

# Recovering the authority of public institutions

A resource book on law and human rights in Sri Lanka



Basil Fernando



ASIAN HUMAN RIGHTS COMMISSION 2009



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The photographs on the cover are those of the former High Court Judge, Sarath Ambipitiya assassinated on November 19, 2004; a witness who was to give evidence in a High Court trial against several police officers, Gerard Mervyn Perera, assassinated on November 21, 2004; a complainant in a bribery case and a petitioner in a fundamental rights application against torture by several police officers, Sugath Nishanta Fernando, was assassinated on September 20, 2008; and a prominent journalist, who was harassed, brutally assaulted and whose house was sprayed with gunfire, Lasantha Wickramatunga, assassinated on January 8, 2009,. Their lives and their tragedies reflect the crisis of justice in Sri Lanka.

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# Introduction: Contrasts between a developed legal system and the Sri Lankan legal system

*Basil Fernando, Director, Asian Human Rights Commission*

At one time Sri Lankans talked about their legal system with pride. Most books, articles and speeches on it began with self-congratulatory statements. In 1986, A. R. B. Amerasinghe wrote in one such work that,

“The spirit of Justice in our Supreme Court is invincible and the independence of the Court is inviolable. And there is little doubt that it shall always be so, for that has been the desire of those who have served it from the Bench and at the Bar and that has been and, above all else, is the will of the Sri Lankan people.” (*Supreme Court of Sri Lanka*, p. 4)

However, another Supreme Court judge, K. M. M. B. Kulatunga, gave a very different picture in *Disorder in Sri Lanka*, suggesting that the system had suffered a tremendous downfall, not unlike that of Humpty Dumpty. This perhaps better characterises the perceptions of almost everyone involved in the system in some way today, be they in a professional capacity or as a party in a case.

Whatever the past, Sri Lanka’s present-day justice system in fact endangers, rather than protects, lives and liberty. This view of the system as a threat to Sri Lankan society is no longer radical. It is shared among people in every corner of society.

What the country is looking for now, is a future. A future that carries on with the mistakes and abuses of the present will not only be at least as bad but may even be far worse.

To avoid that type of future, we need to clearly articulate the problems of the past and present, so that we can face them head-on. To do that, we need to accurately document the features of the legal system and plainly state how it looms large in the national tragedy.

This is the opposite approach to law and its implementation that has often been adopted in Sri Lanka, where discussion begins with the introduction of ideals rather than realities. Sometimes models from different jurisdictions are discussed. What is missing from all that is any detailed description of how and why the system fails. The refusal or reluctance to go into the causes and features of this systemic failure means that we have not built up a body of knowledge that can be used to inform and propose reforms.

This book is a small step in that direction. It has been prepared specifically to give a vivid picture of the system and encourage production of more such work. The picture is ugly, given the extremely inhumane effects of the system over the past couple of decades, but in order to change its appearance it is vital that we first face it and acknowledge it for what it is.

### **Savage use of law**

The law can be used savagely either by making savage laws or by using civilised laws in a savage way. In Sri Lanka, poor institutional development meant that for a long time civilised laws were abused. What was given with one hand, the other soon took away. The protections contained in the Criminal Procedure Code and Evidence Ordinance could be whittled down or denied. It is said that Lord Thomas Macaulay, who chaired the drafting committee of the Indian Penal Code, believed that its introduction would go a long way to introducing a modern legal system to the country. However, the Indian policing system became a contradiction in which it was possible to deny modernity through caste-ridden barbarity. In Sri Lanka too, the type of policing that developed defeated any prospects for modernity. Consequently, other parts of the justice system were saddled with heavy burdens that dragged them down. This was a problem in the system that was present from the beginning.

However, from the 1970s savage laws also began to dominate. Emergency and antiterrorism laws took over from ordinary ones. Procedures to protect citizens' rights were abandoned, such as by allowing police officers ranked Assistant Superintendent of Police or higher to decide on the burial of a corpse rather than post mortem. This "law", which was operative in the mid 1980s, paved the way for tens of thousands of people to be abducted and killed. In the south, most of the 30,000 or so persons who were by official estimates forcibly disappeared were killed and discarded after arrest. The general pattern of disappearances during the late-1980s there matches that in the north and the east from the early 1980s up to the present day, although

there is more official documentation on what happened in the south than on what has happened in those areas. In any event, in all parts the number of cases that have been officially recorded is only a small percentage of the total number of incidents.

The use of savage laws has compounded the institutional problems that existed even before they were introduced. The institution that has been most affected is the police, which even in better times was the least reliable and most problematic part of the system. With the introduction of savage laws the police became so institutionally defective that it is now impossible to conceive of it as serving any good purpose. In turn, the police force defeats possibilities for the achievement of good through other institutions.

Bad laws and bad institutions are not only part and parcel of the daily lives of Sri Lankans but also are the milieu of the country's political life. Inevitably, bribery and corruption thrive and the powerful further manipulate savage laws to crush the weak, which are in the majority, for personal political and economic advantage.

Perhaps the state of affairs that George Orwell foresaw in his novel 1984 has come to be realized in Sri Lanka, through very different circumstances. The ideology of Sri Lanka today, to paraphrase Orwell, is that lawlessness is law, injustice is justice and madness is sanity. There is no room to resist but nor is there anything much for anybody to gain by submitting, other than some opportunities for personal gain.

### **Systemic rule of law versus systemic impunity**

Within a rule of law system, serious defects may exist and problems may arise even where there are well-established policing, prosecution and judicial agencies supported with viable public opinion and protest. The Guantanamo Bay detention centre, the introduction of laws in countries across Europe to restrict bail conditions of alleged terrorist suspects, and new modes of surveillance authorised in many developed jurisdictions all speak to the failures of the courts in developed jurisdictions to strongly defend the rights and freedoms upon which their institutions are premised.

By contrast, what exists in Sri Lanka is a situation of overwhelming lawlessness. Although some institutions maintain a semblance of rule of law, in fact the entire system is defective and the rule of law is not considered important at all. Political leaders have treated the limited development of a

rule of law model in the past as an obstacle to their goals and have attempted to remove it, including through military interventions and by strengthening the hands of the executive, in particular, those of its chief.

To compare a rule-of-law-with-defects situation with what is going on in Sri Lanka is to deny what is really going on in each place and why. Take the case of Guantanamo Bay. The detention centre was developed in order to deprive prisoners the rights that are available within the United States system of justice. There had to be a set of measures established to deliberately deny people the rights available to them within the prevalent system. Many people inside the US opposed Guantanamo and they had a range of avenues available through which they could fight. Foremost among them was public exposure of the goings-on in the centre accompanied by calls for its closure. They also launched court cases on behalf of individual detainees that challenged the legal bases for the centre. And the most powerful weapon they had available was the electoral system: under intense public pressure, both presidential candidates in the 2008 election promised to shut it down, and the president-elect has already put the wheels in motion towards this end.

The contrasts between this case and the extralegal detention and disappearance of persons in Sri Lanka and how society responds to them or what any individual can do about them in the present set-up could not be sharper. In Sri Lanka the use of such formalised detention outside of the ordinary system is unnecessary. The method is to remove someone, torture and kill them; the legal system does not come into the picture at all, nor has it proven any competence to do anything about such killings. There are hardly any possibilities to get the assistance of courts in order to deal with them. Even habeas corpus and other urgent applications are defeated by the overwhelming problems that exist within the judicial process, such as delays in adjudication, and opportunities to intimidate witnesses and erase evidence. The system has no avenues, means or authority to deal with such acts that are done through or with the encouragement of state agencies for political reasons. Space for public-opinion making is also limited. The newspapers and electronic media are subjected to severe restrictions and know that if they encounter problems, the legal system cannot protect them. The media ends up echoing state propaganda more than giving the public a voice. As for the electoral process, in Sri Lanka it is by now so manipulated that those with authoritarian policies are the ones assured of victories.

## **Building up basic justice institutions must be the priority**

The priority of all work to protect and promote human rights in Sri Lanka must be on institutional reforms to police, prosecutions and the courts. State initiatives on human rights in Sri Lanka have often turned on the provision of technical assistance and training. Donors have also invested their resources in this sort of work. However, the institutional defects in Sri Lanka are too great to make the training of a few individuals relevant and so the investments do not produce the expected results.

Take the example of the police, who have at times received instruction in fields like forensic science. Because they are working in a system that does not operate on the basis of equality before the law, many offenders have impunity. The fact that some officers have had training so as to improve the scientific calibre of the police makes no difference at all, because their learning is contrary to institutional practice, which ensures that certain crimes are not investigated and certain offenders are treated as above the law. A change in practice depends not on some training but on the development of policies and procedures to ensure that no one is outside of the ordinary operation of the law.

The same can be said about the human rights training of state officers. However much education of this sort may be imparted, its practical use depends on the qualities of the system itself. If it is so politicised that it does not want to prevent violations of rights then this learning is of little practical value and may have a contrary effect, demoralising well-meaning persons who are enthusiastic to make a difference but who find that within their set-up it is quite impossible to do so. In Sri Lanka, this problem is particularly obvious when we observe the work of the Human Rights Commission. The commission has proven itself incapable of protecting human rights not so much because of its own failings but because the arrangements in policing, prosecution and the judiciary deny it the possibility. It cannot take the place of the police, prosecution and judicial branches but nor is it able to reform them. Whereas many look on the commission as a type of ombudsman, the concept of the ombudsman that was developed in Europe only came after the basic system for administration of justice was fairly well developed and the other institutions could be held accountable and responsive to that body.

Work to improve Sri Lanka's justice system, then, requires a concerted effort to make public opinion for changes to the administration of justice. Human rights groups there and abroad need to do much more to document and

expose what is wrong with the existing system, both in terms of its negative actions and lack of positive ones. They need to develop many more ways of communicating to a large audience so that the systemic problems can be exposed both at home and abroad. The government routinely denies violations of rights in United Nations forums and other gatherings overseas but with a little work and planning, its denials are easily exposed as contrary to facts.

### **The dominant role of the police and its consequences**

A functioning justice system creates a healthy balance between investigations into crime, prosecutions of crimes and the criminal trials where the judicial function is exercised. This is the sort of system envisaged in Sri Lanka's legal texts, most of which were written in the colonial legal period or according to its traditions. As far as these texts are concerned, there exist legal safeguards against excessive police power. But in reality there is a vast gap between what is on paper and what happens in reality, in which police power is abused to such an extent that the entire system has been hijacked by political and criminal interests.

The capacity of the Sri Lankan police to investigate crime has been subverted by the undermining of the complaint-receiving and investigation mechanisms.

The receipt of a complaint is the beginning of any inquiry. Without a publicly accessible and acceptable system to receive complaints promptly and efficiently, much of the information and evidence needed to prove a crime can be lost. The police in Sri Lanka stop complaints by making life hard for complainants. They extort money and other favours to allow complaints to be made and to protect alleged offenders, particularly if they are themselves state officers, people connected to the state or other types of influential persons. They also create a general climate of fear around complaint making, in which people not only suffer at the time that they come forward but afterwards as well. They learn that though they may make complaints, not only does it not get them anywhere but may also expose them to all types of retribution and risks. They learn that it is better to remain silent and bear a loss than to complain and suffer greater problems.

Sri Lankan police obstruct the possibility of achieving justice either via incompetence or through deliberate actions that run contrary to the investigation's aims. Political interests keep the police deliberately

incompetent. Investigators are transferred and prevented from performing their jobs if they prove too good at them. Some are threatened with death. Police are used for, and encouraged to use, extrajudicial measures, including killings, torture and disappearance. They are brought fully into the system of impunity and are unable to perform their designated functions because their institution becomes completely perverted, caught up in the sort of illegality that it was designated to investigate and prevent. The use of savage laws, as described above, is especially effective in this respect.

Closely related to this condition is the loss of command responsibility in the Sri Lankan police. The hierarchy is not answerable to the public interest but to political interests whose goals are contrary to those of a rule-of-law system. This is in part a consequence of events beyond the control of the police and in part because police have tried to acquire greater powers for personal advantage through such changes. In any event, once subordinate police learn that their superiors are using the system for their own advantage, they also fall into the same patterns of behaviour and the result today is that the seeking of personal advantage is the overriding goal of police personnel.

### **Inadequate funding for administration of justice**

The military budget of Sri Lanka today far exceeds that for the administration of justice, yet the country's problems can only be solved through effective justice administration, not through military means. The negative effects of this situation are twofold. First, the military has acquired inordinate importance compared to other parts of the state, including all justice institutions, but also those concerned with education, health and effective administration. Second, it signifies a new level of impunity, as military operations are treated as exempt from the workings of law. This is especially the case when antiterrorism is invoked as the reason for certain actions, in which case they will either be treated as falling under a savage law of the sort described above, or no law at all.

Added to this is an ideology among people in the executive, although they may make noises to the contrary, that the rule of law is not necessary for national development. Administration of justice can then be relegated to a back seat, of lesser importance in the political agenda than things like national security, and foreign investment through any means possible. The policy implies that development may be accompanied by, and even necessitate, serious repression. It is assumed that without a period in which human and civil rights are sacrificed, it is not possible to achieve fast economic growth. It

is on the back of such understandings that the supremacy of law in Sri Lanka was altogether lost.

## **Recent events indicative of worsening conditions**

### **Attacks on lawyers**

Sri Lankan lawyers wanting to be successful at criminal law today need to become collaborators with the police, not merely for profit but also for survival. They act as intermediaries between clients seeking to bribe the police and other officials and as a consequence they have to compromise on rights. Those who refuse to play this role can jeopardise both themselves and their clients. Those who are audacious enough to undertake cases against the authorities become targets for attack. Several incidents in recent times demonstrate the extent to which the legal profession is under threat from the police and other powerful agencies:

- On 27 September 2008 two lawyers made complaints to the Bar Association that they had received death threats because they represented a complainant in a bribery case and a fundamental rights case in which their client was assassinated on September 20 to prevent him from giving evidence. The Bar Association passed a resolution on the issue and called for an investigation. There is no evidence that one has been carried out.
- On the night of the same day, someone threw two grenades at the house of J. C. Weliamuna, a senior lawyer who has been appearing in cases of corruption and human rights abuse. Only one exploded. Within three days of the event an unknown person tried to enter the local office of Transparency International, where Weliamuna is director. The Bar Association, again pressurized by lawyers, passed a resolution at its general meeting demanding investigations and legal action against those responsible for the attack. The incident has obtained international condemnation. Again there is no evidence of any such investigation to date. The case is taken up in detail in a separate section of this publication.
- A headquarters inspector at the Bambilipitiya Police Station humiliated a young lawyer, D. W. C. Mohotti, when he went to represent a client. The Bar Association passed a resolution requesting

the police officer to be transferred and an inquiry to be conducted. The Inspector General of Police has not complied with the demands.

Throughout the country police and other officials intimidate lawyers who support the claims of their clients to innocence and the police encourage other lawyers who are willing to act as intermediaries carrying bribes. And despite many decades of demands by lawyers and others to allow lawyers to be present when statements are recorded from the accused, the police have so far successfully prevented them from obtaining this right.

Perhaps the most disturbing threat to lawyers in 2008 came in the form of a letter directed at all those defending people accused of offences related to the conflict in the north of the country. This notice comes at a time when there are several well-known cases where suspects have challenged charges filed against under antiterrorism and emergency laws. Many cases have also come before the Supreme Court by way of fundamental rights applications regarding the forced deportation of persons from Colombo and other Sinhala-predominant areas, and arbitrary forms of registration imposed on Tamils arriving from conflict regions in safer places. The Supreme Court has made several interventions in order to protect the rights of these persons. Persons inside the defence ministry are suspected of being its authors.

This announcement is also a direct threat to the Supreme Court itself, since the court in the months prior to its release gave many judgements against the government, among which were matters relating to the protection of minorities. In any event, if lawyers can be intimidated from taking cases to the Supreme Court, the court would not have the occasion to intervene into arbitrary deprivations of rights made on the pretext of national security by agencies of the state.

Sri Lanka has had a history of death squads, and the contents of the letter cannot be taken lightly. There were many such squads from 1986 to 1990 when counterinsurgency activities were launched against the JVP and it is officially acknowledged that around 30,000 were forcibly disappeared. It has since been established that those squads were operating under police and military authority. Their re-emergence is a frightening reminder of how far the country has departed from the rule of law, and one deserving of far greater attention. For this reason the letter and its implications are taken up further in a separate section of this publication.

## **Killing of a litigant in a human rights case**

In Sri Lanka there is no effective witness or victim protection. Perhaps given the enormity of the problems caused by the dominant place that the police have acquired over the whole justice system it may not be possible under the current circumstances to run a credible witness protection system, even if the will to do so existed. When the policing system can be used to kill and harass witnesses there is hardly any way to protect witnesses. Interested persons may harm witnesses knowing that the police will not pursue them, or as has happened in many instances, the police themselves carry out the crimes or approve of them.

The case of Sugath Nishantha Fernando is indicative. He was a complainant in a fundamental rights case and a bribery case who in June 2008 was threatened with death if he did not withdraw them. On September 20 the threat was carried out when he was killed in broad daylight. The content of the affidavit that he had written to the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission, seeking protection, has been translated as follows:

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

### *An Affidavit*

01. I am the declarant in this case.
02. On 23.6.2008 at around 11a.m. my wife, Surangee, and myself were travelling in my three-wheeler bearing number 205/8052 to go to Negombo hospital to get treatment for my wife’s asthma.
03. While going there, near the Chilaw-Colombo Road at Dalupata Bridge, there was a lorry belonging to the category Chana bearing number WPL(D or G)/5347. And there we saw Niroshan and Namal, who are known to us, and two other persons, who are not known to us.
04. As Niroshan and Namal extended their hands and signalled to stop we stopped the three-wheeler at that place. The driver of the three-wheeler in which we were travelling was Ajith. Niroshan and Namal put their

heads into the three-wheeler and told us, threateningly, 'If you fellows do not withdraw the petition for human rights you have filed against the Negombo police by tomorrow we will kill all of you. We have the permission of the Negombo police to kill you.'

05. As we were frightened by this threat we turned the three-wheeler back and returned home.
06. Shortly after we came back home we heard a loud banging on the door of our gate and two people who were outside the gate shouting and telling, 'Open the gate. If you do not withdraw the petition we will kill you all by the evening of tomorrow. Police have given us the permission. Open it.'
07. Due to fear we did not open the gate and when we looked over the gate we saw Niroshan, Namal, and the two other persons that we saw before. The two persons who were hitting our gate and shouting were Niroshan and Namal. After a short time this group got into a vehicle and went away. I have learned that Niroshan is an absconder from the armed forces.
08. It is very clear that the reason why these persons are making these threats to us is to make us withdraw the fundamental rights petition we have filed against several officers of the Negombo police station regarding violations of human rights.
09. Regarding this, on the same day (23.6.2008) we went to the crimes office of the Deputy Inspector General of Police and made a complaint, which bears No. SHB345/265.
10. Due to these threats we have become very frightened to remain in our house and we are requesting respectfully to provide protection and create an environment in which we can continue to live our lives.

Signed

Siyaguna Kosgodage Anton Sugath Nishantha Fernando  
24th June 2008 at Negombo”

*The affidavit was signed before Justice of the Peace, Rev. Ghanarathane*

The Asian Human Rights Commission (AHRC) also appealed to these agencies and to the Ministry for Disaster Management and Human Rights to take steps to provide protect to Fernando. Despite all the appeals, no protection was provided.

Following the killing, the wife and two children gave detailed evidence at the inquest inquiry stating that they suspected the police officers who are the accused and respondents in the cases where Fernando was the complainant. To date, no one has been arrested and the family and observers do not believe than an impartial inquiry is being carried out into this murder. Fernando's widow has to go into hiding with the two children, as they have also received death threats. The family has made complaints but still not received any protection.

### **Political case launched against prominent journalist**

J. S. Tissainayagam is a well-known journalist in Sri Lanka, and was the editor of [www.outreachsl.com](http://www.outreachsl.com). The Terrorism Investigation Division arrested one of his friends and when on 7 March 2008 he went to visit the person, he too was arrested; later two other persons were also arrested. According to many reports published at the time, Tissainayagam was kept incommunicado. His arrest was followed with extensive protests by the domestic media as well as leading media associations and human rights groups internationally.

In the months before and after his arrest, army commander Sarath Fonseka and the state media tried to portray independent reporting on matters relating to the civil war as directly or indirectly helping the Liberation Tigers of Tamil Eelam (LTTE), and were somehow their agents. The period was also marked with direct physical assaults on journalists. The most prominent event involved Mervyn Silva, a minister who with a group of supporters entered the Sri Lankan Broadcasting Commission and confronted staff. A series of attacks, including stabbings and attempted kidnappings, followed and caused journalists to protest vociferously. Among them, a group of people abducted the deputy editor and defence analyst of *The Nation*, Keith Noyahr, on 23 May 2008. He was freed the next day after already suffering serious trauma.

Tissainayagam was detained even after the 90-day period for detention by the special unit expired; however, he was further remanded on the order of a magistrate. When he was finally indicted in court, the charges against him were listed as follows:

1. That between June 01st 2006 and June 01st 2007, he wrote articles for the 'North Eastern Monthly magazine in a manner that renders itself for punishment for committal of an offence in terms of Sections 102 (abetting) and 113B (conspiracy) of the Penal Code read together with Section 2 of the PTA [Prevention of Terrorism Act] in that such writings amounted to causing or intending to cause acts of violence and/or communal disharmony and/or bringing the State into disrepute
2. That in between the same period, due to publications specifically listed in annexure X of the indictment, he committed the above stated offences
3. That by accepting money from non-governmental organisations for the publication of the said 'North Eastern Monthly magazine' in a manner that amounted to a terrorist act in terms of Reg. 6 read together with Reg. 12 of ER [Emergency Rule] No. 7 of December 6, 2006, he committed a punishable offence under the said ER.

The Tissainayagam case marks a disturbing move towards prosecuting writers for their ordinary work. Over a period of several decades, the Supreme Court in a series of cases has upheld the right to freedom of expression, including the right to criticise the government in power. [Of particular importance are: *Ratnasara Thero v. Udugampola* (1983 1 Sri LR 461), *Mohittige and others v. Gunatilleke and others* (1992 2 Sri LR 246), *Armaratunga v. Sirimal and others (Jana Ghosha case)* (1993 1 Sri LR 264), *Deshapriya and another v. Municipal Council, Nuwara Eliya and others* (1995 1 Sri LR 362), *Gunawardena and another v. Pathirana, OIC, Police Station, Elpitya and others* (1997 1 Sri LR 265), *Channa Pieris and others v. Attorney General and others* (Ratawesi Peramuna Case) (1994 1 Sri LR 01), *Mrian and another v. Upasena* (1998 3 Sri LR 177), *Wanigasuriya v. S.I. Peiris* (SC [FR] 199/88), SCM 22.9.88, *Wijeratne v. Perera* (SC [FR] 379/93) SCM 2.3.94, *Saranapala v. Solanga Arachchi and others* (SC [FR] 470/96) SCM 17.7.1997.]

As Sri Lanka has abolished criminal defamation, the prosecuting of authors for their writings under emergency and antiterrorism laws seems to be an attempt to circumvent the legal recognition of freedom of expression, which is entrenched in Sri Lankan law. It is also an attempt to prosecute purely for political reasons. Of course, some would argue that fair trial has in Sri Lanka already been undermined for some time now. However, will there be a dramatic change from relatively fair trial practices of the sort seen up until

recently to naked political trials of this sort? The AHRC on 15 August 2008 raising this question, framed in the following terms:

“There have been masters who have formulated the basic notions of political trial and among such masters, a prominent place is held by Andrei Vyshinky, Joseph Stalin’s prosecutor. He defined the purpose of these trials as a means to send messages to the people. The individuals charged were of no importance at all. Whether a person had committed a crime for which they could be charged or whether the charge could be proved at all was of no consequence. The person charged was merely a symbol to send a message to others, so that they would be discouraged from having any opinions or doing anything that might be considered in a negative light by the regime in power. In the course of a trial, reducing the accused to despair by the use of blackmail, threats and physical intimidation was allowed. The accused were even encouraged to contribute to the good of the nation by cooperating with the prosecutors and judges in admitting their own guilt. The accused were brought to such pressure that several of Lenin’s closest collaborators, who fought for the Russian Revolution, confessed that they were traitors to the socialist nation. Such trials gave the impression as being all-important while in fact remaining insubstantial. The ‘trial’ was merely directed towards the outlawing and elimination of certain opinions and strongly re-imposing certain other opinions.

Will the next stage of politicisation in Sri Lanka be the introduction of political trials and the complete displacement of fair trial? To ignore this question is to remain blind and passive before one of the greatest threats to civilisation itself and one of the few great achievements of humankind introduced to Sri Lanka, whatever its limitations.”

### **Acquittals in torture cases**

Three judgements given in High Courts recently in cases filed under the Convention Against Torture Act acquitted the accused. The legal reasoning in all cases falls short of standards under international law relating to torture and also locally developed standards of jurisprudence on the evaluation of evidence.

In one case, that of the Gerald Perera, the court held that while the evidence indicated that the accused had arrested and brought the victim to a police station and that the torture had taken place within the next 24 hours when the victim was in custody at the same station, there was no evidence to prove that the accused officers had tortured him. The victim has since been killed and one of the accused in the murder case was also the main accused in the torture case. The court failed to consider the prosecution argument that the accused had not provided an explanation of innocence after a prima facie case had been established against them. In fact, the accused in their dock statement stated that they had used minimum force to subdue the victim. The medical report also clearly established that the victim suffered renal failure, among other injuries, as a result of assault.

In the judgement relating to the torture of Lalith Rajapakse the court misrepresented the medical report, stating that it did not contain evidence of injuries to the soles of the feet whereas it had clearly stated that such injuries existed, and which the judicial medical officer testified could have only happened due to assault by a blunt instrument. The judge seemed to be unaware of the medical report and the evidence of the doctor lead in court. This case is discussed in detail in a separate section of this publication.

In a third judgement, concerning the torture of Palitha Tissa Kumara in October 2006, which also acquitted the accused, the judgement stated that the use of excessive force (which led to serious injuries as indicated by the medical report) did not amount to torture within the definition provided under the Act.

All three cases are being appealed.



# COMMENTARY



# How the supremacy of law was lost

## Introduction

The defeat in May 2008 of Sri Lanka's bid to remain a member of the UN Human Rights Council was the clearest indication so far of how the Sri Lankan government's failure to honour its human rights obligations has been acknowledged abroad. For its part, the government responded that as at present it is in a war against terrorism, it is unable to do anything that would disadvantage it in this fight. Implicitly, it blamed the critics of Sri Lanka's human rights record for the bad reputation, suggesting that they had failed to understand the country's difficult circumstances, and that the human rights agenda was a source of western pressure. In essence the government message in response to its defeat was not that it will try to do something to meet its human rights commitments but rather that no improvements are possible until its enemies are defeated.

The government's position has taken shape over successive administrations. It found clear expression as far back as 1990, in a letter on behalf of President Ranasinghe Premadasa to Amnesty International, in which the state policy on human rights was expressed clearly. The following is part of that letter, from Bradman Weerakoon, Presidential Adviser on International Relations, to Rachel Kiddell-Monroe, chairwoman of the Lawyer's Group of Amnesty International, in reply to an earlier letter from Kiddell-Monroe to Premadasa (emphasis added).

"November 13, 1990

I am writing to thank you for the letter you addressed to the president on October 19 expressing your concern over the alleged violations of human rights in Sri Lanka. The president has directed me to respond.

First, let me thank you for the concern you have shown over the welfare of Sri Lankans and about Sri Lanka as a whole. We value the interest that you are taking in the affairs of this country.

I should emphasise that the alleged threat to human rights in Sri Lanka has been engaging the serious attention of the government for some time and is

currently the responsibility of a high-powered task force that the president has constituted for dealing with it.

Before I deal with the specific averments made by you in your letter, I thought it might help if I sketched out for you the background to the problem.

**You are, of course, aware that during the past four decades most so-called Third World countries have been struggling to come out of the distortions that the colonial experience of several hundred years had inflicted on them. This struggle has involved two gigantic tasks. One, the task of nation-building, and the other, the task of restructuring their economies.**

**It took the industrialised countries four centuries, innumerable wars, tens of millions of dead and wounded and the subjugation of almost two-thirds of the globe to the status of colonies before they completed these tasks within their own countries. In some notable cases among them, these tasks are still not complete.**

**On the other hand, Third World countries have been addressing these tasks only for about four decades, and that too has been attempted under conditions so inimical to their fulfilment that it is a wonder that they have been able to achieve even what they have within this period.**

**During these four decades, Sri Lanka also has been engaged in the task of nation-building and restructuring its economy. In the process it has encountered misunderstandings, violent conflicts, insurrections, terrorism, threats to democracy and attempts by the two terrorist groups, the LTTE and the JVP, at systematically dismantling society itself.**

It is regrettable that, while organizations like Amnesty International have devoted a great deal of time, space, energy and money to exposing the “violations” that the government is alleged to be guilty of, hardly anything has been said of the deliberate and systematic atrocities perpetrated on civilians and against society as a whole by these two terrorist groups.

The LTTE and the JVP have both openly proclaimed their ideology of trusting in the power of the bullet instead of the ballot. Both have committed themselves to the attainment of their political goals through a systematic assassination of persons opposed to them rather than through persuasion

and dialogue. Both organizations have openly repudiated any obligation to conform to the rule of law. Above all, both organizations during the past several years have actually set about systematically and meticulously trying to achieve their social and political goals by implementing their ideologies of indiscriminate killings.

Curiously, 'human rights' groups seem to argue that the atrocities perpetrated by terrorist groups against the state, or even against other civilian groups, do not constitute 'violations.' Only the 'state' is deemed to be capable of such defections.

**Unfortunately this has reduced the discussion of alleged human rights violations in Sri Lanka to a purely one-sided affair. Regardless of the problems of governance and ignoring altogether the right of the state, indeed its obligation, to defend itself against the challenge to its legitimacy and survival, lobbyists have adopted the highly populist pursuit of condemning the government and its functionaries and turning a blind eye to the activities of the terrorists.**

Such partisan lobbying, while being a distortion of the truth, is also highly dangerous because it tends to encourage and legitimise the atrocities perpetrated by terrorists.

In the Sri Lankan situation, what actually happened was that President Premadasa, out of a genuine commitment to reconciliation, peace and democracy, not merely opted for negotiations, but even endangering the survival of his government, ordered his security forces for many months to stay in their barracks lest any activity shown by them, even of a purely defensive nature, might be construed by the terrorists as a lack of good faith on his part. These facts are well known, both within the country and outside.

Not only did the terrorists fail to avail themselves of President Premadasa's offer to negotiate, but they systematically and ruthlessly escalated the level and intensity of violence. Finally the JVP started murdering, dismembering and mutilating the wives and children, the parents and relatives of service personnel in the hope of terrorising them into mutiny and desertion.

**At this stage the president, realising the risk of serious disaffection within the services, ordered them to take measures effectively to wipe out terrorism.**

In the case of the LTTE, they too spurned President Premadasa's commitment to negotiations. When parliament was on the verge of putting through legislation that was necessary for meeting their most urgent demands, they attacked and overran 25 police stations and murdered more than 600 police constables who had surrendered to them. Since then the LTTE has killed more than 300 Muslim civilians who were at prayer in their mosques and hundreds more of innocent women and children who had nothing to do with combat operations.

Strangely, human rights lobbyists do not seem to consider it necessary to condemn or even talk about these violations. In Sri Lanka the two terrorist groups, the LTTE and the JVP, have violated the right to life, the rights of children to education, the rights of shopkeepers to trade, the rights of citizens to travel, the rights of voters to go to the polls, the rights of the sick to receive treatment in hospitals, the rights of the clergy to practice their vocations and even the rights of people to bury their dead. But lobbyists for human rights have remained strangely silent.

Predictably, when security forces have to deal with terrorist groups who, as a matter of ideology and deliberate strategy, adopt practices of the most unimaginable savagery, excesses are bound to occur. The government is aware of several such instances and has instituted appropriate measures to deal with them.

**The proneness of security forces to commit excesses is not peculiar to Sri Lanka. It is a characteristic universal to military personnel of all cultures and all traditions. This is even more true when the 'enemy' they are called upon to deal with has, as a matter of ideology as well as of systematic practice, shown themselves to be ruthless killers capable of violating every known standard of human decency."**

A former Sri Lankan junior defence minister, Rajan Wijeratne, articulated what is tacitly accepted as the antiterrorist policy when talking about the suppression he led against the Janatha Vimuktthi Pereramuna (JVP). Asked in parliament about criticism of the massive human rights violations in the south during this period, when over 30,000 people disappeared, he replied that, "These things cannot be done according to law." Wijeratne was a victim of his own policies, killed by a remote-controlled bomb in Colombo in March 1991. At the time he was regarded as the most powerful politician in the south after President Premadasa. He once threatened to

imprison journalists, called Amnesty International a terrorist organisation, and promised to crush the Mothers' Front, an alliance of women who had lost their children and husbands due to political violence and whose main demand was proper inquiries into their deaths. Despite changes of government since, the position that he dared to put in plain language has remained unchanged, even though there are few who would put it so bluntly and there have been brief periods in which human rights have been a part of state language, if not practice.

How did it get to this? Already by Wijeratne's time the policy that he stipulated of not doing things according to law was far from original. In fact, it had originated some decades earlier. One of Sri Lanka's best known journalists, the late Tarzie Vittachi, in his celebrated book *Emergency '58/ The Story of the Ceylon Race Riots*, wrote prophetically in its conclusion that (emphasis added)

“Race-relationships which had endured for generations were breaking up under the pressure which is inevitable in a country in which economic development had not kept pace with modern needs and the high rate of population increase. Labour relations were cracking under the strain of the new social forces which the MEP had released. This second change, no doubt, was necessary and irresistible.

**Unfortunately the Government made the mistake of throwing the baby away with the bath water. While repressive legislation and irksome, outmoded attitudes which had kept the masses in thrall had to be hurled away without delay, it was vital for the peace and order of the country, especially in times of rapid social change, to preserve and strengthen the rule of law and the authority of the officers who enforce the law. This salutary rule was ignored and even spurned in the extravagant mood of enthusiasm in which the Government tried to meet the massive problems that challenged its capabilities.**

The terror and the hate that the people of Ceylon experienced in May and June 1958 were the outcome of that fundamental error. What are we left with? A nation in ruins, some grim lessons which we cannot afford to forget and a momentous question: Have the Sinhalese and the Tamils reached the parting of the ways?”

In the early years after independence Sri Lankan governments sacrificed rule of law and virtually destroyed the authority of public institutions. This process has continued until the present day and with each succeeding year getting worse than before.

The moves to abandon the rule of law and degenerate public institutions culminated in the constitutions of 1972 and 78. The first was a major blow to the independence of the judiciary. The second created an authoritarian system by constitutional means. One of the leading constitutional lawyers of the time, Dr. Colvin R de Silva, mentioned that the 1978 Constitution was modelled in the fashion of the constitution of Jean Bedel Bokassa of the Central African Republic. This constitution, which created executive presidency, was a product of the megalomaniac personal ambitions of J. R. Jayewardene, the first incumbent executive president, and the cumulative effect of several decades of neglect to the rule of law and public institutions. This constitutional monstrosity was even worse than a system of absolute monarchy because although under the latter there were still in most instances some controls over the monarch, under the 1978 Constitution there were none over the executive president.

