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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-sixth session
Item 1 of the provisional agenda

ORGANIZATION OF WORK

Proposal for inclusion of an item in the provisional agenda

Note by the Secretary-General

1. Pursuant to rules 5 (2) (h) and 5 (4) of the rules of procedure of the functional commissions of the Economic and Social Council, non-governmental organizations in category I may propose items for the provisional agenda of the Sub-Commission provided that:

(a) An organization that intends to propose such an item shall inform the Secretary-General at least nine weeks before the commencement of the session, and before formally proposing an item shall give due consideration to any comments the secretariat may make;

(b) The proposal shall be formally submitted with basic documents not less than seven weeks before the commencement of the session.

2. It is also stated (rule 5 (4) (ii)) that an item proposed in accordance with the above provisions shall be included in the agenda of the Sub-Commission if it is adopted by a two-thirds majority of the members present and voting.

3. The phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting (rule 58 (2)).

4. On 29 March 2004, the secretariat of the Sub-Commission received a copy of the communication addressed to the Secretary-General by the Asian Legal Resource Centre, a non-governmental organization in general consultative status with the Economic and Social Council, informing the Secretary-General of its intention to propose, under rule 5 (4) of the rules of procedure, an item for the provisional agenda of the fifty-sixth session of the Sub-Commission on the Promotion and Protection of Human Rights "to conduct a study regarding the exceptional collapse of rule of law in Sri Lanka and thus to make recommendations to the Commission on Human Rights as per the mandate of the Sub-Commission".

5. On 14 May 2004, the secretariat of the Sub-Commission received a letter from the Asian Legal Resource Centre, in furtherance to its letter of intent dated 29 March 2004, formally proposing the above-mentioned item for the provisional agenda of the Sub-Commission and transmitting a report to be placed before the Sub-Commission. The report is reproduced in the annex to this document.* **

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* Reproduced as received, in the language of submission only.

** The annexes to the report, consisting of 514 pages in total, are available for consultation in the files of the Secretariat.

Annex

ASIAN LEGAL RESOURCE CENTRE
AN NGO WITH GENERAL CONSULTATIVE STATUS WITH THE ECOSOC OF THE UN
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REPORT

Report for the New Agenda Item Under Rule 5 (4) a (ii) of the Guidelines for the Application by the Sub–Commission on the Promotion and Protection of Human Rights of the Rules of Procedure of the Functional Commissions of the Economic and Social Council and other Decisions and Practices Relating thereto.

Asian Legal Resource Centre

1. Background

1. 1. The Asian Legal Resource Centre, (hereinafter referred to as the ALRC) a Regional Non-Governmental Organisation with General Consultative Status with the Economic and Social Council with its registered office at 19/F, Go-Up Commercial Building, 998, Canton Road, Mong Kok, Kowloon, Hong Kong, Special Administrative Region, China, wish to submit this proposal to the Honourable Secretary General through the Secretariat of the Sub-Commission on the Promotion and Protection of Human Rights in furtherance to its former letter of intent dated 29 March 2004 to propose an item for the provisional agenda under Rule 5 (4) a (i) of the Guidelines for the Application by the Sub – Commission on the Promotion and Protection of Human Rights of the Rules of Procedure of the Functional Commissions of the Economic and Social Council and other Decisions and Practices Relating thereto to the Sub Commission to conduct a study on the exceptional collapse of rule of law in Sri Lanka (hereinafter referred to as 'State') and thus to make recommendations to the Commission on Human Rights as per the mandate of the Sub-Commission.

1. 2. The purpose of the proposed study is to aid the State to recover the now collapsed public trust and confidence in the institutions pertaining to the rule of law in Sri Lanka and thereby to augment the state's effort to establish stable and sustainable peace. As rule of law practically must be understood in an institutional framework where effective and functioning administration of justice is the foundation, this is the basis of effective protection of human rights. The ALRC expects that the proposal would further substantiate the content and purpose of the letter of intent mentioned above.

2. Scope of the study mentioned in the proposal

2. 1. The scope of the proposal is within the ambit of the UDHR and in furtherance with Article 2 of the ICCPR & the ICESCR which provides for international cooperation and assistance to provide effective remedy through competent judicial, administrative and legislative process and enforcement of such remedies thereby establishing the rule of law within the State. The failure of the State to provide for such remedies due to the exceptional collapse of rule of law has interrupted the realization of the obligations of the State as a signatory to the international conventions and to all its citizens, including the minorities. The cases attached along with this proposal will prove the above statement. These are cases received from various reliable sources including local non-governmental organisations and individuals seeking urgent intervention. Many of these cases are reported by the UN Special Rapporteur in his report E/CN.4/2004/56/Add.1. [1]

[1] Please see annexure 1

2. 2. Rule of law is also a precondition for economic development. In Sri Lanka the high state of insecurity resulting from the break down of the institutions that should safeguard rule of law has led to increase in crime. A common concern has been expressed by all sections in the society including business sector, political leaders and civil society about the high level as well as the increasingly more cruel nature of the crime that is taking place in the State. Often, this is referred to as a societal collapse. In this situation, labour dispute that in normal circumstances could be resolved by negotiations often end up in continuous strikes. Of particular concern is the suspension of work in the health sector - by the doctors, nurses and other hospital staff. Such situations affect the population, particularly the less affluent sections that are more vulnerable and depending on the functioning of such state provided services for their survival. The present situation affects economic, social and cultural rights badly. The way poverty alleviation programmes are affected by the absence of rule of law is a matter of particular concern. Donations received for poverty alleviation is arbitrarily used, creating divisions among the poor and the system has developed clusters of control, manipulation and violence. [2] The situation reported form 1977 continues even now and has even turned worse.

2. 3. The issue of the poorer sections of the country losing the opportunity for better medical care remains a concern. The quality of the medical service to the general public in some decades back has been better than what it is now. Therefore, there is a lowering of the standards that were once assured.

2. 4. The available mechanisms for protection of human rights and for prevention of torture in particular and for further redressal of grievances, are the courts and the national human rights commission. However, the National Human Rights Commission is not empowered or geared by way of sufficient resources to provide adequate remedies for violations of the rights of ordinary citizens due to soft legislation and incapacity for execution. In this context the statement issued by the Asian Human Rights Commission, a sister concern of ALRC explains what has gone wrong with the National Human Rights Commission of Sri Lanka and what remedial measures should be immediately adopted to cure this problem. The letter is as follows

A statement by the Asian Human Rights Commission

The inadequacies of the torture prevention policy adopted by the Human Rights Commission of Sri Lanka

[2] Please see annexure 2

(The Human Rights Commission of Sri Lanka has announced that it will launch a Torture Prevention and Monitoring Unit on 22 May 2004. On February 19 its Chairperson issued a short policy paper on torture. In this statement the Asian Human Rights Commission, together with its partners in Sri Lanka, examines this policy and makes recommendations for the improvement of both the policy and practices of the Commission.)

We welcome the inauguration of the Torture Prevention and Monitoring Unit within the Human Rights Commission (HRC) of Sri Lanka. However, we hasten to add that we hope this will not prove to be a mere gesture intended only to make Sri Lanka's human rights record look good in the reports that the government submits to agencies abroad, including the UN agencies for human rights. There are many such 'units' referred to in various reports, but people living in Sri Lanka are often unaware of them, as they do nothing much to redress the grave violations of human rights taking place in the country.

Perhaps one way to reflect fruitfully on the task of this new unit is to examine why the HRC has failed to develop even a moderately effective programme to deal with the endemic torture that is taking place in Sri Lanka. The oft-repeated answer is that the Commission does not have sufficient financial resources. One hopes that the new unit will not be offering the same excuse after some time. Whatever the validity of this explanation, it is also very clear that the Commission has lacked a clear policy regarding the elimination of torture in keeping with the UN Convention against Torture. Even now, going by an official HRC statement made on 19 April 2004, the Commission has not shown a serious understanding of how torture is deeply embedded in the country's criminal justice system. The HRC's statement was as follows:

"From May 2004, the Human Rights Commission of Sri Lanka will institute a zero-tolerance policy on torture. The elements of the policy are:

"The setting up of a 24 hour special unit for torture and emergency cases, investigation on torture cases will begin within 24 hours of the incident being reported, whenever there is a death in custody with an adverse medical report, the OIC [Officer in Charge] of the police station will be summoned before the HRC, discussions with Police Commission to secure interdiction of police officers found guilty of torture by the Human Rights Commission or the Supreme Court.

"In addition the HRC will work with the police to implement the Memorandum of understanding between the HRC and the IGP [Inspector General of Police]. The elements of that understanding were:

"Posters with regard to the rights of suspects shall be displayed in all three languages in all police stations, training programmes on human rights at the Police Training Institute will be strengthened. Family members and lawyers will be able to visit anyone held in detention. Officers-in-Charge (OIC) of stations to be held directly accountable for cases of torture at the police station. The HRC, the Inspector General of Police (IGP) and the Police Commission to consider the possibility of indicting police officials who been held guilty of fundamental rights violations before the Supreme Court."

It is worthwhile to examine this brief statement to assess even whether it can be realized, and in so reduce, if not eliminate, the type of torture that exists in Sri Lanka. In doing so we will make reference to some specific cases.

'Zero-tolerance': A soft expression hiding an inadequate policy *In terms of the Convention against Torture (CAT) and corresponding CAT Act (No. 22 of 1994) in Sri Lanka, 'zero-tolerance' is not in itself a policy objective. Under international law torture is regarding as one of the most heinous of crimes. Under the law of Sri Lanka, torture has been defined as a serious crime. When it comes to crimes such as murder, rape, etc., we do not talk of 'zero-tolerance'; we talk of them as crimes, and the perpetrators as criminals. To begin with anything less is to soften the fight against torture. The clear message that the perpetrators of torture should receive is that they are criminals and that they will be dealt with as such. What message does 'zero-tolerance' carry to torturers? Had the Commission said that it would consider it a priority to implement and to improve the CAT Act in Sri Lanka and punish the perpetrators, it would have carried a message to those who engage in this practice despite there being a law against it since 1994.*

The soft expression used by the HRC speaks to its past practices on torture. Until not very long ago HRC officers settled torture cases for small sums of money, if anything. In some cases the settlement was Rs 1000 (about US$10). Torture inquiries were reduced to arbitration. The idea that they were dealing with a serious crime under domestic law and a heinous crime under international law did not enter into the minds of these officers. They adopted a scandalously careless approach, to the great relief of the perpetrators. The present zero-tolerance approach does not show a significant break from that thinking.

What does dealing with torture as a crime imply?

a. Criminal investigations: *A criminal investigation takes place whenever there are complaints of torture. Anything less betrays both the domestic and international law on torture.*

b. Criminal trials: *It may be argued that the HRC does not have the mandate or resources to deal with torture as a crime. However, this argument is meaningless when it comes to how the HRC should approach*

the issue. If it does not have resources and power to take on torture as a crime (as required by law) it should be ready to work critically and seriously monitor other state agencies that are required to deal with torture as a crime. According to government reports to UN agencies such as the UN Human Rights Committee and the Committee against Torture, the official function of making criminal investigations into offences under the CAT Act is assigned to a Special Investigation Unit (SIU). The SIU functions under the Prevention of Torture Perpetrators Unit (PTPU) out of the Department of the Attorney General. The government claims that this Unit has filed about forty cases in High Courts, though so far there has not been a single successful prosecution. Whatever the defects are—and many are visible—torture has not yet once been dealt with as a crime in Sri Lanka.

***c. Studying existing procedures**: The starting point for any serious discussion on the elimination of torture in Sri Lanka should be to study the existing procedures for investigation and prosecution and their limitations, and thereafter to develop an effective strategy to overcome them. Such a study and a counter-strategy could lead to improvements.*

***d. Improving existing procedures:** How could the HRC contribute to the improvement of criminal investigations and the prosecution procedure as existing now?*

i. Treat all investigations into allegations of torture as possible cases for prosecution. This would imply that torture complaints would be investigated with a view to gather all the evidence with which to prove an offence of torture in a criminal case, which at an appropriate stage would be shared with the Department of the Attorney General, to pursue prosecutions.

ii. Critically monitor the PTPU investigations and prosecutions and make official representations where reason exists to be dissatisfied.

iii. Engage civil society on torture and the ways by which legal redress can be obtained for acts of torture, through education and other means.

iv. Engage the National Police Commission (NPC) and the Police Department and instruct police officers that torture is a crime for which they will be punished, thereby establishing a different set of principles in dealing with torture.

