

# Chapter VII

## SRI LANKA

*Conflict Between  
ICCPR & Constitution*

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### *Introduction*

What emerges in Sri Lanka as a sharp point of contest and debate is the problem of the 1978 Constitution and the system of the executive presidency. In the midst of the looming presidential elections, President Rajapaksa, in a much publicized speech, stated that he would be willing, more than any other person, to abolish the executive presidency, if the TNA and the diaspora give an undertaking that they will not demand a separate state. In doing so, he has tried to create a justification for continuing with the executive presidency, as a measure to stand against any moves for a separate state.

Meanwhile, Athureliye Rathana Thero, Member of Parliament representing the Jathika Hela Urumaya Party, which is a partner in the coalition government, stated in a highly represented public gathering that if it was not for the 1978 Constitution it was most likely that the former JVP leader Rohana Wijeweera and the LTTE leader Velupillai Piripaharan may have ended up as members of Parliament and the bloodshed that the country experienced in the past three decades could have been avoided. He stated this at a meeting where a draft for an alternative constitution was submitted for public discussion. The view over-expressed by several speakers during this meeting was that the 1978 Constitution was introduced purely to achieve the individual ambitions of its originator, former President J.R. Jayawardena and, presently, it serves only the personal interests of the incumbent President Mahinda Rajapaksa and his family. Athureliye Rathana Thero also publicly apologized for voting with the government in passing the 18th Amendment to the Constitution.

While there are many issues of importance in this debate, one particular aspect of interest to all is the public identification of causes for the violence in the past several decades. How far the 1978 Constitution contributed to creating the background for this violence and the ensuing bloodshed is important not

only from the point of view of the debate on a possible election, but also for understanding vital societal issues in Sri Lanka.

As for the President stating that he wants this Constitution to be abolished more than anyone else, is an admission that the Constitution is evil and needs to be abolished. How such an evil constitution could contribute to creating and sustaining a unitary form of government is beyond comprehension. Rather, the President's argument seems to sway in favour of his opponents – that there is no justification for not abolishing this Constitution.

Perhaps the Sri Lankan electorate is finally beginning to understand how the prevailing forms of extreme violence in the country have been the result of the political manipulations of just a few persons, to enjoy the privileges of power and the possibilities of self-aggrandizement. In other words, the Sri Lankan people have been exposed to a politically criminal scheme to achieve the selfish aims of a few unscrupulous persons. Perhaps this is a moment when the nation can come to a greater self-understanding of the factors that have caused this peril. This would create a firm foundation to guide those who will try and resolve the nation's problems in the future. The debate, therefore, is about "arising out of a catastrophe", and not about saving the country from a catastrophe, as President Rajapakswants to present it.

Athuraliye Rathana Thero also pointed to some of the ongoing consequences of this catastrophe, such as the prevalent lawlessness causing Sri Lanka to be identified as a trading post for narcotics and drugs, money laundering, the sex trade, and the like. The spread of drugs is causing devastation in the villages of Sri Lanka on one hand, and on the other hand there are problems such as the deaths of several persons a week due to kidney ailments, for which no solution has been found.

Sri Lanka is faced with the tragedy of having a constitution that causes lawlessness. The selfish creators of the Constitution manufactured lawlessness for their own "political survival", which has now virtually destroyed the independence of both Sri Lanka's judiciary and legislature. Both these branches of government were a threat to the Executive Presidency. The people have thus lost both the court as a place for settling their disputes, and the parliament as a public forum on matters that concern the nation. President Rajapaksa still argues that this is a necessary condition in order to maintain the unitary state. The Constitution also caused the displacement of all public institutions including the premier institution for the enforcement of the rule of law, a competent and an independent policing system. Daily media reports reveal how low this institution has sunk.

As a result of these and other problems created by the Constitution, genuinely free and fair elections have become impossible. This is perhaps the reason why President Rajapaksa cannot agree to abolish the existing constitutional framework for the executive presidency, though he publicly declares that he wants to abolish it more than anyone else.

Perhaps the nation is beginning to emerge out of the control of the propaganda machinery, which has been attributing all the country's ills to consequences of "the war". The nation perhaps is beginning to see that "the war itself, was a product of the supreme law of the country", the Constitution.

### ***Office of the Executive President is Above the Law***

The separation of power doctrine as understood in a liberal democratic framework has been conceptually rejected within the 1978 Constitution of Sri Lanka, and this is seen in the way power distribution is articulated. The Office of the Executive President virtually subsumes every other organ of government. The President is neither answerable to the Courts nor to the Parliament. In other words, the President cannot be held accountable during his/her tenure of office, even for an act of intentional violation of the Constitution. The holder of the Office stands above the law. This has an immediate impact on the realization of internationally accepted human rights as found in the International Covenant on Civil and Political Rights (ICCPR), since the very basic idea of the independence of institutions—including that of the judicial institution—has been seriously undermined.

### ***Complete Displacement of the Principle of Separation of Powers***

Universally recognized principles relating to the separation of powers are incapable of being realized in Sri Lanka's constitutional structure. Parliamentary control of the Executive is not effectively exercised due to the overwhelming powers vested in the Office of the Executive President. Separation of power between the executive and the judiciary is also not practically evidenced due to presidential control of the appointments of superior court officers and (indirectly) their transfers, promotions and dismissals. Even though the power over disciplinary control and transfer of judges rests with the Judicial Service Commission (JSC), the control to appoint the Chief Justice and other Superior Court Judges (who constitute the JSC) rests unconditionally and entirely with the President.

Further, the dismissal of these higher-court judges is done through a political process by a Select Committee of Parliament, which is ultimately controlled by the President, again illustrating the preponderance of executive power over

the Parliament. This was highlighted in 2013 when the Chief Justice of Sri Lanka was impeached by government parliamentarians, ejected from office and replaced by the “politically compromised” Attorney General, who is currently Sri Lanka’s de facto Chief Justice.

In a context where the Chief Justice and the judges of the Superior Courts hold office at the pleasure of the President, there can be no independence of the judiciary and consequently no realization of the rights enshrined in the ICCPR.

### *The Judiciary & the Courts*

There are no constitutional impediments to obstruct the President and/or the Executive from interfering into the decision-making processes of judges. Similarly, there are no operative Constitutional Conventions to prevent the President or the Executive from giving directions to the judges on the outcome of cases. The practical result of this is the absence of justice that Sri Lankans experience on a daily basis. The JSC does not function independently, but in accordance with the dictates of the government. Moreover, there is no public perception that independent decision-making can be expected from this body. The JSC process is neither transparent nor accountable.

### *Direct Impact on the Protection of Minority Rights*

Currently the continuation of a public security regime in Sri Lanka is effected by regulations under Section 27 of the Prevention of Terrorism Act (PTA), which reflects the earlier Emergency Regulations (ERs) under the Public Security Ordinance (PSO).<sup>19</sup> In fact, “a perpetual state of emergency has been created through subordinate legislation which, unlike the ERs which were subject to periodic parliamentary oversight”,<sup>20</sup> has entrenched the counter terrorism agenda within the public security framework in Sri Lanka. The judicial response to upholding rights of minority petitioners on constitutional grounds is abysmal. A common feature is that the anti-terrorism law is used to launch cases against individuals seen as opposing the regime and then, in some

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19 The Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011, the Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organisation) No. 2 of 2011, the Prevention of Terrorism (Extension of Application) Regulations No. 3 of 2011, the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011, and the Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011, respectively published in Extraordinary Gazette Notifications 1721/2, 1721/3, 1721/4, and 1721/5 of 29 August 2011.

20 See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, *The Judicial Mind in Sri Lanka- Responding to Minority Rights*, Law & Society Trust, 2014, at p247.

instances, the power of presidential pardon is employed to free that individual. Here again, what emerges is the supremacy of Presidential rule over the legal process. Some illustrations below indicate this fact:

- ***Detention and rehabilitation of Jaffna University students*** - On 27 November 2012, students of Jaffna University lit candles on Maa Veerar Naal, i.e. Heroes day, traditionally celebrated by the Liberation Tigers of Tamil Eelam (LTTE) to commemorate fallen members of their movement. The following day, the students organised a protest march, which the police suppressed, arresting protestors.<sup>21</sup> Four individuals were detained under the PTA Regulations. Two of the students were released from custody on 22 January 2013 after being ‘rehabilitated’ at the Centre. The Government stated that the remaining students required further rehabilitation. These students were released later under the pardon of President Mahinda Rajapaksa. The President’s “benevolence” was seen as a determinative factor in securing the release of the two students. The case demonstrates a critical departure from precedent, where courts were the prime fora for canvassing rights.<sup>22</sup> Now the onus has shifted from the legal arena to the arbitrary use and abuse of presidential power.
  
- ***Ganesan Nimalaruban’s case*** - In July 2012, Ganesan Nimalaruban and Mariyadas Pevis Delrukshan, two Tamil political prisoners, died in state custody.<sup>23</sup> They were severely beaten by the Special Task Force (STF) of the Police following their involvement in a hostage taking incident at the Vavuniya Prison. Nimalaruban (age 28) succumbed to his injuries in hospital on 4 July 2013 and Delrukshan (age 34), who was in a coma for several days, later succumbed to injuries he sustained as a result of the assault.

Nimalaruban’s father thereafter filed a fundamental rights application, dated 3 August 2012, before the Supreme Court. According to the petition, the Criminal Investigation Unit of the Vavuniya Police arrested Nimalaruban on 5 November 2009; he had been traveling on a motorcycle with a friend along Veppankulam Road, Vavuniya.<sup>24</sup> After being detained at the Criminal Investigation Unit, Vavuniya, for two days, Nimalaruban was taken to the Vavuniya Police Station. Meanwhile, a Detention Order

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21 Ibid.

