Summary

This lesson discusses the public hearing that took place in Colombo on 9 December 2003. The hearing was an attempt by civil society organizations to address the phenomenon of child torture committed by the Sri Lankan police.

The lesson also examines the roles of the Sri Lankan police and National Human Rights Commission in dealing with human rights violations.
THEME: A public hearing on the torture of children, Sri Lanka

THE ISSUE

Torture is practiced routinely by the police in Sri Lanka, as in many other Asian countries. Recently, many cases of the torture of children by Sri Lankan police have also surfaced. Sadly, there is little being done by the government and state organizations to stop such brutal practices. It is up to civil society to take up these issues, as was done in the public hearing that was held on 9 December 2003 in Colombo, Sri Lanka.

THE LESSONS:

There are two lessons in this series.

Lesson 1: this lesson describes the hearing as well as the concepts behind it.

Lesson 2: the lesson examines police behavior in Sri Lanka, and the role played by the National Human Rights Commission in addressing human rights violations.
Lesson 1

A. Introduction

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

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

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

A picture of the panel
B. The panel

The panelists were Sunil Cooray, a Senior Attorney, former president of the Vigil Lanka Movement and author of a text on administrative law in Sri Lanka; J.C. Weliamuna, a Senior Attorney and the Chairperson of the Sri Lankan Chapter of Transparency International; and Grissha De Silva, a hotel manager and a torture victim who was subjected to torture on mistaken identity.

C. The hearing

Listening to the evidence of the child victims of torture:

The narration of the stories by the children shocked the panel as well as the audience.

The meeting hall was packed and the audience reacted strongly to the stories that were related by the child victims.
Many mothers of the child victims also attended the hearing:

*Pictures of the children giving evidence:*
D. Concluding observations

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

a) That all the victims were from poor families.
b) That it was clear that all the children who gave evidence were innocent young persons arrested without any reason.
c) Even after torture, the police could not find any evidence against these children.
d) At the time of committing torture, none of the policemen involved were wearing their uniforms.
e) The higher-ranking officers of the police are quite aware that their subordinate officers engage in torture but do not take any serious action to prevent such practices by these junior officers.
f) That there are third parties involved, including the wealthy, the Mudalali class, the politicians and the like who seek the help of the police to torture these persons. In return the police receive power, money and support from these groups who are capable of moving the police to engage in acts of torture.
g) The service rendered to the victims by the hospital authorities when they sought medical assistance is highly questionable. Those authorities failed to fulfil their professional obligations and often also failed to report the torture to the legal authorities. Instead, they appear to work hand in hand with the police.
h) The victims do not appear to trust state organizations such as the National Human Rights Commission and the National Police Commission. The National Human Rights Commission takes months (and sometimes years) before addressing and acting upon human rights cases. This being so, the Commission frequently advises the victims to take his or her case before the Supreme Court. This places the victims in a tight corner against the perpetrators. Additionally, the National Police Commission has failed to put into place the intended public complaint procedure for the entertaining of, inquiring into and the providing of redress for complaints against the police.
i) The people turn to NGOs and in all these instances it is the NGOs that have taken the initiative to protect the rights of these persons.
E. Media Coverage

This event was well reported in both the print and electronic media. The Sri Lankan radio gave wide coverage to this event on December 10, which is International Human Rights Day. The report from Daily News on December 11 is given below:

**Human rights record on fire**
by Chamikara Weerasinghe

The performance of government law institutions working against human rights violations in the country and the level of commitment demonstrated by the Government in promoting human rights, came under fire by local Human Rights Organisations, who had gathered at the Sri Lanka Foundation Institute, Colombo for a meeting to review the country’s human rights environment.

The meeting was held to mark the World Human Rights Day on December 10. The participants comprised representatives from Transparency International and the National Human Rights Commission. The People Against Torture, Setik, Janasansadaya, the Centre for Rule of Law, Home for the Victims of Torture, and Families of the Disappeared had organised the event with the courtesy from Asian Human Rights Commission.

Transparency International Sri Lanka Director J.C. Weliamuna said that cases of human rights violations have rebounded on the poor victims instead of them being resolved before the Sri Lanka National Human Rights Commission. He said, “It takes months and sometimes years before a human rights case has been taken up by the Commission for action. The case being so the Commission very often informs the victims to take his or her case before the Supreme Courts, which put the poor victims in a tight corner against the perpetrators.”

He said that police personnel were found as perpetrating most of the human rights-related crimes in the country that they have been charged with allegations of torture, abduction and illegal confinement. “The government has been unable to put in place the intended National Police Commission complaints procedure to address these conditions,” he said.
Rev. Fr. Reid Shelton Fernando, Director of People Against Torture, said that the public are more inclined to seek the help of the NGOs to fight for their rights, rather than going to government institutions, as they do not trust them. “This is a serious situation that should change that calls for commitment on the part of the government,” he said.

