

Lesson Series 25: Sexual assault, rape and torture of women in custody

This lesson is based on the following case of sexual assault, rape and torture of a woman by police officers in Sri Lanka

Ms Herat P.N.Sriyalatha, 39, was arrested on 08 March 2002. For 2 days after that she was kept at a police station and submitted to torture, degrading and inhuman treatment, even before being told of charge to be brought against her. Among other things, she was beaten with a pole, stripped naked and raped with a pipe-like object, causing bleeding and great pain.

AHRC received news of the case from one of our partners in Sri Lanka and sent out an Urgent Appeal on 13 June 2002. Until today, there has been no action taken on this case. On the contrary, Ms Sriyalatha's father has been harassed and threatened by the police to make him drop the charges.

As in all other cases of violence and torture of women, it is most likely that the perpetrators will go free. Since this is a small, remote village, even lawyers are afraid of repercussions if they take on the case. She is still being kept in remand, and cannot get proper medical treatment.

The following is a translation from a hand-written statement by Ms. Herat Pathirannehelage Nandani Sriyalatha Herat written in her mother tongue, Sinhala, which she made to the Magistrate of the Wariapola magistrate's court when she was finally produced in court on 22 March 2002:

"I was brought to the Wariapola Police Station on the 08 March 2002 around 6:15 p.m. They came to our home in a white coloured vehicle. There were four people dressed in civilian clothes. Because I was bathing at the time, they asked my father if Nandani was at home. Hearing that I peeped from the wall near the well. Because I saw someone known to me I wrapped a towel above by bathing clothe and went there. One of them was examining my younger sister's identity card. His name is Warnakulasuriya. He said they needed to record a statement by me. When I asked about what, they did not tell me. Warnakulasuriya, the Officer

in Charge of (OIC) Crimes and a person I do not know came inside our house. They did not give me room to put on my clothes. When I asked Rathnatileke who was standing at the door to move away as I wanted to dress he did not do so.

My mother came to the vehicle to accompany me. But they did not allow her to get into the vehicle. When I was getting into the vehicle I saw a person with his head covered in a white sheet. I did not know who he was. They brought me and made me sit on a bench. At that time there was no woman present. 10-15 minutes later an elderly woman arrived. Between 7:15 and 7:30 p.m. Ananda arrived. He was dressed in a gurupaata (light brown colour) trousers and a white tee shirt. He said today is good for the bite. I asked that I be taken home. I was not given any food or drink that evening. I asked several times why I was brought but I was not told the reason. Around 8:30 p.m. Ananda, Rathnatileke and Warnakulasuriya arrived. I heard the reserve policeman calling out to some individuals and to a woman. Those three were very drunk. Warnasuriya first beat me with a pole. I felt my left arm becoming lifeless. I felt faintish. Ananda removed my clothes. I asked him not to remove my clothes. I screamed.

After my clothes were removed. Someone struck me a blow from behind. I could not recognise who it was. Ananda put something like a tube into my vagina. Warnakulasuriya kept my mouth shut with his hand. Rathnathileke stood by the front door and watched. At that time the back door was closed. [He said] “This is only a foretaste. It is tomorrow that the job will be done”.

Blood was pouring from my vagina and I felt a sharp pain in my underbelly. The blood was dripping on to the cement floor. Ananda called a woman and said cut a piece from my towel and bring it. The woman brought the towel. Ananda tore it in half and gave me one piece. I wore it. With the other piece he wiped the blood on the floor. After that he asked Rathnatieleke something. I did not hear what he said. I heard Rathnatileke say “Put it in cupboard 4 of the Crimes Division. Tomorrow let us throw it far away”. A little while later because I felt sick I slept there itself. I vomited around 5.30 am. The officer in charge asked a woman to wash the vomit, “Cant say if the ASP might come round”, he said. I asked the OIC for medicine and to send me to hospital. He paid no attention to that but gave me a blow. He scolded me in raw filth. After a short while I went to the OIC’s room and asked again why I was brought there. Then Rathnaileke said, “You have no house to go now they have given it the works also”. I could not think about anything at that time. Around 10:30 that morning the OIC beat me again with a large pole. At that time I was terribly sick. The OIC Crimes asked him not to beat me. After that I was not beaten. By that time I was in a semi-conscious state.

The following night the woman who was locked up with me gave me a tea and two short eats, from what had been brought for her. There were some others also locked up. I cannot remember who they were. I

heard them talking. I have no memory of what was said. The next morning Warnakulasuriya took me to the Crimes Section opened a big book and told me, “Sign your statement.” At that time no statement from me had been recorded. Therefore I hesitated to sign it. But because WPC 2212 kicked me hard from behind and because I could not endure any more pain and because I was terribly hungry, I thought whatever might happen it does not matter and signed the statement.