22 Ibid.

23 Ibid.

24 The petition was reproduced by the Asian Human Rights Commission in: Asian Human Rights Commission, *Sri Lanka: Ganesan Nimalaruban case: Chief Justice Mohan Peiris denies petitioner’s lawyers right to see replies filed by Attorney General*, 22 May 2013.

under Regulation 19(1) of the 2005 ERs was issued by the Additional Secretary to the Ministry of Defence to detain Nimalaruban for a period of 30 days. According to the petition, Nimalaruban was thereafter produced before the Magistrate's Court in Vavuniya and the Magistrate ordered that he be remanded.

Sri Lanka's de facto Chief Justice, Mr. Mohan Peiris, eventually decided the matter on 14 October 2013. The Court proceeded to dismiss the application without citing any reason. Hence, there is no official record of the proceedings or the exchange between counsel and Court. However, unofficial media reports cited by the Asian Human Rights Commission are illustrative of the events that took place.<sup>25</sup> Mr. Peiris is reported to have observed in Court that "if children are brought up well, they won't be involved in these types of activities", thereby displaying what appear to be prejudicial sentiments regarding a case he was yet to hear.<sup>26</sup> He was also reported as saying that the prison authorities needed to use some type of force to quell the riots and rescue prison officers who had been taken hostage. He then reiterated that Nimalaruban was already suffering from a heart ailment, and that this was the cause of his death.<sup>27</sup> The Asian Human Rights Commission pointed out that, at this stage of the case, the Court "did not have all the evidence that would be led by both parties, and that the de facto CJ was not in a position to make his judgment on the facts."<sup>28</sup> Moreover, when Counsel for the petitioner pointed out that there was no material before Court to prove the victim's connection to the incident at the Vavuniya Prison, Mr. Peiris indicated that he had personal knowledge about the incident.<sup>29</sup>

The case remains one of the starkest examples of the capitulation of the Sri Lankan judiciary to so-called public security concerns.<sup>30</sup> When the matter was taken up in Court on 21 May 2013, prior to its dismissal, Mr. Peiris is reported to have stated: "Human rights are there to protect

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25 Asian Human Rights Commission, *Sri Lanka: In Ganeshan Nimalaruban's case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013>.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid. Also see 'De Facto CJ Exposed Himself In The Worst Possible Manner In Courts', *colombotelegraph.com*, 14 October 2013, at <https://www.colombotelegraph.com/index.php/de-facto-cj-exposed-himself-in-the-worst-possible-manner-in-courts/>

30 See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, *The Judicial Mind in Sri Lanka- Responding to Minority Rights*, Law & Society Trust, 2014, at p. 247.

the majority and not the minority of criminals.” In effect, the Court was prepared to see Tamil political prisoners as criminals even before they had been tried by a court of law. When Counsel for the petitioner requested access to certain documents filed by the Attorney-General’s department, Mr. Peiris responded with the following:

“The court is not a place to get documents for the petitioners. This is the way you all procure the evidence and then circulate to the entire world to tarnish the image of the country. The executive submits confidential reports only for the eyes of judges particularly where national security issues are concerned.”<sup>31</sup>

### *Negation of Remedies of F.R. & Habeas Corpus in Relation to Disappearances*

A detailed analytical study of 884 habeas corpus cases, covering the period from 1994-2002, found that the practical inefficacy of the implementation of writs defeats the remedy.<sup>32</sup> For example, the habeas corpus application of “disappeared” journalist Prageeth Eknaligoda illustrates the failure of this remedy as this case has been pending for many years. Petitions filed by Tamil mothers and fathers of those who disappeared during the ending of the conflict in the Wannu in 2009 remain similarly pending before courts. State agents merely deny taking the victims into custody. Earlier, the State was compelled to pay compensation and acknowledge the disappearance where no specific state agent could be held responsible, but this practice has not been evidenced in recent years.

It has been pointed out that solutions require “changes in law, administrative procedures, judicial structure, as well as securing of the independence of the judiciary”<sup>33</sup>. The International Crisis Group<sup>34</sup> has linked the failure of the

31 See Asian Human Rights Commission, *Sri Lanka: In Ganesan Nimalaruban’s case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013>.

32 Kishali Pinto-Jayawardena & Jayantha de Almeida Guneratne, *Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times* (Sri Lanka: Law and Society Trust, 2011)

33 Basil Fernando, ‘SRI LANKA: The politics of habeas corpus and the marginal role of the Sri Lankan courts under the 1978 constitution’, Asian Human Rights Commission (2011), <http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011>, accessed 10 June 2013.

34 International Crisis Group, ‘Sri Lanka’s Judiciary: Politicised Courts, Compromised Rights’, International Crisis Group Report (June 2009) N° 172, p. 30.



Writ of Habeas Corpus to the overall legal and political milieu that includes the diminishing independence of the courts, the inadequacy of constitutional provisions to empower the courts, the passage of emergency laws that further limit its powers, and the reprehensible political influence exercised by the executive on the judiciary.

The constitutional remedy of fundamental rights has virtually fallen into disuse as the Supreme Court has refrained from asserting its authority against powerful state actors, particularly the Ministry of Defence.

### ***Absence of Effective Legal Mechanism for Corruption Control in Executive & Legislature***

Corruption plays a major role in the decision-making processes. The existing system, which is under the Bribery and Corruption Commission, and the relevant laws, are thoroughly ineffective. The functioning of the Commission itself is under direct political control. As in the case of appointments to the higher judiciary, appointments of Commissioners to the Bribery and Corruption Commission are also done entirely at the will and pleasure of the President. The Commission itself has been used to harass political opponents of the ruling party.

### ***Loss of the Meaning of Constitutionalism***

There is no effective legal mechanism through which the legality/constitutionality of any decision of the government can be challenged. Consequently, any action by the government remains valid irrespective of it being illegal or unconstitutional.

### ***Negation of Public Institutions***

Constitutional commissions, such as the National Police Commission, the Human Rights Commission and the Public Service Commission, are appendages of the government and are unable to function independently. The Commissioners of these bodies also function according to the will and pleasure of the President. Even though a constitutional amendment in 2001 (the 17th Amendment) specified the intervening authority of an independent Constitutional Council into the appointments of members of these bodies, the 18th Amendment effectively decimated the 17th Amendment. Presently the President functions without any fetter in respect to these bodies. During the period under review by the Committee, none of these bodies have exercised their powers in even a single decision that goes contrary to the President or his government.

### *ICCPR, Article 14*

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.[...]*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
  - (a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
  - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
  - (c) *To be tried without undue delay;*

[...]

  - (d) *Not to be compelled to testify against himself or to confess guilt.*

### *Judiciary Treated as Lesser Power than Executive*

It must have been somebody's idea that judicial independence in Sri Lanka should be destroyed, although when the idea was first generated is not known. It is possible that it arose more or less at the same time as the 1962 coup; that was a wild period for some people who had enjoyed privileges at the top. These persons were unanimous in their opinion that everything had gone wrong in Sri Lanka and some extraordinary intervention was therefore needed. The idea behind the coup was that democracy should be replaced, or at least modified, to preserve the privileges enjoyed by the elite from the challenge of people claiming democracy as their own. The coup failed, but the ideas around the coup remained. These ideas were nursed by others who wanted to achieve certain ideals through other means. The opportunity arose when J.R. Jayawardena, a person unanimously considered as representing the epitome of reactionary ideas, obtained 5/6th of the seats in the 1977 parliamentary election. In the following year, a small "clique" of people put their heads

together to create a political model drastically restricting democracy, to either eliminate or push back, the notion of people having a greater say through a democratic form of government.

This small “clique” of persons who designed the 1978 Constitution had their own reasons to oppose the Judiciary as an independent branch of government. Those with a taste of the coup aftermath would remember that a strong Judiciary, protecting the investigative branch, was able to convict the leaders of the 1962 coup. It was the Privy Council in England that finally saved these leaders. If such power rested with the Judiciary, it may object to the realization of the ambitions of the new Constitution’s makers. They therefore formulated the idea that development and economic progress necessitated a strong executive. A strong executive implied a weak judiciary and a weak legislature. Thus, the equations found in the 1948 Constitution, based on the classical separation of power concept, needed to be changed in favour of a new equation in which the Executive was a higher power and the Judiciary and the Legislature were lesser powers.

We will never know which individual was more vocal in favour of this new equation. All that we may say with certainty is that it was then Prime Minister J.R. Jayawardena who approved this scheme. He had good reasons to do so; his own personal ambition to retain power for as long as possible could be better achieved under the new equation, where challenges to his authority could not be pursued in the Courts.

In reviewing the currently proposed 19th Amendment to the 1978 Constitution, the basic question to answer is whether it meets the requirements to reestablish the equation between the Executive, the Judiciary, and the Legislature as three separate branches that embody separate powers.

When President Mahinda Rajapaksa says he wants the Constitution to be changed, does he mean that he wants to revert to the classical separation of power doctrine? Have his ideas about the judiciary changed from those consistently exhibited throughout the chain of actions that reduced the judiciary to a position of a lesser power? If this is so, then he is expressing a willingness to undo all the measures he has taken to ensure that the judiciary is in no position to challenge his decisions. It also means that he is willing to abandon the President’s arbitrary powers for appointment and dismissal of judges. This, in turn, implies that he wants to eliminate the possibility of the arbitrary removal of judges, as in the case of Chief Justice Shirani Bandaranayake, and of arbitrary appointments, as in the case of Mr. Mohan Peiris.

