and torture people who have personally offended them, or whom they suspect of committing a petty offence but without an iota of evidence against such suspects;
- Often unresolved crimes at a police station lead to strong public protest and put pressure on the police to find the culprits. There is a tendency then to arrest innocent persons and torture a confession from them. Thereafter charges are filed on fabricated evidence, leading to public applause and even promotions of those police officers;
- Torture is committed by drunken policemen on totally innocent people for no apparent reason other than to derive sadistic pleasure. The only 'offence' committed by the victims seems to be that they were in the wrong place (e.g. on the road) at the wrong time (e.g. when sadistic policemen were passing). After subjecting persons to severe torture, the perpetrator-policemen may obstruct victims, who sustain life threatening injuries, from receiving medical treatment at the hospital because they are afraid that the medical report would be used as unfavourable evidence against them in court;
- The police may attempt to hide their crime by fabricating medical reports in cooperation with medical professionals including District Medical Officers (DMO) and Judicial Medical Officers (JMO).¹¹ In fact, sometimes these medical officers have been found to fill in the necessary medical forms without even speaking or examining the victims. Further, cases of torture are examined by untrained doctors using inadequate facilities due to a scarcity of forensic specialists, leading to faulty reports;
- Doctors in Sri Lanka are not trained properly for the kind of injuries inflicted by way of torture. Although the Torture Act states that civil and medical personnel should be educated on torture, such education programmes are sporadic and have been admitted into medical school curricula only comparatively recently.
- When a person is initially admitted to hospital, the admitting doctor is only concerned with healing the person's injuries. So his report is rather general (and not necessarily of value in the investigation of torture);

¹¹ Our interviews revealed a lack of independence on the part of doctors as they themselves are subject to external pressure from the Police and Army. Most often, such pressure is exerted on those medical personnel who themselves rely on the security provided by army/police officers.

- When victims and their family members attempt to complain to the police hierarchy (e.g. the ASP), these officers try to hush up cases by refusing to receive complaints and instead offering small amounts of money in an attempt to settle the cases;
- After torturing and releasing the victims, the perpetrators also closely monitor the activities of victims and their families. They often pay them unexpected visits to ascertain whether victims are obtaining medical treatment, have made complaints or resorted to legal action;
- Many victims and their spouses, parents and young children have had to flee their homes, villages and abandon their livelihoods for fear of being killed by police personnel who have been unsuccessful in coercing the victims to withdraw their complaints/ cases against them;
- Religious leaders and public administration officials (e.g. *grama sevakas*) are frequently used as intermediaries to harass victims into withdrawing their complaints against the police;
- False allegations are made and cases filed (often under laws where bail is difficult to obtain e.g. the Offensive Weapons Act) using fabricated evidence to further intimidate the victims and their families as well as to discredit their complaints of torture. For example KP Tissa Kumara alleged that he was induced to withdraw the complaint of torture against the alleged perpetrator, in return for having the cases against him withdrawn. Other cases similar to his are legion¹².

B. REPLIES TO THE LIST OF ISSUES

1. Article 2 – Issue 5

Please describe the measures taken to strengthen the independence, impartiality and effectiveness of the Human Rights Commission. Please give examples of successful interventions and of progress actually made, with particular emphasis on the 24-hour hotline, the central register of detainees and the effective monitoring of all places of detention. Please inform the Committee about the effectiveness of the National Strategic Plan of Action (2003-2006), in particular its specific programme to combat torture through effective monitoring and follow-up.

- 1.1 One of the central functions of the National Human Rights Commission (NHRC) under Act, No 21 of 1996 (hereinafter NHRC Act), is to investigate human rights violations. The powers of the NHRC in this regard is limited to mediation or conciliation and is not comparable to the far wider powers of the Supreme Court in determining a fundamental rights violation which extends to any relief or ‘any directions that it may deem just and equitable in the circumstances’¹³, including the grant of compensation.
- 1.2 Issue 5 of the CAT Committee reflects the Concluding Observations of the UN-HRC in 2003 which recommended that "*the capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened.*"
- 1.3 According to the National Strategic Plan of Action (2003-2006) of the Human Rights Commission, “one of the major activities envisaged in the next three years is the development of a specific program to combat torture through effective monitoring and follow up.” However despite its adoption of a specific policy on torture, certain shortcomings in the organisation and functioning of the NHRC continue to impair its effectiveness.
- 1.4 In the past, the failure of the NHRC to develop proper procedures for the conduct of investigations into cases of torture had resulted in NHRC district co-ordinators settling torture cases for minimal amounts of money. This was based on the reasoning that where complaints are bound to fail in the Supreme Court, settlement should be agreed to if parties are agreeable or where they themselves wish to settle instead of being embroiled in long drawn out litigation.
- 1.5 The fundamental deficiency in this sort of thinking is that it ignores the element of coercion which is most always present when a dispute arises between custodial officers and victims of rights abuses. This reality also informs the practice adopted in the Supreme Court of not allowing petitioners to withdraw their cases on the basis of a purported settlement where torture is in issue.

¹² See list of ‘Urgent Appeals’ for 2003 & 2004 compiled by the Asian Human Right Commission at <http://www.ahrchk.net/ua/mainfile.php/2003/> and <http://www.ahrchk.net/ua/mainfile.php/2004/> (visited on 12/07/2004)

¹³ Constitution, Article 126(4)

1.6 Responding to these concerns, a policy decision was taken that the NHRC would not mediate/conciliate complaints regarding Article 11, (freedom from torture)¹⁴.

1.7 However, a prevailing problem is the limited capacity of the NHRC to conduct detailed investigations of a criminal nature into complaints of torture. This has been a considerable drawback given that offences such as torture require professional criminal investigations. The NHRC receives around 400 - 700 cases a month, with only a cadre of four legal officers and seven investigating officers¹⁵ and an insufficient allocation of funds from the treasury. In the absence of government assistance, the NHRC is trying to raise donor funds, but this in itself should not detract from the constitutional duty of the government to provide it with adequate resources.

1.8 One of the problems identified in respect of the investigative functions of the NHRC was that even in cases where the NHRC investigates an allegation of torture and sends the matter to the Attorney General, the Attorney General “again relies on police investigations.” This duplicates and prolongs the investigative process and lends credence to the criticism that serious and thorough investigations are not undertaken by the NHRC.

1.9 In addition, recent decisions taken by the police hierarchy has resulted in officers of the NHRC being hampered in their statutory task of monitoring places of detention to ensure that abuse of detainees do not take place. It is important that the NHRC be allowed to inspect not only the cells of police stations themselves but also the entire precincts of the station including the toilets and the kitchen which are often the very places where detainees are taken and tortured rather than in the holding cell.

1.10 Ideally, the NHRC should be empowered to approach courts directly as is done in India. The Indian HRC for example, can approach the Supreme Court or High Court on its own after the conclusion of its inquiry, at its option under Section 18 of the Indian Act. Though Section 15(3) (b) of the NHRC Act states that, in selected cases where *inter alia*, conciliation or mediation has not been successful, the NHRC may refer the matter “to any court having jurisdiction to hear and determine such matter in accordance with such rules of court as may be prescribed,” the necessary rules need to be yet prescribed by the Supreme Court. It is

¹⁴ Vide observations made by member of the National Human Rights Commission, (NHRC) N Selvakkumaran speaking on the ‘Role of the NHRC’, at the South Asian Treaty Bodies Programme national workshop in August, 2004

¹⁵ data obtained in 2004

imperative that this is done if the NHRC is not to be scoffed at for its lack of substantive power in cases where individuals or bodies cited before the NHRC fail to pay heed to its directions.

- 1.11 The NHRC should also develop closer links in the processes of torture investigations and prosecution, handled by the SIU and AG's Department respectively as well as, for that matter, the National Police Commission (NPC). Preliminary investigations conducted by the NHRC can greatly help in instituting criminal inquiries into gross human rights abuses. All three units should develop a working relationship regarding prosecution of torture cases in particular. This process can be aided by the NPC which can monitor all investigations and prosecutions into acts of misconduct and abuse by police officers. Greater co-ordination and mutual assistance between these state agencies and/or rights monitoring bodies continues to be essential.
- 1.12 This approach would require considerable openness on the part of the AG's Department to create special machinery for investigation and prosecuting of torture. On the other hand it would require institutional capacity on the part of the NHRC to collaborate in such an effort and on the other to skillfully monitor the process therefore ensuring the proper functioning of such a system. This approach would help to avoid the duplication of inquiries while at the same time, keeping an avenue open to ensure accountability and transparency into inquiries regarding torture and other abuses of human rights.
- 1.13 At present, the NHRC does not monitor the operation of the Attorney General's Department, which is responsible for the investigation and prosecution of alleged torturers as it is thought that it would be improper for the Commission to do so. However, it may be relevant at this point to recall that the Commission has been mandated "to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental rights"¹⁶ as well as "to do all such... things as are necessary or conducive to the discharge of its functions"¹⁷. It could arguably be maintained that the cumulative effect of these two sections is to bring such monitoring within the powers of the NHRC. ,

¹⁶Section 10(c) of the NHRC Act

¹⁷Section 11(h) of the NHRC Act

1.14 Currently, the NHRC can only investigate cases involving the alleged violation of *fundamental rights*, as guaranteed in the Constitution. However, the category of constitutionally guaranteed fundamental rights, (which do not even include the right to life even though this has now been recognised in the limited context of threat to physical life by judicial interpretation) is limited. In this regard, protection of *human rights*, as recognized in international conventions becomes vital.

1.15 The NHRC should be allowed to make inquires into even those cases where there is no legal claim possible, if, in its opinion, they involve a violation of an internationally recognized right. In such cases, although the courts could not be approached, the NHRC could nevertheless exercise its mediatory and conciliatory powers, and could also recommend to the Government the award of compensation to the injured person.

1.16 The NHRC appears reluctant to make recommendations to the Government, as part of its annual report on its activities. It is the view of the NHRC that such a “wish-list” would “probably not be taken seriously”, and that instead, recommendations would be made “as and when issues come up.”¹⁸

1.17 However, the issues regarding torture in Sri Lanka are already well documented, and given that the Commission is specifically mandated “to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards”¹⁹, its reluctance to make specific recommendations in that regard is regrettable. Though part of its new strategic plan, the NHRC has not used radio and television media sufficiently to spread awareness on issues pertaining to torture prevention.

1.18 Other faults in its functioning include its failure to keep complainants informed of the progress of their cases, the fact that case files are sometimes missing from the NHRC’s Head Office and complaints by victims that its 24 hour hotline is not accessible at all times.

1.19 Insofar as the Central Register of Detainees is concerned, only intermittent information is available and that too, on an individual basis when much pressure is brought to bear on the

¹⁸ supra note 11

¹⁹ Section 10(d) of the NHRC Act

authorities regarding a particular case. A comprehensive Register appears to exist only in theory. See also section 2.20 below.

2. Article 2 – Issue 6

What steps are being taken with regard to prevention, investigation, prosecution and punishment in response to allegations of torture, extrajudicial executions, disappearances and other violations of human rights?

Instances of Torture

2.1 In 2000, two members of the Committee Against Torture, inquiring into the systematic practice of torture in the country, recommended that Sri Lanka "*initiate prompt and independent investigations of every instance of alleged torture*" which recommendation was also reflected in earlier concerns by the Committee in 1998. The UN-HRC also recommended in its Concluding Observations in 2003 that Sri Lanka "*should ensure ... that allegations of crimes committed by State security forces especially allegations of torture... are investigated promptly and effectively with a view to prosecuting perpetrators*".²⁰

2.2 The government has affirmed before both these international forums that it is committed to conduct prompt, impartial and comprehensive criminal investigations and domestic inquiries into all complaints and information received, relating to alleged perpetration of torture by public officials. In reality however, the mechanisms currently in place in Sri Lanka to investigate crimes of torture -- or the lack thereof -- do not facilitate such lofty ambitions of the State as detailed in the following segment of this Report.

2.3 **One of the most serious problems faced by the police force in Sri Lanka, which is also one of the main reasons for resorting to torture, is the lack of investigative skills of police officers.** The absence of adequate machinery to investigate gross human rights violations is very much linked to the failure to develop proper investigating machinery to investigate crimes in general.

2.4 The police department itself has pointed to the need to introduce forensic training for its staff. But in the absence of better training skills, torture remains the main mode of criminal

²⁰ supra, note 1

investigation. Thus, conducting inquiries into the perpetration of torture itself remains a serious institutional problem.