The constitution created a system of government that was designed to be unmanageable, and to make Sri Lanka ungovernable. In essence it was a constitution aimed at creating chaos within the political system itself, and through it, in all other parts of administrative and social life. Thus a dysfunctional constitutional arrangement resulted in a dysfunctional society. The reason is that while the executive president has so many powers and titles, he or she does not have a system of command or coordination of them.

This political problem is the source of all other problems, including the problems of human rights that are discussed in this publication.

### **A paradigm shift**

The most significant paradigm shift in the Sri Lankan political landscape is in the emergence of the military as the key player in issues of importance to the country. The Final Report of the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces some years back made the following warning about this shift:

“Two problems are facing this country. One is the problem of the youth which took militant form under the J.V.P. The other is ethnic problems

which takes militant form under the L.T.T.E. These two problems unless handled with vision and statesmanship will distort all organs of Society and make the Army arbiter in national issues.”

These words were made with an expectation that preventive measures could then be taken but have now turned out to be a statement of fact and history. The military is indeed, if not the final arbiter, a very significant part in decision-making on most important national issues. It has a number of important implications concerning state obligations to respect, protect and fulfil human rights:

**1. Legislative:** Laws for the protection of human rights cannot be passed because they would threaten the military. For example, a draft witness protection law, which had been discussed for years, has been before parliament mid-2008. Government spokesmen in international forums promised that this law would be passed by June 26. However, talk about the law has subsided. Even before getting to questions of implementation, the government has ceased to take an interest in its passing. Perhaps the government’s unwillingness to pass it may be due to fear of an insistence on its implementation from the courts. There are many other substantive laws needed to protect human rights, like one making forced disappearances a crime. However, more important perhaps is the development of laws for better application of criminal procedure in order to improve the quality of justice within the country. Such legislative changes require political will. Where the legislature is subservient to military interests, the will is lost.

**b. Investigative:** In cases that are ‘sensitive’ to political and powerful interests, investigations are simply not allowed. Some of the factors causing this obstruction include military strategy, which may come into conflict with any investigations into alleged abuses; politicisation, where efficient policing becomes a threat to political power; the lack of command responsibility and disciplinary measures in the police force; the increasingly independent character of police units operating in different areas; the increasing links between police and criminals; widespread corruption in the political system and policing systems at all levels; disruption of the most sophisticated section of the police, the Criminal Investigation Division, by unjust transfers and political interference; failures of the judiciary, such as delays and allegations of corruption, which lead to a poor rate of success in prosecutions, and the general unwillingness of the judiciary to challenge the police lest they lose their cooperation; reduced skill levels in the police, particularly at local and

police station levels; use of torture and extrajudicial forms of punishment; and, the severance of policing with rational forms of constitutional government.

As a consequence of this situation a general feeling has emerged that it is not possible to obtain redress for the violations of state officers in Sri Lanka, but rather that any attempt to do so will put one's life at risk. The only way out for a complainant in a serious case is to leave the locality, and maybe the country, which is impossible for most people. Most instead just accept the pain and humiliation caused by violated rights, no matter how serious, and try to find some compromise for the sake of personal and family survival. It is said of earlier times that if a police officer killed a bull belonging to a poor peasant and took it for his dinner, the wife of the farmer did not complain but instead prepared chilli and asked her husband to take it to the police officer. In this way, the wronged family conveyed to the police officer that his stealing of their cattle had not generated any animosity between them, and thereby they could avoid far more serious incidents. This in fact remains the type of life that millions of people in Sri Lanka are forced to live.

### **The decline of law and rise of human rights abuse**

The rise and rise in abuse of human rights in Sri Lanka can be directly linked to the decline in the capacity of law and its agencies to function. In particular, to the loss of binding character in the law, disregard of the constitution and loss of its character as the paramount law, lost respect for treaty obligations, incapacitating of criminal procedure in cases of rights abuse, and undermining of the prosecution and judiciary. These are examined here in turn.

### **The law is losing its binding character**

A law that is not binding is not a law at all. Whether the law is binding or not cannot be judged purely from the text of the law. The text may prescribe punishments or procedures. There may also be constitutional provisions stating how the law may operate. However, law becomes operative only in its practical implementation.

A law that people perceive as existing merely in books but not in real life does not have the capacity to achieve its purposes. In fact, when the public perception is that the country is lawless, meaning that there is little belief in the practical implementation of law, this disaffection itself has the capacity to further worsen the situation. Politicians and top bureaucrats who know that

the law relating to corruption is not really binding become more corrupt. Criminals who know that the laws relating to murder, robbery, theft, rape and other such crimes are not really binding take to these offences without fear. The police and military officers who know that the laws relating to torture, forced disappearances and custodial killings cannot stop them also engage in such practices fearlessly. Persons who manipulate the electoral process may take to violence and other means to distort the voting process with the same disregard to the law.

The feeling that the law is not binding also affects civil matters, such as contracts and tort. People who are aware that contractual obligations can be violated without expecting prompt and effective intervention of the law to protect the interests of the victimised party can easily engage in many practices that defeat the purpose of the contract. A housing contractor may build houses that could collapse at any time; a vendor who wants to cheat a retailer may give fraudulent cheques knowing that no consequences will follow. A manufacturer may produce products that harm the consumer; an importer may import products such as medical items and milk powder, knowing they are defective. Borrowers intentionally cheat their creditors. Backstreet moneylenders charge exorbitant rates of interest. Garage owners substitute valuable parts in a vehicle given for repairs with substandard ones. Teachers use their official hours of work to give tuition and make money. Doctors find it more lucrative to engage in practices that bring in cash but do not improve the health and well being of society, and lawyers have a thousand ways to trick their clients. There is an overall increase in the use of violence to settle disputes that would otherwise have been addressed through a functioning system.

The same consequences are felt in all parts of the criminal justice system. For instance, police use their powers to arrest persons simply in order to make money and sometimes also for that purpose collude with lawyers. Judges learn many ways to make personal profits from cases that come before them and the case decisions may be prearranged through bribes and favours. Clerks suppress and falsify information to deceive one party or another, again for personal gain. The making of false documents in all parts of the system and with collusion of its agents becomes a part of day-to-day life, and courts may believe that false claimants are authentic.

All these sorts of practices, and but a few are mentioned here, are now prevalent in Sri Lanka.

## **The constitution has lost its character as the paramount law**

Sri Lanka drifted away from the liberal-democratic constitutional framework in 1972 when the then-coalition government promulgated a constitution that it called 'autochthonous' on the pretext of asserting the sovereignty of the parliament but in fact to undermine the judiciary. The 1978 Constitution completely abandoned liberal-democratic principles though it retained some of their jargon, through the executive presidency, which was tailor-made to suit the political ambitions of J. R. Jayewardene. Over three decades, it has destroyed all public institutions by placing them under direct control and denying them the capacity to function according to the norms upon which they were founded.

The destructive effects of the 1978 Constitution have been such that even though by the late 1990s all political parties had reached a consensus that this constitution was responsible for grave damage to public life and institutions in Sri Lanka, they have not been able to find a way out of it through the introduction of a new charter to rebuild democratic government. A partial attempt was made in 2001 through an amendment aimed at putting in place obstacles to direct presidential control over public institutions through a Constitutional Council, whose members would be persons of proven integrity selected to represent all political parties. They in turn would select, on the basis of merit, commissioners for new bodies to cover important areas, such as the public service, police, electoral system, media and human rights. These commissions would have sole power over appointments, transfers, disciplinary control and dismissal of the public servants coming under their mandate.

After the 17th Amendment, the Constitutional Council was created and it in turn composed several other commissions that helped to buffer and diminish the presidential powers; however, the election commission was never created, as successive presidents refused to allow it. As holders of the all-powerful presidency increasingly understood the limitations that could be imposed on their power, under various pretexts the government did not appoint new members to the Constitutional Council when the time came to do so and thereby the 17th Amendment was confined to the book and is no longer operative. The current executive president has made clear that he does not feel any obligation to comply with the amendment because he considers it to be defective and itself in need of amendment. The task of repair work has been given to a Parliamentary Select Committee. Thus, the operation of a major constitutional provision has been suspended on the whimsy of the president,

speaking loudly to the lost character of the constitution as the paramount law in Sri Lanka, and the decline of constitutionalism in general.

### **Respect for treaty obligations has been lost**

Sri Lanka clearly does not see the obligations arising from its membership of the United Nations and as a party to its conventions as creating any serious responsibilities. The government spokesman openly refers to human rights as western and anti-nationalistic. The government's failure to implement any of the recommendations made by the United Nations agencies on human rights is examined point by point in a separate section of this publication, below.

While the government engages in attacks on the very concept of human rights, extreme right-wing organisations portray them as an imperialist conspiracy in order to subjugate less developed countries. Human rights are characterised as a strategy of the former colonial powers in order to maintain their hold on former colonies. They are also portrayed as aiding and abetting terrorism. A major policy line of the government, supported by these extreme right wingers, is to highlight that law, including international law, has no relevance in times of war and that in the war against terrorism everything is fair. Local as well as international intervention on human rights is treated as, at best, the work of intruding fools; more often it is described as the work of traitors. There are attempts to brainwash the population to believe that calls to eliminate torture, extrajudicial killings and forced disappearances and to uphold fair trial and judicial independence, or the showing of any concern at all for victims of human rights abuses, including displaced persons, are all parts of a sinister scheme to undermine military efforts to eliminate terrorism. This propaganda sharply contradicts the impression that the government has tried to create globally that it respects the conventions it has ratified and wants to be a part of the global effort to protect and promote human rights.

### **Investigation mechanisms incapacitated when dealing with rights abuse**

Sri Lanka has a sophisticated system of law relating to investigations into crime as laid down in the Criminal Procedure Code. The code has been amended on many occasions in order to incorporate new developments. In the past Sri Lanka was also able to develop the competence of its criminal investigators. Although there may be areas of training that can be improved, such as the use of forensic science, the formal apparatus was once quite capable of absorbing new developments.

By deliberate interference the executive has ensured that this system can no longer operate effectively. Non-investigation of serious human rights abuses is now state policy. This policy has been refined over several decades, particularly as counterinsurgency operations have expanded since 1971, and covers both the army and police.

Before the counterinsurgency mentality took over, the military police had the means to investigate any alleged abuses. While this branch still exists in name, there is no evidence to suggest that it investigates cases any longer in any credible fashion. In well-published allegations, like the killing of 17 aid workers for Action Contra La Faim and the killing of five students in Trincomalee, had the military police investigated properly they would have easily uncovered the details needed to identify perpetrators. Instead of speculating, the government could have requested investigation reports. The absence of such reports is an indication of how far the investigations of military atrocities have declined as counterinsurgency has taken hold. It also speaks to the overall decline in military discipline throughout this time. When tolerance of abuse is an unavoidable aspect of military operations, all levels of discipline are diminished.

The same types of obstacles to investigations of military abuses have been incorporated into policing. The bulky documentation of police abuses, particularly the reports of the commissions enquiring into forced disappearances, is matched only by the size of denial of wrongdoing and the measures taken to prevent complainants and victims from being heard and redressed. Even in cases of forced disappearances where the official commissions thought that there was adequate information to warrant further action, hardly anything was done. The inertia over complaints that directly or indirectly relate to counterinsurgency over time spread into all criminal investigation processes. Where investigations do occur, they are often accompanied by serious threats to complainants and witnesses, including death threats.

When complaints of police abuses are made by lawyers or human rights organisations some investigations are usually initiated, but by high-ranking officers belonging to the same areas where the abuses have taken place. Their inquiries usually drag on for a long time, give more opportunities for the perpetrators to intimidate the victims and their supporters, and don't produce credible results. These officers meanwhile try to persuade or intimidate complainants to arrive at compromises. Though the Police Regulations also

provide procedures for these investigations, they are not usually followed.

Due to constant criticism about the inquiries of high-ranking officers, from about 2003 to 2006 an initiative was developed to refer serious allegations of human rights abuse to Special Investigating Units (SIU) of the Criminal Investigation Division, often via the Attorney General's Department or the Inspector General of Police. In some instances the Human Rights Commission or National Police Commission (NPC) also requested such inquiries by an SIU. In a few instances even the Supreme Court has ordered such inquiries.

These units did bear some results. Over 60 cases of alleged torture were filed under the Convention Against Torture Act on the basis of their inquiries. However, since the 17th Amendment became inoperative and the NPC abandoned the strong policies pursued by its predecessor, few cases have been referred to them. Another important reason for the cessation of referrals is that the officers affected by such inquiries and others increasingly feared them and agitated against them. The heavy institutional resistance to inquiries into abuses of its officers again proved that it could outweigh attempts to end impunity and bring perpetrators of abuse to justice.

### **Prosecutions undermined and contradicted**

Communications with the Attorney General's Department also reveal a resurgent policy of discouraging prosecutions over police abuses. One glaring example was the case of Gerald Perera. When the High Court of Negombo acquitted the police officers that had been charged with his torture, many human rights organisations made representations to the Attorney General to point out the glaring errors of law and fact in the judgement and requested that an appeal be made. A lawyer for the widow also requested an intervention. The department did nothing; not even reply to these communications. By contrast, in a few earlier cases where there was reason to believe that there were serious errors of law in judgements on acquittals of alleged torturers the department did lodge appeals.

Though the investigative function in Sri Lanka is in the hand of the police and the prosecuting function is with the Attorney General's Department, there are strong links between the two. When there are clear messages coming from the department about investigations and prosecutions, the police pay heed. But often times the messages also are confused and contradictory, and this increases the arbitrariness and uncertainty that the system generates.

One reason for the confusion is that for many decades now Sri Lankan prosecutors have been called upon to also perform a contradictory role to that of the prosecutor, serving as defence lawyers in cases where police and military officers or those working under their direction have allegedly committed criminal offences. Thus the department is called upon to play a dual role of assisting in inquiries against state officers and also defending them. There are many instances of this happening. Perhaps one of the outstanding examples is the case of the July 1983 prison massacres, in which two officers of the department, both of whom were later to serve as Attorney General, were criticised for their roles in subverting the course of justice. In a recent article, Ranjan Hoole outlined what happened:

“Colombo’s Welikada high security prison was the scene of two massacres of Tamil political prisoners during the communal violence of July 1983, first after lunch on July 25 claiming 35 prisoners and second, about 4.00 PM on the July 27 claiming a further 18. On both occasions Secretary of Justice Mervyn Wijesinghe asked Colombo Magistrate Keerthi Srilal Wijewardene to hold inquests with the assistance of Tilak Marapone and C.R. de Silva (the present AG) from the Attorney General’s Department. No culprits were identified and the case was hushed up.

The massacres made life a living hell also for those on the spot, who driven by moral aversion tried unsuccessfully stop them, but were not even allowed to clear their names.

### **The inquest**

One of them, Superintendent of Prisons (SP) Alexis Leo de Silva, upon hearing the alarm on the 25th, rushed into the mob in the Chapel Section with ASPs Amarasinghe and Munaweera, followed by Deputy Commissioner (DC) Cutty Jansz, but to little avail. Leo felt very angry that the army unit at the prison headed by Lt. Mahinda Hathurusinghe, 4th Artillery, did nothing to stop the murder, and later also blocked emergency hospitalization of injured survivors. A lieutenant would hardly have dared to override DC Jansz and doomed the survivors, without prompting from Army HQ. While some prison staff protected Tamils, others, including a jailor, attacked the survivors in the compound. At the inquest on the 26th, Leo wanted to place the truth on record.

Magistrate Wijewardene left out chunks of his testimony. Leo's son Lalanath de Silva recently told us, 'An AG's department counsel called my father outside the room where the inquest was being held and attempted to persuade my father to go along—pleading that the truth would place Sri Lanka in a very adverse position internationally.' At one point the Magistrate became so angry that he refused to take down Leo's testimony.

The Police under Detective Superintendent Hyde Silva questioned the survivors on the 26th following the Magistrate's order. To Suriya Wickremasinghe of the Civil Rights Movement belongs the credit for painstakingly seeking out survivors of the massacres, interviewing them and keeping the issue alive. She told us that survivor Manikkadasan in his statement to the Police, blamed two jailors of active complicity. A thin jailor warned him that mention of names might lead to similar jeopardy from inmates.

### **Eyewitnesses**

Suriya believes that the second massacre owed to earlier survivors being also eyewitnesses. On the 27th Lt. Nuvolari Seneviratne of Army Engineers commanded the platoon outside the prison. Hearing a commotion where the survivors had been re-housed, Nuvolari radioed the Duty Officer (DO) at Army HQ. He told the Junior DO who answered that he wanted authority to go into prison and disperse the mob. The Junior DO gave him a telephone number and asked him to phone the DO (a colonel). Nuvolari used the coin phone at the entrance to ring the number at Army HQ. The DO told him to stick to standing orders and stay outside prison, or would face court-martial if he went in. Nuvolari asked for the Army Commander. He was refused, being told the Commander was with President Jayewardene, and relief was being sent to deal with the problem. (Cutty Jansz had also phoned Army HQ.)

The relief, commandos under Major Sunil Peiris, promptly went in and saved 19 of the 37 prisoners. Nuvolari felt the deaths to be sheer murder, which his platoon could have prevented if not constrained by HQ. At the second inquest, the AG's men, Marapone and de Silva, were keenly selective. Leo who was in prison the whole day, had at the first forebodings asked DC Jansz to expedite the removal of the survivors to safety. As if by design, the attack began when he went for a late snack in lieu of lunch, causing him to rush back. Neither he nor his ASPs were called upon to testify at the inquest.

The AG's men and Magistrate tried to frame a jailbreak attempt that supposedly left inadequate resources to prevent the massacre. The AG's men and Army's lawyers importuned Lt. Seneviratne to tell the inquest that he was outside the prison controlling a jailbreak. He refused. The world had crashed around the 22-year-old sportsman from Trinity College who joined the Army with high hopes. Major Sunil Peiris stepped in saying not to harass Nuvolari and if he won't, he won't, and if their object was having someone from the Army testify, he would.

To a leading question, Major Peiris answered with professional precision, 'I did not notice any prisoners attempting to break out. Therefore I gathered that the attempted mass jail break had been contained before our arrival!' Undeterred by Peiris' refusal to perjure, the Magistrate summed up, '...prompt and efficient steps taken by the special unit of the Army under witness Major Peiris had effectively prevented the jail break ... and helped quell the mob which might otherwise have caused [even greater death].'

### **Taming scandals and condemning posterity**

In July 2001, President Kumaratunge appointed the Presidential 'Truth' Commission on Ethnic Violence headed by former Chief Justice Suppiah Sharvananda, with S.S. Sahabandu and M.M. Zuhair. Suriya Wickremasinghe had repeatedly been thwarted in her efforts to obtain from the Police, testimony they received from the survivors of the first massacre. The Commission, which relied heavily on Suriya's work, could have followed this up to further its investigations, but did not.

Tamil survivors named to us Jailor Rogers Jayasekere, Jailor Samitha Rathgama and Location Officer Palitha as the protagonists on the ground. Senior prison officials have indirectly affirmed Jayasekere's culpability. His family were strong UNP supporters from President Jayewardene's old Kelaniya electorate, shared in 1983 by Ranil Wickremasinghe and Cyril Mathew. Rumours charged that gangsters under Gonawala Sunil of Kelaniya UNP fame were brought into prison to assist the second massacre.

### **Vehicle check**

Nuvolari Seneviratne's testimony bears relevance here. His soldiers at the entrance checked the vehicles going into the prison to ensure they were the government's. Jail guards just inside the entrance did the identity checks.

The soldiers at the entrance told Nuvolari that some of the official vehicles entering took underworld figures, but exited without them. Asked who the underworld figures were, Seneviratne replied, 'I did not see them myself and there is no way my men would have known them. But the jail guards knew them as persons in and out of jail. They told my men.'

During the second massacre, Journalist Aruna Kulatunga wrote recently, he saw airline hijacker Sepala Ekanayake coming out of the prison gates screaming 'kohomada ape wede' (How is our job?), felled by a thundering blow from Major Sunil Peiris. Peiris had told me something more, that Sepala was carrying a severed human head.

Senior prison staff dismissed this as fantasy. I published it in my book *Arrogance of Power*, since I knew Peiris. I had checked back with Peiris, who, a little hurt, explained, 'You know your Bible? It was like John the Baptist's head on a charger'. It happened before Peiris saw the scene of crime. Peiris' action makes sense only if Sepala's utterance, reported also by Kulatunga, drew his attention to something revolting. Peiris' testimony at the inquest speaks for truthfulness and accuracy that are hallmarks of a good officer. Nuvolari's refusal to perjure again stands his testimony in good stead.

About when Peiris' party arrived, Nuvolari's men drew his attention to a fresh hole in the prison wall near the cricket ground. Upon inspection he saw an Air Force truck standing by. No words were exchanged. The Army's legal unit also removed Nuvolari's standing orders and the logbook with records of vehicles entering. On 27th, the Tamil detainees fought back, some attackers were mauled and soldiers shot some, but there is no account of casualties. SP Leo de Silva felt impelled by his honour to place the truth on record. His later investigations were stalled by an order from Commissioner Delgoda. Then Justice Minister Nissanka Wijeratne threw Leo out of service at the age of 56 by refusing a routine extension. The total cover up and a diversity of coherent testimony pointing to the nefarious deployment of broader resources, gives surely the lie to representing the massacres as an outburst of subaltern patriotism. No perpetrators were named and Sepala walks free. Is it not because they have beans to spill?

Whether or not directly intended, what our commissions and AG's Dept. achieve is to protect the State's inbuilt abuses that have gone over tolerable limits. The blame for its repeated crimes is invariably shuffled off to subaltern sectors. The routine official prevarication also leads to Sinhalese seeing

the ethnic problem as Tamils making mountains of molehills, and the solution as being to knock them about, pat them on the head and give them sweets to suck.

Regrettably, few Sinhalese would be shocked that Attorney General C.R. de Silva guides important commission proceedings such as the ACF investigation. He, or Marapone, tried to stop Leo de Silva 25 years ago, pleading that ‘the truth would place Sri Lanka in an adverse position internationally’. Lanka would have redeemed itself had all such crimes been faced squarely long ago, rather than make fixers of truth a permanent feature of the State. On a further point, the prison murders of rising Tamil leaders Dr. Rajasundaram, Kuttimani and Thangathurai led to the fracture of the original Tamil youth leadership and the rise of Prabhakaran. That is another intricate story.” (“Impunity, a debilitating fixture in state culture: 25 years after Welikada massacre”, *transCurrents*, 19 July 2008)

The same issue of departmental staff acting as defenders rather than prosecutors in the initial stages of the inquiry in cases of alleged abuse by government officers has come up again and again. In cases where there was a popular outcry for an inquiry following a certain incident, in order to satisfy the public sometimes commissions are appointed to gather evidence or monitor investigations. Sometimes such inquiries take place at the inquest stage where the decisions of a magistrate determine whether or not there will be any further inquiries at all. At this stage if some vital evidence is suppressed or distorted it may lead to conclusions obstructing the due process of law from being pursued any further.

Early on, evidence can be suppressed in many ways. When a witness is called before an inquiry questions may be asked in order to contradict the statements that the person made to the police in the first instance. Sometime witnesses, particularly state officers who come as witnesses, can be instructed to make statements denying earlier statements or giving a different version of events from the original statements. Lay witnesses can also be intimidated either not to attend the inquiries or to give false evidence so as to subvert further inquiries. When witnesses who have initially come forward to give evidence do not come to give evidence at these commission inquiries or inquests, it may lead to the conclusion that no reliable evidence is available upon which to prosecute. In this way a would-be prosecutor participates in the inquiries with a view to arriving at the conclusion that there is no evidence with which to proceed.

As a defender of the government in international forums, the Attorney General's role as prosecutor again comes into conflict with another role, this one as an advisor for official delegations. The role of these delegations is to deny allegations of wrongdoing and portray Sri Lanka as free from systemic abuses. The department also assists in the preparing of reports for United Nations committees in which the government tries to rebut allegations of abuse, such as of routine torture practiced at police stations in Sri Lanka. Data in one such report authored by the department and submitted to the Committee Against Torture was deliberately distorted such that a limited number of cases reported by one agency were compared with the number of arrests that had taken place during the relevant period to give a false impression about the scale of the problem. The report did not take into account that only in a small number of incidents are complaints actually made due to the immense fear that surrounds these cases in Sri Lanka.

The department also actively defends the state in its media campaign against human rights. In some instances the Attorney General and senior state officers have appeared on panels in order to defend the position of the government on serious allegations of human rights abuse. One such highly publicised incident was a press conference to attack the report of the International Independent Group of Eminent Persons (IIGEP) concerning the proceedings of the Presidential Commission of Inquiry into serious abuses of human rights. Such appearances undermine the prosecutorial role of the department through changed public perception about its work. When the public sees in the media that the department is engaged in denying on behalf of the government that there are serious abuses of rights, naturally people will not approach it or rely on it to prosecute alleged offenders. When the political task of defending the public security apparatus overrides all other obligations, including the tasks of public prosecutor, the prospects for redress for abuse are defeated.

One reason that the Attorney General responded so aggressively to the IIGEP was that the department's role and its contradictory elements were highlighted in the group's report, as follows:

“(a) The role of the Attorney General

The IIGEP expressed its concern about the role of the Attorney General from the very beginning of its work. Justice Bhagwati recommended to the Commission to remove members of the Attorney General's Department from

the inner workings of the Commission as early as 27 February 2007 by reason of the apparent conflict of interest. The IIGEP's concerns were repeated in all subsequent public statements, and in many other communications, written and oral, with the Commission, Ministers of the Government of Sri Lanka, and with the President himself.

The fundamental conflict of interest, in the opinion of the IIGEP, arises out of the position of the Attorney General as the first law officer of Sri Lanka and chief legal adviser to the Government. The Attorney General is legal adviser to all levels of the national Government, including the armed and security forces, and the police. In a Commission whose tasks include an inquiry into the efficacy of the original investigations into certain cases, including investigations and inquiry into certain incidents involving the armed and security forces and the police, the Attorney General's staff is thus potentially in the position of being a subject of the inquiry, and is, in any event, not an independent authority.

The Attorney General rejected the charge of conflict of interest. He took the view that his officers had played no role in the investigations of any of the cases under review by the Commission, a view which is not supported by documentation provided to the IIGEP by the Commission. At a later time, the Attorney General offered to remove himself and his officers from the Commission, if any of the Commissioners so requested. No Commissioner did so.

The Commission itself rejected the notion of a conflict of interest and stated that it is the tradition for the Attorney General to play a leading role in commissions of inquiry. A study made of previous commissions of inquiry commissioned by the IIGEP revealed that not all previous commissions of a similar nature have given a role to the Attorney General. In addition, the Commission stated that it did not have the funds to engage independent counsel to act as counsel assisting it. Nevertheless, it did appoint counsel from the Unofficial Bar to assist it in the Trinco 5 and the Pottuvil cases, and the Attorney General's Department did not play a leading role in these cases.

An astonishing event occurred in November 2007 at the joint plenary meeting held between the Commission and the IIGEP. A letter dated 5 November 2007 from the Presidential Secretariat and addressed to the Chairman of the Commission was revealed to the meeting. It stated that:

*The President did not require the Commission to in any way consider, scrutinize, monitor, investigate or inquire into the conduct of the Attorney General or any of his officers with regard to or in relation to any investigation already conducted by the relevant authorities.*

This letter, which also extended the term of office of the Commissioners, was stated to be by way of a ‘clarification’ of the scope of paragraph 5 of the Presidential Warrant establishing the Commission. The IIGEP was deeply disturbed by this communication. Even some of the Commissioners appeared to be taken aback. The IIGEP considered that such a ‘clarification’ from the President could only be viewed as a directive from the highest level, rather than as a suggestion to the Commission to be taken as an advice. It was the single most important event prompting the IIGEP to decide shortly thereafter that it should bring its presence in Sri Lanka to an end.

The IIGEP is of the opinion that this statement, on behalf of the President, constituted a direct interference in the independence of the Commission in two ways. Firstly, the ‘clarification’ not only seeks to restrict, but also transforms, the mandate, thereby impinging on the independence of the Commission. The effect of this clarification is that members of the Attorney General’s Department who might legitimately be called to give evidence, are granted immunity. Secondly, it undermines and reduces the Commission’s own choices as to which influences and aspects of the original investigations in the various cases should be further investigated. This fundamentally undermines the ability of the Commission to discharge its mandated goal of ensuring that the original criminal investigation was carried out properly and effectively, and in case of its failure, clarifying what led to such failure, which was a central purpose of the establishment of the Commission. Any such interference or unwarranted influence, in the opinion of the IIGEP, erodes public confidence in the Commission’s capacity to function in an independent and transparent manner, and could impede the search for the truth. Moreover, the erosion of public confidence further deters potential witnesses from coming forward.

The IIGEP was greatly strengthened in its opinion on this vital question by the opinion it solicited from two eminent Sri Lankan jurists with long practical experience in the law. This opinion concluded:

*The CoI [Commission of Inquiry] is required to examine and comment on the adequacy and propriety of investigations already conducted. Necessarily, therefore*

*the CoI must scrutinize the role of the Attorney General and officers of the Attorney General's Department who supervised, instructed and/or gave directions to the investigators. Using the Panel of Counsel, consisting of those very same officers and/or their colleagues, will undoubtedly give rise to a public perception of a conflict of interest and even of an appearance of bias. The public, and especially victims — to use the language of the Disappearances Commission — will be 'very much affected by the awareness that State Officers are investigating into complaints against Officers of the State.' Independent counsel are a sine qua non*

An amendment to the Commissions of Inquiry Act 1948 formalises the role of the Attorney General in all future commissions. The newly enacted Bill goes beyond the right of the Attorney General to be present in Commissions of Inquiry. It gives the Attorney General the right to provide counsel to assist the present Commission of Inquiry as well as all future inquiries under the Act. This confirms the IIGEP's apprehension regarding the absence of political will and the institutional inability of Sri Lanka to conduct human rights inquiries in accordance with international norms and standards.”

### **Impunity eating away fair trial and the judiciary**

The constitutional changes described above, in particular through the inordinate growth in power of the executive president, have adversely affected the judiciary in many ways. They have created an overwhelming feeling that the executive interferes with the judiciary both directly and indirectly. The politicisation of the selection process to the higher judiciary and the low expectations within the judiciary that anyone can be promoted on the basis of merit and seniority has created great uncertainty within the judicial system. As security of tenure is considered universally as one of the paramount considerations with regard to the independence of the judiciary, these changes are in violation of the international norms and standards required for the maintenance of independent courts.

This same process of uncertainty has spread in the worst way throughout the lower judiciary. The UN Human Rights Committee in the case of the dismissal of a former district court judge, Soratha Bandaranayake, expressed the view that the judicial service commission's denial of fair hearing to the former district judge violated article 25 of the International Covenant on Civil and Political Rights, guaranteeing the right to access to the civil service, and article 14 (1), which guarantees fair trial. There have been large numbers

of similar complaints regarding dismissals, although most have not been pursued to the international level.

As the constitution itself provides that the chief executive should not be called before any court by any suit it provides blanket impunity to this person. The courts for 30 years declared in favour of this provision. Only in August 2008 for the first time was notice issued to the executive president, regarding the non-implementation of the 17th Amendment. This happened only due to a perceived rift between the Supreme Court and the executive in the months beforehand.

The popular perception that now exists is that the quality of the judiciary as a whole has deteriorated considerably. This is the subject of constant discussions among lawyers as well as the litigants. Many judgements from higher courts and lower courts demonstrate a remarkable lack of understanding about basic principles of criminal law, civil law and procedural law. At a time that there are widespread fears of interference with the judiciary and also where settlements are encouraged without regard to fairness, it is perhaps not surprising that this is happening, but is also a harbinger of more bad news to come. Compounded with ever-lengthening delays and the overall lack of security in the country, it is again unsurprising but disturbing that the overall rate of convictions in criminal cases has reached no more than four per cent, speaking to the systemic failure of justice in Sri Lanka.



# **A point-by-point review of state inaction on the recommendations of UN agencies**

## **Recommendations of the Working Group on the Universal Periodic Review**

*A/HRC/8/46, 5 June 2008*

- 1. Continue to enhance the capacity building of its national human rights institutions with the support of the international community (China), including OHCHR, and seek the effective contribution of OHCHR to strengthen the NHRC (Cuba);**
- 2. Strengthen and ensure the independence of its human rights institutions such as the National Human Rights Commission (Czech Republic, Ukraine), in accordance with the Paris Principles (United Kingdom of Great Britain and Northern Ireland, Germany, Ireland), including through implementation of the 17th Amendment at the earliest (Canada), and ensure its pluralist character (Ireland);**
- 3. Encouraged Sri Lanka to further empower the various institutional and human rights infrastructures, including by strengthening the structural and operational independence of the NHRC (Republic of Korea);**

ASIAN HUMAN RIGHTS COMMISSION (AHRC) COMMENT: The recommendations relate to the Human Rights Committee of Sri Lanka (HRCSL), referred to unfortunately as the NHRC [National Human Rights Commission]. It is not an institution that respects the Paris Principles either from the manner of selection or in terms of independence, and as such it is not worthy of the label, NHRC. Appointments to the HRCSL are made contrary to the Paris Principles. According to Sri Lanka's constitution as amended by the 17th Amendment, the proper authority to make nominations for appointments is the Constitutional Council. The 17th

Amendment has been deliberately neglected and appointments are made by the president himself without any regard to any of the norms of appointment of an independent institution. In fact, the policy line of the state party is to discourage the functioning of the HRCSL because the increase of complaints that may result through the availability of a proper complaint mechanism and investigation mechanism is not welcomed. The policy line of the state party is to claim fewer violations of rights by stating that the HRCSL has received fewer complaints than before. The HRCSL also does not act promptly and often relies on the reports of the alleged perpetrators to decide on violations. The urgent action mechanism that is provided for through the HRCSL to react promptly to complaints of illegal arrest, detention and torture is not utilised. Even the limited progress made some years back has now been lost. After inquiries that take a long time, sums awarded for compensation are puny and not consistent with international norms and standards. In fact, the commission and its staff lack understanding of international norms and standards and demonstrate no commitment to them. It does not appear from any of the official statements or publications of the state party that it has any plan to implement these recommendations.

**4. Cooperate actively with international mechanisms in order to implement human rights at all levels of society and consider participating in core human rights treaties, as well as special procedures of the Human Rights Council (Ukraine);**

COMMENT: All recommendations made by all the treaty bodies have been ignored, as have the recommendations of the UN Special Rapporteur on extrajudicial killings.

**5. Try to respond in a timely manner to the questionnaires sent by the special procedures (Turkey);**

COMMENT: Even if this recommendation is implemented it is of little use as the recommendations of special bodies are always ignored.

**6. Continue close dialogue with the United Nations human rights mechanisms, and OHCHR (Republic of Korea);**

COMMENT: Dialogue without implementation of recommendations does not make any contribution to the protection and promotion of human rights.