'A 24-hour special unit for torture and emergency cases': Nothing new

Such a unit has been in existence for several years. In spite of many defects, it has done a useful service by receiving calls, talking to—and sometimes visiting—police stations. This is a good practice coming from the time of the earlier Task Force. However, this work needs considerable improvement if it is to prove capable of dealing with reports coming from various parts of the country and to deal with them effectively.

In the case of Mr. K.P. Tissa Kumara, for instance, a young artisan who was severely beaten by an officer of the Wellipena Police before a TB patient was made to spit into his mouth, a prompt complaint was made to the HRC. The incident took place on February 3, but there has been no real help offered to this person by the HRC. On April 30 doctors suspected that he had caught the disease. All this time he was in the remand prison with serious bodily injuries and unable to take any precautions to prevent the spread of TB in his body.

This is one of many cases where the HRC's unit for dealing with complaints could have made a difference, but to do so it needs guidelines, and proper supervision. Has the HRC made any such guidelines and arrangements for supervision of this new unit? If not, its use will be very limited, and many will continue to suffer like Mr. Tissa Kumara.

'Investigation on torture cases will begin within 24 hours of the incident being reported': What does it mean? *This is a welcome change from the present position, where often even months after a report no investigation really takes place. However, what the 'beginning' of investigation means has not been made clear. To make it clear it is necessary to have an investigation procedure.*

The need for an investigation procedure: *One of the criticisms of the HRC from its very inception has been the lack of an investigation procedure. Despite its administration changing hands, there has been no attempt at all to lay down such a procedure, which may explain the cheap settlements easily arrived at in the past. If the beginning of an investigation is to be a meaningful exercise the HRC must lay down a procedure for its investigations and make it known to the investigators and the public. That way, the investigators will know what to do and the public will know what to expect.*

Though it is said that the investigation will begin in 24 hours, nothing has been said about when it will end. There are so many cases where complaints have been made to the HRC and the complainants even up to now do not know what has happened to their cases. The case of Chamila Bandara, the 17-year-old boy severely beaten by the Ankumbura Police, is one instance. The complaint was made in July 2003. However, up to the present day the inquiries are continuing. In some cases where victims have allegedly been kept in remand custody on fabricated charges after torture, the inquiries have gone on for up to a year while these people remain in prison.

Will it be different now that inquiries are to begin in 24 hours? There is no reason to think so, unless a clear investigation procedure is laid down and the complainants are made aware of how proceedings are going. The harsh distancing of the complainants from the investigating systems, and making everything appear as if they have no right to know anything about the investigation will only ensure that things will remain as they are.

Dealing with rogue investigators and corrupt Area Coordinators: *Further questions can be raised regarding investigations conducted from Area Offices. Who will conduct these inquiries? Will it be the same people as before, i.e., the Area Coordinators? How about the Area Coordinators who are known to be collaborators with the perpetrators of torture, such as the Area Coordinator of Kandy, whose betrayal of victims of human rights violations and whose partiality to the perpetrators is well known? Many parties have placed complaints regarding this Coordinator with the HRC for a long time now without any results. If such 'investigators' continue, what will be the effect of beginning inquiries within 24 hours? Would it mean that as soon as complaints are made perpetrators will be alerted so that they can do all they need to subvert the inquiries and to harass the complainants?*

The need for witness protection: *Everyone knows that the most difficult obstacle in eliminating torture is that the complainants fear the consequences after making complaints against security personnel. The fear is well founded, as the poor in particular have been subjected to harsh punishments after making complaints. Most frequently they have been implicated in crimes which they did not commit. For example, after Lalith Rajapakse made a complaint about brutal injuries caused to him by the Kandana Police, he was charged with two counts of robbery. Having attended court for almost two years he was acquitted from the charges, as there was no evidence at all against him—not even an adverse witness statement. Angelina Roshana, a girl brutally tortured by the Narahenpita Police, was also falsely charged with stealing a gold watch worth about Rs 500,000, but later acquitted because there was no evidence at all against her. Chamila Bandara, mentioned above, has been falsely charged with several counts of theft, without the slightest evidence. Tissa Kumara, also mentioned above, is still in remand falsely accused of possessing a bomb. A long list of similar cases can be cited.*

There are other measures used to intimidate persons who make complaints. Chamila Bandara's family was exposed to so much harassment that they had to leave their home. They did so in late July 2003 and to the present day have been unable to return. They lodged a complaint with the HRC, but no attempt was made to provide protection for their return. Michael Anthony (Tony) Fernando, who has complained of being tortured when he was in remand custody, later escaped a kidnapping attempt and has been in hiding for several months now.

Any serious attempt to deal with torture must be accompanied by a programme of witness protection. The United Nations Human Rights Committee made recommendations to the government of Sri Lanka to this effect on 2 November 2003.

'Whenever there is a death in custody with an adverse medical report, the OIC of the police station will be summoned before the HRC': A highly flawed proposal

Why the qualification? *The qualification for HRC intervention in custodial deaths only 'with an adverse medical report' is surprising. A major cover-up in custodial deaths takes place well before medical reports are made. For example, when a person is said to have hanged himself inside a police cell, the scene is easily pre-arranged and doctors called merely to certify the police version of what happened. The victims' families need help before that stage, but lawyers are not usually allowed in while investigations are taking place inside police stations.*

In the case of Garlin Kankanamge Sanjeewa, whose body was found hanging in a police cell at the Kadawatha Police Station, his mother alleged that she was called to the station under the pretext that her son was in police custody. Only several hours after arriving at the station was she brought to the place where her son was hanging, and merely to identify his dead body. The doctor was already present. She had no assistance to protest the manner in which the investigation was conducted. Later she buried her son's body in a relative's compound with a view to getting a second post mortem. It is really at the earliest stage of death in custody taking place that the HRC must make its intervention, otherwise in many cases it will be too late.

Why summon the OIC? *It is very difficult to understand what objective would be served by summoning an Officer-in-Charge (OIC) of a police station after a death in police custody. The HRC has not explained what it would do after summoning the OIC. Earlier it had made an announcement that whenever torture takes place at a police station the OIC would be held responsible. However, it never explained exactly what action would be taken against such an OIC. Since that announcement literally hundreds of torture complaints have been made but not one OIC has ever been summoned to the HRC. The public has a right to know how an OIC will be held to account, and what consequences are envisaged. Making empty threats only makes a bad situation even more ridiculous.*

OICs are criminally liable: *Under domestic and international law, an OIC can be held liable as a person aiding and abetting an offence. As the chief investigator of all crimes taking place within a police station, he is estopped from denying knowledge about what took place during a criminal investigation under his jurisdiction. He can also be held for conspiring in the offence of torture taking place within his station. Therefore the HRC must examine the criminal liability of an OIC for any act of torture taking place within his station and recommend what should happen to such officers under the CAT Act.*

The liability of an OIC also arises from the principle of command responsibility, under which an OIC can be held responsible for a violation of fundamental rights. The HRC has a right to conduct inquiries on violations of fundamental rights and there is no reason to exempt an OIC

from liability for fundamental rights violations taking place within his police station.

ASPs are also responsible: *There is no reason for command responsibility to stop with the OIC. In fact every Assistant Superintendent of Police (ASP) has direct responsibility for supervising the police stations in his area. In terms of disciplinary control, his liability matters even more than that of the OIC. In the past there had been some instances when ASPs were summoned by the HRC. When the ASP Kodithuwacku was summoned he challenged the authority of the inquiring officer. How the matter was resolved remains a mystery to the public. In dealing with torture it is essential that the command responsibility of the ASP be addressed. In fact the Supreme Court has held, in the case of Gerald Perera, among others, that the responsibility continues on up to the Inspector General of Police. The HRC should at least begin by upholding the legal developments that have taken place in the country so far. To set standards far less than these will undermine the human rights struggle to eliminate torture. In fact, the HRC is duty bound to uphold the norms and standards of the United Nations regarding torture.*

Doctors are also liable: *One of the major impediments to torture victims seeking redress are the inaccurate and even sometimes false medical reports filed by some District Medical Officers and Judicial Medical Officers. Often local relationships and other obligations cause medical officers to issue misleading medical reports. The HRC should discuss with the Medical Council about ways to prevent this practice. Where the HRC has evidence of false reports being issued, the doctors should be summoned to the HRC and also officially reported to the Medical Council.*

'Discussions with Police Commission to secure interdiction of police officers found guilty of torture by the Human Rights Commission or the Supreme Court': The Establishment Code versus the Constitution

The position so far held by the Police Department is that as judgments of the Supreme Court on fundamental rights applications do not amount to criminal convictions these should not affect the promotions of the officers concerned. The argument is based on the Establishment Code, which stipulates disciplinary consequences for state officers who are convicted in criminal offences. The implication is that the fundamental rights enshrined in the Constitution do not matter. The HRC must challenge and defeat this position. Mere discussions with the National Police Commission (NPC) are not likely to yield any significant result until the Police Department and NPC admit their duty to uphold the Constitution and police liability when provisions of the Constitution are violated.

We will now turn to examine some areas of concern not yet addressed by the HRC.

Trauma and Post-Traumatic Stress Disorder

Torture has a terrible effect on the mind and emotions. As a result, literally tens of thousands of people across the country are suffering from trauma and Post-Traumatic Stress Disorder. One does not have to go very far to discover persons suffering acutely. All that one needs to do is to interview a few torture victims and the stark reality of extremely deep psychological problems will soon surface. But what services are available to deal with such problems? In fact, they are extremely limited and very inadequate. Some good doctors have tried to be of some help, however, their work has meant little overall in an ocean of deep distress and trouble.

The Sri Lankan government is obliged under international laws to which it is a party to provide facilities for persons suffering from the psychological effects of torture. However, it has not at any stage created a facility for the treatment of torture victims, nor allocated any funds for this purpose. It has no plan at all to address this issue.

The HRC likewise has to date done no work in this area, and nor does its recent policy statement make any reference to the psychological consequences of torture. This is a very serious lapse of policy that needs to be corrected as soon as possible. Its first obligation is take up the matter with the government and persuade it to comply with international law. This could be done by way of recommendations and lobbying. The HRC can also help the government to draw up specific plans. By engaging the public on this issue the HRC can also educate people to exercise influence over the government to establish such facilities.

While persuading the government to honour its obligations the HRC can also try to influence the community to assist torture victims. Strong appeals by the HRC would likely find responses from psychiatrists, doctors, counsellors and other concerned persons. Victims coming forward to make complaints about torture could then be directed to such persons, and organisations dealing with trauma and psychological problems. In fact, the HRC should have a unit to deal with this issue alone, or in the interim at least a volunteer group under its supervision. As for finances, it is quite likely that there would be both local and international donors to help if such a unit were established.

Institutional liability for torture

The HRC has approached torture purely from the point of view of individual liability. However, torture is primarily an institutional problem. The endemic torture as found in Sri Lanka is a result of a tacitly accepted policy that torture is necessary and unavoidable. Successive commissions appointed to inquire into the police—Justice Soertsez's Commission of 1947, Justice Basnayake's Commission of 1970, Subasinghe's Salaries Commission of 1978, and Jayasinghe's Commission of 1995—all pointed to institutional problems. Later commissions inquiring into forced disappearances also laid bare the grim reality that torture is entrenched in policing in Sri Lanka.

In fact, there is no controversy on this point. The 17th Amendment to the Constitution was itself based on the need to address the problems of some public institutions, including the police, which have collapsed due to developments in recent times. Some researchers who have held high positions in the Police Department itself have revealed the inherent limitations of the system as it exists today. In a letter dated 6 May 2004 to the Attorney General, written on behalf of the Asian Human Rights Commission, Basil Fernando pointed to this:

"It would be quite naïve on our part to think that the police in Sri Lanka would want suggestions from any of us if they really want to stop torture taking place at police stations or elsewhere during criminal investigations. They would already know HOW to do this, if they really WANTED to do this. The real problem is that there is a firm belief that torture is necessary and unavoidable. The ratification of the CAT Convention against Torture and even making it into a law through the CAT Act (Act No.22/1994) was done without the proper engagement of the police in the exercise. The result was that the police were not confronted with the need to abandon a well-entrenched practice in their institution. Thus the police themselves did not have a part in making one of the most fundamental reforms that was required by the CAT and CAT Act. Even after the making of such a law and the undertaking of such serious international obligations the police were not constructively engaged in looking into the new law and exposed to the obligations and implications it entailed. The result was that almost always in private conversations, the police officers, including those of high rank, spoke and continue to speak of the practical impossibility of doing away with torture. Until this problem is internally resolved by way of genuine and open engagement within the police force itself no amount of external compulsion will be able to bring about the required mindset and the institutional conviction to honour the obligations under the CAT and to implement the CAT Act. In this regard your position as the country's highest legal officer would be useful in engaging the police, particularly the higher-ranking officers, into a serious internal dialogue of the thinking, history and philosophy behind the CAT. I do not mean human rights education for these officers, I believe they are broadly aware of the arguments in favour of the CAT Act. In fact what I mean is a more practical institutional dialogue within which they could openly discuss the views that they hold. If in such a dialogue they agree to eliminate torture, I feel sure they will tell us HOW."