2.5 At present there is no special/independent unit in the police department that entertains complaints into allegations of police torture, and which is empowered to initiate investigations immediately thereafter. Instead, aggrieved parties and their family members are compelled to make their complaints to the Assistant Superintendent of Police (ASP) or Superintendent of Police (SP) of the relevant area. The ASP/SP records statements of the victims as well as that of witnesses and thereafter forwards the complaint to the legal range of the police.

2.6 As already stated, victims allege that sometimes the high-ranking officers of the police refuse to entertain such complaints and /or harass victims and their families into accepting small amounts of money in settlement of these cases. However if and when these complaints are entertained, and recorded, the legal division upon receipt thereof, refers the complaint and any other ancillary information to the IGP, who in turn refers it to the Special Investigations Unit (SIU) with instructions to begin investigations. Since the SIU is directly under the command of the IGP, investigations commence only at the initiation of the IGP.

2.7 The IGP, in his discretion, may instead instruct the Criminal Investigations Department (CID) or another special unit of the police to investigate a complaint. Either way, the procedure currently in place in the police, for commencing investigations into allegations of torture is grossly time-consuming and inefficient. A special police unit empowered to entertain complaints and immediately commence investigations is urgently required, as recognised by the police hierarchy. But to date, no steps have been taken to set up such a unit.

2.8 Earlier, torture cases were investigated into by the CID, but due to it being inundated with 'more important cases' as well as allegations of torture existing against several CID officers, the main unit in the police handling torture cases is currently, the SIU. However the SIU does not only investigate cases of torture; Instead, it also conducts investigations into other complaints against police officers e.g. fraud.

2.9 The cadre of the SIU as well as its allocated office space is totally insufficient, considering the workload entrusted to the SIU. There are about 80 officers including 3 ASPs attached to the SIU, which is housed in 2-3 cubicles at the New Secretariat Building at Police Headquarters. When a case is referred to the SIU, a team of about 3 policemen is required to

visit the area in which the alleged offence occurred and begin their investigation. According to current procedure, it is imperative that at least the initial complaint is recorded by an ASP. But as there are only 3 ASPs attached to the Unit, there is a considerable delay before proper investigations begin. **Annex 1** depicts the current status of cases investigated by the SIU for the years 2002, 2003 and 2004. Of the 21 complaints received in 2004, investigations have not been completed as of May of that year and most likely not completed to date, since there are many complaints received in 2003 that are still pending investigations.

- 2.10 Another problem faced by the SIU is that its officers are not permanently attached to the Unit. Thus, these officers may be transferred at any moment to a police station anywhere in the country. A police officer presently attached to the SIU, and who conducts an investigation against a colleague at police station "X", may very well find himself subsequently transferred to "X" to work alongside with the said officer himself. This may result in the SIU officer being ostracized at his new post and may even endanger his life and job at the hands of angry and vengeful colleagues.
- 2.11 Hence not having a permanent team of officers attached to the SIU is a distinct disadvantage that negatively impacts upon the efficiency and diligence in which the SIU carries out investigations. The fact that alleged torture perpetrators continue to be employed in their same posts, while exacerbating the aforesaid problem, also obstructs investigations, as they are free to interfere with the evidence and witnesses of the case against them.
- 2.12 When allegedly offending police personnel are investigated by fellow policemen, the resulting investigations cannot reasonably be expected to be 'independent'. The head of the legal division of the police, in an interview with us in 2004, was of the opinion that nonetheless, the head of the SIU is a very independent officer who closely supervises his subordinates, who are also independent officers.
- 2.13 Be that as it may, the very fact that police officers investigate their colleagues has troubling implications where the gaining of public confidence in the propriety and efficiency of the investigations is concerned. A separate body, independent of police interference, to conduct investigations into allegations against policeman is an imperative requirement which has not yet received due consideration by the State.

Instances of Enforced or Involuntary Disappearances

2.14 In paragraph 10 of its Concluding Observations in 2003, the UN Human Rights Committee expresses its concern 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 together with the reluctance of victims to file or pursue complaints 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 and give effect to the relevant recommendations made by the UN working group on Enforced or Involuntary Disappearances...*"²¹ These concerns have been reflected in the current List of Issues by the CAT Committee as well.

2.15 Instances of forced disappearances in Sri Lanka are investigated by the Disappearances Investigation Unit (DIU), a special unit within the Criminal Investigation Department (CID) of the police force. Members of the police and security forces implicated in disappearances are investigated by the DIU. This is in contravention of international norms, particularly Article 13 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances (Declaration), which provides that:

*"Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority [emphasis added]."*²²

2.16 The Missing Persons' Unit (MPU) is a separate unit within the Attorney General's department, which is headed by a Deputy Solicitor General. The head of the MPU is of the opinion that the officers of the DIU are competent and unbiased. However, even if that were to be the case, the mandate of the Declaration is for an *independent* investigative body. The establishment of such an independent body to investigate cases of disappearance was also one

²¹ *supra*, note 1

²² A. 13, United Nations Declaration on the Protection of All Persons from Enforced Disappearances, at <http://www1.umn.edu/humanrts/instree/h4dpaped.htm> (visited on 11/6/2004).

of the recommendations made in 1999, by the Working Group on Enforced or Involuntary Disappearances (Working Group), to the Government of Sri Lanka²³.

- 2.17 The MPU in the Attorney General's Department has a poor record of successful prosecutions in cases of forced disappearances, despite the fact that tens of thousands of such cases are thought to have occurred in the past. Since 1998, it has secured convictions in only 9 cases of disappearance, according to the data made available by the MPU (see Annex 3). It is argued that one of the reasons for this poor record is that witnesses in these cases often shift their stance, and make successive, inconsistent statements, particularly in the identification of the perpetrator.
- 2.18 However, this may well be due to the intimidation of witnesses especially in the light of the absence of any form of witness protection programme. Since Article 13 (3) of the Declaration requires that steps be taken "to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal", a witness protection programme is essential.
- 2.19 Perpetrators of forced disappearance are currently prosecuted for the crime of abduction. This is unsatisfactory, because Article 4(1) of the Declaration requires that "All acts of enforced disappearance shall be offences under criminal law *punishable by appropriate penalties which shall take into account their extreme seriousness* [italics added.]" It follows that a specific prohibition of forced disappearance, as a distinct type of crime, along with a provision for a sentence commensurate with its severity, must be put in place.
- 2.20 The Government has reported that a Central Police Registry, for those detained under the PTA and the Emergency Regulations, has been set up, and a twenty four hour telephone hotline made available for the public to make inquiries regarding detention of persons. This is inadequate on two counts. Firstly, Article 10(3) of the Declaration requires that a register of "all persons deprived of their liberty" be maintained, both at the place of detention and centrally, and not just of those arrested under specific legal provisions. Secondly, as Article 10(2) of the Declaration makes clear, information about the detained person must be submitted *suo motu* by the detaining authorities to the family members of the detained person, not only on their request. What happens practically now is that though such a hotline exists in

²³ Recommendations of the Working Group on Enforced or Involuntary Disappearances to the Government of Sri Lanka (December 1999), E/CN.4/2000/64/Add.1.

theory, victims complain that they cannot get the requisite information either from this hotline or from the individual police station where the detainee is kept.

2.21 One of the recommendations of the Working Group was that freedom from enforced disappearance be included as a fundamental right in the Constitution. A declaration to this effect has not yet been made by the Supreme Court though the right to life has been recognised in the case of certain constitutionally protected rights to liberty and freedom from torture.

2.22 Thus, in one seminal decision, the Court, interpreting Article 13(4) of the Constitution which provides that “no person shall be punished with death or imprisonment except by an order of a competent Court” held that, “Article 13(4), by necessary implication, recognizes that a person has a right to life – at least in the sense of mere existence, as distinct from the quality of life – which he can be deprived of only under a Court order.” In this same case, the Court expanded *locus standi* to file fundamental rights applications to allow the wife of a deceased detainee to file an application as his representative.²⁴

2.23 Taking this reasoning further in the context of hearing an *habeas corpus* application on appeal, the Supreme Court recognised that the right not to be ‘disappeared’ was also implicit in Article 13(4).²⁵ Regardless, its enshrining as a specific right in the Constitutions remains necessary for greater certainty given judicial vagaries that may arise on occasion.

2.24 Finally, the relief measures in place for the victims of disappearances are unsatisfactory. The Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons recommended the payment of fair and adequate compensation to dependants of disappeared persons, and institution of employment schemes and vocational training for affected families.²⁶ Their recommendations have not yet been adequately acted upon.

²⁴ *Silva vs. Iddamal goda* 2003 [2] SriLR, 63, per Justice M.D.H. Fernando (Yapa, J. and de Silva J. agreeing at page 8. Also see *Welwage Rani Fernando vs. OIC Minor Offences Seeduwa Police Station* S.C. (F.R.) 700/2002, SCM 26/7/2004, per judgement of (Dr) Shirani Bandaranayake J.

²⁵ *Kanapathipillai Machchavalavan vs OIC, Army Camp, Plantain Point, Trincomalee and Others* (SC Appeal No 90/2003, SC (Spl) L.A. No 177/2003, SCM 31.03.2005

²⁶ Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons, at <http://www.ahrchk.net/hrsolid/mainfile.php/1998vol08no12/1853/> (visited on 11/6/2004).

3 Article 2 – Issue 7

Does legislation prohibiting torture and cruel, inhuman and degrading treatment contain specific provisions regarding gender-based breaches of the Convention, including sexual violence? Please also describe the effective measures taken to monitor the occurrence of, and to prevent such acts, and provide data, disaggregated by the sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of the perpetrators.

3.1 Existing laws such as the Torture Act do not contain specific provisions regarding gender based breaches of the Convention, including sexual violence

3.2 Data in this regard, disaggregated by the sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of the perpetrators is also not easily obtainable in a context where obtaining even the minimal information regarding the cases that are filed is extremely difficult.

5.1 The prevalence of gender based violence impediments in ensuring justice has specially affected women who have been victims of gender based violence both in the North as well as in the South. While there have been isolated instances of successful prosecutions, there has not been manifested a sustained and consistent displacing of impunity in regard to allegations of rape and gendered violence.

5.2 When in 1996 a 17-year-old student, Krishanthi Kumaraswamy, “disappeared” after she was raped and murdered by several members of the armed forces on duty at the Chemmani checkpoint, this incident together with the subsequent killing of her family and friends, who went in search of her, starkly illustrated the severity of disappearances and extra-judicial killings in Jaffna.

5.3 By 1998, the court sentenced six soldiers and one reserve police officer to death and for the first time members of the armed forces and the police were given maximum sentences for the grave human rights violations that had been committed. However, other cases of gendered violence, as barbaric as in the case of Kumaraswamy remain to be prosecuted.

5.4 An analysis of rape cases committed by armed forces personnel reported in the Sri Lankan press for the year 1998, for example, revealed that 37 such cases were recorded. As of 1999, 8 of these cases were still under police investigation, 22 were being inquired into by Magistrate's Courts, 2 cases were before the District Court and an additional 2 cases were pending before the High Court. During the year 1998, 3 of the rape cases that were heard in

the Sri Lankan courts resulted in prison sentences for the armed services personnel involved. 18 of the cases heard before the Courts related to crimes of sexual violence committed in the operational areas of the northeast while the remaining 19 cases were reported in other areas of the country.²⁷

5.5 In its Sri Lanka Monitor, the British Refugee Council notes that in the period February 1996-July 1999, more than 45 cases of rape by soldiers in the North-East were reported.²⁸ In her 2001 report to the Commission on Human Rights, the UN Special Rapporteur on Violence Against Women highlighted a number of cases of rape and sexual abuse perpetrated by the Sri Lankan police, security forces and armed groups allied to the government.²⁹

5.6 Acts of violence against minority women by members of the Sri Lankan police and security forces has overwhelmingly taken the form of rape, sexual assault and harassment.³⁰ In some instances, women in detention have been forced to sign confessions stating that they are members of the LTTE.³¹

5.7 The actual incidence of rape and sexual violence committed by police and security forces during this period is likely to be far higher than that which has been reported. Fear and shame discourage women in Sri Lanka from reporting acts of sexual violence. Fear of social ostracism and retaliation, combined with the widespread lack of gender-sensitivity amongst police, judicial and medical personnel, are powerful deterrents to women reporting violence and pursuing legal action against the perpetrators.³²

5.8 Even though the ceasefire between the government troops and the LTTE has lasted for over a year, many women and children continue to suffer multiple difficulties and trauma as a result of having lost their husbands, being displaced and having their mobility severely affected. The severe violence that women had to endure in the past remains a constant reminder of

²⁷ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 22.

²⁸ British Refugee Council, Sri Lanka Monitor, No. 138, July 1999.