He complained that the government had downplayed with the real issue of human rights when it made its submissions to the Human Right Committee in Geneva in November this year. He said that representatives from Sri Lanka’s Justice Ministry, the Foreign Affairs Ministry, and Solicitor General’s Department gave a different picture of the issue, by purposely refraining from committing themselves to expose its true proportions. “They went on explaining the Geneva Human Rights Committee about how they would establish more Human Right Commissions across the country to promote human rights instead of giving any account on the inefficiency of government legal institutions and corrupt governance.”

Fr. Fernando said, however, the Commission did not believe them after investigating reports provided by non-governmental Human Rights Organisations on the true situation in the sphere of human rights in the country. He said they had taken a child-victim at their expenses to the Geneva forum on this occasion in order to highlight the point of human rights violations being violated in the hands of law-enforcement officials, and lack of commitment by the government to improve the system.

F. Questions For Discussion

1. What do you think is the most important feature of such public hearings for the victims themselves?
2. In your opinion, does the fact that these hearings have no legal authority affect their outcome?
3. What is the link between a functioning judiciary and rule of law, democracy?
4. Social action litigation in India, the Permanent People’s Tribunal on the Right to Food and the Rule of Law in Asia, the National Commission on Truth and Reconciliation of Chile and this public hearing in Sri Lanka, are all attempts by civil society to take positive action against human rights violations. (For more information on some of these actions, refer to the attached articles at the end of this lesson series.) Discuss how similar actions can be implemented in your own country.
Lesson 2

A. An analysis of the proceedings

The observations of the panel clearly point to the police implication of innocent children without any reason other than the fact that they come from poor families. The question then is why such a choice is made; for some reason, the police do not want to arrest the actual culprits and so try to find substitutes. The next question that arises would be why do the police fear to arrest the actual culprits? It is not difficult to suggest some answers:

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

Substituting the innocent for the guilty; why?

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 in police stations in recent years clearly establishes a pattern of implicating innocent persons in serious crimes as a substitute for the actual criminals whom the police have failed to detect. Often when many uninvestigated crimes are piled up at a police station, innocent persons are arrested and forced to confess to crimes that they know nothing about. Often unresolved crimes lead to strong public protest. On the other hand when charges are filed against someone it appears as a resolved crime and may even lead to promotions.

• In the well known murder case of a 76-year-old Catholic priest named Fr. Aba Costa on 10 May 2001, Kurukulasuriya Pradeep Niranjan (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 were allegedly found. It has also been revealed that some senior police officers of the area were involved in the crime. (Television reports in the programme called “Thumbprints,” broadcasted by Rupavahini, national television station in Sri Lanka).

• Waragodamudalige Gerald Mervyn Perera (39) (S.C. FR Application 328/2002) was arrested and tortured on 3 June 2002 by the officers attached to the Wattala Police Station to be implicated in a triple murder case. The Supreme Court held that it was a case of mistaken identity.

• Mulakandage Lasantha Jagath Kumara (23) (S.C. FR Application 471/2000) was tortured between 12 – 17 June 2000 by the officers attached to the Payagala Police Station. Due to injuries suffered at the police station the victim later died on 20 June 2000. The Supreme Court on 8 August 2003, held that the police had tortured the victim. The arrest and detention at the police station was for the purpose of implicating the victim for several unresolved crimes.

• Lalith Rajapakse (17) (AHRC UA-19-2002) was severely beaten on 19 and 20 April 2002 by the officers attached to the Kandana Police Station to the extent of causing him to lose consciousness for about three weeks. He was implicated in two petty theft cases without any complaints against him by anyone and without any evidence.

• Galappathy Guruge Gresha De Silva (32) (AHRC UA-20-2002; article 2, Volume 1, Number 4, August 2002, p. 24) was arrested and tortured on 22 March 2002 by the officers attached to the Habaraduwa...
Police Station with a view to implicate him in a murder case.

- Bandula Rajapakse, R. P. Sampath Rasika Kumara, Ranaweera and Chaminda Dissanayake (article 2, Volume 1, Number 4, August 2002, p. 24), were arrested and tortured on 19 and 20 February 2002 by the officers attached to the Ja-ela Police Station. They were made scapegoats in an inquiry into the loss of 46 rails of clothes from a company store without police having any evidence against them.

- Ehalagoda Gedara Thennakoon Banda (AHRC UA-25-2002) was arrested and tortured on 12 June 2002 by officers attached to the Wilgamuwa Police Station and later released without any case. It was an attempt to implicate him in some illicit liqueur charges without any evidence.

