

## **SRI LANKA: International Human Rights Agencies failed to notice the Collapse of the Sri Lanka's Public Institutions of Justice**

The government of Sri Lanka (GOSL) considered human rights as an irrelevant issue and talks only about development. The concept of development does not include the guaranteeing of human rights. In fact, the violations of human rights are justified on the basis of the priorities that should be given to what is called development. What development seems to mean is the building of some roads and the construction of some highways and the like.

The adoption of the 18<sup>th</sup> Amendment to the Constitution has further strengthened the position of the executive president who already has absolute power under the 1978 Constitution. Some attempts were made to limit this power by way of the 17<sup>th</sup> Amendment and the 18<sup>th</sup> Amendment negated all those attempts.

The result is that the judiciary is incapable of protecting the rights of the individual as against the power of the state. When the state crushes the rights of the people no room is left for the judiciary to intervene and invalidate any illegal interference into the rights of the people. Basically, the liberties enshrined in the Magna Carta do not exist for the people of Sri Lanka now.

The GOSL in its propaganda treats human rights as an alien concept and as a means that western countries use to punish the Sri Lankan government. The anti human rights propaganda is intense.

The result of this propaganda is that the free media is looked upon as a hostile element and severe repression is used to curb the media. The repression of the human rights organisations and all civil society movements which refuse to go under the government's agenda is also intense. Resulting from the repression there is a fear psychosis which in turn reinforces self censorship and the withdrawal of people from active participation relating to matters that affect their lives.

Naturally the public dissatisfaction is widespread and deep. That in turn has led to the giving of enormous powers to the Ministry of Defence which is exercised through the Secretary to the Ministry who is the brother of the president. The Ministry of Defence has developed an extensive network of surveillance through the intelligence agencies. The making of lists of persons who are considered hostile to the government is maintained and distributed through the security apparatus.

Fear of a peoples' uprising and the ways to prevent that is the main strategy of the Ministry of Defence. For this purpose propaganda about a second coming of the LTTE

is cultivated in the country. On that basis all civil society organisations are supposed to provide detailed information about everything they do.

Despite of the intense violations of human rights in the country the international community has failed to grasp the real situation in Sri Lanka and has failed to develop an effective strategy to ensure protection for the human rights of the people.

The above mentioned issues will be discussed in detail below.

## 1. Challenge to Human Rights Community

The international community, including leading human rights agencies and organisations, has failed to understand the depth of collapse of rule of law in Sri Lanka and have failed to make any effective intervention in this regard.

International conventions for several decades now have centered around minority rights and more recently on alleged war crimes. However, violations of minority rights are only a part of the abysmal lawlessness that prevails in the country as a whole and this affects both the majority and the minority. These violations cannot be separated in any meaningful manner. Without addressing the general conditions that have lead to collapse of rule of law, none of the violations of the human rights, including harsh violations of rights of the Tamil minority, can be resolved. It is impossible to remove a part out of the total problem and treat it successfully.

The heart of the problem is the 1978 Constitution and the practices that have accumulated over the last 33 years under this Constitution. The problem of this Constitution essentially, is that it places the executive president above the law and outside the jurisdiction of courts. This means anything that the executive president wants to keep outside law, can be kept outside the law. This applies to all, including the minorities.

It is a sad reflection on the global human rights movement that despite many local human rights organisations and regional organisations like the Asian Human Rights Commission having stressed and emphasized this constitutional issue, not a single international agency or organization has taken up this issue in their interventions and their statements. The issue of constitutionally generated lawlessness has gone unnoticed.

As a result the other issues raised by the international organisations are incapable of achieving any positive result. When, the most central element leading to violations is ignored it is naturally not possible to find solutions to the other problems raised by these organisations. The ultimate beneficiary of all this are the violators of human rights and the political machine which creates the environment for the gross abuse of human rights.

Why did the international community fail Sri Lankan citizens so badly on the violations of their rights? This question may be answered by many persons in different ways. It is

perhaps better to raise one fundamental conceptual issue which may be at the bottom of this failure despite of many well intentioned people trying to contribute in many ways for the solving of human rights problems in Sri Lanka.

This conceptual issue is well articulated by an American lawyer who has been involved in litigation in many less developed countries and has been able to see the absence of the functioning public institutions of justice. In a speech made at Colombia University he identified the problem thus:

"Looking back at the story, one can see that two generations of global human rights work have been predicated, consciously or unconsciously, upon assumptions of a functioning public justice system in the developing world which, if incorrect, effectively undercut the usefulness of those efforts for their intended beneficiaries. Now, absent an effective enforcement mechanism, the great work of the first two generations of the international human rights movement can deliver to the poor only empty parchment promises."

Today the international movement for human rights finds it difficult to move away from the work of the first two generations, that is articulation of international norms and encouraging domestic legislation into the stage of ensuring functioning public institutions for justice.

Instead of undertaking the difficult task of the study and the understanding of situations which are different to the situation in developed democracies where functioning public institutions of justice have already been established through, perhaps the work of over two centuries. The developed country-based human rights organisations assume that similar functioning public institutions of justice as theirs own exist elsewhere.

Based on that assumption when they hear reports about violations of rights they put forward the demands to investigate, prosecute and pay compensation. These demands do not lead to any real response from the governments of less developed countries. Some countries, for various reasons, try to give an appearance of compliance which is often highly appreciated by the persons from more developed countries thinking that such gestures are meant well and that the violations will be addressed to some extent at least.

Increasingly, more of the governments of the less developed countries completely ignore the formula from the developed countries for investigation, prosecution and payment of compensation. The former Special Rapporteur for torture and ill treatment, Manfred Nowak, on the basis of a review of recommendations made to several countries as a Rapporteur concluded that none of his recommendations had been implemented. If similar reviews are made into the recommendations made by different agencies of the United Nations human rights agencies to the governments of less developed countries the result is most likely to be no different than that. When one of the special representatives for the UN Secretary General for Cambodia visited Cambodia for one of his visits the United Nations human rights centre made a list of recommendations the



representative had made to the government earlier. There were nearly 50 such recommendations. Against each recommendation there was a column under the heading 'actions taken'. In that column under each recommendation the comment recorded was: No action.

Similarly if one were to collect the recommendations made by the office of the UN High Commissioner for Human Rights, by various Rapporteurs such as that of the Rapporteur against extrajudicial killings, torture and ill treatment and discrimination against women, just to take a few, it would become clear that the formula, to investigate, prosecute and pay compensation has not resulted in any positive action. The same is true about the recommendations from the new Human Rights Council during the Universal Periodic Review and other occasions. A similar fate met the recommendations made by the UN panel appointed by the Secretary General to inquire into alleged violations which took place at the end of the conflict with the LTTE. In this instance the government openly rejected the report and the recommendations.

## 2. High-Lights of 2011- Selection from AHRC Statements

### *2.1 The need for a nation-wide public hearing on rape and bad policing*<sup>1</sup>

As the International Day for Women is celebrated today it is only fitting to give some thought the major areas of concern regarding women's rights in Sri Lanka. One of the most disheartening aspects of the treatment of women in Sri Lanka is the utter neglect about the cases of rape and harassment. The Asian Human Rights Commission has reported many cases in Sri Lanka which have revealed the carelessness with which the police in Sri Lanka deal with investigations into cases of rape.

The recent case of a mentally retarded young woman from Weligodella, Bombuwela who was raped and thereafter the Officer-in-Charge of the station tried to hush-up the case, obviously after receiving some gratification from the alleged suspect is simply scandalous; it also reveals the breakdown of the disciplinary process within the police where the hierarchy from the Inspector General of Police down to the Assistant Superintendents demonstrate no capacity to impose even the basic discipline among the lower ranks. Had the Assistant Superintendent of Police, just above the Officer-in-Charge looked into the failure of the OIC to carry out his duty in one of the most morally reprehensible and disgusting episodes in the territory under the ASP's control, the story about this rape case would have been different.

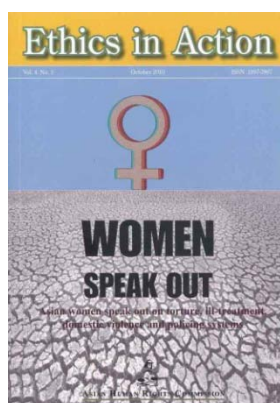
Today the Officers-in-Charge of the police stations do not feel any kind of fear of being supervised by the officers higher in rank. No such supervision takes place. In a large number of cases the Asian Human Rights Commission has reported on an almost daily

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<sup>1</sup> AHRC – STM – 038 – 2011; March 08, 2011

basis, it is quite clearly evident that the obligations of the ASPs' under the departmental orders to carry out inspections relating to the inquiries at the stations under their control, is no longer respected by either ASPs' or those above them.

If the police demonstrate this amount of culpability even in cases of rape which is one of the most reprehensible offences under any jurisdiction, there is little that women can expect by way of protection from the the Sri Lankan police. Therefore it is hardly surprising that over three dozen women interviewed by the Asian Human Rights Commission as to whether they would seek the assistance of the police in the event that they have some problem categorically stated that seeking such assistance would only lead to more trouble for them. A woman who complains about domestic violence finds that the harassment they face at the police station is even worse than they receive at home. (For more details see "Women Speak Out", Ethics in Action, Vol4 No 5)



In many jurisdictions today people talk about the increase of women police officers as a safeguard for the rights of women. However, in Sri Lanka in the cases that have come to public notice the policewomen quite eagerly participate in the ugly scenes that are created within the police stations by their male counterparts. In many instances of sexual abuse at the police stations when the prisoners are exposed to humiliating treatment there are instances in which the women police officers quite eagerly participated with their fellow officers.

All this points out that the morale in police stations has degenerated so much that the average citizen finds it difficult to approach them, when they are faced with serious difficulties. Women being the more vulnerable section of society would find this even more difficult and in many instances more humiliating.

Paying lip service to women's rights is quite easy and many politicians engage in making promises to improve their rights. However, the test of all protection is that which is available to all citizens. When the basic law enforcement agency fails to carry out its basic obligations to its citizens no such protection can be expected.

A nation that fails to take the issue of the rape of women with the utmost seriousness is one that is obviously facing a deep societal crisis. Even the guardians of morals such as the religious leaders remain silent in the face of the degrading treatment meted out to all citizens and particularly the more vulnerable sections of society such as women by the country's law enforcement agencies. The hypocrisy underlying the society is manifest more intensely in the relation to the failure of the state and society to take strong steps in order to ensure legal protection for the women-folk in the country.

The most pathetic events being reported such as case of rape which took place at Weligoda Bomboowela to the physically and mentally handicapped woman is a stark manifestation of a wider reality that is affecting the entire nation. Under these





circumstances it is the duty of the parliamentarians above all to speak out about the horrible conditions that prevail in our police stations. The country's parliamentarians have been failing in their duty in this regard. The failure of the parliament to protect the citizens in general affects the more vulnerable sections of society and particularly the women.

Before anything else, it is time for the people to demand parliament to take appropriate action to maintain discipline within the police stations so that the police will be able to become the law enforcement agency that it is meant to be. Until such a fundamental reform happens the possibility for protection to women will be confined only to loud words which only manifest the lack of will within the nation to protect its women.

A public hearing relating to police protection to women in general and regarding law enforcement relating to rape is urgently needed to address the problems mentioned above. Legislators must create this opportunity for the public and women in particular to air their grievances. Such a public hearing will provide the much needed opportunity to bring about the end bad policing in Sri Lanka.

## ***2.2. Mr. Roshan Chanaka Rathnasekara - Negombo and Seeduwa Police Station/s<sup>2</sup>***

According to the information that the Asian Human Rights Commission (AHRC) has received Mr. Roshan Chanaka Rathnasekara (22) of Gal-Oluwa, Minuwangoda in the district of Gampaha, succumbed to his injuries on 1 June 2011 as a result of gunshot wounds received when police officers attached to the Negombo and Seeduwa Police Stations opened fire on a group of protesters and others who were not involved in the demonstration.

After completing his school education Roshan joined a company inside the Free Trade Zone (FTZ) in Katunayake in January 2011. The Katunayake FTZ is situated in the Gampaha District on 190 hectares of land and there are about 84 factories on the land employing 50,000 workers.

On 30 May 2011, about 600 persons gathered within the FTZ protesting the "Employees' Pension Benefits Fund Bill". Hundreds of police officers, mainly from the Negombo and Seeduwa Police Stations, were present in the area and at around 12.03 pm, the officers attempted to disperse the crowd by using tear gas. This was done without any warning against peaceful protesters.

When the workers attempted to flee the police officers, armed with guns and iron poles charged the FTZ workers. Some officers threw stones and other unidentified objects at them. Some of the workers were critically injured and warded at various hospitals.

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<sup>2</sup> AHRC – UAC – 184; September 30, 2011



During the melee the police opened fire and witnesses have testified that there was no reason for the police to use live ammunition as the protesters were actually dispersing at the time of the shooting. It was also noted that the police used deadly force and did not fire warning rounds as was required of them.

After the police opened fire at the gathered workers they forcefully entered the FTZ and broke open several company gates. They then entered those companies and started to shoot the workers inside. Roshan was among those injured and it must be highlighted at this point that none of the workers who were inside the companies had taken part in the demonstration.

During the death inquest held before the Magistrate of Negombo in giving evidence the Negombo Assistant Superintendent of Police (ASP) Adikari Wijayananda Silva of Negombo, stated that Roshan's death was a result of the shooting by the police.

As a result of this collective and massive assault by hundreds of police officers more than 300 workers were severely injured. Out of those injured some were admitted to the Negombo Base Hospital and other more seriously injured workers were then transferred to the Ragama Teaching Hospital. Among the injured eight workers were found to be in critical condition and were admitted the Intensive Care Unit (ICU) of the hospital. Roshan was among them. The shooting was not the result of indiscriminate firing by any one officer. The Deputy Inspector General (DIG) of the range and the two Senior Superintendents of Police (SSP) along with several ASPs were present. The shooting and the subsequent killing of Roshan occurred under the close supervision of these senior officers.

After the shooting the injured workers were brought to the Kesselwatte Police Station. They, with Roshan amongst them, were kept in the police compound without being afforded medical assistance. The denial of medical assistance to an injured prisoner or suspect constitutes torture under the laws of the country.

Roshan underwent several surgeries in an attempt to save his life but by 7.30pm of 1 June 2011 he succumbed to his injuries. When announcing his death the doctors further detailed that the gunshots in the hip area had caused massive damage to the internal organs. The doctors further explained that Roshan died due to severe hemorrhaging.

Apart from the unjustified shooting the conduct of the police officers violated the legitimate right to the worker's freedom of expression, freedom of speech and freedom of peaceful assembly as well as their right to freedom from torture and arbitrary arrest.

It was only due to the heavy internal and external pressure from different parts of the word and peoples' forums that the Inspector General of Police (IGP) accepted responsibility for the incident and announced that he was withdrawing from his service. (He was later given the post of Ambassador to Brazil, hardly a punishment posting).

Several days later only two police officers, the Officer-in-Charge (OIC) of Seeduwa, Chief Inspector R M Rathnayaka and the OIC of the Environmental Unit of the same police station Inspector of Police (IP) RPKL Ranasinghe were arrested by the Criminal Investigation Division (CID) of the Sri Lanka Police. They were produced before the Magistrate of Negombo and remanded.

The case was taken up on 15 August 2011 for consideration of the bail applications filed by the two police officers. The Magistrate transferred the matter to the High Court of Negombo for further consideration. When on 18 August the matter was taken up the High Court Judge enlarged both officers on bail.

The act of murdering a person and causing serious injuries to many others by indiscriminate discharge of weapons constitutes crimes under the Penal Code of Sri Lanka. Legally suspects arrested for committing murder cannot be enlarged by a Magistrate. Even the High Court cannot enlarge a suspect arrested for committing murder until the investigation into the case is concluded. Further, if the matter received a high degree of public interest this should also have been considered by the deciding judge.

In this particular matter several thousand workers, trade unions of the country and civil rights movements, nationally and internationally paid attention from the very beginning of this case. They all collectively raised their voices seeking justice for the victims (For further photo of protest, please see <http://www.humanrights.asia/news/urgent-appeals/images/2011/AHRC-UAC-184-2011-03.jpg/>).

However, as is customary in Sri Lanka the state's law enforcement authorities have not shown any interest in carrying out a credible investigation. Further still, the state has not arrested all the responsible police officers who took part in the incident. These are the DIG, SSPs, ASPs and OICs who were at the scene of crime and who guided and supervised the shooting which caused the killing and injury.



Later the Presidential Secretariat announced that Roshan's family would be granted Rs. one million in compensation. However, Roshan's family have categorically stated that this compensation must in no way compromise the responsibility of the state to prosecute the guilty parties.

Due to the unwillingness of the police to take action against their own and the failure of the state to bring them into conformity with international norms

justice has been denied to the victims and their families.



### Who gave the orders to use live bullets on protesters at Katunayake? <sup>3</sup>



The government of Sri Lanka has announced the appointment of a one-man commission to inquire into the shooting at Katunayake on May 30, where, according to reports over 200 persons were injured when police opened fire against demonstrators using live ammunition. About 20 workers are reported to have been critically wounded and are being treated at hospitals. The protests were part of an Island-wide campaign against a proposed law endangering the provident fund of the workers of

the private sector. In the aftermath of the shooting the government announced that the bill will not be presented to the parliament.

The use of live ammunition has come under public condemnation, even from some of the government ministers. The one-man commission of inquiry was appointed in answer to such criticism.

However, the mandate of the one-man commission is not clear. The basic questions that any public inquiry must resolve are:

Who gave the orders to use live ammunition against the protestors?

What is the top most authority that authorized such use?

Who was the highest ranking officer on the ground who gave the orders to use live ammunition?

Were the protestors warned prior to the police opening fire and were warning shots fired before deadly force was used.

How many rounds of ammunition were expended and by whom?

Was it the intention of the authorities to use of such deadly force in order to bring the protest to an end and was it pre-planned?

As for the top most authority that authorized the use of live ammunition it is most likely that the orders came from the Secretary of the Ministry of Defense or someone working under him. Further, it is also unlikely that such a shooting would take place without the knowledge, if not the tacit consent of the Inspector General of police.

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<sup>3</sup> AHRC – STM – 069 – 2011; June 1, 2011

Will the one man commission have the power and the will to investigate this matter in order to meet the requirements of the rule law?

Will there be a forensic inquiry into all aspects of the shooting, for example an examination of all the weapons used during the incident? What are the means available for the one-man commissioner to conduct such an inquiry in terms of the requirements of criminal law?

These are just a few of the questions that need to be answered if the inquiry is to be credible and genuine and not just another white wash.

### ***2.3 SRI LANKA: A report on 323 cases of police torture<sup>4</sup>***

(The Asian Human Rights Commission has issued a report on 323 cases of police torture in Sri Lanka. We reproduce below the introduction to the report)



The Asian Human Rights Commission (AHRC) has compiled a report of 1500 cases of police torture in Sri Lanka between 1998 and 2011. This particular report summarizes 323 of the most serious cases of torture. The most notable finding of this report is that almost all of the victims whose cases were summarized were randomly selected by the police to be arrested and detained for

a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges.

#### **The Failure of the Complaints System**

The reason for such arrests lies in the inefficiency and ineffectiveness of the complaint system. Firstly, complaints give rise to opportunities for the police to make social, political or financial gains, by means of bribery or extortion of the victims. If victims fail to pay these bribes, they may be tortured. There are numerous complaints made by citizens regarding crimes and disputes that the police are unable to resolve by way of competent criminal justice enquiries. The inaction of the police leads to a rise in public

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<sup>4</sup> AHRC-STM-085-2011; June 24, 2011



pressure which the police counter by randomly selecting people, usually from those of less privileged socio-economic statuses, as perpetrators of these crimes. These unsuspecting people rightly deny their involvement in the crime in question, and torture is used to force them to sign confessions written by police officers. There may be occasions in which the police are able to determine who the true offender is, but these offenders are often well-experienced in the art of bargaining with the police and maneuvering the criminal justice system, and are thereby kept from their rightful punishments.

### **The Loss of Command Responsibility**

The use of police torture has become endemic to the criminal justice system in Sri Lanka today, but it has been a problem since the establishment of the criminal justice system in colonial times. The most striking difference between the torture that took place then and that which takes place now is the pervasiveness of state-sponsored violence today. In the past, there were controls placed on the police from the high-ranking officers, from the Inspector General of Police (IGP) to the Senior Superintendents of Police, the Deputy Inspector General of Police, Assistant Superintendent of Police (ASP) as well as the Officer-in-Charge (OIC) of each police station, to ensure professional integrity at each level of the system. These controls, which served to maintain professionalism and efficiency within police stations, have been dissolved.

### **The Failure of ASPs to Supervise Police Stations**

The officer immediately responsible for any problems within the police station is the ASP. While the OIC supervises the daily goings-on within the police station, it is the duty of the ASP to supervise the OIC and, by extension, the activities of the police station. The ASP should ensure that each station within their area is following all the rules stated by the police departmental code. Within this code, there are a number of standard procedures for supervision. For example, the duties of the OIC include reviewing criminal files, looking into the conditions of the detainees and ensuring that procedures regarding arrest and detention are followed. This supervisory aspect has all but disappeared. Any understanding of police torture in Sri Lanka should involve an examination of the failings of the ASP in their basic duties. The ASP and other high-ranking officers are supposed to supervise the OIC and other police officers, and ensure that police duties are carried out with efficiency and professional integrity. However, such responsibilities exist only in name, and are rarely carried out in practice.

### **The Control of the Policing System by Politicians**

At this point, an examination of the factors that led to this deplorable state is required. It is clear that the 1978 Constitution had an extremely negative effect on the policing system. This constitution led to the politicization of the police by politicians - particularly the President and the Minister of Defense, as well as powerful members of the ruling party - who began to control the actions of the police. Since professional



etiquette had to be flouted in order to meet the needs of these politicians, investigations were not carried out according to the rule of law. Politicians would demand for certain citizens to be arrested or released for reasons of social gain or political expedience. Police officers have repeatedly said that to deny requests from high-ranking state officials would result in demotions, transfers or even the loss of their jobs. Nevertheless, this is not a sufficient excuse for their departure from the procedures of the law. The law states that police officers should not obey any orders other than lawful orders from lawful superiors, i.e. the OIC up to the IGP. However, this hierarchical order embodied in the command responsibility doctrine does not operate effectively in Sri Lanka. As a result, the policing system is failing. Moreover, the police officers themselves have lost confidence in the political system due to their constant need to grapple with the internal contradictions of the inability to enforce command responsibility and a presumed obligation to use their roles to meet the needs of politicians.

## A Few Case Examples

**Roshan Chanaka:** This situation has produced cases which are undeniably deplorable. Each of the cases we will discuss is a demonstration of the dire state of the Sri Lankan policing system. The most recent case was of a young worker in the Free Trade zone, Roshan Chanaka who was shot by police in the factory where he worked. Government officials later admitted that there had been no reason for the police to use firearms on workers, particularly one who had not aroused their suspicion in any way. As a result of this incident, government officials ordered for each of the 80 officers at the local police station to be transferred. But such a transfer does not alleviate the problem.

**Gerald Perera;** Another well-known case is that of Gerald Perera. Mr. Perera resided close to Sri Lanka's capital city Colombo, in the suburb of Wattala. In the nearby town of Hendala, there was a triple murder, but the police were unable to ascertain any suspects for this crime. The case was passed on to the ASP who asked the special team of police headed by an ASP to investigate the crime. Under the guidance of the ASP, the team arrested Gerald Perera. There was no evidence of any kind to warrant suspicion of Mr. Perera specifically, the only information the unit had was that a man named Gerald knew something about the incidents. This information led the unit to arrest the first man named Gerald who they could find.

Mr. Pereira was a harbor worker and was married with three children. He was arrested and taken to the police station without any information as to why he was being arrested. He was then hung from ceiling beams and beaten with iron rods as police officers demanded information about the murders. These facts were established in the Supreme Court. The court found that there was no reason for arrest and, even if there had been reason, Mr. Perera should have been released upon the police learning of his whereabouts on the night of the murder.



However, this did not happen, and as a result of the torture inflicted upon him, Mr. Perera suffered renal failure and was unconscious in the hospital for over two weeks. This incident underwent a criminal investigation over three years after it took place, and the Supreme Court found the police officers who handled Mr. Perera's case to be guilty of torture.

During the investigation, when the police officers became aware that they would be imprisoned for seven years for this crime, they killed Mr. Pereira before he could give evidence in court. The murder case of Gerald Pereira continues to this day.

**Case of Sarath Kumara Nidos:** Another case that demonstrates the irrationality and violence with which police officers treat suspects is that of a man called Nidos from Moratuwa. Nidos was a worker who was arrested, brought to the police station and subjected to physical assault, as officers demanded that he hand over gold items that he had stolen from a residence. Nidos had no involvement in the crime in question, but police officers continued to torture him for over nine days, under the assumption that he would divulge information under duress. Over the course of the nine days, Nidos' family made a number of complaints to the IGP, the country's national human rights commission as well a number of other organizations. The various institutions informed the police of the family's complaints, and the police produced fabricated evidence in court that Nidos had been found in possession of illegal drugs on the night before his arrest, and was therefore ineligible for bail.

