

**SUGATH NISHANTHA FERNANDO**  
**DEATH OF JUSTICE**



**ASIAN HUMAN RIGHTS COMMISSION**

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**15<sup>th</sup> July 2012**

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<http://www.article2.org/mainfile.php/0801/339/>

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Unheeded requests from the Fernando family for state protection

An Affidavit [unofficial translation]

**3. Vol. 08 - No. 01 March 2009 – article 2: Special Edition: Use of Police Powers for Profit**

<http://www.article2.org/mainfile.php/0801/338/>

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**4. Vol. 08 - No. 01 March 2009 – article 2: Special Edition: Use of Police Powers for Profit**

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The price of fighting the state in Sri Lanka

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## Other AHRC documents partially mentioned about Sugath Nishantha Fernando

1. **SRI LANKA: Extrajudicial Killings --- The miserable breakdown of the rule of law**  
<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-026-2012/>  
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2. **SRI LANKA: Abductors threaten the Supreme Court of Sri Lanka**  
<http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc19/ALRC-CWS-19-10-2012>  
**February 28, 2012**  
Language(s): English only  
HUMAN RIGHTS COUNCIL  
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**A written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organisation with general consultative status**
3. **SRI LANKA: Abduction of a torture victim seeking judicial remedies from the Supreme Court**  
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**February 15, 2012**  
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4. **SRI LANKA: Abductors threaten the Supreme Court of Sri Lanka**  
**February 12, 2012**  
<http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-002-2012/>  
Document Type: Open Letter  
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5. **SRI LANKA: Concluding observations of the Committee against Torture**  
<http://www.humanrights.asia/news/forwarded-news/AHRC-FST-061-2011/>  
**November 26, 2011**  
Document Type: Forwarded Statement  
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**6. 5. Key Findings (I): Results and Outcome**

<http://www.humanrights.asia/resources/journals-magazines/eia/eiav3n6/5.-key-findings-i-results-and-outcome/?searchterm=sugath%20nishantha%20Fernando>

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Key Findings (I): Results and Outcome

**7. SRI LANKA: When law becomes comic - Part 8.**

**August 17, 2009**

<http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-022-2009>

Document Type: Forwarded Article

Document ID: AHRC-FAT-022-2009

**8. Alternative report on Sri Lanka to the UN Committee Against Torture**

*REDRESS, UK; Rehabilitation and Research Centre for Torture Victims, Denmark; Action by Christians for the Abolition of Torture, France; and, Asian Legal Resource Centre, Hong Kong*

Article 2 / Special Compilation: Torture & Ill-treatment in Sri Lanka

Alternative report on Sri Lanka to the UN Committee Against Torture

**9. SRI LANKA: Another complainant -- a medical doctor -- is assassinated by an army officer**

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-255-2008/>

**October 1, 2008**

Document Type: Statement

Document ID: AHRC-STM-255-2008








**10. Destroyed public institutions**

<http://www.humanrights.asia/resources/journals-magazines/article2/0804/6-destroyed-public-institutions/?searchterm=sugath%20nishantha%20Fernando>

Article 2 / AN ESSAY on abysmal lawlessness & the zero status of Sri Lankans /

Destroyed public institutions

## Chronology of Events

-  A fabricated complaint was made by the Negombo police against Mr. Fernando in **2003**, when he had visited the police station to register a complaint against three local thugs who had robbed him in the street. Instead of recording his complaint, the police accused him of a false crime.
-  On **12 November 2007**, a police squad arrived in jeeps, motorcycles and three-wheelers and surrounded the house of Mr. Fernando. They assaulted him with fists, kicked when he fell down on the floor and trampled him until he fell unconscious. They also hit his wife with a pistol on her forehead and trampled her even after she fell to the floor. They request him and his wife not to submit evidence against Officer M.D. at the Colombo High Court on 14 November 2007.
-  On **20 September 2008**, while the Mr. Fernando and his son were inside their lorry at Dalupota junction near their house, two masked persons approached them and fired two shots from a small firearm at Mr. Fernando. The first shot missed him, but the second entered his head through the ear, killing him instantly.
-  On **11 November 2008**, his wife filed an affidavit at the Negombo Magistrate's Court, alleging that there were serious threats against her and her family in her pursuit of her complaints of bribery and torture instituted against police officers,
-  On **7 December 2008**, Mrs. Fernando filed another affidavit at the Paliyagoda Police Station, stating that she and her children were finding it extremely difficult to live in hiding since no investigation had been carried out regarding her husband's murder, and that the same murderers were searching for the author and her children to assassinate them.
-  On **24 January 2009**, the organisation "the Right to Life" received a call from Colombo, threatening staff assisting the author in her complaints of murder should they continue.
-  The Asian Legal Resource Centre, together with REDRESS and the Rehabilitation and Research Centre for Torture Victims (Denmark), submitted a complaint to the UN Human Rights Committee in **February 2009** on behalf of Mr Fernando's wife, Mrs Annakkarage Suranjini Sadamali Pathmini Peiris

## A. UN Human Rights Committee view



### Human Rights Committee - Case of S.K.A. Sugath Nishanta Fernando

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United Nations CCPR/C/103/D/1862/2009

[http://www.alrc.net/doc/mainfile.php/un\\_cases/697/](http://www.alrc.net/doc/mainfile.php/un_cases/697/)

Human Rights Committee

103rd session

Geneva, 17 October- 4 November 2011

Item 9 of the provisional agenda

Consideration of communications under the

Optional Protocol to the Covenant

Communication No. 1862/2009

#### **Views adopted by the Committee at its 103rd session, 17 October to 4 November 2011**

Submitted by: Annakkarage Suranjini Sadamali Pathmini Peiris (represented by counsel, Asian Legal Resource Centre Ltd.)

Alleged victims: The author, her deceased husband Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando and their two minor children, Siyaguana Kosgodage Kalpani Danushi Fernando (born in 1992) and Siyagana Kosgodage Sinesh Antony Femando (born in 1997)

State party: Sri Lanka

Date of communication: 6 February 2009 (initial submission)

Document references: Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 12 February 2009 (not issued in document form)

Date of adoption of Views: 26 October 2011



Made public by decision of the Human Rights Committee.

Subject-matter: Intimidation, torture of author and her family, killing of her husband attributable to agents of the State party; failure to conduct an adequate investigation and to initiate proceedings against the perpetrators.

Substantive issues: Arbitrary deprivation of life; torture and ill-treatment; lack of proper investigation; right not to be subjected to arbitrary or unlawful interference with one's family; right-to the family.

Procedural issues: Non-cooperation of State party;

Articles of the Covenant: Article 2, paragraph 3; article 6; article 7 ; article 9, paragraph 1.; article 17; article 23,

Articles of the Optional Protocol: None

On 26 October 2011, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1862/2009.

(Annex)

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol the International Covenant on Civil and Political rights (103rd session) concerning

Communication No. 1862/2009

Submitted by: Annakkarage Suranjini Sadamali Pathmini Peiris (represented by counsel, Asian Legal Resource Centre Ltd.)

Alleged victims: The author, her deceased husband Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando and their two minor children, Siyaguana Kosgodage Kalpani Danushi Fernando (born in 1992) and Siyagana Kosgodage Sinesh Antony Femando (born in 1997)

State party: Sri Lanka

Date of communication: 6 February 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 October 2011,

Having concluded its consideration of communication No. 1862/2009, submitted to the Human Rights Committee on behalf of Ms. Annakkarage Suranjini Sadamali Pathmini Peiris, Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando, and their two minor children, Siyaguana Kosgodage Kalpani Danushi Fernando (born in 1992), and Siyagana Kosgodage Sinesh Antony Fernando (born in 1997) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Ms. Annakkarage Suranjini Sadamali Pathmini Peiris. She submits the communication on behalf of her husband, Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando, deceased on 20 September 2008, on her own behalf, and on behalf of their two minor children, Siyaguana Kosgodage Kalpani Danushi Fernando and Siyagana Kosgodage Sinesh Antony Fernando. The author claims that she and her family are the victims of violations of article 6, read in conjunction with article 2, paragraph 3; article 7, read in conjunction with article 2, paragraph 3; article 9, paragraph 1, read in conjunction with article 2, paragraph 3; article 17 and article 23, paragraph 1 of the Covenant by the Democratic People's Republic of Sri Lanka ("Sri Lanka"). She is represented by the Asian Legal Resource Centre Ltd.

1.2 On 12 February 2009, the Committee, acting through its Special Rapporteur for New Communications, and pursuant to Rule 92 of its Rules of Procedure, requested the State party to take measures to ensure the protection of Ms. Annakkarage Suranjini Sadamali Pathmini Peiris and her family while her case was under consideration by the Committee. This request was reiterated on 15 September 2009. The State party has not responded to any of these two requests of the Committee.

### **The facts as presented by the author**

2.1 The author and her husband, Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando, purchased a lorry on 24 May 2003 from M.P. , then officer in charge of the Kochikade police station. The officer sold the lorry to the author and her husband, making them believe that he was the legitimate owner of the vehicle. Later, it was

revealed that the lorry was a stolen vehicle, and that the officer had changed its registration plate before selling it to the author and her husband. When they learnt of his fraudulent conduct the author and her husband filed a complaint against M.P., and a disciplinary inquiry was initiated against him. Once the inquiry started, the officer and several of his colleagues tried to threaten the author and her husband, asking them to withdraw their complaint. The officer was indicted in December 2005, but died in the same month. Because of this initial complaint filed, a number of police officers started considering the author and her husband as a threat.

2.2 A fabricated complaint was made by the Negombo police against the author's husband in 2003, when he had visited the police station to register a complaint against three local thugs who had robbed him in the street. Instead of recording his complaint, the police accused him of a false crime. The author's husband filed a complaint before the Human Rights Commission of Sri Lanka (HRCSL), requesting intervention in his case, but, no action followed. The officer in charge of the Negombo police station, M.D., demanded a bribe of 20,000 Sri Lankan Rupees from the author's husband. The latter refused to pay, and instead filed a further complaint before the National Police Commission (NPC) against the officer. No action followed. On 11 June 2004, the author and her husband gave a statement before the Bribery Commission. Only two years later, the Commission initiated proceedings against Officer M.D. The procedure is still pending before the Colombo High Court. According to the author; this new incident rallied several police officers close to M.D. against the author and her family,

2.3 In 2006, the Superintendent of Police in Negombo, M., summoned the author and her husband to his office, on the pretext that their statements needed to be recorded in the departmental inquiry against M.D. At the SP's office however, the author and her husband were intimidated, and threatened that unless they immediately withdrew their complaint against M.D., they would pay a heavy price for opposing the police. No statement was recorded. After this incident, the author and her husband filed a complaint against Superintendent M..

2.4 In the same year, the author and her husband went to the Negombo police station regarding a document concerning one of their vehicles. At the police station, they met with Chief Inspector N., as well as another officer who introduced himself as an officer attached to the Crime Branch. Instead of assisting them, the two officers shouted and insulted the couple, ordering them not to come to the Negombo police station anymore if they cared for their life. The officers also stated that if they wished to stay alive, they had to withdraw the complaints they had filed against several police officers.

After this incident the author and her husband filed a further complaint against the Chief Inspector and accompanying officer of the Negombo police station before the Office of the Deputy Inspector General (DIG) for the death threats received, and asking for an investigation. To their surprise, the DIG directed this complaint to Superintendent M., against whom the couple had already filed a complaint.

2.5 In 2006, under the pretext of recording a statement related to the complaint against Superintendent M., the author and her husband were summoned to the office of the Senior Superintendent of Police, where they were verbally abused and threatened that they would be murdered if they maintained their complaints, asking them to withdraw complaints against officers M.D. and M. The couple then filed a further complaint before the DIG's office, requesting an investigation into the incident, and seeking protection for their family. No action was taken on this complaint.

2.6 On 10 September 2006, after the author and her husband had reached the market by motorcycle, they were approached by a police officer, who asked them why they were not wearing helmets. The couple replied that they did not need to, as they were not riding their motorbike. Another officer then approached them, and asked that they immediately withdraw their complaint against Superintendent M., seized the keys of the motorcycle, and threatened to arrest the author's husband. The same day, the couple was arrested, and a false case was registered against them, but they were subsequently released on bail by the Negombo Magistrate Court.

2.7 On 23 September 2007, the lawyer who assisted the author and her children to deliver their statements was threatened over telephone by an unknown person. The caller threatened that they would murder her if she further assisted the author and her family. Similar calls were made to "the Right to Life", a local human rights organization. The author and her family started living in hiding.

2.8 On 12 November 2007, two police officers, Sub-Inspector A. and Constable D. came to the author's house, requesting her and her husband not to submit evidence against Officer M.D. at the Colombo High Court on 14 November 2007. The Officer further insulted and threatened to kill the author's husband. Officer A, then slapped the author's husband on his face. The author's husband asked his daughter to write down the number of the officer's license plate, but the officer drove in her direction and hit her with the motorcycle, which made her fall on the ground. Six additional officers were, called to the author's house. Fearing for their life, the author immediately contacted the Bribery Commission, seeking help. The officer who attended the call informed the author that he would relay the information to the Headquarter

Inspector for intervention. Headquarter Inspector S. arrived at the author's house accompanied by 50 officers, 20 of whom entered the house, and assaulted the entire family. The author's husband was attacked, fell on the ground and lost consciousness. The officers continued hitting and kicking him, while others assaulted the author. The Headquarter Inspector hit her on the face with a pistol, and another punched and hit the face of her 10 year-old son against the wall. The author, her husband, and their daughter were then forced into the police vehicle. One officer tried to undress the author's daughter.

2.9 Following the incident, the author filed a complaint before the Supreme Court of Sri Lanka for acts of torture, and thus a breach of their fundamental rights against 13 police officers, including Senior Superintendents of the Negombo police inspectors, sub inspectors, sergeants and constables. The case is still pending before the Supreme Court.

2.10 The author and her daughter were hospitalized at the Negombo hospital. The author was hospitalized for five days, and would later need to undergo a surgery of her fractured nose. The police denied medical help to the author's husband. While the author and her daughter were in the hospital, the police charged the entire family with obstruction to police duty. The family obtained bail. The author alleges that because of the assault, she suffered from several injuries and contusions on her face, jaws and teeth.

2.11 On 23 June 2008, four persons in a lorry ordered the author and her husband to stop near Chilaw at Dalupata Bridge on the Colombo road. These included N.N. and N.M. (N.N. was an army deserter with criminal antecedents), who shouted that they were under instruction by the Negombo police to kill them. The author and her husband were frightened and immediately returned home. Shortly after, they found N.N. and N.M. along with two other persons in front of their house, asking her to open the gate, threatening to kill them the next day should they refuse to withdraw their complaint. The author and her husband later went to the office of the DIG (Crimes) and lodged a complaint about the incident. The author's husband also filed an affidavit before the police the next day about the incident. The incident was reported to the Asian Human Rights Commission (AHRC), which wrote on 24 June 2008 to the Minister of Disaster Management and Human Rights in Colombo, seeking an intervention. The AHRC also submitted a communication to the UN Special Rapporteur on torture.



2.12 On 20 September 2008, while the author's husband and their son were inside their lorry at Dalupota junction near their house, two masked persons approached them and fired two shots from a small firearm at the author's husband. The first shot missed him, but the second entered his head through the ear, killing him instantly. The assassins left the scene in the same vehicle with which they arrived. The author's husband was declared dead at the hospital shortly after.

2.13 On 11 November 2008, the author filed an affidavit at the Negombo Magistrate's Court, alleging that there were serious threats against her and her family in her pursuit of her complaints of bribery and torture instituted against police officers, on 7 December 2008, the author filed another affidavit at the Paliyagoda Police Station, stating that she and her children were finding it extremely difficult to live in hiding since no investigation had been carried out regarding her husband's murder, and that the same murderers were searching for the author and her children to assassinate them. The author stressed in the affidavit that the reason why the murderers of her husband were not identified or arrested was because the murder was organised by the police officers who had threatened the author and her family on various occasions.

2.14 On 24 January 2009, the organisation "the Right to Life" received a call from Colombo, threatening staff assisting the author in her complaints of murder should they continue. The President of the organization filed a complaint to the Inspector General of Police (IGP) in this regard but no proper investigation was so far undertaken.

2.15 On 27 January 2009, while the author's lawyer was at the Negombo Police Station to file a complaint on her behalf, and to seek protection for her and her children, one of the police officers in the Supreme Court fundamental rights application filed by the author (Mr. B.) verbally abused him, and threatened that he would be also killed if he continued helping the author. The officer assaulted the lawyer, threatening him with death if he came back to the police station, and coercing him to withdraw all the complaints against the police officers, including the one regarding bribery, the fundamental rights application, and the complaints filed at various stages against police officers for threats received by the author and her family, as well as the complaint for torture. Fearing for his life, the lawyer left the police station.

2.16 After the incident, the lawyer tiled a complaint before various authorities in Sri Lanka, including the Bar Association, but no investigation has been initiated. On 30 January 2009, an unknown arsonist burned his office. On 27 September 2008, two grenades were hurled into the house of another lawyer, .who appears in the author's

fundamental rights application. No proper investigation has been carried out on these incidents.

### **The complaint**

3.1 The author contends that the facts described disclose violations of article 6, read in conjunction with article 2, paragraph 3; article 7, read in conjunction with article 2, paragraph 3; article 9, paragraph 1, read in conjunction with article 2, paragraph 3; article 17 and article 23, paragraph 1 of the Covenant.

3.2 Regarding article 6, the author stresses that after the incident of 12 November 2007, when she and her family were publicly assaulted, they persistently sought help from the authorities. Even though they were filing complaint after complaint, the threats intensified, culminating in the murder of the author's husband. The author stresses that the lack of affirmative action by the State party to safeguard her life and that of her family, in particular her husband's, violates their rights guaranteed under article 6, read in conjunction with article 2, paragraph 3 of the Covenant.

3.3 Concerning article 7, the author claims that they were severely tortured on 12 November 2007, which caused her daughter and her own hospitalization. The author stresses that in addition to these acts of torture, the family has been forced to live in hiding due to continuous threats to their life from the police, which continued after her husband's death. Additionally, all persons having associated themselves with the author and her family have run considerable risk for their lives. The author contends that even though torture is recognized as a crime in Sri Lanka, no one has been punished in her case, and her fundamental rights application filed before the Supreme Court remains pending. She alleges that the lack of redress for acts of torture suffered amounts to a violation of article 7, read in conjunction with article 2, paragraph 3 of the Covenant with regard to her family.

3.4 With regard to article 9, paragraph 1, and stressing that her case is not an isolated incident in Sri Lanka, the author contends that by failing to take adequate action to the protection of the security of her family, the State party has breached Article 9, paragraph 1, read in conjunction with article 2, paragraph 3 of the Covenant in their regard.

3.5 The author further alleges that the State party breached articles 17 and 23, paragraph 1, stressing that since 2004, they have been harassed by police officers through threatening telephone calls and visits. She contends that this has interfered with their peaceful life, and that despite several requests for protection, the threats intensified, culminating with the assassination of her husband. The author also recalls

that her family life has so far been marked by financial and emotional uncertainty, and that the children have been prevented from attending school, thereby denying their right to education, and their family rights protected under article 17 and article 23, paragraph 1 of the Covenant.

3.6 Regarding exhaustion of domestic remedies, the author stresses that despite a dozen of complaints filed before various State party's authorities, which include the President of Sri Lanka; the Chief Justice of the Supreme Court of Sri Lanka; the Minister of Disaster Management and Human Rights and the secretary of this ministry; the Inspector General of Police; the Deputy Inspector General of Police; the National Police Commission, the Human Rights Commission of Sri Lanka and the Magistrate's Court of Negombo, her husband was murdered, further threats continued to be received, no one has been arrested in connection with the events, nor any investigation undertaken. Human rights defenders and lawyers assisting the family have themselves been threatened. In this context, the author stresses that the lack of progress in the proceedings, together with the fact that the alleged perpetrators have pursued their functions as police officers, have resulted in a de facto immunity of perpetrators to any proceedings. She adds that it is highly unlikely that any credible proceedings will be initiated, in light of the subjective effectiveness and delays in the proceedings in her case, assessed in light of the general lack of domestic remedies available for the complainant to be exhausted in Sri Lanka. The author therefore concludes that domestic remedies have been demonstrated to be ineffective, and that she should not be requested to pursue them further for her communication to be admissible before the Committee.

#### **Further submission from the author**

4.1 On 10 September 2009, the author informed the Committee that she had received a threat during her time spent in India, between 13 June and 26 August 2009, and that the danger had escalated since the family's return to Sri Lanka on the expiration of their visas. On 7 September 2009, the author's vehicle was chased by another car, when she was driving back from a court appearance. She also received a number of anonymous phone calls, which informed her that her house would be burnt, and that her family would be murdered. The author also informed the Committee that despite its request for interim measures of protection on her behalf, the State party had not undertaken any step in this regard.

4.2 On 15 September 2009, the above-mentioned information from the author was shared with the State party, along with a reminder on the Committee's request pursuant

to Rule 92 of its Rules of Procedure, for the State party to take measures to ensure the protection of the author and her family while her case is under consideration by the Committee.

### **State party's failure to cooperate**

5.1 By notes verbales of 15 September 2009, 24 February 2010, and 24 January 2011, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that article 4, paragraph 2, of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them, and that they make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.

5.2 The Committee further notes with regret that the State party has failed to respond to its request, made pursuant to Rule 92 of its Rules of Procedure, to take measures to ensure the protection of the author and her family while her case is under consideration by the Committee. It recalls that interim measures are essential to the Committee's role under the Protocol, and that flouting of the rule undermines the protection of Covenant rights through the Optional Protocol.

### **Issues and Proceedings before the Committee**

#### **Consideration of admissibility**

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol.

6.3 In the absence of any submission by the State party on the admissibility of the communication, and noting the author's statement that domestic remedies have proven to be ineffective, the Committee declares the communication admissible, in as far as it appears to raise issues under article 6, read in conjunction with article 2, paragraph 3;

article 7, read alone and in conjunction with article 2, paragraph 3; article 9, paragraph 1, article 17 and article 23, paragraph 1 of the Covenant.

### **Consideration of the merits**

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the optional Protocol. It recalls that in the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.

7.2 Regarding the author's claim under article 6, the Committee recalls that the right to life is the supreme right, from which no derogation is permitted. It further recalls that States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities. The Committee observes that according to the uncontested material at its disposal, the author and her family received a number of direct threats from the police, i.e. agents of the State party, including death threats, seeking to unlawfully coerce them into withdrawing complaints filed by them against police officers. On 20 September 2008, it is reported that the author's husband was shot dead by masked men, three months after two individuals had told the family that they had been instructed by the Negombo police to kill them. After this threat, the author and her husband had filed several complaints, including before the Office of the Deputy Inspector General and the police, but no action was undertaken, by the authorities to protect the family. In these circumstances, and taking into account the State party's lack of cooperation, the Committee is of the view that the facts before it reveal that the death of the author's husband must be held attributable to the State party itself. The Committee accordingly concludes that the State party is responsible for the arbitrary deprivation of life of the author's husband, in breach of article 6 of the Covenant.

7.3 As to the claim under article 7, the Committee recalls that the State party has offered no challenge to the evidence submitted by the author that on 12 November 2007, police officers broke into her domicile, beat her husband until he fell on the ground and lost consciousness, hit her with a pistol, punched her 10 year-old son against the wall, hit her daughter with a motorcycle, causing her to fall on the ground, and later sought to undress her. In the circumstances, the Committee concludes that the author, her husband and their two children were subjected to treatment contrary to article 7 of the Covenant.



7.4 The Committee recalls that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant. In the instant case, the Committee observes that the numerous complaints filed by the author have not led to the arrest or prosecution of a single perpetrator. In the absence of any explanation by the State party, and in view of the detailed evidence placed before it, including the identification by name, by the author, of all alleged perpetrators, the Committee concludes that the State party must be held to be in breach of its obligations under article 2, paragraph 3, read in conjunction with article 6 and article 7 to properly investigate and take appropriate remedial action regarding the death of the author's husband, and the ill treatment suffered by the author and her family.

7.5 Regarding the author's claim under article 9, paragraph 1, the Committee recalls its jurisprudence, and reiterates that the Covenant also protects the right to security of person outside the context of formal deprivation of liberty. The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the present case, it appears that persons acting in an official capacity within the Negombo police station have on several occasions threatened the author and her family with death. In the absence of any action from the State party to take reasonable and appropriate measures to protect the author and her family, the Committee concludes that the State party breached the author's and her family's right to security of person, protected by article 9, paragraph 1, of the Covenant.

7.6 The Committee has taken note of the author's contention that police officers harassed her and her family in their home through threatening telephone calls and forced visits, including the severe assault on her in November 2007, and that subsequently they feared to live in their home and were forced into hiding, and unable to live a peaceful family life. The Committee also notes the continuing harm resulting from the State party's failure to take any action in response to the Committee's request to adopt interim measures to protect the author and her family. In the absence of any rebuttal by the State party, the Committee concludes that the State party's interference with the privacy of the family home of the author was arbitrary, in violation of article 17 of the Covenant.

7.7 The Committee further takes note of the author's contention of a violation of article 23, paragraph 1 of the Covenant, and finds that the violation of articles 6, 7 and 17, in light of the circumstances of the case, also constitute a violation of these articles read in conjunction with article 23, paragraph 1 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal violations by Sri Lanka of article 6, read alone and in conjunction with article 23, paragraph 1 vis-à-vis the author's husband; article 2, paragraph 3, read in conjunction with article 6 and article 7, vis-à-vis the author herself, her husband, and their two children; article 7, read alone and in conjunction with article 23, paragraph 1 vis-à-vis the author, her husband and their two children; article 9, paragraph 1 vis-à-vis the author, her husband and their two children; and article 17, read alone and in conjunction with article 23, paragraph 1, of the Covenant vis-à-vis the author, her husband and their two children.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which includes ensuring that perpetrators are brought to justice, that the author and her two children can return to their domicile in safety, and ensure reparation, including payment of adequate compensation and an apology to the family. The State party should also take measures to ensure that such violations do not recur in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views, to have them translated in official languages of the State party, and widely distributed.

(Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.)

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The full text of the Communication is available at:

<http://www.alrc.net/PDF/SKASugathNishantaFernando-CommNo1862-2009.pdf>

## B. REDRESS document on Sugath Nishantha Fernando



[http://www.redress.org/case-docket/pathmini-peiris-v-sri-lanka?utm\\_source=smartmail&utm\\_medium=email&utm\\_campaign=](http://www.redress.org/case-docket/pathmini-peiris-v-sri-lanka?utm_source=smartmail&utm_medium=email&utm_campaign=)

### Pathmini Peiris v. Sri Lanka

Mr Fernando lodged complaints of torture and bribery against several police officers. He was subsequently subjected to constant threats of assassination. Two lawyers involved with the case have also been threatened. On 20 September 2008, a few days before Mr Fernando was due to give evidence against the alleged perpetrators of torture, he was shot and killed. A death inquest was held at the Magistrate Court of Negombo. The wife of the deceased and two children gave evidence, mentioning the names of 14 police officers who they believed to be implicated in the death of her husband. Mrs. Fernando and her family repeatedly reported threats by police officers for pursuing complaints relating to the bribery, torture and killing of Mr. Fernando and criminal charges were brought against her in response to her complaints.

The Asian Legal Resource Centre, together with REDRESS and the Rehabilitation and Research Centre for Torture Victims (Denmark), submitted a complaint to the UN Human Rights Committee in February 2009 on behalf of Mr Fernando's wife, Mrs Annakkarage Suranjini Sadamali Pathmini Peiris, alleging violations of articles 6, 7 and 9 in conjunction with article 2 (3). The complaint also requested interim measures to ensure the protection of the complainant and her family, following which the Human Rights Committee issued a letter to the Sri Lankan government on 12th February 2009, requesting the state party to take measures to ensure protection of Mrs. Pathmini Peiris and her family.

In August 2011, an additional submission was lodged with the Human Rights Committee on behalf of Mrs Pathimini Peiris in which her counsel argued that failure of Sri Lanka to comply with the protection measures requested by the Committee constituted separate violation of her rights.

On 26 October 2011 the Human Rights Committee issued its views in the case, finding that the murder of Mr Fernando was attributable to the state of Sri Lanka, and that it was therefore in violation of Article 6 of the Covenant (right to life). The Committee also found that Mr Fernando and his wife and children had been subjected to ill-treatment contrary to Article 7 of the Covenant. Sri Lanka was held in breach of its obligations under the Convention to properly investigate and take appropriate action regarding the death Mr Fernando, and the ill-treatment suffered by him and his family. For its failure to take reasonable and appropriate measures to protect Mrs Pathmini Peiris and her children following death threats made by police officers, Sri Lanka was also held in violation of Article 9(1) (right to security of the person) and Article 17 (right to protection from arbitrary interference with privacy and family).

The Committee stated that Sri Lanka is under an obligation to provide Mrs Pathmini Peiris with an effective remedy, including ensuring that the perpetrators are brought to justice, that Mrs Pathmini Peiris and her children can return to their home in safety, and to ensure reparation, including payment of adequate compensation and an apology to the family.

- Communication before the Human Rights Committee:  
<http://www.article2.org/mainfile.php/0801/338/>
  - [Submission to the Human Rights Committee](#) dated 22 August 2011
  - [Views of the Human Rights Committee](#) adopted 26 October 2011
-

## **C. AHRC documents on Sugath Nishantha Fernando**

### **1. UNHRC holds that the government is responsible for the death of Sugath Nishantha Fernando of Negombo**

**January 11, 2012**

Document Type: Statement

Document ID: AHRC-STM-006-2012



The United Nations Human Rights Committee has issued its determination regarding the complaint made by a Sri Lankan citizen, A.S.S. Pathmini Peiris, in connection with the murder of S.K.A. Sugath Nishantha Fernando who was assassinated on 20 September 2008. Previously Mr. Fernando had complained of the torture of himself, his two children and his wife due to a Fundamental Rights Application filed by him complaining about several police officers in Negombo including a Headquarters Inspector and a Senior Superintendent of Police. Pathmini Peiris, in her petition stated that no inquiry had been conducted into this murder. The UNHRC after examining all the material before them came to the conclusion in favour of the petitioner, Pathmini Peiris. The Committee held:

The Committee accordingly concludes that the State party is responsible for the arbitrary deprivation of life of the author's husband, in breach of article 6 of the Covenant.

The full text of the Committee's finding on this particular issue of the denial of the right to life of Mr. Fernando is as follows:

7.2 Regarding the author's claim under article 6, the Committee recalls that the right to life is the supreme right, from which no derogation is permitted. It further recalls that States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities. The Committee observes that according to the uncontested material at its disposal, the author and her family received a number of direct threats from the police, i.e. agents of the State party, including death threats,



seeking to unlawfully coerce them into withdrawing complaints filed by them against police officers. On 20 September 2008, it is reported that the author's husband was shot dead by masked men, three months after two individuals had told the family that they had been instructed by the Negombo police to kill them. After this threat the author and her husband had filed several complaints, including before the Office of the Deputy Inspector General and the police, but no action was undertaken, by the authorities to protect the family. In these circumstances, and taking into account the State party's lack of cooperation, the Committee is of the view that the facts before it reveal that the death of the author's husband must be held attributable to the State party itself. The Committee accordingly concludes that the State party is responsible for the arbitrary deprivation of life of the author's husband, in breach of article 6 of the Covenant.