**7. Take into account the recommendation made by the Human Rights Committee that it incorporate all substantive provisions of ICCPR into its national legislation, unless already done (Mexico);**

COMMENT: The views expressed and the recommendations made regarding all the communications by citizens of Sri Lanka to the UN Human Rights Committee (HRC) have been ignored. The government has taken cover under the Supreme Court judgement in the Singharasa case to state that it cannot implement these recommendations as it is bound by the judgements of the local courts. The government has made no attempt to incorporate its ratification of the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) by way of domestic legislation.

**8. Ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT, unless already done (Czech Republic);**

COMMENT: The HRC has already held that the Supreme Court of Sri Lanka has itself violated several provisions of the ICCPR; however, no attempt has been made to implement the ICCPR by improving provisions for legislative, judicial and administrative measures as required by its article 2 (3).

**9. Ensure that its domestic legislation is in full compliance with the Convention on the Rights of the Child (Poland);**

COMMENT: The failure to develop investigative, prosecutorial and judicial aspects of the implementation of rights as required under article 2 (3) of the ICCPR affects rights of the child as much as all other rights.

**10. Continue its efforts for the full implementation of international human rights instruments to which it is a party (Morocco);**

COMMENT: As pointed out above, all recommendations of United Nations agencies relating to human rights have been ignored and it can be said that there is no effort to implement international human rights instruments.

**11. That civil society organizations, including those from multi-ethnic communities and conflict affected areas in Sri Lanka's north and east,**

**be involved in the follow-up to the UPR process (United Kingdom of Great Britain and Northern Ireland);**

COMMENT: There is tremendous government propaganda directed against civil society organisations, particularly civil society organisations dealing with human rights, which have been castigated as traitors and troublemakers. As none of the recommendations from the UPR review are being implemented, the question of seeking cooperation does not arise. What exists is not cooperation but the enormous repression of civil society organisations.

**12. Further support human rights machinery and capacity building in its national institutions to implement the human rights instruments, such as the introduction of a human rights charter as pledged in 2006 (Algeria);**

COMMENT: The basic national institutions that have the capacity to protect human rights are criminal investigation mechanisms with the power to act independently and an independent prosecutor's branch. Neither is present in Sri Lanka, as the policing and prosecution systems are politicised. There is no capacity building, only the destruction of existing capacities by arbitrary transfers and pressure aimed at discouraging independence and integrity.

**13. That the National Plan of Action provide specific benchmarks within a given timeframe (The Netherlands);**

COMMENT: In fact, a national action plan to destroy human rights is working strongly. Therefore, the establishment of a national plan for the genuine protection of human rights is not being contemplated. The state may come out with a purported plan with a lot of verbiage but a plan to improve legislative, judicial and administrative mechanisms as required under article 2 (3) of the ICCPR is beyond the question.

**14. Take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers (Canada, Ireland);**

COMMENT: As the war between the government and the Liberation Tigers of Tamil Eelam (LTTE) has intensified both parties have been blamed for not taking adequate care to protect civilians. Human rights defenders have little

access to areas affected by war, as neither the government nor LTTE wishes to be scrutinised. Humanitarian workers, except for Red Cross staff, have been asked to evacuate certain areas where heavy fighting is expected.

**15. Ensure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal investigative powers to their full extent (United States of America);**

COMMENT: This inquiry has not been completed and there is no possibility that under the present circumstances a credible independent inquiry can be conducted into the massacre of aid workers.

**16. Implement the recommendations of the Special Rapporteur on the question of torture (Denmark, France);**

COMMENT: All recommendations of the Special Rapporteur on the question of torture have been ignored (see below).

**17. Ensure a safe environment for human rights defenders' activities and that perpetrators of the murders, attacks, threats and harassment of human rights defenders be brought to justice (Poland);**

COMMENT: No case has been brought against any of the perpetrators of attacks on journalists, human rights defenders and others who are assisting persons on human rights issues. The overall environment is extremely hostile to human rights activists and NGOs. The official spokesman for the government tries to portray human rights activists as persons working for foreign donors, motivated by baser considerations. They are also portrayed as persons promoting an alien agenda. Critics insinuate that human rights activists and journalists are directly or indirectly aiding and abetting the LTTE and promoting terrorism. Under emergency regulations and through the prevention of terrorism legislation there is an attempt to suppress human rights activists. The reporting of human rights abuses to international agencies too is portrayed as unpatriotic.

**18. Increase its efforts to further prevent cases of kidnapping, forced disappearances and extrajudicial killings; ensure that all perpetrators are brought to justice; and enhance its capacity in the areas of crime**

**investigations, the judiciary and the NHRC, with the assistance of the international community (Japan);**

COMMENT: The agents of the state party carry on heavy attacks against those who document and lobby on kidnapping, forced disappearances and extrajudicial killings. The state party's political reaction to such allegations is that persons claiming to be abducted or forcibly disappeared are persons who are hiding themselves for reasons of their own and are trying to create favourable impressions to obtain refugee status in developed countries. The genuine actions and good faith of the complainants and those who support them are constantly doubted and such persons are publicly scorned. There is no political will to investigate these matters. Kidnappings, forced disappearances and extrajudicial killings are treated as unavoidable, and an inevitable consequence of the war against terrorism. Any attempts to probe into these matters are also likely to receive unfavourable reactions from the armed forces and police.

**19. Increase its efforts to strengthen its legal safeguards for eliminating all forms of ill treatment or torture in the prisons and detention centres (Islamic Republic of Iran);**

COMMENT: No positive steps have been taken with regard to this recommendation.

**20. Step up its efforts for the rehabilitation of former child soldiers – in particular through enhanced cooperation with the international community – and adopt measures necessary for their rehabilitation in an appropriate environment (Belgium);**

COMMENT: There are no known measures for such rehabilitation. There was a massacre of persons undergoing such rehabilitation at the Bindanuwewa prison camp. Since then there have been no known efforts to deal with it.

**21. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as the recruitment of child soldiers, in accordance with international norms and in a transparent manner (Sweden);**

**22. Take judicial and other measures to put an end to the recruitment of child soldiers in all parts of its territory, and accordingly give further**

**appropriate directions to the security forces and police to ensure their implementation (Belgium);**

- 23. Investigate allegations of forced recruitment of children and hold to account any persons found in violation of CRC and its Optional Protocol (Slovenia);**
- 24. Take further steps to improve the effectiveness of measures to combat the recruitment of child soldiers (New Zealand);**
- 25. Take active measures in order to put an immediate end to forced recruitment and use of children in armed conflicts by all factions (Italy);**

COMMENT: There have been no attempts to prosecute recruiters of child soldiers either in the LTTE or in other armed militant groups. While the state party uses the recruitment of child soldiers by the LTTE for propaganda purposes, it does not make any effort to prosecute offenders. Through prosecutions, the country would have an opportunity to learn more about such operations and there would be community involvement in the issue, but none have been forthcoming.

- 26. Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards (Canada);**
- 27. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner (Sweden);**

COMMENT: Non-investigation of persons who commit extrajudicial, summary and arbitrary killings has become the norm. The habit of killing those who are considered as undesirable elements or criminals is so common that almost every week cases are reported from various parts of the country. The usual story is that a person who has been arrested has tried to attack the police officers when being taken for discovery of some material used in a crime and that the police officers, by way of retaliation and in self defence, kill the prisoner. The investigations into these matters end at the inquest stage when magistrates put the deaths down as justifiable homicide or

suicide, based on the police version of events. Where extrajudicial killings relate to journalists or persons belong to the political opposition no effective investigations take place at all.

**28. Adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims (Austria);**

COMMENT: Despite promises to enact a witness protection act by June 2008, nothing has been done. Also, there is no witness protection authority. In fact, the policy of the state party has been to discourage witnesses from coming forward to make or pursue complaints. A heavy layer of fear has been maintained for this purpose. This policy is consistent with ensuring impunity for officers of the state accused of crimes and violations of rights. Therefore, it is most unlikely that any attempt can be made to implement this recommendation in an effective manner.

**29. Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law (Greece);**

COMMENT: The prosecution and punishment of violations of international human rights law and humanitarian law has been denied in literally tens of thousands of cases. The clearest examples are those responsible for forced disappearances, mostly in the south during the late 1980s. The official figure of disappearances from then is around 30,000. In less than ten cases were there attempts at prosecutions despite the recommendations from these commissions that over 500 be prosecuted. No one has been prosecuted over disappearances in recent times because such prosecutions are seen as having a demoralising effect on the armed forces and the police. Another reason is that prosecutions will encourage further complaints, which again will be a major political embarrassment and contrary to policy. Therefore, whatever be the public declaration, the actual policy is to prevent prosecutions of human rights violations.

**30. (a) Pursue the ongoing inquiries into allegations of violations of children's rights in armed conflict, such as conscriptions and abductions of children anywhere and to adopt vigorous measures to prevent such violations; and (b) take other urgent measures for the re-integration of children who have surrendered to the governmental**

**forces asking for special protection or who are currently held in prisons (Luxembourg);**

COMMENT: Please see the comments in 21–25.

**31. Enter into further agreements with countries hosting its migrants workers (Palestine);**

COMMENT: There are no known agreements in order to implement the Vienna Convention on Consular Relations. As a matter of official policy the state party does not provide legal assistance to migrant workers who face criminal trials abroad. Furthermore, it does not make any attempts to develop agreements with the receiving countries to provide legal assistance to Sri Lankan migrant workers. These matters came to be highlighted in the case of Rizana Nafeek, a 17-year-old girl at the time of leaving the country who was convicted in Saudi Arabia for the murder of an infant. She had not received any services, such as translations or legal counsel, at the trial. After conviction, when the case was highlighted in the media the Asian Human Rights Commission (AHRC) made inquiries through the Ministry of Foreign Affairs, Sri Lanka as to whether it would provide fees for the legal counsel in Saudi Arabia. It found that the government has a policy not to provide such legal assistance. The AHRC took the initiative to raise the legal fees from the public and to ensure that the migrant worker received legal counsel for her appeal. The case is still pending.

**32. Take the measures necessary to ensure the return and restitution of housing and lands in conformity with international standards for internally displaced persons (Belgium);**

**33. Take measures to protect the rights of IDPs, including long-term housing and property restitution policies that meet international standards, and protecting the rights to a voluntary, safe return and adequate restitution (Finland);**

**34. (a) Adopt necessary measures to safeguard the human rights of IDPs in accordance with applicable international standards and that particular emphasis be given inter alia to increased information sharing as well as consultation efforts to reduce any sense of insecurity of the IDPs; (b) facilitate reintegration of IDPs in areas of return and (c) take measures to ensure the provision of assistance**

**to IDPs and the protection of human rights of those providing such assistance (Austria);**

- 35. Ensure protection and security in IDP camps; and, while safeguarding the rights to return and to restitution, adopt a policy to provide IDPs with adequate interim housing solutions (Portugal);**

COMMENT: Due to the continuing war and particularly due to the recent escalation of fighting, there are large numbers of Internally Displaced Persons (IDPs). Some are in IDP camps and others in various places from where they have fled seeking safety. The development of durable solutions has proved difficult and there are large numbers of persons who have been in camps for decades. The hostile policy of the state party towards INGOs also makes rehabilitation and the finding of solutions to property and other issues difficult. There needs to be more discussion and planning to deal with this issue. A general policy of suppressing media reporting on the war makes the obtaining of information about IDPs difficult. Allowing access to information on them so that humanitarian action can become possible is a primary obligation of the state party.

In early September 2008 the situation of IDPs in the Kilinochchi area worsened due to the escalation in fighting there. INGOs and UN agencies, except for the Red Cross, were asked to move from the LTTE-held area, and they mostly did so. The question of food, water, medicine and sanitation for the civilians caught up in the conflict has come to the fore, and religious and civilian organisations have expressed their concerns strongly and has been accompanied with a request to open a corridor for IDPs from Kilinochchi to move to Wanni and other government-held areas, where they can be provided with facilities.

- 36. Give special attention to the rights of women and further promote education and development and their representation in politics and public life (Algeria);**

COMMENT: The problems of women in all areas of life persist and are worsening due to increasingly hard living conditions coming with escalating prices for food and other basic necessities. Many women opt to leave for domestic employment in the Middle East and elsewhere, as they have to play the role of breadwinner for their families. Younger girls of middle and lower-income groups have hardships in pursuing education. Harsh cultural

attitudes adverse to women, like sexual taboos, create psychological problems for them as society changes. Though there are some improvements in laws on domestic violence, the implementing agencies, such as the police, are incapable of enforcement. In a system where representation means little, the issue of women's representation is neither encouraged nor makes much sense.

- 37. (a) Pursue its programmes to develop former conflict zones in order to bring afflicted communities at par with those living in other provinces of the country; and (b) seek which tangible support the international community, particularly States in a position to do so, may extend to assist Sri Lanka in bridging these gaps in order to enhance the effective realization of the full range of human rights for all Sri Lankans. (Bhutan);**

COMMENT: As conflict continues and even escalates, the issue of improving former conflict zones in order to bring afflicted communities on a par with those living in other provinces is not addressed in any way. The breakdown of law enforcement throughout the county makes it impossible to improve areas that were formerly part of the conflict zones. The basic requirement for improvement in these areas is to rebuild legal infrastructure. However, the forces that grew during the fighting have learned how to manipulate this situation of lawlessness. Post-conflict politics depend on the continuance of conditions created during the conflict, and attempts to rebuild will be resisted. The government does not welcome international agencies to do post-conflict development work if these agencies insist on the improvement of law and order and human rights.

- 38. Continue to strengthen its activities to ensure there is no discrimination against ethnic minorities in the enjoyment of the full range of human rights, in line with the comments of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women (Mexico);**

COMMENT: The only machinery that can ensure the elimination of discrimination is strong law enforcement machinery that can respect the equality of all persons before law. Whatever machinery of the state that existed in the country prior to 1978 has now collapsed and there is nothing

to ensure the elimination of discrimination of any kind. Instead the very language of equality is being rejected. To talk about discrimination is itself meaningless. When the law is no longer binding on anyone, inequality and discrimination are inevitable.

**39. Take measures to safeguard freedom of expression and protect human rights defenders, and effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible (Ireland);**

**40. Take measures to improve safeguards for freedom of the press (Denmark);**

**41. Adopt effective measures to ensure the full realization of the right to freedom of expression for all persons (Poland);**

COMMENT: Freedom of expression is the right that has suffered most in recent times in Sri Lanka, particularly since the end of the ceasefire agreement and the escalation of conflict. The government has developed an extensive machinery to undermine and denigrate journalists and media institutions. During the last two years journalists have been physically assaulted and there have been attempted killings. The government has refused to take any action regarding the violators. A well-known journalist is being prosecuted under antiterrorism laws for publishing a magazine that the state has baselessly claimed has attempted to create racial disharmony.

**42. Continue to work with the international community on protection of human rights, environment, disaster risk management, HIV/AIDS and capacity building. (Algeria);**

COMMENT: The state party does not consider any of these things to be priorities.

**43. Actively draw upon the assistance of the international community in the antiterrorism process and in overcoming its negative consequences (Belarus);**

COMMENT: Antiterrorism has become the philosophy upon which the suppression of all opposition and freedom is justified. The authoritarian rule introduced via the 1978 Constitution has destroyed nearly all possibilities for

resistance to absolute power. Sri Lanka is a good example for any study on the negative consequences of so-called antiterrorism processes.

**44. Work closely with OHCHR to build the capacity of its national institutions and seeks States' assistance on counter-terrorism strategies, especially by countering terrorist fund-raising efforts in their territories and in accordance with Security Council resolutions and international conventions (Pakistan);**

COMMENT: The government has clearly indicated that it has no intention of allowing the strengthening of the working of the Office of the High Commissioner for Human Rights (OHCHR) with regards to Sri Lanka.

**45. Share its experience with regards to fighting rebellion and terrorism and how to overcome them, as well as on the measures taken to improve its social and economic development (Sudan).**

COMMENT: The experience that Sri Lanka has to share is with the expansion of authoritarianism and the abandoning of democracy and the rule of law under the guise of fighting rebellion and terrorism. In fighting the southern rebellion, over 30,000 people disappeared and there has been no attempt to acknowledge this colossal crime against humanity in the name of suppressing a rebellion. What has happened is that terrorism has provided a convenient excuse for the expansion of the powers of the state, dismantling institutions of democracy and the system of justice.

## **Recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

*A/HRC/7/3/Add.6, 26 February 2008*

**(a) End impunity for members of the TMVP-Karuna group;**

AHRC COMMENT: No action. Besides, any call for action is treated as aiding and abetting terrorism. As this political group is considered an integral part of the strategy against the Liberation Tigers of Tamil Eelam (LTTE) they are allowed to operate above and outside the law.

**(b) Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations;**

COMMENT: No action. In fact, the principle of granting access to lawyers has not been accepted as a matter of law in Sri Lanka.

**(c) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;**

COMMENT: No action. In matters relating to Emergency Regulations and prevention of terrorism long periods of detention are possible without the courts having jurisdiction to examine their legality. The Secretary of Defence's authorisation is sufficient to legitimise the detention. Habeas corpus actions are possible theoretically; however, as disposal of such actions takes a very long time, hardly any applications have come up recently despite allegations of abductions and forced disappearances having been made frequently.

**(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;**

COMMENT: No action. Neither the Ministry of Justice nor any other legal authority has issued any instructions to magistrates for such routine

questioning and there are many instances in which, despite suspects suffering serious injuries, magistrates have not questioned them accordingly. Often persons who are subjected to harsh treatment are produced outside of normal working hours and at the houses of magistrates or acting magistrates. During these times, often lawyers do not have the opportunity to appear before the magistrates. There are several reported instances where even lawyers have been reluctant to bring the matter of torture to the notice of magistrates due to fear of repercussions from the police. Even where the matter of torture is mentioned magistrates do not take any action other than to refer the person for a medical examination by a JMO. Magistrates do not order the superiors of police to conduct inquiries into torture allegations immediately and submit reports. While independent medical examinations do take place, most of the time there are still allegations of neglect on the part of some district medical officers. The Istanbul Protocol has still not been recognised by law in Sri Lanka nor have the judicial medical forms been developed in terms of Istanbul Protocol. The medical documentation on torture is made on a form used for all crimes, rather than a specialised one for the offence.

- (e) **Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;**

COMMENT: Action contrary to this recommendation. There is still no independent authority without a connection to the authority investigating or prosecuting the case against the alleged victim. Even the limited developments in a positive direction which took place between 2002 and 2006 have been abandoned. One important development during this time was the assignment of a Special Investigation Unit (SIU) to investigate some selected cases of torture. This led to an increased number of prosecution cases being filed during that time. However, this practice has now been abandoned. Now only a few cases are investigated when there is pressure from outside, and the same superior officers of the areas in which the alleged torture or mistreatment took place are the ones assigned responsibility to investigate. Naturally these superior officers feel obliged to protect their subordinates and often are compromised. As for promptness, even where heavy publicity and outside pressure exists, investigations are extremely slow. Often the victim or the complaining organisation does not hear about what is going on with the investigation. As for thoroughness, the cases which have gone before the High Courts indicate the severe weaknesses of the investigations. Only in

three cases (detailed in this publication) have the perpetrators been found guilty. In many cases they are set free due to the poor investigations on which the prosecutions are based.

- (f) Ensure all public officials, in particular prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, to report ex officio to the relevant authorities for proper investigation in accordance with article 12 of the Convention against Torture;**

COMMENT: No action. As mentioned earlier, magistrates who are informed about torture only order medical examinations by Judicial Medical Officers (JMOs) but do not report ex-officio the allegations of torture and do not request inquiries and reports. Prison doctors and officials produce people to JMOs only when ordered to do so by a magistrate. Torture victims who are brought to prisons are given treatment but the prison authorities do not report injuries to the police or any other authorities and request investigations. In fact, no official instructions have been given to prison doctors to report such cases and therefore there is no way to hold them responsible for non-reporting. The prison authorities have also not developed a system of allowing for complaints from inside prisons regarding torture. There are instead instances when torture victims complaining about police torture have been harassed in prison by prison officers. As for article 12, Sri Lanka has not issued instructions to public officials to ensure prompt and impartial investigations wherever there is a reasonable ground to believe that an act of torture has been committed that has come to the notice of competent authorities.

- (g) Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession;**

COMMENT: Under Sri Lankan law confessions are not admissible as evidence; however, any discovery of any material used in the commission of a crime from a confession can be used as evidence. The result is that people are tortured despite the fact that their confessions cannot be used as evidence. The general method of investigation is to arrest a suspect without adequately investigating the circumstances of a crime. The method is to arrest a suspect and then to beat them up. The principle that arrests should take place only

after investigators have found sufficient evidence is contrary to the conduct of criminal investigations in Sri Lanka. The suspects themselves are treated as the primary sources of information, despite their confessions being inadmissible. However, in cases based on emergency regulations and the Prevention of Terrorism Act confessions are admissible and need not be confirmed before a judge. Even when the confessions are denied before a judge they remain admissible. That a confession should be made in the presence of a lawyer is not followed in any case.

**(h) The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress;**

COMMENT: In cases under Emergency Regulations and the Prevention of Terrorism Act the presumption is that a confession is made voluntarily and it is almost impossible for the accused to challenge this. The case of Singharasa to the UN Human Rights Committee (UNHRC) (Communication No. 1033/2001: Sri Lanka. 23/08/2004, referred to in this publication) clearly illustrated this problem. The Sri Lankan government has not taken steps to implement the views expressed by the committee on this case and therefore confessions used as sole evidence in cases under these laws remain admissible.

**(i) Expedite criminal procedures relating to torture cases by, e.g., establishing special courts dealing with torture and ill-treatment by public officials;**

COMMENT: No action. The UNHRC in their view on the communication of Lalith Rajapakse (Communication No. 1250/2004) found that delays in cases amount to a violation of rights. However, the state party has not issued any instructions through any of its organs for their expediting. The question of establishing special courts has not even been discussed or considered by the state party. In fact, the delay in adjudication is being allowed to defeat prosecution. In all cases of torture the victims and their witnesses face very serious threats and in many cases encounter violence. In the well-known case of Gerald Perera, the witness was killed before he could give evidence at the trial of police who allegedly tortured him. As he could not give evidence, the court acquitted the accused. In many other cases victims have come to court and wanted to withdraw cases or have declared that they are unable to identify the perpetrators, mostly due to threats or bribery.

**(j) Allow judges to be able to exercise more discretion in sentencing perpetrators of torture under the 1994 Torture Act;**

COMMENT: No action. It does not appear from any of the official statements or publications of the state party that it has any plan to implement this particular recommendation.

**(k) Drastically reduce the period of police custody under the Emergency Regulations and repeal other restrictions of human rights under them;**

COMMENT: Action contrary to this recommendation. A gazette notification has announced an increase in the period of detention under the Prevention of Terrorism Act to one-and-a-half years, from one year. Further, in one instance some persons detained with the Terrorism Investigation Division (TID) were transferred to remand custody in ordinary prisons due to a new application by the Ministry of Defence. Then they were returned to the TID.

**(l) Develop proper mechanisms for the protection of torture victims and witnesses;**

COMMENT: No action, despite promises to enact a witness protection act by June 2008. Also there is no witness protection authority. In fact, the policy of the state party has been to discourage witnesses from coming forward to make or pursue complaints. Heavy fear is maintained for this purpose. This policy is consistent with ensuring impunity for the officers of the state accused of crimes and violations of rights. Therefore, it is most unlikely that any attempt would be made to implement this recommendation in an effective manner.

**(m) Ensure that the constitution and activities of the NHRC comply with the Paris Principles, including with respect to annual reporting on the human rights situation and follow-up on past cases of violations;**

COMMENT: Action contrary to this recommendation. The appointments to the Human Rights Commission of Sri Lanka (HRCSL) are being made contrary to the Paris Principles. According to Sri Lanka's constitution as per the 17th Amendment, the proper authority to make nominations for appointments of commissioners is the Constitutional Council. The 17th

Amendment has been deliberately neglected and the president himself has made appointments instead, without any regard to the norms of appointment of the commission as an independent institution. The policy of the state party is to discourage the functioning of the HRCSL because the increase in complaints that may follow from a proper complaint and investigation mechanism would be an encouragement for more persons to come forward. The policy of the state party is to claim fewer violations of rights by stating that the HRCSL has received fewer complaints than before. The HRCSL does not follow the Paris Principles. It does not act promptly and often relies of the reports of the alleged perpetrators to decide on the violations. The urgent action mechanism that provided for HRCSL officers to react promptly to complaints of illegal arrest, detention and torture is not utilised for the protection of the people. Even the limited progress made some years back has now been lost. Inquiries which often take a long time end with sums awarded as compensation that are puny, and not in any way consistent with international norms and standards. The commission and the staff lack understanding of international norms and standards of human rights.

**(n) Establish appropriate detention facilities for persons kept in prolonged custody under the Emergency Regulations;**

COMMENT: No action. The persons who are kept in prolonged detention under emergency regulations or prevention of terrorism laws are kept at police stations or police interrogation centres like the TID and Colombo Criminal Investigation Division. There are also other places like the Boosa Army Camp. These are places maintained with great secrecy and the normal facilities for observation by lawyers, independent state officers and family members are highly limited. There have been complaints of solitary confinement. As a general rule the interrogation officers choose the times and methods of interrogation of the detainees and there are no authorised persons to monitor them. When a suspect dies in these circumstances the courts have to rely on the version given by the investigating authority. A woman detainee who died in custody thus was said to have taken cyanide. When a police spokesman was questioned as to how a person who had been in custody for so long could get access to cyanide his simple reply was that, "She may have kept it in a secret part of her body."

**(o) Establish an effective and independent complaints system in prisons for torture and abuse leading to criminal investigations;**

COMMENT: No action. There is no complaint mechanism of any sort for making complaints of torture or abuse in any of the prisons. It does not appear from any of the official statements or publications of the state party that it has any plan to implement this particular recommendation. When persons suspected of being tortured die, police conduct the investigations. Naturally prison officers rarely give any evidence against their colleagues who are the alleged perpetrators. If prisoners come forward to give evidence, which also happens rarely due to fear, they are often threatened and subjected to abuse. There is at least one instance in which prison officers visited the home of a witness who was a released prisoner and assaulted him in his own house, threatening him not to give evidence against prison officers.

- (p) Investigate corporal punishment cases at Bogambara Prison as well as torture allegations against TID, mainly in Boosa, aimed at bringing the perpetrators and their commanders to justice;**

COMMENT: No action. It does not appear from any of the official statements or publications of the state party that it has any plan to implement this particular recommendation.

- (q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities;**

No action. In prisons the condition of the toilets is almost intolerable. The smell makes the lives of prisoners even more miserable. Overcrowded jails naturally produce overflowing toilets. Often prisoners themselves clean the toilets. Due to the threat of abuse they obey. Though there is talk about new constructions there is no talk about changing the toilet system and creating cleaner facilities for the prisoners. Overcrowded prisons also obstruct the possibilities of sleep for the prisoners. Despite public knowledge of all these issues, the state party has no policy, plan or budget allocations in order to improve these conditions.

- (r) Remove non-violent offenders from confinement in pretrial detention facilities, and subject them to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement);**

COMMENT: No action. On many offenses which are made non-bailable

prolonged detention is itself used as a punishment. In cases where the charges are fabricated the suspects still have to remain in prolonged detention. Compared to the number of persons in pre-trial detention the convicted prisoners are a minority. Despite local and international agencies pointing this out repeatedly, there is no policy or plan to deal with it.

**(s) Ensure separation of remand and convicted prisoners;**

COMMENT: No action has been taken.

**(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute minimum as required by article 37 (b) of the Convention on the Rights of the Child;**

**(u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences;**

COMMENT: Capital punishment has not been abolished but generally the death sentence is commuted to imprisonment. However, there are cases where sentences have not been commuted and the convict has remained under threat of capital punishment. There have also been moves from some powerful lobbies in recent times to reintroduce the death sentence. Some judges also support these moves.

**(v) Establish centres for the rehabilitation of torture victims;**

COMMENT: No action. The state party has not taken a single step in order to rehabilitate torture victims, even after the Supreme Court and High Courts have found that torture has been committed. Facilities for trauma counselling have not been provided nor have there been any attempts to introduce them. The government also has not compensated families where persons have been killed due to torture or due to the pursuit of complaints against state officers regarding torture. There is no government authority with responsibility to deal with these matters. The Ministry of Justice has not paid any attention to them either.

**(w) Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews;**

COMMENT: No action. The state party has not made any attempt to study the possibility of signing the Optional Protocol. Even the Supreme Court has suggested that the IGP should establish visiting mechanisms to police detention centres [for instance in the case of Gerald Perera, SC (FR) 328/2202]. However, this has been ignored.

- (x) **Ensure that security personnel undergo extensive and thorough training, using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;**

COMMENT: No action. In interrogations taking place at police stations and other detention centres, the most commonly used technique for the extraction of information is torture. As noted above, a suspect is made the source of information and hardly anything worth calling an investigation takes place before an arrest through scientific techniques. The handing over of DNA investigations to private companies has raised the suspicion of tampering with evidence in many cases. The state party sometimes claims to be engaged in some training. However, very clearly no policy exists to change the main mode of investigation through torture. Until a change of policy takes place, education for better methods is unlikely to bear any results.

## **Recommendations of the Working Group on Enforced or Involuntary Disappearances**

*E/CN.4/2000/64/Add.1, 21 December 1999*

- (a) **The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators;**

AHRC COMMENT: Not done and not likely to be done.

- (b) **The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the outcome of investigations by the police;**

COMMENT: Not done and not likely to be done. Actions on the basis of recommendations for further investigations and prosecutions recommended by the commissions on forced disappearances are now completely forgotten and will not be pursued. Regarding other disappearances also serious inquiries are not possible due to the military conflict, where such inquiries are seen as having a demoralising effect on the armed forces.

- (c) **The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance;**

COMMENT: Not done and not likely to be done.

- (d) **The Prevention of Terrorism Act and the Emergency Regulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners;**

COMMENT: Not done and not likely to be done. In fact, the powers

given under emergency regulations and antiterrorism laws have enormously increased. A recent gazette has extended the period of detention from one to one-and-a-half years purely on the basis of a request by the Ministry of Defence.

- (e) **Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved;**

COMMENT: Not done and not likely to be done.

- (f) **The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission;**

COMMENT: Not done and not likely to be done.

- (g) **All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the confirmation as “proven” by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children;**

COMMENT: Not done and not likely to be done.

- (h) **The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families;**

COMMENT: In recent times there has been no issuing of death certificates as there is no authority to decide whether a person who has disappeared is dead or otherwise.

- (i) **The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead;**

COMMENT: Not done and not likely to be done.

- (j) **The Government should instruct the special unit in REPPIA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified.**

COMMENT: Not done and not likely to be done.

## Recommendations of the Human Rights Committee on communications under ICCPR

Communication No. / Date of decision	Articles of ICCPR found violated	Recommendations	State compliance
<p>Communication No. 1376/2005</p> <p>Date of adoption of views: 24 July 2008</p> <p><b>[Soratha Bandaranayake v Sri Lanka]</b></p>	<p>Articles 25 (c) in conjunction with 14 paragraph 1</p> <p><b>Issues involved:</b> Unfair hearing, access to public service</p> <p><b>Subject matter:</b> Dismissal of judge</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including, appropriate compensation.</p>	<p>NONE</p>
<p>Communication No. 1373/2005</p> <p>Date of adoption of views: 22 July 2008</p> <p><b>[S.B. Dissanayake v Sri Lanka]</b></p>	<p>Articles 9, paragraph 1; 19; and 25 (b)</p> <p><b>Issues involved:</b> Arbitrary detention, freedom of to provide expression, disproportionate sentence, right to vote and to be elected</p> <p><b>Subject matter:</b> Detention following contempt of court proceedings necessary</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation the author with an adequate remedy, including compensation and the restoration of his right to vote and to be elected, and to make such changes to the law and practice, as are to avoid similar violations in the future.</p> <p>The State party is under an obligation to avoid similar violations in the future.</p>	<p>NONE</p>

<p>Communication No. 1436/2005</p> <p>Date of adoption of views: 8 July 2008</p> <p><b>[V. Sathasivam and P. Saraswathi v Sri Lanka]</b></p>	<p>Articles 6; 7; and 2 paragraph 3 in conjunction with Articles 6 and 7</p> <p><b>Issues involved:</b> Arbitrary deprivation of life, torture and ill-treatment, effectiveness of remedy</p> <p><b>Subject matter:</b> Mistreatment and death while in police custody</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including initiation and pursuit of criminal proceedings and payment of appropriate compensation to the family of the victim.</p> <p>The State party should also take measures to ensure that such violations do not recur in the future.</p>	<p>NONE</p>
<p>Communication No. 1426/2005</p> <p>Date of adoption of views: 26 October 2007</p> <p>[R.K.G. Dingiri Banda v Sri Lanka]</p>	<p>Article 2, paragraph 3, read together with Article 7</p> <p><b>Issues involved:</b> prohibition of torture and cruel, in human and degrading treatment, right to an effective remedy</p> <p><b>Subject matter:</b> Ill-treatment of army officer by other members of the armed forces</p>	<p>In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation.</p> <p>The State party is under an obligation to take effective measures to ensure that the Magistrate's Court proceedings are expeditiously completed and that the author is granted full reparation.</p> <p>The State party is also under an obligation to take measures to prevent similar violations in the future.</p>	<p>NONE</p>

<p>Communication No. 1250/2004</p> <p>Date of adoption of views: 14 July 2006</p> <p><b>[Lalith Rajapakse v Sri Lanka]</b></p>	<p>Articles 2, paragraph 3 in connection with 7; 9 paragraphs 1, 2 and 3, as they relate to the circumstances of his arrest, alone and together with Articles 2, paragraph 3; and 9 paragraph 1, as it relates to his right to security of person</p> <p><b>Issues involved:</b> unlawful and arbitrary detention; torture in custody; liberty and security of the person</p> <p><b>Subject matter:</b> Arbitrary arrest, detention and torture in police custody.</p>	<p>The Committee is of the view that the author is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. The State party is under an obligation to take effective measures to ensure that: (a) the High Court and Supreme Court proceedings are expeditiously completed; (b) the author is protected from threats and/or intimidation with respect to the proceedings; and (c) the author is granted effective reparation.</p> <p>The State party is under an obligation to ensure that similar violations do not occur in the future.</p>	<p>NONE</p>
<p>Communication No. 1189/2003</p> <p>Date of adoption of views: 31 March 2005</p> <p><b>[Anthony Michael Fernando v Sri Lanka]</b></p>	<p>Article 9, paragraph 1,</p> <p><b>Issues involved:</b> Arbitrary deprivation of liberty, also fair trial in contempt of court case.</p> <p><b>Subject matter:</b> Detention following contempt of court proceedings</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future.</p> <p>The State party is under an obligation to avoid similar violations In the future.</p>	<p>NONE</p>

<p>Communication No. 909/2000</p> <p>Date of adoption of views: 27 July 2004</p> <p><b>[Victor Ivan v Sri Lanka]</b></p>	<p>Articles 14, paragraph 3 (c), and 19 read together with Article 2(3)</p> <p><b>Issues involved:</b> Undue legal delay, freedom of expression, effective remedy</p> <p><b>Subject matter:</b> Intimidation and harassment of a journalist by repeated filing of cases</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including appropriate compensation.</p> <p>The State party is also under an obligation to prevent similar violations in the future.</p>	<p>NONE</p>
<p>Communication No. 1033/2001</p> <p>Date of adoption of views: 21 July 2004</p> <p><b>[Nallaratham Singharasa v Sri Lanka]</b></p>	<p>Articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with Articles 2, paragraph 3, and 7</p> <p><b>Issues involved:</b> Fair trial, presumption of innocence, undue legal delay, forced confession, torture, effective remedy</p> <p><b>Subject matter:</b> Torture in custody and unfair trial under anti-terrorism laws</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation.</p> <p>The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned section of the PTA are made compatible with the provisions of the Covenant.</p>	<p>NONE</p>

<p>Communication No. 950/ 2000</p> <p>Date of adoption of Views: 16 July 2003</p> <p><b>[Jegatheeswara Sarma v Sri Lanka]</b></p>	<p>Articles 7 and 9 with regard to the author's son and article 7 with regard to the author and his wife.</p> <p><b>Issues involved:</b> Torture, and ill-treatment, arbitrary arrest and detention</p> <p><b>Subject matter:</b> Disappearance subsequent to arbitrary arrest and detention</p>	<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family.</p> <p>The State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance.</p> <p>The State party is also under an obligation to prevent similar violations in the future.</p>	<p>NONE</p>
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# Five overlapping conflicts and their implications for the Sri Lankan legal system

*Basil Fernando, Director, Asian Human Rights Commission*

The Liberation Tigers of Tamil Eelam (LTTE) are engaged in an armed struggle, demanding a separate state over the area which they claim to be the homeland of the Tamil people presently held within the sovereign state of Sri Lanka. The state of Sri Lanka refuses to give into this demand and is militarily defending the territory. The declared aim of both the state and the LTTE is military victory. There are in fact several overlapping and interrelated conflicts at play. They are the conflicts between:

1. The political parties representing the majority Sinhalese and those representing the minority Tamils since adult franchise was introduced to Sri Lanka in 1931.
2. Modernisation and traditional society, particularly in terms of religion and secularism, dating back to the period of British colonialism.
3. Democracy and authoritarianism, going back to the early 1970s and especially since the 1978 Constitution.
4. Marginalised groups and the ruling elite, since independence in 1948. These marginalised people include workers, farmers, newly educated groups from the poorer sections of society and racial and religious minorities.
5. The overt conflict between the LTTE and state.