Even though his family had made official complaints to a number of authorities about the behavior of the police towards Nidos, no enquiry of the police was made because this would have led to disciplinary action and potential suspension of the OIC of the station. The other supervisory officers were well aware of what had happened, but chose to keep silent on the matter. Many months later, a high court judge released Nidos on bail, stating that the charges had been found to be false.

This is the manner in which the police operate within the criminal justice system. Higher officers do not investigate charges that lower-ranking officers have committed torture. ASPs do not act on complaints made by citizens for efficient, effective action and intervention into crimes.

### **Why has this System Ruptured?**

Firstly, lower-ranking police officers often have connections with local politicians, whose word takes precedence over that of higher-ranked officers. Secondly, the police officers are well aware of the failings of the system, but they are under pressure by the public to convict criminals. Furthermore, they often feel that if they interfere with this method of handling cases, there will be conflicts between the higher and lower ranks, and they are wary of disturbing this established order.





### **The Constitutional Reasons for the Collapse of the Police -- Replacing Legal Mechanisms with Extra-Legal Measures;**

The fissures within the institution of the police are symptomatic of a deeper collapse of the rule of law in Sri Lanka. The 1978 Constitution paralyzed public institutions. The 17<sup>th</sup> Amendment, which introduced a system of credible selection of higher officers on the basis of merit rather than political interference, was passed to remedy the effects of this constitution. However, the 17<sup>th</sup> Amendment was indirectly abolished by the 18<sup>th</sup> Amendment, which nullified the statutes outlined in the 17<sup>th</sup> Amendment. As a result, there is no working rule of law system in Sri Lanka. In the absence of such a system, the state must rely on extralegal methods to control crime and other forms of civil unrest. Numerous problems then arise because it is not possible to control extralegal methods through legal means. Those who adopt ad hoc mechanisms to deal with civil unrest cannot be expected to act according to the rule of law. It is this difficulty that makes it almost impossible for Sri Lankan society to effectively counter police torture, extrajudicial killings, disappearances and corruption. When all effective mechanisms are extralegal, and there is no legal mechanism that functions effectively, the rules by which society operates lack structure and order.

The Sri Lankan people are making efforts to publicize their complaints with the use of YouTube and other such technological means. But ultimately, these complaints are of no use because the system is grounded on extralegal mechanisms, so these complaints will never be seen within a rule of law framework, and therefore cannot be investigated according to legal methodologies.

### **Impossibility of Investigations into the State Approved Extra-Legal Actions**

This has led to a situation of chaos; it is impossible to effectively investigate a case of torture in Sri Lanka. There have been attempts to change this system. Act 22, which was passed in 1994, did recognize torture and other cruel, inhuman and degrading treatment as a crime. Moreover, it stated that the punishment for torture by a police officer would be seven years imprisonment. This act has been enforced in the past, but has not been implemented in recent years.

### **Stopping Investigations into Torture by Special Investigations Unit of C.I.D**

The method of enforcing the Convention against Torture (CAT) Act was through investigation, which, between 2005 and 2008, was done through a special unit of enquiry of the criminal investigation division of Colombo. The special unit consists of a number of highly experienced police officers who work outside of the normal system and are under strict supervision by higher-ranked officers. A high level of investigation and discipline is expected from these officers. Cases would be referred to this unit by the Attorney General's department or the IGP, and then investigated. While the original system was in place, investigators had sufficient evidence to find that torture had taken place in over 60 cases, and indictments were filed against the suspects in question.



However, since the appointment of CR De Silva and, thereafter, the appointment of Mohan Peiris as Attorney General of Sri Lanka, references to the special unit have been halted. CR De Silva and later Mohan Peiris have stated that they do not want to bend to pressure from external agencies, namely the United Nations and other human rights organizations, which have called for credible investigations into crimes. CR De Silva made a policy to dismiss these complaints and employed a new system where complaints are received and investigated by the Attorney General's department, and if necessary, are then referred to this special unit.

This system has also been dissolved. Today, there is no credible method of investigation into torture in Sri Lanka. Despite numerous recommendations by UN agencies and human rights organizations, the recommendations of the act have not been implemented, and the CAT Act is seen as little more than a piece of paper. So long as credible investigations into torture do not exist, there is no possibility for the elimination of torture at the hands of state officials.

### **Stopping Inquiries by the National Human Rights Commission**

There have been minor forms of criminal investigation into torture by the country's National Human Rights Commission. However, rather than being thorough investigations in a criminal law sense, these investigations are more like mediation sessions similar to a labour tribunal. But even these investigations have ceased due to lack of compliance. Indeed, Sri Lanka's human rights commission does not have any effective, functioning capacity.

### **The Changes in the Adjudication of Fundamental Rights Cases**

The third remedy available for remedying torture is that of fundamental rights. With this remedy, the complainant would file a complaint as an affidavit. If the court is satisfied that there is prima facie case, they will issue notice. A rule has been established within the Attorney General's department with reference to cases of torture that states that the Attorney General will not defend defendants, and will not interfere even if the Attorney General is made a party to the complainants. Moreover, the Attorney General will not testify on behalf of police officers. However, when a case is brought to the Supreme Court, the case is often referred to the Attorney General's department without issuing notice. The Attorney General's department then contacts the police for their opinion on the matter. This opinion is often given without investigation, and the Attorney General's office will then state these objections to the petition in court.

Since objections are made at this stage rather than when the notice is initially issued, the trial is delayed, sometimes for many years, and justice for the torture victim becomes a distant dream. Since the victims of torture generally come from a lower socio-economic background, a drawn out legal process is particularly difficult because Sri Lanka does not have a state-sponsored legal aid scheme.

### **Delays and Absence of Witness protection**

Moreover, the delays in trials for numerous years often result in increased pressure on both victims and witnesses of crimes. There is no witness protection scheme in Sri Lanka. A law was proposed about two years ago by the Parliament, but it has not been brought forward for discussion since then. This is a deliberate attempt to allow these practices to continue. Indeed, if witnesses do have protection, more witnesses will come forward with credible information about cases and the legal process will be forced to operate more efficiently. The absence of a witness protection scheme serves to paralyze the legal process. Consequently, people are reluctant to make complaints and those who do complain often rescind their complaints partway into the investigation process. If victims and witnesses do not come forward with complaints and information about crimes, constitutional remedies cannot take place. As a result of this legal paralysis, an inherent understanding of what is legal and illegal is rendered meaningless.

### **Displacement of the Law**

These are the kinds of problems that are intertwined with the issue of police torture. Torture at the hands of state officials is a great problem, but in the wider scheme of Sri Lanka's collapsed rule of law system, it is only a symptom of a larger problem of state and societal loss of respect for the law. There is no investment being made into the maintenance of a functional legal system under command responsibility and legal rules. The politicization of these systems has collapsed the legal process and made the welfare of citizens dependent on the whims of politicians. When there is a legal vacuum, society and the state rely on extralegal forces to control civil unrest and other illegalities. Thereafter, there is greater potential for military agencies to play a primary role in the maintenance of societal control.

### **Criminals Allowed Function as Enforcers of Law**

Moreover, there is greater possibility for criminals to take on roles as enforcers of order and maintenance of society. We can take the incident that took place with the boy in Karunika as an example of this. When people organized demonstrations, there were employees of politicians waiting to assault them with poles. Since these assailants play a great role in the rule of law system, people tend to go to them rather than law enforcement agencies to make complaints and solve problems.

### **The Executive is Above the Law**

The most important element of the criminal justice system that must be altered for torture to be eliminated is the 1978 Constitution, which allows for the supremacy of the executive over the judiciary. The judiciary must be re-empowered to play the role required of them in a functioning democracy. They must work to bring the policing system back to function with command responsibility. These are difficult challenges but if they do not happen, there will inevitably be more torture and more criminality. In the

future, the military could step into the vacuum created by the collapse of the policing system l, and the anarchy that exists at present could become even worse.

## ***2.4 The body of the disappeared human rights activist Pattini Razeek exhumed<sup>5</sup>***



Mr. Pattini Razeek, a well known human rights activist and a member of the executive committee of Forum Asia disappeared on February 11, 2010, yesterday (July 28) his body was exhumed before the Valachchenai Magistrate. The body had been buried within a half built private house in a remote village in Uddamaveli, Valachchanair and the location was identified due to a lead given by a suspect. The body has been sent to the government analyst department for scientific identification on the orders of the Magistrate. For the last one and a half years there had been a continuous demand from the members of his family, from the people in his residential area as well as from human rights organisations in Sri Lanka and abroad for an investigation into his disappearance. Razeek was the head of the Community Trust Fund (CTF), a Sri Lankan NGO based in the town of Puttalam.

The discovery of the body should be the beginning of the process of uncovering the circumstances leading to the death of this human rights activist and community leader. It is the duty of the government to ensure a thorough enquiry into all the circumstances surrounding the mystery of this disappearance and to place before the courts the entire evidence relating to the conspiracy for this murder. Obviously this murder and the disappearance is a part of a well thought out criminal conspiracy.



*Pictures courtesy of Daily Mirror*

<sup>5</sup> AHRC-STM-099-2011; July 29, 2011





The circumstances of this disappearance and murder suggest the involvement of powerful forces for the causing of this crime as well as for the attempt to hide the body. The reports published earlier suggest political motives for this murder. The events relating to the disposal of the Community Trust Fund also suggests that there were interested parties to make claims for this trust fund after his disappearance. All these factors need to be thoroughly investigated and brought to the notice of the court and the public.

The public in Sri Lanka has a great interest in the outcome of these investigations. For a long time the causing of forced disappearances has become a common phenomenon in the country. So far there has not been a single case of a disappearance which has led to the discovery of the culprits. The perpetrators of disappearances have enjoyed immunity in almost all instances of such occurrences.

This first discovery of the body of a person who was considered to have been disappeared should lead to a great demand from the community for accountability. As the inquiries are of the greatest public importance such inquiries should be conducted with transparency. It is necessary, not only to uncover the direct perpetrators of this crime but what is even more important is to uncover the conspiracy behind this disappearance and murder.

The Asian Human Rights Commission urges the government of Sri Lanka to conduct speedy and credible inquiries through competent and impartial investigators and to speedily bring the matter before the court for trial. The AHRC also urges complete transparency into the inquiries so that the public should have access to all the information relating to this heinous crime. The AHRC also urges the Office of the High Commissioner for Human Rights to ensure proper monitoring of this important case with the view that the circumstances surrounding such occurrence could be fully revealed.

Thousands of other cases of forced disappearances remain unresolved. The families of such disappeared persons should be given opportunities to make their complaints to competent authorities and to demand inquiries into such disappearances. The failure to ensure enquiries into such heinous crimes amounts to a conspiracy to ensure secrecy relating to such crimes. As the numbers of the persons making such complaints are many there should be a more robust response from the government to ensure credible enquiries.

At the time of the recovery of Razeek's body the case of Prageeth Eknaligoda will naturally come to the minds of the Sri Lankan public. The demand for enquiries into his forced disappearance has been made forcefully by his family as well as many concerned groups in Sri Lanka as well as by the international community. It is the duty of the Sri Lankan government to respond to such demands and to ensure a credible inquiry by competent and impartial investigators into his disappearance.





## ***2.5 A review of Sri Lanka's compliance with the obligations under the Convention against Torture and Ill-treatment*<sup>6</sup>**

The following is a review of Sri Lanka's compliance with the obligations under the CAT.

The Asian Human Rights Commission receives complaints relating to the practice of torture and ill-treatment by the police in Sri Lanka on an almost daily basis. After verification these reports are published by the Urgent Appeals programme of the AHRC and letter are written to the authorities of Sri Lanka and the relevant authorities in the UN agencies relating to each of these cases. During the time between the 46<sup>th</sup> Session of the Committee and the 47<sup>th</sup> Session literally thousands of such cases have been received and dealt with in the manner described above by our commission.

The 323 cases which are summarised in a report recently published by the AHRC (See the link below) and these are only a fraction of the actual number cases of torture. This cases summarised in the report are a sample of the kind of complaints relating to torture which describes the circumstances under which torture takes place, the type of torture which is being practiced, the reasons for such practice and the deficiencies of the law, legal procedures and the mechanisms of the receipt of complaints, investigation of complaints, the prosecution of such complaints and the litigation process.

### **The defects in the substantive aspects relating to the obligations of the state:**

**The CAT Act is merely a paper law:** Sri Lanka has criminalised torture by the CAT Act , Act No. 22 of 1994 which has created a criminal offense relating to torture and ill-treatment and prescribed seven years of compulsory imprisonment and a fine of Rs. 10,000/=. However, this is by now merely a paper law. As a matter of policy the government has stopped investigations into complaints under this act and/or to prosecute under this law. Until about 2008 there were some investigations conducted due to international pressure. However, this practice has been officially abandoned since then. From 2009 there has not been a single case investigated or prosecuted under Act No. 22 of 1994 despite of the complaints related to torture being received almost on a daily basis from almost every police station in the country. The decision not to conduct investigations or prosecute under this Act was the government's response to the resistance developed by some sections of the police against such investigations and prosecution. The failure to implement this law is also for policy reasons in order to discourage complaints being received relating to torture and ill-treatment. In recent years the government has developed the public policy to the effect that making of complaints relating to torture and other human rights abuses are against the public image of the government and the government is being internationally embarrassed by such complaints. Internally the government carries on a heavy propaganda attempt against human rights organisations who support the victims of torture and ill-treatment and other human rights abuses as being unpatriotic. Heavy pressure is exercised against the

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6 AHRC – STM – 095 – 2011; July 8, 2011



complainants of human rights abuses as well as organisations and individuals who support such victims. When the government openly pursues a public policy of portraying victims of abuse and human rights organisations as unpatriotic the whole purpose of Act No. 22 of 1994 is defeated.

**No law relating to compensation:** Sri Lanka does not have a law relating to compensation for victims of torture and ill-treatment. Thus, the state fails to respect the requirements of article 14 of the CAT. There has never been any discussion at a legislative level of bringing a law to articulate the rights of the victims for compensation. The constant policy of discouraging victims from complaining also goes against the state obligation to create a conducive atmosphere for bringing legislation in order to meet with the obligations of the state in this regard. The civil society organisations are discouraged by such negative atmosphere against free speech for the promotion of human rights.

**No law relating to rehabilitation:** The Sri Lanka government has failed to recognise its obligation regarding rehabilitation of victims. The very idea of the legal responsibility to restore to the victim that which he has lost by way of abuse remains alien to Sri Lanka's legal culture. The obligation to provide trauma counseling or to provide medical assistance for acute stress disorder or post traumatic stress disorder and other psychological problems are not acknowledged in any manner by the state. No legislative provisions have been made for such ends. There are also no policy discussions and therefore it is most unlikely that any legislative measure will be created for this purpose in the near future. The general atmosphere of discouragement of public speech and debate affects negatively the development of law and practices regarding rehabilitation of victims.

### **Procedural requirements for implementing the obligations of the state relating to the CAT**

**The absence of a credible and functioning complaint mechanism** regarding torture and ill-treatment. The state has failed to develop such a complaint mechanism and the tendency in recent years is to discourage the development of any such mechanism. Even some avenues which existed under the country's criminal procedure for making such complaints at police stations is not implemented due to negative practices which have been allowed to take place at police stations. The persons who go to make complaints are often sent away without having their complaints recorded and often are also abused and even threatened when they reveal that their complaint is relating to police officers. The higher ranking officers are not trusted by the people as being willing or capable to conduct investigations relating to their subordinates. Many complainants have repeatedly complained about various harassments they have suffered due to making such complaints. In the past there have been two assassinations of torture victims due to the complaints they have made against those who subjected them to torture. The cases of Gerard Perera and Sugath Nishanta Fernando are well known. Sugath Nishanta Fernando who was killed while pursuing a complaint against the police was assassinated and there has been no credible investigation into his murder despite of attempts by even



international agencies to demand an inquiry. A case is pending before the United Nations Committee against Torture relating to the failure of the state regarding this murder. In the past there had also been some forms of complaint making at the Human Rights Commission of Sri Lanka (HRCSL). However, this commission has lost its credibility due to arbitrary appointments and for the absence of any serious actions regarding violations.

**The absence of a credible and functioning investigation mechanism** into torture and ill-treatment. For a short period between 2006 and 2008 the investigations into complaints of torture and ill-treatment was handled by a Special Inquiry Unit of the Criminal Investigation Division. During this period over 60 cases were found to have adequate information for the filing of indictments under the CAT Act, Act No. 22 of 1994. The practice of referring cases for investigation by the SIU was started as a result of interventions by Theo Van Boven, then the Special Rapporteur against Torture and Ill-treatment. The methodology adopted was for the Attorney General's Department to refer cases to the SIU and the SIU, after investigations would submit their report the Attorney General's Department for consideration for the filing of indictments. This practice was discontinued after 2009 when C.R. De Silva became the Attorney General and the present Attorney General, Mohan Peiris continues the same policy. The result is there is no credible investigator to investigate complaints under Act No. 22 of 1994. As pointed out earlier the result is the absence of prosecution under the CAT Act and thus this law of criminalising torture has just become a paper law. The non-prosecution of cases under torture is now a matter of GOSL policy.

**The change of policy relating to torture and ill-treatment at the Attorney General's Department.** The policy change which took place in the Attorney General's Department from the time that C.R. De Silva became Attorney General has been pointed out in the earlier paragraph. Besides this the overall approach of the AGD regarding torture has also changed drastically. Since the late 1990s there was a policy for the Attorney General not to represent any public servant accused of torture and ill-treatment under the fundamental rights provisions of the Constitution. After 2010 this policy has been changed by Mohan Peiris as the Attorney General. Now, when applications are filed under the Constitution on violations of fundamental rights relating to torture notice is issued to the Attorney General. The Attorney General's Department thereafter appears in the Supreme Court to take objections for continuing of applications under fundamental rights. Thus the Attorney General's Department contacts the police officers who are made respondents and assists them in filing objections and taking up objections against this application. Thus, the original policy of non-appearance for public servants has been altered by the Attorney General's Department. The present position of appearing for respondents is contrary to principles as the Attorney General is the prosecutor if cases are to be filed against respondents under the CAT Act. To defend respondents against accusations of torture under fundamental rights and at the same time to be officially responsible for prosecutions in torture cases is to play a self contradictory role. It is ironical that the Attorney General also usually accompanies the government



delegation to the CAT Committee to present the government's position relating to the implementation of the CAT. The role that is usually played is to deny the violations of the CAT or to create a portrait that the obligation under the CAT is being carried out faithfully by the government. In playing these many roles the Attorney General's Department has to twist facts relating to allegations of torture. In any case the Attorney General's Department by now has become a department that directly functions under the executive president and carries out the instructions of the government. No impartial role regarding the protection of the victims of torture can be expected from this department by now.

### **Defects in judicial interventions for the protection of victims of torture.**

**Under the CAT Act, Act No 22 of 1994.** The problems relating to complaints, investigations and prosecutions mentioned in the earlier paragraphs affects the judicial interventions as virtually no new cases are filed under the CAT Act. The court can act only if investigations are made and prosecutions are filed. However, even regarding the earlier cases where such cases have been filed the defects in the judicial system seriously hamper the effective redress under the CAT Act. The trials at the High Courts take many years, as much as four to ten years, and as a result the prosecutions have become ineffective. During the long periods many judges and prosecutors change while each case is taking place before a particular court. In many instances as much as six or seven judges many sit before a trial is completed. The judge who finally writes the judgment has not had the opportunity to see the demeanor of many of the witnesses. The judges have to rely on reading the written record of evidence alone in writing judgments. Some of the judgments create doubts as to whether the judges have, in fact, read the written report. For example in the case of Lalith Rajapakse which was heard before the Negombo High Court there was detailed medical evidence including a written medical report stating that the victim had suffered many injuries including injuries to the foot. The victim himself also gave evidence to that effect. However, the trial judge strangely held that there was no evidence to support the allegation relating to the beatings on the foot. An appeal on this case is now pending. The delays also provide the opportunity for witnesses to be threatened, physically harmed or even killed. As mentioned before two of the torture victims awaiting trials were assassinated. There are many instances where complainants either do not come for cases before courts to give evidence or even change their earlier versions of the statements due to threats or sometimes other incentives to abandon their claims. Besides this some witnesses die and other witnesses leave the country for employment and other purposes thus making it impossible for their testimonies to be recorded in courts. It can also be said that many of the Sri Lankan judges do not demonstrate adequate legal knowledge about torture and ill-treatment and often some tend to sympathise with the officers who are facing the charges. The victims of torture come from the poorer sections of society while often the officers are those who frequent courts for various official purposes. Besides the absence of adequate knowledge and seeming lack of interest there are also matters of policy in the time of civil conflict which seems to mitigate against the prosecutions against the torture. These prosecutions are



often perceived as having a disturbing impact on police and military officers who enjoy privileged positions due to the overall security policies pursued in the country.

**Fundamental rights** -- the fundamental rights jurisdiction also suffers from many defects.

**Declarations do not lead to any consequences:** The declarations made under the fundamental rights jurisdiction by the Supreme Court stating that violations relating to torture have been done by the respondents, meaning police or military officers for the most part, does not have any direct practical consequence. It does not affect the further employment of these officers in their departments or their promotions. The respondents of many cases are still in the police and several of them have received promotions even to higher positions.

**Amounts in financial awards low:** Further, where compensation is awarded the financial awards are of very low amounts and in no way reflect the obligations of the state under the CAT for compensation of torture victims in terms of covering their medical costs, legal costs as well as compensation for the psychological damage. The Sri Lanka Supreme Court has not yet adopted legal principles relating to the assessment of responsibilities for causing psychological damage to the victims. Many of the victims suffer serious abuse at the hands of the respondents which can cause trauma, acute stress disorder, post traumatic stress disorder as well as many other forms of psychological damage. A few years ago the Supreme Court adopted better standards for the assessment of compensation, for example, in the case of Gerard Perera and also a few other cases. In Gerard Perera's case the total compensation came to Rs. 1.6 Million which is around US\$ 16,000. That was even then not calculating the damages from the point of view of psychological injury. However, in recent cases where the torture is proved damages may run to around Rs 5,000 to 100,000 in very rare instances. That is between US\$ 50 to 1,000. Perhaps the reasons for reducing the amounts of damage may be to discourage more persons from pursuing cases. However, the clear policy reason for such reduction has not been stated.

**Attorney General plays a negative role:** A further defect of the fundamental rights jurisdiction is that from very recent times even before notice is issued to respondents the Attorney General is given notice and he comes before the court to object to notice being given on these applications. As the objection taken by the Attorney General at this stage is on the instructions of the respondents there is no evidential basis for the Attorney General to appear at this stage. The Constitution provides that the court can issue notice if they are satisfied that there are grounds for a *prima facie* case. This new practice of hearing the Attorney General before issuing notice for the respondents acts in favour of the respondents and is quite open to abuse.

**Evidence on affidavits alone is adverse to the victim:** An even further defect in the fundamental rights jurisdiction is that the entirety of the proceeding depends on affidavits and no credible inquiry by an investigating unit makes an inquiry into torture





and submits a report to the court. When the Supreme Court received a complaint of torture by way of a fundamental rights application it could refer the matter to a Special Investigation Unit of the CID through the IGP who is always an official respondent. If a special unit makes such an inquiry under the instructions of the Supreme Court they are likely to conduct a credible inquiry and thereby an inquiry into torture by the state in terms of its obligations could be ensured. Mere reliance of affidavits is often to the disadvantage of the applicant who is a lay person and more often than not, a person from the poor classes of society. Thus such torture victims cannot be expected to have all the resources and the capacity in order to find out all the matters relating to the violations of their rights to be placed before the courts. In cases where an SIU of the CID have conducted investigations into torture complaints they have come out with a great deal of evidence which the ordinary layman is unable to have access to. For example in such SIU inquiries documents in the possession of the police stations have been looked into and often much evidence has been found to support the victim's allegations. All the considerations shown above require a reexamination of Article 126 of the Sri Lanka Constitution and ways to improve this remedy should be found. However the present policy of the GOSL to discourage investigations into torture and other allegations of human rights is likely to affect the fundamental rights as a remedy adversely.

**GOSL's constitutional impediments to implement the obligations under the CAT.**

The 1978 Constitution of Sri Lanka places the executive president above the law and thus diminishes the power of the judiciary to protect the individual as against the state. Sri Lanka's Constitution is incompatible with the principles of rule of law. The country has been suffering from a collapse of the rule of law since 1978. Sri Lanka is, in fact, incapable of implementing the obligations under the CAT due to the nature of the constitution in the country. Without a fundamental change to the constitution to bring the executive under the rule of law it is not possible for the GOSL to implement the obligations under the CAT within a legal framework. In fact, this is the most important factor in dealing with the human rights problems in Sri Lanka.

The impunity relating to human rights abuses including violations relating to torture and ill-treatment are guaranteed by the constitution itself. Sri Lanka has a system of constitutionally entrenched impunity.