Around 12:30 that day I was forcibly taken again in a white coloured vehicle. I refused to get in and did not get in. I was forced into the vehicle. Inside the van was the driver of the vehicle and Warnakulasuriya dressed in civilian clothes. Rathnatileke was dressed in uniform. There was another constable in civils. The vehicle went along the Nikaveratiya Road. It stopped near a large Mara tree and Rathnatileke and Warnakulasuriya went there. There were officers in civilian clothes standing by he door of the vehicle. After that I was taken to the Wariapola courts. While I was in the van Warnakulasuriya went inside the courthouse. He came back after 5 to 10 minutes. I remember that he had a paper in his hand. After that I was taken to the Wariapola hospital. I told a doctor about my sick condition. Though he asked me to sit down there was nothing there to sit on. Rathnatileke and Wranakulasuriya were there all the time. On the way to Kurunegala the vehicle near several shops.

I was handed over to the Kurunegala prison. Till I came to the prison I had had nothing to eat. They gave me food brought from Kurunegala. On the 10th of March I was taken to hospital. [Then after making a complaint to Warden of prison] On 13, 14, 15 March 2002, I was taken to hospital for visit. On the 17th around 3 p.m. I was examined in the orthopedic section of the hospital. I am still being taken to hospital. On the day I was brought to court I made a public statement to the lady magistrate.

During the time I was in the police station none of my home people were allowed to visit me. Only after I was brought here did I come to know what the charge against me is.”

End of Statement

Rape is a crime and prohibited by international law

Under international law, rape committed by government officials or armed political groups during armed conflict constitutes torture. Over the years rape has also become accepted as a form of torture under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984).

The UN Special Rapporteur on torture in 1992 stated that “since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture” (UN Doc.E/CN.4/1992/SR.21, para 35, quoted in AI Index: ASA 37/0001/2002)

Several International covenants UDHR, ICCPR and the Declaration on the Elimination of Violence against Women state categorically that gender-based violence is a direct violation of women’s inherent right to life, liberty and security of person, and to be free of torture.

The Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) has identified “gender-based violence as a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.....and added (General recommendation no. 19, 1992) ... “the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

Since States are obliged to do everything in their power to condemn and prevent discrimination against women by any party - state or private - governments are accountable for failing to take measures to prevent violence against women amounting to torture.

Sri Lanka became a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994. Subsequently, an Act was passed in Parliament in November 1994 making torture punishable by imprisonment for a term of 7 (minimum) to 10 (maximum) years and a fine.

In 1995 and 1998, through the Penal Code (Amendment) Act Nos. 22 of 1995 and 29 of 1998, the Code of Criminal Procedure (Amendment) Act, No. 28 of 1998; the Judicature (Amendment) Act, No. 27 of 1998 and the Evidence (Special Provision) Act of 1999, the government has put in place a legal framework which in principle should allow a more effective prosecution of alleged rapists.

Among the changes to the Penal Code was the inclusion of a new provision (Section 364(2)) recognizing rape in custody and gang rape as acts constituting grave crimes. The punishment for rape in custody as a form of aggravated rape ranges between 10 years (minimum) and 20 years (maximum).

In the case of Ms Sriyalatha cited above, the magistrate of the Wariapola magistrate’s court, Padma Pahihakkara, issued the following order:

“While the police have the right to arrest an accused and investigate and take a statement from him about the relevant happenings, the police have no power to inhumanely assault anyone. I order Deputy Inspector

General Wayaba to investigate this matter and submit a complete report to this court. I order the registrar of this court to send a copy of this order to the deputy inspector general of police.

Call the case soon on 2002-04-05".