Without a clear change in policy arrived at by way of a decision within the Police Department itself there is no possibility of eliminating torture. So long as the police tolerate, encourage and think of torture as necessary and unavoidable the HRC's 'zero-tolerance' will be of little consequence.

The educational role of the HRC towards eliminating torture

A strong educational component is missing from the HRC's policy on torture, as it has been since the beginning of its work. This is interesting, as some other national human rights commissions, even where they have failed in other areas of their mandate, have tried to fulfill their educational function.

Strong educational work via electronic media and other means would do much to eliminate torture. Widespread education on the CAT Act would benefit civilians as well as security officers. Education on legal remedies and how to obtain them would be useful to everyone. Public education

would create the pressure needed for policy changes. The HRC can have free access to public media channels. Even private media channels are likely to respond to a call to support this mission. Creative persons in the human rights field, legal field and in the media can collaborate and achieve results within a short time.

Recommendations
To develop a serious strategy towards the elimination of torture we urge the HRC to

a. Make a clear policy statement on the elimination of torture based on Sri Lanka's obligations under the International Covenant on Civil and Political Rights (ICCPR) and CAT, as well as the CAT Act of Sri Lanka. Such a paper will help the public to understand and cooperate with the HRC on this matter.

b. Concentrate on implementing the CAT Act while at the same time trying to improve it in line with the CAT. Develop strategies and methodologies to cooperate critically and monitor criminal investigations and prosecutions currently taking place under the ad hoc arrangements of the Prosecution of Torture Perpetrators Unit. Critical cooperation means studying how investigations and prosecutions are done now and taking suitable action to ensure improvements. The HRC can also monitor investigations and prosecutions to ensure EFFECTIVE REMEDIES in terms of article 2 of the ICCPR.

c. Develop and adopt a complaint receipt and investigation procedure without delay, to serve as the basis on which all investigations are conducted and reported. This implies abandoning earlier procedures for dealing with torture cases, such as the reaching of settlements. The procedure should be made available to the public so that people will be aware of what actions will be taken when they make complaints.

d. Set a time within which to complete inquiries, and require that complainants be kept informed about the progress of their complaints.

e. Inform the Department of the Attorney General where prima facie evidence of torture is uncovered, and ensure that proper criminal investigations and prosecutions follow.

f. Establish and enforce a disciplinary procedure over inquiring officers who deliberately sabotage the process and side with the perpetrators. Take other measures to prevent negligence by investigating officers. Take prompt action to investigate and make appropriate decisions, particularly where corruption is alleged.

g. Enforce command responsibility for torture, from OICs of police stations to ASPs and all others up to the IGP.

h. Give special priority to trauma and Post-Traumatic Stress Disorder among torture victims. Take appropriate action for the government to

recognize and respect its responsibilities in this regard. Establish a unit within the HRC, even with volunteers, to provide services to such victims. Refer all torture victims who make complaints of torture to the HRC to qualified professionals for medical and psychological examination and treatment.

i. Treat torture as an institutional problem arising from the nature of the police force as it exists now. Make suitable studies and generate public discussion and debate on the ways to overcome the institutional limitations legitimating torture. Engage the NPC, Police Department, and other responsible agencies—such as the Department of the Attorney General—in a policy discourse for institutional reform. Provide the necessary technical assistance to the NPC and Police Department to evaluate and adopt practices that eliminate torture. In this regard, engage the government as well as the civil society for quick implementation of the Public Complaints Procedure envisaged by Article 155G(2) of the amended Constitution, which requires that the NPC establish such a procedure.

j. Undertake nationwide education on the CAT and CAT Act of Sri Lanka, and the ways to implement legal obligations arising from these

Asian Human rights Commission

2. 5. The courts, prosecution and other mechanisms have completely failed and justice is tainted taking away the literal meaning of the term. As mentioned earlier, even the Apex court ignores torture thereby recognizing torture and augmenting the culture of impunity. Newer commissions such as the National Police Commission, despite its one year of existence, has also not taken any effective steps towards redressing this situation, even though constitutionally empowered to set up a public complaints procedure against police officers who commit violations of human rights.

3. Country situation vis-à-vis ratifications

3. 1. In terms with the obligations of ratification of the international conventions mentioned above and the spirit of UDHR, the State has enacted domestic legislation to prevent torture. However, ALRC believes that the implementation of these domestic laws have miserably failed due to the exceptional collapse of rule of law. This has paved way for total impunity and lack of adequate prosecution in cases of human rights violations in the State, especially in cases of disappearances, custodial deaths, summary executions and torture. Apart from the legal anomalies contrary to the State's international human rights obligations and thus in violation of the stipulations of the UDHR, the situation in the State, as far as the actual working of its domestic mechanisms to give effect to those international obligations are concerned, is completely negative.

3. 2. There are umpteen observations and recommendations by various international bodies regarding the necessity for immediate action by the State in this regard. The UN bodies like the Human Rights Committee, CAT Committee, CEDAW Committee, CERD Committee, ESCR Committee, Committee on Rights of Child, reports of the Working Group on Arbitrary Detention, Working Group on Enforced or Involuntary Disappearances, reports of the Special Rapporteurs on Extra Judicial and Summary Execution, on Independence of Judges & Lawyers and on Torture, have several times requested and recommended the State to make internal arrangements so as to address the issue of rule of law in the State. The treaty bodies and the extra-conventional mechanisms named above also had occasion to deal with numerous individual complaints from the State indicating an exceptional collapse of rule of law

3. 3. Apart from these UN bodies, report of the International Bar Association (IBA), various reports and statements by the ALRC, Amnesty International, World Organisation Against Torture (OMCT) and other international, regional and national non-governmental organisations have emphatically notified the State as well as the UN bodies about the total collapse of rule of law in the State. The ALRC, Amnesty International and the OMCT have on various occasions called upon the international community and the State to address the exceptional collapse of rule of law in the State with reference to specific cases. [3]

3. 4. In spite of recommendations and appeals the situation of rule of law in the State has not only failed to yield any change but seems to have nose-dived into absolute failure. Currently, there seem to be no internal arrangement capable of moving out of the worsening situation.

4. Observations by UN bodies – The Human Rights Committee.

4. 1. As mentioned earlier the Human Rights Committee has aired its concern through remarks and recommendations to the state on several occasions. [4] In its concluding remarks dated 01-12-2003, the Committee expressed concern about:

4. 2. "[P]ersistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and

[3] Please see annexures 3 & 4

[4] Concluding observations of the Human Rights Committee: Sri Lanka : Sri Lanka CCPR/CO/79/LKA. (Concluding Observations/Comments) dated 01/12/2003.

unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished".

4. 3. "The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy".

4. 4. "[The state] should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators. The National Police Commission complaints procedure should be implemented as soon as possible. The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases"

4. 5. "The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see para. 9 above), creates an environment that is conducive to a culture of impunity".

4. 6. "The State party is urged to implement fully the right to life and physical integrity of all persons (Arts. 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the United Nations Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances".

4. 7. "The Committee notes with concern that overcrowding remains a serious problem in many penitentiary institutions, with the inevitable adverse impact on conditions of detention in these facilities".

4. 8. "The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct".

4. 9. "The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices".

4. 10. "The fifth periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GUI/Rev.1) and be submitted by 1 November 2007. The State party should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated throughout the country".

4. 11. "In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 18. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole".

4. 12. No action whatsoever has been initiated neither is it likely to be initiated regarding the above recommendations made by the Human Rights Committee in the state.

4. 13. This observation was not an isolated incident taking into account of any recent developments. The Human Rights Committee while considering the third periodic report of Sri Lanka on 27-07-1995 also emphatically requested the state to:[5]

4. 14. "The Committee notes with particular concern that an effective system for the prevention and punishment of such violations does not appear to exist. In addition, concern is expressed that violations and abuses allegedly committed by police officers have not been investigated by an independent body, and that frequently the perpetrators of such violations have not been punished. The Committee notes that this may contribute to an atmosphere of impunity among the perpetrators of human rights

[5] Concluding observations of the Human Rights Committee: Sri Lanka : Sri Lanka : *CCPR/C/79/Add.56; A/50/40,paras.436-476. (Concluding Observations/Comments*) dated 27-07-1995

violations and constitute an impediment to the efforts being undertaken to promote respect for human rights".

4. 15. "The Committee is concerned that the rights under article 10 of the Covenant of persons deprived of their liberty in prisons and other places of detention are not fully respected. It regrets that conditions in places of detention other than prisons are not regulated by law and that prisons and other places of detention are not regularly visited by magistrates or other independent bodies".

4. 16. "It also urges the State party to take into account that investigation and prosecution of criminal offences should be carried out by an independent body and that punishment of criminal offences should be carried out by the judiciary".

4. 17. "[T]he Committee recommends that as a matter of priority all legal provisions or executive orders be reviewed to ensure their compatibility with the provisions of the Covenant and their effective implementation in practice".

4. 18. The above recommendations by and large remained recommendations. The failure in implementation was due to the exceptionally collapsed rule of law in the state. One significant factor in this regard was that not a single conviction had taken place for the past nine years since Sri Lanka's CAT Act of 1994 was enacted, ostensibly to give effect to the UN Convention Against Torture. Thus the culture of absolute impunity, horrendous torture, non-dependability of the system in toto, continues.

5. The CAT Committee.

5. 1. Similarly the Committee against Torture vide its report on the 20th session in 1998 expressed serious concern on the issue of torture and disappearances reported from Sri Lanka due to the exceptional failure of rule of law. [6] The Committee specifically points out that:

5. 2. "The serious internal situation faced by the State party, which however in no way justifies any violation of the Convention".

5. 3. "The fact that for years in the past police officers appeared to be immune from prosecution".

5. 4. "The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances".

[6] Concluding Observations of he Committee Against Torture : Sri Lanka : A/53/44, paras. 243 – 257 dated 19-05-1998.

5. 5. "The Committee noted that, while the Convention against Torture Act 22/94 covers most of the provisions of the Convention, there were certain significant omissions".

5. 6. "The Committee urges the State party to review Convention against Torture Act 22/94 and other relevant laws in order to ensure complete compliance with the Convention, in particular in respect of: (a) the definition of torture; (b) acts that amount to torture; and (c) extradition, return and expulsion".

5. 7. "Ensure that all allegations of torture – past, present and future – are promptly, independently and effectively investigated and the recommendations implemented without any delay".

5. 8. "While continuing to remedy, through compensation, the consequences of torture, give due importance to prompt criminal prosecutions and disciplinary proceedings against culprits".

5. 9. "Take the necessary measures to ensure that justice is not delayed, especially in the cases of trials of people accused of torture. Strengthen the Human Rights Commission and other mechanisms dealing with torture prevention and investigation and provide them with all the means that are necessary to ensure their impartiality and effectiveness"

5. 10. As quoted above internal strife is no excuse for the state to derogate from its obligations. The deep silence due to sheer fear from further persecution has engulfed the community, the poor and marginalized in particular. The internal mechanisms are no more able to implement the recommendations without international assistance. The stalemated situation of the peace process if to be improved should start with establishment of rule of law in the state. This requires specific study by independent bodies, especially by the UN or its ancillary bodies immediately.

6. The CEDAW Committee.

6. 1. The CEDAW Committee in its Concluding Observations dated 07-05-2002 observed that:[7]

6. 2. "The Committee is alarmed by the high and severe incidences of rape and other forms of violence targeted against Tamil women by the police and security forces in the conflict areas".

[7] Concluding Observations of the Committee on the Elimination of Discrimination against Women : Sri Lanka : A/57/38 (Part1), paras. 256-302 dated 07/05/2002.

