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State Violence in Sri Lanka

**An alternative report to the Human Rights Committee
presented by the
Asian Legal Resource Centre (ALRC)
Centre for Rule of Law, Sri Lanka
People against Torture (PAT), Sri Lanka
and the
World Organisation Against Torture (OMCT)**

in collaboration with the following organizations:

**Families of the Disappeared (Kalape Api), Sri Lanka
Human Rights and Development Centre (SETIK), Sri Lanka
Janasansadaya (People's Forum), Sri Lanka**

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Foreword:

Writing alternative reports is one of the main activities of the OMCT and a vital source of information for the members of the Committee Against Torture. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture.

Under the aegis of the European Union and the Swiss Confederation, the “Special Procedures” program presented this report on state violence and torture in Sri Lanka at the 79th session of the Human Rights Committee, which took place in Geneva from 20th October to 7th November 2003 and during which the Sri Lankan Government’s report was examined.

This report was jointly prepared by the following NGOs working for the promotion and protection of human rights in Sri Lanka:

- ❖ Asian Legal Resource Centre (ALRC)
- ❖ Centre for Rule of Law
- ❖ Families of the Disappeared (Kalape Api)
- ❖ Human Rights and Development Centre (SETIK)
- ❖ Janasansadaya (People’s Forum)
- ❖ People against Torture (PAT)

Three delegates representing the coalition presented the report during the information session and shared their observations and concerns with the members of the Human Rights Committee.

This study is divided into three parts. Part I provides a general overview of torture and inhuman or degrading treatment (in prisons in particular) committed by state officials. Parts II and III deal with torture and inhuman or degrading treatment of women and children respectively. This rather novel approach sheds light on the situation of particularly vulnerable groups of people. The Human Rights Committee Concluding Observations and Recommendations adopted following examination of the Sri Lankan Government’s Report are included in the Appendices.

PART 1: STATE VIOLENCE IN SRI LANKA

Introduction

The Asian Legal Resource Centre (“ALRC”) is a regional, independent non-governmental organization (“NGO”) with General Consultative Status with the Economic and Social Council of the United Nations. Its mission is to promote and protect human rights 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.

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

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

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

Often analysis of human rights in Sri Lanka is based on the assumption that rights violations are mostly due to civil strife in the northern and eastern parts of the country and that, consequently, the most effective way to improve the situation is to resolve the conflict. However, close observation of the sequence of events leading to the breakdown of law and order in Sri Lanka demonstrates that such an assumption is not only simplistic but also fatally flawed. It can even be argued that without a serious attempt to improve the institutional framework of the rule of law and democracy in the country as a whole, no lasting solution can be found to the conflict in the northern and eastern parts of the country. In fact, the ceasefire agreement in effect in recent months shows that in order to make further progress, it is essential that the country’s longstanding problems with rule of law be addressed. Moreover, institutional flaws and subsequent delays in dealing with the denial of basic rights have created tremendous insecurity in the rest of the country, where the vast majority of the population

lives. The following comments refer to the basic institutional failures that need to be addressed if Sri Lanka's obligations under ICCPR are to be complied with.

I. Article 2 of the ICCPR-Effective implementation

Under article 2 of the ICCPR, the state parties are under obligation to take legislative, judicial and administrative measures to ensure implementation of the ICCPR. This obligation is very much of a practical nature. It means that institutions must be created and provided with resources to uphold the rights enshrined in the ICCPR.

1. Police system

One of the basic institutions that a state party needs in order to carry out the obligations under the ICCPR is a proper police system. When the police system is fundamentally flawed, none of the rights in the ICCPR can be guaranteed. In Sri Lanka the police system is seriously flawed. These flaws are acknowledged by the government-appointed commissions themselves, including the Justice Soertzs Commission of 1946, the Basnayaka Commission of 1970, the Jayalath Committee of 1995, and the Commissions of Inquiry into the Involuntary Removal and Disappearance of (Certain) Persons («Commissions on Disappearances»), which were set up in 1994 and whose final reports were submitted in 2001. Many other official documents have also acknowledged the serious defects of the police system. The National Police Commission («NPC») created under the 17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka («the Constitution») was intended to prevent political interference with the police force. The newly appointed NPC has reported problems with the police force on several occasions. The defects of the system identified by these commissions are as follows:

a. **Militarization of the police force:** Police have been used for riot control purposes and control of civil conflict. Since the early 1970's, Sri Lanka has gone through a period of violence which has transformed the Sri Lankan police force from a crime detection and law enforcement agency to an insurgency suppression mechanism. As shown in the reports published by the Commissions on Disappearances, police stations served as detention centers, torture chambers, and places where many thousands of people disappeared. Police stations throughout the country were used for these purposes. A profound transformation of the system took place as a result of this. Extreme forms of torture were routinely used against suspected insurgents at police stations. These extreme forms of torture were also used on persons suspected of petty theft or even on those arrested on mistaken identity.

Some examples may illustrate the existing situation. In one case, the Supreme Court found police officers from the Wattala Police Station guilty of torturing Waragodamudalige Gerald Mervyn Perera (Supreme Court Fundamental Rights Application SCFR 328/2002), arrested on mistaken identity. Within a few hours of his arrest, he was assaulted so severely by police officers that he suffered renal failure and had to be kept on a life support system for 2 weeks. Moreover, he suffered serious damage to his arms when police officers hung him from the police station roof.

In another case, officers from the Ankumbura police tortured a 17-year-old boy named B. G. Chaminda Bandara Jayaratne (17) (AHRC UA-35-2003) from 20-28 July 2003 by hanging him by his thumbs. Doctors later declared that he had permanently lost the use of his left arm. The method of torture was described in an affidavit signed by the young victim thus:

“Then my hands were swung behind my back and my thumb tied together with a string. They put a fiber string between my thumbs and hung (me) from a beam on the ceiling. One officer pulled the fiber string so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numbed. Then the OIC kept hitting me on my legs and the soles of my feet with wicket stumps used for cricket (AHRC UA-35-2003 and Supreme Court Fundamental Rights Application No. SCFR 484/2003) (see From the Affidavit filed by the victim in his case to the Supreme Court)

Similar forms of torture were also used in the case of Galappathy Guruge Gresha De Silva (32) (*article 2*, Volume1, Number 4, August 2002, p. 24) who also lost the use of both his arms due to such torture. Reports are received from all over the country of similar types of torture used at the police stations, which clearly show that the habits formed in the past when dealing with insurgents are now being commonly, and routinely used at the police stations. Thus a central issue for implementation of Article 2 of the ICCPR is to find ways to stop such methods and create a police force that is committed to the rule of law. When the police force itself is seen to be blatantly breaking the law, it is not possible for the State Party to implement its obligations under the ICCPR.

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

"I may add that the manner in which the B.C.I.B.s [Grave Crimes Information Book], R.I.B.s [Register/Investigation Book] etc. have been altered with impunity and utter disregard for the law makes one wonder whether the supervising A.S.P.s and S.P.s are derelict in the discharge

of their duties or actually condone such acts. In a case in which I pronounced judgment a few days ago too, I found that the B.C.I.B. had been altered, and therefore it appears that it was not an isolated instance. Thus, the police force appears to be full of such errant officers. The question is what is the 5th Respondent Inspector General of Police doing about it? In my view, it is unsafe for a Court to accept a certified copy of any statement or notes recorded by the police without comparing it with the original. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law. We may ask with Juvenal, *quis custodiet ipsos custodios?* Who is to guard the guards themselves?" [Justice Edussuriya with two other Supreme Court judges agreeing in the case of Kemasiri Kumara Caldera (S.C. (F.R.) Application No. 343/99)]

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

b. **Political interference with the police force:** was the acknowledged reason for the 17th Amendment to the Constitution of Sri Lanka. Political interference with the police disrupts the command structure within the police force. Political interference means that politicians play a commanding role within the police force, thereby seriously disrupting the normal principles of an organization driven by a unified command system. The NPC have declared on many occasions that they would stop this process and that the police force would be brought within an internal command system ("No more political interference with police transfers, NPC Chief," by Jayampathy Jayasinghe, *Daily News*, 31 March 2003). This objective needs to be achieved if the obligations under the ICCPR are to be respected and observed by the state parties.

c. **Loss of competence in criminal investigations resulting in fabrication of cases against innocent persons as a substitute to the real culprits:** A study done by ALRC (*article 2*, Volume 1, Number 4, August 2002) on custodial deaths and torture occurring at police stations in recent years clearly establishes a pattern whereby innocent persons are accused of serious crimes instead of actual criminals simply because the police are unable to find the real culprits. Often when many uninvestigated crimes pile up at a police station, innocent persons are arrested and forced to confess to crimes that they know nothing about. Unresolved crimes often lead to strong public protest. When charges are filed against someone, anyone, the crime is considered to be resolved and police officers may even be promoted as a result.

- In the well-known case of a murder of a 76-old Catholic priest named Fr. Aba Costa 10 May 2001, Kurukulasuriya Pradeep Niranjana (30) and another male named Gamini were arrested by the police within 3 days of the murder and allegedly severely assaulted. Thereafter, they were charged with the murder of Fr. Aba Costa and kept in remand for a long time. After almost two years the Attorney General withdrew the charges against the accused on 21 February 2003 as the actual criminals had allegedly been found. It later turned out that some senior police officers of the area were actually involved in the crime. (Television reports in the program called “Thumbprints,” broadcasted by Rupavahini (national television station in Sri Lanka).
- Waragodamudalige Gerald Mervyn Perera (39) (Supreme Court Fundamental Rights Application SCFR 328/2002) was arrested and tortured on 3 June 2002 by officers from the Wattala Police Station for supposedly being involved in a triple homicide case. The Supreme Court later ruled that it was a case of mistaken identity.
- Mulakandage Lasantha Jagath Kumara (23) (Supreme Court Fundamental Rights Application SCFR 471/2000) was tortured from 12-17 June 2000 by officers from the Payagala Police Station. The victim later died on 20 June 2000 from the injuries suffered at the police station. The Supreme Court declared on 8 August 2003 that the police had tortured the victim. The arrest and detention at the police station was for the purpose of making the victim responsible for several unresolved crimes.
- Lalith Rajapakse (17) (AHRC UA-19-2002) was severely beaten on 19 and 20 April 2002 by officers from the Kandana Police Station and remained in a coma for 3 weeks. He had been accused of involvement in two petty theft cases even though no one had filed any complaints against him and there was no proof to implicate him.
- Galappathy Guruge Gresha De Silva (32) (AHRC UA-20-2002; *article 2*, Volume1, Number 4, August 2002, p. 24) was arrested and tortured on 22 March 2002 by officers from the Habaraduwa Police Station with a view to implicate him in a murder case.
- Bandula Rajapakse, R. P. Sampath Rasika Kumara, Ranaweera and Chaminda Dissanayake (*article 2*, Volume1, Number 4, August 2002, p. 24), were arrested and tortured on the 19 and 20 February 2002 by officers from the Ja-ela Police Station. They became the scapegoats in an investigation into the loss of 46 racks of clothes from a company store, despite the fact that police had no evidence against them.
- Ehalagoda Gedara Thennakoon Banda (36) (AHRC UA-25-2002) was arrested and tortured on 12 June 2002 by officers from the Wilgamuwa Police Station and later released without any case. The police had attempted to implicate him in some illicit liqueur charges despite lack of evidence.
- Eric Antunia Kramer (AHRC UA-36-2002) was arrested and tortured on 28 and 29 May 2002 by officers from the Mutwal Police Station. Here again, police officers were trying to implicate him in

the robbery at the company where he worked without any evidence against him. He was not charged with any offence later.

- 10-year-old T. K. Hiran Rasika and 12-year-old E. A. Kusum Madusanka (AHRC UA-30-2002) were arrested and tortured on the 8 July 2002 by officers from the Hiniduma Police Station. Again, police officers were trying to implicate these children in a petty theft at the school cafeteria on the basis of unsubstantial evidence.
- V. G. G. Chaminda Premalal (AHRC UA-31-2002), a 16-year-old student, was arrested and tortured on 9 and 10 July 2002 by officers from the Aralaganvila Police Station attempting to implicate him in a petty theft case without any evidence.
- The following cases were fishing expeditions whereby police tortured individuals without any grounds for suspicion.
- Subasinghe Aarachchige Nihal Subasinghe (40) (AHRC UA-01-2003) was tortured (dates) by officers from the Keselwatte Police Station, Panadura;
- Korala Gamage Sujith Dharmasiri (23) (AHRC UA-02-2003) was tortured from 1-8 January 2003 by officers from the Kaluthara South Police Station; Anuruddha Kusum Kumara (15) (AHRC UA-01-2003) was tortured on 29 December 2002 by officers from the Wellawa Police Station, Kurunegala District;
- Bambarenda Gamage Suraj Prasanna (17) (AHRC UA-05-2003) was tortured on 8 January 2003 by officers from the Matugama Police Station; (see earlier)
- K. T. Kumarasinghe alias Sunil (33) (AHRC UA-05a-2003) was tortured from 1-4 April 2003 by officers from the Galagedara Police Station;
- Hetti Kankanamge Chandana Jagath Kumar (23) and Ajith Shantha Kumana Peli (32) (AHRC UA-13-2003) were tortured on 13 May 2003 by officers from Biyagama Police Station;
- B. G. Chaminda Bandara Jayaratne (17) (AHRC UA-35-2003) was tortured from 20-28 July 2003 by officers from the Ankumbura Police Station. According to the doctor's report, he permanently lost the use of his left arm after police officers hung him up by his thumbs;
- Bandula Padmakumara (14) and Saman Kumara (17) (AHRC UA-41-2003) were tortured from 20-28 July 2003 by officers from the Ankumbura Police Station;
- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003) was tortured from 26-28 August 2003 by officers from the Wattedagama Police Station;
- Garlin Kankanamge Sanjeeva (25) (AHRC UA-41-2003; AP news under the headline, "Fearing police may steal body of her alleged torture victim son, mother buries body in garden" on 1 September 2003) was tortured by officers from the Kadawata Police Station (though the police claimed the victim had committed suicide at the police station, the victim's mother openly challenged the postmortem investigation conducted at the police station and buried her son's body in the family

garden until she can get an impartial investigation. The burial was also intended as a means of preventing the police from stealing the body);

- Padukkage Nishantha Thushara Perera (23) (AHRC UA-45-2003) was tortured on the 7-10 September 2003 by officers from the Divulapitiya Police Station;
- Mohamed Ameer Mohamed Rizwan (23), Suppaiya Ravichandran (23) and Abdul Karim Mohamed Roshan Latif (30) were tortured from 30 August to 6 September 2003 by officers from the Wattala Police Station and Peliyagoda Police Regional Headquarters;
- Dondage Pushpa Kumara (14) was tortured on 1 September 2003 by officers from the Saliyawewa Police Post of the Putlam Police Station.

d. **Torture of children:** see above section for details of cases

e. **Extra-judicial killings and custodial deaths:**

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

f. **The loss of the disciplinary process of the police:** The Supreme Court of Sri Lanka made the following observations on this matter:

“There has been no decline in the number of credible complaints of torture and cruel, inhuman and degrading treatment whilst in police custody. 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 the very 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 aimed at preventing violations of Article 11 and ensuring the proper investigation of those which nevertheless take place followed by disciplinary or criminal proceedings, may well justify the inference of acquiescence and condemnation (if not also of approval and authorization).” [Justice Mark Fernando, with other two judges agreeing, in Gerald Mervin Perera’s case, SCFR 328/2002]

In a statement issued by the NHRC of Sri Lanka on 4 September 2003 an agreement reached by the NHRC and the IGP (Inspector General of Police) mentioned the following item:

"The NHRC agreed to draft guidelines together with the NPC and the IGP (Inspector General of Police) for the dismissal of officers whom the Supreme Court has found to have violated fundamental rights (translation from Sinhala)."

