



## *SRI LANKA: Rapid fall into Dictatorship*

### Preamble

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In previous annual reports, the Asian Human Rights Commission has documented Sri Lanka's rapid fall into a dictatorship under the executive presidential system. This process has now been completed. There are violations written into the basic structure of its constitution, which was initially based on Sri Lanka being a republic and a democracy, recognizing the separation of powers between the executive, a legislature and judiciary, with the rule of law as its foundation and made on the basis of sovereignty of the people; now the legislature and the judiciary have been subjugated to the executive, through the 1972 and 1978 Constitutions. The executive president has now taken control of the legislature and the judiciary, and thereby reduced these two formerly independent branches of government into branches of the executive. This transformation is so complete that the principles of separation of powers and the rule of law can no longer be operated in any rational manner. The executive president is the sole and the direct controller of every aspect of governance, and all institutions are now expected to operate under his direction and according to his wishes.

The direct result of this transformation is that now no justice is possible in Sri Lanka. Under the structure of governance, functioning under the direction of the executive president, there is no protection for the dignity and liberty of individuals. Individual freedoms are completely suppressed and there is no institutional structure for the protection of such liberties.

Citizenship in Sri Lanka now only refers to one without any of the human rights. Individuals are being made into digits of a system in which the controller is the executive president. No one is outside the arbitrary control of the executive president, including the Chief Justice of Sri Lanka herself. All judges in the time to come will be under the total control of the executive president. The only permissible decisions that the judges of Sri Lanka will be able to make will be those that the executive president allows them to make. Anyone who even slightly deviates from this path is likely to be removed from his or her position immediately, the same way that chief justice is being dealt with now. Under these circumstances, fundamental human rights, though enshrined in the constitution, are without any effective protection. The protections that arise from Sri Lanka being signatory to international conventions in human rights have now lost significance.

The people of Sri Lanka have been watching these transformations helplessly. The international community is totally oblivious to these transformations. For many decades, the UN Agencies, the powerful countries, and the international community at large, thought the sole problem in Sri Lanka was the ethnic conflict, or the minority issue, and failed to recognize the terrible constitutional crisis that the political system as a whole was facing since 1978. There were those who pointed out this situation in a fuller picture, and this included the Asian Human Rights Commission. However, such warnings were not taken



seriously. Now, when the collapse is becoming obvious, there are some expressions of concern, but these have come too late, and even now the recognition of the total transformation of Sri Lanka into a dictatorship is not being grasped at all. The consequence is that the people of Sri Lanka now have to face this situation alone and even someone in as high a position as the Chief Justice of Sri Lanka has no choice but to face the consequences of the total absence of respect for rules. It will be said in the future that at the point when Sri Lankan democracy sank like the Titanic no one came to her rescue.

The most frightening spectacle is the rise of the Ministry of Defense as the total controller of the lives of Sri Lankan citizens. The para-military forces, such as the Special Task Force (STF), the intelligence services, and the military are now intervening into the lives of people in the North and East as well as the people of the South. Not even the prisoners are outside their control and direct intervention. All these forces work outside the law and enjoy total impunity.

The possibility of any credible investigation into violations of rights has come to an end. In the absence of such investigations, the possibility of prosecutions does not exist and, in any case, the prosecutor - that is, the Attorney General's Department - is under the control of the new administration of the executive president. The judiciary has ceased to be a separate branch of governance and is now under the control of the executive president. When even the Chief Justice is without legal protection, there is hardly any need to speculate on the fate of ordinary folk.

Forced disappearances, extrajudicial killings, rampant torture, denial of protection from illegal arrest and illegal detention, the denial of fair trial, the suppression of freedom of expression, publication, and association, are all entrenched, and electing a government by a free and fair election is no longer a possibility. In short, all the rights enshrined under the UN International Covenant of Civil and Political Rights (ICCPR) are being violated and there is no effective remedy, as required under Article 2 of that Covenant, for any of the rights.

The final culminating issue is the government initiative to impeach the chief justice. This was a direct retaliation to judgments relating to the Divinaguma Bill, which the three judges of a bench presided over by the Chief Justice had held to be in contravention of the constitution. After threats of impeachment, 117 members filed an impeachment motion containing 14 charges, all of which the Chief Justice denied. Later, 11 members, of whom 7 are from the government, have been appointed to be the Parliamentary Select Committee (PSC).

The impeachment procedure is contained in article 107 and select committee resolutions are found in article 78. Many authorities have pointed out that this procedure does not provide for impartial investigation of a tribunal, and therefore violates the basic principles relating to an impeachment of a judge.

Despite such challenges, the impeachment proceedings are continuing. The government approach appears to be that legality or illegality of the impeachment is irrelevant. The executive can request the parliament to commit an act which may be illegal, and on that request, parliament must oblige. The core argument is



that whatever the executive orders has effect of law. This is the same position that Otto Adolf Eichmann took about the orders of Hitler.

Throughout the year, the Asian Human Rights Commission has documented all these aspect of the tragedy of Sri Lanka and the loss of human rights protection therein. We set out below some of the statements produced for the illustration of the basic positions stated above.

## 1. 1. Democracy

### 1.1. (a) Like the Titanic did Sri Lankan Democracy Sink<sup>1</sup>

A comparison with the Titanic is most appropriate. The Titanic, at the time, was thought of as a wonder ship that could never sink. It was not expected ever to perish. Sri Lanka also was considered a wonder. It was expected to be an example to other countries. It was expected to prove that democratization of a “less developed country” is possible and achievable. In granting adult franchise in 1931, long before many other countries, Lord Donoughmore said, the world will watch the outcome of this. However, what everyone conveniently forgot was that they must be vigilant because of the possibility of hidden icebergs.

One such iceberg emerged in 1978. This was by way of a new constitution. It had been quickly created through the tyranny of a two-third majority that government had in parliament. It was a man-made iceberg that created a constitutional monster called the executive president. However, the country’s affluent sections and the intellectuals were happily drinking and singing the praises of open economy and became oblivious to the danger that was looming. Each group was pursuing their petty interests and lost sight of the whole. While the legislature and the judiciary were also having their parties with the executive, the iceberg got ever closer.

And, it finally struck. The final blow was on the judiciary, which was itself enjoying the party. *When and how will the sunken democracy rise again? Those are the only real questions now.* In Indonesia it took over 35 years to undo General Suharto’s attack on democracy. Burma, is still struggling to rise again after General Newin’s attack on that country’s democracy, and there are many other examples which show how difficult it is to rise again.

It is, of course, possible, to sleep walk – by thinking nothing has happened. Many may find ways to get something out of this tragic situation. There are times when vultures too have their festivals.

The truth now is that the ship has sunk.

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<sup>1</sup> An article by Basil Fernando, AHRC-ART-111-2012; November 8, 2012,



## 1.1 (b) Government rejects the Universality of Human Rights<sup>2</sup>

Speaking at the 20<sup>th</sup> session of the Human Rights Council, under the agenda item on the Special Rapporteur on Health and the Special Rapporteur on the Right to Education, Sri Lanka attacked the United Nations' role in developing international norms and standards relating to human rights. Speaking on the issue of education, the government noted in an official statement:

"We would however caution on attaching excessive focus and arbitrary conditionalities on developing norms and standards related to quality education, as many developing countries are as yet grappling with the provision of basic education to their populations. Setting goals which require enormous finances which developing countries are often unable to meet, and placing the onus of responsibility solely on the state will not practically advance the quality of education. Instead, it is suggested that realistic goals be set, which are developed taking in to consideration the particular needs of countries and their respective domestic situations, if we are to successfully improve the quality of education worldwide."

Given that in Sri Lanka, the government has been working to downgrade the school and university education systems; this announcement does not come as a surprise. The implication of this statement is that Sri Lankans are not entitled to the highest standards of education, as the citizens of other countries are. Under the pretext of economic difficulties, the Sri Lankan government wants a different set of educational standards for poorer countries. By this, they mean that the poor deserve a poor quality of education.

The setting of international norms and standards for the protection of human rights is the most important function of the United Nations' human rights agencies. Since the adoption of the Universal Declaration of Human Rights in 1948, this has been the United Nations' human rights agencies most significant project. The covenants and conventions have been developed to ensure a similar entitlement of rights for people in all countries, so that basic rights can be enjoyed by every person.

As such, to attack the making of international norms and standards is to strike at the very heart of the United Nations' human rights project. Sri Lanka's present government has been consistently engaged in this attack since its formation.

In relation to the resolution passed by the United Nations' human rights council on the issue of accountability and reconciliation in Sri Lanka, the thrust of the attack by the Sri Lankan government relates to civil and political rights. The Sri Lankan government is vigorously pursuing a project in which international humanitarian and human rights legal codes will be reformed so as to allow serious violations, thus denying the universality of human rights.

During the mid-twentieth century, Sri Lanka was one of the countries heralded as a model for other developing nations, in light of its progress in establishing quality social infrastructure, such as that in

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<sup>2</sup> AHRC-STM-127-2012; June 21, 2012



education. There was good reason to hold Sri Lanka in such high esteem at this time. Indeed, from the early 20<sup>th</sup> century when Sri Lanka was under colonial rule to the early part of the independence period, achieving a higher quality of life for the people of Sri Lanka was one of the government's central goals.

Today, this pursuit of a higher quality of life is suffering due to the incredible level of neglect. Indeed, Sri Lanka has been reduced to a lawless place. The accusation of lawlessness comes from the highest levels of society. Cynical remarks are frequently made regarding the fact that Sri Lanka has a parliament, but does not have parliamentary democracy, that Sri Lanka has courts but lacks an independent judiciary to preside over these courts, and that Sri Lanka has a rule of law system but is nonetheless becoming a lawless nation.

It is quite clear that this deplorable state of affairs has not come about by accident, but is the product of design; the statement made by the Sri Lankan government at the United Nations is testament to this ideological position. Such government officials believe that it is acceptable to deny the basic standards of life to the people of Sri Lanka, in terms of civil and political rights as well as economic, social and cultural rights. Moreover, they believe that such a viewpoint is justified on the basis of the idea that people in poorer countries cannot have a high standard of life that others in wealthier countries are able to enjoy.

Sri Lanka is a member of the United Nations. When the Sri Lankan government challenges the efforts of UN human rights bodies and officials to define international norms and monitor the upholding of these standards, it is attacking the core of the United Nations' project on human rights. As such, what justification can Sri Lanka have to remain within this assembly of nations, which is primarily devoted to defining universal standards and monitoring their progress?

The universality of human rights is at the heart of the basic philosophy of human rights. In attacking the notion of the universality of human rights, Sri Lanka is attacking the fundamental tenets upon which human rights norms stand. The statement made by the Sri Lankan government at the 20<sup>th</sup> session is clear evidence of the new direction that the Sri Lankan government is taking to renege from the enterprise that the world became engaged in when the Universal Declaration of Human Rights was enshrined as a basic, global agreement.

## 1.1 (c) Ministry of Defence

### Role of the Defence Secretary in paralysing the criminal investigation system<sup>3</sup>

On 19<sup>th</sup> June 2012, Sri Lanka's United National Party (UNP) published a statement demanding the resignation of the Secretary of Defence. The UNP claimed that the resignation was warranted in light of the recent deaths of two people at the JVP meeting at Katuwana, Hambantota.

However, a larger issue that should be considered in this case is the paralysis of Sri Lanka's criminal investigation system due to the control exercised by the Secretary of Defence over this system. In light of

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<sup>3</sup> AHRC-STM-125-2012; June 20, 2012



this control, the UNP, Sri Lanka's leading opposition party, should have demanded this resignation many years ago. Even at this late stage, however, it is a welcome action. We hope that Sri Lanka's paralysed criminal justice system will be revived, at least in part, by this action.

The notion that the Secretary of Defence, and the larger Ministry of Defence have been an obstruction to the criminal justice system is not an exaggeration. In fact, this assertion is an understatement of the actual situation. To illustrate this issue, below is a list of crimes that have not been credibly investigated by state officials. All of these crimes are well-known to the local population.

- The murder of Lasantha Wickaramatunga, which took place in broad daylight, sent reverberations throughout the nation and around the world. Despite the pressure placed on state officials by local citizens and international agencies, a credible investigation has yet to be instigated. Mr. Wickaramatunga was a public rival of the Secretary of Defence, and this is clearly one reason why his rights enshrined in the Sri Lankan Constitution have not been respected. The blatant attempt to silence any enquiries into this murder speaks to the degree to which the Sri Lankan criminal investigation system works at the behest of local politicians.
- The disappearance of Stephen Sunthararaj is another well-known case. Mr. Sunthararaj was well-known for his work with the Centre for Human Rights and Development (CHRD) in documenting cases of child abuse in Jaffna. Mr. Sunthararaj was arrested in 2009 and detained without charge. Two months later, on the order of the Supreme Court, he was released on the grounds that there was no evidence to form his conviction. Later that day, as he was traveling with his wife, his vehicle was stopped on a crowded street by two motorcyclists and a white van. Five men emerged from the van and kidnapped Mr. Sunthararaj. Numerous local and international organizations have campaigned for state officials to initiate a credible investigation into this forced disappearance. However, no investigation has been instigated. In December 2009, the Permanent Secretary to the Ministry of Foreign Affairs, Mr. Palitha Kohana, stated in conversation with US Embassy and European Union officials, that Mr. Sunthararaj was not forcibly disappeared, but had been arrested by intelligence services. Despite repeated petitions made by his wife as well as by local and international organizations, no information on Mr. Sunthararaj's whereabouts have been released.
- The disappearance of Prageeth Eknaligoda is another well-known crime. UN agencies have repeatedly questioned the Sri Lankan government regarding this disappearance. In response, the former Attorney General who represented the Sri Lankan delegation at the 47th session of the UN CAT Committee in November 2011, told committee members that he had credible information that Mr. Eknaligoda had become a refugee in another country. Later, at a Magistrate Court's inquiry, the Attorney General denied having any information on the whereabouts of Mr. Eknaligoda. For two years, numerous mistruths have been published in the local media regarding this case, and a credible investigation has yet to be initiated.
- There have been a number of high-profile abductions which have not been appropriately investigated. In the case of Pramakumar Gunaratnam and Dimuthu Artigala, the quick





intervention of the Australian government led to their release. This occurred in spite of the Defence Secretary's claim that no such person had been taken into custody. Despite this embarrassing public scandal, no action was taken against any public officers, nor was a credible investigation initiated into the case. There have been numerous abductions, some which led to the deaths or permanent disappearances of the abducted, which remain un-investigated.

- The case of the murder of Baratha Lakshman Premachandra is one of the most shocking examples in which the criminal justice system has been clearly manipulated for political reasons. Duminda De Silva, a known drug dealer who had been involved in numerous financial scandals, received state protection after the murder, whereas the members of Mr. Premachandra's family has been publicly harassed.

This list is not exhaustive. Indeed, the attacks on journalists, press establishments, workers, trade unionists and civil society activists, which have not been investigated, are numerous. The fact that Sri Lanka's criminal investigation units operate under political control is a publicly known fact, and has been criticized by numerous local organizations and international agencies. It is naive to blame the police for the failures of the criminal justice system. The police are in the grip of a political machine that does not give them the freedom required to fulfil their professional duties.

A nation cannot operate effectively if its criminal investigation system is hampered by political agendas. When a criminal investigation system is paralysed in this manner, every citizen of the nation is in danger. Moreover, local businesses are also at risk. As such, there is a high level of insecurity in homes, businesses and establishments across the nation. When people are aware that they do not have the protection of the rights which have been enshrined in Sri Lanka's Constitution, they live in fear that they will become the next victim of an arbitrary political agenda.

Given the circumstances, the UNP's call for the resignation of the Defence Secretary is certainly justified. Ironically, however, the resignation of a high-ranking government official is a fundamental requirement for national security. When the rule of law is under threat, there is no greater threat to national security than the paralysis of the criminal investigation system.

What follows is UNP's statement, in full, regarding the resignation:

### *The UNP statement*

"Police spokesperson SP Ajith Rohana accepted that two persons including a woman died due to an unarmed gang shooting at a Janatha Vimukthi Peramuna (JVP) local meeting held in Katuwana in the Hambantota district on 15 June (2012). He said, a group of unidentified men on motorcycles had opened fire at the meeting killing and injuring people. Police sources said, around 100 JVP supporters had attended the meeting and the gunmen had arrived on 03 motorcycles.

We stress here, any political party, whether in the government or in the opposition has the same equal right to participate in democratic political activities without restrictions, intimidations and threats of any sorts. Therefore, it is the undisputed and unchallenged responsibility of this government to allow such democratic political activity, in any part of the country. The responsibility of this armed thuggery in breaking up a democratic political meeting at the cost of 02 lives and injuries to many others, therefore has to be totally borne by the Rajapaksa regime, more so, because it is their family bastion of political power, the shooting had taken place.

It is also no secret in Hambantota that an armed gang in this area is operating in the open with T-56 riffles in hand and the people in the area claim, the police are ineffective as this armed gang is being sponsored by the Rajapaksas. It was in this area that a bus carrying UNP supporters was shot at during the 2010 January presidential elections and a woman was killed. We are yet to hear of the outcome of the investigations into that killing, 02 years and 06 months after the shooting.

As with all other extra judicial killings, abductions, involuntary disappearances and killing of protesters, we don't have any reason to believe, there will be independent investigations and a proper judicial process initiated, in this double murder. Such is the efficiency of this Secretary to the Defence Ministry, who brags that crime in Sri Lanka has not increased as opposition politicians' claim.

Yet as the opposition we firmly believe, a Secretary who takes pride in being the almighty of defence and enforcement of law and order, having the police department too under his administration, is totally responsible for all custodial killings in this country, serious increase in sexual abuse of children and for 1,847 cases of rape and incest, 103 cases of extortions and 877 cases of abductions in the year 2010 as reported by the Police and for 471 cases of rape and incest, 18 cases of extortions and 235 cases of abductions during the first 03 months of the year 2011 that comes within a total of 12,281 crimes of every sort during those 03 months.

Let's also not forget that it is under this same Secretary to the Ministry of Defence that for the first time we heard, a group of police personnel taking into contract killing and also an army officer getting into the business of killing for money. It is also under this Secretary to the Ministry of Defence that 02 police stations were completely mobbed by villagers for custodial killing of youth.

This country, cannot afford to allow such an inefficient, non-administrative service person to handle a serious and important ministry as its Secretary, and allow the country to go chaotic and into anarchy. People of this country, whatever their political affiliations cannot live with such unsolved crime, dictated by politically backed armed thugs under a Secretary, who is not even willing to accept he is a total failure as a State officer.

We therefore don't believe even this shooting and killing at Katuwana will be independently investigated and solved under his administration. We therefore demand that the Secretary to the





Ministry of Defence be immediately removed and the position be vested with a career administrator, as the first step in restoring sanity in law enforcement.

Mangala Samaraweera MP  
Matara District  
Convenor, Media Committee, UNP”

## 1.1 (d) Rise Of the Security Apparatus & Decline of the Criminal Justice System<sup>4</sup>

A few decades ago, Sri Lanka’s criminal justice system was organised on the basis of the Penal Code, the Criminal Procedure Code and the departmental orders of the police. The Penal Code defines crime and lays down penalties for each particular crime. New crimes were identified or defined either through amendment to the Penal Code or through separate statutes. The Criminal Procedure Code describes basic protocol, which mechanisms in the justice and law enforcement institutions should comply with, and provides proper processes along which those in authority must operate. This includes how complaints are to be taken down, how to, and who should, conduct the investigations into crime, how the findings of the investigations are to be submitted to the Attorney-General, how arrests should be made, how indictments are to be made by the Attorney-General, how the indictments are to be filed in courts, how the trial process is to be carried out and how bail and appeals are to be made.

The Criminal Procedure Code also lays down the manner in which people are to be summoned to courts, and how to deal with persons who evade the summons, as well as many other matters incidental to the investigation, prosecution, trial, appeal, sentencing and punishment of an accused in accordance with accepted legal principles within the country. This system that had been gradually developed over centuries was supported, implemented and enforced by the police departmental orders, and guaranteed – to large extent – fairness through equality before the law and equality of protection by the law.

The departmental orders of the police lay down the manner in which police, who are to play the key role in the investigations into crime, are to carry out their obligations. These orders circumscribe the legal mandate of police officers and prescribe acceptable ways of recording complaints, making arrests, detaining a person, interrogating suspects and witnesses, maintaining records and proper documentation of all proceedings, the systematic archival of evidence and case files to the Attorney-General and pursuing crimes their order permits them to prosecute. The obligations of police officers are described in minute detail in these departmental orders. Officers-in-charge of police stations have been tasked with the critical role of personally demonstrating, supervising, and enforcing the proper conduct of police officers, and of investigations, as well as with the maintenance of discipline within the police station. Assistant Superintendents of Police have been, in turn, mandated to monitor the conduct of all police stations under their charge. In this manner, a strict hierarchy and chain of command was built and strengthened through dense networks, which demanded accountability and a certain amount of transparency. This system provided feedback mechanisms with which rogue actors and misconduct could be quickly checked by

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<sup>4</sup> An article by Basil Fernando, August 2, 2012; COLOMBO TELEGRAPH

superiors and peers. This possibility in turn encouraged self-regulation by those in authority and inspired trust and confidence among the general populace.

The Penal Code, Criminal Procedure Code, and the Departmental Orders together enshrine scientific methodologies for investigation into crime. Centuries of vigorous debates in the European context gave rise to the rules set out in these various legal documents. The norms of equality of all before the law, justice and protection for all by the law, led to the gradual abandonment of the systems that prevailed in Europe before the 17<sup>th</sup> century. This period came to be known as the period of Enlightenment. The primary concern during this period was the development of a system of governance based on models of rationality, empiricism and science, and on the ideal of utilitarianism. This system attempted to balance the interests of many, often competing, parties, and to design rules to uphold, protect and enforce principles of justice. The criminal justice system was based on the acceptance of presumption of innocence before being proven guilty, and the placement of the burden of proof on state agencies, particularly investigators and prosecutors. These agencies were charged with bringing before the court adequate information and evidence which would conclusively link the suspect with the crime committed. Guilt was to be imputed through concrete evidence alone, the logical interpretation of which should prove beyond shadow of a doubt that the accused was responsible before any verdict or sentence is dealt.

## A thing of the past

The system described above is today, on the whole, a thing of the past. Since 1978, the adoption of the new Constitution of Sri Lanka has replaced this old conception of criminal justice. Increasingly, state and public security laws have replaced the old system of criminal justice and its belief in due process and the principles of equity, equality, and justice. These national security laws and acts suspend scientific rules and processes that would normally apply in the event a crime is committed. This is equivalent to a suspension of justice, equality and equity in law enforcement and the judicial system. For over 40 years since the counterinsurgency of 1971, the rules and recommendations composing the Penal Code have been systematically neglected or violated, rendering irrelevant considerations underlying the rule of law, i.e. presumption of innocence and burden of (adequate and scientifically obtained / interpreted) proof on the prosecuting agencies. Newly defined transgressions are often accorded disproportionately severe punishments and new legal statutes permit the suspension of due process for arrests and detentions. This undermines every principle upon which the old system of criminal justice was built.

In the earlier system of criminal justice, two departmental heads played critical roles. The Inspector General of Police directed and supervised the policing and law enforcement institutions, while the Attorney-General ran the Attorney-General's Office, which exercised the prosecutors function. Both department heads were expected to ensure that the entire system of investigations and the prosecutions are conducted within that normative framework delineated by the rules comprising the Penal Code and the Criminal Procedure Code. These department heads enjoyed the privileges, power, and respect attendant to high office.



## Enter the Ministry of Defence

Yet, national security laws have hollowed out the portfolios of the Inspector General of Police and the Attorney-General, by placing greater power in the hands of the Ministry of Defence. The Secretary of Defence has acquired unprecedented powers through national security laws such as the 1979 Prevention of Terrorism Act (PTA) and various Emergency Regulations (ERs) since the 1971 Janatha Vimukthi Perumuna (JVP) insurgency. ERs can suspend, amend or override any legislation. Such powers threaten the long cherished principles of criminal justice. Some of the ERs cleared the way for causing forced disappearances on a large scale.

There has also been a proliferation of power amongst other agencies closely connected with the Sri Lankan Ministry of Defence. The intelligence service, whose earlier mandate had been strictly and clearly limited, has an expanded purview that includes most sectors of society, where they play supervisory roles. There are few, if any, restrictions to their power akin to the boundaries set to the ambit of the police according to their departmental orders. Intelligence service operations follow unwritten guidelines very vaguely and generally understood within the Ministry of Defence and amongst affiliates. These groups remain unaccountable to the courts and the public. They often abuse even the chain of command and communication established by the government. Yet their actions are often overlooked, condoned, or justified by the ruling parties as essential to “national security”.

Paramilitary groups such as the Special Task Force, and others of an even more clandestine nature, are also intentionally kept outside public scrutiny and the control of an elected parliament. The nature of these agencies and their work is often secret. In the earlier criminal justice system, it was compulsory for police officers to identify themselves in public through donning a uniform, carrying badges, and presenting various identification numbers upon request. They worked openly in society and had to clearly explain their activities in accordance with well-established rules and procedures. Law enforcement agents today have no such organisational obligation; the public are often unaware of the presence of police, who may dress in plain clothes on duty, do not present badges, or identification numbers upon request, and do not conduct arrests by due process (informing the suspect of the charges being brought against him / her or carrying a memo authorising the arrest, for instance).

Agencies charged with national security have adopted methodologies which would have been considered completely unacceptable within the earlier criminal justice system. Under the excuse of protecting “national security”, the officers may themselves engage in criminal, barbaric, and morally reprehensible activities such as abducting, torturing, falsely charging, or extrajudicial killing of persons. Victims are often dehumanised through rhetoric that terms them animals, traitors, or enemies of the state. Instead of open arrest, persons may be suddenly accosted, brought into detention in “unusual” places or forcibly “disappeared” or killed in extrajudicial operations. These new practices not only substitute old processes but replace the fundamental principles upon which the old processes were constructed. Such executive impunity has never before been allowed to be exercised, even by police in the earlier criminal justice system. And these new practices have been put to use on a large scale. These are not hiccups in the earlier criminal



justice system – they are manifestations of a radical departure from the criminal justice approach to a rabid national security approach.

## Radical Departure from Criminal Justice



The corpus of complaints about the complete disregard for all provisions of law dealing with crime is so vast; it is no exaggeration to say that today the Penal Code, the Criminal Procedure Code, and the Departmental Orders of the police are regarded as matters no longer vital to the functioning of criminal justice in Sri Lanka. The process by which this entire system has been displaced is described in popular parlance. Much has also been written and spoken about the politicisation and militarisation of judicial processes. What in essence this means is the displacement and replacement of the command responsibility, which comes down from the Inspector General of Police to the lowest ranking police officer, with a new structure wherein there is direct contact between politicians and police officers of all ranks without reference to their superiors. Hierarchy, accountability, checks and balances have lost much of their meaning and the superior officers themselves seem to have accepted this erosion of their authority and the corrosion of due process as *fait accompli*. The policing system was never intended to be run by power-holders outside the system. When such intrusions and impositions occur, the integrity, independence, impartiality, and credibility of the entire process is compromised.

This is not an exhaustive exposition of the security apparatus of Sri Lanka. There are many texts that provide analyses of the contemporary political and judicial administration of Sri Lanka. Instead, this merely stresses the transformation of a society where even the phantom of criminal justice no longer haunts the structures now filled by actors who aspire only to the semblance of order and justice while themselves holding the reins of power and acting with impunity. The public has a right to know the extent to which Sri Lanka has changed and the impact this has had and continues to have on their lives. The successful erasure of the importance of justice in public awareness and the secrecy with which political responsibilities of a regime are held in Sri Lanka signify the pressing need for understanding and local debate to be generated.

### 1.1 (e) Why Sri Lanka is abandoning a court-centered, law-based system of justice<sup>5</sup>

#### A reflection on the 16<sup>th</sup> murder in Kahawatte, gruesome violence in Galle, & the petition for impeachment

The 16<sup>th</sup> murder of a woman took place at Kahawatte recently. The woman is said to be 65 years old and was staying alone in the house until her son returned, when she was brutally murdered. Her body was found in the parlour of the house when the son returned. People of Kahawatte have been under the threat

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<sup>5</sup> An article by Basil Fernando, AHRC-ART-109-2012, November 6, 2012



of these kinds of mysterious murders. The police from time to time claimed that they have solved the problem and now the situation is under control. However, the credibility of such statements is then tested by new events, such as this murder. It was only three months before this fatal attack that a mother and a daughter were brutally murdered in their own house.

There are also the incidents in Galle, which are gruesome and bewildering. One man was attacked, one of his arms and a foot was cut off, and then he was stabbed in the back and left on the road. A video published on the internet showed this gruesome and sad sight. It is said that he lay there for quite some time before an ambulance arrived to take him to the hospital. The video footage shows that while there were many people nearby, no one dared to come near him, or to offer any kind of assistance. It was reported later that this man died due to his injuries. According to reports, some persons came from behind him, in a van, while he was travelling on his motorcycle and knocked him down. And then, after he fell, he was cut and stabbed. Two policemen watched the brutal attack and his prolonged struggles as he bled out, but they did not intervene.

It was not long after that the next report came, about four persons whose hands were tied behind their backs, blindfolded, and shot in the head and left by the wayside at Poddala in Galle. The initial police report was that these were the culprits who had caused the death of the man mentioned above and that they belong to rival gangs. The story was that another gang, who were supporters of the dead man, had killed these four in revenge. However, the stories by the relatives of the four dead persons revealed that the four persons were taken in a police vehicle and it was that they were later found dead. One of the persons killed is said to be a navy officer, who was on holiday. The four murders suggest a police killing rather than a gang murder.

These two incidents at Kahawatte and Galle point to a situation where, in the law enforcement, capacity of the police has reached almost a zero point throughout the country, an observation that almost everyone has been making for quite some time now. Often, what follows a serious crime is some gesture by the police about taking action and then a report that the matter has been resolved. However, instances where there are serious investigations are by now rather rare occurrences. The internal contradictions within the policing system are so many that the type of capacity which existed within the police in an earlier period is now almost lost. In fact, there is not even an expectation that the police will do a proper investigation or, to be more exact, that the police will be allowed to do a proper investigation.

When things are as bad as that, there is hardly any initiative to encourage the police capacity for law enforcement within the framework of rule of law. The initiatives that have come forward, as shown by the newly proposed Criminal Procedure Amendment Bill, are to make the police more distanced from judicial control and to adopt the tactic of more brutal methods of dealing with some criminals (while leaving many others to go their way, free). In this situation, the killings of the four persons are no surprise. There is a mentality that is promoted to adopt such methods in dealing with crimes.

It was quite some time back that there were police working within the framework of rule of law, guided by the Penal Code, Criminal Procedure Code and their own police departmental orders, and led by





disciplined officers of higher ranks who engaged in crime control. These officers knew that they were directly responsible to the courts and that everything they did had to be reported to the courts. The system they followed was a law-based system, which had at its center the courts' control exercised by judicial officers. They understood their role as part of a judicial system of criminal justice.

All this changed, particularly after 1971. Under the guise of emergency, the police were given extra-legal powers and were used to do extrajudicial activities. The most manifest activity of the time was abductions, which were followed by disappearances. It was a license to kill and to dispose of bodies, a power given to the police and the armed forces, which changed the character of the policing system in Sri Lanka. It changed from a law-based, judicially-controlled criminal justice system into a system controlled by the Ministry of Defense, and guided by emergency laws, anti-terrorism laws, or directives that have no legal basis at all. Police officers became less and less accountable to the judicial system. The powers of judges were limited by emergency and other regulations. A tacit understanding developed that the things that judges could control were quite limited and that officers could follow orders from somewhere else.

This system has lasted from 1971 up to now. The times of tensions, sometimes called 'a time of war', distance the judicial control of the police and other law enforcement agencies, and they became a law unto themselves. The statement of the then Deputy Minister of Defense, Ranjan Wijeratna, in parliament, that "these things cannot be done according to the law," became the unwritten law. All the governing parties led this to develop into a system outside the normal law and, more and more, the Ministry of Defense became the controller of "justice", and the courts had less and less to do in controlling the process. In fact, the words "the due process of law" began to be forgotten and today hardly any police officer uses or even understands these terms.

Gradually, a mentality developed among the politicians that a system of justice based on law and control by the judiciary is rather an absolute affair and that they could handle these matters on their own rather than through the judges. There were some developments in the constitutional setup itself which undermined the judiciary. Both the 1972 Constitution and the 1978 Constitution displaced the idea of supremacy of law in favour of the supremacy of politicians.

It is this distancing of the system of crime control from the legal system and from judicial oversight that has brought about this situation and the failure to control crimes. However, the politicians do not understand the problem in that way. The politicians think that they should take over the matter themselves and keep the judiciary out even more to make things efficient. The Ministry of Defense is considered the center of efficiency, while the judiciary and the law are considered obstacles to the workings of the Ministry of Defense.

Even the Lessons Learnt and Reconciliation Commission (LLRC) was able to see these problems and one of their recommendations was to separate the control of police from the Ministry of Defense. However, like everything else, such recommendations were useful only to create a deception at the international forums and these things have no relevance to real life issues. The real life issues are dealt with by the same philosophy, "these things cannot be done according to the law".





The present attack on the judiciary, which has manifested through series of events culminating in the impeachment petition, emerges from this very mentality of considering the law and the judiciary as irrelevant or even as obstacles to the way the politicians want to do things. The writers, on behalf of the government, directly argue (as in Divaina 5<sup>th</sup> November) and seriously advise the opposition not to oppose the impeachment petition, but, in fact, to support it because subjugating judges would also benefit them when, in some future date, they come to power. The judiciary is seen as an obstacle to the efficiency of the executive. When the BBC questioned some government MPs who had gone to the speaker's house to submit the impeachment petition as to why they are doing that, their reply was the judiciary is doing an injustice to the executive and to the legislature by obstructing what they are trying to do. They saw the judicial interpretation of law as an obstacle on their way. They even turn it into an injustice done by the judiciary. Their question was that if the judiciary is obstructing us (meaning the legislature and executive) do we not have a remedy? Their own answer was yes, they had a remedy, and that was the impeachment. Thus, impeachment was seen as a way to stop a judicial role in interpreting law. In fact, the writer who wrote the government point of view to the Divaina states that he has already demonstrated in his article that leaders in India and the United States do not allow judges to behave in this way (categorically stating the falsehood that judicial review isn't tolerated in these countries). This is the thinking behind the petition for impeachment.

Sri Lanka has arrived at a point where the law and the judiciary are regarded as obstacles to progress. Executive action alone is seen as the real government. The judiciary is no longer seen as a branch of the government – definitely not an *independent* branch. If the judiciary wants to survive within this scheme, it is forced become a branch of the executive instead. That is how far Sri Lanka has derailed from the path of law and the path of administration of law under judicial control.

The result is what we saw at Kahawatte and Galle. These are not exceptional places. Everywhere there is lawlessness and the resulting chaos. And no one can find a solution to the situation. This is no surprise. When the path of law within an administration of justice, authoritatively interpreted by judiciary, is lost, then justice is lost all together. Justice is fairness. When justice is lost, fairness disappears. When fairness disappears, there are brutal forms of competition. When the competition degenerates by the actions of rulers, then violence and chaos is the result.

This is what Sri Lankans are experiencing at Kahawatte, Galle and Hultsdorf.



## 1.2 Independent of Judiciary in Peril

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### 1.2 (a) Independence without justice<sup>6</sup>

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#### A statement for the commemoration of the independence of Sri Lanka

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The 64<sup>th</sup> commemoration of Sri Lanka's independence has taken place at the time when the country's justice system is in a hopeless crisis. The abuse of the judicial process for political reasons has created doubts about the independence of the judiciary itself. The government shows no will to respect the rule of law. The police and the Attorney General's Department are immersed in problems that seem to defy any kind of genuine improvement. Where is justice to be found? This is the question that everyone is asking, but no one is able to provide a credible answer.

Almost every day cases come before the courts which reinforces the perception of manipulation in the process of justice. Shocking fabrication of charges, quite obviously to achieve petty political revenge, comes to the notice of the people all the time. On the other hand the manipulation of criminal investigations as well as the filing of charges with the view to exonerate those who are in politically favourable positions is also quite common. Whether we look into the cases filed against Sarath Fonseka, who perhaps is treated as the most prominent opponent of the present government, or cases like those relating to the murder of Baratha Lahksman Premachandra, the obvious forms of blatant manipulation of justice is quite manifest. Does anyone believe that there are genuine reasons for the failure to find the murders of Lasantha Wickrematunge and those responsible for the disappearance of Prageeth Ekenaligoda, Lalith Kumar Weeraraj, and Kugan Muruganathan, and those behind the white van abductions?

The government cynically ignores all criticism relating to the undermining of justice in prominent cases, as well as in much less prominent cases faced by the ordinary citizens throughout the country at every police station and in every court. Despite consistent criticism in this regard, the government neither offers any apology nor makes any promises of improvement.

When justice is in such peril does independence make any sense? Freedom and justice are inseparable. Where justice is undermined, freedom is also undermined. A political system that puts its justice system in peril, necessarily, creates a messy situation, not only for the people, but also for itself. Good governance without justice is impossible.