Perhaps this may not be an issue that the CAT Committee can deal with in their usual procedure. However, without dealing with this issue the GOSL will not have the capacity to implement any of the recommendations of the CAT Committee.

It is respectfully submitted that in order to have any practical impact the CAT Committee needs to go beyond their normal procedures and to question the GOSL regarding the constitution itself particularly in relation to the impunity guaranteed to the executive and the diminishment of the capacity of the courts to protect the rights of the individual

## Conclusion

The GOSL is neither willing nor capable of implementing the obligations under the CAT. That is the challenge that the CAT Committee needs to deal with if any kind effective remedy regarding the implementation of the state obligations relating to the CAT is to achieve any tangible results in keeping with article 2 of the International Covenant on Civil and Political Rights (ICCPR). As Jean-Jaques Rousseau has said in his Discourse: What is the Origin of Inequality Among Men, and is it Authorized by Natural Law:

*I should have wished then that no one within the State should be able to say he was above the law; and that no one without should be able to dictate so that the State should be obliged to recognise his authority. For, be the constitution of a government what it may, if there be within its jurisdiction a single man who is not subject to the law, all the rest are necessarily at his discretion.”*

Please see the link to the report: <http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>

## Executive presidential system and the supremacy of T56

### ***2.6 Murders of father, mother and two children in Udawalawe***<sup>7</sup>

While the whole nation was shocked by the multiple killings at Mulleriyawa, another set of gruesome murders have been reported from Puhulyaya, Panahakaduwa, in Udawalawe. A father M K Lalith (37), mother R Indrani Gnanalatha (32), son M K Dilan Chathuranga (12), daughter M K Nadeeka Sevuwandi (8) were killed due to a shooting which, according to reports, the police believe to be shots from a T 56 gun. The killings at Mulleriyawa also were done through the firing of automatic weapons.

As of now, the killers of the family in Udawalawe are not known. The initial reports are that some persons who had come on a vehicle had stopped the vehicle a little way away from the house where the family lived, then walked to the house and killed the family, then gone back to the their vehicle and fled. However this story seems to be mere speculation, as there had been no witnesses to any of the aspects of this incident. After hearing some sounds like firecrackers some neighbours had gone to the house and found all four persons dead.

There is also speculation that the deaths may be due to some financial transaction. Mr. M K Lalith, the father, is said to be a private bus owner and also engaged in some financial business. Again, hardly any details about these matters are available at the moment. Also, the killings of the wife and the two young children throws doubt about the motives for

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<sup>7</sup> AHRC – STM – 149 – 2011; October 16, 2011

these murders. It may well be like in Mulleriyawa, the blast of automatic fire aimed at one may have kill them all.

According to police reports they have no clue of any sort about the murder and they are investigating into the matter.

Murders by automatic weapons have brought the acute problem of the increase in gruesome crimes to a new height. However, the use of such weapons during the conflicts in the south, north and the east were well known. These weapons are freely available, and there are also former solders, members of paramilitary groups and others who are well-trained to use such weapons. Under these circumstances this new trend in crime in no surprise.

The spread of the news of the four murders of the family members has brought unrest in the area and it was reported that the police had to make special arrangements and reinforcements to deal with the issue. Such unrest is now a common feature as the recent incidents in Dompe after the extrajudicial killings of a young man arrested by the police, and the incident at Mulleriyawa, show. What were earlier called ‘Grease Devil’ incidents sparked crowd protests against strangers who had entered into other areas and were suspected of having committed crimes. The fear of any stranger is now a common feature and this reflects enormous stress and unrest among the ordinary folk.

However, the most disturbing factor is that the government has neither the willingness nor the capacity to deal with these crimes, as the instrument through which the government deals with the control of crimes is a competent, independent and adequately funded policing system. It is through the introduction of the executive presidential system, which has politicized all public institutions in Sri Lanka, that the Sri Lankan Policing System came to the present state of leaderless incompetence and became extremely poor in its organizational capacity. The pathetic plight of the Sri Lankan Police is a truth known to the government, the leaders and others of the policing system itself, as well as the public.

The government is deeply committed to the executive presidential system as found in the 1978 constitution. In fact, the government strengthened the executive presidential system by passing the 18th amendment to the Constitution thirteen months prior. Under this Constitution the most essential aspect of the rule of law, which is the supremacy of the law, was displaced by placing the executive president above the law. It is this displacement of the most essential component of rule of law that has brought the Sri Lankan Policing System to what it is today.

The criminal elements in Sri Lanka are fully aware of the present order or the causes of what one retired Justice Kulatunga stated as Sri Lanka’s disorder. Criminal intelligence consists mainly of the capacity to exploit the weakness of the criminal justice system for their own advantage. The weaker the system, the greater is their mastering of the skills to undermine law and order, and their engagement in crime to achieve their ends.



1978 Constitution has placed the president above the law. However this has not made him the Supreme Being who is capable of controlling everyone and everything. In fact he has been reduced to a powerless onlooker who has to keep on watching the most gruesome crimes every day and can do nothing about it. Even people who are most close to him like his brother, the Secretary to the Ministry of Defence Gotabaya Rajapaksha, and the Member of Parliament of his party Duminda Silva take law into their hands.

Today it is the automatic weapons that have become supreme in the country. The government may have used this situation for their own advantage in elections and in the suppression of opponents. However now things have gotten out of control so completely that the government is unable to prevent its own members from killing each other with the use of automatic weapons.

The Secretary to the Ministry of Defence has cultivated a mentality of adulation for weapons and for those who are willing to use them, even if they are part of the underground elements. The close association of The Secretary to the Ministry of Defence with Duminda Silva, who is known to be one of the masters of the underground elements, speaks glaringly about the nature of the present day crisis.

The problem of this crisis is that the government has no solution to it. The government has to go on their knees to such political figures as Duminda Silva, as shown by the manner in which the some of the top government leaders have been behaving since the Mulleriyawa murders. The government is today incapable of even disowning a person accused of multiple murders and other socially unacceptable activities.

The government incapacity to deal with crisis is due to the importance given to the executive presidential system and the placement of the president above the law. This is a position that the government is neither willing nor capable of abandoning. The government when coming to power promised to abolish this system but since has done everything possible to strengthen it.

The people are unhappy, angry and insecure. The incident at Udawalawe shows them what might happen to them on any day at any time. Once the dispute settlements are taken over by the criminal elements with automatic weapons, anyone could become a target anytime. Professionals such as lawyers, doctors, university professors and everyone else today face this danger. It was not long ago that a doctor working at the Urugasmanhandiya was assassinated and even up to now this crime remains a mystery. Even Dr. Nonis, the registrar of the Sri Lankan Medical Council, was attacked in open daylight for carrying out his duty relating to medical exams. In the future, in all these matters criminal gangs with automatic weapons may have the ultimate sa.

People now need to find a political expression to their sense of insecurity, helplessness and frustration by finding a way to restore the supremacy of law by displacing the executive presidential system as found in the 1978 Constitution and strengthened by 18th amendment.

## ***2.7 The criminal Justice system in Sri Lanka is a dead tree***<sup>8</sup>



That murder should not be looked on lightly and the murderers must be punished is one of the most basic moral judgments in any human society. The attitude taken by the Sri Lankan government that no legal action need be taken against Duminda Silva, who has been identified by witnesses as having instigated and taken part in an incident that ultimately ended in the deaths of four persons, is nothing less than scandalous. Playing games with this issue indicates the perversion that has taken the place of moral judgment. If there is no moral condemnation of murder what standard can a society base condemnation on -- nothing at all?

Not long ago, there existed in this society the belief and feeling that a murderer must be brought to book irrespective of whatever high status he may enjoy. The manner in which Duminda Silva has been treated by the higher echelons of the government makes a nonsense of all that.

Perhaps, the explanation is that once the rule of law system sinks into the abyss, a society's moral foundations sink with it. The collapse of Sri Lanka's rule of law system is such that the society cannot any longer protect its basic moral code. Even murder becomes an amoral issue.

If political interference is the reason for taking no legal action against Duminda Silva then the IGP and Attorney General should have resigned in protest. That at least would have shown the public, there is still some reason for hope. However, the system is so dead, that even the idea of resigning in protest does not arise.

The only morally justifiable course open to the public now is to boycott this dead system.

## ***2.8 The 47th Session of CAT -- the government makes empty statements without firm commitments to halt violations***<sup>9</sup>

Yesterday (November 8, 2011) the government delegation gave the state report relating to the questions raised by the Committee against Torture (CAT) at the 47th Session of the CAT Committee. Mr. Mohan Peiris, a former Attorney General and now an advisor to the government presented the report. After making the report the committee members raised a large number of questions for which they sought answers from the government delegation. The government is expected to answer these questions today (November 9).

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<sup>8</sup> AHRC – STM – 153 – 2011; October 18, 2011

<sup>9</sup> AHRC-STM-170-2011; November 9, 2011





The session was made available online. You may watch it at <http://www.ustream.tv/channel/cat-webcast1>.

The opening presentation by the government delegation and their concluding comments at the end of the session demonstrated that the government is not taking this meeting seriously at all and is not making any commitment on concrete issues relating to the violations of the CAT in Sri Lanka.

The government of Sri Lanka (GOSL) spent most of its time giving a very general commitment stating that the eradication of torture and ill-treatment is a common concern of all, including that of Sri Lanka. However, it failed to address the causes for the widespread use of torture and ill-treatment in the country and also the widespread impunity. The questions of the constitutional justification of impunity arising out of article 35 of the Constitution, which places the executive president above the law and outside the jurisdiction of the courts, thus making widespread impunity possible; the virtual stopping of serious investigations into torture by the Special Investigation Unit (SIU) of the Criminal Investigation Division; the failure to implement the CAT Act, No. 22 of 1994, the problems caused by policy changes at the Attorney General's Department which now takes the side of the alleged perpetrators, rather than the victims of torture, enormous delays in the judicial process which frustrates any judicial action against torture and other serious defects in the system of the administration which acts to benefit of the perpetrators; the failure of the government to bring before the parliament and pass the witness protection law that has been pending for many years; the enormous defects in the exercise of fundamental rights jurisdiction; the pauper-like compensation awarded for serious violations of torture and the complete absence of the rehabilitation of victims, were all ignored in the government's presentation. No commitment of any sort was given on any concrete action to remedy these fundamental defects of the administration of justice.

The GOSL harped on about what it calls an Action Plan for Human Rights which is not a law and about which very little known in Sri Lanka. It is more a cabinet paper designed for the purpose of being presented at international forums than for any practical purpose within the country. This Action Plan does not provide any answers to the questions mentioned above.

The overall tone was reflected in the concluding remarks of Mr. Peiris who said that the GOSL agrees "110 percent" with the concerns of the Committee. In view of the absence of any concrete commitment to resolve long standing problems that violate the obligations under the CAT this was nothing more than an empty statement.

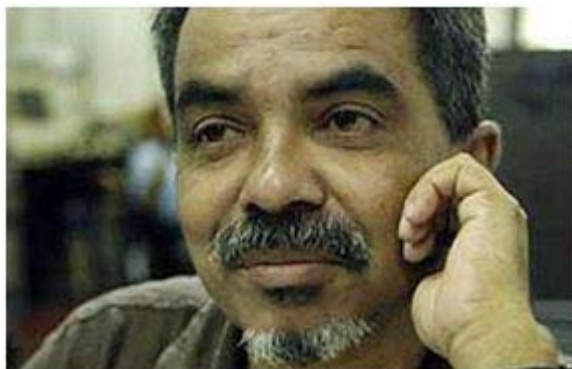
**'In reality there may be torture but our law against torture is fine' <sup>10</sup>**

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<sup>10</sup> AHRC – STM – 171 – 2011; November 10, 2011



The second day of the 47th Session on Sri Lanka at the CAT took place yesterday (November 9, 2011). For our comments on the first day please visit <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-170-2011..>



At this session the Sri Lankan delegation was required to reply to the long list of questions posed by the committee members the previous day. However, Mr. Mohan Peiris, who spoke on behalf of the government of Sri Lanka (GOSL) preferred to give a long tedious lecture on the law in Sri Lanka instead of answering questions which were about factual situations and actual violations.

He was trying to turn the CAT session into a theatre of evasion. It was a performance more suited to Mr. Bean, not a person representing a sovereign government before an august body of the United Nations.

Even on the law the impression that Mr. Peiris tried to create about Sri Lanka having a good system of law is altogether false. The 1978 Constitution has caused a complete collapse of the rule of law system in Sri Lanka by placing the executive president above the law and outside the jurisdiction of the courts. This has virtually diminished the importance of the judicial branch in Sri Lanka. Besides this fast track procedures established to amend even the Constitution and to pass other legislation is totally contrary to the process of making laws under a rule of law system.

Some of the statements of Mr. Peiris were blatantly false. For example the statement that the habeas corpus have fallen out of fashion due to the provisions of the Fundamental Rights under the 1978 Constitution. Hundreds of habeas corpus applications have been filed since 1978, and as a recent study has clearly established, most of these applications have failed due to trivial reasons. Besides this the habeas corpus procedure which should be speedy, as it is in most countries, takes many years in Sri Lanka totally defeating the whole purpose of the application. Thus, the people's unwillingness to file habeas corpus applications is due to the popular realisation of the futility of pursuing this remedy. This sense of futility of pursuing redress for violations of rights is a result of a judicial system that is being neglected and which has failed.

In the same manner he refused to answer questions posed on the attacks on journalists and human rights defenders. When asked about the publication in Ministry of Defence website naming several lawyers as traitors his reply was that the publication, in fact, did no harm. He was unwilling to consider the liability of the Ministry of Defence in making such inflammatory claims against these lawyers. When asked as to what action was taken against the persons responsible in the Ministry for making such publications or what measures in place to ensure that this would not recur, it did not occur to Mr. Peiris to address such questions of accountability.



Without any sense of ethics and responsibility Mr. Peiris made some remarks, like for example on the issue of the forced disappearance of Prageeth Ekmaligoda. He said, that according to reliable information that he could vouch for, Mr. Ekmaligoda has taken refuge in a foreign country and that the campaign against his disappearance is a hoax. Mr. Peiris failed to provide detailed information on the alleged whereabouts of Mr. Ekmaligoda despite claiming that he had "reliable information". The making of such statements as a representative of the GOSL is mean and totally unbecoming. Similar conduct displayed by anyone representing a state would lead to the taking of disciplinary action against him if, in fact, Sri Lanka was observing the rules of accountability as expected of any civilised country.

The committee questioned the willingness of the GOSL to ratify the Optional Protocol to the Convention against Torture, the Convention against Forced Disappearances and the Rome Statute of the International Criminal Court. Despite of repeating the questions for the second time, there was no answer forthcoming from Mr. Peiris.

On answering a question relating to the throwing of a grenade at the house of a lawyer Mr. Peiris replied that as the lawyer, Mr. Weliamuna himself could not tell the government who threw the grenade it was not possible to identify the culprit of this act. If this principle is followed in all cases of crimes the burden will be squarely laid on the victim to discover the perpetrator, thus exonerating the state from conducting investigations into the crime and discovering the culprits through competent investigations. Considering that Mr. Mohan Peiris once held the post of Attorney General this answer demonstrates that he may not have had the basic knowledge of criminal law and procedure to qualify for such a position.

Mr. Peiris also went on to say that the reason for not allowing the presence of lawyers during police interrogations is because confessions made to the police or other authorities are inadmissible in a court of law. What he was trying to evade was the responsibility of the state to ensure that a person in custody is not subjected to torture for whatever reason. The presence of a lawyer is a safeguard to ensure the absence of such ill-treatment at the police stations.

When Mr. Peiris talked about Sri Lanka's zero tolerance of torture one of the committee members pointed out that given the overwhelming evidence received from many sources about widespread torture practiced in the country he cannot accept that there is zero tolerance of torture in Sri Lanka. He reminded the Sri Lankan representative that what really matters is what happens in reality and that is what the committee was trying to clarify. These repeated requests to reveal information on the basis of questions asked on the real situation were blatantly dodged.

When questioned about the allegations of sexual misconduct of Sri Lankan police officers sent to Haiti Mr. Peiris objected on the basis of not having prior intimation about the question. However, when pressed he was unable to inform the committee



about what actions had been taken against these police officers regarding such serious violations relating to sexual abuse.

No process of accountability of human rights can succeed if the government faced the United Nations human rights bodies with the intention of dodging all the pertinent questions posed. However, the Sri Lanka government adopting this position is no surprise as in so many public statements the GOSL treats the human rights bodies in the United Nations as hostile elements who are engaged in trying discredit the government. That the west is engaged in a propaganda war on human rights against Sri Lanka is a common propaganda line pursued by the highest officers including the president himself. Mr. Peiris' dodging and evasion was surely in terms of the instructions he had received.

### **Epilogue to the CAT Committee proceedings on Sri Lanka<sup>11</sup>**

The meeting of the Sri Lankan delegation with the CAT Committee took place earlier. Kindly see our comments on those meeting of the 8th<sup>12</sup> and 9th<sup>13</sup> November.

It is now a suitable moment to take an overview of 'the dialogue with Sri Lanka' which the Sri Lankan delegation obviously did not treat as a dialogue. Why did the Sri Lankan delegation dodge the dialogue and instead, really provide the least amount of information on the most vital issues relating to the elimination of torture in Sri Lanka?

In the Asian Human Rights Commission's report to the CAT Committee the AHRC stated that the GOSL is both incapable and unwilling to implement the obligations under the CAT. If we look into the reasons as to why Sri Lanka has become incapable of implementing the CAT we can easily find the explanation as to the manner in which the Sri Lankan delegation participated or some would say, did not participate in a constructive and cooperative dialogue with the CAT Committee.

The reasons for the incapacity to implement the CAT are fundamental because these are constitutional. Sri Lanka's Constitution which was adopted in 1978 is the source of the impunity to the head of the state as well as to any agency of the state of which he is the head. Article 35 of the Constitution places the executive president above the law and outside the jurisdiction of the courts. As total control of all actions of the executive are with the president almost all acts done by state officers are virtually outside the jurisdiction of the courts. All matters of public policy come from the president.

The direct result of this situation was the displacement of all the public institutions of Sri Lanka, the police, the election commission and the civil service. By 2001 there was a general realisation that all the basic public institutions had collapsed due to over politicisation which meant the control of the executive president. There was public

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<sup>11</sup> AHRC-STM-175-2011; November 11, 2011

<sup>12</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-170-2011>

<sup>13</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-171-2011>

dissatisfaction. Responding to the public protest the parliament, with near unanimity passed an amendment to the Constitution, which is known as the 17th Amendment which brought about some limitations on the power of the president to make appointments, transfers, promotions and dismissals of public servants working in the above mentioned institutions. This was an attempt to bring about at least some limited control over the president's super powers.

The present government got rid of these limited controls over the president by passing the 18th Amendment which virtually negated the 17th Amendment. The direct result was that all the public institutions are now under the direct control of the president.

Here lies the basic incapacity of the Sri Lankan state to function under the rule of law and to respect the international norms and standards relating to human rights. The political 'order' created by the 1978 Constitution and the practices that have become entrenched in the following 33 years have created a situation in which the commands of the president become law. Anything could be treated as legitimate as long as the president approves it. For example the extrajudicial killings of those persons who are considered as unwanted or bad criminals has now become a frequent practice as a way of dealing with law and order as understood by the regime. A long list of such things which within a rule of law system would be considered illegal and criminal but which within the Sri Lankan system is now considered legitimate could be made.

The total control of the president of all public institutions directly resulted in the disempowerment of those who hold higher positions in these institutions. For example in the police the Inspector General of Police and his deputies today have very little control over their subordinates. This has led to the virtual collapse of the disciplinary controls which has earlier worked reasonable well.

Today when torture is practiced at police stations there is hardly any possibility for the higher ranking officers of the police to impose disciplinary sanctions and punish recalcitrant officers. The institution thus faced such serious internal contradictions and is thus incapable of functioning in order to achieve goals as expected under the CAT Convention and by international norms.

What the CAT Committee members referred to as reality as against the law as it appears in the books is something that the superior officers of the hierarchy have little control of. In the real world they are powerless. The real power is with the political master.

It is not surprising that persons who have had their upbringing and education in developed democracies fail to grasp what the Sri Lankan legal system is today. This is perhaps the challenge the CAT Committee will be faced with in making recommendations for achieving torture elimination in Sri Lanka. The recommendations of the last session were totally ignored by GOSL. The usual recommendations for investigating, prosecuting and provide judicial remedies are of course, always valid but however, in terms of Sri Lanka are unlikely to produce any positive result.



Under the 1978 Constitution the word 'impunity' does not carry much meaning. The impunity for all executive actions is guaranteed by the constitution itself. Thus, the security forces are protected from any legal consequences as long as the executive can exercise such impunity.

The courts in Sri Lanka do not have the legal capability to alter this situation. Unfortunately in the past the court interpreted article 35 of the Constitution to mean that the presidential impunity is absolute. Over the last 33 years the jurisdiction of the courts in public law and criminal justice issues has been greatly curtailed. In response the peoples' expectation of the courts has also diminished greatly.

Can the CAT Committee make meaningful recommendations in order to make a difference in a situation of this sort? This is the kind of question that international lawyers working with situations like that of Sri Lanka and of many other countries with similar situations need to deal with.

To act on the presumption that Sri Lanka still has a rule of law based legal system is to ignore reality. The real practice of torture which is the reality faced by the people cannot be altered if the recommendations themselves ignore the reality of constitutionally guaranteed impunity.

### 3. How Lawlessness affect Women

#### *3.1 Ms. Srini Wasana Amaratunga - Wattala Police Station<sup>14</sup>*

In this case 33 year old English teacher who went to saloon get a haircut, was murdered for the purpose of stealing the jewelry she was wearing, worth little over Rs.100,000 ( around USD.1000. The alleged murders, a couple, paid a mortgage with the money. They put the dead body in a toy box and dumped in a far way place.

The details are as follows.



According to the information that Asian Human Rights Commission (AHRC) has received the body of Ms. Srini Wasana Amaratunga (34) of Daluwakotuwa, Kochchikade, Negombo was found 25 September 2011 at the Elakanda, Wattala in the Gampaha District.

Her body was a found by a police team attached to the Wattala Police Station around 3 am while they were on patrol on that night.

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<sup>14</sup> AHRC – UAC - 190 – 2011; October 04, 2011



Srini was married and a mother of two children. She was a music teacher by profession and worked at the Loyola College, Kochchikade, Negombo. Srini's husband is employed overseas and she lived with her mother and two children.

On morning of the 24th Srini left home for Negombo town to pay some bills after having her breakfast with her family. Before she left she told her mother that she need not cook since she would be bringing home lunch. But as did not return home the worried family members made a complaint to the Negombo Police and requested the officers on duty to take all the possible measures to search for her and protect her life. Her colleagues too started their own search.

Later the victim's family were informed on the morning of the 25th a team of police officers attached to the Wattala Police Station found the body of a woman from a canal at Elakanda of Wattala Police Division.

Later Srini's relatives went to the hospital and indentified her body. According to the police there were no visible external injuries on her body and there was no evidence of her having been raped. However, there were some burn marks around her mouth. According to the government analyst's department where certain parts of her body was sent for examination it was found that she had died three hours after breakfast. Her earrings, gold bracelet, chain, and two rings were missing.

In the last two months alone, there have been similar robberies in the Negombo Police Division and other parts of Gampaha and Colombo Districts. The families of the victims have blamed the police for failing to solve any of these crimes.

Human rights activists believe that a gang of women could very well be behind these crimes but as the police have so far failed to investigate any of these cases this is not confirmed. It is believed the victim's are followed and then enticed with narcotic drugs before the robberies. The gang act in a systematic method where one group is responsible for befriending and drugging the women and then another given the responsibility of stealing their valuables including gold jewellery before abandoning them in a desolate spot.

There is more to these incidents than meets the eye and state protection for women and children leave a lot to be desired. In the last two or three months alone, more than a hundred cases of murder, abuse and rape were reported in different parts of the country.

Laws are aplenty in our country vis-à-vis protection to women and children and religions practiced here profess non-violence but violence has beset our nation since independence and it sees no sense of abating despite having ended a reign of terror for over four decades.

Srini's relatives state that even after they made a complaint on the 24th the officers of the Negombo Police Station did not take appropriate measures to undertake a meaningful investigation.

The AHRC has observed that there is an exceptional collapse of the rule of law in the country. The law enforcement agencies simply turn a blind eye to the situation and forget their statutory duties. The lethargic approach of these officers and the undue delays in judiciary have exasperated the situation to the point where the general public live in constant fear. The relatives of the victim are fear that they will not be able to obtain justice for Srini due to the apathy on the part of the police.

### ***3.2 Rape of a 9 year-old girl - Peradeniya Police Station***<sup>15</sup>

Mr. Mohammad Mulafar and Ms. Siththi Farina are the parents of three children, two boys and a girl, residing in Mowbray Estate, Mahakanda, Hindagala. Their only girl is 9-years-old. She was a student at Peradeniya Tamil School in year 5. The father is a labourer and the mother works in a house as a helper. They are the only Muslim family living in Mowbray Estate.