- Eric Antunia Kramer (AHRC UA-36-2002) was arrested and tortured on 28 and 29 May 2002 by the officers attached to the Mutwal Police Station, it being an attempt to implicate him for a robbery at the company where he worked without any evidence against him. He was not charged with any offence later.

- 10-year-old T. K. Hiran Rasika and 12-year-old E. A. Kusum Madusanka (AHRC UA-30-2002) were arrested and tortured on 8 July 2002 by officers attached to the Hiniduma Police Station, in a case of trying to implicate the children for a petty theft in the school canteen without having any evidence to support such a charge.

- 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 the officers attached to the Aralaganwila Police Station, again in an attempt to implicate him on a petty theft case without any evidence.

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

- Subasinghe Aarachchige Nihal Subasinghe (40) (AHRC UA-01-2003) was tortured by the officers attached to the Keselwatte Police Station, Panadura;

- Korala Gamage Sujith Dharmasiri (23) (AHRC UA-02-2003) was tortured between 1–8 January 2003 by the officers attached to the Kaluthara South Police Station; Anuruddha Kusum Kumara (15) (AHRC UA-01-2003) was tortured on 29 December 2002 by the officers attached to the Wellawa Police Station, Kurunegala District;

- Bambarenda Gamage Suraj Prasanna (17) (AHRC UA-05-2003) was tortured on 8 January 2003 by officers attached to the Matugama Police Station; (see earlier)

- K. T. K. Umaraisinghe alias Sunil (33) (AHRC UA-05a-2003) was tortured from 1 – 4 April 2003 by the officers attached to 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 the officers attached to Biyagama Police Station;

- B. G. Chaminda Bandara Jayaratne (17) (AHRC UA-35-2003) was tortured from 20 – 28 July 2003 at Ankumbura Police Station and as a result according to medical opinion he permanently lost the use of his left arm due to being hung by his thumbs by the police;

- Bandula Padmakumara (14) and Saman Kumara (17) (AHRC UA-41-2003) were tortured between 20 – 28 July 2003 by the officers attached to the Ankumbura Police Station;

- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003) was tortured between 26 – 28 August 2003 by the officers attached to the Wattegama Police Station;

- Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003; AP news under the title, “Fearing police may steal the body [of] her alleged torture victim son, mother buries body in garden,” 1 September 2003) was tortured by the officers attached to the Kadawata Police Station (though the police have claimed this as a suicide inside the police station the mother of the victim has openly challenged the postmortem inquiry held inside the police station and has buried her son’s body in the home garden with a view to get an impartial inquiry and to prevent the body being stolen by the police);

- Padukkage Nishantha Thushara Perera (23) (AHRC UA-45-2003) was tortured on 7 – 10 September 2003 by the officers attached to the Divulapitiya Police Station;

- Mohamed Ameer Mohamed Rizwan (23), Suppaiya Ravichandran (23) and Abdul Karim Mohamed Roshan Latif (30) were tortured between 30 August - 6 September 2003 by the officers attached to the Wattala Police Station and Peliyagoda Police Regional Headquarters;

- Downdage Pushpa Kumara (14) was tortured on 1 September 2003 by the officers attached to the Saliyawewa Police Post attached to the Putlam Police Station.

Of particular importance is as to why the National Human Rights Commission (NHRC), which has the duty to protect children, has failed to provide assistance to these child victims of torture. The Asian Human Rights Commission (AHRC) has listed on the basis of many earlier reports the basic defect of the NHRC investigating unit. Below is an advance copy of the submission made to the 60th session of the UN Commission on Human Rights by ALRC regarding this issue.
COMMISSION ON HUMAN RIGHTS
Sixtieth Session
Item 18 (b) of the Provisional Agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organization with general consultative status

National Human Rights Commission of Sri Lanka in serious need of reform

1. In its concluding observations of the periodic report of Sri Lanka dated November 2003, the
Human Rights Committee stated that, “The capacity of the National Human Rights Commission
to investigate and prosecute alleged human rights violations should be strengthened” (CCPR/CO/
79/LKA [Future]).