²⁹ UN, Report of the Special Rapporteur on Violence Against Women, Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000), UN Doc. E/CN.4/2001/73, 23 January 2001, p. 30.

³⁰ See for example, University Teachers for Human Rights (Jaffna), Sri Lanka Information Bulletin No. 25, *The Fatal Conjunction: Women, Continuing Violations and Accountability*, 11 July 2001.

³¹ See the case of Wijikala Nanthan and Sivamani Sinnathamby Weerakon (LKA 090401.VAW) in the case annex. See also TamilNet, "Girl describes bizarre police torture in Supreme Court petition," 31 March 2001, www.tamilnet.com.

³² British Refugee Council, Sri Lanka Monitor, No. 138, July 1999. "Local agencies say many rape victims do not report their ordeal for fear of retaliation or ostracization from the community. Most rape cases remain uninvestigated."

their helplessness in a country where the State has failed to deal with the plight of women affected by the war. There has been an obvious inability of the legal system to effectively deal with the perpetrators of the violence.

5.9 The courts have been unable to change the general pattern of impunity behind which members of the forces take refuge for their actions. While judicial intervention has been able to correct injustices in some cases, this is more the exception than the rule. The impact of such decisions has not resulted in an appreciable change in the behaviour patterns of the police and security forces.

5.10 The Secretary General of the Tamil United Liberation Front (TULF), R. Sampanthan, wrote in an April 2001 letter addressed to Sri Lankan President Chandrika Bandaranaike Kumaratunga: "it cannot be denied that ever since 1994, the Krishanty Kumaraswamy case is the only instance related to a Tamil female victim where the service personnel involved were convicted."³³

5.11 The case of Ida Camelita who was raped and murdered in Mannar in July 1999 is proceeding very slowly while the investigation into the murder and alleged rape of Koneswary in Amparai in 1999 has fallen through due to intimidation of the witnesses.

5.12 Perpetrators of human rights violations against women are brought to some measure of justice in a consistent manner only when cases are brought before the Supreme Court for violation of fundamental rights. In August 2001, Yogalingam Vijitha of Paruthiyadaippu, Kayts filed a complaint against the Reserve Sup. Inspector of Police, Police Station, Negombo and six others ."³⁴ This was a good example of a case in which the Supreme Court ordered compensation and costs to be paid to a Tamil woman who had been arrested, detained and brutally tortured. The Court stated the following:

'As Athukorala J in Sudath Silva Vs Kodituwakku 1987 2 SLR 119 observed 'the facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting and offend one's sense of human decency and dignity particularly at the present time when every endeavor is being made to promote and protect human rights'.

³³ See *The Sunday Leader*, 8 April 2001, p. 10 and *The Sunday Leader*, 22 April 2001.

- 5.13 The Attorney General was also directed to consider taking steps under the Torture Act against the police officers involved as well as against any others responsible for the acts of torture committed against the victim. However, we were unable to ascertain compliance with such directions.
- 5.14 Where investigations into torture and other forms of violence are initiated, they are often hampered by evidentiary problems, including a lack of medical evidence, and victims and officials are frequently intimidated into withholding important evidence.
- 5.15 According to media reports, during a seminar in Batticaloa in February 2001, State Counsel Suganthi Kandasamy described the problems linked to obtaining medical evidence in rape cases. Kandasamy, a government official, reportedly stated that one of the major hurdles to the prosecution of torture, including rape, in the Batticaloa district is the fact that medical examinations are not systematically carried out on all victims and that vital evidence is therefore often not available to magistrates. Even in cases where District Medical Officers are willing to examine alleged victims of rape and other forms of torture, these officers and the victims themselves may be subjected to pressure or threats by police in order to keep the evidence from reaching the magistrature.³⁵
- 5.16 For example, in the Vijayakala Nanthakumar and Sivamani Weerakoon case concerning events that took place in Uppukulam in March 2001, the two women were allegedly raped by members of the Mannar police's Counter-Subversive Unit (CSU). According to the information received, the District Medical Officer initially reported to the magistrate that he had examined the women and that there was no evidence of rape.³⁶ Following widespread public outcry and an intervention by the Bishop of Mannar, the women stated that they had not been medically examined and that they had been warned by the police not to consent to an examination or provide any evidence to the magistrate regarding the torture. When the women were finally examined by the District Medical Officer 8 days later, he found strong evidence to suggest that the women had been subjected to torture including rape and sexual

³⁴ SC FR No. 186/2001, SCM 23.8.2002

³⁵ See "Is rape just part of a game?", *The Sunday Leader*, 8 April, 2001, p. 11.

³⁶ University Teachers for Human Rights (Jaffna), Sri Lanka Information Bulletin No. 25, *The Fatal Conjunction: Women, Continuing Violations and Accountability*, 11 July 2001.

assault.³⁷

5.17 The fact that the Sri Lankan Evidence Ordinance was not amended in concert with the 1995 amendments to the Penal Code may create additional evidentiary hurdles for women wishing to bring charges of rape against security forces personnel. Section 364(2) of the Penal Code provides for punishment ranging from ten to twenty years imprisonment for public officers or persons in a position of authority who commit rape on women in official custody or who wrongfully restrain and commit rape upon women. Under the Evidence Ordinance, however, women may be required to prove an absence of consent even in cases of custodial rape and prior sexual history may be introduced as evidence.³⁸

5.18 In recent years, Sri Lankan courts have reportedly been more willing to admit uncorroborated testimony from rape victims and it is to be hoped that judicial practice will become more flexible on evidentiary requirements in cases involving rape and other forms of sexual violence, especially where these acts have occurred during police custody or detention.³⁹

5.19 In its concluding observations on the report of Sri Lanka in 1998, the Committee against Torture noted that there were "few, if any, prosecutions or disciplinary proceedings" being initiated against police and other officials alleged to have committed acts of torture. The Committee called upon the government to promptly, independently and effectively investigate allegations of torture and to ensure that justice is not delayed.⁴⁰

5.20 The lack of seriousness in which the Torture Act has been utilised in regard to members of the armed forces and police who commit serious human rights violations remains a problem. Women do not have access to redress and compensation and very few can appeal to the Supreme Court.

³⁷ See "Govt. taken to task on human rights", *Sunday Leader*, Colombo, 8 April 2001, p. 10.

³⁸ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 20.

³⁹ Wijetilleke, D. "Abuse of Women and Children: Recent Amendments to the Law in Sri Lanka to meet the situation", *The Bar Association Law Journal*, vol. VI, Part II, 1996.

⁴⁰ Committee against Torture, Concluding observations on Sri Lanka, UN Doc. A/53/44, paras. 243-257, 19 May 1998, para.250.

5.21 The widespread impunity granted to perpetrators of rape and other forms of violence committed against women in Sri Lanka provides strong evidence of a systematic practice of discrimination. The consequences of this impunity are devastating for individual victims who are effectively denied access to criminal and civil remedies including compensation. At the community level, impunity leads to reduced public confidence in law enforcement personnel and in the judiciary.

5.22 Moreover, potential perpetrators are not deterred from committing similar crimes. The failure of the government to send a strong signal that all forms of violence and other types of discrimination against women are unacceptable has important ramifications for women's social status. It shows that promoting and protecting women's human rights are perceived as being of little value.

4. Article 4 – Issues 10 & 11

10. What internal disciplinary processes exist within the police force? Is torture and ill-treatment included in their competence and, if so, is the sentence different from the one provided for under criminal law? How are inquiries conducted and how long does it take to complete such an inquiry? How are these inquiries made public?

11. Do accused public officials remain at work during investigations of torture?

4.1 At the moment, hundreds of police officers—including senior police officers—who have been found by the Supreme Court to have violated the rights of citizens by way of torture, illegal arrest and illegal detention are still serving in their positions. In several recent cases, the Supreme Court has ordered the NPC to hold disciplinary inquiries into the conduct of policemen impugned in those cases. However, these directions appear not to have been adhered to. The Court also has pointed to the responsibility of higher-ranking officers to enforce discipline and prevent human rights violations by their subordinates. Notwithstanding, the police persist in committing grave abuses and the manner in which they are dealt with has not significantly changed.

4.2 In one of the most grievous violations of rights in recent years, (referred to earlier in this report), the OIC and several other policemen of the Wattala police station, were found by the Supreme Court to have grossly violated Gerald Perera's fundamental rights under Article 11 of the Constitution which guarantees freedom from torture, cruel, inhuman or degrading

treatment/punishment. The Court awarded a hereto unprecedented amount of compensation and medical costs to the victim (totalling to about Rs. 1.6 million) for violation of his rights.

4.3 In this case, the judges stated that ;

“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 condonation (if not also of approval and authorization).”⁴¹

4.4 However in spite of this specific finding by the Court, most of these officers (including the OIC) continued to hold office in the same capacity at the very moment that Gerald Perera was murdered days before he was due to give evidence at a High Court trial that had been instituted by the Attorney General’s Department against some of those very same police officers under the Torture Act.

4.5 Section 2 of the Act makes torture, or the attempt to commit, or the aiding and abetting in committing, or conspiring to commit torture, an offence. A person found guilty after trial by the High Court is punishable with imprisonment for a term not less than seven years and not exceeding ten years and a fine not less than Rs. 10,000 and not exceeding Rs. 50,000.

4.6 Despite the severity of these provisions⁴² due to the lack of immediate disciplinary action against errant police officers and the total absence of a witness protection, victims are threatened, terrorised or even killed as evidenced most particularly by the fate that befell

⁴¹ Justice Mark Fernando, with Edussuriya, J. and Wigneswaran, J. agreeing in Sanjeewa vs Suraweera, 2003 [1] SriLR, 317

⁴² some legal professionals argue that the very severity of the said provisions have, at times, deterred judges from handing down convictions

Gerald Perera. There are many instances in which, even after the indictment against alleged torture perpetrators are filed in the High Court by the Attorney General, victims forward affidavits to withdraw their complaints. Notwithstanding, on occasion, the AG proceeds to prosecute the accused police officers, which in turn may seriously endanger the lives of the victims and their family members.

4.7 When alleged perpetrators of torture and other serious crimes are allowed to continue in their same posts and even considered for promotions⁴³ they become a distinct threat to the safety of complainants and members of their families, while making a mockery of the entire system of justice. They are also in a position to destroy vital evidence with the Supreme Court itself remarking that it is common for the police to fabricate evidence and alter documents.⁴⁴

4.8 Furthermore, the investigation and prosecution of torture cases in Sri Lanka should also follow the same procedure as applies to other crimes, where, when a *prima facie* case is established, the accused is arrested and immediately produced before a magistrate. However, this procedure is not followed in torture cases under the Torture Act and it seems that police officers charged with crimes are indeed treated differently from other alleged criminals. Even when indictment is forwarded and the accused police officers are produced before the Magistrate's court, they are almost immediately released on bail mainly because the police do not object to bail being granted. Thereafter, with cases pending before them, the accused continue to occupy their posts.

4.9 It is contended by the police that interdictions of police officers purely on the basis of being found culpable in fundamental rights violations on 'affidavit evidence' is not fair as this does not amount to proof beyond all reasonable doubt. However, it may be said in counter reply that this is scarcely an adequate reason as to why the Inspector General of Police cannot initiate disciplinary inquiries against such police officers and make the results of such inquiry (irrespective of whether it exculpates such officer or finds him culpable) known to the public.

4.10 As ironic as it seems for the Supreme Court to find in favour of a state officer (under Article 12 of the Constitution), whom the Court itself has found to have violated another's rights under Article 11 of that very same constitutional document, the IGP seems reluctant to

⁴³ See *The Sunday Times* dated 11/07/2004. Though indictments are issued against particular police officers, there is a lapse in time between issuance and the serving of the indictment resulting in interdicted officers still serving in their posts.

⁴⁴ *supra* Kemasiri Kumara Caldera's case, note 8 above

take any disciplinary measures against alleged torture perpetrators, in the absence of a common policy between the different organs of the State.⁴⁵

4.11 Recently, the NPC commenced interdicting police officers who had been indicted in terms of the Torture Act. While this is an improvement on its previous inactivity, such initiatives need to be supported by the Office of the Inspector General of Police which support seems to be notably lacking.⁴⁶

5. Article 12 – Issues 23, 24, 25, 26, 27 & 27

23. Which authority can order the initiation of a criminal investigation in cases of torture or cruel, inhuman or degrading treatment or punishment? Does this require a formal complaint by the alleged victim? Please update the data contained in the report and provide examples of cases investigated and indicate the results of the proceedings, both at the penal and disciplinary levels.