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

2. *Judicial administration: Lack of a Public Prosecutor’s Department*

Another institution that needs reorganization if there is to be any change in the practices ensuring impunity is the Attorney General's (AG's) Department. The most important aspect of such reorganization would be the separation of the public prosecution function from the AG’s department and the creation of a public prosecutor’s office. We would like to highlight the fact that such a separation has been recommended by numerous bodies in the past including: the Justice Soertsz Commission (1946), the Basnayake Commission (1970) and the Jayalath Committee (1995). In 1973,

with the introduction of Administration of Justice Act, the position was created but later abolished after 1977.

If the inherent inefficiency in the present setup is to be negated, a separate department for the public prosecutor needs to be created whereby prosecuting functions could be more thoroughly specialized and pursued. If the existing obstacle for proper prosecution were changed, it would remove one of the major impediments to the rule of law in Sri Lanka.

In 1973 the Office of the Public Prosecutor was created in Sri Lanka. However, this office was abolished after 1978. In subsequent years, like all other public institutions, the independence of the Department suffered a great deal. In recent years, attempts have been made to improve the situation. However, without the development of an independent public prosecutor's department, it is quite unlikely that a suitable prosecution department dealing with serious crimes can be instituted. This is particularly true for crimes where the alleged perpetrators are police officers and other state officers.

Due to the nature of the complete separation between criminal investigations and prosecutions prevailing in the country, the AG's Department has a close connection with the police officers in relation to crimes that are being prosecuted. This is because the AG's Department depends entirely on the police for investigations. The investigation of normal crimes is in the hands of the police. The officers of the AG's Department base their prosecution on the investigations carried out by the police. Thus, close co-operation between such investigators and the prosecutors is inevitable. Some of these very same police officers or their colleagues have often been accused of torture, custodial deaths and the like.

Naturally, in such circumstances conflicts and even public perception of conflicts of interest arise. Some units have been created under the AG's Department for the prosecution of state officers. These include, for example, the Disappearances Investigation Unit (DIU), established in November 1997, and Prosecution of Torture Perpetrators Unit (PTPU), established recently. These units function under the direction of the AG's department. While they may be free to investigate when authorized to do so, they do not have the power to initiate investigations independently when reliable complaints are submitted to them. Further prosecution into matters entirely depends on the discretion of the AG's department.

The units suffer from the same general defect of the Attorney General's department. For example though the Presidential Commissions... "recommended prosecution of a large number of persons, only a handful of cases were filed. Some of them were even lost due to the defects of prosecution. Due to considerable delay in prosecution before vital witnesses make their statements in court (which can be

as long as 12 years), charges are dropped (ALRC written statement “Enforced or involuntary disappearances in Sri Lanka (E/CN.4/2003/NGO/88) 2003 on disappearances). The same holds true in torture cases. While complaints are made immediately after the incident, investigations often begin quite some time later, which creates doubts about the credibility of evidence and identification. The prevailing sentiment is that such investigations and prosecutions are delayed or otherwise hampered by the unwillingness of the state to prosecute state agents. Another commonly held view is that investigations by such units are conducted only due to pressure coming mainly from the international community.

3. *Legal provisions for curbing bribery and corruption*

Inadequate legal provisions for curbing of bribery and corruption and the defects in the existing legal procedure: The studies by Transparency International (Sri Lanka) have exposed many defects relating to the Commission to Investigate Allegations of Bribery and Corruption (hereinafter the "Bribery Commission"). The following observations are relevant in this regard:

a. The investigating officers of the "Bribery Commission" must be drawn from the Police Department itself. This undermines the credibility of the "Bribery Commission" and particularly raises doubts as to the capacity of the Bribery Commission to investigate bribery and corruption within the police force and of politicians who patronize the police. The Bribery Commission does not have the capacity to recruit personnel on its own. The study of successful models such as the Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administration Region of the People's Republic of China, clearly shows that one of the most important elements of a successful institution is complete independence from the police. Particularly in the early years of anti-corruption efforts, the ICAC had focused on creating accountability within the police force. Given the historical circumstances of policing in Sri Lanka as described in paragraph 1 above, it is counter-productive to have police officers as investigators in the Bribery Commission. The 2001 annual report of the Bribery Commission, issued very recently, showed that there had not been any successful prosecutions on corruption or bribery for the year 2001.

b. The Bribery Commission also lacks financial independence: The Bribery Commission depends on the Treasury for its funds and thus the executive subjects it to indirect control. There are no mechanisms to guarantee independence of the Bribery Commission through funding that comes from sources beyond executive control. A properly functioning corruption control agency requires adequate funding for many office functions such as investigations, prosecutions and education. Dealing with fraud and corruption in the modern context requires the capacity to use modern technology and forensic facilities. In fact, due to limited funding, it can be said that Bribery Commission is not

equipped to deal with bribery and corruption in the country except by way of some symbolic investigations and prosecutions. The "Bribery Commission" has not demonstrated its ability to carry out its mandate.

c. Due to some obsolete legal provisions, the Bribery Commission cannot function when a vacancy for a commissioner is not filled. As a result, the Bribery Commission was not functioning for a considerable amount time pending appointment for vacancies.

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

e. The general public feels that there is no real political resolve to genuinely establish a powerful corruption-control agency in the country. The people also feel that the existing structure is but a symbolic institution, lacking real capacity and resources to control corruption to any significant degree.

The implementation of Article 2 of the ICCPR is seriously hampered by the institutional defects of the three institutions mentioned above. One of the results of these has been the failure to implement many of the recommendations made by United Nations bodies in the past.

II: Article 6: right to life and disappearances:

Article 6 of the ICCPR guarantees the inherent right to life of every human being; law shall protect this right; and no one shall be arbitrarily deprived of his/her life. In violation of this right, large-scale enforced or involuntary disappearances have taken place in southern, northern and eastern Sri Lanka. According to recent NHRC publications, around 20,000 people have fallen victim to enforced and involuntary disappearances since 1995. This includes some government soldiers too. However, the most of the disappearances relate to Tamil youth.

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

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

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

The Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) (Session Paper No. I - 2001) dated March 2001 stated that it received 10,136 complaints to investigate because previous commissions "[had] failed to launch the investigations." The Final Report also stated that at least a further 16,305 cases had been brought to the Commission's attention but were outside of its remit (ch. VII, p. 45), making the number of disappearances in Sri Lanka one of the largest in any country in modern times.

Although this gross violation of human rights has been assessed, thus far national and international agencies have failed to come up with any proposed measures to adequately deal with the problem. The lack of genuine initiatives by the authorities to prosecute the perpetrators of enforced and involuntary disappearances has demoralized the families and loved ones of victims. Such reluctance to act according to law and punish the perpetrators has also reinforced the general loss of faith in the rule of law and law enforcement agencies in Sri Lanka, especially the Department of the Attorney-General, which acts as the chief prosecuting authority. Meanwhile, as the Government of Sri Lanka has ignored most recommendations coming from the Working Group and also all of the domestic Presidential Commissions of Inquiry (which even named some of the persons to be investigated further and prosecuted) disappearances have continued; the National Human Rights Commission is investigating new cases.

The number of cases the Attorney General's Department claims to have filed against the perpetrators of this crime against humanity is less than the number of cases actually approved for prosecution by the Presidential Commissions.

In fact, the Working Group on Enforced or Involuntary Disappearances itself has stated that their recommendations have not been implemented. The performance the AG's department on this matter is a serious disappointment to family members of missing persons and local and international human rights organizations. The fact that there has been little progress in prosecution almost a decade after these horrendous crimes were committed is testimony of the inability and unwillingness of the AG's Department to effectively and efficiently deal with the issue. The only reason for not taking action seems to be a political one. More specifically, there is political unwillingness to deal with senior police, military and political figures who were responsible for causing these disappearances. Though

the AG's Department had a special unit to prosecute those responsible for disappearances, this unit did not have the political liberty to take action as requested by the Presidential Commissions.

There are no excuses for committing crimes against humanity. Sooner or later these crimes need to be dealt with by rendering justice according to internationally established norms and standards. It should also be noted that the present crisis in law enforcement agencies has a direct bearing on the era where mass disappearances were carried out providing ample impunity for the police to carry out these crimes. That many law enforcement officers and politicians who carried out these crimes remain at large is common knowledge. Such a situation makes the ordinary folk lose faith in the justice system in the country. This is a country where the politicians and law enforcement officer can commit crimes against humanity and go free.

III. Article 7 of the ICCPR - Freedom from torture

I. General situation

In August 2002, the ALRC published the "Special Report on Torture Committed by the Police in Sri Lanka" particularly those arising out of criminal investigations. The UN Special Rapporteur on Torture, Mr. Theo Van Boven in his latest report dealt lengthily on complaints of torture in Sri Lanka, "Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted pursuant to Commission resolution 2002/38, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received," E/CN.4/2003/68/Add.1, Pghs. 1486-1695).

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (Act No.22 of 1994) was enacted in Sri Lanka under much international pressure in 1994. However, despite the existence of numerous complaints by victims of torture by state officials, no effective action has been taken. It is true that a Prosecution of Torture Perpetrators Unit (PTPU) was appointed under the AG's Department and that a few cases (The exact number is not known as the AG's Department has not published a list of cases.) have been filed by the PTPU. However, to date, there has not been a single trial or conviction. The usual process is to inform international bodies, including the UN, after cases have been filed but then to leave the matter pending. In principle, these cases should be prosecuted only by the High Court. However, sometimes cases are filed in the Magistrates Court and kept pending. Proper implementation of Act No.22 of 1994 is in the hands of the AG and his department. Therefore, failures in the actual prosecution must be attributed to this department. It is believed that no cases have been successfully prosecuted under this Act even though in paragraph 174 of the State Report, the government claims that there have been 10 convictions. The government should be asked to list those convictions imposed which it says have been procured under

the Act in paragraph 174 of the State Report. Further, the government should be asked what offences the perpetrators were convicted of and asked to give details of such cases and the sentences issued. Moreover, the government should explain why this information is not known to human rights organizations which have been following such cases closely.

Regarding the situation of minors, it should be mentioned that children who have suffered violence have to make complaints in the same way as adults, at police stations. Counseling, assistance with recovery and re-integration are largely absent and children who make complaints face serious difficulties at police stations and schools. Nevertheless, today more and more parents and children do make complaints.

2. *Types of Torture*

Types of torture taking place in Sri Lanka:

- Sitting on the spine or beating the spine. This can dislocate disks in the spine and cause full or partial paralysis;
- Using a pole to strike blows to the head or to books held on the head. This can cause fractures in the skull and brain injuries;
- Tying hands behind the back, tying the thumbs together, putting a string through the thumbs and hanging the person from the ceiling from the thumbs--this way a person can lose the use of arms temporarily or permanently;
- Tying the hands and legs and putting a pole through the legs in a way that a person can be rolled around: While being rolled the person can be beaten on the head and the soles. the police cynically call this method *Dharma Chakka* (literally meaning the wheel of the universal law especially in Buddhism);
- Hanging up and beating. This can cause renal failure and other serious injuries;
- Hitting on the genitals;
- Inserting genitals into drawers and closing them to cause pain;
- Pumping water through fire hose pipes on genitals;
- Inserting S-lon (PVC) pipes and other objects like glass bottles into the vagina;
- Beating on the ear. A person could fully or partially lose hearing this way;
- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles of the feet with a pole;
- Forcing the fingers into glass bottles making it very difficult to remove them;

- Threatening to kill;
- Threatening to rape;
- Threatening to plant drugs and press charges for possession of drugs. The punishment for such cases is very high.

Judging from the documentation of torture cases filed and from the Supreme Court judgments on non criminal torture cases, we note that these forms of torture usually take place at police stations. Appendix 1 has some extracts from medical examiners notes of torture victims at police stations.

3. *Threats to those who make complaints*

Those who make complaints against Torture come under severe threat from the perpetrators. This happens in almost all cases. In the case of Lalith Rajapakse (cited above), after he made the initial complaint, there was a plot to poison him. He had to make complaints to the NHRC and also to other authorities. AHRC intervened by writing letters and appeals to save the grandfather's and the victim's life. The victim had to live in hiding for about 5 months. Even now he has to be kept protected. In the case of Gerald Perera (mentioned above), he and the fellow workman received threats of assassination.

In the case of Dawundage Pushpakumara (14 years old) (UA-50-2003), attempts were made by the officers of Saliawewa Police Post to prevent the child from receiving medical treatment for the torture injuries. It was only through the intervention of the Child Right Authority that the child was removed from the Saliawewa police area to Colombo for treatment. After that, the police officers and a prominent politician threatened to burn the family's house if complaints against the police were not withdrawn. The AHRC notified the NHRC, NPC and other authorities of the family's complaint.

In the case of B.G. Chaminda Bandara (mentioned above) who was tortured by the Ankubura police and lost the use of his left arm completely due to the torture inflicted, his family was constantly threatened by the OIC of the Ankubura Police. The victim went into hiding and is still in hiding. In fact, such situations arise invariably in almost all cases after complaints have been made. One of the reasons for this is that despite complaints, police officers, particularly OICs, remain at the police station. OIC's have enormous powers in the local community. Some OIC's remain in the police stations even after Supreme Court has found them guilty of having tortured a person. For example the officer in charge of the Wattala Police Station, was found to have violated the rights of Gerald Perera (mentioned above), but is still the officer in charge of the same police station. All other OIC's of the police station named above are also still there. The Committee is urged to take this matter up with the government of Sri Lanka and to ensure protection for those who make complaints against the police.

4. *Compensation:*

There have been a few (non criminal) cases from the Supreme Court, which demonstrate an effort to deal with compensation on the basis of the seriousness of the crime of torture, a gross human rights violation. In such cases, the greater compensation is now being granted. However, in the majority of the cases, compensation granted is not proportional to the violation of rights guaranteed under article 7 of ICCPR. Most awards are between US\$ 100 to US\$ 500. In some cases, even when the victim dies from his/her injuries, the amount awarded is only around US\$ 250 (for example, the case of Josephine Mary Kanmany on behalf of Anthonyville Jesudasen, SCFR 807/ 1999). Act No 22 of 1994 states that the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is part of the law in Sri Lanka. However, the Supreme Court has transposed this in their judgments on violations of Article 11 of the Constitution, which is same as article 7 of the ICCPR.

Moreover, the state does not yet pay much attention to the trauma associated with torture. Facilities to treat trauma and provide adequate rehabilitation of torture victims are practically non-existent.