Such considerations will determine the credibility of his stated willingness to change the Constitution. They will also emphasize that changing or not changing the Constitution depends not on the question of some groups claiming a separate state, but on whether or not the President is ready to stop treating the judiciary and legislature as lesser powers.

Even the worst of criminals have a right to a fair trial before an independent judiciary. In Sri Lanka however, it was witnessed that even a Judge—no lesser than the Chief Justice herself—does not have that right. Article 107 of the Constitution and the standing orders now preclude that right. This brings us to Article 12(1) of the Constitution, which guarantees equality before law to everyone. However, with the recent impeachment proceedings against Chief Justice Shirani Bandaranayake, even judges do not have that equality. What, then, is the quality of the citizenship of a judge? There is a tragi-comic absurdity here, and a fundamental illegality.

Perhaps for the first time in Sri Lankan history, people have taken to the streets in the last few months to protest against the abuse of the judicial process and to demand fairness. Some lawyers were quoted by the media as saying, “Now, we have to demand justice from the gods, unseeing forces, as there is no justice in Sri Lanka”. The present regime has acquired the reputation of manipulating justice and punishing opponents without due process. It is proving that the executive president can, indeed, do anything, except making a man into a woman or vice versa, as claimed by the first executive president, J.R. Jayewardene. The denial of fair trial has been both seen and felt by the people, and the street protests demonstrate their frustration against the entire political system based on the 1978 Constitution.

J.R. Jayewardene did not dare in his day to go all out against fair trial. When punishing Mrs. Sirimao Bandaranayaika by depriving her of her civil rights, he made sure that the case did not go before the normal courts; he created a special commission for that purpose. He used emergency laws to arrest and detain her supporters, including Mahinda Rajapakse, Vijaya Kumaratunga and others. They were kept in detention for months but he did not proceed with their trials. Perhaps, he was not so sure that he could get what he wanted from the courts.

When Rohana Wijeweera filed an election petition against him, J.R.J. proceeded to proscribe the JVP and hunt them down through the use of emergency regulations. What developed as the second JVP insurrection, in fact, began in that way, culminating under R. Premadasa into the disappearances of over 30,000 persons. No matter the many theories put forward regarding these events, the core issue was the elimination of the political opponents of

the executive president; any means was excusable to protect this position. This same logic has now been extended to the abuse of justice: the subversion of justice to eliminate political opponents is now deemed justifiable.

### **Overall Constitutional Structure Defeats the Efficacy of Remedies**

In any country based on the rule of law, the judiciary is the most important protector of the individual against the arbitrary exercise of power by the executive. In Sri Lanka, judicial power has been reduced so much that the judiciary can no longer play its role in any significant manner to protect the people who seek legal redress.

Torture by police and extrajudicial killings are among the most common abuses in the country; the same is true for forced disappearances, illegal arrests and detentions. The judiciary is unable to ensure fair trials regarding any of these abuses, because of extraordinary delays and limited resources. It is impossible to protect the rights of women due to the failures of the justice system. A law about domestic violence for instance, has been rendered ineffective during the process of implementation. People in the north and the east are neglected and are without legal protection. They have the right to fair trial, to freedom of expression and freedom of association, to form a government after free and fair elections. They also have a right to the truth, compensation for past violations when they endured the loss of life, liberty and property. None of these rights are being realized or protected by the Sri Lankan courts.

The Sri Lankan Constitution specifies that the exercise of the sovereignty of the people, where judicial power is concerned, shall be by the Parliament through the Courts. This particular wording, “by the Parliament through Courts”, privileges the Parliament above the Courts and subordinates the Court to the Parliament. This is of immediate practical concern to the efficacy and availability of remedies.

The Parliament’s 2013 impeachment of Sri Lanka’s 43rd Chief Justice was ruled against by both the Supreme Court and the Court of Appeal on the basis that one organ of government (i.e. the Parliament) should not be allowed to “punish” the Chief Justice or any Judge of the Supreme Court without due process being followed.

The government’s position was that proceedings of Parliament relating to the impeachment of superior court judges are not amenable to judicial review. After disregarding the opinions of the Supreme Court and the Court of Appeal to withdraw from the impeachment, the government put into place a ‘compromised Chief Justice’, under whom a Bench of the Supreme Court ruled

one year later that the judiciary could not challenge the process or decisions of a parliamentary committee on impeachment.

This question is central to the consideration of Sri Lanka's compliance with the ICCPR and the availability of remedies thereto. In a practical sense the judiciary in Sri Lanka has been made structurally incapable of being independent by the Constitution itself. This has impeded the proper functioning of remedies for individuals whose rights are violated. In a basic sense, it has undermined the independence of the judicial institution, though theoretical remedies exist for fundamental rights violations.

### **Immunity of the Executive President**

The Sri Lankan Constitution provides no remedy for individuals whose rights have been violated when the act in issue is by the Executive President. Article 35(1) of the Constitution provides for the immunity of the President while holding office as President for any acts done either in an official or private capacity.

In terms of the Constitutional structure itself, the Parliament is empowered to make retrospective laws and/or repeal or amend the constitution with minimal accountability. In terms of article 122 of the Constitution, the Supreme Court is mandated to come to a decision on the constitutionality of a Bill within 24 hours in some cases. As a result, there is little space for public comment/criticism of such Bills.

The 18th Amendment to the Constitution—which repealed the progressive 17th Amendment and returned the power to make appointments to key constitutional commissions and public positions to the president—was passed by the Parliament in such a context.

### **The Privileging of Public Security Law by the Constitution**

Article 15 privileges law relating to public security over the exercise and operation of fundamental rights, including the presumption of innocence and the prohibition of retrospective legislation.

### **Recommendations Relating to Article 14 of the ICCPR**

The Government should provide opportunities to the Sri Lankan public to air their grievances and criticisms relating to the setbacks on fair trial, assess such grievances, and take corrective actions to ensure that article 14 of the ICCPR is respected and implemented in Sri Lanka.

The Government should make amendments to the Constitution to ensure that the judiciary is treated as an independent branch of the government and that the recognition of such independence is manifested through the processes of appointments and promotions, as well as in the disciplinary process and in the dismissals of judges; the prevalent understanding is that the Executive President controls all these functions and, therefore, the appointments, promotions, disciplinary control processes and dismissals of judges, including judges of the Supreme Court, are done for political reasons that act detrimentally to the independence of the judiciary.

The prevalent constitutional provisions and practices which were used in the impeachment of the Chief Justice, Dr. Shirani Bandaranayake, were all done in direct contradiction to the principles relating to the removal of judges followed in countries where the independence of the judiciary is respected and where the separation of powers principle is entrenched. The foul play practiced on the occasion of the Chief Justice's removal has thoroughly shaken public confidence in the judiciary as an independent institution. All constitutional provisions relating to the impeachment of judges must thus be laid down in terms of international norms and practices applicable to such impeachment processes.

The Government should take serious measures to ensure that the principle of open justice is respected in Sri Lanka. The recent practice of holding in camera court proceedings for the examination of the constitutionality of proposed legislation, including proposed amendments to the constitution, is a blatant violation of the judicial process and the notion of open justice. The exclusion of public participation and the absence of lawyers in such judicial actions result in 'judgments which cannot be considered as judicial in nature'. By making such exclusions the judiciary virtually acts as an arm of the Executive. Such judgments can have disastrous effects on the rule of law and democracy. Further, such actions expose the judiciary to public ridicule and decrease confidence in the institution.

The judiciary as a branch of the government must exercise its duty to protect its own independence. In the recent past there have been many instances in which the judiciary itself has acted in a manner that is contrary to the principles of the independence of the judiciary. This was well illustrated in the impeachment of Sri Lanka's 43rd Chief Justice, which was initially ruled to be contrary to constitutional principles relating to due process by Sri Lanka's Court of Appeal and Supreme Court. The Court of Appeal in fact quashed the proceedings of a Parliamentary Select Committee which, through its government parliamentarians, had upheld the impeachment. One year later, another bench of the Supreme Court, under 'a new Chief Justice,' reversed this decision and stated categorically that a Parliamentary Select Committee is not subject to judiciary review. This was a manifest travesty of justice.

The interpretation of the principle of the Supremacy of Parliament as meaning that the Parliament can act in violation of the principle of judicial independence nullifies judicial power in Sri Lanka. The interpretation of these principles by the Parliament, as well as by the judiciary, is contrary to the manner in which these principles are interpreted in other common law jurisdictions. At present, there is a serious crisis in how the judiciary is being treated in Sri Lanka. So long as this matter is not addressed in favour of a proper liberal democratic interpretation, the public in Sri Lanka will have serious doubts about the protection of their rights against arbitrary violations by the Executive through the judicial process. This crisis casts serious doubts on any valid and legitimate roles the legal profession can play in defense of their clients' basic rights.

The Government should take serious action in order to restore the legitimacy and the democratic role of the legal profession in Sri Lanka. The prevalent situation is one in which the role of the legal profession is drastically undermined, not only on constitutional matters, but also in every kind of litigation, including litigation relating to property rights.

The Government should address the serious crisis that exists in the criminal justice process in Sri Lanka. The prevalent situation is one in which the roles of all relevant state actors, such as the police in their investigative role, the Attorney General's Department in its role as the public prosecutor, and the judiciary in its role, have all been undermined due to constitutional provisions resulting in their politicization. These constitutional provisions have also led to the erosion of the power of the police as a civilian policing institution, the Attorney General's Department as an institution working within the rule of law framework, and the judiciary as one that functions within the of principles of open justice.