6. 3. "The Committee urges the State party to monitor strictly the behaviour of the police and the security forces, to ensure that all perpetrators are brought to justice and to take all necessary measures to prevent acts of violence against all women".

6. 4. The assault on women, in particular the rural women and those belonging to the minority community are left unchallenged and the perpetrators enjoy absolute impunity. The proposal will prove that the atrocities committed against the women in the state are not limited to the minorities, but also extends to any other citizen. The proposal will enumerate the extent of horrendous violence committed against women and the reason why such violence is left unchallenged.

6. 5. Violence against women is a common tool for intimidation and threat. The widespread violence against women is a pertinent feature of any state that suffers from exceptionally filed rule of law. History is not short of examples to prove this. The Japanese practices during World War 1, the mass rape in Rwanda and Burundi, the cases from former Yugoslavia are to name a few. If the situation in Sri Lanka is allowed to continue at the current state, the same will happen in Sri Lanka in a worse proportion. The exceptionally collapsed rule of law in the state is a fertile ground for such history to repeat in alarming proportions in very recent future.

7. Working Group on Enforced or Involuntary Disappearances.

7. 1. The Working Group on Enforced or Involuntary Disappearances has reported regarding the situation in Sri Lanka through its various reports. The report E/CN.4/1995/36 dated 21 December 1994 comments upon the situation in Sri Lanka in pages 354-369. The Working Group observed that between the period 1980 to 1994 there are 11,441 cases of disappearances reported to the Working Group.

7. 2. Similarly the then Working Group on Enforced or Involuntary Disappearances vide its report E/CN.4/1992/18/Add.1 had opined that the situation in Sri Lanka regarding torture, disappearances and racial discrimination must be a matter of immediate concern. Referring to this report the CERD Committee in the year 1995 requested the state to facilitate demonstrable results to the concern of the Working Group through effective domestic law enforcement mechanisms. [8]

7. 3. However, the subsequent observations by the CERD Committee in the year 2001 on its 59th session expressing concern of allegations of human rights violations in the country involving racial discrimination and bringing to justice the responsible persons shows that the situation remains the same without any considerable change and is thus an indicator to the failure of rule of law in the country. [9]

7. 4. The Working Group on Enforced or Involuntary Disappearances in its report dated 21st Januray 2003 further recommended the Government to:

> "The Group wishes to remind the Government of its obligations under article 10 of the Declaration to hold persons deprived of liberty only in officially recognized places of detention, to bring them promptly before a judicial authority and to make available promptly accurate information on the detention of such persons to their family members, their legal counsel, or to any other persons having a particular interest". [10]

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[8] Summary Record of the 1079th meeting : Sri Lanka : CERD/C/SR.1079 (Summary Record) dated 09-03-1995.

[9] Concluding Observations of the Committee on the Elimination of Racial Discrimination : Sri Lanka : A/56/18, paras. 321- 342 dated 14-09-2001.

[10] Report of the Working Group on Enforced or Involuntary Disappearances Submitted in accordance with Commission resolution 2002/41 dated 21st January 2003.

8. Special Rapporteur on Independence of Judges & Lawyers

8. 1. In the report of the Special Rapporteur on the Independence of Judges and Lawyers the Rapporteur observed referring to the report of the International Commission of Jurists that:

8. 2. "[T]he perception of a lack of independence of the judiciary was in danger of becoming widespread and that it was extremely harmful to respect for the rule of law by ordinary citizens". [11]

8. 3. This observation is further fortified from the fact that innumerable judgments of the Supreme Court in finding state officers responsible for violations of human rights have directed that their departmental heads, including the Inspector General of Police, the Army Commander etc. should take disciplinary action against those officers responsible, have been ignored. Police officers in charge of stations, who have been held responsible for heinous rights violations, continue to remain at their posts.

8. 4. This trend has taken a new turn with the Court itself, in recent times, making statements that has detracted from its own authority. Thus, for example, in a recent verdict of the Supreme Court of Sri Lanka, the court among other issues answered the issue regarding torture and the resultant inquiry against law enforcement officers while considering their claim for promotion.[12] While deciding the case the court opined that even though the respondents were subjected for departmental inquiry against fundamental rights violation and torture and thus punished, this would not in any way, be held as a disqualification for promotion.

9. Special Rapporteur on Torture

9. 1. The Rapporteur on Torture in his report E/CN.4/1994/31 dated 6 January 1994 narrates the practices followed by the law enforcement mechanism within the state. [13] The report narrates:

9. 2. "It was also reported that in the north-east torture and ill-treatment of prisoners continued in military, Special Task Force and police custody. Methods of torture include severe beatings; electric shocks; burning with cigarettes or matches; pouring petrol into prisoners' nostrils and then

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[11] Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39 (E/CN.4/2002/72) dated 11 February 2002.

[12] S.A.D.M.P Gunasekera Officer in Charge Examination and Training Division & Others **V** A.K. Samarasekera Officer in Charge Police Radio administration & Others. Supreme Court of Sri Lanka in S.C Applications 607/99 & 608/99; Judgment dated 12-01-2000

[13] Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32 (E/CN.4/1994/31) dated 6 January 1994.

> placing a plastic bag over their heads; suspending prisoners from their thumbs and beating them; beating with barbed wire and repeatedly submerging prisoners' heads in water while they were suspended from their ankles. Women have reported being raped by soldiers. Torture was also reported to occur in both police and military custody in the south with respect to political detainees arrested under the Emergency Regulations and the PTA, as well as criminal suspects. It was further reported that, in the majority of cases, victims of torture do not file complaints or report their cases to governmental or non-governmental bodies for fear of reprisals".

9. 3. The Rapporteur in his subsequent report in the year 1999 shares the same concern of the CAT Committee that the situation of internal strife is no excuse for practice of torture or any violation of human rights.[14] The Rapporteur also shares the concern of the Committee regarding numerous instances of torture and disappearances reported from the state. The report narrates 40 cases of horrendous torture practiced by the law enforcement agencies in the state.

9. 4. In the report for the year 2000 the Rapporteur reported that:

> "It remains evident that more prosecutions and convictions will be required in order significantly to affect the problem of impunity. In any event, personnel responsible for injury leading to compensation should be removed from office".[15]

9. 5. Further in the year 2003 the Rapporteur mentioned:

> "The Special Rapporteur notes with concern that no response has been provided to a number of cases brought to the attention of the Government since 1998. The Special Rapporteur considers it appropriate to draw attention to the views expressed by the Committee against Torture after consideration of the situation in the country under the procedure provided for by Article 20 of the Convention against Torture, a summary of which may be found in report A/57/44, paras 123-195".[16]

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[14] Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution E/CN.4/1999/61 dated 12 January 1999.

[15] Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution E/CN.4/2001/66 dated 25 January 2001.

[16] Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution E/CN.4/2003/68/Add.1 dated 27 February 2003.

9. 6. The practice of horrendous torture and the culture of impunity prevail only in a society where there is absolute failure of rule of law. Sri Lanka is an example. The proposal will prove that the practice of torture in the state has further worsened and rule of law is beyond the scope of any recovery by itself.

10. PROSECUTOR'S OFFICE

10. 1. Another institution that needs reorganization if there is to be any change in the practices ensuring impunity that exist now is the Attorney General's (AG's) Department. The most important aspect of such reorganization would be the separation of the public prosecution function from the AG's department and the creation of a public prosecutor's office. We would like to highlight the fact that such a separation has been recommended by numerous bodies in the past, including the Justice Soertsz Commission (1946), Basnayake Commission (1970) and Jayalath Committee (1995). In 1973 with the introduction of the Administration of Justice Act, the position was created but abolished after 1977. If the inherent inefficiency in the present set-up is to be negated, a separate department for the public prosecutor needs to be created wherein prosecuting functions could be more thoroughly specialized and pursued. If the existing obstacle for proper prosecution were changed it would remove one of the major impediments to the rule of law in Sri Lanka. In 1973 the Office of the Public Prosecutor was created in Sri Lanka. However, this office was abolished after 1978. In the subsequent years like all other public institutions the independence of the Department suffered a great deal. In recent years there has been some attempt to improve the situation. However, without the development of an independent public prosecutor's department it is quite unlikely that a suitable prosecution department dealing with serious crimes can be instituted. This is particularly so in relation to crimes where the alleged perpetrators are police officers and other state officers. Due to the nature of the complete separation between criminal investigations and prosecutions prevailing in the country, the AG's Department has a close connection with the police officers in relation to crimes that are being prosecuted as the department depends entirely on the police for investigations. The investigation of normal crimes is in the hands of the police. The officers of the AG's Department base their prosecution on the investigations done by the police. Thus a close co-operation between such investigators and the prosecutors is inevitable. Some of these very same police officers or their colleagues are often being accused of torture, custodial deaths and the like. Naturally in such circumstances conflicts and even public perception of conflicts of interest does arise. Some units have been created under the AG's Department for the prosecution of state officers, for example, the Disappearances Investigation Unit (DIU) established in November 1997 and the Prosecution of Torture Perpetrators Unit (PTPU) established recently. (These units function under the direction of the AG's department. While they may be free to investigate when direction is given to investigate they do not have the power to initiate investigations independently on receipt

of reliable complaints. Further prosecution into matters entirely depends on the discretion of the AG's department).

10. 2. However, the units suffer from the same general defect of the Attorney General's department. For example, though the Presidential Commission "recommended prosecution of a large number of persons only a handful of cases were filed and even some of them were lost due to the defects of prosecution. Due to much delay in prosecution, such as 12-year delays before vital witnesses make their statements in court, the prosecution has been abandoned." (ALRC written statement "Enforced or involuntary disappearances in Sri Lanka (E/CN.4/2003/NGO/88) 2003 on disappearances). Even in torture cases when complaints are made immediately after the incident, often the investigations begin quite some time later, thereby creating doubts about the credibility of evidence and of identification. The impression that such investigations and prosecutions are delayed or otherwise hampered by the unwillingness of the state to prosecute state agents is quite prevalent. That often investigations by such units are conducted only due to pressure particularly from the international community is also a common criticism.

10. 3. The Executive Director of AHRC issued the following letter to the Attorney General in relation with the role the Attorney General's Department could play in eliminating torture in Sri Lanka thereby to help in establishing rule of law in the state.

6 May 2004

Hon. Mr. K. C. Kamalasabesan
Attorney General
Attorney General's Department
Colombo 12
SRI Lanka
Fax: +94 11 2 436 421

Email: attorney@sri.lanka.net or counsel@sri.lanka.net

Dear Mr. Kamalasabesan,

Mr. Shaveendra Fernando, Senior State Counsel, has informed me of your wish to know some of the suggestions of the Asian Human Rights Commission (AHRC) in dealing with the issue of torture in Sri Lanka. May I thank you for your kind request. The few thoughts that I am putting down here are a response to that request which I appreciate very much.

1. *It would be quite naïve on our part to think that the police in Sri Lanka would want suggestions from any of us if they really want to stop torture taking place at police stations or elsewhere during criminal investigations. They would already know HOW to do this, if they really WANTED to do*

this. The real problem is that there is a firm belief that torture is necessary and unavoidable. The ratification of the CAT Convention Against Torture and even making it into a law through the CAT Act (Act No.22/1994) was done without the proper engagement of the police in the exercise. The result was that the police were not confronted with the need to abandon a well-entrenched practice in their institution. Thus the police themselves did not have a part in making one of the most fundamental reforms that was required by the CAT and CAT Act. Even after the making of such a law and the undertaking of such serious international obligations the police were not constructively engaged in looking into the new law and exposed to the obligations and implications it entailed. The result was that almost always in private conversations, the police officers, including those of high rank, spoke and continue to speak of the practical impossibility of doing away with torture. Until this problem is internally resolved by way of genuine and open engagement within the police force itself no amount of external compulsion will be able to bring about the required mindset and the institutional conviction to honour the obligations under the CAT and to implement the CAT Act. In this regard your position as the country's highest legal officer would be useful in engaging the police, particularly the higher-ranking officers, into a serious internal dialogue of the thinking, history and philosophy behind the CAT. I do not mean human rights education for these officers, I believe they are broadly aware of the arguments in favour of the CAT Act. In fact what I mean is a more practical institutional dialogue within which they could openly discuss the views that they hold. If in such a dialogue they agree to eliminate torture, I feel sure they will tell us HOW.