The disarray that exists within the policing system, the Attorney General's Department, and the judicial system itself arises from structural reasons. The reasons are to be found within the country's constitution. This constitution, having placed the executive above the law, has destroyed the functioning of the country's legal system and the administration of justice. The ruling political parties have, while in opposition, promised to abolish this constitutional system, to create one based on the rule of law and

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<sup>6</sup> AHRC-STM-023-2012; February 03, 2012.



democracy. This has been everyone's promise, and the betrayal of this promise has resulted in the betrayal of the very notions of independence.

Today the government is not in a position to even ensure security on the roads. Discipline on the roads is an indicator of the discipline within a country. The absence of discipline in the country though decried by every politician defies any solution. When the system of law and justice is in crisis there is hardly a possibility for creating discipline in any of the country's institutions.

Besides this, delays in justice remain a killer disease. The manner in which delays affect justice is simply maddening. A single trial may take five or six years and to add to the chaos many state counsels are transferred during the trial. Any cunning defence lawyer may win even a foolproof case by relying on delays for an acquittal. There are many factors that contribute to these delays. The factor that hangs on justice like a noose is the Government's Analyst Department. All attempts to cause even limited changes to this accursed department have failed. The present government does not even care to raise a finger against this department.

The government also resists the passing of a witness protection law. Perhaps, there may be those who think that it is unsafe to protect witnesses. The killing and intimidation of witnesses is a game that is allowed and even encouraged.

The open sabotage of justice, as it is happening now, poses a great threat to the morale of the people. A political system that demoralizes the people is inviting peril to itself and the nation.

The government remains oblivious of this lawless and messy situation. Equally, the opposition political parties are also oblivious to this crisis. Politics has become disconnected from the real problems that the people and the system of administration face.

What sense does celebrating independence make in such circumstances. The only sensible decision that any responsible citizen can make is to stay away from any such celebrations. Making a firm commitment to fight for a change in this situation is the need of the hour. It is the citizens who would have to begin the process of making that change. Demands for drastic reforms in the systems of the administration of justice is the only way to respond to the prevailing impasse



## 1.2 (b) Attacks on the Court

### Time for judges and lawyers to fight back<sup>7</sup>

According to reports received, a group of criminals allegedly sponsored by a government minister stoned the High Court and the Magistrate Court of Mannar in a coordinated attack last week. A very tense situation has developed. According to information received, a mobile fishing hut was attacked by a group of criminals. The Magistrate directed the police to apprehend the culprits. Soon after, a government minister contacted the Magistrate hoping to discourage him from placing legal sanctions on the perpetrators of the crime. Despite his attempts, the Magistrate insisted that the legally proscribed court order be carried out. It is believed that the attack occurred in response to this decision made by the Magistrate.



*Clash between fishermen of Uppukulam & Vedithaltivu in Mannar left several injured (July 18)*  
[AHRC Photo]

The incident comes as no surprise. Political attacks on courts, both physical and verbal, have been occurring for many years now. When the supporters of ruling parties are suspects to crimes, politicians resist the attempts of courts to investigate cases and maintain the rule of law. As such, courts are forced to subordinate their legal duties to the personal and professional priorities of politicians. Past parliaments have made limited attempts to counteract this politicization, such as with the passing of the 17<sup>th</sup> Amendment. However, this law was later negated by the 18<sup>th</sup> Amendment to the Constitution.

The recent incidents involving Julampitiye Amare expose the depth to which political interference has become embedded in Sri Lanka's legal system. Indeed, a man allegedly accused of 24 murders and 15 arson attacks as well as several other crimes, is moving freely, despite the fact that courts have issued numerous

<sup>7</sup> Originally published as AHRC-STM-144-2012; July 19, 2012



warrants for his arrest. This case is one of thousands in which legal process has been flouted due to political influence.

It is time for judges and lawyers to collaborate and protect the law, the judicial process and each other. If they do not fight back, the downward spiral that the legal system is currently in will continue and ultimately, Sri Lanka's rule of law system will perish.

## The gang rape of a girl by 20 men

The news of the gang rape of a 13-year old girl by 20 men in Tangalle has been reported by several news channels, sending shock waves across the region. An investigation is currently underway, and several of the suspects have been arrested. Recently however, the victim's mother has filed a complaint with the local police station regarding death threats that her family has received from the perpetrators of this heinous crime. The family has been told that once the main suspect is released, he will come to the victims' house with his family and neighbours and kill the whole family. The main suspect is an alliance member of the Tangalle Municipal Council.

Despite the rise in complaints of sexual violence, government officials have repeatedly denied that sexual violence is an issue that must be paid attention to. One government minister publicly stated that he did not believe the crimes had increased, just the number of complaints filed. This, he believes, is sufficient reason not to devote more resources to countering sexual violence. There is little public faith in the credibility of the country's policing system and its capacity to investigate crime. Such repeated denials of criminal epidemics and institutional failures are major contributing factors to the spread of lawlessness in Sri Lanka. Moreover, the governments' inaction is unsurprising since the communications portal through which the government expresses opinions is the Ministry of Defence. The Ministry of Defence is militaristic in its philosophies. Since the Ministry of Defence is a highly politicized agency, it cannot be expected to play an effective role in deterring crime. At this point, there are serious threats to Sri Lanka's legal processes. The only people who can remedy this situation are lawyers and judges. If there is no pushback from the Bar Association of Sri Lanka and the Judges Association of Sri Lanka, nothing will be able to stop the downward spiral that Sri Lanka's rule of law system is in.

### 1.2 (c) Boycott of the Courts by Judges and Lawyers<sup>8</sup>

The attack on the Magistrate's Court and the High Court in Mannar, allegedly instigated by a powerful government minister, has led to a resolve by law court judges and lawyers to boycott all courts today. The Asian Human Rights Commission welcomes this decision as a very important step in the fight back against the serious undermining of the courts, the judicial independence, the role of lawyers and the very relevance of the law itself in Sri Lanka by the government for a considerable period of time. The only way forward is

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<sup>8</sup> AHRC-STM-145-2012; July 20, 2012





to fight back vigorously otherwise legal institutions face the threat of extinction and the legal profession cornering itself into a position of irrelevance.

The Judicial Officers Association has resolved that:

- (a) They will issue a press release on this
- (b) Not to work on one day
- (c) Move for contempt of court against the Minister

The Executive Committee of the Bar Association is meeting at 6.30 pm today and is likely to adopt the same decisions as the Judicial Officers Association. The government is moving fast to prevent any actions by judges and lawyers on this and particularly to prevent any contempt of court case against the Minister.

The judges have also met the Chief Justice for her advice, but information is not yet available.

The incident leading to this decision is as follows: a group of criminals allegedly sponsored by a government minister stoned the High Court and the Magistrate's Court of Mannar in a coordinated attack yesterday. A very tense situation is reported to be taking place.

According to the information we have received, a mobile fishing hut was attacked by a group of criminals and the Magistrate directed the police to apprehend the culprits. Soon after, a government minister contacted the Magistrate hoping to discourage him from placing legal sanctions on the perpetrators of the crime. Despite his attempts, the Magistrate insisted that the legally proscribed court order be carried out. It is believed that the attack occurred in response to this decision made by the Magistrate.

The crisis judges, lawyers and the very legal system itself are facing now is the result of a prolonged crisis beginning, particularly with the 1978 Constitution of Sri Lanka. The very purpose of this Constitution was to undermine the parliament and the judiciary and to place the executive president above the law. As a result of this Constitution all the public institutions such as the civil service, the police, the office of the Election Commissioner, the Attorney General's Department and other commissions such as the Human Rights Commission and the National Police Commission have lost their independence.

Today the situation has come to a point where the functioning of the judiciary has become almost impossible. The judges complain of warrants not being executed by the police. The police in turn complain of being brought under the thumbs of politicians and therefore being unable to enforce the law. The people, in turn, complain that there is complicity between the police and the criminals and the criminals and the politicians.

As a consequence of the judiciary being undermined the legal profession has lost much of its fighting capacity and relevance. Many lawyers openly complain of how their role is being increasingly ignored in the legal process.



Under these circumstances a fight by the judges and lawyers is long overdue. In fact, there were instances when the lower court judges came close to striking and due to unfortunate miscalculations this decision was avoided. Once such occasion was in the 1980's, when stones were thrown at some of the houses of Supreme Court judges. On that occasion it was reported that the lower court judges met and came to a unanimous decision to strike in protest. Unfortunately, one well meaning senior judge discouraged this action stating that it may not be appropriate for judges to go on strike and that the Supreme Court would look after its own problem. Though well meaning, this senior judge failed to understand the political importance of protest when faced with direct assaults on the judiciary by the executive. Had this strike taken place the history of Sri Lanka in general and particularly the situation of the independence of the judiciary and the legal profession would have been different to what it is now. The failure to act, when the action was imperative, has led to the present day crisis of the law in Sri Lanka.

The Asian Human Rights Commission has drawn attention to the crisis in the law in Sri Lanka for several years now. For further information please refer to the publications: [Gyges' Ring - The 1978 Constitution of Sri Lanka](#) and [Sri Lanka-Impunity, Criminal Justice & Human Rights](#)<sup>9</sup>. We hope that even at this late stage the judges and lawyers will fight back to save the legal system, and that civil society and the media will support them.

## 1.2 (d) Will the Bar Association Defend the Legal Profession and Judicial Independence<sup>10</sup>

The Sunday Times reported that the Bar Association of Sri Lanka (BASL) has decided to intervene in the contempt of court case filed by seven senior lawyers against Minister Rishad Bathuideen over the threats he is alleged to have made to the Mannar Magistrate. Earlier, these seven lawyers, Geoffrey Alagaratnam PC, Sunil Cooray, Lal Wijeyanayake, Chanrapala Kumarage, E.C. Feldano, Nalini Kamalika Manatunga and A.S.M. Perera, initiated contempt of court proceedings against the minister in the Court of Appeal. The Court of Appeal Judge, W.L. Ranjith Silva on Thursday issued a rule on Minister Bathuideen to appear in court on September 5 to show cause as to why he should not be punished for contempt of court for allegedly threatening the Mannar magistrate.

The AHRC welcomes the intervention of the BASL and at the same time repeats the call it has made on several occasions in previous years for the BASL to lead the fight against the virtual collapse of the rule of law in Sri Lanka and the threat this poses to the judiciary as well as to the very survival of the legal profession.

There have been no arrests following the attack on the Mannar courts. Nor has the government taken any action to deal with the minister who is alleged to have been behind the threat to the Magistrate and the attack on the courts.

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<sup>9</sup> <http://www.humanrights.asia/resources/books/AHRC-PUB-001-2010>

<sup>10</sup> AHRC-STM-156-2012; August 2, 2012

The lawyers and judges, who boycotted all the courts in protest against these attacks, have demonstrated the utter frustration felt by all of them as well as the people of Sri Lanka over the serious crisis of law which affects every aspect of their lives as well as their properties. The basic rights that the Magna Carta assured for the people, the right to protection of personal liberties and property has been under threat in Sri Lanka for several years now. This is perhaps the first occasion on which the judges and the lawyers have spontaneously reacted by way of a boycott of courts.

In fact, this should have happened quite a long time ago. It is reported that when, under the UNP regime stones were thrown at the Supreme Court judges, judges of the lower courts discussed the issue of boycotting courts in protest. Unfortunately that was prevented due to ill advice. However, had the judges and lawyers acted strongly at that stage the present impasse would not have happened.

For years there have been many occasions when much more decisive intervention by the judges and lawyers to defend their own independence required a serious understanding of the situation and a well thought out strategy to retaliate against this threat to their very existence. Perhaps the former Chief Justice, Neville Samarakoon, who did realise how his former friend, President J.R. Jayewardene was undermining him and the whole judiciary may have done better by resigning or taking some dramatic stance rather than merely confining his protest to some strong words.

In the period that followed much more leadership ability to defend the very system of the judiciary should have come from the country's senior judges. In India the Supreme Court clearly comprehended the authoritarian ambitions of Indira Gandhi and played a decisive role in defeating her schemes, thus protecting the country's rule of law and democratic system. The Supreme Court of India also defeated the attempt by the right wing BJP government in their attempt to reform the basic structure of the Indian Constitution. The court bravely held that no government has the authority to undermine the basic structure of democracy as enshrined in the Indian Constitution.

In Sri Lanka, President Jayewardene did undermine the basic structure of the country's democracy through the 1978 Constitution. What became of Sri Lanka thereafter has its ultimate root in this altering of the country's basic constitutional structure and replacing it with a basic structure that is undemocratic and which undermines the rule of law.

There were times when even the Chief Justices collaborated with the executive presidents to further undermine the very basis of the existence of the law in Sri Lanka. The dark period under the former Chief Justice, Sarath Silva, who acted to fulfill the ambitions of the then executive president, Chandrika Kumaratunga has left insurmountable obstacles for the recovery of the system of the rule of law and democracy. His fallout with incumbent executive president did not contribute in any way to undo the enormous damage that was done to the basic structure of the Sri Lankan democratic system.

The deformation of the country's basic structure was brought to even higher levels with the adoption of the 18<sup>th</sup> Amendment to the Constitution by the government of Mahinda Rajapakse. So many actions have thereafter been taken to complete the course of erasing whatever might remain of the democratic tradition.



The virtual subordination of the country to a public security system with no respect for personal liberties or property rights of the citizens has advanced in recent years.

Throughout all these crises the attempt by the judiciary as well as the legal profession under the leadership of the BASL has no proud moment to record. Perhaps the only light at the end of the tunnel was this boycott which came as a reaction to the attacks on the Mannar Courts.

Perhaps the prevalence of an overall situation of the conflict between the Sri Lankan government and the LTTE has provided a useful background for the governments in power to allow curtailment of the serious resistance of democratic forces against the authoritarian course they are taking.

Some may say that things have gone too far and now it is too late for any attempts at reversal. No doubt there is considerable truth in such perceptions. However, the very survival of the judiciary and the legal profession are at stake. Particularly the younger generations entering these professions can see quite clearly as to how they are trapped and how their future is threatened.

There is the example of the lawyers in Pakistan who fought a successful fight against the subjugation of the judiciary and the legal profession under several military regimes. There is much to be learned from their brave and courageous struggle.

The lawyers and judges in Sri Lanka must face their own destinies with seriousness; will they be doomed to an existence of subjugation under an authoritarian system or will they fight back to regain the basic structure of democracy and the rule of law that has been severely undermined.

## 1.2 (e) President attempts to trample on the Judicial Service Commission & the independence of the judiciary<sup>11</sup>



The Asian Human Rights Commission (AHRC) is not surprised by the government's confrontation with the Judicial Service Commission (JSC) and the courts, as it is part of a consistent pattern that has been going on ever since the executive presidential system was established in 1978. The constitution was established in order to undermine the independence of the judiciary. The recent call by President Mahinda Rajapaksa on the JSC to meet him to discuss its functions, which the JSC refused, only indicates an attempt by the president to establish his patronage over the judiciary. Through the 1978 Constitution the basic structure of the 1948 Constitution was fundamentally altered, by replacing a democratic system with a patronage system, where the very idea of the independence of the judiciary was treated as an alien concept.

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<sup>11</sup> AHRC-STM-188-2012; September 24, 2012

The AHRC calls on the Sri Lankan people to come to an understanding, even belatedly, that the independence of the judiciary and the very basic structure of democracy cannot coexist with the executive presidential system. The recent gathering of mobs to protest against the judiciary and otherwise intimidate it is only a reminder of similar attacks in the past.

While appreciating the JSC's determination not to meet with the president to discuss the functions of the JSC and their determination to defend the rights of the JSC, the AHRC reiterates once again that the very existence of the judiciary in Sri Lanka as an independent institution is under severe threat and it is the duty of the Supreme Court itself, above all others, to defend the institution against the patronage system which will continue to attempt to bring the judiciary under its thumb.

The JSC issued a press statement detailing many attempts by the government of President Mahinda Rajapaksa to trample on its independence. The attack on the JSC came directly after the Supreme Court expressed its determination on the Divineguma Bill, which the Supreme Court held to be unconstitutional until the provincial councils are consulted on the matters involved in the bill. The Supreme Court determination was immediately followed by a protest, which the newspapers reported to be by a crowd sponsored by the government. The 3,000 people that assembled near the parliament included Minister Basil Rajapaksa (one of the president's brothers) and several other ministers.

The Bar Counsel of Sri Lanka (BaSL) condemned this mob protest as an attack on the independence of the judiciary and stated that it will initiate legal action for contempt of court against the organisers of this demonstration. The BaSL also condemned the use of the state media to attack the judiciary and announced that it will take legal action against the state media concerned.

President Rajapaksa called on the JSC to meet him in order to discuss the functions of the JSC but the JSC, in an official meeting, decided not to meet the president or anyone else regarding its official functions, as such discussions are unconstitutional.

The JSC in its press release stated that it is paying serious attention to the baseless attacks made by both electronic and print media on it recently. It stated that the aim of those who are engaged in such attacks attempting to belittle the functions of the JSC is to destroy the independence of the judiciary and the rule of law in Sri Lanka.

The JSC press release further stated that attacks and pressures have been exercised by people of various positions regarding some of its basic activities. There had been attempts to influence the JSC regarding some of the decisions it has taken. On one occasion, the JSC took disciplinary action against a particular judge, and there have been several attempts to influence it regarding this decision. The JSC reference here is to the disciplinary action against the District Judge Aravindra Perera, who was interdicted following many complaints of corruption. The newspapers mentioned Aravindra Perera as a close friend of Namal Rajapaksa, the president's son.

The government is also angered by the action taken against Minister Rishard Bathurdeen, who is accused of an attempt to pressurise the magistrate of Mannar, and the action against the attack on the Magistrate's Court and the High Court of Mannar. These attacks led to a boycott of the courts by judges and lawyers throughout the island. The minister is now facing criminal charges at the Magistrate's Court and an inquiry into contempt of court at the Court of Appeals. The government has not taken any action against this minister and is engaged in a showdown with the courts regarding this case.

While appreciating BaSL's initiatives to defend the independence of the judiciary with regard to the attacks on the JSC and regarding the attacks on the courts in Mannar, AHRC is compelled to point out that, given the magnitude of danger to the very existence of the independence of judiciary and the independence of the legal profession itself, the actions taken by BaSL are, so far, inadequate. Things have reached a point at which it is dangerous for the Supreme Court to declare a bad law as bad or to interdict a bad judge or to take legal action against intimidation of a magistrate and attacks on courts. The system of patronage that has been established through the 1978 Constitution demands absolute submission to the president's authority. Therefore, the attacks on the courts and the lawyers, as independent professionals, will continue. It is time for the BaSL, representing the interests of the lawyers in Sri Lanka – whose existence depends on the existence of an independent judiciary – to develop a consistent strategy for a continuous struggle to save the judiciary and itself from attacks from the patronage system, which is entrenched through the 1978 Constitution<sup>12</sup>.

## 1.2 (f) Judicial Independence Shrouded in a Coffin<sup>13</sup>

The Asian Human Rights Commission condemns the attack upon the Secretary of the Judicial Services Commission (JSC) of Sri Lanka, Mr. Manjula Thilakarathne. It is reported that Thilakarathne, a senior High Court judge who was openly critical about the executive's unwarranted control over the country's judiciary. Unidentified persons have reportedly attacked Thilakarathne, stabbing him three times and seriously injuring the judge. A section of the country's judiciary, under the banner of the Judicial Services Association of Sri Lanka, has called for a strike by the judges of the country marking protest against the attack upon the judge. The Association will also convene a special general meeting tomorrow to decide its future course of action. Lawyers in the country have joined the protest.



<sup>12</sup> On the conflict of the executive presidency with judiciary see: Gyges' Ring - The 1978 Constitution of Sri Lanka

<sup>13</sup> AHRC-STM-194-2012; October 8, 2012





The AHRC is not surprised by the attack upon Thilakarathne, which is this time a physical one, causing serious injuries to the judge. The executive of Sri Lanka has been, for the past several years, assaulting judicial independence. The President's Office is suspected to be behind such interference. On more than one occasion the President's Office has reportedly intervened in judicial acts for which the President of Sri Lanka, Mr. Mahinda Rajapaksa has faced criticism both within and outside the country. Thilakarathne, in his capacity as Secretary of the JSC was openly critical of this interference, against which the President's Office had once ordered him to meet the President at his office which Thilakarathne refused forthwith.

Yesterday's physical attack upon the Secretary of the JSC is emblematic of the threats faced by judges in Sri Lanka ever since the 1978 Constitution came into operation. The attack showcases the impunity enjoyed by the assailants upon the country's judiciary and its independence. All governments that have held forth in Colombo since 1978 have prevented every attempt to make the country's judiciary independent. The judges in Sri Lanka since then have been trying to undertake their constitutional mandate facing threats from the executive and today this threat has taken a dirty turn.

While it is yet to be investigated as to who assaulted Thilakarathne, from past experiences none will be surprised should it reveal that the ruling political party in Sri Lanka is directly involved in the attack. Past crimes committed with impunity by none other than cabinet ministers of the present regime strongly suggests such a possibility.

It is however to be seen whether an independent investigation could be undertaken in this case. If experience from the past is of any value, such an investigation will not happen.

One of the pivotal institutions required to run a constitutional architecture that protects and promotes the rule of law in a country, the judiciary, has been publicly assaulted. In a country like Sri Lanka where the public's perception of their justice institutions is at an all time low, an incident like the physical attack upon the representative of the country's independent body like the JSC will go down as one of the lowest moments in the country's judicial, constitutional, and political history.

This incident is of such magnitude that it challenges the very notion of professionalism and independence, not only that of the judiciary, but also of other institutions related to the judiciary, like that of the profession of lawyers and the police in Sri Lanka. Sandwiched, in between, is the Attorney General's Department, an office that function as a bridge between the government, its policies, the judiciary and the police. The AG, having absolute prosecutorial powers, as it is in Sri Lanka, must be facing the moral dilemma to function any more in the given context as legal advisor for a government that is unable to protect the body and person of an equally important constitutional office such as that of the Secretary of the JSC.

It is in this overall context of threat, intimidation, and fear that the judges and lawyers of Sri Lanka have chosen to protest today. This protest directly confronts the inability of the government to protect its constitutional institutions. Needless to say such a government would be unable to protect and safeguard the legitimate rights and property of the people of Sri Lanka. Such a government has no legitimate right of morale to continue in office.





It is widely rumoured and perhaps it is true that the life of the Chief Justice of Sri Lanka is also at risk. It is reported that Thilakarathne was attacked because he had said in public that his CJ is under threat. Now that Thilakarathne himself is in hospital the message is clear that anyone who criticises the government, regardless of his or her standing puts their lives at risk. If this is the security that an officer of the court can expect in Sri Lanka, the safety of the person and property of ordinary Sri Lankans, having far less standing, is imaginable. If this situation continues in Sri Lanka, it is just a matter of time before Sri Lanka falls down the abysmal pit of no return, of absolute judicial servitude to the executive, as it is today in countries like Cambodia and Burma.

The AHRC supports the call for the strike by the lawyers and judicial officers in protest against the attack upon the judiciary and its officers in Sri Lanka. It is the responsibility not only of all Sri Lankans who wish for the return of the rule of law in the country but also that of the international community that believes in the independence of the judiciary as a sine qua non for the establishment of the rule of law and democracy in Sri Lanka.

## 1.2 (g) Decisive Moment in the Defence of an Independent Judiciary<sup>14</sup>

On October 7, 2012, four persons attacked the Secretary to the Judicial Services Commission of Sri Lanka (JSC), Mr. Manjula Thilakaratne. Thilakaratne is a senior high court judge. The Secretary, accompanied by his wife, had taken their son to drop him at the St. Thomas' College gymnasium. After dropping his wife and son at the college, he parked his car. Since he had to wait for some time, the Secretary waited in his car reading a newspaper.

Suddenly Thilakaratne saw four persons stopping near his car. One of them had a stick that was about three-feet long and the other was armed with a pistol. The one with the stick walked towards the passenger-side door of the car and the other three took position by the driver-side. The three men ordered the Secretary to open the car's door. But Thilakaratne refused.

Then they threatened to fire at him. The JAC Secretary opened the door. One of them asked Thilakaratne whether he was the boss (Lokka) at the JSC. Then without warning they started beating Thilakaratne on his face and tried to drag him out of the car. Thilakaratne resisted them.

Having realised that it would be difficult to pull Thilakaratne out of the car the men tried to push Thilakaratne into the passenger's seat. At that moment, Thilakaratne realised that the men were trying to abduct him.

At this stage he shouted loudly.

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<sup>14</sup> AHRC-STM-197-2012; October 10, 2012



On hearing his cry for help, some residents in the locality came out. Some three-wheeler drivers and others persons in the vicinity were also attracted to the noise.

At this stage, the four assailants ran towards the road behind the car and Thilakaratne lost sight of them. Later Thilakaratne was admitted to the hospital, and is receiving treatment for his injuries.

A sequence of events prior to this attack clearly suggests the reasons behind the attack and to those who might have instructed the four assailants. On September 18<sup>th</sup>, Thilakaratne, in the capacity as the Secretary to the JSC, issued a statement on behalf of the JSC to the effect that there were attempts to interfere with the judiciary and particularly with the JSC. The statement also pointed out that there was unfair and malicious propaganda against the judiciary and suggested that a high official had attempted to influence the JSC in relation to the disciplinary action that the JSC had taken against a particular judge.

Following this statement there were several public statements that were given great publicity by the state media against the Secretary to the JSC, against the JSC itself and the judiciary in general. The attack on the Secretary to the JSC happened in this background.

The attack clearly shows that Thilakaratne's movements were watched and that he was under surveillance. On the fateful day when Thilakaratne took his wife and son to the gymnasium, those who directed the attack were aware of this usual routine and on that basis directed the assailants to the location. It is obvious that the assailants would have been directed through telephone communications.

The attack was directed with a very high level of coordination. If the assailants had succeeded, Thilakaratne would have been abducted and what might have happened after that is anybody's guess. Abductions are a frequent occurrence in Sri Lanka and the public knows many instances of such abductions and what happens to the victims. Many abductions end in enforced disappearances, but some victims have survived after facing the ordeal. One of the best-known cases of such an abduction that continues to receive international and local publicity is that of the disappearance of Mr. Prageeth Eknaligoda.

Given the background of the event, the high-level government involvement in this attack is obvious. Further, although several days have passed after the event and despite the highly publicised calls for investigations, nothing of any significance has happened so far concerning the case. This, again, is a very clear indication of the high-level of government involvement in the attack.

The significance of this event is that the real confrontation is between the JSC headed by the Chief Justice and composed of three other judges including two senior Supreme Court judges and the government. The authority of the JSC to run its own affairs on the basis of the position it holds is the crux of the issue. The government wants a JSC that is subservient to it.

The direct issue of confrontation is the interdiction of a judge accused of many acts of corruption that the government wants to protect from legitimate inquiries. If this were to succeed, then virtually there would



be no avenue at all to ensure the integrity and independence of the judges in the performance of their duties.

The attempt to suppress the JSC is part of the wider objective of suppressing the Supreme Court itself and the independence of the judiciary. The tensions between the governments in power that have been uneasy about the independence of the judiciary in Sri Lanka go back several decades.

The first major attack on the power of the Supreme Court arose in 1972 by the then coalition government that put forward the doctrine of the supremacy of the parliament as against the supremacy of the law. The claim that the parliament can legislate any law on the basis of the absolute majority it might have has been the claim under which the power of the courts to review legislations by way of judicial review was drastically suppressed. Since that move, by way of the 1978 Constitution, the executive president was placed outside the jurisdiction of any court. Added to this; the ouster clauses in many legislations, particularly in relation to the emergency powers and the anti-terrorism laws, have reduced the power of the Supreme Court that it once had to intervene, to protect the rights of the citizens.

This may be compared to the position of the Supreme Court in the 1930s, when the absolute power of the Supreme Court to intervene in matters relating to the protection of individual rights, as asserted in the well-known *Bracegirdle* case. In that case, the Court said that the British Colonial Governor, Sir Reginald Stubbs, (today's Sri Lankan equivalent is the Executive President) has no power to deport *Bracegirdle* from Sri Lanka. Today, however, the Supreme Court and the High Courts are in a much weaker position.

The move by the government now is to reduce this weak power further and to trample upon the independence of the judiciary. If this attempt succeeds, even the limited protection that the citizens of Sri Lanka have against the executive will be reduced and may even be lost altogether.

There are 'judiciaries' in some countries that have no power to protect the rights of citizens. The courts in Burma and Cambodia are examples of such courts that have only administrative powers but no real juridical authority or role. Such courts are expected to rubberstamp whatever the executive does.

Sri Lankan courts have been pushed in that direction and gone a long way down the precipice. Now the government is bent on pushing the authority and independence of the country's courts further down.

The primary task to safeguard the independence of the judiciary is with the Supreme Court itself. If the Supreme Court does not jealously safeguard their independence, their integrity and the inviolability of the judges from executive interference, there is nothing that can save the judiciary.

The record of the higher courts in the past few decades in safeguarding their own independence is not impressive. The Supreme Court should have resisted the coalition government of 1972 when the power of judicial review was taken away from the Supreme Court. The failure to resist on that occasion has led to the crisis that the independence of the judiciary faces in Sri Lanka now and also to the loss of many lives and the liberties of people during the last few decades. Had the Supreme Court resisted the move by the



coalition government then, on the basis of its own inherent powers and following the basic structure doctrine, innumerable lives would have been saved. Had the Supreme Court resisted the attempts by the governments in the last few decades to push the power of the courts, the people of the country would have supported it wholeheartedly, then and today. The ultimate losers when the independence of the judiciary is attacked are the people themselves. Sri Lanka's history in the last few decades amply proves this historical truth. The course of Sri Lanka's history could have been different and many of the tragedies faced during the last 20 or 30 years may have been avoided if the Supreme Court courageously defended its own independence and its rightful place as the ultimate protector of individual rights.

At this moment the JSC is challenged even when it tries to interdict a judge who must face disciplinary inquiries on serious charges. What this implies is that the executive would tolerate corrupt or otherwise delinquent judges if they were loyal to the government. If this were so, the judges would not be tested on the basis of their judicial competence or integrity, but on their loyalty to incumbent executive.

The Asian Human Rights Commission (AHRC) condemns the attempts by the government to interfere with the independence of the JSC and the judiciary in general. The AHRC joins hands with everyone in their condemnation of the attack upon the Secretary to the JSC, the independence of the judiciary and the JSC in general. We call upon everyone including the international community to grasp the significance of this moment and not to allow the judiciary in Sri Lanka to be pushed into the abyss.

## 1.2 (h) The JSC Secretary could have ended up like Prageeth Eknaligoda<sup>15</sup>

There was an attempted abduction of the Secretary to the Judicial Service Commission on October 7, near the St. Thomas College gymnasium. Had the attempted abduction of Manjula Tilakaratne succeeded, what might have happened is hard to guess. However, judging from previous abductions it is quite possible that he may have ended up in one of the following ways:

It could have been like that of Kumar Gunaratna and Dimuthu Artigala, who were rescued after their abductions due to the intervention of the Australian High Commissioner after a massive publicity campaign immediately undertaken after their abductions; or it could have been like the case of Richard Soysa, whose body was found after his abduction and assassination; or he could have met the fate of Prageeth Eknaligoda, whose whereabouts remain unknown after his abduction, which happened immediately prior to the last presidential election.

The JSC Secretary's attempted abduction happened in a lonely spot. Had the four abductors succeeded, it would have been unknown for hours. No one would have known what had happened and the abductors would have had sufficient time to hand him over to their masters.

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<sup>15</sup> AHRC-STM-199-2012; October 12, 2012



Given the high profile position held by Manjula Tilakaratne as secretary of the JSC, it would have been most unlikely that he would have been released alive if the abduction attempt had succeeded. The implications on the abductors and those who were politically responsible for the attempt would have been too much for that. If he would have been in a position to reveal what had happened it would have caused too much damage. In such circumstances the victims usually never reappear.

Sri Lanka is a nation with experience of abductions and enforced disappearances, which are numbered in the tens of thousands. The abductors and those who are engaged in disappearances in Sri Lanka have enormous experience. It is seldom that they fail in their attempts as they did in this case. However, whenever they succeed they know how to keep secrets.

All Sri Lankan governments during the last few decades have done whatever they can to keep the secrets about enforced disappearances intact. Despite many high level international interventions, there has hardly been even an iota of success in breaking down the secret codes of those who are engaged in such enforced disappearances.

By now, such enforced disappearances, which started with the abductions of rural youth, have reached the point of an attempted abduction of a former High Court judge who is the Secretary of the Judicial Service Commission itself. Today, hardly anyone considers him or herself as exempt from the threat of such abductions.

Prior to the abduction attempt, the secretary of the JSC warned that the life of the Chief Justice herself is under threat. No one treats such statements lightly. Everyone knows that anything is possible in Sri Lanka as far as abductions, enforced disappearances and extrajudicial killings are concerned.

There is an apparatus at work that does not leave any sense of security for anyone in the country. This internal security apparatus, supported by the intelligence services and maintained with the blessings of the highest political circles, is well entrenched itself in Sri Lanka. It has taken over 40 years since the first experiment in large scale extrajudicial killings in 1971 for this apparatus to become mature and wrap itself around the political life of the country like a python.

Ever since the failed abduction several highly placed government spokesmen have made public statements attempting to make light of the allegations from the Secretary of the JSC. One minister said that the JSC secretary should not have been reading a newspaper inside his car but should have been with his son in the playground. Another said that the Secretary had planned the attempted abduction himself. Yet another minister said that this might be the work of a third party to bring the government into disrepute. A government spokesman at a press conference said that the JSC Secretary should not have made the press release that he made some weeks ago.

None of the actions or statements of the government showed any seriousness or genuine attempt to initiate any inquiries. Justice seems to be the remotest thing available to a Sri Lankan faced with a serious threat to his life and security.



Now the threatened ones are members of the judiciary itself. It is rather sad that during all these past 40 years or so the judiciary itself did very little to deal with the threat of abductions and enforced disappearances of easily over 100,000 persons in their country.

Belated as it is, it is time for the Supreme Court of Sri Lanka and all the judges to wake up to the threat posed to the rights of individual citizens in terms of their lives and security. It is the judiciary alone that can play the role of initiating the fight against a well entrenched evil scheme of abductions and enforced disappearances in their country. Now that one of their own had become the victim it is perhaps the final chance for the judiciary to take up the role it should have been playing to protect the civil liberties of all citizens.

All Sri Lankans and the international community should take this attack on the JSC secretary seriously, not only as an attack on an individual but as an attack on the institution of the judiciary itself, for the judiciary is the final resort for the protection of democracy<sup>16</sup>.

## 1.2 (i) Executive Exposing Sri Lankans to Danger by Ruthlessly Attacking the Judiciary<sup>17</sup>

Mahinda Rajapaksa's government is now engaged in a ruthless attack on the Chief Justice, the Judicial Service Commission (JSC), and the independence of the judiciary in general. The immediate reason for the attacks is the Supreme Court decision against the Divineguma Bill and the JSC decision to take disciplinary action against a judicial officer alleged to have been engaged in corruption, who is supposed to be close to the government.



At the moment the attack is being led by Minister G.L. Peiris, whose unscrupulous commitment to defend the executive for his own personal reasons has been demonstrated time and time again. The law and the independence of the judiciary seem to be far removed from the comprehension of this one-time professor of law.

While the police are filing reports of their inability to investigate the alleged attempted abduction and attack on the Secretary of the JSC, G.L. Peiris was engaged in a garrulous attack on the secretary himself and questioning his seniority. The obvious purpose of this attack is to create division among the judicial officers. However, what is scandalous is that G.L. Peiris does not care about the actual attack on this officer, who holds one of the highest posts in the country. Instead of calling for investigations into a serious crime against a senior government officer he is attempting to divert the attention and to attack the victim himself. That is not just insensibility but sheer brutality.

<sup>16</sup> For further information please see: WORLD: *Who will respond to the distress call of the Judicial Service Commission of Sri Lanka?*, SRI LANKA: *Not free from fault, but too vain to mend*, & SRI LANKA: *Judicial independence in a coffin*

<sup>17</sup> AHRC-STM-214-2012; October 26, 2012



The anger against the secretary of the JSC is because of the press statement he released on behalf of the JSC stating that there is interference by the executive in the JSC and with the independence of the judiciary. He specifically mentioned the case of the disciplinary action against a judge by the JSC, which seems to have angered the executive. It is an extremely dangerous situation if the JSC cannot take a disciplinary action against a judicial officer against whom there are serious allegations of corruption. The result would be that there would be no investigations into such actions and the judicial office itself could be used for the personal profit of the individuals concerned and his political friends.

However, what is more frightening was demonstrated by the incident which took place yesterday (October 25) at Galle, when in broad daylight a well-known businessman was attacked by a criminal gang, who cut his hand and foot, as a result of which he subsequently died. This kind of brazen behaviour on the part of criminals can happen only when they have begun to perceive that the law enforcement mechanism and the judiciary are in crisis and are unable to enforce the law.

When the executive makes irresponsible attacks on the judiciary the message they communicate is about a serious crisis in the relationship between the executive and the judiciary. The criminals take advantage of this public perception for their own benefit and it is the ordinary people who suffer.