24. How many police personnel are attached to the Special Investigating Unit of the Attorney-General investigating complaints of torture and ill-treatment? How many lawyers are available to the Attorney-General for the preparation of indictments? What steps is the State party taking to ensure that adequate resources are allocated for this purpose?

25. Please provide more detailed information about the specific measures that have been taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by State agents. What steps are being taken to ensure that State agents and others guilty of torture violations are brought to justice?

26. How many State officers have been found in torture-related cases to have violated the human rights guaranteed by the Constitution in recent years? How many State officers have been indicted under the Torture Act or the Penal Code, and how many successful prosecutions have taken place? What were the punishments meted out to such persons, and how many such officers have been dismissed from their employment with the State? The State party is requested to provide a list of these cases to the Committee if one exists.

27. How many cases were brought with respect to rape or sexual assault in custody? What mechanisms have been established to counter these crimes? How many persons were convicted,

⁴⁵ we are now wondering whether we can, in fact, interdict a person who is found violating FR by the Supreme Court before indictment is served under the CAT Act. These are matters however, that can be settled only through a policy decision. There should be a greater effort to hold senior officers responsible in regard to torture cases, -- over the last few decades, we have lost the concept of responsibilities of senior officers.' Vide DIG Thangavelu, head, Legal Division of the Sri Lanka Police, at the LST South Asia Treaty Bodies Programme national workshop, 2004

⁴⁶ See also segment 6 of this Report below..

and for what offences? What were the punishments meted out to such persons? The State party is requested to provide a list of such cases to the Committee if one exists.

5.1 In Concluding Observation No 9 issued by the United Nations HRC in 2003, the Committee regretted that "*the majority of prosecutions initiated against police officers on charges of torture have been inconclusive ... despite a number of acknowledged instances of ...torture and that only very few.... have been found guilty and punished*"

4.12 In its Concluding Observations in 1998, the Committee Against Torture also observed "that for years in the past police officers appeared to be immune from prosecution" and accordingly recommended that Sri Lanka "establish an effective mechanism for the criminal prosecution of public officials committing acts of torture". It was recommended that the State should "establish an effective mechanism for the criminal prosecution of public officials committing acts of torture."⁴⁷

5.2 As stated before, Sri Lanka acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1994 and consequently adopted enabling legislation the same year viz. by Act No. 22 of 1994 the Torture Act).

5.3 However, though domestic legislation criminalising acts of torture has been in existence for more than a decade to date, there have only been two convictions under the Torture Act, both of which were handed down by the respective High Courts in January and August of 2004.

5.4 Under normal guidelines that are followed by the Attorney General's Department, three factors are taken into consideration when deciding to issue an indictment:

- a) Is there sufficient credible evidence relating to the charge of torture?
- b) Is there a 50 % chance of securing a conviction?
- c) Is it in the public interest to prosecute the case? (not applicable to cases of torture)

For a successful conviction in a torture case, the identity of the perpetrators and the evidence of the witnesses must be credible and the medical evidence should correspond with the facts. It is their assertion that many complaints have had to be dropped due to lack of substantiation

⁴⁷ supra note 1.

of all these three elements.⁴⁸ However, systematic efforts by the Department to provide safeguards in relation particularly to witness protection, the absence of which leads many witnesses to drop out of a case due to fear or intimidation does not appear to be forthcoming.

5.5 In reporting both to the UNHRC and to the CAT Committee, it has been asserted by the State that a special unit named the Prosecution of Torture Perpetrators Unit (PTP Unit) has been established in the Attorney General's Department to function symbiotically with the CID in the prosecution of torturers, headed by a Deputy Solicitor General and consisting of seven state counsel.

5.6 Before the UN-HRC, it was stated that "the PTP Unit monitors the progress and advises on the conduct of investigations of the CID pertaining to allegations of torture. The CID is duty bound to report the progress of investigations on the perpetration of torture to the PTP Unit, in order that this information may be periodically recorded in a computerised database maintained by this Unit."

5.7 However, a closer scrutiny of the structure of the Attorney General's Department reveals that there is no separate Unit dealing with torture cases. Instead, the 'PTPU' is only an administrative convenience (or international convenience) with neither specially assigned staff nor separate premises. There is only a separate file category called 'AGT files' for torture cases, which come within the scope of the Criminal Branch under the Solicitor General. The torture cases are distributed among 4 - 5 State Counsels, who also handle other criminal cases.

5.8 As aforementioned, the main unit in the police service in charge of investigating allegations of torture is the SIU, which is operates directly under the IGP. Of course the IGP in his discretion may direct a case to be investigated by the CID or another special unit. Nonetheless, currently all allegations of torture against police personnel are investigated by fellow policemen. Even when an allegation is brought to the attention of the AG's department or the HRC, these too are referred to the SIU (via the IGP) for investigation.

5.9 It was observed during our work that contrary to what is stated to international monitoring bodies such as the HRC Committee under the ICCPR and the CAT Committee, the AG does not seem to monitor to investigations conducted by the SIU. Neither is the progress of an

⁴⁸ Interviews with officers of the Attorney General's Department in 2004

investigation reported to the AG. In fact, the Department appears to 'lose track' of the investigation until it is completed and the file is returned to the Department. Of course, upon receiving a case file from the SIU, the state counsel in charge of the case may request the SIU to conduct further investigations, record statements or obtain ancillary documents. But considering the massive workload assigned to each state counsel, it is very unlikely that any of them can personally monitor the investigations conducted by the SIU. Thus if the principal task of the PTP Unit is to ensure the successful conviction of perpetrators of torture, its dubious existence indicates that the system in place is clearly *not working*.

5.10 It must however be stated that insofar as the killers of Gerald Perera, (the torture victim who was killed days before he was due to testify in the High Court trial), are concerned, the IGP ordered the CID to investigate the killing subsequent to a public uproar over the outrage resulting in those responsible being arrested in mid February 2005. It is pertinent that upon arrest, the assassin had confessed to the police that he had been ordered to shoot Gerald Perera on the orders of the police sub-inspector found responsible by the Supreme Court of torturing Perera.

5.11 **Delays before Courts** - The Government has been urged by both CAT as well as UNHRC to take the necessary measures to ensure that justice is not delayed, especially where torture trials are concerned.

5.12 The following are details of cases indicted by the Attorney General (AG) under Act No. 22 of 1994 for the years of 2001- 2004. Unfortunately the AG was unable to afford information re the current status of each of these cases upon requests made to the Department by NGO's working on issues of torture.⁴⁹

Year	Number of Cases	Number of Accused
2001	4	Exact No N/A
2002	2	2
2003	25	55
2004 (till June)	5	12

5.13 Furthermore, according to the Attorney General's Department, while a few cases indicted under the CAT Act have resulted in acquittals, the vast majority of cases are still pending

⁴⁹ Data relevant to mid 2004 - Condensed from information afforded by the Attorney General's Department during personal interviews with its officers during 2004.

before the High Courts. In fact though some indictments have been sent to the relevant High Courts almost 2 years ago, they have yet to be served on the accused. The reason given for this was the severe backlog of cases in many high courts in Sri Lanka, with the next date of certain criminal trials 'going down' well into next year.

5.14 In the past the Attorney General's Department has been accused of delay in dispatching indictments to the perpetrators. Such a delay was due to most torture cases reported being from the North and the East and the on going conflict posing an impediment to expeditious proceedings. At times, while evidence pertaining to a torture case is available, the identity of the accused cannot be determined.

5.15 However in recent times (2001 onwards) a fair proportion of the torture cases reported were from the South. In many of these cases, it has been easier to ascertain the identity of the perpetrator and carry out prosecutions, leading to an increase in the number of indictments filed by the Attorney General's Department.

5.16 In general, the time period within which indictments are served and the cases are taken up is extremely long. Even where a criminal trial begins, a lenient attitude is maintained by some judges towards lawyers who move for dates and postpone cases. This is a distinct disadvantage where prosecutions for torture are concerned as it gives the accused more time to intimidate witnesses and victims which, in turn, affects the memory and resolve of witnesses/victims. This may very well be one reason as to why a majority of the indictments forwarded by the AG from 2002 is still pending in court. This delay is symptomatic of general law's delays even where murder trials are concerned.⁵⁰

5.17 Meanwhile, necessary measures that are essential for the efficient dispensation of justice in Sri Lanka for instance, the lack of proper and adequate infrastructure continue to be lacking⁵¹

5.18 The trauma caused to detainees due to days spent in remand despite court orders to release them is pertinent at this point. This is due to lack of facilities of communication from

⁵⁰ Consequent to recent amendment of the criminal procedure laws and public pressure demanding a speedy trial, the Attorney General decided to file direct indictment in the High Court without non-summary proceedings in respect of the perpetrators of Gerald Perera's killing. (Vide *The Daily Mirror*, September 7, 2005) However, this remains an exceptional instance.

⁵¹ See <http://www.ahrchk.net/ua/mainfile.php/2004/716/> (visited on 10/07/2004)

and to the court when a person is ordered to be released or when a court requires additional information to be filed or where a petition requesting for bail is filed in court. Providing fax machines to all the courts in Sri Lanka could solve this problem with the magistrate courts, district courts and high courts all benefiting from the facility. It is unfortunate that the courts still do not have such equipment when even small businesses and many private individuals are using such facilities.

5.19 The primitive communication systems still prevailing indicates the careless disregard for administration of justice and civil liberties of the people. While people are kept in remand unjustly they go to higher courts to obtain orders for release. Though courts may grant relief, the benefits from such orders take further time. While every one suffers from this delay, those who suffer most are the poor and illiterate. Added to the technical aspect of delays, some unscrupulous persons also take advantage of the situation and demand bribes for performing official duties. It is also not rare for case file / documents to mysteriously disappear when bribes are not forthcoming.

5.20 Another pertinent impediment to efficient dispensation of justice was recently highlighted in a letter by the Bar Association of Wattala to the IGP.⁵² In this letter the lawyers alleged that police officers of the Wattala police are interfering with the work of the lawyers to the extent that they are unable to conduct their professional duties towards their clients in the proper manner. The lawyers had complained that the police have virtually taken control of the presentation of court cases and the defense in this Magistrate's court.

5.21 This phenomenon of the police selecting lawyers means that many innocent persons will lose their chance to seek redress. Torture victims and their families often complain that they are unable to retain lawyers working in a particular area to appear for them against errant policemen. Lawyers themselves face intimidation and / or threats from the police or else they are wary of losing their criminal clientele if they antagonize the police.

⁵² See <http://www.ahrchk.net/ua/mainfile.php/2004/723/> (visited on 12/07/2004)

6. Article 13 – Issue No 28

What role does the National Police Commission play with respect to complaints of torture and ill-treatment? Has the National Police Commission established a public complaints procedure, as required under article 155 G (2) of the Constitution of Sri Lanka?

6.1 The lack of an unambiguous state policy with regard to disciplinary action against errant state officers and the woeful inadequacy of existing mechanisms for implementing such action, remains a most serious problem.

6.2 This lacunae has not been filled by the constitutionally created National Police Commission (NPC) even though public expectations were high in this regard. The National Police Commission (NPC) was appointed at the end of 2002 and was met with a warm public response. It was created by the 17th Amendment to the Constitution, which aimed to depoliticise important national institutions by appointing commissions with constitutional powers over appointments, promotions, dismissals and disciplinary control of employees.

6.3 The powers of the NPC are two fold. Firstly, it is vested with the powers of appointment, promotion, transfer, disciplinary control and dismissal of all officers other than the Inspector General.⁵³

6.4 Secondly – and most vitally – the 17th Amendment stipulates mandatorily that the NPC "*shall* establish procedures to entertain and investigate public complaints and complaints from any aggrieved person made against a police officer or the police service...[italics added]"⁵⁴

6.5 Initially in 2002 and 2003, the complaints received by the NPC were referred to the IGP who had the authority to accept and act on them due to the fact that the disciplinary power of police personnel from the rank of Inspector downwards was delegated by the NPC to the IGP.

6.6 The Inspector General of Police in turn referred the cases to his subordinate officers, or to a special investigation unit. As this involved police officers investigating other police officers, the procedure lacked credibility. Also, the higher ranking officers who earlier oversaw the conduct of such inquiries were accustomed to making settlements between complainants and

⁵³ See 17th Amendment, Article 155G(1)(a)

⁵⁴ See 17th Amendment, Article 155G(2)

alleged perpetrators rather than conducting inquiries in an objective manner and hence most complainants were rightly fearful and distrustful of these inquiries.

6.7 The NPC admits that till July 2003, the police handled their investigations. Hence its functions were appropriately described by its critics as being similar to that of a 'post box'; that is, it merely entertained complaints and referred them to the police for investigation.