On 5 October 2010 the daughter could not go to school due to the heavy rain and her elder brother also stayed at home; only the second brother went to school. On that day both parents left for work. The elder brother who stayed home went to play with some other children of the estate.

Around 11am a well known neighbour Sinnamuttu Kirubakiran alias Raja came to the house and asked her to come to his sister's house which was very close. The child complied and when she entered the house she was raped by the suspect. After the assault she was given five twenty rupee notes. Further she was threatened that she will be killed if she revealed to anyone what had happened to her. Further she was forced to bathe and wash her clothes.

A few hours later, the girl went to a boutique which is close to the house to buy biscuits with the money given to her by the suspect. Then she met the wife of the suspect who beat her, accusing her of stealing the money. The girl fainted and the neighbours came to assist. With their intervention they were able to rescue the child. When she regained full consciousness she revealed what had happened to her. When her parents learned what had happened they took the child to the Peradeniya Police Station at around 8 pm and made a complaint. Then immediately after completing the complaint they took her to the Teaching Hospital of Kandy. The doctors who examined the child admitted her for treatment immediately. She was treated in ward 7 of the hospital until 7 October. Before she was discharged the Judicial Medical Officer (JMO) also examined her and recorded the medical situation.

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15 AHRC – UAC – 026 – 2011; February 11, 2011



Officers attached to the Peradeniya Police Station visited Mowbray Estate during the evening and searched for the suspect. However, he was not arrested and after the police left the estate he went to the child's house and pleaded with the parents for a settlement without going for court proceedings. The family members learned that the suspect was subsequently arrested. He was produced before the court on 7 October. He was represented by a lawyer and accused the child of stealing money and denied the charge of rape.

The suspect of the case is a very influential person as he is wealthy and an entrepreneur owning two business shops and a passenger bus.

Presently the parents fear that he will influence the police officers to withdraw the original case of rape and file a fabricated charge of stealing the money against the victim child. The victim's family stated that the police did not take any sufficient steps to properly complete the investigation into the case of rape.

Meanwhile the brother-in-law of the suspect threatened to kill the parents of the child if they pursue this case. The parents made a complaint to the Peradeniya Police Station regarding the incident on the 8 October the police recorded the complaint under reference No. CIB 390/210.

However, the police did not investigate the complaint of threats and presently the virtual complainant and the witnesses of the case are in fear of their lives.

According to the parents the suspect was accused of raping another 14 year Tamil girl, living in the same estate on 14 October. Though the case was reported to the Peradeniya Police Station still the police have not taken appropriate steps to either arrest the suspect or take the necessary legal action against him. The residents of the estate and the victim of the case believed that this is due to him bribing the police.

Furthermore, the parents fear that the medical report pertaining to the case would be changed due to the influence of the suspect as it has not yet been submitted to the court.

The parents of the victim are pleading for protection for themselves and their children. Further they are seeking speedy justice as this alone will alleviate the threat and danger to the child and her family.

### ***3.3 Rape of a 10 year-old girl - Nawalapitiya Police***<sup>16</sup>

According to the information that the Asian Human Rights Commission has received Mr. Kandiah Mahendra and Mrs. Manori Chamini Perera of No: 188, Ambagamuwa Road, Nawalapitiya are married with two daughters, the youngest of which is just 10-years-old. Mr. Mahendra has travelled to Bangladesh for work.

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<sup>16</sup> AHRC – 031 – 2011; February 16, 2011



Anoma (not her real name), is studying in year 10 at a reputed girl's school in the district. She is clever and a brilliant student.

On 31 December 2010 Mrs. Manori was out at a nearby house helping for an almsgiving while her younger daughter was alone at home, having her lunch at around 11.30 am. Anoma answered a knock on the door and found a man who asked for a knife in order to do some repair work on his vehicle. However, when she handed over the knife the man forced his way into the house.

The man threatened the child and attempted to rape her but she started to struggle. In the course of this attempt he stabbed the child on her head and the neck. He further slapped her, knocking out a tooth and breaking her nose. Finally the child was able to run out of the house and shout for help.

The suspect fled when a neighbour came to the scene. This neighbour then took the girl to the Nawalapitiya hospital, however, due to the seriousness of the injuries she was transferred to the Kandy Teaching Hospital where she was treated at ward 4 for 8 days.

The hospital authorities informed the Nawalapitiya Police Station and officers came to the hospital and visited the house at around 10 pm. After the child was discharged from the hospital, she was called to the Police Station several times by the police to identify the perpetrator. The child and the eye witness both gave enough information on the identity of the perpetrator but to-date, the police have failed to arrest him.

On 31 January 2011 Anoma went to the school for the first time after the incident and saw that the perpetrator was waiting at the school gate. As she was sure that it was the perpetrator she informed her mother who in turn informed the officers at the Nawalapitiya Police Station however, by the time the officers arrived he had already left the place.

Mrs. Monari categorically states that that the virtual complainant of the case, the eye witness and she herself have provided enough credible information on the identification of the suspect to the police. She further stated that the suspect was a resident of the house where she was helping with the almsgiving.

Mrs. Manori is aware that the suspect belongs to an influential family in the area and is closely associated with the police. She believe that it is due to this relationship that the officers are reluctant to arrest the suspect and do not want to proceed legally against him.

Mrs. Manori believes that the suspect came to the school when her victim daughter was there with the intention of causing further harm to the child. She further states that her daughter and the witness are now exposed to danger as the police officers are not implementing the law. She says that the victim and the witness should be provided with protection and the case should be referred to the Magistrate's Court so that the learned



Magistrate can be made aware of the situation, especially the danger posed to the victim and the witness.

The victim and her family members appeal to the Inspector General of Police (IGP) to make the necessary order to investigate the complaint in this regard; arrest the suspect and produce him before court.

When the police as a law enforcement agency of the country fail to carry out impartial investigations into an incident and take the culprit before the law it curtails the rights of the victims for redress.

### ***3.4 The rape of a 17 year old girl***<sup>17</sup>

Mr. Mohamed Niyasdeen of No. 439 Peradeniya Road Kandy is a businessman by profession and engaged with businesses in Kandy. He is married with one daughter aged 17 years.

On the 24 December 2010, Aaesha (not her real name) went for her tuition classes as usual but never returned home. Later in the evening she Mr. Niyasdeen and informed him that she was in a train and cannot understand anything and then the line got cut. Following the telephone message Mr. Niyasdeen made a complaint at the Kandy Headquarters Police Station and it was registered with the number CIB (i) 381/509 the same day. Though Niyasdeen explained his grievances the police did not pay proper attention and take any necessary measures to search for his daughter. Then he made another complaint to the Child & Women Care Bureau in the same station on 28 December 2010.

In March 2011 Mr. Niyasdeen received a message that his daughter was abducted by a person named Yasitha Yohan who is working at George Goonaratne Optometrists in Piliyandala and that she was being kept in his house at No: 9 Heraliyawa, Temple Road, Polgasowita, Kahathuduwa.

Mr. Niyasdeen went to the Kahathuduwa Police Station on 29 March 2011 and made a complaint on the abduction of his child. It was recorded and the number was CIB 283/482. Then he went to the house at No: 9 Heraliyawa, Temple Road with two police officers. When they visited the place Yasitha, his mother, brother and brother's wife were there. The police officers went inside the house and found the fact that Aaesha also present but Mr. Niyasdeen was not allowed to talk to her or see her. After having a confidential talk with the residence of the home, the police officers informed Mr. Niyasdeen that if he wants to take his daughter back, he should come with the Kandy Police officers and that they cannot do anything. The officers at Kahathuduwa Police Station did not investigate the complaint that Niyasdeen made properly.

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<sup>17</sup> AHRC – UAC – 107 – 2011; May 26, 2011



Mr. Niyasdeen returned to the Kandy Headquarters Police Station and informed the situation to the officers and sought their assistance to take the necessary steps to inquire into the matter and retrieve the child. But the officers on duty said that they could only inform Kahathuduwa Police Station but they too cannot do anything. Mr. Niyasdeen believes that the police officers are under the influence of a powerful politician and that Yasitha has his support.

Four months later in April Mr. Niyasdeen received a message that Yasitha has married Aaesha in April 2011 by providing false details to the registrar. At the time of abduction Aaesha had her laptop and an expensive mobile phone. Further, according to the parents, Aaesha is a kidney patient who has been treated at Kandy Teaching Hospital.

Mr. Niyasdeen is seeking justice as he believes that his daughter was abducted and detained by force and that the police have failed in their duty to investigate the matter. Furthermore, when the child was found they blatantly refused to take any action to retrieve her or ascertain as to whether she was, in fact, abducted or had gone of her own free will. Mr. Niyasdeen states his fundamental rights guaranteed under the constitution of the country have been violated by the police officers attached to both Kandy and Kahathuduwa Police Stations by not investigating any of his complaints.

### *3.5 The lady editor of the Sunday Leader threatened with death<sup>18</sup>*

The Editor of The Sunday Leader, Frederica Jansz last Thursday (27) received a death threat via the post to her residence. Frederica lodged a complaint with the Mirihana Police after receiving the threat.

This is not the first time and it certainly will not be the last that Editors at this newspaper receive death threats. Sometimes handwritten, sometimes typed, these vicious little notes (this time it was four pages long) always come anonymously posted by persons too cowardly to be identified.

The threatening letter is written in the most abusive and insulting language.

## Conclusion

The cases cited above have been randomly chosen from many such cases reported daily by the media. The acts of utter lawlessness make women and young girls into victims. The state agencies are unwilling and often unable to assist these victims. Quite often the police take the side of the perpetrator due to the influence of bribes or other favours or pressures.

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<sup>18</sup> AHRC-UAC-235-2011; November 17, 2011



When the law is unable to provide the least amount of protection to women is there any point in talking about the rights of women? Nice speeches can be made the rights of women but where they are unable to get the protection of the state all the talk about their rights is not taken seriously by anyone.

Deep insecurity is the result of the realisation that the state is unable to provide basic protection and that there are lawless elements who will exploit the situation to their advantage.

Thousands of incidents similar to those cited above have created a sense of helplessness in the population at large. Generally there is an agreement on the part of the general public that the police and the courts are not interested in their problems.

Women try to solve this situation by imposing huge restrictions on themselves. They avoid travel in the evening and even during the day they will ensure that they are accompanied by someone. Particularly the mothers of teenage girls accompany them to schools, tutorials and any other place due to the fear that they might be harmed if not accompanied.

Now as a habit most women do not wear jewellery, not only to prevent theft but also so as not to draw attention to themselves.

Added to all this, the language used by the police as well as the criminal elements against women is most crude. References to their genitalia and the sexual abuse they could be exposed to are told in the most uncouth language.

What worries everyone is that there is no solution to these problems as the state has abandoned their duty to protect the rule of law.

### ***3.6 Young Tamil complainant in a bribery case against a police officer faces attempts on his life and is in hiding<sup>19</sup>***

Devarathnam Yogendra ( 28 ) is the complainant in a bribery case against IP Wijesuriya of the Hatton Police Station, who has been indicted on a charge of obtaining bribes. This charge has been filed on the basis of a complaint made by Yogendra on November 6, 2010 and it is alleged that the police officer was arrested a decoy from the Bribery Commission immediately after accepting a bribe. Ever since the arrest of this police officer Devarathnam Yogendra has faced several attempts on his life, according to several complaints that he has made to the police, including the Inspector General of Police and also many other authorities including the Human Rights Commission of Sri Lanka. Yogendra has also complained that several fabricated charges have been filed, one

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<sup>19</sup> AHRC-STM-009-2011; January 18, 2011



of which was dismissed by the Magistrate on January 11, 2011. Another such case is scheduled to be taken up on March 1, 2011.

Four days after the first case was dismissed by the court Yogendra faced another threat to his life. Following are the details of this incident:

On January 15, 2011 on the Thai Pongal day morning around 01.30 a.m. about 5 police officers in police t-shirts had come to Yogendra's house and woke him up and said that they needed to question him. When his father has asked the reason for his arrest, the police officers have said that there is a complaint against Yogendra and they need to question him. Then they have taken Yogendra walking towards a white van with tinted glasses and pushed him in to the van. It was not a police jeep. It happened to be a rainy day and there was noise of crackers being lighted to celebrate Pongal.

Inside the van he was blindfolded and handcuffed and they have taken him about 200 meters into a lonely place where there was a cemetery. When he was taken out of the van, the cloth that blindfolded him was removed and Yogendra was asked to kneel down. Then he was threaten and told that they would kill him if he acted against the police. Yogendra was then assaulted on his shoulders and his body and this stage Yogendra has identified a police officer by the name of sergeant Sarath. Yogendra told him that if he is killed that the whole world will know that the Hatton police officers had done it. Further he told, the police officer "you are Sergeant Sarath and I know you" at this stage police officers were drinking, laughing and making merry. After this they further assaulted him and took out a gun which they fired in the air. Then they have shown him the cemetery and said that he would be soon be there if he continued to act against the police officers. Having kept him for more than one hour he was threatened repeatedly. Then the handcuffs were removed and the officers left in the van.

Yogendra has collected 2 bullets casings from the ground and also a rain coat which was thrown out by him while he was in the van to prove that they were from Hatton police.

Yogendra is now afraid to go home and is now in hiding.

This is one more case of a person who is being hunted by the police due to complaints made by him to the Bribery Commission and other authorities. Sugath Nishanta Fernando from Negombo was assassinated after making complaints against the police regarding torture and bribery. At the time he was killed several police officers were being charged by the Bribery Commission and were also made respondents in a torture case. Earlier Gerard Perera, who was pursuing his complaint against torture by several officers from the Wattala Police Station was assassinated while he was traveling on a bus. A case is before the Negombo High Court relating to the murder of Gerard Perera in which the accused is a police officer and an accomplice who was earlier charged under the CAT Act, No. 22 of 1994 for torturing him.



Devarathnam Yogendra is now in hiding, afraid for his life. In a 53 minute taped interview he described to the Asian Human Rights Commission the series of attempts that were allegedly made on his life which he narrowly escaped.

The AHRC calls on the Inspector General of Police and the police authorities as well as the Human Rights Commission of Sri Lanka and the National Police Commission to investigate the complaints of Devarathnam Yogendra and also to provide him protection.

## 4. Censorship

### *4.1 Censorship is an integral part of the contemporary political system<sup>20</sup>*

The government decision to call for registration of websites that publish any material relating to Sri Lanka has come under severe criticism from local journalists and other concerned persons and groups and also from many international organisations. While requiring registration the government has taken action to close down the facilities for the viewing of several websites. Many of these websites have existed for a considerable time and have wide readerships.

For several years the Sri Lankan government directed its attacks on the print and television media. This goal was pursued ruthlessly. The killing of editors and other journalists, serious physical injuries caused to others involved in the media, attacks on television crews and attacks on stations became part of the normal routine in Sri Lanka. Everyone who takes a new initiative to publish was aware of the great risk that follows such initiatives.

Only those who are with the government are allowed the freedom of expression and publication. A virtual monologue has been imposed on the whole nation. Keeping all those shut for the free media and for persons with views opposed to the government is perhaps the most primary objective that is followed passionately by the government, particularly through enthusiastic project management by the Ministry of Defence.

Contemporary censorship in Sri Lanka is a comprehensive one. While the government creates various kinds of pressures against the free media another branch is also employed for activities for achieving this same objective. This is the underworld element that is today a very integral part of the machinery of repression. Recent events relating to Duminda Silva has revealed the details of the link between the illicit drug business and the underworld. Monies earned from the drug trade are generously used for payments to slum dwellers that are then brought into the roads to support the government and

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<sup>20</sup> AHRC-STM-173-2011; November 10, 2011





oppose all opposition forces. During the Katunayake incident at which a young man was killed, in order to prevent protestors participating at the funeral, people armed with poles were placed on the roads in all parts of the city. They were to compliment the police and the army in suppressing protestors who were expected to come to attend the funeral.

The inner core of the social fabric of Sri Lanka today is seriously crushed and trampled by militaristic and mafia combinations together with the lawless policing. This is supplemented also by the ever expanding intelligence services. These intelligence services are now engaged in the collection of information from all organisations about all their activities.

The grand explanation for all that is that there is a possibility of the revival of the LTTE and that there is also the possibility that the LTTE may gain a linkage with the state sector. The propoganda line is to preach the story of this great danger of an LTTE revival as an excuse to interfere with all independent organisations and persons so that the government would have the monopoly of creating public opinion.

The present attempt to suppress the web publications under the pretext that some of the country's leaders are being maligned by them is an extension of this censorship that has been achieved in other areas.

The government is thoroughly aware of the mass discontent. By taxation on commodities and services the government has imposed a heavy burden on the people. The failures of economic policies compelled the government to impose more taxes and hardship on the people.

To rule over an unhappy people is the task the government is faced with. In earlier times during times of such discontent the possibilities for regime changes acted to prevent crises of discontent. However, the present government has taken away this option.

Thus, what is being done is to punish discontented and unhappy people. Censorship therefore has become an integral part of government policy. It is a component of the overall strategy of repression.

#### ***4.2 Tamil newspaper 'Uthayan', Mr. Gnanasundaram Kuganathan – Head Quarters Police Station, Jaffna<sup>21</sup>***

According to the information that the Asian Human Rights Commission (AHRC) has received the chief news editor of the Jaffna-based newspaper 'Uthayan', Mr. Gnanasundaram Kuganathan (59) was assaulted by a group of unidentified persons on 29 July 2011 and was admitted to the Jaffna Teaching Hospital in critical condition.

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21 AHRC – UAC – 138 – 2011; August 10, 2011

Kuganathan received a telephone call on the afternoon of the same day from someone who inquired as to what time he would leave the office. Under the impression that the caller meant to visit the newspaper offices regarding some potential information, Kuganathan provided the caller with the information.

On his way home from work, Kuganathan was assaulted by two men who beat him with iron bars. Following the attack he was admitted to the Jaffna Teaching Hospital where the hospital authorities confirmed that his condition was critical.

Following the incident it was reported that the Sri Lanka Army had sent several teams into the area to track down the suspects. While the area is ostensibly under civilian control there is a heavy military presence. It was also revealed that the police also had deployed several teams to arrest the two men who had arrived on a motorbike to assault Kuganathan. Later following the instructions of the president himself the Inspector General of Police (IGP) N.K. Ilangakoon immediately launched an investigation into the incident. The IGP later handed over a preliminary report on the attack to the President who, in typical manner, has not revealed the contents.



It was also revealed that further investigations are currently being carried out on the attack by the Jaffna police. Much has been said about the lack of investigative skills of the Sri Lankan police who resort to torture rather than actual investigation technique to find the real culprit so it is widely believed that any person they produce, if they do produce anyone at all, is unlikely to be the actual perpetrator. The IGP himself has publicly noted the lack of policing skill by the men under his command.

To date, twelve days after the attack neither of the suspects has been arrested or produced before the courts for prosecution.

The protest against this ruthless attack is narrated in the YouTube presentation at the following link: [http://www.youtube.com/watch?v=xwQY5\\_uElsI](http://www.youtube.com/watch?v=xwQY5_uElsI)

## 5. Torture And Ill Treatment

### *5.1. Devarathnam Yogendra - Hatton Police Station*<sup>22</sup>

According to the information received by the Asian Human Rights Commission Mr. Devarathnam Yogendra (28) of Shanon Estate, Hatton is the complainant in a bribery case number: 50600/01 in the Chief Magistrate's Court Colombo, against IP Wijesuriya of the Hatton Police Station, who has been indicted on a charge of obtaining bribes. This charge has been filed on the basis of a complaint made by Yogendra on November 6, 2007 and the police officer was arrested a decoy from the Bribery Commission immediately after accepting a bribe. Ever since the arrest of this police officer Devarathnam Yogendra has faced several attempts on his life, according to several complaints that he has made to the police, including the Inspector General of Police and also many other authorities, including the Human Rights Commission of Sri Lanka. Yogendra has also complained that several fabricated charges have been filed, one of which was dismissed by the Magistrate on 11 January, 2011. Another such case is scheduled to be taken up on 1 March, 2011.

Four days after the first case was dismissed by the court Yogendra faced another threat to his life. Following are the details of this incident:

On the 9 December 2007 SI Silva has threatened Yogendra when he was on his way to Hatton from Talawakelle.

On the 1 April 2009 Yogendra was arrested with fabricated charges, produced and remanded until the 21st April 2009. (Case Number: B/296/09) (38152). This case was settled on the 11 January 2011.

Once again Yogendra was arrested on the 1 December 2010 on the charges that he had weapons in his possession. (Case Number: B/902/2010). This case is pending in Hatton Magistrate Court and the next hearing will be on the 1 March 2011.

On 15 January, 2011 on the Thai Pongal day morning around 1.30 a.m. about 5 police officers in police t-shirts had come to Yogendra's house and woke him up and said that they needed to question him. When his father has asked the reason for his arrest, the police officers have said that there is a complaint against Yogendra and they need to question him. Then they have taken Yogendra, walking towards a white van with tinted glasses and pushed him in to the van. It was not a police jeep. It happened to be a rainy day and there was noise of crackers being lighted to celebrate Pongal.

Inside the van he was blindfolded and handcuffed and they have taken him about 200 meters into a lonely place where there was a cemetery. When he was taken out of the

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<sup>22</sup> AHRC – UAC – 007 – 2011; January 19, 2011



van, the cloth that blindfolded him was removed and Yogendra was asked to kneel down. Then he was threaten and told that they would kill him if he acted against the police. Yogendra was then assaulted on his shoulders and his body and this stage Yogendra has identified a police officer by the name of sergeant Sarath. Yogendra told him that if he is killed that the whole world will know that the Hatton police officers had done it. Further he told, the police officer "you are Sergeant Sarath and I know you" at this stage police officers were drinking, laughing and making merry. After this they further assaulted him and took out a gun which they fired in the air. Then they have shown him the cemetery and said that he would be soon be there if he continued to act against the police officers. Having kept him for more than one hour he was threatened repeatedly. Then the handcuffs were removed and the officers left in the van.

Yogendra has collected 2 bullets casings from the ground and also a rain coat which was thrown out by him while he was in the van to prove that they were from Hatton police.

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This is one more case of a person who is being hunted by the police due to complaints made by him to the Bribery Commission and other authorities. Sugath Nishanta Fernando from Negombo was assassinated after making complaints against the police regarding torture and bribery. At the time he was killed several police officers were being charged by the Bribery Commission and were also made respondents in a torture case. Earlier Gerard Perera, who was pursuing his complaint against torture by several officers from the Wattala Police Station was assassinated while he was traveling on a bus. A case is before the Negombo High Court relating to the murder of Gerard Perera in which the accused is a police officer and an accomplice who was earlier charged under the CAT Act, No. 22 of 1994 for torturing him.

Devarathnam Yogendra is now in hiding, afraid for his life. In a 53 minute taped interview he described to the Asian Human Rights Commission the series of attempts that were allegedly made on his life which he narrowly escaped.

The AHRC calls on the Inspector General of Police and the police authorities as well as the Sri Lanka Human Rights Commission and the National Police Commission to investigate the complaints of Devarathnam Yogendra and also to provide him protection.

## ***5.2. Selema Lebbe Mohammed Amir Sultan - Katupotha Police Station***<sup>23</sup>

According to Mr. Selema Lebbe Mohammed Amir Sultan (40) of Madalahisa, Kakunagolla in the Katupotha Police Division he was illegally arrested, detained and tortured by a Katupotha Police Station on 9 October 2010.

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<sup>23</sup> AHRC – UAC – 015 – 2011; January 27, 2011



On that day Amir received a telephone message from telephone number 077 8751160 which belongs to Mr. Nijam, a well known businessman in the area. He was told that one of his elder brothers, Rasik had been assaulted and at that moment he was being taken to a police jeep. Amir was asked to come to Kirimatiyawa to help his brother. When he received the message he was at the Narammala bus stand. He immediately went home and informed his relatives and started to travel to Kirimatiyawa on a motorbike belonging to one of his brothers. When he reached Kirimatiyawa he saw that his brother was inside the jeep with two others, Imran and Safeek. The time was around 1 pm. Amir observe that there were four police officers attached to the Katupotha Police Station, namely Court Sergeant (CS) Jayawardana and officers Janaka, Herath and one other. All were in uniform.

When CS Jayawardana saw Amir he ordered him to get into the jeep. When Amir asked the reason CS Jayawardana started to scold him in a derogatory manner. He then slapped Amir several time to force him into the jeep. During the journey to the Katupotha Police Station Amir learned that there were had been a quarrel between his brother Rasik and the others in the jeep.

At the police station Amir was taken was made sit on the bench. CS Jayawardana told Amir to be ready to go the 'mother-in-law's house' for six month. This is a euphemism for sending someone to remand prison. CS Jayawardana repeatedly questioned Amir as to why he sought the intervention from the higher authorities for his rights violations. Amir replied that he wanted to get justice.

Another police officer, Janaka, got a big knife from Mr. Jesmin, the elder brother of Mr. Safeek who had quarreled with Amir's brother. Jesmin was an owner of the beef stall at Madalassa and as such is a person of influence in the area. Janaka handed the knife to Amir handle first and asked him to hold it. However, Amir refused to do so as he realised that the officer wanted his fingerprints on the potential weapon.