Most explanations of the conflict in Sri Lanka refer only to the fifth one. The others are not treated as distinctive conflicts but merely as factors to explain it. For example, conflicts between political parties representing majority and minority groups, problems relating to language, and discriminatory acts in education and employment are treated as elements of the fifth conflict rather

than conflicts in their own right. Foreign experts, local constitutional experts and the LTTE itself have all treated the fifth conflict as the one of singular importance to Sri Lanka. The state—and military in particular—also has portrayed everything in terms of the fifth conflict, so as to justify repressive actions against what it calls a terrorist group. There has thus been resistance to any references to conflicts in the country other than the fifth.

When foreign experts, including the Norwegians who played an active role as peace negotiators, define the parameters of all conflict in terms of the fifth one it makes their task theoretically easy. All that they need to concentrate on is the developing of some agreements between the government and LTTE, and with the parties reaching some adequate terms it would seem that the conflict could be brought to an end. There is an inference that if that conflict can be solved then other things will fall into place. Peace negotiations thus far have generally been carried out with this expectancy. They have all been predestined to fail because—as the two parties to that conflict are themselves profoundly aware—even if they were to agree on some basic proposals the prevalence and continuance of the other four conflicts would defeat any agreement. However, this failure has been universally reinterpreted among analysts as a consequence of profound distrust between the two parties, rather than arising from other unacknowledged conflicts.

## **Some explanations of the five conflicts**

### **1. The conflict between political parties**

In 1931 a British commission lead by Donoughmore recommended adult franchise to Sri Lanka. With this began a form of electoral politics in which persons seeking to be political leaders had to win their seats in parliament. The direct result was that those who sought to be representatives tried to develop their constituencies on the basis of popularity. As it was a feudal society under control of a colonial system, many popular personalities arose from among the landlord classes of all communities. Would-be representatives exploited the prejudices of race and caste.

Having built vote banks on feudal values, these parties tried to emerge as champions of particular races and castes rather than leaders of a nation where diverse groups existed and had to find ways to develop constitutional, social and political strategies in order to resolve their problems. Naturally, language figured prominently and parties promised to give prominent places to their constituencies' languages if elected.

The adult franchise was not accompanied by attempts to develop a constitutional framework that would serve as a foundation for a vigorous economy, vibrant social interactions, and achieve the type of modern state that had the capacity within its institutional framework to deal with conflicts, including those arising from majority-minority disputes. Developing a constitutional and legal framework within which fair competition was possible was not a major concern to any among the generations of politicians who emerged from 1931. While some leaders were considered moderates on racial issues and others as more racist, the distinctions between them were not great.

The failure to develop a vigorous tradition of constitutionalism based on modern constitutional norms, such as equality and the rule of law, resulted in inadequate development of the civil administration and the basic institutions of the state, including the parliament and the judiciary, which could be exploited to diminish and destroy even those limited developments.

The writings by Fareed Zakaria on how elections have been used in many countries to subvert liberal democracy and give rise to ethnic conflict are relevant to this discussion:

“Elections require that politicians compete for people’s votes. In societies without strong traditions of multiethnic groups or assimilation, it is easiest to organise support along racial, ethnic, or religious lines. Once an ethnic group is in power, it tends to exclude other ethnic groups. Compromise seems impossible; one can bargain on material issues such as housing, hospitals, and handouts, but how does one split the difference on a national religion? Political competition that is so divisive can rapidly degenerate into violence. Opposition movements, armed rebellions, and coups in Africa have often been directed against ethnically based regimes, many of which came to power through elections. Surveying the breakdown of African and Asian democracies in the 1960, two scholars concluded that ‘democracy is simply not viable in an environment of intense ethnic preferences.’ Recent studies, particularly of Africa and Central Asia, have confirmed this pessimism. A distinguished expert on ethnic conflict, Donald Horowitz, concluded, ‘In the face of this rather dismal account....of the concrete failures of democracy in divided societies....on is tempted to throw ones up one’s hands. What is the point of holding elections if all they do in the end is to substitute a Memba-dominated regime for a Nyanja regime in Zambia, the two equally narrow, or a southern regime for a northern one in Benin, neither incorporating the other half of the state?’” (*From The future of freedom: Illiberal democracy at home and abroad*)

## **2. The conflict between modernisation and traditionalism**

The modernisation of Sri Lanka started with various invasions beginning from the early 16th century. However, a more comprehensive form of modernisation began with the entire country becoming a colony of the British Empire in 1815. From then until independence in 1948, developments in the economy and administration followed the particular type of modernisation that takes place in a colony. This type of modernisation cannot be compared with that following industrial revolution coupled with other developments aimed at applying reason in all areas of government, along with the changes to social relationships that took place in Europe and North America. It is a much more limited type of modernisation, for example, by the introduction of a plantation economy linking the country to the global economy, changes in transportation and communications, and some refining of administration that followed changes that the British made in their own country.

This limited modernisation also extended to the legal system. An independent judiciary was established and there was legal education for judges and lawyers from Sri Lanka, who gradually took their places within the system. In policing too developments followed models in the west, but were limited by the colonial imperative that people not obtain political freedom, which is the basis for modern judicial and policing agencies.

In response to these changes, religion took an important place. In the early civilisation of Sri Lanka, Buddhism had played a dominant political role. This was suppressed during the colonial period. With independence movements emerged among the monks to regain the position that they had lost. The expression of this goal is found in a book that became the manifesto for the Buddhist monks in Sri Lanka, entitled the *Heritage of the Monks*, written by a prominent Buddhist scholar and leader of their movement, Welpola Rahula. This monks' movement developed close links with the political movements of the Sinhalese that were part of the first conflict. Thus, a strong resistance developed to political modernisation, as the monks sought to gain a special place by strengthening the position of the Sinhala majority and opposing moves to develop a political system within which the issues of race could be addressed on a more rational basis, without granting unfair advantages to any one community.

## **3. The conflict between democracy and authoritarianism**

There have been many factors that have pushed the Sri Lankan political system towards authoritarianism. The 1978 Constitution turned decisively

away from the liberal-democratic model introduced at time of independence. The factors that contributed to this were many. Several leading political parties began to see it as leading to crises for particular regimes in power, and felt that no regime could hold power long enough to affect a development plan. There were authoritarian models developing in other parts of the region, for example in Singapore and Indonesia, and these were seen as more efficient in trying to achieve “development”. Members of the ruling elite were also frustrated that they were unable to take what they considered as necessary repressive measures against the trade unions and militant youth movements. Besides this there were the personal ambitions of politicians who craved power and longer terms in office. Many also saw the judiciary as a cause of instability and sought reforms to the judicial branch that would oblige greater loyalty to the executive.

With a clear two-thirds majority in parliament, the regime that came to power in 1977 was able to push through the constitution it wanted without any credible consultative process. In 1978 the elected prime minister declared himself, without a separate election, executive president. All members of parliament had to provide him with undated letters of resignation, which made it possible for him to dismiss them at any time. The tradition of parliamentary debate that existed previous to 1978 was thus abruptly discontinued. Measures were taken against those who were capable of offering an electoral challenge to the president. In 1982 a referendum was held to extend the life of the parliament for another term of six years without an election. Rigging of subsequent elections and violations of electoral law became blatantly obvious. The entire system of administration too was politicised. Party loyalties became the most important thing in the appointment, promotion, transfer and dismissal of public servants. All political parties finally acknowledged the tremendous damage that this caused to the public service during the parliamentary debate on the 17th Amendment, which was passed in 2001.

The two institutions of public service which were most affected and which played key roles in the further destabilisation of the country were the Sri Lankan police service and the Attorney General’s Department. The damage caused to them was such that now credible investigation and prosecution even in ordinary crimes has been greatly undermined, let alone those that constitute violations of human rights. The rate of successful investigation and prosecution of crimes under the Penal Code is now only around four per cent. There are hardly any prosecutions of abuses of human rights, such

as politically motivated murder, disappearances, kidnappings and torture. The police and prosecutors are neither willing nor capable of dealing with investigations into these matters or prosecuting them.

The first chief justice appointed under the 1978 Constitution was a long-time friend of the president. However, once he understood the political scheme of which he was a part, he began to rebel. There were several years of open confrontation between the president and the chief justice, and the documentation of this conflict is a rich source of material for anyone seeking to understand what happened to the judiciary later. The second person called to become chief justice was, like ministers, given an undated letter of resignation to sign upon appointment. He refused to sign it and for that reason was not appointed. From then on there have been several chief justices who have had to play the very difficult game of conforming in all serious political matters with the executive president while at the same time attempting to preserve some aspects of the independent judiciary, particularly on matters apart from direct challenges to political authority.

In 1994 there was a change of government and with that the appointment of a new chief justice to serve the interests of the new regime. From then on the degeneration of the judiciary was rapid. This new chief justice took upon himself the task of defending the regime, and even interfered with the judicial process itself for that purpose. Bench fixing; open discrimination against some judges; the sacking of many lower-ranking judges who failed to conform with his views; and, manipulation of the Judicial Service Commission, which is the highest authority and which controls appointments, promotions, transfers and disciplinary control of all judges other than those of the Supreme Court became normal. So too have arbitrary judgements flouting procedural equality.

The arbitrariness of the Supreme Court was demonstrated graphically in the case of Michael Anthony Fernando, a layman who went to it on a fundamental rights application and who was sentenced to one year of rigorous imprisonment without trial for allegedly talking loudly in the courtroom. The same bench presided over by the chief justice also heard and dismissed the appeal that was filed while he was in prison. Later the United Nations Human Rights Committee held that the Supreme Court had by imprisonment of this person violated article 9 of the International Covenant on Civil and Political Rights and requested the government to pay compensation and to prevent a repetition of such misuse of contempt of

court. However, within a very short time after this case a member of cabinet who deserted the ruling regime was also sentenced to two years of rigorous imprisonment for making a remark perceived to be contemptuous of court, but who was in the general view punished for having turned against the president.

#### **4. The conflict between repressed and ruling social groups**

Sri Lanka has a labour movement with a long history, which consolidated itself and became one of the most organised forces within the country. Through this movement, workers won many demands and were able also to play a very important role in dealing with social problems. The workers' movement also gave birth to the first political party in Sri Lanka and later several others emerged from it. Among these parties were the Lanka Samasamaja (Equal Society) Party and the Communist Party of Sri Lanka. Although both used Marxist rhetoric, they were in fact social-democratic parties, interested to improve working class conditions through trade unionism and parliamentary interventions.

With independence the new political elite showed great resentment to labour groups. It represented the discontent among local entrepreneurs, mostly small businessmen who viewed trade unionism as a menace. Others portrayed the leftists as people who were bent on destroying religion. The political elite exploited these feelings to develop political bases. Nonetheless, the unions continued to grow in strength and in 1953 the workers' movement demonstrated its authority through a *hartal*, a complete work stoppage, called in protest against the increased price of subsidized rice. It drew a countrywide response and brought the ruling regime down at the next election. The unions continued to exercise considerable power. They had the capacity to call a general strike whenever they wished and also to bring massive numbers of workers from all over the country to the city for demonstrations.

Political parties became preoccupied with how to put a stop to the unions. A coalition government between labour parties and a leading elitist party formed in 1970. It reduced the power of the main right-wing party to just a few seats; however, the coalition leaders of the labour movement, who had a long track record as champions of the working class, took it upon themselves on behalf of the government to put an end to the demands of the workers. With the powers acquired through the 1978 constitution, the new government proceeded to crush the workers' movement, particularly by using mob violence against independent unions. The new regime also developed

trade unions that were loyal to it. Use of overt violence also grew. Within a short period the labour parties lost their grip on the trade unions and also their positions in the political scene. In the election of 1997 they lost all the influence they had had in parliament for several decades.

Another group that the new regime considered a threat emerged from the younger generation, particularly from rural areas, and from among people who had obtained education due to the free schooling system that had prevailed in the country for several decades. It made itself visible as a new generation of young adults coming from the poorer sections of society with the education needed to compete with the children from elite classes. The elite considered that this was such a severe threat that in 1962 a coup was attempted to change the course of society and push it back in the former direction. Later some of the coup leaders explained that they had acted out of fear that their children would not have the places and privileges in society that they themselves had enjoyed.

This newly emerging generation was burdened with unemployment and was seriously frustrated. One of its expressions was the Janatha Vimukthi Pereramuna (JVP), or People's Liberation Front, which rebelled with rudimentary and homemade arms and handguns in small numbers during 1971. For the first time in independent Sri Lanka the military was called to crush an uprising. It was totally unprepared, both in terms of intelligence and training. The government panicked and handed the military power to act without restraint. It killed over ten thousand people, mostly young persons against whom there was no evidence of involvement in the JVP. The army and police developed many habits that have continued to feature in their work since. The political establishment also developed a habit of unrestrained and disproportionate retaliation to any form of serious protest. It was in this phase too that the idea of abduction as arrest became prevalent, and killing overtook the practice of detention. When the regime that came to power in 1977 began to face opposition in the 1980s, it resorted to the same methods of hunting rebels who had given up attempts at entering democratic politics and had gone underground in the south, also using violence for political expression. It used the same approach in dealing with Tamil militant groups, which had also given up on the possibility of achieving their aims through democratic means. The first executive president sent a military commander to the north with an express mandate to crush the northern rebellion within a few months. The military needed no more encouragement to engage directly in killings and torture. But unlike in the south, it found an equally ferocious retaliation and as a consequence the war has gone on there since.

This conflict between elite and repressed groups was the main cause of the habits that built up in the military, police and paramilitary groups with encouragement from the political establishment, which abandoned restraint and encouraged utter ruthlessness without scruple. One glaring example of its consequences was the well-known case of the 28 Ambelilpitiya children, all around 14 years of age, who were taken to a military camp, tortured and killed through the influence of a school principal. The principal was responding to complaints from his son that these boys had teased him. Despite nationwide protest, inquiries into this case took several years. Finally, only the principal and some junior officers were prosecuted, and only on kidnapping charges. The commander and all other superiors, who were aware of the arrests and detention of the children, their killing and the disposal of their bodies, were never prosecuted.

### **5. The conflict between the government and LTTE**

The conflict between the government and LTTE is well documented. From the point of view of the LTTE leadership, the conflict is premised on an uncompromising demand for a separate state, although prominent persons who have represented the LTTE in public debates have indicated a willingness to settle for less. On that basis they have participated in several rounds of negotiations. From the point of view of the state leadership, the unitary state structure is non-negotiable; even a federal model like that in India is unacceptable. Various forms of devolution have been suggested and sometimes even introduced, but neither the government nor LTTE have adhered to them.

Both sides treat ceasefires and other respites from military action as giving the other side time to prepare better for further fighting, and therefore both have used such periods to purchase more sophisticated weapons and locate themselves to fight again. This use of ceasefire periods for further strengthening of the capacity to strike has encouraged intense campaigns against ceasefires, which has undermined trust in peace-building measures.

Both sides also pay very little heed to civilian casualties. They have used direct attacks on civilians as scare tactics and as part of psychological warfare. In recent times, particularly since the end of the ceasefire, the spokesman for the Sri Lankan government has strongly rebutted international criticism over the causing of civilian casualties. Ultra right-wing supporters of the military solution believe that there should be a no-holds-barred attack and that the Geneva Conventions and international law on war crimes are irrelevant.

They hold that talk of international law on the protection of civilians, war crimes and even gross abuses of human rights are all means to restrain the military from seeking a final solution. The no-holds-barred approach was used to crush the 1971 JVP rebellion and in the crisis in the south from 1987 to about 1991. The Sri Lankan state considers both operations to have been successes and therefore there is continued support for this mode of action.

### **Post-conflict accountability**

In Sri Lanka discussion on post-conflict accountability is very limited. There is very little ever even said on previous conflicts, such as those in 1971 and from 1987 to 2001, despite the scale of killings and damage in all these.

There had been some calls for investigations into gross abuses of human rights during and after these earlier periods of intense repression. In its campaign against the ruling regime from 1977 to 1993, the opposition made this one of its central demands. One of the primary reasons that it was elected to power in 1994 was that this call had strong public backing. However, the demand for change has been seen more in political terms, in terms of regime change, rather than in terms of legal and social accountability. For this reason among others there have been no significant prosecutions of persons who have engaged in serious violations of human rights, despite commissions of inquiry into forced disappearances naming people who could be prosecuted.

One of the major obstacles to the prosecution of alleged offenders from 1986 to 1991 in the south has been that the same military officers have still been engaged in the struggle against the LTTE. The military leaders openly challenged the political leadership, stating that they could not go to prison and fight the war at the same time. As the political culture allowed the no-holds-barred approach, the government found it difficult to proceed. Prosecuting the war and prosecuting offenders have become incompatible concepts in Sri Lanka.

### **Prospects for alternative mechanisms of post-conflict justice**

#### **Amnesty, whether *de facto* or *de jure*, and pardons**

The question of amnesty has not really arisen, because the absolute impunity that is guaranteed within the political and military culture ensures immunity. The question of amnesty and pardon requires some administration of violations and a willingness to change behaviour in the future. In none of the periods of repression from 1971 to the present has the state acknowledged its

responsibility for gross abuses of human rights. In fact, the official position is that these actions were fully justified and that in any future occurrence similar repression will be used. The right to use unlimited and disproportionate force is part of the entrenched political doctrine in the country. This cannot be changed without addressing the third and fourth conflicts mentioned above.

### **Formal investigation commissions**

There have been no parliamentary or other commissions of inquiry into the fifth conflict. Such inquiries are resisted, lest they discourage the military from “prosecuting the war”. Some particular acts were the subjects of inquiries via presidential commissions in order to appease international criticism. A group of international experts was brought in under the International Independent Group of Eminent Persons (IIGEP) so as to monitor the work of one such presidential commission. However, the IIGEP itself after one year expressed the view that the commission lacked credibility. The intense opposition of the Sri Lankan government to a call from Louise Arbour, the former United Nations High Commissioner for Human Rights, for an international monitoring mission was also based on the argument that such a body would discourage the armed forces from carrying out their attacks.

As for the Human Rights Commission of Sri Lanka, it has had a sub-office in the north in order to receive complaints of abuse of rights such as forced disappearances and the like. In the past it had published statistics of the complaints received. However, as the Sri Lankan government perceived that these statistics might be used to embarrass the state, the commission was discouraged from publishing such reports. Besides this, its commissioners have not been appointed through the Constitutional Council, which is supposed to select persons on the basis of merit. Instead the president appointed them directly. The international supervisory body on the performance of national human rights institutions downgraded the commission from category A to B on the basis that the commissioners were appointed outside of the constitutional process. A further reason for this downgrading was that the commission failed to submit required reports.

### **Police investigations, domestic courts and international tribunals**

#### **Alleged crimes and human rights abuses of the LTTE**

Up to about 1983 the police conducted inquiries into some of the major crimes attributed to the LTTE, such as bank robberies, attacks on civilians

and other “terrorist acts”. However, following the killing of prisoners belonging to Tamil militant groups awaiting trial the investigators themselves felt at heightened personal risk, and their investigations became more difficult. Alleged LTTE offences were increasingly used for political mileage rather than being investigated for the purpose of bringing cases to the courts. The approach turned towards identifying offenders with a view to eliminating them, rather than investigating and prosecuting. Many cases blamed on the LTTE are believed to have been the work of other militant groups or paramilitaries acting on one side or the other, as well as ordinary criminals, but the breakdown in criminal investigations means that the true perpetrators are rarely if ever revealed, let alone brought to justice.

### **Alleged crimes and human rights abuses of the armed forces**

There have been some occasions in which the police have carried out investigations into some of the abuses attributed to the armed forces. However, in more recent times the possibilities for such investigations have decreased. Investigators face threats from the armed forces and do not receive cooperation in their inquiries. One of the major causes for the failure of the presidential commission that was appointed to investigate some specified alleged crimes was that it was unable to get the effective assistance of the police to investigate. Besides the absence of protection for people involved in investigations, there are also the implications arising from the government’s policy to “prosecute the war more effectively” and to avoid discouraging the armed forces with investigations into their conduct.

### **The courts**

The Sri Lankan courts earlier maintained their integrity in the conduct of cases against Tamil militants, particularly before the massacre of prisoners inside a prison during the riots of July 1983. There had up until then been several prominent trials at which prisoners had had their rights respected. During this period the government provided extensive protection to the prisoners and the court. However, the absence of witness protection severely affected these trials and after the 1983 massacre the government ceased to attach great significance to the prosecuting of cases before the courts. Finally, with the introduction of antiterrorism laws it became possible to convict persons solely on the basis of confessions, reducing the possibility of fair trial. The case of Nallarathnam Singharasa, which came before the UN Human Rights Committee, illustrated how the admission of confession negated the rights of prisoners.

There have hardly been any cases of significance against military officers who are alleged to have committed crimes during the conflict. Without such cases, it is not possible to assess how the courts might have dealt with them. In one case that was prosecuted before a High Court, a jury acquitted the accused military officers despite directions from the judge indicating the culpability of the offenders. Local and international human rights groups condemned the jury verdict as being prompted by prejudice.

### **International tribunals**

There have not been any international tribunals into the human rights abuses of the last decades and nor have there been any discussions on this matter. There has been limited discussion on monitoring abuses of human rights by both parties. The government and ultra-nationalist elements among the Sinhalese have tried to depict any such efforts as an attack on national sovereignty. They insist that any such monitoring, let alone tribunals, would also adversely affect military morale.

### **Other international mechanisms**

No international mechanism has yet seriously addressed the human rights abuses arising out of conflict in Sri Lanka. The Human Rights Committee and Committee against Torture have in their statements and recommendations to the Sri Lankan government taken a more lenient view of abuses in accordance with the prevailing view that there is an internal conflict, that is, the fifth conflict. While providing for a more diplomatic approach to Sri Lanka this approach has also unfortunately lent credence to the government's excuse of abuses of human rights as arising out of this conflict. The United Nations committees have not yet come to any significant understanding of the situation of Sri Lanka in terms of the five interrelated and overlapping conflicts, and have so far made no significant contribution.

The Supreme Court judgement concerning the Nallaratnam Singharasa case has also severely restricted the possibility of the Human Rights Committee from intervening in individual complaints made under the Optional Protocol to the International Covenant on Civil and Political Rights. The Supreme Court held that the president's ratifying of the Optional Protocol did not bind the country domestically as it had not been approved in parliament. On this basis the government took a position before the committee that it cannot implement its decisions until appropriate legislative measures are taken to negate the judgement in this case on the basis that as it is bound to respect the decisions of domestic courts, it is unable to implement the committee's views and recommendations.

The only case related to human rights abuse in Sri Lanka to come up before a domestic court in another country is the case of Colonel Karuna (the *nom de guerre* of Vinayagamoorthi Muralitharan), a prominent LTTE officer who later shifted his allegiance and worked closely with the armed forces. The British police arrested him for fraudulently using a diplomatic passport that was issued under a different name. The passport was in fact validly issued through proper authorisation of the authorities in the Sri Lanka, allegedly at the initiative of a very senior member of the government. The accused pleaded guilty to the charge and was sentenced to nine months' imprisonment. During the investigations and court proceedings a great deal of information regarding the past events relating to the conflict between the government and the LTTE surfaced. According to reports, the British authorities are now investigating Karuna with a view to bringing charges against him under war crimes. A number of human rights groups have submitted reports alleging acts of torture, recruitment of child soldiers and even his participating in a massacre of a large number of captured prisoners. If he is prosecuted it is quite likely that an enormous amount of information will surface and that it would also be a deterrent to others from both parties in the conflict, as they would fear similar prosecutions in other countries.

### **Truth and reconciliation commissions**

For a number of reasons, there has been no effort at the establishing of a truth and reconciliation commission to resolve the conflict between the LTTE and government. Above all, as there is still an ongoing conflict that if anything is escalating, there is no mood for reconciliation. Beyond this, it is important to acknowledge that this is not a conflict between communities but rather a conflict between the armed forces and an opponent engaged in military struggle. The military nature of the struggle puts it outside the scope of normal truth and reconciliation approaches. A truth and reconciliation approach confined to the state and LTTE conflict also would make little sense with the first through fourth conflicts persisting. All these conflicts are intertwined. There would be little reason to support attempts at confining the work of such a body to only one part of the total conflict. In fact, it would contradict the very nature of the search for truth.

### **Memorials**

In the conflict between the government and the LTTE the concept of the victim is absent. Instead there is the concept of the hero. The LTTE maintains a Cemetery of Heroes. All the major events, such as the LTTE

chief's annual speech, are given on Heroes Day, and when security permits are conducted in this graveyard. The government has also erected monuments to its heroes, soldiers who have died in the war. However, it is reluctant to erect a larger monument depicting the large number of soldiers who have lost their lives, as this would generate a popular resentment against the war. Those who conduct war propaganda do not want to highlight how many lives have been lost in this conflict.

One government established a monument for all the lives lost in the southern conflict between 1987 and 1991, particularly for the Ambelipitya children who were killed within a military camp. This monument, situated on the road to the parliament, did not attract much popular support. It was seen as a gesture devoid of any genuine attempt to ensure accountability.

The only monument on the conflict from this period that has adopted a truth and reconciliation approach is a civil society monument situated at a public junction in Raddoluwa, Seeduwa: some miles from the main airport. The group Families of the Disappeared initiated the monument, which consists of a sculpture in which there is an empty space in the shape of a human being. About five hundred photographs of disappeared persons, mostly young people, are exhibited on tiles there. Every year on October 27 there is ceremony at which the families of the disappeared gather and have a full day of commemorations, including religious ceremonies and the laying of flowers. In front of the monument there is the following poem engraved in stone:

“This wreath  
with no name attached  
is for you  
who have no grave

As the place of earth  
which embraced you  
could not be found,  
this wreath was placed by the wayside  
forgive me

Forgive me  
for placing a memorial for you  
by the roadside”

There are some similar monuments that the family members of victims have erected, for example, that of the families of Ambelipitya in their village, and some small monuments erected by the families of the disappeared in the north.

## **Reparations**

There is no organised system for recognition or reparation of victims. However, there is a scheme for reparations for soldiers lost in the war, which covers funeral expenses and payments of salaries to widows. There have been complaints from former soldiers who have lost limbs or suffered other serious injuries that they have not received adequate reparation. Sometimes there are also payments to civilians who have lost family members or suffered other forms of damage. However, these are made arbitrarily and without any systematic approach.

For torture victims, the compensation awarded by the Supreme Court has been minimal. Even the Human Rights Commission has not pursued the idea of reparation beyond some form of limited compensation. In short, the idea remains an alien concept in Sri Lanka.

## **Concluding observation**

Debate about post-conflict justice in Sri Lanka is hampered by the artificial narrowing of the conflict to that between the state and LTTE. As explained, people are caught up in serious problems and suffering arising out of a range of other interrelated and overlapping conflicts. Trying to deal with this conflict alone does not make sense, and means that people who know better don't get involved. Meanwhile, the government and extremists on both sides try to deny social discourse on the conflict by narrowing it to a small number of topics that are more divisive and supportive of continued military action.

Huge potential exists for extremely productive and rich discourse on the full range of these conflicts, especially the third and fourth. If a vigorous effort was made there would be wider participation by many groups of people who would see in such debates the prospect to overcome some of the fundamental problems affecting Sri Lanka's journey towards a society based on rule of law and democracy.

# **A study about the processes and strategies of prevention of torture in Sri Lanka**

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[Reproduced from Jasmine Joseph (ed.), *Sri Lanka's Dysfunctional Criminal Justice System*, Asian Human Rights Commission, Hong Kong, 2007, pp. 15-35.]

## **Introduction**

This paper begins with a caveat about probable difficulties a reader from developed nations might encounter in understanding certain matters discussed herein.

The general assumption is that persons from developed countries are habituated to the way of life in liberal democratic systems. The histories of development of such democracies may vary, but most developed countries have experience of liberal democracy for at least a few centuries. In contrast, the political system of Sri Lanka never was a liberal democracy as is the case with many other developing and under developed nations. It might not be absolutely right to say that in the political history of Sri Lanka, there never was any attempt to establish a liberal democratic polity, but they were short stints of a few decades. Even during these periods, the liberal democratic set ups were turbulent with many crucial challenges. The situation took a turn for the worst in 1978, when a constitution of an authoritarian model was imposed on the country.

This constitutional configuration has seriously undermined the institutional framework of liberal democracy. The chasm between democratic aspirations of the nation and the rulers' intentions make democratic discourse irrelevant under the present constitutional structure. Added to this, if not as a consequence, internal conflicts have developed in all parts of the country; the south, the north, and the east resulting in large scale disappearances and other forms of gross abuses of human rights.

In this milieu of internal clash, democratic discourse has been conveniently jettisoned and military rule and power became the vanguard. It is within such a context that this study about different aspects relating to the prevention of torture in Sri Lanka has been done. Here, expressions like the police, investigations, prosecutions, and the judiciary are not accompanied by meanings attached to similar terminology in functioning liberal democracies, but as they exist in Sri Lanka. Understanding this difference is essential for grasping some of the matters discussed below.

### **About the paper**

This paper is a study about the processes and strategies of torture prevention employed by the Asian Human Rights Commission (AHRC) and its network in the context of Sri Lanka. The experience of the AHRC, a voluntary organization working in the field of human rights, and a network of organizations in Sri Lanka is being reflected in this paper. The information generated and the knowledge acquired by the AHRC and the network is employed to analyze the problem, study the ramifications, draw conclusions and propose suggestions. This paper is a sketch of the experiences of working on the issue of torture in Sri Lanka. The endeavour is to study the strategies and work pattern adopted by the AHRC and the network groups to combat torture, some of which are specific to Sri Lanka.

### **Framework of the study**

**Components:** The focus of work on the issue of torture is on two main components, human and institutional. It may be noted that, sometimes, the institution is nothing but the sum total of humans working within a system. The two major human components are the victims and the perpetrators of torture. The institutions are those charged with investigation, prosecution and adjudgment of torture incidents. The following is the list of components which are the targets of study in this paper.

- a. Victims of torture
- b. Alleged perpetrators of torture
- c. Criminal Investigation Department  
*Explanation: Institutions that are required to investigate torture. The focus is on their role in the investigation of torture*
- d. The prosecuting branch  
*Explanation: In Sri Lanka, the prosecuting branch is the Attorney General's Department*

e. Judiciary

*Explanation: Judicial activities relating to torture take place at the Magistrates Courts, the High Courts (where trials under the Convention against Torture, Act No. 22 of 1994 are heard) and the Supreme Court where fundamental rights cases are taken up and where the issue of compensation against torture is decided. Actions can also be taken in civil courts regarding compensation on torture.*

f. The Human Rights Commission of Sri Lanka (HRCSL) and the National Police Commission (NPC).

*Explanation: Both institutions are national in character*

g. UN agencies such as the UN Rapporteur against Torture, the CAT Committee, UN Human Rights Committee and others

h. Media and other avenues available for lobbying both locally and internationally

**Approach:** Each component is specifically studied in the larger canvass of prevention of torture. The regular work pattern of the AHRC and the network involves constant interaction with all the components mentioned earlier. The experiences and observations from this process are always documented, and data about each constituent, at times, is generated. Study and analysis of the components vis-à-vis strategy employed with each is carried out in this paper. The predominant work design employed with these components is maintenance of close contact with relevant persons and institutions together with constant scrutiny.

The documentation is the stepping stone for further actions, for instance: prosecution, judicial intervention, reporting to the UN agencies and lobbying to fetch results both to the individual victims, and to make differences in the system.

## **Analysis of components**

### **Victims of torture**

Maintaining close links with torture victims is the foundation of our work and study. The predicament of each victim may vary, but there are certain essentials every victim might seek. The AHRC is working in tandem with six groups in Sri Lanka, which are located at various regions. They are the primary units where victims approach initially or who locates the victim in need of support. They receive victims, record complaints, assist the victims to lodge complaints with the authorities and in the courts, help with physical

and psychological treatment, provide solidarity, extend community based witness protection, and offer humanitarian assistance. Based on the demands of the circumstance, they involve themselves and facilitate many more means to assist the victims in their struggle for legal redress and justice.

***The process:*** Victim's experiences are reduced into writing by one of the members of the network, competent to interview and record statements. The persons who record testimonies are trained to look for the essential details as well as to check the veracity of the story by detailed interviews.

Statements are also recorded from witnesses to the incident or other persons aware of the incident and are willing to support the claims. Interviewers have skills to ponder the essentials that make a strong case. The fundamental information includes details of incidents, injuries, places and circumstances in which the incident occurred, details about the identities of perpetrators and whatever actions the victims may have already taken. These vital facts are taken down in the form of statement authenticated by the victim or witness as the case may be.

The next step in the process is to convert these statements into the form of duly signed affidavits. This is done either immediately or within a short time, depending on the availability human resources. To transform the statements of facts into legally amenable affidavits, the assistance and advice of lawyers are sought.