5. *Assessment of main reasons for police torture:*

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

- a. Breakdown of the command structure of the police: higher ranking police officers are perceived as being either inefficient or corrupt;
- b. OICs at police stations, in fact the real authorities within the police station, are incompetent, inefficient and often accused of being corrupt;
- c. Lack of training in proper methods of criminal investigations and lack of forensic facilities. In such circumstances, torture is perceived as both a legitimate and necessary means of investigation;
- d. Increase of crime and public pressure to deal with crimes. Since police officers have no real capacity to deal with crimes and are unable to find the real culprits, they often engage in torture just to find someone to blame and ease public criticism against them for the unresolved cases. As a result, many innocent people are severely tortured or even killed;
- e. Corruption: a recent survey carried out by Transparency International showed that the general public sees the police force as the most corrupt institution in the country. It is well known that a person can be tortured by the police at the request of an opponent;

f. Lack of disciplinary procedure: in the recent past, the disciplinary procedure has been almost completely lost. The only punishment resorted to is a transfer when there is public criticism. Dismissal for misconduct hardly takes place;

g. Absence of a proper and impartial public complaint mechanism: complaints against the police are usually referred to higher ranking police officers for investigations. It is quite well known that these officers try to work out some sort of a compromise rather than properly investigate a complaint. Often complainants are even threatened. As a result, the police officers know that no serious disciplinary measures will be brought against them if complaints are filed. Psychologically, this makes officers feel as if they can enjoy complete impunity. The NHRC, which could have dealt with the complaints against torture in the past, did not take a serious approach to such torture. They did not have a system of preliminary investigations. Their concern was to settle torture cases and they exerted pressure in the past even to accept settlements for sums as small as 10 US\$. In August 2003 the chairperson of the NHRC stated that she has ordered this type of settlement to be discontinued and torture cases to be seriously investigated. Another move is the implementation of the constitutional provisions requiring the NPC to establish a public complaints procedure to entertain, investigate and redress complaints against the police. The AHRC has submitted a draft for such a procedure to the NPC. This is being considered at the moment by the NPC.

6. Delays in decision Making in Fundamental Rights Applications and Institution of Prosecutions under Act No.22 of 1994:

Though Article 126 of the Constitution was to provide expeditious remedy for violations of fundamental rights, the actual time taken for a final decision is still too long. Even when a petition is filed within a month of a violation, the final decision usually takes two or more years. Victims of brutal torture at the hands of police officers and other state agents are thus required to wait too long before a final ruling in their cases. Meanwhile, the alleged perpetrators continue to hold office. In virtually all cases, torture victims come under heavy pressure to give up or settle cases. They also live in great fear of reprisals for having filed such cases against the police. They also receive death threats. Thus, delay in hearing such complaints of rights violations, helps to perpetuate such violations.

The filing of Criminal cases under Convention Against Torture--Act No 22 of 1994 takes even longer. Of the 59 cases submitted by Police Special Investigation Teams under the Act in 2002 to the Attorney General's Department, only 10 cases have been filed in Courts. The remaining files are with the Attorney General's department. (Lakbima- 11 September 2003). This is despite claims by the Attorney Generals Department that it prosecutes offences under the Act. Despite the many claims filed during earlier years, as mentioned earlier, we are thus far unaware of any successful prosecutions under the Act.

7. *Attorney General's Department attempts to reduce compensation for victims of torture.*

As a matter of principle, the Attorney General's Department does not appear for Respondents in Fundamental rights application under article 126. Though this is a step forward, representatives of the Attorney General's Department at the end of the trial urge the court to reduce the amount of compensation to be granted by the Court. This does not conform to the principles of international law regarding compensation. Even in cases where the Attorney General's Department admits rights violations, as for example, in the cases of torture, illegal arrest and imprisonment of Kurukulasuriya Pradeep Niranjana. After having been falsely charged with the murder of Fr. Aba Costa and tortured, he spent 21 months in custody before the attorney general ordered his release. However, in an attempt to protect real culprits, no steps were taken to compensate the victim and his family for their suffering.

8. *Complaints of negligence at postmortem and other investigations by state medical officers*

In many cases of torture, there are serious doubts about the professionalism of some of the district medical officers (DMOs) and judicial medical officers (JMOs). M. K. Lasantha Jagath Kumara was taken to a DMO the day before his death but the DMO failed to examine him properly or prescribe immediate medical attention. Sunil Hemachandra died from injuries suffered from torture while in police custody. There are several eyewitnesses who saw him being severely beaten by the police. He was 32-years old and had no history of epilepsy or any serious illness. His family adamantly denies that he ever had any seizures. However, the medical report left out the possibility of injuries due to assault and speculated on the possibility of a fall due to seizures caused by an illness. The family strongly believes that the medical examination was not carried out professionally.

In the case of Garlin Kankanamge Sanjeeva (AHRC UA-41-2003) whom the police claim committed suicide inside the police station, the family of the victim seriously doubts the medical officer's report. They even keep the dead body buried in the family garden in the hopes of getting an impartial autopsy. The family alleges that even the sketch of the body as found was fabricated. Further observers have challenged the possibility of an adult male being able to hang himself with the belt that the police presented. The fact that there were two people in the same jail cell at the alleged time of hanging but who saw nothing at all has also increased suspicion.

In the case of B. G. Chaminda Bandara Jayaratne (AHRC UA-35-2003), who lost the use of his left arm due to police torture, the Kandy Hospital did not even take him to a JMO for examination despite having made note of the young boy's allegation that he had been tortured by the police. He was discharged without any treatment. It was only after he was readmitted to Peradeniya Teaching Hospital

that doctors examined him and declared that he had permanently lost the use of his left arm. Human rights organizations continue to receive many such complaints of DMO and JMO shortcomings. Nevertheless, there are still a number of state medical officers who carry out their duties with great care and professionalism.

IV. Administration of justice

1. Ratification of International Treaties

Sri Lanka acceded to the CAT on 2 February 1994. Sri Lanka has neither signed nor ratified the Rome Statute.

2. Legal definition of torture

There are several provisions of the Torture Act (Act No. 22 of 1994) passed by Sri Lanka which do not fully comply with the UN Convention against Torture. The following observation by Amnesty International on this matter is relevant:

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

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

“In addition, subsection (3) of Article 2 of the Torture Act stipulates that "the subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence" under the Act. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences (see also below).

“Article 3 of the UN Convention against Torture, which provides that “[n]o State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, is not in effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in another country cannot invoke this provision to contest their return to that country. The failure to include this prohibition in the Act is a matter of deep concern because Article 3 of the UN Convention against Torture, in contrast to the UN Convention relating to the Status of Refugees, applies to all persons, not only asylum seekers. “The Committee against Torture in May 1998 recommended a review of the Torture Act in respect of each of the above three concerns. “Prior to the coming into force of the Torture Act, perpetrators of torture could be prosecuted under Sections 310 to 329 of the Penal Code which define the offence of causing harm and an aggravated form of causing harm, referred to as "grievous harm" in order to try and extract information or a confession which may lead to the detection of an offence or to compel the restoration of property or satisfaction of a claim. Such an offence of grievous hurt is punishable by imprisonment for up to ten years and a fine (no minimum punishment is stipulated).” [“SRI LANKA: Torture in Custody,” by Amnesty International, AI INDEX: ASA 37/010/1999, 1 June 1999]

In many of the cases in this report cited above, the type of injuries suffered by the victims would have qualified as “grievous harm” or even “attempted murder” where the prescribed punishment is greater than under the Act No 22 of 1992.

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

4. *National Institutions (The National Human Rights Commission)*

Though the National Human Rights Commission has been in existence for over 10 years, it has been unable to win the confidence of the people in its capacity to promote and protect human rights. The Asian Human Rights Commission and Asian Legal Resource Centre have made series of recommendations in this regard.

National Human Rights Commission opened many branches in different parts of the country. This was a welcome move and created lots of expectations. However, experience with these offices has so far not been encouraging and in some instances very negative. For example, NGO’s such as People Against Torture and Janasansaya have complained that regional coordinators of the Kandy office work

too closely with the police. They have also complained that an officer gave a press interview trying to discourage people from making complaints to the NGO's on human rights violations. (A Report on this appears in Janasmmathaya newsletter for August and September 2003). Despite these complaints, this officer is still the coordinator of the Kandy office. Proper reorganization of the regional offices and appointment of competent persons committed to human rights can help improve the human rights situations in various parts of the country. Further, complaints against officers must be properly investigated.

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

Fair trial guarantees have frequently been severely curtailed since 1971. The consistent use of emergency regulations and anti-terrorism laws has significantly limited the importance of the courts and diminished the value of lawyers as defenders. As a result, the scope of fair trial guarantees has diminished. Added to this, law enforcement agencies have acquired so much power that the legal profession has often had to adjust to a situation whereby they are either afraid to exercise their rights as lawyers or find themselves incapable of doing so. A resigned mentality has now developed in response to this situation. Confessions are admissible in the courts regardless of how they were obtained. Much valued due process rights no longer seem to be important.

The very system of protection underpinning the ICCPR is threatened by such developments. This threat must be seriously addressed. The proposed Prevention of Organized Crimes Bill is an example that even the law can be changed to legitimize the growing restrictions of basic guarantees of a fair trial. Some conservatives have even suggested replacing criminal trials with arbitration. With increasing pressure to prosecute violators of human rights, powerful politicians and higher ranking police officers are pushing for arbitration as an alternative to guaranteed due process. Thus, the very core of the ICCPR is now being undermined.

Special Cases

1 Case of Michael Anthony Emmanuel Fernando

UN Special Rapporteur on the Independence of Judges and Lawyers described this case as an "act of injustice by the Supreme Court of Sri Lanka." On 6 April 2003, the Chief Justice of the Sri Lankan Supreme Court and two other judges issued a one-year prison sentence to layman and human rights defender, Michael Anthony Emmanuel Fernando (aka Tony), for alleged contempt of court even though no investigation or trial ever took place. All Tony did was insist on being heard before his case was dismissed. Moreover, Tony had submitted a written petition for review of the decision but the

Chief Justice would not consider this petition. Later a revised petition for review of the decision was filed against the ruling, requesting that the case be referred to a five-bench sitting. The basis for the revised petition for review of the decision was that the court ruling was legally wrong, *per incuriam*. However, the same three judges did not refer to a five-bench sitting as requested. The ruling on the revised petition for review of the decision was set for 2 June 2003 but has not been rendered as yet.

The UN Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, made the following press statement on 28 May 2003 about this case: "I am pleased to learn that the petition for review of the decision of the Supreme Court in the Michael Fernando case would be heard by the same Court on 2-3 June 2003. However, the delay in filing the petition for review and the subsequent delay on the part of the Supreme Court fixing a date for hearing are matters of concern. Where the liberty of the subject is involved, particularly in this case where Mr. Fernando was subjected to grave injustice brought about by a flawed judicial process, one would expect the Supreme Court to move swiftly to remedy the same injustice. Four months during which period Mr. Fernando was incarcerated must necessarily be viewed as an inordinate delay. Nevertheless, I urge the Supreme Court not to delay this matter any further, hear the petition, set aside the patently flawed decision delivered on February 6, 2003 whereby Mr. Fernando was convicted and sentenced to one year imprisonment for contempt for court."

2 *Case of Kurukulasuriya Pradeep Niranjan*

In the case of Kurukulasuriya Pradeep Niranjan, the victim was arrested on 13 May 2001 and kept in remand prison until 21 February 2003 under the charge of killing a 76-year old Catholic priest, Fr. Alfred Bernard Cost (popularly known as Aba Costa), on 10 May 2001. This was a gruesome murder where the priest was stabbed 27 times and was strangled to death. The death was highly publicized throughout the country. On 21 February 2003, the Attorney General released Kurukulasuriya Pradeep Niranjan without any charges. Kurukulasuriya Pradeep Niranjan complained that he had been severely beaten to get him to confess to the murder of the Catholic priest. He also claimed that, because he had been accused of killing a Catholic priest, he was badly treated inside the remand. His family, including 4 children, suffered greatly from the accusation. Living in a Catholic area and having someone in the family accused of murdering a senior priest, Kurukulasuriya Pradeep Niranjan's entire family was ostracized. After charges were dropped and he was released, no compensation was ever paid for torture, illegal arrest and detention for a prolonged period of time or for the humiliation that he and his family suffered. The Human Rights Committee is respectfully requested to look into failures similar to this case where the state does not accept responsibility for its actions.

3 *Cases of Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003) and Sunil Hemachandra (28) (AHRC UA-34-2003)*

In both of these cases, the families have publicly expressed doubts regarding medical officer objectivity. After Garlin Kankanamge Sanjeewa was declared to have hung himself with his trouser belt inside the Kadawatte police station, his mother dug a grave in her garden in the hopes that a new autopsy could be conducted with different doctors. A short article in the International press regarding the case is attached. A great deal of print and public media attention has been given to the case and the impossibility that the death occurred in the manner described by the police. In the case of Sunil Hemachandra, three eyewitnesses testified that they had seen the victim being severely beaten by Moragahahena police officers. The family also submitted proof that the young man did not have any history of serious illness, epilepsy or seizures. The medical report made no mention of injuries to the head resulting from the assault but did mention that the deceased may have had a seizure and fallen. This case received a lot of media attention and cartoons were published in some newspapers ridiculing the findings of the medical officers. In both cases, families have called for public inquiries into the propriety with which this inquests were conducted. So far, the authorities have ignored their demands.

VI. Article 19 of the ICCPR- Freedom of Expression

The signing of the Memorandum of Understanding between the new government and the LTTE on 22 February brought to a halt a destructive conflict in the northern and eastern parts of the country. Raging for the past two decades, this conflict had taken its own very distinct toll on freedom of speech and freedom of the press. The main issues are now the distinct rights and responsibilities of the media and reform of the legal framework governing the media in Sri Lanka. Equally important is ensuring the right of journalists to life and liberty.

VII. Article 25 of the ICCPR

People have a right to freely elect their government. This implies, among other things, that elections must not be free of violence. However, the record in recent elections has been one of considerable violence. Thus, human rights organizations and UN agencies have a duty to bring this matter up with the state and all concerned parties. For this reason, it is essential that the constitutional provisions relating to the Election Commission be implemented under the terms of the 17th Amendment. People also have a right to seek political office. Today, there is a violent culture which prevents many people from standing for office. Threats of assassination and other serious consequences against persons seeking to participate in public affairs are widespread. Many human rights guarantees have been made meaningless by such violence.

The 17th Amendment, which governs the powers and functioning of the Elections Commission, is also defective in significant respects. The process regarding the state media in the event of contravention of an order of the Elections Commissioner is clear-cut, involving the appointment of a Competent Authority. However, the manner in which Parliament can provide for his functions and powers still remains to be enacted into law.

The question of enforcement of the Commissioner's power to prevent misuse of state resources is more problematic. In theory, the Commissioner can prohibit the use of any movable or immovable property belonging to the State or any public corporation by any candidate, political party or independent group as well as for the purpose of promoting or preventing the election of the above. However, there are no enforcement provisions to back this power. The 17th Amendment only imposes a vague duty on every person or officer having custody or control over such property to comply with and implement orders coming from the Commissioner.