6.8 On its part, the NPC justified the delegation of its disciplinary powers to the IGP on the basis that it was intended to check day-to-day indiscipline of police officers and to enable the smooth functioning of the police force. It was also maintained that at the time that the delegation was made, it was not realised by the NPC that instances of torture were widespread. The second justification for allowing the IGP to handle disciplinary matters was that the NPC is in charge of promotions etc., not the day-to-day running of the police. The IGP was allowed to retain powers with respect to lower ranking police personnel because it was considered necessary for administering his department.⁵⁵

6.9 However, it was clear that this delegation of disciplinary power had been unsuccessful, in that the IGP failed to take any action against offenders, even in cases of torture. According to the Chairman, NPC, whenever violations by lower ranking officers were brought to its notice, the NPC informed the IGP to take disciplinary action against the alleged offenders and notify the NPC of the measures that have been taken. However, it seems that the IGP rarely replied to such directions let alone acted in compliance with them.

6.10 When questioned, the department of the Inspector General of Police (IGP) was not able to give details of specific instances in which disciplinary action has been taken against any offending police officer. And in the absence of a concrete policy regarding disciplinary action within the police, it may be reasonably inferred that if any action has been taken, it has been done on a purely *ad hoc* basis. There is also provision within the police to hold disciplinary inquiries against police officers, which admittedly takes several years to complete. However to date, very few disciplinary inquiries have been completed, and the outcome of these departmental inquiries are not known (see **Annex 2**).

⁵⁵ *'The 17th Amendment was to depoliticise the police force, enabling police officials to 'stand tall' without political interference, for often politicians manipulated the police for their own personal ends. Its main objectives are to create an independent and efficient police service and to set up the machinery to entertain public complaints, investigate them and provide redress'* Chairman, NPC, at the LST South Asia Treaty Bodies Programme national workshop, 2004

- 6.11 From the above, it is clear that there seemed to be no common policy among the different organs assigned to deal with the problem of police discipline, giving rise to a total sense of impunity among the rank and file of the police force.
- 6.12 Constitutionally, however, the NPC is *bound* to conduct investigations into allegations of misconduct itself -- as a facet of disciplinary control. However statements by the Chairman of the NPC to the effect that the NPC does not have the power to conduct investigations in regard to offences or acts of misconduct of officers below the rank of the IGP is very worrying.⁵⁶ In fact, the constitutional mandate of the NPC for disciplinary control excludes only the IGP. What these statements imply is that although the NPC has received large numbers of complaints, particularly regarding torture, against subordinate officers, the NPC has not taken any action on these matters due to prevailing misconceptions about its own mandate.
- 6.13 Article 155G(3) of the Constitution explicitly states that “The Commission shall provide for and determine *all matters* regarding police officers...[italics added]” Therefore, it is not possible to maintain that the day-to-day running of the police is outside the purview of the Commission. The power of disciplinary control, among others, is vested *solely* in the Commission by Article 155G(1), and is ordinarily to be exercised by it, in consultation with the IGP, unless *specifically* delegated, by *publication in the Gazette*, to a Committee under Article 155H or the IGP under Article 155J. The provision for the delegation of disciplinary power to the IGP itself conclusively indicates that he or she does not, in the absence of such delegation, possess such power. The reluctance by the NPC to claim such powers to itself during the better part of its first term was therefore disappointing.
- 6.14 Primarily due to strong criticism by activists who pointed out that if the NPC delegated its powers to the IGP, the substantive purpose of the 17th Amendment would be defeated, the NPC decided in mid 2004⁵⁷ that it would recall the delegation of its powers and assume substantive disciplinary control as mandated by the 17th Amendment over the police officers of all ranks, excepting the IGP. Recently it commenced interdicting police officers indicted under the Torture Act.

⁵⁶ See the *Daily Mirror* dated 21/07/2004 at p 11.

⁵⁷ Most of the work of the NPC since its official inauguration in November 2002 has been devoted to matters relating to promotions, particularly the filling of about 4000 vacancies in important posts which

- 6.15 Public hostility has been evidenced thereafter between the IGP and the NPC where the former has considered that the creation of the NPC has imposed an unwarranted fetter on his powers. The current IGP has not hesitated in publicly opposing the interdictions by the NPC of police officers indicted under the Torture Act.⁵⁸
- 6.16 This has been aggravated by adverse statements made by frontline ministers that the 'independence of the NPC' was not needed and that the IGP should be involved in the decision making processes of the NPC. Inflammatory remarks by other political figures of the ruling coalition have also added fuel to the fire.⁵⁹
- 6.17 The NPC has appointed police commission area coordinators, mostly from retired police personnel in selected districts, i.e. in Colombo, Gampaha, Kandy Matale, Kurunegala, Puttalam, Amparai/Kalmunai. A overall coordinator has also been appointed at the NPC head office. Practically, though the NPC has appointed district/area co-ordinators to look into public complaints, it is yet uncertain whether the NPC conducts its own investigations, or whether it refers them to the police. The precise functions of these area co-ordinators are not known. Furthermore, it is doubtful as to whether one area coordinator could single handedly manage to entertain and investigate into all the cases of that particular area. It is most likely that such co-ordinators still refer investigations to the police.
- 6.18 While the lack of resources for the NPC is problematic as often affirmed by the NPC itself⁶⁰ the generation of funds to support a vigorous and active NPC, given its constitutional character, which is unique in South Asia and perhaps in the entire world, is not a far fetched objective if the institutional will is present and clearly articulated.
- 6.19 ***Still no Public Complaints Procedure*** - In its concluding observations after considering the periodic report of Sri Lanka the Human Rights Committee stated that, "*The National Police Commission public complaints procedure should be implemented as soon as possible*". This is also specifically detailed in Issue No 28 of the CAT Committee.

remained vacant due to inaction under the earlier system of administration. Resolving this problem of vacancies was looked upon as a priority by the NPC in order to get the system to function properly;

⁵⁸ See the Island, 1st October 2005

⁵⁹ See the Island, 12th August, 2005

⁶⁰ "*Taking back disciplinary powers from the IGP is insufficient. We need an Army of personnel to conduct investigations and disciplinary proceeding for which we need resources. We advertised for investigators*

6.20 It is axiomatic that an effective public complaints procedure requires clear written steps and practical measures for it to take effect. Article 155G(2) of the Constitution is very clear in its import. It does not merely state that public or individual complaints may be inquired into. If so, then the NPC may be justified in doing what they are doing now; that is appointing district co-ordinators to look into complaints. However, what it requires is not *ad hoc* consideration of complaints where the complainant is left to the mercy of an individual NPC officer but the mandatory establishing of meticulous procedures regarding the manner of lodging the complaint, the persons who can complain, the way it is recorded and archived and the way in which it is inquired and investigated.⁶¹

6.21 Article 155(G)(2) allows inquiry into public complaints, as well as complaints of an aggrieved person in respect of an individual officer or the service in general. Thus, a person or groups of person can appeal to the NPC, rather than only the victim. The death/torture and/or cruel, inhuman or degrading treatment and/or injury to a member of the public in police care / custody are obvious examples where such interventions could be made. The NPC should enumerate and publicise a non-exhaustive list of such instances. Indeed, similar procedures in other countries require the OIC and his superior officers to automatically report categories of grave incidents to the monitoring body, whether a complaint is made or not.

6.22 Guidelines should be put into place directing the registering, documenting and archiving of complaints so that uniform procedures are followed at all NPC district offices of which records should ideally be kept at the head office. Thereafter, at the very least, there should be quick responses to the complaints in terms of not only documentation but also the ensuring of medical attention and victim protection.

6.23 Finally, the NPC has a duty to recommend appropriate action in law against police officers found culpable, in line with the vesting of the disciplinary control and dismissal of police officers, (other than the IGP) in it under Article 155(G)(1) of the 17th Amendment in the absence of the enactment of a specific law whereby the NPC can itself provide redress.

about 3 months back and received about 100 applications. We have already processed about 60 of them but had to put that matter aside to attend to the promotion matter. ” Chairman, NPC, supra note 5

⁶¹ These procedures would hold accountable both the police officer concerned and officers of the NPC so that both act in strict compliance with their constitutional and statutory duties. This important in a context where officers of monitoring bodies themselves have been accused of colluding with the very perpetrators of terror in this country. Acts of collusion include settling with victims of the most gruesome torture for small sums of money and in extreme cases, collaborating with the police to cover up the incidents.

6.24 The lack of a complaints procedure has not precluded 'hundreds' of public complaints being received by the NPC by district co-ordinators appointed for this purpose. However not adopting such a procedure is clearly in dereliction of its mandatory constitutional duties.⁶²

6.25 NPC officials have asserted that the lack of resources for the NPC has impeded the implementation of the public complaints procedures. However, while the government has a duty to provide such resources, the proper functioning of an effective complaint mechanism is a separate matter. Proper investigations are obstructed by widespread impunity, which has deep roots in the country's history since the early 1970s, when draconian powers were given to law enforcement officers on the pretext of curbing dissident elements. The police force in Sri Lanka has been engaged in mass enforced disappearances, torture and extrajudicial killings. To date, the non-enforcement of disciplinary procedures negating the prevalent attitude of impunity for grave human rights abuses remains the single biggest problem for policing in Sri Lanka.

6.26 To deal with this problem, the NPC will have to create strong disciplinary procedures and enforce it. The NPC needs to inculcate in the police force a serious understanding of the gravity of offences such as torture, extrajudicial killing and enforced disappearance. A clear disciplinary code should be included in any training programme for police. If such steps are taken, NPC may initiate a dramatic—albeit difficult—process towards change within the police force, forcing it to decisively abandon past practices. Without an effectively operating complaints procedure however, this is not possible.

⁶² Chairman, NPC affirmed in August 2004 that the public complaints procedure under Article 155 G (2) of the Constitution of Sri Lanka, introduced under the 17th Amendment, will be implemented as soon as possible and apologised for the delay in initiating this procedure, which the NPC has acknowledged as one of its primary tasks. A draft Public Complaints Procedure was jointly compiled on the initiative of the Asian Human Rights Commission (AHRC) and submitted to the NPC in 2004. It is however yet under consideration. See Annex Five to this Alternate Report

7. Article 13 – Issue No 29

Does the State party plan to establish an effective witness protection programme, particularly for victims of torture, extrajudicial killings and other abuses? Is this matter under review? In particular, have financial or other resources been allocated for this purpose?

7.1 Currently, there is an urgent need for the development of an effective witness protection scheme for victims of police abuses. Such a scheme must seek to ensure that victims of torture be treated with the utmost respect, in a manner that safeguards their safety and relief.

7.2 In recognition of this dire need, the Human Rights Committee stated in its concluding observations dated November 2003 that, "*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*".

7.3 This need was also recognised by the Attorney General of Sri Lanka, Mr. K.C. Kamlasabayson PC, who made the following observation in an address of December 2, 2003:

"Another important feature that requires consideration is the need for an efficient witness protection scheme that would ensure that witnesses are not intimidated and threatened. No doubt this would involve heavy expenses for the State and amendments to the law. I will only pose a simple question. Is it more important in a civilised society to build roads to match with international standards spending literally millions of dollars rather than to have a peaceful and law abiding society where the rule of law prevails?"⁶³

7.4 The absence of a witness protection scheme seriously affects criminal justice. In Sri Lanka, many complainants have been murdered on their way to court, and while going about their daily lives. Because victims are frequently and seriously threatened, many fear to pursue their complaints. Others too are afraid to come forward as witnesses. The following cases illustrate the gravity of the problem.⁶⁴

- Kurudukarage Eranjana Sampath -- was arrested by the Thebuwana police on suspicion of theft on January 2, 2004 and is alleged to have been tortured while in custody.

⁶³ Remarks made during the 13th Kanchana Abhayapala Memorial Lecture as reported by Basil Fernando in *The Right to Speak Loudly*, Asian Legal Resource Centre, 2004.

⁶⁴ Vide *The Daily Mirror* dated 10/04/2004 at p.11.

Subsequently he was released on bail and filed a fundamental rights application in the Supreme Court against the alleged perpetrators. The OIC threatened the victim several times to withdraw his complaint, saying that he would take Eranjana into custody and charge him with fabricated allegations in court, if he did not do so. On May 22, 2004, Eranjana was arrested allegedly on false charges and remanded until June 1 2004.