The issues arising from this case

1. The first issue is that the police arrested Ms Sriyalatha, and subsequently detained her for 2 days without any court order or charge. She was also held incommunicado, and her parents were not informed nor allowed to visit her while in police custody. This is in itself illegal and this is the kind of practice which gives the opportunity for ill-treatment and torture of arrestees.
2. The ill-treatment and torture itself are crimes which are punishable under Sri Lanka's Act. No 22 of 1994, the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (CAT) Act. By international agreement (CAT), torture can under no circumstances be excused. The violent abuse of Ms Sriyalatha is torture as understood under the concept of torture in the CAT. It was intentional, caused serious physical and psychological suffering and was inflicted with the purpose of getting her to sign a statement, which she had not given.
3. The fact that such brutal sexual abuse has been committed against a woman arrestee illustrates the extra vulnerability of women under such circumstances, when law enforcement officers can commit such violence with impunity. The damage that is done to her is not only physical but also mental and psychological. The treatment she received was intended to humiliate and degrade her, through attacking her womanhood. The anguish she suffers extends beyond the physical pain. It is not yet certain what physical damage has been done to her internal (reproductive and sexual) organs, but her whole life after this experience will be marked and perhaps ruined. She might be socially outcast, not be able to bear children and have a family.
4. The fact that the lawyers are afraid to come forward to represent her in her case against her torturers, and that until now no investigations have been started against the alleged torturers who have been identified by her, shows how weak the judicial system is. The Magistrate's order to investigate the accused soon were not carried out. Instead Ms Sriyalatha's father was harassed and threatened by the police and higher officers to induce him to withdraw the complaint.
5. All the time during her detention at the police station she was not given food or drink, not given medical treatment even after she was visibly hurt by the ill-treatment. Even now she is only being treated by the prison remand hospital, and is not allowed to obtain better and more private medical treatment.

See Appendix 1 for more recent cases of torture of women while in police custody in Sri Lanka.

Questions for Discussion:

1. Have you come across cases like this in your country?
2. Do you see similarities in the behaviour of the police in your country with the officers in this case in Sri Lanka?
3. Why is it so difficult to initiate criminal investigations into complaints of rape, especially rape in custody? Do you think that sexual abuse in custody amounts to torture?
4. Do you think this kind of behaviour is generally prevalent among the police in the whole country, or are these isolated cases?
5. Why do you think that police use torture on prisoners? Are they simply “cruel persons” or is it the law enforcement system itself which leads to the use of torture by police officers? What can be done to reform the system?
6. Torturers should be prosecuted because they have committed crimes. Is there a law against torture, including rape in custody in your country? Is your country party to the UN Convention against Torture, Inhuman and Degrading Treatment or Punishment (CAT)?
7. Can you think of ways to prevent torture from happening? For example, by lobbying for a national law against torture?
8. Are there organisations or individuals in your country and/or community who are working to prevent torture? What are they doing? Can you join them?
9. Are there organisations or individuals in your country and/or community who are providing support to victims of torture? Can you join them?

People's Action against Torture in Sri Lanka

1.

A major exhibition opened in at the Colombo Public Library auditorium on 16 April 2002 on the theme of elimination of torture. A large amount of exhibits depicting individual cases of torture, painting on the theme of torture, posters explaining the reasons for torture and laws against torture and highlighting of the failures of the legal process have been offered to the public.

The exhibition has been organized by Janasansadaya, a local organization working towards elimination of torture, and the Asian Human Rights Commission.

The major part of the exhibition is devoted to the failures of the prosecuting branch—Attorney General's department—to enforce the existing legal provisions against torture. Under Sri Lankan law, torture is an offence punishable with a minimum of seven years of imprisonment, but despite of hundreds of cases that comes up every month, no one has been punished yet, the organizers said at the opening.

“This is terrible problem”, Chitral Perera, the president of Janasansadaya said to reporters. “Why is it that no one does any thing about it? There is no investigating authority to take down complaints. People still some how make their complaints. They even get medical reports showing the injuries. But at the end nothing comes of it. The Department of the Attorney General, which has to implement Sri Lanka's Torture Act, Act No.22 of 1994, in fact blocks prosecutions and protects culprits”, he said.

The Exhibition is attracting many viewers and will continue till the 18th. A book entitled Policiyata Prathisankarana—Reforms to the Police— will be launched on the 18th during the exhibition.

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2.

PEOPLE AGAINST TORTURE

On 23rd May 2002 , a number of concerned persons in Sri Lanka has formed a movement “People Against Torture”, to seek redress for the victims of torture and to institute preventive action. Violence, which has been found to be endemic in Sri Lanka, has as its roots in the wide use of torture by the law enforcement officers. It is by countering this vicious habit that violence can be curtailed and eventually an atmosphere of peace and the respect for the human dignity can be established. This has been the underlying perception among the members present on that day when they decided to launch this movement against torture.

The objectives spelt out by the members of the movement included the following:

1. To take all steps in order to implement the Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment Act 22 of 1994.
2. To collect and share nationally and internationally, information on torture, extra-judicial killings and other violations of human rights.
3. To ensure the realisation of human rights.
4. To take all possible legal and other steps against violations of human rights.
5. To take steps for the rehabilitation of torture victims and other victims of human rights violations.
6. To train activists for realisation of above mentioned aims.
7. To intervene to seek justice against the disappearances in all parts of the island.
8. To create a national culture of peace by the elimination of torture and other cruel, inhuman treatment or punishment by the police and other authorities.