It is interesting to note that in the drafting process leading up to enactment of the 17th Amendment, any person who contravened, failed or neglected to comply with any instruction or order issued by the Commissioner or indeed, any provision of the law relating to elections, would be committing an offence. The Commissioner was entitled to institute criminal proceedings in the appropriate court under his own hand. Where any particular offence was not punishable by any particular law, the Commission or the Attorney General could, in fact, take the matter to the High Court. Rigorous penalties could be imposed on a person found guilty of such an offence, up to a fine not exceeding one hundred thousand rupees or a sentence of seven years imprisonment or both.

However, this clause had been removed from the final draft of the 17th Amendment which was certified by the Cabinet as an urgent Bill, placed on the Order Paper of Parliament and passed by the same. As a result, the Commissioner's powers in this sense are largely cosmetic. The hand of the Elections Commissioner, particularly when it comes to misuse of state resources, needs to be considerably strengthened.

PART 2: STATE VIOLENCE AGAINST WOMEN IN SRI LANKA

I. Introduction

An increasingly brutal culture of social and political violence is the legacy of the war in the northern and eastern parts of the country and two youth rebellions. Such violence has created serious obstacles to the development of human rights in Sri Lanka over the past three decades.

Sri Lanka has a long record of violent conflict. The youth rebellion of the Janatha Vimukthi Peramuna (JVP) in the 1970s was methodically crushed by the then United Front Government of Sirimavo Bandaranaike. It was only a taste of worse things to come in the future.

The United National Party (UNP) regime came to power in 1977. With it, a new culture of political violence set in. Violence was practiced to systematically wipe out all opposition to the government. Not only did the UNP reorganize its trade unions to act as thugs to incite and carry out violence, certain politicians were allowed to have their own private armies and mobilize large crowds and mobs to wreak violence with impunity. Paramilitary organizations set up during this period, supposedly to help the armed forces and police fight the LTTE, also expanded the UNP's armed sphere of influence.

The violent politics of this era culminated in the re-emergence of the JVP in the late 1980s. The JVP intended to capture state power and establish a socialist state, but was suppressed by the State in an equally violent fashion. The violence thus unleashed only subsided in 1991 after the leader of the JVP was arrested and summarily executed by the Sri Lankan army. By that time, the ethnic conflict in the northeast had lent a constant brutal dimension to this pervasive violence, making Sri Lanka the country with the second highest number of disappeared persons (an estimated 12,000) in the world, after Iraq.

This culture of state violence has not abated. Instead, formal entities of state power continue to be supplemented by "informal" agencies of state violence. It is through this deeply troubled dual process that questions of legality, constitutionality and accountability of a variety of state practices are addressed and most often, circumvented.

In this process, the law itself has been commonly used as an instrument of repression. During this period, the principal legal provisions relating to public security in Sri Lanka are contained in the

Public Security Ordinance (PSO) No. 25 of 1947, as amended, and in the Prevention of Terrorism Act (PTA) of 1979, as amended.

Wide powers of arrest and detention given to the police and the armed forces under these laws were used to crush the JVP in the 1970s and 1980s. These laws also lacked minimum safeguards relating to conditions of detention and admissibility of police confessions to senior police officers, (though conviction on a mere confession is rare) and for cases of deaths in custody, they relaxed the normal procedure of inquests, postmortem examinations, disposal of bodies and judicial inquiry. These laws were used to fight Tamil separatism in the country as well as control Sinhalese youth extremism.

While Sri Lanka currently has no active conflict in any part of the country and the emergency regimes under both the PSO and the PTA have lapsed (though both laws still remain in the statute books), a legacy of violence remains, affecting both the physical safety and security of Sri Lankan women.

II. State-sponsored violence against women in North

In the decades-long ethnic conflict, women were the first and easiest victims. Government statistics estimate a total of 587,399 displaced persons in Sri Lanka (statistics taken at the end of 1993), of which 80% were Tamils and 40% were women. Displacement has occurred as a result of actions by the government as well as by the LTTE. The case of displaced women in Puttalam, an area in the northwestern province of Sri Lanka provides one example. Here, approximately 80,000 Muslims were forcibly evicted from the north by the LTTE in the 1990s and have since then been living in welfare centers (refugee camps) run by the government.

On the one hand, the catalytic role of violence brought women out to a devastating and devastated public arena. Traditional roles of Sri Lankan women underwent radical change and women were catapulted into hitherto unaccustomed roles of sole breadwinner and head of household.

In this scenario, women's activity focused on day-to-day survival issues such as how to get a pass, how to get food to eat, and to find out what happened to their husbands, fathers and sons who had disappeared.

With regard to missing relatives, the state has attempted to provide some relief to displaced women, and has responded to appeals for justice against the violation of human rights of the Tamil people by its own institutions. The courts and other mechanisms of the state, such as the Human Rights Commission, the Commissions on Disappearances and the Anti Harassment Committee, have provided a limited space for Tamil citizens to contest violations of their rights by the armed forces and

police, and obtain some relief and redress. For instance, women from the north and east were able to obtain compensation from the Disappearances Commissions appointed by the state for the disappearances of their husbands, sons or fathers.

In addition to the drastic change in roles and the loss of relatives, women have also been subjected to unprecedented violence. During the period of the active conflict, the police, paramilitary units and members of the government's armed forces, were involved in the commission of acts of torture, including rape and sexual violence, against women.

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.¹

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.² 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.³

During this period, ethnic minority women in Sri Lanka were targeted by members of the Sri Lankan police and security forces for acts of violence. This violence overwhelmingly takes the form of rape, sexual assault and harassment.⁴

In November 2000, the United Nations Division for the Advancement of Women, the Office of the High Commissioner for Human Rights and the United Nations Development Fund for Women jointly organized an Expert Group Meeting on Gender and racial discrimination. In their report, participants at the meeting cited Sri Lanka as an example of a conflict "motivated by ethnically based acts of

¹ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 22.

² British Refugee Council, Sri Lanka Monitor, No. 138, July 1999.

³ 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.

⁴ 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.

aggression in which women have been targeted and become victims of ethnically-motivated, gender-specific forms of violence."⁵

The number of female suicide bombers taking part in attacks by the LTTE has made Tamil women the targets of stringent security checks, arbitrary arrests and detention by police and armed forces personnel.⁶ The conduct of random night-time checks by security forces of boarding houses and other establishments where Tamil women live have created a climate of insecurity and fear. Women passing through security check points are particularly vulnerable to rape and other acts of sexual violence.⁷

Tamil women arrested and detained by police and security forces were reportedly subjected to rape and other forms of torture. The individual cases reproduced in the Appendix of this report, as well as information received from other sources, indicate that Sri Lankan security forces often used rape and sexual violence against women in detention as a means of forcing them to sign confessions stating that they are members of the LTTE.⁸ The form of torture used by police and security forces in Sri Lanka against ethnic minority women in detention clearly constitutes a gender-specific form of racial discrimination. It had been estimated that a Tamil woman is raped by members of the armed forces or police every two weeks and that every two months a Tamil woman is gang-raped and murdered by the Sri Lankan security forces.⁹

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. It is useful to note that 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.¹⁰ Further elements that dissuade women from reporting crimes of violence committed against them

⁵ United Nations Division for the Advancement of Women, Office of the High Commissioner for Human Rights and United Nations Development Fund for Women, Report of the Expert Group Meeting on Gender and racial discrimination, Zagreb, 21-24 November 2000, <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>.

⁶ C. Lindsey, Women and War, *International Review of the Red Cross*, No. 839, 30 September 2000, pp. 561-579.

⁷ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 33. See the case of 'Rani' (LKA 2809601.VAW) in the case annex.

⁸ 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.

⁹ Women Against Rape, oral intervention by Ms. Deirdre McConnell during the 57th session of the UN Commission on Human Rights, 10 April 2001.

¹⁰ 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."

include the prevailing climate of impunity for acts of sexual violence against women from ethnic minorities and the fact that women who are victims of violence frequently have no safe place to stay during investigations or trials.¹¹

III. Impunity for violence against women

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 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.

While impunity continues for members of the armed forces who engage in blatantly unconstitutional acts under PTA and Emergency Regulations, the courts have been unable to change the general pattern of impunity behind which members of the forces take refuge for their actions. While court intervention has been able to correct injustices in some cases, this is more the exception than the rule.

The rape of a fifteen-year-old school girl, Krishanthi Kumarasamy, was made even worse when eight soldiers and a police officer on duty at the Chemmani checkpoint killed her mother, brother and neighbor who had come to look for her. The case marked the coming together of forces across the country, united in their condemnation of the horrendous incident.

The accused in this case were convicted in the Sri Lankan High Court *inter alia* of offences under Section 357 of the Penal Code, (abduction with intent that the victim may be compelled or knowing it to be likely that she will be forced or seduced into illicit sexual intercourse), under Section 364 (rape) and Section 296 of the Penal Code (murder). Their appeals are currently pending.

The Krishanthi Kumaraswamy case led to increasing hope that the 1990s would be a time of swift justice for those members of the armed forces who engaged in rights violations. The call was made for a genuine re-evaluation by both ordinary people and their leaders of the reality of the events happening in the country. A surge of angry public opinion showed how important acknowledgment of abuses committed by members of the security forces is and how extremely counterproductive such abuses are.

¹¹ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 8.

However, at the close of 1998, the momentum generated by the Kumarasamy verdict petered out. Other cases, similarly gruesome in nature, remain to be pursued. There is evidence that the perpetrators of acts of violence against women have often escaped punishment. Victims of violence at the hands of police and security forces are often threatened and intimidated into discontinuing proceedings. Moreover, the feelings of shame often associated with rape and other forms of sexual violence make women particularly unwilling to complain. It is often for this very reason that perpetrators use this form of violence as they are aware that they are unlikely to be held accountable for their actions.

The Secretary General of the Tamil United Liberation Front (TULF), R. Sampathan, 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."¹²

The case of Ida Camelita who was raped and murdered in Mannar in July 1999 (see case appendix, appeal LKA 100899.VAW), 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.

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, (SC FR No. 186/2001, SCM 23.8.2002). 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'.

The Attorney General was also directed to consider taking steps under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Act No. 22 of 1994 against the police officers involved as well as against any others responsible for the acts of torture committed

¹² Frederica Jansz, "Govt. taken to task on human rights", *The Sunday Leader*, 8 April 2001, p. 10; J.S. Tissainayagam, "Rape case will justice be done ?", *The Sunday Leader*, 22 April 2001.

against the victim.

The lack of seriousness in which Act No. 22 of 1994 has been used with 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.

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 confidence in law enforcement personnel and in the judiciary. 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.

1. *Transfers*

Members of the armed forces or police who are suspects in criminal cases are frequently transferred away from the area in which the crime allegedly took place. The Sarathambal Saravanbavananthakurukul case (see Appendix, case LKA 050100.VAW) is one example of the practice of transferring members of the armed forces and police suspected of having committed crimes of violence against women away from the scene of the crime in order to avoid or delay the initiation of an investigation.¹³

There are some signs, however, that the judiciary is becoming less open to petitions by defendants from the armed forces wishing to transfer cases away from courts in the North-East. In the recent case of Sivamani Weerakoon and Wijayakala Nanthakumar (see Appendix, case LKA 090401.VAW), who were allegedly raped by members of the Mannar police Special Investigation Unit (SIU) and navy personnel, the court hearing the matter denied the request made by the officer in charge of the SIU to have the case moved to Colombo or Anuradhapura for hearing.¹⁴

¹³ Frederica Jansz, "Govt. taken to task on human rights", *The Sunday Leader*, 8 April 2001, p. 10.

¹⁴ J.S. Tissainayagam, "Rape case will justice be done?", *The Sunday Leader*, 22 April 2001.

2. *Evidentiary issues*

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.

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.¹⁵

For example, in the Vijayakala Nanthakumar and Sivamani Weerakoon case concerning events that took place in Uppukulam in March 2001 (see case appendix, case LKA 090401.VAW), 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.¹⁶ 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 assault.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

¹⁵ J.S. Tissainayagam, "Is rape just part of a game?", *The Sunday Leader*, 8 April, 2001, p. 11.

¹⁶ University Teachers for Human Rights (Jaffna), Sri Lanka Information Bulletin No. 25, *The Fatal Conjunction: Women, Continuing Violations and Accountability*, 11 July 2001.

¹⁷ Frederica Jansz, "Govt. taken to task on human rights", *Sunday Leader*, Colombo, 8 April 2001, p. 10.

evidence.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.¹⁹

3.3 Failure to Prosecute and Delays

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.²⁰

¹⁸ Women and Media Collective, *Women's Rights Watch 1998*, Colombo 1999, p. 20.

¹⁹ Dhara Wijetilleke, "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.

²⁰ Committee against Torture, Concluding observations on Sri Lanka, UN Doc. A/53/44, paras. 243-257, 19 May 1998, para.250.

PART 3: STATE VIOLENCE AGAINST CHILDREN IN SRI LANKA

I. Article 24

While there are many domestic monitoring bodies seeking to safeguard the rights of children in Sri Lanka, the lack of effective coordination between them and the scarcity of resources to those bodies is an issue of real importance.

For example, the activities of the National Monitoring Committee (NMC) and the National Child Protection Authority (NCPA), their respective monitoring and child protection committees at provincial and district level as well as other bodies like the Department for Probation and Child Care Services are not effectively coordinated and their roles are not clearly defined.

Similarly, the National Human Rights Commission does not address the rights of children as a specific focus of its concerns. Does the Commission have adequate human and material resources to embark on this task? Should there be a separate unit set up within the Commission in order to ensure its accessibility to complaints by children, in particular, those affected by conflict?

These are all questions that are extremely relevant in the context of observance of Article 24 of the ICCPR.

1. *Definition of the child*

As noted in the Concluding observations of the Committee on the Rights of the Child of 6 June 2003²¹, although Sri Lankan legislation defines a child as a person under the age of 18, there are several legal minimum ages (provisions regarding marriage and child labor and penal code provisions on sexual abuse of children) that are discriminatory or too low. This decreases child protection standards for children over these minimum ages and further exposes them to torture and inhuman or degrading treatment.

2. *Torture*

Between 1994 and 2003, AHRC and OMCT have documented and made urgent appeals on several cases of torture committed against children (see appendices). The great majority of these acts were

²¹ CRC/C/15/Add.207, par.21

committed by police officers who enjoy total impunity for acts that they committed in local police stations.

The latest case documented by AHRC and OMCT is typical and symptomatic of police abuses against children, usually from low socio-economic backgrounds, as soon as they are assumed to be guilty.

14-year-old Dawundage Pushpakumara was brutally tortured by several police officers from the Saliyawewa Police Station in Platum, Sri Lanka on 1 September 2003. About six police officers from the Saliyawewa Police Post in Putlam, dressed in civilian clothes, and having allegedly drunk before their arrival, came to Pushpakumara's sister's house, threatened him and took him away. They assaulted Pushpakumara, telling him to confess to stealing a chain. They took him to the Saliyawewa police station and threw him into a cell. There they tied his hands behind him and hung him on a beam, where the Officer in Charge (OIC) and several others assaulted him. They then put him in a room full of ants with his hands still tied.