- The villagers of Baddegama -- were allegedly brutally attacked by the 200 drunken policemen from the Gokarella police and their supporters on December 31 2003. After the incident was reported to the NPC and NHRC as well as highlighted in various newspapers, the police threatened the villagers to withdraw the complaints and have stop the bus service to the village.
- Chamila Bandara 17, complained that he was illegally detained and severely tortured by the OIC of the Angkumbura police station from July 20 to 28, 2003. As a result he was hospitalised for a long time and was in fear of losing the use of his left arm. There was an attempt to kidnap him from the hospital where he was receiving treatment. He was removed from the hospital for his safety, and ever since has been living away from his village, under the protection of local human rights organisations. His mother was also forced to leave the village due to constant severe harassment. His two younger sisters have been unable to go to school due to death threats. Complaints have also been made to the Special Rapporteur on Torture, the NPC and the NHRC. His fundamental rights plea is currently pending before the Supreme Court.
- Lalith Rajapakse, complained that he was brutally tortured by the officers from the Kandana Police and taken to the hospital in an unconscious state on April 20, 2002. After filing a fundamental rights case against the perpetrators in the Supreme Court, and with the state also filing a criminal case in the Court under the Convention against Torture Act, No. 22 of 1994, he was threatened to settle or withdraw the case. He has since complained further to the NPC and the NHRC. Later the police filed 2 cases of robbery against the victim in the Magistrate's court. But after the complainants in both cases denied having complained against the victim and in the absence of evidence, the victim was acquitted of the fabricated charges against him.
- Dawundage Pushpakumara 14, complained that he was tortured by the OIC and other officers of the Saliyawewa police post in Putlam on September 1 and 2, 2003. After he was released, the victim's family asked a human rights organisation to investigate their

son's case. Thereafter they alleged that the police and a local politician threatened to burn the family home if they pursued their complaints. When he was released from the police station, the police had prevented the victim from obtaining medical treatment and it was only with the help of the Child Protection Authority that he was hospitalised. Finally, the victim was forced to go into hiding with the help of a human rights NGO, who is caring for him now. He alleged that he was also threatened to withdraw his fundamental rights application in the Supreme Court, and his complaint to the Prosecution of Torture Perpetrators Unit.

- K Palitha Tissa Kumara complained of being assaulted up to 80 times with a cricket pole (wicket). He stated that a tuberculosis patient was instigated by a police officer to spit into his mouth whilst in the illegal custody of the Welipenna police and claimed that his fingerprints were forcibly placed on a hand grenade, after which he was charged under the Offensive Weapons Act and remanded. He complained that he continued to receive threats from intermediaries, acting on behalf of the torture perpetrators whilst in remand and later, and is currently in hiding together with his wife and 2 young children.
- Saman Priyankara complained of having boiling water poured on his thigh whilst in the illegal custody of the Matale police. Ever since he has made several complaints against his alleged torturers. In early July he was once again arrested and tortured by the Matale police. The alleged reason for the second act of torture which caused serious injuries to one of Saman Priyankara's ears was that he had refused to accept a settlement on his complaint of the throwing of boiling hot water on his thigh. It is alleged that the second act of torture took place after many attempts to pressure to him to withdraw his complaint failed.

D. CONCLUSION - SUMMARY OF RECOMMENDATIONS

1. Regarding Prevention of Torture and Other Gross Abuses of Human Rights

- 1.1 The central concern with regards to the above, is the lack of a competent and credible investigating machinery for the investigation into complaints of such violations. The establishment of such a mechanism is urgently required.
- 1.2 Ideally, an **Independent Prosecutor's Office** should be established with a mandate to conduct independent investigations. As explained above, the Special Investigation Unit (SIU) investigation procedure into cases of torture -- with little supervision of the Attorney General's (AG) Department -- is inadequate and subject to serious defects. Also, the National Human Rights Commission (NHRC) procedure does not satisfy the requirements of a proper criminal investigation system for the investigation of such violations.
- 1.3 As an alternative to the above, we suggest that the present SIU system be strengthened by making it an investigating unit that solely inquires into complaints of torture and other gross abuses of human rights on a permanent basis. This implies that members of this unit during the time of their service to the SIU should not be assigned with any other task other than the investigations regarding torture and other abuses of human rights.
- 1.4 The work of the SIU should be directly controlled and supervised by the officers of the AG's Department specially assigned for this purpose. During the time that they hold the position of supervision over the said SIU, such state counsel should have no other assignments. The government should also increase the cadre of the AG's department, if so required. This process should be thoroughly monitored and supported by the NHRC which should assign competent persons for that task. The NHRC should be in a position at any given time to account for each single investigation under the CAT Act or any other violation of human rights amounting to a crime and investigated by the SIU and prosecuted by the AG's Department.
- 1.5 For this purpose, the AG and the NHRC should work together to develop guidelines for such cooperation between the AG's Department and the NHRC. These guidelines must be made available to the public so that the public can be aware of the manner in which such complaints are investigated and prosecuted. The NHRC should be explicitly allowed to

investigate not only the cells in police stations but all areas within the precincts of the station including the kitchen and toilets.

- 1.6 The NHRC should thoroughly review its inquiries and investigations unit within the shortest time possible. It should arrive at a clearly laid out policy and guidelines for the achievement of such a policy. Such statement should also be made available to the public. The NHRC should avoid duplication of inquiries and instead adopt an approach of critical cooperation in which the interests of justice and the promotion of human rights would be the primary consideration.
- 1.7 It has been suggested that the NHRC Act be amended to empower the NHRC to approach courts directly as is done in India. In the minimum, rules need to be made by the Supreme Court in order to enable the NHRC to refer the matter “to any court having jurisdiction to hear and determine such matter in accordance with such rules of court as may be prescribed therefor.....,” in terms of Section 15(3) (b) of the NHRC Act.
- 1.8 The NHRC should also develop closer links in the area of torture investigations and prosecution, handled by the SIU and AG’s department respectively. Preliminary investigations conducted by the NHRC can greatly help in instituting criminal inquiries into gross human rights abuses such as torture. All three units should develop a working relationship regarding prosecution of torture cases in particular. This process can be aided by the NPC which can monitor instances of grave misconduct and abuse by police officers.
- 1.9 This approach would require a considerable openness on the part of the AG’s department to create special machinery for investigation and prosecuting of torture. On the one hand it would require the capacity on the part of the NHRC to collaborate in such an effort and on the other, to skilfully monitor the process therefore ensuring the proper functioning of such a system.
- 1.10 The National Police Commission (NPC) should, ensure that disciplinary control of police officers should, in no circumstances, be delegated to the IGP. Instead the NPC should develop disciplinary procedures as well as the constitutionally mandated public complaints procedure to speedily deal with complaints of torture and other violations of the police affecting public confidence in the institution of policing. **It is imperative that the public complaints procedure in terms of Article 155G(2) of the Constitution be implemented.** The NPC should clearly lay down the types of misconduct or abuse of rights that it will

inquire into and what punishments would follow if complaints of breaches of such conduct were proved.

1.11 As for the resources needed, the NPC should work out its requirements and place them before the government. The public including the civil society organisations and the media should assist the NPC to come to a clear understanding of its constitutional mandate and to assure that the government will provide all resources required by the NPC.

1.12 A very high degree of professionalism is required from the staff of both the NHRC and the NPC to ensure the aforementioned. All possibilities of political interference in the appointment of staff to the NPC should be strictly guarded against, with a removal procedure for acts of serious misconduct clearly laid down and enforced. Particularly the allegation of corruption and cooperation of staff with perpetrators of alleged acts of torture and other gross abuses of human rights should be speedily inquired into and acted upon. The excuse of the rights of employees should not be used for condoning serious acts of misconduct, which obstruct the performance of the mandate of the said commissions.

1.13 In particular, the NHRC and the NPC should strictly supervise the work of their area offices and area coordinators. This is because the loss of confidence at area levels could seriously undermine the effectiveness of these commissions. On the other hand the efficient functioning of the commissions at area level would greatly enhance the capacity of the public to have their complaints made and investigated with less hazard.

1.14 **Witness Protection** -- The absence of a witness protection scheme may be identified as the single-most obstacle to the protection of human rights with regard to torture and other gross abuses of human rights. This also affects the control of crime in general. We recommend that the Attorney General and the police department develop a strategy and scheme for the effective protection of witnesses. This could be developed by an expert group who could draw up a scheme within a short period of time with a statement of the resource allocations required. If the AG and the police department follow a common strategy re witness protection, it is very likely that the state and the public would support such a move.

1.15 At present, while the AG has publicly acknowledged the lack of such a strategy and scheme, no initiative has been taken to create such a witness protection scheme. Therefore, it is evident that the recommendations of the UN-HRC in this regard have not even been properly studied -- let alone implemented. Until a proper strategy and scheme is in place,

implementation of the UN-HRC's recommendations would not be possible. Given the importance that a coherent witness protection scheme bears to the preservation of human rights, the NHRC too should make its recommendations for the implementation of the human rights committees recommendations on this matter and monitor this issue until its realisation. Furthermore, the NHRC could include witness protection into its recently adopted policy of zero tolerance of torture.

- 1.16 The NHRC can hold public consultations and thereby provide to the government, the AG and the police department the best possible options for the speedy implementation of an effective witness protection programme. The NHRC can form a group of experts working on a voluntary basis to study this issue and monitor the progress until such a scheme is effectively implemented.

Gender Based Violence

- 1.17 As a matter of priority, the State Party should immediately take steps to eliminate the prevailing culture of impunity enjoyed by the police and armed forces when they perpetrate serious human rights violations. It should therefore investigate, prosecute and punish with due diligence under the applicable laws, in particular the Penal Code and the CAT Act, those armed forces personnel and deserters from the armed forces involved in rape and sexual offences;
- 1.18 The State Party should put into effect a national policy with the objective of bringing these perpetrators to justice in collaboration with monitoring bodies such as the Human Rights Commission. At the very least, this should include analysis/examination of fundamental rights, Supreme Court rulings against members of the police force and/or armed forces for violations, the recommendation of further measures to the appropriate disciplinary authorities and all necessary measures aimed at protecting the victim/s, their families and witnesses;
- 1.19 The directive requiring female officers to be present for the purpose of frisking women at checkpoints must be followed and any failure to comply with this directive should lead to the officer in charge being held responsible and subject to disciplinary action. The State should consider setting up of women and children's desks at police stations in conflict areas, manned by personnel who have the language skills needed to deal with complaints and the training needed to handle cases of sexual violence and other forms of gender-based violence. They

should work together with local citizens' committees so that the local community is familiar with their work;

- 1.20 Changes in the substantive penal law on sexual offences should be coupled with corresponding changes in the procedural aspects of the law such as complementary changes in the Evidence Ordinance and the Code of Criminal Procedure;
- 1.21 Government monitoring mechanisms (i.e. the Child Protection Authority, the Human Rights Commission and the Police Commission) should set up comprehensive data gathering systems within their units on violence against women/children. Such data should be available for public scrutiny. Attention should also be given to collecting data on trafficking, given the paucity of such research at present;
- 1.22 Special courts should be set up, presided over by retired judges to try cases of violence against women in an attempt to solve the pervasive problem of delays in processing court cases.

2. Recommendations for Ending the Disappearances Cycle

- 2.1 In creating a model process to combat disappearances, (crucial to effectively tackling the prevalence of torture practices in Sri Lanka), the three strategies of prevention, investigation, and countering impunity needs to be utilised.
- 2.2 ***Prevention Procedures*** - The first step in such a model process involves the prevention of disappearances and other violations of human rights. Eradicating disappearances is a matter of political will; a fundamental duty of the Sri Lankan State. Some key areas of prevention include effective training of security forces, safeguards on arrest and detention etc.
- 2.3 The Sri Lankan government must provide comprehensive training to security forces in human rights and humanitarian norms in order to ensure non-abuse. Greater supervision of troop activities by those adequately trained in human rights norms will also encourage the armed forces to be more attentive to their human rights obligations under international law.
- 2.4 Security forces should also be trained to understand that they have a right to disobey or refuse to participate in activities that violate norms of human rights and a duty to report such breaches in conduct.