2. The National Human Rights Commission of Sri Lanka (NHRC) has a mandate to investigate
human rights violations. However, it has been criticised for some time over its failure to develop
an effective complaint and investigation procedure. The lack of a procedure has resulted in its
officers acting arbitrarily. This became apparent in November 2003 after an Area Coordinator
submitted a report on a torture case where a 17-year-old boy suffered serious injury as a result of
being hung from a beam and assaulted by the police. This child was a part of a team representing
the World Organization against Torture (OMCT) and Asian Legal Resource Centre at proceed-
ings before the Human Rights Committee during its hearing of Sri Lanka’s periodic report. When
questioned by the Committee about this case, the Sri Lankan delegation claimed that the story
was false. The delegation based its claim on a report by the NHRC Area Coordinator for Kandy.
The report was made without interviewing the victim, his family, or the doctors who had exam-
ined him. A complaint was subsequently lodged with the NHRC Chairperson, who reopened the
case and also announced an inquiry into the conduct of the Area Coordinator. This inquiry, which
was announced on 6 November 2003, has continued up to the end of December.
3. An internal study into 708 complaints of torture received by the NHRC during 2000 and 2001 identified a range of defects in the handling of cases, including most of the following:

a. Advising complainant torture victims to pursue their cases in the courts by themselves. Senior lawyer, J C Weliamuna, has remarked that, “It takes months and sometimes years before a human rights case has been taken up by the Commission for action. The case being so the Commission very often informs the victims to take his or her case before the Supreme Courts, which puts the poor victims in a tight corner against the perpetrators” (Daily News, 12 December 2003).

b. Lack of investigation into cases where the victim has died in police custody allegedly as a result of torture. There is not a single case of successful inquiry into the many custodial deaths that have taken place, including the most recent ones. A case in point is the case of Kottabadu Durage Sriyani Silva, of Pettawatta, Gomarakanda, Paiyagala (SC No. 471/2000 [FR]). The NHRC rejected the complaint brought before it by the victim’s family, claiming that it has no mandate to investigate.

c. Calling for further particulars and then abandoning the inquiry. In many cases, there has been no follow-up of the requests for further information, and no further action taken.

d. Conducting investigations at police stations. Victims complaining of torture have been asked to come back to the same police station where he or she has allegedly been tortured, for further inquiries.

e. Intimating to the perpetrators that a complaint has been made against them, and giving the particulars of the victim. This has been done without providing any protection to the victim.

f. Conducting inquiries in such a manner that victims have no option but to agree to a settlement. Victims already traumatised due to torture are pressured into talking with the perpetrators to arrive at a deal. In these cases, the settlements have amounted to as little as 1000 rupees (US $10). This is even though the officers involved know that there is no way to enforce payment, as the NHRC has no capacity to legally impose and enforce financial settlements.
4. In a press release of 1 December 2003, the Chairperson of the NHRC attributed many of the problems to a shortage of staff. She stated that there has been a rapid increase in complaints, but the number of inquiry officers is insufficient. She added that she hoped to improve on this by March 2004. However, in a subsequent letter to the Chairperson, the Asian Human Rights Commission, the sister organisation of the Asian Legal Resource Centre, pointed out that the problems relate more to the lack of an effective investigation procedure, rather than a shortage of resources.

5. The Asian Legal Resource Centre proposes that the work of the NHRC could be rapidly improved by

a. Giving priority to investigations into torture, deaths in custody, intimidation of victims and other serious cases.

b. Eliminating bad staff to speedily boost the morale of others so that they will properly attend to their mandate.

c. Punishing corrupt staff and collaborators with alleged perpetrators.

d. Seeking volunteers from among human rights groups and other concerned persons to record statements and assist with other preliminary steps in an investigation. There are many persons who will volunteer if asked to help.

e. Establishing a mobile unit from among these volunteers to help in quick interventions, such as visits to police stations and similar activities, and giving the necessary authorization to a group of selected persons for this purpose.

f. Putting in writing the basic investigation procedure.
g. Making contact with the Attorney General, and arrangements to refer serious cases of torture and similar violations to the Special Investigation Unit working under the Prosecution of Torture Perpetrators Unit.

h. Ensuring that victims will be protected. The Asian Legal Resource Centre has submitted a separate written statement on this matter to the Commission.

i. Implementing an emergency plan to deal with temporary shortfalls in funds and gaps in policy. This plan should include calls for special assistance from the government, international funding agencies and others, and calls for resources from local human rights groups, by way of personnel and materials.

6. Were the attention of all members of the NHRC directed unreservedly to the above concerns, many of them could be resolved within a matter of months, and in compliance with the recommendations of the Human Rights Committee. The Committee has required the Government of Sri Lanka to report back to it on this matter, and several others, within a year. The Asian Legal Resource Centre sincerely hopes that the NHRC will make every effort to bolster its abilities to investigate and prosecute alleged human rights violators within this time.

B. Questions For Discussion

1. What are the mechanisms of child protection in your country? Have you heard of cases of child abuse/torture?
2. Discuss the role of the police, as guardians of law, in establishing democracy.
3. When law enforcement agencies themselves are guilty of breaking the law, what effect does this have on society?
4. Which recent issues has your National Human Rights Commission dealt with? Were these issues addressed on the basis of human rights, or are there other factors that influence their decisions/recommendations? Does the Commission have adequate authority and public support to ensure effective change in the society? If not, how could this be addressed?