It was at that time that CS Jayawardana ordered Janaka to remove Amir's clothes. Janaka dragged Amir into an adjoining room. There Amir observed that there were other police officers, namely Herath and two women officers, one of whom Amir identified as Manike. Immediately they brought in Farseek, Imran, Jasmin and Amir's bother Rasik into the same room. Then police officer Herath forcefully took Amir's wrist watch, and he searched Amir's pocket and took Rs. 105.00.

Amir's T-shirt was forcefully removed while CS Jayawardana continuously beat him about the face. vest of Amir as well. After his sarong was torn off and Amir was completely naked he was pushed onto the table. Then all the police officers included the two women started to clap, make rude noises and laugh. This was done in the presence of Jesmin, Imran, Farseek. The only one that remained silent was Rasik, the brother of Amir.



This degrading and humiliating punishment continued for some time. The women police officer called Manike started to scolded Amir with obscene language and told him that this punishment was not enough for someone who complained to higher authorities like Amir. She said that that further punishment was required.

Manike told Amir that there were pens and paper and that he could write whatever he wanted but to remember that the courts would only accept the version provided by the police. She further threatened him not to fight with the police.

During this time they treated Amir in very humiliating manner. Being a Muslim it was religiously and culturally unacceptable for him to have been forcibly stripped naked, particularly so in front of strangers and women. Due to this Amir suffered great mental anguish.

Police officer Janaka gave Amir back his sarong and then started to write a statement. Amir was never asked to make a statement but was forced against his will to sign the one prepared by the police.

Then police officers brought Amir, his brother Rasik, Faseek and Imran to the Katupotha District Hospital. When Amir was produced before the doctor he revealed how he was torture at the hand of the police officers. However, the doctor did not examine Amir, nor did he answer any of his questions.

Amir was brought to the residence of Acting Magistrate Mr. Abdulla and remanded. He was not told the reason for filing a case against him and vehemently states that it was a fabricated charge. He was first taken to Kuliypitiya Prison Lock Up and then on 10 October transferred to Wariyapola Prison.

On 20 October he was released on bail and learned that the case number of the fabricated charge the police filled against him was B/1995/2010. Amir is certain that the police officers filled this case to take revenge on him for seeking justice from the higher authorities for what had happened to him and to please the influential people.

He narrated the way that he was tortured and violated his rights by the police officer in the video<sup>24</sup>.

### ***5.3. Karasinghe Arachchilage Kumarasinghe Appuhami - Kolonna police***

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According to Mr. Karasinghe Arachchilage Kumarasinghe Appuhami (55) of Temple Road, Wijegiriya, married, a father of 5 and a farmer by profession. He lives in the Kollonna Police Division in Rathnapura District.

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<sup>24</sup> <http://www.youtube.com/user/janasansadaya#p/u/19/4gUJAZk55Rg>

<sup>25</sup> AHRC – UAC – 020 – 2011; February 01, 2011



On 30 April 2010, he received a message from the Kolonna Police Station to appear at the station for an inquiry at 9 am. After waiting for several hours he was asked by officer Thilakarathna to answer some questions. Thilakarathna was in civilian clothes at the time. Kumarasinghe was accused of stealing electricity from the village electricity plant for his home which he strongly denied. Each time he denied the charge officer Thilakarathna slapped him heavily. Then Thilakarathna grabbed hold of his shirt collar and dragged him forward and started to beat him about the head. During this assault Kumarasinghe struck his head against the wall. Thilakarathna locked Kumarasinghe in a cell headless of the pain that the man was suffering.

After 30 minutes Thilakarathna came to the cell along with another officer and shouted at Kumarasinghe in obscene language and warned him that two fabricated cases would be filed against him. Then Thilakarathna ordered the other officer to take Kumarasinghe to the hospital and bring him back. Two officers came to the cell and took Kumarasinghe to the Kolonna District Hospital.

At the hospital Kumarasinghe was produced before a doctor to whom he explained how he had received his injuries and that the police had tortured him. After examining Kumarasinghe the doctor informed the police officers that he should be admitted for further treatment. The officers told the doctor that they could not allow him to be admitted as they had to take him back to the station. Further they denied that they had tortured him. The doctor informed the officers that they had to wait until the District Medical Officer (DMO) came and made a decision in that regard as he (the doctor) could not release the patient. For the next 15 minutes Kumarasinghe was asked to sit on a bench and it was then that he started to vomit.

When the DMO arrived he also examined Kumarasinghe who was able to explain the history of the case. The DMO specifically asked him whether he had vomited and felt faint. Kumarasinghe said that this was the case and that he had already started vomiting. Then the DMO again asked one of the officers to take Kumarasinghe back to the bench while he spoke with the second officer. Following their conversation both of them came out from the examination room and the DMO said that he had to go the ward. Kumarasinghe pleaded with the DMO that he needed treatment but the DMO left without considering his request. Kumarasinghe firmly believes that the DMO willfully allowed the police officers to take him from the hospital in the full knowledge of his medical condition and that he was suffering severe pain. Vomiting after suffering a head injury is a symptom of the seriousness of the patient's condition.

As the police officers tried to take Kumarasinghe back to the police he pleaded them to admit him for treatment. However, heedless of his request the officers started to forcefully drag him away. Kumarasinghe held on to the bench with his right hand pleading with them not to take him back to the police station as he was in fear of being subjected to further torture. One officer called the police station and a short while later another five officers, including the Thilakarathna, came to the hospital. They shouted at him with obscene language and Kumarasinghe begged them to at least give him some



medicine for the pain. Then one officer told him, 'Thota Beheth Dennai' (The direct translation is: "we will give you medicine", however, it is a euphemism for "we will give you torture"). Then the officers tried to carry Kumarasinghe out of the hospital but he held on to one leg of the bench. His fear was so great and his grip so strong that when the officers tried to drag him the heavy bench moved from the wall. Another officer took hold of Kumarasinghe's left hand and started to beat and twist it thereby causing enormous pain. All the while Kumarasinghe was screaming and pleading with the doctors and the bystanders to save him. However, no one came to his assistance. He saw a large number of health staff looking on but none intervened to save him. Meanwhile other officers tried to release Kumarasinghe's right hand from the bench.

Finally the officers were able to drag Kumarasinghe out of the hospital and into a vehicle parked in the hospital premises. Kumarasinghe lost consciousness but not before he realised that his sarong had been torn off.

When he regained consciousness he found that he was back at the police station. With difficulty they brought Kumarasinghe to a cell.

After sometime Kumarasinghe was taken out from the cell and brought before the Officer-in-Charge (OIC) of the station. Then he was able to explain what had happened to him. After listening to this the OIC told him, 'Mama Hitiyanam Thota Gahanne Redde Revenna' (If I was here I would have beaten you until you shat yourself). He was then returned to the cell and at around 7 pm one of his relatives came to visit him. After explaining his pain he was able to take some Panadol. Altogether Kumarasinghe took six pills after getting some water from an officer.

Then at around 10 am officer Thilakarathna came to Kumarasinghe and informed him that they needed to record a statement from him and took him to another room. Then Thilakarathna wrote a statement one and half pages in length and asked Kumarasinghe to sign it. When Kumarasinghe asked the officer to read the statement before he signed it Thilakarathna blackguarded him and ordered him to shut his mouth and sign. After Kumarasinghe again refused to sign the statement Thilakarathna brought him before the OIC and told him that he refused to sign the document. Kumarasinghe told the OIC that he needed to know the contents of the document before signing it. The OIC then requested Thilakarathna to read over the document. Thilakarathna brought Kumarasinghe back to the room and shouted at him, ordering him to sign the document but Kumarasinghe again refused and stated that even if he were to be killed he would not sign the document if it was not explained to him.

Then again officer Thilakarathna brought Kumarasinghe back to the OIC who told Kumarasinghe that there was no law that says a statement should be explained before getting signed which of course is completely contradictory to police regulations. He showed Kumarasinghe a book and explained that according to the information contained therein there was no need to explain a document before getting it signed.



At that time Kumarasinghe noted that members of the 'Electricity Plant Association' of the village had also come to the station. Then the OIC warned Kumarasinghe that they will file two fabricated charges against him and that Kumarasinghe would be sent to remand prison for 14 days. The OIC called an officer and ordered him to inform the Magistrate that he needed to send Kumarasinghe for to remand prison for 14 days.

Then OIC told that "Yako S B Dissanayaka Mahatthaya Awurudy 2 Hire Hitiya, Sripathi Suriarachchi Mahatthaya Kalayak Hire Hitiya, Sarath Fonseka Mahatthaya Thawama Athule. A Minissu Giye Katawal Hinda. Thotai Apitai Kohoma Karaida? A Nisa Umbata Viruddawa Nadu Danawa" (Devil! Mr. S B Dissanayak imprisoned for two years, Sripathi Suriarachchi also for certain time, Sarath Fonseka is still in prison. All of them went prison because of their mouths. Then what would happen to you? So we will file two cases against you.) Then Kumarasinghe pleaded with the OIC not to file cases stating that his two children and the wife were hospitalized and the other his 3 children were in school when he came to the police. He told the OIC that he did not know what will happen to them. Finally he agreed to sign the document and was released.

The OIC then informed all the members of Electricity Plant Association and the others to come to the station the next day, 2 May. On that day first Kumarasinghe went to the Kolonna Hospital for treatment but had to go to the police station for the inquiry. As all the members of association were present the inquiry was held and at the end it was found that there was nothing against Kumarasinghe. He was informed that the police would not file any case against him. This was stated in front of everyone present.

When he returned home although he used the medicine which was given to him by the hospital he understood that the pain was getting worse so he went to the Base Hospital of Ambilipitiya. Then the doctors admitted him for further treatment to the ward number 2. The police officers at police post of hospital also recorded a statement from him on 7 May. Then on the same day the Judicial Medical Officer (JMO) examined him and recorded his condition. He was discharge on that day.

Then Kumarasinghe went to the Assistant Superintendent of Police (ASP), Ambilipitiya on 11 May and explained the incident to him. Another officer recorded his statement which they got him to sign.

Kumarasinghe made complaints to the Inspector General of Police, Deputy Inspector General (Sabaragamuwa), Senior Superintendent Police (Rathnapura), National Police Commission, Human Rights Commission of Sri Lanka regarding the unjust treatment he had received at the hands of the police. As a result of these complaints he was informed by the police that they would file a fabricated charge against him which they later did.

He narrated the way that he was tortured and the violation of his rights by the police officers in the video<sup>26</sup>.

#### ***5.4. P.G.W.G. Jayarathna - Vavuniyawa Headquarters Police Station***<sup>27</sup>

P.G.W.G. Jayarathna (37) of number 7/3, Panwatte, Ovilikanda, Matale is married and a police constable (PC) attached to the Sri Lanka Police Department. On 2 May 2009 he served at number 7 bunker of Sub Zone 1 of Zone 14 of Vavuniyawa District. His bunker was at the Vavuniya Mannar main road. On the particular day at around 6 pm as usual he prepared to light the lantern to the Lord Buddha statue. While completing his religious ritual he heard the horn of a police jeep. Immediately he went to the front of the bunker where he saw a police jeep with two senior officers and few junior police officers. Immediately Jayarathna saluted the seniors and approached the jeep with his weapon. He knew the two senior officers, Assistance Superintendent of Police (ASP) Jayantha Athapaththu and Inspector of Police (IP) Nishantha Alwis. IP Nishantha alighted from the jeep and asked Jayarathna the reason for not coming to him immediately. He answered that he was carrying out his religious ritual by lighting the lantern to the Lord Buddha. Then IP Nishantha slapped him severely. Jayarathna understood that IP Nishantha was inebriated at the time as where the officers accompanying him. When he was assaulted it was witnessed by Sergeants Jayarathana and Kularathna who were the assistants of ASP Athapaththu. Further the incident was witnessed by another police officer, Thilakarathna, who also served in number 8 bunker as well. Just after Jayarathna was assaulted Sergeant Jayarathana and Sergeant Kularathna went to IP Nishantha. They were staggering as they walked as they were both drunk. They urged IP Nishantha to return to the vehicle. Jayarathna told the ASP that he worshiped Lord Buddha every day by lighting a lantern. Then the ASP told IP Nishantha that they had to go and they left the place.

Jayarathna felt unbearable pain in his ear along with an unusual eco on in ear. Also he lost his sense of balance and was not able to stand properly.

Jayarathna called the State Information Centre on 1919 and asked the telephone numbers of Deputy Inspector General (DIG) Vavuniya and Senior Superintendent of Police (SSP) Vavuniya. Though he was able to get those numbers he was not able to contact the officers. Then he called to 118, the Emergency Service number and asked them to inform a senior police officer at Vavuniya to come and take him for treatment as he cannot travel unaided. He waited for some time but no one came.

Then Jayarathna went to meet his immediate senior, the Officer-in-Charge (OIC) of the Sub-Zone 1. He was able to make a record about the incident. Then the OIC (Administration) of Zone-14, Maddumabandara, came to him and told Jayarathna that he

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<sup>26</sup> <http://www.youtube.com/watch?v=UABuyMF3hKQ>

<sup>27</sup> AHRC – UAC – 021 – 2011; February 02, 2011



should not go for treatment as the IP Nishantha was drunk and would face future problems if the complaint went any further. Then Jayarathna informed him that he was in great pain and could not stay. Then Madduamabandara went away saying that he would return with a vehicle but he never did so.

When he could no longer bear the pain he went to the office of the Zone-14 after making a record on the record book of the Sub-Zone officer. At that time he met IP Nishantha who told him that he can go anywhere he wished as he was not afraid of any of those authorities.

Then Jayarathna handed over his official weapon to Bunker 6 of Sub-Zone 1 and kept a note of the record. He then went to the Government Hospital of Madawachchiya at 10.55 pm where he was admitted. Before he was admitted an officer from the Madawachchiya Police Station also recorded a statement from Jayarathna regarding the incident.

While he was treated at the ward he vomited around four times and suffered a severe headache as well. After the doctors examined his ear they decided to transfer Jayarathna to the Anuradhapura Teaching Hospital for further treatment. He was transferred with an ambulance. After admitting him to the Anuradhapura hospital he was examined by the ENT consultant and informed him that there is a perforation to his ear drum (tympanic membrane).

Jayantha then made a complaint to the SSP Vavuniyawa, DIG Vavuniyawa and to the police headquarters. He also made complaint with the Human Rights Commission of Sri Lanka. Then the HQ Police Station Vavuniyawa filed a criminal case against the IP Nishantha in the Magistrate Court Vavuniya and the case number was 56816/2009. In this case IP Nishantha was accused of committing a crime of grievous hurt by perforation to the ear drum.

The witnesses for the case were all police officers including the seniors and few junior officers. Presently the case is pending.

Meanwhile the case Jayarathna filed at Human Rights Commission was taken up for inquiry and when it was concluded the Commission decided that IP Nishantha had violated the fundamental rights guaranteed to the Jayarathana and further ordered him to pay sum of Rs. 10 000/= as compensation.

Jayarathna states that if a government officer is found to be inebriated while on duty it should be considered as one of the most serious offences and that officer should be dismissed from service after being found guilty.

Instead of that happening a few weeks later he found that IP Nishantha was promoted and appointed as the Personal Assistant to the Senior Deputy Inspector General (Sabaragamuwa and Uva Provinces). After his appointment Jayarathna observed that



police officers attached to the HQ police station of Vavuniya have shown no interest in proceeding with his case. Further he found that all of the witnesses were failing to appear in court as they were reluctant to give evidence due to the influence of the IP. Further he states that his life has been placed in danger by the higher authorities of the police department by their silence and reluctance to take action against IP Nishantha.

Jayarathna further state that he learned that certain steps have been taken to change the order of the HRC decision which was in his favour. Presently Jayarathna is in fear of his life.

He narrated the way that he was tortured and the violation of his rights in the video<sup>28</sup>.

### *5.5. Kapila Sampath Jasingha - Chillaw Police Station*<sup>29</sup>

According to the information received by the Asian Human Rights Commission, Mr. Kapila Sampath Jasingha (28) of No: 91/31, 3 Lane, Aluthwaththa, Chillaw in the district of Puttalam is a bachelor and a well known fruit seller in the Chillaw Public Market.



On the 23 January, 2011 Sampth was running his fruit stall in the front part of the Public Market of Chillaw. As he wanted to go home for a personal matter he handed over the stall to his assistant Mr. Charith. In the afternoon at around 3.30 pm two persons, who were both drunk, in civilian clothes came to the stall and ordered Charith to remove the fruit stall. Then Charith informed the men that the stall belonged to

Mr. Sampath and called him on his mobile phone. Soon after Sampath came to his fruit stall by his three wheeler bearing number NW-OF 5716. He explained to the two people that the stall belonged to him. As the two men rudely demanded him to remove the stall, Sampath, in turn, demanded their identity.

They started shouting at Charith in a defamatory manner. Then when Sampath tried to approach his stall one of them asked Sampath for his identity. Then Sampath again explained that he is the owner of the stall and his name is Kapila Sampath. The man further asked whether Sampath had permission to run a fruit stall whereupon Sampath explained that he had been running his fruit stall for many years.

After hearing that the two men both threatened Sampath and ordered him to remove the fruit stall with immediate effect. Sampath explained that he had been selling fruit in the stall continuously for many years legally and he was paying tax to the local government authority.

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<sup>28</sup> <http://www.youtube.com/watch?v=a-LQbFNHlcw>

<sup>29</sup> AHRC – UAC – 027 – 2011; February 11, 2011



Sampath tried to explain that as he was legally running the stall he was not ready to remove it on the instructions of two drunken men. At that time one of them announced that they were both police officers attached to the Chillaw Police Station. Further one of the officers appeared to be in a state of extreme inebriation and shouted that he was police officer Senarath of the Chillaw Police (later identified as PN Senarath (54808)).

Sampath told the officer that he was drunk, not in uniform and, in fact, had not produced his identification to prove that he was a police officer he had no reason to obey him. By that time many businessmen and a large number of people witnessed the violent and shameful behavior of the two inebriated officers. Officer Senarath ordered Sampath to go the police station with him. When Sampath explained that as he had not committed any crime there was no any necessity for him to go the station. Further he explained that as he doubted the identity of the two men he would not go the police station.

On hearing that officer Senarath started to assault Sampath about the head and face. During this attack Sampath's nose was fractured and began to bleed. One of his teeth also was knocked out.

Senarath held Sampath's neck and dashed his head against the gate post situated nearby. Then Sampath fell to the ground. Thereafter Senarath dragged Sampath by the neck of his T-shirt along the road to the police station. During this time Sampath was unable to resist or defend himself as he was semi conscious.

At the police station Senarath pushed Sampath into the cell. Despite the fact that he was bleeding profusely the other officers paid no attention to his situation.

Later between 4 to 5 pm several police officers came to the cell and asked Sampath to settle the matter with Senarath and not to proceed against him. But none of these officers provided any medical treatment. Then Sampath told them that he intended to go the court as he was assaulted for nothing.

After sometime two of his friends, Indunil Madusanka and Anton came to the police station with Hillary Prasanna, Attorney-at-Law. Sampath noted that the lawyer spoke to the police officers at the station and went off without providing any relief to him.

Then around 7.30 pm two police officers along with the police officer Senarath brought him to the Base Hospital of Chillaw. When the police officers referred Sampath to the doctor at the Out Door Patient Department doctor he specifically asked whether Sampath has taken liquor. Then Sampath clearly told the doctor that he has not taken liquor and he explained how he was tortured by the police officers. Further he explained the doctor that the police officer responsible, Senarath was drunk at the time of the assault. But the doctor did not made any attempt to consider that.

Further Sampath showed the doctor that he is still bleeding and he showed the blood on his hands also. Then the doctor explained to the police officers that Sampath needed to

be admitted for further treatment. He was admitted to ward number 4 of the hospital for treatment.

Sampath was X-rayed and transferred to the ward 7. Later two police officers came to the bed and guarded him. Later on 24 January the officers went away. Then Sampath learned that his friends and relatives had sign for a surety and the police had released Sampath.

However, Sampath was later asked to appear before the Magistrate's Court of Chillaw on 9 February for a case B/R/71/2011. Sampath was discharge from the hospital on 26 of January. While he was in the hospital the doctors informed him that his nose has been fractured due to the assault of the police officer.

On 27 January two police officers went to his home and informed Sampath that he needed to go to the police station which he did. At the police station officers asked for his name, address, age and marital status and he noted that the officers were making some notes with the data. But Sampath was not aware about the content of those documents. Sampath believes that the likely purpose of the assault was to force him out of the location so that the officers could 'sell' it to another vendor. Sampath made a complaint to the Human Rights Commission regarding the violation of his fundamental rights guaranteed to him by the constitution of the country. Sampath categorically states that he has not committed or attempted to commit any crime. But he presently in fear of the police filing fabricated cases against him as he did not agree to the request of police officers not to proceed against Officer PN Senarath.

### ***5.6. Alagumail Mohan - Thalawakele Police Station*** <sup>30</sup>



According to information received by the Asian Human Rights Commission Mr. Alagumail Mohan (25) of Line-10, Thalawakele Estate, Thalawakele in the Nuwara Eliya District is a mentally retarded patient. He has been diagnosed as such for several years now by the doctors at the Peradeniya Teaching Hospital where he receives treatment. Further the consultant issued a special letter of concern asking people to pay special attention to his condition.

On 15 February 2011 Mohan went to a shop situated in close proximity to the Thalawakele Tea Factory belonging to Mr. Ranaweera and asked for a bottle of Fanta (a soft drink). The shop owner gave him a bottle which Mohan drank before returning it to the shop owner. He remained at the shop talking with the owner and other customers. He then left the shop forgetting to pay the price for the drink.

<sup>30</sup> AHRC – 057 – 2011; March 10, 2011

Mohan went to his house at Line-10 in the Thalawakele Estate. After a short while two persons in civilian clothes came by a three-wheeler and asked him to come out of his home. The two persons arrested Mohan and explained that they are from the Thalawakele Police Station. They had received a telephone call from Mr. Ranaweera that Mohan had not paid the price for the Fanta drink he bought. Then the officers brought Mohan to the police station by the same three-wheeler.

After Mohan was brought inside the police station he was produced before Sub Inspector (SI) Gunarathna who started to shout at Mohan and blame him with obscene language. Mohan was not able to understand any of these things. Then SI Gunarathna started beat him with punches and kicks and struck him about the head. Then he grabbed Mohan's left wrist which he twisted and wrenched. Mohan was not able to bare the pain and started screaming loudly. SI Gunarathna released Mohan and he was able leave the station and return home.

When he went to the home he felt severe pain in his left arm. Then his relatives informed the Estate management and they arranged for an Estate Ambulance to take Mohan, who was in severe pain, to Nuwara Eliya Base Hospital. Due to the seriousness of his condition the doctors at that hospital transferred Mohan to the Teaching Hospital of Peradeniya.



Mohan was admitted to the Peradeniya Teaching Hospital and underwent an X-ray examination and the doctors informed the relatives that there was an oblique fracture (please see X-ray above) due to the tortured he suffered. Mohan had to undergo surgery to treat the fracture and a plate and pins were inserted. Mohan was instructed to attend the orthopedic clinic of the Peradeniya Teaching Hospital for further treatment.

There is no doubt in the minds of Mohan's relatives that he simply forgot to pay for the drink due to his mental illness and that if reminded, he would have paid for it before leaving the shop. They also believe that there was no malice or mischief intended. They state that the police tortured and broke Mohan's wrist at the whim and fancy of a private party.

Mohan and his relatives state that SI Gunarathna and the officers of Thalawakele Police violated Mohan's rights. Despite his obvious mental disability (which is widely known and understood in the area) the police showed no respect or understanding. He was humiliated and tortured in the cruelest manner for what was, in fact, a minor matter that could have been easily resolved. Due to this injury Mohan has to take treatment for a few more months. They also believe that the State of Sri Lanka should be responsible for violation of Mohan's rights.





The mother of the victim narrated the story in the video<sup>31</sup>.

### ***5.7. Wickramasinghe Arachchige Ranjith Chandrasiri Perera - Criminal Investigation Department and the Colombo Crime Division***<sup>32</sup>

According to the information that the Asian Human Rights Commission (AHRC) has received Lieutenant Colonel Wickramasinghe Arachchige Ranjith Chandrasiri Perera (47) of No: 5B/27, Army Quarters, Kendalanda, Homagama is a permanent residence of Diayatalawa in Badulla District. He is a commissioned Officer attached to the Sri Lanka Army. In 2009 Lt. Col. Wickramasinghe was serving as the Commander of the Transit Army Camp at Ratmalana.

Lt. Col. Wickramasinghe was arrested by a group of officers attached to the Criminal Investigation Division (CID) of the Sri Lanka Police on the 14 May 2009 at around 11.30 am with the vague accusation that he had committed a crime against the state. He vehemently denied the accusation at that time and continues to do so now. Lt. Col. Wickramasinghe questioned the arresting officers for further reasons for arresting him. The officers were not able to answer. Lt. Col. Wickramasinghe then understood that the arresting officers did not have any reasonable doubt in their hands against him.