The Government should re-examine its claim about implementing the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), to ensure the functioning of the policing system as a civilian policing system by bringing the Department of the Police under a Ministry of Law and Order. However, the prevalent situation is that of a directly politically controlled policing system, where the Inspector General of Police and higher-ranking police officers have lost the command of the institution and the institution is controlled from outside. This has drastic consequences on the rule of law in the country as a whole, and the capacity of the police to bear the responsibility for the control of crime.

The Government should critically examine the deepening militarization within the police. Since the Justice Soertz Commission of 1946, the matter of the militarization of the police has been raised by several subsequent commissions.



However, none of the recommendations of these commissions have been implemented. Instead, the policing system has been allowed to be further militarized, both in its mentality and its practices. The idea of the development of a civilian policing system within the conceptual framework of the British metropolitan police has not even been ventured into in Sri Lanka.

The Government should address the problems relating to the politicization of the Attorney General's Department and its virtual incapacity to act within the framework of the rule of law. The prevalent situation is a result of direct political control of the Executive of this institution, which has brought it directly under the Presidential Secretariat by virtue of a Gazette notification.

The Government should also seriously examine its inability to address some of the perennial failures of the judicial system, particularly in terms of undue delays and archaic procedures that result in dragging litigation on for ten years or more.

The Government should look into several failures of the appellate process, both in the Court of Appeal and in the Supreme Court, and in particular the failures to immediately communicate the decision of the Appellate Court to the relevant trial court, even in instances when the court has ordered fixing of retrials at the trial courts in the relevant cases. A direct case in point is regarding Gerard Perera's case referred to above. It must be emphasized that such failures leave room for corrupt practices with the connivance of certain judges.

#### *ICCPR, Article 19*

3. *Everyone shall have the right to hold opinions without interference.*
4. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

### *Loss of Freedom of Expression & Intimidation of the Media*

In the year 2014, killings and abductions of journalists in Sri Lanka reminded uninvestigated. The militarization of the state structure resulted in journalists being assaulted, threatened, and intimidated in situations of public disorder (i.e. the attack by the army on unarmed protestors at Weliveriya in 2013 and the

communal violence in Muslim villages by radical Buddhist priests in Sri Lanka's South West in 2014).

Journalists who reported on these matters were routinely questioned and put under surveillance. The Government, in a 2014 circular, prohibited non-governmental organizations from holding training workshops for journalists. Tamil journalists travelling from the North to Colombo to participate in such workshops were detained at checkpoints.

The Government's assertions that the Parliamentary Powers and Privileges Act of 1978 has been repealed is also incorrect. What has been repealed is only a limited amendment to the Act. The Act remains in full force, restricting the power of journalists to report on proceedings in Parliament.

Though the State Party refers to the existence of bodies set up by the media industry in support of its position that freedom of expression is not under threat, mobs stormed the central office of the Sri Lanka Press Institute, situated in Colombo, in July 2014 during the holding of a training programme. Perpetrators responsible for these attacks have not been identified and brought before the Courts.

Widespread abuse of state media and state resources by the Government in election campaigns has also been evident.

The following are some of the interventions made by the AHRC regarding freedom of expression during the year 2014:

### **AFP Reporter Killed in Her Home**

Former AFP reporter Mel Gunasekara's horrendous murder came just two days before the independence-day commemorations in February this year. According to reports, she was killed while she was at home alone on a Sunday morning. She was stabbed and cut. Such crimes are often reported from around the country.

There are many professional killers with developed skills available to be put to use by anyone who wishes to have one of his or her enemies eliminated. Such killers are a 'gift' from the war. A sophisticated killer can be at anyone's door at any time.



As mentioned earlier, senior journalist Prageeth Eknaligoda's whereabouts are still unknown. The allegation by his family, and even some of the newspapers that have reported on the issue of his disappearance, is that a powerful politician of the ruling regime is behind his disappearance. In fact, for several years, Prageeth Eknaligoda's disappearance has been a major embarrassment for the Rajapaksa regime.

It is unfortunate that the media interest in the disappearance of Prageeth Eknaligoda was diverted into controversies about the claims that his disappearance came about due to his journalistic involvements. The issue whether he was a journalist, or whether the cause for his disappearance was his journalism, became the focal point of media controversy. This happened despite virtual unanimity in suspicion of the government's involvement in his disappearance.

The government's campaign to undermine the allegations against it arose from the highest levels. The present Chief Justice Mohan Peiris, who, when participating at the last sessions of the United Nations Committee Against Torture on 9 November 2011, officially stated to the Committee that he was aware that Prageeth Eknaligoda was living in a foreign country. He reneged on these words when later questioned in a Court of law. However, despite such constant embarrassments faced at international fora, the government has done nothing to exonerate itself from any of the allegations by ensuring a credible inquiry.

Recently, journalists and lawyers held demonstrations to protest attacks and imminent threats of attack as a reprisal against their engagement in their respective professions.

In another incident, in July 2014, dozens of pro-government activists blocked several Tamil journalists from holding a training program in Sri Lanka. Journalists from the northern Jaffna Peninsula were travelling to Colombo to attend a media workshop when the organizers were forced to stop the program because of intimidation by dozens of protesters. They were stopped by the military and the police at two locations on the way to Colombo and detained for several hours after being falsely accused of transporting cannabis. Police detained the driver of the vehicle and later freed the journalists after questioning them for hours. Military spokesman Brigadier Ruwan Wanigasooriya denied security forces had framed the journalists and insisted that they searched the vehicle on a tip-off that it was transporting narcotics. He also denied that the military was linked to the demonstration outside the Sri Lanka Press Institute, the venue for the training of the ethnic minority Tamil journalists.

The Free Media Movement accused the Military of being behind a new wave of intimidation that has been unseen before. According to reports, the organisers of the workshop had also received death threats over the telephone for holding a press conference to denounce the harassment of Tamil journalists demonstrating yet another incident in the Sri Lankan Government's agenda of keeping up a policy of harassing journalists.

## **Recommendations**

Freedom of opinion and expression are binding on every State party and all branches of State. The executive, legislative, judicial and other public or governmental authorities at whatever level are in a position to engage the responsibility of the State party. Therefore, we urge that the Sri Lankan government ensures that the rights contained in article 19 of the ICCPR are given effect to in the domestic law of the State, and actually implemented.

The State must guarantee the protection of the right to hold opinions without interference. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person freely chooses, and no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual or perceived opinions.

It is incompatible with the provisions of article 19 to criminalize the holding of an opinion. The harassment, intimidation, or stigmatization of a person, including arrest, detention, trial, or imprisonment for reasons of the opinion they may hold, constitute a violation of article 19.

The government should guarantee the right to freedom of expression including the right to seek, receive, and impart information and ideas of all kinds regardless of frontiers of all citizens. This scope also embraces even expression that may be regarded as deeply offensive.

The government should ensure that public broadcasting services operate in an independent manner, and should guarantee their independence and editorial freedom.

The government must, as per its obligations under the Covenant, put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. This obligation may never be invoked as justification for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights. Under no circumstances can a person be attacked for exercising his or her freedom of opinion or expression, including such forms of attacks as arbitrary arrest, torture, threats to life and killing.

### *ICCPR, Article 22*

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

### *Article 21*

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

### *Relevance of Freedom of Association & Peaceful Assembly Today*

Freedom of association and peaceful assembly saw its worst threats in Sri Lanka in 2014, despite the attempts by state media and “Para state propaganda units” to deny it.

Although the Constitution of Sri Lanka reinforces the ICCPR by guaranteeing freedom of assembly and association (article 14(1) b and c), it also offers exceptions to these guarantees to be restricted in the interests of racial and religious harmony, the national economy (articles 15(3)(4)). Meanwhile, the Prevention of Terrorist Act (PTA) [Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended by Act Nos. 10 of 1982 and 22 of 1988] threatens the right of freedom of assembly and association.

The Ratawesi Peramuna case record speaks volumes of the importance of human values and human rights. This case took place during the 1990s when Sri Lanka was differently poised. There were insurrections in the North and the South and emergency laws were in operation. As a result, dissenting points of view were subject to suppression. Yet the court system was upheld and courts recognized the value of upholding the Fundamental Rights enjoyed by any citizen. It is thus pertinent to revisit this case.

Malinda Channa Peiris Seneviratne, Athureliye Rathana (Ranjith), Ranawaka Arachchige Patali Champika Ranawaka are prominent personalities in contemporary Sri Lanka. In 1992 they were among 16 other individuals who moved the Supreme Court in 10 Fundamental Rights Applications, now reported in (1994), 1 Sri Lanka Law Reports 1, alleging that they were detained by the police under emergency laws and tortured. Their main complaint however, was that their freedom of association, which they exercised through the Ratawesi Peramuna, a non-political civil society organization, was violated. The Legal Aid unit of the Bar Association of Sri Lanka (BASL) and several other NGOs were at the forefront to protect the rights of the detainees at that time and they had coordinated preparations for this case. These cases were filed pro bono and Sri Lanka's foremost Human Rights Lawyer Mr. R.K.W. Goonesekere and Attorneys-at-Law Manori Muttetuwegama, Suranjit Hewamanne, Methsiri Coorey, LCM Swarnadhipathi and J.C. Weliamuna represented them. Fortunately, unlike today, nobody questioned the rights of the activists and NGOs to raise these issues before the appropriate fora.