The UNHRC also held that the government of Sri Lanka has violated article 7 by severely torturing him and his two children and his wife:

As to the claim under article 7, the Committee recalls that the State party has offered no challenge to the evidence submitted by the author that on 12 November 2007, police officers broke into her domicile, beat her husband until he fell on the ground and lost consciousness, hit her with a pistol, punched her 10 year-old son against the wall, hit her daughter with a motorcycle, causing her to fall on the ground, and later sought to undress her. In the circumstances, the Committee concludes that the author, her husband and their two children were subjected to treatment contrary to article 7 of the Covenant

It also held that the failure to investigate into the murder and the torture amount to a denial of an effective remedy to the victims and therefore the government of Sri Lanka has committed a violation under articles 6 & 7 of the Covenant on Civil and Political Rights; the Committee further held that the failure on the part of the government to take reasonable and appropriate measures to protect the author and her family amounted to a denial of the right to security of persons which is a violation of article 9 (1).

The failure on the part of the state party to take action in response to the Committee's request to adopt interim measures to protect Mr. Fernando and his family is held by the Committee as a violation of article 17 of the Covenant.

The Committee has recommended that the government should undertake to ensure an effective remedy which includes ensuring that the perpetrators are brought to justice; that the author and her two children can return to their domicile in safety, ensure

reparation including payment of adequate compensation and apologise to the family.

The UNHRC has requested the government to provide within 180 days information about the measures taken to give effect to the committee's views. The Committee has further requested the government to publish the Committee's views.

The full text of the Communication is available at:

<http://www.alrc.net/PDF/SKASugathNishantaFernando-CommNo1862-2009.pdf>

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## **2. Torture victim shot dead while seeking justice**

**September 24, 2008**

Document Type: Urgent Appeal Update

Document ID: AHRC-UAU-057-2008

Dear friends,

The Asian Human Rights Commission (AHRC) regrets to inform you that a torture victim as well as a complainant in a bribery case against the police was assassinated by unidentified gunmen while driving with his son on 20 September 2008. Before this assassination took place, the victim had repeatedly asked relevant authorities for protection for his family. However, his requests were ignored.

### **UPDATE INFORMATION:**

Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando, who was a complainant in a torture case before the Supreme Court (Case No. SCFR. 446/07) and a bribery case before the High Court (Case No. Bribery/1658/2006) against several police officers attached to the Negombo Police Station. On 23 June 2008, four men hired by the police threatened to kill his family unless Nishantha Fernando withdrew the case pending in the Supreme Court. The victim had filed this case in the Paliyagoda Criminal Division (Case No. SIIB 345/266) on the same day. (Please refer to [AHRC-UAC-141-2008](#))

According to detailed information received, about 10am on September 20, Nishantha Fernando was driving his van with his 11-year-old son. Two persons on a motorbike

came from behind and shot him at the Dalupotha junction, Negombo. A witness said that one assassin fell from the motorbike but managed to remount and they fled towards Chilaw. Nishantha was rushed to the Negombo hospital where he was pronounced dead. Fortunately his son was unharmed.

After the death of Fernando, his widow stated that they have no other suspects except the police officers against whom her husband was pursuing two cases of bribery and a fundamental rights case regarding torture. The government has not taken any steps to remove from the area those police officers named as accused and respondents in the two cases.

Meanwhile, it is reported that the respondents in the Supreme Court case are: Senior Superintendent of Police (SSP), Premasiri Vithanage, SSP's Office Negombo; Superintendent of Police, Mahanama, SSP's Office Negombo; Somarsiri Liyanage, Officer-in-Charge, Head Quarters, Police Station, Negombo; Inspector of Police Priyadarshana, Negombo Police Station; Inspector of Police Subasinghe, Negombo Police Station; Inspector of Police Bandara, Negombo Police Station; Inspector of Police Silva, Negombo Police Station; Sub Inspector Abeynayake, Negombo Police Station; Sub Inspector Rohana, Negombo Police Station; PC Leelasena, 19999, Negombo Police Station; PC Nihal, 51750, Negombo Police Station and Sergeant Silva, Negombo Police Station. The accused in the bribery case is Inspector of Police, Mahagama Dhamadasa.

The AHRC is of the opinion that a competent, independent authority should be set up to investigate the death of Nishantha Fernando since several police officers attached to the Negombo Police Station are involved in the torture case.

#### **ADDITIONAL INFORMATION:**

Judging from previous experience, the AHRC has reason to believe that there will be an attempt to cover up this case and to create the impression that inquiries are taking place while, in fact, perpetrators directly or indirectly are given impunity.

For further details and an analysis of this case, please refer to statements:

[AHRC-STM-246-2008](#): SRI LANKA: Another complainant in a torture case shot dead

[AHRC-OLT-022-2008](#): SRI LANKA: A man who sought your protection against death threats from police officers in Negombo was shot dead yesterday

[AHRC-STM-247-2008](#): SRI LANKA: The government and the state media is silent about the murder of the complainant in a bribery and a torture case

#### **ADDITIONAL COMMENTS:**

A proper mechanism to protect witnesses or victims in cases where the police are perpetrators of crimes does not exist in Sri Lanka. A bill called 'Assistance and Protection of Victims of Crime and Witnesses' was introduced into the Parliament on 18 June 2008 and is under consideration. However, concerns remain about the bill due to the lack of protection for the victims of crimes committed by law enforcement agencies and/or people hired by them.

This incident is just a mirror of what is happening today in Sri Lanka. It began with the soliciting of a bribe, to the torture of a whole family, to the making of death threats. The lives of ordinary people are constantly disturbed by these types of threats. Complaints made to state agencies produce little if any change in the situation. The case of the death of [Gerald Perera](#) is indicative. A police officer who gave a statement at an early stage at the Magistrate's Court has received threats to change his statement. ([AHRC-STM-141-2008](#))

#### **SUGGESTED ACTION:**

Please write letters to the government authorities listed below urging them to immediately set up a competent and independent investigative authority. Please also urge them to provide full protection for the family members of the deceased.

Please be informed that the AHRC has written a separate letter to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the question of torture calling for an intervention in this case.

#### **SAMPLE LETTER:**

Dear \_\_\_\_\_,

#### **SRI LANKA: Torture victim shot dead while seeking justice**

**Name of victim:** Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando

**Case:** complainant to the Fundamental Rights Application ([FR. 446/07](#)) at the Supreme Court; Complainant of bribery case ([B/1658/2006](#)) against an Inspector of Police attached to the Negombo Police Station; Complainant regarding death threats at Paliyagoda Criminal Division (No. [SIIB 345/266](#))

**Respondents in the Supreme Court:** Senior Superintendent of Police (SSP), Premasiri Vithanage, SSP's Office Negombo; Superintendent of Police, Mahanama, SSP's Office Negombo; Somarsiri Liyanage, Officer-in-Charge, Head Quarters, Police Station, Negombo; Inspector of Police Priyadarshana, Negombo Police Station; Inspector of Police Subasinghe, Negombo Police Station; Inspector of Police Bandara, Negombo Police Station; Inspector of Police Silva, Negombo Police Station; Sub Inspector Abeynayake, Negombo Police Station; Sub Inspector Rohana, Negombo Police Station; PC Leelasena, 19999, Negombo Police Station; PC Nihal, 51750, Negombo Police Station and Sergeant Silva, Negombo Police Station

**Respondents in the bribery case:** Inspector of Police, Mahagamage Dhamadasa

**Name of perpetrators:** two unidentified gunmen hired by the police

**Date of incident:** 20 September 2008

**Place of incident:** at Dalupotha junction, Negombo

I am shocked to learn that Mr. Nishantha Fernando, torture victim as well as the complainant in two cases, was assassinated by unidentified gunmen hired by police officers in Negombo on September 20, 2008

According to the information I have received, about 10am on September 20, while Nishantha Fernando was driving his van with his 11-year-old son, two persons on a motorbike came from behind and shot him at Dalupotha junction, Negombo. Nishantha was rushed to Negombo hospital where he was pronounced dead. Fortunately his son was unharmed.

I am aware that Nishantha Fernando, a torture victim, is a complainant in a fundamental rights case in the Supreme Court as well as in a bribery case. I have already informed you of the death threat against him made by Niroshan and Namal, which Nishantha had reported to the Paliyagoda Criminal Division (No. SIIB 345/266). He requested immediate police protection but received neither response nor protection.

Several police officers attached to the Negombo Police Station are respondents in the torture case currently pending in the Supreme Court. I strongly urge you to set up a competent, independent authority outside of Negombo so that a thorough investigation can be conducted. In this regard, I also urge that the respondents in the fundamental rights application are removed from the Negombo area until the investigation is completed. Such transparency is required to make sure that the investigative authorities are not unduly pressurized or influenced. I further call upon



you to provide protection for all family members until the cases before the High Court of Colombo and the Supreme Court are completed.

Yours sincerely,

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**PLEASE SEND YOUR LETTERS TO:**

1. Hon. Minister Mahinda Samarasinghe  
Ministry of Disaster Management and Human Rights  
2, Wijerama Mawatha  
Colombo 7  
SRI LANKA  
Fax: +94 11 269 3284 (ATTN: Mr. Rajiva Wijesinghe, Secretary)  
E-mail: [info@dmhr.gov.lk](mailto:info@dmhr.gov.lk)

2. Mr. Neville Piyadigama  
Chairperson  
National Police Commission  
3rd Floor, Rotunda Towers,  
109 Galle Road  
Colombo 03  
SRI LANKA  
Fax: +94 11 2 395867  
Tel: +94 11 2 395310  
E-mail: [npcgen@sltnet.lk](mailto:npcgen@sltnet.lk)

3. Mr. Jayantha Wickramaratne  
Inspector General of Police  
New Secretariat  
Colombo 1  
SRI LANKA  
Fax: +94 11 2 440440/327877  
E-mail: [igp@police.lk](mailto:igp@police.lk)

4. Mr. C.R. De Silva  
Attorney General  
Attorney General's Department  
Colombo 12  
Sri Lanka

Fax: +94 11 2 436421

E-mail: [ag@attorneygeneral.gov.lk](mailto:ag@attorneygeneral.gov.lk)

5. Secretary

Human Rights Commission

No. 36, Kynsey Road

Colombo 8

SRI LANKA

Fax: +94 11 2 694 924 / 696 470

Tel: +94 11 2 694 925 / 673 806

E-mail: [sechrc@sltnet.lk](mailto:sechrc@sltnet.lk)

6. Mr. Mahinda Rajapakse

President

Socialist Democratic Republic of Sri Lanka

C/- Office of the President

Temple Trees

150, Galle Road

Colombo 3

SRI LANKA

Fax: +94 11 2472100 / +94 11 2446657

E-mail: [secretary@presidentsoffice.lk](mailto:secretary@presidentsoffice.lk)

7. Mr. Ratnasiri Wickremanayake

Prime Minister

Temple Trees

Galle Road, Colombo 03

SRI LANKA

Fax: +94 11 2 575454

Tel: +94 11 2 575317-8 or 370 737-8

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### **3. The government and the state media is silent about the murder of the complainant in a bribery and a torture case**

**September 23, 2008**

Document Type: Statement

Document ID: AHRC-STM-247-2008

On the 20th September Sugath Nishanta Fernando, of Negombo who was the complainant in a bribery case and a torture case in which the allegations were against several police officers of the Negombo area, was assassinated. The family has very clearly stated that they suspect no one else for this murder except the police officers who are either the accused or the respondents in the cases of bribery and torture. The deceased, Nishanta Fernando himself, made repeated requests to the Inspector General of Police and all the Sri Lankan authorities for protection against death threats. He was repeatedly threatened that he and his entire family would be killed if he did not withdraw the case before the Supreme Court. For the details of the assassination please see: SRI LANKA: Another complainant in a torture case shot dead, at <http://www.abrchk.net/statements/mainfile.php/2008statements/1697/>

Despite of complaints made to the Sri Lankan authorities and the private media giving a great deal of information about this incident, neither the president nor the prime minister of Sri Lanka nor the Minister for Disaster Management and Human Rights or any other spokesmen for the government, has made any statement to condemn the killings, to urge for credible and prompt inquiries, to provide protection for the family, to remove the alleged suspects who hold important police positions in the Negombo area from their posts or to promise any other action. No spokesman for the Sri Lankan police has made any comments about this assassination. The Human Rights Commission of Sri Lanka and the National Police Commission have also remained completely silent.

### **The silence of the government media**

Meanwhile the government media has also not given any publicity to this assassination. Even trivial crimes are publicised in this media but they have maintained a studied silence about this assassination of a complainant who has two cases, one before the Supreme Court and the other before the High Court of Colombo.

The killing of a complainant should have received enormous attention on the part of any government that cares for the rule of law and from the government media, as it has an obligation to report matters of public importance.

This silence on the part of the government and the media should be seen as an attempt to ignore the tremendous importance of the issue of the killing of complainants and witnesses. In international forums spokesmen for the Sri Lankan government have been making statements which are aimed at creating the impression that the government has a serious interest in protecting the complainants and witnesses. This statement of avowal to prosecute those who kill or harass complainants and witnesses

is made against a local and global criticism on the failure of the government to provide witness protection. However, such statements are nothing more than empty words when compared with the complete silence in the face of the actual killing of witnesses.

The government has neither taken any steps to remove from the area those police officers who have been named as accused and respondents in the two cases. The respondents in the Supreme Court case are: Senior Superintendent of Police, Premasiri Vithanage, SSP's Office Negombo; Superintendent of Police, Mahanama, SSP's Office Negombo; Somarsiri Liyanage, Officer-in-Charge, Head Quarters, Police Station, Negombo; Inspector of Police Priyadarshana, Negombo Police Station; Inspector of Police Subasinghe, Negombo Police Station; Inspector of Police Bandara, Negombo Police Station; Inspector of Police Silva, Negombo Police Station; Sub Inspector Abeynayake, Negombo Police Station; Sub Inspector Rohana, Negombo Police Station; PC Leelasena, 19999, Negombo Police Station; PC Nihal, 51750, Negombo Police Station and Sergeant Silva, Negombo Police Station. The accused in the bribery case is Inspector of Police, Mahagamage Dhamadasa.

### **In Sri Lanka killing has become easy and cheap**

The government's silence and inaction in this case is no surprise. In fact, the ever-extending powers of the executive presidency are crippling all the government institutions including the institutions of justice and are aimed at creating a climate of fear and silencing the people. Within such a framework the criminals need to be given the assurance that their actions will not bear adverse consequences. Creating confidence among the criminal elements in the police and the armed forces and also the government supporters is a deliberate policy of a government that wants to suppress the operation of the law on an equal basis for everyone. Those who commit crimes that, directly or indirectly support the government policy of creating a climate of fear, are protected from inquiries or any other form of condemnation. Under these circumstances murderers, thieves and those who engage in corruption can thrive.

### **The manipulation of the media**

The state manipulates the media in many sophisticated ways in order to trivialise the vital problems affecting the people. These problems may be in the field of economics such as basic food prices, medical care and the like or it may be on issues such as unemployment and poverty and it may also be in the area of basic security that is denied to the people. Under these circumstances it is no surprise that the government has no time to listen to the cries of the widow and the children of Nishanta Fernando.

The earlier case of Gerard Perera also showed sophisticated manipulation at all levels in order to deny justice to a witness who was pursuing his complaint against the police officers who tortured him. Naturally, effective action in that case would have discouraged others from engaging in similar acts. Perhaps Nishanta Fernando would not have faced his tragic death had the state ensured justice in the case of Gerard Perera. Now with two such cases in the Negombo area, if other police officers and the criminals who work with them are encouraged to engage in similar acts, the blame must be placed entirely on the Sri Lankan government.

The only way the government can answer the accusation against it that it deliberately encourages greater violations of human rights and the suppression of human rights is to demonstrate its will to investigate assassinations, such as the one of Nishanta Fernando. Each day that passes without the culprits being brought to justice will vindicate the accusation that the government wants this kind of act to happen so that there will be a climate of fear from which it can benefit. The very fact that the repeated requests for protection were denied by the government to Nishanta Fernando and his family leaves no doubt about the type of bleak climate of fear that is being deliberately cultivated in the country.

For further information on this case please also see: [Open Letter] SRI LANKA: A man who sought your protection against death threats from police officers in Negombo was shot dead yesterday, at <http://www.ahrchk.net/statements/mainfile.php/2008statements/1698/>

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#### **4. A man who sought your protection against death threats from police officers in Negombo was shot dead yesterday**

**September 21, 2008**

Document Type: Open Letter

Document ID: AHRC-OLT-022-2008

Please note that a similar letter was also sent to the Secretary to the Ministry, Prof Rajiva Wijesinghe)

September 21, 2008

Hon. Minister Mahinda Samarasinghe

Ministry of Disaster Management and Human Rights  
2, Wijerama Mawatha  
Colombo 7  
SRI LANKA

Fax: +94 11 269 3284  
E-mail: [info@dmhr.gov.lk](mailto:info@dmhr.gov.lk)

Dear Mr. Samarasinghe,

**Re: A man who sought your protection against death threats from police officers in**

The Asian Human Rights Commission is writing this to bring to your notice that Mr. S.K.A.S. Nishanta Fernando, who was a complainant in a bribery case and a torture case against several police officers in Negombo, who sought your intervention to ensure his protection against threats to his life and that of his family, was shot dead at Dalupatha Junction yesterday, 20th September 2008.

The letter written to you and Prof. Rajiva Wijesinghe, the ministry secretary was sent to you on June 24th 2008 and was also published by us as an open letter. The full text of the letter sent to you is attached herewith:

The AHRC did not receive any reply or even an acknowledgement of our letter from you or your ministry secretary. What action you took on this very serious request for assistance on death threats we do not know and to our knowledge the family also, has not heard from you or your ministry secretary. Even if you did take some action it has either not been heeded by anyone in authority, or has not proved to be of any effectiveness as the man was shot dead in broad daylight at 10a.m. while driving his vehicle while accompanied by his 11-year-old son.

The family, in subsequent statements to the police, as well as to the media clearly stated the names of the policemen whom they suspected of being behind this assassination. Mr. Fernando widow has also clearly stated that they have no one else?to suspect except the police officers against whom her husband was pursuing two cases for bribery and a fundamental rights case regarding torture.

You yourself, and the secretary to your ministry have been making solemn statements

before the forums of the United Nations and other public forums, affirming the government • commitment to provide witness protection to its citizens. However even in this simple matter where a man has directly sought your protection against death threats you have been unable to provide any form of protection to him.

Judging by previous experience, we have reason to believe that the assistance of your ministry will now be sought to cover up this incident and to create the impression that inquiries are taking place while, in fact, impunity will be directly or indirectly assured to the perpetrators. We therefore wish to caution you against such pressure and once again, even despite of not receiving any effective response for the earlier request for protection against death threats, again we urge you to use your authority to ensure a thorough investigation into this matter. Such investigation, if it is to be done with any credibility, should be taken out of the hands of the police officers in the Negombo area, including the high ranking officers of the area, one of whom is the 1st Respondent in the fundamental rights case before the Supreme Court. Only an investigation by a competent special unit of inquiry that is not pressurised politically to protect the perpetrators, can ensure justice in this case.

The famous Draft Bill for the Assistance and Protection of Victims of Crime and Witnesses that was introduced to parliament in June, is still pending. Despite of the many glowing speeches of the speedy passing of this law, persons like Mr. Fernando have not lived to see the benefit of such a law. Naturally, no one can be blamed for reacting to such deaths with a cynical conviction that all such talk about witness protection is just political bluff.

Despite of all this we still appeal to you as officially, your ministry is supposed to be in charge of the protection and promotion of human rights in the country. We urge you to:

- a. To make a public statement about this case.
- b. To take all practical measures to ensure an independent and impartial investigation by a competent team outside the officers working in the Negombo area.
- c. To take at least the minimum step of transferring all the officers against whom the cases are pending before the High Court of Colombo and the Supreme Court on the basis of complaints made by Mr. Fernando.

Thank you

Yours sincerely,

Basil Fernando  
Executive Director  
Asian Human Rights Commission

Attached: A copy of the earlier letter:

Dear Mr. Samarasinghe,

**Re: Save the lives of a family of torture victims facing death threats**

(the following was sent as a letter to the Hon. Minister Mahinda Samarasinghe, Ministry of Disaster Management and Human Rights by the Asian Human Rights Commission.

A family in Negombo has complained of death threats made against the entire family due to a complaint of bribery and a fundamental rights application filed in the Supreme Court of Sri Lanka. S.K.A.S Nishanta Fernando, made a complaint against an Inspector of Police (IP) who solicited a bribe of Rs. 5,000/= from him and the Bribery Commission, having investigated the complaint, filed an action against this police officer at the High Court of Colombo. Later about 12 police officers surrounded the house of Mr. Fernando and severely assaulted his wife, A.S. S. Padma Peiris, and his daughter, Dilukshi, a minor and son, Anjana, also a minor, causing severe injuries.

The husband, wife and two children submitted a petition to the Supreme Court under the fundamental rights jurisdiction and the Supreme Court gave leave to proceed in this case. Yesterday, June 23rd, two persons made threats to the family to withdraw the fundamental rights application within 24 hours or otherwise the entire family would be killed. The family reported this matter to the Deputy Inspector General of Police at Peliyagoda yesterday.

The Asian Human Rights Commission yesterday made appeals to the chief justice, the Attorney General, the Ministry of Human Rights and Disaster Management and the Human Rights Commission of Sri Lanka to investigate into this matter and provide protection to the family.

**Fundamental rights application**



In the Fundamental Rights Application, 446/07, the Petitioners have stated that both the husband and wife were approached by police officers demanding that they not give evidence in the bribery case bearing case number B/424/05, against the IP.

On November 12, 2007 a police squad arrived in jeeps, motorcycles and three-wheelers and surrounded the Petitioners house. They then abused and assaulted the family members. The husband was assaulted with fists and when he fell on the floor he was kicked and trampled until he fell unconscious. The wife was hit with a pistol on her forehead close to the eye from which wound she started to bleed. Several police officers assaulted and trampled the wife even after she fell to the floor. The young daughter was slapped by a police officer and hit about the head. One police officer tried to remove her blouse, despite of her struggle against this. She then started to scream. She was dragged to the police jeep and one of the officers tried again to lift her blouse. When she screamed again she was beaten. She shouted from the window asking someone to go and inform the grandmother. And when she inquired where they were being taken a police officer replied, we are taking you to the beach to kill you. The young son was dragged to a wall and struck about the head, face and stomach. Due to this mistreatment he lost part of a tooth and his lip was split.

The husband regained consciousness only when he was inside the Crime division of the Negombo police station and water had been thrown over him. One police officer was shouting that this fellow had to be killed and that the SSP has said to do this. He was dragged out of the room and overheard an officer speaking over the telephone to someone, '• ir that is the thing that I am writing now. This fellow who is half dead now is in front of me.' Later, after their release all the members of the family sought medical treatment and the medical reports confirmed their injuries. In an application made to the Colombo High Court in the bribery case the High Court judge canceled the bail granted to the police officer who was the accused in this case.

It was about this assault on the entire family that the fundamental rights application was made and the Supreme Court granted leave to proceed. The death threats were made against the family for the purpose of forcing them to withdraw this fundamental rights application. In an affidavit signed by Mr. Fernando he states as follows:

On 23.6.2008 at about 11 in the morning, myself and my wife were going towards the Negombo hospital in our three-wheeler bearing number 205/8052 in order to get treatment for my wife. While we were traveling in Chilaw, Colombo Road, near Dalupatha Bridge, there was a heavy goods vehicle bearing number WP-L (DOG) 5347 and the persons named Niroshan and Nimal and some others unknown to the family

were there. Niroshan and Nimal signaled us to stop the three-wheeler with their arms. The driver our other three-wheeler was one Ajith and he stopped. Niroshan and Ajith put their heads into the three-wheeler and told us threateningly if you do not withdraw the human rights petition filed against the Negombo police by tomorrow morning we will kill all of you by tomorrow afternoon. The Negombo police have given us permission to kill you all.

We were frightened by this threat, turned our vehicle and returned home. Shortly after our return we heard some people banging our gate and two people shouting, pen the gate. If you do not withdraw the petition by tomorrow evening we will kill you all, the police have given us permission for that, open the doors. Due to fear we did not open the gate but when we looked over the gate we saw Niroshan and Nimal whose names we do not know, hitting the gate. We clearly identified Niroshan and Nimal. A little later this group left in their vehicle. We have hear that this Niroshan is an army deserter.

These threats have been made against us to force us to withdraw the fundamental rights petition we have filed at the Supreme Court of Sri Lanka. We made a complaint at the office of the DIG crimes at Peliyagoda and the complaint bears number SIIV 345/266.

As they have threatened to kill us we are afraid to live in our house and we request that protection for our lives be provided and the conditions for the carrying out of our ordinary business be restored to us.

This incident is just a mirror of what is happening today in Sri Lanka, even in those areas which are far away from any conflict zone. Negombo is situated close to the main airport of the country and just a few miles away from the capital, Colombo. The incident, beginning with the soliciting of the bribe, to the torture of a whole family, and now the making of death threats has taken place within this locality where there are check points with heavy police and military presence. The lives of the ordinary people are so disturbed by this type of threat constantly and complaints made to state agencies produce little, if any change in the situation. The famous case of the assassination of Gerard Perera, which also took place within this same vicinity, has become the symbol of the terrible fear that the people have to live with under the present circumstances.

Complaining about the police or other state agencies about bribery, torture or anything else, has become a dangerous exercise. Not only do these officers enjoy impunity for

the wrongs they do, but they can also kill or harm those who complain against them. Complaining about violations of rights has become an offense that may carry capital punishment by unofficial means.

Under these circumstances we urge you to take the following steps for the protection of these persons as your ministry is named also, the Ministry for Human Rights:

1. Immediately investigate this matter through an independent police unit from outside the Negombo area, preferable through the Special Investigating Unit, which used to investigate torture related complaints.
2. Take immediate steps to provide protection for this family by assigning this task to a responsible unit who should take responsibility for the lives of the members of this family.
3. Until the problem is resolved take steps to provide alternative residence for the family with special protection for the wife and the two young children who are still minors.
4. Take steps to ensure prosecution of the offenders relating to the complaint of torture made earlier and narrated above and also for the making of death threats, including instigating criminal elements against this family.

Under the circumstances it would be natural to hold your ministry and other state agencies who have been informed of these threats responsible if any harm befalls any member of this family.

Thank you,  
Yours sincerely,

MOON Jeong Ho  
Programme Officer  
Asian Human Rights Commission

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## **5. Another complainant in a torture case shot dead**

September 20, 2008

Document Type: Statement

Document ID: AHRC-STM-246-2008

Prompt enquiries from a competent and independent special police unit needs to be conducted into to the assassination of Siyaguna Kosgodage Anton Sugath Nishantha Fernando, who was a complainant in a torture case before of the Supreme Court and a bribery case before the High Court against several police officers attached to the Negombo Police Station.

Nishantha Fernando, who had made complaints of torture and bribery against a senior police officer and several other police officers, was shot dead today, 20th September 2008, at Dalupotha junction, Negombo. He was shot at around 10 a.m. and was rushed to the Negombo hospital where he has been pronounced dead. He was driving his van accompanied by his 11 year old son when two persons travelling on a motorbike came from behind and shot him. The assassin fell from the motorbike but managed to remount and then and then fled towards Chilaw. Fortunately, the son was unharmed.

Nishantha Fernando had repeatedly complained to the Inspector General of Police and all local authorities, including the Attorney General, the National Police Commission (NPC) and the Human Rights Commission of Sri Lanka and also to the bribery commission, about the constant threats he had been receiving of assassination of himself and his family. On the 23rd of June 2008 four men, believed to be hired by the police, arrived at his house and told him to withdraw the fundamental rights complaint currently pending before the Supreme Court of Sri Lanka, stating that if within 24 hours he did not do so, he and his family would be assassinated. He and his family immediately went into hiding and informed the all the relevant authorities of the threat. The Asian Human Rights Commission also published the story of the threats widely. He returned to his home after a long period in hiding only recently.

The initial complaint of Nishantha Fernando was against police inspector Mahagamage Dharmadasa for soliciting a bribe of 5,000 rupees (about 46 USD). The Bribery Commission inquired into the matter and filed a prosecution before the High Court of Colombo, bearing number Bribery/1658/2006. Following the arrest of policemen, about 12 police officers from Negombo attacked the whole family (wife and two children) and seriously injured them. Thereafter Nishantha Fernando was brought to the Negombo Police Station and further tortured. A case bearing number SCFR.446/07 was filed against twelve police officers in Negombo regarding this assault. The Supreme Court granted leave proceed in the case. Now the case is before the Supreme Court for its final hearing.

Nishantha Fernando and his family had taken all the precautions for their safety and

asked all the authorities to provide protection for him and his family. The Inspector General of Police has written back to the human rights organisations saying that inquiries were being conducted into this matter. However, this daylight killing of the complainant of a torture case and a bribery case clearly indicates the utter negligence of the police authorities in protecting him. Despite of two cases pending before the Supreme Court and the High Court, none of the police officers were transferred from the police station and thus they were placed in an advantageous position to take their revenge from a citizen who had dared to complain against them.

In the earlier case of Gerald Perera, a torture victim who was due to give evidence before the High Court against a sub inspector of police and several other police officers who were formally attached to the Negombo Police Station, was shot dead while travelling on a bus. The sub inspector and another lay accomplice have been charged with murder in that case, and several of the police officers have, on their own, given voluntary confessions to the Magistrate at Wattala about what they knew about the murder. However, in the torture case against the police officers, they were all acquitted by the High Court Judge, who, while holding that the torture took place at the Wattala Police Station, acquitted the accused as there was no eyewitness to the torture.

The Sri Lankan government has agreed with the Human Rights Council to enact a witness protection. The Minister of Disaster Management and Human Rights introduced this act several months back to the parliament. However, it has not been passed. There is no statutory authority take prompt action in order to deal with the request by witnesses who complained about threats to their lives. There is a callous disregard to all such requests which virtually creates confidence in errant police officers to take revenge their opponents in this manner. The responsibility for providing witness protection is with the Inspector General of Police but there is nothing on record to show that he has not acted in a manner to encourage attacks on the witnesses.

There is fear now, quite legitimate under the circumstances, that the inquiry into this murder will be hushed up. There are so many ways of sabotaging inquiry into murders in which the alleged suspects are the police.

The Asian Human Rights Commission urges the Inspector General of Police to initiate prompt and effective investigation into this matter with a special team of competent and impartial police officers. Leaving the investigation to the Negombo police station or to any of the higher authorities of the police in charge of this area would mean to

give opportunity to tamper with evidence and to destroy the possibility of prosecution in this case. The higher authorities of police in the Negombo area were aware of the cases before the Supreme Court and the High Court against the police officers and about the complaints made by Nishantha Fernando and his family of threats to their lives. However, these authorities did nothing to protect him. Therefore to leave the inquiries in the hands of these persons would not create a belief that a credible and an impartial inquiry will be held into this case.

We also urge the United Nations Rapporteurs on Torture and on Extra-judicial Killings and all other relevant mechanisms to take up this case as a matter of priority and demand a proper inquiry into this killing. We also urge the local human rights community and the media to take up this matter as it raises fundamental issues regarding protection of human rights in Sri Lanka. We also urge the international human rights organisations to proactively pursue this case.

For further details see <http://www.ahrchk.net/pr/mainfile.php/2008mr/535/> and <http://www.ahrchk.net/ua/mainfile.php/2008/2911/>

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## **6. Men allegedly with the backing of police threaten petitioners to withdraw case**

**June 25, 2008**

Document Type: Urgent Appeal Case

Document ID: AHRC-UAC-141-2008

Dear Friends,

**The Asian Human Rights Commission (AHRC) has received information that four members of a family received death threat by four men allegedly hired by police on 23 June 2008. It is reported that four men threaten the family members to withdraw the case which is currently pending under the Fundamental Rights jurisdiction at the Supreme Court, Negombo. Please intervene in this case and urge the authorities to immediately provide protection for them.**

**CASE DETAILS:**

Sugath and his wife, Sandamali Padmi Peiris are petitioners of a fundamental rights case before Supreme Court, Negombo (Case No. FR. 446/07). They had been allegedly tortured after illegal arrest and detention by 12 police officers attached to the Negombo Police Station. Sugath had earlier made a complaint against Inspector of Police (IP) Mahagamage Dramadasa for soliciting a bribe of Rs. 5,000 (USD 46) about which the Bribery Commission has made inquiries and filed a case before the High Court of Colombo (Case No. B/1658/2006).