While these activities are in progress, we simultaneously employ the strategy of pressure building, lobbying and intervention from the AHRC centre. The initial information about the torture is communicated to the AHRC's Urgent Appeals (UA) desk in Hong Kong through email or fax within the shortest possible time. This information is then studied in Hong Kong by the UA desk, comprising of persons with specialized knowledge on Sri Lanka. If required, verifications regarding the information sent are done with the sender, as quickly as possible. When the UA desk is satisfied with the authenticity, accuracy and adequacy of the information, the case is prepared and issued as an Urgent Appeal. Such Urgent Appeal's are used to trigger interventions locally and by the United Nations (UN). The same information is also circulated to a much larger audience for lobbying purposes as well as to create perceptions on the issue of torture. This is an activity carried out routinely, round the clock, in the AHRC.

***The strategy:*** The statements reduced into writing are the basic material used by the members of the network for inquiries into the incidents of torture. The advantages of having a record for further work have helped the partners in network to recognize the importance of written statements in the process of torture documentation. The practice of documentation has more than mere statistical value. The persons engaged in these activities are aware that their work has many objectives; the primary one to assist the victims in the legal process, and the second to document torture and related matters for the purposes of inquiries into the issue of prevention of torture. Getting persons motivated to undertake both missions concurrently was a daunting task. Over a period, both skills as well as consciousness about the responsibility have improved.

The initial documents are about factual details of a case, later inputs are about the institutions with which the victims interact and the details of these transactions. Thus, we develop enormous amounts of documentation on what happens at police stations, courts, national institutions and other places where victims attend for legal redress.

On the personal link front, the duration of maintaining close contact with the victims, whose cases we have taken up and study, could vary from one to six years. But from a documentation point of view, a case never ends.

Personal contact is maintained by constant interactions. These interactions could be to meet the requirements of law such as appearances before various inquiring bodies and courts, or solidarity meetings to boost the morale of the victims and their family. Contacts also take place for the purposes of providing psychological or medical assistance.

The documentation is the base material for study and analysis. The documents ranging from the initial story, to all those generated on the way down for several years, are constantly analyzed with a view to understand the multitude of aspects relating to prevention of torture in Sri Lanka. This analysis is constantly shared with local and international audiences. This is achieved by means of statements, articles, papers, shadow reports submitted to UN bodies and publication of periodicals and books.

### **Alleged perpetrators of torture**

Knowing your adversary is imperative for success in any combat. So it is in addressing the issue of torture. The AHRC closely observes and study

the perpetrators of torture. We believe that understanding the perpetrator is equally important in fighting the perils of torture, as understanding the victim and the causes of torture. Perpetrators of torture do not exist in a vacuum. Therefore they ought to be studied in context. In state sponsored torture, it is all the more relevant. This requires profiling of the person and the system in which she/he functions. Consequently, the next component of focus is the perpetrators of torture.

***The process:*** The initial information about the perpetrators is gathered from the individual cases of torture. The victims and their families provide a certain amount of basic information about the perpetrator(s). The information thus received is used by the network groups to address the authorities about the incidents of torture and demand justice. The network often receives replies from official sources as a result of their interventions. Such communications usually include statements from the perpetrator(s) and may also contain copies of documents in their custody. More often than not the reason for such statements and documents is to deny allegations against them.

Victims and witnesses are further addressed with the content of the statement and documents from the perpetrator. This exercise is done to generate counter evidence to challenge the version of the perpetrators.

The documents from the perpetrators together with the information gathered by the interviewer from the victim and family help us to build the profile of perpetrator(s). In consultation with lawyers, we demand more documents from official sources and compile them for prosecution, study and analysis. These processes help us to generate a fair amount of material for cross checking and comparative study.

***The strategy:*** Though the content of the replies from official sources most often are in the tones of denial, it is critical material to understand how the system works. It also enlightens us about the structure and accountability pattern of the system or reveals the utter lack of the same.

Beyond this, in the long run, such documentation aides us to check the veracity of the official claims from victims and be resourceful for prosecution. The earlier mentioned practice of further communication with the victims about the official version helps us to anticipate the strategies at the time of prosecution. More importantly, lawyers of victims get the opportunity to request further documents and in this process a great deal of material

becomes available, not only regarding the particular case but also about the whole system. This also gives us the opportunity to compare materials collected about perpetrators in different cases.

The study of the perpetrators is not limited to the direct elements, i.e. those who have actually participated in the act of torture. It includes those who bear command responsibility by virtue of being in a superior position. This necessitates gathering documents like departmental orders and other materials concerning how superiors keep control over subordinate officers.

In the course of such studies, we gather a large amount of materials of consequence. They are generally about problems relating to command responsibility, internal critiques, documentation on government commissions and committees, and also testimonies of officers who are unhappy about the manner in which the system works.

### **Institutions investigating torture**

The alleged act of torture is expected to be inquired into for meeting the ends of justice. The agencies that investigate offences of torture are mainly four in Sri Lanka. The latest one is the Special Inquiry Unit (SIU). This is a specialised unit within the Criminal Investigation Department to inquire into incidents of torture. It is worth mentioning here that the SIU is an outcome of the interventions of the UN Rapporteur against Torture. The office of the UN Rapporteur sought explanations from the Government of Sri Lanka as a state party on cases of torture, most of which had been submitted by the AHRC network since 2002. As an upshot of this and many other interventions, the government mobilized this special unit to investigate allegations of torture under the CAT Act (Act No. 22 of 1994). It is officially claimed that so far over sixty cases have been filed in the High Courts of Sri Lanka regarding police torture against about one hundred officers.

Besides the SIU, investigations are also conducted by senior police officers in charge of specific areas. Often, these investigations are carried out at the area headquarters in different provinces or districts. The two national commissions, namely the Human Rights Commission and National Police Commission, are the other two institutions of relevance here. The process and strategy adopted with these two institutions will be separately dealt at a later point in this paper.

*The process:* The network groups get ample opportunity while they assist the

victims to be in direct contact with institutions and officers that investigate torture cases. It was mentioned earlier that the SIU have filed over sixty cases in the High Courts of Sri Lanka. The procedure at the High Court starts with an indictment, which includes all the documentation that the prosecutor will rely upon during the trial. Logically, an indictment is a wealth of information. This includes, the statements collected from the victims and witnesses, statements from alleged perpetrators and witnesses they rely on, medical reports from doctors, extracts of records from police books, sketches drawn by the police investigators and their investigative notes. In some cases there will also be DNA reports and other forensic reports. The network has collected a large number of indictments which form tremendous resource materials to study about practices of torture in Sri Lanka. Otherwise inaccessibility of many of these documents enhances its significance.

Thus far, the SIU has been about to file indictments in very few cases. This is indicative of the non-availability of officers for investigations. These officers are senior in rank and position. The experiences of these persons are highly valuable. We document the experiences of these officers in a systematic manner, for which a research project has already been launched.

The police officers who conduct inquiries into torture, other than those attached with the SIU, is also our target of study. The network uses the opportunity they get while assisting the victim to gather information and generate ideas about the functioning of these officers. In this process we gather departmental circulars and other forms of instructions concerning various matters of discipline in the police and about the disciplinary process.

***The strategy:*** The study and analysis about persons and institutions inquiring into torture is of critical relevance. The strategy adopted to reach this end is twofold. The members of the network group generate data about the process of investigation and officers, through the interaction they have with these institutions and the personnel. Such information is the windfall they gain while working with the victim; it might not always be focused though highly relevant.

The strategy next is to employ a dedicated study about the work of these agencies. The research project earlier mentioned is designed for meeting as many officers as possible. The research team includes a retired senior police officer who would facilitate inquiries with the police officers. They interview the officers on the basis of questionnaires and interview schedules on a range

of aspects of their work. Already many facets of investigations into torture have been revealed by this process.

### **The prosecuting branch**

The Attorney General's Department is in charge of prosecutions in Sri Lanka. Investigation and prosecution divisions work in mutual exclusivity in Sri Lanka. The Attorney General's office does not exercise any supervisory power over investigations of torture cases conducted by the police department or by the SIU. So is the case with any other criminal investigations by the police. This absence of a supervisory role has been criticized by various persons including some committees headed by officers of the Attorney General's Department itself.

The crucial decision, whether or not to prosecute, is made at the department of Attorney General. The files are expected to be studied and a decision to be made as to whether to drop or proceed with the charge on the basis of existence or otherwise of sufficient evidence. On the decision to proceed, the department drafts the charge sheets and prepares the indictment file, which is to be placed before the High Court.

Some observations may be worthwhile here. The Attorney General's powers to prosecute have so far not been used for prosecuting any officer above the rank of Inspector of Police. There had been glaring incidents where officers higher than that of 'Inspector' were accused of commission of torture. So far they are not indicted. A further remark is that the Attorney General's Department is yet to file an indictment on the basis of command responsibility. Liability on the basis of failures of higher officers is usually not dealt with as matters of criminal liability in Sri Lanka. In the case of Gerald Perera (For details, see *infra*, note 55), the Supreme Court found that the involved Inspector of Police had violated the victim's rights. Initially, this Inspector's name was included in the list of accused in the indictment filed at the High Court by the Attorney General's Department. However, his name was withdrawn by a senior counsel representing the Attorney General's Department on the basis that Inspector's responsibility was vicarious liability falling under the civil law, not amounting to criminal liability.

***The process:*** The network groups pursue cases with the Attorney General's Department often by official communications through the AHRC or by communications on particular cases via lawyers. The documents thus received form part of the treasury of information for analyzing the role of the

prosecution branch.

The network engages in public campaigns when the department fails to launch prosecutions, mostly due to obvious reasons. Such campaigns and lobbying put pressure on the department to act, despite their initial negative stand. The experiences of such campaigns are also documented.

***The strategy:*** The basic purpose of engagement with the prosecution department is to put across the point of view of the victim. In the labyrinth of official process at the Attorney General's office, the interest of the victim is often affected. That apart, there are many considerations, political or otherwise that mars the claim of victim for justice through the prosecution wing. The holdup of files that occurs in this office is highly condemnable. This situation warrants close monitoring of the affairs of the prosecution branch.

This is done by constant communication with the concerned office. These communications are done by the AHRC and the network groups. Communication of intentions through mass action is also a strategy which has been thus far favourably employed.

By these involvements, the network is able to gather detailed information about the manner in which the department deals with indictments and prosecutions. Such information is documented and analyzed as part of the overall study on the prevention of torture.

## **The judiciary**

Formal legal process relating to torture takes place mainly at three levels. It can be either at the Magistrate's Courts, the High Courts, where trials under the CAT Act takes place or at the Supreme Court where fundamental rights issues are taken up. The issue of compensation against torture is also decided by the Supreme Court.

In conjunction with these or by itself, civil courts could be approached with claims of compensation for torture under the civil jurisdiction. Furthermore, applications can be made to the Court of Appeal by way of Writ Applications on torture related matters.

The network has recourse to all these avenues, and more than hundred cases are pending before either of these courts. A case filed in any of the courts in

Sri Lanka is likely to take several years for completion. Many of the cases, that the network has taken an active interest in pursuing, have gone beyond five years. The delay in the system of justice is one of the major problems that prevent proper remedies for human rights abuses including torture. The network is able to study the process of judiciary by a simple method of attending the cases.

***The process:*** The ways of law can be bewildering. A victim may be attending more than one court for cases originating from the same incident, but for different offences or purposes. It could be to prosecute in one case and to defend another, which has been set up as a counter case by the police to set off the damage or as a pressure tactic. It could be explained thus. While the Attorney General's Department may file a case against police under the Torture Act, the police may file a fabricated case before the Magistrate's Courts against the victim of torture by making him an accused for theft, or assault on police or any such offences. The fall out being, at the High Court the torture victim appears on behalf of the prosecution to give evidence against the police. At the Magistrate's Court the police will be on the prosecution side trying a case against the torture victim. The victim is compelled to defend a fabricated case to save himself.

Each of these cases in the Magistrate's Court and the High Court are postponed many times. The usual duration of postponement is around two months. Thus, in each court, a person will have to appear at least 6 times during a year. Having cases for different reasons before the High Court as well as the Magistrate's Court would imply at least 12 appearances in a year.

Fundamental rights cases are heard before the Supreme Court of Sri Lanka. When these cases are being heard, the victim and/or his/her lawyers have to attend the court. This means a few visits to the Supreme Court as well, sometimes for as long as 6 years.

The information gathered by attending these court proceedings are of two kinds. On the one hand, there is knowledge gained about the nature of proceedings in each of these courts relating to torture. This involves, court procedures, trial procedures, issues relating to evidence, issues relating to application of forensic science and all matters that relate to the adjudicating process that takes place in each court. The network closely monitors and documents every proceeding in the court. It could be by filing copies of documents produced in the court to entering one's own observation as to

what transpired in the court that particular day and why it happened so. On the other hand, there are enormous amounts of documentary evidence collected by way of certified copies of court proceedings. These include complete files of trials from beginning to end; the files of applications and replies and other documents in fundamental rights cases and also judgments delivered by courts.

*The strategy:* The observations gathered in this way are important materials for understanding the problems of judicial redress in Sri Lanka. These source materials of actual cases that are fought in courts are some of the primary materials which can provide an array of information.

The court proceedings give an insight about wider issues such as delays in court, witness protection, nature of legal profession and the problems that members of the legal profession face in court as well as the lack of access to legal redress. Direct observations gathered through the participation is a valuable source of information in the study of wide-ranging aspects relating to prevention of torture in Sri Lanka.

## **The Human Rights Commission and National Police Commission**

Two national institutions which are relevant to this study are the Human Rights Commission (HRCSL) and the National Police Commission (NPC). Torture victims can make complaints to the HRCSL as well as the NPC. The HRCSL is empowered to inquire into human rights violations. Members of the network as well as the Urgent Appeals desk in Hong Kong send letters on behalf of the victims to both of these national institutions on an almost daily basis.

The NPC was appointed in the year 2002. It was established by virtue of the 17th amendment to the Constitution with laudable intentions. The amendment provided for the appointment of certain national commissions with constitutional powers over appointments, promotions, dismissals and disciplinary control of employees to depoliticize important national institutions. The NPC, so appointed, enjoys all such powers over the police department except in relation to the office of Inspector General of Police. Article 155G 2 requires the NPC to establish a procedure for entertaining, investigating and redressing complaints against police personnel and the police service.

***The process:*** The network assists victims to file complaints and pursue proceedings in these institutions, especially the HCRSL. Attending these institutions, the network documents the proceedings therein. The network has accumulated valuable information, through direct involvement and also by collecting relevant documents about these national bodies.

***The strategy:*** Transform through engagement is the motto adopted by the AHRC with these institutions. Wherever possible, the network uses the process of these institutions which in turn reveals their strengths and shortcomings.

The constant engagement we have with these institutions and the materials gathered on them enabled the AHRC to write several articles and statements about the nature of these organizations. These commentaries on the HCRSL reveal the inherent nature of the institution with several fundamental flaws. The fault lies both in the law and functioning. The experiences of the torture victims with these establishments also reveal other problems regarding administrative matters and the limited competence of the officers of the HCRSL.

As for the NPC, the network has worked very closely with it up to the time when the commission functioned under commissioners elected in conformity with constitutional provisions. This was from 2003 to the end of 2005. During this time, on the basis of work by the network, the AHRC had submitted documents for the development of a public complaints procedure as required by the Constitution (Document titled “Procedural Implementation of article 155 G (2)-17th Amendment” was submitted to the National Police Commission (NPC) in December 2005. A further discussion paper on the same theme was also submitted to NPC. Both documents are available in, Basil Fernando, State of Human Rights 2005, Law Society and Trust, Sri Lanka, pp 119-158). This document submitted by the AHRC was partially adopted in January 2007. Since the beginning of 2006, the commissioner of the NPC has been appointed in contravention to the constitutional mandate. The legitimacy of the whole institution has been shaken due to the deliberate deviations from the constitutional spirit. The AHRC together with many others is engaged in prolonged lobbying and generation of public opinion to bring the 17th amendment to the Constitution back into operation. Copious number of articles and statements are written on this issue and the cause is pursued.

## **International agencies**

The AHRC has been consistently using the scope of international agencies to address the issues relating to torture. The major among them are the UN agencies, which includes the UN Rapporteur against Torture, the CAT Committee and UN Human Rights Committee.

***The process:*** The AHRC is communicating with UN agencies such as the UN Rapporteur against Torture on an almost daily basis regarding cases of torture in Sri Lanka. This is done by way of detailed letters with information about cases to enable him to request responses from the state party. The study of the reports of the Rapporteur against Torture to the Human Rights Commission and UN Human Rights Council shows that since 2002, the Rapporteur has sought explanations from the government for more than thirty cases submitted by us each year.

Reports of the Rapporteur, which are published every year, show the actions taken by the Rapporteur and the responses of the government. In many instances the government has acknowledged that the allegations are accurate and that actions are being taken to investigate and/or prosecute the offenders.

The network has also made shadow reports to the CAT Committee and the Human Rights Committee. The network has also sent representatives to the meetings of review of these committees and sometimes have had occasion to give oral explanations in private sessions with the committee or to lobby the members on the basis of information submitted by the network.

The network also makes reports to other UN bodies such as the Special Rapporteur on extrajudicial killings, Special Representative on human rights defenders, Working Group on enforced disappearances and other UN agencies dealing with the rights of women and children.

The communications with these agencies and follow up actions provide a great deal of education in itself. The experience of working with and stimulating these institutions is carefully documented by the network. By all these direct involvements, the network has gathered massive amounts of materials about the working of the UN agencies and the manner in which the human rights movement can employ particular methods in the process of the prevention of torture.

***The strategy:*** Using the available mechanism to the optimum is the principle employed. By communicating with the agencies and feeding them constantly with accurate information about the local situation, in contrast with the official versions, helps to build the larger case against torture. Filing of individual cases often serves a dual purpose, attention to particular cases and also as an exposure of a failing system within the country.

In the recommendations of these committees, one can find the efforts to pursue the information made available to them, and often they have made similar recommendations as those put forth by the AHRC on behalf of the network. It is a fact that the number of cases submitted by the AHRC on behalf of the network on police torture is much larger than those submitted by anyone else.

The AHRC and the Sri Lankan network are involved with a project to promote the Optional Protocol in four countries in Asia under a programme initiated by Rehabilitation and Research Centre for Torture Victims, Denmark. The volume of activities of this programme also brings out a large amount of information about problems relating to the prevention of torture.

### **The media and other avenues for lobbying**

The media can be a beneficial ally for furthering the cause of human rights. Presently, the scope of information technology is immense and the AHRC makes use of it to a great extent.

***The process:*** Through the AHRC, the network in Sri Lanka has access to an extensive network in Asia on the prohibition of torture. The AHRC has developed its own IT capacity that is capable of transmitting information on a routine basis to a massive audience in Sri Lanka and rest of the world. All major human rights groups in Europe and the USA receive information on torture related issues on a daily basis from the AHRC's IT network.

***The strategy:*** Linking with people and institutions through the internet for the cause is the rule for us and so far it has worked well. Such a network not only disseminates information, it also brings in new information. When information is published constantly, we receive responses from persons who provide additional information to what the network already knows. Thus the media network in itself is a means of collecting information by way of linkages.

A media network could be a method of verification of information as well. When the information is publicized by the network it is received by newspapers far and wide and is often reproduced. The publication and reach of the information provides an opportunity to challenge the network if there is any flaw in the material published. The very fact that the information goes unchallenged after being well circulated indicates its veracity.

A media network with modern IT facilities is also a means of preserving documents and materials collected over the years on the issue of torture made available through various web sites of the AHRC. In the archives of these web sites, material collected through years has been preserved for the use of anyone engaged in the study of these issues.

The responses we receive constantly from many countries and universities throughout the world give us an indication of the extent to which reference is made to the material available in these web sites.

### **Some observations from the study**

The years of experience have been a great educator. Meticulous evaluation of the enormous amount of data, study and analysis of the system, institutions and the personnel has led us to several conclusions and observations. Some salient aspects are summarized below.

#### **Police torture**

1. Police torture is endemic and routinely practiced at all police stations in Sri Lanka. The reasons for torture, unlike common perception, are not just to extract information but for other reasons such as finding substitutes for unresolved crimes, showing results to superiors or for statistical purposes. Sadly, the habit of use of force on anyone under arrest is a major factor. The reasons could be frustration on the part of the police officer, impression that proper respect is not paid to him or for bribery, extortion and the like. In almost all cases the victims belong to the poorest groups with very few to nil influential social connections.
2. Often the officers in charge of the police, i.e. the highest post in a station, condone torture and directly participate in it. Almost always they try to cover up the incidents of torture when complaints emerge. The Departmental Orders have extensive rules to prevent torture, but these are largely ignored. The Departmental Orders provide for visits by Assistant Superintendents of Police (ASP) to police stations. However, there is

significant evidence to show that these visits seldom take place as required. ASPs or Superintendents of Police who take strong views against torture found to be extremely rare.

3. The data available indicate a considerable collapse of the exercise of command responsibility, ranging from the Inspector General of Police (IGP) to the lower ranking officers. There are consistent remarks supported by observations on cases and comments by judiciary that the supervision exercised by the IGP and other high-ranking officers to prevent torture is negligible. In fact, the Supreme Court has observed that the conduct of superior officers can give the inference that they ignore or condone torture.

### **Investigation of torture**

1. The system of investigation of torture within police seems to work only under heavy pressure, particularly international pressure such as official interventions by the UN Special Rapporteur against torture. Complaints which are not accompanied with such pressure are regularly ignored.
2. If the investigation is referred to the SIU by intervention of the UN or due to intense local pressure, investigations are conducted competently and impartially, suggest the data. Experiences from many cases clearly witness that the SIU does have the capacity to conduct scrupulous investigations even against officers of the police. Apparently, investigations by SIU are not interfered with by higher ups.
3. The investigations by higher-ranking police officers of the areas where incidents of torture are alleged to have taken place do not show the same type of competence and impartiality as the SIU inquiries. In many instances there are allegations that various forms of pressures are exercised on victims of torture to discourage them from pursuing complaints.
4. The HRCSL inquiries mostly lack competence. Institutionally it is bereft of proper powers for investigations. There is documentary evidence which reveals the admission of the HRCSL that “their inquiries do not amount to proper criminal investigations into torture.” There is also data available to show that there are enormous delays in the process of inquiries and often they employ various methods to discourage victims from pursuing their complaints. Case studies show that in many instances the HRCSL inquiring officers do not show an understanding of international norms

and standards. This has an adverse affect on the manner in which they conduct inquiries.

5. The NPC has the mandate to inquire into allegations of torture from a disciplinary point of view. Often such inquiries are expected to be conducted through the local representative of the NPC. However, according to case studies, it is revealed that the NPC refer the matter to senior police authorities to conduct inquiries and submit reports. In January 2007, the NPC published a gazette extraordinary regarding the public complaints procedure against police officers. How this will function remains to be experienced.
6. Considerable delay is observed in the SIU inquiries as well. A matter has to be referred to SIU for it to commence an inquiry. Such reference is often done months after a complaint is lodged. The actual commencement then depends on the workload of the unit. Studies in some cases show a delay of one year or more before the final report is made to the Attorney General.
7. As compared to the number of complaints made, the number of inquiries conducted by the SIU is very low. This imply that a large amount of complaints on torture do not go through a proper process of investigation.

### **Prosecutions**

1. The filing of indictments and prosecutions is the responsibility of the Attorney General's Department. The information gathered in this study shows that out of the numerous complaints made by torture victims relatively few are prosecuted.
2. Delay is endemic to the AG's Department as well. From the receipt of the investigation file, sometimes two years have taken, to file indictment at the High Court. Statements from the AG's Department indicate delay in admission at the court as the problem. The department attributes overall delay to lack of sufficient staff to deal with all files relating to crime of which torture cases are only a few. The absence of assignment to attend to the cases of torture on a priority basis is another impeding factor. Responses from the AG's Department suggest that they find no reason to give priority to cases of torture. The experiences gathered from cases as well as interviews with officers of the department do not show any concern for the prevention of torture as a policy influencing the handling of cases.

3. There is also data to show that there exists lack of understanding to lack of appreciation of the international law on torture by the AG's Department. This is evident from the instances of filing of charges on torture.
4. When charges are not filed with required precision, the accused can utilize the defects in the indictment as a means to circumvent responsibility and liability.
5. The study reveal that the AG's Department, as a matter of policy, do not want to prosecute any officers above the rank of Inspector of Police even if there is evidence of direct involvement of such officers in torture. Besides, it is also a matter of policy not to prosecute higher officers or even inspectors on the basis of command responsibility. There is a disparity in the way the AG's Department distinguishes vicarious liability of higher officers as a matter of civil law and the obligations under the ICCPR and CAT to deal with torture as a crime.
6. The information gathered by this study also points to a policy of prosecutions based on pressure rather than by way of normal routine based on legal obligation.
7. Delays in filing prosecutions seriously affect the victims and the witnesses. This is one of the primary factors that discourage the victims to pursue cases. On the information available from this study it is not unreasonable to conclude that while filing indictments under pressure the department encourages the retreat of victims and witnesses which eventually acts in favour of the alleged accused. In this way while it appears that the department has done its duty to prosecute, the blame is indirectly shifted on the victims and the witnesses for the unsuccessful result.
8. Information collected through cases also shows that counsels representing the AG's Department do not make applications in court for speedy hearing of torture cases. Unofficial explanation is that such applications often do not result in being allowed and that the better course is to be prudent and not to press for speedy trials. Even in an instant where the UN Human Rights Committee has requested the state party to ensure that the trial is speeded up, counsel from the department refused to make any such application to the court.
9. Despite all the above, several cases demonstrate the exceptional ability of

some of the counsels from the department while prosecuting torture cases. They do their job with competence and integrity. It has to be noted that such efforts are against all odds they face.

### **Courts: The High Court**

1. So far there are two successful prosecutions in two separate High Courts and both have taken two to three years for completion. In one case, the accused officer escaped and fled allegedly out of the country by the time the verdict was rendered. There are several cases in which there were no successful prosecutions. There have been many instances in which the victims have come forward to state that they do not wish to proceed with the case. The study exposes that in some of these cases serious threats have been made to the victims or inducements such as money been offered. Some victims have tried to resist for some time but had succumbed to the pressures from their family and peers whose backing has been well employed by the accused officers.
2. In one well-known torture case, the accused was killed about a week before he was to give his testimony in court. Investigations into the murder confirmed the involvement of the alleged perpetrators of the torture.
3. The High Courts now follow the practice of postponing further proceedings after recording evidence. This result in delay. Large number of cases is included in the trial roll for each day which make the time available for each case considerably brief. The earlier practice was for trials on serious offenses at High Courts to be conducted on a day to day basis ending within three or four days of commencement. Abandoning of this practice has brought considerable difficulties to the victims.
4. According to official figures the success rate in overall prosecutions is a meagre four percent. This would be even less on torture cases due to the official position held by the accused and social, administrative and political sway in their favour.
5. Some judgments at the High Court illustrate considerable confusion on the part of the High Court judges about the understanding of law relating to torture. The exasperating fact is that this exists even in elementary matters. Some judges have held that causing of injuries by police officers on persons in their custody is not torture as the purpose of the assault

was not to obtain confessions. In another case, a judge of the High Court even held that though the accused police officer has used excessive and unnecessary force causing extensive injuries, it still do not amount to torture.

6. The observation of torture victims and a number of lawyers is that prejudices still exist against the prosecution of police officers. It has also been observed that judges may be discouraged to arrive at convictions due to the mandatory seven years imprisonment, which is the prescribed punishment in law.
7. The sum total of the effect all these factors on victims of torture is that more sources exist to discourage the pursuit of complaints against torture than to encourage attempts to ensure liability of the offenders.

### **Courts: The Supreme Court**

1. Available data indicate that while complaints of torture are increasing, the number of cases filed at the Supreme Court by way of Fundamental Rights cases is on a steep decline. This drop is attributed mostly to the advice of lawyers and even human rights activists that success in such applications is fewer now than ever before.
2. The rejection of cases without issuing notice is quite high and usually no reasons are offered for such rejections.
  - a. In cases where charge of torture is proved, the amount of compensation granted by the Supreme Court has become ever more meager. While there were some attempts to set higher standards of compensation for torture few years ago, for example around US\$ 8,000 in serious cases, the quantum currently has been reduced to a paltry sum of \$100 to \$250. No reasoning is given for the decline in quantum. Though the objective of fundamental rights is not compensation alone, low quantum could discourage victims from filing cases. The dissuasion should be viewed in the backdrop of expenses of moving the Supreme Court. The low quantum also is used by the perpetrators and others to their advantage in trying to dissuade victims from pursuing cases.
  - b. The Supreme Court of Sri Lanka has made some attempts to incorporate international norms on human rights into domestic law through its judgments a few years ago. However, in recent years, the

Supreme Court has taken a view that the ratification of the ICCPR is not binding on the courts in the country. It has also taken an extreme stand that the signing of the Optional Protocol by the state may even be ultra vires. There is a wide gap between the law as laid out in the Supreme Court judgments and the international norms and standards.

- c. The UN Human Rights Committee has expressed that it has noted violations of rights by the judgments of courts in Sri Lanka including that of the Supreme Court. However, none of the recommendations expressed by the Human Rights Committee are respected.
- d. The Court of Appeal and the Supreme Court have gone to an extent that it held the constitutional provisions enabling the executive president to be not liable for any action before court as absolute, even when she/he violates the constitution.

### **National institutions**

As for national institutions such as the HRCSL and the NPC, the evidence gathered in this study lays bare that they are ineffective in providing any remedy against torture.

### **Some conclusions**

1. The basic institutions such as the police investigation system, prosecution system under the Attorney General's Department and the judiciary are fundamentally flawed. Therefore the contribution they make to the prevention of torture is minimal to none. Often the defects are of such a nature that it becomes an encouraging factor for adopting means of torture.
2. At the moment, no reform process is envisaged by the government.
3. Due to the existence of civil conflict, emergency and anti terrorism laws have been enforced which have a negative impact on the issue of the prevention of torture. The state obligation to reform the institutions is also hampered due to such laws.
4. The burden of prevention of torture, at the moment, rests highly on civil society efforts. The capacity to lobby strongly is an essential component to get the state into action even marginally. Support for victims by civil society is the sole avenue to keep interest alive to seek redress through the

exasperatingly prolonged process in courts beset with severe harassments. The absence of a proper legal process to provide witness protection, transfers that burden also on civil society and communities. Extensive information is available about the capacity and the willingness of civil society to face the brunt of all the impediments involved in providing support for torture victims and to keep up the discourse for the prevention of torture.

5. There is considerable interest among the public at large to participate in the discussion on the issue of torture and about the severe restrictions on civil liberties. It is felt that avenues are limited. Both the state and private media are actively discouraged from giving serious attention to this problem. It is the responsibility of civil society groups involved with human rights to evolve their own capacity to communicate efficiently to keep this debate active. The experience of the network shows that this is possible despite extreme difficulties in the present circumstances.

### **Publication of the experience**

Regular publication of the activities of the prevention of torture is being done by the AHRC, other publishers and the media. Initial publications of the AHRC had been through IT networks reaching a regular audience of a few thousand persons which in turn was picked up by both local as well as international media. Such publications have been done routinely on a day to day basis for several years. The resources so generated are available in the archives the AHRC's several websites.

The first report on torture was published, as an issue of the bimonthly publication *article 2*, in August 2002 (*article 2*, vol. 1, no. 4). This report consisted of details of 22 cases and had analysed various factors that have contributed to torture. This report was followed in 2004 by another volume of *article 2* which studied 33 more cases and also analysed legal and other issues relating to the prevention of torture. This was followed by a book of 300 pages, titled "X ray of the Policing System in Sri Lanka", which studied about 65 cases and contained a number of articles analysing the problems relating to the prevention of torture in Sri Lanka. In two shadow reports published in 2003 and 2005, submitted to the Human Rights Committee and the CAT Committee, a considerable amount of factual details regarding torture was tendered together with analyses and recommendations for the prevention of torture. Besides these, several articles in different journals have been published on matters relating to torture in Sri Lanka. Books have also

been published in local Sinhala language. A few-hundred newspaper articles have also been published.

Two extensive reports on torture related issues are available in the Annual Country Report published by the AHRC in 2005 and 2006.

### **Existing literature on prevention of torture**

In the course of our studies we have tried to find resources from international publications for further understanding. Though we could find some, there was a dearth of relevant materials.

- a. There is want of literature on institutional causes that encourage or lead to torture. Studies on endemic torture that takes place regularly at police stations, due to the very nature of the criminal justice systems, in countries where liberal democratic systems have not been established to any credible degree is scarce.
- b. Many studies are made on the assumption that credible investigations, prosecutions and judicial systems exist to investigate and prosecute torture, while some errant officers or some authoritarian governments have at times allowed torture. However, torture as it exists in Sri Lanka for the most part does not fall under this category.
- c. Recommendations of the CAT Committee and the Human Rights Committee, including direct observations in the sessions of these committees, which were available for this study, shows that so far the recommendations of these committees have not been detailed enough to address the institutional problems that obstructs the prevention of torture. Often such recommendations are too generalized and are not respected by Sri Lanka as a state party. The recommendations of the Human Rights Committee in 2003 and the committee decision made under the optional protocol have not been respected even scantily. The CAT Committee recommendations of 2005 have also not been honoured. Making recommendations effective would require a better understanding on the part of these UN bodies about the violations which arise out of the institutional defects within the rule of law system itself.

**The challenge**

The challenge that this study raises for anyone working in the area of prevention of torture or to any international experts who wish to contribute is the need to develop a theoretical framework to deal with the problems of prevention of torture. It should be connected with fundamental problems relating to the rule of law and the development of democratic institutions.

# A 'praxis' perspective on subverted justice and the breakdown of rule of law in Sri Lanka

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## 1. Introduction

At each historical juncture, the framers of Sri Lanka's post independence constitutional documents suffered from a deep-rooted distrust of giving practical effect to the rule of law and the idea of justice. The 1972 'autochthonous' Constitution<sup>1</sup> subordinated the judiciary and only superficially embodied a Bill of Rights while declining to grant the Supreme Court, explicit jurisdiction over the determination of violations. Thereafter, the 1978 Constitution<sup>2</sup> entrenched the concept of the all powerful executive president whose actions were virtually above the law, besides (in a most absurd paradox), omitting the right to life and inflicting a constitutional rights chapter with procedural restrictions that diminished the protection of those very rights.<sup>3</sup>

This deviously subversive rationale outlined each and every measure ostensibly agreed to in the name of constitutional democracy, whether it was the enactment of laws setting up to monitor abuse of human rights, curb police indiscipline or the implementation of a constitutional amendment meant to restore public confidence in the governance process. The familiar adage of 'giving with one hand and taking with the other' took on terrible meaning in the gradual but relentless destruction of Sri Lanka's political, constitutional and legal systems.

From this core political objective of subversion of the rule of law, sprang a rabidly intolerant response to legitimate dissent; the constitutional documents of 1972 and 1978 were used to deny justice to both the majority

Sinhalese and the minority Tamils and Muslims. The failure of the justice system and the breakdown of the ordinary law enforcement process impacted on all communities, resulting in the deaths, enforced disappearances, physical and mental torture of thousands during the past three decades. Ominously, this phenomenon was manifested not only during active conflict but also in times of relatively normal functioning. The very foundations of the liberal democratic polity, such as protection of human rights, independence of the judiciary, a democratic electoral system and the concept of separation of powers were used as weapons to twist the constitutional process to suit political exigencies and to strike at the heart of the public's understanding of the rule of law.