Around the same time, another case came up in the Supreme Court, when Mr. Mahinda Rajapakse MP (now the President) was detained at the airport for questioning as he was on his way to Geneva to make a representation before the 31st Session of the Working Group on enforced or involuntary disappearances. This detention was challenged with Mr. R.K.W. Goonesekere leading the team of lawyers (see *Mahinda Rajapakse v. Kudahetti* 1992 2 SLR 223). All leading NGOs condemned the detention of Mr. Rajapakse. What is notable given the current environment in Sri Lanka however, is that no one questioned the role of civil society in support of Mr. Rajapaksa's visit to Geneva.

The interesting backgrounds of the different petitioners in Ratawesi Peramuna make it important to understand how an association works outside the control of the Government. According to the case record, Malinda Seneviratne (now editor of Nation newspaper and close associate of Sri Lankan Defense establishment) had read fundamental texts of Marxism, and then became a Trotskyite. He entered Dumbura University but went to the United States of America on an exchange to read sociology at Harvard University. Ven. Ratana (now a Member of Parliament from Sihala Urumaya) was the ideological leader

of the group. Champaka Ranawaka (now a Minister and a leading nationalist ideologist), a founding member of Ratawesi Peramuna, took an active part in anti JVP activities in the universities. He wrote articles to Ravaya and Lakkima. He was opposed to the guns of both the JVP and the government, and wanted to prevent the youth from being pushed to violent politics. He also had a scheme to restructure the Peramuna along the lines of a political party. Many other petitioners were involved with Government and held key positions in various ministries. Petitioner Bandara became a Governor of Uva and later a Member of Parliament from UPFA.

In delivering the judgment, Justice Dr. A.R.B. Amerasinghe considered several leading decisions of the US Supreme Court amongst others, and made the following pronouncements, now part of our constitutional law:

- No person or group of persons, not even majorities, can claim to have a monopoly of good ideas. Many a strange and singular idea in its time, through argument and debate, had the power to get accepted as truth.
- It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an indispensable aspect of liberty.
- Freedom such as the right to association are protected not only against obvious heavy handed frontal attack, but also from being smothered or stifled or chilled by more subtle interferences.
- Legitimate agitation cannot be considered as incitement to overthrow the government unlawfully.

Amongst those who were victims of the repression of freedoms of assembly and association in 2014 are families of the disappeared, student activists, workers, lawyers, the clergy, opposition members of Parliament, NGO workers and human rights defenders.

Foremost amongst the attacks on freedom of assembly and association was the alarming event during the first half of the year where the NGO secretariat on the instructions of the Ministry of Defence sent out a circular to all non-governmental organisations in Sri Lanka. The circular warned them to refrain from holding any workshops for journalists, organizing training programmes for journalists, holding press conferences and issuing press releases of any kind. Public notices were also issued by the Department of External Resources of the Ministry of Finance issuing a stern warning to these organizations on accepting funds from overseas donors. Also afoot were plans to introduce new laws on the registering, monitoring and controlling of NGOs.

In other such moves against the freedom of assembly, participants at peaceful protests have faced threats and intimidation, with police and army personnel using maximum force against unarmed protestors engaged in peaceful assembly. Police have resorted to obtaining ex parte judicial orders to stop any protests before they take place. Police have also blocked travel to and from the North Eastern Provinces for peaceful assemblies. Some such attacks are elaborated below:

*In January 2014*, the Colombo Police, Crime Division arrested former Convener of the University Inter Student Federation, Mr. Mahesh Bandara, alleging that he had committed offences of public nuisance by organizing a protest on 13 November 2013, and for disturbing vehicle movement in Colombo. The Colombo Fort Magistrate ordered bail on conditions that he was not to participate in protests or enter universities.

*In March 2014*, 48 people including women, children and devotees observing precepts at a temple were arrested and many others assaulted by the police, for protesting against drinking water pollution in the area by the rubber factory in Thunnane, Hanwella.

*In April 2014*, a group of United National Party (opposition party) members of parliament visiting the Magampua Port in Hambanthota, were threatened and pelted with eggs by an armed mob. The mob included the district mayor. The group of parliamentarians abandoned the tour once the mob turned violent.

*In May 2014*, 17 university students were arrested and several others were assaulted by the police. Four of the students were admitted to the Colombo National Hospital. A student spokesman told media that the students were taken to the police station by police in civilian clothing, and beaten in full view of the public. Students of the Faculty of Allied Health at the University of Peradeniya have been engaged in an ongoing protest against the special degree being reduced from four to three years.

*In June 2014*, a protest was disturbed by the military by arresting a Tamil Northern Provincial Councillor and trying to prevent people from participating. The protest was organized to demand legal hearings into habeas corpus applications from families of disappeared persons.

*In July 2014*, journalists who protested against military intimidation on their way to Colombo to attend a media workshop on July 25, were called for questioning by the Omanthai Police.



On 1 July 2014, the National Secretariat for Non-Governmental Organizations, functioning under the Ministry of Defence and Urban Development, issued a letter to all registered Non-Governmental Organisations (NGOs). The letter expressly forbade NGOs from conducting press conferences, workshops, training for journalists, and to stop them disseminating press releases. This came under serious condemnation from many civil society organizations within Sri Lanka and outside, and the United Nations stated that it would inquire into the circumstances under which this letter was issued.

As a result of this condemnation, the Ministry of External Affairs has issued another letter attempting to explain the earlier one. The Ministry for External Affairs' letter attempts to create the impression that the work of NGOs are restricted by several laws under the Voluntary Social Service Organizations [Registration and Supervision] Act Number 31 of 1980, by amendments to the Act, by regulations issued under an Extraordinary Gazette, as well as by a Circular Letter of the Secretary to the President. This letter from the External Affairs' Ministry is a complete misrepresentation of the law in Sri Lanka.

The Constitution of Sri Lanka has a section on the fundamental rights of citizens. All basic human rights enshrined in the ICCPR are recognized as rights of citizens in Sri Lanka. The right to freedom of expression and assembly are recognized as fundamental rights. The functioning of all organisations within Sri Lanka, whether governmental or non-governmental, is subject to these basic laws.

Any regulations made specifically for non-governmental organisations are solely for the purpose of guaranteeing accountability for any funds received for the functioning of these organisations, whether from external or internal sources. There is no other purpose for these regulations and none of these regulations can take away the human rights guaranteed within the basic law of Sri Lanka, and within the international conventions to which Sri Lanka has become a signatory by its own choice.

The Asian Human Rights Commission has previously condemned the attempt to impose any restrictions that curtail the rights of NGOs, and clarified its position on the government's proposal for a law to force the registration of non-governmental organisations with a National Secretariat functioning under the Sri Lankan Ministry of Defence and Urban Development. In our analysis, there were two separate issues involved:

### 1) *Requirement that NGO's be registered under the Ministry of Defence*

The Ministry of Defence should not have any power over the functioning of any civil society organisations, for the following reasons:

- The sole purpose of the Ministry of Defence is to control all opposition against the Rajapaksa government. This Ministry will naturally use its power against any sector of society, to cripple and destroy every form of freedom of expression and association that has, as its aim, the protection and promotion of people's interests as against the authoritarian inclinations of the government. Any additional power given to the Ministry will be used to destroy the freedom of NGOs, and they will be unable to function in a manner compatible with democracy, the rule of law, and human rights;
- The Ministry of Defence stands for impunity. And NGOs, by definition, are committed to ensuring accountability and opposing impunity. The Ministry's commitment to preserving impunity does not need much illustration. It has a horrendous record of using violence against citizens. This includes killings, kidnappings, forced disappearances, and violent attacks against any demonstrators. In all such serious violations of law, the Ministry has protected the perpetrators of violence. In fact, there is overwhelming public opinion within Sri Lanka that the Ministry masterminds these operations. Therefore, there is incompatibility between the Ministry and organisations whose mandate emanates from a duty to defend the basic democratic rights and freedoms of the people. It does not require any imagination to comprehend that the Ministry will use all its authority to crush those demanding accountability for human rights violations. Any move to grant power to the Ministry over the functioning of NGOs is manifestly unjust and done without good faith;
- The Ministry of Defence cannot claim that its own actions and expenses have been conducted transparently, as required by the basic principles of constitutional law. The Ministry has more to hide than all Sri Lankan NGOs put together. Handing 'watchdog of transparency' responsibilities to the Ministry is hypocrisy, and certainly not in good faith.

In sum, a move to grant any power over the functioning of NGOs to the Ministry of Defence would be, as the saying goes, asking the fox to guard the chickens.

## 2) *The Transparency of Non-Governmental Organisations*

The AHRC also clarified that its opposition to the Ministry of Defence having control over NGOs does not compromise its position that all NGOs and civil society organisations need to observe the highest standards of transparency. NGOs in particular, as they may receive funds from foreign donors, have an extra obligation to behave impeccably on the subject of transparency. The AHRC repeatedly stated that Sri Lanka is in dire need of a genuine agency committed to inquiry and prosecution of offences relating to corruption. We have constantly pointed out that an agency similar to Hong Kong's Independent Commission against Corruption (ICAC) is the only way to allow all Sri Lankan institutions to perform with the highest levels of responsibility, accountability, and transparency.

*On 4 August 2014*, a meeting for the families of disappeared persons, held at the Centre for Society and Religion in Colombo, was disrupted by a mob of people led by several Buddhist monks. The families, who had travelled from Mannar, Mulathi, Killinochi, Vavuniya and Jaffna, had also visited the International Committee of the Red Cross Office prior to this meeting.

According to reports, over 30 family members of disappeared persons, members of civil society and NGOs, several Catholic priests and nuns, as well as members of the diplomatic community, were present when the disruption took place.