Lt. Col. Wickramasinghe was then taken to an unknown location close to Bambalapitiya and a few hours later transferred to the Colombo Crime Division (CCD) in Dematagoda. Then several officers blindfolded him and severely assaulted him on separate occasions during the course of the day. According to Lt. Col. Wickramasinghe he was brought to the Harbour Police Fort Colombo and detained there until the 23 June 2009.

On that day at around 10.30 am officers again blindfolded him and forcibly took him to an unknown location by a vehicle. At this new location he was severely assaulted until he fell unconscious. When he regained consciousness he could not stand up. The torture caused grievous injuries to him and he was then taken to the CCD at around 10.30 pm that evening.

On the morning of 24 June at 10:30 he was produced before a doctor who advised the police officers immediately to admit him to a hospital. He was then taken to the National Hospital of Colombo at 3:30 pm. The doctors who examined Lt. Col. Wickramasinghe considered the severity of his injuries and referred him to be admitted to the Intensive Care Unit (ICU). But the police officers working against the doctor's advice brought him to the Military Hospital, Galle Face Colombo at 5.30pm on the same day and admitted him. The doctors at the Military Hospital admitted him to the ICU and started treatment for his injuries. He remained there until the 14 July and was thereafter brought back to the CCD.

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<sup>31</sup> <http://www.youtube.com/watch?v=4Ax1q-AuSz8>

<sup>32</sup> AHRC – UAC – 140 – 2011; August 12, 2011

Lt. Col. Wickramasinghe was detained at the CCD until 19 September. Following that, after almost one year of detention without charge or being produced before a court he was transferred to the CID in police headquarters and detained there until 14 August 2010.

It was on that day, (14 August) that he was produced before the Magistrate's Court of Colombo, remanded and sent to the Magazine Prison in Colombo. At no time did the magistrate question the length of his illegal detention.

Lt. Col. Wickramasinghe clearly identified the police officers who tortured him at the CCD and CID as Anura Senanayake, Deputy Inspector General of Police (DIG), Senior Superintendent of Police (SSP) Doole, SSP Vaas Gunawardena the director of the CCD, Chief Inspector (CI) Jayathilaka the Officer-in-Charge (OIC) of the CCD, Inspector of Police (IP) Wijertatne of CCD, Sub Inspector (SI) Jayakody of State Intelligence Service (SIS), Police Constable (PC) Chathuranga of CCD, PC Ranathunga of CCD, PC Rahuman of SIS, PC Rohan of SIS, PC Madushanka and Major Bulathwela attached to the Military Intelligence.

Lt. Col. Wickramasinghe has filed a fundamental rights application in the Supreme Court on the basis that his rights guaranteed under the Constitution of the country have been violated by these perpetrators. The case was registered as SCFR/879/2009 in the Supreme Court.

Later Lt. Col. Wickramasinghe was produced before the Chief Consultant Judicial Medical Officer (JMO) Ananda Samarasekara to assess his medical condition. The medical report pertaining to Lt. Col. Wickramasinghe, prepared by the JMO number O/60304 has clearly stated that there is sufficient medical evidence to support the allegation of assault after 14 May 2009. It further states that Lt. Col. Wickramasinghe was unable to stand on his feet due to severe assault and had fallen unconscious. Clinical notes of the medical records are consistent with the statement in the petitioner. The medical report further records as follows;

"The findings of presence of contusion, joint pain, body pain, generalize body pain, presence of cervical color (treatment), mild tenderness of the abdomen and poor hydration as observed in the clinical notes on the day of the admission 25-06-2009 to the hospital. Therefore the observation on the medical condition that have been made in this regards in the clinical notes of the medical records are consistent with the statement in the petition"

The medical report further stated that,

"The damaged muscle that releases nephrotoxins and other substance and hypovolemic state could finally lead to "Crush syndrome" and acute renal failure. This condition is life threatening situation which is fatal in ordinary course of nature."

Lt. Col. Wickramasinghe is still detained at the Magazine Prison Colombo. He still does not know what charges have been leveled against him by the police officers. He believes



that as a military officer he worked very close to General Sarath Fonseka, the former Military Commander of the Army. General Fonseka later became the opponent of the present government as he ran against the incumbent president as the common opposition presidential candidate. Lt. Col. Wickramasinghe vehemently states that he has not committed any crime against the state and executed his duties as a well-disciplined military officer, following the legitimate and lawful orders of his higher ranking officers at all times.

Lt. Col. Wickramasinghe appeals that he should be released from detention and compensated given redress for the violation of this rights.

### *5.8. Udaya Pushparaja Antony Nithyaraja - Jaffna Headquarters Police Station*<sup>33</sup>

According to the information that the Asian Human Rights Commission (AHRC) has received Mr. Udaya Pushparaja Antony Nithyaraja (31) of Jaffna District was illegally arrested and severely tortured by seven police officers from the Jaffna Headquarters Police Station on 20 September 2011.

Antony learned that the police had started an investigation into a crime and that his name was on the list of persons to be questioned. As a law abiding citizen Antony on the same day went directly to his lawyer Mr. Thawabalasingham and then to the Magistrate's Court of Jaffna and voluntarily made motion and an application to the Magistrate and informed the court that if there is any necessity of his presence or assistance for the investigation he was ready to cooperate. Further he said that if the court needed him to be prosecuted for any crime then he was ready to assist by voluntarily obeying any order even to the extent of remanding him.

The Magistrate called the case in open court and considered his application with the assistance of the police officers appearing for the Headquarters Inspector (HQI) of the Headquarters Police Station of Jaffna. Then the Magistrate announced that according to the B-report filed by the HQI Jaffna there was no mention of Antony and that he was not mentioned as a suspected person who was to be arrested or prosecuted. The Magistrate then duly released Antony.

However, immediately upon his release a group of seven police officers in civilian clothes entered the court house and started to severely assault Antony in front of the Magistrate. Antony started to plead with the officers not to assault him and cried out, seeking others to rescue him from the beating. This heinous assault took place inside the court house while the Magistrate was on the bench still hearing cases. Lawyers, the staff officers of the court and the general public witnessed the assault. The police then dragged Antony from the court house and brought him to the Headquarters Police Station of Jaffna.

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<sup>33</sup> AHRC – UAC – 175 – 2011; September 23, 2011

The Bar Association of Jaffna District has protested against the ruthless and arrogant behaviour of the police officers and have refused to appear in all five courts in Jaffna District from the 21st onwards until the responsible police officers are taken before the court for prosecution. The lawyers of the Jaffna Bar Association demanded that efficient and coherent steps are taken against the responsible police officers, that the Chief Justice and the other Judges of the Supreme Court intervene and made necessary steps to prevent police officers from carrying out such gross violations and for the Bar Association of Sri Lanka to intervene and take strong actions to prevent the repetition of such incidents.

Immediately following the incident the Magistrate called the senior police officers of Jaffna District to the courts and demanded that steps be taken to provide justice for this violation. The two senior police officers who appeared before the Magistrate apologised. However, no steps have been taken to investigate the violation of Antony's rights. Furthermore, none of the law enforcement agencies have initiated any steps to bring the responsible police officers before the law and prosecute them.

Once again justice has been denied in Sri Lanka. If action is not taken against the responsible officers then the very operation of the Magistrates and courts of the country will be in jeopardy. The independence of the judiciary has been challenged and is now in peril because of the errant behaviour of the Sri Lankan police. The incident which occurred in Jaffna is nothing less than contempt of court and the Inspector General of Police should be held accountable.

### ***5.9. Jayasinghe Arachchige Chathura Manohara - Pitabaddara Police Station***<sup>34</sup>



According to the information that the Asian Human Rights Commission (AHRC) has received Mr. Jayasinghe Arachchige Chathura Manohara (29) of 'Darshani', Deniyaya Road, Pitabaddara in the Matara District was illegally arrested and severely tortured by police officers attached the Pitabaddara Police Station on 10 July 2011. He is the Secretary of the Traders Association of Pitabaddara and a trader by profession.

On 10 July 2011, Manohara returned home after seeing a musical show with his wife and daughter. At around 11.55 pm, someone shouted in a threatening manner near his bedroom saying "open the door". Manohara asked him who he was and the man replied, "I am an Army person". Manohara heard three other fellows talking and became suspicious. He then made a phone call to the Pitabaddara Police Station on 041 228126.

<sup>34</sup> AHRC – UAC – 176– 2011; September 23, 2011



Manohara informed the police officer through the phone that he was facing a problem from an unknown gang that had come to his home and threatened him. He urged them to take action to secure the safety of himself, his family and property.

While he was making this call the people in front of his house demanded that he open the door and that if he refused they would break it open. By 12.20 am no one from the police had come to investigate the matter so Manohara made a second call and the officer who answered said that they would send someone immediately.

However, when no one came from the police, Manohara phoned three of his colleagues and informed them of what was happening. Within moments he heard shouting in front of his house and knocks to the doors.

Manohara heard one fellow ask "Who are you?" and realised that the voice belonged to his friend Buddhika's, one of the men whom he called for help. At that time, Manohara opened the door and saw two persons, one wearing an army T Shirt. When Buddhika asked who they were and what they wanted the one wearing the army T shirt tried to strike him with his fist and Manohara tried to protect him.

The same person seized a wooden pole and tried to assault Buddhika while the other tried to run away. However, by now Manohara's other friends had arrived and they caught him.

Manohara questioned one of the assailants who told him that they had gone there by mistake. The other remained silent. By now there were a large number of neighbours at the scene and finally, at 12.35 am three officers of the Pitabaddara Police Station came to his home.

Manohara complained to the police officers that they always arrived late forcing the members of the community to do their job for them. He went on to say that they only arrived after the job was done and that they offered no security to the villagers. In this manner Manohara expressed his disfavour about the police.

He further told the officers that he and his friends had handed all the accused to the police but that he never expect any justice from the Pitabaddara Police. He went on to say that he would complain in person to the Senior Superintendent of Police (SSP), Matara.

A junior police officer, named Sugath made a phone call to Arjuna Wijewardane, the Officer-in-Charge (OIC), of the Pitabaddara Police Station. Sugath informed Manohara that the OIC was not available and that they could not take the suspects to the police station because the OIC was attending a birthday party at Ellalagawawatte Gedara.

However, within five minutes at around 12.45 the OIC came to Manohara's home. The officer was not in uniform and appeared to be inebriated. Manohara complained to the





OIC about what had happened earlier and the lack of action by his officers. At that time around 15 villagers were there at Manohara's house.

Then the OIC asked Manohara "Are you going to teach me about my duties? I will show you how I am doing my duties". At that point he stated beating Manohara about the face. The OIC told Manohara he would never give him a chance to complain about this and asked the officers to take the suspects. After they left Manohara discussed what had happened with the people who were still gathered around his home.

Around 1.15 am the OIC returned to his home with five other officers by three-wheeler and two bikes. The OIC had a wooden pole and warned everyone to stay away. Then he started to assault Manohara with that stick. When the OIC instructed an officer to handcuff Manohara his wife came and asked the OIC what he had done wrong?

In response the OIC assaulted Manohara's wife and pushed her aside. At that time, Manohara's daughter was hanging onto his leg and the OIC kicked her so that she fell to the floor. When Manohara's wife pleaded with the OIC not to hurt the girl he told her to take the daughter and leave.

Following that the OIC continued to hit Manohara until he was brought to the police station by three-wheeler.

The OIC kept Manohara in a room and ordered the officers to close all the doors and windows of the building and close the main gate also up to 6 am. He told them not to allow anyone into the police station and that none of them should go out for any duty.

Then, the OIC went to the room where Manohara was detained, closed the door and started to assault him with a steel chair. He assaulted Manohara for 20 minutes continuously while Manohara pleaded with the OIC not to beat him.

The OIC continued Manohara's torture by holding him about the neck and striking his head against a table until the table glass was broken. After that he started to kick him in the abdomen. By this time Manohara was bleeding from his mouth and nose. Then the OIC called some officers and ordered them to remove all of his clothes.

The OIC then told the same officers to bring two wooden poles and some rope. Once again the OIC kicked Manohara and said that at that time when he went to Manohara's house Manohara wanted to complain to the senior police officers against the Pitabaddara Police Station. He taunted Manohara by asking how he expected to go to the ASP now?

After few minutes, the officers came with two wooden poles and several fabric ropes and the OIC tied Manohara wrists and ankles. He was then hung by the two poles that had been placed on two tables. Manohara started screaming and pleaded with the OIC to release him as he suffered with enormous pain.

Then the OIC shouted that no one could transfer him from that station. Although Manohara was in great pain he realised that the OIC was too drunk to realise what he was doing.

Then the OIC called the officer called Sugath and ordered him to record Manohara's screaming with his mobile phone while he was being tortured which Sugath did. Then the OIC threatened Manohara that he would only be released after 5 am.

As Manohara continued screaming the OIC ordered Sugath to stuff his mouth with cloth. When this was done Manohara felt that he was suffocating. While he was hanging on the pole Manohara's legs started to cramp up and this added to the pain. The OIC told him that the next day he was going to play the recorded screams to all the people of the town. He went on to boast that he had killed 52 Sinhalese people and an uncountable amount of Tamils as a Special Task Force (STF) officer in his service and that he had worked for STF for 16 years. He said that it would be an easy thing for him to kill Manohara but that too many people had seen him at his home and witnessed his arrest.

After being hung in this manner for an hour Manohara was brought to another room inside the police compound of the Pitabaddara Police Station. There he was seated on the ground near the bed inside the room and one of his wrists was cuffed to a leg of the bed.

Manohara noticed that his hands, legs and face were swollen. He further noticed that he was still bleeding from his face mouth and nose.

At around 7 am an officer came to the room where Manohara was detained and he told Manohara that the OIC had behaved like animal; that he was barbaric and very cruel.

After some time another officer, later identified as Yasapala, approached Manohara and suggested that to finalize the matter Manohara should plead guilty for some crimes. Manohara vehemently refused the suggestion.

Then at 8 am, the officer Sugath approached Manohara and shouted that he was talking too much and not following the orders. He then kicked him two times. Another officer later identified as Chamara also beat him three times.

At 2 pm of the same day police officers produced Manohara before the District Medical Officer of the Morawaka Government Hospital. Manohara explained the way in which he was tortured by the OIC and the other officers. After making some notes the doctor simply stated that this was the way of treating the people who 'assisted' the police in their activities.

Then at 2.30 pm Manohara was produced before the Magistrate at the Kotapola Magistrate's Court. There he learned that the police had filed two fabricated charges against him. In one case he was charged with obstructing the duty of the police officer by holding the collar of the OIC's shirt. The second charge was that of causing minor

injuries to a person. Manohara vehemently denied both cases. When he was produced before the Magistrate the several lawyers appeared for him and submitted the facts relating to the severe tortured Manohara suffered at the hand of police. The Magistrate observed the injuries and signs of torture on Manohara's body and released him on bail.

Manohara later learned that the case numbers that the police have filed against him were: 18414 on obstructing the official duties of the police officer and 18413 for the causing minor injuries to a person.

Immediately Manohara was admitted to the General Hospital of Matara and was treated at ward number 3. He was discharged on 15 July after five days of treatment. During his stay at the hospital he underwent six X-ray examinations by the doctors. The doctors explained that there were injuries to the spinal column so he has to rest for a time.

While he was treated at this hospital the Judicial Medical Officer (JMO) also examined him.

While Manohara was being treated at hospital a person who himself identified him as police officer Yasapala of the Pitabaddara Police Station called him on 12 July to tell him that the general public was going to hold a protest in the town of Pitabaddara against his torture by the police officers attached to the Pitabaddara Police Station. Yasapala pleaded with Manohara to prevent that from taking place but Manohara explained him that he was still under treatment and unable to do anything. Yasapala further explained that the OIC was ready to provide any support for him.

After 10 minutes Yasapala called him again and explained that he had made the earlier call at the request of the OIC of the station.

Later Manohara learned that there was a large gathering of the public and a large protest in the Pitabaddara Town with the participation of around 2000 on 13 July. Manohara further learned that the police department had transferred the OIC of the Pitabaddara Police Station to the office of the Assistant Superintendent of Police (ASP) of Matara.

Manohara states that later he learned that the name of the police officers who participated in torturing him also included, PC 40078 Chaminda, PC 40629 Pradeep, PC 84066 Lakmal and PC 85875 Yogananda. He further states that if the suspects are produced before an identification parade he could identify the suspects.

Manohara further states that he has complained to the Human Rights Commission (HRC), the Senior Superintendent of Police (SSP) Matara, the Inspector General of Police (IGP) and the Deputy Inspector General of Police (DIG) Southern Province seeking justice against the violation of his rights.

However, neither the police department nor any other law enforcement authority has yet started any investigation on the matter. He further states that he was illegally arrested and

detained, laid with two fabricated charges after he helped the police to catch criminals. Manohara has also filed a fundamental rights petition before the Supreme Court.

### ***5.10. Perumal Sivakumara - Special Task Force of the Sri Lanka Police***<sup>35</sup>

According to the information that the Asian Human Rights Commission (AHRC) received Mr. Perumal Sivakumara (32) of Kalpitiya Road, Norochhole in the Puttalam District was a father of three children. He was a leaf vender by profession.

Perumal was a human rights defender and worked very closely with many civil rights protection movements and organizations in the area. Perumal first started to work with the 'Right to Life Human Rights Secretariat' in Katunayaka and till his death he was one of the most active human rights activists working with the Right to Life Organizations to achieved its objectives. He further worked with many people's councils and forums works for the promotion and protection of human rights. Perumal was directly involved with many individual human rights violations cases and did his best to assist the individual victims to get justice for their violations. Perumal was instrumental to many human rights organizations to organize demonstrations and protests against human rights violations in the area. He was highly recognized and respected by the people of the area and the society as a whole as a social worker and the civil rights defender. Perumal played a pivotal role in building the Human Rights Defenders Group for Nerochhole with the large people's gatherings in year 2006.

In 2006 Perumal was diagnosed with heart disease and underwent surgery following which he was continuously under treatments.

On 22 August 2011 he wanted to buy some medicine prescribed by his doctor and went to the Kalpitiya Town at 5 pm. He went with one of his friends, Mr. Janaka Pradeep. Perumal was a Roman Catholic by religion.



While he was in town he heard that the bell of the church ringing. Janaka and Perumal after identifying the special need of the church for the people's interventions went there. Then he so around five hundred people gathered at the church. Perumal questioned the crowd the reason for being there.

Then he learned that a strange person has come to the area and the scared people had come to the church for protection. This was the publicly well known factor that strangers coming to the village are called 'Grease Devils', who try to terrify the people and abuse women and girls. The people have gathered and have sought the protection from the authorities.

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<sup>35</sup> AHRC – UAC – 183 – 2011; September 28, 2011



Within a few moments a large number of police officers attached to the Special Task Force (STF) came to the church in a police jeep. They all had wooden sticks in their hands. Without inquiring anything or giving any warnings the STF officers started to beat the people who were at the church who tried to run away. Then several police officers approached Perumal and mercilessly assaulted him with sticks. Perumal pleaded with the officers not to assault him as he is a heart patient. Without listening to his pleadings the officers continuously assaulted Perumal who also tried to escape.

Finally Perumal fell to the ground. With the help of other people he was able stand up again and started to walk.

Perumal suffered ten injuries on his legs and hands and was in great pain. With difficulty he was able to come to his home where he informed his family of the situation.

Several hours later his condition became severe. The relatives brought Perumal to the Base Hospital of Puttalam at 9.30 pm. Then the doctor who examined advised him to be admitted for further treatment and he was subsequently admitted to the ward number 6 of the hospital.

While he was undergoing treatment his condition deteriorated and he passed away at 10 am on 23 August 2011.

Shortly following his death several senior police officers approached his relatives and warned them that they should not state that the death of due to the assault which happened at the church compound. They further warned the relatives not to take any legal proceedings against the killings. They told the relatives that if the assured that there would not be any further legal proceedings against the police then they can make necessary steps to handed over the death body that day itself. The officers requested a statement to the affect that there would be no action against the police but the relatives did not agree.

Human rights organizations along with the relatives of Perumal complained to the law enforcement agencies seeking justice against the public torture of Perumal and for an impartial, prompt and effective investigation into his death. But the relatives and the civil society groups' states that still none of these law enforcement agencies have started any investigation unto the incident. Justice has been denied.

### ***5.11. Ganearachchi Appuhamilage Gayan Saranga - Dompe Police Station***<sup>36</sup>

According to the information that the Asian Human Rights Commission (AHRC) received Mr. Ganearachchi Appuhamilage Gayan Saranga (29) of Katulanda, Dekatana,

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<sup>36</sup> AHRC – UAC – 187 – 2011; October 03, 2011



Dompe in the Gampaha District was arrested and extrajudicially killed by police officers attached to the Dompe Police Station on 29 September 2011.

Saranga was married, the father of one child and a three-wheeler driver by profession. According to his mother, Ms. Lalani Ajantha (54), Saranga was arrested while he was at his wife's home at Pattiwela in Dompe on 29 September 2011 at 5.15 pm. Five police officers attached to the Dompe Police Station requested Saranga to accompany them to the police station to record a statement. Saranga's father identified one police officer, who was a closely known friend, went to the police officers and demanded the reason for the arrest. The officers explained that they are only arresting him to record a statement about transporting a water pump by his three-wheeler.

The mother, father and the wife of Saranga followed the police officers and pleaded with the police officers not to assault Saranga, stating that he had never engaged in any crime. The police officers promised them that they were not going to harm Saranga. They then took Saranga to the police station along with his three-wheeler.



When Saranga did not come back, his wife Rashika went to the police station to see what had happened to her husband. However, when she tried to enter the station the police officers in front prevented her and asked her to go home. Then she was afraid for Saranga's safety and once again she pleaded with the officers not to torture him. Then she returned home.

Later in the morning of the following day she learned that Saranga had been killed and his body handed over to the Mortuary of Dompe Government Hospital.



Then she and hundreds of relatives and friends of Saranga rushed to the hospital mortuary and observed the dead body and demanded the reason for his death. They all were able to see several dozen marks of injury very clearly on the body. They further learned that Saranga had been hung and beaten by the police officers while he was in the custody and that the noise of the torture and his pleading with the officers had been heard by many people in the vicinity of the police station.

Police Headquarters then issued a communiqué stating that the police had arrested a suspected criminal wanted for more than 20 crimes and that while the suspect was being taken to a place where he had hidden the stolen property he had fallen from the speeding police jeep and succumbed to his injuries.

However, when the communiqué was received, along with the news of his death thousands of people surrounded the Dompe Police Station and demanded the quick and speedy action against the police officers who were responsible for the death.



On 2 October 2011 the Inspector General of Police (IGP) issued a statement that the earlier version of the police could not be proved. The IGP further stated that he had directed the Criminal Investigation Division (CID) of the police to investigate the incident.

The CID is currently conducting further investigations into the suspicious death of Saranga and has arrested five policemen including the Officer-in-Charge (OIC) Crime Branch of the Dompe Police Station. Also, according to reports the entire contingent of officers at that police station in question has been transferred.

Along with the Crimes OIC, the CID arrested a Sub Inspector, a Police Sergeant and two Police Constables on 2 October evening.

Later on three of the arrested police officers were produced before the Magistrate of Gampaha and remanded till the 14 October. The case has now been postponed pending the development of further investigations into the incident.

The Sri Lankan police have adopted a systematic practice of extrajudicially killing its citizens in the name of crime prevention. The innocent, even after arrest by the police, especially by the Special Task Force (STF) have been killed while in police custody. In a recent incident the police claimed that one suspect drowned while trying to escape their custody. They offered no explanation when it was pointed out to them that the 'suspect' had been a navy specialist and an expert swimmer.

The prevention of crime is a one of the sacred and paramount duties of the any civilized state. According to the Constitution of the country the law enforcement authorities are bound to protect the right to life of the people and their constitutionally enshrined rights. Sri Lanka, while running the country with a democratic framework is bound to support the judiciary and impose the rule of law and protect the civil liberties of the people. The killing of civilians by police officers has become a peremptory norm in the country. For many years now there has been no command responsibility in the Sri Lanka police and it is the supervisory officers that should be held primarily responsible for the killings perpetrated by the officers under their command.

### ***5.12. Kamaranga Hannadige Lalith Susantha Peiris - Moratuwa Headquarters Police Station***<sup>37</sup>

According to the information that the Asian Human Rights Commission (AHRC) received Mr. Kamaranga Hannadige Lalith Susantha Peiris (32), No: 80, Tsunami Housing Scheme, Modara, Moratuwa in the Colombo District was arrested and extrajudicially killed by the police officers attached to the Moratuwa Headquarters Police Station on 3 October 2011.

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<sup>37</sup> AHRC – UAC – 193 – 2011; October 06, 2011



Lalith was arrested along with four of his brothers by a police team attached to the Criminal Branch of the Headquarters Police Station Moratuwa on 3 October 2011. The police team was commanded by the Officer-in-Charge (OIC) of the Crime Branch Inspector of Police (IP) Hettiarachchi. Then Lalith, his brothers, Jagath Nishantha Peiris, Sanath Nilantha Peiris, Ajith Prasanna Peiris were brought to the police station and detained.