However, in trying to analyse this problem, much effort has been expended on problems of constitutional theory and the niceties of one system as against another (viz, a parliamentary system as against a presidential system, a proportional representation electoral system as against a first-past-the-post electoral system or a unitary state as against a federal state). Such efforts are premised on the assumption that Sri Lanka's democratic institutions are in proper working order and that what is required is merely to decide on suitable models of governance.

This paper departs from the above premise in unequivocal terms; it reiterates the failure of the democratic process in a most profound sense and systematically dissects the centrality of the breakdown of the justice system within this context. The point, albeit controversial, is re-iterated; the ongoing conflict in the North/East is the effect rather than the cause of a destructively cyclic perpetuation of coercive violence. Granted, the brutality of the Sri Lankan state has been practiced against minorities with the ultimate consequence of alienating them and abandoning them to the ferocious mercies of separatist forces that are not propelled by a liberation ideology but only by a thirst for totalitarian power.

Fact remains that such brutality has been practiced also against the majority community to devastating effect. The redressing of the brutal nature of the State must therefore be seen as a problem common to all ethnicities. This indeed is the approach that the Asian Human Rights Commission (AHRC) and its partner organizations in Sri Lanka have followed in their work. The theme of the failure of justice is pragmatically manifest in their campaigns and case studies.

The paper critically questions past thinking wherein the authority of the constitutional order has been situated primarily around the failure of constitutionalism to provide for the needs of ethnic minorities and to ensure the multi-ethnic character of the polity. While conceding the importance of these intertwining themes, it contends strongly that this struggle should have been centred round broader and primary questions of the failure of justice and of human rights in general and the failure of law enforcement in particular. In doing so, the paper re-iterates the following rationale:

“A discourse on justice is separate from a discourse on politics. This does not mean that the two are unrelated – only that they are distinct. And for the discourse in justice to influence the political discourse in a country, thereby breaking its tautological nature, there must first exist something akin to a discourse on justice. However, sadly such a discourse is quite absent in Sri Lanka.”<sup>4</sup>

The limited approach taken, of focusing only on minority rights and the ‘ethnic conflict’, it is argued, has detracted from a more profound exploration of fundamental problems of protecting life and liberty confronting all Sri Lankans today. In direct relevance to the peace process for example, this has resulted in downplaying of the critical question of human rights protection for civilians consequent to the 2002 Oslo brokered ceasefire agreement with the putting into place of credible monitors rather than ‘political facilitators/mediators’<sup>5</sup> which deprived the entire exercise of that vital element of public ‘ownership’ and legitimacy.

The research does not focus exclusively on theory but instead, takes the ‘praxis’<sup>6</sup> approach by exploring the above premise through the diverse findings that have emerged from sustained and pro-active campaigns against the endemic prevalence of torture, carried out by and associate organizations during the past several years. Informed and driven by the determination of the victims and grassroots activists, this has been a singularly successful approach to learning that has distinguished itself by reflecting felt needs of the people as opposed to arid theories.

## **2. The ‘schizophrenic’ Sri Lankan state and the gradual breakdown of the rule of law**

The assumption that traditional democratic legacies carry with them all the formulae for building equitable and just societies is common in South Asia. This rationale is underpinned not only by the perception that the state is the

key arbiter in ensuring the rights of citizens but that its role is at once, both non-conflictual and benevolent. So also, (and as a matter of natural logic), are asserted to be the institutions that it constructs.

In the immediate post-colonial era, such naiveté was natural and perhaps necessary for the emergence of new national identities. The state was perceived as having certain essential responsibilities of defining territorial integrity, looking after the welfare of the people and enacting laws and regulations in order to maintain order and good government within the territory. It was thus that the state derived its legitimacy to speak on behalf of all its citizens against external influences, friendly or aggressive and justify the right to use force in order to safeguard its own existence. The notion that the state existed for the common good prevailed almost to the point of automatic acquiescence of all its actions. Belief in the normative power of constitutions was an essential part of this formidable authority. Inherited British traditions of parliamentary democracy asserted the power of transformative reform through constitutional institutions and constitutionalism as the ideal condition of democracy.

This was however, soon realised to be a misplaced faith. As communities fragmented, there began the search as to how best the state and institutions of the state could be reconstructed. But the subsequent discourse of correction continued to operate within the old parameters that defined the state as being central to any form of reform. Thus, the focus shifted to issues such as a justiciable bill of rights, an independent judiciary, a multi party system and competitive electoral processes. This shift was however accompanied by a sense of overwhelming despair arising from the failure of constitutions in many societies to uphold human rights or democratic values and the appalling disparity between constitutional theory and constitutional practices. The tension between these two was palpable.

Insofar as Sri Lanka is concerned, a number of instruments, both constitutional<sup>7</sup> and statutory<sup>8</sup> purport to protect the rights of its citizens. However, on the other hand, the state itself remains the chief violator of these rights either by way of commission or by omission. The constitution has not become a living law and the aspiration of equality and equity based on social justice remains unrealised.

The modern Sri Lankan state therefore possesses a schizophrenic personality as far as the protection of human rights is concerned. It combines the ability

to unleash violence and execute an internal war with a remarkably duplicitous capacity to superficially affirm commitment to the democratic process as the following analysis would make clear.

### **2.1. A culture of violence**

Social and political violence encompassing a continuing war in the North and East and two youth insurrections has transfixed the country's human development during the past three decades. Sri Lanka has a long record of violent conflicts. The youth rebellion of the Janatha Vimukthi Peramuna (JVP) in the seventies, methodically crushed by the then United Front Government, was only a foretaste of worse things to come.

With the entering of the opposition United National Party (UNP)<sup>9</sup> into government in 1977 and the centralization of powers in an elected executive president, 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 without impunity. Paramilitary organisations set up during this period, supposedly to help the armed forces and police fight the Liberation Tigers of Tamil Eelam (LTTE) fighting for a separate state in the North/East, also expanded the UNP's armed sphere of influence.

The violent politics of this era culminated in the re-emergence of the JVP in the late 1980's. 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 army. At this point of time, the ongoing ethnic conflict in the North-East lent a continuing brutal dimension to this pervasive violence and Sri Lanka ranked as having the second highest count of disappeared persons (an estimated 12,000) in the world, next to Iraq.

It was in this background that the 1994 general elections were held. The People's Alliance (PA) government came to power in 1994 on the promise of ushering in new political ethos in the country. But the resumption of the war against the LTTE and the defensiveness generated by a constant struggle to maintain a moral high ground against the "*dushanaya*" and "*beeshanaya*" (corrupt and violent) record of its predecessor, the UNP, quickly propelled

the PA into a morass of its own making. In the background of much of the violent political apparatus still remaining intact as far as the JVP and the UNP were concerned, there was precedence and a certain seemingly legitimate space for PA politicians, to engage in political violence. This 'politics of violence' has continued thereafter with succeeding alliances of one or the other major parties capturing political power

The law itself was commonly used as an instrument of repression. The Public Security Ordinance (PSO) No 25 of 1947 as amended and in the Prevention of Terrorism Act (PTA) of 1979 as amended have governed the country for the better part of the past decades and virtually replaced the ordinary penal laws and criminal procedure/evidence statutes.

These emergency laws gave wide powers of arrest and detention to the police and the armed forces. Other powers included the absence of minimum or any safeguards relating to conditions of detention, admissibility of police confessions to senior police officers and relaxing of the normal procedure in relation to deaths in custody in respect of inquests, postmortem examinations, disposal of bodies and judicial inquiry. The Criminal Procedure Code which required a suspect to be produced before a Magistrate within 24 hours of his arrest and the Evidence Ordinance which prohibited the making of confessions to police officers were completely overridden by the emergency laws. These laws were used to fight Tamil separatism in the country as well as control Sinhalese extremism. Their abuse led to deaths, extra judicial killings and enforced disappearances in thousands and aggravated overall brutalisation of Sri Lankan society.

### **3. Failure to question the subversion of the justice system and defeat of constitutional oversight of the governance process**

The inability, by a majority of domestic as well as international non-governmental organizations to view the failure of justice as underpinning human rights activism in Sri Lanka has had a direct impact on the perpetuation of a culture of violence. A specific feature of the pervasive breakdown of the rule of law in Sri Lanka is the problematic failure of the justice system to bring to book, the perpetrators who commit abuses, whether in times of ordinary law and order or in periods of emergency.

This failure of justice system is evident at all levels, from the highest to the lowest courts and deserves close scrutiny by virtue of the central theme in this paper; that the failure of the justice system has been a factor

in the deterioration of constitutional governance, including proper law enforcement, resulting consequently in pervasive violence. In this context, the phrase 'the justice system' infers much more than theoretical judicial pronouncements; rather, it is used to span the entire gamut of the legal system from prosecutions to decisions and thence to practical implementation of those decisions. Safeguarding of the independence of the judiciary as well as preservation of the credibility of the prosecutorial system is exceedingly vital to this discussion.

### **3.1. Subordination of the rule of law to 'rule by politics'**

The gradual politicization of Sri Lanka's judiciary and the subordination of the rule of law to 'rule by politics,' referred to in the introduction to this paper, are important as it frames this analysis. The absolute inability of 'civil society' non-governmental organizations based in Colombo to mount a vigorous campaign regarding the blatant politicization of Sri Lanka's Supreme Court from 1999 onwards was a particular consequence of the inability to posit the failure of justice as central to their work and, in some measure also, pointed to the political choices that these organizations made.

Some context is necessary to this critique. The question of the independence of Sri Lanka's judiciary is not a novel dilemma that has arisen in recent times. Soon after independence, attempts were made by the political establishment to reduce its independence but met with valiant resistance by the judges. When the separation of powers articulated by the Independence Constitution was sought to be overset by legislation attempting to give the Minister of Justice authority in the appointment of judicial officers, the Supreme Court responded by declaring the legislation invalid.<sup>10</sup> Further attempts to fetter the independence of the judiciary were also outlawed.<sup>11</sup> The Court was, in these early stages, conscious of the need to safeguard the rights of the minorities.<sup>12</sup>

Predictable political outrage at this perceived flouting of its authority resulted in the sweeping aside of the Independence Constitution by the 1972 constitutional document. The subordination of the judiciary was one immediate consequence thereof.<sup>13</sup> The 1972 Constitution abolished judicial review, established a Constitutional Court with the limited power to scrutinize bills, and this, too, in 24 hours when the bill was certified as being urgent in the national interest and allowed the declaration of a state of emergency to be passed without a debate. Fundamental Rights were included in the constitution but made impotent by open-ended restrictions and no specific enforcement procedure.<sup>14</sup>

The change in political leadership brought about the current second Republican Constitution in 1978, which theoretically protected the role of the Supreme Court as the highest and final superior court. The court was given special jurisdiction in respect of election petitions, appeals, constitutional matters, fundamental rights (now made justiciable) and breach of the privileges of parliament. The appointment of judges of the superior courts was by an elected president “by warrant under his hand.”<sup>15</sup> In practice however, the spirit of authoritarian disregard for the independence of the judiciary continued. A constitutional clause which specified that all judges of the appellate courts shall, on the commencement of the new Constitution, cease to hold office was soon used by the president to radically “reconstitute” the higher courts.<sup>16</sup>

Police officers found responsible for the violation of fundamental rights were not only promoted, but the damages and costs were paid from the government exchequer. Procedural difficulties in judicial officers taking the oath of allegiance under the Sixth Amendment resulted in the police locking and barring the Supreme Court and the Court of Appeal and refusing entry to judges who reported for work. Following unpopular decisions, judges’ houses were stoned and vulgar abuse was shouted at them by thugs.<sup>17</sup>

In the wake of the sustained political barrage, decreased efforts by the judiciary to protect the rights of the people was not surprising. In 1982, when the UNP government flouted honoured electoral traditions and substituted a referendum for the general election that was then due, the Supreme Court upheld the decision of the government. In the subsequent Thirteenth Amendment case, the court again refused to engage in a debate on the substantive merits and demerits of devolution while approving the amendments on the technical basis that they did not violate the unitary nature of the state.<sup>18</sup>

From about the 1990s however, judicial restraint of politicians, state agents and particularly officers in custodial authority such as police officers and prisons officers was far more substantive. This was in part due to a widespread public acknowledgement that the abuses of the past could not be tolerated further and part due to the efforts of some liberal judges on the bench at that time. Working within the limited confines of a constitutional document that did not permit public interest litigation,<sup>19</sup> did not allow challenge of legislative acts,<sup>20</sup> did not allow judicial review of even unconstitutional laws if they were enacted before 1978<sup>21</sup> and did not include the right to life,<sup>22</sup>

the judiciary did as much as it could. Importantly, the vicarious liability of officers in authority who did not intervene when their subordinates violate rights was specifically affirmed.<sup>23</sup>

Insofar as abuses of power under emergency was concerned, the Supreme Court's response was far more sensitive than in the past; it relaxed procedural rules that prescribed strict compliance with the manner in which a petition must be filed in court and thus allowed hundreds of persons detained under emergency to file fundamental rights petitions.<sup>24</sup> The power of the defence authorities to arrest and detain using emergency regulations and provisions of the PTA was also restrained and the Court went on to disregard an ouster clause in the Public Security Ordinance (under which emergency regulations are issued) to strike down the validity of a regulation itself.<sup>25</sup>

This judicial 'activism' resulted in a hostile reaction from the political regime; the Supreme Court and those perceived to be 'liberal' judges came under scathing criticism from government ministers and indeed, then President Chandrika Kumaratunge herself. In 1999, with the appointment of Chief Justice S.N. Silva who had close personal connections to President Kumaratunge, the Court became characterized not only by a withdrawal in articulating restraint on government actions but indeed, by a positive upholding of powers of the government against citizens and by distinct arbitrariness in its functioning.<sup>26</sup> Benches were constituted by the chief justice without any consideration for seniority,<sup>27</sup> but only with a view to 'packing' the bench with favourites<sup>28</sup> who would be amenable to whatever decision that was desired by the political establishment. The flood of fundamental rights applications progressively decreased;<sup>29</sup> whatever isolated 'rights friendly' judgments that were delivered awarded only small amounts of compensation. Settlements in fundamental rights cases were evidenced by judicial coercion of lawyers and/or petitioners.

The Court declared itself not bound by views of monitoring bodies established under international human rights treaties entered into by the executive,<sup>30</sup> thus giving the formal stamp to an informal process whereby, for years, the government had been ignoring the views of the Human Rights Committee.<sup>31</sup>

Public confidence in the ability of judges to act as a last measure against government authoritarianism has decreased. All this took place without significant protest from the Colombo based non-governmental community, excluding a few seminars held by one or two organizations.

At the level of the lower courts, the capacity to function independently from government was predictably affected. Transfers, disciplinary control and dismissal of lower court judges, which are handled by the Judicial Services Commission (JSC) were made at the whim and fancy of the JSC,<sup>32</sup> most often at the nod of the Chief Justice. The negative impact that this had on the credibility and internal discipline of the judicial service is incalculable.<sup>33</sup>

### **3.2. Failure of civilian oversight mechanisms and constitutional governance**

Any effort to remedy a politically influenced approach to governance has had a short lifespan in Sri Lanka and/or has been thoroughly ineffective. The collective fate that befell two important commissions: the Bribery and Corruption Commission and the National Human Rights Commission evidenced this in no uncertain terms. The first was set up by a law unanimously passed in Parliament in 1994,<sup>34</sup> however it has been wholly ineffective, holding only insignificant and lower ranking public officials in its net while stupendous frauds and corrupt acts by heads of institutions and politicians have been bypassed. During long periods of its existence, it has been almost non-functional due to its infiltration by political elements, the infighting of its officials and efforts by successive governments to use it for their own political ends.

The National Human Rights Commission (NHRC),<sup>35</sup> on the other hand, was established through a law that was significantly flawed in many respects; it allows the body to engage only in conciliation and mediation with the end result that its directions are substantively ignored by not only the police hierarchy but also other government departments and officials,<sup>36</sup> its members are not stipulated to be full time, thus resulting in their giving only part time commitment to the work, section 31 of the act confers powers on “the Minister” to make regulations regarding implementation, including conducting investigations<sup>37</sup> and the commission is not empowered to approach courts directly as petitioners in instances of grave human rights violations or even refer such questions to the appropriate court.<sup>38</sup>

Though some commission officers have been engaged in useful work in, at least documenting human rights violations particularly from the conflict areas and in bringing their persuasive efforts to bear on illegal arrests and detentions, the efficacy of the body as a whole has never been great due to the inherent limitations in its mandate. Specific deficiencies in its functioning will be highlighted in the course of consideration of the particular cases forming part of campaigns as discussed below.

The lack of legitimacy in the NHRC has been further aggravated in recent times by the unconstitutional nature of the appointments of its currently sitting members, who have been appointed by Presidential fiat ignoring a specific constitutional amendment which specified that the appointments be approved by a 10-member Constitutional Council (CC).<sup>39</sup> The 17th Amendment also established two new monitoring bodies; namely the Elections Commission<sup>40</sup> and the National Police Commission (NPC). The CC was, in fact, in existence only for a relatively short period, from March 2002 to March 2005. The terms of office of its six appointed members expired in March 2005. But the vacancies arising therein were not filled, which resulted in the lapsing of the CC itself.<sup>41</sup>

The incumbent president, Mahinda Rajapakse, then made his own appointments to the commissions, including the NHRC and NPC, predominating with his supporters and personal friends. At the time of writing this paper, the unconstitutionally appointed Commissions remain. Though a Parliamentary Select Committee has been appointed to examine as how the 17th Amendment may be 'rectified' in its substance, this Committee has been sitting for the past many months with no visible result.

The constitutional 'experiment' of the 17th Amendment illustrates the huge resistance that is manifested from the political establishment in regard to any attempts to de-politicise the governance process. Early on, the relatively feeble attempts of the National Police Commission (NPC) to discipline the police and restore the service to some measure of independent functioning met with blatant antagonism from politicians. Frontline ministers remarked that the 'independence of the NPC' was not needed and maintained amazingly that the Inspector General of Police (IGP) should be involved in the decision making processes of the NPC. Public hostility was evidenced between the IGP and the NPC where the former considered that the creation of the NPC had imposed an unwarranted fetter on his powers.

The response from the non-governmental community in regard to the political subversion of the constitutional process was again muted. Though some protests were evidenced at the start, (perhaps to an extent that was more than at other times, including the refusal of some former members of the NHRC to be re-appointed on the basis that this would be conforming to an unconstitutional process), these protests did not gather momentum as a collectively outraged reaction and were, moreover, confined only to that time at which the unconstitutional appointments took place.

#### **4. Exposing the failure of the rule of law: A practical analysis of the campaign by the AHRC and its partners**

The approach followed in this instance was a full frontal critique of the justice system, focused on a plethora of cases which took the victims through the whole process by providing them not only with legal help but also physical protection and counselling in order to provide a conducive environment for their rehabilitation. A significant factor was that these cases were from parts of the country not affected by the war. This was a deliberate choice<sup>42</sup> in order to examine the pervasive nature of the problem in a manner that de-links it from the conflict.

Two positive consequences could be inferred from the outset as a result of these campaigns. In the first instance, the ‘victims’ of torture became transformed from the ‘powerless’ to the ‘powerful’ purely by articulating their grievances in a collective manner. This process became instructive as a best practice example in regard to activist interventions. Secondly, a normally unresponsive media became part of the campaign, engaging in the daily reporting of torture.

“Torture by the police is now almost daily reported in newspapers, television, radio and other media. Public actions have been held against torturers. Heavy pressure has been placed upon defective state institutions. The judiciary is under attack for its failure to deal effectively with the problem.”<sup>43</sup>

Some specific facets of this phenomenon will be examined now. While the case studies referred to in this regard are those engaged in by the AHRC and its partners, principles and perspectives emanating from case law of the Supreme Court and High Court will also be adverted to, where necessary.

##### **4.1. The endemic nature of the problem of police abuse**

The vast majority of custodial deaths in Sri Lanka are caused not by rogue police but by ordinary officers taking part in an established routine.<sup>44</sup>

— *Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*

The ‘safe’ assumption harboured by most Sri Lankans that the practice of torture remains confined to a particular segment of the societal undesirables; terrorists or hard core criminals as the case may be is now comprehensively

debunked to all intents and purposes. Instead, police brutality has been practiced against diverse individuals; a labourer assaulted with batons and sticks while in army detention<sup>45</sup> the cleaner of a van assaulted after being blindfolded<sup>46</sup> an attorney-at-law pulled out of his car and assaulted<sup>47</sup> another attorney-at-law who was a bystander at a protest demonstration (and not a participant) shot at close range<sup>48</sup> and an alleged army deserter tortured to the extent that he died in police custody.<sup>49</sup>

However, as the case studies engaged in by indicates, torture is most evidenced against the poor and the marginalized; the most gruesome torture could be practiced against a teenager accused of stealing a bunch of bananas<sup>50</sup> or some such petty theft. The actual criminals and the underworld characters are allowed to escape with the nexus between senior/junior police officials/politicians and the underworld linchpins being too strong to allow their apprehension.

As reflected in the observation by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions above, the studies also expose the fact that torture is not resorted to by a few 'rogue' policemen but is widespread due to many factors; the lack of good investigative training, public pressure to apprehend suspects and the general feeling that torture is not a condemned practice but is implicitly allowed and even expressly ordered by senior police officials despite laws and regulations prescribing otherwise.

One specific feature that emerges from these case studies is the brutality manifested in use of torture. In one case taken up by<sup>51</sup> Koralaliyanage Palitha Tissa Kumara from Halawala, Mathugama, was a respected local artisan of that area, engaged in painting and carvings for the past thirteen years, for which he had been awarded a gold medal by the Hotels Corporation as well as certificates from the Housing Development Authority and the National Apprentice Board. This 31-year-old father of two sons had been returning home from the southern city of Galle where had had undertaken carving work in early February 2004, when he was suddenly arrested by the Wellipenna Police simply because he had given food to a person who allegedly committed some serious crimes.

After his arrest, Tissa Kumara was subjected to severe assault by a sub-inspector attached to the Wellipenna police station. Thereafter, with extraordinary brutality, that same police officer had brought a tuberculosis

patient who was in the same police station, to spit into Tissa Kumara's mouth, telling him that he too would die within two months of the same disease. After that, he was put into the remand prison on fabricated charges of possession of a grenade and for robbery. After fears of being inflicted with tuberculosis arose following a severe cough and blood in his saliva, Tissa Kumara was put in a solitary cell. Food was passed through to him by a narrow opening in the door, as the prison authorities were nervous of contamination.

His wife made frenzied appeals to the various monitoring bodies in Colombo, including the National Human Rights Commission (NPC) and the National Police Commission (NPC) but her husband continued to lack proper medical treatment. Tissa Kumara's case was distinguishable in its extreme perversion from the ordinary cases of police brutality being reported.

#### **4.2. Militarization of law-enforcement agencies**

The failure of the law enforcement process has been a persistent and central feature of the failure of the justice system in Sri Lanka. The precise extent of corruption within the police ranks, police brutality, lack of investigative skills, inefficient and time consuming procedures in dealing with complaints of torture,<sup>52</sup> and the virtual militarization of the police service accustomed to using emergency powers for long decades is clear.

The study refers to two discernible patterns of torture, firstly where torture is resorted to for interrogation purposes and secondly where it is apparent as a pure abuse of power.<sup>53</sup> Into the first category of cases falls the denial of all of the commonly accepted rights available under the normal criminal procedure laws<sup>54</sup> such as the right to be given reasons for the arrest and the right to be speedily brought before a magistrate.

In this regard, the trauma of persons mistakenly arrested by the police and tortured in the belief that they are criminals, is common<sup>55</sup> as is the arbitrary arresting and torturing of individuals possessed of a criminal record purely as a convenient cover for crimes lacking a suspect. Palitha Tissa Kumara's case (detailed before) and the case of Lalith Rajapakse who was severely beaten on 19 and 20 April 2002 by officers from the Kandana Police Station and remained in a coma for three weeks<sup>56</sup> are two latter examples. Numerous judgments of the Supreme Court have held that even a hardened criminal cannot be tortured with impunity. In the *Wewelage Rani Fernando Case* (where it was contended that the deceased had stolen two bunches of bananas), the

court observed that this allegation of theft should not have detracted from the duty to afford to the deceased, the protection of his constitutional rights of personal liberty. Thus:

“...[T]he petitioner may be a hard-core criminal whose tribe deserve no sympathy but if constitutional guarantees are to have any meaning or value in our democratic set-up, it is essential that he be not denied the protection guaranteed by our Constitution.”<sup>57</sup>

However, these judgments have not had any effect on the law enforcement machinery.

The *Madiliyawatte Jayalathge Thilakarathna Jayalath* case in which there was the first conviction under the Anti-Torture Act, the absence of due process at all stages of the investigative process was well illustrated. The case involved the alleged theft of four gems from the office of a gem dealer who alleged that the victim, a business acquaintance and a broker, was responsible. The victim stoutly denied that he had stolen the gems but was threatened by the gem dealer that, if the gems were not handed over, he would get the police to assault him. Some time later, while travelling to Colombo in the bus, the victim was arrested and taken to the Wellawatte police station where he was mercilessly assaulted with a plumbing pipe by the accused police officer, then attached to the crime division as an acting officer in charge. Thereafter, he was kept in the police station for two days. It was only after the members of his family had protested asking why he was not produced before court, that he was taken before a magistrate. He did not make any complaint of assault to the magistrate or the officer in charge of the Wellawatte police station. When asked why, he said that there had been ‘no point’ in doing so. The medical evidence showed injuries on the victim, which had been caused by a blunt weapon, including the fracture of his hand.

The accused police officer contended that the victim had been arrested on suspicion of being involved in the theft of gems and had hurt himself attempting to run away at the time of arrest. Somewhat more interestingly, it also turned out that the gem dealer, who had lodged the complaint, later found the gems and had informed the police that his allegations against the victim had been unfounded. In assessing these facts, the Colombo High Court<sup>58</sup> determined that the prosecution had established beyond reasonable doubt that the accused had assaulted the victim in order to obtain a confession from him, which he had done in his official capacity as a police

officer and therefore, a public officer. The absconding accused was convicted to the minimum seven years rigorous imprisonment (RI) and payment of a fine of Rs. 10,000, in default of which, a further two years of RI was ordered.

The case illustrated the various points at which the system fails to work in Sri Lanka. At the most fundamental level, immediate deficiencies in the law enforcement process are apparent where basic investigation skills and training is replaced by brute force on the part of not only junior but also senior police officials. This is buttressed by the impunity that law enforcement officers can claim for their actions, a continuing legacy of extraordinary emergency laws which, at one point, gave them virtual powers of life and death. The element of supervision that should normally be operative at the chain of command is also rendered completely nugatory by this breakdown in the systems of policing.

“In all these cases, what the police officers are, in fact, doing is producing substitute suspects for crimes that they have not resolved. In some instances, the police may be aware of the identity of the real culprits who were allowed to ‘escape’ after undue influence. In these cases, it is even more essential for the police to find substitutes. Producing substitutes creates the impression—among the department as well as the public—that the police are efficient and crimes are being solved. This paves the way to financial rewards and promotions.”<sup>59</sup>

The second category of cases includes infliction of torture as a sheer abuse of power, with many concrete examples to illustrate this point. Saman Priyankara<sup>60</sup> for example, was illegally detained on January 5, 2004 and severely tortured by the policemen attached to the Matale police station. Boiling water was poured down his right leg from the hip downwards, severely burning him. The perpetrator sub inspector of police (acting on the instigation of Priyankara’s neighbour) claimed that he was going to make sure that the victim would not be able to have a normal sex life anymore. Afterwards he was given some ointment to apply on his wounds but was warned not to report the incident to anyone and not to take any treatment at the hospital.

In many cases, torture has been practiced as a result of a legitimate query by a citizen. For example, Saman Jayasuriya,<sup>61</sup> was driving a van with two others when his vehicle was stopped by two policemen in civilian clothes who asked for his license and insurance. In response, he asked for their identity and was

instead, pulled out and assaulted. He managed to escape, but a contingent of policemen from the Kadugannawa police station visited his residence and mercilessly assaulted him in the presence of his wife. He was arrested and taken to the police station with his son.

Another well-known instance concerned the alleged death of a restaurant manager, H. Quintus Perera for refusing to sell liquor on a religious holiday (the Poya Day).<sup>62</sup> These cases illustrate the most heinous depths to which law enforcement has degenerated; namely the illegal punishment of individuals for trying to uphold the law by brutalized law enforcement officials who have long since, lost any respect and adherence to their office.

### **4.3. Maintenance of a culture of impunity**

A specific feature of the culture of impunity is the blatant disregard with which implicated police officers falsify official documents, including the Information Book. In one case where the court found that Grave Crimes Information Book and the Register/Investigation Book had been altered with impunity and utter disregard for the law, the view was taken that it was 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 custodiet?’ Who is to guard the guards themselves?”<sup>63</sup>

Even where police officers (junior as well as senior) have been identified as personally responsible for acts of torture by the courts of law, no internal departmental action has been taken against them. Directions of the Supreme Court to the police hierarchy to initiate disciplinary action against erring police officers are blatantly ignored.<sup>64</sup> Official resistance to these pronouncements by the Court has always been high and the police department has, in fact, set up funds to provide for lawyers to appear for the accused police officers as well as to pay the sums of compensation due personally from the implicated officers.

The National Police Commission (NPC) was the first serious legislative attempt to restore discipline in the police force. It comprises of a body of seven persons whose security of tenure is explicitly provided for.<sup>65</sup> Its powers are twofold. Firstly, it is vested with the powers of appointment, promotion,

transfer, disciplinary control and dismissal of all officers other than the Inspector General.<sup>66</sup> Secondly, and most vitally, the 17th Amendment stipulates mandatorily that the NPC “*shall* establish procedures to entertain and investigate public complaints and complaints from any aggrieved person made against a police officer or the police service...”<sup>67</sup>

However, the NPC, during its first term of existence, did not fulfill its constitutional expectations to any great extent, though it does deserve credit for its decision to interdict police officers indicted in terms of the Anti-Torture Act and its prevention of police officers being arbitrarily transferred during the pre-election period. Most importantly, it failed to take significant steps beyond a few preliminary discussions with members of civil society, to implement the Public Complaints Procedures as constitutionally mandated.<sup>68</sup>

#### **4.4. Ineffective prosecutions**

The politicization of the judiciary was accompanied by a corresponding decrease of public confidence in the office of the chief law officer of the land; the Attorney General (AG). Its record of strong prosecutions for grievous human rights abuses has not been marked. Indeed, in all the decades of enforced disappearances and extra judicial killings, there have been two successful prosecutions, namely the rape and killing of a Tamil schoolgirl and thereafter, the murder of her mother, brother and friend who went in search of her, by Sinhalese army soldiers in the North in 1996 (the *Krishanthi Kumaraswamy* case) and the enforced disappearance of twenty five Sinhalese schoolchildren (though the numbers that were abducted and never found were much larger) by Sinhalese army soldiers in 1990, acting in collusion with the school principal motivated by a private vengeance (the *Embilipitiya* case). This well illustrates the duality of the failure of the prosecutorial and justice process in respect of extraordinary crimes, irrespective of ethnicities.

Undeniably the record of successful prosecutions in respect of grave crimes<sup>69</sup> as well as in regard to ‘ordinary’ torture cases has been extremely unsatisfactory.<sup>70</sup> From the time that the Anti-Torture Act was enacted into law in 1994, no convictions for torture resulted up to 2004. Thereafter, two convictions were made by the High Court, but this remedy continues to be inefficacious due to long delays in filing indictments, filing faulty indictments and delays in the substantive trial proceedings.

According to the Attorney General’s Department, while a few (five) cases indicted under the Anti-Torture Act have resulted in acquittals, the vast

majority of cases are still pending.<sup>71</sup> Though some indictments have been sent to the relevant High Courts almost two years to the date, they have yet to be served on the accused and the reason given for this has been the severe backlog of cases in many high courts.<sup>72</sup> On its own part, the department, which is responsible for the issuance of the indictments, is accused of delay.<sup>73</sup>

However, in many cases, it was found that despite evidence of grievous torture being disclosed, prosecutions are not ensured. For example, in the *Nandini Herath case*, indictment was not filed under the Anti-Torture Act but the police merely pressed charges for simple hurt.<sup>74</sup> In *Jagath Kumara's case*<sup>75</sup> (where he was arrested, detained and tortured by the Payagala police station officers in June 200 and died at the Welikada prison thereafter), though the information and relative files were handed over to the Attorney General, no prosecution was the result. *Yogalingam Vijitha's case* is also instructive in this regard.<sup>76</sup> The Supreme Court ordered compensation and costs to be paid to a Tamil woman who had been arrested, detained and sexually tortured. The court stated as follows:

“As observed, the facts of this case have 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.”<sup>77</sup>

Though it was directed that the culpable officers be prosecuted, this was not done.<sup>78</sup>

A primary problem in this regard is that prosecutors depend solely on police investigations for the establishing of a *prima facie* case on which indictment is issued. In many cases, good investigations are simply not forthcoming by police officers who are essentially investigating their own colleagues.

#### **4.5. Exposing deficiencies in the nature of litigation at the Supreme Court**

Even at a point when fundamental rights litigation was at its zenith, the gap between judgments and their implementation was immense. Judgment upon judgment was delivered by the Supreme Court finding torture to have been committed by officers in custodial authority but none were implemented in order that these officers would be disciplined or prosecuted.<sup>79</sup>

At the least, these officers were not even removed from their positions or interdicted with catastrophic effect as seen in one particularly poignant instance of *Gerald Perera's case*,<sup>80</sup> The rights petition that he filed was upheld by the Supreme Court. However, no disciplinary action was taken as recommended against the responsible police officers who continued serving in their posts. A year later, as he was due to testify in the case instituted in the High Court under the Torture Act against the police officers who had tortured him, he was shot and killed at point blank range by some of those very same police officers. The murder trial is ongoing.

With the gradual politicization of the Supreme Court examined early on in this paper, an increased arbitrariness on the part of some judges was evidenced in response to fundamental rights petitions. In one particular case, the Court, by the order of the Chief Justice, sentenced a lay litigant to one-year rigorous imprisonment on the basis that he had talked too loudly in court and filed numerous motions in support of his application. Despite the manifest injustice of this sentencing, no perceptible outrage was shown by non-governmental organizations, including those specifically working with the legal system and it was left to a few domestic lawyers to take up the cause of the arbitrarily sentenced litigant, Tony Fernando with the single support of the AHRC. The UN Human Rights Committee later found Fernando's rights against arbitrary detention to have been violated.<sup>81</sup>

Another distinct feature in recent times has been judicial inconsistency in granting of compensation to victims of torture in fundamental rights cases. Earlier, such sums had been considerable, indicating that the Court wished that the imposing of these amounts would have a deterrent impact. In *Silva vs. Iddamalgoda*,<sup>82</sup> an alleged army deserter arrested by the police, died whilst in remand custody. The Court gave relief to his widow on the basis that she and her minor child were entitled to the compensation that the deceased would have received, but for his death. A sum of Rs. 700,000 was directed to be payable by the State and Rs. 50,000 each by the two errant police officers personally.