Mobilizing mobs led by Buddhist monks to disrupt meetings organized by civil society groups has become a common occurrence. Buddhist monks are being used as provocateurs in such disruptions. The Secretary of the Ministry of Defence and Urban Development divulged use of this method; he told some journalists, such as the former editor of *The Sunday Leader*, Frederica Jansz, that the people will soon attack them. Through mob attacks, the government can create the impression that these are spontaneous attacks by people and that the government does not have any responsibility regarding such attacks. Another feature of these attacks is the support extended to them by the police. As a consequence, no genuine inquiry is held into the attacks by these 'mobs'.

*On 30 August 2014*, the International Day of the Victims of Enforced Disappearances, government forces in Vavuniya prevented hundreds of families from protesting against the disappearance of their loved ones, claiming that they did not have permission to state such a protest. As seen from several above incidents, extremist groups have been employed with the connivance of the

government, who work hand in hand in violating people's rights to the freedom of association and assembly.

*Also in August 2014*, a private, invitation only discussion session at the Centre for Society and Religion in Colombo for the families of the disappeared was disrupted by a mob including several Buddhist monks who threatened the participants to immediately stop the meeting. Police who arrived at the scene refused to offer any protection to the participants from the mob attack.

*In another such incident*, every year on October 27 a commemoration of the enforced disappearances is held at the Raddoluwa junction in Seeduwa in front of the monument for the victims of enforced disappearances. On this day parents, brothers and sisters and other relatives and friends of the disappeared person gather at this monument where several events are held to commemorate their loss of loved ones. These events include placing of flowers before the wall where the photographs of over 600 disappeared persons are exhibited. It has always been a very emotional moment when mothers, fathers and other relatives and friends place flowers and say their prayers before the images of their loved ones. Other events are religious ceremonies conducted by Buddhist, Christian and Muslim clergy according to their respective religious traditions. Following the local traditions and customs, *dhana* (alms) are offered to a number of Buddhist monks from the nearby temples. Various audio-video footage is shown to remember the tragedy faced by these disappeared persons. Many speakers attend to express their solidarity with the families of the disappeared and to support their call for investigations and justice regarding these disappearances. The monument for the disappeared persons was erected in 2000; this commemoration event has been held annually for the last 14 years, receiving considerable coverage in the media.

Among the persons who have spoken at this commemoration in the past is the incumbent President Mahinda Rajapaksa, who has supported this commemorative event and promised to support the demand for justice by the families of the disappeared. Other guests have included many well-known politicians from all spectrums of political life in Sri Lanka as well as intellectuals and persons committed to the pursuit of human rights in Sri Lanka. Among the guests for this year's commemoration is Victor Ivan, a well-known journalist and editor of the highly respected newspaper '*Ravaya*'.

While the event is being advertised, a poster has been exhibited in Negombo, Colombo and many other parts of the country attacking the commemoration as a work of "*dollar crows*" and exhibiting in the poster photographs of Victor Ivan, Brito Fernando—a founding member of the families of the disappeared

and a spokesman for this cause, Phillip Dissanayake—also a founding member of the group, and five other persons who have appeared as guests at previous commemorations or have actively supported this commemoration. The poster does not carry the names of those who are responsible for the making and publication of the poster, and is therefore illegal under Sri Lankan law. The law enforcement authorities have allowed the posters to be exhibited however, and have not taken any action against the persons responsible for publishing and pasting them.

### *ICCPR, Article 6*

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*
3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

## *Failure to Provide Enforceable & Effective Remedies to Protect Right to Life*

### **The Absence of a Right to Life in the Constitution**

Even though the Supreme Court has recognized a ‘limited’ right to life, to the extent that the death penalty can be enforced only through a decision of a competent court, this has little impact on a positive recognition of the right to life in Sri Lanka. Moreover, this judicial reasoning was used only in three decisions of the Court several years ago, and has not been reflected in recent jurisprudence. Therefore, limited judicial recognition cannot satisfy the need for express constitutional inclusion of the right to life.

Since 1971 Sri Lanka has experienced large-scale enforced disappearances. The law in Sri Lanka does not prescribe a limitation to the power of the Executive and the Parliament to, respectively, take actions or legislate in a way that undermines the basic right to life. Public security laws, developed in terms of emergency regulations and anti-terrorism laws, empower the security forces to engage in enforced disappearances and other acts that deprive citizens of the right to life. There is no provision in the Sri Lankan Constitution to guarantee article 6 of the ICCPR, which states that ‘...every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life...’ The vast number of enforced disappearances in Sri Lanka demonstrates how officers in the security forces can deprive the life of a person without any reference to a court decision on the matter. Under the pretext of someone being classified as a “terrorist” by the security forces, the decision and action to deprive the person of their life can be taken by the security forces themselves. What is internationally known as the power of the Russian Cheka has been operative in Sri Lanka, leading to large-scale enforced disappearances, over a period of about 40 years.

### **Failure to Enact Effective Legislation to Prevent Murder**

One of the primary duties of a state is to protect the lives of people by creating an effective legal mechanism to prevent murder. Sri Lankan law has such a mechanism under the Penal Code and the Criminal Procedure Code. As the provisions of these laws are not enforced effectively however, there is a widespread sense of insecurity regarding even the protection of life itself.

In Sri Lanka murder is easy to commit and there is a great likelihood that the murderers could escape and carry on their lives freely. This can happen due

to the dysfunctional policing, prosecution and judicial systems. Interventions made by the AHRC during the year regarding this are mentioned briefly below.

### **The Displacement of the Criminal Justice Process & its Subsequent Collapse**

The obligation of the state to investigate all credible allegations of crime is no longer a basic criminal justice principle adhered to in Sri Lanka. The accepted notion that an offense is 'an offense against the state' is not respected; crimes are now treated as private disputes.

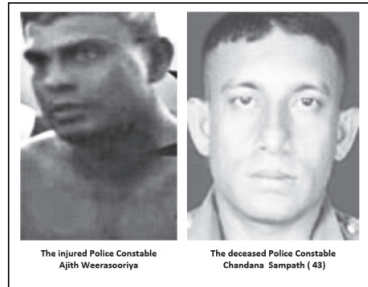
In all stages of what should be a functional criminal justice process, an approach advocating settlements of criminal disputes is followed. At the preliminary stage of recording a complaint at a police station, police officers routinely decline to record complaints against state agents and politicians. This applies even in instances of grievous human rights violations, such as torture, enforced disappearances and extrajudicial executions. This is followed through to the second stage of the criminal justice process, the prosecutorial stage, in which officers of the Attorney General's Department decide whether to indict or not based on political realities rather than legal standards. One such case was the indictment filed against journalist J.S. Tissanayagam, under the PTA. He was later convicted and sentenced. A presidential pardon was granted to him thereafter. The use of the power of pardon by the President is in fact another way in which the law is being circumvented. The pattern is that indictments are issued unjustifiably, decisions are given thereafter by compromised judicial officers, and then, to offset public pressure, a Presidential pardon is granted. The meaning of the law is lost in the process.

Indictments are not issued by the Attorney General's Department despite credible allegations about the involvement of state agents in crimes such as torture and disappearances. This is done, despite the fact that under the CAT Act (No. 22 of 1994), torture is recognized as a crime punishable with seven years rigorous imprisonment. From 2010, the practice of conducting inquiries and prosecutions under the above mentioned law has been abandoned, except in extremely rare instances. However, torture and ill treatment take place routinely across the country. The number of convictions under the CAT Act is minimal, largely due to the absence of state will to prosecute. In no case has an officer in charge of a police station been indicted for complicity in acts of torture, even though the High Court, before which indictments are filed under the CAT Act, has castigated the Attorney General for this failure.

Reprisals against witnesses and complainants are widespread, and in some instances, the witness or the complainant is killed so as to prevent them from giving evidence in court. The absence of an effective witness protection law is a major reason for such reprisals. The draft witness protection law advanced by the Government has no practical meaning because it is premised on protection by state agencies in a context where the state itself is incapable of providing protection due to the deep politicization of state agencies, particularly the police.

### **Drunken Police Officers Gun Down 24-year-old**

On the night of June 11, officers attached to the Nittambuwa police station gunned down Subash Indika Jayasinghe, a 24-year-old man, for no reason. A friend named Saveen Chathuranga, 18-years-old, was accompanying Indika. Saveen describes the incident as follows: Indika and Saveen were travelling on Indika's motorcycle. As there was significant traffic, they were moving slowly. Some police officers stopped their motorcycle. There were four policemen. They seemed to be drunk. After Indika stopped, both the riders got off the bike. One police officer then put his pistol to Indika's upper torso and shot him point blank. The police officers did not make any attempt to take Indika for medical treatment. Saveen had to stop a passing vehicle to take Indika to the hospital. The officers threatened Saveen and told him not to reveal what happened. Indika did not survive.



After the incident, a police spokesman stated that the motorcycle was being driven very fast, and as the riders did not stop after the police signaled them to do so, the police shot at the vehicle. The generation of such excuses is common when wrongdoings of the police are exposed. In any case, shooting people to stop traffic violations is a ludicrous explanation.

Police officers have been given pistols quite recently. The justification for the move was that there are constant clashes between civilians and the police, and that the police officers could use their pistols to defend themselves. Given this policy, and given the reputation of the Sri Lankan police as poorly disciplined and poorly trained, this murder comes as no surprise.

The officers involved in this shooting have not been charged for murder and a competent and independent investigatory team should conduct criminal investigations. However, what is more likely is that, under various pretexts,



investigations will be delayed, paving the way for these officers to escape responsibility and, in most likelihood, they will continue their work with impunity.