Such irresponsible actions on the part of the executive endanger the security of the society at large. When the executive, for their petty ends, engage in public attacks on the judiciary it is the government itself that is weakened. When people perceive that the judges themselves are helpless when the spokesman for the executive is attacking the judiciary it is the criminals that have the last laugh.

It is time for the public to get their message across to the executive clearly that they do not wish their judiciary to be attacked and weakened. If the people watch passively when the executive, for their own petty ends, attack the judiciary the cost of their silence will have to be paid by the people themselves and the future generations. It is time for the people to talk loudly and tell the executive to stop such nonsense<sup>18</sup>.

## 1.2 (j) The ugliest attack in Sri Lankan history on the Supreme Court & Chief Justice<sup>19</sup>

The Mahinda Rajapaksa regime has resorted to the ugliest attack in Sri Lankan judicial history on the Supreme Court and the Chief Justice this week by using the state media as a slander machine and by employing the state media to introduce deliberately manufactured slanderous letters to the parliament with the sole purpose of abusing parliamentary privilege for biased reasons. The government has, within its ranks, schemers of the lowest quality who have little scruple in manufacturing any lie to suit their purpose, and thereafter using others to introduce and propagate such lies in the highest legislative assembly of the country, namely Sri Lanka's parliament. It is evident that people in the state media will defy every rule of

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<sup>18</sup> For further information please see: WORLD: *Who will respond to the distress call of the Judicial Service Commission of Sri Lanka?* and SRI LANKA: *Not free from fault, but too vain to mend*

<sup>19</sup> AHRC-STM-215-2012; October 27, 2012



journalistic ethics to do whatever the government demands. However, the responsibility for such vile attacks lies entirely on President Rajapaksa himself for allowing such schemes to be carried out.



*Sri Lanka's judges and lawyers demonstrate next to a coffin which they said symbolized the death of independent judiciary, as they protest outside a court complex in Colombo, Sri Lanka, Monday, Oct. 8, 2012.  
(AHRC File Photo)*

Manufacturing a slander sheet is an easy affair. Whoever allowed such a slander sheet to be put before the country's most august forum clearly showed a high degree of unscrupulousness and carelessness regarding every form of decorum and public etiquette that is generally required in the use of materials in the country's Parliament. This is one of the worst acts of irresponsibility that has defamed the Parliament itself and the very tradition of parliamentary debate anywhere in the world. Only fools and criminals would permit the abuse of parliamentary process in this manner.

The issue in question was an attempted abduction and an attack by four unidentified persons on the Secretary of the Judicial Service Commission on October 7, 2012. So far the police have filed reports in the courts stating that they are unable to identify the culprits responsible for this attack. And then the government introduces an unscrupulous letter in Parliament stating that it was the Chief Justice's husband who had organized the attack because he had suspected an illicit relationship between the Chief Justice and the Secretary of the Judicial Service Commission. Yet the country's criminal justice investigators have declared to the court that they do not know who the attackers are. Irrespective of this, the government introduces this despicable letter manufactured by one of its hatchet men to the Parliament. The question then becomes as to what precisely is the role and importance accorded to criminal investigations in Sri Lanka? Has this role been usurped by hatchet men who write unscrupulous leaflets?

The Supreme Court of Sri Lanka was established in 1802. Up to this date there had never been such dastardly attacks on the Supreme Court or the Chief Justice. This marks perhaps the lowest point of Sri Lanka's political culture when a government in power could abuse parliamentary privilege in this fashion.



And it is worse when the Government's slander machine is utilized to attack the Supreme Court and the Chief Justice.

The strategy behind the government action is very clear. The Secretary of the Judicial Service Commission in a press statement had complained that the public media is carrying on a campaign against the Judicial Service Commission and the independence of the judiciary. Then the government retaliates with a far worse abuse of public media in attacking the Supreme Court and the Chief Justice herself.

In doing this government resorts to the lowest forms of abuse by taking advantage of the vulnerability of the Chief Justice being a woman. This is one of the worst sexist attacks that we have seen in recent times and women movements in Sri Lanka, together with every woman in Sri Lanka and anywhere else in the world, should protest against this ugly abuse against a woman holding a public office. Does this mean that every time that the government is unhappy with a woman holding public office it will resort to this kind of dastardly tactic in order to humiliate and defame such a person?

This is shameful Mr. Mahinda Rajapaksa. Very shameful.

In a functional democracy, people would have demanded that the President himself and every one who has participated in this shameful abuse of power, the abuse of parliamentary privilege, and abuse of women, should resign because they simply do not deserve to hold public office.

This episode only demonstrates the lowest depth that Sri Lanka has reached at this point of time. No nation can avoid dire consequences to its societal moral, when the government at the highest level resorts to such low level of mean and dastardly conduct.

If the people of Sri Lanka tolerate this level of immorality on the part of the government then they should blame themselves for all the societal ills that will arise from a situation such as the current crisis that the country is facing.

The greatest societal ill that will rise from this kind of abyss is the very high level of criminality in every aspect of social life. There will be loss of respect for anything moral or ethical in a society like this. The children of such a nation will inherit a culture that is ugly and stinking.

The Asian Human Rights Commission is aware that there are many others against whom such gimmicks are being schemed. One such scheme is to attack the lawyers who appear for just causes and oppose the government's abuse of powers in court through the use of manufactured reports accusing them of all kinds of things, for example saying that they are being paid by drug lords. We are aware that there was an attempt to publish such a report in the government's mouth piece Daily News last week against Mr. J.C. Weliamuna and another lawyer against whom the government does not agree with. It was because a particular news editor was a man who respects journalistic ethics that the report was not published. However, others who are willing to engage in any kind of abuse may be put in the editorial chair and will possibly publish such reports against those whom the government selects to slander.



The Asian Human Rights Commission is saddened by the attack on the Supreme Court and the Chief Justice. Its concern is not due to any personal attachment, but due to respect for principles which, when undermined, harms the very fabric of society. The Supreme Court deserves respect. The Chief Justice, whoever it is, deserves respect and the Parliament deserves not to be abused. History tells us that societies that do not respect these principles ultimately pay a high price for that disrespect.

## 1.2 (k) Impeachment against the Chief Justice

### Impeachment of the Chief Justice is a prelude to greater militarisation<sup>20</sup>



After a series of attacks on the judiciary, the Mahinda Rajapaksa government is now reported to be engaged in preparing papers for the impeachment of the Chief Justice (CJ). While the accusation against the CJ is not known the determination of the government to impeach her has been highly publicised. The state media have been mobilised to make a concerted attack on the judiciary.

Meanwhile, there is also a bill being discussed which attempts to introduce several provisions which will limit the powers of the magistrates relating to arrest and detention and will increase the powers of the police.

The reasons for the hurried attempts to suppress the judiciary are not accidental. The project for the replacement of the democratic form of governance with a national security state where the military and the intelligence services will have enormous powers has been going on for some time. Impunity for almost all actions by the executive and the security forces against the freedoms of the individual has been assured now for many years. The allegations of serious abuses of human rights by way of enforced disappearances, other forms of extrajudicial killings, torture and kidnappings are never credibly investigated.

Now, according to reports, there are moves to bring the military more directly into the policing system. It was reported that even the IGP may be replaced by a military officer as a police commissioner. Also the OICs and Divisional Police Chiefs will be replaced by Special Task Force officers. This will amount to a complete shift from the civilian policing which is an essential component of a democracy to military policing.

Such radical changes would naturally be resisted by an independent judiciary. Therefore there is an urgent need to put in place judges who will be willing to carry out whatever projects the government may propose. The impeachment of the CJ has therefore several purposes. One is to remove the present CJ and replace her with a friend of the executive and the second is to have a chilling effect on all other judges of the Supreme Court and the Court of Appeal. The message is simple: anyone who will abide by the mandate to

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<sup>20</sup> AHRC-STM-217-2012; November 1, 2012



protect the dignity and the freedom of the individual as against the dictates of the executive is clearly not wanted among the highest judiciary.

The government, beset with serious economic problems will continue to impose harsher conditions on the population. The government knows that such measures will necessarily bring about retaliation from the trade unions and other organisations representing the ordinary folk. Such protests on the part of the people will be ruthlessly crushed and recourse to justice will be denied.

The government wants to pass a strong message to the effect that justice is no longer welcome. The courts will be required to approve whatever the government wants and the protection of the individual freedoms will be regarded as a hostile action towards the government.

## **Disappearances of Persons and the Disappearance of the System of Justice**

Over a long period Sri Lanka has been engaged in the large scale practice of enforced disappearances of persons. In the process, justice has always been denied to the victims and their families. The practice of enforced disappearances amounts to the denial of all rights. This practice which has gone on for several decades has had a seriously paralysing influence on the entire system of justice.

Now the stage has been set for the destruction of the independence of judicial institutions altogether. These institutions have a history going back to 1802 when the Sri Lanka's first Supreme Court was instituted. It is this legacy that is now being seriously challenged.

In a recent published book by a senior lawyer, S.L. Gunasekara entitled *Lore of the Law and other Memories*, the author quotes a prediction by another well known lawyer, D.S. Wijesinghe, President's Council, *"We now have a new Parliament and with it democracy vanished. We are now about to get a new Superior Courts Complex and with that justice will vanish"*. With this attempt to file an impeachment on the incumbent Chief Justice this prophecy may come to a complete realisation.

While there are usual noises from some quarters protesting the impeachment move, there still does not seem to be a full grasp of the threat that the independence of the judiciary in Sri Lanka is faced with by the Bar Association of Sri Lanka or the legal profession. The end of the independence of the judiciary also means the end of the legal profession as an independent profession. The lawyers lose significant when the possibility of the protection of the dignity and the freedom of the individual is no longer possible.

It is perhaps the last chance available for everyone including the judiciary itself and the legal profession to fight back from the ultimate threat to the independence of the judiciary and the possibility of the protection of the dignity and the freedom of the individual in Sri Lanka. Many years of cumulative neglect has led to the possibility of the executive being able to come to a position to make a final assault against any challenge by way of demand for justice. Unless the gravity of this threat is fully grasped Sri Lanka will soon become like some countries which no longer have independent institutions to protect individual liberties.





The people of the north and east are already under military grip. It may not take a long time before the people of the south are also brought under the same grip<sup>21</sup>.

## 1.2 (I) Attack on Judiciary is Logical Extension of 18th Amendment<sup>22</sup>

The 18th Amendment to the Constitution, which ended all the debates and discussions on the 17th Amendment, itself brought an end to all independent public institutions in Sri Lanka. From that point on, only one institution remained outside the complete control of the executive president. And this was the judiciary.

True, this institution itself had been seriously undermined ever since the 1972 and 1978 Constitutions were created. The 1978 Constitution conceptually displaced the idea of the independence of the judiciary. However, a 200-year-old tradition of an independent judiciary could not be wiped out merely by a constitutional change. At ground level, the institution and the people who had been trained under the 'old' framework were still there. More than that, a belief had been created over those 200 years that in court it was possible to obtain justice. And this was difficult to erase.



This gave rise to a contest between the executive president and Neville Samarakoon QC, the first Chief Justice under the new constitution. One of the issues that no one has yet explained is how a person with such legal erudition and integrity as Neville Samarakoon could have not seen the pernicious effect of the 1978 Constitution on democracy as a whole and on the independence of the judiciary in particular. Surely, as one of the leading civil lawyers of the time, he would have had some understanding of the basic principles of constitutionalism. That the ruler cannot be above the law is so basic a premise that it is difficult to fathom how Neville Samarakoon failed to understand it when he agreed to be the Chief Justice under the new constitution, in

which the basic premise was that the executive president was above the law.

The debate throughout the period of the coalition government (1970-1977), particularly within the legal community, was about the attack made through the 1972 Constitution on the independence of the judiciary. It replaced the notion of the supremacy of the law with the supremacy of the parliament. This meant that parliament could make any law, because of the removal of the powers of judicial review that the judiciary had enjoyed until then. In fact, judicial review was what gave the power and the punch to the judiciary. In at least one instance, even in the colonial days, an order by the governor representing the British Crown was declared null and void and quashed by the then Chief Justice. This was in the well known case of *Bracegirdle*. Neville Samarakoon QC could not have failed to realise that if a similar situation arose under the 1978 Constitution an order of the executive president could not be so quashed

<sup>21</sup> For further reading please see: *SRI LANKA: The ugliest attack in Sri Lanka's history on the Supreme Court and the Chief Justice*, *SRI LANKA: The executive is exposing Sri Lankans to a dangerous situation by ruthlessly attacking the judiciary*, *SRI LANKA: The proposed bill will limit the powers of the magistrates and increase the powers of the police*, & *SRI LANKA: Judicial independence in a coffin*

<sup>22</sup> An article by Basil Fernando, AHRC-ART-106-2012; November 2, 2012

by the Supreme Court of Sri Lanka, as Article 35 (1) of this constitution ensured that no law suits could be brought against the executive president in any court of law.

Mr. Neville Samarakoon QC and many others like him could have done better if they had initially rejected the 1978 Constitution rather than when they rebelled against the executive president when he began to bring into effect what he designed the 1978 Constitution for, which was to have absolute power. It is said by many who knew Neville Samarakoon QC that he regretted his mistake bitterly until the time of his death.

It was when J.R. Jayewardene found that the Chief Justice was not under his control that he brought the first impeachment move under the 1978 Constitution. Since then, whenever the impeachment provisions are used, it is done under the same circumstances and for the same purpose.

The Chief Justices, who came after Neville Samarakoon, understood the new equation and did all they could to avoid any kind of confrontation. In that way they weakened the judiciary and also the peoples' faith in their independent function.

When Sarath N. Silva became the Chief Justice he understood the equation very well and made it his business to support President Chandrika Bandaranaike until the very end, up to the point when he realised that the future did not lie with her. Then he shifted his alliance to Mahinda Rajapaksa and kept up the supportive link to the executive until finally, for reasons best known to him, their relationship faltered. Sarath N. Silva makes many speeches now and, at times, expresses partial regret for his allegiance to the executive. However, by then irreparable damage had been done to the power, as well as the image, of the judiciary.

Over the years this situation led to the creation of disillusionment among the people as well as the lawyers. The following quote from S.L. Gunasekara's recent book 'Lore of the Law and other Memories' reflects the demoralisation caused by the weakening of judicial independence.

In answer to a question from a junior lawyer: "*Sir, is Hulftsdorp much different today to what it was when you joined the Bar?*" He replied, "*When I joined the Bar we had no air conditioners, no computers, no lifts, no ponds inside the Supreme Court premises, no photocopying machines or free trips abroad sponsored by the Government or nongovernmental organisations; but we had justice.....I did not, by this, mean to say that there is no justice whatever done in the courts today, (in that some measure of justice is done) but that the difference between then and now lay chiefly in the fact that while there were doubtless many shortcomings in the administration of justice even in those days which we nostalgically recall as having been the gold old days, that was a time when we almost always won good cases and lost bad cases whereas today, there are so many occasions when we lose good cases and win bad cases that it has now become virtually impossible to properly advise a client about his prospects in a case whether already filed or in contemplation.....*"

## The new impeachment motion

The advantage that President Rajapaksa may be trying to cash in on now as he brings the new impeachment motion against the incumbent Chief Justice is perhaps this disillusionment and demoralization, prevalent among the people as well as among the lawyers themselves about what they see as the deterioration of the judiciary. Perhaps the executive may be seeing this as a suitable moment for striking a final blow against the judiciary and thus completing the process started by J.R. Jayewardene when he filed his impeachment against Neville Samarakoon.



The 18th Amendment to the Constitution was a determined attempt for the full realisation of the aim of the 1978 Constitution, which was to give absolute power to the executive president. In 1978, this was still a difficult task as there were habits formed over a long period – to trust the local institutions – and still a belief in the possibility of justice and fairness was quite alive. Perhaps the executive thinks that the opportune moment has arrived to realise the full potential of the 18th Amendment.

Already there are public rumours about who the executive is aiming to plant in place of the incumbent Chief Justice, once the impeachment process is speeded up by the utilisation of the toothless majority that the government has in parliament. If those rumours are correct then the last days of even the limited independence of the judiciary are close at hand.

However, it may not all go that way. The people may use this occasion not only to critique the absolute power of the executive but also as a critique of the weaknesses of the judiciary itself. They may use this occasion to demand a stronger judiciary. That, of course, implies that the people will have to deal with the displacement of the absolute power notion which was created through the tyranny of a four-fifth majority in parliament that J.R. Jayewardene had in 1978.

Whichever way, for better or for worse, the present impeachment motion will prove decisive.

## 1.3 Abduction and Disappearances

### 1.3 (a) Government's Abduction Industry Exposed<sup>23</sup>

In one of the most shameful episodes, the Sri Lankan government's involvement in the 'abduction industry' was exposed last night (April 9, 2012) when the government took action to deport Premakumar Gunarathnam alias Ratnayake Mudiyansele Dayalal, who was abducted on April 6, 2012.

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<sup>23</sup> AHRC-STM-083-2012; April 10, 2012



This abduction brought immediate reactions from the Frontline Socialist Party (FSP), human rights organisations and the Australian government. The Secretary of the Ministry of Defense, Gotabaya Rajapakse initially declared that he was unaware of any such abduction. The Director General of the Media Centre for National Security (MCNS), Lakshman Hulugalle, previously stated to the BBC that there was no reason for the government to arrest Mr. Gunarathnam and Ms. Dimuthu Attigala. Then, shortly before the deportation Gotabaya Rajapakse even told the media that Mr. Gunarathnam would be charged in many cases.

The Police Spokesman, SP Ajith Rohana, now claims that Mr. Gunarathnam was abducted by some unknown persons and brought to Dematagoda, and later to the Colombo Crime Division.

This episode clearly exposes the government's involvement in abductions. Earlier, two officers of the rank of captain from the Sri Lankan military and two other officers were arrested after an attempt to abduct the Mayor of Kolonowara. The photographs of these officers were taken by their captors and published, leading to their identification. The government later claimed that they were mistakenly arrested while they were on their way to arrest some army deserters.

The latest incident relating to Mr. Gunarathnam and Ms. Attigala has vividly exposed the government's abduction industry. The number of abductions in recent months has risen to around 60.

As long as Gotabaya Rajapakse remains the Secretary to the Ministry of Defense there is no likelihood of any credible inquiry into the allegations of the government's involvement in these abductions.

The Asian Human Rights Commission calls upon the government to appoint a high level inquiry into the abduction of Mr. Gunarathnam and Ms. Attigala and also all other recent abductions. Unfortunately, we are compelled to state such an inquiry is most unlikely due to the high-level position held by Gotabaya Rajapakse, who is also President Mahinda Rajapakse's brother.

The Sri Lankan opposition has an obligation to the people to demand such a high level inquiry into this particular incident and all other abductions. The newly formed Frontline Socialist Party and all other political parties need to make it a high priority to take all possible action to stop abductions taking place in Sri Lanka. It is also the duty of all civil society organisations to intervene effectively to ensure that the government takes effective action to remove all those in high positions who are suspected of having links to such abductions.

We also call upon the High Commissioner for Human Rights, Navanethem Pillay, to request the Sri Lankan government to initiate a high level inquiry into this particular abduction as well as all reported abduction in recent months.



## 1.3 (b) Use of State Violence to Suppress Peaceful cConversation on Political matters: The Abduction of Mr. Premakumar Gunaratnam and Ms. Attigalla<sup>24</sup>



An abduction drama ended yesterday, exposing so vividly the government's involvement, not only in this particular incident but also in many of the abductions that have been taking place in Sri Lanka during the last six months. The number of these abductions has reached around 60 in this period. The government has failed to investigate any of these incidents adequately and to make any arrests.

Ms. Attigalla, within hours of her release, gave a detailed account of her abduction, interrogation and subsequent release. Her interview was conducted in Sinhala and may be seen [here](#). This courageous statement giving details of how the abductions took place on April 6 until yesterday (April 10) when she was released deserves careful study. The ease with which the abductors behaved throughout and the manner in which their actions were coordinated with those who were directing the operation leaves no room to doubt the direct involvement of a government agency in this abduction.

Mr. Premakumar Gunaratnam gave an interview on his return to Sydney (today, April 11), in which he categorically stated that, *"I have no doubt that if I didn't have the Australian government's support I would have been killed just like my brother and hundreds of other political activists and journalists have been killed,"* He went on to say, *"I can confirm I was abducted by the Sri Lankan government forces, blindfolded and tortured. This includes, I am embarrassed to say, sexual torture."* This article may be found [here](#).

Characteristically, the spokesman for the police, SP Ajith Rohana, tried to deny the government's involvement. This is the common manner in which the Sri Lankan police deal with the complaints relating to the abductions taking place in the country. The police are not only prevented from conducting any credible investigations into complaints of abductions, but are also compelled to engage in propaganda to whitewash such allegations. What SP Rohana's statement reveals is the pathetically comical situation to which the Sri Lankan police have been reduced.

When government agencies engage in abductions, and the police is used only for the purpose of denying the credibility of these allegations, the citizens are left with no possibility at all of getting any kind of redress. The purpose of abductions is to intimidate, not only the victims but also society as a whole. Preventing a conversation amongst the citizens on matters that are of importance to them is the aim of the government agencies who are employed in the carrying out of abductions, some of which end in the death of the victims.

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<sup>24</sup> AHRC-STM-086-2012; April 11, 2012



Sri Lanka has a history of carrying out arrests by way of abductions and torturing the victims and imposing other forms of punishment including extrajudicial killings. The commissions appointed by the government itself have revealed great details of how this has happened to large numbers of persons in the past. In recent time no such commissions have been appointed to investigate the allegations.

The details revealed by Mr. Premakumar Gunaratnam and Ms. Attigalla, whose lives have been saved by the urgent intervention of the Australian government, have for the first time revealed what many other victims did not live to make public. Ordinary citizens who have had no links to the outside governments have suffered their fate in silence. It is an irony that in a country that is quick to accuse external conspirators for anything and everything, the citizens are left with no other recourse except to a foreign government when they face the possibility of imminent death after abduction.

In the past, the journalists have attempted to expose the attacks on freedom of expression. The danger that exists in Sri Lanka is much greater than such attacks on journalists. What prevails in Sri Lanka is a comprehensive programme of suppressing political participation all together. Keeping the monopoly of political power in the hands of a small group of persons at the expense of everyone else including some sections of government supporters themselves is the scheme that is being so meticulously implemented within the country.

A chance saving of two lives due to decisive intervention on the part of the Australian government should be an eye opener to everyone both inside and outside the country about what Sri Lanka has become; a place where democratic conversation is outlawed<sup>25</sup>.

### 1.3.(c) Absence of political will to stop abductions<sup>26</sup>

**Abductions are seen by many as the most important problem that requires to be solved.**



The recent abductions of Mr. Gunaratnam and Ms. Attigala, merely highlighted the long standing problem. The concern about the absence of political will on the part of the government has been there for a long period of time. While Mr Gotabaya Rajapakse grudgingly handed over Mr. Premakumar to the Australian authorities, he gave no firm commitment to take all appropriate action to stop abductions from taking place as might be expected of the chief operative of the defense

establishment of Sri Lanka.

For a long time now the use of abductions has been part of an approved counter insurgency strategy in Sri Lanka. The late Mr. Ranjan Wijeratne, who was a former Deputy Minister of Defense, told parliament

<sup>25</sup> Please also see: SRI LANKA: The government's abduction industry exposed

<sup>26</sup> AHRC-STM-088-2012; April 12, 1012



that these things, meaning counter insurgency, cannot be done according to the law. Former President Chandrika Bandaranaike refused to sign the UN Convention against Forced Disappearances on the grounds that a military offensive was taking place against the LTTE.

However, even after the official announcement of the end of that conflict, there has been no end to abductions. A tacit policy that the use of abductions may be extended, not only to counter insurgency but also to the suppression of any opposition to the government, has been followed by all recent governments.

In the discussion on recent abductions, the position of government spokespersons has been to deny government involvement in abductions while, at the same time, refusing to make any formal commitment to stopping them, irrespective of who carries them out, as is the duty of any government.

The government may tell those who accuse it of abductions to "prove our involvement". However, it is unable to answer those who accuse it of failing to take decisive action to stop abductions, and of the lack of political will to deal with the issue.

The most obvious argument against the government on the basis of its involvement in abductions is this absence of political will to bring culprits to the book and demonstrate its determination to stop such things from taking place.

The only way the government can answer this accusation is by demonstrating what credible action it has taken to stop such widespread abductions. The simple deduction to be arrived at from government's absence of political will to deal with the issue is that there is a justifiable imputation of guilt.

### 1.3 (d) Another Abduction & Murder<sup>27</sup>

On the January 2<sup>nd</sup>, 2012, a man named Mohammad Nistar was abducted by a group who arrived in a white van from San Gartikulam at Puttalam. According to reports at the time of the abduction, Mr. Nistar was traveling in a three-wheeler. Sometime later his body was found with bullets wounds to the head. According to reports, Mr. Nistar was engaged in the rehabilitation of drug addicts at a centre in the area.

No one has been arrested for this abduction and murder.

The abductions, often ending in disappearances or murder have been a common occurrence in Sri Lanka for several years now. In early December of last year, two young men, Lalith Kumar Weeraju and Kugan Murugan, were abducted and have since disappeared. According to human rights groups these two young men were activists campaigning for the International Day for Human Rights on December 10. Despite

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<sup>27</sup> AHRC-STM-002-2012; January 4, 2012



many calls from local as well as international groups, no action has been taken to investigate and recover them<sup>28</sup>.

On October 27, 2011, a well known astrologer named Mohamed Sali Mohamed Niyas was abducted by a group of armed men and after several days his body was found on the shore at Akkarai Paththu<sup>29</sup>.

The white van has become the symbol of abductions, which are often alleged to have been perpetrated by agencies associated with the government. For many years now the Sri Lanka government has been urged by UN agencies, international human rights organisations as well as several governments to take effective steps to stop abductions and forced disappearances in the country. The government has refused to comply with any of these recommendations. The latest of such recommendations came from the UN Committee against Torture in its 47<sup>th</sup> Session held in November, 2011. The CAT Committee recommended that:

*The State party should:*

- (a) Take all the necessary measures to ensure that enforced disappearance is established as an offence in its domestic law;
- (b) Ensure that the cases of enforced disappearances are thoroughly and effectively investigated, that suspects are prosecuted and those found guilty punished with sanctions proportionate to the gravity of their crimes;
- (c) Ensure that the any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person, as well as to fair and adequate compensation;
- (d) Adopt measures to clarify the outstanding cases of enforced disappearances and comply with the request to visit by the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48, para. 450).
- (e) The Committee furthermore calls upon the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearances.

The Asian Human Rights Commission urges the government of Sri Lanka to investigate the abduction and murder of Mohammad Nistar and all other abductions and disappearances.

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<sup>28</sup> Please see the AHRC statement.

<sup>29</sup> Kindly see for details the AHRC statement on the appeal by his wife.

## 1.3 (e) A Further Report on Abductions followed by Murder<sup>30</sup>

Dinesh Buddhika Charitanda (25), was abducted on the January 3<sup>rd</sup> at night and on the morning of the 4<sup>th</sup> his body was found near the Keleni River, close to Grand Pass and his mother identified the body. He had injuries to his head. This is one more amongst the numerous abductions followed by murder that have been happening throughout the country.

A week earlier, the body of a fish vendor, who had been abducted by an unknown group, was found dead in the same manner at Mutuwal Colombo. Yesterday we reported the abduction and murder of [Mohammad Nistar](#). In recent weeks we have reported several other abductions and the discovery of bodies indicated murder.

Despite the reports on such ongoing abductions and murders, the government has taken no action at all to ensure the ending such crimes. There is a commonly held belief that these abductions and murders are taking place with the direct or indirect knowledge of the police and often also with the tacit approval of political authorities.

The Asian Human Rights Commission once again urges the government, as well as the United Nations Human Rights agencies, to take an active interest to investigate these abductions and murders and the media and the people should call for a greater protection of the people by effective law enforcement by the government<sup>31</sup>.

## 1.3 (f) Enforced Disappearances & Deprivation of Enforceable Entitlements have turned Sri Lankans into a Broken-hearted People<sup>32</sup>

Yesterday, we discussed several protests that took place in Asia. They are the student protest in Hong Kong; the protests of the people fighting against eviction from their lands by the Omkareshwar Dam project in Madhya Pradesh, India; the fight against the abuse of blasphemy law in Pakistan in the case of Rimsha, the 14-year-old mentally handicapped girl; and the student protest in Sri Lanka.

We noted that while in all the other three instances there was massive support for the protestors from the local media after the incidents had been revealed, the Sri Lankan media was almost completely silent about the attacks on the students by the government.

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<sup>30</sup> AHRC-STM-003-2012; January 5, 2012

<sup>31</sup> For further information please see the following statements by the AHRC: SRI LANKA: The murder of the British national and the rape of the Russian lady at Tangalla allegedly by a local politician close to the government, SRI LANKA: The abduction and the brutal murder of Mohamed Sali Mohamed Niyas -- the family writes to the human rights organisations, & SRI LANKA: The disappearances of Lalith Kumar Weerajug and Kugan Murugan

<sup>32</sup> AHRC-STM-181-2012; September 11, 2012



We also noted that in the other instances the governments showed tolerance towards the protestors and there was no use of violence against them. In contrast, in Sri Lanka the police, who arrived in large numbers, used brutal violence. Tear gas and baton charges were used against the peaceful demonstrators and some were arrested and charged. Added to this, a heavy propaganda campaign was carried out by the government spokesman, and this was given wide publicity through the state media, which said that the violence was provoked by the students and that investigations are being carried out against them.

In all the other three instances, the governments concerned at least partially granted the relief demanded by the protestors. The Hong Kong authorities promised not to enforce the proposed new curriculum on moral and national education that the students were objecting to; in India the Madhya Pradesh government promised to grant all the demands of the protestors, who stood neck-deep in water for seventeen days, and appointed a five-member committee to deal with the matter completely within 90 days by giving land for land and stopping the rise of the dam's water levels. In Pakistan, where protesting against the blasphemy law has remained difficult for a long time, the court released the young girl on bail and the government provided her with protection to move out of the location. Also, the police have arrested the cleric that made the false charges against the girl and charged him in turn with blasphemy.

What all this shows is that there is at least a certain degree of willingness to negotiate with the protestors, and to treat protest as a legitimate means by which citizens may express grievances and demand urgent action when they are frustrated with the negligence of the authorities. Such negotiations are possible when the idea of rule by consent is treated as the foundation of the legitimacy of a government. What the Sri Lankan government showed in this instance was that they derive their power purely by physical force and the idea of government by consent no longer has a practical relevance.

How did Sri Lankans come to accept rule by brutal force? Why have the citizens cowed down to this way of being ruled? How have the mass movements, which were at one time so vibrant in Sri Lanka, become so subdued? Why is the media so self-censored in the face of brutal violations of all the basic norms of democracy and rule of law? Why is everybody so unwilling to lend support for those who come forward to protest for legitimate reasons?

The answer to all this is not difficult to find. It lies in the way enforced disappearances have been used as an effective tool to suppress public protest. The fear of abduction followed by torture and many other forms of harassment, probably ending in an enforced disappearance, is now an impression so deeply embedded in the psyche of the Sri Lankan people.

While all that happens, the legal machinery of investigations into complaints, prosecution of offenders and even the judicial independence has been so badly undermined. That investigations into complaints against the state's abuse of its powers and of the use of naked violence will not take place is now known to everyone. The examples are available of such refusals to investigate, not in the hundreds, but in their thousands.



The Sri Lankan people have been reduced to persons with no enforceable legal entitlements. The Constitution does have a bill of rights and many fundamental rights are mentioned. There are many statutes that have criminalised violence of various forms against the people. However, the enforcement mechanism has been suppressed and by now it can be said that, virtually, no enforcement mechanism against violations of rights exists any longer.

A long period of the abuse by way of enforced disappearances, illegal arrest and detention, torture, denial of fair trial, suppression of freedom of opinion and expression, publication and association have virtually made the Sri Lankan people into a broken-hearted people, who have lost faith in their legal rights. When there is no possibility of the enforcement of entitlements, the idea of citizenship becomes a hollow one.

### 1.3 (g) Enforced Disappearances & an Unjust Republic<sup>33</sup>

Forced [disappearances](#) have left quite an impression on the psyche of the Sri Lankan people living in all parts of the country. Since 1971, there has been continuous use of enforced disappearances as a tool by the state, for what is referred to as the maintenance of “law and order”. The result is a negative mindset, arising from what the people have seen and heard over several decades, due to so many incidents and stories about enforced disappearances. The shocking news has obviously been borne deep into the psyche of the people of all the people, living in all parts of the country.

Such deep impressions alter the views of people on many issues. One of the great changes in the minds of people, due to the impressions that are left in their minds of enforced disappearances, is to change their ideas about all those in authority; about the police, the military, the intelligence services and also the political leaders. The people now in their inner minds have different ideas as to what these things meant in the past before these large scale enforced disappearances happened.

Today, the police and the military are often seen by the people as abductors who may come in any guise, at any time. What the people expect from the police, the military or anyone else who represents a lawful authority and exercises such things as arrests has undergone a fundamentally deep change. The expectation of what might happen in the event of abduction or arrest is now very different. People have lost the legitimate expectation that they might have in the event of dealing with their law enforcement agencies; the expectation that whatever happens will be within the limits of the law and rationality no longer exists. Now the expectation is that the law will be flouted, that anything might happen, and that if anyone were to come out of the situation safe and sound it would be his or her great luck.

The other agencies about which the people’s views and expectations have changed are the intelligence agencies. The idea that the intelligence agencies may be involved in activities concerning the security of the state, within the limits that are expected in such operations, has altered a great deal. The expectation that any kind of foul play is possible, and that there may be many schemes to put unsuspecting citizens into all kinds of trouble, has become quite normal. That there may be all kinds of games, including arrest and

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<sup>33</sup> An article by Basil Fernando, September 3, 2012; COLOMBO TELEGRAPH

detention for illicit money-making by way of demands for bribes, and the fear that if these things are not complied with one may come to a different kind of experience that cannot even be imagined, is today among the normal, or let us say, abnormal expectation of the people – not only of the poorer classes, but also of other social groups.

All such alterations of opinions and expectations are not from wild imaginations but on the basis of detailed incidents that they know have happened to many people in their societies. Some of those people may have been family members or friends or known to them in other ways, but on many occasions these stories are part of a general knowledge about the practice of enforced disappearances, by the repeated telling of the stories of these incidents, mostly about persons with whom they may not have been personally acquainted.

The general knowledge of security in the country has undergone fundamental changes. And the subsequent psychological habits, which have now become part of the ordinary persons psyche, can be easily manipulated by any unscrupulous person. That unscrupulous person might be someone holding authority in the government who wishes to manipulate this psychological condition for political purposes, such as through attempts to intimidate people who have different political allegiances or hold different opinions. It could also be manipulated by rivals in businesses.

Anyone in competition with another for one reason or another, as is usual in normal society, might now fear that a rival will use foul methods in association with those who have the power of arrest and detention in order to take undue advantage and promote their interest over another by illegitimate means.

More than anyone else, this psychological condition can be exploited by the criminal elements, who are often better readers of the minds of people in their society than others. They can manipulate this condition to achieve various criminal enterprises for their own benefit or for others. It is within that context that the behaviour of the government on the issue of enforced disappearances should be reviewed.

The government adamantly refuses to conduct any kind of proper legal inquiries into allegations of abductions and enforced disappearances. Many of the glaring examples are part of the peoples' experiences. [The case of Prageeth Eknaligoda](#) naturally comes to mind. The manner in which that disappearance took place, the various methodologies that were employed by the government to deny any kind of inquiry into the matter, and also other methods they employed to deny their responsibilities, is now firmly registered in the psyche of the Sri Lankan people. That even a former Attorney General speaking at a United Nations body in his official capacity could blatantly lie about the Prageeth Eknaligoda incident became a well-known tale about how someone in authority can be so blatantly abusive. Even journalists working for well-known newspapers were used in order to create all kinds of stories, such as the story that [Prageeth Eknaligoda](#) had taken up refugee status in some other country. They were used so cynically in order to manipulate a society that was aware of this incident and interested to know what was happening. Such levels of manipulation, including all kinds of statements made by the government spokesmen, are also part of the knowledge that the people acquired about how things happen in their society.



Perhaps the worst part of the impression is about the futility of any attempt to seek justice for enforced disappearances. Tale after tale, going into tens of thousands of cases, tell the same story, of the complete incapacity of the legal system in Sri Lanka, which has been crippled to such an extent that it is incapable of providing any kind of assistance to those in search of their loved ones who have been victims of enforced disappearances. In this, Sri Lanka repeats the experience of other countries, when the state itself is the agency that plays a prominent role in enforced disappearances. The following poem tells of the tragedy of so many mothers and others who are faced with the disappearances of their sons or other loved ones, and whose demands to the systems of justice are so blatantly frustrated.

## She goes looking for you

We go  
Looking for you.  
To be accurate,  
She goes  
Looking for you.  
To be accurate,  
She goes looking  
For your bones  
Or for something that is yours:  
A hair or a piece of cloth.