When his parents went to the police station, they saw him hanging on a beam and asked to see him, but were told to come the next day. The next morning, his mother and sister were allowed to speak to him and he showed them the deep wounds in his hands, the ant bites all over his legs and the bumps and bruises on his head and chest where they had assaulted him. He added, "It is good that you came last night, otherwise they would have killed me." The OIC asked Pushpakumara whether he had taken the chain, to which he replied that he had not. The OIC allowed him to go home with his mother. After he went back home, he complained of headaches and fainted. The following morning, he was admitted to the General L Hospital of Putlam. Three day later, the real culprit was arrested. The police pressured the family to get Pushpakumara out of the hospital and stop pursuing complaints against police officials.

On 26 September 2003, AHRC and OMCT issued a second appeal to denounce the fact that police officers of the Saliyawewa Police Station and a prominent local politician had threatened to burn down Pushpakumara's home if his family pursued their complaints on this matter. The victim's family is extremely poor and will face deprivation and severe loss if their home is burnt down. According to the information received, the victim is currently in hiding and is being taken care of by a human rights organization. The officer in charge of the police station, who was reported to be amongst those who tortured Pushpakumara, continues to occupy the same post.

3. *Corporal Punishment*

As stated in the Concluding Observations of the Committee on the Rights of the Child of 6 June 2003²², Sri Lanka needs to repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. There is also a need for the State to undertake well targeted public awareness campaigns on the negative impact of corporal punishment and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.

4. *Juvenile Justice*

The minimum age of criminal responsibility is set at 8 years, although the judge has discretionary powers to hold a child criminally accountable, or not, between 8 and 12 years old. Children between 16 and 18 are treated as adults by the criminal justice system.

As described above, children who are considered criminally responsible and suspected of having committed an offence are commonly abused and tortured by the police. If under arrest, they are subject to pre-trial detention in conditions and for periods that are contrary to their best interests. They face heavy deprivation of liberty sentences if found guilty. Furthermore, under child protection measures, children who have been victims of abuse, street children and other child victims are also sent to closed correctional facilities.

Children in conflict with the law also lack access to legal assistance. Children are often exposed to harsh cross examination at court hearings. There is no systematic training of professionals working with these children. They are not systematically separated from adults at all stages of the legal process. Finally, there is a total absence of alternative non-custodial methods of rehabilitation.

These issues have been documented²³, identified and addressed by Sri Lanka's Law Commission, but adequate changes in law and practice must still be urgently made.

AHRC and OMCT thus support and reiterate the Concluding observations of the Committee on the Rights of the Child of 6 June 2003²⁴ that the State Party:

²² Ibid. par.28-29

²³ See Save the Children Sri Lanka Submission to the Committee on the Rights of the Child, 23rd January 2003.

²⁴ CRC/C/15/Add.207, par.21, par 52

- “b) Amend the Children and Young Person’s Ordinance (1939) to raise the minimum age of criminal responsibility to an internationally acceptable level and to ensure that all offenders under 18 are treated as children;
- c) Set up a system of juvenile courts across the country;
- d) Ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate time period;
- e) Take effective measures, including the enactment of legislation where appropriate, to implement the recommendations of the Law Commission on the juvenile justice system, in particular those regarding access to legal assistance, training of professionals working with children, separation of children in conflict with the law from adults at all stages of the legal process and development of alternative non-custodial methods of rehabilitation.”

II. Child protection

With regard to the existing Penal Code provisions in Ss. 363 and 365B of the Penal Code (Amendment) Act No 22 of 1995, it is relevant to note that with regard to rape and grave sexual abuse, consent obtained by instilling fear in a person should not be confined to fear of death or hurt.

Consent can be manufactured by creating fear on various other grounds such as cancellation of a land permit, keeping a husband in custody without bail, dismissing a husband from his job, denying a legal right, promising or granting various favors through deceit, or making false promises. The clauses relating to consent in Ss. 363 and 365B should be amended so as to cover all such incidents.

In all cases of abuse, violence and torture against children, Sri Lanka lacks effective child sensitive mechanisms of reporting, monitoring and filing of complaints. There is also no protection mechanism, other than institutionalization.

AHRC and OMCT thus denounce the lack of due diligence on the part of the authorities and urge the government of Sri Lanka to:

- i. Create and support reporting and monitoring mechanisms such as free hot lines, information and assistance centers, national and local ombudsmen for children;
- ii. Create and support non-custodial rehabilitation and protection services;
- iii. Train specialized police and justice professionals to receive complaints and testimonials from children and undertake adequate action against perpetrators, taking into account the best interests of the child (notably when perpetrators are close family members, etc.);

- iv. Actively engage in a fight against impunity of state agents who commit abuse, violence and torture against children.

III. Economic exploitation

There should be a uniform age in the various laws regarding the definition of “child” and the minimum legal working age. As things now stand, the ages differ from law to law, which has created a great deal of confusion (i.e.: Children and Young Persons Ordinance; Employment of Women, Young Persons and Childrens’ Act, Factories Ordinance, Penal Code);

There is also a dire need for a single piece of legislation dealing with child labor and the exploitation of children. ILO Conventions No. 138 and No. 182 have been ratified by Sri Lanka but there is a serious lack of implementation and monitoring, especially in the informal sector.

AHRC and OMCT believe that, in order to prevent exploitation and abuse of children, reforms to the law and procedure relating to employment of children in domestic service should be made in order to comply with the following:

- i) The JMO should periodically check the health of children in domestic employment and submit a medical report to the labor office where the child is registered. This report should be drafted at the outset of the domestic employment and a copy should be submitted along with the child's application for registration with the labor office;
- ii) Registration of all children and young persons with the labor office should be compulsory and failure to do so should be punishable by law;
- iii) Where a medical report shows injuries or abuse of the child, it should be mandatory that the police conduct investigations and prosecute those responsible. If necessary, any sanctions or certificates to that effect should be issued by the Commissioner or other statutory authority.

IV. Children in armed conflicts

Regarding armed conflicts, the LTTE has been constantly denounced for its use of child soldiers. According to observers, this problem still persists. The recruitment of these children – whether it be compulsory, forced, coerced or voluntary – has led to their exploitation for labor and sexual purposes as well as to their exposure to the most extreme human rights violations. Nevertheless, discussions on reconstruction have not, so far, addressed the implementation of children’s rights in reconstruction.

Of special importance are also children who have spent a long time in refugee camps. A special mechanism for overseeing the interests of children and monitoring their re-integration is a pressing need.

AHRC and OMCT urge to Government to:

1. Prohibit all military recruitment of children into any armed forces or groups;
2. Ensure their full demobilization and rehabilitation, with special attention to girls;
3. Tackle socio-economic factors that lead to recruitment;
4. Guarantee adequate protection and reintegration of refugee children.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS

Based on the above information, the ALRC and OMCT would like to urge the Human Rights Committee to raise the following issues:

1. The State Party should review implementation of Article 2 of the ICCPR by examining the police force, the AG prosecution system and the functioning of the Bribery Commission;

2.
 - a. The State Party should review implementation of Act No 22 of 1994 and the work of the Prosecution of Torture Perpetrators Unit functioning under the AG's Department. It should also improve its investigative capacity and particularly the use of documentary evidence. Unlike in many other criminal cases, there can be lots of documentary evidence in torture cases. These are the books maintained by the police indicating who was at a police station at a given time, giving information about duties of police officers. They also show how circumstantial evidence was used in other cases.

For example, when torture victims are blindfolded inside a police station, they can identify those who blindfolded them but not those who beat them up. Gerald Mervin Perera's case, (SCFR 328/2002) is a perfect example. He was able to identify those who hung him up before he was blind folded. However, no one was prosecuted on the grounds that he was unable to identify those who actually beat him up while he was blindfolded. In this way a

huge advantage is given to torture perpetrators as they can close the place and manner of torture. This Unit also does not apply the legal provision whereby everyone who is aware of a crime must report the matter. Torture taking place in a police station is known by everyone in such police stations. However, such witnesses have not been compelled to reveal what they know...;

- b. The Supreme Court should be asked to issue instructions to the magistrates in the country to handle torture claims brought before them. Since magistrates are the initial judicial officers who come across torture suspects, they could make a great difference if they deal with torture claims with sufficient care and diligence. The present procedure is clearly inadequate. In the best cases, magistrates will order a medical examination of the alleged victim. However, on the very first instance the magistrate can make his/her own observations on the conditions of the torture victims. For example if a victim is brought before the magistrate in an almost paralyzed state, as in the case of Lalith Rajapakse (see references above), it is quite easy for the magistrate to note down the conditions of the victim. However, torture victims brought before the magistrate have suffered many types of physical injuries.

The victims should also be separated from the police at the time they are questioned about torture at the police station. Victims who come directly from the police station after being severely beaten are naturally afraid of their tormentors. When questioned before them victims sometimes state that they fell or came about their injuries in some natural way. Furthermore, other than getting medical reports on the alleged victims, the magistrate should notify the NPC and higher police authorities about cases of alleged torture and demand that an investigation be carried out and reports submitted to the court on such allegations;

As mentioned in this report, torture is often inflicted on the basis of trumped up charges filed against the victims. When torture cases are brought to the attention of a magistrate, preliminary inquiries should be launched immediately. Instructions on the part of the Supreme Court on such matters can be very a useful means of providing an effective remedy to torture victims and will act as a deterrent to officers engaging in acts of torture. Furthermore, the counsels from the AG's Department and all judicial officers should be exposed to international law and jurisprudence on torture. The seriousness attached to the offence of torture should be impressed upon them. The principles regarding compensation should also be part of the instructions given to them;

3. The submissions made above clearly demonstrate that the police force, in its current form, is the major source of torture. Without a major reform of the police force, it is not possible to overcome the present institutional difficulties that, inter alia, make torture a routine habit at police stations. As part of this reform, the criminal investigations division must be separated from law and order and peacekeeping functions.

The criminal investigation division must be improved through recruitment of more educated and experienced police officers. This division must also be equipped with forensic facilities and modern technological know how. Above all, this division must have adequate resources and professional independence to carry out their criminal investigations without fear. The present criminal investigation system under the existing Criminal Procedure Code gives undue authority to the OICs of police stations when it comes to conducting criminal investigations. Given the nature of the police stations in various locations, OICs of police stations have manifold duties other than the conduct of criminal investigations. Thus, suitable changes must be made to reduce the importance of the role of the OIC of a police station in criminal investigations. Police stations should be used more for receiving initial complaints of crimes and then more serious crimes should be handed over to special units run under the Criminal Investigation Department outside the police stations;

4. The State Party should review the recommendations to prosecute offenders made to the Sri Lankan Government by several UN bodies, in particular the Committee against Torture (CAT) and the UN Working Group on Enforced or Involuntary Disappearances. It is recommended that a Review committee be setup consisting of a representative of the National Human Rights Commission, the National Police Commission and the Attorney General's Department to review progress on such prosecutions. It is further recommended that the families of the victims be informed of progress on such prosecutions and that lawyers for such families or organizations representing the victims be given access to such information;
5. The Committee is asked to recommend that a public prosecutor's office be set up in Sri Lanka as an initial effective measure towards eliminating impunity;
6. The State Party should review the Prevention of Organized Crime Bill in terms of the Sri Lankan government's international obligations under the ICCPR and do away with this bill altogether. This proposed bill would encourage torture, increase extra-judicial killings and make the very unacceptable police system as described above even more intolerable;

7. The Committee is asked to recommend better training of police officers in forensic science and investigations skills and the reorganization of police departments as an alternative way to deal with crime. This matter has been discussed with NHRC and NPC. A Strategic plan must be developed with an agreed upon timescale to achieve such an end. NHRC has been reported as being willing to help in fund-raising for this. A clear policy statement on this matter from the government will help to expedite the matter;
8. The Committee is asked to recommend speedy implementation of the 17th Amendment to the Sri Lankan Constitution by appointing commission members and providing facilities for commissions to begin work in accordance with the said Amendment. Perhaps the most important constitutional development in recent years is the 17th Amendment, which is intended to set the stage for removal of political control from the country's major national institutions. The establishing of the Constitutional Council has paved the way for implementation of the 17th Amendment. The Constitutional Council has also laid down some criteria for appointment of public officers. However, several of the commissions suggested under the 17th Amendment have not been set up. In fact there is a constitutional vacuum relating to the functioning of related institutions. Therefore the speedy appointment of commission members is necessary for proper constitutional governance in Sri Lanka. The Human Rights Committee should recommend the speedy appointment of commission members and provision of adequate resources for such commissions to function effectively;
9. The creation of the NPC at the end of 2002 was welcomed by everyone. In fact it generated some optimism about the possibilities of dealing with the extreme crisis in the police system. However, provision of resources to the NPC has been very slow. It does not yet have a strategic plan for effective development and functioning. Such a plan is very much needed if initial enthusiasm which was generated by the creation of the NPC is to be kept alive. A welcome move was the appointment by the NPC of 7 area coordinators to investigate complaints relating to the police. If the coordinators are to function properly they need to be given proper guidelines for investigations, training and resources. The most urgent need in relation to the NPC is the establishment of a public complaints procedure under 155G (2) of the Constitution. The Human Rights Committee should specifically make recommendations relating to the speedy establishment of the public complaint procedure of the NPC;
10. The Committee is asked to recommend that the government of Sri Lanka examine the widespread fear of assassinations spread in all parts of country and find ways to bring an end to a situation of paralyzing fear that prevent citizens from exercising all of their rights, but in particular the rights guaranteed under article 19 and 25 of the ICCPR;

11. The Committee is asked to closely consider widespread criticism of the Judiciary in Sri Lanka and make a suitable recommendation for its speedy reform. The Committee is furthermore asked to pay special attention to the case of Michael Anthony Emmanuel Fernando. The recent announcement of the premature resignation of most senior judge in the Supreme Court, Justice Mark Fernando, is widely seen by the public as a protest against the very serious breakdown of the judiciary. Lawyers and others are now calling for rapid action for change;
12. The Committee is asked to recommend that the National Human Rights Commission of Sri Lanka play a greater role in safeguarding and promoting the rule of law in the Sri Lanka;
13. The Human Rights Committee should recommend that the section on human rights in the Sri Lankan Constitution be amended to include the right to life as a basic right. The present constitution does not include the right to life. For this purpose it is not necessary to wait until a completely new constitution is adopted. Since no political party in parliament at the moment disagrees with this proposal, this amendment can be made with the agreement of all of the political parties. The delay in recognizing right to life has serious implications for the defense of this right;
14. Enforced or involuntary disappearances should be declared a criminal offence in Sri Lanka. Offence can be defined in terms of the Rome Statute of the International Criminal Court. The alleged perpetrators of enforced or involuntary disappearances have taken advantage of the absence of such a law since they can only be tried for the crime of kidnapping;
15. As a measure to launch immediate judicial intervention in possible cases of enforced or involuntary disappearances, the law relating to *habeas corpus* should be amended to make it possible for petitions to be submitted to the nearest magistrate's court as well as to all other courts. Furthermore, it should be possible for such complaints to be made anytime of the day as it is the case in several countries;
16. The Human Rights Committee should assess the extent to which its recommendations relating to enforced or involuntary disappearances and the recommendations of the Working Group on Enforced or Involuntary Disappearances have been implemented by Sri Lanka. Given the lack of significant progress to date, the Human Rights Committee may also propose specific ways for the Government of Sri Lanka to address the issue of disappearances, and suggest steps to guarantee government cooperation and compliance. The prosecution of perpetrators of enforced or involuntary disappearances by the Attorney General's Department must be assessed in terms of

expediency and effectiveness. Benchmarks to determine what constitutes successful prosecutions must be established and international assistance by way of the UN agencies or otherwise should be provided where needed;

17. Given the nature of the mandate of the Working Group on Enforced or Involuntary Disappearances and limitations arising from that, the Human Rights Committee needs to take a more proactive role in addressing effective and efficient redress to the victims of enforced or involuntary disappearances in Sri Lanka. Sri Lanka today has one of the highest, if not the highest, numbers of enforced or involuntary disappearances in the world. Therefore, the Human Rights Committee is urged to take up this matter with the Government of Sri Lanka on a priority basis;
18. One of the root causes of torture is bribery and corruption. Development of a bribery and anti-corruption commission with effective functioning capacity is very much an urgent need. The present system of bribery control is outdated and obsolete. A powerful commission much like the Independence Commission Against Corruption (ICAC) in Hong Kong SAR should be thought of as an alternative to the present system. The practice of having police officers investigate bribery cases submitted by the Bribery Commission should be discontinued forthwith as a preliminary step towards greater effectiveness of the existing mechanism. The Commission itself must develop a strategic plan for its own development in order to fulfill the task of eliminating bribery and corruption. The Human Rights Committee should make recommendations for the development of an effective bribery and corruption control system in the country;
19. The Committee is asked to urge the State to vigorously prosecute the many cases of rape committed by the armed forces, which have thus far gone unreported and unpunished;
20. The Committee is asked to request the State to announce its intention to seriously evaluate the mooted policy change whereby death sentences would not be changed to life imprisonment if the judge who heard the case, the Attorney General and the Minister of Justice unanimously recommended such a sentence.