2. *So far, the response to torture issues in Sri Lanka has been mainly due to external pressures. Today United Nations agencies and even major donors to countries like ours exert pressure for the implementation of human rights obligations. Of particularly interest to the international lobby is the issue of the prevention of torture, which through centuries of struggle has been established in the Western world as one of the foundations of modern criminal justice. The criticism that even the American administration is now receiving with regard to the soldiers who engage in torture in Iraq is a clear indication of a deeply established international principle that torture is a heinous crime and should not be tolerated under any circumstances. UN interventions are founded on principal. However, when the principle itself is not assimilated into our own legal culture what often happens is that we make some public response to the external pressures and stop at that. It is perhaps this very approach that you could help the Sri Lankan administration move away from. This could be done in the manner described above through an attempt to convince people that it is the principle of the elimination of*

torture that we have to assimilate for our own benefit. Such groupings as the Inter-Ministerial Working Group on Human Rights Issues and other ad-hoc groupings have been established in the past, not so much with a view to eliminate human rights violations such as torture, but to engage in limited activities in response to external pressure. It is this approach that needs to be changed if we are to acquire as part of our legal culture the principles enshrined in the CAT.

3. *At present and in the near future the best means of ensuring a rapid acceptance of the CAT is to implement the CAT Act. The impediments to the implementation of the CAT Act seem to be:*

a. The delay in the prosecution of cases already investigated by the ad-hoc arrangement of the Prosecution of Torture Perpetrators Unit (PTPU) functioning in your department. Though even the UN Rapporteur has been informed that some cases have been investigated by the PTPU it takes a long time before the cases are instituted in courts. This, as you have pointed out in one of your letters, may be due to the limited number of staff you have at your disposal to engage in so many varieties of functions. However, while appreciating the difficulty, it may be a wiser move to make some special arrangement regarding the preparation of files for torture cases. As at the moment the persons who deal with the preparation of such files are also engaged in other work, it may be useful to assign a few persons on a full time basis to attend to torture cases. From the point of view of developing deterrence against torture and also getting a more lively debate within the police institution and the country at large on this issue, such a move would contribute a great deal. The effort that is put into creating such a full time functioning unit may be perhaps the most important step needed for the elimination of torture under the present circumstances.

b. The present arrangement for the investigation of torture through special units has resulted in some credible investigations leading to the filing of cases in the High Court. This positive development can be more enhanced by improving the number of persons engaged in the work and thus being able to cope with the large number of complaints received. Quick investigation leaves less room for tampering with evidence and provides greater protection for the people who make complaints. Further, when the completed files of investigations are submitted to PTPU, if they are attended to on an urgent basis this is also likely to enhance the inner enthusiasm of the investigators. The police investigators can also be specially instructed to attend to any complaints of threats to those who make complaints against the police.

c. Another impediment to the use of the CAT Act as a deterrent against torture is the delays in the hearing of the cases in court. It is not difficult to understand that this is a more complicated problem and the solution does not directly depend upon your office. However, it may be possible to develop some means by which there can be quicker disposal of torture cases in court. A final solution of course is, as you have suggested in one of your lectures, an increase in the number of courts and judges. However, as this may not happen immediately perhaps a way could be found to discuss with the judiciary for a special procedure in the disposal of torture cases.

d. A further aspect of the prosecution of torture cases is that it requires special training on the part of the state counsels themselves. Perhaps due to the prevailing legal culture in the country, which has not treated torture as a heinous crime as has been done in more developed jurisdictions, the lighter attitudes regarding torture affect everyone including, the prosecutors. Thus, a thorough grounding of the prosecutors in the seriousness of the crime will better prepare them for such prosecutions. The UN Human Rights Committee and other agencies have commented that though there had been a number of cases filed in the High Court there has not yet been a successful prosecution of a torture case in Sri Lanka. Perhaps better training and motivation on the part of the prosecuting counsel can make a difference in this regard.

e. As the National Police Commission (NPC) is responsible for the discipline of the police it could be useful to engage the NPC in a constructive dialogue on the implementation of the CAT Act. The joint activity of your office with the NPC would be quite useful for this purpose. The NPC also has a mandate to investigate human rights violations. In one of the National Human Rights Commission's (NHRC) recent statements it speaks of a Zero Tolerance of Torture. Thus if there is a strong initiative on your part to draw the NPC and the NHRC into a practical programme on the elimination of torture, these two Commissions can benefit from such an initiative arising from your office due to the position you hold as the highest legal officer of the country. Such a common strategy could help to eliminate the duplication of work and each

agency could also become aware of the actual legal action taking on each complaint.

I appreciate the opportunity of presenting these suggestions to you.

Thank you.

Yours sincerely,

Basil Fernando
Executive Director.

10. 4. Role of the Attorney General's Department relating to compensation for torture is negative.

As a matter of principle the Attorney General's Department does not appear for Respondents in Fundamental rights applications under article 126. Though this is a positive step, representatives of the Attorney General's Department urge the court to reduce the quantum of compensation that may be granted by the Court. This does not conform to principles of international law relating to compensation. Even on cases where the Attorney General's Department admits violations of rights, as for example in the instance of torture, illegal Arrest and imprisonment of Kurukulasuriya Pradeep Niranjan, who was in remand for 21 months after being falsely charged with the murder of Fr. Aba Costa and tortured, the attorney general made an order to release him. However, no steps were taken to compensate the victim and the family, for having been made to suffer, in an attempt to protect the real culprits.

11. POLICING

11. 1. One of the basic institutions necessary for carrying out the obligations under the ICCPR by the state party is a proper policing system. Where the policing system is fundamentally flawed none of the rights in the ICCPR can be realized. In Sri Lanka the policing system is seriously flawed. The reasons are acknowledged by the government appointed commissions themselves, such as the Justice Soertzs Commission of 1946, Basnayaka Commission of 1970, Jayalath Committee of 1995, Commissions of Inquiry into Involuntary Removal and Disappearance of (Certain) Persons (Commissions on Disappearances), which were appointed in 1994 and made their final reports in 2001. Many other official documents have also acknowledged the serious defects of the policing system. The creation of the National Police Commission (NPC) under the 17th Amendment to the Constitution of Democratic Socialist Republic of Sri Lanka (the Constitution) was for the depoliticization of the police force. The newly appointed NPC has on several occasions pointed to problems of the police force. The defects of the system identified by these commissions are as follows:

11. 2. Militarization of the police system

The police have been used for riot control purposes and later for control of civil conflict. For over 30 years since the early 1970's Sri Lanka has gone through a period of violence which transformed the Sri Lankan police force from a crime detection and law enforcement agency to an insurgency suppression mechanism. As shown in the reports published by the Commissions on Disappearances, police stations functioned as detention centres, torture chambers, and places where thousands of persons disappeared. The police stations throughout the country were used for these purposes. A profound transformation of the system took place as a result of this. The extreme forms of torture, which were used against the suspected insurgents, became a usual habit within police stations and extreme forms of torture are being used on persons suspected of petty theft or even arrested for mistaken identity. Some examples may illustrate the existing situation. In one case the Supreme Court found the police officers of the Wattala Police Station having tortured a person named Waragodamudalige Gerald Mervyn Perera (Supreme Court Fundamental Rights Application SCFR 328/2002), who was arrested on mistaken identity, and within a few hours was assaulted to the extent that he suffered renal failure and had to be put on a life support system for two weeks. Further, there was serious damage to his arms due to hanging from the roof of the police station. In another case, a 17-year-old boy named B. G. Chamila Bandara Jayaratne (AHRC UA-35-2003) was tortured between 20 - 28 July 2003 by the officers attached to the Ankumbura police by hanging him by his thumbs. The doctors later declared that he had lost the use of his left arm completely and cannot be cured. The method of torture was described in an affidavit signed by the young victim thus:

11. 3. "Then my hands were swung behind my back and my thumbs tied together with a string, and then they put a fibber string between my thumbs and hung (me) from a beam on the ceiling. One officer pulled the fibber string so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numbed. Then the OIC kept hitting me on my legs and soles with the wicket stumps used for cricket." (AHRC UA-35-2003 and Supreme Court Fundamental Rights Application No. S.C. FR 484/2003) (see Affidavit filed by the victim in his application to the Supreme Court).

11. 4. Similar forms of torture were also used in the case of 32-year-old Galappathy Guruge Gresha De Silva (32) (*article 2*, Volume 1, Number 4, August 2002, p. 24) who also lost the use of both his arms due to such torture. Reports are received from all over the country of similar types of torture used at the police stations, which clearly show that the habits formed in the past in dealing with insurgents are now being commonly and routinely used at police stations. Thus a central issue in relation to the implementation of article 2 of the ICCPR is the way to stop such methods and the creation of a police force that is committed to the rule of law. When the police force itself is seen to be blatantly breaking the law it is not possible for the state party to implement the obligations under the ICCPR.

11. 5. Yet another result of the long period of civil conflict on the police was the impact on the keeping of information books and other records at the police stations. The extent of tampering with the official books came under criticism by the Supreme Court in the case of Kemasiri Kumara Caldera:

"I may add that the manner in which the B.C.I.B.s [Grave Crimes Information Book], R.I.B.s [Register/Investigation Book] etc. have been altered with impunity and utter disregard of the law makes one wonder whether the supervising A.S.P.s and S.P.s are derelict in the discharge of their duties or in the alternative condone such acts. In a case in which I pronounced judgment a few days ago too, I found that the B.C.I.B. had been altered, and therefore it appears that, that was not an isolated instance. Thus, the police force appears to be full of such errant officers. The question is what is the 5th Respondent Inspector General of Police doing about it? In my view, it is unsafe for a Court to accept a certified copy of any statement or notes recorded by the police without comparing it with the original. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law. We may ask with Juvenal, *quis custodiet ipsos custodies?* Who is to guard the guards themselves?" [Justice Edussuriya with two other Supreme Court judges agreeing in the case of Kemasiri Kumara Caldera (S.C. FR Application No. 343/99)]

11. 6. Further it was widely publicized by the media in July 2003 that at the Negombo Police Station two information books were kept, one containing original statements and another containing manipulated records created by some police officers. The latter was often produced for official purposes and thus the actual contents were falsified.

11. 7. The politicization of the police

This was the acknowledged reason for bringing about the 17th Amendment to the Constitution of Sri Lanka. The consequence of politicization of the police is to disrupt the commanding structure within the police force. The very meaning of politicization of police is that the politicians have begun to play a commanding role within the police force by their interference. This means that the normal principles of an organization driven by a unified command system have been seriously disrupted. The NPC on many occasions have declared that they would stop this process and that the police force would be brought within an internal command system ("No more political interference with police transfers, NPC Chief," by Jayampathy Jayasinghe, *Daily News*, 31 March 2003). This objective needs to be achieved if the obligations under the ICCPR are to be respected and observed by the state parties.

11. 8. Loss of competence in criminal investigations resulting in fabrication of cases against innocent persons as a substitute to the real culprits

A study done by ALRC (*article 2*, Volume 1, Number 4, August 2002) on custodial deaths and torture in police stations in recent years clearly establishes a pattern of implicating innocent persons in serious crimes as a substitute for the actual criminals

whom the police have failed to detect. Often when many uninvestigated crimes are piled up at a police station, innocent persons are arrested and forced to confess to crimes that they know nothing about. Often unresolved crimes lead to strong public protest. On the other hand when charges are filed against someone it appears as a resolved crime and may even lead to promotions.

- In the well-known murder case of a 76-year-old Catholic priest named Fr. Aba Costa on 10 May 2001, Kurukulasuriya Pradeep Niranjan (30) and another male named Gamini were arrested by the police within 3 days of the murder and allegedly severely assaulted. Thereafter, they were charged with the murder of Fr. Aba Costa and kept in remand for a long time. After almost two years the Attorney General withdrew the charges against the accused on 21 February 2003 as the actual criminals were allegedly found. It has also been revealed that some senior police officers of the area were involved in the crime. (Television reports in the programme called "Thumbprints," broadcasted by Rupavahini, national television station in Sri Lanka).

- Waragodamudalige Gerald Mervyn Perera (39) (S.C. FR Application 328/2002) was arrested and tortured on 3 June 2002 by the officers attached to the Wattala Police Station to be implicated in a triple murder case. The Supreme Court held that it was a case of mistaken identity.