Later Lalith was brought to the Bolgoda River by a group of police officers, allegedly to show them where he had concealed a knife. According to the official police version he drowned while attempting to escape.

Before Lalith's death, several hours earlier in the morning of 3 October a police constable attached to the Police Guard Point Modara in Moratuwa Police Division was injured while trying to settle a dispute between two parties which arose in the Modara area. He later succumbed to his injuries.

Following the officer's death a police team headed by the Officer-in-Charge (OIC) of the Headquarters Police Station of Moratuwa arrested Lalith and his brothers along with other persons. Later the police announced that after the arrest they had brought Lalith to a location at one Islet in the Bolgoda River where he revealed that the sword and the large knife used in the killing was hidden by him. Then when they were bringing him back to the police station the deceased had committed suicide by jumping into the water. The police further claimed that before jumping into the water he attacked a police officer who was in the boat as well.

It is normal that the Sri Lanka Police make these statements in the belief that no one can prove them wrong. However, in this case they may have gone too far. In their statement they admitted that Lalith was handcuffed during the entire incident. If this is truly the case then it is most suspicious that he managed to attack and cause harm to an officer while several other armed officers were observing the situation in a small boat. Even more suspicious is the fact that it is customary with 'dangerous' suspects to cuff their hands behind their back. This then makes the police claim that Lalith injured an officer even more preposterous.

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the judiciary and impose the rule of law and protect the civil liberties of the people. The killing of civilians by police officers has become a peremptory norm in the country. For many years now there has been no command responsibility in the Sri Lanka police and it is the supervisory officers that should be held primarily responsible for the killings perpetrated by the officers under their command.

### *5.13. Eighth case of extrajudicial killing of beggars - Kalaniya Police* <sup>38</sup>

We, the Asian Human Rights Commission (AHRC) are making this exceptional Urgent Appeal after observing the increased numbers of systematic extrajudicial killings of beggars in the cities of Sri Lanka over the past few months.

According to information that the AHRC has received, another beggar was clubbed to death by unidentified assailants with a sharp weapon during the early hours of 4 October 2011 in Kelaniya in Gampaha District. The beggar was found with severe head injuries on the road in front of 'Priyantha Iron Tech' of Biyagama Road, Gonawala, Kalaniya.

This is the eighth such instance in which a beggar was killed by a blow to the head in the past 3 months within the Kalaniya Police Division. Earlier, the police recovered the bodies of seven beggars from various locations in urban areas with severe head injuries. The extrajudicial killing of beggars has been reported in the Paliyagoda, Kaliniya and Kiribathgoda areas of the Kalaniya Police Division.

The police have yet to uncover the motive behind this mindless killing. The police reported that they believe these killings are being carried out by cliques who make money from these beggars, and ask them to meet specific monetary targets. When the beggars are unable to meet the targets, they are badly assaulted or killed.

The beggars who were reported dead to the Kalaniya Police Division were found at the following locations:

1. Nawaloka Circle, Paliyagoda
2. Pattiya Junction, Paliyagoda
3. Near the 'Sanasa Bank' of Biyagama Road in Paliyagoda
4. Near the 4th mile post, Kandy Road in Paliyagoda
5. At turning road to the Pattiya Junction from Biyagama Road in Paliyagoda
6. At Kiribathgoda Town
7. At seventh mile post in Kelaniya

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<sup>38</sup> AHRC – UAC – 194 – 2011; October 06, 2011



In 2010, as the Sri Lankan government prepared for the 'International Indian Film Academy' Awards (IIFA) the government created propaganda about the need to beautify the city by removing beggars. Soon after, there was a mysterious series of extrajudicial killings of around a dozen beggars in the city of Colombo.

Beggars are usually disabled people in wheelchairs, and as such it is not necessary for a thief to kill a beggar. Moreover, by their very nature, beggars have very little and it is hard to imagine anyone wanting to steal what little resources they do have. As no accidental circumstances have come to light, it is clear that these killings are not accidents.

In one reported case, the beggar was a disabled lottery ticket seller. He suffered a severe head injury which proved to be fatal, likely caused by a blow with a heavy stone. The circumstances suggest a deliberate intention to kill.

Over the past two years, the AHRC has observed that those who were alleged to be criminals were killed at police stations shortly after they were arrested. Sri Lankan society seems to have gotten used to the idea of killings as the solution to wider societal problems.

It is the peremptory norm of the state to protect the citizens of its country. Moreover, the state has implemented laws which oblige it to protect the rights and safety of every individual. In order to fulfill such an obligation, the state has established law enforcement agencies to investigate violations and the breaching of implemented laws so as to bring those who has violated these laws before a court of law for appropriate sanctions.

In any democracy, the poorest of the poor must be given extra protection. Affirmative action must be adopted so that social justice is a reality for every individual in Sri Lanka.. The meaning and value of human rights lies in the understanding that every member of society will be under its care, not just certain segments of society.

When the basic elements of the investigation and prosecution process are paralyzed, the practice of killing and the adoption of systematic practices that are used to eliminate many of the problems faced by society are used instead. Such a practice will ultimately destroy the basic structure of civil society in Sri Lanka.

The deaths of these beggars should be investigated promptly, efficiently and impartially. The responsible perpetrators should be brought before the court of law and should be prosecuted and those who are found guilty should be penalized.



## 6. Report on the examination of the third and fourth periodic reports of Sri Lanka by the UN Committee against Torture

### First round

The Committee against Torture (hereinafter – “the Committee”), presided over by Mr Claudio GROSSMAN<sup>39</sup>, began its consideration of the third and fourth periodic reports submitted by Sri Lanka pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter – “the Convention”) on 8 November 2011, in the morning, in Geneva, in the headquarters of the United Nations High Commissioner for Human Rights in Palais Wilson with a nice view over Lake Léman.

The Sri Lankan delegation was introduced by Her Excellency Tamara KUNANAYAKAM, Ambassador, Permanent Representative of Sri Lanka at the United Nations Office in Geneva. The delegation was led by Mr Mohan PEIRIS, Senior Legal Advisor to the Cabinet of Ministers of Sri Lanka and former Attorney-General. It also included Messrs W.J.S. FERNANDO and A.H.M.D. NAWAZ, Deputy Solicitors General at the Attorney-General’s Department, and Mr M.A.M. NAVAS, Acting Director (Legal) at the Department of Police, as well as several Geneva-based Sri Lankan diplomats.

Mr Peiris took the floor to present the report.

He noted at the outset that the armed conflict in Sri Lanka had mercifully ended, and the country was now on its way to recovery. The conflict posed unprecedented challenges to the authorities. But now the authorities’ mission is to maintain law and order, implement the ambitious national development plan, and pursue civil peace. In the submission of Mr Peiris, in May 2009 the terrorism was defeated in Sri Lanka, and the process of rebuilding the fractured nation began, accompanied by the renewed hope but also the new challenges. The authorities’ focus in this process is on rehabilitation, reconstruction, and reconciliation. Domestic home-grown solutions are being used in this process.

Sri Lanka’s human rights commitments were evidenced by the invitations extended to the UN Special Rapporteur on Torture who visited Sri Lanka twice.

Mr Peiris assured that Sri Lanka had never sought to invoke any justification for torture, and that the authorities maintained the policy of “zero tolerance” of torture. Absolute

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<sup>39</sup> President of the Committee (Chile). Dean of the Washington College of Law at the American University in Washington, D.C., United States of America.

right not to be tortured is enshrined in the respective constitutional guarantee. Mr Peiris argued that Sri Lanka's progress in the fight against torture had in many areas been exemplary.

In 2009 the Sri Lankan authorities commenced the process of formulation of the national plan for the promotion and protection of human rights. That plan includes eight thematic areas, torture being one of them. Civil society is included in the drafting process. Outcome of the universal periodic review is also used. The action plan includes measurable indicators in order to ensure the proper monitoring and evaluation. The draft composite plan has recently been submitted to the Cabinet of Ministers of Sri Lanka.

The directorate on human rights and international humanitarian law has been established in the Sri Lankan Army. Likewise, the human rights division has been established in the Sri Lankan Police Department.

Sri Lanka's commitment to eliminate torture has been evidenced by the evacuation of the civilians in the final stage of the armed conflict in 2009, as well as the rehabilitation, reinsertion, and reintegration of ex-combatants and internally displaced persons. The Lessons Learnt and Reconciliation Commission has been established to ensure the era of peace, harmony and prosperity for Sri Lankan people, and that the internal armed conflict never recurs. The focus of that commission is on restorative justice. It conducted the public sittings in Colombo and the areas affected by the armed conflict. The commission is due to report to the President shortly. It is supposed to contribute to the task of forging common Sri Lankan identity.

The authorities attempt to bring about a paradigm shift. For example, the idea of establishing an office of an investigating magistrate is on the table. Emergency Regulations is now thing of the past.

However, Mr Peiris readily admitted that there was much more to do. He assured that the Sri Lankan authorities were sensitive of the human rights context, and that their desire was not to pay lip service to the international obligations of Sri Lanka but to ensure the real progress in their realisation.

Mr Peiris concluded by the following: "We look forward to the constructive interactive dialogue with the Committee".

The President of the Committee invited the co-rapporteurs of the Committee on Sri Lanka, Ms Felice GAER<sup>40</sup> and Mr Alessio BRUNI<sup>41</sup>, to pose their questions to the delegation of Sri Lanka.

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<sup>40</sup> Vice President of the Committee (United States of America). Director of the Jacob Blaustein Institute for the Advancement of Human Rights at the American Jewish Committee.

Ms Gaer pointed out that she was pleased to welcome the distinguished delegation of Sri Lanka in Geneva. She emphasised, however, that the Sri Lankan report to the Committee had been two years late. She then went on to say that the Committee had received extensive allegations of torture and ill-treatment in Sri Lanka, including enforced disappearances, sexual violence, unacknowledged detention, lack of investigations, etc. She pointed out that the Convention cannot be effectively implemented without the rule of law. She stressed three worrying trends, including the lack of data, the lack of independent investigations and prosecutions, and the continuing threats to civil society, journalists, lawyers, and other dissenting voices. She said that only scant data had been provided by the Government of Sri Lanka to the Committee in response to the questions contained in the Committee's list of issues.

She went on to repeat the questions concerning the safeguards against torture contained in the point no. 2 of the list of issues. She requested clarifications on the enforceability of the Presidential Directives referred to in the report. She requested practical information on the monitoring activities of the National Human Rights Commission and the magistrates accompanied by the concrete data including the statistics on the number of the complaints lodged with the National Human Rights Commission and their outcome. She requested data on the availability of Tamil-speaking interpreters. She requested information on the location of legal aid officers.

In connection with point no. 4 of the list of issues Ms Gaer asked who would order the medical examination of the detainees and within which time-period such examination would be conducted. She asked whether judicial medical officers are required to issue their reports to the torture survivors or their next-of-kin. She inquired about the number of successful *habeas corpus* complaints. She asked a range of questions about the modalities of the administrative detention pursuant to the Prevention of Terrorism Act and requested information on the total number of people detained under that Act. Having noted that Sri Lanka has the biggest amount of cases of disappearances registered with the UN Working Group on Enforced or Involuntary Disappearances (hereinafter – “the Working Group”) than any other country in the world, Ms Gaer invited the delegation to comment on the allegations of undisclosed detention centers in existence in Sri Lanka, and secret detention facilities run by the Sri Lankan Army.

Ms Gaer touched upon the issue of intimidation of lawyers. She mentioned the case of Amitha Ariyaratne who allegedly faced death threats from the police in 2009, and emphasised that Sri Lanka was under the obligation to investigate even in absence of the formal complaint. She also referred to the attack on Mr Weliamuna, and defamatory publications against the lawyers in which the latter were labelled as traitors (especially one at the website of the Ministry of Defense).

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<sup>41</sup> Member of the Committee (Italy). Former senior officer at the Office of the UN High Commissioner for Human Rights in Geneva.



She again requested the information on the number of complaints lodged with the National Human Rights Commission and their outcome. She questioned the independence of the National Human Rights Commission given that its members are solely appointed by the President.

Ms Gaer requested information on the number of custodial deaths and deaths in encounters with police, and investigations into such deaths.

She asked whether the report of the Lessons Learnt and Reconciliation Commission would be published.

Ms Gaer also asked how many indictments were made under the CAT Act.

Ms Gaer had much more to say but was interrupted by the President Grossman who gave the floor to Mr Bruni.

Mr Bruni started by warmly welcoming the representatives of Sri Lanka.

He asked whether Sri Lankan authorities were still considering making declarations under Articles 21 and 22 of the Convention (possibility of lodging communications with the Committee, by the States and individuals, respectively).

He referred to 322 cases reported and precisely documented by the Asian Human Rights Commission, and how this was consonant with the “zero tolerance” policy advocated by the Government. He also referred to the report submitted to the Committee by the organisation “Freedom from Torture” (London) and numerous allegations sent to the Special Rapporteur on Torture.

Mr Bruni asked about the resources allocated to the National Human Rights Commission. He asked whether the Commission visits the places of detention including military camps. He referred to the surprise visit made by the National Human Rights Commission to the Mount Lavinia police station on 15 August 2011. Several persons detained there for more than seven days and allegedly tortured were found at the premises of that police station. Mr Bruni inquired about the outcome of that sudden visit, in particular, whether it led to any prosecutions.

Mr Bruni asked about the effectiveness of the human rights training programmes for police, in particular, whether the Istanbul Protocol was used.

He asked for the examples of the unannounced visits by the magistrates to the places of detention.

Like Ms Gaer, Mr Bruni asked to provide information on a number of persons detained pursuant to the Prevention of Terrorism Act, as well as the conditions of their detention.



Mr Bruni mentioned so-called “rehabilitation programmes” for the ex-combatants given that the Committee had received a flood of negative information about those programmes. Is it possible for the ex-combatants to decline the so-called rehabilitation? Mr Bruni explained that many non-governmental organisations informed the Committee that the so-called rehabilitation centers were in fact detention facilities with deplorable living conditions. He therefore asked the delegation what had been done to improve those conditions.

Mr Bruni touched upon the issue of overcrowding in Colombo remand prison. He asked about the measures envisaged in order to reduce overcrowding there. He asked about the rate of occupancy of cells in that remand prison.

He inquired as to whether the independent investigation body would be established in Sri Lanka.

Mr Bruni asked for examples of the disciplinary proceedings brought against the police officers allegedly implicated in torture.

Mr Bruni mentioned the report by *Amnesty International* on the ineffectiveness of the Lessons Learnt and Reconciliation Commission. He asked whether the involvement of the international fact-finding body was envisaged.

He asked for the governmental comment on the torture methods allegedly used in the Boza prison.

Mr Bruni then said that he was forced to skip the questions on Article 14 of the Convention.

Mr Bruni referred to the fact that the inquiry conducted by the Committee pursuant to Article 20 of the Convention found that torture had been frequently resorted to by the paramilitaries associated with the Government. He therefore asked for any follow-up with regard to that concern. Whether any paramilitaries were prosecuted for torture?

Questioning was continued by Ms Essadia BELMIR.<sup>42</sup> She raised an issue of the independence of the judiciary in Sri Lanka, in particular, in the context of the appointments and removals of the magistrates by the President, as well as arbitrary transfers of the judicial officers. Her question essentially was whether the separation of powers existed in Sri Lanka.

Ms Belmir also questioned the true nature of the Presidential Directives referred to by the Government of Sri Lanka in their report to the Committee.

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<sup>42</sup> Vice President of the Committee (Morocco). President of the Chamber at the Supreme Court of Morocco.



She also mentioned the problem of the delays of justice and urged the reforms of the judicial system capable of ensuring its independence and fair trial.

Another question from Ms Belmir concerned the separation of males from females and of adults from children in the places of detention. She also mentioned the long duration of pre-trial detention in Sri Lanka.

Ms Nora SVEAASS<sup>43</sup> took the floor and asked the delegation what had been done in Sri Lanka to guarantee the independence of the judiciary. She continued the line of questions commenced by Mr Bruni about the so-called rehabilitation centers and asked how many detainees are in those centers voluntarily and how many of them are there pursuant to the court orders. She asked whether it was true that the detainees were brutally handled in the rehabilitation centers and whether any possibility of redress for victims existed, including psychological damage.

Ms Sveaass also developed the theme of gender-based violence and inquired whether there would be any investigation into such crimes. Do the victims of gender-based violence have any possibility to seek redress and assistance?

She also touched upon the obligations flowing from Article 14 of the Convention and whether compensation for torture is paid. She requested detailed statistics in this connection.

Mr Fernando MARIÑO MENENDEZ<sup>44</sup> asked whether the database on the detainees existed and if it existed whether it covered the detainees apprehended pursuant to the Prevention of Terrorism Act. He further asked what efforts did the State of Sri Lanka take to protect the stateless persons in Sri Lanka and the Sri Lankan nationals working overseas, such as the domestic servants working in the countries of the Gulf. He referred to the statement on the domestic workers issued by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>45</sup>

He then turned to the issue of police interrogations: how do they progress? who is present at those interrogations? are they being taped?

He also mentioned the problem of *incommunicado* detention.

Mr Mariño Menendez then referred to the institution of the Attorney-General in Sri Lanka. He mentioned the position of the Asian Human Rights Commission about the changed role of the Attorney-General during the tenure of Mr Peiris – head of Sri Lankan delegation before the Committee, and that the Attorney-General now defends

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<sup>43</sup> Rapporteur of the Committee (Norway). Senior Researcher and Head of Section for Refugee Health and Forced Migration at the Norwegian Centre for Violence and Traumatic Stress Studies in Oslo, Norway.

<sup>44</sup> Member and former President of the Committee (Spain). Professor of Public International Law in Madrid, Spain.

<sup>45</sup> Doc. CMW/C/GC/1 (23 February 2011).

possible perpetrators of torture instead of protecting the torture victims. He asked for the first-hand account on this issue.

Mr Mariño Menendez posed the question about the competence of the military justice system.

Mr Abdoulaye GAYE<sup>46</sup> took the floor. He asked about the problem of the lack of judicial intervention in the extradition proceedings and how it was compatible with the principle of *non-refoulement*. His other question concerned the issue of inadmissibility of proof obtained through torture (Article 15 of the Convention), whether this principle is clearly recognized in Sri Lankan law.

Ms Myrna KLEOPAS<sup>47</sup> joined the others in welcoming the Sri Lankan delegation but went on to express her concern that impunity was a rule in Sri Lanka rather than an exception.

She referred to the recommendations contained in the report of the UN Panel of Experts on Accountability in Sri Lanka made public on 25 April 2011. She asked whether those recommendations had been taken by the authorities into account in formulating the national action plan.

Mr WANG Xuexian<sup>48</sup> declared that terrorism could not be tolerated and encouraged the implementation of the national action plan on human rights. He then mentioned a number of allegations of extrajudicial killings including an unnamed 7 years-old boy who was allegedly gunned down in a market. Mr Wang inquired whether an investigation ensued.

The session was wrapped up by Mr Grossman. He asked for the list of cases decided by the Supreme Court of Sri Lanka allegedly expanding the statutory definition of torture. He asked about the punishment for torture applicable in Sri Lanka. He went on to ask about the legal grounds to keep people in detention after the repeal of the Emergency Regulations.

He asked about the outcome of *habeas corpus* petitions and the gender and ethnic balance in the Sri Lankan judiciary which is very important, in the submission of Mr Grossman, for the legitimacy of the judicial power.

Mr Wang then referred to the report of the Asian Human Rights Commission in the part concerning the immunity from suit granted to the executive branch of power in Sri Lanka. He also posed the questions about the prevalence of the human rights

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<sup>46</sup> Member of the Committee (Senegal). Prosecutor General at the Court of Cassation in Dakar, Senegal.

<sup>47</sup> Member of the Committee (Cyprus). Former Cypriot career diplomat whose last post was High Commissioner of Cyprus in London.

<sup>48</sup> Vice President of the Committee (China). Career Chinese diplomat, formerly Deputy Permanent Representative and Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the United Nations and Ambassador Extraordinary and Plenipotentiary to the Republic of South Africa.

phenomenon of disappearances in Sri Lanka including the abductions of the internally displaced person who especially find themselves in the position of weakness.

Mr Wang asked how many indictments have been filed pursuant to the CAT Act. He further asked the delegation whether the Government of Sri Lanka is considering ratification of the new International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention and the Rome Statute of the International Criminal Court, as well as making declarations under Articles 21 and 22 of the Convention. He also asked whether the Government is contemplating new visits by the special procedures of the UN Human Rights Council.

Mr Peiris assured the Committee that the Sri Lankan delegation would take on board all matters raised by the Committee with full sincerity and that all those matters would be addressed by them with openness. He said that both the delegation and the Committee had a common objective, namely to make Sri Lanka an ideal place to live.

Mr Grossman closed the meeting.

### **Second round**

In absence of Mr Grossman, the meeting of the Committee on 9 November 2011, in the afternoon, was presided over by Mr Wang, Vice President of the Committee.

Mr Peiris, on behalf of the delegation of Sri Lanka, started answering the questions posed by the Committee members. He pointed out that those questions were formidable and that they had required formidable efforts on the part of the delegation. He cited Alan Derschowitz.<sup>49</sup>

Mr Peiris then said that it was indispensable to provide the Committee with some background. He assured the Committee that the delegation had given their earnest consideration to all matters raised by the Committee members.

Mr Peiris went on to cite the provisions of the Constitution of Sri Lanka mandating the Government to promote international peace and security, respect for international law and treaty obligations. He then referred to the absolute prohibition of torture, cruel, inhuman and degrading treatment contained in the fundamental rights' chapter of the Constitution (Article 11).

He then went on and on citing the various constitutional provisions and the case-law of the Supreme Court of Sri Lanka on the right to life and the grant of reparations for ill-treatment suffered including those rendered by Justice Mark Fernando.

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<sup>49</sup> American lawyer, author of *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*.



Mr Peiris then went as far back into the history as 1884 citing various statutory provisions. He referred on numerous occasions to the Constitution and Criminal Procedure Code of Sri Lanka. He explained that the Criminal Procedure Code provided for the legal framework in order to implement the constitutional safeguards.

After recounting some totally irrelevant stuff Mr Peiris pointed out that it was obvious to everyone even when he himself had been in his nappies. The Committee met this brilliant joke with silence.

Mr Peiris then cited the case-law of the European Court of Human Rights on the reversal of the burden of proof in torture cases. He attempted to defend the provision that there was nothing wrong in use in the criminal proceedings of the statements given by the accused without his or her lawyer being present. He conceded accordingly that there was no right for a lawyer to be present in a police station under Sri Lankan law, but that its introduction into the legislation was being considered.

He informed the Committee that the Government of Sri Lanka was considering establishment of a duty attorney scheme, as well as an institution of the investigatory magistrates.

On 11 June 2009 the Inspector-General of Police issued a circular no. 2178/2009 on the police officers' way of interaction with the lawyers. It led, in the submission of Mr Peiris, to the marked improvement of the overall situation.

As to the status of the Presidential Directions, Mr Peiris remarked that any non-compliance with them would be visited with strong sanctions. He further assured the Committee that no criminal trial in Sri Lanka would ever commence without the interpreter being available. He confirmed that there was a dearth of interpreters and suggested that it was an area where additional capacity building would be necessary. He regretted that there were no more trilingual (English-Sinhala-Tamil) interpreters available. He then said that in the North and in the East of the country the court proceedings were conducted in the Tamil language.

As to the functioning of the National Human Rights Commission, Mr Peiris gave no data to the Committee referring to its non-availability as the Commission is an independent body.

He said that there were 765 persons in administrative detention, they are provided with medical treatment by an in-house doctor, family visits, recreational and religious facilities, visits by the International Committee of the Red Cross (they conducted 5 visits in 2010) and the National Human Rights Commission. He then cited some legislative provisions on the status and independence of the National Human Rights Commission. He promised to provide the Committee with additional data contained in a separate schedule. He then quoted numbers of the fundamental rights' petitions lodged with the Supreme Court every year.

As to the medical examinations, Mr Peiris confirmed that no police officer was allowed to be present when a suspect is being examined by a judicial medical officer. The latter does not issue a receipt to the patient, the medical reports are kept confidentially in the custody of judicial medical officer before being submitted to the court, when required.

As to the writ of *habeas corpus*, Mr Peiris very helpfully explained that it was an old legal mechanism coming from English law, he explained that this writ was not fashionable today because of the availability of the fundamental rights' litigation.

As to the rehabilitation centers for ex-combatants, Mr Peiris acknowledged that the choice the people faced was either to go to the rehabilitation centre or to go to the jail. He emphasized that Sri Lanka had opted for restorative justice rather than purely retributive justice. He said that there were 689 persons detained in rehabilitation centers, but with a new peaceful dawn in Sri Lanka this number is constantly decreasing.

As to the number of cases pending before the Working Group, Mr Peiris explained that most of them are from 1980s, the time-period of the JVT insurrection and Northern insurrection.

Mr Peiris then said that every person may petition the Lessons Learnt and Reconciliation Commission for issuance of a death certificate in respect of a missing relative. He went on to explain that the mandate of the Lessons Learnt and Reconciliation Commissions would soon be terminated.