We are just the sub-committee  
Helping her  
To find you.  
We go to an abandoned house,  
In an abandoned field,  
And the area opposite  
We have forensics  
Helping the sub-committee.  
Everyone is looking  
For a piece of you.

Forensics find near  
The rubbish burning spot  
Two piles of bones.  
We think  
We found you.  
Forensics say  
Its human bones.  
We think  
We found you.



The journey is yet long,  
Spread through fields  
Through many more bones,  
Through laboratories,  
Through jurists,  
Through judges,  
Who must finally believe  
That it is you.  
She will go on that journey  
We wish to be with her also  
Till she finds you.

## 1.4 Illegal Arrest and Detention

### 1.4 (a) Burial at a place of choice by family members is a matter of justice<sup>34</sup>

A prisoner, Ganeshan Nimalarubin, died in prison custody. Allegedly he was a former LTTE, who had been in prison custody for a long time undergoing rehabilitation. His death in the prison has given rise to an important controversy.

The BBC Sinhala Service reported yesterday (July 5<sup>th</sup>) that the prisoner's parents, who are old and quite destitute were informed of their son's death and they were asked to go to Colombo to sign for and take the body before the burial was conducted there. The parents refused on the basis that their son had been taken away and that they were not aware of his whereabouts for years and that they were unaware of what had happened to him and therefore they were not willing to come forward and sign anything before burial. They also stated that they were destitute and that they had no money to go that distance to Colombo and requested the prison authorities to bring the body to Vavuniya so that he could be buried in the locality where they live.

The prison authorities and the police argued against this position stating that the burial was a matter of national security. The authorities argued against the body being taken to Vavuniya for burial. A group of lawyers went on behalf of the family and pleaded on their behalf. However, the authorities refused. Finally, the matter was brought before a magistrate. Both parties gave reasons for their stated positions; the lawyers arguing on behalf of the family's right to bury the man in the locality he had come from and the police and prison authorities that as a matter of national security it could not be allowed.

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<sup>34</sup> AHRC-STM-140-2012; July 6, 2012



The magistrate, after listening to both sides, stated that as the authorities were arguing on the basis of national security he would hold in their favour and that the burial would take place at a burial ground at Kadawatte. Between Kadawatte and Vavuniya is a great distance, about 200 kilometers. In Vavuniya there is a large concentration of Tamils and the prisoner was Tamil who had come from among them. Kadawatte is an area where the concentration of the population is mostly Sinhalese.

As a result of the objection on the basis of national security, the parents and the relatives of the deceased prisoner lost their right to bury the person at a place of their choice.

The conflict with the LTTE ended in May, 2009 and therefore what national security issue is there to object to a burial at a place of choice by family members? Obviously, there is no rational foundation for this argument on the basis of national security and the issue of burial affects one of the most humane aspects of any society and the choice of burial as a matter of the rights of the family is an issue of justice.

In recent years there have been many instances where government authorities have intervened to prevent burials or to lay down conditions for burials on the basis of national security. The case of the assassination of Roshan Janatha, the young worker at the Free Trade Zone, is one such example. The authorities interfered with the burial in many ways and even took the body from the house on the morning of the burial when, in fact, the burial was to take place in the late afternoon. Besides, criminal gangs were allowed to operate on the roads with poles in their hands to prevent anyone from participating in the funeral. There are several other instances of similar sort including the burials of the two persons who were killed due to the attack on a JVP meeting recently.

The government owes the public an obligation to make a statement clarifying what public policy is involved in interfering with the rights of families for the place of burial of their choice and the manner of burial according to the customs of their choice. While the authorities who intervened claim that they are acting on the basis of national security, the government has made no such public declaration. Anyway, there would be no justification on the basis of law and ethical considerations for the government to make such a statement.

The matters of public police have now become the prerogative of the Ministry of Defense. Therefore, it would not be wrong to assume that in each of these instances the authorities, who have acted to obstruct the peoples' rights to burial, have done so on the instructions of this Ministry. If this is not the case the Ministry should openly disclaim any responsibility for the actions of these officers.

There is something fundamentally wrong in the manner the term national security is being used in Sri Lanka. It violates law, moral and ethical principles. The present practice of interfering with funerals clearly violates basic ethical norms and principles of fairness which are, in fact, the principles of justice.

It is blatantly unfair to interfere with the rights of family members to perform the family rites for their loved ones in places of their choice and in the manner of their choice. It is also a violation of the rights of





neighbours, relatives, and others who usually participate in such funerals as a matter of religious and cultural sensitivities to pay their respects to a deceased person.

It is the duty of the parliament to raise this matter as one of justice and as a matter of decency. No political considerations will justify actions that interfere with funerals.

## 1.4 (b) Sorry State of Affairs -- Illegal Arrests & Detention<sup>35</sup>

The criminal justice system of Sri Lanka is in decline. Across the country numerous reports document that illegal arrests and detention continues to happen indiscriminately. The Asian Human Rights Commission (AHRC) has issued several hundred urgent appeal cases over the past decade regarding illegal arrests and arbitrary detention in locations across the country. Most, if not all of the cases, demonstrate that state authorities have acted illegally when arresting and detaining civilians. Indeed, in most of the cases, the state agency did not supply the victim with a reason for the arrest. This is a serious violation of Sri Lanka's legal code and departs from both domestic and international standards regarding arrest and detention. Although the right to a fair trial is guaranteed as a fundamental human right within Sri Lanka's Constitution, state authorities, particularly the police, have shown little respect for these constitutional provisions.

### Torture during arrest

In almost all of the cases reported to the AHRC, the arrestees were tortured at the time of the arrest. Obscene language and threats were often used. Many of the arrestees were subjected to degrading treatment in public, despite the fact that the arrestee had not shown any objection to the arrest, or made any attempt to harm the officers involved. These actions are in direct opposition to the procedures established by domestic and international law. Indeed, these legal codes expressly state that arrest can only be made in accordance with appropriate legal procedures.

### Use of firearms

The AHRC has reported a series of cases over the past few years where police officers shot the arrestees before or during the arrest. Inevitably, this resulted in a number of extrajudicial killings. It was clearly reported that the arrestees who were shot at did not object to their arrests or move to intimidate the police officers. This amounts to a clear disrespect of civilian liberties and the basic human rights of the Sri Lankan people. According to the Criminal Procedure Code, police officers are not permitted to use their weapons while they are in the process of arresting a person, unless there is credible evidence that the arrestee has committed a crime that can be punished with the death penalty. However, the incidents mentioned

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<sup>35</sup> AHRC-STM-078-2012; April 03, 2012



demonstrate that police officers have shot innocent people even though the arrestee was not obstructing the arrest procedure in any way.

## **Custodial deaths**

There have been numerous cases in the past few years where arrestees have been killed while in custody of the police. In many cases, the police took the arrestee to an isolated location and killed the person in question. These victims did not have access to a fair trial. Often the police will excuse such actions by issuing a communiqué stating that the arrestee attempted to attack the officers and was shot in self-defense. It is difficult to understand how a handcuffed person poses any threat to a police officer, yet the police maintain this explanation.

## **Arrests of substitute perpetrators**

The AHRC has observed that the Sri Lankan police demonstrate disrespect for procedural law and regularly violate the liberty of innocent people. The police have adopted a practice where they respond to a complaint by searching for a suitable 'substitute perpetrator' to prove that they have taken care of the complaint. In abandoning their fundamental responsibility to investigate, they do injustice to both the complainant and the substitute perpetrator who is unwittingly accused of the crime. The substitute perpetrator is often tortured by officers coercing these civilians to admit to crimes that they have not committed. This process is an ad-hoc, illegal, procedure which has been adopted into mainstream police use.

## **The denial of legal representation**

The AHRC has reported numerous cases in which detainees have not been allowed access to legal representation. In one case, when a lawyer visited the police station to meet with his client, he was subjected to torture by the police officers at the station. The issue was raised in the Supreme Court in 2011 and a circular was issued by the Inspector General of Police (IGP) detailing the guidelines that officers must abide by with respect to legal counsel. These guidelines have not been respected.

## **Emergency regulations and illegal detentions**

In the past few years, the AHRC has reported a number of serious cases involving arbitrary, prolonged detentions. According to state officials, the majority of these detainees are being held under suspicion of involvement with terrorist organizations. However, it has often been reported to the AHRC that these detainees were arrested in mass while protesting publicly against the government. Suspects are often arrested under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA) and Emergency Regulations (ER). The emergency regulations allow state authorities to arrest innocent people who have not committed any crime, on the vague suspicion that they might be involved in a crime in the future.



The government of Sri Lanka has used emergency regulations to arrest and detain thousands of innocent civilians. During the civil war, state authorities arrested more than twenty thousand innocent civilians. At no point were the exact numbers of the arrested and detained revealed, nor were family members allowed access to the detention centers where their relatives were being held.

Civil rights and international human rights organizations have repeatedly called on the Sri Lankan government to release lists of the arrested with details of the length of detention and reason for detention, but the state has continuously failed to do so. The detention centers where people are held are unknown, and although people are occasionally released, the state has refused to reveal the exact number of people detained within the detention centers.

The arbitrary arrests and detentions of thousands of people in unknown locations have resulted in chaos ruling the country. Moreover, those who seek justice for the abductions, disappearances and extrajudicial killings of their loved ones are unable to gain closure.

## **Detainees prosecuted with illegally recorded confessions**

The AHRC has reported several cases in the past year where detainees have been tortured by officers. After the suspect is tortured for several months, or years even, they are forced to sign blank or forged documents. The blank or forged documents are then used as a confession and presented as evidence that can be used to prosecute detainees in the High Court. In some cases, the suspects were threatened with death if they did not sign, or promised release if they did sign the papers.

## **No prison visits allowed**

The state has repeatedly requested permission for detainees to communicate with their relatives and loved ones. Even when members of Parliament have requested permission to visit the detention centers, they have been refused. The only prison that allows visits is Welikada Remand Prison, where visitors are allowed once a month.

## **Denial of medical treatment**

The AHRC has issued several Urgent Appeals regarding cases in which detainees were tortured and suffered physical injuries as a result of the torture. Even though these injuries necessitated medical attention, the police refused to provide medical treatment to detainees. In one case from 2011, a detainee who was in a critical medical condition was brought to a nearby hospital. Despite the detainees' request for medical treatment and advice of the doctor to admit the detainee for treatment, he was brought back to the prison.

Police officers are reluctant to take detainees to a hospital for medical treatment since they fear that the physical evidence of their torture will be recorded. Many detainees have died in custody after their gunshot or other wounds went untreated.



## Maintaining proper arrest records

The AHRC has recorded numerous statements of detainees who were arrested and only produced before a court several days later. The fact that these detainees were not told the reason for their arrest and the subsequent detention is a clear violation of their fundamental rights enshrined within the Sri Lankan Constitution. Indeed, the Constitution states that detention of a person for more than 24 hours without appropriate indication as to the crimes committed is a violation of the arrested person's rights. Yet, police officers often keep detainees at the police station or detention center, but purposely do not record the particulars of the crime or information regarding the detainee in any official records. Usually, the information is recorded a few hours before the detainee is produced before the Magistrate. This practice violates the rights of the detainees.

## President's directives of 2005

The behavior of state officers, as documented by the AHRC, violates the basic rights of civilians at the time of arrest and detention. Furthermore, the actions of state officers are in direct violation with orders from the President issued in 2005 where he spoke about safeguarding the basic rights of civilians at the time of arrest and detention.

A number of actions should be taken in order to ensure that civilians' basic liberties are not violated at the time of arrest. A notice should be issued to the arrestees' next of kin. The identity of each arresting officer, including their name, rank and police station should be included on this notice. A special investigation unit should be established with the mandate to investigate the cases of detainees who have been arrested and detained under the PTA. Adopt a policy of quickly holding and finishing criminal trials for those detainees who have been detained for prolonged periods of time. Impose and follow through on the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act). Enact an act on codifying the rights of the arrestees at the time of arrest and after the arrests. Enact a law pertaining to procedures regarding the handling of firearms by law enforcement officers, including officers involved in criminal investigations. Repeal the PTA and strengthen the administration of Sri Lanka's criminal justice system.

### 1.4 (c) Code of Criminal Procedure will further Endanger Citizen's Rights<sup>36</sup>

The proposed Code of Criminal Procedure (Special Provisions Act) will lead to an increase in the abuse of power, extortion, torture and custodial deaths. A bill placed before parliament as the Code of Criminal Procedure (Special Provisions Act) of 2012 is dangerous in the present context and is very much likely to complicate the already overwhelming problems besetting the administration of criminal justice in Sri Lanka.

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<sup>36</sup> AHRC-STM-205-2012; October 18, 2012

The objections to this bill are as follows:

- This bill takes place within the context of the 1978 Constitution which has already displaced all the public institutions in Sri Lanka. The adverse impact of the 1978 Constitution on the public institutions is well known to the public in the country. That the policing system in Sri Lanka has been severely politicised and is used for political purposes by the president as well as the politicians of the regime is one of the most common criticisms that has been repeatedly made. It is also a common position that the Attorney General's Department is directly under political control and is being used for political purposes. It is these two institutions, that is the police and AG's Department that are being given greater powers under the proposed bill. Giving greater powers to already highly politicised institutions will naturally lead to greater abuse. Thus, the proposed bill, instead of contributing to better performance of the criminal justice institutions will instead contribute to a reduction of their performance. Bringing about a new law to make things worse makes no sense.
- Under the proposed bill a 24 hour limit for holding persons under police custody will be increased to 48 hours with regard to some offenses. Already the 24 hour rule is itself severely abused by way of the arrest of persons without legitimate reason and by way of torture and ill-treatment. That the only known method of investigating a crime is the use of torture and ill-treatment is well known. The Supreme Court itself has dealt with literally hundreds of cases relating to the use of torture and ill-treatment. The Asian Human Rights Commission daily reports cases of the use of torture at police stations throughout the country. If the period of police custody is doubled it would only mean giving a greater amount of time to torture and to ill-treat suspects.
- The use of arrest and detention for extortion is well known. The police find the arrest of a person as a means of extracting money for their release. In recent times this habit has increased a great deal and the amount of money demanded is often staggering. It was only recently that two culprits who organised the illegal smuggling of a group of person to Australia were released after arrest on payment of Rs. 26 Lakhs (Rs. 2,600,000). After releasing the actual culprits, an innocent person was accused of the crime so as to create the impression that charges had been filed in the case. In another instance, a Cambridge graduate, who went to obtain a clearance letter, was illegally searched. Upon finding that he had Rs. 70,000/- of his own money and several travelers' cheques, they were taken by the police and the man was charged with stealing money from the police station. These are two instances. Literally thousands of others can be cited. The proposed law will provide unscrupulous police officers unimaginable opportunities to make themselves rich. As for citizens, it will create new circumstances under which they will be harassed.
- One of the strong objections to this new law is that it gives vast powers to the Officers-in-Charge of the stations (OIC). Experience has clearly shown that it is rarely an OIC has enough integrity to be trusted with such power. It is not likely that in the near future the quality of OICs or Crime OICs and other such officers is going to improve. Giving more power to such officers will only increase their propensity to abuse their positions for their own benefit. It is well known that OICs



soon after they get their positions begin to build new houses. Under the new law these officers will have many more opportunities for doing such things.

- A further objection for giving greater powers to the police stations for detaining persons for longer periods is that the system of command responsibility by which officers of the higher ranks, beginning with the IGP down to DIGs, SSPs, SPs and ASPs, used to control the conduct at police stations no longer wields such power. It is a common criticism that officers at the stations are led by politicians and others and not by their superiors. And, higher ranking police officers themselves are now being suspected more and more of corruption and connivance with the lower ranking officers in the doing of wrongs than ever before. Under these circumstances, higher ranking police officers are unlikely to have much control over the day to day affairs at the police stations. Under such circumstances giving these people greater powers will only lead to greater problems.
- It is also known that the disciplinary processes envisaged by the Police Departmental Orders are no longer followed with any sense of credibility. Higher officers try to hush up complaints against their subordinates instead of attempting to keep the discipline at any cost. When the police stations, without disciplinary control, are given extraordinary new powers and twice as much time to keep the arrested persons it is not difficult to imagine the extent to which the discipline within police stations would further degenerate.
- Besides the problem of the police officers there is also the complete loss of confidence in the Attorney General's Department. The newly proposed bill provides that cases may be taken out of the hands of the magistrate and directly dealt with by the Attorney General. Let us take an example to demonstrate what might happen. Take the case of Bharatha Lakhsman Premachandra. Obstacles created by the government for the prosecution in this case are well known. Enormous delays have been caused by police officers claiming to be seeking advice from the Attorney General and the Attorney General never giving such instructions. Of course, the AG's Department must be under severe political pressure not to take any action that would jeopardise the freedom enjoyed by Duminda Silva. Now under the new bill things will become much easier. All that the AG's department will have to do is to make a claim at the Magistrate's Court that on the basis of the new provisions the case will be taken over by the Attorney General. The magistrate thereafter will have no jurisdiction to deal with the case. Another case, the case of David Amerasinghe at the Pugoda Magistrate's Court demonstrates this same point. In this case two police officers were accused of killing David Amerasinghe after arrest. They were refused bail by the magistrate. The two officers sought the assistance of the Attorney General by use of their personal links. Then the Attorney General issued a letter releasing the two officers from the non-summary proceedings for murder. The Magistrate, shocked by this unprecedented order asked the Attorney General to reconsider the matter and did not immediately comply with the order of the Attorney General. The Attorney General then went to the Court of Appeal and got a stay order on the proceedings at the Magistrate's Court and released to two suspects. The matter is now before the Court of Appeal. In the future, under the new bill there would be no ambiguity about the power of the Attorney General and the magistrates will cease jurisdiction the moment the Attorney General makes an



application to deal with the matter himself. In all matters in which the government has an interest the suspects could be assured of freedom under the operation of this bill.

In short, the objections to this bill are on the basis of the political abuse of criminal proceedings that are already happening and the new bill will aggravate this situation. The situation of Sri Lanka cannot be compared with countries where rule of law systems strictly operate. In Sri Lanka, due to the operation of the 1978 Constitution, this system has already collapsed. Under these circumstances giving greater powers of detention to the police and also given more power to the Attorney General to cases out of the hands of the magistrate is dangerous.

The proposed law will not enhance the cause of freedom and will not add to the security of the people. In fact, the insecurity of the people will further increase due to this bill. The Asian Human Rights Commission supports the call that has already been made for people to oppose the proposed legislation for the reasons stated above.

## 1.4 (d) Prison Killings

### The killing of 27 prisoners at the Welikade Prison in Colombo<sup>37</sup>

The Asian Human Rights Commission has written to the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the incident at the Welikada Prison in Sri Lanka on November 9, 2012. The full text of the letter follows herein:

Mr. Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions  
C/o OHCHR  
Palais des Nations  
CH-1211 Geneva 10  
SWITZERLAND

Dear Professor Heyns,

#### **Re: The killing of 27 prisoners at the Welikade Prison in Colombo, Sri Lanka**

The Asian Human Rights Commission (AHRC) wishes to bring to your notice the killing of 27 prisoners in two separate sections of the Welikada Prison; 'L' Section and the 'Chapel Building'

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<sup>37</sup> AHRC-OLT-017-2012, November 12, 2012

that took place on the evening of 9 November. Further according to reports three persons are missing.

It is difficult to obtain a clear picture of how the killing took place as the public is only receiving information which gives the government's version of the events published through the state media. No independent investigation about the incident is possible in Sri Lanka under the present circumstances.

According to the information provided by the spokesperson for the government, about 500 Special Task Force (STF) personnel entered the prison for an inspection or a raid to investigate the illegal possessions of the prisoners such as mobile telephones, drugs and the like. The STF is a paramilitary group. Under normal circumstances such groups are not deployed for inspections or raids inside prisons and this is usually done by prison officers themselves and at times in the past they have sought the help of the civilian police of the area. In this particular raid the assistance of the police was not sought and the raid was carried out entirely by the STF officers and later when the conflict developed military commandos were called in.

It is reported that the STF initially handcuffed the prisoners in 'L' Section and conducted the raid. This appears to have been completed without incidents. Thereafter, the officers went to the Chapel Building and attempted to do the same there. Here the prisoners protested against the use of the handcuffs and a commotion ensued.

While this was happening another group of prisoners, reported to be about 3,000 in number were being taken for daily labour. On hearing of the commotion by the prisoners in the Chapel Building, who were reportedly protesting the use of handcuffs, the prisoners who were being taken for their labour turned to help the other prisoners and this it appears to have led to the confrontation between the STF and the prisoners.

At this state teargas was used against the prisoners but it also affected the officers themselves and even those staying in the quarters of the prison officers which is close by. At this point the STF moved out and in the commotion some of the prisoners broke into the armoury and reportedly came into possession of some weapons.

Thereafter, the situation reportedly went further out of control and there appears to have been a gun battle between the prisoners and the officers that resulted in several deaths. However, even after several hours things were still out of control and army commandos were called in. They entered the area occupied by the prisoners under the cover of gunfire and after some time the situation was brought under control.

Family members of the prisoners claim that they received telephone calls from their relatives inside the prison at around 4 AM on 10 November. The prisoners informed their family members that they were being taken for questioning. Later these same prisoners were found dead of gunshot

injuries. According to reports about 11 persons were killed in this manner after being taken for questioning.

The total death toll until now is 27 and there are many others who are in critical condition in hospital.

Quite recently there were two other raids of similar nature; one at the Magazine Prison and another at Vavuniya Prison. In both instances STF were used and there were conflicts in which several persons were killed. There has not been any credible inquiry into either of these incidents. Following the Welikada incident on 9 November, the minister for the Department of Prisons, Mr. Chandrasiri Gajadheera, made a statement in the parliament in which he said that a three-member committee would be appointed to inquire into the incident. However, he failed to name who the three persons might be.

Such large-scale killings in prisons require a high level of inquiry headed by superior court judges. However, the appointment of such an inquiry is most unlikely.

In an inquiry the witnesses under the circumstances are going to be mostly the officers involved in the raid and the prisoners who witnessed the incident. However, it is most unlikely that the prisoners will come forward to state any evidence which is adverse to that of the officers. They have good reason to fear that they may be harmed if they were to honestly depose in an inquiry. Under such circumstances it is most unlikely that the actual event and the manner in which it happened will ever be revealed.

The state media is carrying on a heavy campaign to create the impression that the killings are a good thing as the persons who were killed are those convicted of serious crimes such as murder. This campaign is directed to counteract a possible reaction from the public against these killings and any demands for a proper inquiry.

The key question involved in any inquiry should be as to how the prison authorities lost control of the prisons. As mentioned above, this is the third instance within a few months when paramilitary forces have been called on to conduct raids inside prisons. Quite clearly there is a breakdown of the normal process of the control of prisons which should be carried out under the direction of the Commissioner of Prisons.

This breakdown of the control of the prisons reflects a similar problem that exists in all public authorities in Sri Lanka. The cause of the breakdown of all the public authorities is usually referred to locally as 'politicisation' of state establishments. A political process that favours the appointments of those who are nominated by the government, decides all appointments, promotions, disciplinary control and dismissals. Such politicisation has been severely criticised. However, under the executive presidential system in Sri Lanka all aspects of the state apparatus are brought under a handful of persons who are close to the executive president. This is causing a breakdown in administration in every aspect of governance.

This STF and also the commandos work directly under the Ministry of Defence. In recent years this ministry has acquired a reputation for engaging in all forms of killings such as by way of causing enforced disappearances and by uncontrolled use of force. Usually those who work under the ministry enjoy absolute impunity.

This is a serious situation and I hope you will take appropriate actions to demand from the Government of Sri Lanka a proper reporting about the incident and thereby to ensure accountability for these killings.

Sincerely,

Bijo Francis  
Acting Executive Director  
Asian Human Rights Commission

## 1.4 (e) Special Task Force kills 27 prisoners and injures many others<sup>38</sup>

Yesterday (October 9<sup>th</sup>), at least 27 prisoners were gunned down and around 35 were injured by the STF. The shooting was carried out when the STF entered the Welikada prison for some inspections.



*(Photo Courtesy: Sunday Times, Sri Lanka)*

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<sup>38</sup> AHRC-STM-224-2012, November 10, 2012





According to an eye witness, interviewed by the BBC Sinhala service, when some prisoners who were on death row were taken out and handcuffed, the prisoners resisted and then the prisoners were attacked by the officers who had come for inspection. The dead bodies of 10 persons had been brought to the hospital by that evening and the shooting was still continuing at the time of the interview. According to the eye witness, all the prisoners were taking shelter and hiding to try to avoid becoming victims of the shooting. The government spokesman, who was questioned by the BBC Sinhala service, denied that any of the prisoners have been killed and tried to attribute the reasons for the incident to the prisoners. He said that around fifteen officers had been injured. It appears that the officers had entered the prisons for some inspection and the confrontation with the prisoners had taken place at that time.

The Asian Human Rights Commission condemns this shooting and calls on the government to institute a judicial inquiry into the incident. President Rajapaksha himself and the Defense Secretary Gotabaya Rajapaksha should take the responsibility for this shooting. The use of STF officers, who are in fact a paramilitary group, for this type of inspections needs to be scrutinized.

The use of paramilitary forces in policing work is being witnessed quite often in recent times. The STF started as a paramilitary force during the conflict with the government and the LTTE, and they were used for special tasks in the military zone. They were given commando training. On earlier occasions, when the STF was deployed for crowd control during demonstrations, there were shootings and these were condemned by civil society organisations.

Last week, there was also a shooting of four prisoners in Galle after they were arrested by the police.

The killing of prisoners is a heinous crime. Where such incidents occur, it requires the most serious kind of investigations. However, in recent years, Sri Lanka has abandoned the practice of conducting serious inquiries into incidents where police and military officers are said to be involved. It is most likely that, instead of conducting a credible inquiry into the conduct of these officers during this incident, the government propaganda machine will be employed to create a version of events that puts the blame for the incident on the prisoners.

The LLRC recommended that the police should be de-linked from the Ministry of Defence. However, this recommendation is quite unlikely to be implemented. More and more, military approaches have been adopted in investigations which should in fact have been done on the basis of normal criminal investigation methods by the civilian police.

The Asian Human Rights Commission calls on the government, civil society organizations and international community to demand a thorough and credible inquiry into all aspects of these killings and related incidents.

## 1.5 Torture and Ill-Treatment

### 1.5 (a) What Happened to Protect and to Serve?<sup>39</sup>

On an almost daily basis the Asian Human Rights Commission receives complaints related to the practice of torture and ill-treatment by the police in Sri Lanka. From January to November 2011 the AHRC issued a total of 106 Urgent Appeals on torture and ill-treatment in Sri Lanka, based on information gathered by local grass-root organizations. In the majority of cases, the perpetrators were members of the police force.

In most of the urgent appeal cases, victims appear to be randomly selected, arrested, and detained by the police on unsubstantiated charges and are subsequently subjected to torture or ill-treatment to obtain a confession for those charges. Often, the police target innocent people from a poorer socio-economic background. In the absence of a state-sponsored legal aid scheme the members of the weakest social groups rarely have the resources at hand to hold the police accountable for the abuse.

The numerous urgent appeals illustrate that torture in Sri Lanka is a widespread and systematic practice. It is important to keep in mind that the urgent appeals issued in 2011 are only the tip of the iceberg. The vast majority of incidents remain unreported. Fear, intimidation, the lack of credible complaint mechanisms, the absence of witness protection and a host of other factors all contribute to a culture of silence on police torture in Sri Lanka.

The AHRC's extensive documentation of thousands of cases of torture by the police sits uncomfortably with the "zero tolerance" policy on torture advocated by the Government. The state of Sri Lanka has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), but the legal framework in place is not working in the manner intended. Investigations into acts of torture carried out by state authorities have come to an absolute halt. In present day Sri Lanka, the CAT convention is not worth the paper it is written on.

The Sri Lankan judicial system has failed at holding the police accountable for their transgressions. The legal aftermath of the urgent appeal cases illustrates that an investigation into acts of torture is the exception rather than the rule. In almost all the urgent appeal cases on torture committed by the police complaints were lodged by the victims or by human rights organisations on their behalf. Complaints were also made to the Inspector General of the Police, the Human Rights Commission of Sri Lanka, the Attorney General's Department and sometimes the National Police Commission. To our knowledge, there have been no serious investigations into any of the allegations, which could lead to prosecution under the Convention against Torture Act No. 22 of 1994. Nor has the Special Inquiry Unit (SIU) of the Sri Lanka Police Department carried out any investigations into the allegations of torture. As long as there are no credible investigations into acts of torture committed by state officials the government's "zero tolerance policy" is of little value.

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<sup>39</sup> AHRC-STM-071-2012; March 27, 2012



The Sri Lankan government has failed in providing torture victims with means of redress and the introduction of a National Action Plan does not change this sorry state of affairs. The National Action Plan for the Protection and Promotion of Human Rights drafted by the Sri Lankan authorities in 2009 includes the issue of torture, but the government has not disclosed how the National Action Plan will be implemented. Also, the National Action Plan does not present a solution to the fact that acts of torture are committed with impunity and is therefore found lacking.

As for the National Human Rights Commission its mandate is limited and its activities cannot replace a thorough criminal investigation. Furthermore, at the moment it does not function at full capacity and its independence has frequently been questioned.

Perpetrators of torture enjoy absolute impunity. The lack of internal discipline within the police force is partly to blame for this state of affairs. The hierarchical order embodied in the command responsibility doctrine is not operating effectively in Sri Lanka. A police officer guilty of torture will not be held accountable for his transgressions by his superiors. The police authorities continue to neglect enforcing discipline among its cadres and this is one of main reasons behind the continued use of torture that is still in practice in Sri Lankan society.

Torture by the police is only one symptom among many which indicates that Sri Lanka is a country where people no longer respect the rule of law. This calls for a fundamental change in the criminal justice system. Important in this regard is a change in the Constitution of 1978 that placed the executive above the judiciary. In order to counter this alarming trend the judiciary needs to be re-empowered, so it once again can play the role required in order for Sri Lanka to be a functioning democracy.

In 2008, the Government of Sri Lanka promised that a Witness and Victim Protection Bill would be introduced in Parliament shortly and measures would be taken to implement the legislation including the establishment of the necessary institutions. The Witness Protection Bill is yet to be implemented. Ensuring that witnesses enjoy a modicum of protection is crucial in the fight against torture. Only when victims and witnesses feel safe will they come forward and testify against state officials. At present the legal process is paralyzed by the absence of a witness protection scheme. The government should make good on its promise and actively lobby for the passing of this law.

## 1.5 (b) Basic Argument for the Elimination of Police Torture<sup>40</sup>

What does police torture mean?

If we were to ask this question, and then proceed to answer it, someone may ask in turn, “Wait, *how* do you know?” It would take us into realms of epistemology: “how do we know anything?”

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<sup>40</sup> An article by Basil Fernando; AHRC-STM-148-2012; July 22, 2012



Such a question been asked through the ages. And, one answer that has emerged in the last few centuries is that one *knows* by the collection and observation of data. Our age is symbolized by the images of the telescope and the microscope. And today, we answer questions about what something means through observation and analysis of data.

What about the data on torture?

This data is present in the actual stories of victims of torture. The approach of studying torture through the stories of victims differs from the study of mere statistics. Through stories accurately recorded, we can *know* what torture is, why it happens, and answer all other associated questions.

What does the *known* data on torture tell us? What it tells us is of the contradictions in our institutions. Observation and analysis of this data reveals to us the malfunctioning of institutions, which defeat the possibility of achieving rule of law. The study of torture thereby becomes a study of the basic structure of key institutions in our societies, and their peculiar defects.

The data garnered from the stories of victims reveals to us the utter stupidity of the way our major institutions function. It follows that torture is not simply a study of cruelty. Rather, it is more a study about the stupidity that has become a part of the way our institutions function.

Thus, asking a question like “what is the meaning of torture?” is like asking the meaning of pneumonia, malaria, or any other disease. Today, the methods of studying such diseases have been well-established. The same principles can be used to study the diseases that afflict our basic institutions.

Democracy, without functioning institutions, is a meaningless expression, an empty balloon floating through space. Democracy, if it is to be meaningful, is about functioning public institutions. The measure of well-functioning institutions is the way such institutions are capable of functioning under the rule of law. When a public institution is dysfunctional, from the point of view of rule of law, it means that such an institution has ceased to be an institution of democracy, and has transformed into something else.

In our societies, where police torture is widespread, what we are experiencing are public institutions which have become “something else.” This “something else” may have gone as far as totalitarianism, or it may be along the path to such an “ism”, but what we can be sure of is that such institutions have not only become non-democratic, they have become an obstacle to democracy.

In countries where there is widespread use of torture, there is also a belief, particularly among the leaders and operators of public institutions, that policing without torture is impossible. However, the opposite is a more direct reflection of reality. When torture is a widespread practice, policing, in its democratic sense, becomes impossible.

The above reflections are on the very basics of the discussions we have had yesterday.



As for AHRC, such discussions started almost fifteen years back. We have answered questions by stubbornly continuing with the methodology of studying torture via accurately recording stories of victims, day in and day out. Our documentation is testimony to the pursuit of finding-out the meaning of torture through such study of stories. Our maxim in our early days was "go from micro to macro", which meant "to know through individual stories of torture the problems of the basic structure of society."

When we know about these stories, the knowledge we have about the basic structure of our societies is explained in a very different way to what it is normally believed or declared to be.

This is why the study of the widespread practice of torture and the exposure of it is a vital part of undoing what is wrong with the basic structure of our societies. It is from this point of view that dealing with the issue of police torture becomes an unavoidable task for anyone who is committed to the pursuit of democracy in our societies.

Elimination of police torture is one of the most essential tasks in working towards democratization of our societies. It is a practical way of getting about undoing the institutional obstacles to democracy.

It is this approach that the Asian Human Rights Commission is presenting to the participants in this meeting. And, in particular, AHRC is asking the legislators to take this approach seriously in the strategies that they develop to fight for the establishment of democracy.

The elimination of torture and the enabling of the freedom of speech are inseparably linked. When the possibility of the practice of torture is reduced, if not fully eliminated, the psychological conditions for the freedom of speech are thereby created. And the core element of democracy is the freedom of speech. It is through the freedom of speech that we are able to get the views of many, if not all, and thereby develop a collective consciousness with the participation of all. Thus, in the development of civic sense and in the development of people's participation, the elimination of torture is an essential component.

## 1.5 (c) Torture Cases

### Narahrenpita Gamage Sisil Weerasinghe<sup>41</sup>

According to the information received by the Asian Human Rights Commission Mr. Narahrenpita Gamage Sisil Weerasinghe (48) is married, the father of two daughters and a retired soldier. Sisil, who resides at No: 212/1, Woodland Estate, Colombo Road, Chilaw is disabled as the result of injuries to the right leg and hand in a battle in July 1992. Following his partial recovery Sisil was removed from operational duties and given light duties. He retired from the service in 2007 and later worked as a private security guard attached to the Peoples Bank.

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<sup>41</sup> AHRC-UAC-003-2012; 19 January 2012





On December 30, 2011, he was working at the People's Bank branch, located at the Headquarters of Island Revenue Department, in Fort, Colombo. On this particular day, after completing his work, he was on his way home by bus. Then as he felt a stomachache he informed the conductor and asked him to stop the bus. He alighted from the bus and went nearby to the toilet after which he waited for another bus to continue to his home.

While he was waiting, a red colour three-wheeler came and stopped in front of him. Then the persons who were in police uniforms asked him what he was waiting at the roadside for at that time (by this time it was close to 10 pm). Then Sisil explained what had happened to him and told the officers that he is waiting for a bus. The police officers accused him of planning to commit a house breaking. Sisil explained to them that he was a former soldier of the Sri Lanka Army, that he was disabled and presently working at the Peoples Bank Security Section at the Island Revenue Department Branch. However, the officers did not accept his explanation, accused him of arguing with them and started to beat him with fists and boots. The officers then dragged him into the three-wheeler and brought him to the Wattala Police Station.

At the police station, again, three police officers, including a police officer who was later identified as Mr. Mahinda started to beat him with a cricket bat. Another officer beat him with a plastic pipe that had been filled with sand. Sisil was assaulted all over his body and pleaded with the officers not to beat him. He repeatedly explained that he was a disabled soldier but the officers did not listen. Even after Sisil fell to the ground the officers continued to beat Sisil mercilessly. Later they locked him in a cell.

As Sisil was suffering immense pain he pleaded with the officers to provide medicine. They then took him out from the cell and brought him before a doctor. Before he was brought to the doctor two officers held his arms while another officer forcefully poured liquor into his mouth. Sisil tried to resist but the officers forced him. Then he was brought before the doctor. Then Sisil explained to the doctor in the presence of the perpetrators how he was tortured in police custody. He further told the doctor that due to the assault one of his hands was fractured and that he was experiencing enormous pain. However, to his amazement the doctor ignored him and did not provide any treatment or medicine.

Later Sisil was returned to the police station and put back in the cell. When he started to scream with pain one of the officers gave him two tablets but he did not know what it was.