RECOMMENDATIONS WITH REGARD TO WOMEN

1. 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;

2. 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;
3. 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;
4. 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;
5. 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;
6. Violence against women should be constitutionally defined as a human rights violation and the fundamental rights chapter of the Constitution should be amended accordingly;
7. 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;
8. The Government should set up a Gender Legal Analysis Unit in collaboration with the Ministry of Women's Affairs, the Ministry of Justice and other bodies such as the Law

Commission and the Human Rights Commission. This Unit would carry out a systematic study of gender discriminatory laws, (including, but not limited to, the Land Development Ordinance). It would also implement amendments thereto as a matter of priority;

9. The Penal Code should be amended to decriminalize abortion and to unconditionally criminalize marital rape.

RECOMMENDATIONS WITH REGARD TO CHILDREN

1. The Government should create and support reporting and monitoring mechanisms such as free hotlines, information and assistance centers, national and local ombudsmen for children;
2. The Government should create and support non-custodial rehabilitation and protection services;
3. The Government should train specialized police and justice professionals to receive complaints and testimony from children. It should also undertake adequate action against perpetrators, taking the best interests of the child into account (notably when perpetrators are close family members, etc.);
4. The Government should actively engage in a fight against impunity of state agents who commit acts of abuse, violence and torture against children;
5. The JMO should periodically check the health of children in domestic employment and submit a medical report to the labor office where the child is registered. This report should be drafted at the outset of the domestic employment and a copy should be submitted along with the child's application for registration with the labor office;
6. Registration of all children and young persons with the labor office should be compulsory and failure to do so should be punishable by law.
7. Where a medical report shows injuries or abuse of the child, it should be mandatory that the police conduct investigations and prosecute those responsible. If necessary, any sanctions or certificates to that effect should be issued by the Commissioner or other statutory authority;
8. The Government should prohibit all military recruitment of children into any armed forces or groups;

9. The Government should ensure their full demobilization and rehabilitation, with special attention being given to girls;
10. The Government should tackle socio-economic factors leading to recruitment;
11. The Government should guarantee adequate protection and reintegration of refugee children.

APPENDICES

Appendix 1: Concluding observations of the Human Rights Committee

CCPR/CO/79/LKA (future)
HUMAN RIGHTS COMMITTEE
Seventy-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SRI LANKA

1. The Human Rights Committee considered the combined fourth and fifth reports of Sri Lanka (CCPR/C/LKA/2002/4) during its 2156th, and 2157th meetings, held on 31 October and 3 November 2003 (see CCPR/C/SR.2156 and 2157) It adopted the present concluding observations during its 2164th meeting (CCPR/C/SR. 2164), held on .6 November 2003.*

Introduction

2. The Committee notes that the report was submitted after considerable delay and combines the fourth and fifth periodic reports of Sri Lanka. It notes that the report contains detailed information on domestic legislation and relevant national case law in the field of civil and political rights, but regrets that it does not provide full information on the follow-up of the Committee's concluding observations on Sri Lanka's previous report. The Committee expresses its appreciation for the discussion with the delegation, and notes the answers, both oral and written, that were provided to its questions.

* These Concluding Observations do not address events in Sri Lanka that occurred after the examination of the report.

B. Positive aspects

3. The Committee welcomes the conclusion, on 24 February 2002, of a cease-fire agreement between the Government of Sri Lanka and the LTTE, and expresses the hope that the implementation and monitoring of the agreement will help to achieve a peaceful and lasting solution to a conflict which has given rise to serious violations of human rights on both sides.

4. The Committee welcomes the establishment of the National Human Rights Commission in March 1997. It notes that the Commission has begun to play an active role in the area of promotion and protection of human rights in the peace process. It expresses the hope that the Commission's monitoring and educational activities, including those projected under the Strategic Plan for 2003-2006, will receive appropriate resources.

5. The Committee notes the measures taken by the State party to improve awareness of human rights standards among public officials and members of the armed forces, and to facilitate the investigation of human rights violations. These measures include improved human rights education for all law enforcement officers, members of the armed forces and prison officers, the establishment of a central register of detainees in all parts of the country and the creation of the National Police Commission.

6. The Committee welcomes the State party's ratification of the Optional Protocol to the Covenant in October 1997, and the training workshop on the procedure under the Optional Protocol to the Covenant co-organized by the National Human Rights Commission and the UN Development Programme in December 2002.

C. Principal subjects of concern and recommendations

7. While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible

under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in Chapter III of the Constitution even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16(1) of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (articles 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist.

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

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

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

9. The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or

members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished. The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (article 2 of the Covenant).

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

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

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

Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.

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

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

12. The Committee is concerned that abortion remains a criminal offence under Sri Lankan law, except where it is performed to save the life of the mother. The Committee is also concerned by the high number of abortions in unsafe conditions, imperiling the life and health of the women concerned, in violation of articles 6 and 7 of the Covenant.

The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (article 7 and General Comment 28), and repeal the provisions criminalizing abortion.

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

suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

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

14. ,The Committee is concerned about recurrent allegations of trafficking in the State party, especially of children (article 8).

The State party should vigorously pursue its public policy to combat trafficking in children for exploitative employment and sexual exploitation, in particular through the effective implementation of all the components of the National Plan of Action adopted to give effect to this policy.

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

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

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

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

17. While appreciating the repeal of the statutory provisions relating to criminal defamation, the Committee notes with concern that State radio and television programs still enjoy broader dissemination than privately owned stations, even though the Government has taken media-related initiatives, by repealing the laws that provide for state control of the media, by amending the National Security Act and by creating a Press Complaints Commission (article 19).

The State party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant. The State party should take measures to ensure the impartiality of the Press Complaints Commission.

18. The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices (articles 7, 14 and 19).

The State party should take appropriate steps to prevent all cases of harassment of media personnel and journalists, and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted.

19. While commending the introduction since 1995 of legislation designed to improve the condition of women, the Committee remains concerned about the contradiction between constitutional guarantees of fundamental rights and the continuing existence of certain aspects of personal laws discriminating against women, in regard to marriage, notable the age of marriage, divorce and devolution of property (articles 3, 23, 24, and 26).

The State party should complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them into conformity with articles 3, 23, 24 and 26 of the Covenant.

20. The Committee deplores the high incidence of violence against women, including domestic violence. It regrets that specific legislation to combat domestic violence still awaits adoption and notes with concern that marital rape is criminalized only in the case of judicial separation (article 7).

The State party is urged to enact the appropriate legislation in conformity with the Covenant without delay. It should criminalize marital rape in all circumstances. The State party is also urged to initiate awareness-raising campaigns about violence against women.

D. Dissemination of information about the Covenant (article 2)

21. The fifth periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GUI/Rev.1) and be submitted by 1 November 2007. The State party should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated throughout the country.

22. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 18. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

Appendix 2: Additional comments regarding the re-introduction of the death penalty in the Sri Lanka in reference to the Article 6 ICCPR.

1. Historical Context

Divided into ten stages, the historical context of capital punishment in Sri Lanka is as follows;

1st period: refers to the earliest recorded times when capital punishment held sway in this country right up to the 1st century A.D.

2nd period: refers to the period between the 1st century A.D. and the 13th century A.D. There appears to have been four brief stages during which capital punishment was abolished or not enforced.

3rd period: refers to the period between the 13th century and the early part of the 20th century. It would be reasonable to infer that capital punishment continued without much resistance.

4th period: refers to the period between 1928 and 1958. Four unsuccessful attempts were made to abolish capital punishment:

- a) Motion in the Legislative Council in 1928;
- b) Motion in the State Council in 1938;
- c) Resolution in the House of Representatives in 1955 which, though approved by the House, could not be implemented due to a change in government;
- d) Bill presented in Parliament in 1956, passed in the House of Representatives but rejected in the Senate;

5th period: In April 1958, the Suspension of Capital Punishment Act No 20 of 1958 was passed by both Houses of Parliament. The Act was to originally intended to remain in effect for three years.

6th period: In May 1958, at the height of the civil disturbances and community riots taking place around the country, the government proclaimed a state of emergency. Offences affecting property such as arson, looting and similar offences were declared to be punishable by death. The proclamation remained in force until March, 1959.

7th period: On 15 October, the Governor-General appointed a Commission of Inquiry on Capital Punishment under the provisions of section 2 of the Commissions of Inquiry Act No. 17 of 1948.

8th period: Following the assassination of the Prime Minister in September, 1959, the death penalty was restored in the country. From 1958-1976, for example, a total of eighty-nine executions were carried to completion out of one thousand two hundred and ninety-two death sentences laid down.

9th period: Since the eighties however, actual executions have been rare. Article 34 of the Constitution, (which empowers the president to grant pardons, respites and remissions) has been invoked on many occasions to change death penalty sentences to sentences of life imprisonment.

2. *Prevalent Issues*

On 13 March 1999, the government first announced a policy change regarding the death penalty as part of a larger issue of the presidential prerogative of granting remissions of sentences rendered by the courts. The intention was that death sentences issued in cases of murder and drug trafficking would be carried out and would not be changed to life imprisonment if the judge who heard the case, the Attorney General and the Minister of Justice unanimously recommended that the sentence be carried out. If all three reports are adverse, the President will sign the death warrant and "...the person will be hanged by the neck until death ensues."

The Government's stated intention was reiterated in 2002, raising considerable controversy. Sri Lanka appears to be on the verge of resuming executions, after twenty three years of being a de facto abolitionist country.

Thus, activists have continued to urgently present convincing and credible arguments as to why there should be a wholesale abolition of Section 52 of the Penal Code (which provides for the death sentence for offenders) in light of Sri Lanka's international obligations under Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

While recapitulating some of the main arguments put forward by proponents of the death penalty, activists are addressing these arguments from, *inter alia*, the theoretical standpoints of deterrence, retribution, rehabilitation, long term effect, administration of justice, alternative punishments, prison administration, public opinion, legal factors such as the onus of proof, constitutional and human rights norms and religious values.

The thrust of these arguments is that accepted human rights norms should triumph over perceived criminal justice, particularly with regard to women and juveniles in the current criminal justice system.

- a) Towards that end, activist groups are presently engaging in an in-depth historical study of the law and practice regarding capital punishment in Sri Lanka. Particular emphasis is being placed on relevant religious, social and cultural factors that support arguments against the death penalty;

Factual studies of the existing situation of offenders who have received a death sentence need to be carried out. These studies should involve the documenting of death penalty cases and death row conditions. Particular reference should be made to women and juveniles detained “at the President’s discretion”, which is the alternative punishment to the death sentence for offenders under the age of eighteen. (Section 53 of the Penal Code);

Appendix 3: Reform of Media Laws, Regulations and Practices

I. Reform of Media Laws, Regulations and Practices

Previous attempts to reform of the country’s archaic media laws and regulations (many of them whose origins date back to the colonial era) have lacked resolve.

In 1995, the Government appointed four committees to look into broad-basing the state-owned Lake House newspaper group, to reform laws governing the media, to establish a media training institute and improve conditions for media personnel. This marked the first coherent attempt to address this problem. While all four committees submitted extensive reports, these soon lapsed into obscurity.

Unsuccessful attempts were made thereafter to resurrect the reform process. Although a Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media was established in 1997, it did not make any recommendations, apart from indulging in a few sittings and calling for public representations.

In 2000, a Parliamentary Motion (No 218/99) on legal anomalies affecting the press was introduced by the combined opposition in Parliament. The Motion focused primarily on four areas: repeal of criminal defamation laws, repeal of the Press Council Law, enactment of a Freedom of Information Act and a Contempt of Court Act. However, this too did not lead to any constructive legislative steps being taken towards implementation of the same.

Following cessation of active hostilities in the North and East in 2002, emergency regimes resorted to the Public Security Ordinance (PSO) No 25 of 1947 (as amended) and Prevention of Terrorism Act (PTA) No 48 of 1979 (as amended).

These laws, (and regulations imposed under the PSO in particular), were indiscriminately used to impose censorship of the media, seize printing presses and prosecute journalists. In addition, the PTA prohibited the printing, publishing and distribution of specific publications without approval in writing from a competent authority. These emergency laws (which had almost but replaced the normal laws of the land for decades) led to calls for the repeal of the PTA and amendment of the PSO in order to prevent a recurrence of abuses. These demands have thus far gone unheeded.

Nevertheless, election campaign promises to reform Sri Lanka's media laws were kept. The Government presented Penal Code Amendment Act No 12 of 2002 in Parliament, repealing Chapter 19 of the Penal Code and making consequential procedural amendments to Section 135 (f) of the Criminal Procedure Code.

In addition, the House repealed Section 118 of the Penal Code, which had penalized attempts by contumacious or insulting words or signs against the President.

Press Council Amendment Act No 13 of 2002 meanwhile repealed paragraph (b) of subsection (1) of Section 15 of the Press Council Law No 5 of 1973.

The amending legislation, passed unanimously by the House in the middle of the year, effectively removed provisions relating to criminal defamation from the country's statute books.