According to the information received, at 11am on 23 June 2008, the couple hired a three-wheeler (trishaw) bearing number 205/8025 driven by a driver called Ajith and were on the way to the Negombo Hospital to get treatment for Sugath's wife. While the three-wheeler was waiting for a traffic signal near the Dalupatha Bridge on Colombo-Chilaw main road, four persons of two of whom Sugath identified as Niroshan and Namal stopped the three-wheeler.

Niroshan and Namal asked the couple to withdraw the case which is currently pending at the Supreme Court, Negombo before evening of the next day (June 24). They said if Sugath did not withdraw the application, they will kill them all. They further said that they had permission to do so from the Negombo police. Due to fear, the couple returned home without going to the hospital.

Just after the couple returned home, the four persons came to the gate of the house and started banging on it and shouting that they would kill the couple if the couple did not withdraw the case. Sugath did not open it but could identify the four persons through the gate the same men as he met near the bridge. Two unidentified persons were just staying without shouting or banging the gate.

The couple went to the office of Deputy Inspector General (DIG) in Paliyagoda where they met Mr. Sarath Jayassoriya, DIG whom instructed Assistant Superintendent of Police (ASP) Jagoda Arachchi and Officer-in-Charge (OIC) Samarajith to take immediate action. Then the couple made a complaint to Paliyagoda Criminal Division regarding the death threats (No. SIIB 345/266) on June 23.

Those who made death threats to withdraw the case are known to the couple as persons of criminal background usually hired for criminal activities after their release. The couple believes that these threats have been made at instigation of police officers who are respondents in the fundamental rights application.

All members of the family are now living in a fear of further harassment or death threats while in pursue of getting justice.

### **ADDITIONAL INFORMATION:**

S.K.A.S Nishanta Fernando, made a complaint against an Inspector of Police (IP) who solicited a bribe of Rs. 5,000 (USD 46) from him and the Bribery Commission, having investigated the complaint, filed an action against this police officer at the High Court of Colombo.

On 12 November 2007, a police squad arrived in jeeps, motorcycles and three-wheelers and surrounded the house of Mr. Fernando. They assaulted him with fists, kicked when he fell down on the floor and trampled him until he fell unconscious. They also hit his wife with a pistol on her forehead and trampled her even after she fell to the floor. They slapped young daughter, Dilukshi, and hit her head. One police officer tried to remove her blouse, despite of her struggle against this. She was dragged to the police jeep and one officer tried again to lift her blouse. When she screamed, she was beaten. She shouted from the window asking someone to go and inform the grandmother. When she inquired where they were being taken, a police officer replied, 'We are taking you to the beach to kill you.' The young son, Anjana, was dragged to a wall and struck about the head, face and stomach. Due to this mistreatment he lost part of a tooth and his lip was split.

When Fernando regained consciousness only when he was inside the Crime Division of the Negombo Police Station and water had been thrown over him. One police officer was shouting that this fellow had to be killed and that the Senior Superintendent of Police (SSP) has said to do this. He was dragged out of the room and overheard an officer speaking over the phone to someone. 'Sir, that is the thing that I am writing now. 'This fellow who half dead now is in front of me.' Later, after their release all members of the family sought medical treatment and the medical reports confirmed their injuries. In an application made to the Colombo High Court in the bribery case, the High Court judge cancelled the bail granted to the police officer who was the accused in this case.

### **ADDITIONAL COMMENTS:**

A proper mechanism in order to protect witness or victims in a case where police are alleged perpetrators does not exist in Sri Lanka. A bill called 'Assistance and Protection of Victims of Crime and Witnesses' was introduced to the Parliament on 18 June 2008 and is under consideration. However, concerns remain in the bill due to the lack of protection for the victims committed by law enforcement agencies and/or people hired by them.



This incident is just a mirror of what is happening today in Sri Lanka. It began with the soliciting of the bribe, to the torture of a whole family, and now the making of death threats has taken place. The lives of the ordinary people are so disturbed by this type of threat constantly and complaints made to state agencies produce little, if any change in the situation. The case of death of [Gerald Perera](#) is indicative and a police officer who gave a statement in earlier stage at the Magistrate Court has received threat to change his statement. ([AHRC-STM-141-2008](#))

#### **SUGGESTED ACTION:**

Please write letters to the authorities listed below and urge them to immediately provide protection for whole family members and thoroughly investigate into the death threats.

Please be informed that the AHRC has written a separate letter to the UN Special Rapporteur on the Question of Torture calling for an immediate intervention in this case.

#### **SAMPLE LETTER:**

Dear \_\_\_\_\_,

#### **SRI LANKA: Please immediately provide protection for the family**

##### **Name of victims:**

1. Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando
2. Ms. Annakarage Surangee Sandamali Padma Peiris (Victim 1's wife)
3. Dilukshi, minor, daughter of the couple
4. Anjana, minor, son of the couple

*(all victims are members of a family; residents of No. 349/2A, Jayamawatha Road, Dalupotha, Negombo)*

**Case:** All victims are petitioners of Fundamental Rights Application (FR. 446/07) at the Supreme Court; Complainants of bribery case (B/1658/2006) against an Inspector of Police attached to the Negombo Police Station; Complainants regarding death threats at Paliyagoda Criminal Division (No. SIIB 345/266)

**Name of alleged perpetrators:** two out of four men allegedly hired by police are identified as Niroshan and Namal by victim 1

**Date of incident:** 23 June 2008

**Place of incident:** near the Dalupota Bridge on Colombo-Chilaw main road and in victims' residence

I am writing to express my voice regarding the death threats of family members by four men allegedly hired by police on 23 June 2008.

According to the information I have received, the couple of the family was threaten to withdraw the case pending at Supreme Court, Negombo as a fundamental rights case by four men whom two of them were identified as Niroshan and Namal near the Dalupatha Bridge on Colombo-Chilaw main road at 11am on June 23 on the way to get medical treatment in a hospital.

From the information that I have learned, while the couple returned home after the threat and stayed in the house, the same four men came and banged the gate of the house with shouting that the whole family would be killed if they did not withdraw the case.

I am aware that all family members were tortured by a police squad while being asked not to give evidence in the bribery case bearing case number B/424/05, against an Inspector of Police (IP) on 12 November 2007 and they are now threatened by four men to withdraw the fundamental rights case.

Accordingly, I urge you to immediately investigate this matter through an independent police unit from outside the Negombo area, preferable through the Special Investigation Unit, which used to investigate torture related complaints. I also urge you to take immediate steps to provide protection for the family by assigning this task to a responsible unit who should take responsibility for the lives of this family. Until the problem is resolved, alternative residence for the family with special protection for the wife and the two young children who are still minors should be provided.

I further urge that you take steps to ensure prosecution of the offenders relating to the complaint of torture made earlier and narrated above and also for the making for death threats, including instigating criminal elements against this family.

Under these circumstances it would be natural to hold your mandate and other state agencies who have been informed of these threats responsible if any harm befalls any member of this family.

I trust you will take immediate action in this case.

Yours sincerely,

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**PLEASE SEND YOUR LETTERS TO:**

1. Hon. Minister Mahinda Samarasinghe  
Ministry of Disaster Management and Human Rights  
2, Wijerama Mawatha  
Colombo 7  
SRI LANKA  
Fax: +94 11 269 3284 (ATTN: Mr. Rajiva Wijesinghe, Secretary)  
E-mail: [info@dmhr.gov.lk](mailto:info@dmhr.gov.lk)

2. Mr. Neville Piyadigama  
Chairperson  
National Police Commission  
3rd Floor, Rotunda Towers,  
109 Galle Road  
Colombo 03  
SRI LANKA  
Fax: +94 11 2 395867  
Tel: +94 11 2 395310  
E-mail: [npcgen@sltnet.lk](mailto:npcgen@sltnet.lk)

3. Mr. Victor Perera  
Inspector General of Police  
New Secretariat  
Colombo 1  
SRI LANKA  
Fax: +94 11 2 440440/327877  
E-mail: [igp@police.lk](mailto:igp@police.lk)

4. Mr. C.R. De Silva  
Attorney General  
Attorney General's Department  
Colombo 12  
Sri Lanka  
Fax: +94 11 2 436421  
E-mail: [ag@attorneygeneral.gov.lk](mailto:ag@attorneygeneral.gov.lk)

5. Secretary  
Human Rights Commission

No. 36, Kynsey Road  
Colombo 8  
SRI LANKA  
Fax: +94 11 2 694 924 / 696 470  
Tel: +94 11 2 694 925 / 673 806  
E-mail: [sechrc@sltnet.lk](mailto:sechrc@sltnet.lk)

6. Mr. Mahinda Rajapakse  
President  
Socialist Democratic Republic of Sri Lanka  
C/- Office of the President  
Temple Trees  
150, Galle Road  
Colombo 3  
SRI LANKA  
Fax: +94 11 2472100 / +94 11 2446657  
E-mail: [secretary@presidentsoffice.lk](mailto:secretary@presidentsoffice.lk)

7. Mr. Ratnasiri Wickremanayake  
Prime Minister  
Temple Trees  
Galle Road, Colombo 03  
SRI LANKA  
Fax: +94 11 2 575454  
Tel: +94 11 2 575317-8 or 370 737-8

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## **7. Death threats to petitioners to Supreme Court**

**June 23, 2008**

Document Type: Press Release  
Document ID: AHRC-PRL-019-2008

(Hong Kong, June 23, 2008) The Asian Human Rights Commission (AHRC) today wrote to the Sri Lankan authorities to provide protection to a family facing death threats to force them to withdraw their petition to the Supreme Court. The husband, wife and their two children are the petitioners in a fundamental rights case (No. FR 446/07) in which the Supreme Court had granted leave to proceed.

The AHRC's letter states:

“Siyaguna Kosgodage Anton Sugath Nishantha Fernando and Annakarage Surangee Sandamali Padmi Peiris are a husband and wife who live at No. 349/2A, Jayamawatha Road, Dalupotha, Negombo, Sri Lanka. Both of them and their two children are petitioners in a fundamental rights application before the Supreme Court bearing number FR. 446/07. The respondents are 12 police officers from Negombo. The petitioners, who alleged torture, illegal arrest and detention, were granted leave to proceed by the Supreme Court. Mr. Fernando had earlier made a complaint against IP [Inspector of Police] Mahagamage Dramadasa for soliciting a bribe of 5,000 rupees (US\$46) about which the Bribery Commission has inquired and filed a prosecution before the High Court of Colombo bearing No. B/1658/2006. The attack on the family on 12 November 2006 by a large number of policemen was to force them to withdraw their complaint relating to this bribery case. Today (23 June) several persons visited the family and asked them to withdraw the fundamental rights petition within a day, or they will all be killed. This threat was made twice during the same day. Names of the persons who made the threat are Niroshan and Namal from nearby villages, and these two are known to the petitioners as people with a criminal background usually hired for criminal activities. The family believes that these threats had been made at the instigation of police officers who are respondents in the fundamental rights application. The family is now on the way to make a complaint.

“Your kind intervention to have this matter investigated and to provide protection for the petitioners in this fundamental rights case may save the family from possible harm.”

Basil Fernando, the director of the AHRC said, “This is crazy. The whole family was beaten by many policemen because the head of the family had made a complaint of bribery against a police inspector. Then the family made a complaint about this to the Supreme Court. Now they face death threats. This is the terrible reality of the country. We hope the authorities will act before it is too late.”

## D. article 2 documents on Sugath Nishantha Fernando

**Vol. 08 - No. 01 March 2009 – article 2: Special Edition: Use of Police Powers for Profit**

<http://www.article2.org/mainfile.php/0801/337/>

### Policing in Negombo

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*Basil Fernando, Director, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong*

The key events in the case of Sugath Nishantha Fernando and his family, as narrated to Julianne Porter ('The price of fighting the state in Sri Lanka', article 2, vol. 8, no. 1) and as known to the Asian Human Rights Commission (AHRC) can be described as follows:

1. A police inspector sells a stolen vehicle to a civilian, and on being discovered, threatens to harm the civilian if he pursues the case.
2. Other police connive with a group of thieves who rob the civilian of some cash and make him the accused in a criminal case.
3. A second inspector requests a bribe from the civilian to withdraw the charges. He obtains part of the requested amount and keeps harassing the victim for the balance. He pretends to destroy documents relevant to the case but in fact charges are still laid.
4. The first inspector switches between threatening and trying to bribe the civilian to stop the case against him; he dies before the matter goes to court.
5. The victim, after a long period of harassment, complains about the demands for money of the second inspector; the police then refuse to deal with him and abuse him and his family.
6. After requests and threats from various police officers, a senior officer and some 50 policemen come to the house of the victim and beat him, his wife and their children. They threaten to kill the parents.
7. The victim and his family file a fundamental rights application against 12 of the police officers, including a Senior Superintendent of Police, for torturing them.

8. The next day the victim and his wife are threatened to withdraw the petition filed against the 12 officers. The victim complains to the Inspector General of Police, the Deputy Inspector General of Police of the local area, the Human Rights Commission of Sri Lanka and the National Police Commission, requesting protection for him and his family. He receives no such protection.

9. On 20 September 2008 two men kill the victim in broad daylight, while with his son. No one is arrested over the killing.

10. The wife and the two children repeatedly ask for protection. After the funeral no protection is provided for them. On their own, with the help of some friends, they go into hiding.

11. A lawyer assisting the victim and his family is threatened with death on two occasions, and his office is subjected to an arson attack. Staff at a human rights organisation assisting the victim, Right to Life, also receive death threats, and due to the absence of protection, temporarily close their office.

12. Throughout all these events, many complaints are made to senior officers of the Sri Lankan police, but no one intervenes to properly enforce the law. The case is highly publicised and known to the government, but no intervention is made to protect the family or oblige the police to do their jobs.

### **What is revealed through this narrative?**

An inspector selling a stolen vehicle admits in a roundabout way that either he has stolen the vehicle himself, or he is working in connivance with a third party who has stolen the vehicle. Whichever is the case, how is such behaviour compatible with a law enforcement officer—particularly one holding the rank of inspector? The buyer, being a civilian, places his trust in an officer wearing a uniform. Had it been another civilian selling the vehicle, the buyer would have taken more precautions about the legality of the sale. Thus this inspector used his official position to deceive a civilian.

The deception goes further. The inspector tells the civilian that he will hand over the registration book, thereby enforcing his claim about the legality of the sale. However he does not have any such registration book for the vehicle; instead he keeps on giving false promises and gets the civilian to travel up and down. Finally the civilian makes a complaint to a higher officer, and when the complaint is investigated it is revealed that there are many complaints against the inspector. But those complaints are without signatures, indicating the fear of people to make complaints. Only this one civilian's letter has been signed.

The inspector is interdicted and then comes to the civilian, begging him to withdraw the complaint and promising up to a million rupees. How is a police inspector able to offer a million rupees to keep his job, a sum that is about seven years of his salary? This clearly indicates that the position of inspector is extremely valuable to this officer, as he is able to make that kind of money through other means, including illegal activities. As this was not a secret or exceptional case it demonstrates that such practices are known and undertaken throughout the entire police force in the area, and that superior officers also are aware of what is going on and engage in such activities.

After the victim is beaten and robbed he finds that the police have already prepared a case against him in connivance with the assailants. When the complainant came to the police station to file his complaint it was the duty of the police to record his complaint. If there had been a counter complaint, the complainant should have been asked to make his own statements in writing after which it is the duty of the police to investigate the matter. Instead the police make the civilian the accused. There is double culpability in this: first, in police connivance with thieves; second, in the fabricating of a charge against the real complainant. This is followed by an attempt to misinform the court. The court, on the information filed, sent the civilian to remand prison for several days. The abuse of power by making false reports to court and getting a person remanded amounts to an offence under the Penal Code. Morally it is a most despicable form of the abuse of power, which makes a mockery of the law.

As the civilian is harassed so constantly with demands for the balance of a bribe to have the charges against him dropped, he finally complains about it to the Bribery Commission. This demonstrates that there are still some limited avenues to make complaints, and the civilian here obtains some relief for the first time. But filing these charges with the Bribery Commission is to bring him more and more problems, finally leading him to his death and putting his entire family under threat.

Officers of the Negombo police station, including its senior officers, gang up to defend one another against the complaints of the family. In a law-enforcement system, when officers are accused of serious crimes others should be expected to steer clear. Instead the police in this case manifested gang behaviour, and were ready to go to any lengths to suppress the complainants, including through physical assault and death threats. They behaved like people who have total control over a certain territory, within which their power should not be challenged. The police as a body have no sympathy for the victim of crime who had come to them expecting assistance and relief; instead they side with the criminals with whom they have made deals and compromises.



The civilian, still having faith in the system, goes to the Supreme Court and files a fundamental rights application against 12 of the police officers for violating article 11 of the Constitution of Sri Lanka, which prohibits torture. The Supreme Court accepts the petition and issues leave to proceed. Again it shows a positive element within the system, that there is still something available for the victim to hold onto. However at that point too, what the victim receives is not justice but an increase in threats and intimidation. A group of persons threaten him and his wife that unless they withdraw the petition to the Supreme Court within 24 hours their whole family will be killed. These persons claim to have come on behalf of the 12 police officers, and even declare that they have the permission of the police to execute their threat. They come in broad daylight, two of them known to the civilian by name. They have no fear of being identified because they are sure of being protected by their patrons, the policemen.

Intimidating a person to withdraw a case filed before any court is interfering with justice. When this is done regarding a Supreme Court case it is even worse. However neither the police officers nor their agents think it a matter of consequence to make such a threat; once again they believe that there will be no consequences for this behaviour. The civilian immediately makes complaints. He goes to the office of the Deputy Inspector General of Police at Peliyagoda and makes a written complaint. He also complains by way of a letter attached with an affidavit to the Inspector General of Police, Human Rights Commission of Sri Lanka and the National Police Commission. On the basis of his complaint the Asian Human Rights Commission makes an appeal to the same authorities as well as the Ministry of Disaster Management and Human Rights. No action follows. For about three months the civilian remains in hiding in different places, unable to pursue his usual business affairs.

Witness protection is a primary requirement of any criminal justice system. One should not need to seek witness protection; once a case is before court witnesses should have a right to it if required; however, in this case the witness made serious attempts to get the attention of the police and to get protection, but no one moved and nothing happened.

Perhaps the question is: how can a civilian living in a particular territory be protected from the police who behave as a gang against him? Will that gang take orders from their superiors? Obviously this is a situation in which so-called superior officers do not really matter. The gang can ignore them or even sabotage their efforts. This raises further questions about the nature of this type of policing. Is this police station disjointed from the body of the policing system? Or is the system so bottom-heavy that

it can pull down the top? What kind of command structure exists here? Is it a case of the tail wagging the dog?

At time of writing, over months have passed since the killing, but no suspect has been arrested. The deceased himself provided two names of persons who delivered death threats to him and his family. If these persons were to be interrogated they could have given information about the persons who gave them the orders. Surely this is not the type of mystery that a competent and impartial police team could not resolve? But if there is no proper investigation into a crime, it cannot be solved. The absence of investigations is the best means of guaranteeing impunity, as this case amply demonstrates. In this respect, a joint statement issued by ten United Nations human rights experts on 9 February 2009 is of special relevance (see contents of box).

**UN Experts\* deeply concerned at suppression of criticism and unabated impunity**

GENEVA, 9 February 2009—Ten independent UN Experts on Monday expressed their deep concern at the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses which—together with a lack of effective investigations and prosecutions—has led to unabated impunity for human rights violations...

Speaking of the general human rights situation in the country, Ms. Margaret Sekaggya, the Special Rapporteur on the situation of human rights defenders, said “A climate of fear and intimidation reigns over those defending human rights, especially over journalists and lawyers.” The safety of defenders has worsened considerably over the past year, most significantly following denunciations of human rights abuses committed by parties to the conflict, of corruption by state officials and of impunity. Serious and fatal aggression against journalists and the media are now a common occurrence as witnessed in the killing of the journalist Lasantha Wickremetunga and recent attacks on major media outlets...

Notwithstanding the severity of the abuses in areas of conflict, the Experts wish to highlight that the problem is deeper and more endemic. The conflict deflects attention from the impunity which has been allowed to go unabated throughout Sri Lanka. The fear of reprisals against victims and witnesses, together with a lack of effective investigations and prosecutions, has led to a

circle of impunity that must be broken. The Experts continue to receive disturbing reports of torture, extra-judicial killings and enforced disappearances throughout the country.

The UN Experts strongly urge the Government of Sri Lanka to immediately take measures to ensure that effective remedial action can be pursued in support of the victims of human rights abuses and their families. They also highlight that thorough reforms of the general system of governance are needed to prevent the reoccurrence of further serious human rights violations. The Experts call for an immediate end to impunity and to refrain from any reprisals. To strengthen the rule of law and to help ensure the safety and protection of the human rights of all persons in Sri Lanka, they continue to extend their offer of assistance to the Government.

\* The Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue; the Chairperson of the Working Group on Enforced or Involuntary Disappearances, Mr. Santiago Corcuera Cabezut; the Chairperson of the Working Group on Arbitrary Detention, Ms. Manuela Carmena Castrillo; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on the right to food, Mr. Olivier de Schutter; the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Ms. Raquel Rolnik.

As the UN experts note, the extent of impunity covers not only the persons involved in the original case but also extends to the making of new threats, and where necessary, carrying them out, against people assisting victims and their families. The lawyer and human rights organisation helping the civilian, his widow and children are also threatened with death on more than one occasion. On 27 September 2008 the Bar Association of Sri Lanka complains to the Inspector General of Police about the death threats to the lawyer and asks for investigations and protection. Nothing is done. On 28 January 2009, after the lawyer has been threatened three times and assaulted inside

the Negombo police station, his office is burned down and he and his wife have a lucky escape, having been there only moments before the attack. When a lawyer and the premier lawyers' organisation themselves cannot get a complaint investigated, is there any chance that anyone else might succeed?

### **What does Negombo tell us about Sri Lanka?**

In Negombo we see a police station that is a law unto itself. Its officers are engaged in making money and for that purpose they engage in crimes and collaborate with those who also engage in crimes. They manipulate their powers of arrest, detention and the filing of charges in courts in order to enhance their capacity to make money.

Everybody in the police in this area is fully aware of this situation. The superior officers are either unwilling or incapable of dealing with it; the situation prevails within their full knowledge and with their connivance. The superior officers are very much part of the same game, as their complete inaction in the face of complaints reveals. Even after the Inspector General of Police has been fully informed, through the complaints of the civilian and his family, as well as the lawyer and the human rights organisation, the Bar Association, and international human rights organisations, there has been no action of any significance.

The government has also been made fully aware of everything that has been stated above yet there is no indication of any action taken. If the government has taken action and still nobody in the police has paid any heed to it, then this is even worse. If that is so, it means that the government has no control over the policing system. But perhaps the government does not want to interfere because overall it benefits from a system of policing such as this; a policing system in which the arbitrary orders of government or local politicians are followed in exchange for favours. The officers within such a system are willing also to engage in the manipulation of the electoral process, and the intimidation of political opponents of the regime or local politicians. And as interfering with free and fair elections has been an entrenched part of the local and political culture, perhaps the government would prefer to have this kind of policing, rather than a law abiding police force which upholds the rule of law for everyone.

If the way to rule a population and to have social control is by terrorizing people, then this kind of policing can do that task. The extent of cruelty that Sugath Fernando and his family have suffered shows how much a civilian has to pay to fight a system based upon terror. Unfortunately, compounded by abuse of power and corruption this type of policing can only get worse, not better.

Posted on 2009-03-13

**1. Unheeded requests from the Fernando family for state protection**

**An Affidavit [unofficial translation]**

I, Siyaguna Kosgodage Anton Sugath Nishantha Fernando, of 349/2A Jayamawatha Road, Dalupata, Negombo, being a Catholic, make oath and declare as follows:

1. I am the declarant in this case.
2. On 23/6/2008 at around 11am my wife, Surange, and myself were traveling in my three-wheeler bearing number 205/8052 to go to Negombo hospital to get treatment for my wife for asthma.
3. While going there near the Chilaw–Colombo Road at Dalupata Bridge [we saw] a lorry belonging to the category Chana bearing number WPL(D or G)/5347. And there we saw Niroshan and Namal, who are known to us, and two other persons who are not known to us.
4. As Niroshan and Namal extended their hands and signaled to stop we stopped the three-wheeler at that place. The driver of the three-wheeler in which we were traveling was Ajith. Niroshan and Namal put their heads into the three-wheeler and told us, threateningly, “If you fellows do not withdraw the petition for human rights you have filed against the Negombo police by tomorrow we will kill all of you. We have got the permission of the Negombo police to kill you.”
5. As we were frightened by this threat we turned the three-wheeler back and returned home.
6. Shortly after we came back home we heard a loud banging on the door of our gate and two people who were outside the gate shouting and telling, “Open the gate. If you do not withdraw the petition we will kill you all by the evening of tomorrow. Police have given us the permission. Open it.”

7. Due to fear we did not open the gate and when we looked over the gate we saw Niroshan, Namal and the two other persons that we saw before. The two persons who were hitting our gate and shouting were Niroshan and Namal. After a short time this group got into a vehicle and went away. I have learned that Niroshan is a person who has absconded from the armed forces.

8. It is very clear that the reason why these persons are making these threats to us is to make us withdraw the fundamental rights petition we have filed against several officers of the Negombo police station regarding violations of human rights.

9. On the same day (23/6/2008) we went to the Crimes office of the Deputy Inspector General of Police and made a complaint regarding this matter which bears No. SHB345/265.

10. Due to these threats we have become too frightened to remain in our house and we are requesting respectfully to provide protection and create an environment in which we can continue to live our lives.

[Signed]

Siyaguna Kosgodage Anton Sugath Nishantha Fernando

24th June 2008 at Negombo, before Justice of the Peace, Rev. Ghanarathane

**An Affidavit [unofficial translation]**

I, Annakkarage Surange Sandamali Padmi [Pathmini] Peiris, living at No. 349/2A, Jayamatha Dalupatha, Negombo, being a Sinhalese Roman Catholic hereby declare oath and state honestly and truly as follows:

1. I am the declarant named above and the widow of the deceased Siyaguna Kosgodage Anton Sugath Nishantha Fernando.

2. There is case No. B/479/8/NS at the Magistrate's Court of Negombo regarding the assassination of my husband, the above named, and up to date other than the evidence given by me and the members of my family no other evidence has been uncovered about the murder of my husband.

3. I also state that under these conditions the persons who assassinated my husband, those who conspired to kill him and others who helped in that killing are moving about freely.

4. Up to now there have continuously been various types of threats to the effect that my children and I will be killed, and due to such threats none of us can live freely.
5. And that is the circumstances that we are facing. I have a reasonable ground to believe that the same persons who killed my husband will also kill my children and I and I have made complaints to relevant authorities regarding this threat.
6. As I have stated very clearly at the inquest proceedings into my husband's death I believe the persons who killed my husband are those working in collaboration with and connected to the officers of the police station at Negombo whom I have named.
7. The reason for the murder is complaints I and my family members made on very reasonable grounds against a number of police officers of the Sri Lanka police and because we are to give evidence against them before courts.
8. By now we cannot under any circumstances live in our house in Negombo or places close to Negombo and it is not possible to live openly in any other part of the country also.
9. At this moment we are living in hiding in a helpless condition with the help and sympathy of many persons and there is no protection for us at all to live freely.
10. I have forwarded an affidavit dated 1/11/2008 regarding this matter to the Negombo Magistrate's Court and thereby revealed to the court all the circumstances under which we have been living without protection and a copy of that affidavit has also been attached to this.
11. My daughter who was expected to take part in the exam for the GCE ordinary level is living under shock and mental anguish due to these threats and also is confused and depressed due to the murder of her father and therefore did not sit for the said exams.
12. Under these circumstances we are now living under serious threats and therefore we need protection; however, we are afraid to get any protection from the officers of the Negombo police or from any police station near Negombo.
13. At the same time it is not possible to live in hiding indefinitely and if we receive proper protection we are willing to live even in our own house.
14. Therefore at this moment we can have faith only in the officers of the Criminal Investigation Division and we request that you provide us the protection of these

officers and the protection should be brought under the supervision of an Inspector General of Police.

15. We request to provide this protection until the end of giving evidence in several of the cases, and that if this protection is guaranteed to us we will divulge the places where we are hiding to the officers who are authorised to give us protection.

16. Given the serious situation we face we are in great need to be guaranteed protection and we have an expectation and a hope that such protection will be provided and as soon as a reasonable proposal for our protection is provided to us we will without fear accept such protection and whatever we have stated here does not imply the imposing of conditions but arises from the severe threats and the pressures we are facing.

After reading and understanding this statement affirming that it is true and correct I set my signature on 7th December 2008 before Supun Rathnayake, attorney at law, and a commission of oaths and company secretary,

[Signed]

A.S. Sandamali Padmi Peiris, declarant

## **2. Unheeded letter of the Asian Human Rights Commission to the Government of Sri Lanka seeking protection for the Fernando family**

June 24, 2008

Hon. Minister Mahinda Samarasinghe  
Ministry of Disaster Management and Human Rights  
2, Wijerama Mawatha  
Colombo 7  
SRI LANKA

Fax: +94 11 269 3284 (ATTN: Mr. Rajiva Wijesinghe, Secretary)

E-mail: [info@dmhr.gov.lk](mailto:info@dmhr.gov.lk)

Dear Mr. Samarasinghe,

### **Re: Save the lives of a family of torture victims facing death threats**

A family in Negombo has complained of death threats made against the entire family due to a complaint of bribery and a fundamental rights application filed in the Supreme



Court of Sri Lanka. S.K.A.S Nishanta Fernando, made a complaint against an Inspector of Police (IP) who solicited a bribe of Rs. 5,000/= from him and the Bribery Commission, having investigated the complaint, filed an action against this police officer at the High Court of Colombo. Later about 12 police officers surrounded the house of Mr. Fernando and severely assaulted his wife, A.S. S. Padma Peiris, and his daughter, Dilukshi, a minor and son, Anjana, also a minor, causing severe injuries.

The husband, wife and two children submitted a petition to the Supreme Court under the fundamental rights jurisdiction and the Supreme Court gave leave to proceed in this case. Yesterday, June 23rd, two persons made threats to the family to withdraw the fundamental rights application within 24 hours or otherwise the entire family would be killed. The family reported this matter to the Deputy Inspector General of Police at Peliyagoda yesterday.

The Asian Human Rights Commission yesterday made appeals to the chief justice, the Attorney General, the Ministry of Human Rights and Disaster Management and the Human Rights Commission of Sri Lanka to investigate into this matter and provide protection to the family.

#### *Fundamental rights application*

In the Fundamental Rights Application, 446/07, the Petitioners have stated that both the husband and wife were approached by police officers demanding that they not give evidence in the bribery case bearing case number B/424/05, against the IP.