Later in the morning on 31 Sisil was asked to sign a document but he refused. He further explained that he cannot read without his spectacles. The officers told him that if he signed and pleaded guilty at court he could go home and get treatment. He then signed the document and was brought to the Wattala Magistrate's Court. The police officers who tortured him were present in the court and they stood close to Sisil while he was produced before the Magistrate. Sisil did as he was instructed and pleaded guilty. He later learned that he had been charged with indecent behaviour due to being inebriated. He was then fined Rs. 1,500. Sisil vehemently denies the accusation and states that as he was in severe pain and in fear of



further torture by the perpetrators who never once left his side. He therefore states that he had no option but to plead guilty to the charge.



Sisil went home and received treatment from a doctor. Though the doctor provided medicine, by 2 January, 2012, Sisil's condition worsened. He was admitted to the Chilaw Base Hospital for treatment by his family members. While he was treated at the hospital the doctors revealed to him that there is a fracture in his hand. The Judicial Medical Officer (JMO) examined him and recorded his situation. The officers attached to the Police Post of the Hospital

also recorded his statement. On January 4 he was discharged but he was asked to return to the clinic for further treatment.



Sisil states that he was illegally arrested, detained, severely tortured and maliciously prosecuted. He states that his fundamental rights were violated by the police officers attached to the Wattala Police Station.

After he was discharge from the hospital Sisil complained to the Human Rights Commission, Inspector General of Police, Attorney General, the Director of Special Investigation Unit (SIU) of the Criminal Investigation Department (CID) of Police, Senior Superintendent of Police of the Western Province (North) and the Officer-in-Charge (OIC) of the Wattala Police Station. To-date none of these authorities have responded to him nor investigated his complaint.

## JP Samson Kulatunga<sup>42</sup>



Mr. JP Samson Kulatunga (62) of No: 23, Ihala Haththiniya, Marawila in the Puttalam District, is a widower, the father of two sons and a retired fish trader by profession.

Mr. Kulatunga's wife died two years ago and his sons also left the home for their work; one went abroad and the other to another part of the country. As Mr. Kulatunga then lived alone he decided to sell his land and the house which he then advertised.

In front of Mr. Kulatunga's house there was an establishment that sold toddy and the owner expressed an interest in buying the land. Mr. Kulatunga offered the house and lot at the sum of Rs. 10 million and refused to consider anything less.

<sup>42</sup> AHRC-UAC-038-2012; 1 March 2012



Then, on 9 February, 2012, two persons in plain clothes forcefully entered during the day and started to search the premises. Mr. Kulatunga was lying on his bed at the time and demanded the identities of the persons. They replied that they were police officers from the Marawila Police Station. When he asked them where they were not in uniform and for their identity cards they started to beat him. They then accused Mr. Kulatunga of child molestation and keeping the stolen goods which he vehemently denied.

The men ordered Mr. Kulatunga to sell his house and lot to the owner of the toddy establishment as soon as possible. They then stole Rs. 15,000 which was on the top of the cupboard, sent to Mr. Kulatunga by his elder son for his medications and living expenses for the month. As the men were leaving, Mr. Kulatunga pleaded with them to return the money as it was all he had. However the two men ignored him and told him that they would return in a police jeep. Mr. Kulatunga noted that they were inebriated.

Just after the two men left the place Mr. Kulatunga informed the situation to his son, Sujith Sanjeeva Kumara, who came and made a complaint to the Assistant Superintendent of Police (ASP) Marawila. The ASP ordered him to bring Mr. Kulatunga to his office the next morning.

Accordingly Mr. Kulatunga and his son went to the ASP's office where they were kept waiting until 2 pm despite the fact that Mr. Kulatunga was in severe pain. Finally, the ASP listened to the complaint and called 10 police officers into the office. He asked Mr. Kulatunga to identify the two officers that tortured him and stole the money. Mr. Kulatunga positively identified the two officers and stated clearly all that they had done to him in front of all the other officers.

The ASP questioned Mr. Kulatunga and his son as to their intention and when told that they wanted justice he told them to settle the matter with the officers which he refused. The ASP told him that they would have to have another identification parade and on this occasion Mr. Kulatunga was able to produced two eye witnesses, Ms. Pradeepa Dilrukshi and Ms. Somawathi, to the ASP who has clearly able to testify that the police officers entered into the house.

Shortly after Mr. Kulatunga felt unwell and his son took him to the Marawila Base Hospital where he was admitted. The doctors and the police officers at Hospital Police Post recorded his statement and he was discharged on the 12<sup>th</sup>. The doctors instructed him to come back every week. Still Mr. Kulatunga suffers from the injuries that he suffered due to the torture inflicted on him.

Later again the ASP called Mr. Kulatunga's son and requested him to bring his father to settle the matter in his office. However, due to his medical condition he was not able to attend. Mr. Kulatunga states that the ASP is illegally suppressing his legal rights and trying to protect the perpetrators in this case. He further states that the officers acted on behalf of the toddy seller, no doubt for some sort of advantage<sup>43</sup>.

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<sup>43</sup> The victim narrated the way in which he was tortured in Sinhala Language in the video below.  
<http://www.youtube.com/watch?v=--hpDu5PzgQ&feature=youtu.be>

## K. A. Somarathna<sup>44</sup>



According to information that the Asian Human Rights Commission (AHRC) has received, Mr. K.A. Somarathna (48), of Madurankuliya, Aamakuliya in the Puttalam District was severely tortured by two police officers and was placed in jail for a crime that he did not commit.

Mr. Somarathna is married, and a businessman by profession. On January 22, 2012, a few policemen and civilians traveling by lorry took a water pump and several other goods that Mr. Somarathna had kept at his new business construction site in Sembatta, Mundalama. Since Mr. Somarathna was out of town when the theft took place, he was unable to file a complaint with the Senior Superintendent of Police (SSP) Puttalam against the police officers who had stolen his goods until January 25.

On January 27, a police officer named Priyantha of the Traffic Branch of Mundalama Police Station took Mr. Somarathna to Muddalama Police Station, reportedly to record a statement based on the complaint he had made at the SSP's office. When Mr. Somarathna entered Mundalama Police Station, Officer Priyantha took his wallet from him. He took him to the back of the police station building, where the Officer-in-Charge (OIC) was waiting. Without asking him any questions, the OIC pulled his hair and kicked him in the stomach. He was beaten severely, and his head was dashed against the station wall. Even after Mr. Somarathna fell to the floor, the abuse continued.

Mr. Somarathna fell unconscious as the result of this beating. When he regained consciousness, he found himself inside a jail cell. Despite his cries for help, he was not given food, water or medical treatment for his extensive injuries. When his relatives tried to visit, police officers refused to allow them to meet with him. His family members reported that they could see Mr. Somarathna inside the jail cell; they said that he was lying down and appeared unable to stand.

According to information that AHRC has received, the OIC threatened Mr. Somarathna and his family; they said that if they persisted with their complaint to the SSP, Mr. Somarathna would be abducted in a white van and forcefully disappeared. At around 10am the next day, Mr. Somarathna was taken to Mundalama Government Hospital in a police jeep. He was unable to walk as the result of his extensive injuries. Since he was unable to go inside the hospital, a doctor issued a medical report without examining Mr. Somarathna.

A few days later, the police produced Mr. Somarathna before the Additional Magistrate of Puttalam on the charge that he illegally acquired water for personal use from the public water supply. Mr. Somarathna vehemently denied this accusation. When he was standing before the Magistrate, Mr. Somarathna explained that he had been subjected to physical abuse by the police. Despite this, the Magistrate sent Mr.

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<sup>44</sup> AHRC-UAC-108-2012; 22 June 2012





Somarathna to remand prison for 14 days. Mr. Somarathna told the prison guards at the remand prison that he had been beaten and was in great physical pain. His injuries were examined, and the prison guards admitted him to the prison hospital. While he received treatment at the prison hospital, Mr. Somarathna bled while urinating. After completing his 14-day sentence, Mr. Somarathna was held in remand for another 7 days, and finally released on bail.

On February 16<sup>th</sup>, Mr. Somarathna was admitted to Puttalam Base Hospital for further treatment. Despite his deteriorating condition and the fact that he had not given consent, he was discharged on February 18<sup>th</sup>. Mr. Somarathna believes that he was discharged by the hospital authorities under the instruction of the police officers. Since he was still experiencing pain, he checked himself in to Ragama Teaching Hospital and underwent treatment. He is still experiencing pain from his extensive injuries, and is unable to take care of himself without assistance. Mr. Somarathna's family maintains that since Mr. Somarathna was in good health before these incidents, his deplorable health is the direct result of the abuse he experienced at the hands of the police.

Mr. Somarathna filed a complaint with the Human Rights Commission of Sri Lanka (HRCSL). However, neither the SSP nor the HRC have initiated a credible investigation into the violation of his rights. Mr. Somarathna believes that his rights enshrined in the Constitution of Sri Lanka have been violated and he seeks an impartial investigation to bring the perpetrators of this crime to justice.

## Thusitha Ratnayake<sup>45</sup>

According to information that the Asian Human Rights Commission has received, Mr. Thusitha Ratnayake (37) of 4th Yaya, Rajanganaya in the Anuradhapura District, was illegally arrested, detained and tortured for a crime that he did not commit.

Mr. Ratnayake is married and works as a mason. On May 21, 2012, at about 2 am, while Mr. Ratnayake was sleeping at home, his friends Priyantha, Wasantha and Baby, visited his residence and woke him up to tell him that the house of their mutual friend, Chandrasiri, had been burgled, and Chandrasiri's wife's necklace had been stolen.

The four friends went to Chandrasiri's house, where several neighbours were waiting outside for the police to arrive. At 2:30 am, police officers from the Thambuththegama Police Station arrived. Shortly after this, Mr. Ratnayake's brother, Rasika, telephoned Mr. Ratnayake to inform him that police officers had visited his home looking for him; they suspected that he was the culprit of the robbery. Rasika urged his brother to talk to Chandrasiri and visit the police station, fearing that would be assaulted if he did not speak to the police.

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<sup>45</sup> AHRC-UAC-112-2012; 28 June 2012



The police telephoned Mr. Ratnayake several times and told him to hand over the necklace he had stolen. Mr. Ratnayake spoke with Chandrasiri on the phone, who told him to go to the police station and make a statement without fear of assault; Chandrasiri knew he was innocent. But Mr. Ratnayake was afraid; he had been told that the police had questioned several individuals regarding the robbery and during questioning, some of those people had been assaulted. Mr. Ratnayake maintained his innocence to the police officers; he said that he would visit the police station on the condition that he would not be assaulted. Since the police officers did not agree to this condition, Mr. Ratnayake did not go to the police station.

On May 28, at around 1:30 pm, Sergeant Ranbanda and Officer Gunawardena arrested Mr. Ratnayake at 4<sup>th</sup> Yaya School Junction. They took him to the police station on their motorcycle. Sergeant Ranbanda and Officer Gunawardena took Mr. Ratnayake to the yard behind the police station, removed his shirt and blind-folded him. They tied both his hands and legs together, and inserted a wooden pole between his legs. They continued to brutally assault Mr. Ratnayake for over one and a half hours. During the course of his assault, Sergeant Ranbanda spoke with someone on the telephone and told the person he was speaking to that Mr. Ratnayake had been arrested. He then called Officer Wilegoda and repeated the same information to him.

Sergeant Ranbanda and Officer Gunawardena made Mr. Ratnayake stand on a chair attached a rope from the ceiling rafter to his body. They kicked the chair from beneath him so that Mr. Ratnayake was hanging from the ceiling. From this position, they assaulted him, beating his spinal cord, legs and heels.

At about 4:30 pm, they untied Mr. Ratnayake and took him into another room where they hand-cuffed him to a bed. At about 7:30 pm, they took Mr. Ratnayake inside the police station and told him that they had received information that he is a good person, and was therefore going to be released on bail. At about 9:30 pm, the police allowed Mr. Ratnayake to wear his clothes and eat a meal. Although Mr. Ratnayake asked for water on several occasions, his requests were refused.

On May 29<sup>th</sup>, Mr. Ratnayake's brother, sister and wife came to the police station to visit Mr. Ratnayake. The police officers instructed Mr. Ratnayake not to tell his family that he had been assaulted. They threatened him, saying that if he did tell the truth of the assault, they would not permit him to leave.

Later that day, at about 12:30 pm, Mr. Ratnayake was released. His friend took him to Thambutthegama Government Hospital. He was examined by a doctor and kept in the hospital for treatment from May 29<sup>th</sup> to May 31<sup>st</sup>.

Mr. Ratnayake is still experiencing pain. He is unable to work and cope with basic, daily tasks.

He has filed a complaint with the Human Rights Commission of Sri Lanka, the Inspector General of Police (IGP), Deputy Inspector General (DIG) North Central Province, and Headquarters Inspector of Police of Thabuthegama Police Station. None of these authorities have initiated a credible, impartial



investigation into the abuse he suffered at the hands of state agents, and the blatant violation of his basic rights. Mr. Ratnayake seeks justice.

## **J A Susantha Kumara Jayasinghe<sup>46</sup>**

According to information the Asian Human Rights Commission has received, Mr. JA Susantha Kumara Jayasinghe of No: 33, Pambadeniya, Panvilathenna, Gampola in Kandy District, an agricultural labourer, was assaulted by police officers from the Gampola Police Station without any established reason.

On May 28, 2012, at around 10:30 am, three police officers from the Gampola Police Station dressed in civilian clothes came to Mr. Jayasinghe's residence. Without showing Mr. Jayasinghe a legal warrant or otherwise explaining why they were there, the police officers began to assault Mr. Jayasinghe. His right leg was broken during the assault.

Mr. Jayasinghe's sister witnessed part of the assault, and pleaded with the officers to tell her why they were assaulting her brother, and to release him. The police officers refused her requests. The police officers did not bring Mr. Jayasinghe to the local police station to file a case against him, and Mr. Jayasinghe and his family remains unaware of the reason for his assault. Mr. Jayasinghe's mother and sister brought Mr. Jayasinghe to Gampola Government Hospital, where he was admitted for treatment. He was later transferred to Kandy Teaching Hospital for surgery on his right leg.

Mr. Jayasinghe's family has filed a complaint to the Sri Lanka Human Rights Commission (HRCSL), National Police Commission (NPC) and the Deputy Inspector General's office in Kandy (DIG, Central Province). However, these authorities have yet to launch a credible and impartial investigation into the cause of his assault, and they have failed to offer Mr. Jayasinghe rehabilitation for his extensive injuries. Mr. Jayasinghe and his family are seeking justice; they demand that Mr. Jayasinghe's rights enshrined in the Constitution of Sri Lanka be immediately upheld.

## **WA Pramal Meheran<sup>47</sup>**



According to information that the Asian Human Rights Commission has received, Mr. WA Pramal Meheran (29) of No:141/2 ,4<sup>th</sup> Yaya, Rajanganaya was arbitrarily arrested, detained and tortured for a crime that he did not commit. Mr. Meheran is married, and is the father of two children.

On 28 May 2012, at about 4am while Mr. Meheran was asleep, Officer Willegoda and Officer Dissanayake of the Thambuththegama Police Station came into Mr. Meheran's

<sup>46</sup> AHRC-UAC-114-2012; 29 June 2012

<sup>47</sup> AHRC-UAC-117-2012; 03 July 2012



residence, woke him up and ordered him to come with them in their police jeep to the house of Chandrasiri, a neighbour who had recently been burgled. When they arrived at the house, Officer Willegoda put a pistol into Mr. Meheran's mouth and demanded that he tell him where he had hidden the stolen necklace. Mr. Meheran told him that he did not know anything about the stolen necklace. Officer Willegoda pointed to Mrs. Chandrasiri and said "that woman says you stole her necklace."

Inspector Laxman of the Thambuththegama Police Station made Mr. Meheran bend over and slapped him on his back and demanded to know who had the necklace. He asked "is it with you or Thusitha?" When Mr. Meheran insisted that he was innocent, Officer Willegoda said "this will not do. We should give him some more work and see what he says."

After the police officers searched Mr. Chandrasiri's house, at about 11:30 am, they brought Mr. Meheran to the Thambuththegama Police Station and locked him in a jail cell. After ten minutes in the cell, Mr. Meheran was taken out of the cell and hand-cuffed. Officer Willegoda and Officer Dissanayake brought Mr. Meheran to a back room. They shouted "tell us the truth, or we will not let you go home or see your children." Despite Mr. Meheran's insistence of his innocence, the police officers tied his hands and legs and together inserted a wooden pole between his legs. They hung Mr. Meheran from a ceiling beam and beat him severely on his heels, thighs and backside with a cricket bat, shouting "where is the necklace?" After this, the officers placed a book on Mr. Meheran's head and beat the book. Shortly after this started, Mr. Meheran fainted. When he came to, he was on the floor with his hands and legs tied. He asked for some water, and the officers poured a few drops of water into his mouth and then hung him from the ceiling again and continued to beat him with a rubber hose.

Mr. Meheran was eventually untied and returned to the jail cell. Despite numerous visitation requests from his family, he was not permitted to meet with his wife, children or other relatives. The next morning, at around 9 am, the officers recorded a statement from Mr. Meheran. At about 11:30 am, he was taken to Thambuththegama Government Hospital in the police jeep. During the journey, the officers told Mr. Meheran that if he spoke to anyone about the torture he suffered, the police would prevent him from being released on bail. They said they would accuse him of possessing drugs or a bomb. As such, Mr. Meheran did not reveal what had happened to the doctor who examined him.

Mr. Meheran was produced before Nochchiyagama Magistrate's Courts on the accusation of stealing a necklace. The police refused to grant bail, and Mr. Meheran was in remand prison until June 1<sup>st</sup>. On June 1<sup>st</sup>, Mr. Meheran was produced before the Magistrate and granted bail. Later that day, he was admitted to the Thambuththegama Government Hospital, for treatment of his injuries. After a medical examination, Mr. Meheran was transferred to Anuradhapura Teaching Hospital. He was admitted to ward 11, then to ward 14, and was discharged on June 4<sup>th</sup>.

Although Mr. Meheran has returned home, he is unable to do any work, as he continues to suffer from his injuries. His legs and arms are numb and he suffers from severe migraines. Since Mr. Meheran is unable to work, his entire family is suffering, particularly his child who requires medical treatment for a kidney problem.



Mr. Pramal has filed a complaint with the Human Rights Commission of Sri Lanka, the Inspector General of Police (IGP), Deputy Inspector General (DIG) North Central Province, and Headquarters Inspector of Police of Thabuththegama Police Station. None of these authorities have initiated a credible, impartial investigation into the abuse he suffered at the hands of state agents, and the blatant violation of his basic rights. Mr. Pramal seeks justice and the protection of his rights enshrined in the Constitution of Sri Lanka.

## **R M Chamara<sup>48</sup> (name changed for privacy and security purposes)**

According to information that the Asian Human Rights Commission (AHRC) has received, Mr. R M Chamara of C/o R M Karunawathie, Periyamadu, Andigama in Puttalam District was physically and sexually assaulted by a group of intoxicated police officers for a crime that he did not commit. Mr. Chamara is 17-years old and is in training to be a motor mechanic.

On May 27, 2012 at about 7 pm, Mr. Chamara's neighbour, Mr, Asoka, along with one of Mr. Asoka's relatives, visited Mr. Chamara to tell him that they could not find several pieces of jewelry (total worth Rs. 10,000) and believed that Mr. Chamara had stolen the items. Mr. Chamara denied the allegation, and his father spoke further to Asoka and his relative on Mr. Chamara's behalf.

On May 28<sup>th</sup>, at about 9 am, Police Officer Jayapathma (41510) of Pallama Police Station visited Mr. Chamara's home and recorded a statement regarding the theft. Later that day, at around 7:30 pm, ten officers dressed in civilian clothes from Pallama Police Station visited Mr. Chamara's residence. Three of the officers arrested Mr. Chamara. As they led Mr. Chamara away from his home, one of the officers (who shall be referred to as Officer X and can be identified by the victim through an Identification Parade) put his hand around Mr. Chamara's neck and said "I have a son like you. If you tell us the truth, we will release you now." However, Mr. Chamara maintained his innocence. The officers took him to the Pallama Police Station.

On the way to the police station, the officers stopped to buy beer at a liquor shop, where another officer from Pallama Police Station was waiting on his motorcycle. According to Mr. Chamara, Officer X told the officer on the motorcycle to keep ropes, a pole and a bottle of petrol ready at the station. Officer X asked Mr. Chamara about the stolen items again, and Mr. Chamara, once again, maintained his innocence. Officer X responded that he would make him vomit the stolen items.

Mr. Chamara was taken inside the police compound by several officers who were consuming alcohol, and was told to sit on the bed. They again asked him to tell them the truth, and threatened to hang him from a ceiling beam if he did not comply. When Mr. Chamara insisted that he was innocent, Officer X removed Mr. Chamara's clothes, and tied his hands together with his sarong. He then used wooden poles to hang Mr. Chamara across two chairs. Even though Mr. Chamara pleaded for them to release him and maintained his innocence, the officers hit his heels, shoulders, backside and ears. Then, a police officer

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<sup>48</sup> AHRC-UAC-121-2012; 04 July 2012



inserted the empty bottle of alcohol into Mr. Chamara's rectum. They officers tried to pour petrol into Mr. Chamara's rectum, but were dissuaded from doing so by Officer Jayapathma, who said that he knew Mr. Chamara's aunt.

Mr. Chamara's aunt and another relative tried to visit him at the police station that evening, but were turned away. According to information AHRC has received, Officer Jayapathma assured Mr. Chamara's aunt that he would not be tortured. After Mr. Chamara's relatives had left, the police officers ordered Mr. Chamara to do exercises. However, due to the severity of his injuries, Mr. Chamara was unable to do the exercises. He was unable to sleep, or even lie on the ground, due to the extent of his injuries.

On May 29<sup>th</sup> at about 7:30 am, Mr. Chamara was taken back to the room in which he was tortured, and was hand-cuffed to the bed. At around 10 am, Mr. Chamara's parents and aunt visited the police station, and this time, the officers permitted them to see their son. Mr. Chamara told his family that he had been hung up and brutally assaulted for a crime that he did not commit. Despite his family's requests, the police officers did not release Mr. Chamaraa.

On May 30<sup>th</sup>, one of the police officers who had tortured Mr. Chamara wrote a statement on a piece of paper and told Mr. Chamara to sign it. The officer did not read the document to him, nor did he allow him to read it. Due to fear of further abuse, Mr. Chamara signed the document.

Later that day, Mr. Chamara was produced before the Puttalam Magistrate Court. He was accused of stealing his neighbours' jewelry and was remanded for seven days. He was released on bail on the seventh day. Shortly after he was released, Mr. Chamara was admitted to Chilaw Basic Hospital for medical treatment of his injuries. He has not fully recovered as yet.

Mr. Chamara's family has filed an official complaint with the Human Rights Commission of Sri Lanka (HRCSL) and the Inspector General of Police (IGP). None of these authorities have initiated a credible, impartial investigation into the abuse Mr. Chamara suffered abuse at the hands of state agents, which constitutes a blatant violation of his basic rights. Mr. Chamara and his family seek justice for the crimes committed against him. They call for his rights enshrined in the Constitution of Sri Lanka to be upheld.

## **Yapa Mudiyanseelage Chaminda Priyashantha<sup>49</sup>**

According to information the Asian Human Rights Commission has received, Mr. Yapa Mudiyanseelage Chaminda Priyashantha (35) of No: 83 Watthe, Bandaranayakapura, Vanathavilluwa in Puttalam District was brutally assaulted in front of a roomful of people by the OIC of Vanathavilluwa Police Station for a crime that he did not commit.

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<sup>49</sup> AHRC-UAC-122-2012; 5 July 2012





Mr. Priyashantha is married with one child. He works as a Caterpillar Machine Operator in Vanathavilluwa Gampaha in Puttalam. On 17 March 2012, Mr. Priyashantha visited a friend, Jayantha, at Jayantha's residence after he had finished work. Mr. Priyashantha and Jayantha went with their families to see a musical show at 16 Miles Stone, in which Mr. Priyashantha and Jayantha's daughter were performing a song.

After the show, the two families returned to Jayantha's residence, and at about 1:30 am, Mr. Priyashantha and his family arrived home. The next day, Jayantha told Mr. Priyashantha that he had heard that there had been a dispute between a group of people from Puliyankulama and 16 Mile Stone at the musical show.

On 20 March at about 10:30 am, Mr. Priyashantha was working when he received a call from someone who identified himself as Gihan. Gihan said that he was calling from the local police station about the dispute that occurred at the musical show. He went on to say that the Officer in Charge (OIC) at the Vanathavilluwa Police Station had called Mr. Priyashantha in for questioning, and that he should come to the police station immediately with his friend, Rahula. When Mr. Priyashantha asked why he was being called in for questioning, Gihan said that one of the parties involved in the dispute had said that Mr. Priyashantha incited the dispute and ensuing assault.

Mr. Priyashantha and Rahula went to the police station with their friend, Dilanka. They arrived at the police station and were sitting on a bench waiting for an officer to attend to them when a woman who was later identified as Mrs. Kaluwa, pointed to Mr. Priyashantha and said that he had encouraged people to beat their children. Mr. Priyashantha denied this allegation, and said that he was with his friends and family at the musical show, supporting his daughter.

The officers called Mr. Priyashantha, Rahula and Dilanka into a room in which the OIC, Gihan, Mrs. Kaluwa and several other police officers were waiting. The OIC asked Gihan to explain why Mr. Priyashantha was present, and in response, Mrs. Kaluwa cried and told the officers that Mr. Priyashantha had bribed a number of people with drugs and alcohol, and urged them to beat their children. The OIC then began to beat Mr. Priyashantha in front of the others in the room. Mr. Priyashantha insisted that he was innocent of the crime which he had been accused of, but the OIC continued to beat him. The OIC then told the police officers to put Mr. Priyashantha, Kanishka and Rahula in a jail cell. After about two hours, the three men were released from the cell and taken to the complaint desk. There, they met Gihan and his associates, who said that they did not want the case to go to court, and would like to settle the case. Mr. Priyashantha recorded and signed a statement and they left.

Mr. Priyashantha has categorically stated that he has never been engaged in any illegal activity. He said that he was not questioned about the incident by police officers at any time. He said that he did not know who



Mrs. Kaluwa was. He believes that he was publicly assaulted to fulfill the whim of an unknown third party. Rather than investigating the dispute using procedural legal provisions, he was tortured.

As the result of the assault, Mr. Priyashantha experienced pain in his head, ears and legs, and found it difficult to carry out his daily work as normal. On one occasion, he fainted. He was admitted to Ward No. 3 of Maravila Government Hospital for treatment of his injuries. The hospital police recorded Mr. Priyashantha's statement on 23 March, and he was discharged on 24 March. He was told to visit the clinic at Chilaw Basic Hospital for treatment of his earache, and a clinic at Maravila Government Hospital for further treatment.

Mr. Priyashantha has filed a complaint with the Human Rights Commission of Sri Lanka (HRCSL), and the National Police Commission (NPC) regarding the fundamental violation of his rights by the OIC of the Vanathavilluwa Police Station. However, neither the HRCSL nor the NPC has taken any step to instigate a credible, impartial investigation process so as to prosecute the perpetrators of this crime and bring the police officers to justice. Chaminda seeks redress of the gross violation of his rights enshrined in the Constitution of Sri Lanka.

## **Don Prasanna Dilrukshana Aquinas Mallawaarachchi<sup>50</sup>**

Mr. Don Prasanna Dilrukshana Aquinas Mallawaarachchi (22) of No: 721/S /3, 30<sup>th</sup> Lane, Pubudugama, Uswattakeiyawa in Pamunugama Police Division in Gampaha District, is a bachelor and three-wheeler driver by profession.

On August 6, 2012, in the early morning, Prasanna received a telephone call from a person who he identified as a police officer attached to the Pamunugama Police Station who informed him that they needed Prasanna to appear before the police that day. Prassana went to the Pamunugama Police Station at 10.30 am with his mother Kanugalawattage Prasida Nirmale Perera. When they entered the police station a police officer on duty started to shout at them using obscene language. Prasanna was accused of having an extra-marital relationship with a married woman, which he denied. Prior to entering the police station he observed that several people were also waiting there. He identified them as villagers, Ms. Nirasha, her mother Kumudu, her husband, her husband's mother all residing at 6th Lane of Pubudugama in same village. Prasanna was aware that they had been living together out of wedlock for the past few days.

A few moments later, Inspector of Police (IP) Priyantha approached them and also started to shout at Prasanna and her mother. He also accused Prasanna of having an extra-marital relationship with a woman, which again Prasanna denied. However, IP Priyantha continued to verbally abuse Prasanna and his mother. Then IP Priyantha called a lady called Nirasha who was also waiting at the station and started to blame her. She was threatened and questioned as to whether she is having a relationship with Prasanna. She became frightened and was unable to answer.

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<sup>50</sup> AHRC-UAC-141-2012; 13 August 2012



Then IP Priyantha, after observing that Nirasha apparently refused to answer, ordered a police officer to bring a cane. Accordingly, the officer brought a cane from the inside of the police station which was about 3 feet long with a circumference of 3/4 of inches. IP Piyanath then started to beat Nirasha on her buttocks, back, hands and legs while threatening her with obscene language. Despite seeing this illegal abuse and torture by an officer of the state Nirasha's husband and mother did not intervene.

IP Priyantha ordered Prasanna to come to the scene and observed the way in which Nirasha was beaten. Prasanna told the officer, "Sir, do not hit her". Upon hearing this IP Piyanath started to beat Prasanna about his head, face and other parts of his body with his fists.

As a result of beating and severe torture, Nirasha fainted and fell to the floor. When Prasanna tried to lift her and seat her on a chair, IP Piyanath kicked his waist at which Prasanna also fell to the floor. IP Priyantha then continued to beat and kick Prasanna brutally. Despite his pleading with the officer IP Priyantha did not stop. At the same time Prasanna observed that Nirasha fainted several times.

On observing her son being beaten by the police officer, Prasanna's mother pleaded with the officer to stop. She told the officer that her son never had any relationship with that woman. Then IP Priyantha started to beat the mother with his fists before chasing her away from the place. Prasanna's mother then tried to make a call to her younger son to inform him about incident but IP Piyanath ordered an officer to take away her phone. She was then prevented from leaving by going away. In an attempt to save the phone she put it under her blouse but a female police officer put her hand inside her clothing and grabbed it from her. She then gave the phone to IP Piyanatha. IP Piyanath told a police officer, "You must do what I tell you. You must send them to the prison by putting 20 heroin packets each to two of them".

Thereafter, Prasanna was released by the police officers and his mother brought him first to the home. However, as Prasanna fell ill during the night due to the torture and the wounds caused by torture his mother on the following day on 7 August took him to the Ragama Teaching Hospital where he was admitted for treatment. Then he had to make a statement to the Hospital Police Post at Teaching Hospital of Ragama explaining how he was severely tortured at the Pamunugama Police Station by the police officers including IP Piyanath. He is still undergoing treatment at the Ragama Hospital as in indoor patient in Ward No: 5 at bed No: 13.

Prasanna state that he has not committed any crime under the law of the country. He further states that he was forcefully arrested and detained at the police station. Further he was punished for a crime he has never committed and tortured in front of several people. He states that his fundamental rights guaranteed by the Constitution were violated by the police officers attached to the Pamunuwa Police Station. Prasanna further states that he still do not know whether police have filed a fabricated charge against him for possession of illegal drugs as they threatened to do so against him and his mother. He is presently in fear of facing illegal prosecution. No investigation has yet been initiated against the torturing and illegal arrest and detention in police custody. Prasanna seeks justice against the fundamental rights violations by the police officers.



## Dadallage Ajith Kusumsiri<sup>51</sup>

Mr. Dadallage Ajith Kusumsiri (38) of No.113/1, Sriya Niwasa, Kandakatiya Aluth Para, Ratmalwala, Tangalla in Hambantota District is married and the father of one child. He is labourer and works in the brick-making industry in the area. On the July 6, 2012, at about 5.30 am in the morning one Shantha living in the village of Kailawelpotawa, came to Ajith's house and asked him whether anyone gave him a water pump. Ajith said no.

He argued with Ajith and then left the place. Again at about 8:00 am same day, he came with another two or three persons carrying wooden poles and threatened Ajith. Then and there Ajith telephoned Police Emergency Unit 119 and made a complaint. Shantha and his companions then left. After some time they came again and threatened Ajith.



At about 1.30 pm in the afternoon, two police officers from Middeniya Police Station arrived at Ajith's house. On their instructions, Ajith went to Middeniya Police Station and lodged a complaint regarding the incident.

Following day, July 8, 2012, Ajith went to the police to face the inquiry; the above mentioned Shantha too was there. Shantha admitted his fault, and the case was solved. Shantha was asked to leave the police station, but Ajith was asked to remain as two officers from Angunapalassa, would come to take down a statement from him. At about 10.30 am Officer in Charge (OIC) and two sergeants from Angunapalassa

Police Station arrived and arrested him.

When he asked for the reason for arresting him the OIC said that "You will know when you go to the police station". Then they made Ajith sit on the floor of the jeep and pushed his head under the seat. They took him to Angunukolapalassa Police Station where they brought Ajith to the office of the OIC. Then Ajith noted that Shantha too was there. The OIC asked Ajith that "some time back you blamed some innocent persons of robbing your house?" He further said, "Your case will be on the 31 of this month", and asked, "Whom do you think will go inside?" Ajith replied, "Kuruvita Ruwan". This was due to the police investigation, and according to the information that police officers provided him earlier. Then the OIC said, "Not Kuruvita Ruwan, you will go to jail". The OIC started to slap Ajith across the mouth three or four times, breaking three teeth. The OIC further asked Shantha, "What did this fellow rob from you?" Shantha replied, "Goods worth of about three hundred thousand." Ajith then told the OIC that "Shantha is lying, this morning there was an inquiry at the Middeniya Police Station, there Shantha admitted his fault and the case was settled". But the OIC was not ready to listen to Ajith, and continued assaulting him. Ajith fainted. When he came to he found himself inside a cell, in darkness.

<sup>51</sup> AHRC-UAG-142-2012; 13 August 2012





After some time, two police sergeants, whom Ajith noted were clearly intoxicated, came to the cell and tied Ajith's hands with a rope and tried to hang him. They then removed all his belongings which they took into custody. That moment one police officer, who lives in Ajith's village, named Ranasinghe, came onto the scene and shouted at the police officer, "Don't hang him", and rescued him. He gave Ajith some water to drink and poured water over his body too.

Ajith did not know either the full name of officer Ranasinghe, or the names of the two sergeants. The OIC asked Ajith whether he knows of a lonely house at Kailawalpotawa. When Ajith replied that he did not. Then the OIC said to the two sergeants: "Release this fucker".

The two sergeants took him out of the cell and made him sit on a chair and told him "we are going to file a case against you accusing you of possessing two kilograms of ganja (Cannabis) and also accusing you that that you are selling ganja through your 17 year old son". Ajith pleaded the officer not to drag his son into this matter. The officer then asked him if he had any money. If yes, they can consider releasing him. They told him that "if you have money we can save you". And that 'we will charge you for some ganja and you can pay about Rs.2,000 as a fine and get away free".

Ajith answered, "Do not send me to jail; I will give you some money." The officer demanded Rs.15,000, but Ajith told him, "I do not have that amount of money. I can give about Rs.12,000". This amount he agreed to. The officer then took Rs. 200 from Ajith's wallet and put in some ganja and made a false charge, and then he told Ajith that "when you go in front of the Magistrate don't say we assaulted you. If you ever reveal it to anyone you will not come out. When you are produced before the Magistrate you should plead guilty." Ajith agreed to all as he was in fear of further torture. Ajith was not handed over any of the things which were with him at the time of arrest, at any time.

On July 9<sup>th</sup>, at about 3 pm, Ajith was presented at Angunapalassa Magistrate's Courts, where he pleaded guilty and he was fined Rs.2000. Even at that time Ajith's "PET" card (ATM card issued by the People's Bank of Sri Lanka) and the mobile phone were with the sergeant. After Ajith came out of court compound, one of the sergeants who tortured him approached him and took him to the Branch of the People's Bank in the town and gave his "PET" card and the mobile phone back. He was forced to withdraw Rs.12000 and give it to the sergeant. Out of fear, he complied.

On July 10<sup>th</sup>, Ajith went to Middeniya Police Station to make a complaint regarding the incident. But the officers on duty did not record the complaint. Ajith informed them that he wanted to make a complaint about the assault and the fabricated charges for illegal possession of ganja.

Again, on the same day, Ajith went to the office of Namal Rajapakse, the Member of Parliament of the District of Hambantota at Beliatta, and made a complaint.

All these complaints were in vain. Ajith was so depressed and in mental agony that, on the 13 July 2012, at about 7.30am in the morning, he climbed on to the roof of Middeniya Bus Stand and started a peaceful "fast unto to death" demonstration. At about 8.30 am Superintendent of Police (SP), of Tangalle, Balagalle, and Officer Mr. Mahesh, from the coordinating office of MP Namal Rajapakse, arrived at the



scene and had a discussion with Ajith. They promised to hold an inquiry, and do justice. On their assurance, Ajith decided to give up the fast.

Later, Ajith complained to Human Rights Commission of Sri Lanka (HRCSL) regarding the violation of his rights. On July 10, 2012 he made a verbal complaint at Middeniya Police Station. On July 18, 2012, written complaints were sent to Inspector General of Police (IGP), Deputy Inspector General of Police (DIG) Southern Province, National Police Commission (NPC) and the Attorney General (AG).