Other areas of great concern with regard to Sri Lanka's media laws however, have yet to be addressed as enumerated below:

A) Freedom of Information

Sri Lanka has yet to enact a Freedom of Information (FOI) Act aimed at fostering transparency and accountability in public and quasi public bodies

Specific information legislation has become imperative in view of the culture of secrecy prevalent in government departments and ministries. Obtaining even the simplest information is difficult if not impossible for journalists and even more so, for citizens. In the year 2000, the Cabinet announced that it would implement Section 3 of Chapter XXXI of Volume 1 and Section 6 of Chapter XLVII of Volume 2 of the Establishment Code which prohibits public officials from disclosing any information to the media. The threat led to jittery public servants refusing to release information of any kind to the media, including even refusing to confirm or deny information already in the hands of journalists, giving initials of public servants and giving statistical information without the sanction of the Secretary of the Ministry.

Previous attempts to draft a FOI law for Sri Lanka had been singularly unsuccessful. The Sri Lanka Law Commission released a draft Access to Official Information Law in 1996. This law gave only limited access to official information and contained, in addition, significant exceptions that appeared to defeat the very purpose of the law.

Though the media, civil society groups and the government are currently discussing enactment of an FOI Law, no consensus has yet been reached on the final draft.

Lobbying by interest groups in this respect has focused on basic principles that should be contained in a draft FOI Act, including the following;

- a) Standard regarding Maximum Disclosure: The Act should establish a presumption in favor of disclosure on the part of all public bodies and should prevail over existing laws restricting information. The definitions of information and public bodies should be broad, focusing on the type of service provided rather than formal designations, in line with international standards.
- b) Standard regarding Obligation to Publish (proactive measures): An obligation should be imposed on Ministries and Public Authorities to make records and information of a particular kind coming under its purview public within certain stipulated time periods. The duty to give reasons for decisions should be automatic and not upon request. Policy formulation discussions should also be made public, although subject to certain safeguards so as not to hinder the process.

- c) Standard regarding Promotion of Open Government: Public bodies must actively promote open government.
- d) Standard regarding Exceptions: Access to official information should be subject only to narrow and clearly drawn exceptions (particularly with regard to national security), which would be subject to a substantial harm test and a public interest override.
- e) Standard regarding Processes to Facilitate Access: Requests for information should be processed fairly and rapidly. There should also be independent review of refusals which allows appeal to a Freedom of Information Commission and finally to the appellate court. Arbitrary refusals should be subject to disciplinary action.
- f) Standards regarding Costs: Costs for requests for information should be reasonable.
- g) Standard regarding Protection for Whistleblowers: There should be a provision for this internationally recognized principle which affords protection to individuals from legal, administrative or employment related sanctions in the event that they report wrongdoing (ie; commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public authority) as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of such wrongdoing.

The need to have a FOI Act, on these lines for Sri Lanka, remains imperative.

B) Contempt of Court

Past developments with regard to the media and the judiciary have highlighted the need for a Contempt of Court Act for Sri Lanka. This need was further strengthened during the year in the wake of increased disputes between Chief Justice Sarath Nanda Silva and members of the minor judiciary, who alleged that they had been unfairly dismissed from service, without a proper hearing and on political grounds.

Two judges, respectively the President and the Secretary of the Judicial Services Association, filed petitions in court alleging that they had been prevented from holding the Annual General Meeting of the Association. This, they contended, was due to arbitrary and coercive actions of the Chief Justice

who wanted to prevent them from holding positions in the Association. They had opposed the Chief Justice in the past due to behavior that was unfitting of the honor and dignity of the office.

The Registrar of the Supreme Court sent letters to the heads of media institutions warning them that contempt of court charges could be leveled against them because their journalists had reported on the latter cases and who had published/broadcast interviews with the concerned judges.

The Free Media Movement, one of the major media lobbying groups in the country, issued strong protests in response.

(The Daily Mirror, 25/12/2002)

The media institutions themselves, including the state-run Daily News and the Sri Lanka Rupavahini Corporation (SLRC) immediately responded to the letters from the Registrar, affirming that mere reporting of the disputes could not constitute contempt of court.

Though no further development took place on this matter thereafter, the incident was seen as an attempt to intimidate the media and to constrain the reporting of vital matters regarding independence of the judiciary in the country.

The incident also illustrated the imprecise nature of contempt of court in Sri Lanka, an increasing concern in recent years due to the position of the Chief Justice. Indeed, the entire judicial system itself, is wracked by unprecedented internal and external disputes.

Media coverage of the disputes spanned both extremes. Some newspapers adopted the ‘publish and be damned’ attitude while others preferred the view that an ostrich-like discretion was the better part of valor. This, in turn, further emphasized the need to provide for a defined legal framework on contempt of court. Such a framework will ensure that citizens and the media can subject the Sri Lankan judiciary to due and rigorous scrutiny without infringing on basic respect for the institution itself.

Case law on contempt of court in Sri Lanka has hitherto inclined towards the conservative. Disputes between the judiciary and the media in the past have resulted in a range of contempt of court cases, some understandable while others appreciably less so.

(See for example, In the Matter of a Rule on De Souza 18, NLR, 41, In Re Hulugalle, 39, NLR, 294 and the report in The Ceylon Daily News, 6 June, 1974 where a journalist was imprisoned for commenting on an incident concerning a witness who had appeared in bush shirt and slacks before the Criminal Justice Commission. The sittings were adjourned and the witness was ordered to return to

give evidence properly attired. A day's imprisonment was also imposed on the acting editor of the paper.

A similar conservatism has held sway with regard to comments on pending proceedings. In Sri Lanka, where cases can drag on for interminable lengths of time, the *sub judice* rule has seriously impeded discussion on matters of public interest.

See In Re Garuminige Tillekeratne (1991 1 SLR 134), where a provincial correspondent of a Sinhala paper, the 'Divaina', sent a report of a speech made by a member of Parliament in the opposition at a time when the presidential election petition was being heard, in which the latter said that "the petition had already been proved and if the petitioner did not win her case, it would be the end of justice in Sri Lanka..." Contempt of court was found *inter alia* on the basis that the publication *might or was likely* to result in prejudice to the pending hearing of the presidential election petition, inferring that the judges had already made up their minds and thus possibly deterring potential witnesses from giving evidence.

Judicial attitudes on the *sub judice* rule have been strongly criticized. Another concern relates to the rule on disclosure of sources.

These factors have further fuelled the need for an Act on Contempt of Court along the lines of similar legislation in India and the United Kingdom, which would be based on the following principles;

- a) Contempt should only be found if the impugned act is of such a nature that it substantially interferes or substantially tends to interfere with the due course of justice in active proceedings;
- b) A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest should not amount to contempt of court if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion;
- c) A fair and accurate reporting of public legal proceedings, published contemporaneously and in good faith should not amount to contempt of court any more than an abridged or condensed report of the same, published contemporaneously and in good faith, provided it gives a correct and just impression of the proceedings;
- d) The defense of innocent publication or distribution should also be made available;

- e) A person should not be guilty of contempt of court for publishing any fair comment on the merits of a case which has been heard and finally decided;
- f) No court may require a person responsible for a publication to disclose a source of information contained in a publication, nor would that person be found guilty of contempt of court for refusing to disclose such a source, nor may any adverse inferences be drawn against that person after for refusing to disclose such a source of information, unless it be established to the satisfaction of the court that disclosure is necessary in a democratic society in the interests of justice or national security or for the prevention of disorder or crime;
- g) The necessity to prescribe fair procedures for contempt inquiries, (including contempt in the face of the court), in a manner akin to the 1971 Act on Contempt of Court in India. This should also apply for contempt hearings in the appellate courts in Sri Lanka. A constitutional amendment may be necessary in view of the recent case in Sri Lanka where a petitioner before the Supreme Court was immediately given a one-year prison sentence by a Bench consisting of the Chief Justice and two other judges of the Supreme Court. The petitioner had spoken loudly in court and persisted in his petition. He had also objected, saying that Chief Justice SN Silva who had been named as one of the respondents in the petition, should not be hearing the case on the grounds of bias. The matter is presently before the Human Rights Committee in a communication submitted by the petitioner under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) (see section 1:7 for a detailed account of this case)

C) Parliamentary Privilege

The Constitution continues to permit limitations on freedom of speech on the grounds of parliamentary privilege (Article 15(2) of the Constitution).

However, this is not defensible by international norms and standards that Sri Lanka is subject to, including the International Covenant on Civil and Political Rights (ICCPR). This international human rights text does not include parliamentary privilege as a ground on which the right to free speech may be prohibited.

Amending Act No 17 of 1980 to the Parliament (Powers and Privileges) Act No 21 of 1953 (as amended), penalizes the willful publishing of any report of any debate or proceeding in Parliament that contains words or statements after the Speaker has ordered such words or statements to be expunged from the official report of the Hansard.

The amendment, worded as it is in undesirably general and vague terms, allows irresponsible members of the House to evade accountability for statements that they make on the floor. Repeal of this amendment has been urged.

D) Broad basing the Associated Newspapers of Ceylon Limited

There is still no effort to broadbase the Associated Newspapers of Ceylon Limited, commonly referred to as Lake House, which continues to be under government control.

In one of the more outrageous moves against the media in 1973, the then leftist coalition government passed the Associated Newspapers of Ceylon (Special Provisions) Law changing the status of the company.

The newspaper group (publishing some sixteen newspapers in all three languages at the time of the takeover) was founded by D.R. Wijewardene, considered by most to be the single most prominent figure in post-colonial press history. The group continued to be under the direction of members of his family after to his death. The takeover of the group was subject to a particularly specific legal undertaking, namely that the newspaper company be broadbased and that the majority of the shares acquired by the Public Trustee be gradually divested by sale of the shares to the public. Since the law was passed, however, the broadbasing was not carried out by political parties of whatever hue and color that came to power at various times. Instead, the Lake House Group became subject to a callous manipulation of its resources; its Chairmen was routinely changed with every shift in political power; and its journalists were coerced into following the party's political line in their work. In mid 1995, a committee appointed by the Peoples Alliance government strongly recommended that Lake House shares be re-distributed in a manner that would ensure the creation of a broadbased democratic newspaper company with the widest possible citizens' participation. The committee took into account the fact that the election manifestos of major political parties in the country had promised to broadbase Lake House as long as no single person or group would be able to own more than a quarter of the shares so re-distributed. However, its report was wholly disregarded by the government.

By the year 2002, the country saw the integrity of what had once been a respected newspaper group in Sri Lanka degenerate into a veritable farce. The situation has not changed appreciably since then. The broadbasing of Lake House remains an urgent media law reform issue.

Electronic Media

As far back as in 1996, the Report of the Committee to Advise on the Reform of Laws affecting Media Freedom and Freedom of Expression had pointed out that;

“...radio and television broadcasting by the state should be undertaken by separate corporations as now but with necessary changes in the law to guarantee both the independence of their governing bodies and their editorial independence. They should be governed by boards which are independent of government; members should see themselves as independent trustees of the public interest in broadcasting and not as representatives of any special interests. They should be appointed for a fixed term according to specified criteria. The selection process should be such as to ensure it is fair and not subject to political or other pressure.....”

These changes remain imperative in Sri Lanka. Legislation that should be amended are as follows: the Sri Lanka Broadcasting Corporation (SLBC) Act No 37 of 1966 (as amended) and the Sri Lanka Rupavahini Corporation (SLRC) Act No 6 of 1982 (as amended).

Recommended changes to these laws by media/activist lobbies include repeal of Section 44 of the SLBC Act, (empowering the Minister to issue licenses for the establishment and maintenance of private broadcasting stations), including Section 44(4) and subsections thereto which conferred extensive powers on the Minister to make regulations governing the functioning of such stations both in terms of its composition and nature of programs. Other concerns relate to the need to stipulate qualifications/criteria in the appointing of members to the Board of the SLBC. Such members should only be removed for a specific reason and not on the basis of an arbitrary whim of the Minister. Similar objections can be raised to particular provisions of the SLRC Act, enacted after the SLBC Act but retaining some of the problematic provisions of the latter. Recommendations in this regard include the repeal of Section 28, the provisions of which specify, *inter alia*, that no person other than the Corporation under the Act shall maintain a television broadcasting station unless he/she has obtained a license from the Minister. Amendment of section 3(8) of the SLRC Act is also recommended, incorporating the safeguard that the ministerial power of removal of a member should be for reasons specified.

These changes are suggested as a minimum. Other imperative matters relate to the establishing of an independent broadcasting authority to regulate the granting of licenses to private broadcasters and consequent repeal of existing legal provisions that prescribed ministerial intervention in the licensing

process. Important attributes of such a licensing body would be its procedural as well as substantive freedom from state control.

Freedom of Expression Issues and the Conflict

In the northern part of the country, even though the LTTE declared a ceasefire with the government, it increased its intimidation and repression of freedom of expression of civilians, opposition parties and opposition newspapers. While the organization publishes several newspapers, including one in the Sinhala language, and has its own radio station in the Wanni, its intolerance of opposition printed press has been marked.

In April, the management of the pro EPDP (a party in opposition to the LTTE) weekly “Thinamurasu” complained to the Norwegian monitoring mission regarding the ban of their paper by the LTTE in Batticaloa. Similar complaints were also lodged by the “Thinakathir”, a regional newspaper.

Though the monitoring mission intervened in the matter, the “Thinamurasu” was banned again five weeks later and returned to the news stands only after the monitors made a further strong intervention in the matter. The staff of the newspaper complained of continued harassment by LTTE officials in the area. In August, journalists and civilians in Batticaloa took part in a passive resistance campaign following a raid on the “Thinakathir” by a ten-member armed gang, which ransacked the newspaper office, tied up and blindfolded the staff and then set fire to the office. Towards the end of the year, the editorial office of the “Nawamani”, a southern-based newspaper advocating the cause of the Muslim community living in the eastern part of the country, was attacked by an unidentified gang.

(See in this respect, *The Island*, 13 April 2002, *The Island*, 12 June and 3 May 2002, *The Daily Mirror*, August 11 2002, *The Island*, 1 December 2002).

Meanwhile, there have been countless incidents of repression of freedom of speech and expression, including extortion, abduction and assault of northeastern citizens by the LTTE, as detailed in the reports of the University Teachers for Human Rights (UTHR) (Jaffna).

A particularly heinous incident was the assault on the Principal of Hartley College, a prominent school in the northern part of the country. He had opposed efforts by the LTTE to use students as propaganda tools against the government on various issues. Unlike other like incidents, this assault was protested against by activists in the southern part of the country on the basis that ‘peace is not merely the cessation of war but is also democracy, freedom and dissent. (See *The Island*, 6 October 2002).

The international media watchdog Reporters Without Borders sent a letter to Prime Minister Ranil Wickremesinghe in October, expressing concern over the fact that the perpetrators of the murder of a Northern-based journalist, Mayilvanam Nimalarajan, had yet not been apprehended. Nimalarajan's killing, in the time of the previous government, had been commonly linked to his opposition to the activities of the Eelam Peoples Democratic Party (EPDP), a political party opposed to the LTTE. (See The Daily Mirror, October 19, 2002).

Though arrests of some EPDP members took place in this respect, the investigations petered out by the end of the year. Serious concerns have been expressed as to whether these investigations will ever continue.

Physical Assault and Intimidation of Journalists in General

Particular incidents that took place last year, for example, demonstrate how the issue of life and liberty still remains a grave problem for journalists in the country. In April 2002, the Special Task Force attempted to obstruct photo journalists covering an anti-peace protest demonstration by the National Bhikku Front near the Pettah Bodhi in Colombo.