On November 12, 2007 a police squad arrived in jeeps, motorcycles and three-wheelers and surrounded the Petitioners house. They then abused and assaulted the family members. The husband was assaulted with fists and when he fell on the floor he was kicked and trampled until he fell unconscious. The wife was hit with a pistol on her forehead close to the eye, from which wound she started to bleed. Several police officers assaulted and trampled the wife even after she fell to the floor. The young daughter was slapped by a police officer and hit about the head. One police officer tried to remove her blouse, despite her struggle against this. She then started to scream. She was dragged to the police jeep and one of the officers tried again to lift her blouse. When she screamed again she was beaten. She shouted from the window asking someone to go and inform the grandmother. And when she inquired where they were being taken a police officer replied, 'We are taking you to the beach to kill you.' The young son was dragged to a wall and struck about the head, face and stomach. Due to this mistreatment he lost part of a tooth and his lip was split.

The husband regained consciousness only when he was inside the Crime Division of the Negombo police station and water had been thrown over him. One police officer was shouting that this fellow had to be killed and that the SSP has said to do this. He was dragged out of the room and overheard an officer speaking over the telephone to someone, 'Sir that is the thing that I am writing now. This fellow who is half dead now is in front of me.' Later, after their release all the members of the family sought medical treatment and the medical reports confirmed their injuries. In an application made to the Colombo High Court in the bribery case the High Court judge canceled the bail granted to the police officer who was the accused in this case.

It was about this assault on the entire family that the fundamental rights application was made and the Supreme Court granted leave to proceed. The death threats were made against the family for the purpose of forcing them to withdraw this fundamental rights application. In an affidavit signed by Mr. Fernando he states as follows:

On 23/6/2008 at about 11 in the morning, myself and my wife were going towards the Negombo hospital in our three-wheeler bearing number 205/8052 in order to get treatment for my wife. While we were traveling in Chilaw, Colombo Road, near Dalupatha Bridge, there was a heavy goods vehicle bearing number WP-L (DOG) 5347 and the persons named Niroshan and Nimal and some others unknown to the family were there. Niroshan and Nimal signaled us to stop the three-wheeler with their arms. The driver our other three-wheeler was one Ajith and he stopped. Niroshan and Ajith put their heads into the three-wheeler and told us threateningly "if you do not withdraw the human rights petition filed against the Negombo police by tomorrow morning we will kill all of you by tomorrow afternoon. The Negombo police have given us permission to kill you all."

We were frightened by this threat, turned our vehicle and returned home. Shortly after our return we heard some people banging our gate and two people shouting, "Open the gate. If you do not withdraw the petition by tomorrow evening we will kill you all, the police have given us permission for that, open the doors." Due to fear we did not open the gate but when we looked over the gate we saw Niroshan and Nimal whose names we do not know, hitting the gate. We clearly identified Niroshan and Nimal. A little later this group left in their vehicle. We have heard that this Niroshan is an army deserter.

These threats have been made against us to force us to withdraw the fundamental rights petition we have filed at the Supreme Court of Sri Lanka. We made a complaint at the office of the DIG crimes at Peliyagoda and the complaint bears number SIIV

345/266.

As they have threatened to kill us we are afraid to live in our house and we request that protection for our lives be provided and the conditions for the carrying out of our ordinary business be restored to us.

This incident is just a mirror of what is happening today in Sri Lanka, even in those areas which are far away from any conflict zone. Negombo is situated close to the main airport of the country and just a few miles away from the capital, Colombo. The incident, beginning with the soliciting of the bribe, to the torture of a whole family, and now the making of death threats, has taken place within this locality where there are check points with heavy police and military presence. The lives of the ordinary people are so disturbed by this type of threat constantly and complaints made to state agencies produce little, if any change in the situation. The famous case of the assassination of Gerald Perera, which also took place within this same vicinity, has become the symbol of the terrible fear that the people have to live with under the present circumstances.

Complaining about the police or other state agencies about bribery, torture or anything else, has become a dangerous exercise. Not only do these officers enjoy impunity for the wrongs they do, but they can also kill or harm those who complain against them. Complaining about violations of rights has become an offense that may carry capital punishment by unofficial means.

Under these circumstances we urge you to take the following steps for the protection of these persons as your ministry is named also, the Ministry for Human Rights:

1. Immediately investigate this matter through an independent police unit from outside the Negombo area, preferable through the Special Investigating Unit, which used to investigate torture related complaints.
2. Take immediate steps to provide protection for this family by assigning this task to a responsible unit who should take responsibility for the lives of the members of this family.
3. Until the problem is resolved take steps to provide alternative residence for the family with special protection for the wife and the two young children who are still minors.
4. Take steps to ensure prosecution of the offenders relating to the complaint of torture made earlier and narrated above and also for the making of death threats, including instigating criminal elements against this family.

Under the circumstances it would be natural to hold your ministry and other state agencies who have been informed of these threats responsible if any harm befalls any member of this family.

Thank you,

Yours sincerely,

MOON Jeong Ho  
Programme Officer  
Asian Human Rights Commission

### **3. Unheeded complaint to the Inspector General of Police from the president of Right to Life, a human rights group assisting Sugath Fernando's family, over death threats**

This is the written complaint by Kanukulage John Britto Fernando, 54 years of age; male; Sri Lankan citizen; a Catholic; married. Employment: a consultant on labour law, the president of the Right to Life, a human rights centre situated at: No. 555, Negambo Road, Kurana, Katunayake.

I am making this complaint regarding the death threats made to our office for the second time by a threatening telephone call made on the 24th of January 2009. I am making this complaint to the Inspector General of Police. We have made a previous complaint regarding death threats to our organisation and our lawyers on the 26th of September 2008, by way of a written complaint to the IGP [Inspector General of Police]. Regarding that complaint CIU division of the Criminal Investigation Division called us and recorded our statements, and informed us that inquiries into this have begun. On the 24th of January 2009, in the evening between 6:08 and 6:10 there was a call to our telephone number at our office 031 2221604. That telephone call was taken by a staff of our office, Prasanga Fernando. The person who gave that call spoke in a male voice and asked in Sinhalese, "Is your big fellow there?" and Prasanga has answered asking "Who do you want to speak to?" Then the caller asked, "Who are you?" Prasanga answered, "Before I tell you who I am, kindly tell me who you are." Then the caller angrily said, "Who am I? Who am I? That will be told when you all have to pay with your lives. One fellow paid the price already... do you know? Where is your tie-kota?" (a derogatory reference to the lawyer). Then Prasanga asked, "Who do you mean by tie-kota?" Then the caller answered, "Who is tie-kota... do you really not know? I am talking to you for the second time now. No matter how many times you are told, you don't stop? You all did a campaign in Puttalam? How many times

have you been told, but you don't listen. You fellows have not learned a lesson yet.” Then Prasanga said, “I don't understand what you are talking about. Maybe you have got something mixed up. Maybe you are talking to the wrong telephone number.” Then, the caller answered, “Are you trying to be a baby? When two or three of your lives are lost, you will know who I am... you have your women and children, get ready and wait... if you don't stop this...” Then Prasanga asked, “What is this about?” and the caller replied, “What is it about? You all get ready for a sacrifice... are you licensed thugs, you all go on the roads, let us see. Be ready and wait.” Then the call was disconnected. The telephone number of the person who called was 011 2260156, as noted in the caller display. We tried to call this number back but it was temporarily disconnected. We are frightened by the threats made to us and our lawyers continuously. Therefore we request you to conduct an inquiry into this and to arrest the persons who are making such threats. We also call you to take steps to provide protection for lives of our staff, including myself.

Affirming that all that was said above is true and correct, I set my signature below on this, 26th of January 2009.

#### **4. Inquest proceedings into the killing of Sugath Fernando**

Before Additional Magistrate Negombo Upul Rajakaruna Esqr.

Case No: B.479/08 N S (02)

Stenographer: Dilrukshi

Date: 2008/09/23.

Attorney-at-Law Balsius Dias appears for the aggrieved party.

Evidence at the Inquest led by Sub Inspector of Police Ekanayake of the Paliyagoda Crimes Division.

Evidence of the inquest is recorded in open court.

Siyaguna Kosgodage Sinesh Antony Fernando, 11 years. 349/2/A Jaya Mawatha Road, Dalupotha, attends Central College:

I study in the 6th grade. I have one sister; that is an elder sister. Elder sister's name is Kalpani Dinushi. My father's name is Anton Sugath Nishantha Fernando. My mother's name is Annakkarage Suranji Sadamali Pathmini Peris.

My father hired out a Cantor [lorry] as his job. This lorry was earlier driven by my father. After that a driver was taken temporarily. If a hire was obtained, Father would give the lorry to the driver to go on the hire. On such hires some days my father would also go. A hire is going for a journey for payment.

The lorry is parked a little ahead of the Dalupotha junction for the purpose of going on hires on the main Kochchikade–Negombo road, by the side of a drain. I cannot remember the number of the lorry. A blue coloured lorry. The make is Mitsubishi.

I remember 20/09/2008. That day my father left home to go on a journey at about 8.00 in the morning. It was school holiday and I went with my father in the lorry to a little this side of the Dalupotha junction. That day my father drove the lorry himself. It was about 8.15 or 8.20 when we went to that place. We went to the said place and stopped the lorry at the place where the lorry is normally parked near the drain. The lorry was facing the Kochchikade direction. It was parked on the right hand side of the road. My father was seated in the driving seat with the door opened to get the breeze. I was seated on the left side next to the seat where my father was.

The drain was a deep one. There was about a foot between the drain and the lorry. A person can come or go along that one foot. When we were waiting with the lorry parked there, my father went to Peryamulla to bring some goods for the three-wheeler. I can't remember the time my father went. It took my father about half an hour to return with those goods. After returning my father was seated in the same seat as before. At that time he did not fall asleep. During that time nobody came to negotiate hires. When we were waiting like this a bicycle [motorcycle] came near the lorry and stopped behind the lorry on the left side. There were two people who had come on the bicycle. One person was wearing a helmet and he was the person who drove the bicycle. Both were covering their faces with black scarves like a handkerchief. They did not stop the bicycle and get down. They were seated on the bicycle and turning the handle this side and that side. I saw this through the side mirror. These people had covered the portions below their noses along with their mouths. I did not turn and look at them, I looked only through the side mirror. I did not see what they did there after. Within about 1 or 2 minutes I saw someone coming from the side where my father was. When I say that it was somebody I say that it was one of the persons who came on the bicycle. That person's face too was covered in that manner. He came and initially pointed a gun and shot. Nobody was shot at that time. It was a tiny black colored gun like the ones I have seen in films. That shot did not strike anybody. It had struck the back of the seat on which my father was. Immediately thereafter another shot was fired. Then I shouted aloud. I shouted aloud asking whether there was no one around. With that gun

shot sound my father fell on to my lap. I saw blood coming from a little above my father's ear. (Witness shows that point in his body). I kept my father like that and got down from the lorry. After I got down I called the brother [i.e. an older person] in the Land Master [small motorized tractor]. I do not know his name. He was there about 40 feet away. (Shows about 40 feet distance). I told that brother that two people came and shot my father and went away. Then that brother came there. As this was happening one of the people that shot ran and got onto the bicycle and both of them rode the bicycle fast towards Kochaikade. That bicycle was a red colour Pulser model bicycle. I cannot remember the number of the bicycle. The Land Master brother came there, then left me and ran and got a three-wheeler and came back.

Thereafter my elder sister came (elder sister came after the Land Master brother came). My sister came and shouted to the village people. At the same time my father's mobile phone rang. My sister took that call and I recognized that the call was from home. It was my mother calling. My elder sister told my mother that my father had been shot. My father was taken out of the lorry with the help of the village people. He was taken out and put in a three-wheeler and taken to the Negombo hospital by my elder sister.

I waited there. My mother did not come to the place where the lorry was. I went to my grandmother's house, which is on the Pillawa road. I told that my father had been shot by somebody and that he had been taken to hospital. My mother's younger sister, my grandfather and my mother's brother came quickly and went to the hospital. I stayed back in that house.

I got to know that my father had died when the people who went to the hospital came back. There were enemies of my father where we parked to go on hires. They were from the police.

They were angry that a case had been filed against the police. The chief officer of the police came to our house and assaulted my father, my mother, my elder sister and myself. This happened at about 7.00, last year, 2007; I cannot remember the date. This happened on a day towards the end of the year at about 7.00.

There was a case filed against a police officer on a complaint made by my father that the officer had taken a bribe. They came home and assaulted us in this manner demanding that the case is withdrawn. At that time we were assaulted we complained to the Human Rights [Commission]. We also complained to the Bribery [Commission]. We did not make a complaint to the police. As far as I know I do not know whether that complaint was inquired into. Other than this my father did not have any other enemies. Nobody in the village was angry [with him about anything].

After this incident I went to the mortuary to see my father. At this time I was not called before the judge and the chief doctor. I have nothing more to say regarding this incident. (The witness shows the length of the gun on his right palm as about three inches in breadth and 8 inches long) This is all I have to state.

The evidence was read over and accepted as correct and signed

Signed/ .....Witness.

Signed/ .....Magistrate

Siyaguana Kosgodage Kalpani Danushi Fernando. 16 years. 349/2/A Jaya Mawatha Road Dalupotha, Negombo. Religion Catholic. Sworn

I go to school. I go to the Dalupotha Central College. I am studying in year 11. It was my younger brother who gave evidence earlier. My father's name is Siyaguna Kosgodage Anton Sugath Nishantha Fernando. My mother's name is Annakkarage Surangi Sadamali Pathmi Peris. There is nobody else in my family except my father, mother, younger brother and myself.

My father used to hire vehicles. A Cantor means a Cantor model lorry. Before working in the lorry I cannot remember what my father did. There are temporary drivers when a hire is obtained. That person is put to go on the hire. If it [the hire] comes suddenly my father also works. There is a gas shop about 100 meters from the Dalupotha junction near which the lorry is parked to go on hires. I remember the day 20/09/2008. It was a school holiday. That day my father went with the lorry and took my younger brother at about 8.00 in the morning. They went to the place where they go for hires on other days. I and my mother were at home. When we were at home, mother phoned my father. I can't remember a time. I was told to come to the road to give some goods purchased. I was also told for me to bring a bottle of cool water. By the time I took these and went it would have been past 10.00. As I came to the junction I saw a crowd gathered around my father's lorry. There were a lot of people. I went there. I saw the people who had gathered peeping into the lorry. Since they were peeping into our lorry I went to see what had happened. At that time my father was inside. My father was fallen on his side on the seat. There was blood on my father's face. Then I got into the lorry and spoke to my father. Saying "Father get up". My father did not talk. Then a call came to my father's phone which was in his pocket. That call had come from my mother. I did not answer the phone the first time. It got cut the first time. The second time I spoke. As I said hallo my mother asked from the other side for Sugath. I told my mother that father had been shot. My father had fallen inside the



lorry when I got in to the lorry and looked at my father I saw a wound on his head. I then realized that he had been shot. Nobody told me that he had been shot. As I got in I looked at my father. I saw a wound that looked like a hole on my father's head. Because of that I thought he had been shot.

When I went there I did not see my younger brother. There were people who had seen this incident I do not know some of them. We have a Land Master. That is driven by a brother. I do not know his name. I did not see him there. The people around told me to call 119. I took a call to 119. I told them that I was at the Dalupotha junction and that my father had been shot. I said that I would take my father to the hospital in the lorry. When I said so, I was asked what the police area is. I said Negombo. They said not to take [him] in the lorry but to take a different vehicle. We took my father in a three-wheeler. My father was put into a three-wheeler and I took my father to the hospital. My father was admitted into the hospital by me.

When I took him to hospital the doctors told to wait outside till they examined him. I told them, I cannot go outside, you can do what you want. I was told again to go out. They brought me outside. As I was coming out from near the O.P.D. door I saw my mother coming in a three-wheeler. From near that door itself I told my mother that father had been shot. The doctors examined my father and did not say anything. I and my mother went in and told the doctors to take father to Colombo. They said that they will take him and to go and to wait outside. We waited for about 5 minutes outside. After about 20 minutes or half an hour of being admitted to hospital we got to know that father had passed away.

We cried when we were told that father had died. The police recorded our statements regarding this. We gave statements to the Negombo police regarding this incident. At the Negombo hospital mortuary mother and I identified father's body before the honorable judge and the doctor. The people who helped to put father into the three-wheeler were the people who were there. I do not know who they were. While father was being taken in the three-wheeler he did not talk at any time. I called the 119 from my father's phone.

My father takes the lorry where he hires. What I have to say about my father's death is that there were threats from the Negombo police. There were death threats. My mother was due to give evidence in a case which was a bribery case. It was [a] case against a police officer named Dharmadasa in the Negombo police. The threats were regarding that case. There were threats stating not to go to give evidence in the case.

The threats were made by the officers of the Negombo police. I do not know who. I was told not to go to give evidence in the case.

Two people from the police came to the house on 12/11/2007 at about 5.30 in the evening. They were in uniform. They came and asked if I was going for the case on the 14th. They asked from my mother and father. Then father said they were going. Thereafter they said not to go and if they went [mother and father] that they will be killed. The bribery case I said about is still being heard. As far as I know. At the time of those threats, we made a complaint to the Bribery Commission over the phone regarding those threats. I cannot remember whether a statement was given regarding this. The two people who came to threaten were about 25-30 years of age. One was tall and a little thin. The other person had a number. I cannot remember his number. He was also of the same age. When the police came that day and when my father said that they were going for the case the tall police officer hit my father. The other police officer knocked me with the motorcycle. Thereafter they sent a message that these people are not listening to what we say and to come quickly. They spoke through a radio used by police officers. Thereafter three motorcycles came with six officers. They were in uniform. They came and scolded us. They scolded using filthy words and told us not to go to the case. They said they would kill us if we go. I wrote down their numbers. I cannot remember them now. They are not at home. I cannot remember if the people who I said about are presently in the Negombo police. If I see them I can recognize them.

Apart from the threats from the police, three other people from the village have threatened my father to withdraw the case filed against the police. One person's name is Namal. His younger brother is Saman. I cannot remember the other person's name. I can recognize the said three persons if I see them. I do not know if there were any cases in the human rights. I do not have anything to say about this incident. I do not know who shot [my father]. Did not get to know from the people who were around the lorry as to who shot.

When father was in the lorry there was blood on the seat. There was blood on the body and hands. The shop next to the drain which sold goods was open that day. That is all I have to say.

The evidence was read over and accepted as correct and signed

Signed / .....Witness

Signed / .....Magistrate

Annakkarage Surangi Sadamali Pathmi Peris, 33 years. Unemployed. 349/2/A Jaya Mawatha Road Dalupotha Negombo. R Catholic. Sworn.

My husband is Siyaguna Kosgodage Anton Sugath Nishantha Fernando. I have been married for 14 years. We reside at the house in Dalupotah.

We have two children. Evidence was given earlier by these two children. These two children go to school. They go to Dalupotha Central College.

At the time I married my husband he used to supply king coconuts and coconuts to shops by bike. He used to take [them] wholesale. Sugath had a disability in one hand due to a cut he received at a political incident in 1999. As far as I know it was by United National Party supporters. After that incident my husband supplied sand and bricks at building sites. After negotiating with vehicles he used to take from outside vehicles and go and deliver.

In the recent past my husband had a Cantor model lorry and a hand tractor (K 700). A boy came and was employed for the hand tractor recently. The person who worked it earlier went to join the forces. The boy who came recently was called Niroshan. Till the 23rd of June this year there was a permanent driver to work in the lorry. Thereafter since there were death threats from the police he was not at home but in hiding. Therefore when a call came for a hire they were told to go for some of them. After this driver left (he was frightened to come), temporary people were employed.

I remember 20/09/2008. That day this lorry was taken by my husband and he went with my son. It was between 8.00 – 8.30 in the morning. They went to the place where the lorry is parked for hires at the Dalupotha junction. This lorry was not taken to that place from 23/06/2008 till the aforesaid date. One day (on the 17th of this month) the lorry was taken there and I also went. My husband left me there and said to take on a hire if a driver comes. My husband went on my son's bicycle to the place where the three-wheeler we had was repaired. Thereafter the lorry was parked there only on the 20th.

That day [my husband] went with the son. Everyday I go with my husband but that day my husband told me to come later on after cooking. When my husband was leaving home he told to send the daughter as he had to go on the bicycle and get some goods for the three-wheeler from the Periyamulla shop. He told me to send the daughter to collect the same. After leaving home my husband did not call me. My husband had given money to the daughter to purchase groceries from the shop and take home to

cook. My daughter brought only the rice and told me, Mother, Father told me to buy dry fish, but I did not buy it, therefore call father and ask what to do.

Thereafter when I called my husband, he told me to send the daughter with a bottle of ice water and that he would send fish through the daughter. Thereafter daughter left with a bottle of ice water. I gave another call after daughter had left. It was to my husband. The first call was answered. I heard a big noise. The call got cut. When I called again my daughter shouted aloud, I only heard her say Mother, Father, Father. Thereafter I also started running from the house to the road. After that a person who came on a motorbike took me to the Dalupotha junction. When I went near the lorry there were a lot of people. I did not see my two children or my husband. A person who was there put me into a three-wheeler and told me to go quickly; that my husband had been shot and had been taken by my daughter to the hospital.

Thereafter I went to the hospital. My daughter came running shouting, Mother, Father has been shot. I too ran and looked at my husband. I then told the doctor to take my husband to Colombo. I was told that they he was going to be taken to Colombo and to wait till then. Thereafter, from my house, my father and my brother and a friend of his came. An uncle who had come told me that my husband had passed away.

After my husband passed away I told not to hold inquiry at the Negombo police but asked that the Police Head Quarters to conduct inquiries. I did not give a statement to the Negombo Police. I know that the Paliyagoda Crimes Division is conducting inquiries regarding the death. I gave a statement to the Paliyagoda Crimes Division. At the Negombo Hospital before the judge I identified [my husband]. Before the doctor, the body was identified by the husband's brother.

My husband had enemies. They are: Senior Superintendent of Police Premasiri Vithrma, Head Quarters Inspector Somasiri Liyanage, IP Bandara, IP Subasinghe, IP Priyadarshana, IP Silva, SI Abeynayake, SI Rohana, PC Dissanayake of the Negombo police.

My husband and I bought a lorry from Mahinda Pathirana the OIC who was at the Kochchikada Police. We bought it for cash. As I remember in the year 2004. About 2003, May. We gave that gentleman three and a half lakhs [350,000]. The lorry was five lakhs. We paid that and bought the lorry. There was another shortfall of one and a half lakhs to be paid. We promised to pay that and bought. We paid little by little. Paid and finished. Thereafter we asked for the legal book of the vehicle. We asked for this book from him several times. He started to evade us without giving the book. Thereafter we made a complaint to the National Police Commission. This complaint was investigated

by the Paliyagoda Crimes Division and that gentleman was produced in court. After that he was suspended from work.

There was that incident and my husband had also made complaint to the Bribery against the gentleman called IP Dharmadasa of the Negombo police. For that complaint a case was filed against Dharmadasa in 2006. Action was filed against the OIC Kochchikade in 2005. That case is not over yet. Husband has concluded giving evidence. Due to this reason the police were angry.

At every instance we went to the Negombo police station for a necessity, pressure was brought by the Negombo police officers to withdraw the bribery case. We did not withdraw the case due to this pressure. Because the case was not withdrawn I had to give evidence on the 14th of November 2007. On 12th November 2007 SI Abeyanayake and PC Dissanayake of the police (of the Negombo police) came to our house on a traffic bike and threatened us not to give evidence in the case that was on the 14th. SI Abeyanayake is the person who threatened us not to give evidence in the High Court case. My husband and I said that we have received summons from the High Court and we are going to give evidence. At that time Mr. Abeyanayake gave slapped my husband on his cheek. [The] constable called Dissanayake knocked my daughter with the bicycle [motorcycle]. At that time I called the Bribery Commission on the telephone and told them about this. They did not go away. They sat blocking the gate entrance and got down three more bicycles. There were six officers on those three bicycles [motorcycles]. They were called and brought down. They called with something that was in their hand and got them down. Those six who came were in uniform. When they started to get down I called the Bribery Commission again. Those gentlemen (from the Bribery) told me to write down the numbers of the people who had come. The daughter stayed in front of the house and wrote their numbers. These details that were written have been given to the Bribery [Commission]. Thereafter the Bribery Commission said that they would call the HQI [Head Quarters Inspector] and tell and that he would come and settle this problem.

Thereafter at about 6.00, about 50 [persons] from the police came to the house. I showed the summons to the HQI and told him that the gentleman named SI Abenayake was threatening not to go to give evidence in the High Court case and that he had hit my husband and knocked my daughter. Thereafter the H.Q.I used filth and assaulted my husband. When he was assaulting my husband I came running. H.Q.I Somasiri hit me with a pistol on my head, from where it bled.

We made a complaint with regard to this incident to the Bribery Commission.

Did you go for the case on the 14th?

Could not go. Was in the Negombo hospital.

Was the High Court informed regarding this incident?

Yes. With regard to my assault there is a case in the Supreme Court bearing number 446/2007 for breach of fundamental rights. Further, an investigation was done by the Bribery Commission. Because of these incidents the police were angry with us.

Regarding which incident did the HQI assault you?

Because we were going to give evidence in the Bribery Commission case. The respondents in the Supreme Court case are: Negombo Superintendent of Police Mr. Premasiri Vitharna, SP Mahanama, HQI Somasiri Liyanage, IP Bandara, IP Subasinghe, IP Silva, IP Priyadarshana, SI Abeyanayake, SI Rohana, Nihal, Leelsena, Sarjent Silva, PC Dissanayake. I am the petitioner in this case. Prior to the death of my husband a complaint was made to the National Police Commission regarding threats made by the Negombo Senior Superintendent of Police, Premasiri Vitharna, in connection with these incidents to kill my husband. The Colombo SIU (Special Investigation Unit) had taken a statement from my husband regarding that. Because of these incidents I suspect these police officers. Therefore I think that this would have been done by the police.

Three people in the village made death threats to my husband to withdraw the Fundamental Human Rights case. (The case we have filed against the police). Threats were made for the first time on 23/06/2008. The threats were from Namal, his younger brother Saman, and an army deserter called Nirosh. On the evening of the day that the incident happened I and my husband met the Deputy Inspector General of police Paliyagoda and lodged a complaint. We were met one day with regard to this complaint. I do not know what happened regarding same.

On 25/06/2008 a white van came to our house between 7.00–8.00 in the night. This was answered by the boy who worked the tractor. When I looked out of the window I saw two people in police uniform and about four people in civilian clothes. They asked for my husband, where is Sugath? The boy who was at home said, they are not at home and have gone to get medicine, if there is any necessity to tell him. Thereafter they threatened [him] and went away. They said, we want Sugath and we will catch Sugath. The boy said that that brother is not here, if you have a telephone number give it and it will be given when they come.

They started the vehicle and went away at high speed. My husband's death has occurred because of these incidents. There were no other enemies for my husband. The police were angry with us regarding case 446 (446/2007) that and in connection with the bribery case (B1658). The defendant in that is the person called IP Dharmadasa who was in prison for three months after he jumped into our house and assaulted us. I do not suspect any other then those whom I stated. I suspect the person named IP Dharmadasa, the people from the police, and those three people from the village. I have made several complaints against the police. Therefore I think that there is a threat to my life and to the life of my children from these people. The bribery case was taken up on the 3rd of July and postponed. This case is again on the 1st of December.

I do not know about the people who shot [my husband]. Yesterday two unknown people have come and videoed the funeral house along with us. They said they are known. That is all I have to say.

The evidence was read over and accepted as correct and signed

Signed / .....Witness.

Signed / .....Magistrate

Posted on 2009-03-13

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**Vol. 08 - No. 01 March 2009 – article 2: Special Edition: Use of Police Powers for Profit**

<http://www.article2.org/mainfile.php/0801/338/>

**Complaint to the UN Human Rights Committee**

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***Sandamali Pathmini, wife of Sugath Fernando, Negombo, Sri Lanka***

*Individual complaint (by representation) under the First Optional Protocol of the International Covenant on Civil and Political Rights*

6 February 2009

## **1. Information on the Complainants/Authors:**

1.1 Name: Mrs. Annakkarage Suranjini Sandamali PATHMINI Peiris, aged 33 years

Complainant above is filing this communication on her behalf AND on behalf of her deceased husband Mr. Siyaguna Kosgodage Anton SUGATH Nishantha Fernando AND her two minor children Siyaguana Kosgodage KALPANI Danushi Fernando, aged 17 years & Siyaguna Kosgodage SINESH Antony Fernando, aged 12 years, as their legal representative and lawful guardian.

The permanent address of the complainant is 349/2A, Jayamawatha Road, Dalupata, Negombo, Sri Lanka.

1.2 Nationality: Sri Lankan

1.3. Place & date of birth:

Complainant: Negombo, 07 April 1975

[Sugath (husband): Negombo, 05 October 1971, Kalpani (daughter): Colombo, 02 May 1992, Sinesh (son): Negombo, 26 August 1997]

1.4. State party: Sri Lanka

## **2. Representation:**

2.1. The complainant is represented and assisted by the (1) Asian Legal Resource Centre (ALRC), (2) Mr. Bijo FRANCIS, Advocate, both having the address 19/F, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong Special Administrative Region, (3) REDRESS, 87 Vauxhall Walk, London, SE11 5HJ United Kingdom & (4) Rehabilitation and Research for Torture Victims (RCT), Domus Parker, Borgergade 13, PO Box 2107, DK-1014, Copenhagen, Denmark

2.2. An authorisation signed by the complainant authorising the ALRC and the complainant's lawyer to represent the complainant before the Committee is annexed herewith. The letters of consent from the REDRESS and RCT are also annexed herewith.

2.3. All future correspondence regarding this complaint may be addressed to:

Asian Legal Resource Centre  
19/F, Go-Up Commercial Building  
998 Canton Road, Mongkok  
Kowloon, Hong Kong SAR



### **3. Alleged breach of the International Convention on Civil and Political Rights (ICCPR):**

It is averred:

§ that the complainant and her family have received numerous threats to their life to withdraw the complaints, including a Fundamental Rights Application filed against 13 police officers serving in Sri Lanka police, and that the complainant's husband was shot dead on 20 September 2008 and further that so far not a single satisfactory and credible investigation has been initiated against the murder which amounts to the violation of Article 6, read with Article 2 (3);

§ that the complainant and her family were tortured and abused by the police officers serving in Sri Lanka police thereby violating their inalienable rights under Article 7;

§ that the State party has failed to provide any form of redress, including a proper investigation into the complainant's case, even in instances where the rights under Article 7 of the complainant and her family were violated and that the incidents so far establish that the possibility of such redress does not exist in Sri Lanka, thereby violating their rights guaranteed under Article 2 (3) read with Article 7 of the ICCPR which binds the State of Sri Lanka

§ that the complainant and her husband have complained to the Inspector General of Police, the National Human Rights Commission, the National Police Commission and also to the Ministry of Disaster Management and Human Rights in Sri Lanka seeking protection against the threats to their life but were denied any form of protection by the State party; and that the complainant and her family have been subjected to further threats to their life by the police officers of all ranks and the criminals associated with these officers, and that the complainant and her family are prevented from pursuing their complaints and grievances, thereby the State party violated their rights under Article 9 (1) read with Article 2 (3);

§ that the State party has failed to provide any protection to safeguard the rights under Article 17 and Article 23 (1) of the complainant and her family and due to this, the peaceful family life of the complainant and her family is shattered, they were abused, assaulted and tortured in public view at their home; and further that for the past five months the complainant and her children have been unable to live in their house and are thus forced into a life of hiding fearing persecution; and that this life of uncertainty has affected the complainant's peaceful family life and further terminated the possibility of her two children pursuing their education.