But, the authorities concern has failed to grant him justice. Ajith states that all he can do is start another "fast unto death". He further said that most probably it would be in front of President's private residence, 'Carlton' at Thangalle. He has stated that none of the law enforcement agencies in the country have provided justice for the violation of his rights.

## G R Sampath Prasanna Piyadasa<sup>52</sup>



Mr. G R Sampath Prasanna Piyadasa (37) resides at No: 114, Ihala Owala, Kaikawela, Rattota in Matale District and is a three-wheeler driver by profession. Sampath was able to purchase his three-wheeler after his wife went to Middle East as a migrant worker and returned from there with the money she earned. The couple has three children.

Sampath used to park his three-wheeler at the park designated for three-wheelers close to the Kaikawela Divisional Secretariats Office, where he waited for passengers.

On June 3<sup>rd</sup>, 2012, at around 9.30 pm Sampath was called for a hire by a person by the name of Pradeep Sarath Kumara who wanted to go to Kaikawela from Rattota in Matale. As Sampath was moving-off a lorry blocked their way and Pradeep requested the driver to move to a siding and this led to a small dispute.

However, as they took off in the three-wheeler and were proceeding to Kaikawela they noticed that a van was following them. Then a little while later they also noticed a motor cycle following them along with the van. Fearing the van and the motor cyclist, Sampath was asked by Pradeep to stop the three-wheeler in a house compound nearby for safety. As the three wheeler stopped Pradeep alighted and ran away, telling Sampath to run for safety as well.

Sampath, however, climbed the hill behind the house where the three-wheeler was parked and from his hiding place watched what was happening to his vehicle. The mob of around seven men, who alighted from the van and the motor cycle, smashed the three-wheeler with poles while calling for Pradeep.

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<sup>52</sup> AHRC-UAC-151-2012; 29 August 2012



In the meantime Sampath called his wife Nilanthi Kumari from his mobile phone and informed her about the incident. In turn, she called 119 (the emergency number) and made a complaint to the police but the police officers asked her to make a Written Complaint at the Rattota Police Station to initiate proceedings.

When Sampath came home, he went along with his wife to the Rattota Police Station. When he entered into the police station the officers on duty informed them that the police station has received a phone call believed to be from a person who identified himself as Musamil about the same incident, accusing Sampath of stealing a bag of cinnamon.

Hence, Sampath and his wife were treated rudely by the police officers and they were not allowed to make a complaint. Instead, Sampath was locked up in the police cell and was severely beaten by several police officers. Later the police officers visited the scene and found that the badly damaged three wheeler that had been thrown into a nearby river. Sampath was detained in the police station for two days from June 3<sup>rd</sup> to June 5<sup>th</sup>. Later, a statement was recorded from Nilanthi at around 5.30 am on June 4<sup>th</sup>, 2012.

Then the police officers forced Sampath to place his signature on several documents, which Sampath refused. When the officers threatened him with further torture, Sampath finally agreed to sign them out of fear. Sampath categorically states that those documents did not contain anything recorded from him. He further states that he was never shown the content of the documents.

The police produced Sampath before the Magistrate of Matale at 1.30 pm on June 5<sup>th</sup>. The case which the police filed against him is numbered B/ 907/12. He was released on bail. At the Magistrate's Court he learned that the police accused him of engaging in a theft, which he denied before the Magistrate. Sampath was able to identify the three police officers, who were involved in torturing him as, Wasantha, Weerasinghe and Hennanayake – all attached to the Rattota Police Station.

Sampath later learned that police officers were bribed by a very rich estate owner named of Musamil, who suspected Sampath of stealing of some cinnamon. Sampath states that he has never stolen anything and does not know Musamand is unaware of any of his properties. Sampath states that Musamil and the police officers illegally arrested, detained, severely tortured and filed fabricated charges against him baselessly. Sampath further states that there is no evidence against him. The police never revealed any complaint or explained any details which identified him as a person engaged with the theft.

Sampath states that police filed this fabricated charge to prevent him from proceeding with legal steps against the perpetrators who severely tortured him.

Sampath's wife, in the mean time, attempted to make a complaint at the Rattota Police Station regarding the torture by the police officers and damage to his three-wheeler by an unknown group of people. But her request was denied by the officers on duty.



Later, she complained to the Assistant Superintendent of Police (ASP) regarding the refusal of the officers at Rattota Police Station. Then, with the intervention of the ASP, she was allowed to register her complaint. However, the officers have not taken any steps to investigate any of these illegal activities of any of the parties. Sampath states that he is being denied justice.

## Sundaram Sathies Kumar<sup>53</sup>

Mr. Sundaram Sathies Kumar (34) of Kandy Road, Kodigamam, Jaffna, was a detainee under the prison authorities of Sri Lanka. As a result of severe torture suffered during his incarceration, Sundaram is in a critical condition and being treated at the National Hospital of Sri Lanka in Colombo (NHSL). He is presently in a coma and in danger of losing his life. Considering the immediate threat to his life AHRC is making this special appeal for urgent intervention to provide the necessary prompt and essential medical assistance and protection for his security.

Sundaram was a businessman when he was arrested by the military officials attached to the Sri Lanka Army on August 15, 2008 along with his wife and the son. His wife and the son were released later in 2010, after being detained for two years at the Welikada Remand Prison without any charge.

At the time of arrest, they were not given any reason for their arrest or shown any warrant issued by any court of the land. They were among the many hundreds of Tamils who were arrested from the same area by the Armed Forces of Sri Lanka during the armed conflict in the North and East of the country. Sundaram was detained in several detention camps in areas of the North. Later, he was detained at New Magazine Prison along with hundreds of other Tamils who were detained under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA). Before he was detained he was produced before court, but he did not know anything about the case which the Terrorist Investigation Department (TID) of the Sri Lanka Police had filed against him. Sundaram's relatives vehemently deny that he has been involved in any criminal or terrorist activities and state that the TID has filed fabricated cases against him.

On August 21, 2012, Sundaram was brought by the prison officers from New Magazine Prison to the Galle Remand Prison. When he was transferred, he was informed by the prison officers that he was to be produced before the court in Galle for a case filed against him.

But Sundaram did not know anything about the case. Before he was produced before the court, he was detained at Galle Remand Prison. Then, the next morning, instead of producing him before the judge he was admitted to the Karapitya Teaching Hospital by prison officials. It was during this time that he suffered severe torture that has placed him in a coma and in danger of losing his life.

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<sup>53</sup> AHRC-UAC-153-2012; 29 August 2012



At the hospital, first he was treated at ward No: 14. The doctors examined a large number of severe injuries on his body. There were clearly visible severe injuries on his head, shoulders, and face. The left side of the body was paralyzed and he was unconscious.

When the prison authorities informed his relatives, the wife and son visited him at Karapitiya Teaching Hospital. When they visited Sundaram, they understood that he is in a critical condition, and is being kept alive with the help of a life support system.

When the wife contacted the medical authorities, several nurses ordered her to sign a document giving her consent for the further treatment and for subjecting Sundaram to surgery. When she questioned the nurses for the cause of the illness they were not able to explain anything. As all the documents were in Sinhala, which she cannot read or speak, she refused to sign them.

As his condition worsened on August 28, 2012, the hospital authorities transferred him from the Karapitiya Teaching Hospital to the National Hospital of Sri Lanka in Colombo.

When Sundaram's wife questioned the prison officials as to why they tortured him, she was told that he had sustained the injuries falling out of bed. When his wife and his son went to visit him in the hospital, his 10-year-old son tried to talk to his father saying, "Dad what happened to you". Sadly Sundaram was unable to identify either his son's voice or the boy himself. Sundaram's wife categorically states that Sundaram was in good health when he was detained at New Magazine Prison on every occasion when she visited him. His condition was very much equal to the health of any other 34-year-old man and he has no history of any chronic illness.

It is obvious that whatever injuries Sundaram sustained happened when he was in the custody of the prison officers, during the process of producing him before the court in Galle, and during his transfer from New Magazine Prison to Galle. Such horrendous injuries could not have been the result of 'falling out of bed'.

The wife of Sundaram clearly states that he was severely tortured by the prison authorities. She further states that when she met Sundaram earlier, she learned that he was in fear of his life and being subjected to torture for being a Tamil detainee. He further told her that the Terrorist Investigation Division (TID) officers were trying to file fabricated charges against him for aiding and abetting the activities of the Liberation Tigers of Tamil Eelam (LTTE). He told her that he was being treated by the prison officers as an enemy.

There have been numerous incidents of prisoners being severely tortured in the immediate past in Sri Lanka. Two detainees died after they were severely tortured by prison authorities at Vavuniya Prison and Mahara Prison.

When one prisoner, Nimala Ruban, was declared dead on arrival at the Ragama Teaching Hospital, the police wanted to bury the body at the Mahara Jurisdictional Area, and prevent the relatives from taking his

body to his native village. When the parents made a request to the Magistrate of Mahara for approval to transport the body to their home, the police objected with the baseless reason that the people would protest against the officers. Then the parents filed a Fundamental Rights Applications in the Supreme Court of Sri Lanka and the Court ordered the authorities to hand over the body to the relatives so that they could pay their last respects and conduct the burial.

The Asian Human Rights Commission has reported numerous incidents of torture and custodial deaths of detainees while they have been in the custody of either the police or prison authorities.

The wife of Sundaram further states that Sundaram was detained for more than four years without any reason. Even to date, the law enforcement authorities have not filed an indictment against him. She states that the fundamental rights guaranteed by the Constitution of the country have been violated by agents of the state. Sundaram's relatives seek an immediate and transparent investigation into the incident and prosecution of the perpetrators of his torture. They further seek the authorities to provide necessary protection for the life of Sundaram as his life is presently in peril.

## Gallalagama Arachchige Thilanka Niroshan Gamaarachchi<sup>54</sup>



Mr. Gallalagama Arachchige Thilanka Niroshan Gamaarachchi (27) resides at No: 8/2, Kothalawala Road, Kolamadiriya, Bandaragama in the Kalutara District and is a Marketing Officer by profession.

On May 16, 2012, at 8.45 pm Thilanka received a call on his mobile informing him that his brother had been arrested by a team of police officers and that he was requested to come to the Kolamadiriya Temple to help his brother. The caller identified himself as Damith Dushmantha. When Thilanka received the call he was with his mother and one of the sisters of his mother. Along with these two ladies, Thilanka went to a location near to the Kolamadiriya Temple. He saw his brother, apparently under arrest and sitting on the rear seat inside a police jeep. Thilanka approached the police officers at the scene and respectfully asked them the reason for the arrest of his brother. Without saying a word the police officer, later identified as Police Sergeant Sarath Perera attached to the Bandaragama Police Station, slapped Thilanka several times and started to beat him with fists about his face and head.

Sergeant Perera ordered Thilanka to get into the police jeep. Thilanka was in great pain and told the police officers that he had not committed any crime and that he only questioned the reason for arrest of his brother. Sergeant Perera shouted at Thilanka using obscene language. The police officers then brought Thilanka along with his brother to the Bandaragama Police Station, while Sergeant Perera followed on a motor bike. At the police station, Sergeant Perera observed that Thilanka was sitting on the bench in the compound. He ordered an officer who was on duty to lock Thilanka in a cell.

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<sup>54</sup> AHRC-UAC-155-2012; 29 August 2012



Then next morning at 6 am, June 17<sup>th</sup>, Thilanka was brought out from the police cell and a statement was recorded from him, following which he was returned to the cell. Later that day, at 2 pm, Thilanka and his brother were brought to the Magistrate's Court of Horana and produced before the Magistrate. When the case was called, police officers informed the Magistrate that they had arrested the brothers only on suspicion. The Magistrate then released Thilanka on bail and the only condition was that he was ordered to appear before the court on June 19<sup>th</sup>.

Thilanka went home, but as he was suffering from the pain of his injuries received as a result of the torture, he went to the Bandaragama Government Hospital. After examining him, the doctor advised him to be admitted for treatment. Thilanka remained in the hospital for two days and was discharged on the morning of June 19<sup>th</sup>. Thilanka then went to the Magistrate's Court of Horana, where the Magistrate ordered a bail of Rs. 2500. Thilanka complied with the bail condition and left the court. The Magistrate postponed the case as the police wanted to have further time to investigate the case.

Earlier that day when Thilanka was discharged from the hospital, the authorities advised him to obtain a Medico Legal Examination Form (MLEF) from the Bandaragama Police Station. Thilanka collected the form from the police station and handed it over to the hospital. Later, the same day, Thilanka made a complaint to the Assistant Superintendent of Police (ASP) of Horana regarding his illegal arrest, torture, and the filing of fabricated charges against him by the police officers attached to the Bandaragama Police Station.

The following day, on June 20<sup>th</sup>, he was summoned to the Bandaragama Police Station and informed that the police had decided to hand the matter over to the Mediation Board and that he was to proceed there. They further informed him that he has to appear before the Mediation Board on June 23<sup>rd</sup>, 2012.

Thilanka states that police officers illegally arrested, detained, tortured, and filed fabricated charges against him. He further states that police directed this case to the Mediation Board for a settlement which is illegal under the law of the country, as torture cannot be settled by the Mediation Board, and that this is being done because the police wanted to protect the culpable officers. Thilanka states that justice has been denied to him. He seeks an impartial, transparent and prompt investigation into his case.

## Abasinghegedara Mahesh Niroshan Palamakumbura<sup>55</sup>



Mr. Abasinghegedara Mahesh Niroshan Palamakumbura (19), of Kothalawala Road, Kolamadiriya, Bandaragama in the Kalutara District is a machine operator by profession.

On June 16, 2012, at 8 pm, Mahesh went from his house to a shop in his village to buy betel and areca nut. When he was passing the estate of a man called Wasantha, suddenly Wasantha along with another person, grabbed

<sup>55</sup> AHRC-UAC-157-2012; 30 August 2012



Mahesh, ordered him to be silent and then dragged him to a house in the estate. On shutting the door, they tied his wrists and ankles and started to beat Mahesh.

After some moments, they called a person called Sarath Perera. Later Mahesh was able to identify him as Police Sergeant Sarath Perera, attached to the Bandaragama Police Station. They informed him that they had caught someone and requested to come to the place. Within just ten minutes Sergeant Perera arrived on the scene.

Sergeant Perera started to torture Mahesh. He beat the soles of his feet with a pole. Then he started to beat him about the head and face as well. Mahesh started to faint due to the pain and trauma and the police officer released his hands and legs. Mahesh believes that the other person who was with Wasantha was also a police officer, considering the way he talked and behaved with Sergeant Perera.

After the beating, Sergeant Perera ordered Mahesh to make a statement that persons called Thushara and Damith had committed a theft. Mahesh told the officer that he was not aware of such information. Then Sergeant Perera threatened Mahesh that if he did not do what he was told he would face more vigorous torture than he had already experienced. Further, Sergeant Perera told him that he was going to record him when he made that statement.

At first, Mahesh refused. Then Sergeant Perera took up an electric timber cutter and showed it to Mahesh. He told Mahesh that if he did not comply with his orders he would cut off his legs and hands. On hearing that, and being afraid of further torture, Mahesh told the officers that he would make the statement. A little while later Mahesh was brought to a police jeep, which was parked close to the estate and they went in the direction of the Bandaragama Police Station. On the way, the police officers stopped the jeep and arrested a person called Thushara.

At the police station Mahesh was locked up in a cell. The next day at 10 am he was brought out from the cell to make the statement, and when he was asked to sign the document he did as he was ordered. At 2 pm he was produced before the Magistrate of Horana and remanded for two days. When he was brought to the Kalutara Remand Prison, one of the duty officers assaulted him with his fists. When he informed the prison officer that he was tortured at the hands of the police officers, he was admitted to the Prison Hospital. When he was produced in court on June 19<sup>th</sup> he was released on bail. As his condition worsened, he was admitted to the Bandaragama Government Hospital, where he was treated for two days and discharged on June 21<sup>st</sup>.

Mahesh states that he was illegally arrested, detained and tortured as the police wanted to have a witness for fabricating a case against two other persons. Finally, they filed a fabricated charge against him also as they wanted to remand him and suppress the story of the torture they committed on him. Mahesh states that his fundamental rights guaranteed under the Constitution of the country were violated by the police officers and that justice has been denied. After Mahesh was released from the remand prison he made a complaint to the Assistant Superintendent of Police (ASP) Horana regarding the violations of his rights

and requested an independent investigation. To date no authority has started any investigation into the violation of his rights.

### Randunu Pathiranalage Susil Priyankara Seneviratne<sup>56</sup>



Mr. Randunu Pathiranalage Susil Priyankara Seneviratne (27) of No 411/3, Nawa Theldeniya, Galadivulwewa in Anuradhapura District is a businessman and owns a communication center in Thambuththegama Town.

On August 3, 2012, the day that followed a demonstration, when Priyankara opened his shop at 9 am, about 10 police officers traveling in a police jeep and on several motorcycles arrived. Six of them entered Priyankara's shop. One officer by the name of Jagath caught Priyankara by his neck while another officer grabbed Priyankara's hands from behind. Then other officers, namely Prasanna Karunajeewa, Upali, Abey, Karunathilake and Wijethunga started to brutally assault Priyankara with their helmets and fists.

When Priyankara asked them the reason for the assault one officer told him, "You assaulted police with stones" (referring to the demonstration of the previous day). Priyankara replied that he had not been anywhere other than in his shop the whole day. He told them they could ask the neighbouring shop keepers for confirmation of this. The officers told him rudely, "We know everything". Then they dragged Priyankara along the floor as they continued to assault him.

Priyankara suffered enormous pain and continuously pleaded with the officers to stop. The adjoining shop keepers came out and, while watching scene, told the police officers that on the day of the demonstration Priyankara had been in the shop for the whole day. They further explained to the officers that he did not go anywhere. But the police officers did not listen and pushed Priyankara into the police jeep. In the jeep, Priyankara observed that the officers had arrested three more persons from the Kuda Bilibawa, Pahalagama areas, and they were also in the police jeep. They all were brought to the Thambuththegama Police Station and locked up inside a cell. The police officers ordered Priyankara to sign documents, which were already drafted, and which he was not allowed to read. Priyankara did so out of fear of further torture.

Priyankara was produced before the Thambuththegama Magistrate, where he learned that the police had filed a fabricated case against him, accusing him of damaging state property. When he was produced, he denied the charges in front of the Magistrate. The Magistrate granted him bail with the condition of two surety bonds of Rs.100,000 each.

After he returned home, Priyankara's health condition worsened and he was admitted to the Thambuththegam Government Hospital. After his admission, he was transferred to the Teaching

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<sup>56</sup> AHRC-UAC-158-2012; 31 August 2012

Hospital of Anuradhapura for treatment. Priyankara was treated as an in-house patient for 3 days and on August 7<sup>th</sup>, 2012. During that time the Judicial Medical Officer (JMO) examined him.

Before the arrest and the torture by the police officers, Priyankara was in good health. However, following the brutal and inhumane assault by the police officers he is now suffering various health ailments and has difficulty in performing his daily activities. He is still undergoing treatment. One of the injuries resulted in damage to his left ear and he is now short of hearing. He is going to get further treatment for this from the consultant medical practitioner.

Priyankara complained to the Inspector General of Police (IGP), National Police Commission (NPC), Senior Superintendent of Police (SSP) North Central Province, Assistant Superintendent of Police (ASP), Officer-in-Charge of the Police Station Thambutthegama, Director Special Investigating Unit (SIU) of Criminal Investigation Department (CID) of the Sri Lanka Police and the Attorney General (AG) regarding the violations of his rights. None of these authorities have started any investigation into his complaint. He states that his right to have his complaint investigated has been violated and he seeks justice from the state of Sri Lanka.

### D P Anil Thushara<sup>57</sup>



Mr. D P Anil Thushara, 34 years old, of No: 62, 3<sup>rd</sup> Mile Post, Rajangana Road, Thambutthegama in the Anuradhapura District, is a farmer by profession.

In the morning of August 2, 2012, Thushara went to the office of the former Chief Minister of North Central Province Mr. Bertie Prasad to inform the minister about the economic hardships that he and his family were facing due to the drought that has affected the area for several months. He wanted to know how to make an application for the government assistance scheme for farmers who lost their harvest due to the drought and ask for the advice of the minister how to do so. While he was in the minister's office, he heard the noise and commotion of a public demonstration so, out of innocent curiosity, went to the front of the office to see what was happening.

Thushara walked behind the people, and saw the cause for the demonstration. He observed that the demonstrators were carrying the dead body of a lady (killed in a road accident), and blaming the police for releasing the driver responsible, who was drunk at the time, courtesy favoritism. Then the police officers arrived and opposed the demonstrators and this was followed by an exchange of stones between the police and the demonstrators. Thushara then left the place, as he thought that it could turn dangerous and

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<sup>57</sup> AHRC-UAC-159-2012; 31 August 2012

returned to the office of the former Chief Minister. However, due to the large crowd of people there as well Thushara decided to return home.

Thushara returned to the office of Chief Minister the following day, August 3<sup>rd</sup>, for the same purpose, and while he was inside the office, at 11 am, about ten officers from Thambuththegama Police Station, arrived in a jeep and some motor cycles. The officers, later identified as Karunathilaka (32787), Jagath (48123), Premathunga (35275) rushed into the office and got hold of Thushara, handcuffed him, and assaulted him mercilessly. Police officer Jagath then struck Thushara with his helmet and officer Karunaratne beat him with a wooden pole as they dragged him to the police jeep. There, Police Inspector (IP) Ubeyananda, attached to Nochchiyagama Police Station, thrashed Thushara with a long rounded piece of plastic. When Thushara asked the police officers for the reason they were assaulting him one officer said that "You attacked our OIC during yesterday's demonstration". Then, immediately, Thushara explained to the police officers that he has never done any such attack. Further, he explained that he was inside the former Chief Minister's office during the demonstrations. He admitted that he had gone out to see what was happening, but had never participated in the confrontation. However, the officers did not listen to him and continued their assault. Janaka Sampath from Thushara's village and some others who had been in minister's office witnessed this beating.

The officers arrested Thushara and brought him to the Tambuththegama Police Station by police jeep. At the station the assault by Jagath and Karunathilaka continued as they caught Thushara by his shirt collar and pulled him out of the jeep and dragged him into the station. A villager by the name of Sisira, who had been inside a police cell, saw this happen.

Then the Officer-in-Charge (OIC) of the Thambuththegama Police Station, Upul Seneviratne approached Thushara and assaulted his head with a wooden pole, thus cracking Thushara's skull. He then dragged him and made him sit on a bench. Despite his already pitiful condition, the torture continued as Thushara was dragged to a table. He was then ordered to sign a document which had been prepared before-hand. Initially Thushara refused to sign and demanded to know the contents of the document. This was refused, and he was threatened with further abuse if he did not comply with the officers instructions. Out of fear of further torture he signed the papers.

Thushara was produced before the Thambuththegama Magistrate's Courts, where he learned that the police had filed a fabricated case against him, accusing him of damaging state property. When he was produced, he denied the charges in front of the Magistrate who granted bail.

After he returned home his family members brought him to the Thambuththegam Government Hospital where he was admitted and treated for two days. He was transferred to the Teaching Hospital of Anuradhapura for further treatment. Thushara was treated in Anuradhapura Teaching Hospital for seven days. Since this brutal and inhumane assault Thushara's health condition is very bad and he suffers continuous headaches due to the torture.





Thushara complained to the Inspector General of Police (IGP), National Police Commission (NPC), Senior Superintendent of Police (SSP) North Central Province, Assistant Superintendent of Police (ASP), Officer-in-Charge of the Police Station Thambuththegama, Director Special Investigating Unit (SIU) of Criminal Investigation Department (CID) of Sri Lanka Police and the Attorney General (AG) regarding his rights violations. But none of these authorities have started investigation into his complaint. He states that his rights to have investigations and justice have been violated by the states agencies of Sri Lanka.

## 1.6 Human Rights Defenders

### 1.6 (a) Attempted Abduction of Activist

*Herman Kumara, human rights activist, fighting for fisher folk, writes in his own words about the attempted abduction and continuing threat to his life<sup>58</sup>*

*The following is an English translation of a written statement made by Herman Kumara to the police:*

I am Mr. Wijetunga Appuhamilage Herman Kumara of Sandalankawa, Irabadagama, [located in the Kurunegalle District]. I am 48 years of age, married and a father of two children. While, I am the Chief Executive, or National Coordinator, of the National Fisheries Solidarity Movement (NFSM) of Sri Lanka, I am also the Special Representative of the World Forum of Fisher People (WFFP). I am a Roman Catholic by religion.

In a written statement that was released earlier on the February 28, 2012, I released information about the different threats to my life and intimidation I have been subjected to in the last few days. After leaving for Rome on February 18, 2012, to take part in a Farmer Forum organized by the United Nation's International Fund for Agricultural Development (IFAD), I arrived back at the Katunayake Airport, Sri Lanka, on February 24, 2012, at 1.30 pm on-board flight EK348 from Rome.

While I was presenting my travel documents to an officer in the Immigration section of the Airport, I noticed that three individuals were observing me and behaving in a suspicious manner. They were loitering around the immigration counter where I had given my travel documents, after which they started to enter and exit a room that was located behind the counter. I even heard one of the three, who I suspected to be the leader of the three men say "now finish this [objective] we will look after the other things later" to the other men. In addition to this, I noticed that the Immigration officer paid a special interest to the details in my travel documents.

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<sup>58</sup> AHRC-STM-039-2012; March 02, 2012

After this, the arrival of my baggage in the baggage retrieval section was delayed by a short period. While I was waiting for my baggage to arrive, I noticed that two of the officials that I had noticed observing me earlier, had come close to where I was and they paid a keen interest towards me. After I had proceeded to meet my wife and friends at the public lobby and continue on, towards the car park, we all noticed that these two officials walked past us, crossed the road and hid behind a pillar to observe us in a suspicious manner. I noticed that they were using mobile phones to engage messages at this time. Freddy Gamage, a friend of mine who had come to pick me up from the airport stood next to the two men and heard what the two officials were saying over the phone. Freddy had heard they say “bring the vehicle quickly, the man is about leave” in a hurried manner.

When the group that came to pick me up joined me and my wife to leave the airport in the van that my wife had come in, we noticed that a green colored car bearing license plate number 301-2865 with one of the officials who we had noticed earlier, was following our vehicle. While our vehicle turned towards Negombo on the Colombo – Puttallam main road we stopped the vehicle I was travelling in at a food and drink shop in Katunayake so that some of my friends who had come to pick me up could get off the vehicle and go back home. The vehicle that was following us went past us and stopped a little ahead of where we were parked.

When we restarted our journey, the vehicle which was following us, which had been parked in a manner so that we could not see it, started to follow us again. Due to this, I felt deeply suspicious and a fear about my own safety. Hence, without going to my house as planned earlier we proceeded to travel faster, to lose the car that was following us and proceeded to a relative’s house.

However, even though the car could not follow us, the car bearing license plate number 301-2865 had gone close to my own residence and asked for details from my neighbours. The officials had told the neighbours that I had applied for a bank loan and hence they needed details about me. These officials had taken down information from my neighbours about my house and family, my job, and the vehicles I use. They had obtained this information from the homes of 3 neighbours.

Due to these incidents, I had to go into hiding for a few days. However on the February 25, 2012, I decided to inform the people and the media by making a statement about these incidents and the threats faced by me, when I gave a speech at the ‘Platform for Freedom’ event at Cardinal Cooray Centre, Negombo on February 25, 2012. We found out that intelligence officers were in attendance at that meeting. One individual we suspect to be from the Security Forces. He had then gotten onto a motor cycle bearing license number WP VX 2375 with another individual and left the meeting before it ended. When we finished the meeting and were leaving the meeting hall to go home, we noticed that a motor cycle bearing license plate number WP – 6442 (other letters were not visible) started to follow our line of vehicles. However, we were able to lose this motorbike by using one vehicle as a decoy to turn off from our route. Due to these continuous incidents I believe that some kind of group intend to either abduct me, making me disappear, or do some sort of harm to me.



A number of suspicious activities had also happened before these incidents took place. On the February 0, 2012, while I was out of the country, an individual identifying himself to be from the intelligence section of the Kuliapitiya Police had inquired whether the details he had about me and my vehicle numbers were correct from the agricultural officer of my village. He had also inquired whether the news about me being out of the country was correct.

In addition to this, Minister for Fisheries Rajitha Senaratne had repeatedly made public statements that he feels it is me and my organization that are behind the protests and struggles of fishermen. On February 21, 2012, the Minister had made a statement in Parliament that it was I who was behind the fisherman's protests and that I am responsible for the death of a fisherman who was killed during the protests. He had stated my name quite clearly during this statement. Even though it is not a surprise that our organization makes special interventions on behalf of fisherman's rights, these fishermen's protests and struggle were not done by our organization. This had been stated publically by fishermen's organization involved in the fishermen's struggle. I heard that the Minister for Fisheries was not happy with me because we organized a protest against landing Sea Planes in the Negombo lagoon.

On the January 25, 2012, I was given a call on my mobile phone by Hon. Father Lester Nonis the head of Periyamulla Mission. He is also in charge of Fishermen's activities for the Catholic community. After asking about whether I had made any interventions in relation to the issues faced by the Fishermen of Sinnapaduwa he proceeded to say "you go around inciting fishermen everywhere, even the cardinal asked about this" and "we will take care of this" in a threatening manner.

But I had not had any discussions in relation to these issues. After the Negombo protests Father Lester Nonis had made a statement in the Independent Television Network (state owned) that an opposing group, who were not fishermen and opposed to fishermen, had thrown rocks at the security forces and created this conflict. He had then stated that these were NGO people and that they were to blame for this.

The father's statement is a statement which targets us. After this, the father's statement was used by many government MPs and Ministers to state that the fishermen's struggle is the work of NGO's. These allegations were especially prevalent in Lake House newspaper publications. In addition to this, in the last few weeks groups identifying themselves as intelligence have shown up at the houses of two employees from my organization and asked for details about our office and about me.

In this situation, I suspect that there is an initiative to either kill me, abduct me, or cause some other kind of harm to me. Due to this reason, I must spend my time hiding in different places. Our organization; the National Fisheries Solidarity Movement (NFSM) of Sri Lanka is a state registered organization. Responsibly, I can say that neither I, nor the organization that I represent, has been engaged in any illegal activities. While, the police or any other security forces organizations can utilize the accepted procedures under law to obtain information to obtain any information they need to know about me or our organization, I would like to state that we are happy to completely support them in this regard.



On the February 24, 2012, my wife, Ms. Shrini Kumuduni Pradeepika Adihettie made a complaint to the Pannala Police Station in reference to these incidents and it was recorded with reference as, CIB (1)/241/490. Due to us seeing no fair investigation being conducted in this regard I have decided to send this written statement to you. I request that you accept this written submission and conduct a thorough, fair and efficient investigation in this regard. I request that you protect my life, the lives of my family and the lives of the employees of our organization. I request that you protect my house and my office.

This is my written submission, I have read it, understand it completely and sign it on the February 28, 2012 in Negombo.

## 1.6 (b) Two arrested from JVP Dissident Group<sup>59</sup>

Mr. Premakumar Gunarathnam, the leader of the JVP dissident group and Ms. Dimuthu Attigala, a member of the same group are reported to be missing from yesterday night. According to a report, published today in the Daily Mirror, both have been arrested. However the grounds on which they were arrested or the location of the place of detention have not been revealed.



The JVP dissident group has been known for taking a proactive stand in supporting the struggle of workers and other marginalized groups such as the fisher folk who have, in recent weeks, held various protest activities against the rise of oil prices and other livelihood issues. It is no secret that the government and the Ministry of Defense are concerned about their activities.

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<sup>59</sup> AHRC-STM-081-2012; April 7, 2012



The security of the two arrested persons is a matter of serious concern for all the human rights groups. Torture and other extra-legal punishments are a common practice of the 'law enforcement' agencies in Sri Lanka and there are genuine fears for the well-being of these men. The two persons arrested in December from this same group, Lalith Weeraraj and Kugan Muruganathan still remain missing<sup>60</sup>.

The Asian Human Rights Commission expresses concern about the security of these two persons and requests the government to reveal the reason for their arrest and their place of detention. The AHRC further urges the government to either release these two persons immediately or, if in fact they have committed a crime, produce them before a court of law within the 24 hour period stipulated by law.

## 1.6 (c) Lalith Kumar Weeraju and Kugan Murugan kept in Detention<sup>61</sup>



The Asian Human Rights Commission, as well as other human rights organisations, has kept up a constant vigil on Lalith Kumar Weeraju and Kugan Murugan, who were abducted on December 10, 2011, while engaged in putting up posters for Human Rights Day.

There had been no news about them since. However, some media channels in Sri Lanka and human rights activists have brought to our notice that, in fact, both Lalith and Kugan are being held in detention at the Police Welfare Building at Pettah, Colombo 11. According to the information we have received, the Human Rights Commission of Sri Lanka has been informed about their detention at this building and requests have been made for the Human Rights Commission to visit the premises and obtain their release.

Lalith and Kugan also belong to the same political faction of the JVP as Mr. Gunaratnam and Ms. Attigala, who were abducted and released after the intervention of the Australian government. This JVP faction formed themselves into a new party just this week under the name of the Frontline Socialist Party. Concerned persons request everyone to take steps to pressurize the Sri Lankan government to release these two persons immediately<sup>62</sup>.

<sup>60</sup> For details please see: SRI LANKA: The disappearances of Lalith Kumar Weeraju and Kugan Murugan.

<sup>61</sup> AHRC-STM-090-2012; April 13, 2012

<sup>62</sup> For details of the abduction of Lalith and Kugan kindly see: SRI LANKA: The disappearances of Lalith Kumar Weeraju and Kugan Murugan



## 1.6 (d) Sandya Ekneligoda harassed<sup>63</sup>

### **The harassment of Ms. Sandya Ekneligoda, by the government's supporters in Geneva and by the Attorney General's department, for joining the UN Human Rights Council**

Mrs. Sandya Ekneligoda was one of the speakers during a side event held on March 19, 2012, during the 19<sup>th</sup> sessions of the UN Human Rights Council in Geneva. The side event was titled "Rule of Law and human rights violations in Sri Lanka: Perspectives from women, minorities and families of disappeared". She was invited to share her perspectives as the wife of a disappeared journalist / cartoonist Prageeth Ekneligoda and as woman human rights defender who had been engaging with various Sri Lankan legal institutions and government officials as well as international bodies to search for her husband while also advocating more broadly for democratization in Sri Lanka and on the plight and aspirations of families of disappeared.

During the side event, Mr. Douglas Wickramaratne, a well known supporter of the Sri Lankan government delegation in Geneva for a number of years, attempted to intimidate Mrs. Ekneligoda by saying that "you are coming to Geneva with a smiling face, you are not a victim". Immediately after the event, another group of men had come to her, identified themselves as Sri Lankan Muslims and said "We are sad about what happened to your husband, but you should not betray the country, even though we are Muslims, we have come here to defend the country" They also accused Mrs. Ekneligoda of being manipulated by the money of various organizations. Ms. Farah Mihlar, another women human rights defender, who was a speaker at the same panel, was also harassed by members of the Sri Lankan Government delegation.

A day after returning from Geneva, Mrs. Ekneligoda attended the hearing at the Homagama Magistrate's Courts (Colombo district) on March 26, 2012. The hearing was an inquiry in connection with Mrs. Ekneligoda's plea to the High Court to summon Mr. Mohan Peiris, Advisor to the Cabinet of Ministers and former Attorney General, to courts to give evidence in relation to a statement he had made in Geneva on November 9, 2011, to the UN Committee against Torture that Mrs. Ekneligoda's husband had not disappeared, but was living abroad.

During the court hearing on March 26, Mr. Shavindra Fernando, Deputy Solicitor General, appearing for the Attorney General's department, appeared to harass and intimidate Mrs. Ekneligoda by questioning her at length on matters related to her participation in the 19<sup>th</sup> session of the UN Human Rights Council. Mrs. Ekneligoda asserted that she although she will respond to these questions she felt that these were not relevant to the question at hand: summoning Mr. Peiris to give testimony to courts.

When Mr. Fernando questioned Mrs. Ekneligoda about what she expected from the courts, she emphasized that her aim was to find her disappeared husband or at least his body. Mr. Fernando then asked whether she trusts the judiciary, she answered 'yes' to which he asked "Then why did you take this

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<sup>63</sup> AHRC-STM-092-2012; April 16, 2012



matter up internationally? Mrs. Ekneligoda was asked why she complained about her husband's disappearance to the UN and she responded that this was her right and that the UN's Working Group on Disappearances is mandated by member states of the UN to receive such complaints.

Mr. Fernando asked who invited and paid for expenses of the visit to Geneva and whether she received any money. The defense objected saying the questions did not pertain to the objective of the case, to which Mr. Fernando replied "I am entitled to ask any question to find out whether international organizations and NGO's are provoking something against the state".