- 2.5 ***Investigation Procedures*** - The government must ensure stern implementation of established legal processes for example the notification of the NHRC of arrests and detentions so that arbitrary arrests and detention are minimised. Penalties ranging in severity from fines and/or imprisonment for not more than one year after trial, must be enforced and possibly elevated for those soldiers and officers who disregard this essential rule. Further places of detention should be regularly inspected by the HRC and other human rights monitors to ensure that disappearances and incidents of torture are not concealed.
- 2.6 In order to prevent and combat disappearances, torture and extra judicial killings, there must be an effective investigation carried out into all such cases. Investigating bodies must be impartial, have necessary powers and resources, be staffed by professionally competent personnel, and be protected from intimidation.
- 2.7 The Disappearance Investigative Unit (DIU) of the Police Department should not be the sole authority responsible for providing crucial evidence to initiate charges against human rights offenders, some of whom are within the department's own ranks. An independent body possessing investigatory powers to look into cases of disappearance, torture and extra judicial killing must be established. At the minimum, the DIU should be fully staffed and funded by the government to carry out their investigations and provide evidence to the AG's Department in a competent and effective manner in order to carry out the prosecution.
- 2.8 ***Confronting Impunity*** - Legal and constitutional changes in Sri Lanka should be initiated to provide greater accountability for disappearances. The act of enforced disappearance should be made a separate offence under Sri Lankan criminal law, "punishable by appropriate penalties as stipulated in Article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances."
- 2.9 This will classify the phenomenon as a crime in law and allow for more efficient and greater numbers of prosecutions as opposed to the handful of prosecutions currently carried out under the offence of abduction.
- 2.10 Concurrently, the prohibition against enforced disappearance should be elevated to the status of a fundamental right in the Sri Lankan Constitution, allowing a petition to the Supreme Court. Such a move would allow for more efficient prosecutions, as proof of death will no longer be an impediment to initiating charges against the perpetrators, and further

serve to strengthen the recent decisions of the Supreme Court, holding that the right to life of citizens have been impliedly guaranteed under the Constitution.

2.11 The Prevention of Terrorism Act (PTA) and the Public Security Ordinance (PSO) should be modified to render them consistent with international human rights norms. Crucially, the provisions of the PTA should be revised to follow normal Sri Lankan criminal procedure by allowing an arrested suspect to be brought before a judicial officer within 24 hours, thus reducing the likelihood of abuse by arresting authorities. The law should be further amended to ensure that the burden of proof in regard to the involuntariness of a confession is not on the accused.

2.12 The government also must ensure an increase in prosecutions and convictions of offenders. Prior efforts to ensure steady prosecutions have failed, with low numbers of convictions and even promotions of suspected perpetrators, despite expanded criminal investigations by the DIU and the AG. More thorough and less politicised investigations by the DIU of the Police Department and the establishment of permanent commissions will provide solid evidence by which prosecutions may begin and convictions may be sought.

2.13 Overall, the judicial process must be prompt, impartial, effective, fair, and open. Sri Lanka must comply with Article 18 of the Declaration on the Protection of All Persons from Enforced and Involuntary Disappearance and must not pass any amnesty law or similar provision to exempt perpetrators from criminal proceedings or sanctions. In disappearance cases, statutes of limitations should not apply, the defence of superior orders should not be a permissible defence, and the full scope of liability for prosecution should apply. Sri Lanka must take full responsibility for past and present disappearance cases in an effort to provide justice and accountability for those who lost their lives through senseless acts of ethnically motivated violence.

3. Breakdown of the Rule of Law

3.1 We also recommend that the CAT Committee should specifically address the situation of the overall breakdown of the rule of law in the country including specific concerns affecting the independence of the institution of the judiciary. We note that the NHRC in articulating its three-year plan has acknowledged the issue of rule of law as the central issue around which its other strategies have revolved.

- 3.2 **Efforts to address the prevalence of patterns of torture in Sri Lanka cannot be considered in isolation from overall institutional failures in systems of governance.** The former is an integral part of the latter. Until the country has effective systems of democracy, including an independent and sensitive judiciary, singling out law enforcement authorities for blame is counterproductive.
- 3.3 Serious concerns continue to be raised in regard to guaranteeing the independence of Sri Lanka's judiciary. Research surveys have indicated a highly negative public perception in regard to the integrity of the judicial process and the prevalence of corruption among court staff. The instituting of fundamental rights applications before the Supreme Court alleging infringement of the provisions of the Fundamental Rights Chapter in the Constitution including Article 11 (freedom against torture and cruel/inhuman/degrading treatment) which was voluminous some years before, has now steadily declined.
- 3.4 Encouragement of public interest litigation through constitutional reform bringing in a new chapter on fundamental rights and the allowing of bona fide public interest groups to bring complaints on behalf of aggrieved victims has assumed a specific importance in a context where the filing of ordinary fundamental rights applications to the Supreme Court in terms of Article 126 of the Constitution has decreased due to public disenchantment with the judicial process. Though such a chapter was contemplated in the Constitution Bill of 2000, it did not become part of the Constitution due to the Bill being rejected as a result of opposition to some of its other provisions. This chapter needs to be enacted to facilitate greater interventions by the Court in the protection of fundamental rights, including the prohibition of torture.
- 3.5 The State should be called upon to demonstrate its adherence to the Concluding Observations and Communications of Views forwarded by international human rights monitoring bodies, most particularly that of the UN-HRC and the CAT Committee. At present, its commitment to the adherence and dissemination of such Observations and Views is faltering. Apart from independent media reports, dissemination of this information is significantly lacking.
- 3.6 It is relevant in this context for the general information of the Committee that an increasing number of Communication of Views in terms of the Optional Protocol to the ICCPR has been forwarded by the UN-HRC to the Sri Lankan State, pointing to violations of article of the ICCPR. Five Communications of Views have stated that there has been a violation of articles

of the ICCPR by the Sri Lankan State⁶⁵ and called for compensation to be awarded to the applicants and for the State to take measures to prevent the recurrence of such violations. However, the implementation of these Views by governmental authorities remains lackadaisical. While discussions are underway in some of these cases to award compensation as directed by the UN-HRC, the process is laborious and is engaged in long after the Communication of Views.

3.7 Importantly, these cases include the following;

- a) The Sinharasa Case – Recommendation of the UN-HRC to amend Section 16(2) of the Prevention of Terrorism Act. taking out its imposing of the burden regarding the proving of the voluntary nature of a confession. In deciding that Sinharasa's rights under Article 14, paragraph 3 (g) of the Covenant had been violated by his being forced to sign a confession and subsequently to prove its voluntary nature, the UN-HRC pointed out that its jurisprudence had laid down the principle that no one shall "be compelled to testify against himself or confess guilt" which must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt. It was considered implicit in this principle that the prosecution prove that the confession was made without duress. Interestingly, it was pointed out that even if, as argued by the Sri Lankan State, the threshold of proof regarding the forced nature of a confession is "placed very low" and "a mere possibility of involuntariness" would suffice to sway the court in favour of the accused, it remains that the burden was on the author, this would not suffice. However, the relevant provisions of the PTA Act remain un-amended.

- b) The Tony Michael Fernando Case - a lay litigant who was sentenced to one year rigorous imprisonment by a Supreme Court bench consisting Chief Justice Sarath Nanda Silva and

⁶⁵Views of the UN Human Rights Committee in Communication No 916/2000 (Sri Lanka 26/07/2002, CCPR/C/75/D/916/2000 (Jurisprudence), the Jayalath Jayawardene Case; (Communication No 950/2000 (Sri Lanka, 31/07/2003) CCPR/C/78/D/950/2000 (Jurisprudence – The Jegetheeswaran Sarma Case; Communication No. 909/2000: Sri Lanka 26/08/2004 (CCPR/C/81/D/909/2000 (Jurisprudence) – the Victor Ivan Case Communication No. 1033/2004: Sri Lanka 26/08/2004 (CCPR/C/81/D/1033/2001 (Jurisprudence) – the Singarasa Case. See also the Views of the Human Rights Committee in ***Tony Michael Fernando vs Sri Lanka*** (Communication No 1189/2003 –31, March, 2005)

Justices Yapa and Edussuriya in February 2003 for raising his voice in court and persisting in filing fundamental rights applications. He appealed thereafter to the UN-HRC in terms of the Optional Protocol to the ICCPR. The UN-HRC decided that this committal violated his right not to be arbitrarily deprived of his liberty on the basis that “Article 9(1) of the Covenant forbids any ‘arbitrary’ deprivation of liberty. The imposition of a draconian penalty without adequate explanation and without independent procedural safeguards falls within that prohibition.” The State was directed to pay Mr Fernando compensation for the violation of Article 9(1) of the International Covenant on Civil and Political Rights, (ICCPR), and to respond to the Committee regarding the measures taken to give effect to its Views within ninety days of the decision.⁶⁶ Though this deadline has passed, no action has been taken by the Sri Lankan State in this regard.

3.8 We recommend that the focus of the local and international agencies on human rights should be on the link between the rule of law and human rights if their interventions for the improvement of human rights in the country are to be of any value.

Acknowledgements

Information in this Report has been gathered from the following;

⁶⁶ Thirteen jurists of the UN Committee agreed without dissent that though courts, notably in common law jurisdictions, traditionally enjoy authority to maintain order and dignity in court debates by the exercise of a summary power to impose penalties for contempt of court, “no reasoned explanation has been provided by the court or the State party as to why such a severe and summary penalty was warranted in the exercise of the court’s power to maintain orderly proceedings.” It was ruled that the State cannot absolve itself of responsibility merely on the ground that actions of the judiciary are in issue.

- a) colloquia held by the Law & Society Trust in 2004/2005. The discussions in 2004 involved key academics, activists, legal professionals, officials of ministries and members of monitoring bodies including the NPC and the NHRC. The findings of the discussion process were then shared in a regional consultation held in 2005 attended by leading activists from India (The Commonwealth Human Rights Initiative, the National Law School University, Bangalore), Pakistan (Shirkat Gah), Bangladesh (Ain O Salish Kendro) and Nepal (INSEC) resulting in comparative analysis of the Report.
- b) Personal interviews conducted with government officials, members of the armed services and the police, human rights monitoring bodies and civil society as detailed below. However, upon the request of some of those who have been interviewed, we have refrained from personally quoting them.

1. The Head, Special Investigations Unit of the Police Department on 18th May 2004
2. The Head, Legal Range of the Police Department on 18th May 2004.
3. The Chairman, National Police Commission on 11th May 2004
4. The Chairperson of the National Human Rights Commission on 6th April 2004.
5. A Director of the National Human Rights Commission on 26th April 2004.
6. A Senior State Counsel, Attorney General's Department on 21st April 2004
7. Head of the Missing Persons' Unit at the Attorney General's Department on 31st March 2004
8. State counsel at the Attorney General's Department on 22nd March 2004
9. State counsel attached to the Missing Persons' Unit at the Attorney General's Department on 25th March 2004
10. Commander and Chief Legal Officer of the Army

ANNEX 1

Cases investigated by the SIU for the years 2002, 2003 and 2004

	Complains received	Investigation completed	Investigation pending
2002	95	83	12
2003	156	85	71
2004	21	-	21

ANNEX 2

Table with details of disciplinary inquiries pending and completed by the police department for 2003

Year	Complaints received	Inquiries pending	Inquiries completed
2003	156	3	11

ANNEX 3

Data made available by the Missing Persons' Unit (1998 to 2003)

Case files have been sent to MPU by DIU	2147
Cases have been sent to the record room after completion of inquiry due to insufficient evidence	1384
Indictments in High Court (107 acquittals / 9 convictions)	353
Summary inquiries	2
Non-summary inquiries	43

ANNEX FOUR

From the REPARATION REPORT - SRI LANKA: THE NATIONAL HUMAN RIGHTS COMMISSION'S ANTI TORTURE POLICY published in REDRESS, Issue 5/May 2005

Last month REDRESS' Lorna McGregor met with Dr. Radhika Coomaraswamy. Chairperson of the Sri Lankan National Human Rights Commission (NHRC) headquartered in Colombo with regional offices around the island, to ask her about its anti-torture work.

Editorial Note: Since 2002 the Government of Sri Lanka and the LTTE (Liberation Tigers for Tamil Eelam, commonly referred to as the 'Tamil Tigers') have been engaged in a peace process (which is currently stalled) to end years of protracted conflict. Throughout the conflict and even under the ceasefire, both sides have committed serious violations of human rights and humanitarian law. Against this background, the **National Human Rights Commission (NHRC)** adopted an Anti-Torture Policy, due to the endemic nature of the abuse.

Can you tell us a little about the background to the Human Rights Commission's anti-torture policy?

Dr. Coomaraswamy: Over the last two years we have had an increase in the daily number of torture complaints. I don't know whether this is due to an increase in the actual number of torture cases taking place or because of an increase in the reporting of such cases, as there are a number of very active international and national NGOs in Sri Lanka now working in this area. Either way, we felt that we should urgently respond to this situation, so we adopted a zero-policy on torture. Furthermore, our discussions with the police and other individuals and agencies have revealed that the police had not really been trained in basic investigative skills. For some reason, the training was more of a paramilitary nature. Torture is often a short cut to getting information, and as a result it is systematic and widespread.

What are the main elements of the anti-torture policy?