#### **4. Summary of the facts alleged:**

4.1. The complainant and her husband, Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando, purchased a lorry on 24 May 2003 from Mr. Mahinda Pathirana, the then officer in charge of the Kochikade Police Station. The officer sold the lorry to the complainant and her husband making them believe that he was the owner of the vehicle. Later, it was revealed that the lorry was a stolen vehicle and that the officer with fraudulent intentions had changed its registration plate before selling it to the complainant and her husband.

4.2. Coming to know about the fraud played upon them by the officer, the complainant and her husband filed a complaint against police officer Mahinda. A disciplinary enquiry was initiated against the officer. Once the enquiry proceedings started, the officer and several of his colleagues tried to threaten the complainant and her husband asking them to withdraw the complaint. But they pressed on with the complaint. The officer was interdicted in December 2005. The officer however died in the same month. Due to the stubbornness the complainant and her husband exhibited in pursuing their complaint, some police officers started seeing the complainant and her family as a threat to their corrupt ways.

4.3. The husband of the complainant had a fabricated complaint made against him by the Negombo Police in 2003. The complaint was made against the complainant's husband when he visited the Negombo Police Station to register a complaint against three local thugs who had abused and robbed the complainant's husband on the street. By the time the complainant's husband reached the police station, the thugs had contacted the police officers known to them at the police station and instructed them to book the husband of the complainant in a petty case. When the complainant's husband arrived at the police station, instead of recording his complaint, the complainant's husband found that he was accused of a crime and a false case registered against him. The complainant's husband filed a complaint to the Human Rights Commission of Sri Lanka (HRCSL) requesting an intervention in this case. The HRCSL did not take any action. Exploiting the trap the complainant's husband had fallen into, the officer in charge of Negombo Police Station, Mr. P. P Mahagamage Darmadasa, demanded a bribe of 20,000 Sri Lankan Rupees from the complainant's husband.

4.4. The complainant's husband refused to pay the amount demanded. Instead the complainant and her husband filed a complaint at the National Police Commission (NPC) against the officer. No action followed. On 11 June 2004, the complainant and

her husband filed a complaint at the Bribery Commission of Sri Lanka against police officer Darmadasa. The complainant's husband also gave a statement at the Bribery Commission. After two years, in 2006, based on the statement given by the complainant's husband, the Commission initiated proceedings against Darmadasa. These are pending before the Colombo High Court as B/1658/2006. This incident however turned several police officers associated with Darmadasa against the complainant and her family.

## **5. Intimidation and torture:**

5.1. In 2006, the Superintendent of Police (SP) in Negombo, Mr. Mahanama, summoned the complainant and her husband to his office on the pretext that their statements needed to be recorded in the departmental enquiry against officer Darmadasa. At the SP's office the officer shouted at the complainant and her husband. He threatened them that unless they immediately withdrew the complaint against Darmadasa, they would have to pay a heavy price for antagonising the police. The officer recorded no statement. Threatened and intimidated, the complainant and her husband filed a complaint against the officer, Mr. Mahanama.

5.2. In the same year, the complainant and her husband went to the Negombo Police Station regarding a document concerning one of their vehicles. At the police station, they met Chief Inspector Mr. Nishanta and another officer who introduced himself as an officer attached to the Crime Branch. Instead of assisting the complainants, the officers shouted at them in filthy language. The officers ordered the couple not to come to Negombo Police Station any more if they cared for their lives. The officers also threatened that if they want to live, they must withdraw the complaints they had filed against the police officers. It must be noted here that the Crime Branch within a police station is the branch that conducts enquiries into crimes. Regarding this incident, the complainant and her husband filed a complaint against the two officers at the office of the Deputy Inspector General (DIG) asking for an investigation and further informing the DIG that their life in under threat from police officers stationed in Negombo Police Station. To their surprise and frustration, the DIG directed this complaint to SP Mr. Mahanama, against whom the complainants had already filed a complaint.

5.3. In 2006, on the pretext of recording a statement on the complaint against SP Mr. Mahanama, the complainant and her husband were summoned to the office of the Senior Superintendent of Police (SSP). At the SSP's office, the police officers verbally abused and threatened the complainant and her husband that they would be murdered

if they pressed on the complaints. The officers demanded them to withdraw the complaint against officers Darmadasa and Mahanama. Shocked from the two incidents, the complainant and her husband filed yet another complaint at the DIG's office requesting an investigation about the incident and further, protection for the complainant and her husband and their family from police officers. No action has been taken on these three complaints so far.

5.4. On 10 September 2006 the complainant and her husband were buying bread from a local market. They had arrived at the market on a motorcycle. At that time, the Negombo SSP was passing by, accompanied by his motorcade. A police officer from the motorcade approached the complainant and her husband and asked why they were not wearing their helmets. The complainant and her husband replied that they need not since they were not riding the motorbike. Then another police officer approached and ordered that they must immediately withdraw the complaint they had filed against the SP. The complainant and her husband refused, and informed the officers that it was none of their business. The officers started shouting at them and one officer snatched the keys for the motorcycle from the complainant's husband. The police officers threatened the complainant that they would arrest the complainant's husband if they refused to withdraw the complaints. The same day the officers registered a false case against the complainant and her husband. They were later released on bail from the Negombo Magistrate's Court.

5.6. On 12 November 2007 two police officers, Sub Inspector Mr. Abayanayake and Police Constable Mr. Dissanayake came to the complainant's house and asked the complainant and her husband that they should not give evidence against police officer Mr. Darmadasa at the Colombo High Court on 14 November. The complainant's husband showed the officers the summons they had received from the court. At this, the officer threatened that the complainant and her husband would be murdered to prevent them from going to the court and started abusing the complainant and her husband using filthy language. Then, officer Mr. Abayanayake slapped the complainant's husband on his face. The complainant protested against this.

5.7. The husband of the complainant at this time asked the complainant's daughter to write down the number of the motorcycles the officers had arrived with. When the complainant's daughter approached a motorcycle, the officer who was sitting on the motorcycle hit the complainant's daughter with the front wheel of the motorcycle by driving the motorcycle towards the child. The complainant's daughter fell down. Then the officers summoned more officers to come to the house. Six officers immediately came to the house.

5.8. Fearing for their lives the complainant immediately contacted the Bribery Commission seeking help. The officer who attended the call informed the complainant that he was passing the information over to the Head Quarters Inspector and ordering the officer to intervene. It must be noted here, that other than the local police stations there are separate offices of the Sri Lanka police in the provinces and in major towns. The officers posted in these offices are known in Sri Lanka as ‘Head Quarters Officers’ since they are answerable to the police head quarters in Colombo rather than to the local police station. On instructions from the Bribery Commission, Mr. Somasiri, the Head Quarters Inspector, arrived at the complainant’s house with about 50 officers. 20 officers marched into the house compound, whereas 30 officers waited outside, keeping the villagers who had gathered around the house by then from intervening.

5.9. The officers then took turns to assault the entire family. Due to the assault, the complainant’s husband lost his consciousness and fell down on the ground. The officers continued kicking and hitting him. Some officers in the meanwhile assaulted the complainant. The Head Quarters Inspector Mr. Somasiri hit the complainant on her face with his pistol. Another officer punched the complainant’s son, who was just 10 years old, on his face. The same officer then banged the boy’s head on the wall. The boy started screaming from pain and fear and ran out of the house. Later, the officers threw the complainant, her husband, and her daughter into the police vehicle. As they were bundled into the police vehicle one police officer tried twice to forcefully remove the blouse from the complainant’s daughter.

5.10. Regarding this entire incident the complainant and her husband filed a case in the Supreme Court of Sri Lanka alleging torture and thus a breach of their fundamental rights. Senior Superintendent of Police, Negombo, Mr. Premasiri Vitharna, Superintendent of Police Mr. Mahanama, Head Quarters Inspector Mr. Somasiri Liyanage, Inspector of Police Mr. Bandara, Inspector of Police Mr. Subasinghe, Inspector of Police Mr. Silva, Inspector of Police Mr. Priyadarshana, Sub-Inspector of Police Mr. Abayanayake, Sub-Inspector of Police Mr. Rohana, Sub-Inspector of Police Mr. Nihal, Sub-Inspector of Police Mr. Leelasena, Police Sergeant Mr. Silva and Police Constable Mr. Dissanayage are the respondents in this case. The case, SCFR 446/2007, is pending before the Supreme Court.

5.11. The complainant and her daughter were hospitalised at the Negombo Hospital to receive treatment for their injuries. The police denied medical help to the complainant’s husband. While the complainant and her daughter were in the hospital, the police charged the entire family with yet another false case. The charge against the family was obstruction to police duty. The family obtained bail consequently. The complainant

was hospitalised for five days. Later, the complainant had to undergo a surgery to fix her fractured nose. Because of the torture, the complainant suffered the following injuries:

1. Contusion (1.5x1 inch) on the right side of the face just below the eye
2. Contusion (1.5x1 inch) on the left side of the face just below the eye
3. Pain and tenderness on the left side of the cheek underneath the fracture
4. Tenderness on the teeth on left side, underneath fractured crown of the 2nd teeth on the jaw, left side
5. Tenderness on the nose underneath fracture to nasal bone

5.12. The assault and torture of the complainant, her husband and children; the attempt to undress the complainant's daughter, a minor girl, in full public view, and the fabrication of the false case against the entire family is a form of illegal and cruel punishment by the police officers for the complainant and her husband refusing to withdraw the fundamental rights case and the other complaints they had filed against the police officers. The show of force by the police in terms of the number of police officers who were assembled was a strong message to the villagers to stay away from whatever that happens between the complainant's family and the police. It was also a threatening message to the public that no one should dare to initiate and pursue complaints against police officers.

5.13. The very fact that a large number of police officers could trespass into a house, and torture and threaten the resident of the house in public, showcases the breakdown of the entire policing system in Sri Lanka and the impunity the criminal elements in the Sri Lanka police enjoy as of now. This situation allows police officers like Mahinda Pathirena to run a business like selling stolen vehicles.

5.14. The emotional trauma and the isolation a family suffers after such an incident, the complainant's children in particular, are beyond the scope of any form of redress.

## **6. Murder of the complainant's husband:**

6.1. On 23 June 2008 when the complainant and her husband were travelling in a three-wheeler, they saw a lorry near Chilaw at Dalupata Bridge on the Colombo road. There were four persons in the lorry, of which the complainant and her husband knew two persons. They were Mr. Niroshan and Mr. Namal. As the three-wheeler in which the complainant and her husband were travelling approached the lorry, Niroshan and Namal signalled the three-wheeler to be stopped. When the vehicle stopped, Niroshan and Namal shouted at the complainant and her husband that they are under instruction

by the Negombo police to murder them. The complainant and her husband were frightened and they immediately returned home.

6.2. Shortly after reaching home, the complainant and her husband found Niroshan and Namal along with the two other unknown persons at their gate. They were shouting at the complainant asking her to open the gate. The complainant and her husband were so scared since they knew that Niroshan was an army deserter with criminal antecedents. The complainant and her husband were certain at this point that their lives were at serious risk from the police officers. The complainant and her husband, later on the same day, went to the office of the DIG (Crimes) and lodged a complaint about the incident. This complaint is numbered SIIV 345/266. The complainant's husband also filed an affidavit before the police the next day narrating the incident. A translated copy of this affidavit is produced herewith.

6.3. The incident was reported to the Asian Human Rights Commission (AHRC), a sister organisation of the ALRC. The AHRC immediately wrote a letter on 24 June 2008, to the Minister of Disaster Management and Human Rights in Colombo seeking an intervention in this case. A copy of the letter issued by the AHRC is annexed herewith. The AHRC also wrote a separate letter to the UN Special Rapporteur on the question of torture seeking an intervention in the case. A copy of this letter is annexed herewith.

6.4. On 20 September 2008, the complainant's husband along with their son, were waiting in their lorry at Dalupota junction near their house. While they were sitting inside the lorry, two masked persons approached the complainant's husband and fired two shots from a small firearm. The first shot missed, but the second shot hit the complainant's husband entering his head through the ear and killing him instantly. The complainant's husband fell on to the lap of his 10-year-old son and started bleeding. The assassins left the scene on the vehicle with which they arrived. The complainant's husband was declared dead at the hospital. The translations of the statements given by the complainant and her children during the inquest proceedings concerning the murder are provided herewith.

6.5. On 23 September 2007, the day on which the statements were recorded, a woman lawyer, Ms. Chamari Mahanama, who assisted the complainant and her children to give their statements, was threatened over telephone by an unknown person. The caller threatened that they would murder her if she further assisted the complainant and her family. This incident shows the swiftness with which information passes between

police officers and the criminals and how observant the police officers are, concerning the complainant and her movement and the persons who were associated with her.

## **7. Further threats:**

7.1. Despite the complaints filed by the complainant and her husband to the authorities in Sri Lanka seeking protection, inter alia, the President of Sri Lanka; the Chief Justice of the Supreme Court of Sri Lanka; the Minister of Disaster Management and Human Rights and the secretary of this ministry; the Inspector General of Police; the Deputy Inspector General of Police, Peliyagoda; the National Police Commission; the Human Rights Commission of Sri Lanka and the Magistrate's Court of Negombo, the complainant's husband was murdered. It also proves that none of these complaints were acted upon by the authorities in Sri Lanka.

7.2. On 23 September 2007 Ms. Chamari Mahanama, who was assisting the complainant with the inquest, started receiving threatening calls on her mobile telephone informing her that if she went to the courts in the following few weeks, she would be killed. Similar calls were made to the Right to Life, a local human rights organisation, threatening them that if they wished to help the complainant with her cases, they might have to make a costly sacrifice, including the lives of some of their staff. Finding that in spite of repeated complaints, the state of Sri Lanka and its mechanisms are not willing to protect the complainant and her family, and is instead sparing no opportunity to make the complainant's life further worse, the complainant started living in hiding along with her two children.

7.3. On 11 November 2008, the complainant filed an affidavit at the Negombo Magistrate's Court stating that there were serious threats to her and her family as they were pursuing a fundamental rights case and complaints of bribery and torture instituted against police officers. On 7 December 2008, the complainant filed yet another affidavit at the Paliyagoda Police Station stating that she and her children were finding it extremely difficult to live in hiding since no investigation had been carried out regarding her husband's murder and that the same murderers were searching for the complainant and her children to assassinate them. The complainant averred in the affidavit that the reason why the murderers of her husband were not identified or arrested was because the murder was organised by the police officers who threatened the complainant and her family at various occasions. The complainant also averred in the affidavit that the only persons whom she suspected of the murder of her husband were the respondents in the fundamental rights case filed by her which is pending in



the Supreme Court of Sri Lanka. A translated copy of this affidavit is produced herewith.

7.4. On 24 January 2009, the staff at the Right to Life, received a call from the telephone number 011 2260156. According to the allotment of telephone numbers in Sri Lanka, this must be a landline telephone number registered in Colombo. The caller threatened that if the organisation continued to help the complainant with her case and complaints, the persons assisting her would be murdered. When the staff of this organisation immediately tried to call back this number, they found that the number was not in service. Such numbers, often referred to as dummy numbers, are allotted to the police service for crime investigation.

7.5. The President of the organisation, Mr. Britto Fernando, filed a complaint to the Inspector General of Police (IGP) informing him about the incident and requesting immediate action to investigate the matter. No proper investigation has been done so far in this regard by the police. A copy of the complaint filed by the Right to Life to the IGP is annexed herewith.

7.6. On 27 January 2009 the complainant's lawyer Mr. Amitha Ariyaratne was at the Negombo Police Station to file a complaint on behalf of the complainant seeking protection for the complainant and her children. Inside the police station, a group of officers, including an officer named Mr. Bandara, abused lawyer Amitha using filthy language and threatened the lawyer that he would be also killed if he further helped the complainant to pursue their complaints. Bandara is one of the respondents in the Fundamental Rights application filed by the complainants pending the Supreme Court. This officer also assaulted Amitha, threatening him that if he came back to the police station to deal with the complainant's case Amitha would not return alive. He also wanted Amitha to force the complainant to withdraw all the complaints against the police officers, including the one regarding bribery, the fundamental rights application, the complaints filed at various stages against the police officers for threatening the complainant and her family and the complaint on torture. Fearing for his life, the lawyer left the police station.

7.7. A complaint was filed immediately by the lawyer stating the facts to various authorities in Sri Lanka, including the Bar Association of Sri Lanka. No investigation has been initiated against these complaints by the authorities so far. Another lawyer, Mr. J.C. Weliyamuna, who is appearing for the complainant in her fundamental rights application also faced similar situation. On 27 September 2008 two grenades were hurled into lawyer Weliyamuna's house at night. Fortunately the lawyer escaped. In this

case too no proper investigation has been carried out. The statements and press releases issued in connection with this incident are annexed herewith.

7.8. On 30 January 2009, at about 9pm, an unknown arsonist burned down the office of lawyer Ariyaratne. Ariyaratne and his wife, who is also a lawyer, escaped by sheer miracle from being burned alive in this incident. A statement issued by the AHRC in this context is annexed herewith.

## **8. Proceedings at the domestic level:**

8.1. The complainant, human rights defenders and the lawyers assisting the complainant have filed complaint after complaint seeking protection for the complainant and her family. Now, the human rights defenders and the lawyers are at the same situation as that of the complainant. The office of the human rights organisation, Right to Life, is closed down due to the threats to life of its staff from police. Lawyer Ariyaratne had his office burned down completely. The complainant has been staying in hiding for the past five months along with her children. No one has been arrested in connection with any of these crimes so far. Even the statement of the complainant has not been recorded as part of the investigation. Here, the complainant wishes to highlight the fact that she and members of her family were tortured on 12 November 2007 and her husband was shot dead on 20 September 2008. Given the circumstances, the complainant is of the bona fide fear that she will not survive to give her statement.

## **9. Admissibility:**

9.1. Sri Lanka acceded to the International Covenant on Civil and Political Rights on 11 September 1980 and to its First Optional Protocol on 3 January 1998. The alleged breaches of the ICCPR took place after Sri Lanka's accession of both these instruments and the Human Rights Committee is therefore competent to examine the present case.

9.2. The complaint is in conformity with the requirements of Article 5 of the Optional Protocol and Rule 96 of the Rules of Procedure of the Human Rights Committee.

9.3. In particular, regarding Article 5.2 (a) of the Optional Protocol and Rule 96 (e) & (f) the complainant wish to confirm that the present matter has not, at any time, been submitted to another procedure of international investigation or settlement.

9.4. As for second limb of Article 5.2 (b) of the Optional Protocol and the question of exhaustion of domestic remedies it should be noted that the complainant has attempted to obtain redress through criminal and fundamental rights application in order to obtain redress which has not rendered any result whatsoever. Instead, the complainant as a result of her quest to obtain redress has lost her husband, was tortured along with her minor children, her family life has been permanently interfered with and is now denied the possibility of receiving any support from human rights organisations or lawyers in Sri Lanka. The facts indicate that the complainant would be murdered at anytime unless there is an intervention from a strong international body like the Human Rights Committee to provide them protection.

9.5. Regarding the criminal proceedings against the alleged perpetrators it is submitted that: 1) no person has been arrested so far in any of the complaints filed by the complainant, her deceased husband, human rights activists or by the lawyers; 2) the complaint filed by the complainant against torture and abuse of the complainant and her family as early as 12 November 2007 is not yet investigated or enquired into; 3) and it is highly unlikely that any credible proceedings will be initiated in Sri Lanka as regards to the complainant's case and that the complainant or her family will not be alive to participate in it.

9.6. An assessment of the effectiveness and the reasonableness of the length of the proceedings should be made within the context of the circumstances of the case at hand and the general effectiveness of the proposed remedy in Sri Lanka. Regarding the case at hand, an evaluation should be made of what positive action was taken by the authorities, to ensure that a thorough investigation of the facts that took place that would lead to the prosecution and conviction of those responsible for the acts of torture and the threat faced by the complainant and those who are willing to help them

9.7. In this respect, it should be noted that: 1) no credible criminal investigation into the murder of the complainant's husband or in the case of torture of the complainant and her family is initiated up till today in spite of the fact that the complainant has suffered serious injuries, so severe that she had to be hospitalised and has to live in hiding for security; 2) that the alleged perpetrators were not suspended from active service and due to this they continue to threaten the complainant and those who are willing to help her in Sri Lanka; 3) that no arrest has been made in connection with the crimes narrated above; 4) that due to lack of protection and threats to life, the complainant or even the lawyers are unable to pursue the remedies theoretically possible in Sri Lanka and that such a situation, in effect, for all practical purpose, means that there are no domestic remedies available for the complainant to be

exhausted in Sri Lanka; 5) and the complainant did not believe that the court proceedings would be completed in the near future and the pendency of court proceedings in itself is no guarantee to the safety of the complainant and her family, but on the contrary, and has been proved, pursuing remedies in itself is a threat to the life of the complainant and her children; 6) It should also be noted that the State party has not brought about a legislation for protection of witnesses. In addition to this, the UN and its various agencies have made several recommendations to the State party, none of which has been implemented so far. A compilation of these recommendations is annexed herewith.

9.8. The United Nations Committee against Torture (CAT) has consistently ruled that, under the Convention against Torture to which Sri Lanka is party, allegations of torture should be investigated promptly, without delay. The CAT also considers that no formal complaint need to be lodged and that it is sufficient that the victims bring the facts to the attention of the authorities. In the case of *Encarnación Blanco Abad* [CAT/C/20/D/59/1996, 14 May 1998, paras 8.2 and 8.6] the Committee considered delay of three weeks and more than two months in initiating procedures into allegations of torture to be excessive and, in the case of *Khaled M'Barek* [CAT/C23/D/60/1996, 24 January 2000, paras 11.5–11], the Committee considered unwarranted a delay of 10 months in ordering an inquiry into allegations of torture. The Committee stated:

...The Committee observes that promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear. [Encarnación Blanco Abad v. Spain, para. 8.2]

9.9. The complainant and her family were tortured on 12 November 2007. The husband of the complainant was killed on 20 September 2008. In spite of the extreme gravity of the situation, no action was taken by the authorities to investigate the acts of torture or of the murder which was carried out by police officers or at their behest. The fact that the police officers themselves are engaged in crimes in Sri Lanka is an alarming situation that annuls the possibility of the complainant receiving any form of redress in Sri Lanka. As early as on May 1998 the Committee against Torture in its report had called upon the Government of Sri Lanka to carry out prompt, independent and effective investigations into cases of torture. The Human Rights Committee has also made similar observations.

9.10. Moreover, the alleged perpetrators who attacked the complainant and her family are not yet arrested or even suspended. It is also important to note here that the police officers involved in the case are from all ranks, are organised to behave like a gang of criminals, daring enough to threaten human rights activists and attempt to murder and burn down the office of the lawyer who assisted the complainant. The officers continue to threaten and intimidate the complainant at their will. Given the experience of the complainant from the authorities in Sri Lanka, the complainant has lost faith in getting any result from the proceedings that are currently dragging on for the last several months in Sri Lanka.

9.11. Finally, regarding the general efficacy of the remedies within Sri Lanka, it should be considered that in Sri Lanka it is common for investigations to suffer long delays and illegal interventions by corrupt officers at various levels due to the collapse of the rule of law regime in the country. The consistent position taken in the recent months by the Government of Sri Lanka is that due to 28 years of war, criminal investigations as required by law are not possible as of now in Sri Lanka. In this context it is also notable that to date, there are only two cases where the perpetrators were sentenced for engaging in torture in Sri Lanka.

9.12. The Human Rights Committee has consistently taken the view that a remedy need not have to be exhausted if it has no chance of being successful. Moreover, it is important to recall that international jurisprudence has recognised that safeguards against serious violations of human rights, such as the one that exists in cases of murder and torture, entail independently of other remedies an obligation upon the states to carry out full and effective investigation. Such an obligation implies that victims of torture be entitled, in addition to the payment of compensation, to “a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.” [European Court of Human Rights, Askoy v. Turkey, 18 December 1996, Reports 1996-VI, para. 98.]

9.13. The lack of progress in the proceedings together with the fact that the alleged perpetrators have continued in their jobs as police officers has resulted in literally rendering the perpetrators absolutely immune to any proceedings, which is likely to culminate in rendering no punishment to the assailants. This also works as an immense pressure upon the complainant in pursuing any of the pending proceedings within Sri Lanka.

9.14. Considering that, in Sri Lanka, criminal procedures for torture have generally been demonstrated to be ineffective, together with the extreme lack of diligence shown by the authorities in the present case, the complainants submit that the criminal proceedings opened cannot be considered to constitute an effective remedy to the violations alleged.

9.15. As for reparations, in Sri Lanka, the Supreme Court has jurisdiction to hear complaints for Fundamental Rights and grant compensation to victims of torture. Such a complaint was filed by the complainant in 2007. However, for the complainant, as of now there is no guarantee that she could engage a lawyer to conduct the case, since those who helped the family have been subjected to attack and threat by the police. Moreover the complainant and her family has not been provided any protection so far and does not expect such protection to be provided by the state under the current circumstances. This has forced the complainant to stay away from public view, including appearing in courts.

9.16. Regarding the complaints on bribery and torture, no investigation has been initiated by the authorities so far. As of now, there are NO procedures in Sri Lanka to ensure that cases of exceptional gravity, like this case, are heard expeditiously.

9.17. The European Court assesses the reasonableness of the length of a proceeding according to the particular circumstances of the case, including, notably, the complexity of the case, the conduct of the parties and what is at stake for the complainants. In cases where delays have a “quality of irreversibility”, the Court has stated that:

...the authorities are under a duty to exercise exceptional diligence since,...there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing [H v. the United Kingdom, 26 May 1987, para. 85].

9.18. In the present case, special emphasis should be placed on what is at stake for the complainant. The husband of the complainant was murdered; the entire family was tortured and continues to endure this ordeal. The complainant’s capacity to earn a livelihood has been affected. So is the possibility of her two children attending school or her finding legal assistance to pursue the complaints. Due to these circumstances the complainant is facing extreme psychological trauma. And as far as the complainant and her family is concerned, there are no effective remedies within Sri Lanka, The very fact that the complainant is pursuing a process to bring the assailants to justice, she is exposing herself and her children to grave danger.

9.19. Lack of adequate medical and psychological treatment accessible in a timely manner in cases of such extreme gravity can result in irreversible consequences for the health of a person. Monetary compensation granted after the complainant and her family suffering irreversible damage cannot be considered to be an adequate remedy. As there is no alternative process to ensure victims of torture and severe crimes suffering from acute trauma and injury, rehabilitation in a timely manner, a procedure that is not concluded with sufficient celerity to guarantee the full rehabilitation of the complainants cannot be considered to be an effective remedy in the sense of Article 2.3.

9.20. International law demands recourse solely to remedies that are sufficient and effective, that is, capable of providing redress for the violations suffered. In the present case, neither the criminal nor the civil procedure can be considered as such a remedy for the injuries the complainant and her family have suffered.

9.21. In view of the above, the complainant submits that the requirements set forth by Article 5 of the Optional Protocol and Rule 96 (e) & (f) of the Rules of Procedure of the Human Rights Committee have been complied with and that the present communication is admissible.

## **10. Rights Breached:**

### *i) Article 6 – Right to life read with Article 2 (3)*

10.1. In spite of more than a dozen complaints and a fundamental rights application initiated by the complainant as against the violation of rights suffered by the complainant and her family, no domestic body has rendered an effective remedy to their grievances. The only body that conducted an internal inquiry is the local police way back in December 2005 against the first complaint the complainant and her husband had filed against the police officer who sold them a stolen lorry. Even this proceeding did not culminate in any definitive result since the officer died before the procedures were over. The complainant and her family are denied legal assistance, emotional support and are forced to live in hiding.

10.2. As early as 2004 the complainant and her husband have been complaining to the authorities in Sri Lanka about the threats they received directly and indirectly from the police. After the incident on 12 November 2007, when the complainant and her family were publicly assaulted, the complainant and her husband frantically sought help from the authorities. Complaint after complaint filed by the complainant and her husband were not acted upon. Instead, after the filing each complaint, the threats intensified.

Complaints filed to the state agencies like the Bribery Commission were handed over straight to police officers who were waiting for opportunities to hurt the complainants. All these culminated in the murder of the husband of the complainant and further have forced the complainant and her family to live in hiding. The lack of affirmative action by the State party, to safeguard the life of the complainant and her family, the complainant's husband in particular, violates the inalienable rights guaranteed under Article 6 of the ICCPR read with Article 2 (3) of the Covenant.

10.3. The Human Rights Committee has consistently found that a State party to the Covenant is under the obligation to provide an effective and enforceable remedy to violations of that instrument. Remedies recommended by the Committee have included compensation, the release of persons arbitrarily detained and that criminal proceedings be expedited, leading to the prompt prosecution and conviction of the persons responsible. The Committee has also on a number of occasions ruled that the duty to provide a remedy includes an obligation to ensure that similar events do not occur in the future.

10.4. In this case, not only did the State party fail to provide any form of protection to the complainants, but allowed, due to the state's lack of affirmative and prompt action, the husband of the complainant to be murdered. The state through its non-action continues to allow lawyers and human rights activists helping the complainants to be threatened and further encourages the perpetrators to attempt to murder the lawyer assisting the complainant and her family and burns down the lawyer's office. The result of these incidents is that the complainant and her family are left with no other option other than to approach the Human Rights Committee, expecting an intervention by the Committee in their case.

10.5. In *Luyeye Magana ex-Philibert v. Zaire* the Committee concluded that the lack of effective remedies was in itself a violation of the Covenant [Communication No. 90/1981, 30 March 1981, UN Doc. Supp. No. 40 (A/38/40) at 197 (1983), para. 8].

10.6. Regarding the obligation to provide a remedy for the crime of torture the Committee has stated:

...Article 7 should be read in conjunction with Article 2, paragraph 3.... The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.... States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible [General Comment No. 20 on article 7 concerning



prohibition of torture and ill-treatment, adopted at the Committee's forty-fourth session in 1992, para. 14].

10.7. The Committee clearly stated that in cases of torture complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective, and that the notion of an effective remedy must include as full rehabilitation as may be possible.

10.8. In the present case, the State of Sri Lanka has failed to comply with the above. Investigations into the crimes, including that of torture, committed against the complainant and her family were not initiated after the elapse of two years since the incident, in spite of numerous written representations by the complainant. Neither was any disciplinary or other action taken against the alleged perpetrators and the existing proceedings appear to be at a standstill. The complainant and her family have thus become the object of threats and other acts of intimidation and has become internal refugees within their own country.

10.9. Thus the State party has breached Article 6 read with Article 2 (3) of the Covenant.

*ii) Article 7- Freedom from Torture*

10.10. The complainant and her family were severely tortured on 12 November 2007. In consequence of this, the complainant and her daughter had to be hospitalised. The complainant even had to undergo a surgery to fix the fracture on her nasal bone that she suffered from the assault by the police officer. The right against torture, a non-derogable right of the complainant and her family under Article 7 was not only violated but they were to stay in hiding due to the continuing threat to their life. Additionally, anyone getting associated with the complainant and her family stands a risk to their life and property from the police. The complainant's lawyer's office was burned down, the office of the human rights organisation providing legal and emotional support has to be closed and the complainant and her family are forced into hiding, ironically from the state's police who are at duty to protect a citizen. All this is because the complainant is pursuing domestic remedies. This situation has deprived the complainant and her family their rights to pursue the cases. The domestic mechanism in Sri Lanka, both judicial and non-judicial, has absolutely failed in giving any redress to the complainant amounting to a clear violation of Article 7 read with Article 2 (3) of the Covenant. An act of torture, though recognised as a crime in Sri Lanka under Act Number 22 of 1994, no one has been punished for the offense in this case and the

fundamental rights application filed at the Supreme Court of Sri Lanka by the complainant is still pending.