In one case where death was due to assault by prison officials rather than by the police,<sup>83</sup> the state was directed to pay a sum of Rs. 925,000 while each of the three prison officials were directed to pay Rs. 25,000, amounting to one million in equal shares. In awarding this considerable sum as compensation and costs, the court took into account the fact that the deceased was a father of three minor children. The treatment meted out to him while he was at

the Negombo prison, which “painted a gruesome picture where a hapless prisoner was brutally tortured and left alone, tied to an iron door, to draw his least breath,” was a contributory factor to the high award.

While these two cases involved the ultimate death of the victim, in *Gerald Perera’s case*<sup>84</sup> which concerned severe torture, the court granted the sum of Rs. 800,000 as compensation and costs for the violation of the petitioner’s rights, payable both by the police officers found to be responsible for the violations and the state. Additionally, the court granted the petitioner’s claim to reimbursement by the state of his medical expenses, including treatment obtained at a private hospital due to the gross torture that he suffered, despite the contention of the respondents that the charges were exorbitant and treatment could have been obtained at a state hospital. At that time of his killing by the very police officers who were responsible for torturing him, a major portion of the medical re-imburements had yet not been paid to him.

As contrasted to these awards, smaller amounts of compensation were awarded in recent cases as exemplified in *Tissa Kumara’s case* as well as in some others.<sup>85</sup> In the case of *BA Surange Wijewardene*,<sup>86</sup> the amount awarded was a paltry Rs. 15,000, split between the three respondents while in *D.A. Nimal Silva Gunaratne v. Kodituwakku*,<sup>87</sup> the petitioner was given only a nominal sum of Rs. 50,000 and Rs. 20,000 as costs despite the loss of one eye as a result of torture as well as the finding that his right to freedom from arbitrary arrest and detention had been violated. In *Erandaka and Anor v. Halwela, OIC, Police Station, Hakmana*<sup>88</sup> where the petitioners were assaulted while in prison as evidenced by the medical records, payment of compensation in the sum of Rs. 25,000 by the state was awarded to each of the two petitioners, in the absence of the identification of the particular prison officers responsible for the assault.

#### **4.6. Inadequate magisterial supervision**

In *Madiliyawatte Jayalathge Thilakarathna Jayalath*, a particular feature remarked upon by the High Court was the paucity of magisterial supervision of the victim of torture when he had been produced before the judicial officer and specifically, the failure to question the suspect as to whether he had been tortured. This is a common problem in Sri Lanka. A recent judgment of the court articulates this breakdown of the element of magisterial supervision in the detention process.

In *Weerawansa v Attorney General*,<sup>89</sup> remand orders by the Magistrate,

Harbour Court, made under the ordinary law were held to be in violation of the petitioner's rights in that several such orders of remand had been made even though the magistrate or the acting magistrate did not visit or communicate with him. This was ruled to offend a basic constitutional safeguard in article 13(2), that judge and suspect must be brought face to face before liberty is curtailed, which safeguard was not an obligation that could be circumvented by producing reports from the police. An earlier view<sup>90</sup> that remand orders, where they concern a patent want of jurisdiction, cannot be safeguarded under the cover of being 'judicial acts' with consequent immunity from fundamental rights challenge, was agreed with.

#### **4.7. Complicity of politicians in abuses**

The unconcern and indeed, the complicity of politicians in regard to the occurrence of torture is also interesting. In *Nandini Herath's case*, for example, the Minister of Women's Affairs at the time that Nandini was tortured, who lived close to her house, at all times, only defended the accused police officers.<sup>91</sup>

#### **4.8 Turning upon their own kind**

Instances of police officers or military persons being themselves the targets of violence by their fellow officers are not uncommon. In V.K. Swarnarekha's case, a healthy thirty-year-old policewoman was 'disappeared' in 1993 and there was suspected complicity of the police. However, the case was hushed up and there were no inquiries by the CID. There is also the case of a naval officer, Elmo de Silva being illegally detained and tortured in January 2001 when he tried to remonstrate with the police officers of the Ja-ela police station for using bad language to his wife and cousin when they had gone to visit his wife's uncle who was in custody.<sup>92</sup>

#### **4.9 Corruption of medical officers and collusion of NHRC officers with police torturers**

In the case of Garlin Kankanamge Sanjeewa<sup>93</sup> whom the police claimed, committed suicide inside the police station, the medical report pertaining to his death was seriously impugned by the family. The Chamila Bandara case is a further excellent example. Whilst being a minor, he was tortured from 20 to 28 July 2003 at Ankumbura Police Station, ostensibly on grounds that he had committed a petty crime. He was hung by his thumbs and the Officer in Charge (OIC) hit him on his legs and the soles of his feet with wicket stumps used for cricket.<sup>94</sup>

This young boy was not produced before a Junior Medical Officer, for examination despite being admitted to the Kandy hospital for treatment. It was only, after being re-admitted to the Peradeniya Hospital, that Chamila was given a proper medical examination, as a result of which, doctors declared the impairment of the use of his left arm. The second stage in this saga came when his case was reported to the district area co-ordinator of the National Human Rights Commission (NHRC) who, going by only the police version, concluded that there had been no mistreatment. Desperate by this collusion of the NHRC officer with the implicated police officers, his family appealed to and its local partners. It was primarily as a result of this pressure that investigations were re-opened into Chamila Bandara's case by the National Human Rights Commission and the matter was handed over to a one-man inquiry committee. Meanwhile, the members of his family were threatened by the police officers named as those responsible and Chamila himself had to go into hiding.

While this was ongoing, his case was taken by the AHRC before the United Nations Human Rights Committee at its seventy-ninth session when it considered Sri Lanka's combined fourth and fifth Periodic Reports under the International Covenant on Civil and Political Rights (ICCPR). Chamila himself gave testimony before the members of the UN Committee.<sup>95</sup> Chamila Bandara's grievance was ultimately vindicated by the report of the one man inquiry committee of the NHRC which concluded that the young boy had, in fact, been tortured, as a result of which, his rights under article 11, article 12(1) and article 13(1) and (2) had been violated.

The Officer In Charge of the Ankumbura police and other police officers serving under his command were found responsible. The final recommendation of the inquiry committee was that a copy of the inquiry report be sent to the IGP who should send severe warning to the individual police officers that any further instances of abuse on their part would result in a termination of their services.<sup>96</sup> Like in the case of similar directions by the Supreme Court, this too has been of no practical value in bringing about disciplinary action against the culpable police officers.

In addition, his case exemplifies a further problematic development at the stage of fundamental rights litigation. Individual Supreme Court judges now prefer to lay bye fundamental rights hearings in instances where a parallel High Court trial is taking place, ostensibly on the basis that the finding of the Court might influence the attitude of the High Court. For example,

in *Chamila Bandara's case*, this is precisely what happened and the matter is now indefinitely laid-by.<sup>97</sup> This attitude continues to be taken despite the protestations of lawyers appearing for the victims that the inevitable laws delays attending the trial will also render the Supreme Court remedy, redundant and that, in any event, the two judicial proceedings are different and should be proceeded with differently.

#### **4.10. Impossibility of ensuring justice without witness protection**

Responsibility for the absence of a witness protection scheme speaks to the responsibility of the Department itself and the commitment of the State to ensuring justice. The extent to which this has been a factor in crippling the criminal justice process is clear.<sup>98</sup> *Chamila Bandara* (cited above), together with his family members were threatened by the OIC of the Ankubura Police and, in consequence had to remain many years in hiding.

Similar patterns of intimidation are apparent in a large number of cases; *Lalith Rajapakse* learnt that there was a plot to poison him after he made the initial complaint against the respondent police officers and had to go into hiding. In the case of *Gerald Perera*, he was, in fact, killed after numerous threats by the police officers who had tortured him proved to be unsuccessful in coercing him to withdraw the litigation that he was engaged in.

### **5. Conclusion**

There is no doubt that the failure of effective law enforcement is a central question in Sri Lanka today. A number of measures that should be taken to redress this failure have been outlined by the AHRC, including revision of the prosecutorial and investigative process and the initiation of an effective witness protection system.<sup>99</sup> A special police unit empowered to entertain complaints and immediately commence investigations is a necessity, not only in 'special cases' of torture (where international pressure is brought to bear on state authorities) but rather, in all cases.

Ideally, an office of a special prosecutor having the appropriate independence of office with independent investigative staff should be established.<sup>100</sup> The investigative/prosecutorial machinery set in place should follow special procedures in relation to investigating and prosecuting complaints by women victims of torture. Such an office would also better co-ordinate the present procedures in respect of examining urgent appeals by victims of torture instead of committees of government officials which is presently the case. The AHRC has also urged the application of the doctrine of command

responsibility, the use of developed forensic investigations and a detailed list of specific suggestions<sup>101</sup> relating to arrest and production in court<sup>102</sup> speedy investigations and filing of indictment under the Anti-Torture Act and initiation of community protection mechanisms.

The intensification of the conflict and the increasing breakdown of law and order in all parts of the country have led to incidents of disappearances, extra judicial killings in recent months, thereby creating a climate that is highly conducive to human rights abuses. This has been further enabled by the return to rule by emergency regulations conferring extraordinary powers of arrests and detentions on the forces which have had inimical effect in controlling and preventing practices of torture.

Thus, the essential crisis in Sri Lanka still remains the non-implementation of the rule of law. The shift from a central focus on this question to nebulous, (though highly profitable), ventures in peace and conflict resolution on the part of the country's non-governmental community has been unfortunate; it has wasted time and effort in processes that were doomed from the start precisely due to its flawed conceptualization. More importantly, it has allowed sometimes insidious and sometimes sledgehammer attacks on constitutional institutions and indeed, the very Constitution to take place with scarcely a murmur; the result has been a calamitous breakdown of the governance process.

In this situation, talk of constitutional solutions to solve the 'ethnic problem' has been limited to rhetoric and political manoeuvring; where constitutional provisions are blatantly abused by the political establishment in respect of governing the South, can there be any hope in such a Constitution providing any solution for the intractable war in the North/East?

The studies engaged in by the AHRC and its partner activist networks in Sri Lanka, which have been examined in this paper, show the overriding importance of returning the reform process back to the basics of restoring the legitimacy of the justice system and in particular, the law enforcement process. This should, indeed, be the central focus of our work.

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1. The Independence Constitution in 1947 established the judicature as a body distinctly separate from the executive and the legislature and safeguarded minority rights in section 29(2). But affronted by what it saw as an unwarranted bridling of their authority, the leftist United Front government which formed the government in 1970, deciding on

an autochthonous or disastrously 'home grown' formula, specified that the legislature, (the National State Assembly) was the sole and supreme repository of power. All other institutions, including the judiciary, had to give way. Regardless of whichever government came into power then on, political expediency determined the course of constitutional and political events in Sri Lanka.

2. The present constitution, available at <<http://www.priu.gov.lk/Cons/1978Constitution/Introduction.htm>>
3. These developments were in sharp contrast to, for example, neighbouring post colonial India's commitment to the democratic norm and in particular, the constitutional environment where the right to life was recognised in many of its ramifications, including all the ingredients that go to make the quality of life, not just physical existence. The growth of public interest litigation was spurred by a receptive constitutional framework.
4. Basil Fernando, 'The tale of two massacres: The relevance of Embilipitiya and Bindunuwewa to conflict resolution in Sri Lanka', in *Law and Society Trust Review*, vol. 15, issue 212, June 2005.
5. As is currently the case with the Nordic backed Sri Lanka Monitoring Mission, (SLMM) which has, by now lost public support to a great extent.
6. The Chambers Dictionary explains 'praxis' as the practice or practical side of an art or science, distinguished from its theoretical side.
7. The Supreme Court has exclusive jurisdiction to hear and determine complaints of violation of fundamental rights (except the right to life) by executive or administrative action. Article 13(1) stipulates arrest only according to 'procedure established by law' and the giving of reasons for the arrest. Article 13(2) states that every detained person must be subjected to judicial supervision and that further detention must only be upon judicial order. Article 13(3) is to the effect that 'any person charged with an offence shall be entitled to be heard in person or by an attorney-at-law, at a fair trial by a competent court' while article 13(4) prohibits the punishment of death except by order of a competent court. article 11 states that 'No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'
8. Sri Lanka has enacted domestic legislation to give effect to the UN Convention against Torture. Section 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No 22 of 1994 (hereafter the Anti-Torture Act) makes torture, or the attempt to commit, or the aiding and abetting in committing, or conspiring to commit torture, an offence. A person found guilty after trial by the High Court is punishable with imprisonment for a term not less than seven years and not exceeding ten years and a fine not less than Rs 10,000 and not exceeding Rs 50,000.
9. Sri Lanka has always been governed by either the Sri Lankan Freedom Party (SLFP, a core constituent of the 1970 United Front government as well as of the modern Peoples Alliance) or the United National Party (UNP), often as coalition of other parties, mainly the SLFP with leftist parties and the UNP with minority parties. But these lines often being blurred contingent on expedient power politics.
10. *Senadheera v. The Bribery Commissioner* 63 NLR 313.
11. *Queen v. Liyanage* (1966) 68, NLR 265, *Bribery Commissioner v. Ranasinghe* (1964) 66 NLR 73.
12. In *Bribery Commissioner v. Ranasinghe*, *ibid.*, later affirmed by the Privy Council in

Kodeeswaran v. The Attorney General (1969 72 NLR 337) it was pointed out that section 29(2) of the Independence Constitution represented the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which inter se they accepted the Constitution and are therefore unalterable under the Constitution.

13. In place of the earlier independent Judicial Service Commission, a politically subverted Judicial Services Advisory Board (JSAB) and an ineffective Judicial Services Disciplinary Board (JSDB) was established. The JSAB had no right to appoint minor judges but only to recommend their appointment to the Cabinet (articles 126 and 127 of the 1972 Constitution).
14. Only one case alleging violation of fundamental rights was filed during this time in the District Court, Ariyapala Guneratne v. The Peoples Bank, 1986 SLLR 338.
15. Article 107. As in the two previous Constitutions, the security and tenure of the judges were guaranteed and judges of the superior courts held office during good behaviour and could be removed only after address of Parliament on grounds of proved misbehaviour or incapacity and that the full particulars of such allegations should be set out, vide Article 107 (2). The JSAB and the JSDB were replaced by a Judicial Service Commission (JSC) vested with the same powers. The JSC consisted of the Chief Justice and two other judges of the Supreme Court, named by the President, who could be removed only for cause assigned, vide article 112.
16. Seven out of the nineteen judges holding office were not re-appointed, thus reducing their guaranteed tenure.
17. The attempted impeachment of then Chief Justice Neville Samarakoon allegedly due to criticism of the government by him during the course of a speech at a school prize giving ceremony was another black mark of this time. The Select Committee appointed to investigate his conduct (divided according to party affiliations), found no "proved misbehaviour" which could justify the chief justice's removal but viewed his conduct as a serious breach of convention.
18. SC Application Nos. 7-47/87 (Spl) and SD 1&2/87 (Presidential Reference).
19. Article 126(2) gives the right to move court only to a person alleging the infringement of any right 'relating to such person', or an attorney at law on his behalf. Bona fide public interest groups, unlike in the Indian constitutional context, cannot come before court on behalf of a victim.
20. Only executive and administrative challenge is permitted. Judicial or legislative acts are not challengeable.
21. Article 16(1) of the Constitution. Article 121 of the Constitution provides that bills must be challenged within one week of their being placed on the Order Paper of Parliament. Even though there is a constitutional requirement to publish the bills in the gazette at least seven days before it is placed on the Order Paper of Parliament, vide article 78 (1), the gazettes are not easily obtainable and offensive bills go unchallenged. In any event, this scrutiny is also brushed aside when the cabinet certifies a bill as being urgent in the national interest. Here, the bill is referred directly by the president to the Supreme Court for its constitutionality and citizens have no formal right of challenge, vide article 122.
22. It was only in 2003 that the Court inferred a positive right to life from the constitutional right not to be punished with death or imprisonment except by court order under article 13(4). See, Perera v. Iddamalgodha 2003 [2] SriLR, 63, per judgment of Justice

Mark Fernando and the Wewelage Rani Fernando case, SC (FR) No 700/2002, SCM 26.07.2004, per judgment of Justice Shiranee A. Bandaranayake. These two cases are also authority for the proposition that a dependant has the right to come before court on a rights petition when a family member dies as a result of police torture. It took the Court more than twenty-five years to affirm these core rights as being implied from the existent constitutional provisions.

23. Per Justice M.D.H. Fernando in *Perera vs. Iddamalgoda* (ibid), *Sanjeewa v. Suraweera*, 2003 [1] SriLR, 317, *Wewelage Rani Fernando* (ibid), *Banda v. Gajanayake*, 2002 [1] SriLR 365, in the context of emergency regulations, *AM Vijitha Alagiawannawe v. LPG. Lalith Prema, Reserve Police Constable and Others* SC (FR) No 33/2003 SCM 30.11.2004. *Deshapriya v. Weerakoon*, SC 42/2002 SCM 8.8.2003. The principle asserted was that participation, authorization, complicity and/or knowledge is not compulsory for responsibility to be found on the part of a superior officer. This could arise purely on dereliction of duties. This principle was judicially stretched to encompass even an instance where an officer-in-charge of a police station fails to promptly record the statement of the Petitioner regarding his assault and to embark on an investigation in respect of the same.
24. In re *Perera* , SC 1/90; Supreme Court Minutes (“SCM”) 18.9.1990.
25. *Joseph Perera v. The Attorney General* (1992) 1 Sri LR 199, 230, *Shanthi Chandrasekeram v. D.B. Wijetunge and Others* (1992) 2 Sri L.R. 293, *Channa Peiris v. AG* (1994) 1 SLR 1 at p 51 and *Sunil Rodrigo v. De Silva* (1997) 3 SLR 265 where the Court upheld the right of a detainee under emergency to be speedily produced before a magistrate and to have legal representation.
26. See, report by the United Nations Special Rapporteur on the Independence of the Judiciary in April 2003 to the UN Commission on Human Rights, (E/CN.4/2003/65/Add.1 25, February 2003) and several relevant press releases of the Special Rapporteur. See also, releases dated 27 February 2003 and 28 May 2003. Also Report of the International Bar Association, 2001, Sri Lanka: Failing to protect the rule of law and the independence of the judiciary.
27. The Chief Justice has absolute power to constitute benches to hear cases in the Supreme Court. One notable casualty of this practice was the then senior-most judge, Justice Mark Fernando who had, in fact, been bypassed for promotion in 1999 by President Chandrika Kumaratunge in favour of then Attorney General, S.N Silva. Thereafter, Justice Fernando was not assigned to sit on any bench hearing important constitutional matters despite court tradition to the contrary, given his seniority. He retired two years prematurely on the basis that he could no longer fulfill the expectations on which he had assumed judicial office.
28. In one instance in particular, involving three fundamental rights petitions filed against his own appointment, the chief justice constituted a Divisional Bench consisting of the most junior judges rather than the most senior, indicating a clear contempt for convention and precedent.
29. See, the State of Human Rights in Eleven Asian Nations: 2006, Asian Human Rights Commission, in the chapter on Sri Lanka, at page 288. See among others, case of *B.A.S. Surange Wijewardene*, SC (FR) 533/2002, SCM 27.5.2005, where the compensation given was only Rs. 15,000 divided between three respondents and the case of *Palitha Tissa Kumara*, SC (FR) 211/2004, where despite a finding of extensive torture, the compensation awarded was only Rs. 25,000.

30. See the highly critiqued judgment by a divisional bench of the Court in the Singharasa case, (SCM 15.09.2006, judgment of Chief Justice Sarath Silva), ruling that Sri Lanka's accession to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was unconstitutional. This has posed direct obstacles to ongoing campaigns to pressurise the Sri Lankan government to ratify the Optional Protocol to the Convention against Torture (CAT).
31. The United Nations Human Rights Committee has, up to date, delivered six communication of views against the Sri Lankan state in terms of the protocol to ICCPR, namely *Fernando v. Sri Lanka*, Case No. 189/2003, Adoption of Views on 31 March 2005; *Sarma v. Sri Lanka*, No 950/2000, Adoption of Views on 31 July 2003; *Jayawardene v. Sri Lanka*, Case No. 916/2000, Adoption of Views on 26 July 2002; *Ivan v Sri Lanka*, Case No. 909/2000, Adoption of Views on 26 August 2004; *Sinharasa v. Sri Lanka*, Case No. 1033/2004, Adoption of Views on 23 August 2004; and, *Rajapakse v. Sri Lanka*, Case No. 1250/2004, Adoption of Views on 26 July 2006. However, there has been no implementation of these views up to date. In some cases, such as in *Fernando*, which involved a violation of ICCPR article 9(1) as a result of the arbitrary sentencing for contempt by the Supreme Court, the government has replied to the Committee saying that it could not implement the views since it would be construed as an interference with the judiciary.
32. *Supra*, note 26, Report of the International Bar Association, 2001, Sri Lanka: Failing to protect the rule of law and the independence of the judiciary.
33. Interview by former Supreme Court Justice C.V. Wigneswaran, one of the most respected judges of the Court, to the Sunday Leader, (13.3.2005), consequent upon his retirement.
34. Act, No 19 of 1994.
35. Act, No 21 of 1996, hereafter the NHRC Act.
36. The requirement, for example, that the NHRC should be informed of any arrest and detention taking place under the Prevention of Terrorism Act, No 49 of 1979, vide section 28(1) of the NHRC Act, is not adhered to. Indeed, the very requirement that any person with the authority of the Commission may enter into any place of detention. Section 28(2) of the NHRC Act is defeated by police practice that had in fact, been formalized by a police circular which allows officials on the NHRC to inspect (with prior notice) only the cells of police stations themselves but not the entire precincts of the station including the toilets and the kitchen, where, most often, torture takes place.
37. This provision violates the Paris Principles in that “[a]n effective national institution will have drafted its own rules of procedure and these rules should not be subject to external modification.”
38. Relevant rules that would have permitted the NHRC to refer cases to the appropriate court as mandated by section 14(3)(b) have not been yet prescribed by the Supreme Court.
39. Five individuals of high integrity and standing in public life and with no political affiliations, (out of which, three members represented the minorities), had to be nominated jointly to the CC by the Prime Minister and the Leader of the Opposition. One member had to be nominated by the smaller parties in the House, which did not belong to either the party of the Prime Minister or the Leader of the Opposition. In

addition, the President had the authority to appoint a person of his or her own choice. The rest of the CC comprised the Leader of the Opposition, the Prime Minister and the Speaker of the House *ex officio*.

40. The Elections Commission was not constituted at all due to the President Chandrika Kumaratunge refusing to appoint the nominee of the CC as its chairman.
41. Though names of five nominated members were agreed upon by the Prime Minister and the Leader of the Opposition and communicated to the President for appointment as constitutionally required in late 2005, these appointments were not made. The deliberate delay on the part of the smaller political parties in parliament to agree by majority vote on the one remaining member to the CC was cited as the ostensible reason for the CC not being brought into being. The many representations made to the President by civil society groups that the one vacancy in the CC should not prevent the appointment of the members nominated already and that the consequent functioning of the body was essential to the good administration of the country, were to no avail.
42. AHRC, A Special Report on Torture, article 2, vo1.1, no. 4 August 2002, at page 2.
43. AHRC Second Special Report on Torture, article 2, vo1 3. no. 1, February 2004.
44. Mission to Sri Lanka, 28 November – 6 December 2005, LST Review, vol.16, issue 221, March 2006. He called on government officials to accept that disrupting this pattern of custodial torture is a necessary step not only in ensuring the human rights of those arrested but also of retaining public trust and confidence.
45. Konesalingamv. Major Muthalif and Others, SC (FR) no. 555/2001, SCM, 10.2.2003.
46. Shanmugarajah v. Dilruk, S.I., Vavuniya, SC (FR) no. 47/2002, SCM. 10.2.2003.
47. Adhikary and Adhikary v. Amerasinghe and Others, SC (FR) no. 251/2002, SCM. 14.2.2003.
48. Senasinghe v. Karunatileke and Others, SC (FR) no. 431/2000, SCM 17.3.2003.
49. Silva Vs. Iddamalgoda, 2003 [2] SriLR, 63.
50. Both in the Chamila Bandara case (AHRC UA -35-2003) and the Wewelage Rani Fernando case, (SC (FR) No 700/2002, SCM 26.07.2004) the police arrest was on the basis that the arrestee had stolen some bunches of bananas. The first petitioner, while being a minor was brutally tortured by the police while the second arrestee was brutally tortured by prison officials resulting in his death.
51. AHRC Urgent Appeal (UA-18-2004).
52. Complaints of torture recorded at police stations are first referred to the Assistant Superintendent of Police (ASP) or Superintendent of Police (SP) of the relevant area. If they are entertained, the legal division of the police refers them to the IGP who refers them thereafter to the Special Investigations Unit (SIU). The SIU (which is in charge of investigating all complaints against police officers (including fraud) and is currently completely under staffed) is directly under the command of the IGP. The IGP may also instruct the Criminal Investigations Department (CID) or another special unit of the police to conduct further investigations but this is exceptional. For years, domestic and international activist groups have been calling for an independent investigative and prosecutorial office to inquire into such complaints that invariably involve law enforcement officers themselves and which cannot be effectively inquired into by their fellow police officers particularly as postings at the SIU are transferable.

53. AHRC Third Special Report on Torture, An X-Ray of the Sri Lankan policing system and torture of the poor, at page 6.
54. Section 23(1) of the Code of Criminal Procedure Act, No 15 of 1979 incorporates accepted procedures in relation to arrest, including the stipulation that the person making the arrest must inform the arrestee of the nature of the charge or allegation upon which the arrest is made. This provision of the code in practice today reflects similar principles in the old Criminal Procedure Code to which it succeeded.
55. The case of Gerald Perera is an example. A law abiding employee of the Ceylon dockyard was arrested by the police under mistaken identity, considering him to be a known criminal by the name of "Gerald." He was tortured so severely that he suffered renal failure. The Fundamental Rights petition that he filed was upheld by Court, *Sanjeewa v. Suraweera*, 2003 (1) SLR, 317.
56. AHRC UA-19-2002. He had been accused of involvement in two petty theft cases even though no one had filed any complaints against him and there was no proof to implicate him.
57. The case law is specific in this respect; see, *Amal Sudath Silva v. Kodituwakku*, (1987) 2 Sri LR, 119; *Senthilnayagam v. Seneviratne*, (1981) 2 Sri LR 187; *Dissanayake v. Superintendent, Mahara Prisons*, (199) 2 Sri LR, 247, *Premalal de Silva v. Inspector Rodrigo*, (1991) 2 Sri LR 307; *Pellawattage (AAL) for Piyasena v. OIC, Wadduwa, SC Application No 433/93, SCM 31.08.1994*. In *Silva v. Iddamalagoda*, 2003 (2) SriLR, 63, a specific argument that an alleged bad record of the petitioner should be held against him was dismissed by Court pointing not only to the presumption of innocence but also that by the respondent's actions in depriving the petitioner of life, he lost the opportunity to redeem the alleged bad record.
58. HC 9775/99, order of S. Sriskandarajah J.
59. AHRC Third Special Report on Torture, An X-Ray of the Sri Lankan policing system and torture of the poor, at page 7.
60. AHRC-UA-07-2004.
61. AHRC-UA-31-2004 (1 April 2004).
62. AHRC-UA-132-2004 (5 October 2004).
63. *Kemasiri Kumara Caldera's case*, SC (FR) 343/99, SCM 6.11.2001.
64. See, *Sanjeewa v. Suraweera*, supra note 55, *Silva v. Iddamalagoda*, supra note 57, as well as *Dayaratne's Case*, (SC (FR) 337/2003 SCM 17.5.2004) where a senior attorney was severely assaulted for attempting to remonstrate with the police over the arrest of a neighbour's son, are some recent examples.
65. Vide 17th Amendment, Article 155A.
66. Vide 17th Amendment, Article 155G(1)(a).
67. Vide 17th Amendment, Article 155G (2). Italics added.
68. Though a Public Complaints Procedure was put into place by the second NPC, its legitimacy was negated by the fact that the members of this body were unconstitutionally appointed by the President as was discussed previously.
69. The rate is 4 per cent. See, *The state of human rights in eleven Asian nations: 2006*, Asian Human Rights Commission, in the chapter on Sri Lanka, at page 288.

70. In its reports to the UNHRC and to CAT, (UN Human Rights Committee (CCPR/CO/79/LKA) Human Rights Committee, seventy ninth session, November 2003 and Committee Against Torture (CAT/C/LKA/CO/1/CRP.2. 7-25 November 2005), the State referred to a special unit [Prosecution of Torture Perpetrators Unit (PTP Unit)] in the Attorney General's Department. Closer scrutiny reveals that there is no separate Unit dealing with torture cases and the Unit is only an administrative convenience with neither specially assigned staff nor separate premises. The torture cases are distributed among 4 - 5 State Counsels, who also handle other criminal cases. The AG does not seem to monitor to investigations conducted by the SIU. Neither is the progress of an investigation reported to the AG.
71. Condensed from information afforded by the Attorney General's Department during interviews by researchers with its officers during 2004 for the preparation of a joint report to the 2005 CAT sessions by the Law and Society Trust and the AHRC.
72. *Ibid.*
73. The common unacceptable defence being that this is because most torture cases reported is from the North and the East and the conflict impedes expeditious proceedings. The recent situation of issuance of indictment consequent to the renewal of conflict in the North/East from 2006 onwards has not yet been ascertained.
74. AHRC, A Special Report on Torture, article 2, vol.1, no. 4, August 2002, at pages 14 and 15.
75. *Id.*, at page 18 – situation existent as at August 2002.
76. SC (FR) no. 186/2001, SCM 23.8.2002.
77. Citing Athukorala J in *Sudath Silva v. Kodituwakku*, 1987 2 SLR 119.
78. Vide letter written by the co-ordinator of the urgent appeals programme of the AHRC to then minister of the interior dated 9 September 2002, asking that the relevant police officers be indicted. Quoted in AHRC Special Report on Torture, article 2, vol.1, no 4, August 2002, at page 52.
79. "The number of credible complaints of torture and cruel, inhuman and degrading treatment whilst in police custody shows no decline," per observation of Justice Mark Fernando in *Sanjeewa v. Suraweera*, 2003 (1) SLR, 317. This is one of the many cases which recommended that disciplinary action be taken against the relevant police officers but was not adhered to.
80. *Ibid.*
81. *Fernando v. Sri Lanka*, Case No 189/2003, Adoption of Views on 31 March 2005.
82. *Supra* note 57.
83. *Wewelage Rani Fernando*, *supra* note.
84. *Sanjeewa v. Suraweera*, *supra* note, 55.
85. See, *The state of human rights in eleven Asian nations: 2006*, Asian Human Rights Commission, in the chapter on Sri Lanka, at page 288.
86. *Ibid.*
87. *Ibid.*
88. [2004] 1 Sri LR, 268. Also, *Adhikary and Adhikary vs. Amarasinghe and Others*, SC (FR) No. 251/2002, SCM 14.2.2003), another recent case again involving a police assault on

- a lawyer where the Court ordered Rs. 20,000 as compensation and Rs. 5,000 as costs to be paid by the state.
89. (2000) 1 SLR 387.
  90. Farook v. Raymond (1996) 1SLR, 217.
  91. AHRC, Special Report on Torture, article 2, vo1.1, no 4, August 2002 at page 15.
  92. AHRC, A Special Report on Torture, article 2, vo1.1, no 4, August 2002, at page 18; Ekanayake v. Weeraawasam, SC (FR) no. 34/2002, SCM 17.3.2003 concerned the case of a reserve police constable subjected to assault by a reserve sub inspector.
  93. AHRC UA-41-2003.
  94. AHRC UA-35-2003. The same manner of torture was inflicted upon Galappathy Guruge Gresha De Silva (AHRC, article 2, vol.1, no. 4, August 2002, p. 24).
  95. It is notable that the representative of the State before the UNHRC specifically denied that torture had occurred when the case was brought to his attention by the UNHRC, more or less alleging that the allegations had been fabricated.
  96. It later transpired that the one medical report adverse to Chamila Bandara, the victim, (which contradicted the other reports finding physical injuries compatible with the nature of the torture described by the victim), was written out by a doctor who had not seen or examined Chamila Bandara.
  97. SCFR 484/2003.
  98. The need for such a scheme has been acknowledged by the then Attorney General himself, K.C. Kamalabayson who made the following observation in an address of December 2, 2003: "Another important feature that requires consideration is the need for an efficient witness protection scheme that would ensure that witnesses are not intimidated and threatened. No doubt this would involve heavy expenses for the State and amendments to the law. I will only pose a simple question. Is it more important in a civilized society to build roads to match with international standards spending literally millions of dollars rather than to have a peaceful and law abiding society where the rule of law prevails?" in remarks made during the 13th Kanchana Abhayapala Memorial Lecture as reported in *The Right to Speak Loudly*, Asian Legal Resource Centre, 2004. Also, "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," Concluding Observation No. 9 of the UN Human Rights Committee (CCPR/CO/79/LKA) Human Rights Committee, seventy-ninth session, November 2003.
  99. AHRC Third Special Report on Torture, An X-Ray of the Sri Lankan policing system and torture of the poor, at page 9.
  100. There is precedent for this in Sri Lanka in that the Office of the Public Prosecutor was first established in 1973 but was done away with after 1978. The manner in which this office was permitted to function was however, not free from political control.
  101. AHRC Third Special Report on Torture, An X-Ray of the Sri Lankan policing system and torture of the poor, at page 12.
  102. *Ibid*. One useful recommendation is that suspects should be produced only before courts and not in the residences of magistrates given the practice that this manner of judicial scrutiny is often defeated by the judicial officer not even being shown the suspect.

# Police reform initiatives within a dysfunctional system

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## Introduction

A peculiar feature that emerged through the study of the problems relating to the policing system in Sri Lanka is that the government sources, through various commissions, have identified the same problems which have been substantiated by independent sources.

That the system has become dysfunctional is a common finding. About the manifestation of such dysfunctionality there is no controversy. That a radical change is needed is also commonly acknowledged. However, in terms of any initiatives for change the issue of policing is not considered a priority by the government and even independent sources appear reluctant to make any determined effort in this direction. There also seems to be an underlying fear that any significant attempt to deal with the dysfunctional nature of the system may have adverse consequences on the country's political system and social life as a whole.

Such reform seems to be regarded as too formidable a task that no one is really willing to venture into. Besides this, there is also apparently an underlying fear that initiatives to change the habits that have entered into the system and the incumbents of the system may cause such retaliation that the political leadership does not feel competent to deal with. It is not the factual elements regarding the failed political system of Sri Lanka that creates controversy, but as to whether these problems can, or should be addressed. The suggestion made in this paper is that it is this overall problem of how to deal with these issues that needs attention, rather than diagnosis of the various aspects of the ailments that affect policing in Sri Lanka.

## **The premise**

Attempts to reform policing have been initiated in Sri Lanka more than once. Still the situation remains critical. The hypothesis taken in this article is that reform of dysfunctional policing system requires a discourse of more fundamental issues such as the nature of the political system within which policing has to take place.