Order to detain pursuant to the Prevention of Terrorism Act is amenable to judicial review by way of writs for *certiorari* and is subject to fundamental rights' litigation.

Judges can exercise their discretion and impose sentences lower than minimal statutory threshold.

Any attorney-at-law may meet with a detainee, police officers would be present during such an interview, but in the hall rather than in the immediate vicinity. He explained that it was in fact the same situation in England where such meetings are recorded with CCTV cameras. The police officer in a hall is indispensable in order to ensure that nothing unusual happens during the interview.

As to the status and activities of the National Human Rights Commission, Mr Peiris repeated that they were permitted to visit all places of detention.

Mr Peiris affirmed that there were no unverified detention centers in Sri Lanka. List of all gazetted detention centers is available at [www.document.gov.lk](http://www.document.gov.lk).

Database on detainees is available for every person who is next-of-kin. But many detainees do not want the data on their detention to be disseminated. The National Human Rights Commissions also keep the database built by the United Nations Development Programme.



Mr Peiris said that *Amnesty International* was wrong and there were no secret detention centers in Sri Lanka. There is no shortage of the official detention centers in Sri Lanka.

All information on the detention centers was published in the *Official Gazette* for 14 July 2011 and 30 July 2011.

Touching upon the issue of the threats to lawyers, Mr Peiris confirmed that the police officers implicated had been transferred out and disciplined by the Inspector-General of Police. Overzealous police officers have been dealt with. In particular, 44 police officers were indicted in 2006-2011, some more cases were recommended for the disciplinary proceedings.

There is a very small number of complaints about the enforced disappearances in Sri Lanka, if one agrees with the estimates of Mr Peiris.

As to the torture cases, Mr Peiris promised to make available a chart with gender and ethnic breakdown to the Committee. It is not clear whether this chart has been or is intended to be made public.

Mr Peiris said a few words about the attack on the house of Mr Weliamuna. Mr Peiris referred to Mr Weliamuna as his “colleague” and to the attack itself as a “sad” event. He went on to explain that Mr Weliamuna himself was not capable of telling the authorities who was responsible for the attack. Mr Peiris said that the authorities denounced the attack but the investigation did not proceed.

As to the attacks on the lawyers in the media, Mr Peiris expressed his hope that his colleagues would not be deterred by them. He said that those attacks had no impact on anyone’s practice and as such had nothing to do with the problem of torture.

Concerning a seven-year old boy who was gunned down, Mr Peiris said that that particular event had nothing to do with the Convention as it was a shoot-out between the offenders and the police pursuing them, and the boy was unfortunately caught in cross-fire.

As to the accession to the Optional Protocol to the Convention and the Rome Statute of the International Criminal Court, Mr Peiris explained that Sri Lanka was a dualist jurisdiction, therefore, recommendations of the Human Rights Committee were of no consequence for its legal order, that is one of the reasons why acceptance of the procedures under Articles 21 and 22 of the Convention still continues to be under consideration by the Government of Sri Lanka. It is not clear how in making that statement Mr Peiris connected the distinct issues of the accession to the Optional Protocol and the Rome Statute and making declarations under Articles 21 and 22 of the Convention.

As to the national action plan on the promotion and protection of human rights, Mr Peiris once again said that it was developed following broad-based consultation. Mr



Peiris then repeated that that plan had elements in respect of torture. He then said that the plan comprised goals, issues, activities, key performance indicators, timeframe, responsible agencies identified in respect of the implementation of the Convention. This official documentation will be published in December 2011.

Mr Peiris concluded by saying that he was conscious of the fact that there remained some outstanding issues.

Mr Wang welcomed the presentation by saying that he admired energy of the speaker (Mr Peiris) who was capable of speaking without a pause and without a sip of water.

Ms Gaer then took the floor. She thanked the delegation for very interesting information but said that their responses had just hit the tip of the iceberg. She admitted that she was still left with many questions.

She referred to the draft human rights action plan as a fine initiative but said that its implementation would be crucial. She said that there was not a single reference in the description of the plan to prosecutions, though prosecution of torturers is a central obligation under the Convention, if there is a reasonable ground to believe that torture had taken place, even in the absence of a formal complaint to that effect.

Ms Gaer said that the Committee had no information as to what locations had been visited by the delegates of the International Committee of the Red Cross, and others.

She mentioned her question on the list of detainees and other persons in the custody of the Government and asked the delegation to fill that gap (although that information was one of the few topics clarified by Mr Peiris in his presentation).

As to the cases pending before the Working Group, Ms Gaer said that those had still not been clarified. The people are missing, and there have been many disappearances.

She asked about the allegations of sexual violence against women at the end of the conflict. She also mentioned sexual violence in which the Sri Lankan peacekeepers in Haiti (MINUSTAH) had allegedly been involved. She asked about the investigations, if any, conducted into those well-founded allegations, as well as to provide the results of the investigation into the behavior of the Sri Lankan peacekeepers in Haiti. Were the individuals jailed, suspended, or dismissed?

Mr Peiris interrupted and said that the whole issue of Haiti was completely new for the delegation as it had not even been hinted the day before.

Mr Wang said that if the delegation could not respond to that question immediately, they would be able to respond to it later.

Ms Gaer then returned to the question of the treatment and intimidation of civil society, human rights defenders, lawyers, and journalists. She pointed out that the response given

by Mr Peiris to that question had been very brief. She then mentioned the killing of Mr Perera and that still no-one was held accountable for that crime, as the principal suspect is still working as a police officer. Ms Gaer then cited other cases referred to in the list of issues under this rubric.

Ms Gaer explained that all those incidents created a sense of fear among the civil society in Sri Lanka whose normal functioning and ability to uphold the values of the Convention are central to the work of the Committee.

Ms Gaer asked Mr Peiris to confirm the Government's support of the work of the human rights defenders.

Mr Bruni again referred to the possibility for Sri Lanka to make declarations under Articles 21 and 22 of the Convention, whether the Government is considering making them, as well as ratifying the Optional Protocol to the Convention.

Mr Bruni then said that reality was very different from the legislative and administrative frameworks referred to by the Government, as amount of credible allegations of ill-treatment coming from Sri Lanka is enormous.

Mr Bruni reiterated his precise questions about the resources allocated to the National Human Rights Commission, its access to the military camps, and asked for precise answers, possibly even yes or no answers, and information on the follow-up given to the recommendations of the National Human Rights Commission.

Mr Bruni said that he had accompanied (as a member of the secretariat) confidential inquiry to Sri Lanka previously conducted by the Committee. He asked about the follow-up to the conclusions of that inquiry. As to the rehabilitation centers, it seems it is an offer that cannot be refused, as the only alternative is jail. He asked for recent examples of the Supreme Court's case-law on the substantive compensation.

Mr Mariño Menendez again inquired about the treatment of stateless persons and the protection afforded by the Sri Lankan authorities to the migrant workers particularly women in the countries of the Gulf and other countries. He asked about accessibility of the central police register. He asked about who is entitled to sign the interrogation warrant normally and pursuant to the Prevention of Terrorism Act. He also asked about the *incommunicado* detention, the decision-making authority in this respect and its duration.

Ms Kleopas declared that the fight against impunity was in the very heart of the Convention. Therefore, she questioned the approach of Mr Peiris that there was no problem in the lack of presence of a lawyer in a police station, as torture can be committed not only for the purpose of obtaining information.

Ms Belmir returned to her questions about the independence of the judiciary in Sri Lanka. She said that it was not enough to issue a death certificate for a missed person,

every case of disappearance should be investigated as to what has happened with the loved ones of those who applied for the issuance of death certificates.

Ms Sveaass raised the case of the disappearance of Prageeth Eknaligoda, and that the Government promised the Committee to provide it with supplementary information about that case in October 2011.

Ms Sveaass asked whether there would be a special programme of rehabilitation for women and children exposed to sexual violence. She declared that in order to move ahead those who are guilty should be held accountable.

Mr Wang reminded the members of the Committee that there was no additional time available for their questions. He explained to the delegation that the outstanding questions might be answered in writing. He then gave the delegation twenty minutes to address the Committee orally.

Mr Peiris started responding to the questions by tackling the issue of Eknaligoda. He said that Eknaligoda had taken refuge in a foreign country, and that the matter was being investigated.

He pointed out to a huge window of opportunity for filing civil cases in tort against State. Civil cases may also be filed against the military.

As to the issue of death certificates he fully agreed with Ms Belmir, and that autopsy and inquiry are indispensable in all cases of deaths from unnatural causes.

As to the migrant workers, it is an important thing which is seriously addressed by the Government which at some point even considered stopping sending Sri Lankan female workers abroad at all. It is one of the thematic areas of the proposed national human rights action plan. Sri Lanka has a specialized ministry of foreign employment. Sri Lankan migrant workers working abroad are a valuable asset for their country.

Mr Peiris conceded that reality might be different from high-flying jurisprudence. He said that amid all doom and gloom there were million good things in Sri Lanka. 6 000 people are arrested annually, and there are only 400 torture allegations. Mr Peiris assured that he was completely with the Committee that there is no room for torture, and that it should be brought to a minimum.

He then went on to conclude. He said that contemporary terrorism was extremely sophisticated. That is why Sri Lanka needed special legislative response to the terrorist threat under the Prevention of Terrorism Act, given that ordinary law was completely impotent to deal with terrorism. Sri Lankans based themselves on the laws of the United Kingdom and India.

Testimony in absence of a lawyer is admissible evidence only if it is given to a police officer of a particular rank or above. In any case, this evidence is to be tested in court for its voluntariness.

Mr Peiris then cited extensively from the draft national action plan on human rights and promised to make that document available to the Committee. He repeated once again that prevention of torture was a special thematic area of that plan.

He went on to criticize the report of the UN Secretary-General's Panel on Accountability in Sri Lanka. He said that the Panel did not have investigatory powers, therefore, it scarcely possessed any objective information. The sole objective of the Panel was to advise the Secretary-General, its report itself qualifies that the material collected is unchecked and unverified. Mr Peiris questioned whether it is fair to base oneself on this report.

Mr Peiris assured the Committee that the Government of Sri Lanka would take every bit of critique on board if that critique had been made in good faith. He explained that reports similar to that broadcast on *Channel 4* are very convenient vehicle for ex-combatants seeking refuge in green pastures. However, many applications for asylum submitted by such individuals have been rejected in Switzerland and elsewhere in Europe. In fact, it is "economic asylum", that is why this game is being played, in the firm submission of Mr Peiris.

Mr Peiris declared that the Convention should not be exploited by the terrorists and mercenaries. In his submission, the Committee should focus on legal issues and should not let the Convention to be exploited by the terrorists. He thanked the Committee for their patient hearing.

Mr Wang asked for supplementary written submissions. He added that the Committee would "not allow the Convention to be used by anyone including the terrorists". He thanked the delegation of Sri Lanka. That concluded the examination of the third and fourth periodic reports of Sri Lanka by the Committee.

### **Concluding observations**

On 25 November 2011, the final day of its 47<sup>th</sup> session, the Committee published its concluding observations on Sri Lanka.<sup>50</sup>

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<sup>50</sup> UN Doc. CAT/C/LKA/CO/3-4.



As to the quality of the Sri Lankan reports, the Committee remarked that it regretted that “the report lack[ed] statistical and practical information on the implementation of the provisions of the Convention”.<sup>51</sup>

The Committee pointed out that it remained “seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings”,<sup>52</sup> about the Sri Lanka’s “failure in practice to afford all detainees, including those detained under anti-terrorist laws, with all fundamental safeguards from the very outset of their detention”,<sup>53</sup> and about the “reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges”.<sup>54</sup>

The Committee mentioned the allegations of secret detention centers<sup>55</sup> and enforced disappearances including those documented by the Working Group.<sup>56</sup>

The Committee expressed its concern at the reports of intimidation and harassment of human rights defenders, lawyers, journalists, and other civil society actors.<sup>57</sup> It mentioned by name the cases of Prageeth Eknaligoda, Mr Weliamuna and some others.<sup>58</sup>

As to the conditions of detention, the Committee expressed concern “at the deplorable levels of overcrowding and poor conditions prevailing at police stations and prisons, especially the lack of hygiene, inadequate medical care”<sup>59</sup> and reports on death in custody.<sup>60</sup>

On the National Human Rights Commission, the Committee expressly requested the Government of Sri Lanka to provide information on the follow-up to its recommendations made after the surprise visit to the Mount Lavinia police station on 15 August 2011.<sup>61</sup> The Committee expressed its concern on the fact that the independence of the National Human Rights Commission had been undermined.<sup>62</sup>

Most importantly, the Committee underlined “the prevailing climate of impunity in [Sri Lanka] and the apparent failure to investigate promptly and impartially wherever there is

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<sup>51</sup> *Ibid.*, para. 2.

<sup>52</sup> *Ibid.*, para. 6.

<sup>53</sup> *Ibid.*, para. 7.

<sup>54</sup> *Ibid.*, para. 11.

<sup>55</sup> *Ibid.*, para. 8.

<sup>56</sup> *Ibid.*, para. 9.

<sup>57</sup> *Ibid.*, para. 13.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, para. 14.

<sup>60</sup> *Ibid.*, para. 15.

<sup>61</sup> *Ibid.*, para. 16.

<sup>62</sup> *Ibid.*, para. 17.



reasonable ground to believe that an act of torture has been committed”.<sup>63</sup> The Committee’s concerns about the lack of protection of victims and witnesses were supplemented by the mention of the assassinations of Messrs G. Perera and Mr S.K.A.S. Nishantha Fernando.<sup>64</sup> The Committee reiterated its previous recommendation on the establishment of an independent body to conduct the prompt, impartial, and spontaneous investigations into the allegations of torture and ill-treatment committed by the police officers.<sup>65</sup>

As to the Lessons Learnt and Reconciliation Commission, the Committee noted its “apparent[ly] limited mandate” and “alleged lack of independence”.<sup>66</sup>

As to the training of law-enforcement personnel, the Committee invited the authorities to “[a]ssess the effectiveness and impact of training programmes and education on reducing the incidence of torture and ill-treatment” and support the training on the use of the Istanbul Protocol.<sup>67</sup>

On redress, the Committee noted lack of the legislative provision on compensation or other forms of reparation for torture victims. The Committee reiterated its previous recommendation that the Government of Sri Lanka “should ensure that appropriate rehabilitation programmes are provided to all victims of torture and ill-treatment, including medical and psychological assistance”.<sup>68</sup>

The Government of Sri Lanka is requested to furnish the follow-up information to the Committee by 25 November 2012<sup>69</sup> and their fifth periodic report by 25 November 2015.<sup>70</sup>

### **Some thoughts instead of conclusion**

The Sri Lankan delegation led by former Attorney-General Pereira skillfully avoided answering most concrete questions posed by the Committee. Instead of focusing their analysis, the Committee members frequently repeated themselves and went into unnecessary length.

The Committee’s concluding observations are relatively detailed. It is important that the Committee chose not to isolate the human rights violations committed during the final stage of the armed conflict, but rather preferred to address, in rather firm and strong

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<sup>63</sup> *Ibid.*, para. 18.

<sup>64</sup> *Ibid.*, para. 19.

<sup>65</sup> *Ibid.*, para. 18 (a) and (c).

<sup>66</sup> *Ibid.*, para. 21.

<sup>67</sup> *Ibid.*, para. 28 (b) and (c).

<sup>68</sup> *Ibid.*, para. 29.

<sup>69</sup> *Ibid.*, para. 38.

<sup>70</sup> *Ibid.*, para. 39.



language, the demise of the rule of law in the country as a whole. The concluding observations, however, suffer from the same defect as the Committee's review as a whole. Lack of focus did not allow the Committee to concentrate upon the most important institutional issues which lead to the problems in numerous other areas.

All in all, this exercise – although somewhat useful in calling snake a snake internationally – has very little to add to the already ongoing debate within the Sri Lankan society as to the widespread phenomenon of torture, its root causes, and the ways forward to overcome this scourge.

*(Put together by Sergey Golubok, representative of the Asian Legal Resource Center at the 47<sup>th</sup> session of the Committee against Torture, in November 2011 in Russia, Germany, and France.)*

## 7. Development Proposal of the Medico-legal Service in Sri Lanka

**(This proposal was prepared by Several Judicial Medical Officers)**

Medico-legal work of Sri Lanka is covered by Consultant J.M.O.s, MOs(Medico-legal), D.M.O.s in the government hospitals in the health ministry and also by Professors / Senior Lecturers who are attached to the Departments of Forensic Medicine in faculties of Medicine. Medical Officers (Medico-legal) who have trained in Forensic Medicine for a short period are working in some of the government hospitals and they refer certain medico-legal cases to consultant JMOs. In addition, District Medical Officers, perform medico legal work within their capacity and they too, refer the medico legal cases as do MO(Medico legal).

In late 1980's there were only 4 consultant JMOs and by the end of year 2011 there are 26 consultant J.M.O.s working in 18 out of 25 districts of Sri Lanka. However, this number is far below the cadre position for the Consultant J.M.O.s proposed by the Ministry of Health. Medico-legal work in districts where there is no consultant JMOs is covered by non specialized doctors (Medical Officer in Medico legal, D.M.O.s and MOs).

In Sri Lanka Consultant Judicial Medical Officer has to work in clinical forensic medicine, postmortem examination and examination of skeletal remains (anthropology), administration and teaching .

Certain deficiencies and problems have identified when the doctors working in these medico-legal units and they are classified according to three main streams as described below.

1. Deficiencies found in the infra structure of the medico-legal set up.
2. Matters in relation to the work in medico-legal units.
3. Matters arising with the work in other disciplines of the medico-legal examination.

### ***1. Deficiencies detected in the infra structure of the medico-legal set up and the suggestions to overcome these matters.***

1.1. *There are no separate office complex and mortuary complex in medico-legal units of certain hospitals. This is particularly evident where a consultant judicial medical officer is appointed to a district general hospital for the first time without setting up an office complex. The mortuary set up in such hospitals is also sub standard. i.e.: no body coolers or frequently broken body coolers. no water, electricity and adequate ventilation facilities. No changing rooms and no shower room for doctors and mortuary staff to clean themselves after finishing the postmortem examinations, etc. No clothes and aprons to wear at the time of conducting the postmortem examination. It has been noted that these requirements are extremely difficult to be fulfilled in hospitals that are under the provincial councils.*

1.2. Lack of required equipments for clinical and postmortem examination to perform the proper medico legal work. It has been noted that required equipments are not available in most of the medico-legal units. The list of essentially required equipments are described below.

### **CLINICAL FORENSIC EXAMINATION –EQUIPMENTS ESSENTIALLY REQUIRED<sup>71</sup>**

- Sphygmomanometers (Blood pressure apparatus)
- Stethoscopes
- Hand lenses
- Weighing scale
- Measuring tapes

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<sup>71</sup> The total cost for one unit is approximately SLR 3.5 million. Thus for 26 units is SLR 91 million. Out of this total cost the cost for portable x-ray and body coolers per unit is 2.5 million. Thus the total cost for these two items for 26 units is SLR 65 million.

- Bed side screens
- Bed side lamps
- Examination bed (With facilities for gynaecological examination )
- Infra red lamps
- Ultra violet lamp
- Vaginal speculums (Eg: Cusco's bivalve type) in different sizes
- Otosopes
- Ophthalmoscopes

### **FOR INVESTIGATIONS**

- Light microscopes (Brand like OLYMPUS)
- Sterile swabs with close containers
- Sterile containers (Screw capped or rubber topped bottles and vials)
- Standard labels – adhesive type
- Standard tags
- Sample sealing tapes

### **RECORDING AND STORAGE**

- Computers (Desk top and laptop)
- Computer printers (Laser type – Monochrome preferable)
- Scanners
- Photocopy machines
- Digital cameras (With high mega pixels)
- Digital voice recorders
- Ordinary steel cupboards and file cupboards
- Racks



**COMMUNICATION**

- Telephone
- Fax machine
- Internet facility

**AUTOPSY EXAMINATION – EQUIPMENTS ESSENTIALLY REQUIRED**

- Body coolers
- Autopsy tables
- Portable X-ray unit
- Autopsy instruments
  - Skull saw (Electric)
  - Scissors
  - Forceps (Tooth and non tooth)
  - Hammers
  - Chisels
  - Scalpel handles
  - Brain knives
  - Rib cutter
  - Hand lenses
  - Lamp with movable arm



1.3. Insufficient human resources (Consultant Judicial Medical Officers, Medical Os, trained Mortuary attendants and labourers, data entry operators, photographers, laboratory technicians).

## *2. Matters arising in working in the medico-legal set up.*

2.1. Lack of uniformity in medico-legal documents that are used in medico-legal work.

- There is no uniformity in reporting of COD after the postmortem examination.
- The present postmortem report should be upgraded
- Investigation request forms ( govt. analyst, MRI, histo path.,lab., ILMT,ect.)has to be made uniform and upgraded
- Uniform and more descriptive diagram forms( body, genital, bones, ect)
- Upgrading existing MLEF, referral forms, MLR

2.2. Lack of in service training for most of the non specialized doctors who are involved in medico-legal work (e.g.: D.M.Os in district hospitals, etc). CME for specialist

- Regular island wide in-service training programs for non -specialized dos. who are engaged with medico-legal work.
- Comprehensive and mandatory training for new coming MOML, preferably at provincial levels
- Training programs form mortuary attendants
- Conducting research and attending CME programs by specialists

2.3. Lack of communication and consultation regarding medico-legal work that is performed by non specialized doctors and other relevant authorities.

- The consultant should be freely communicable by the non-specialized doc. when and where necessary
- To have a monthly mortality meeting at the hospital with the participation of the director / MS / DMO, JMO, coroner, relevant specialist, , etc.

2.4. Lack of auditing of medico-legal work and documents.

- Medico legal documents prepared by specialists and non- sp. has to be audited anonymously and/ or peer reviewed mutually

2.5. Matters arising when dispatching of specimens to forensic laboratories.

- Dispatching samples should be done under the supervision of the JMO preferably via a hospital minor staff member

## 2.6. Maintaining registers

- MLEf reg. PME reg. summons. Labs. Reports to courts. BHT receive and dispatch reg. etc.,

## *3. Matters arising with other disciplines that are related to medico-legal work.*

- Police.
  - a). poor communication
  - b). non compliance
  - c). delayed presentation
- Inquirer in to Deaths.
  - a) to have a mandatory training programmed for ISDs ( inquirer into deaths) in death investigation at the time of their appointment.
  - b) Justice ministry should have criteria in appointing ISDs
  - c) ISD should have a proper working environment/place
- Forensic Science Services. (Government analyst's Department etc.)
  - a) It takes a long time to get the report of results once the specimens are sent to the govt. analyst dept. Therefore the final PM report is delayed.
  - b) Limited number of toxicological tests that are being performed.
  - c) Absence of quantitative analysis other than very few as alcohol.
  - d) Absence of other forensic science investigations such as DNA, etc.
  - e) Absence of reception of specimens throughout the day/ 24 Hrs.
  - f) Poor communication with the JMO
  - g) Absence of comments regarding the positive findings in investigation results.

- Judiciary.
  - a) National format to summons an expert witnesses including relevant information of the case and the patient or the deceased examined.
  - b) Summons should be served with adequate time to respond/ to send the report to court( a minimum of two weeks)
  - c) Summon the JMO only when medical evidence will be taken in high court.
  - d) Undue delay in disposal of cases cause enormous inconvenience to JMO. Effective measures adopted to remove undue delays could ensure a more efficient service from JMOs which at the same time will remove the inconveniences to JMOs.
  - e) To assist to locate the Medical Officer who performed the medico-legal work. A list of medical officers who perform/have performed medico-legal work can be included in the web site of the Ministry of Health with their present stations.
  - f) Making facilities available to display photographs to court with multimedia facilities.
  - g) Police messages are routinely sent for all the calling dates and therefore should not be practiced.
  - h) The present arrangement to attend district court for medical officers (specialists and non specialists) is unsatisfactory and unacceptable therefore there is a need to develop a practice which is reasonable and just regarding such payments. The initiative in this regard should be taken by the JMO themselves in consultation with the Attorney Gen. Dept.
- Difficulties encountered in govt. hospitals and in referring patients to other medical specialties.
  - a) To obtain a blood sample from patients at the time of admission to whom a MLEF will be issued and where their lives are endangered or when blood investigations will be necessary for further medico-legal investigations and to preserve it in a refrigerator
  - b) A non specialist medical officer (Medical Officer Medico-Legal / DMO / MO) should be able to refer a person directly to a specialist medical officer and specialized units to get his opinion in relation to medico legal work, preferably by a referral form.





- Medico-legal work in Pvt. Hospitals
  - a) To formulate a guideline to attend to medico-legal work (mainly MLEF) at private hospitals
- Ministry of health
  - a) To have a separate financial allocation for medico legal services in the annual health budget.
  - b) At present there is no uniformity in issuing reports for insurance purposes and therefore a reasonable practice should be adopted in this regard initiated by JMOs in collaboration / consultation with Ministry of Health.