In a separate incident, near the Katunayake area, police recently shot at a moving three-wheeler. The police missed their target and instead shot a bystander.

In another incident, Sri Lankans were this year confronted with the abduction of two policemen, one of whom was assassinated. The other narrowly escaped by struggling and running into the jungle naked in Kurunegala. The immediate reaction of some persons who were interviewed by the press agencies was: if this is what is happening to our policemen, what can we expect for ourselves? Such reactions sum up the extent of the lawlessness that has spread throughout the country.

### **The abuse of Presidential Pardon is an abdication of the state responsibility to control crime**

The Panadura High Court judge, Kusala Sarojani Weerawardana, found ten Presidential Security Division (PSD) officers who were accused of assaulting two famous songsters Rookantha Gunathilake and Chanta Chandraleka Perera to be guilty of the charges and sentenced them to four and a half years of rigorous imprisonment. The PSD officers entered the living premises of the two famous singers, shaved their heads and assaulted them in 2000. The PSD officers did this due to the two singers' public participation at an opposition UNP political rally.

On 11 April 2014, the ten former PSD officers were released from prison as they were granted Presidential Pardons. On an earlier occasion, Mary Juliet Monica Fernando, the wife of the Minister of Parliamentary and Christian Affairs, Melroy Fernando, who was charged and found guilty of murder, was also released on a presidential pardon in 2008.

The pardon by the head of the state is done for specified reasons in any country. Such pardon is not meant to forgive persons who have committed serious crimes and certainly not for the purpose of favouring political allies. However, the Sri Lankan president does not consider himself bound by any conventions or ethical and moral considerations in the use of his extraordinary powers. Above all, it is no longer considered essential to weigh the impact of such pardons on the process of crime control.

A huge list of uninvestigated crimes glaringly speaks of the loss of commitment on the part of the government to stand firmly on the issue of crime control. Throughout the country there are routine complaints and frustration about the failure of the state to deal with crime. Such negligence sends the message that crime control is no longer a priority of the Sri Lankan state. This is the biggest contribution to creating public insecurity.

### *Prageeth Eknaligoda's case exposes lack of consensus against enforced disappearances*

Prageeth Eknaligoda disappeared on 24 January 2010, and to this day there has been no credible investigation into his disappearance, despite many interventions by the United Nations Human Rights agencies, other international organizations, and by local Sri Lankan organizations. Prageeth Eknaligoda's wife, Mrs. Sandya Eknaligoda, while participating in an international conference in London, told the BBC SinhalaService that she has attended court on over 50 occasions to appear in the inquiry into the habeas corpus application filed by her, and that the case has been dragged on, primarily due to police witnesses failing to appear in court. She reportedly said that she cannot even guess how long the case will be made to drag on in this manner, and that it is not possible to expect justice for this disappearance from Sri Lankan courts.

Her complaints of delays and witnesses absconding the proceedings will not surprise anyone in Sri Lanka. Delays and the space for all kinds of manipulations to sabotage justice are inbuilt characteristics of the so-called justice system in Sri Lanka. The UN Human Rights Committee has made several recommendations to the Sri Lankan government to correct this situation, but the government treats delays and unscrupulous maneuvering of the system as incorrigible aspects of the "local system of justice".

It can be said without hesitation that sabotaging all attempts to obtain justice by the families of the disappeared persons is an entrenched government policy. All government agencies involved in delivering justice, such as the police, the attorney general's department, and the judiciary, have demonstrated an impenetrable resistance to all such to seek justice in cases of enforced disappearance. This is not surprising, as the primary suspects for causing these disappearances are none other than government agencies such as the police, the military and other paramilitary agencies.

## Recommendations

**The government of Sri Lanka must ensure, both by legislation and the enforcement of laws, that only a competent court has the power to order the death sentence.** The prevailing practice of the last 40 years of allowing security force officers to be the accuser, investigator, adjudicator, executioner and disposer of bodies, should be specifically outlawed by legislation; particularly in situations in which emergency laws and anti-terrorism laws are in operation. Clear prohibitions must be laid down and enforced to ensure the end of the above-mentioned practice, which can also be summed up as an imitation of the Russian Cheka.

**The government should take speedy action to enact legislation criminalizing enforced disappearances.** No perpetrator of enforced disappearances should be allowed to avoid prosecution due to the absence of a law criminalizing enforced disappearances, as is the case at present. Sri Lanka should speedily become a signatory to the International Convention for the Protection of All Persons from Enforced Disappearances and enact relevant legislation on the offence of enforced disappearance. The principle against retrospective criminalization should not operate.

**Sri Lanka should ensure that the offence of murder would necessarily lead to credible investigation and prosecution through the country's public justice system.** Private settlement should be disallowed in instances of the offence of murder, as should the practice of offering and granting suspended sentences. The government should particularly ensure that credible investigations occur in cases of murder alleged to have been motivated by political reasons. All steps must also be taken to ensure that investigating officers are not afraid of reprisals for properly carrying out their duties.

**Trials, particularly in the case of murder and other serious offences, should be held from start to finish continuously.** The present practice of postponing cases after short hearings, with cases going on for years, should be discontinued forthwith. After the completion of an investigation, indictments should be filed and the case should be held and completed within a period of about a year. The United Nations Human Rights Committee's recommendations regarding undue delay on the holding of trials (expressed through its views on several communications from Sri Lankan petitioners) should be carefully implemented.

Moreover, during investigations and trials relating to murder and other similarly serious offences, the protection of the complainant and the victims should be ensured. Police officers must attend to complaints without the harassment of complainants and witnesses. The government should establish a disciplinary

procedure that will investigate all allegations of bribery and corruption used by the suspects or accused in murder and other serious cases of crime to escape strict law enforcement.

### *ICCPR, Article 7*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

### *Torture Victims Demand Justice*

It is disturbing to note the approach adopted by Mahinda Rajapaksa's government to encourage the use of torture and obstruct every attempt by victims to obtain justice. The government has done everything possible to obstruct human right organizations, as well as other concerned groups like journalists, who have exposed the widespread and most brutal forms of torture being used by the police and other security forces. The government has also encouraged reprisals on victims, human rights defenders, and journalists. The government has deliberately ignored the many recommendations made by the United Nation's Human Rights Council and other human rights agencies. Through its propaganda machinery, it has cultivated hostile attitudes towards the United Nations and its human rights agencies, labeling their observations as attempts to destabilize Sri Lanka. Criticism relating to the use of torture and ill-treatment is also treated by the government as hostile propaganda against the nation and its people. The simple message of the government is that victims of torture and human rights organizations should keep silent about what has happened to them and express appreciation for the wonderful work done by the police and security agencies.

Despite such a hostile and dangerous environment, people continued in 2014 to complain against acts of brutality taking place in police stations around the country. They have continued to demand justice and have narrated their experiences through the media and social media networks. And, the human rights organizations have carried on their task of assisting victims and attempted to create a discourse on the causes of torture prevalent in Sri Lanka. A rich discourse on torture and ill-treatment has resulted. Discussions have taken place throughout the country to condemn this assault on human dignity, and there is resolve to work towards a change of the political environment that enables such brutal use of force against people in the country.

A few cases of torture are summarized below:

### **Commercial sex worker exposes the “rotten” nature of Sri Lankan Police**

In September 2014, a video showing a policeman beating a young woman on a public road in Ratnapura, generated heated discussion in the media. Reactions in the media, as well as in other social media, such as Facebook, indicated widespread public contempt of the behavior and conduct of the police.

The manner in which the police spokesman reacted to the video and subsequent developments was almost comic. When the video was first shown, the police spokesperson's reaction was that as this video is not reliable, no action can be taken. As the media heat grew, the police spokesman declared that the policeman seen in the video beating the young woman with a wire has been identified. Sometime later, the police spokesman announced that this particular officer had been interdicted. Thereafter, the police spokesperson's repeated message was that a police team has been deployed in trying to identify and to obtain a statement from a particular woman concerned, but that she appeared to be in hiding and therefore, it was not possible to obtain her statement.

While the police spokesperson was repeating this story, Ganga, the woman who was beaten, emerged and began revealing her ordeal in public. Besides holding a press conference, she also gave an exclusive interview to *Ada Derana*, a local TV channel. She said that she was a resident of Kanadola in Ratnapura and that the particular police sergeant had asked her to come with him to an inappropriate location on several occasions and when she had refused for the third time, he had plotted to extract revenge. She revealed that the police officer had assaulted her with a wire, while uttering filthy and abusive language at her, and he had also kicked her when she had fallen to the ground.

The police sergeant's name has been revealed as P.P. Thissera. A witness with a mobile phone had recorded the incident, which was then distributed widely through social media, making the incident a talking point among Sri Lankans everywhere.

The manner in which several police officers including a Headquarters Inspector (HQI) treated Ganga after the incident was brazen. Ganga revealed how police officers kept her at a police station for several hours attempting to get her to agree to be silent about this incident. At one instance, the policemen offered Rupees 3,000 to her. All her attempts to have a complaint registered failed.

Ganga then filed an application before the Supreme Court claiming the violation of her rights and demanding Rupees 5 million as damages. A team of

lawyers assisted her. After filing the fundamental rights application, she held another press briefing explaining her position. She openly told the press that due to extreme poverty she makes a living as a sex worker.