Four journalists and another citizen were injured in late 2002 after an armed mob comprising some fifty people broke up a non-violent protest campaign carried out by opposition supporters in the north-central city of Polonnaruwa. The journalists had been covering a protest campaign by the latter group regarding two earlier attacks on their members, including agriculture officers. While it was alleged that the mob had the tacit support of a United Front Government politician in the area, there was no immediate intervention or investigation by the police. (See The Island, 3 October, 9 October 2002).

In a letter sent to President Chandrika Kumaratunge (as head of the coalition) in April meanwhile, Reporters Without Borders urged immediate action regarding death threats and intimidation of a journalist who had taped a controversial speech made by President Kumaratunge in Wattala during which she had made several negative remarks about the peace process. Intruders broke into the journalist's house in his absence, threatened his wife and stole several cassettes and a tape recorder. (See The Daily News, 6 April 2002). In other incidents specifically involving police action, a reporter of the Ravaya was assaulted and detained by the police after he attempted to prevent police officers from assaulting two individuals in public. Another journalist belonging to the same newspaper was attacked on the bus following his consistent reporting of a woman who had been tortured in police custody in Wariyapola. It is a moot question as to whether investigations into these attacks are being prosecuted vigorously.

Appendix 4: Cases

Case of Gerald Perera:

“The Judicial Medical officer ("JMO") of Colombo examined the Petitioner on 16 July 2002. In his report, he set out the history of torture, substantially as stated in the petition. From the investigations conducted at the Nawaloka Hospital, he concluded that the Petitioner had "developed acute renal failure probably due to rhabdomyolysis which necessitated hemodialysis", "changes due to axonal loss in the median and ulnar nerves", and "loss of sensation over the 8th cervical and 1st thoracic vertebrae". The relevant medical records had been called for from the Nawaloka Hospital. According to the JMO, systemic examination of the Petitioner revealed complete loss of power of the muscles around both shoulder joints, and inability to move both arms at the shoulder joints; while he could move his fingers he could not grasp any object at the time of examination; and there was sensory loss around both elbow areas.

“He noted certain injuries, consistent with the history given by the Petitioner: two blackish scars on the back of the right hand, consistent with the burns with lighted matchsticks; two scars, near the right and left wrists, consistent with being hung with a coir rope; a discoloration of the skin on the left shin, consistent with a blow with an iron bar; and weakness of both upper limbs, consistent with being suspended. In his opinion, such suspension could have caused neuromuscular and tendon damage and weakness of the upper limbs; and muscular contusions could cause rhabdomyolysis, which could cause acute renal failure, but there was no evidence of a considerable amount of contusions at the time of his examination. The Petitioner had completely recovered from renal failure.”

[Supreme Court Fundamental Rights Application SCFR 328/2002]

Case of Negombo Tamil Woman case:

“By way of conclusion, the Assistant Judicial Medical Officer found that:

- a. There is positive medical evidence of vaginal penetration.
 - b. There is positive evidence of pelvic sepsis with endometriosis.
 - c. She has many scars on her limbs and torso.
 - d. She has features of post traumatic disorder.
- a. Vaginal penetration by the insertion of plantain flower is possible.
 - b. Pelvic sepsis with endometriosis could have followed by the insertion of the plantain flower as conclusively suggested by the Consultant Radiologist. The frequency of urination and irregular

menstrual period could have been the result of the physical, psychological and sexual violence that she underwent while in custody.

c. The symptoms of post traumatic disorder and depression could have resulted from physical and mental trauma that she underwent while in custody.

d. The causation of the original injuries and resultant scars could have been sustained in the manner described in the history given by the prisoner.”

[Supreme Court Fundamental Rights Application SCFR 186/2001]

BURIAL OF THE VICTIM IN THE GARDEN

-- Associated Press

Fearing police may steal body of her alleged torture victim son, mother buries body in garden

Associated Press, Mon September 1, 2003 04:04 EDT . COLOMBO, Sri Lanka -

(AP) A mother who alleges her son was tortured to death in a police station, has buried him in her garden, fearing that officers would otherwise steal the corpse to cover up the case, a human rights group said Monday. Garlin Kankanamge Sanjeeva, 25, was arrested in Kadawatta, a Colombo suburb, on Wednesday accused of involvement in a robbery. Sanjeeva, a Sri Lankan army soldier on leave, was found hanging in a police lockup the following day, said Chitral Perera, secretary of Janasansadaya, a human rights group. "Police have claimed he hanged himself in the police cell with his trouser belt. But there is no evidence of how such hanging took place," Perera said. "There is widespread suspicion that the victim's death is due to torture and that hanging was done after the death to cover up murder," Perera said. Police in Kadawatta denied the charge. "This was a case of suicide," said S. Skandakumar, a police officer. "Our officers held a detailed investigation and found that Mr. Sanjeeva had killed himself," he said. On Sunday, Sanjeeva's family buried him in their garden. "They do not trust the police version and want proper inquiry and second inquest," Perera said. "If we buried the body in the cemetery, the police might steal it. So, we want to protect the body until proper inquiries are made." Sanjeeva's mother, Dorin Athukorala, told the human rights group that she had seen blood flowing from the lower part of her son's body and wounded arm. "My son did not commit suicide. He was killed," Athukorala said. "I will not give this up." Perera called for the death to be investigated officially by an independent committee of forensic experts and police officers from outside the area. Human rights groups have accused Sri Lankan police and government forces of torture, particularly during a 19-year civil war conflict with Tamil rebels seeking to establish a separate homeland. Cases in which officers have been convicted of torture have been very rare.

Lanka Academic: <www.lacnet.org><http://www.lacnet.org> of 2 September 2003.

[\[Jana Sammathaya -- Vol. 02, No. 36 \(05 September 2003\)\]](#)

MAHANAYAKE URGES JUSTICE MARK FERNANDO TO STAY ON

--AHRC

In the last issues of JS we reported the shock caused by the announcement of resignation of Justice Mark Fernando. Reactions are now flowing from different groups and persons. Among those who are urging him to stay on are leading Buddhist monks, Bishops, religious leaders, intellectuals and leaders of civil society movements.

The Most Venerable Wewaldeniye Medhalankara Mahanayake Maha Thera of the Ramannya Nikaya has issued an appeal to Justice Mark Fernando, whose decision to retire two and a half years prematurely became public knowledge recently, urging him to reconsider his decision. The appeal was issued on behalf of the Buddhists of Sri Lanka who are concerned about the judiciary in this country.

The letter says: "On behalf of the Sri Lankan Buddhists in this country, I deeply appreciate the great contribution that you have made to uphold the legal system and legal traditions in this country. It is to be noted that Lord Buddha as well as the other great religious leaders have preached that the one who works honestly and with dignity, faces criticism and harassment and that this happens without any discrimination, whether one is in the clergy or laity. I take this opportunity to request you to continue to be strong like a rock that does not yield to high winds and continue to work towards protecting and maintaining justice in this country. I wish you long life through the blessings of the Noble Triple Gem". This letter by the head prelate of the Ramannaya Nikaya comes in the wake of a letter to Prime Minister Ranil Wickremesinghe that is currently being signed by over thirty main public interest groups in Sri Lanka urging the Prime Minister to appoint an ad-hoc Parliamentary Select Committee to inquire into five issues relating to the judiciary, namely:

- (a) Constitution of benches in the Supreme Court in particular the matters of Constitutional Determinations and fuller benches;
- (b) Listing of cases before the Supreme Court;
- (c) Appointment of the Members of the Judicial Service Commission;
- (d) Nomination of Judges to international conferences, meetings, study tours and short courses;
- (e) Development of judicial infrastructure with foreign funds;

The signatories include representatives of PAFFREL, the Marga Institute, Consortium for Humanitarian Agencies, the Asian Human Rights Commission, the Centre for Policy Alternatives, Transparency International, Avadhi Lanka Movement, Habitat for Humanity, INFORM, Families of the Disappeared, Niveka, People Against Torture, the Ecumenical Institute and Janasansadaya.

[\[Jana Sammathaya -- Vol. 02, No. 38 \(19 September, 2003\)\]](#)

PREMATURE RETIREMENT OF JUSTICE MARK FERNANDO: CRM DISTRESSED AND DISTURBED

-- By Suriya Wickremasinghe, Secretary, Civil Rights Movement (CRM)

The Civil Rights Movement (CRM) is distressed and disturbed at the news that Justice Mark Fernando, the most long-serving judge on the Supreme Court, intends to retire from the Court prematurely. Justice Fernando was appointed to the Supreme Court bench on 4 March 1988 and his contribution to the law during his over 15 years on the bench has been remarkable. Justice Fernando's judgments are clear and compelling in their analysis. They reflect that deep attachment to values of fairness and equality, to freedom of expression and freedom from torture and arbitrary arrest, unaffected by changes of political climate, which the public have the right to expect of any judge.

Mark Fernando's judgments in the field of fundamental rights have naturally been of particular interest to CRM:

In one case, relief was given to a member of the SLFP, whose freedom of expression was infringed when the police forcibly stopped him from beating a drum in participating in the jana gosha, an island-wide cacophony of protest against the government's policies;

In another case, the complaint of a wildlife ranger succeeded on the basis that the assault on him by private individuals (a State Minister and a Member of Parliament) inside a police station and in the presence of police officers amounted to "executive or administrative action";

The UNP mayor of Nuwara Eliya who seized 450 copies of the paper "Yukthiya" came within the ambit of "executive or administrative action" since she did this while purporting to exercise her functions and while acting under the color of her office;

Relief was granted to a regular participatory listener of a program of the Sri Lanka Broadcasting Corporation, who complained that the program was abruptly stopped in mid-broadcast when a government Minister was criticized during a phone-in interview;

A petitioner wrongfully detained under the Prevention of Terrorism Act won his case because, inter alia, the remand order issued by a magistrate (without the suspect being brought face-to-face and without his being asked to state his case) was not a "judicial act" but an "executive or administrative action" for which the State was liable;

In striking down an emergency regulation which postponed five Provincial Council elections, Justice Mark Fernando held that the right to vote was part of the free expression guarantee provided in the Constitution. He also defined the nature and scope of the immunity granted to the President, and explained the powers and duties of the Commissioner of Elections. He stated that the Commissioner of Elections must maintain his independence and ensure proper elections;

Very recently, he recognized the right to life as a fundamental right although not expressly provided in the Constitution, and that a third person may assert the rights of a deceased person and claim relief. In another case, which was not a fundamental rights petition, but a regular criminal appeal in a case of culpable homicide, Justice Fernando relied on the "fair trial" provisions of the Constitution, whereby failure of the prosecution to disclose an eye-witness statement supposedly made to the police was an additional ground for setting aside the conviction.

The CRM, which for many years has been producing a series in three languages called *The Value of Dissent* welcomes statements that Justice Fernando has made such as: "Stifling of peaceful expression of legitimate dissent today can only result, inexorably, in the catastrophic explosion of violence some other day", and "...democracy requires not merely that dissent be tolerated, but that it be encouraged."

CRM appreciates Justice Fernando's tendency to refer to the Directive Principles of State Policy and Fundamental Duties in the Constitution as well as to international human rights conventions when rendering his decisions. It is well known that the Directive Principles and international conventions are not binding on the national courts, but consideration of these norms have contributed to the fundamental rights jurisprudence in this country. Of fifteen Sri Lankan cases published in the *Commonwealth Human Rights Law Digest*, eight are judgments made by Justice Mark Fernando.

Justice Mark Fernando's contribution to the law naturally goes well beyond the field of fundamental rights, though this is the area with which CRM is most familiar. An instance of clear public importance was his ruling that a Provincial Council (in this instance, the northeastern) is empowered to run a bus service within its Province. Resolving an awkward problem of statutory interpretation, as the Thirteenth Amendment appeared to mean the opposite (i.e. "without" but not "with"!) he quoted a US judge who said: "The meaning of a sentence may be more than that of the separate words, as a melody is more than the notes". Justice Fernando went on to say: "In the symphony of devolution, the three Lists apportion to the Government and the Provincial Administrations their respective parts, and the single discordant note in List I, item 8 must be set right by a harmonious construction."

There are many equally noteworthy features in "statutory determinations" on the constitutionality of Bills made by benches of the Supreme Court in which Justice Fernando was a member. These include the decision to strike down various provisions of the proposed Postal Corporation, which again concerned a vital public service. In such cases, the determination is issued as the judgment of the Court without being ascribed to any particular judge.

This is not the first time in recent years that CRM has felt troubled about developments relating to the judiciary. In November 1995, it sent statements to the President on the role of the judiciary in connection with the Supreme Court decisions on liquor licenses. It wrote to her again in September 1999 on the forthcoming vacancy in the Office of Chief Justice, suggesting considerations that should affect an appointment.

It is not in the nature of CRM to speculate on the reasons for Justice Fernando's decision to depart early. Speculation on this subject is rife among lawyers, human rights activists, and members of the general public, and this is only to be expected. Regrettably, not all of the speculation can be readily dismissed. CRM reiterates its profound concern and unease at this most disturbing and unacceptable state of affairs. It suggests that a serious and non partisan examination of the laws and the constitution be carried out, while taking care not to interfere with the principle of the independence of the judiciary. This could help determine whether any legal or constitutional reform is called for in the light of recent experience.

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Appendix 5: 2002-2003 cases of torture of children documented by AHRC and OMCT:

- T. K. Hiran Rasika (10) and E. A. Kusum Madusanka (12) (AHRC UA-30-2002 /OMCT LKA 160702.CC) who were arrested and tortured on 8 July 2002 by officers from the Hiniduma Police Station.
- V. G. G. Chaminda Premalal (16) (AHRC UA-31-2002/ OMCT LKA 190702.CC) who was arrested and tortured on 9 and 10 July 2002 by officers from the Aralaganvila Police Station
- Hettitantrige Lasitha Sameera Madusanga (17), (OMCT Case LKA 231002.CC) a 17-year-old student, who was arbitrarily arrested and tortured by officers of the Crime Branch of Peliyagoda Police, on 17 and 18 October 2002 in Kelaniya, Sri Lanka.
- Anuruddha Kusum Kumara (15) (AHRC UA-01-2003) was tortured on 29 December 2002 by officers from the Wellawa Police Station, Kurunegala District.
- Bambarenda Gamage Suraj Prasanna (17) (AHRC UA-05-2003) was tortured on the 8 January 2003 by officers from the Matugama Police Station.
- B. G. Chaminda Bandara Jayaratne (17) (AHRC UA-35-2003 / OMCT LKA 130803.CC) who was tortured from 20-28 July 2003 by Ankumbura Police Station. According to medical opinion, he permanently lost the use of his left arm after police hung him up by his thumbs.
- Bandula Padmakumara (14) and Saman Kumara (17) (AHRC UA-41-2003 / OMCT LKA 220803.CC) were tortured between 20-28 July 2003 by officers from the Ankumbura Police Station.
- Dowundage Pushpa Kumara (14) was tortured on 1 September 2003 by officers from the Saliyawewa Police Post from the Putlam Police Station (AHRC UA-50-2003 / OMCT LKA 180903.CC.).