*iii) Article 9.1- Right to Liberty and Security of the Person*

10.11. The complainant and her family were tortured; the complainant's husband was murdered; and complainant and her family are forced to live in hiding. The complainant and her family are under continuous threat from the assailants who have successfully evaded any form of punishment or even arrest for the crimes they have committed against the complainant and her family.

10.12. None of the domestic systems are able to provide protection to the complainant and her family even though the complainant and her murdered husband have made written requests for protection from their assailants, who are continuously threatening the complainant to withdraw the pending complaints and the case in the court. It is not a rare or an isolated incident in Sri Lanka where a person who is pursuing his legal rights is threatened with dire consequences or murdered by the respondents in such cases. This case is no exception. In Sri Lanka, as was proved in December 2004, in the case of the murder of a torture victim Mr. Gerald Melvin Perera, the police were responsible for hiring and ordering an assassin to murder Mr. Perera since he was pursuing a case of torture against the police. In such circumstances, the chances of survival of the complainant until her case and complaints are finally resolved, rendering justice to the complainant and her family is impossible without appropriate interventions.

10.13. In the present case, the persons alleged to have been responsible for torturing the complainant and her family and murdering the complainant's husband were neither suspended from their jobs nor arrested. In addition, the complainant and her family have been subjected to numerous threats and acts of intimidation. Though the authorities have been duly notified they have not taken adequate action.

10.14. By failing to take adequate action to ensure that the complainant and her family are protected from threats by those who tortured them and murdered the 2nd complainant, or from other persons acting on behalf of the perpetrators, the state of Sri Lanka has breached Article 9 (1) read with Article 2 (3) of the Covenant.

10.15. Thus the current situation of the complainant and her family is a breach of Article 9.1 of the Covenant.

*iv) Article 17 and Article 23 (1) - Right against arbitrary intervention with privacy of a family & the right of the family to be recognised as a fundamental unit of the society that is entitled to protection by society and the state*

10.16. Since 2004, the complainant and her family have been harassed by the police officers through various means. A litany of threatening telephone calls and visits by local thugs acting at the behest of the police officers and by the police officers themselves to threaten and abuse the complainant and her family members at their home has interfered with the peaceful life of the complainant and her family. On each occasion, the complainant or her husband tried to inform the state agencies about these intrusions and further requested for protection. None of these requests found results. Additionally, the frequent incidents involving dangerous elements of the society at their home isolated the complainant and her family from their neighbors.

10.17. The complainant and her family were tortured at their home on 12 November 2007 in full public view. A complaint filed against this incident has not resulted in a proper investigation since the past two years. After the murder of the complainant's husband, due to the lack of any affirmative action by the State party or its agencies, the complainant and her family have been forced to live in hiding since the past five months. The result is a life of uncertainty, financially and emotionally affecting the complainant and her family thereby violating their rights under Article 17 and Article 23 (1) of the convention. Additionally, the children of the complainant are prevented from attending school thereby being denied their right to education.

## **11. Conclusion**

11.1. Considering the above it is respectfully requested that the Human Rights Committee declare that:

a) the state of Sri Lanka has breached Article 7 read with Article 2 (3), Article 6 read with Article 2 (3), Article 9 (1) read with Article 2 (3), AND Article 17 & Article 23 (1) of read with Article 2(3) of the International Covenant on Civil and Political Rights;

b) Recommend that the state of Sri Lanka adopt all necessary action to:

1) provide adequate remedy for the breach of covenant rights cited above of the complainant and her family

2) provide adequate compensation for the complainant and her family for the breach of rights they have suffered so far

- 3) ensure that the complainant and her family receives full protection, the perpetrators arrested thus enabling the complainant to pursue her complaints without any delay;
- 4) take all appropriate measures to ensure that the criminal procedures relating to the assault and torture of the complainant and her family are initiated and concluded promptly;
- 5) adopt any measures necessary to ensure that the complainant or anyone willing to assist her in the process are not submitted to further threats;
- 6) recommend to the State party to make appropriate changes in its legislations so as to provide effective, impartial and adequate remedy for violations of individual rights without delay by ensuring speedy investigation and trial.

## **12. Interim measures:**

12.1. The complainant requests the Human Rights Committee acting through its Rapporteur dealing with new communications to take immediate steps through the State party to ensure that:

- the complainant and her family receive immediate protection so that they could lead a normal life;
- the officers against which the complainant has filed SCFR 446/2007 are immediately placed on suspension;
- the complainant receive legal and other help to continue their prosecution

12.2. Grounds on which such interim measures are sought:

The complainant wishes to emphasise that the narration of incidents in the foregoing paragraphs of the communication itself is a reasonable and justifiable ground under which the Committee could be convinced to request the State party to provide interim measures to safeguard the complainant and her family. Yet, the complainant wishes to highlight the under mentioned aspects to highlight the circumstances under which the complainant seeks interim measures:

- i) the complainant and her family are living in hiding for the past four months;
- ii) the complainant wishes to send her children to school, an essential requirement to ensure their future, which as of now is impossible;

- iii) the complainant's son requires immediate medical attention and trauma counseling, since the boy finds it hard to cope after his father was shot dead in his presence;
- iii) the complainant is fighting a case against prominent police officers in her locality and that includes even senior police officers;
- iv) the lawyer who assisted the complainant had his office burned down, an intentional act of crime, that effectively prevents lawyers from helping the complainant;
- v) the human rights group that assisted the complainant also had to close down its office due to death threats;
- vi) in the recent past, murder of individuals who fight cases against government officers, politicians, influential individuals or the police is on the rise in Sri Lanka.

(Signed)

Bijo FRANCIS

Advocate

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**Vol. 08 - No. 01 March 2009 – article 2: Special Edition: Use of Police Powers for Profit**

<http://www.article2.org/mainfile.php/0801/336/>

**The price of fighting the state in Sri Lanka**

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*Julianne Porter, Journalist, Hong Kong*

In September 2008 Sugath Nishanta Fernando was shot dead while sitting in his lorry with his 12-year old son. His murder wasn't entirely out of the blue. He, his wife and his two children had been caught in a maelstrom of events that had been increasing in violence for five years. Sri Lankans with a little knowledge of the case have since been heard opining that the family brought it on themselves. Perhaps they are right.

Sugath's death came not because he was tangled in the country's bloody civil war, or because he was caught up with members of its underworld gangs, but rather because he challenged his local police with a once-lethal weapon. He went to them with the law, and as many Sri Lankans will now tell you, he didn't stand a chance.

The following tale is not intended to read like another Sri Lankan horror story--it has not been told dramatically--it is just the true story of a normal, middle class Sri Lankan family with a stubborn streak, who, when crimes were committed against them, went through official channels. Unfortunately they found that the more you do this in Sri Lanka the bigger your problems tend to get. But there was that stubborn streak... and thus the tale descends, by way of the police, into the stuff of nightmares: into harassment, assault and bribery, into fabricated charges, bogus witness reports, attempted murder, and murder. It paints a big, bright picture of the Sri Lankan police as a league of bullies who thrive on intimidation, blustery insults and physical violence. Most importantly this story lays out the scale and the systematic, entrenched nature of this bullying.

The Fernandos were a normal middle class family, but now they are remarkable as an example of the few in the country who are willing to push on through the red tape, bribery, court delays, physical assault and murder. Though consistently cowed by the abuse of the Sri Lankan law, they honestly believed--as Sandamali Pathmini, Sugath's wife, still does--that it is in the law that the family, now one member less, will find salvation and peace.

### **The beginning**

In 2003 on the 24th May, the Officer in Charge (OIC) of the Kochikari police, Mahinda Pathirana, sold Sugath Fernando a lorry for 500,000 Rupees, but without the registration book and identity details. Sugath made four or five unsuccessful visits to the inspector's office to get the documents, before Mahinda finally arranged for the couple to meet his car so that he could hand them over. But instead of getting the details, the couple arrived to be shouted at and told to stop contacting him. They fled, and filed their complaint at the National Police Commission.

After giving an official statement that November, the Fernandos discovered that the officer had changed the number plate of their lorry illegally, suggesting that it was stolen--and that he'd been accused of a similar crime before. "Because he was a police officer we'd made the deal on trust, we didn't think to suspect him," remembers Sandamali. They decided to fight the case through to the end.

On 28 January 2005 Mahinda was arrested. After he was taken into custody, a procession of Mahinda's friends and police colleagues came to the Fernandos' home, individually and in groups, asking them to drop the charges. One officer came several times insisting, fairly affably, they say, that they file an affidavit in return for cash. However the couple refused and the harassment was stepped up a level:

My husband and I had gone to the Negombo courts to ask about another case. We were just outside getting ready to go home when a police officer from Kochikari police station came up behind Sugath and dragged him to the side. He threatened him and tried to punch him, before letting us go. We were told to drop the charges, or we would be hurt.



They lodged another complaint with the superintendent of police at Negombo police station, but no proper inquiry was done. Mahinda's camp then tried another tactic, as Sandamali remembers:

In April the Inspector Mahinda came to our home, saying that his would give us two million rupees if we would withdraw the case. He came with three friends, who stood at the gate. He said, "I'm in a very difficult situation so I've lately fallen into a big depression", and showed us his bank savings book. My husband said, "I don't want money, I want to go to courts and get a judgment." So the inspector humbly said, "Please think about this, and if there is a disciplinary inquiry, don't show up." But Sugath and I had agreed: we didn't want to accept a single cent. We had support from the family too; they all thought we were doing the right thing.

On December 15 there was a disciplinary inquiry at the office of the Deputy Inspector General (DIG), Mahinda was interdicted, and a case filed. Word on the grapevine was that he turned very heavily to alcohol, and in 2006 before the case was heard Mahinda had suffered an alcohol-related heart attack and died.

We were at a petrol station when we found out--the petrol boys had heard about it, and knew that we were fighting against him because it was an unusual case there. Sugath was very sorrowful at that time because he knew that it was because of this case that he had started drinking. He was hanging round town boozing from morning until evening, and it was because of that that he died. But at one of our visits to the criminal division, SSP Priyantha showed us four files of complaint letters and petitions against this one policeman. Since I was the only one to send a petition with my name on it, only then, he said, could they take action against him. He also told me that the police officer has connections with the underworld gangs.

## Round two

The case was closed--the family emerging from it relatively unscathed. But they had been simultaneously fighting another case. One Sunday evening back in 2003, Sugath had been on his way to the house of a friend carrying 20,700 Rupees that he owed him when a gang of men pulled him off his motorbike, robbed and badly beat him. The men called the police and claimed that Sugath had first tried to impersonate a police officer, and had then tried to steal one of their mobile phones. Unlike the lorry incident, this case would run on for years, exposing the family to countless levels of police corruption and abuse, and ultimately end up with Sugath's murder.

The men who beat Sugath were from a political party, the United National Party, and among them was a municipal councilor, Mark Sudith. A friend of the Fernandos who was on the way to the beach had seen Sugath being arrested, and she went straight to tell Sandamali, who recalled that, "There were many people who saw the incident, but none would come forward as a witness because they were very afraid... the municipal councilor was not a good person."

When Sandamali arrived at the scene that evening she was confronted with the vision of her husband covered in blood, his nose broken and a tooth missing. The police told her they would take him to the hospital, and loaded him into a van; she went along. But on the way one of the policeman got a call and the van turned around, taking them to the police station. On the way she overheard Sugath's charges, and was astonished. At the station they were told he would be kept in remand overnight. "At this time I knew nothing about human rights," she says. "I was crying and telling the police that this isn't true, my husband didn't do it--I was trying to explain that it was misinformation."

The next morning Sandamali went with Sugath's uncle to the superintendent of police's office and explained her problem, to no avail. Still bruised and bloody, Sugath was charged in court (the headquarters inspector, HQI, had filed the case) and bailed out on 5000 Rupees. He went straight to the Superintendent of Police (SP) to file a complaint and record their statement, but nothing happened after that. Sandamali had met someone in the community called Osmund, who told her to complain to the Human Rights Commission, which they did:

We weren't sure why Sugath had been targeted, but Mark Sudith and his people... I think it was due to a kind of political grudge. Sugath was active in a different political party to the councilor, Sudith, and they knew each other. It was a supporter of Sudith's, Dan, a kind of underworld guy, who did most of the beating.



After some time I went to speak to the DIG and filed a case against those who beat my husband--I hadn't seen any of them since the incident--then I wrote the whole story to the Human Rights Commission. At the end of 2003, Negombo police station received a letter from the HRC and PP Mahagama Dharmadasa, the OIC of Crimes, wrote asking Sugath to come and meet him. He was new in the station. He told Sugath that, "The earlier people filed a bogus case against you so I'm going to start a new one." We were really happy to hear it.

## **Hope**

The new inspector PP Mahagama Dharmadasa had expressed sympathy for the pair, and promised to do something for them. On the second visit, Sandamali went along, but found that the policeman was not all that he had seemed.

"I'll arrest all these people who assaulted you," he said... Then he mentioned that he'd be getting married soon and needed 150,000 Rupees, so maybe we could put 20,000 Rupees to the wedding... I felt surprised. But then he got down a file and took out the statement made against Sugath, and gave it to us. He said that if we removed this, no one could file the case against us. We had 5000 Rupees with us and so we gave it to him. He said, "Tomorrow come with the rest, and I'll destroy the other report against you too."

The next day Sugath visited him and paid another 5000 Rupees, not 15,000 Rupees. Sugath felt that this would be our best way forward, we felt that the policeman was on our side and we just wanted to get rid of the case. That second day, the police officer came to my husband's vehicle in the car park and in front of him, burned the second report against us. Then very frequently he would call us, asking for the 10,000 Rupees balance, which we told him we couldn't pay. At this point he had helped us file against the group for assault. But when we got to court we found out that in fact, both cases against us had gone to court--the policeman had just burned unnecessary pieces of paper.

On 11 June 2004 the Fernandos complained to National Police Commission but found that there wasn't much interest in the case. So a few months later Sugath went to the Bribery Commission, and recorded a statement there. But when the Negombo police came to know that the Fernandos had complained about them, they retaliated. The next time the couple went to the station, Dharmadasa and his colleagues refused to serve them.

They insulted us, calling us troublemakers and talking about the other case with the van. They were using bad language. We complained with their DIG there; then we went to

the Police HQ and made statements against the SP in Negombo, and against the entire crime branch.

### **Harassed**

The Fernandos received a phone call days later from an SP Mahanama, asking them to come in to the police headquarters to give their evidence. Twice they went, and twice were instructed to give a promise in writing that they would not take it to court, but would come to a compromise. Sandamali remembers that, “SP Mahanama told us to withdraw and threatened that otherwise hereafter, if you make any complaints against my officers, one fine day the whole family will get destroyed by the police.” The couple promptly filed another complaint against Mahanama. When asked, “When the police said ‘destroy’, do you think they were suggesting financial ruin, or something else?” Sandamali replied, “That they will kill the family.” “Did you believe him?” “Yes, we did. That’s why we complained further.”

On another occasion Sandamali visited the police station with Sugath about the issue of the lorry licensing. Chief Inspector Nishanta, a crime branch police officer was there. When their appointment came up with the inspector of police, the chief inspector drew him to one side. The two men started to shout at the couple.

They were shouting utter filth at me. They basically told us not to come to the police station again for anything. They brought us in front of HQ Inspector Silva, telling him I’m a bad kind of woman. My husband spoke up and scolded him. HQI said to us, if there’s any civil evidence that we’ve said this, go ahead and make another complaint to the DIG office.

So I went to the people in the waiting room and I asked, “Is anyone here willing to give evidence to support us?” One girl stood and said yes, they were like this with her too, and she agreed to give evidence if we complained. You see, when you go to the police station they just don’t know how to address people! They often use rude language. So on the same day we went to the DIG officer and made a complaint regarding this. The DIG directed the matter to be dealt with by SP Mahanama--but we had already complained against Mahanama!

At this point personnel at the Negombo police station were becoming increasingly irritated with the Fernandos. It was rare for anyone to be tenacious enough to make complaints, let alone insist on following through. Their case was bringing pressure from above. Tactics to dissuade and punish Sugath and Sandamali intensified.

A police sergeant came and took statements from the girl and us and later we had to go in and give another statement for the other complaint against Mahanama. We went to the SSP's office to make a statement and were sent to a sub-inspector, a woman. During that time I was getting chest pain and some arthritic pains. But they were angry with us, so I had to give a statement over a period of six hours, standing up.



Finally my husband requested the sub-inspector, "Offer my wife a chair because she's not well." So they laughed at him, saying, "He's going to faint, give him a chair!" My husband said, "No, not for me, for my wife" and called for the SSP. The SSP came and dragged me to his office and then scolded us, swearing at us, and said, "If you don't cooperate I'll remand you." I was experiencing chest pains so we went to Negombo hospital, and they took an ECG. During that time my

husband spoke to one of the HQ DIGs. He instructed my husband to come in and make another complaint against the slurs and ill treatment... So myself and my husband we went again and we made another complaint! Then finally we went home.

But the harassment was not to end there; the traffic police were to get involved. One day the couple was seated in their parked lorry in front of their house when the SSP's motorcade went by. When this happens cars on the road are generally told to move out of the way. But of the parked vehicles it was only the Fernandos who were told to move. Sugath called someone in the defense ministry and was told that there was no such regulation. He was told to make a complaint, which he did to emergency services 119, over the phone. Then:

It was 10 September 2006 and the SSP was going by with escorts. We had gone nearby on our motorbike to buy some bread and the SSP must have seen us. Then a police officer on a motorcycle broke off from the motorcade--we were standing next to it, our helmets on the motorbike, and he told us, "Wear your helmets!" My husband said, "But we're not on the bike." Then another policeman came and told us, "You must

immediately withdraw the case against our SSP.” My husband said, “No, I can’t.” Then the officer started shouting and insulting us, he snatched our bike keys and then three other police officers appeared. We were threatened with arrest. I came forward and asked, “Why, what reason do you have?” Then he dragged Sugath into the police jeep. I was hanging onto his shirt and shouting, but then I got into the jeep too--I didn’t want him to be alone.

### **Assaulted**

The police took the couple to the station and told them that they could leave after they had signed blank pieces of paper. They refused to and Sandamali made discreet calls from her cell phone to the HRC in Colombo, to police headquarters where she spoke to the DIG, and to 118 (the Sri Lankan security number). She sent messages to one of her sisters and her father, who turned up at the station and started to ask questions about them.

Their lawyer also arrived and started to kick up a fuss, so they were finally taken to court. But it appears that the visit had been carefully timed so that the magistrate was just getting down from the bench. They were taken to the magistrate’s private chambers instead, where they were told that they’d both have to be remanded for obstructing police duties. Although the pair weren’t allowed to speak, their lawyer appealed to the magistrate on behalf of their children. She softened and put Sandamali on 2000 Rupees bail. But Sugath would have to spend the night in jail. The pair was unaware of the dangers awaiting him there.

Before this my husband had never been in prison, and I didn’t know much about prison either, so myself and my sister and my husband’s friend sat in front of it, trying to get to see him. My father went home to bring clothes for him. But then the bodyguard of the mayor of Negombo visited us with a few other guys. He came up to me sitting there, and told me that his boss, the mayor, has got information that the police had requested an underworld person in remand prison, Feroz, to kill Sugath. I just couldn’t believe it was happening.

Then he [the bodyguard] called Feroz inside the prison right there, and said that my husband was a man from their political party so don’t hurt or harass him. Then he told Feroz, “I have his wife here and she is waiting to hear that he’s okay.” I heard about two seconds of Sugath’s voice before the phone cut off.

Later I discovered that before the phone call this Feroz had already been beating up my husband, but then stopped. Sugath is strong, but he couldn’t fight back because he

knew Feroz was a powerful underworld thug. This all happened in the first few hours of Sugath being taken to prison.

The mayor's bodyguard told prison officers to put Sugath into a safer communal ward, rather than a cell, and to keep an eye on him. The next day Sugath phoned Sandamali from jail and asked her to bring small amounts of cash to the prison to pay off certain prison guards, and for 15 lunch boxes. He survived unscathed until the following Monday, when he was produced before the courts again. Sandamali never found out who had asked the mayor to get involved.

The police requested that Sugath's jail time be extended for another four days because they hadn't completed their inquiries, and wanted to take another statement. On the Friday Sugath was bailed out on 25,000 Rupees personal bail and 2000 Rupees in cash and went straight to the HRC in Colombo, and to the police commission, to record what had happened to him. He was shaken, says his wife; both frightened by the attempt on his life and depressed at the thought of having a prison record. Up until this moment too, the children had been sheltered from their parent's tussles with the police. Kalpani was 15 at the time, Anjana, 12.

Later, looking at the report with the HRC, the Fernandos saw that there were two witnesses of his arrest, one of them staying close to their home.

We went searching for him and asked whether he'd be giving evidence against us. Some of the officers had apparently come to see him where he worked in a small boutique, and they told him he had to sign a prepared statement. But to us he agreed to give an affidavit to the HRC, recording what had actually happened. Another woman in the boutique agreed to testify that she'd seen the officers threaten him and take his signature by force. I think they were brave to support us. We went to look for the second police witness, but found that the name and address were false; they had written a bogus statement.

On 12 January 2007 the Fernandos were summoned to the courts about this case. They appeared but their evidence wasn't taken. Sugath's evidence was taken in March; Sandamali's was postponed again to November. A traffic officer again threatened the pair not to follow through with the bribery case against the SSP, which prompted another call to the Bribery Commission, another complaint. The Fernandos were becoming deeply unpopular among law enforcers in their neighbourhood, and their situation was about to worsen dramatically.

A traffic policeman who lived on the same road was holding a funeral for his son one Sunday afternoon, and on their way back two traffic officers decided to pay the family a visit.

My husband and I were sitting and talking on our verandah. The children were watching TV. Then a police officer came up to us and said, on the 14th there's a case against this police officer, are you going to give evidence? Sugath said that we'd received a summons from the HC to be present, and that we would go; the man slapped my husband's face hard. I started shouting and went to my husband, who instructed my daughter to take down the number of the policeman's vehicle--but the other one was waiting on his motorcycle and as she came towards him he drove straight at her, and into her. So I ran in front of the vehicle to stop it. I called the Bribery Commission then and there, and [the staff] told me to get the number of the officers who'd come.

The two policemen were Sub-inspector Liyanage, and PC Dissanayake. They called in three more traffic policemen, and then for more back up, claiming that the family was not cooperating. Sandamali called the Bribery Commission again for help, where she was told that they had arranged for the HQI to visit them and help to straighten out the problem.

After half an hour the HQI came to our place with about 50 police officers. About 20 of them forced their way into the house and about 30 were outside, 15 on either side of the house, keeping out civilians. Our parents were there, and they were trying to get inside. The children were very scared--this thing was new to them. Then we were trying to explain to the HQI what had happened, but he came out with obscenities and scolded my husband. Then he just started to hit him. I had been in the kitchen with my daughter--my phone was on charge there--and I came running out to help him, screaming. The HQI then dragged me by the hair and hit me in the face with his gun. Then four or five police officers beat me onto the ground and kicked me. I could see my husband unconscious, being dragged into a van and then I was thrown onto his body into the van. My daughter was fighting them. They punched her, choked her, and were trying to pull off her blouse. Then they punched my son, breaking one of his teeth. Luckily he ran out to two women policemen and hid behind them. They started to take us away in the police van and my daughter ran after it, asking where they were taking us. One said, "We're going to take them to the beach and we're going to kill them there."

Kalpani got in the van anyway. The son, Anjana, was taken away by his grandmother and the policemen took Sugath, unconscious, Sandamali and their daughter to the police station where they dragged Sugath in, lay him on the floor and doused him with cold water. The HQI then proceeded to take down their details, which Kalpani gave--her first time in a police station. Sandamali remembers that her own nose and head were still bleeding and she could barely talk. She also recalls a phone call from the SSP to assess the situation, and the HQI responding flippantly, "Don't worry; they've been beaten and they're already half dead."

After about four hours in the police station the three were put into a van, and driven far out of town, into isolated countryside. Then a phone call came. The drivers turned the van around and took them to a hospital. Asked where they had been going until the phone call arrived, Sandamali replies, "I thought that they were taking us somewhere to kill us."

### **Hospitalised**

IP Bandara took mother and daughter to Negombo Hospital, one of the officers who had beaten them, and were placed in ward 5, where doctors gave them an injection and gave Sandamali two stitches in her temple. Sandamali had come off worst during the beatings--records later showed that both her jaw and nose were fractured. Two policewomen were left with them, initially, they thought, for their own security. They soon realized that this was not the case.

There was a bed for me, but the policewomen told me I had to sleep on the floor. When I asked to go to the toilet, they refused. We asked to make a call on our phones, but they wouldn't let us. I was crying because of the pain, and finally a nurse came over and gave me a bed. Then the two policewomen switched on the bright light over the bed, and stood around it watching me. My daughter was sitting on a chair, but when we tried to talk, we were told to shut up. The next morning the HQI and another two policemen visited us, with the Judicial Medical Officer [JMO], asking him to discharge us.

When the JMO checked me I couldn't really open my mouth to say much, my jaw was injured, and I couldn't walk much at this time either. But the JMO did only a quick check of my external injuries--not any internal injuries. I told him that I couldn't really walk and that my back hurt, and would he check me properly, but he hardly listened. I hadn't really expected him to be helpful--he supports the police--but the HQI also asked the head of the ward to discharge us. The doctor asked the police about my daughter, saying, why did you bring this child to the hospital? They told the doctor that

we, my daughter and I, had assaulted the police. They said that they wouldn't arrest the girl, so please just discharge me. But when the doctor saw me he realized that I wasn't in a good condition, and he refused. We felt that he was kind.



That evening the police--IP Bandara, OIC Jayawardena and Somasiri Liyanage--brought the magistrate, Prabath Ranasinha, to the hospital. Sandamali was shown a warrant that would remand her for fourteen days for interfering in police duties. Despite Sandamali's obvious injuries, the magistrate complied. She told him of their other case, the bribery case, for which there was a court appearance the next day (the 14th), and he told that she would need to appear while under police custody--and that since she had reportedly assaulted police officers he would not grant bail. She asked about making an appeal and he instructed her to file one in court according to the official procedure.

### **Imprisoned**

The policemen did not keep their word about not arresting Kalpani. That night the 15-year-old was taken from her parents in hospital to a ward in a women's prison. She recalls:

Inside I was very frightened and the facilities inside were very basic. They were speaking with bad language, and their behavior was very unpleasant. I was so frightened I didn't speak to anybody. I was in a ward with about 200 prisoners in it. I didn't sleep at all; there was nothing to sleep on.



Her grandfather came to bail her out of prison the next morning, and after five days in hospital the ward doctor discharged her mother, under the impression that she would be taken to the prison hospital. Instead the police took her to the same ward of the prison her daughter had been in. She remembers sitting back tightly in a corner until morning and then being taken to the courts, where she and Sugath were granted bail. She hadn't had the chance to wash since her assault, a week earlier.

A few days after their assault and imprisonment, the couple went again to the HRC in Colombo, where they were told they could give evidence against the JMO. The HRC gave a letter to Colombo Hospital so that Sandamali would be reexamined. She was sent to a surgeon and given the surgery she needed for her broken nose and fractured crown.

### **Into hiding**

At home, a message had been left by human rights lawyer Basil Fernando suggesting that the family report to Right to Life (RTL), a legal aid group that helps with complainants in human rights abuse cases. RTL staff had already visited Kalpani when her mother and father were still in hospital, and a few days later the whole family went to the group's office in Negombo, and started to put their complaints in order. Human rights lawyer J.C. Weliamuna joined the case, along with Amitha Ariyaratne. This was a source of great comfort to the family, despite the dangers to the lawyers in doing such work. Anjana has kept a picture of Weliamuna from a newspaper article referring to an anonymous grenade attack on the lawyer's home just months later, from which he narrowly escaped. Ariyatne has received death threats three times, and on 27 January 2009 this year his office was burnt down.

In June 2008 it was decided that Sugath should go into hiding.

It was around March when a person called Namal came to our house and advised my husband to withdraw all the cases that he had filed against the police. Then on June 23 he came up to us in the street with another man and said if we didn't withdraw the cases they would kill us both; luckily the children were at school. We reported this to the DIG, who of course instructed us to go to the crime branch and make another complaint to the officer in charge. So we did. But at that time they in the station took no interest and we didn't think they'd do anything. We believed we were in danger. We told Right to Life and Mr. Basil Fernando, and Basil Fernando informed the President and the Chief Justice, and the Minister of Human Rights in Sri Lanka, and the President of the HRC.

Two days later at about 8 o'clock at night a white-coloured van came to our house and inquired after my husband from our houseboy. Sugath signaled that he shouldn't tell them he was home. The boy asked, "Why are you here?" and they said, "We came to hand over a business contract." The boy said that Sugath had gone out for medical treatment and asked, "Would you like to leave a number?" They said, "No, we want to meet him personally and pay him some cash." Again Sugath signaled to the boy not to tell them that he was in. Then he closed the gate and padlocked it from the inside.

The van continued to sit there with a running engine, and when we looked out we could see two policemen in uniform, and two men in civvies. That day I was so frightened. Even my husband was frightened. We think they were trying to kidnap him.

The family decided to hide at Sandamali's sister's house that night, and the next day they split up, leaving the children with her parents. RTL organized a temporary safe house for Sugath and Sandamali and the next day he was sent off to a safer place. The rest of the family slept at Sandamali's mother's home and used their house during the day, keeping the gate carefully locked. Still, they found it hard to be without Sugath.

My husband was the one looking after all the expenses at home, and I didn't have much knowledge about the business, so that was definitely a problem. We were also scared much of the time. When he was at home we lived so joyfully as a family, and we'd go most places together. He didn't like to go anywhere without us! But we were also lucky; from this point on RTL paid for the main things for us.

Nevertheless, Sugath decided to leave his place in hiding.

When he would call he would tell me, I want to come home, I want to come home, I want to come home! And I would also miss him, I was telling him too, I wish you were home! We were very attached. After he decided to leave he went to RTL, and to the Bribery Commission, and they made some observations regarding the assault case. They said we have now done all our necessary work. We don't need more from you. But we were still waiting for them to do actually do something.

### **A killing**

At this point the police had filed two cases against the Fernandos for obstructing their duties and the Fernandos had filed a bribery case, and through the HRC, one for assault and one against the JMO. On the day that Sugath died he had been home for two months and four days, and it had been a time free of harassment. The family was getting used to the idea that their ordeal could be over.

Part of the Fernandos' business was renting out their lorry. During the day Sugath, with his wife or his son for company, would find a spot at a junction nearby and wait for customers.

That day he got up at about 6:30, had a bath, had breakfast and left at about 8:30 in the lorry. Because of the threats I'd always gone with him before in the lorry, but the day before he'd asked me not to come anymore, saying it wasn't needed. That particular day though, I got ready to go with him, but he went with my son. I remember that Anjana was happy because the day before he'd been told that he had been chosen to be in the school band. Sugath told my daughter to follow on her mountain bike to the junction. After parking he took my daughter's bike and went to the market to buy a few vegetables, which he sent back home with her. He'd asked her to buy some dried fish on the way home but it wasn't available, so I called him to say that they hadn't got fish. He told me to send a bottle of cold water through my daughter. "I'll go find some fish," he said, "And I'll send it back through her."

These would be their last words.

About five minutes later I called my husband to ask about my daughter because she'd gone alone and I was a little nervous. But my daughter answered his phone. She was crying and I couldn't understand what was wrong. I thought someone must have come and assaulted my husband. I started to shiver. I pulled on a shawl and I started to run down the road to the junction. On the way I met an uncle on a motorcycle coming the other way. He said, "I've come to get you." He took me to the lorry. There was a huge crowd gathered there, and I still didn't know what had happened. Then my relative told me, "Your husband has been taken to hospital but they couldn't find your son." Someone put me into a three-wheeler and took me to the hospital. On the way I called to Right to Life, I don't know who, and I told them, "Someone has shot my husband."