Mrs. Ekneligoda responded that she had been invited overseas several times by various organizations, such as the Cartoonist's Rights International Network, IMADR and this time by a coalition of German NGOs. She also explained that all her expenses, including travel costs, accommodation, meals were covered by the hosts and that she was provided per-diem for expenses on days the hosts didn't provide meals. She was also asked whether she spoke at a side event and she answered that she had. Mr. Fernando also asked her whether she was aware that the government of the United States of America had tabled a resolution on Sri Lanka which was to be voted on few days after the side event and Mrs. Ekneligoda responded that she was indeed aware of this, as this had been reported extensively in various media in Sri Lanka before she left Sri Lanka for Geneva.

This questioning took most of the time, close to an hour, while there was very little said in terms of getting Mr. Peiris to testify in courts about his statement that the disappeared journalist was in a foreign country. Mr. Fernando tried his best to prevent Mr. Peiris being summoned to courts by saying that the certified copy of the transcript of Mr. Peiris's statement provided by the UN Office of the High Commissioner for Human Rights couldn't be taken as a true copy and that it was not proper to summon Mr. Peiris, as he (Mr. Peiris) had made that statement about the disappeared journalists whereabouts as an official representative of the Government.

During the early stage of the questioning by Mr. Fernando, Mrs. Ekneligoda said that it was around 9.30 pm on that fatal day that she suspected that her husband might have been abducted and that since it was late in the night she could not go to the police station to make a complaint and that it was only the next morning at about 10 am that she was able to find someone to accompany her to the Police. When asked why she did not go then and there to the police station, she said there was nobody to go with her at that time of the night. Mr. Fernando then asked her why she didn't take her elder son who he said must be 18 years old. She corrected him by saying that when this incident happened he was only 16 years old. This line of questioning showed a lack of appreciation of the fact that this mother must have been fearful of taking an underage child for company and rushing to the police station at 10 pm in the night, just after her husband's disappearance.

The line of questioning appeared to be aimed at establishing that it was wrong for a family of a disappeared person to complaint to the UN and attend sessions of the UN Human Rights Council and to show that Mrs. Ekneligoda was getting money from foreign organizations and betraying the country. The line of questioning was also thoroughly unsympathetic towards a woman who was already in great anguish after



the husband's disappearance, especially after she repeatedly told court that her children were traumatized by this shattering experience.

## 1.6 (e) An update on the disappearance case of Prageeth Eknaligoda<sup>64</sup>

The Court case in relation to the disappearance of Journalist Prageeth Eknaligoda was taken up for hearing at the Appeals Court in Colombo on April 24. The hearing opened as the attorney appearing for Mr. Eknaligoda's wife, Sandhya, explained the proceedings of the case held at the Magistrate Court in Homagama on March 26.

Sandhya's attorney pointed out that he may have to seek the intervention of the Appeals Court to summon former Attorney General, Mohan Peiris, to testify in Court on the comments he made at the UN Committee against Torture on November 9, 2011 in Geneva. The attorney noted that, as per his comments made in Geneva, former AG Pieris was aware that Mr. Eknaligoda was alive and living overseas. The Homagama Magistrate held an order on the same request with no date specification. The government lawyer re-iterated that his objection to summon former AG Mohan Peiris remains unchanged. The basis for his stance is that the UN document, purporting to be the transcript of Mr. Peiris' statement submitted to the Court by the petitioner, was not entirely accurate. He went on to say that the statement contained therein could have been made on government instructions for which Mr. Peiris cannot be held personally accountable.

The Appeals Court will allow the Homagama Magistrate to ascertain the accuracy of the UN transcript of Mohan Peiris' statement at UN Committee against Torture when the case is heard on May 17. A hearing however, will take place on May 31 at the Appeals Court where the proceedings of the May 17 hearing will be submitted. At the May 17 hearing, the lawyers will also cross-examine the last person to speak to Prageeth over the phone.

## 1.6 (f) Concern over the safety of the Bishop of Mannar, Rev Joseph Rayappu<sup>65</sup>

The Asian Human Rights Commission is concerned over the safety of the Bishop of Mannar, Reverend Joseph Rayappu who has a long-standing record of being a spokesperson on the democratic rights of the minority Tamil community in Sri Lanka. As a pastor of his people and a conscientious religious leader he has consistently expressed his concerns about the problems that affect the Tamil people.

On May 13, 2012 the Sunday Leader revealed that, "Rev Joseph Rayappu, Bishop of Mannar, was questioned by the police on his statement to the Lessons Learnt and Reconciliation Commission(LLRC)

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<sup>64</sup> AHRC-STM-095-2012; April 25, 2012

<sup>65</sup> AHRC-STM-103-2012; May 16, 2012



regarding the disappearances of about 146,000 during the last phase of the 30-yr war that was brutally ended in May 2009"<sup>66</sup>.

The police spokesman SP Ajith Rohana confirmed that officers from the Criminal Investigations Department visited the Bishop and questioned him.

Under the criminal law of Sri Lanka the power of investigations is based on a suspicion of the commission of a criminal offense. However, it has now become a common practice to question individuals without having any such criminal suspicion against them. Such questioning without revealing the nature of the inquiry violates the basic rights of citizens and creates a climate of fear and distrust.

Following this investigation there are fears that the Bishop may fall victim to some conspiracy. Abductions and disappearances are common occurrences in Sri Lanka and there have been several priests and even Buddhist monks who have been victims of extrajudicial killings or forced disappearances.

Following the passing of the resolution by the Human Rights Council in late March of this year, many persons have been exposed to various types of harassment and vilified as traitors as they called for credible inquiries into the alleged human rights abuses relating to the Tamil people. Rev. Rayappu has also written to the President of Sri Lanka and the Human Rights Council on such abuses and the need for justice and reconciliation. One such letter was published by [Transcurrents](#) on March 4, 2012.

Those who exercise freedom of expression, airing their concerns about the rights of their fellow citizens, are now being exposed to serious dangers in Sri Lanka. Under such circumstances many persons are anxious about the security of the Bishop of Mannar, Rev. Rayappu.

The Asian Human Rights Commission urges the Sri Lankan government and all opposition parties to take all steps to ensure security for him. The AHRC also calls upon the international community, including the diplomatic community in Sri Lanka, to express their concern to the Sri Lankan government on this matter.

## 1.6 (g) Threat to the safety of Dr. Nimal Devasiri of the University Teachers Union<sup>67</sup>

The Asian Human Rights Commission has received information that, two days ago, a group of people who have identified themselves as members of the Ministry of Defense, visited the neighbourhood in which Dr. Nirmal Raanjith Devasiri, (the President of the University Teachers Union and the Secretary of the Arts Faculty Teachers' Association of the University of Colombo (AFTA-CU) resides, and made inquiries about him and his family, in what appears to be an attempt to intimidate them.

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<sup>66</sup> The original article may be accessed <http://www.thesundayleader.lk/2012/05/13/mannar-bishop-grilled-on-disappearances/>.

<sup>67</sup> AHRC-STM-128-2012; June 22, 2012



Last night, a jeep without a proper licence plate was seen parked near his house. Today, a complaint was lodged at the Mahargama Police Station regarding these intimidating and suspicious actions. The FUTA is preparing to hold a press conference today to inform the media about these incidents.

In a letter written to Gotabaya Rajapakse, the Secretary of the Ministry of Defence and N.R. Illangakoon, the Inspector General of Police, Professor Asanga Tilakaratne, President of the AFTU-CU has stated:

"It has been brought to our notice that a group of men claiming to be from the Ministry of Defence have been behaving suspiciously within the neighbourhood of the secretary of Arts Faculty Teachers' Associations (FUTA), Dr. Nirmal Ranjith on June 19, 2012. They have questioned neighbours regarding Dr. Devasiri's movement's and details regarding his family. Dr. Devasiri has lodged a complaint with this regard at the Maharagama Police Station on 21.06.2012. We are deeply concerned about this and request you to immediately launch an investigation into this matter."

The University Teachers Union has been working to improve the livelihoods of university teachers, notably by campaigning for wage increases and improved working conditions. The Minister of Higher Education, the Hon. S.B. Dissanayake, has publicly opposed these efforts.

Trade unionists and political activists who campaign for wage increases and the improvement of working conditions, are frequently threatened, and even, physically attacked. The forced disappearances of unionists and activists who disagree with government officials are a regular occurrence in Sri Lanka. Indeed, last week, a shooting in a small meeting of the JVP led to the deaths of two people.

The Asian Human Rights Commission is extremely concerned about the security of Dr. Davasiri, and calls upon the government of Sri Lanka to enquire into this complaint regarding threats made to Dr. Davasiri and his family, and to take concrete measures to ensure his safety.



## 1.7 Freedom of Expression

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### 1.7 (a) The UN Rapporteur on the right to freedom of opinion and expression refers to attacks on human rights defenders<sup>68</sup>

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What follows is a reproduction of the section on Sri Lanka from the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. The Report was submitted to the Seventh Session of the Human Rights Council<sup>69</sup>.

## Sri Lanka

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### Urgent appeal

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2019. On 17 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning **the existence of a worrying and increasing trend aimed at delegitimizing the activities of human rights organizations, individual human rights defenders and journalists working in Sri Lanka**. Such information includes reports regarding physical attacks, threats, intimidation and public smear campaigns.

2020. Such attacks and threats, while experienced since 2006, have tangibly intensified following the Special Session of the Human Rights Council on Sri Lanka, which was held on 26-27 May 2009. It is reported that the Human Rights Minister, Mr. Mahinda Samarasinghe commented in The Hindu newspaper that "The people who go and sit in the cafeterias in the UN and lobby people in a very subjective manner putting forward those kind of sentiments (against Sri Lanka) would be inviting a very stern response from the government of Sri Lanka".

2021. In another article published in the online edition of the newspaper Divayina on 25 May 2009, it was alleged that "an NGO team goes to Geneva to defend the LTTE leadership. A team of people from NGOs in this country, including a representative of the Free Media Movement, has reached Geneva airport (...) with the aim of going before the Human Rights Council with inaccurate and false statements against the government of Sri Lanka and the security forces". It is further reported that the Inspector General of the Police claimed in an interview on ITN TV station on 28 May 2009, that several journalists were on LTTE payroll. The Inspector General of the Police further alleged that these journalists have committed treason and distorted and misreported against Sri Lanka.

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<sup>68</sup> AHRC-STM-132-2012; June 27, 2012

<sup>69</sup> The Full report can be viewed at: <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc17/abrc1727.pdf/view>

2022. On 3 March 2010, the Sri Lankan news website Lanka News Web published an article and a list containing the name of 31 human rights defenders and journalists allegedly compiled by the Sri Lankan State Intelligence Services. The list includes human rights defenders and journalists categorized according to their work, and a brief description of the activities of each individual. The list contains the names of individuals who have been engaged in "international outreach" on human rights related issues and grades them according to their perceived importance to the intelligence services. Several human rights defenders and journalists are referred to as "providing information on human rights issues and IDPs to several local and international outlets", as "international platform speaker on media/human rights" and as a person who "speaks on human rights and media freedom and involved in advocacy overseas". While the purpose of the list remains unclear, it gives rise to a serious concern about the physical and psychological integrity of the individuals contained therein.

2023. The head of Transparency International's Sri Lanka office, Mr. J. C. Weliamuna is at the top of the list. It was reported on 8 March 2010 that the Government of Sri Lanka is planning to arrest Mr. Weliamuna in connection with the alleged misuse of funds. This information comes amidst a media campaign targeted against the Sri Lankan branch of Transparency International. It is feared that the allegations may be related to reports that Transparency International issued in December 2009 and January 2010, which included allegations about violation of election laws and misuse of public resources by the ruling party, and would be aimed at discrediting organizations engaged in monitoring elections. Mr. Weliamuna was the subject of a communication sent on 6 October 2008 by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Chairman of the Working Group on Enforced or Involuntary Disappearances. We have not yet received a response to this communication from your Excellency's Government. The communication related to a grenade attack on the house of Mr. Weliamuna, causing damages to his property. It is reported that no credible inquiry has been carried out into this attack.

2024. Mr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives, has been listed number three in the list. Mr. Saravanamuttu has been receiving death threats mainly in connection with the extension of GPS Plus (Generalized System of Preferences) status by the European Union to Sri Lanka in case it should have been rejected. Mr. Saravanamuttu was the subject of an urgent appeal sent on 24 August 2009 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. A response from your Excellency's Government to this communication was received on 25 August 2009.

2025. Mr. Sunanda Deshapriya, a prominent journalist and human rights defender, who is number six on the list, has been living in exile in Switzerland since May 2009, due to the threats received and the ongoing denigration campaign in the media following his participation and intervention at the March 2009 session of the Human Rights Council and the 11th Special Session on Sri Lanka. He has been accused of being a "traitor" and a "liar" due to his participation at the Special Session. Videos containing death threats against him have been posted on the social networking site Facebook; he has received numerous threatening text messages and has been vilified in television and radio shows and a number of editorials. The Prime Minister of Sri Lanka, Mr. Mahinda Rajapaksa allegedly stated in an interview on 7 June 2009 in The



Nation that it was a betrayal by Mr. Deshapriya to talk against his own country and to say that Sri Lanka violates human rights, while countries like India, China and Russia were firmly standing by the Government. In an interview with ITN TV on 4 June 2009, Mr. Mahinda Samarasinghe, the Minister of Disaster Management and Human Rights allegedly did not object to the talk show host's suggestion that Mr. Deshapriya should be expelled from the country for his intervention at the HRC Special Session. Mr. Deshapriya was the subject of urgent appeals sent on 7 June 2006 and 23 May 2005 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A response from the Government to this communication was received on 27 June 2006.

2026. Concern was expressed that threats and harassment of, and intimidation against human rights defenders and journalists, including media smear campaigns, may be related to their legitimate activities in defense of human rights, in particular to their international advocacy and outreach efforts. Further serious concern was expressed that some of the threats may be related to their having cooperated with the UN Human Rights Council and Special Procedure mandate holders. Given the extent of the allegations, an overarching concern was expressed that the threats, attacks and media smear campaigns may form part of a broader attempt to delegitimize the activities of human rights defenders who are critical of actions and policies of the Government.

**Observations** 2027. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 17 March 2010, and to earlier communications sent on 9 February 2010, 6 November 2010, 15 October 2010, 9 October 2010, and 8 October 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2028. The Special Rapporteur remains seriously concerned about the situation of journalists and human rights defenders in Sri Lanka, and restrictions to the right to freedom of opinion and expression, as well as the rights to freedom of assembly and association. In particular, he expresses his grave concern regarding physical assaults, abduction, intimidation and harassment of journalists, and lack of effective investigation into such acts and prosecution of perpetrators.

2029. In this regard, the Special Rapporteur expresses his continued concern regarding the disappearance of Mr. Prageeth Ekmaligoda since 24 January 2010, who had been reporting on the 26 January 2010 presidential elections and had completed an analysis that favoured the opposition candidate, Mr. Sarath Fonseka. He urges the Government to undertake independent and effective investigation into his whereabouts and the circumstances of his disappearance, and to bring responsible persons to account.



## 1.7 (b) Attack on the Freedom of the Press

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### The rape of the legal process<sup>70</sup>

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As the criticism both from within the country as well as internationally mounts against what is happening in the name of law and order in Sri Lanka, new types of distortions and aberrations are taking place in the country's courts.

There has been quite a lot of criticism about the delays of adjudication in courts and in recent times this has been highlighted regarding cases of rape. Just last week one report stated that a rape takes place in Sri Lanka every ninety minutes. Other reports on sexual abuse of children also reveal facts which are quite shocking. This led many local and international organisations to highlight this scandalous situation. Among others some of the international organisations to highlight the issue of delays relating to rape cases were UN agencies.

What is the result?

There has now emerged a practice in several courts to deal with this issue by way of offering to end the cases by way of paying compensation by the offender without imposing any prison sentences or even fining the offenders if such fines would affect their future employment. The going rate of compensation is around Rs. 100,000. Thus, an accused in a rape case could escape liability if they are willing and able to pay this amount.

Sometimes this can lead to very pathetic results. There was a case of the rape of a disabled woman and the police tried to settle the matter by the payment of Rs. 10,000 to the victim's family. The family refused and made complaints, which also received quite a lot of publicity. As a result the police had to bring the rapist to the court. When the case was taken up at a Magistrate's Court the judge asked the victim's mother what compensation she wanted and added that he was not in a position to offer anything more than Rs. 100,000. The mother of the victim, who is thoroughly ignorant of the law and what can be done in courts, muttered Rs. 80,000. The judge ordered that amount to be paid in compensation and that was the end of that case.

In some instances when the accused is a government servant and might lose his job if he was to pay a fine as a result of a conviction there are instances where a compromise is reached not to impose the fine but to make a payment for what is called, state costs.

The whole process of adjudication even on very serious matters like rape and torture, the habits of the market place are now being practiced in the courts and the matters are dealt with by way of such kind of negotiations and compromise.

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<sup>70</sup> AHRC-STM-121-2012; June 13, 2012



There is also the news of a pilot project for speeding up child sex abuse cases in three courts with the view to conclude a case within a period of three months. Such arrangements are unlikely to lead to an actual trial and are more likely to end in a similar kind of compromise.

Sri Lanka has moved far, far away from the rule of law. Any and every possible pragmatic arrangement is possible irrespective of the principles enshrined in the laws in the statute books.

## 1.7 (c) Sri Lanka Mirror, an online paper, raided<sup>71</sup>

According to reports the office of a well-known online daily newspaper based in Colombo, Sri Lanka is currently being raided. The raid is being conducted by dozens of security officers of the Ministry of Defense. According to a source quoted in the Sri Lanka Guardian, the security officers entered the offices showing a search warrant but are preventing people inside the premises from leaving and also preventing anyone outside from entering. It is also reported that the editor of this paper Ruwan Ferdinand's house is being surrounded by security officers at the same time.

Attacks on online newspapers and websites have been going on for several months now and several online publications have been banned in Sri Lanka. Sophisticated technology is being used to keep to maintain the ban and to control all internet publications.

Earlier the Sri Lanka Mirror was banned along with others but after a court case it was allowed to operate. Now suddenly it has been raided. Regarding the ongoing suppression of web publications we reproduce a [forwarded statement](#) published earlier.

Last week the president of the Federation of University Teachers' Unions, Nirmal Ranjith Devasiri, complained that some persons saying that they were from the Ministry of Defense visited his neighbourhood and inquired after his whereabouts. The extent to which the Ministry of Defence is interfering into the liberties of persons in Sri Lanka is reflected in the statement we issued [today](#).

## 1.7 (d) Yet another attempted abduction of a journalist<sup>72</sup>

Yesterday, July 5, there was an attempt to abduct a web journalist, Santha Wijesooriya, reported the BBC Sinhala Service. The incident is reported to have happened at Nugegoda. Santha Wijesooriya noticed that he was being followed by a white van and took the precaution of changing his route in order to avoid the van. While he was doing so, two persons attempted to catch him. One caught him by his shirt and tried to drag him towards the van, but he managed to kick the person away and escape. Thereafter, he reported this matter.

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<sup>71</sup> AHRC-STM-133-2012; June 29, 2012

<sup>72</sup> AHRC-STM-139-2012; July 6, 2012





Santha Wijesooriya is a person who is known to have been working with several websites. He is well-known as a web journalist. He has also written many articles relating to corruption and mismanagement. One of the recent articles he has written is about the link between the Rajapaksa family and Julampitiya Amare a.k.a. Geegana Gamage Amarasekera, the criminal who has been evading warrants for many years while enjoying the close company of many associates in the government.

Santha Wijesooriya in his article gives a great deal of information about Amare. In the article, Amare is supposed to have been remanded the first time for an alleged crime at the age of 18. Thereafter, he has worked as a security guard at the Walawwa (chateau) of Nirupama Rajapaksa. In July, 2002 a number of prisoners at Tangala Prison staged a riot against the guards. Amare was identified as a leader in that riot. The government at the time stopped the riot with the use of the armed forces. It is reported that during the riot, President Rajapaksa, who was then an opposition Member of Parliament, went to the prison with the then Minister of the Interior and it was after he called on Amare that he surrendered. Later, he became the best known underworld leader in the south. He is suspected of 24 murders, 15 robberies and around 20 arson attacks. However, he was evading arrest and had acquired about 100 acres of land by force and was freely enjoying possession. Recently he sold about 20 acres of land.

Santha Wijesooriya gives considerable detail about the criminal activities of this man and how he was protected by some members of the Rajapaksa family. The article, written in Sinhala may be found [here](#). It was a few days after the publication of this article that the abduction attempt took place.

Just last week we reported the arrest of several persons by a unit from the Ministry of Defense, who entered their premises and inspected all the computers, two of which were confiscated. A total of eight persons were produced before a magistrate who granted them bail. According to reports, the magistrate criticised the police stating that it is not permissible to arrest anyone thinking that they might commit a crime.

The attempted abduction of Santha Wijesooriya and the attack on Srilanka Mirror (please see our [statement](#)) are part of a series of actions by the Sri Lankan government, which has maintained consistent vigil and attack on all web publications. In a situation where local print publications are controlled by intimidation and attacks, web journalism has become an important alternative media which provides information otherwise not available to the public.

All such actions are taken on the basis of national security. When each incident happens the responsibility is denied by the Ministry of Defense which is the controlling agency in all matters relating to 'internal security'. However, that the Ministry of Defense is carrying out an extensive activity under the guise of internal security is well known.

An assumption that is fast becoming established is that there are no legal limits to the powers of the Ministry of Defense. No justification needs to be given to anyone for whatever the Ministry of Defense does.



How an institution can function completely outside any kind of legal responsibility to justify its actions on the basis of the law has no rational explanation. Such explanations are no longer considered necessary. That the government can do whatever it likes is the unofficial doctrine that is operating in the country and it is this approach that provides the motivation for persons undertaking such abductions and illegal attacks on websites, including illegal arrests and also secret surveillance of individuals as was reported in the case of the president of FUTA recently.

It is the duty of the parliament and the judiciary to question the mode of operation of the Ministry of Defense. As long as they fail to do so, there is no guarantee of any protection for any individual from any kind of attack on their civil liberties.

There needs to be an investigation into this attempted abduction. However, judging by the absence of inquiries into previous abductions there is scepticism among many as to whether such an investigation will take place.

## 1.8 Women's Rights

### 1.8 (a) Failure of state protection for women from rape, sexual harassment, & murder<sup>73</sup>

At Kahawatte, representatives from several religions met and addressed a press conference on the issue of insecurity relating to the women living in this area. Ten women have been raped and killed in this area within a short period of time; the most recent incident occurred one month ago. For further information, please see the [article](#) published by the AHRC. The police have failed to identify and arrest the persons responsible for this heinous crime.

The women representatives from the different religions stated in very clear terms that now women are afraid to stay alone in their houses in the Kahawatte area. Amongst those who expressed their concerns were nuns from the Buddhist and Catholic faiths. They all stated that the night has become a terrifying time for them and that if there were no men in the house they would rather leave home and stay elsewhere. The fear of rape and murder has gripped the locality.

All the speakers attributed this deep sense of insecurity to the failure of the police and went on to say that this is not something new to the Kahawatte area. Indeed, all over the country people identify the failure of the police as the main reason for the increase in crime and the spread of insecurity in their respective localities.

The women who held the press conference stated that the police are no longer interested in their law enforcement functions but, are rather being used to hunt political opponents of the ruling regime. The

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<sup>73</sup> AHRC-STM-043-2012; March 7, 2012

concerns of the police are directed at those who hold demonstrations relating to the high increases in the cost of living or other forms of repression which are prevalent in the country. Hunting down dissenters is now the task for which the police are used and their function as the protectors of the people has taken a back seat.

The fear of rape and the very real possibility of being murdered are wide spread throughout the country. In 2011 alone 1,350 cases of rape were reported. It is well known that anywhere in the world that the numbers of persons who dare to report a rape are very few. Thus, the figure of 1,350 is just a fraction of the women who have been subjected to this abuse. How many of these cases have been investigated and how many of the perpetrators have been brought to book? If, indeed, there are any at all it would only be a handful. The sense of futility of making complaints to the police is such that from among 30 women that were interviewed on the question as to whether they would go to a police station if they had a problem almost every one of them answered categorically that they would not dare.

A variety of reasons were given. The foremost being that they are afraid that they would be subjected to an even worse form of treatment than the one about which they were making a complaint. The fear of rape or sexual harassment at police stations is quite common among women.

When the lack of trust in the police has fallen to these depths with regard to protection and when the lack of confidence is so well-known to the government and the authorities and still no action is taken what expectation can there be of protection for women. At the moment there is nothing to attach one's hope to and there is no real demand that could be made of the government with any real expectation that action will be taken.

Thus, the core of the problem of the rape and murder of women and other insecurities that they face relates to a deeper problem of the failure of the government to take up the task of law enforcement with any kind of seriousness or any sense of obligation. One of the primary tasks of any government is to ensure the enforcement of the law through its agencies, such as the police, and thereby create the assurance to everyone, particularly the vulnerable groups such as the women, children and the elderly that their protection is a matter for which the government places the most serious attention. This consideration no longer exists in the Sri Lankan context.

Therefore, what anyone is seriously concerned about in the protection of women as the representatives of the religious groups who gathered at Kahawatte should do is to seriously ponder the failure of the government in this regard and to address the root causes of the failure of the government to take its primary obligations seriously. In any inquiry into such root causes it will become extremely clear that the structure of the government that is being imposed through the 1978 Constitution has failed completely. The executive presidential system has proven itself to be a complete failure in every aspect including that of the basic protection of citizens.

Press conferences or protests against rape and the absence of protection for women will be of little use as long as the ineffective system of governance, created and imposed on the people by the 1978 Constitution



would be enforced. The only kind of protection that the people would have under these circumstances is whatever they can do for themselves and not what they should expect from the government.

The executive presidential system is a threat to the protection of women and even a basic problem like rape cannot be prevented as long this form of governance will be the one that people of Sri Lanka have to live under.

Therefore, the women who make up half of the population, together with others should combine their efforts to address the root causes of the problems of insecurity and direct their attention to the removal of the system of governance that exists in Sri Lanka under the 1978 Constitution.

## 1.9 Crimes

### 1.9 (a) Murder of British national and Rape of Russian lady at Tangalla<sup>74</sup>



The murder of Kuram Shaikah Zaman (32), a prosthetic expert who was working in the Gaza Strip for the International Committee of the Red Cross, allegedly by a local politician, accompanied by a gang, has led to sharp criticism against the failure of the Sri Lankan government to maintain law and order and for its encouragement of lawlessness and criminal behaviour.

Zaman and an associate, a Russian lady by the name of Ms. Victoria Alexandrovna, (23) went to Sri Lanka for a short vacation. A number of foreign girls, including Victoria were enjoying a party when the Chairman of the Pradeshiya Sabha, Sampath Chandra Pushpa Vidanapathirana, wanted to dance with the girls; however, they refused. The infuriated chairman started a quarrel with the girls and Zaman, who was outside at the time came in and tried to stop the altercation. At this stage Zaman was assaulted and stabbed with a sharp instrument; he was also shot at, according to the reports of eye-witnesses.



After the attack, Victoria was brutally raped and was found naked by the time the police arrived to investigate. She also suffered blunt trauma and sustained a skull fracture. According to an eye witness she was raped even as she lay bleeding from the head wound.

*(photo: The alleged murderer, Sampath Chandra Pushpa Vidanapathirana, in the company of president Rajapakse)*

<sup>74</sup> AHRC-STM-001-2012; January 3, 2012



Several eye witnesses who had seen the incidents and made statements are now being threatened and are expressing concern for their own safety. Meanwhile several journalists who have reported the incident have also received death threats and reported the matter to their media agencies.

A government spokesman's first reaction to the media was to deny the rape. This is the usual pattern of government spokesmen, who try to defend government politicians even when these politicians are involved in serious crimes.

This murder and rape does not come at all as a surprise. Throughout the country similar gruesome murders and rapes were reported during 2011. The Asian Human Rights Commission has repeatedly brought these cases to the notice of the public, stating that the criminal justice system has been brought to a halt due to the political control of the policing system. The local politicians, on many occasions, have acted in a wild manner, due perhaps to the political patronage they have from the government.

Due to the publicity this incident has attracted, Chairman Vidanapathirana surrendered to the police. On assurance of anonymity, a policeman explained that such surrenders are nothing but a game. All the conditions of how to deal with the situation and the manner in which the surrendering suspects are to be released are all prearranged, he said. The whole process of criminal investigations is so manipulated by the government politicians that in many similar incidents the suspects have escaped any criminal punishment. The most glaring example is that of Duminda Silva, a Member of Parliament and a close associate of the Rajapakse family who was known to be a drug dealer and who was responsible for the attack that led to Baratha Laksman Premachandra and several others being killed. Duminda Silva was never named as a suspect in the reports of the criminal investigations submitted to court. The government's excuse was that the police have failed to name him as such.

The murder and rape of these two foreigners is the result of the failure on the part of the government to take the necessary measures to maintain law and order. The murder and rape are not accidental incidents but one of the many gruesome crimes that are taking place throughout the country due to the failure of law enforcement system.

The Rajapakse regime has clearly shown that it cares little about the law. Every kind of illegality has been permitted and the criminal investigation system has been brought to a standstill.

Lawlessness is part of the ruling style of the Rajapakse regime. The government claims, as its right, to engage in any kind of illegality for the maintenance of its power. Assaults of opposition parliamentarians inside parliament itself has now become the rule and this kind of behaviour is condoned by the president and the hierarchy of the regime who are for the most part, members of the same family.

Assassinations, death threats and other forms of intimidation of the media are so frequent and still no investigations take place into the complaints relating to such allegations. It is as if the Rajapakse regime has given a holiday to the officers of the Criminal Investigation Division.





The absence of investigations into serious crimes is the rule now. When some incidents become social scandals some persons are arrested and then a government spokesman claims that the crime has been solved. However, thereafter hardly any criminal process takes place and many such suspects, particularly those who are close to the government, are let loose after their initial arrest.

The result is that the policemen themselves, as well as the public have lost faith in the whole mechanism of law. The cynical comments could be heard about this system constantly.

This murder and rape and the similar incidents will keep on happening as long as the Rajapakse regime belittles law and criminal justice. The responsibility for this murder and rape lies not only on the culprits but also on the Rajapakse regime as a whole.

The statement of the wife of Mohamed Sali Mohamed Niyas (Loku Seeya shows the kind of gruesome murders taking place in Sri Lanka).

According to the post mortem, he was strangled and his throat slit. He had also been pounded in the head and stabbed a number of times. He was also administered 3 injections of unknown chemicals. I am still unable to imagine how brutal that had been. The body had over 100 kgs of weight strapped on to it which was wrapped with barb wire. The body was then covered with polythene and secured further with chicken fencing. It also had something like an anchor attached to the body. In spite of all that it had washed ashore to Akkarai Paththu. The body was flown back home and the funeral proceedings conducted.

What has happened in this incident is an extension to foreigners of two countries what is normally happening to Sri Lankan citizens all the time. This incident should be an eye opener to the government of the respective countries as well as to others about the state of lawlessness that prevails in Sri Lanka.

Without local and international effort to undo what the Rajapakse regime does to the legal system of Sri Lanka the future of all citizens as well as the visitors to Sri Lanka will remain a dismal one. There is regret at the moment about the adverse impact of this incident on tourism. However, the problem is not one of tourism alone. It is about total failure to create opportunities for a decent way of life in the country.

The Asian Human Rights Commission, while condemning this incident, calls upon Sri Lankans as well as the international community to boldly resist the Rajapakse regime's undermining of the rule of law in Sri Lanka. This descent to animal-like behaviour can only be stopped if the Rajapakse regime changes its policy of taking complete political control of the police. As long as the nation's law enforcement agency is unable to act to protect society from crime, there is no way to stop similar incidents from happening again.

[Kindly see the AHRC's New Year message for Sri Lanka.](#)



## 1.9 (b) People express frustrations by burning some houses at Kahawatte<sup>75</sup>

After intense public pressure, the police have revealed that they have identified the culprits behind the assassination of a mother and daughter at Kahawatta which took place one month ago. The failure of the police to take action so far has been attributed to political interference which has prevented them from carrying out their duty. Complaints of political interference with regard to the police are quite common.



The anxiety felt by the people, particularly the women, due to the recent murders, and the failure of the police to investigate led to the people protesting in large numbers, said to be over 2000, in Kahawatta. Following the news that the suspects had been arrested, houses belonging to the brother of one of the suspects were torched by the protesters. The owner of the houses is a Pradeshiva Sabha (council) member and the coordinating secretary to a minister.

According to information published so far, the council member is said to have ordered the murders of these two women. In the meantime the council member and his family have fled the area fearing retribution from the protesters.

The participation of such a large number of persons and the torching of the houses is a clear indication of the frustration that the people are feeling due to the failure of the policing system. A similar incident, including the burning of a house, occurred a few months ago when a doctor was murdered and the people discovered the identity of the killer. In many other instances also there have been large scale interventions of the people who have protested against police inaction in relation to serious crimes.

While arson needs to be condemned, as an act of lawlessness that can create a greater sense of insecurity, the participation of the people of a locality in such large numbers needs to be seriously pondered. Attempts must be made by the authorities and other concerned persons to understand the depth of frustration that is expressed by such protests.

Such protests clearly demonstrate that the frustration is not merely with the police but with the government itself which has clearly demonstrated that it lacks the political will to deal with the complicated problems of the failures of law enforcement throughout the island. In the past the excuse of the civil conflict in the north was given as the explanation for such failures. However, there is no real connection between the problem of the civil conflict in the north and the failures of the policing system in the rest of the country. In any case, this excuse no longer holds water after the May 2009 defeat of the LTTE.

The incapacity of the government to deal with the failures of law enforcement speaks to far deeper causes than the mere negligence of the local police or even the police hierarchy. The existing situation is the result

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<sup>75</sup> AHRC-STM-048-2012; March 8, 2012

of a systemic failure which arises from deep structural reasons rather than mere negligence of particular individuals.

As pointed out by the Asian Human Rights Commission earlier, the most difficult problem relating to law enforcement as well as the democratic process in Sri Lanka is the political structure imposed through the 1978 Constitution, which has clearly emerged as one that cannot be practically implemented. Empowering a single individual, the executive president, with all the authority of managing the political and administrative structure of the country was, from the very inception an impractical idea. No single individual has the capacity to run the civil administration of a country. The authority that the head of a state has is that of a coordinator rather than that of a commander, looking into every problem that exists in a country. Thousands of new problems and new situations arise within a country and these situations are multiplied in each locality by way of new situations and new problems.

There need to be persons at different levels of government with the power and the capacity to comprehend the manifold problems that arise within a country and these authorities should also have the power to take the necessary action on their own. Making these decisions on their own implies that their authority should not be interfered when carrying out their duties. The idea of supervision or the command responsibility of higher authorities does not imply the direct control of each and every individual holding office and depriving such authorities of the right to take the necessary action to deal with the problems that they are confronted with.

What has happened under the 1978 Constitution is that all decisions of all authorities have come under the direct political control of the executive president. As a result of the exercise of this kind of political authority over various institutions, the authorities within those institutions have learned that they do not have the independent power to make decisions and solve problems. They have learned to wait for orders. This mentality, of fear to deal with one's own responsibilities with one's own initiative, is the cause of the paralysis of all the institutions in Sri Lanka, including the police. This means that the frustrations that the people have in the failures of the institutions is not going to be resolved until this system which has been imposed through the 1978 Constitution remains the operative system within Sri Lanka.

As a result, for each event, for example on each murder, the affected people in the localities have to generate an enormous amount of pressure if they want to get any kind of action from the relevant authorities such as the police. The whole system depends on the ability of the people to become directly involved in every problem and to hold public protests in order to create pressure.

Therefore, this is not a rational system that relies on multiple sources of authority acting on the basis of the responsibilities that are conferred on them by law and authorities that hold themselves responsible to carry out the duties that are imposed on them within the framework of the law.

The present situation is a direct policy imposing system and not a law enforcement system. Every officer has to be waiting for the command from the top indicating what he or she should do and such authorities cannot depend on the legal mandates that are given to them by the very office they hold.



Therefore, the responsibility for the violence that took place at Kahawatta, by burning the houses of the alleged culprits of the crime the responsibility should be laid, not on these helpless people acting out of sheer desperation, but on this presidential system that has forced the people to take such action. It is the President that should be held responsible for these acts of violence.

The question simply is who is going to take the initiative to undo this failed system? Though the incumbent president promised to take that initiative when seeking a political mandate for the highest post in the country, that promise has not been kept. Without the president taking that initiative it is not possible for anyone in the government to take any action for the dismantling of this failed system.

This implies that the initiative for changing the failed system rests with the people themselves. Instead of the desperate action of torching the houses of alleged criminals the peoples' initiative should be more rationally directed towards dismantling of the executive presidential system which is the cause of their grievances, their frustrations.

## 1.9 (c) Fort Police steals from a Cambridge graduate and charges him with theft<sup>76</sup>

The Asian Human Rights Commission is forwarding the following letter from Mas Rashid Singawangsa, a Sri Lankan citizen, which gives detailed information of the ordeal he suffered at the hands of the Fort Police.

*What follows is the letter from Mas Rashid Singawangsa:*

I humbly and respectfully submit the following facts with the fervent hope of getting redress and justice:

I am a Cambridge University qualified English teacher. I studied in the US and UK and then taught in Yemen (I have lived out of the country for over 15 years). Afterwards I returned to Sri Lanka on about February 2012 and went on a tour around the island.