- Mulakandage Lasantha Jagath Kumara (23) (S.C. FR Application 471/2000) was tortured between 12 ¡V 17 June 2000 by the officers attached to the Payagala Police Station. Due to injuries suffered at the police station the victim later died on 20 June 2000. The Supreme Court on 8 August 2003, held that the police had tortured the victim. The arrest and detention at the police station was for the purpose of implicating the victim for several unresolved crimes.

- Lalith Rajapakse (17) (AHRC UA-19-2002) was severely beaten on 19 and 20 April 2002 by the officers attached to the Kandana Police Station to the extent of causing him to lose consciousness for about three weeks. He was implicated in two petty theft cases without any complaints against him by anyone and without any evidence.

- Galappathy Guruge Gresha De Silva (32) (AHRC UA-20-2002; *article 2*, Volume 1, Number 4, August 2002, p. 24) was arrested and tortured on 22 March 2002 by the officers attached to the Habaraduwa Police Station with a view to implicate him in a murder case.

- Bandula Rajapakse, R. P. Sampath Rasika Kumara, Ranaweera and Chaminda Dissanayake (*article 2*, Volume 1, Number 4, August 2002, p. 24), were arrested and tortured on 19 and 20 February 2002 by the officers attached to the Ja-ela Police Station. They were made scapegoats in an inquiry into the loss of 46 rails

of clothes from a company store without police having any evidence against them.

- Ehalagoda Gedara Thennakoon Banda (36) (AHRC UA-25-2002) was arrested and tortured on 12 June 2002 by officers attached to the Wilgamuwa Police Station and later released without any case. It was an attempt to implicate him in some illicit liqueur charges without any evidence.

- Eric Antunia Kramer (AHRC UA-36-2002) was arrested and tortured on 28 and 29 May 2002 by the officers attached to the Mutwal Police Station, it being an attempt to implicate him for a robbery at the company where he worked without any evidence against him. He was not charged with any offence later.

- 10-year-old T. K. Hiran Rasika and 12-year-old E. A. Kusum Madusanka (AHRC UA-30-2002) were arrested and tortured on 8 July 2002 by officers attached to the Hiniduma Police Station, in a case of trying to implicate the children for a petty theft in the school canteen without having any evidence to support such a charge.

- V. G. G. Chaminda Premalal (AHRC UA-31-2002), a 16-year-old student, was arrested and tortured on 9 and 10 July 2002 by the officers attached to the Aralaganvila Police Station, again in an attempt to implicate him on a petty theft case without any evidence.

11. 9. The following cases were also attempts to fish for evidence of undetected crimes by torturing persons against whom there were no grounds for suspicion.

- Subasinghe Aarachchige Nihal Subasinghe (40) (AHRC UA-01-2003) was tortured by the officers attached to the Keselwatte Police Station, Panadura;

- Korala Gamage Sujith Dharmasiri (23) (AHRC UA-02-2003) was tortured between 1¡V8 January 2003 by the officers attached to the Kaluthara South Police Station; Anuruddha Kusum Kumara (15) (AHRC UA-01-2003) was tortured on 29 December 2002 by the officers attached to the Wellawa Police Station, Kurunegala District;

- Bambarenda Gamage Suraj Prasanna (17) (AHRC UA-05-2003) was tortured on 8 January 2003 by officers attached to the Matugama Police Station; (see earlier)

- K. T. Kumarasinghe alias Sunil (33) (AHRC UA-05a-2003) was tortured from 1 ¡V 4 April 2003 by the officers attached to the Galagedara Police Station;

- Hetti Kankanamge Chandana Jagath Kumar (23) and Ajith Shantha Kumana Peli (32) (AHRC UA-13-2003) were tortured on 13 May 2003 by the officers attached to Biyagama Police Station;

- B. G. Chaminda Bandara Jayaratne (17) (AHRC UA-35-2003) was tortured from 20 ¡V 28 July 2003 at Ankumbura Police Station and as a result according to medical opinion he permanently lost the use of his left arm due to being hung by his thumbs by the police;

- Bandula Padmakumara (14) and Saman Kumara (17) (AHRC UA-41-2003) were tortured between 20 ¡V 28 July 2003 by the officers attached to the Ankumbura Police Station;

- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003) was tortured between 26 ¡V 28 August 2003 by the officers attached to the Wattegama Police Station;

- Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003; AP news under the title, "Fearing police may steal the body [of] her alleged torture victim son, mother buries body in garden," 1 September 2003) was tortured by the officers attached to the Kadawata Police Station (though the police have claimed this as a suicide inside the police station the mother of the victim has openly challenged the postmortem inquiry held inside the police station and has buried her son's body in the home garden with a view to get an impartial inquiry and to prevent the body being stolen by the police);

- Padukkage Nishantha Thushara Perera (23) (AHRC UA-45-2003) was tortured on 7 ¡V 10 September 2003 by the officers attached to the Divulapitiya Police Station;

- Mohamed Ameer Mohamed Rizwan (23), Suppaiya Ravichandran (23) and Abdul Karim Mohamed Roshan Latif (30) were tortured between 30 August - 6 September 2003 by the officers attached to the Wattala Police Station and Peliyagoda Police Regional Headquarters;

- Downdage Pushpa Kumara (14) was tortured on 1 September 2003 by the officers attached to the Saliyawewa Police Post attached to the Putlam Police Station.

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12. Torture of children

See above section for details of cases.

13. Extra-judicial killings and custodial deaths

- T. A. Premachandra (46) (AHRC UA-07-2003) was shot and killed on 1 February 2003 by the officers attached to the Kalutara South Police Station;

- Yoga Clement Benjamin (47) (AHRC UA-12-2003) was shot and killed on 27 February 2003 by the officers attached to the Kalutara South Police Station;
- Sunil Hemachandra (28) (AHRC UA-34-2003) was tortured to death on 26 June 2003 by the officers attached to the Moragahahena Police Station;
- Saliya Padma Udaya Kumara (26) (AHRC UA-42-2003) was tortured to death between 26 ¡V 28 August 2003 by the officers attached to the Wattegama Police Station;
- Garlin Kankanamge Sanjeewa (25) (AHRC UA-41-2003) was tortured to death by the officers attached to the Kadawata Police Station;
- Okanda Hevage Jinadasa (50) (AHRC UA-48-2003) was assaulted and died of those injuries on 5 September 2003 by officers attached to the Okkampitiya Police Post in Moneragala District.

14. The loss of the disciplinary process of the police

14. 1. The Supreme Court of Sri Lanka made the following observations on this matter:

> *"The number of credible complaints of torture and cruel, inhuman and degrading treatment whilst in Police custody shows no decline. The duty imposed by Article 4(d) [of the Constitution] to respect, secure and advance fundamental rights, including freedom from torture, extends to all organs of government, and the Head of the Police can claim no exemption. At least, he may make arrangements for surprise visits by specially appointed Police officers, and/or officers and representatives of the [National] Human Rights Commission, and/or local community leaders who would be authorized to interview and to report on the treatment and conditions of detention of persons in custody. A prolonged failure to give effective directions designed to prevent violations of Article 11, and to ensure the proper investigation of those which nevertheless take place followed by disciplinary or criminal proceedings, may well justify the inference of acquiescence and condemnation (if not also of approval and authorization)." [Justice Mark Fernando, with other two judges agreeing, in Gerald Mervin Perera's case, S.C. FR 328/2002]*

14. 2. In a statement issued by the NHRC of Sri Lanka on 4 September 2003 an agreement arrived by the NHRC with the IGP (Inspector General of Police) mentioned the following item:

> *"The NHRC agreed to draft guidelines together with the NPC and the IGP (Inspector General of Police) for the interdiction of officers who have been*

found to have violated fundamental rights by the Supreme Court (translation from Sinhala)."

14. 3. Meanwhile the NPC is also engaged in drafting a public complaints procedure under Article 155 G (2) of the Constitution of Sri Lanka to entertain, investigate and redress complaints against police. However, while these measures are pending, at the moment no procedure is operative to take disciplinary action against the police. In the absence of a proper and impartial disciplinary process the investigations against the police are left in the hands of other police officers. Usually, a higher-ranking police officer such as Assistant Superintendent of Police (ASP), Superintendent of Police (SP) or Deputy Inspector General of Police (DIG) is assigned to investigate such complaints. It is quite well known that these officers try to work out some compromise rather than properly investigate a complaint. Often complainants are even threatened into withdrawing complaints. The knowledge of ineffectiveness of internal procedures relating to complaints against the police has created a psychology among the officers that they are quite safe despite whatever violation they may commit. A circular issued by the IGP in September 2003 states that higher officers such as Officers in Charge (OICs) of police and ASPs and others will be held liable for custodial deaths and torture taking place at police stations. However, there is no procedure at the moment to hold such officers liable for such actions.

15. Types of Torture

Types of torture taking place in Sri Lanka:

- Sitting on the spine or beating the spine--this can result in dislocating discs in the spine resulting in full or partial paralysis;
- Hitting on the head or sometimes keeping books on the head and hitting with a pole--this can cause fractures in the skull and brain injuries;
- Tying hands behind the back, tying the thumbs together, putting a string through the thumbs and hanging the person from the ceiling from the thumbs--this way a person can lose the use of arms temporarily or permanently;
- Tying the hands and legs and putting a pole though the legs in a way that a person can be rolled round--while being rolled the person can be beaten on the head and the soles. This method is named by the police cynically as *Dharma Chakkra* (literally meaning the wheel of the universal law especially in Buddhism);
- Beating while hanging--this can cause renal failure and other serious injuries;
- Hitting on the genitals;

- Inserting genitals into drawers and closing them to cause pain;
- Pumping water through fire hose pipes on genitals;
- Inserting S-lon (PVC) pipes and other objects like glass bottles into the vagina;
- Beating on the ear--a person could fully or partially lose hearing this way;
- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles with a pole;
- Forcing the fingers into glass bottles making it very difficult to remove them;
- Threatening to kill;
- Threatening to rape;
- Threatening to implant drugs and file cases in courts for possession of drugs--punishment for such cases is very high;

15. 1. Judging by the documentation of torture cases filed and from the Supreme Court judgments on non-criminal torture cases, we note that these forms of torture usually take place at police stations.

16. Threats to those who make complaints

Those who make complaints against torture come under severe threat from the perpetrators. This happens in almost all cases. In the case of Lalith Rajapakse (cited above), after he made the initial complaint there was a plot to poison him. He had to make complaints to the NHRC and also to other authorities. AHRC intervened by writing letters and appeals to save the grand father's and the victim's life. The victim had to live in hiding for about five months. Even now he has to be kept protected. In the case of Gerald Perera (cited above), he and his fellow workman received threats of assassination. In the case of Dawundage Pushpakumara (14 years old) (UA-50-2003), attempts were made by the officers of Saliyawewa Police Post to prevent the child from obtaining medical treatment for the torture injuries. It was only through the intervention of the Child Rights Authority that the child was removed from the Saliyawewa police area to Colombo to get treatment. After that the police officers and a prominent politician threatened to burn the house of the family if complaints against the police were not withdrawn. On this matter also, the family's complaint was made known to NHRC, NPC and other authorities by AHRC. In the case of B.G. Chaminda Bandara (cited above) who was tortured by the Ankumbura police and lost the use of his left arm completely due to the torture, his family was constantly threatened by the OIC of the Ankumbura Police. The victim went into hiding and is in hiding still. In fact, such situations arise invariably in almost all cases after complaints have been made. One of

the reasons for this is that despite the complaints, police officers, particularly OICs, remain at the police station. OIC's have enormous powers in the locality. Some OIC's remain in the police stations even after the Supreme Court has found them guilty of having tortured a person. For example, the officer in charge of the Wattala Police Station, was found to have violated the rights of Gerald Perera (cited above), but is still the officer in charge of the same police station. All other OIC's of the police stations named above are also still there.