Members of the newly formed movement have in fact been meeting regularly over three years under the auspices of the Asian Human Rights Commission. Largely drawn from among the clergy, both Buddhist and Christian, the legal profession, human rights activists and journalists, these members have discussed at length the human rights situation in the country with specific emphasis on the deteriorating law and order situation.

With the realisation that the wide use of torture has very much to do with the prevailing lawlessness and the human rights violations, the members decided to follow a course of action that aims at prevention through the implementation of the existing domestic laws by the state authorities and by seeking redress to the victims. It is hoped that this group will expand and become a veritable movement for the defense and the promotion of rights that will also serve as the basis for peace in the island of Sri Lanka.

A Statement on the Occasion of the Exhibition against Torture in Colombo

Public Library Auditorium, Colombo, Sri Lanka, 16-18 May 2002

Organised by Janasansadaya Sri Lanka and the Asian Human Rights Commission

Sri Lanka has been engulfed in a pathology of violence, a fact which is acknowledged and lamented by everyone. There are many people, however, who are committed to finding ways out of this predicament. This

exhibition is another moment during which this important theme will be reflected.

The cause of the violence in Sri Lanka is the State's unwillingness to bring to an end a tradition and culture of torture and other cruel and inhuman punishment that is embedded in its law enforcement agencies. It is an old and hardened tradition, and there has not been a real commitment to terminate it. The signing of the international covenants and conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have not been followed by any determination to implement them. Though torture is a serious crime in Sri Lanka under Act No. 22 of 1994, there have been no prosecutions for this crime. Unfortunately, this crime is a very common one, and hundreds of complaints and even Supreme Court cases are available for anyone who is willing to prosecute them. Many UN agencies, international human rights groups and foreign governments have urged action, but prosecuting someone for torture has become more difficult than moving a mountain.

Why such resistance to the elimination of torture?

Obviously it is not just a matter of individuals that is behind this obstruction but an in built pathology of violence. The result of this pathology is that it creates reactions beyond its own control by its victims. The cycle of violence in Sri Lanka needs close examination, not merely from a psychological point of view, but from the point of view of legal responsibility of the State to create a peaceful society. The State cannot ascribe this responsibility to others under any circumstance. A failure to meet its international obligations does not in any way help to end the situation. No, responsibility for changing the present situation lies with the State. It must take the initiative boldly and resolutely. By the very nature of things, non-state actors will not be able to continue their violence if the State does its duty to end torture.

The way the State can meet its obligations to the international community and its people is simple: it only has to implement its own law, that is, Act No. 22 of 1994. The responsibility for this action lies with the attorney general and the investigation team that is attached to his department. Many investigations are already completed, and there is enough evidence for other prosecutions. Now it is the will of the prosecutor on whom the burden currently rests to act decisively against the country's pathology of violence. This is something that CAN BE DONE NOW.

In the long term, there are many other things that can be done. Many commissions appointed by the government have created tons of recommendations. Unfortunately, no attention has been paid to these recommendations. Now that the Constitutional Council has been appointed and several commissions will also be appointed soon in terms of the 17 Amendment to the Constitution it may be possible to make suitable arrangements for a serious study of these recommendations and to develop suitable ways to implement them. Thus, now is the

time for all democratic-minded people to ensure that the Constitutional Council and other commissions live up to the expectations of the people. A push from below will determine what ultimately happens to improve things.

As for now, all eyes must be turned to the attorney general. Will the attorney general implement Act. No. 22 of 1994, which lays down Sri Lanka's law on torture? Very much is at stake on what the attorney general will do. He can help to decisively end the nation's pathology of violence.

References:

1. Amnesty International Reports, to be accessed at [www.amnesty.org]
 - a. Sri Lanka - Rape in Custody , AI Index: ASA 37/001/2002
 - b. Sri Lanka - Torture in Custody, AI Index: ASA 37/10/99
2. Appendix 2: Amnesty international's Recommendations to the Sri Lanka government
3. Appendix 3: International Rehabilitation Council for Victims of Torture (IRCT)
4. Appendix 4: World Organisaition Against Torture (OMCT)
5. Appendix 5: Update on Ms Nandini Sriyatha Herat's case
6. AHRC's Statement on the occasion of International Day against Torture, 26 June 2002, to be accessed at [www.ahrchk.org]
7. Previous Lessons on Torture of the Human Rights School:

Lesson Series 7, which dealt with the nature, causes and consequences of torture;

Lesson Series 20, which posed some discussion questions for local community action against torture, and showed the need to reform the prosecution system in order to eliminate torture.

These lessons can be downloaded from the web-site [www.hrschool.org]