On or about 15 March 2011, I applied for a Police Clearance Certificate to enable me to take up employment abroad before undergoing some specialized Chinese treatment in Malaysia for a skin problem I have been suffering for a long time. I had already bought a ticket to Malaysia to leave by 10th May 2011. Since the clearance was getting delayed I visited the Police HQ several times without getting any positive response. Again, I visited this office on the 9th of May 2011, and met ASP Ms. Renuka who had earlier given me an appointment to see her and was told it was not ready and if I wanted earlier I could write a letter of appeal to DIG, which she could take to him to expedite the matter. Accordingly, I handed over a letter to her and left her office. After about half an hour I received a call from OIC Mr. Alwis of the Clearance Section Police HQ who asked me to report at his office and collect the Clearance Letter. Since I was taking some Ayurvedic treatment for my eczema (a skin problem) and also was having loose motions, I

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<sup>76</sup> An article by Basil Fernando, AHRC-ART-098-2012; October 15, 2012

called Ms Renuka and asked if I could come a little later and if she could leave the letter at the entrance. She said it was not possible and asked me to come before 5.00 p.m.

I arrived at OIC Clearance office around 5.00 p.m. and met Ms Renuka. She told me that she took a lot of trouble by personally seeing the DIG to obtain the Clearance Letter. Then I asked OIC Mr. Alwis for the letter and he kept me delayed up to one hour saying the letter was still under process.

All of a sudden I saw SI Mr. Wijedasa (who I later learnt was from the Fort Police station) along with a number of PCs walked in and asked me to follow them to a corner of the hallway, surrounded me and strip-searched me. They removed all the items in my possession and went through them. They left my things on the floor which was put back into my bag later. However, they kept back my wallet which had approximately Rs.70,000 in S/L currency and Two Travelers Cheques of USD \$ 100 each, among other items. Then the SI took my wallet to ASP Renuka's office while I was asked to stay outside the office. I was completely unaware as to what was happening inside the office. The officers who were present there were joking at me calling me "Bin Laden" apparently for my beard in spite of my protests. One of the officers however, repeated this name many times which appeared like insults. After about 15 minutes the SI came out of the office and accompanied me with another officer out of the HQ and took me to Fort Police Station on a Three Wheeler. At this stage my bag and wallet were still in their custody. At the Fort Police Station, they had me seated and asked me a few questions which I don't fully recollect. I asked some of the officers around why I was taken here for which they were reluctant to answer. However, one of the officers jokingly said "you have been arrested for a theft of Rs. 8,000", which I too took as a joke as they did not show any anger towards me. Then I was shocked when I was taken to the cell and locked up. I was lying there for some time and also performed my prayers. Then I was brought to the office and was asked to sign a statement for the items which they found in my wallet. I looked at the amount mentioned as Rs.55,000 and disagreed about the amount as it was short by Rs.15,000. Also, the receipt mentioned only one TC x US\$100 whereas I had two TCs. I counted the money in my wallet and after discovering the amount stolen, I banged the wallet on the table saying, "you know how much was in it and you know who took it". The officers there did not react to my shouting. They kept insisting me to sign the statement which I totally refused to do. I was then put back into the cell. I spent the most agonizingly sleepless night since this was the first time I ever experienced such a dreadful event in my entire life.

On the following day morning, a police officer from the Tourist Police (I was told) forced me to provide a statement the way he wanted relating to the incident. I was not sure what the incident was. He said, if I don't give a statement I would be given another prison sentence. He asked me several questions and wrote down on his own words. From the questions I inferred that I was being framed to have committed a theft of some money from the Police HQ. It looked ridiculous to me to imagine even a hard core criminal could have had the courage to steal cash from the Police HQ. Here I would mention that due to absence from Sri Lanka for a long period of time due to employment abroad and studies I had been out of touch with Sinhala language and my accent sound foreign. The Officer was perturbed that I could not manage in Sinhalese and even cursed me intermittently, "you fucker, you forgot your language", and was very angry with me notwithstanding the fact that I am not a Sinhalese and throughout my life I used English as my



home language. I asked him to write the exact words I spoke, which he refused and used his own words and insisted me to sign the statement.

I remember signing the document with my comment at the bottom "with reservations" within brackets. After the interview I was put back in the cell and later I was asked to sign for the "release of my property that included money". I refused to sign as part of my money was missing as mentioned before. Then they told me they would not return rest of my money if I did not sign the receipt they had with them. I was therefore compelled to sign the document in order at least retrieve the rest of my own money. However, I mentioned that "missing Rs.15000 and a TC for USD \$100" after my signature on the document. Also, the trouser belt they removed the previous night before putting me in the cell was not returned to me. I had to wear my trouser without the belt which made me very inconvenient as I had to hold on to it with my hands.

I was taken to the Magistrate's Court, Fort where the Fort Police read out a statement to the judge. I did not see the statement which was read out at the courts which I could not follow fully well as it was hardly audible. The honorable judge did not ask me a single question, when I was prepared to tell her my version of the events. Later, some prison officers took me to the Magazine Prison.

Up to now I am not clearly told what crime I had committed or given any charge sheet. I spent 14 days or so at the prison and after the initial court appearance. On my second appearance I was offered bail which I could not utilize as I did not know any procedure and was put back into the cell notwithstanding the fact I was represented by a Lawyer arranged by the Police against my will. After a few more days, through a motion I was released on bail on 30<sup>th</sup> May 2011. Having spent most of my hard earned money on the above matters, I have now become almost a pauper, without a job, unable to go abroad for employment, unable to face the world and suffer through mental agony. Inside the prison, I had to stay with some of the worst criminals and drug dealers I have ever come across in my entire life, and also had to tend to my bleeding wounds without any proper medicines. All these when I remain not even knowing what I am really accused of. My plan to obtain treatment in Malaysia for my skin problem has failed and the problem has worsened since then.

Though I am fully aware of the true incident (that it was a total fabrication), I leave that decision with you to decide. However, apart from that, any laymen can say with certainty that the police have made inaccurate and contradictory statements under oath, as a cursory perusal of the documents will show. Out of the more than 40 contradictions, let's take the following as an example:

The alleged lost money was kept in the following locations:

(a) In an open cane basket (A,1,26) (b) under a book (B,4,19) (c) under a file (P1,4,5) (d) on a shelf (P2,8,3) (e) on W1's left side of table

**Since a person's life would depend on the statements made by police, one could even get a life sentence based on a wrong wording. Therefore, under such circumstances,** I believe it is irresponsible to have such characters to continue service since they clearly pose a risk to the well-being of our society as



they have themselves clearly demonstrated through their work, without a shadow of a doubt, in statements under oath, that they are incapable of doing their duties properly and thus putting people's lives at risk. I was myself in prison for 3 weeks. Although out on bail, I can never forget the miserable time I had to endure. I can't forget being dragged in chains and hand cuffed while being taken to the hospital and spending sleepless nights in drug and cigarette smoke filled environments next to murders, rapists and criminals. I am now on psychiatric medication, and to date suffer from strange rashes in my body and groin areas. The perpetrators are no other **than criminals in uniform. So long as they and their likes remain employed, I will never feel safe, nor you or your family, dear reader or anybody else known or unknown.** I am sure everybody will disagree as dangerous if we have former prisoners work in the police force. Likewise, as responsible citizens, those police officers must be stripped from their positions and brought to trial as the evidence is established with certainty based on their own statements made under oath. I believe police officers engaged in such misconduct ought to be suspended so as to discourage further crime since they have committed perjury as noted in the proceedings as well in complete disregard to the judicial system.

I therefore request that proper charges be brought against those responsible and that they be taken to task to the fullest extent of the law so that it remains a lesson to would-be-criminals. I also request that the evidence be looked into and that I be acquitted and the case dismissed, **if you are satisfied of my innocence.**

I lodged a complaint with the Human Rights Commission (1636/11) a photo copy is attached herewith within a month after being released on bail and therefore would like to file a fundamental rights petition.

Below are some of the violations:

- 1) Falsely and knowingly bringing false charges + imprisonment.
- 2) Stealing money in my possession.
- 3) Refusing (Fort Police) to lodge my complaint.
- 4) Refusing a copy of the first information.
- 5) Refusing to provide a clearance for work.
- 6) Tarnishing of my character.
- 7) Causing physical and psychological damage.

I therefore most humbly request that I be released and absolved of all the charges, if any, which I never committed to the best of my knowledge and belief. I also hope the perpetrators of this criminal injustice to me be legally taken to task as they tarnish the good image of this government and our beautiful nation.



## 1.9 (d) Attack killing 2 attending JVP meeting is forewarning of another round of terror<sup>77</sup>

Two persons were killed and several others injured attending a JVP meeting on 15<sup>th</sup> June. This has once again reminded the country of the system of political terror, which has undermined the political and legal system. The killing was the result of shots fired by motorcyclists, who fled after the incident and according to the JVP, the shooting was carried out by an underground elements. The JVP believes that it was a political assault for which the government is responsible.

What has created the suspicion about the government's involvement is the media version given by some channels immediately after the attack which said that it may have been caused by break away rival groups of the JVP itself. The spokesmen for the police also tried to give this interpretation, even though there was no evidence at all to back it up.

Whenever the government is involved in a political attack, it is a common feature to attempt to attribute such attacks to some other sources. In a country where political terror is so deeply entrenched, committing and attributing the blame on various groups and elements is now the norm.

The JVP has stated in public that they have provided sufficient information which should enable the arrest of the culprits. However, the police claim that there is not enough evidence to rely on and that they are investigating the matter through several investigating teams.

Making claims about ongoing investigations is also a common feature in Sri Lanka after political attacks. However those investigations hardly ever lead to any genuine arrests. Indeed, there are so many cases where for years the investigations are said to be on going but no findings have been made. The cases of Lasantha Wickramatunga, Pradeep Eknaligoda and many others relating to journalists and people representing opposing views to the government are quite well known.

On the other hand, when it comes to the people who are friends of the government, such as Duminda Silva, the police investigators do everything they can do to ensure the protection of these culprits. President Mahinda Rajapaksha and the defense secretary Gotabaya Rajapaksha should take the blame for the state of the prevalence of state of the terror in the country and for the failures of the police investigations.

This killing of people who are faithfully participating in a small political gathering in a peaceful manner is a warning of another round of terror that is being ushered in. That the JVP is the target being relentlessly pursued by the government is no secret. These attacks have happened over and over again and it is quite likely that there will be many more of them.

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<sup>77</sup> AHRC-STM-123-2012; June 19, 2012

In such circumstances, to remain silent is to encourage the recurrence of another round of violence. The protest against such violence should above all come from those who have supported the government. Surely many of those who have supported that government have not done so just to see the recurrence of a period of terror.

The opposition parties and civil society organizations should rise against this resurgence of terror attacks irrespective of whatever their may be views about JVP's political ideas. If they remain silent, such terror will soon be directed against all opposition parties and the civil society organizations.

## 1.10 Attack on the Right to Property

### 1.10 (a) Disappearance of land titles among other frauds<sup>78</sup>

The Asian Human Rights Commission wishes to bring to the attention of the Sri Lankan public that we have learned about the massive frauds relating to tampering with land titles and also other frauds by the misusing the criminal justice process by way of fabrication of charges.

The incidents narrated hereunder would explain the nature of fraud that is taking place on land titles, by the removal of District Land Registry documents from the land registrar's offices. The cases will also reveal, how, by unscrupulous manipulation of false charges on innocent people, some massive frauds are taking place.

For reasons of security, the AHRC has withheld the names of the persons who were directly victims in these stories. However the incidents are real and have taken place recently.



### Story 1

**Upali (1)** is a businessman who owns land in a reasonably important area in Galle. He has owned about 40 perch of land (one fourth of an acre), which is his family property for over 80 years. As is becoming more common these days some unscrupulous persons made a false deed and registered it in the District Land Registry for this same land. Upali (1) is unaware of this registration. The newly registered owner sold the land to a company dealing in real estate. This company was requested by a politically powerful family who

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<sup>78</sup> AHRC-STM-187-2012; September 17, 2012

is trying to develop a big project in the area to find land for them. The company sold several pieces of land including that belonging to Upali (1) to the family.

When the project tried to take possession of the land they discovered that Upali (1) is the legitimate owner of the land but claimed that they were the lawful owners. The company who sold the land to the project was questioned about this issue. It was only at that point that the company found out that the deeds of the person who sold the land was falsely registered and that the lawful owner is Upali (1). The politically powerful family who are the owners of the project placed the matter before the Ministry of Defence who questioned the company about the complications of the transaction.

The company, on the one hand, tried to negotiate with Upali (1) offering a certain amount of money for him to vacate the land and hand it over to the company so that it could in turn, hand it over to the project. On the other hand the company explained to the Ministry of Defence about the complications involved and Upali (1)'s resistance to hand over the land.

While the company was involved in this difficult process tried to correct the mistake they had made in buying the land from the person who had the falsely registered deed and at the same time please the politically powerful family by trying to obtain vacant possession of the land, they explained the complications to the investigators from the Ministry of Defence.

While the negotiations were ongoing between Upali (1) and the company one day he went to a public event and there, two uniformed officers who arrived in a white van arrested him. They told a family member of Upali (1) who was present that they were taking him to a particular police station. Later, members of Upali (1)'s family went to that police station only to be told that there had been no such arrest. The police further stated that they had no information on Upali (1)'s whereabouts. They then contacted the employee of the company who had led the negotiations and learned that the Ministry of Defence was making enquiries about the land and the complications. He also said that he was unable to do anything about this matter and that it was being handled by big people. He was a small man, he told them and it was out of his hands.

Two years have passed since the disappearance of Upali (1) and to date, no one knows his whereabouts. He is considered to be a disappeared person. The family members who are still trying to find Upali (1) are harassed and threatened to give up their enquiries. Eventually they had to flee the country for their own security.

Whatever the claims or land titles that Upali (1) once had are lost and the politically important family has now become the owners of the land as well as other lands which are being used for the project.

## Story 2

**Upali (2)** is the owner of a tea estate, which is fairly large and a well-known person in the area. Between 1987 and 1991, which was when, the JVP was in conflict with the government, one night he was abducted





and brutally killed by unknown persons. The family was not sure whether it was a JVP team or one from the UNP who also considered him to be an opponent.

Twenty years later we are now telling his story.

Some persons had allegedly written false deeds for his land, which was registered, and they were trying to claim ownership. The surviving family members had to find their own solutions to their lives and are distanced from this affair. The persons who registered the false deeds are aware of the possible complications and it was to profit from these complications that they registered the false deed and tried to claim the land of the owner who was extra-judicially killed during those days of terror.

### Story 3

**Upali (3)** was a Deputy Inspector General of Police who rose to that position after working for several decades. One day, an amount of gold worth millions of Rupees was stolen from his house. Despite of all possible enquiries the police were unable to arrest anyone. Some months later the suspect was apprehended in another theft. The Head Quarters Inspector of Police (IP) in another area had arrested the suspect. This IP was a powerful person with connections to local and national politicians. He had been accused of many human rights violations including the extrajudicial killing of a person who had complained of police torture by the OIC and other officers under his command. However, he had been able to avoid any kind of enquiry or any disciplinary action. Even the extrajudicial killing of the complainant of torture was never investigated.

After the arrest of the suspect, the IP discovered that the man had been involved in the robbery from the DIGP and was able to recover the gold. He released the thief but kept the gold and gems for himself. Sometime later the thief was arrested again in another area and there, among other things he revealed his arrest by the HQ IP and how the officer took the gold and gems. The IP was later arrested on charges of robbery from the DIGP.

### Story 4

**Upali (4)** is a young businessman and is also a qualified accountant who learned in the recent years to invest some money in the shares market. He discovered that by careful watching the market and investing his money properly, he could make a profit. Realising that he had learned his trade well he put most of his savings into the market, which amounted to around Rupees Ten Million. Suddenly within a few days he lost around Rupees Nine Million. He then learned that due to a massive fraud that had taken place within the share market he had been thoroughly cheated. There was nothing he could think of by way of legal action to take action on the cheating that had gone on in the shares market.



## Story 5

**Upali (5)** is a young man who had taught himself a few languages and found a job as a tourist guide. He was in the job for some years and as a result he had a big advantage over the other guides and got to know a lot of people. Knowing so many people he became engaged in small transactions where he would do jobs for traders and make a commission for himself. He was previously from a fishing community and because of this he knew people who made and sold boats.

One day two persons approached him and asked where they could find a company that would sell them a boat. They told him the boat would be used for fishing. He introduced them to a company which sold them a boat for Rs. Three Million and gained a commission of Rupees 50,000.

Sometime later, as often happened, some tourists asked him to find them a hotel and he took them to a particular hotel for the night. That night the police raided the hotel and arrested the tourists and charged them with illegal migration to Australia by a private boat. The police questioned the owner of the hotel as to who had brought the tourists there and he identified Upali (5).

Upali (5) was then arrested by a number of police officers. He was assaulted and threatened with death. He was blindfolded and overheard the officers saying, "Let's kill him now." Another replied, "No, let's get the information and we can kill him afterwards".

When they took a statement from him he told them of how he had introduced people to buy the boat and gave the police their names. Later these people were also arrested. They paid a large bribe to the arresting CID officer and these people who were in fact, the organisers of the illegal migration and who had taken money from people promising employment, were released.

Upali (5) was charged with organising the trip and recruiting people for illegal migration and he then spent a period of almost two years without bail. There was no evidence of any sort against him except for the fact that he had brought the tourists to the hotel. While the actual culprits escaped by payment of a heavy bribe Upali (5) was charged for their offense. The making of fabricated charges by the police and CID is quite usual.

## Story 6

**Upali (6)** is a retired officer from one of the three main forces of Sri Lanka, and held a senior rank. Some 40 years ago while he was still serving he bought a house in a prestigious area of Colombo and lived there with his family. While in retirement when he was trying to do some alterations to accommodate another family member, another person claimed the land on the basis of a false deed. When making enquiries in the Land Registry he found that all the registration books entries relating to his land were missing. Now he is facing a challenge in court where the man who falsely registered the deed is claiming the title on the basis of prior registration. In order to prove the falsehood in the registration Upali (6) is unable to get the necessary documents from the Land Registry as these books are missing.



Under these circumstances it is advisable for everyone to have a proper check in the respective District Land Registries about the documents relating to their properties. Where there is any reason to suspect fraud, the people should take appropriate action through the criminal as well as civil processes, and where these fail to resort to publicity to get assistance from the media. The others who face serious threats to their life and liberty through manipulation of criminal processes by way of fabrication of charges should also take precautions for their protection.

## 1.11 Rizana Nafeek

### 1.11 (a) Nothing moving to save Rizana Nafeek, who awaits beheading at Dawdami Prison, Saudi Arabia<sup>79</sup>



Ever since the initial verdict of the Dawdami High Court sentencing her to death, the Asian Human Rights Commission has maintained that she is innocent of the charges and that it was the duty of the Sri Lankan government to do all it can to save her life. As the government refused to assist her to file her appeal, the failure of which would have led to her death 30 days after the verdict, the Asian Human Rights Commission took the initiative to collect the lawyer's fee for filing her appeal (USD \$40,000) and got the appeal

filed in time. Ever since, there has been worldwide attention on this case and literally all the leading media agencies in the world highlighted her plight, and millions of people from around the world campaigned on her behalf. Most recently, even the European Union expressed their concern for her and stated that her case is being monitored.

However, Mr. Dilan Perera, Minister of Foreign Employment Promotion & Welfare in Sri Lanka, stated publicly several times that such campaigning may be counterproductive in the context of Saudi Arabia and that the government of President Rajapaksha is engaged in diplomatic efforts in order to save Rizana Nafeek. Minister Perera made the same remarks even at the Sri Lankan parliament when questioned about the matter.

However, from the reports that have subsequently appeared, it has become very clear that the government of President Rajapaksha has failed to take any effective measures to ensure successful negotiations with the family of the deceased infant in order to secure a pardon for Rizana Nafeek. It now appears that all the Minister Perera has done is to attempt to stop a worldwide campaign to release Rizana Nafeek due to the political embarrassment it has created for the Rajapaksha government. He has done this by taking responsibility to get Rizana's release and thereafter doing nothing about it.

<sup>79</sup> AHRC-STM-115-2012; May 31, 2012



What was most embarrassing for the Sri Lankan government was the rise of criticism of the government's failure in this matter by many Muslim leaders in Sri Lanka and also the Muslim community as a whole. Besides this, the women's movements in Sri Lanka and also organisations for the protection of migrant workers and many others, including other religious groups, have been actively engaged in demanding that the government secure her release.

While the government of President Rajapaksa has failed to initiate any diplomatic measures to secure her release, its efforts have been to silence critics and to dampen the campaigners for her release by making false promises of taking the responsibility for her release.

The Asian Human Rights Commission, which has throughout campaigned for her release, is shocked and saddened by the utter negligence and lack of concern shown by the government on this issue.

On an earlier occasion, AHRC wrote an [open letter](#) to President Rajapaksa on this issue. We once again reiterate that the life of Razina Nafeek lies in the hands of President Mahinda Rajapaksa and that if her death sentence, which has been delayed due to worldwide interest shown on her behalf, is to take place, the entire responsibility for her life would lie with the hands of the President and his government.

We call upon everyone to write to President Rajapaksa and to hold vigils in Sri Lanka and outside, demanding the government to take immediate diplomatic measures to get her released.

The contact details of President Mahinda Rajapaksa are as follows:

His Excellency the Hon. Mr. Mahinda Rajapaksa  
President Socialist Democratic Republic of Sri Lanka  
C/- Office of the President  
Temple Trees, 150, Galle Road  
Colombo 3  
SRI LANKA

Also, here is a news item that appeared in the Asia Tribune, which we reproduce. The article describes the pathetic plight of Rizana Nafeek, who may be beheaded at any time.

## **The Caged Bird – Rizana Nafeek**

Thu, 2012-05-31 04:23 — editor

By K.T.Rajasingham  
Colombo, 31 May, (Asiantribune.com):

It is unfortunate, we have conveniently forgotten her. She continues to languish in the Dawdami High Security Prisons since 25 May 2005. Unfortunately we have not done anything to secure her release. She is still in the same Dawdami Prison, without any light at the end of the tunnel.

To know her present plight, I contacted Dr. Kifaya Ifthikar , a Sri Lankan dental surgeon working in Riyadh and who visits regularly to the Dawdami Prison to meet Rizana Nafeek.

I asked her when she last went to the Dawdami Prison to meet Rizana Nafeek. She said last time she visited was in the first week of April 2012.

She said that as nothing is moving in her favor, she is planning to go again in the second week of June, to meet Rizana Nafeek.

When asked about the condition of Rizana Nafeek, Dr. Kifaya Ifthikar said that she is 'OK'. She is keeping well without any problems. She used to cry for some time whenever she sees me. She also said that whenever she visits the prisons, she makes arrangements for Rizana Nafeek to speak by phone to her parents in Muthur, Sri Lanka.

"She does not know that her appeal in the Supreme Court was rejected. She does not know that the Supreme Court has confirmed her death penalty. She even does not know that she awaits the consequences of beheading, one day or other, in case we failed to secure her release.

The poor soul, she is hoping that one day she will be released. She is always happy whenever I visit her and she is of the opinion that something good is happening to her."

When I asked Dr. Kifaya Ifthikar in what language she talks with Rizana Nafeek? She said that she use to converse with her in Tamil and now she knows very good Arabic and very fluent in that language, as she is inside the prison with Arabic people.

Dr. Kifaya Ifthikar said that from the day she was arrested on 25 May 2005, to date, she continues to remain the Dawdami Prison. The prison is like an urban house and she is not in a death row. There is no any problem for her inside the prison. Everything is perfectly all right for her and she is inside, but she has to come out soon from the prison.

She says that Sri Lankan Embassy in Riyadh knows about her visits to prison, as she has to go in the Embassy vehicle as it is a 4 hour long journey from Riyadh and there are lot of check points and have to show documents and it is possible to go only by the Embassy vehicle.

It is very long she is there in the prison and she should come out soon.

Dr. Kifaya Ifthikar said last time I was in Sri Lanka I went and met her parents in their house in Muthur. I met them last August. I went and stayed with the family from morning to evening and then went back. I am in contact with them almost once in a week. The two sisters of Rizana Nafeek are going to school and their house is also in a very bad condition. I don't want to do anything immediately. I want the Girl (Rizana Nafeek) to be out first.



Rizana Nafeek of Muthur, when she was 17 years old, became a victim of a recruitment agent who altered her date of birth in her passport, making her as 23-years old and was sent to Saudi Arabia on 22 April 2005 as a house maid, to work in the family of Mr & Mrs Naif Jizin Khalaf Al-Otaibi of Dawdami, Saudi Arabia.

On 25th May 2005, she was arrested and thrown into the Dawdami High Security Prison on charges of murdering the 4 month old baby son of Mr & Mrs Naif Jizin Khalaf Al-Otaibi of Dawdami.

Initially, on June 16, 2007, a three-member panel of judges from the Dawadami High Court headed by Chief Justice Abdullah Al-Rosaimi found Rizana Nafeek guilty of murdering the four-month-old son of Naif Jiziyan Khalaf Al-Otaibi and sentenced her to death.

The court informed Rizana Nafeek that she could file an appeal against her death sentence, which she did.

Subsequently, the Supreme Court of Saudi Arabia confirmed on the 25th of September 2010, the death sentence of Sri Lanka house maid Rizana Nafeek.

In October 2010, Sri Lanka President made a special appeal to King Abdullah bin Abdul Aziz Al Saud, King of Saudi Arabia to grant pardon to her.

Later on 18 November 2011, an eighteen member delegation appointed by Minister Dilan Perera went to Riyadh to seek the release of Rizana Nafeek. The delegation was more or less led by Kingsley Ranawaka, chairman of the Sri Lanka Bureau of Foreign Employment.

After their failed attempt, Kingsley Ranawaka is no more the Chairman of Sri Lanka Bureau of Foreign Employment. When *Asian Tribune* asked whether he was removed because of the failed attempt to secure the release of Rizana Nafeek, a spokeswoman of the Ministry of Foreign Employment Promotion & Welfare said, "it had no connection".

Subsequently, *Asian Tribune* contacted Dilan Perera, Minister of Foreign Employment Promotion & Welfare and asked about Kingsley Ranawaka, the Chairman of the Employment Bureau. The Minister said that President Mahinda Rajapaksa has transferred him as Chairman of Mega Naguma.

Also *Asian Tribune* asked Dilan Perera about the action taken by his Ministry regarding the release of Rizana Nafeek. The Minister said, "I don't give press interviews on policy matters as that is not the way for us to move about regarding getting Rizana's pardon. Sorry Mr. Rajasingham, I respect you a lot.



It is a pity the poor Rizana Nafeek is still languishing in the prison and so far no arrangements are made to secure her freedom.

Let us all pray for her release.

– Asian Tribune –

## 1.11 (b) Rizana Nafeek awaiting beheading is forgotten by the government<sup>80</sup>

The AHRC releases a [dossier](#) on all relevant documents relating to the campaign to obtain release for Rizana Nafeek.



Rizana Nafeek, arrested in 2005 and sentenced to death by beheading in 2007 is still languishing in the Dawdami Prison in Saudi Arabia as the government of Sri Lanka has failed to take the necessary diplomatic steps to obtain her release despite of their promises to do so.

As pointed out by the Asian Human Rights Commission, the allegations against Rizana, who was 17 at the time of the alleged incident, was baseless. She was charged with the murder of an infant under her care while, by all circumstances, it is clear that she had no involvement of any sort regarding this death and that in all probability the child died of natural causes. No foul play of any sort by her was alleged, even at the courts and there was no post-mortem report giving the cause of death. Purely on the basis of a confession obtained under severe duress, by police officers who spoke only in Arabic, a language she had no understanding of, and without the benefit of a translator.

The sole basis for her conviction and the later affirmation of the conviction during appeal was that, under Saudi Arabian laws, a confession has finality and there is no room to challenge such confession during the trial.

There was an international outcry against the sentence and concern for her has been expressed by way of massive interventions on her behalf requesting her pardon from His Royal Highness, the King of Saudi Arabia.

His Excellency, the president of Sri Lanka, Mahinda Rajapaksa also wrote a letter to His Royal Highness requesting a pardon. In Sri Lanka the government spokesmen have repeatedly claimed that missions have been sent and negotiations conducted with the family of the deceased child to obtain a pardon. However, in close examination of reports available in the media it becomes clear that the Sri Lankan government has

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<sup>80</sup> AHRC-STM-143-2012; July 11, 2012



failed to establish contact with the family and therefore there are no effective negotiations going on at all.

This means that the order for her execution could be carried out at any time.

Among those who have expressed concern for this case is the European Parliament, where the EU High Representative and Vice President, Catherine Ashton has said that, "The EU will continue to follow it (Rizana's case) very attentively in close coordination with the authorities in her home country, Sri Lanka (May 10, 2012)".

The Asian Human Rights Commission is today issuing a dossier on all documents relating to the case of Rizana Nafeek and call upon everyone to make a renewed attempt to get her release by intervening with His Royal Highness the King of Saudi Arabia and also pressuring the Sri Lankan government to undertake effective diplomatic efforts to obtain her release.

## 1.11 (c) To protect the life of Rizana Nafeek is an obligation of the sovereign state of Sri Lanka<sup>81</sup>

### The Asian Human Rights Commission's reply to a letter from the Secretary to the Honourable President of Sri Lanka

For the full dossier on Rizana Nafeek's case please see [here](#)

What follows is a letter from Mr. Lalith Weeraratunga, Secretary to the President, regarding a background report on Ms. Rizana Nafeek and the AHRC's reply to this letter.

PRESIDENTIAL SECRETARIAT

August 20, 2012

Programme Officer  
Urgent Appeals Programme  
Asian Human Rights Commission  
Hong Kong

Background Report of Miss Rizana Nafeek

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<sup>81</sup> AHRC-STM-168-2012; August 28, 2012

I write with reference to your letter of June 05, 2012 addressed to His Excellency the President of Sri Lanka on the above subject and wish to present the following details for your information.

According to the background reports received from the Ministry of Foreign Employment Promotion and Welfare, and the Ministry of External Affairs, charges have been made against Miss Rizana Nafeek under the Shariya Law by a court in Saudi Arabia for committing the murder of a baby child even though Miss Nafeek was a minor at the time of the incident.

His Excellency the President has requested clemency for her from His Majesty King Abdulla bin Abdulaziz Al-Saud in the year 2010.

Further, the Sri Lanka Bureau of Foreign Employment which is under the Ministry of Foreign Employment Promotion and Welfare has agreed to pay the blood money, if the parents of the victim baby child agree to accept the blood money in court. Accordingly, a delegation was sent to Saudi Arabia to discuss the release of Miss Nafeek with the Saudi authorities and the parents of the victim child.

The Sri Lanka Embassy in Riyadh has also conducted a series of negotiations with relevant parties in Saudi Arabia in this regard.

During the visit of Hon. Minister of External Affairs to Riyadh on March 12, 2012, Hon. Prof. C L Pieris had met the Governor of Riyadh, His Royal Highness Prince Sattam Bin Abdulaziz Al-Saud, under whose purview this matter comes, to convince the parents of victim baby child to forgive Miss Nafeek.

Lalith Weeratunga  
Secretary to the President

## Our reply to this letter

Mr. Lalith Weeratunga  
Secretary to the President  
Presidential Secretariat  
Galle Face  
Colombo 01  
Sri Lanka

Your reference: PCMD/1/3/17/4

Dear Mr. Weeratunga,

Thank you very much for your letter dated 20<sup>th</sup> August 2012. The Asian Human Rights Commission (AHRC) has been writing to His Excellency the President of Sri Lanka and the Sri Lankan authorities ever since it learned about the sentencing of the Sri Lankan housemaid Rizana Nafeek in 2007. As the Sri Lankan government was not willing to provide the lawyer's fees for an appeal from the death sentence, AHRC took the initiative to raise the funds for filing the appeal, and thus prevented her immediate execution. Ever since, we have taken many initiatives to save the life of this unfortunate girl, who was seventeen years of age at the time she left for employment in Saudi Arabia. Over the years, the AHRC and literally thousands of organisations and millions of individuals around the world have taken up the cause of saving her life, and the efforts made by everyone have been conveyed to the government of Sri Lanka. This is the first occasion on which the Sri Lankan government has cared to send us a reply for our expressions of concerns and we are therefore thankful to you for sending us this letter.

In your letter, you mentioned that Rizana Nafeek has been sentenced to death for the murder of a baby. I'm sure you are aware that on the very first occasion that she was able to, on the 30<sup>th</sup> of January 2007, she submitted an affidavit to court in which she completely denied the charges and explained the circumstances in which the death of this child took place. Her letter has now been published. From all that has been published in this case, throughout these few years, it is quite clear that there was no murder involved in this case; the murder was never proved in the courts of Saudi Arabia. It is well established that there was no post-mortem into the death of this baby. In addition, based on a publicized medical opinion from a Swedish doctor, there is no proof of murder involved in this case.

Razina Nafeek has been convicted on the basis of an alleged affidavit written in a language that she did not understand, and it has been proved in Saudi courts that there was no qualified Tamil translator at the time she was interrogated by the police. She has clearly stated that force was used on her and that the confession was taken under duress and without her understanding what she was signing into.

Her death sentence is based on a defect in the Saudi Arabian law that treats a confession with finality and where the courts have no discretion to adjudicate on the voluntariness of the confession. This, as you know, is clearly against the well-established principles under international law relating to the inadmissibility of confessions without clear proof of the voluntariness of the confession. Therefore, there is a clear violation of the basic norms that all the nations have agreed to through the admission of this confession. Thus, you are no doubt aware that this matter of a grave violation of international law is a matter that the Sri Lankan government is under obligation to take up in dealing with the issue of the life of one of its citizens.

You mentioned the willingness of the Sri Lankan government to pay the blood money. However, according to published reports in the international media, which have never been contradicted by the Sri Lankan government, the Sri Lankan diplomacy has failed to have a direct meeting with the parents relating to the issue of payment of blood money. As is quite well known, it is only the



parents of the child who have the capacity and the power to negotiate this issue, and the failure to meet up with them means that there was no real opportunity for the settlement of this matter.

You are well aware that while the blood money may be a way out, the real issue in this case is of a death sentence, which is blatantly contradictory to well-established norms. This is the issue that the Sri Lankan government, according to the published reports, has never raised with the government of Saudi Arabia or with the international forums where the matter could have been raised.

The Sri Lankan President has asked for clemency and His Royal Highness the King of Saudi Arabia has the same power of granting clemency within his jurisdiction that the Sri Lankan President has in his jurisdiction. Therefore, having made the request for clemency from the King of Saudi Arabia, the obvious course for the Sri Lankan government has been to pursue the matter with His Royal Highness the King of Saudi Arabia. Your letter does not indicate that the government is pursuing this course.

The Sri Lankan government in this instance had the advantage of the support of the international community. United Nations human rights authorities have expressed their concern on this issue to the authorities of Saudi Arabia. Besides this, the European Union has expressed its continuous concern on saving the life of Rizana Nafeek and publicized its desire to work with the Sri Lankan government on this issue. The European Union's High Representative and Vice President, Catherine Ashton, has announced that the European Union has intervened on this matter and that they will pursue efforts on her behalf together with the Sri Lankan government. Many Western governments have also taken up this issue with the Saudi authorities, as well as the Sri Lankan government. Among the international dignitaries who expressed their concern are His Royal Highness Prince Charles and many others.

Clearly the Sri Lankan government has the support of the international community in pursuing this matter, not merely as a matter of clemency but also as a matter of serious violations of international law, affecting the life of one of Sri Lanka's subjects. If the Sri Lankan government pursues the matter with diplomatic skill, there is all likelihood of enormous international support to take the matter up with the Saudi authorities.

There is no denying that there are quite serious deficiencies in the manner in which this issue has been pursued by the Sri Lankan government in the past. However, we are not writing this to point a finger, but even at this stage to call upon the Sri Lankan government to make a more dignified and a serious attempt to save the life of an innocent Sri Lankan citizen who has suffered many years in jail due to a clear defect in the Saudi Arabian law, which has led to a miscarriage of justice.

Despite being a small nation, Sri Lanka has the same status with any other nation in the world as a sovereign state. It is with the dignity of a sovereign state that a matter of this nature should be pursued and it is by pursuing matters in that manner that many nations have been able to convince



other nations of the seriousness with which they regard the matters of life and death of the citizens of their nations. It is to be hoped that the fear of the loss of trade relationships or other such embarrassments will not be a consideration on matters of this nature.

The Asian Human Rights Commission therefore once again pleads with the Sri Lankan government, as it has done throughout several years now, to take up this matter of the life of one of its citizens, however humble the position of that citizen may be, with the appropriate dignity of a sovereign nation, and to request from the authorities in Saudi Arabia the saving of this person. In this, Sri Lanka will have the assured support of the international community.

We fervently hope that this young Sri Lankan citizen who is unjustly suffering in a foreign land may be soon saved, and that in no event will the Sri Lankans have the misfortune of hearing of her execution.

Thank you.

Sincerely yours,

Basil Fernando  
Director of Policy and Programs  
Asian Human Rights Commission