16. 1. As mentioned above, the major cause for the use of police torture as it exists today is the breakdown of the policing system during the period from early 1970's. As a result the following things have happened:

a. Breakdown of the command structure of the police: higher authorities of the police either being perceived as inefficient or corrupt;

b. The OICs of the police stations who are in fact the real authorities within the police station being incompetent, inefficient and often being accused of being corrupt;

c. Lack of training in proper methods of criminal investigations and lack of forensic facilities. In such circumstances torture is perceived as not only a legitimate means of investigation but also as a necessary means;

d. Increase of crime and public pressure to deal with crimes and having no real capacity to deal with crimes, often police engage in torture to create substitutes for actual criminals in order to answer the public criticism against them. As a result many innocent people get either severely tortured or even killed;

e. Corruption: a recent survey done by the Transparency International pointed to the police as being perceived by the public as the most corrupt institution within the country. It is well known that a person can be tortured by the police at the request of an opponent;

f. The lack of disciplinary procedure: in the recent past the disciplinary procedure has been almost completely lost. The only punishment that is resorted to is a transfer when there is public criticism. Dismissal for misconduct hardly takes place;

g. Absence of a proper and impartial public complaint mechanism: the complaints against the police are usually referred to higher police officers for investigations. It is quite well known that these officers try to work out some compromise rather than properly investigate a complaint. Often complainants are even threatened. As a result the police officers know that no serious threat will come to them due to complaints. Psychologically this creates in the officers an attitude of having complete impunity. The NHRC, which could have dealt with the complaints against torture in the past, did not take a serious approach to such torture. They

did not have a system of preliminary investigations. Their concern was to settle torture cases and they exerted pressure in the past even to accept settlements for such small sums as US$ 10. In August 2003 the chairperson of the NHRC stated that she has given instructions to stop this mode of settlements and to seriously investigate torture cases. Another move is the implementation of the constitutional provisions requiring the NPC to establish a public complaints procedure to entertain, investigate and redress complaints against the police. The AHRC has submitted a draft for such a procedure to the NPC. This is being considered at the moment by the NPC.

17. Delays in decision-making in Fundamental Rights Applications and Institution of Prosecutions under Act No. 22 of 1994

Though article 126 of the Constitution was to provide an expeditious remedy for violations of fundamental rights, the actual time taken for final determination is still too long. Though an application has to be filed within a month of a violation, the final determination usually takes two or more years. Persons who become victims of brutal torture at the hands of police officers and other state agents are thus required to wait too long before final determination of their cases. Meanwhile, the alleged perpetrators continue to hold office. Torture victims in almost all cases come under heavy pressure to give up or settle cases. They also live in great fear of reprisals for having filed such cases against the police. They also receive death threats. Thus, delay in hearing such complaints of violations of rights, helps to continue such violations.

17. 1. The filing of Criminal cases under Convention against Torture--Act No. 22 of 1994 takes even longer. Of the 59 cases submitted by Police Special Investigation Teams under the Act in 2002 to the Attorney General's Department, only 10 cases have been filed in Courts. The rest of the files are with the Attorney General's department, (Lakbima - 11 September 2003). This is despite claims by the Attorney General's Department to prosecute offences under the act. Despite the many claims filed during earlier years, as stated above to date we are not aware of any successful prosecutions under the Act.

18. Complaints of negligence at postmortem and other inquiries by state medical officers

In many cases of torture it has been revealed that there are serious doubts about the professionalism of some of the district medical officers (DMOs) and judicial medical officers (JMOs). In the case of M. K. Lasantha Jagath Kumara, who was produced before a DMO the day before his death, the DMO did not examine him properly or prescribe immediate medical attention. There is also the case of Sunil Hemachandra, who died due to injuries suffered from torture in police custody. There are several eyewitnesses who saw him being severely beaten by the police. He was 32 years of age and had no history of epilepsy or any serious illness. His family specifically denies

him having any fits at all. However, the medical report left out the possibility of injuries due to assault and speculated on the possibility of a fall due to fits caused by an illness. The family strongly believes that the medical examination has not been carried out professionally.

18. 1. In the case of Garlin Kankanamge Sanjeewa (AHRC UA-41-2003) who the police alleged to have committed suicide inside the police station, the family of the victim has seriously doubted the verdict of the medical officer and even keeps the dead body buried in the family garden with the hope of getting an impartial medical inquiry. The family alleges that even the sketch of the body as found was fabricated. Further observers have challenged the possibility of an adult male being able to hang himself with a belt, which the police allege happened. Further evidence that there were two persons inside the same police cell at the alleged time of hanging but they had seen nothing at all has also increased suspicion.

18. 2. In the case of B. G. Chaminda Bandara Jayaratne (AHRC UA-35-2003), who has lost the use of his left arm due to police torture, the Kandy Hospital did not even produce him before a JMO for examination despite the fact that they recorded the allegation of the young boy of having been tortured by the police. He was discharged without any treatment and it was only possible for him to get treatment after he had been re-admitted to Peradeniya Teaching Hospital where after examination the doctors declared that he has permanently lost the use of his left arm. Many such complaints about failures by the DMOs and JMOs are being received by human rights organizations. However, there are still a number of state medical officers who carry out their duties with great care and professionalism.

19. Legal definition of torture

19. 1. There are several provisions of the Torture Act (Act No. 22 of 1994) passed by Sri Lanka which do not fully comply with the UN Convention against Torture. The following observation by Amnesty International on this matter is relevant:

19. 2. The Torture Act passed by Sri Lanka's parliament in November 1994 and certified on 20 December 1994 makes torture punishable by imprisonment for a term not less than seven years and not exceeding ten years and a fine. Regrettably, however, several provisions in the UN Convention against Torture were not fully implemented in the Torture Act which uses a more restrictive definition of "torture" than that contained in the UN Convention against Torture.

19. 3. As stated above, the UN Convention against Torture defines "torture" as "any act by which severe pain *or suffering* ... is intentionally inflicted on a person *for such purposes as*..." (emphasis added). In subsection (1) of Article 2 of the Torture Act, however, the causing of "suffering" is not explicitly made part of the definition of "torture", and the purposes for which torture is inflicted are listed in an exclusive (rather than inclusive) way by use of the wording "for any of the following purpose[s]". Thus, torture for other purposes, such as sadism alone, are not defined as a crime under this Act.

19. 4. In addition, subsection (3) of Article 2 of the Torture Act stipulates that "the subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence" under the Act. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences (see also below).

19. 5. Article 3 of the UN Convention against Torture, which provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", has not been given effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in another country cannot invoke this provision to contest their return to that country. The failure to include this prohibition in the Act is a matter of deep concern because Article 3 of the UN Convention against Torture, in contrast to the UN Convention relating to the Status of Refugees, applies to all persons and not only to asylum seekers. "The Committee against Torture in May 1998 recommended a review of the Torture Act in respect of each of the above three concerns. "Prior to the coming into force of the Torture Act, perpetrators of torture could be prosecuted under Sections 310 to 329 of the Penal Code which define the offence of causing hurt and an aggravated form of causing hurt, referred to as "grievous hurt" in order to try and extract information or a confession which may lead to the detection of an offence or to compel the restoration of property or satisfaction of a claim. Such an offence of grievous hurt is punishable by imprisonment for up to ten years and a fine (no minimum punishment is stipulated)." ["SRI LANKA: Torture in Custody," by Amnesty International, AI INDEX: ASA 37/010/1999, 1 June 1999]

19. 6. In many of the cases in the report cited above, the type of injuries suffered by the victims would have qualified the cases to be prosecuted also under "grievous hurt" or even under "attempted murder" where the prescribed punishment is greater than under the Act No. 22 of 1992.

In fact despite the criticisms by the Committee against Torture and international human rights organizations, no attempt has been made to bring Sri Lanka's anti-torture legislation into conformity with the Convention against Torture. In fact there is no such draft law before the Law Commission in Sri Lanka.

20. State-Sponsored Violence against Women in Sri Lanka

20. 1. An increasingly brutal culture of social and political violence resulting from a continuing war in the North and East and two youth insurrections has posed serious obstacles to Sri Lanka's human development during the past three decades.

20. 2. Sri Lanka has a long record of violent conflict. The youth rebellion of the Janatha Vimukthi Peramuna (JVP) in the 1970s, methodically crushed by the then United Front Government of Sirimavo Bandaranaike, was only a taste of worse things to come in the future.

20. 3. With the United National Party (UNP) regime, which came into power in 1977, a new culture of political violence set in. Violence was practiced to systematically wipe out all opposition to the government. Not only did the UNP reorganise its trade unions to act as thugs to incite and carry out violence, certain politicians were allowed to have their own private armies and mobilize large crowds and mobs to wreak violence with impunity. Paramilitary organisations set up during this period, supposedly to help the armed forces and police fight the LTTE, also expanded the UNP's armed sphere of influence.

20. 4. The violent politics of this era culminated in the re-emergence of the JVP in the late 1980s. The JVP intended to capture state power and establish a socialist state, but was suppressed by the State in an equally violent fashion. The violence thus unleashed only subsided in 1991 after the leader of the JVP was arrested and summarily executed by the Sri Lankan army. At this point, the ongoing ethnic conflict in the North-East has lent a continuing brutal dimension to this pervasive violence and Sri Lanka had the second highest count of disappeared persons (an estimated 12,000) in the world, next to Iraq.

20. 5. This culture of state violence has not abated. Instead, formal entities of state power continue to be supplemented by 'unformalised' agencies of state violence. It is through this deeply troubled dual process that questions of legality, constitutionality and accountability of a variety of state practices are addressed and most often, circumvented.

20. 6. In this process, the law itself has been commonly used as an instrument of repression. During this period, the principal legal provisions relating to public security in Sri Lanka are contained in the Public Security Ordinance (PSO) No. 25 of 1947, as amended, and in the Prevention of Terrorism Act (PTA) of 1979, as amended.

20. 7. Wide powers of arrest and detention given to the police and the armed forces under these laws were used to crush the JVP in the 1970s and 1980s. These laws also lacked minimum safeguards relating to conditions of detention and admissibility of police confessions to senior police officers, (though conviction on a mere confession is rare) and they relaxed the normal procedure in relation to deaths in custody in respect of inquests, postmortem examinations, disposal of bodies and judicial inquiry. These laws were used to fight Tamil separatism in the country as well as control Sinhalese youth extremism.

20. 8. While Sri Lanka currently has no active conflict in any part of the country and the emergency regimes under both the PSO and the PTA have lapsed (though both laws remain still in the statute books), a legacy of violence remains, impacting equally the physical safety and security of Sri Lankan women.

30. State sponsored violence against women in the North

30. 1. In the decades long ethnic conflict, women were the first and easiest victims. Government statistics estimate a total of 587,399 displaced persons in Sri Lanka (statistics taken at the end of 1993), of which 80% were Tamils and 40% were women. Displacement has occurred as a result of actions by the government as well as by the LTTE. The case of displaced women in Puttalam, an area in the North Western province of Sri Lanka provides one example. Here, approximately 80,000 Muslims were forcibly evicted from the north by the LTTE in the 1990s and have since then been living in welfare centres (refugee camps) run by the government.

30. 2. On the one hand, the catalytic role of violence in this respect brought women out to a devastating and devastated public arena. Traditional roles of Sri Lankan women underwent radical change and women were catapulted into hitherto unaccustomed roles of sole breadwinner and head of household. In this scenario, women's activity focused on day to day survival issues such as how to get a pass, how to get food to eat, and to find out what has happened to their husbands, fathers and sons who had disappeared.

30. 3. With regard to relatives who have been disappeared, the state has attempted to provide some relief to displaced women, and has responded to appeals for justice against the violation of human rights of Tamil people by its own institutions. The courts and other mechanisms of the state, such as the Human Rights Commission, the Commissions on Disappearances and the Anti Harassment Committee, have provided a limited space for Tamil citizens to contest violations of their rights by the armed forces and police, and obtain some relief and redress. For instance, women from the north and east were able to obtain compensation from the Disappearances Commissions appointed by the state for the disappearances of their husbands, sons or fathers.

30. 4. In addition to the drastic change in roles and the loss of relatives, women have also been subjected to unprecedented violence. During the period of the active conflict, the police, paramilitary units and members of the government's armed forces, were involved in the commission of acts of torture, including rape and sexual violence, against women.

30. 5. An analysis of cases of rape by armed forces personnel reported in the Sri Lankan press for the year 1998 for example, revealed that 37 such cases were recorded. As of 1999, eight of these cases were still under police investigation, 22 were being inquired into by Magistrate's Courts, two cases were before the District Court and an additional two cases were pending before the High Court. During the year 1998, three of the rape cases that were heard before the Sri Lankan courts resulted in prison sentences for the armed services personnel involved. Eighteen of the cases heard before the Courts related to crimes of sexual violence committed in the operational areas of the North-East while the remaining 19 cases were reported in other areas of the country.