At this point in the narrative Anjana seems absorbed with writing on his hand and playing with his family's mobile phone. Sandamali starts to cry quietly, and her daughter takes over. Kalpani speaks with fierce but surprisingly composed energy for a 16-year-old.

As I was approaching the junction with the water I saw a big gathering. I pushed through to the lorry but there was nothing to see, I couldn't see my father or my brother. The door was half open on the driver's side. Then I saw my father lying to the side on the driver's seat. I thought at first someone must have come and beaten him. Then I got into the vehicle, climbing over his body, and I saw that there was a hole, a bullet hole here [she points to her temple]. Being on my father's body I spoke to him,

father, father--but there was no answer. Then the phone rang. I answered it and as soon as I did I collapsed out of the lorry onto the ground. I couldn't get up, but I tried to tell her what had happened. I don't know where my brother was at that point.



Anjana had been in the passenger seat when his father was shot, and he doesn't like to talk about it--since the murder he has suffered from fainting spells. He remembers the shooter was a man in a mask on a motorbike, that only the second shot met its mark, and that his father fell across him. He ran out of the lorry and was in the crowd when his sister arrived. He was later taken to his grandmother's. Kalpani continues, pausing occasionally for a deep breath.

I was shivering with fear, I told my mother, 'father was shot', and my mother told me to get away to somewhere safe. Then I shouted to the crowd, come and help me take him to the hospital. We called the emergency services and they said not to move the lorry, but to take my father to the hospital in another vehicle. I went around and opened the other door, and I pulled him into a three-wheeler, onto the floor. Some people helped me, I don't know who. Then I jumped in and it left for the hospital.

Sugath died at the hospital.

### **Hiding, grieving and rebuilding**

The day after the burial it was back to court for Sandamali, this time to give the

statement about Sugath's murder, supported by the team at Right to Life. The family was told that they should go into hiding, since they were intent on following through with all the old cases, and in those Sandamali is now the main witness.

Being away from home has made it harder for them to recover--they have stayed in three places in three months and are about to move again because people have been asking questions in town. At the house where they are now staying, the Fernandos have had to tell the host family that Sugath was killed in an accident. They're all finding it hard to express their feelings, and Sandamali has become almost obsessed with the cases. Those around her say it's the only thing she talks about these days; she dismisses talk of trauma counseling and only legal speak can animate her. She wields her stuffed case file and photos of herself in hospital like a protective charm. Those working with her wonder what could happen to the family should the case drag on for five or six years, or worse, not yield the result they hope for. In the meantime, her children have yet to settle into a school or a routine.

The threats are still there. Their lawyers have both escaped assassination attempts, death threats have been phoned into the RTL office and even a TV journalist who covered the case received a threatening phone call. As Sandamali twists a sodden napkin around her fingers, Kalpani continues, clear-eyed:

First of all we want to see to our education--my brother's and mine. Then we want to find out who did this to my father. Then I want to show them that I can live in front of them.

We are worried about being killed, but we are also concerned that nothing has been done to find my father's killers. The CID [Criminal Investigation Division] is making inquiries, but little new information comes to us.

We tend to wake up early. Sometimes I study. We don't have a TV, so if the landlady invites us to join them to watch TV, we do so. Otherwise we keep to our rooms. Sometimes my brother and I go and explore the jungle, but there's not much else we're allowed to do. We don't have an income so we are relying on help from these organizations. We have locked up our home--there are many things there, but we can't get them. It's frustrating, and yes, it feels lonely. We miss my father so much.

### **Who's to blame?**

In November seven of the officers involved in the beating of Sandamali and her family were told that they would be transferred, following strong national and international protests. Ignoring official procedures the policemen appealed directly to the country's

president, Mahinda Rajapakse, who overrode the transfer order. For a system so slow to protect a man from death threats coming from its own ranks, it acted swiftly on behalf of these men. Yet Sandamali seems unsurprised. “I got to know about the case from the Bribery Commission. We heard that Somasiri had appealed to the president, and he now remains at the same police station.”

*Whose fault is that?*

Everyone from the president down, through all the authorities.

Why do you think it has been so hard to get justice?

The political leaders need support from the police for their political campaigns, so they never do anything against them. When the police do wrong and need protection, they go to the ministers.

*What about the courts?*

I don't trust the courts even. From our experience I don't have faith in them...

*Who has given you the most trouble?*

The police have done all these things. According to my knowledge, police support other police. But maybe the Bribery Commission is even worse. They promised to take action against the authorities, to file a case within two weeks of seeing us, but they did nothing until Sugath died. They dragged the case, they collected all the necessary information from us time by time, but they didn't file a case...

*What are your hopes now?*

To give a proper education to my two children, and to punish Sugath's murderers. After that I have no plans.

Be careful not to lose yourselves in this case.

But we will try to win.

Posted on 2009-03-13

## E. Media reports on Sugath Nishantha Fernando case



**UNHRC holds that the government is responsible for the death of Sugath Nishanta Fernando of Negombo**

[http://lankanewsweb.rsf.org/english/indexa613.html?option=com\\_content&view=article&id=1041:unhrc-holds-that-the-government-is-responsible-for-the-death-of-sugath-nishanta-fernando-of-negombo&catid=1:general&Itemid=29](http://lankanewsweb.rsf.org/english/indexa613.html?option=com_content&view=article&id=1041:unhrc-holds-that-the-government-is-responsible-for-the-death-of-sugath-nishanta-fernando-of-negombo&catid=1:general&Itemid=29)

**Wednesday, 11 January 2012**

The United Nations Human Rights Committee has issued its determination regarding the complaint made by a Sri Lankan citizen, A.S.S. Pathmini Peiris, in connection with the murder of S.K.A. Sugath Nishanta Fernando who was assassinated on 20 September 2008.

Previously Mr. Fernando had complained of the torture of himself, his two children and his wife due to a Fundamental Rights Application filed by him complaining about several police officers in Negombo including a Headquarters Inspector and a Senior Superintendent of Police. Pathmini Peiris, in her petition stated that no inquiry had been conducted into this murder. The UNHRC after examining all the material before them came to the conclusion in favour of the petitioner, Pathmini Peiris. The Committee held:

"The Committee accordingly concludes that the State party is responsible for the arbitrary deprivation of life of the author's husband, in breach of article 6 of the Covenant."

The full text of the Committee's finding on this particular issue of the denial of the right to life of Mr. Fernando is as follows:

"7.2 Regarding the author's claim under article 6, the Committee recalls that the right to life is the supreme right, from which no derogation is permitted. It further recalls that States parties have a positive obligation to ensure the protection of individuals against

violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities. The Committee observes that according to the uncontested material at its disposal, the author and her family received a number of direct threats from the police, i.e. agents of the State party, including death threats, seeking to unlawfully coerce them into withdrawing complaints filed by them against police officers. On 20 September 2008, it is reported that the author's husband was shot dead by masked men, three months after two individuals had told the family that they had been instructed by the Negombo police to kill them. After this threat the author and her husband had filed several complaints, including before the Office of the Deputy Inspector General and the police, but no action was undertaken, by the authorities to protect the family. In these circumstances, and taking into account the State party's lack of cooperation, the Committee is of the view that the facts before it reveal that the death of the author's husband must be held attributable to the State party itself. The Committee accordingly concludes that the State party is responsible for the arbitrary deprivation of life of the author's husband, in breach of article 6 of the Covenant."

The UNHRC also held that the government of Sri Lanka has violated article 7 by severely torturing him and his two children and his wife:

"As to the claim under article 7, the Committee recalls that the State party has offered no challenge to the evidence submitted by the author that on 12 November 2007, police officers broke into her domicile, beat her husband until he fell on the ground and lost consciousness, hit her with a pistol, punched her 10 year-old son against the wall, hit her daughter with a motorcycle, causing her to fall on the ground, and later sought to undress her. In the circumstances, the Committee concludes that the author, her husband and their two children were subjected to treatment contrary to article 7 of the Covenant"

It also held that the failure to investigate into the murder and the torture amount to a denial of an effective remedy to the victims and therefore the government of Sri Lanka has committed a violation under articles 6 & 7 of the Covenant on Civil and Political Rights; the Committee further held that the failure on the part of the government to take reasonable and appropriate measures to protect the author and her family amounted to a denial of the right to security of persons which is a violation of article 9 (1).



The failure on the part of the state party to take action in response to the Committee's request to adopt interim measures to protect Mr. Fernando and his family is held by the Committee as a violation of article 17 of the Covenant.

The Committee has recommended that the government should undertake to ensure an effective remedy which includes ensuring that the perpetrators are brought to justice; that the author and her two children can return to their domicile in safety, ensure reparation including payment of adequate compensation and apologise to the family.

The UNHRC has requested the government to provide within 180 days information about the measures taken to give effect to the committee's views. The Committee has further requested the government to publish the Committee's views.



## **Sri Lanka: Extrajudicial Killings**

Thursday, 22 March 2012, 2:48 pm

Article: Asian Human Rights Commission

026-2012

March 22, 2012

An Article by the Asian Human Rights Commission

### **Sri Lanka: Extrajudicial Killings: The Miserable Breakdown Of The Rule Of Law**

By Nilantha Ilangamuwa

Our lives are spinning out

from world to world;

the shapes of things

are shifting in the wind.

What do we know

beyond the rapture and the dread?- Stanley Kunitz\*

“They finished off my husband after two days of torture, and then took me to Hambantota where a number of women were held on suspicion. To my knowledge, most of them were innocent like me. There too they tortured me and urged me to reveal the names of the people who had connections with the JVP, but I did not know anyone who had JVP connections and I didn’t have any link with them either.” - Mrs. Premasili\*\*

Every national and international observer agrees that Sri Lanka today is a state facing tremendous upheaval and chaotic social disorder, even after the elimination of the Liberation Tigers of Tamil Eelam (LTTE), on May 19, 2012 (when the Government of Sri Lanka officially declared the longest civil war in Asia over<sup>1</sup>). The national and international civil society organizations have documented that violations of fundamental human rights are occurring every day<sup>2</sup>. The tabling of the drafted resolution on human rights in Sri Lanka by the United State of America, to the 19th Session of the Human Rights Council in Geneva, has questioned an old phenomenon in a new framework, though it continues, as previous resolutions have, to open widespread discussion on human rights violations by the Government of Sri Lanka, as well as by non-state actors in recent times in the island nation. There is no doubt that the Government of Sri Lanka needs tremendous pressure from the international community, not only to take responsibility for its conduct during the war, but also to address the many constitutional shortcomings that resulted from the introduction of the 1978 Constitution<sup>3</sup> and most of its amendments, where the principles of common law were manipulated by the executive branch to place itself above the law.

In regard to the threat to human lives, there is no significant difference between open warfare and political competition between the powerful political parties of Sri Lanka. Since 1971 when the UF Government<sup>4</sup> introduced the practice of extrajudicial killing for the first time against the JVP insurrection, many dissidents, both rebel and civilian, have been killed in cold blood. Extrajudicial killings have become a norm of daily life in Sri Lanka. Even though the present regime has made some symbolic developments on extrajudicial killings, they remain part of daily life. Sri Lankans, rightly, remain fearful of abduction and the white van syndrome has become a powerful symbol of extrajudicial killings in recent years. However, the Government of Sri Lanka remains unwilling to conduct genuine investigation on “White Van” abductions and it is

commonly believed that the Government is the one of the main perpetrators of these heinous crimes.

The worst development of this practice was reported on the second week of February this year, when an armed gang entered the premises of a courthouse and abducted an individual who was being escorted by security officials from the courthouse to prison, after hearing a case against him. The following morning, Tuesday 14th February, 2012, a body of a male was dumped and burnt near Sri Lankan President Mr. Mahinda Rajapaksa's private residence in Boteju Mawatha, in Colombo. Around 9.30 am on 14th February, unidentified persons arrived in a white van, dumped a male body, and burnt it in front of Mr. Rajapaksa's private residence.

The Asian Human Rights Commission has documented a case of a man who was tortured and illegally detained for 28 months and was abducted before the Supreme Court could hear his Fundamental Rights application. On 11 February, 2012, Mr. Ramasamy Prabakaran was forcibly abducted in the presence of his wife, Shiromi, and their daughter, near their home in Canal Bank Road, Wellawatte. Prabakaran, who owns Panama Traders, an electronic shop in Majestic City Shopping Complex, is a Tamil of Indian origin.<sup>5</sup> It has been reported by the media, that there have been 32 unexplained abductions documented between last October and this February, mostly in Colombo and suburb or northern Sri Lanka; the victims being a mix of Sinhala, Tamil and Muslim<sup>6</sup>.

As a part of the militarization of the country, not only of the North and East, but of the entire country, the rule of law has come under threat while the military controls whole sectors of the country and has been given enormous power to undermine the peoples' basic rights, rights that have been confirmed in the Constitution of Sri Lanka, international treaties which have been signed by the Government of Sri Lanka, and even in election manifestos issued by each of the political parties, including the present ruling alliance. Former high court judge, Mr. W.T.M.P.B. Warawewa, at a felicitation organized in his honor by the Young Lawyers Association, has claimed that the current breakdown of the rule of law is the result of certain judges failing to maintain the dignity of their profession and having no self-strength. Some judges would fall to any lowly depth for personal gains and this corruption has allowed human rights violations to flourish. Honesty and courage are essential for a judge, and that is why the people respected the judiciary. Very soon, it would not be surprising if the Army's major generals are appointed to the Supreme Court, as the judiciary has recognized a court martial as a legitimate court of law for accused civilians, as well as military personnel.

The victims of forceful abduction and extrajudicial killings are not only ordinary people, but it has been widespread among all level of the society and some of members of the Government itself are in fear of abduction and execution. In an interview with this writer<sup>7</sup> the President of the Urban Council, Kolonnawa, Colombo suburb, Mr. Ravindu Udaya Shantha revealed that the Government was responsible for the extrajudicial killing of his own brother, who was abducted on February 21, 2012, in a white van, as well as an endeavor to abduct him by an armed group attached to the Sri Lankan Army on 11th March 2012, in Umagiliya, Kolonnawa. There is no investigation regarding his brother's abduction, while the Minister of Economic Development Affairs, who is the brother of the President as well as an adviser, Mr. Basil Rajapakse, unofficially informed Mr. Ravindu that his brother had been killed. There has been no investigation into the abduction of Mr. Ravindu, even after four people who were involved in the attempt were handed over to the police station in Wellampitiya. They were released on special order from the Defence Authority that same day.

Forceful abduction and extrajudicial killing have been constantly growing after the killing of former parliamentarian and an advisor to the President, Mr. Bharatha Lakshman Premachandra, as a result of internal power struggles within the ruling alliance, in Mulleriyawa, Colombo on October 08th 2011. As the Asian Human Rights Commission disclosed, all business transactions and even human transactions will suffer from the unscrupulous actions of persons who will refuse to respect the law. Already this situation exists to a large degree. Guns, goons, and the police and politicians acting illegally have a great influence on business activities both big and small. Those who have influence with the criminal elements and the politicians that support such elements will ensure that the 'cake' only belongs to them. Of course these persons will fall out with each other and resort to the same tactics against their former friends.<sup>8</sup> Most of abductions and extrajudicial killings that have occurred recently, not only in Colombo but everywhere in the country, targeted businesses, both lawful and unlawful.

There is also the case of Mr. Mohamed Sali Mohamed Niyas, also known as "Loku Seeya", who was abducted in a Colombo suburb by an armed gang in a white van, and then taken to an unknown location in the Eastern province where it is believed that he was tortured, killed, and his body then dumped at sea. It is questionable how such abductions can occur, taking a victim hundred kilometers away from the place where he was abducted when the abducting gang has to go through at least five major security points. The statement of the wife of Mr. Mohamed Sali Mohamed Niyas a.k.a. Loku Seeya, Mrs. K.G.C Ruika Niyas, shows the kind of gruesome murders taking place in the country. According to the post-mortem, he was strangled and his throat slit. He

had also been pounded in the head and stabbed a number of times. He was also administered 3 injections of unknown chemicals. I am still unable to imagine how brutal that must have been. The body had over 100 kgs of weight strapped on to it which was wrapped with barb wire. The body was then covered with polythene and secured further with chicken fencing ( same as barbed wire) . It also had something like an anchor attached to the body. In spite of all that it washed ashore at Akkarai Paththu. The body was flown back home and the funeral proceedings were conducted.<sup>9</sup>

Meanwhile, there is no justice for the abduction and murder of the human rights activist Mr. Pattani Razeek. He disappeared on 11 February 2010. After much delay in the police investigation, his dead body was found on 28 July 2011 by the police in Kavathamunai, Oddamavadi, Valaichenai, Eastern province. It has been reported that the family and lawyer of Mr. Razeek has yet to receive the post-mortem report and the deoxyribo nucleic acid test (DNA) report that may reveal the truth behind the murder of Razeek.

It has been widely reported that the party of the ruling alliance was directly involved in an abduction and extrajudicial killing in Northern district, in the Jaffna peninsula. On the first week of March 2012, a thirteen-year –old school girl, Jesudasan Lakshmi, was abducted, raped and killed by breaking her skull using a stone, when she was on her way to the school on Delft Island, by a man who is a member of the Eelam People's Democratic Party (EPDP), led by Douglas Devananda, who is a minister of the Government. In the beginning of the year, on January 28, 2012, there was another extrajudicial killing in Jaffna where sixteen-year-old school student Miss. Iridiyanar Sineshika, of Alwari North, Point Pedro, Jaffna was murdered. Also, on November 10, 2011, Mr. Subramaniam Dayabaran (45) who was the Principal of the Karanakuri School, Kodikamam, Jaffna, was murdered. Like other parts of the country, the Jaffna peninsula remains a dangerous place, even after the elimination of the LTTE. There is still no news of Mr. Lalith Kumar and Mr. Kugan Muruganathan who were abducted at the end of last year by an armed group.

Corruption within law enforcement and police brutality towards civilians has resulted in the killing of unarmed civilians who were engaged in peaceful demonstration, due to the loss of their essential rights. The AHRC, over the past few decades, has highlighted the loss of independence of the police, and their shift by government elements towards the unlawful practice of social control and now the police have become another tool to secure the absolute power of politicians. Through the killing of a torture victim, Mr. Sugath Nishantha Fernando, who was pursuing a fundamental rights application against Negambo police, and the killing of Mr. Gerald Perera, who was a torture victim

pursuing a case against several police officers at Wattala Police station, the AHRC has examined the country's policing system and the decline of genuine investigations. Recently, the killing of Mr. Roshan Chanaka Rathnasekara, a worker at the Free Trade Zone (FTZ) in Katunayake, Colombo and the assassination of Mr. Anthony Fernando of Chilaw, who was shot dead while engaged in a peaceful demonstration against the rise in the prices of oil, reveals the changes of law and order, policy, and attitudes relating to murder and its these developments destroy faith in the country's legal system.

Nationally and internationally pressuring the Government of Sri Lanka to implement the recommendations given in the Report by the Commission of inquiry on Lessons Learnt and Reconciliation (LLRC) is essential to stop the abduction, torture, and extrajudicial killings that have become part of daily life in the island nation. The government has denied human rights to the people and identified opposition to this policy as a threat to national security and part of an international conspiracy against the country. Meanwhile, the government claims that their action plan for the protection and promotion human rights is the result of a government and people deciding to take concrete action to bring about positive change. "In developing the Action Plan, the Government assessed the measures in place to protect and promote human rights, identified areas that need improvement and have committed ourselves to improving the protection and promotion of human rights."<sup>10</sup> However the LLRC report highlights some important aspects of social developments in the country. Acknowledging the losses and suffering of the past and providing mechanisms for recompense, social justice and for restoration of normalcy and expressions of empathy and solidarity, are steps aimed at redress. Relationship building following violent conflict, addressing issues of lack of trust, prejudice, and intolerance whilst accepting commonalities and differences, is the essence of reconciliation.<sup>11</sup> The culture of suspicion, fear, mistrust and violence needs to be removed and opportunities and space opened up in which people can hear each other and be heard.<sup>12</sup>

While we welcomed the draft resolution by the US on Sri Lanka, which urges the implementation of recommendations given by the LLRC, the AHRC believes that there will be little hope for the reconciliation of disordered social institutions unless the Government takes action to change the present constitution to limit the powers of the executive and respect basic law in order to restore social order. The people of Sri Lanka expect that the government of Sri Lanka will be encouraged in the Universal Periodic Review to take gradual action, not only at the legislative level, but beyond that to implement basic principles of rule of law, where complaints will be systematically

investigated, and where crimes will be properly prosecuted, regardless of whether they were committed by state agencies or non-state actors.

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\*Stanley JassponKunitz( 1905-2005) was an American poet

\*\* Mrs. Premasila Sinhalese widow. Her husband was killed in cool blood by the Sri Lanka Army, while interrogating in detention camp in 1988.

1.Address by the President MahindaRajapaksa at the ceremonial opening of Parliament, Sri Jayawardhanapura - Kotte, May 19, 2009.

([http://www.president.gov.lk/speech\\_New.php?Id=74](http://www.president.gov.lk/speech_New.php?Id=74) )

2. The Phantom Limb: Failing Judicial Systems, Torture and Human Rights Work in Sri Lanka , Chapter 01- What is and What is Not of Human Rights in Sri Lanka , Asian Human Rights Commission

(<http://www.humanrights.asia/resources/books/the-phantom-limb> )

3. 1978 Constitution original promulgation by the National State Assembly on 7 September 1978, by Prime Minister J. R. Jayewardene then he became first executive president of Sri Lanka. It is Sri Lanka's second republican constitution and its third constitution since the country's independence (as Ceylon) in 1948; perhaps it has been formally amended 18 times up to 2010 September.

4. The United Front ( UF) was a political alliance in Sri Lanka, formed by the Sri Lanka Freedom Party (SLFP), the Lanka Sama Samaja Party (LSSP) and the Communist Party of Sri Lanka (CPSL) in 1968. It came to power in the 1970 general election, but broke up in September 1975.

5. SRI LANKA: Abduction of a torture victim seeking judicial remedies from the Supreme Court

(<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-023-2012> )

6. Sri Lanka's sinister white van abductions

(<http://www.bbc.co.uk/news/world-asia-17356575> )

7. Interview with Mr. RavinduUdayaShantha, Mayor, KolonnawaUC

(<http://www.youtube.com/watch?v=hxBQH875bVc&feature=youtu.be>)

8. Sri Lanka: It is not enough to 'cry for the country'

(<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-155-2011/?searchterm=Bharatha%20Lakshman%20Premachandra>)

9. Sri Lanka: The abduction and the brutal murder of Mohamed Sali Mohamed

Niyas -- the family writes to the human rights organisations

(<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-202-2011> )

10. Sri Lanka: The National Action plan for protection and promotion of human rights (2011 -2016)

11. The Report by the Commission of inquiry on lessons learnt and reconciliation (LLRC), Chapter 09-173

12. *ibid* (Chapter 09-174)

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### **Alternative report on Sri Lanka to the UN Committee Against Torture**

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This report seeks to identify the systemic problems in legislation and practice in Sri Lanka in response to the critical points highlighted and the questions posed by the Committee Against Torture in the List of Issues and Conclusions and Recommendations on Sri Lanka's second (previous) periodic report (UN Doc. CAT/C/LKA/CO/2, generally distributed by the secretariat on 15 December 2005).

Inadequate legislative, administrative, judicial or other measures taken to prevent acts of torture in territory under Sri Lanka's jurisdiction (article 2)

#### **Custodial safeguards**

##### **1. 2007 Presidential Directions and detention practice**

In its report Sri Lanka referred to the July 2007 Presidential Directions that purportedly detail steps that should be taken to guarantee rights of persons in police custody. The Committee identified a number of questions in this respect, in particular, whether various custodial safeguards (right to be informed of the reason for arrest, the access to a lawyer of their choice, the right to be assisted by an interpreter, right to access a



doctor and to receive an independent medical examination, right to habeas corpus) are effectively guaranteed in practice.

The Presidential Directions are not legally binding and cannot replace the formal legislative pronouncements. Parliament is vested with the exclusive power to make laws in Sri Lanka. The Presidential Directions are therefore of no relevance to the judiciary, which is supposed to act pursuant to the laws only and with no regard to any directions from any person except a superior court or tribunal or other person entitled under law to direct or supervise a judge or judicial officer. As there is no provision in law entitling the President to issue directions of the nature in question, their legal basis and effect are unclear. In any event, the practical effect of the Presidential Directions is negligible. Reports testify to widespread and systematic non-compliance with the most fundamental legal safeguards meant to protect detainees.

In response to the question raised by the Committee concerning the observance of the safeguards aimed at the prevention of torture in custody, it should be observed that the individuals who are deprived of their liberty by police are arbitrarily denied information regarding the reasons for their arrest, access to a lawyer, and the possibility to inform a family member of their arrest. This widespread and systematic practice is illustrated, among many other reported examples, by the facts of the case of Mohammed Amir Sultan who was illegally arrested and subjected to torture by the police officers attached to the Katupotha Police Station in October 2010.

## 2. Effective access to a lawyer of one's choice

In response to the question raised by the Committee concerning treatment of lawyers who represent individuals alleging human rights abuses, it should be noted that there have been a number of incidents in which arrested or detained persons were denied effective access to lawyers of their choice, especially at the most crucial initial stages of their arrest and first interrogations by the police. Intimidation of lawyers themselves who appear for clients in cases where police officers are involved is also evident. There are reported incidents of the assaults on lawyers who have visited police stations together with their clients; for example, it was reported that Mr D.W.C. Mohotti, attorney-at-law, while accompanying his client, was assaulted by police officers at the Bambalapitiya Police Station on 24 October 2008, and had his identity card taken away from him. This incident illustrates a widespread lack of respect of lawyers and their role in the criminal justice process and a failure to ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment and improper interference. Conversely, reports point to a widespread practice of cultivating lawyers

who are inclined to take the side of police. Those incidents indirectly lead to the effective denial of a right to qualified legal assistance of those in police custody.

### 3. Effective access to independent medical examination

In response to the Committee's question on the medical examination of those in custody, it should be observed that the judicial medical officers responsible for medical examinations are formally independent of police and report to the health care authorities. However, in practice they frequently find themselves subject to considerable police influence. This concerns, in particular, the police practices of refusing to leave a room or a place when judicial medical officers examine individuals who may have suffered from torture and ill-treatment, and write their reports. For example, a judicial medical officer was forced to examine Mr A.A. Priyantha Kumara, who was violently assaulted by police in Dodangoda on 12 February 2007, in a hospital in the presence of a police officer from the same police post to which the alleged perpetrators belonged.

It is also common practice for judicial medical officers not to fill in the sections provided for their comments in the medico-legal reports. This section is intended to provide the judicial medical officer with the opportunity to give his or her expert opinion on the degree to which medical findings on the alleged victim correlate with his or her allegation of torture or ill-treatment. The judicial medical officers rarely do so in practice, although, it is their responsibility to state conclusively whether the injuries are consistent or inconsistent with the allegations of torture or ill-treatment. There are also reported cases of judicial medical officers' complicity in covering up evidence of torture.

Judicial medical officers are reportedly reluctant to send police guards away, out of fear of a detainee escaping because there is an acute shortage of safe rooms available for medical examinations. Moreover, when a judicial medical officer reports on injuries, a copy of his or her report is mandatorily sent to the police. As most torture allegations are linked to police conduct, it effectively gives an early warning to the culprits, allowing them to tamper with evidence and intimidate victims and witnesses, where applicable. It is advisable to change this practice so that the copy of the report of the judicial medical officer is sent to the magistrate in charge of the inquiry rather than to the police. While the introduction of judicial medical officers is a welcome step, more needs to be done in order to ensure their operational independence.

### 4. Effective access to interpretation and translation

In response to the point raised by the Committee concerning alleged shortages of Tamil-speaking court-appointed interpreters, it is to be observed that there are shortcomings in access to Tamil-Sinhala judicial translators and interpreters at all stages of the criminal proceedings, from recording a complaint by the police to the prosecution in court. Apart from a separate violation of the defendants' fair trial rights, this situation contributes significantly to the vulnerability of the Tamil detainees.

There is a significant shortage of competent Tamil-speaking judicial translators and interpreters; for example, there are no Tamil-Sinhala judicial interpreters attached to the High Courts of Jaffna, Kegall and Kurunegala, and no Tamil-Sinhala interpreters and translators attached to the police stations.

There are few Tamil-speaking police officers, prosecutors and judges, which adds to the overall situation of heightened vulnerability of Tamil detainees.

The role of institutions in the prevention of torture

#### 1. Role and status of the National Human Rights Commission

The Committee invited information on the role of various bodies including the National Human Rights Commission. Although the National Human Rights Commission has statutory powers to monitor the welfare and respect for the rights of detainees, its powers of inspection are weak and its alarming unwillingness to do so is a cause of great disappointment and enormous concern. For example, the National Human Rights Commission now routinely fails to provide the victim or his or her counsel with information concerning the nature of steps taken by the Commission in response to the respective complaint. Further, the National Human Rights Commission does not proceed if the victim has filed a fundamental rights' petition with the Supreme Court (the action he is obliged to take pursuant to the Supreme Court Rules within thirty days of the alleged violation). One of the leading Sri Lankan legal commentators recently wrote of "[t]he severe decrease of constitutional and statutory legitimacy" of the National Human Rights Commission witnessed now.

The Committee invited information on the National Human Rights Commission's compliance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights. The National Human Rights Commission's failure to comply with the Paris Principles was confirmed by the ICC Subcommittee on Accreditation which downgraded the Sri Lankan National Human Rights Commission from a status "A" to a status "B" national human rights institution. In its report the Subcommittee expressed concern about the independence of the

Commissioners and questioned whether the actual practice of the National Human Rights Commission remained balanced, objective and non-political particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006. The Subcommittee also noted that the National Human Rights Commission had failed to issue annual reports on human rights as required by the Paris Principles. The independence of the National Human Rights Commission suffered further setback in 2010 with the adoption of the 18th amendment to the 1978 Constitution of Sri Lanka. It should be noted, as a general remark, that the national human rights institutions are complementary mechanisms which are not substitute for the general criminal justice system.

## 2. Role and status of the judiciary

The Committee invited information on the measures in place to fully ensure the independence of the Sri Lankan judiciary in conformity with the Basic Principles on the Independence of the Judiciary, in particular, in so far as the procedure for the appointment of judges, the duration of their mandate, the rules governing their removability and the ways in which they may be dismissed from office are concerned. The lack of active judicial control over the lawfulness of detention and detainees' well-being including their exposure to torture is partly explained by the lack of judges' institutional independence from other branches of the Sri Lankan Government. In this regard, it has been recognised by the Supreme Court of Sri Lanka that

“the process of impeachment of superior court Judges can be held like a sword of [D]emocles over incumbent Judges who would be placed in peril of an inquiry to be held within Parliament by a Panel consisting of Members of Parliament” [In the matter of a Reference under Article 129(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka (No. 01/08), Judgment of 17 March 2008 delivered by Chief Justice Silva and joined by Justices Amaratunga, Marsoof, Somawansa and Balapatabendi].

With adoption of the 18th amendment to the Constitution, the appointment of the Chief Justice and judges of the Supreme Court and the Court of Appeals no longer need to be approved by the Constitutional Council.

Magistrates rarely visit remand prisons, although they are duty bound to do so. Each magistrate regularly submits statistical data about his or her activities, including the number of cases disposed of and hearings conducted. The relevant forms do not require magistrates to report on how many visits to the remand prisons within the respective judicial circuit he or she has conducted. As a result of this lack of

transparency and control, independent judicial oversight of places of detention has become ineffective if not inoperative altogether.