Dr. Coomaraswamy: The first priority is to investigate all complaints of torture within twenty-four hours. In the south of Sri Lanka complaints are skyrocketing. We don't receive many torture complaints from the north. Since the ceasefire we have much fewer complaints against the security forces, probably as a result of the presence of counter-veiling forces, such as the LTTE. Both sides are much more careful. We don't receive many torture complaints against the LTTE either, although we receive many complaints about abduction and child-recruitment which we report to the Sri Lanka Monitoring Mission and the LITE offices, which have their own complaints' mechanism. From 1 March 2005 we have set up a special unit to inquire into torture allegations as quickly as possible, and to try to deal with any backlog of torture cases within three months. The backlog will address cases brought before the NHRC over the last year.

Procedurally, we first investigate complaints made by survivors. As there are now strong NGOs in Sri Lanka, such as People Against Torture, and the Asian Human Rights Commission (which has offices throughout the country), survivors usually come to the NHRC through an NGO. Following our initial investigation, there is an inquiry at which both parties are present. The process takes up to a year, but regrettably survivors are often not able to find out the progress of their case due to lack of resources. We also don't have a clear policy on protection and that is something that has been raised, but again we don't have enough resources. We intervene to make

the police provide protection. At the end, the NHRC as an informal body makes recommendations.

Is the NHRC now involved in police training?

Dr. Coomaraswamy: We have had discussions with the Inspector General of the Police on training and investigative methods for the police.

What other steps have you taken to improve police behaviour?

Dr. Coomaraswamy: We have tried to educate both the police and the public about the rights of persons during detention. We have put up posters in every police station advising suspects of their rights. To an increasing extent we have agreed with the police that families and lawyers can visit detainees. There was previously some controversy about that. We also make surprise visits to police stations, which we are now doing in a widespread manner. We find all kinds of things, especially in the police barracks, like blood on the floor.

We have suggested to the Police Commission that when the Supreme Court makes a finding against a person following torture allegations, that it affect their promotion. [The Supreme Court can find a human rights violation and ask for compensation to be paid, based on affidavits filed]. The police have argued, however, that as the finding is made at the Supreme Court level, there is no fact-finding process in the sense of a trial - it is all done on affidavits - so their officers are not given a fair hearing. They say that promotions should only be affected if there is a conviction of torture through a criminal conviction, with which we disagree.

How does the new anti-torture policy work in respect of compensation for torture victims and the prosecution of offenders?

Dr. Coomaraswamy: Under previous human rights commissions, complaints were dealt with by way of mediation, and compensation was paid in lieu of prosecution. We stopped that practice. Now we still recommend compensation but we also send all the materials and facts we have gathered to the Attorney General for prosecution. In terms of compensation, we recommend that both the police and the individuals concerned pay compensation and we try to make the compensation substantial - given the realities of Sri Lanka, of course. The problem is that previously there was a willingness to pay the compensation because of the guarantee of non-prosecution. For the last three months we have begun recommending compensation and prosecution, so we don't yet know whether people will actually pay. For survivors of torture, our regional officers claim that many are less concerned about prosecution and more concerned about compensation. Many are perturbed by this shift in policy because they need to pay for their health needs. They are worried that they won't get anything, whereas under the old system they could be more or less guaranteed some measure of compensation. They favour compensation because of their belief that prosecution will not occur. The Attorney General's department has indicted thirty-three alleged perpetrators of torture, and there has been one conviction so far, in August 2004. Given the number of complaints we receive - at least two or three a day - you can see prosecution is not taking place. Those indicted are also mainly lower ranking officers. But things are moving. We passed the Torture Act in 1999, and for some years nothing happened. Now at least there is movement.

What would you say have been the NHRC's main successes. and what are still the main challenges in the struggle against torture in Sri Lanka?

Dr. Coomaraswamy: I think torture is so endemic that it is going to take a long time before we turn the tables, but to some extent at least the NHRC has created some kind of restraint. The police are aware of the NHRC's role. But that has also created a backlash. The police are hostile to us. I am very worried about extrajudicial killings; recently there have been eighteen cases of shootouts with the police. The challenges are really training the police force in a way that makes it a community police. We are not talking about isolated cases of rogue policemen: we are talking about the routine use of torture as a method of investigation. It requires fundamental structural changes to the police force to eradicate these practices

ANNEX FIVE

Procedural Implementation of Article 155 G (2)- 17 Amendment*

December 2003

* Compiled by Dr J. de Almeida Guneratne,P.C. and Kishali Pinto-Jayawardena in collaboration with Ali Saleem and Basil Fernando, Asian Human Rights Commission, Hong Kong

Amendment 17, Section 155.G.2

" The Commission shall establish procedure to entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance with the provisions of any law enacted by Parliament for such purposes."

– Explanatory Note

The 17th Amendment to the Constitution of Sri Lanka, in so far 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 155 (G) 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

Creation of the procedures is a constitutional obligation that has yet to be realized. Although ASPs, DIGs and the like have, so far, had the duty of investigation of complaints, disciplinary procedures in the police thus far have been arbitrary and ad hoc. The following submission is a working template that seeks to fulfill the mandate of Amendment 17 Section 155.G.2.

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.

Preamble: Principles of Amendment 155.G(2)

Whereas the 17th Amendment amending 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 aforesaid, 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 their capacity to enforce law and order in the context of a severe deterioration of discipline, inadequate training and common prevalence of practices of torture by 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

01. 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;

02. 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 '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 abuse words, threats or intimidation on complainants or witnesses;
- (v) Deterring complainants/witnesses who come to make complaints or statements;
- (vi) Failure to maintain records- 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 cooperate 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 Supplementary Document 1 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) Failures to make notes on each stage of the arrest;
 - (ii) Failure wear 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 NPC if reasons are provided for in writing by the complainant as to why investigations have been unsatisfactory and such reasons are accepted by the NPC or an officer delegated by the NPC.

1.2 Public Complaints and Complaints by Aggrieved Parties Against the Police Service

Individuals or organizations may submit complaints relating to general deficiencies or concerns of 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 prevalence of torture in a particular police station may be the subject of such a complaint. Similarly, misbehavior of 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 immediate police response to crimes in a locality

and similar violations such as number of fabricated cases and delayed investigations and alike issues of police “mis-management and abuse of power in public sphere” pertaining to particular area can come under this category.

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

1.3 The 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 NPC.⁶⁷
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 System⁶⁸

All Officers-in-Charge of police stations, ASPs and/or DIGs and/or SPs 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 or / and 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.

⁶⁷ Interestingly, in the UK IPCC system, complaints are submitted to the Police which then is passed to the IPCC. It is only when there is a refusal to record a complaint that the complainants have a right to appeal to the IPCC against the refusal. In the Dec 2000 *Complaints Against the Police* (hence CAP) the reason for keeping the complaints recording procedure within the police authority is because “To do otherwise would complicate and lengthen what is a routine process which causes little friction except when there is a refusal to record.” However, this system might not be well suited for the Sri Lankan context.

⁶⁸ This method is in effect in the UK-IPCC.

1.5 Pro-Active Role of the NPC

The NPC may undertake *suo motu* investigations into all or any of the instances set out in sub section 1.4 above.

1.6 The Registering, Documenting and (Archiving is separate of registration and documentation) of Complaints

1. 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 it was 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. Complainant must be informed of the unique number for further follow up.
 - d) The copies of complaints should also be maintained on a computerized 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 sub-section 1.1, 1.2 and 1.4 can be cumulatively evaluated by the NPC at a given time and/or referred to by a member of the public upon authorisation given to that effect by the NPC
 - f) All steps towards the protection of records must be followed. The NPC should draft regulations relating to the protection of the documents of the NPC which would allow aggrieved parties and/or members of the public access to completed case records upon permission given by the NPC.

2. How the Complaints will be Archived: The NPC 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 sub-section 2.2 shall apply *mutatis mutandis*.

Stage One

- a) 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 will issue such instructions as required for the protection of the victim such as immediate medical attention when required, or reallocation 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.

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

Duties of a NPC 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.

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

An authorized Special Investigation Unit should conduct 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 NPC.

Stage Two

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

- Where the NPC is satisfied that evidence of a criminal offense or offences exist under the prevalent law the NPC will refer the matter for investigation to the relevant authorities with the observation of the NPC that a prima facie case exists against the alleged perpetrators. A information note should be conveyed to the complainant.
- NPC 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 NPC unless the said reports are excluded from public scrutiny on express orders of the NPC.

2.2.Procedure Relating to Complaints that Constitute Breach 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 wilful refusal and/or failure of any police officer to comply with a request made by the NPC (or an officer delegated by the NPC) 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.

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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 NPC will record all the relevant statements and collect all evidence of acts of police officer/s that are categorized as breach 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 NPC for inquiry; ;

- On the basis of the comprehensive investigation contemplated in the preceding sub-section, the NPC 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 NPC and will be conducted by a three member panel of the NPC presided over by the Chairman or by a member of the NPC with authority delegated thereto by the Chairman of the NPC.
- The complainant and/or affected persons thereto will be notified by the NPC 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 NPC shall make their findings in writing to the NPC.
- On the basis of such finding, the NPC will take appropriate disciplinary action as provided by law. Such decision must be conveyed in writing to the complainants, the perpetrators and the IGP;
- A right of appeal from such decision of the NPC 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 NPC shall delegate the complaint to an officer of the Special Investigation Unit of the NPC for follow up action;
- b) Such officer 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, 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 NPC.

Provided that, if a written request is made to the NPC 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.

- (d) Upon the receipt of the report, a three member Committee of the NPC shall deliberate on 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 NPC if such is considered to be necessary. Such views may be furnished in writing or the committee of the NPC may also make available time for oral representations;
- (e) Such deliberations shall be in public unless the NPC sets down in writing, the reasons why it should be held in camera;
- (f) The report of such sub-committee of the NPC shall be submitted to the NPC 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 NPC shall, within two months of the report being submitted, authorise the implementation of the same with suitable modifications;
- (g) The findings of the NPC shall, along with the investigative report, be filed in the offices of the NPC to enable public scrutiny unless reasons are given in writing by the NPC as to why the report and/or the findings cannot be made public.

Chapter 3: THE POWERS OF THE NPC, ITS PUBLIC ACCOUNTABILITY AND MATTERS INCIDENTAL THERETO

3.1. The Accessibility of Information for an Effective NPC to complete Investigations

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

In terms of the power given to the NPC under Article 155G(2) to investigate complaints against any police officer or the police service, which has been detailed in these Procedures, all police officers are under

- (a) a legal obligation to produce and/or give access to the NPC documents or other material as called for;
- (b) allow members of the NPC to take away the actual or copies of the documents or other material, and
- (c) allow entry to police premises;⁶⁹

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

1. NPC should have full access, when appropriate, to all necessary information from both the public and private sector.
2. Simultaneously the NPC should abide by the following guidelines when handling the information:
3. The NPC in their dealings with the complainant, should have the discretion to disclose information from the investigation of complaints subject only to the harm test;
4. The NPC should have the freedom to use information received from reports and other documents from police forces, after excluding sensitive or demonstrably confidential material, to compile rules of guidance, promotional and other material for the purpose of continuous improvement in the complaints procedure and in the interests of raising public awareness and understanding of the complaints procedure.

3.2 The NPC 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 to the complainant 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 requested, a member of the NPC should meet the complainant or the family of the complainant, explain the results of the investigation and findings.

3.3. Duty of Fairness on the Part of NPC Officers and Prohibition on Collusion with the Police in any Form or Manner Whatsoever

1. All officers of the NPC 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 NPC found colluding with any police officer or officers in any form or manner whatsoever in the carrying out of their duties as contemplated

⁶⁹ These are taken from the UK- CAP Dec 2000

by these Rules will be immediately suspended from work and upon inquiry being held, will be forthwith dismissed from the service of the NPC.

3.4. NPC and Public Accountability

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

1. The NPC should present an annual report of its activities through means that will be accessible to the public.
2. NPC finances should generally be produced and available.
3. The NPC should provide an opportunity to assess the public confidence of NPC, through public debates and surveys.

Supplementary Document 1

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 available³ or cause to make available State documents or copies thereof of outside parties without the permission of an appropriate authority.

12. Alter, distort or destroy 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.
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 willfully, 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 NPC, as well as all members of the police service, should know what constitute breaches of discipline in the police force and what are consequences of each type of discipline that is breached.
2. For this to happen it 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 to be long; however, breaches of discipline common to Sri Lankan police must be included in such a listing.

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

Supplementary Document 2

RULES RELATING TO ARREST LAID DOWN BY THE INDIAN SUPREME COURT IN D.K. Basu Vs. State Of West Bengal (1997 1 Supreme Court Cases, p416)

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 measurers:

(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 insist 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 atleast 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,