30. 6. In its Sri Lanka Monitor, the British Refugee Council notes that in the period February 1996-July 1999, more than 45 cases of rape by soldiers in the North-East were reported. In her 2001 report to the Commission on Human Rights, the UN Special Rapporteur on Violence Against Women highlighted a number of cases of rape and sexual abuse perpetrated by the Sri Lankan police, security forces and armed groups allied to the government.

30. 7. During this period, ethnic minority women in Sri Lanka were targeted by members of the Sri Lankan police and security forces for acts of violence. This violence overwhelmingly takes the form of rape, sexual assault and harassment.

30. 8. In November 2000, the United Nations Division for the Advancement of Women, the Office of the High Commissioner for Human Rights and the United Nations Development Fund for Women jointly organized an Expert Group Meeting on Gender and Racial Discrimination. In their report, participants at the meeting cited Sri Lanka as an example of a conflict "motivated by ethnically based acts of aggression in which women have been targeted and become victims of ethnically-motivated, gender-specific forms of violence."

30. 9. The number of female suicide bombers taking part in attacks by the LTTE has meant that Tamil women are often the targets of stringent security checks, arbitrary arrests and detention by police and armed forces personnel. The conduct of random night time checks by security forces of boarding houses and other establishments where Tamil women live created a climate of insecurity and fear and women passing through security check points became particularly vulnerable to rape and other acts of sexual violence.

30. 10. Tamil women arrested and detained by police and security forces were reportedly subjected to rape and other forms of torture. The individual cases reproduced in the Annex of this report, as well as information received from other sources, indicate that Sri Lankan security forces often used rape and sexual violence against women in detention as a means of forcing them to sign confessions stating that they are members of the LTTE. The form of torture used by police and security forces in Sri Lanka against ethnic minority women in detention clearly constitutes a gender-specific form of racial discrimination. It has been estimated that a Tamil woman is raped by members of the armed forces or police every two weeks and that every two months a Tamil woman is gang-raped and murdered by the Sri Lankan security forces.

30. 11. The actual incidence of rape and sexual violence committed by police and security forces during this period is likely to be far higher than that which has been reported. It is relevant in this regard that women in Sri Lanka are frequently prevented through fear and shame from reporting acts of sexual violence. Fear of social ostracism and retaliation, when combined with the widespread lack of gender-sensitivity amongst police, judicial and medical personnel, acts as powerful deterrents to women reporting violence and pursuing legal action against the perpetrators. The prevailing climate of impunity for acts of sexual violence against women from ethnic minorities and the fact

that women who are victims of violence frequently have no safe place to stay during investigations or trials are further elements that dissuade women from reporting crimes of violence committed against them.

31. Impunity for violence against women

31. 1. Even though there is now a ceasefire between the government troops and the LTTE which has lasted for over a year, many women and children continue to suffer multiple travails and traumas from losing their husbands and being displaced with their mobility severely affected. The past severe violence that they had to undergo remains a constant reminder of their helplessness in the context of the failure of the State to deal with the plight of the Sri Lankan women affected by the war. There has been an obvious inability of the legal system to deal effectively with the perpetrators of the violence.

31. 2. While impunity continues for members of the forces who engage in blatantly unconstitutional actions under the PTA and Emergency Regulations, interventions by the courts have not been able to stem a change of the general pattern of impunity behind which members of the forces take refuge for their actions. Such interventions have been able to correct injustices only in very individual situations which are more the exception rather than the rule.

31. 3. In particular, the Krishanthi Kumarasamy case where the rape and murder of a fifteen year old school girl and the subsequent murder of her mother, brother and neighbor who went in search of her, by eight soldiers and one policeman on duty at the Chemmani check point, marked the coming together of forces across the country, united in their condemnation of the horrendous incident.

31. 4. The accused in this case were convicted in the High Court of Sri Lanka *inter alia* of offences under Section 357 of the Penal Code, (abduction with intent that the victim may be compelled or knowing it to be likely that she will be forced or seduced into illicit sexual intercourse), under Section 364 (rape) and Section 296 of the Penal Code (murder). Their appeals are currently pending.

31. 5. The Krishanthi Kumaraswamy case saw the growth of hope that the 1990s would be a time of swift justice for those members of the forces who engaged in rights violations. The call was made for a genuine re-evaluation by both ordinary people and their leaders as to the reality of the events happening in the country. A surge of angry public opinion emphasized that abuses by members of the security forces have to be acknowledged and a consciousness created that such incidents are, indeed, hugely counterproductive.

31. 6. However, at the close of 1998, the momentum caused by the Kumarasamy verdict petered out. Other cases, similarly gruesome in nature, remain to be pursued. There is evidence that the perpetrators of acts of violence against women have often escaped punishment. Victims of violence at the hands of police and security forces are often threatened and intimidated into discontinuing proceedings. Moreover, the feelings of shame often associated with rape and other forms of sexual violence make women

particularly unwilling to complain and it is often for this very reason that perpetrators use this form of violence as they are aware that they are unlikely to be held accountable for their actions.

31. 7. The Secretary General of the Tamil United Liberation Front (TULF), R. Sampanthan, wrote in an April 2001 letter addressed to Sri Lankan President Chandrika Bandaranaike Kumaratunga that "it cannot be denied that ever since 1994, the Krishanty Kumaraswamy case is the only instance related to a Tamil female victim where service personnel who were such offenders have been convicted."

31. 8. The case of Ida Camelita who was raped and murdered in Mannar in July 1999 (see case annex, appeal LKA 100899.VAW), is proceeding very slowly while the investigation into the murder and alleged rape of Koneswary in Amparai in 1999 has fallen through due to intimidation of the witnesses.

31. 9. Perpetrators of human rights violations against women are brought to some measure of justice in a consistent manner only when cases are brought before the Supreme Court for violation of fundamental rights. In August 2001, the case filed by Yogalingam Vijitha of Paruthiyadaippu, Kayts, against the Reserve Sup. Inspector of Police, Police Station, Negombo and six others, (SC FR No. 186/2001, SCM 23.8.2002) was a case in point where the Supreme Court ordered compensation and costs to be paid to a Tamil woman who had been arrested, detained and brutally tortured. The Court pointed out thus;

31. 10. '*As Athukorala J in Sudath Silva Vs Kodituwakku 1987 2 SLR 119 observed 'the facts of this case has revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting and offend one's sense of human decency and dignity particularly at the present time when every endeavor is being made to promote and protect human rights'.*

31. 11. The Attorney General was also directed to consider taking steps under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment Or Punishment Act No. 22 of 1994 against the respondent police officers and any others who are responsible for the acts of torture perpetrated on the victim.

31. 12. The lack of seriousness in which Act No. 22 of 1994 has been utilised with regard to members of the armed forces and police who commit serious human rights violations remains a problem. Women do not have access to redress and reparation and very few can appeal to the Supreme Court.

31. 13. The widespread impunity that continues to be enjoyed by perpetrators of rape and other forms of violence committed against women in Sri Lanka provides strong evidence of a systematic practice of discrimination. The consequences of this impunity are devastating for individual victims who are effectively denied access to criminal and

civil remedies including reparations. At the community level, impunity leads to a diminution in confidence in law enforcement personnel and in the judiciary and potential perpetrators are not deterred from the commission of similar crimes. The failure of the government to send a strong signal that all forms of violence and other types of discrimination against women are unacceptable has important ramifications for women's social status as the promotion and protection of women's human rights are thereby perceived as being of little value.

32. Transfers

32. 1. Members of the armed forces or police who are suspects in criminal cases are frequently transferred away from the area in which the crime allegedly took place. The Sarathambal Saravanbavananthakurukal (see case annex, case LKA 050100.VAW) provides one example of the practice of transferring members of the armed forces and police suspected of having committed crimes of violence against women away from the scene of the crime in order to avoid or delay the initiation of an investigation.

32. 2. There are some signs, however, that the judiciary are becoming less amenable to petitions by defendants from the armed forces wishing to transfer cases away from courts in the North-East. In the recent case of Sivamani Weerakoon and Wijayakala Nanthakumar (see case annex, case LKA 090401.VAW), who were allegedly raped by members of the Special Investigation Unit (SIU) of the Mannar police and by navy personnel, the court hearing the matter refused the petition by the officer in charge of the SIU to have the case moved to Colombo or Anuradhapura for hearing.

33. Evidentiary issues

33. 1. Where investigations into torture and other forms of violence are initiated, they are often hampered by evidentiary problems, including a lack of medical evidence, and victims and officials are frequently intimidated into withholding important evidence.

33. 2. According to media reports, during a seminar in Batticaloa in February 2001, State Counsel Suganthi Kandasamy described the problems linked to obtaining medical evidence in rape cases. Kandasamy, a government official, reportedly stated that one of the major hurdles to the prosecution of torture, including rape, in the Batticaloa district is the fact that medical examinations are not systematically carried out on all victims and that vital evidence is therefore often not available to magistrates. Even in cases where District Medical Officers are willing to examine alleged victims of rape and other forms of torture, these officers and the victims themselves may be subjected to pressure or threats by police in order to keep the evidence from reaching the magistrature.

33. 3. For example, in the Vijayakala Nanthakumar and Sivamani Weerakoon case concerning events that took place in Uppukulam in March 2001 (see case annex, case LKA 090401.VAW), the two women were allegedly raped by members of the Mannar

police's Counter-Subversive Unit (CSU). According to the information received, the District Medical Officer initially reported to the magistrate that he had examined the women and that there was no evidence of rape. Following widespread public outcry and an intervention by the Bishop of Mannar, the women stated that they not been medically examined and that they had been warned by the police not to consent to an examination or provide any evidence to the magistrate concerning the torture. When the women were finally examined by the District Medical Officer 8 days later, he found strong evidence to suggest that the women had been subjected to torture including rape and sexual assault.

33. 4. The fact that the Sri Lankan Evidence Ordinance was not amended in concert with the 1995 amendments to the Penal Code may create additional evidentiary hurdles for women wishing to bring charges of rape against security forces personnel. Section 364(2) of the Penal Code provides for punishments ranging from ten to twenty years imprisonment for public officers or persons in a position of authority who commit rape on women in official custody or who wrongfully restrain and commit rape upon women. Under the Evidence Ordinance, however, women may be required to prove an absence of consent even in cases of custodial rape and prior sexual history may be introduced into evidence. In recent years, Sri Lankan courts have reportedly been more willing to admit uncorroborated testimony from rape victims and it is to be hoped that judicial practice may be becoming more flexible in relation to the evidentiary requirements in cases involving rape and other forms of sexual violence, especially where these acts have occurred in the context of police custody or in detention.

34. Failure to Prosecute and Delays

34. 1. In its concluding observations on the report of Sri Lanka in 1998, the Committee against Torture noted that there were "few, if any, prosecutions or disciplinary proceedings" being initiated against police and other officials alleged to have committed acts of torture and called upon the government to promptly, independently and effectively investigate allegations of torture and to ensure that justice is not delayed.

35. Conclusion.

35. 1. Implementation of domestic mechanisms with regard to the protection of human rights within Sri Lanka is now lost in a vacuum of confusion, inefficiency and utter desperation. It is time for the international community, through considered opinion and conscious effort, to provide adequate support to the state in addressing and thus tackling this problem. A study by the UN Sub Commission for Promotion and Protection of Human Rights regarding the exceptional collapse of rule of law in Sri Lanka will help the country in the process of recovering its lost faith in basic guarantees of the Rule of Law and there by to identify the problem and to suggest remedies.

35. 2. As a member of the UN, even though the state through its reports has tried to reply for the recommendations of the UN bodies, such attempts have only been cosmetic as well as superfluous. They are yet to deliver any tangible result. This is due to the reason that the rule of law in the state has collapsed to a hitherto unimagined extent and representatives of the State to the UN bodies are burdened with the moral responsibility to safe guard the image of the country in such international summits. This though understandable, is not what the state requires. Hence it is for an independent organisation like the Asian Legal Resource Centre to bring the fact into the attention of the Sub Commission so that there could be an earnest attempt by the Sub Commission in understanding the problem and thus undertaking a study regarding the rule of law situation in Sri Lanka. And this is the very purpose of this proposal.

35. 3. In consideration of the facts and circumstances mentioned above the Asian Legal Resource Centre most respectfully request the immediate attention of your kind office to take appropriate actions to place our proposal to the Sub Commission for Promotion and Protection of Human Rights to conduct a study on Sri Lanka on the exceptional failure of rule of law for the forthcoming session of the Sub Commission.

Respectfully

Basil Fernando
Executive Director
Asian Legal Resource Centre

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