The remedy of habeas corpus is equally ineffective. A recently conducted comprehensive study of 880 judgments of various courts in Sri Lanka on habeas corpus applications demonstrates that almost all of them have now been rejected.

Another systemic problem capable of facilitating ill-treatment in the custodial context is excessive use of bail and keeping of suspects in pre-trial detention for prolonged periods of time, often under falsified charges.

#### Situation of individuals detained under the Emergency Regulations

The Committee requested information on the State party's compliance with its obligations under article 2 of the Convention with specific emphasis on the information about the fate of persons detained under the Emergency Regulations and the Prevention of Terrorism Act. The above-mentioned fundamental safeguards are absent in respect of the persons arrested under the Emergency Regulations and the Prevention of Terrorism Act. Although the Emergency Regulations were allowed to lapse on 31 August 2011, there is no intention of the Government to repeal the Prevention of Terrorism Act. Instead, the Attorney General recently announced the Government's plans to introduce new regulations under the Prevention of Terrorism Act. The situation of total arbitrariness in which those detainees find themselves is exacerbated by the fact that they are being held in undisclosed and remote locations in the Northern Province. In particular, such makeshift detention centres are frequently disguised as orphanages, children's centres, welfare centres or medical institutions. In this situation there is no realistic opportunity for independent monitoring of those places of detention, for example, by magistrates even if they were prepared, in the circumstances, to exercise their right to do so, as they will not be able to locate the relevant de facto detention centre.

One of the recent examples of mass detention under the Emergency Regulations took place in the village of Navanthurai, Jaffna District, Northern Province, on 23 August 2011. In a late-night operation conducted by the Sri Lankan Army more than one hundred villagers were arrested and subsequently detained. They were severely beaten up with rifle butts and iron rods and dragged to the premises of the army detachment not far from their village. Women and children who tried to defend their husbands and fathers were also beaten. Those injured were initially not provided with medical treatment. The Assistant Superintendent of Police for the Jaffna District who appeared in person in the subsequent proceedings before the Magistrate accused the villagers of

“unlawful gathering”, thus suggesting that the latter had been detained by the Army on the basis of the provisions of the Emergency Regulations.

#### Prevention of violence against women including sexual violence

The Committee specifically requested information on the prevention of violence against women including domestic and sexual violence. The number of the reported cases of violence against women, including sexual violence, continues to grow while the response on the part of police and other State authorities to date remains unsatisfactory. The Asian Human Rights Commission (AHRC) received information on the rape of a 9-year old daughter of Mr Mohammad Mulafar and Ms Siththi Farina in October 2010. The results of the examination of the victim by a judicial medical officer, as well as her testimony, initially prompted the police to act. However, because the suspect was an influential and wealthy businessman, the officers of the Peradeniya Police Station failed to take him in custody but instead pleaded with the victim's parents suggesting out-of-court settlement. When the rape charges were finally brought against the man in question, the brother-in-law of the suspect threatened to kill the parents of the girl, and the police failed to act in order to protect them. It is highly probable that the case will end in a withdrawal of charges against the wealthy and influential accused and the discontinuation of the pertinent proceedings.

In addition to a failure to adequately investigate and prosecute cases of sexual violence, police personnel are reportedly frequently themselves involved in the crimes in question. This is illustrated by the case of Ms Padmini Sriyalatha. On 7 October 2006, the victim was attacked in a public toilet by a drunken police constable attached to the Ratnapura Police Station, whom she was able to identify. The police constable attempted to sexually assault her and inflicted several bodily injuries. When confronted by the victim's husband, the police constable threatened him with reprisals. In spite of numerous complaints, the identification of the assailant by her victim, and medically confirmed injuries, no criminal or disciplinary action has yet been taken against the alleged perpetrator.

#### Absence of the legal concept of command responsibility

In response to the question raised by the Committee, it should be noted that the concept of command responsibility is not incorporated into Sri Lankan law, including the Penal Code and the Convention Against Torture Act, No. 22 of 1994.

#### Lack of sensitisation and human rights education among public officials (article 10)

The Committee requested information on the human rights training provided for law-enforcement and other public officials. The co-signatories are not aware of any verifiable information concerning the implementation of the so-called National Action Plan for the Promotion and Protection of Human Rights in Sri Lanka. It is evident, however, that the Government of Sri Lanka fails to promote human rights education and awareness. One of the leading domestic legal commentators, Kishali Pinto-Jayawardena, noted that “the lack of skilled and trained regular police personnel remains a fundamental problem” (*The Rule of Law in Decline*, Copenhagen, 2009, p. 175).

Moreover, the Government attempts to discredit the very idea of human rights. The authorities frequently refer to human rights as a “western concept” that is detrimental to national integrity and sovereignty. In an interview given recently to a French journalist, Mr Mahinda Rajapakse, President of Sri Lanka, was reported as referring to the “so-called activists and defenders of human rights” as “getting benefits thanks to that” (*Sunday Leader*, 13 March 2011).

The Government characterised the report of the UN Panel of Experts on the Accountability in Sri Lanka, referred to on several occasions throughout the List of Issues, as “illegal”, “biased”, “baseless” and “unilateral”.

The totality of the Government's comments on human rights and the individuals and bodies seeking to promote and protect human rights results in the cultivation of a negative perception of human rights and reinforce a climate of impunity.

Such an attitude openly expressed at the highest levels of administration seemingly contributes to an indifferent attitude towards human rights education, especially among law-enforcement personnel, in violation of article 10 of the Convention.

Failure to promptly and impartially examine and investigate credible torture complaints and ensure protection of victims and witnesses (articles 12 and 13)

One of the most crucial issues severely undermining Sri Lanka's compliance with its obligations under the Convention is its systemic failure to promptly and impartially examine credible allegations of torture and other forms of cruel, inhuman or degrading treatment or punishment. It concerns, in particular, the failure to conduct Convention-compliant criminal investigations into such allegations in respect of torture and ill-treatment, particularly enforced disappearances, committed during the final phase of the internal armed conflict in 2009 and in respect of torture and ill-treatment committed outside of that context, that it so-called “routine police torture”.

## Torture as a criminal offence and its interpretation by Sri Lanka's judiciary

The statutory minimal sentence of seven years' imprisonment for torture is no longer applicable following a judgment handed down by the Supreme Court in 2008. The Supreme Court found in *In the matter of a Reference in terms of Article 125(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka* (No. 03/08, Judgment of 15 October 2008 delivered by Justice Ratnayake and joined by Chief Justice Silva and Justice Amaratunga) that the statutory minimal mandatory sentence was unconstitutional and that, therefore, "the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence". This dictum is now used in other cases, including cases where allegations linked with torture are levelled against the accused. This case-law development has led to the possibility of imposing minimal or even conditional custodial sentences for the torture-related offences. This is not in line with the Committee's understanding that by defining the offence of torture under article 1 of the Convention as distinct from common assault or other crimes States Parties should also ensure "appropriate punishment that takes into account the gravity of the offence". It seems, on the basis of available information, that the courts in Sri Lanka more frequently give suspended sentences for crimes, including such crimes as murder and rape. It seems that this policy is motivated by the desire to get the accused to agree to a guilty plea and not to contest charges and therefore to avoid trials, as the criminal justice system is generally overburdened. To take one example, one magistrate has recently disposed of 206 cases in a single day.

## Investigation of allegations of torture and ill-treatment

### 1. Independence

The lack of independence and impartiality of investigations into allegations of torture and ill-treatment, particularly by the police, is a central factor that perpetuates the climate of impunity. The practice of investigations conducted by the special investigation units, which allowed for some degree of impartiality, has in practice been largely discontinued. The Police Complaints Commission delegated its statutory authority to hold inquiries into allegations of police misconduct back to the police. It follows that the allegations of torture committed by police are investigated by the police themselves, often by the very police officers implicated or their colleagues. It goes without saying that such investigations are defective from the very outset. For example, it was the officers of the Moragahahena Police Station who were dispatched to inquire into the allegations of ill-treatment of Mr T. Sunil Hemachandra, including



taking testimonies of the victim, his co-detainee and his relatives, although the alleged ill-treatment had taken place at the premises of the same police station and in the police vehicle driven by the officers of the same police station.

As the bulk of torture allegations are linked with routine police activities, it is indispensable to follow-up on the Committee's recommendation on the creation of an independent body with a view to ensuring prompt, impartial and exhaustive investigations into all allegations of torture, ill-treatment and enforced disappearances committed by law-enforcement officials. So far, no steps have been taken by the authorities to establish such a body.

The courts fail to exercise independent judicial control by ordering investigations into credible allegations of torture. By way of an illustration, the Supreme Court of Sri Lanka, when seized of the fundamental rights' petition lodged by the relatives of Mr T. Sunil Hemachandra, did not order an independent investigation into the circumstances of the facts complained of, but instead entirely relied on the account provided by police rejecting the petitioners' version of events as not "supported by contemporaneous evidence" [Guneththige Misilin Nona and Jayalatha v. Muthubanda, Maheepala, Wijemanna, Inspector General of Police and the Attorney General (No. 429/2003), Judgment of 6 August 2010 delivered by Justice Shiranee Tilakawardane and joined by Justices Sripavan and Imam]. This approach, which can only be described as abdication by the judiciary of its constitutional responsibilities, is entirely at odds with the applicable international standards which do not permit the transfer of the burden of proof in its entirety onto the torture survivor and his or her next-of-kin, but require that the necessary steps be taken by the authorities which were given notice of the credible torture allegations, including the judicial authorities. As it has recently been emphasised by the Human Rights Committee, it is up to the State to demonstrate that its authorities did address the torture allegations advanced by the torture survivors and/or their next-of-kin expeditiously and adequately, including in the context of the relevant judicial proceedings.

The role of the Attorney General has also fundamentally changed. Having previously been an independent legal officer, the Attorney General now defends the Government and State agents, even those who are accused of torture, in particular, in fundamental rights' proceedings before the Supreme Court. Defending them in the fundamental rights' proceedings, the Attorney General is then responsible for prosecuting them in criminal proceedings. This creates an obvious conflict of interests. When, against all odds, a criminal case with torture charges makes its way to court, the Attorney General can withdraw it at his own discretion. Although under domestic law the Attorney

General's decision to withdraw a case in such circumstances is not binding upon the court and is ultimately within the judge's discretion, in practice the judicial proceedings are almost invariably discontinued following such a withdrawal. The change in the Attorney General's role appears to those observing the situation to be associated with the wish of the Government of Sri Lanka to have as few indictments in respect of such crimes as torture as possible as the number of such indictments is used as an indicator of overall human rights situation. The Attorney General is therefore expected to play a role in giving "a good image" to the nation.

In those isolated cases where judges embark on an independent examination of torture allegations brought before them, they are almost immediately rebuked by the higher courts. The Court of Appeal, presided over by the President of that Court, recently held that the decision of a magistrate to proceed with a non-summary inquiry into ill-treatment allegedly committed by police officers leading to the victim's death was taken in contravention of the Criminal Procedure Code and halted the inquiry. The Court of Appeal also ordered the unconditional release of the police officers allegedly involved, whose arrest had been ordered by the magistrate. This decision proves the trend of the further weakening of the role of the judiciary which is de facto deprived of its independent role in verification and investigation of credible allegations of torture, cruel, inhuman and degrading treatment or punishment. Taking into account the above-mentioned loss of legitimacy and ineffectiveness displayed by the National Human Rights Commission, the police have effectively become the only governmental agency in charge of investigating torture allegations. However, it is most frequently the police officers who are reportedly involved in torturing the detainees. The alleged perpetrators are not reassigned or suspended from service pending investigation. These factors, in combination, have resulted in a cycle of impunity evidenced by a negligible number of successful investigations and prosecutions. In fact, not more than a half-dozen of such prosecutions took place under the CAT Act since its entry into force. Basil Fernando, of the AHRC, notes the following:

These days, anything and everything is possible within that system, however illegal. Whether police officers engage in drug dealing and protecting the drug dealers; whether they use their powers of arrest and detention to obtain bribes for themselves; whether they help politicians by putting their opponents behind bars under false charges, using anti-terrorism laws and anti-drug laws; or engage in any other type of illegality, there is hardly anything the system can do to stop it. Cosmetic measures such as arresting a few low-ranking officers do not make any difference. (Sri Lanka: Impunity, Criminal Justice and Human Rights, Hong Kong, 2010, pp. 51-52.)

One of the measures which is critically required to address this systemic problem is the full implementation of the earlier recommendation of the Committee to set up an independent agency charged with investigating credible allegations of torture and ill-treatment committed by the members of the law-enforcement personnel in Sri Lanka, primarily by police officers. So far, no steps have been taken by the authorities in order to have such agency established.

In order to implement this Committee's recommendation, one possible institutional solution towards ensuring the independence of investigations is to enhance the role of magistrates in supervising police investigations. The Supreme Court of India opined the following in 2007:

In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he [or she] can issue a direction to the police to do the investigation properly, and can monitor the same... The power in the Magistrate to order further investigation... is an independent power, and does not affect the power of the investigating officer to further investigate the case... Hence the Magistrate can order re-opening of the investigation even after the police submits the final report. (*Sakiri Vasu v. State of Uttar Pradesh and Others*, Supreme Court of India, Case No. 1685/2007, Judgment of 7 December 2007, at paras. 15-16.)

This pronouncement led to a new practice in some Indian States, including Kerala, in recent years. According to this new practice which was affirmed by the High Court of Kerala, the investigation into the most sensitive cases is conducted under close supervision of the judicial magistrate akin to an “inquisitorial judge” or “juge d’instruction” in some Romano-German legal systems, such as France. Such judicial control – if it is exercised thoroughly and independently – is capable of ensuring an effective investigation in compliance with the strict standards set by the Convention.

## 2. Promptness

A further systemic factor of long-standing concern is the exorbitant delays in the investigation and judicial proceedings concerning torture and other forms of ill-treatment. This critical issue is well illustrated by the case of Mr Lalith Rajapakse. In that case, the Human Rights Committee identified the following instances of impermissible delays: the Attorney General did not initiate a criminal investigation into credible allegation of ill-treatment until more than three months after the incident, indictments were served only four years after the alleged incident, and the courts took an extremely prolonged period of time to examine the case. The Human Rights

Committee emphasised that the expeditiousness and effectiveness required of the domestic remedies are particularly important in the adjudication of cases involving torture and that the prolonged remedies are ineffective. The general situation with the delays has not changed since the time of the facts of the Lalith Rajapakse's case and, as it has been highlighted in the special report produced by REDRESS, lengthy delays continue to frustrate any legal remedies for torture victims.

#### Protection of victims and witnesses

The failure to protect witnesses from threats and intimidation constitutes a crucial impediment to effective investigation into instances of torture and ill-treatment in light of a practice of threats and harassments, including killing, of victims and witnesses. The Committee requested the updated information on the status of the draft bill on Witness and Victims of Crime Protection which was presented to the Sri Lankan Parliament back in 2008. This draft bill has not been adopted by the Sri Lankan Parliament and is still pending before the Parliament. There is no verifiable information at the time of writing of this submission as to the tangible prospective of this bill to be adopted and become law. Absence of legislation on protection of victims and witnesses significantly facilitates impunity.

#### Information on specific cases referred to by the Committee

The Committee requested comments on the status of efforts to prosecute the perpetrators of the 2002 murder of Mr Gerald Perera. Six police officers who were charged with torturing Mr Gerald Perera were acquitted by the High Court. The appeal against that acquittal is currently pending before the Court of Appeal. The case relating to the murder of Mr Gerald Perera is still pending before the High Court of Negombo. This case of torture and subsequent murder of an innocent man, allegedly by a group of police officers, in broad daylight clearly demonstrates the incapacity of the Sri Lankan criminal justice system to respond effectively and in compliance with the Convention to the grave human rights violations alleged to have been committed by its own law-enforcement personnel. The story of Mr Gerald Perera was told in a movie specially screened by the AHRC to commemorate the sixth anniversary of his assassination.

The Committee requested information on investigations and disciplinary/criminal proceedings concerning a range of individual cases of assassinations, abductions, enforced disappearances and severe beatings. In response to this request, the following information is produced.

The killing of journalist Lasantha Wickremetunga has been referred to as an example of what is “now a common occurrence” in Sri Lanka by Ms Margaret Sekaggya, UN Special Rapporteur on the Situation of Human Rights Defenders, in her remarks made in Geneva in February 2009. There is no evidence of any meaningful investigation, disciplinary or criminal proceedings in this case.

Likewise, there has not been an impartial and effective inquiry into the circumstances of the abduction and brutal beating of Poddala Jayantha, secretary-general of the Sri Lanka Journalist Association, in June 2009. In view of the remarks made by President Rajapakse when he was informed by one of his ministers about Poddala Jayantha's misfortunes, and the vilification campaign conducted against him by a state-controlled television channel, there are justified concerns that this prominent media specialist has been singled out by the authorities as another victim of the state-sponsored attacks on the media.

No effective measures were taken to establish the whereabouts of Mr Sinnavan Stephen Sunthararaj, a human rights defender who was based in Jaffna. He was abducted in May 2009. The AHRC subsequently received information that his life was in immediate danger. No information about his fate is available.

The case involving the death of two young men, Dinesh Tharanga Fernando and Danushka Udaya, in police custody in Angulana is pending before the High Court in Colombo.

The murder of Siyaguna Kosgodage Anton Sugath Nishantha Fernando, a human rights defender and himself torture survivor, in September 2008 stands out. Following his death, Sugath's wife and children were pursuing a fundamental rights' petition before the Supreme Court of Sri Lanka and requested that their family be afforded protection against police. Sugath was assassinated, and his murder has not been investigated. His family had to flee abroad because of fear for their own safety. ALRC and REDRESS assisted Sugath's widow and children in taking their case to the Human Rights Committee. It was registered in February 2009 and is now pending before the Human Rights Committee. The Human Rights Committee also requested the Sri Lankan authorities, under rule 92 of its rules of procedure, to take measures “to ensure protection” of Ms Peiris, Sugath's widow, and their children. No steps have been taken, however, by the Sri Lankan authorities to comply with that explicit interim measures' request of the Human Rights Committee. Following their return to Sri Lanka, Ms Peiris received a number of threats. In particular, her car was chased and she received a number of anonymous phone calls with death threats to herself and her children. In

September 2009, the counsel for the family wrote to the Human Rights Committee drawing their attention to Sri Lanka's failure to comply with the order made under rule 92 of the rules of procedure of the Human Rights Committee and inviting the Human Rights Committee to draw the attention of the Sri Lankan Government to the interim measures ordered under rule 92 and request them to take appropriate actions to ensure the necessary protection of Ms Peiris and her children. No measures were taken by the Sri Lankan authorities to that effect. This case illustrates the persistent refusal of the Government of Sri Lanka to meaningfully co-operate with the international human rights treaty bodies.

Failure to provide redress to torture survivors including compensation and as full rehabilitation as possible (article 14)

The Committee requested information concerning the efforts of Sri Lanka to make physical, psychological, and social, rehabilitation services available to all victims of torture.

Sri Lanka does not have a specific policy on the provision of redress to torture survivors. A right to compensation is only available to victims in the context of the fundamental rights' petition before the Supreme Court but not in the context of the criminal proceedings into credible allegations of torture, cruel, inhuman and degrading treatment or punishment.

The amount of compensation granted has been inconsistent and is often very small. In some cases even the compensation ordered by courts is not paid in full.

Though the Sri Lankan National Human Rights Commission may recommend awards of compensation to torture survivors, such recommendations lack binding force and are not enforced.

As at the time of the Committee's last consideration of Sri Lanka's report, there are still no rehabilitation services provided by the State that are available throughout Sri Lanka to all torture survivors, such as physical, psychological, and social rehabilitation services. The psychological scars of the torture survivors are not properly healed.

Some rehabilitation services which are available to torture survivors and members of their families in Sri Lanka are provided by civil society actors such as locally active non-governmental organisations. Human Rights Office in Kandy, for example, regularly organises series of workshops and training activities for torture survivors, their next-of-kin and the wider communities affected.

## The conflict in the North-East and the findings of the UN Panel of Experts

The current submission takes note of the prominence given to the Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka published in April 2011 by the Committee in its List of Issues, particularly in the context of articles 2, 11, 12 and 13. Notably, the Committee is the first treaty body that has the opportunity to consider Sri Lanka's treaty obligations in light of the Panel's findings.

The Panel found credible allegations, based on a large number of submissions and its own inquiries, of “potential serious violations committed by the Government of Sri Lanka” (this submission does not consider allegations of violations committed by the Liberation Tigers of Tamil Eelam (LTTE) as they do not directly fall within the purview of this Committee). The Panel of Experts' Report provides evidence that suggest violations both of Sri Lanka's negative obligation to refrain from committing torture and ill-treatment and its positive obligation to prevent and respond to such violations. Implementation of these positive duties flowing in particular from articles 2, 12, 13, 14 and 16 are still outstanding, namely (i) holding those responsible to account; (ii) providing reparation to victims; and (iii) putting in place effective guarantees of non-repetition, which requires undertaking the necessary legislative and institutional reforms.

Sri Lanka's response, both domestically since the end of the conflict and internationally following the publication of the Panel's Report and broadcasting of related documentation, is characterised by a denial of any responsibility and a refusal to undertake a prompt, impartial and effective investigation into allegations of torture and ill-treatment, or other violations for that matter. Immediate political responses to the Report were disparaging with senior government officials calling the report ‘divisive,’ ‘biased,’ and ‘unbalanced’ as well as ‘illegal,’ ‘baseless’ and ‘unilateral’. The President called for protests and joined rallies over the 2011 May Day holiday. In July 2011, the Ministry of Defence released a detailed report entitled Humanitarian Operation: Factual Analysis-July 2006-May 2009 relating to the conduct of the conflict, which fails to acknowledge the UN Panel of Experts findings, and instead depicts the last phase of the war as a campaign that sought to minimise civilian casualties while restoring ‘normalcy’ in the North-East.

The Government continues to portray the LTTE as the only party responsible for violations and refers to the Lessons Learnt and Reconciliation Commission (LLRC) as the sole and sufficient response mechanism. However, as found by the Panel and others, such as Amnesty International, the LLRC has no mandate to conduct the

requisite investigations; nor can it provide adequate reparation to victims of violations. In fact, victims of torture have only received limited and inadequate reparation, if any, to date. The findings of the Panel therefore remain fully relevant in light of Sri Lanka's failure to comply with its obligations under international human rights law, including CAT.

The Panel made detailed recommendations. It is the primary responsibility of Sri Lanka to comply with its obligations under the CAT and other international treaties. However, should Sri Lanka continue to fail to take the requisite measures despite the availability of credible evidence of torture and ill-treatment, it is the responsibility of the United Nations and its organs, as well as the treaty bodies, to do their utmost to ensure accountability and justice for the victims of these violations. Indeed, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights already urged Sri Lanka to co-operate with the UN Panel of Experts and the Committee on the Elimination of Discrimination against Women urged Sri Lanka to 'consider having an independent international accountability mechanism'; it is now the next logical step to call for a full implementation of the Panel's recommendations. This could build on previous precedents where UN bodies have urged the Secretary-General to call for the establishment of an international accountability mechanism, namely the International Criminal Tribunal for the former Yugoslavia. Conversely, a failure to take action would compound the climate of impunity in Sri Lanka and would constitute a betrayal of the Convention against Torture, which was adopted 'to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world'.

#### Conclusions and recommendations

Torture, in particular by the police, remains endemic in Sri Lanka. In spite of the large number of credible allegations of torture and other forms of ill-treatment, there have been few prosecutions and even fewer convictions of the torturers. This lamentable situation reflects serious shortcomings in investigation methods and accountability mechanisms that result in an overall climate of impunity.

The Sri Lankan authorities must, among other measures to be taken, urgently address the following issues as crucial steps towards the fulfilment of their obligations under the Convention:

- ensuring effective access to a lawyer of one's choice, independent medical examination, next-of-kin and, where necessary, translators to all arrested and detained persons;



- ensuring effective independent oversight of places of detention;
- establishing an independent body to investigate all allegations of torture, cruel, inhuman and degrading treatment committed by representatives of the law enforcement agencies, including police officers;
- ensuring effective independence of judicial medical officers;
- adopting the requisite legislation and putting in place the institutional mechanisms for the effective protection of victims and witnesses;
- ensuring that amounts of compensation ordered are consistent and fully paid;
- ensuring that rehabilitation services are made available to torture survivors and members of their families.

In relation to the findings of the Panel of Experts' Report the Committee is requested to urge the Government of Sri Lanka to:

- acknowledge that there are credible allegations of torture, ill-treatment and other violations, to promptly commence genuine investigations into these allegations in compliance with articles 12 and 13 of the Convention, and to report back to the Committee within six months on what steps it has taken in this regard;
- specifically criminalize enforced disappearances;
- consent to the establishment of an independent international mechanism having the mandate proposed by the Panel of Experts, and to report back to the Committee within six months on what steps it has taken in this regard. The Committee should also urge the UN Secretary-General to proceed without further delay with the establishment of such an independent international mechanism;
- take effective measures aimed at ending the practice of torture and ill-treatment in custodial situations, including the repeal of the Prevention of Terrorism Act and putting in place effective custodial safeguards by means of legislative and institutional changes. The Government of Sri Lanka should provide for effective monitoring of all detention facilities through national bodies, such as an impartial and credible national human rights commission. In addition, it should disclose the location of camps and other detention facilities set up in the context of the conflict, and permit immediate access to any remaining facilities; it should also give an undertaking not to hinder access by monitoring bodies such as the ICRC to any detention facilities in future;

- undertake a thorough investigation into allegations of torture in custody, as well as torture and ill-treatment prior to executions and enforced disappearances, in line with its obligations under articles 12 and 13 of the Convention. This should include considering the recommendations by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child allegations of specific incidents of rape and sexual violence, as well as the killing of children, respectively. It should also comprise various forms of ill-treatment arising out of the conduct of warfare and the denial of humanitarian assistance. The Government of Sri Lanka should provide the families of victims with all of the relevant factual information that it holds about the violations, including the location of bodies where applicable, acknowledge its responsibility and provide reparation in conformity with its obligations under article 14 of the Convention;

- ensure that any 'transitional justice' measures taken following the conflict are in full conformity with Sri Lanka's obligations under the Convention and do not detract from the rights of victims. This comprises the right to an effective remedy and adequate reparation, including, in particular, acknowledgment and truth, in addition to restitution, compensation and rehabilitation;

- include consideration of discrimination as a reason for torture and ill-treatment as part of any investigation and review undertaken, and to put in place guarantees of non-repetition. This includes a wholesale review of measures taken by the Government of Sri Lanka in the North-East during and following the conflict that may have a discriminatory impact on Tamils and may have lowered the threshold for violations (known as 'dehumanisation').

- ratify or otherwise become a party to international treaties that enhance protection and accountability for serious human rights violations and international crimes, including in particular the Optional Protocol to the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court, as well as the Additional Protocols to the 1949 Geneva Conventions.

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Footnote: This article consists an edited and condensed version of a September 2011 joint report submitted to the UN Committee against Torture to coincide with its examination of the combined third and fourth periodic reports of Sri Lanka under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. CAT/C/LKA/Q/3-4 (generally distributed by the secretariat

on 24 June 2011). The report was jointly submitted to the committee by Redress Trust (REDRESS), the Asian Legal Resource Centre (ALRC), the Rehabilitation and Research Centre for Torture Victims (RCT) and Action by Christians for the Abolition of Torture (ACAT France), all of which are non-governmental organisations which are active in the field of international human rights protection in Sri Lanka, based in London, Hong Kong, Copenhagen and Paris, respectively.

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Basil Fernando

Not only the content but also the style of the propaganda issued by the state media is aimed at dulling the minds and discouraging independent thought within the nation.

The result is that when immensely dangerous things happen to the community the people have learned to avoid any public discussion on these matters. Take for example, the instance the murder of the British tourist and the grievous bodily injury and sexual assault to this Russian partner. When the identification parade took place last Friday at the Tangalle Magistrate's Court, according to a newspaper report, the witnesses could not identify any of the suspects. These included the chairman of a Pradesheeya Sabha, Sampath Vidanapathirana, a well know personality who could easily be identified. The silence of the witnesses comes as no surprise to anyone who knows how things happen in Sri Lanka now.

Take also the murder of a young girl and her mother at Kahawatte in the most brutal manner.

In any society where there is still dynamic thought, both events would have shocked everyone and there would have been a media frenzy. Such a frenzy adds vigour to the nation's thinking process and the events of this type, if they happen at all generates a movement within a living society which tries to defeat the evil of silence.

However, in Sri Lanka there was no fuss raised either about the manner in which the investigation was conducted into the first case which became an international scandal. Similarly, there were no expressions of shame and disgust in any of the editorials of the journals in Sri Lanka. Nor were there any debates in the electronic media about what is happening to the witnesses that come before the courts.

This is important, not because the persons who suffered in this case are foreigners but also because similar things are happening in numerous cases in many of the courts. The two witnesses who were killed while pursuing complaints in torture cases; Gerard Perera and Sugath Nishanta Fernando are examples of the way in which witnesses are treated in Sri Lanka. The lesson is loud and clear! Coming to court to testify is a dangerous affair and the people simply do not want to take the risk of reporting what they have seen or heard.

It does not take a great deal of knowledge in criminal justice to understand that if witnesses do not want to testify then the courts cannot function. Criminal justice is an essential component in any civilised society. However, no criminal justice can exist if the witnesses are unwilling to come forward and give evidence.

However, the media are made to keep silent on matters that are vital to the nation. Many journalists who have tried to practice their profession as it should be practiced have paid for it with their lives. Many others have had to pay a heavy cost for doing so. Due to the cumulative effects of such violence, today many are not bold enough to report and talk about such matters in public. However, even if they were willing to do so, there would be hardly any place in the media to publish what they write or say.

Imposing silence on matters of public importance creates a brain dead nation. The death of the collective brain is quite visible even in the parliament itself where the most vital debates of the nation are supposed to take place. Today, no one expects that such debates would take place at all. A systematic attempt has been made to silence the spirit of debate in the parliament itself. Unfortunately, the very constitution has been manipulated in order to facilitate the quick passing of bills, even those relating to amendments to the constitution and the habit of debating constitutional affairs has become lost in Sri Lanka.

Why would any political regime want to create a brain dead nation? This should have been the issue that was discussed when the 64th anniversary of the independence of the country was celebrated. However, such celebrations have begun to lose their public

significance and ceased to be dates on which the vital affairs of the nation are discussed by all.

Under these circumstances, the attempts by the opposition to launch a campaign to end lawlessness and for reinstituting democracy are to be welcomed. If this campaign is carried out with the seriousness that it deserves it would undoubtedly gather support from those, who in the past, have been ardently supporting the government because the depth of frustration over the absence of public debate is a feeling that is commonly shared. In the past, the opposition itself contributed to the creation of the brain dead nation. It is hoped that at least, at this late stage the moves by the opposition will be carried out with genuine effort and that the nation will begin to discuss its public affairs with the vigor that is required if the nation is to regain its ability to think again.

(An article from the Asian Human Rights Commission, COURTESY- Scoop World-[www.scoop.co.nz](http://www.scoop.co.nz))

“Article 13(4), by the necessary implication, recognizes that a person has a right to life - at least in the sense of mere *existence*, as distinct from the *quality* of life - which he can be deprived of only under a court order. If, therefore, without his consent or against his will, a person is put to death, unlawfully and otherwise that under a court order, clearly his right under Article 13(4) has been infringed.”

Fernando, J in *Sriyani Silva v. Iddamaloda, Officer-in-Charge, Police Station Paiyagala and Others* (2003) 2 Sri L.R. 63



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