Despite such enormous publicity, with photographic evidence of brutal police assault, to this date, the police sergeant in question has neither been arrested nor has he been charged with a criminal offence. Clearly, the criminal offence falls under the CAT Act No. 22 of 1994. In terms of this Act, any public officer who commits an act of torture can be charged with an offence punishable with up to seven years rigorous imprisonment and/or a Rupees 10,000 fine. The photographic evidence establishes that there is sufficient evidence to charge the police sergeant under this law. Besides the photographic evidence, there is also the evidence of the victim and several other eye witnesses.

For several years now, the police, as well as the Attorney General's Department, have connived not to file charges under the Torture Act. While a large body of evidence has been revealed regarding incidents of torture by police officers, the Inspector General of Police and the Attorney General have been following a policy of preventing criminal charges being filed against such officers. The shameful behavior of the police sergeant in this incident has merely exposed the ugly manner in which police officers in Sri Lanka generally behave towards citizens.

In dismantling the 17th Amendment to the Constitution, the government has deliberately destroyed the only serious attempt that has been made by the Sri Lankan Parliament to restore discipline in the public services in general, and the police service in particular. The simple reason governments do not want to see an efficiently functioning police force is to prevent free and fair elections. From 1978 onwards, all parties in power have sought to misuse the police in order to engage in electoral mal-practices. Therefore, the destruction of the police force in Sri Lanka has been done for policy reasons. In the modern world, no civilized society can survive without a law abiding and disciplined police force that ensures peace and stability. To allow a police force to descend to such an abyss is to drag the entire society into a similar, or worse, situation.

### **Sandun Malinga Dies in Brother's Arms Following Assault by Kandeketiya Police**

On 9 May 2014, a 17-year-old boy, P.H. Sandun Malinga, from Atturukudua, Meegahakiula, died in his brother's arms following brutal assault and torture by a group of policemen from the Kandeketiya police station. Two days before, on May 7, Sandun Malinga, his brother and another relative were on their way

to see a vehicle which was on sale. They were arrested by a group of around 10 policemen including Sub Inspector (SI) R M P Somaratne, who gave no reason for arrest and brutally assaulted and tortured them after taking them to the police station.

Following the assault and torture, Sandun Malinga's complaints of severe chest pain were ignored and no medical treatment was provided to him. He continued to suffer the pains and complained to his parents at around 2:30 p.m. when they visited him in police custody the next day. His parents pleaded with several police officers including Somaratne, to provide their son with medical attention. These pleadings fell on deaf ears and the police officers requested the parents to come back the next day. On the next day, it was the same story: the parents found their son lying on the floor of the cell and complaining about chest pains, while the police again refused to send Sandun Malinga for medical treatment. Cursing the parents in foul language, the police informed them that both their sons would be produced in Court on the same day. Sandun Malinga, his brother and another person were finally produced in the Passara Magistrates Court's, Magistrate's chambers at around 3 p.m. The police requested the Magistrate that the accused be remanded till May 21. Completely ignoring repeated requests by Sandun Malinga's counsel to provide him with medical treatment, the Magistrate remanded all three till May 21. Prison authorities also ignored pleas from the parents to provide medical care to Sandun Malinga. On the morning of May 9, Sandun Malinga, 16 years old, succumbed to his chest pains, and died in his brother's arms in prison. The following day the boy's body was subjected to a post mortem where the Judicial Medical Officer concluded that the reason for his death was internal bleeding caused by an assault.

This incident depicts the collapse of the public justice system. Not only did the police brutally assault an innocent young man, but the lady magistrate ignored repeated requests for medical treatment even when confronted with first hand testimony from the victim himself. Added to this was the denial of the remand prison officers to send the boy to the prison hospital ward. The negligence of these state officials caused the death of Sandun Malinga.

To date, neither the police officers at the Kandeketiya police station nor the Magistrate of the Passara Magistrate's Court, have been held accountable for this death. All the culprits to the murder remain scot free while the family of the deceased child is further tormented due to the orders of the Magistrate to keep the other family members in remand. The family is aware that Sandun Malinga's brother, in whose arms he died, is in severe mental distress, but they are unable to do anything as he is being kept in remand on court orders.

People in Sri Lanka have today become helpless in the face of police killings and torture. There does not appear to be any inclination on the part of the government to inquire into these grave crimes and rights violations. Under normal circumstances, the function of inquiring into acts of police indiscipline has been the responsibility of the Inspector General of Police (IGP). However, he does not seem to be engaged in these tasks anymore. People do not show any trust on the capacity of the IGP or any other high ranking officers to protect law enforcement. In the past, people used to go before the Courts when faced with grave issues such as police killings, but today the same people have no hope of obtaining redress through due process. Courts in recent times have even decided that custodial killings are legitimate homicides.

### **Two Persons Brutally Tortured by Chilaw Police**

In these circumstances, who is the protector or guardian of the people? Within the short period of one month, two killings occurred due to the police shooting young persons with their pistols. The police reaction to these serious crimes has been to offer various fake explanations, amounting to ridiculing those killed. This is not the prevalence of normalcy. The people themselves and the opposition Members of Parliament who represent them should step forward to protect the people.

The two cases involved acts of torture committed on Mr. Edirisinghe Devayalage Sanjeewa Edirisinghe, resident of No. 164, Heen Agara, Panirendawa, Chilaw, Puttalam District and Mr. Wathuthantreelage Presly Fernando, also from Chilaw. Sanjeewa and Presly were both brutally beaten up by Sergeant Basnayake at the Chilaw police station on two different occasions. Sanjeewa was assaulted at the time of arrest in front of his ailing father and family members and was further assaulted at the Chilaw police station. Sergeant Basnayake urinated on Sanjeewa's face and continued to assault him for over three consecutive days, causing terrible injuries. Chili was placed on his sexual organs, eyes, and other sensitive body parts and he was later also hung from a roof beam and assaulted, due to which he now suffers from nerve damage in both of his arms and is unable to use either arm. After Sanjeewa was released on bail, the police threatened to kill if he were to visit a hospital for treatment. As a result, he did not get immediate medical treatment, further aggravating his injuries. When he later admitted himself to the Chilaw hospital, he was immediately transferred to the Ragama hospital, where his treatment began. According to medical reports, he has suffered extensive nerve injury; a long period of treatment will be needed for him to be able to use his arms again.

The assault of the other victim Mr Presly Fernando had also been led by Sergeant Basnayake of the Chilaw police. Presly too had been assaulted at



the point of arrest, in front of his wife, who, upon witnessing the assault, fell unconscious and recovered only after receiving treatment. She continues to suffer from a mental breakdown as a result of the assault. He was then continuously assaulted at the police station in a separate room where he was held for over three days. Like Sanjeewa, Presly was also hung from a beam in the roof, which caused damage to his shoulder resulting in him being unable to use his arm. He had been further assaulted with sticks, boots, and by Sergeant Basnayake sitting on his chest, causing him to lose consciousness. Presly also received threats following his release, not to avail treatment from any hospital.

The AHRC has learnt that Sergeant Basnayake has had a long record of torture, which he has practiced in his earlier assignments at several other police stations.

### **Recommendations**

One of the primary duties of any state is to protect its citizens. Widespread corruption is in direct contradiction to such a protection function; proper implementation of its protective function thus requires Sri Lanka to implement measures to eradicate corruption as well as torture. Similarly, under article 2 of the ICCPR, governments are required to protect all human rights by providing effective remedies through legislative, judicial, and administrative measures. This role comes into direct contradiction with the use of torture and corruption: an effective remedy requires that policing, prosecution, and judicial functions must exclude the use of torture and corruption.

The government should therefore discontinue all policies and instructions through which the police and other security officers have been allowed/encouraged to use torture and ill-treatment during interrogations. It should also discontinue with any policies or instructions given to the police to not investigate and prosecute offences under the CAT Act (No. 22 of 1994).

The Inspector General of Police should be directed to take measures to stop the widespread practice of harassing complainants, and refusal to take complaints, by officers at the police stations in Sri Lanka.

The widespread use of torture and ill-treatment by the police for purposes of extortion must be eliminated, with specific attention paid to instances where complainants pay or give favours, to have some persons arrested and tortured.

It is also imperative that the Sri Lankan government ends the practice of extrajudicial and custodial killings. Similarly, violence directed against women by police officers when they seek police assistance, either as complainants or as relatives of arrested persons, must be eliminated.

Particular steps must be taken to immediately stop the following prevalent kinds of torture:

- a. Twisting the victim's arms behind their back before hanging them from the ceiling, causing serious injuries, including the loss of the use of the victim's arms, and beating the victim all over their body;
- b. The use of chili powder in the eyes, genitals and other sensitive parts of the body, causing extreme forms of pain;
- c. Putting books on the head of the victim and beating the books with iron or wooden poles, thereby causing internal injuries to the brain;
- d. Using blunt instruments to penetrate the anus, and putting genitals into drawers and slamming them shut;
- e. Inserting objects, such as bananas or PVC pipes, into the vaginal entrances of female victims;
- f. Getting persons suffering from diseases, such as tuberculosis, to spit into the mouth of victims;
- g. Urinating on the face of victims;
- h. Stripping a victim, putting them between two poles, tying them there and rotating them while beating them.

With regard to all those engaged in human rights work, it is crucial that they have a thorough grasp of the practical manner in which the Sri Lankan police, prosecution and judiciary function. Empirical knowledge about the country's criminal justice administration is more useful than theoretical knowledge about principles and conventions.

Thorough knowledge about the actual historical changes to 'corruption-ridden systems' where torture was a common practice and how they were transformed into 'consent-based law enforcement systems' capable of crime investigation without torture, is imperative for those who are engaged in human rights monitoring and the elimination of torture.

The development of rehabilitation models including psychological methodologies of trauma counselling and other community based healing methods are also necessary in addressing torture.