This article speaks of policing only in areas outside the conflict zone of Sri Lanka in the north and the east. In many parts of the north and east large areas are outside the writ of the Sri Lankan police service. In some parts rebels claim to have their own police and judiciary. Such rebels include not only the LTTE but also some armed groups that are opposed to the LTTE. This work does not address the policing issues relating to these areas. It deals with those areas of the country within which the police system still operates under the ordinary law and legal procedures.

## **Studies on the policing system**

The Asian Human Rights Commission has closely studied the issues relating to policing in Sri Lanka for over ten years now. Some of the publications based on these studies are: *article 2*, vol. 1, no. 4;<sup>1</sup> *article 2*, vol. 3 no. 1,<sup>2</sup> a book entitled *An X-ray of the Sri Lankan policing system & torture of the poor*,<sup>3</sup> and several reports submitted as shadow reports to UN agencies. Much of the material produced is available on the Internet.<sup>4</sup>

There is no significant police reform-initiative taking place in Sri Lanka at the moment. Previously there had been some commissions appointed by former governments which produced reports analyzing the problems facing the policing system and which made many recommendations for change. Given the drastic nature of the political and social changes that have taken place in the country, the contents of these reports may seem somewhat obsolete by now. However, for the purpose of record as well as to provide some reference to the historical roots of the present day policing system some mention of these reports may be useful.

## **A historical perspective**

The first of these reports is known as the Soertsz Commission Report, which derived its name from the chairperson of the Commission, Justice Francis J. Soertsz, and this report was submitted in December 1946. The title of the report was 'Sri Lanka police service – suggestions for improving its efficiency

and effectiveness.' This was published as a sessional paper and covers such topics as the composition of the force; the conditions of the service and selection of officers for promotion and transfer; procedure for investigations of complaints made by the public against the police; the powers and duties of the police, especially in relation to preliminary investigations of offenses, the arrest and custody of the accused and suspected persons; the institutions of prosecutions in court and the expeditious conduct thereof; amendment of the police ordinance and of other existing legislation for giving effect to the recommendations of the commission and a final chapter entitled 'miscellaneous' which covered such topics as Port Police, public prosecutor, criminal investigations department and political police.

Another commission report was published by the government publication bureau in October 1970, and this was named the Basnayake Commission. This commission's mandate was to cover the following issues: The nature and the scope of the functions of the Police Force, and the measures that should be taken to secure the maximum efficiency of the Police Force for the purpose of maintaining law and order, and to secure a greater measure of Public co-operation and confidence; the measures that should be taken to reorganize the Police Force, having regard to Ceylon's status as a independent country; the structure and composition of the Police Force, the methods of recruitment and training of personnel for the Police Force, the terms and conditions of service (other than basic rates of pay) and the selection of officers for promotion and transfer; the procedure that should be adopted for the investigation of complaints made by the public against members of the Police Force, especially in relation to:

- (i) the preliminary investigation of offences,
- (ii) the apprehension and custody of accused or suspected persons, and
- (iii) the institution of prosecutions in the Courts and the expeditious conduct thereof ; the adequacy of the security and safeguards provided hitherto to members of the Police against risk to life and bodily injury involved in the performance of their duties, and the adequacy of the compensation hitherto payable where injuries were sustained, or where death resulted from any injury sustained, in the course of their duties; any amendments to the Police Ordinance and to other existing legislation which may be necessary for giving effect to our recommendations on the matters aforesaid or for securing the objects and purposes of such recommendations; and any other matter connected with, or incidental to the matters specified above

in respect of which we may receive representations; and to make such recommendations as we may consider necessary as a result of our inquiries in respect of the aforesaid matters.

The report of a further commission was published in 1995 which is generally known as the Justice D.G. Jayalath Commission Report, the mandate of which was to examine and report on the following matters: The structure and composition of the police force; the methods of recruitment and training of personnel for the police force; the selection of officers for promotions and transfer; the nature and scope of functions of the police force and the measures that should be taken to secure the maximum efficiency of the police force for the purpose of maintain law and order; the measure that should be adopted to encourage better relation with the general public; the establishment of a permanent police commission to administer recruitment, promotions and disciplinary control in the police service; any other amendments to the Police Ordinance and to other existing legislation which may be necessary for giving effect to the recommendations on the matters aforesaid or for securing the objects and purpose of such recommendations.

### **Some general observations on the previous studies**

Already in 1946 a serious crisis in the policing system was perceived and by 1970 much graver problems had surfaced. Then by 1995 a completely new set of problems had arisen due to larger politicization of the system and the introduction of paramilitary elements as policing units such as the Special Taskforce. None of the recommendations of the above commissions were put into effect.

### **The 17th Amendment to the constitution: October 2001**

Perhaps the 17th Amendment was the most significant attempt made so far to recognize the serious problems in the Sri Lankan policing system together with several other public institutions. The central problem that this amendment tried to address was the politicization of the public services. This amendment provided for the appointment of a Constitutional Council who would have the obligation to appoint the commissioners for several commissions including the National Police Commission (NPC).<sup>5</sup> The NPC had the powers of appointment, promotion, transfer and disciplinary control of all police officers except for the Inspector General of Police. It also had the duty to establish a public complaints procedure. The first commission came to be appointed in November 2002 and by the end of the term of the first batch of commissioners the Constitutional Council had ceased to exist so

that it was not possible to appoint the new commissioners. Ever since, there have been no appointments to the commission, by the procedure prescribed by the Constitution. In 2006 the executive president made appointments to the commission bypassing the provisions of the constitution. As the NPC derived its authority from the constitution itself, the appointment of its members bypassing the constitution has raised questions about its legitimacy.

### **Identification of areas needing reform**

At the moment there are no reform programmes being undertaken by the police. However, there are many areas that have been identified by some senior police officers, international experts, as well as the public as major areas that need to be addressed in any serious attempt at reform. These are, the elimination of criminal elements from within the policing system; to re-establish command responsibility within the police hierarchy; the establishment of a credible system of criminal investigations; the elimination of torture as the most commonly used method of criminal investigation; the training of police in the more sophisticated methodologies of investigations including forensic training; measures to ensure police attendance in courts and compliance with court orders; the establishment of a proper system of disciplinary control within the police and the establishment of a credible public complaints procedure.

### **The elimination of criminal elements from within the policing system**

The Inspector General of Police himself recently identified the criminal elements within the police together with soldiers and deserters as being among the culprits for some of the very grave crimes in the country such as abductions, disappearances and murder which increased sharply at the end of 2006 and continuing into 2007.

“Sri Lanka’s police admitted Tuesday that its own security personnel have been involved in kidnappings for ransom and vowed to crack down on mounting abductions and killings of civilians. Police Inspector General Victor Perera said a ‘large number’ of police officers and troops had been arrested on charges of abduction and extortion.”<sup>6</sup>

The former Inspector General of Police who retired in 2006 also pointed out the criminal elements within the policing system.

“.....While the IGP, referring to the Auditor General’s latest report on the Police Department, is quoted as saying:

‘...that corrupt officers were liable to be blacklisted, taking into account the corruption and fraud cases pending against them.’

In the same article he went on to say:

‘One of the shocking revelations highlighted in the AG’s report was where certain senior officers had swindled thousands of rupees in the police cash reward scheme. Cash rewards of Rs. 1,500 were regularly paid to individuals or groups of police officers for outstanding service in the field but reportedly, the audit report highlighted occasions where the figures were altered to read Rs. 15,000.’

And the IGP went on to remark that:

‘...the audit report on individual police stations were so serious that if action was to be taken, then most officers would be liable to be sacked.’”<sup>7</sup>

In the aftermath of the assassination of the High Court judge, Ambepitiya, J, by a drug lord, there was much public criticism about high-ranking police officers being linked with drug dealers and underworld figures.<sup>8</sup> However, perhaps it was the assassination of Inspector of Police (IP) Douglas Nimal and his wife that brought the most acute criticism against the police connivance with drug dealers. IP Douglas Nimal who was investigating several drug related crimes was arrested on false charges and later released by the Attorney General. He complained that some persons, including high-ranking police officers, had implicated him in order to obstruct his investigations. He was murdered shortly after his release while traveling to pursue his complaints.

Dealing with the internal situation of the serious involvement of police officers in crime should be one of the primary aims of any police reform. A reform that leaves out this aspect is very likely to receive very little public attention, support or credibility. Perhaps the example of Hong Kong where a similar situation was successfully addressed through an agency outside the policing system itself, the Independent Commission Against Corruption (ICAC) should be seriously studied.

## **To re-establish command responsibility within the police hierarchy<sup>9</sup>**

The loss of command responsibility has been discussed from many points of view. One common point of reference is the politicization of the police by which is meant the politicians playing a direct role in the command responsibilities of the organisation. The debate on the 17th Amendment to the constitution mentioned above was entirely on this theme. Political influence over the police is perceived to have extended to all aspects of the administration and often it is alleged that it also influences criminal investigations. The influence on the administration is on the selection of persons by way of recruitment as well as promotions purely on the basis of connections to individual politicians or a political party.

This also often affects transfers where one of the common fears is people being transferred to far away places or conflict zones as punishments for non-compliance with the demands of political elements.

The interference into investigations is that either due to direct interference or indirect forms of influence statements are not recorded or investigations are not proceeded with. There are instances when in the midst of sensitive investigations the investigating officers are transferred from their positions. Over a period of time many officers also learn “to read what will be approved and not approved by their political masters.” This behaviour can be so ingrained that they will avoid some investigations altogether, for example into cases such as extrajudicial killings, abductions, disappearances and the like.

Due to political interference often subordinate officers can become even more powerful than their superior officers. On the other hand when subordinate officers perceived that their superior officers behave in a manner to unduly cooperate with politicians the moral authority that such officers have is also lost. The instances are many when politicians deliberately undermine the high-ranking officers in a way to get them to toe the line.

Under the Departmental Orders the specific duties of supervision are assigned to superior officers. An officer in charge at a police station has very specific duties regarding all the officers linked to a police station. An Assistant Superintendent of Police has duties to attend all police stations regularly at short intervals to read all the books maintained at the station as well as to be personally present at the crime scene in the event of investigations into

serious crimes, were some of the requirements prescribed in the Departmental Orders. In recent times there is a widespread complaint that this supervision often does not take place.

One of the factors that undermines the command structure of the police was the involvement of the police in gross human rights abuses during the periods when emergency laws and anti terrorism laws prevailed. In the post independence period, in the early decades such situations were few and sometimes the officers who engaged in such acts were disciplined. However, when various insurgencies broke in police officers together with military officers were used to eliminate insurgents, which meant that they were allowed to abduct persons, keep people in illegal detention, to torture them and even to kill them and dispose of their bodies. The generally estimated number of such killings at the hands of the police and the military in 1971 when a minor rebellion led by a small group of persons was crushed ferociously by the Sri Lankan government is around ten thousand. No official inquiries have been held into this event. In the second phase of a rebellion by the same group, the JVP between 1987 and 1991 an official figure of around thirty thousand persons disappeared mostly in the south. Commissions were appointed to inquire into the periods in which disappearances were described as abductions followed by assassinations and the disposal of the bodies. These were also done by the police and the military personnel aided by paramilitary groups.

From the point of view of maintaining command this meant a tremendous lowering of standards and the loss of internal guidelines for the maintenance of hierarchical relationships and codes of conduct. These periods have also destroyed the morale of the law enforcement agency.

### **The establishment of a credible system of criminal investigations**

One of the most commonly expressed criticisms regarding policing in Sri Lanka by persons from within the system itself, by local and internal critics including some UN agencies is that in recent years the Sri Lankan police have not resolved any of the major crimes that have taken place in the country.

These crimes includes massacres such as the extrajudicial killings of the 17 aid workers in Muttur; killings by the military as well as insurgent groups (LTTE and other armed groups opposed to the LTTE); killings of journalists and other activists including human rights activists; large scale abductions and

disappearances<sup>10</sup> throughout the country including in the capital Colombo. There are also of allegations about large-scale corruption.

“The reasons attributed to the weakening of the capacity of the Sri Lankan police to conduct credible investigations into crimes and gross violations of human rights is the lack of protection for the investigating officers, which arises from factors such as the politicization of the system as well as internal divisions within the policing system itself which can create serious physical risks for investigators; the increase of violence by terrorist elements and military elements in which investigations are prevented by the physical force of alleged terrorist and military; the increase of links between criminals and the police (this was referred to earlier); the enormous increase of corruption throughout the country, including within the political establishment; the breakdown of the judicial supervision of the investigating process and the lack of higher demand for credible criminal investigations maintained by the judiciary;<sup>11</sup> disruption of the system of command responsibility (this was also commented upon earlier); the lack of forensic facilities and training;<sup>12</sup> the development of nationalist sentiments which try to undermine the legal norms and standards with regard to crime. Added to these problems is the abandonment of the 17th Amendment by which even some limited interventions were made possible by the National Police Commission to intervene in order to deal with some of the problems mentioned above.”

### **The elimination of torture as the most commonly used method of criminal investigations**

“...Torture is often a short cut to getting information, and as a result it is systematic and widespread... We are not talking about isolated cases of rogue policemen: we are talking about the routine use of torture as a method of investigation. It requires fundamental structural changes to the police force to eradicate these practices.”<sup>13</sup>

“I had the privilege of addressing about 100 Inspectors on ‘Investigations techniques to minimize violation of human rights’ at a police department programme conducted by the United Nations Development Programme (UNDP) in early June this year. When I asked these officers their opinion of human rights, especially the aspect of torture, their observations were that they had to resort to the use of force to solve cases due to the following reasons:

- Sense of shame and loss of face if they fail to solve the case by recovering the weapon of the offence or the fruits of the crime, where

there were several eyewitnesses testifying against the suspect.

- Lack of resources – personnel/vehicles, equipment etc. to pursue investigations;
- The period of custody of 24 hours being insufficient.
- Pressure from superiors to solve the cases, with the implications that the consequences of non-compliance or failure to successfully complete investigations within the time limit would result in unfavourable reports to their personnel file or other strictures, which would adversely affect their career prospects.

.....And when I asked them whether I was incorrect in saying that in almost all the instances of torture in police custody, the victims were the poor, the destitute and the defenceless, they sheepishly admitted it was so.”<sup>14</sup>

Sri Lanka enacted a law incorporating the Convention against Torture and Cruel and Inhuman Treatment Act (Act No. 22 of 1994). In terms of this act torture or cruel and inhuman treatment is punishable with a mandatory sentence of seven years of rigorous imprisonment and a fine of not less than Rs. 10,000. Over 50 cases have been filed and there are already two convictions. However, due to the long delay in the filing of these cases followed by long delays in the courts many victims come under severe pressure and many abandon pursuit of their case. The delay in adjudication and the absence of a witness protection programme defeats the purpose of Act No. 22 of 1994. Besides this the other factors regarding the dysfunctional nature of the policing system negates the possibilities of even positive legislation such as this act.

### **The training of police in more sophisticated methodologies of investigation, including forensic training**

While there are some attempts with the assistance given by organisations such as SIDA there have been some improvements in the education of some officers on forensic issues. However, there has not been any systematic attempt to replace the earlier model of obtaining oral evidence through torture by the introduction of new methodologies of investigation. The core of the problem is that within a system that has become dysfunctional due to the reasons described above training and even the introduction of new knowledge and technology is of little use. Often there is talk about improved forensic education as the solution to the crisis faced by the police force. However, this can be valid only when much more serious problems which affect the entire organisation are addressed:

“The significant role played by the Police Force in the administration of criminal justice makes it an integral component of any strategy aimed at curbing crime. Therefore it is important that the police force be geared to perform at its maximum potential. The Police reforms proposed herein are intended to achieve progressive changes in Policing practice and provide a framework for improving standards, reliability, consistency and responsiveness within the Police Force.

In this regard Senior DIG Chandra Fernando was invited by the committee to discuss and help identify the several problems, which appear to militate against the capacity of the police force to provide an efficient service with regards to the implementation of criminal justice.

This discussion highlighted the need for a reform programme aimed at improving the performance of the police force making it more flexible through diversity and workforce modernization, increasing its capacity, providing better conditions, training and development and investing in communications, IT, forensics and best practice.”<sup>15</sup>

“a) Lack of material resources: The lack of technological support and equipment in the context of modern investigative techniques.

The Committee believes that the drive for better performance goes hand in hand with the need to provide new resources, tools and technology to the Police. However, the primitive nature of investigative techniques presently used by the Police i.e. outdated fingerprinting technology and the lack of rudimentary investigative equipment such as Polygraph machines (lie detectors) in Sri Lanka, highlight the urgent need to invest in equipment relating to IT and forensics.

Therein the Committee strongly recommends that scientific and technological support for criminal investigations be significantly improved in order to facilitate a meaningful effort in curbing crime.”<sup>16</sup>

## **Measures to ensure police attendance in courts and compliance with court orders**

One of the revealing factors about the nature of the policing system in Sri Lanka is a finding by the same committee, which submitted its final report in April 2004 and identified the failure of the police to comply with court orders to attend court as one of the major reasons for the delays in courts.

The committee made the following recommendation:

“The Committee makes the following additional recommendations pertaining to the Police in the context of advancing best practice:

a) Compulsory attendance: The Committee recognises the need to introduce administrative measures requiring Police Officers to attend Court on a compulsory basis, in view of the frequency with which Police Officers obtain leave and abstaining from Court sighting inappropriate grounds, which has been observed to result in unnecessary disruption of Court proceedings in the recent past.

In this regard the Committee recommends that the Ministry of Justice advise the Judicial Service Commission (‘JSC’) and the judges Institute to educate Judicial Officers on the necessity to take prompt and appropriate action against Police Officers who default on appearances on inappropriate grounds.”<sup>17</sup>

The recognition of this factor is significant in that it shows a breakdown of the link between the courts and the police. Under the present circumstances it is difficult for the magistrates to give the necessary orders to the police relating to investigations and the matters relating to the basic rights of citizens. This breakdown may be traced back to times of the beginning of the insurgencies in 1971. Ever since the police have used the excuse of having to attend to other duties such as the security functions or for providing security for politicians as matters that need to be given higher consideration than attendance in court. The police hierarchy has done very little to correct this situation despite of a government appointed committee having recognized this as one of the fundamental aspects affecting the administration of justice.

### **The establishment of a proper system of disciplinary control within the police and the establishment of a credible public complaints procedure**

It is also admitted that the disciplinary process within the police is quite primitive and the safeguards for complainants is very limited. The National Police Commission has itself pointed out that despite of large numbers of complaints received against police officers the number actions taken against them are very few. The 17th Amendment to the Constitution itself recognized the need for the establishment of a public complaint procedure. Article 155G requires that such procedure should be established. In January

2007 by a gazetted notification the National Police Commission announced such a procedure. However, still the system of the conduct of investigations has not been changed.

The problem of police discipline is linked to the more fundamental problems of a dysfunctional system and cannot be dealt with in isolation purely by instructions to improve discipline.

### **The conditions needed for police reform**

A question that has been raised by many persons during the course of the last ten years of the Asian Human Rights Commission's study on Sri Lankan policing is that whether a system such as the one existing in Sri Lanka can be reformed at all. Such concerns are expressed by senior criminal lawyers, judges and other intellectuals, including some policemen themselves. When speaking privately most policemen admit that there is something gravely wrong with the system and that there is no serious discourse at all about putting this right.

Therefore discussions about police reform should concentrate more on the factors that contribute to making systems dysfunctional rather than minor aspects of reforms such as the introduction of forensic science and the like.

### **The need for a changed discourse on police reforms**

The type of crisis that the Sri Lankan policing system faces is a part of a larger political and societal crisis. The salient question is as to what type of policing the state as well as civil society wants to have. So long as the state fears the development of an efficient policing system as a threat to the way the state exists in the country at the moment the implicit answer to that question is that the state has allowed the system to become dysfunctional. An efficient policing system will threaten the existing pattern of misrule abuse of power and corruption.

As long as the state and society cannot arrive at an agreement to eliminate these factors the talk of police reform will remain of little practical value. The real problems are the issues of the nature of the state and the role that the policing system has to play within such a system.

It is respectfully submitted that mere discussions on the introduction of forensic science or the improvement of training and the improvement of

discipline of the police will contribute little to the understanding of the magnitude of the problem or the finding of solutions.

A regional and international discourse on the dysfunctional policing system, the causes of such dysfunctionality and the overall approach to deal with it will contribute more to solving not only the problems of policing but also of some of the basic problems of the rule of law and democracy. The experiment made by Hong Kong with the Independent Commission against Corruption in 1974 is a relevant experience in studying a more fundamental type of police reform that while reforming the policing system also contributes to overcome some of the basic problems affecting the political system within a country.

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1. Please see: <http://www.article2.org/mainfile.php/0104/>
  2. Please see: <http://www.article2.org/mainfile.php/0301/>
  3. Published by the Asian Human Rights Commission, (September 2005), edited by Basil Fernando & Shyamali Puvimanasinghe.
  4. Please refer to the following web sites: [www.ahrchk.net](http://www.ahrchk.net), [www.alrc.net](http://www.alrc.net) & <http://www.article2.org/>
  5. The mission statement of the NPC as shown in its website at [www.npc.gov.lk](http://www.npc.gov.lk) reads as follows: "Our Mission: Transforming the Sri Lankan Police into a truly modern elite force with emphasis on respect for rule of law, professionalism, transparency, and responsiveness to public aspirations."
  6. 6 March 2007 (AFP)
  7. *Daily Mirror*, 7 March 2006.
  8. Justice Ambepitiya was assassinated on 21 November 2005 and later an alleged drug lord and some of his accomplices were convicted for the killing. While there were several allegations against some senior police officers in the press during this period no official inquiry was conducted into the matter.
  9. For a detailed statement on the collapse of command responsibility please see Chapter 15 of *An X-ray of the Sri Lankan policing system and torture of the poor*, published by the Asian Human Rights Commission, (September 2005), edited by Basil Fernando & Shyamali Puvimanasinghe.
  10. The Human Rights Commission of Sri Lanka has mentioned over 100 such abductions and disappearances since September 2006.
  11. The Sri Lankan judiciary has not intervened in dealing with the failures of the criminal investigations in the way the Indian Supreme Court has done in its judgement on the *Best Bakery case (Zahira Habibulla H Sheikh and Anr. PETITIONER, State of Gujarat and Ors. RESPONDENT, Case No. Appeal (crl.) 446-449 of 2004)*. The court in its judgement found that "... the justice delivery system was being taken for a ride and literally allowed to

be abused, misused and mutilated by subterfuge.” The court blamed “the investigation ... [was] perfunctory and anything but impartial, without any definite object of finding out the truth to book those who were responsible for the crime. The public prosecutor appears to have acted more as a defence counsel ... The Court is turn appeared to be a silent spectator, mute to the manipulations and ... indifferent to [the] sacrilege being committed to justice. The role of the State Government ... [suggests] that there was no seriousness ... in assailing the trial court’s judgment.” The Supreme Court stated “crimes are public wrongs [in which] ... it is not just the accused who has must be fairly dealt with.” Faced with “political patronage ... muscle and money power,” the Court has an obligation to get to the truth. The hesitation of the witnesses was directly traceable to money, muscle and politics. In this situation, courts had to take a “participatory role” and were not mere “tape recorders.” In ordering a re-trial, the court was not punishing the accused but giving truth a second chance.

12. See, “The absence of forensic facilities” by Dr. Clifford Perera, Department of Forensic Medicine, Faculty of Medicine, Galle, at Chapter 16 of *An X ray of the Sri Lankan policing system and torture of the poor*.
13. Dr. Radhika Coomaraswamy, in an interview with Lorna McGregor of REDRESS, quoted in the ALRC alternative report to the second periodic report of Sri Lanka to the Committee against Torture, September 2005.
14. Please refer to Chapter 4 of *An X ray of the Sri Lankan policing system and torture of the poor*.
15. Committee Appointed to Recommend Amendments to the Practice and Procedure in Investigation and Courts. This committee was appointed to submit a report to the government on the eradication of laws delays. The committee consisted of the following: Mr. C.R. de Silva P.C. (Chairman) Solicitor General, Mr. Ranji Abeyseriya P.C. Attorney-at-Law, Mr. N.S. Rajapakse High Court Judge, Mr. M.N. Burhan Magistrate, Mr. Dappula de Livera Senior State Counsel.
16. Ibid.
17. Ibid.

# Promoting international norms and standards in the context of dysfunctional justice systems

*Basil Fernando, Director, Asian Human Rights Commission*

A prerequisite for the protection of human rights in a modern state is the existence of a legal framework for such protection. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) obligate all state parties to take legislative, judicial and administrative measures for the implementation of the rights. This is also implied in the duty of states to provide adequate remedies for violations of rights. The meaning of an adequate remedy has been explained in the general comment on article 2 of the ICCPR as well as numerous views expressed by the Human Rights Committee (HRC) in dealing with communications submitted to the committee.

The yardstick for determining functionality or otherwise is the possibility of guaranteeing an adequate remedy for a violation of rights in terms of article 2 of the ICCPR. In terms of investigations into violations, this means that,

- a. The state provides an adequate complaint-receiving mechanism regarding all violations of rights.
- b. Inquiries into such complaints are done promptly.
- c. The inquiring agency has the legal powers needed for such investigations, and the competence and resources for them.
- d. The agency doing such investigations has a system of command responsibility, which ensures proper monitoring and supervision of all aspects of the investigation.
- e. The investigating agency and its agents can carry out their investigations professionally and without interference, particularly political interference.
- f. Inquiries are completed speedily.
- g. There are avenues for holding the investigating agency accountable for its acts and omissions.

Ensuring an adequate remedy requires a legal framework capable of providing it. The aim of this paper is to identify the point at which a criminal justice system, in this case that of Sri Lanka, may be considered dysfunctional. Identification of a dysfunctional system is of prime importance when considering the issue of an adequate remedy. If the system is dysfunctional and is unable to guarantee an adequate remedy for violations of rights, the obligation of the state under article 2 of the ICCPR to take legal, judicial and administrative measures to safeguard rights imply that the state is under obligation to make the system functional and capable of ensuring an adequate remedy.

Where the system is dysfunctional, work needs to be directed towards measures that may lead to the ending the factors that contribute to its dysfunctional character. Analysis is essential if the recommendations of United Nations human rights bodies and other like organisations are to be meaningful. Without such analysis it is still possible to make generalized recommendations, but the criminal justice system will be incapable of implementing them; this particularly true of states with legacies of impunity over gross abuses of human rights. Attempts at prosecuting perpetrators of such violations in these places may not get a response for many reasons, including the sheer incapacity of the criminal justice system to conduct credible investigations and prosecutions. Repeatedly recommending the same things may only create circuitous arguments between the agencies making the recommendations and the state towards which they are directed.

The position taken in this paper, concerning the criminal justice system in Sri Lanka, is that while some violations of rights may happen within any criminal justice system, routine violations indicate systemic defects. This paper proceeds on the basis that empirical evidence clearly shows a systemic failure in investigations into crime due to fundamental flaws in the Sri Lankan police service.

After examining the issue of torture on the basis of information gathered through the cases decided by courts, the defects of the judicial system itself are examined through the communications of the United Nations Human Rights Committee. There have been many cases referred to the HRC from Sri Lanka and it has delivered opinions on these cases. The reasoning of the HRC demonstrates how the courts themselves have contributed to the violations of some rights. Besides this, none of the recommendations of the HRC have been implemented. The Supreme Court has in response taken the view that

by joining the Optional Protocol to the ICCPR the president of Sri Lanka has violated the constitution by granting judicial power over Sri Lanka to the HRC. Therefore, the defective policing system is complicated by problems in the judicial system.

## **Dysfunctionality of investigations as seen in the three convictions in torture cases before Sri Lanka's High Courts**

### **Selvin Selah and another v. State of Sri Lanka**<sup>1</sup>

In this case an Inspector of Police, Selvin Selah, and a police constable, Warnakusuriya, were indicted under the Convention against Torture, Cruel and other Inhuman and Degrading Treatment Act (Act No. 22 of 1994) for torturing a girl named Angelina Roshana on 3 December 2000 within the premises of Narahenpitiya Police station (close to Colombo).<sup>2</sup> She was supposedly taken into custody for an investigation into a theft. The two officers were charged on two separate counts.

According to the evidence led in court on behalf of the prosecution, the accused worked as a domestic helper in the house of one Primali Seneviratne since November 2000. On 3 December 2000 (Sunday) the accused went to work in the house and helped in cleaning and arranging, and she left to return home at around noon. By 8pm her employer arrived at her home with the 1st accused and inquired about a gold watch valued at about Rs. 500,000 (around USD 5000), which she claimed was missing. Angelina was asked to come to the employer's house and help to find the watch. She was taken in a van driven by the 1st accused, who was wearing civilian clothes; the 2nd accused was also in the vehicle. Once inside the house the 1st accused slapped Angelina and asked her to hand over the watch if she had taken it. Angelina fell on a bed as a result of the blow. The 1st accused had a wooden pole in his hand, and showing it threatened that if she were to be taken to the police station she would be more severely tortured. Later Angelina was taken to the station. Despite assaults, she denied having taken the watch. She was then taken to a room by the 1st and the 2nd accused. The 1st accused beat her on her back, legs, hands, and on the head with the pole. The two accused took turns hitting her and continued to torture her in this manner for about four hours until she fainted. The accused used the wooden pole, wire, and a hosepipe. She was again taken back to her employer's house and asked to find the watch. When her parents were allowed to visit her the next morning she told them about the beating and they applied ointment and gave her paracetamol tablets to ease her pain.

Angelina was produced in court only on the Tuesday. As a complaint of torture was made to the court, the court ordered her to be produced before a Judicial Medical Officer (JMO), who later gave an extensive medical report enumerating the injuries she had suffered. Angelina had to undergo treatment for about two months and was unable to attend to her normal work. The medical report revealed injuries consisting of 20 contusions which were in the left shoulder, upper arm, near the armpit, on the back of the mid-left upper arm, right shoulder area, across the mid left buttock, lower left buttock extending down to the upper left thigh and lower buttock.

The accused took the position that the arrest was on 4 December 2000 and that the victim was produced before the Magistrate's Court on the next day. Angelina rejected this suggestion during the cross-examination, and the court accepted her evidence as credible and that the cross examination had not damaged her credibility in any way. Several other witnesses gave evidence about the torture. Angelina's father explained how he saw her for the first time after the torture and how she demonstrated her injuries, described the assaults and mentioning the two accused as the persons who had carried out the assault.

A former lecturer of philosophy at a university in the Netherlands, Dr. Joseph Nalin Swaris, gave evidence of being informed by the family about the arrest of Angelina and of his visit to the police station with a lawyer. He gave evidence of how he saw Angelina in a very frightened state and about being told by the 1st accused that she had allegedly stolen a gold watch. He talked to the 1st accused for about fifteen minutes, requesting him not to assault her but to do whatever legal duty he had according to the law. The court also found this evidence to be credible.

The officer in charge of the police station, Don Wijesiri Kurunara, produced several books from the police station with notes to the effect that the 1st accused reported to work on 3 December 2000 at 5:40am and continued to work up to 1:55am on the 4 December 2000. In cross-examination this police officer revealed that there was a note on 4 December 2000 at 9:45 in the notebook on Crimes of Minors on the theft of a watch worth Rs. 500,000. According to the notes, Angelina's statement was recorded on 5 December 2000 at 7:30am and the time of arrest was 6:30pm on December 4. The time that Angelina was brought before the officer in charge of crimes, the 1st accused, was recorded as 5:10pm on the same day.

The JMO gave evidence and produced the medical report and also stated the history of the incident as explained to him by Angelina. The JMO said that in her opinion the type of contusions that Angelina had suffered could heal after 10 to 14 days and as she observed the injuries to be fresh they were compatible with an assault made on 3 December 2000 as given in the history of the patient. The JMO further said that she had examined the patient's feet but generally assaults do not leave easily identifiable marks on the feet. She also said that due to contusions there could be internal bleeding due to which pain could spread throughout the body and there could be lowering of blood pressure as a result.

On examining all the evidence, the date of arrest was established beyond reasonable doubt as 3 December 2000 and the accused was convicted.

### **Kirthi Bandara Edrisinghe, IP v. State of Sri Lanka<sup>3</sup>**

In this case an inspector of police was charged under the Convention against Torture, Cruel and other Inhuman and Degrading Treatment Act (Act No. 22 of 1994) for torturing M.D. Wesley Norman on 13 April 2001.

Four persons gave evidence on behalf of the prosecution. Indranie Perera, an aunt of the torture victim, said that she received a telephone call from Wesley Norman about his assault. She went to the house of one Edrisinghe looking for him and as she could not find him there she went to Kirulapana Police Station to inquire as to whether this boy had been arrested and found that he was there. She saw the boy in front of the officer in charge of the station, the accused in this case. She saw that Norman's eye was almost swollen shut and his face was swollen too. She inquired from Norman as to what had happened. He told her that the officer in charge, a sub-inspector, and four or five policemen had beaten him. As he climbed the stairs a number of them kicked him on his back. She got the boy released and took him to the Kalubowila Hospital. At the hospital he was told that since this was an assault by the police they should first go and make a complaint at the police station and come back for treatment. They went to the Police Headquarters and made a complaint and were given a PHT ticket for getting treatment. They returned to the Kalubowila Hospital and Norman was treated. He was initially hospitalised.

The complainant/torture victim, M.D. Wesley Norman, stated that he had been living with his aunt, Indranie, from his childhood and that his parents were dead. He had worked for about two months prior to this incident for

one Athula Edrisinghe as a driver. The employer asked him also to do the shopping and clean the house. Then he left this employer and went to work for a trader named Karunabadasa. The incident in question happened just three days after he went to work for this new employer. After some work he returned to the new employer's house at around 10:15am. At the time there was a police jeep stationed at the former employer's house. When Norman was walking along someone at the police jeep asked him whether he had his national ID card. He showed his driver's license but the officer demanded the ID card. It was at this stage that he had made a call to his aunt on his mobile telephone, to bring the card. At this time the accused police officer was in the house of Wesley's former employer. He walked over from there to where Norman was and assaulted him on the chest and kicked him on the back. Then about six officers joined in the assault and started kicking him; they were all wearing police boots. Then they took him in the jeep to the police station. After they arrived at the station he was again assaulted. In answering the court he said that he was assaulted so many times that he could not state the number of blows. It was when he was at the station, at about 2:30 or 3pm that his aunt arrived. Later he went to the Kalubowila Hospital and from there to Police Headquarters to make the complaint before returning to Kalubowila Hospital where the doctors examined his head, back, mouth and the chest. In answering questions during cross-examination he stated that his shoulder had collided with the doorpost of the vehicle, as had his face. He said that he was kicked, held by the hair and pushed against the wall, and also beaten on the chest.

The Assistant Judicial Medical Officer (AJMO), Hasana Labbe Mukarak, in her evidence said that she had examined Norman on 14 April 2001. Norman stated to her that he had been assaulted by several police officers with poles, their fists and feet. The AJMO noted in her report that there was a contusion 1.2cm in length on his left shoulder and an injury 4cm below the right eye. These injuries were fresh. The examination was done one day after the incident. If a person is slapped on the face, marks can disappear within eight hours; if a person is assaulted with a blunt instrument marks can disappear within 24 hours, the AJMO stated. In answer to cross-examination she said while the injury near the eye could have occurred as a result of a collision with a doorpost it could also have happened due to assault. However, the doctor said that as there was only this injury on the face it was more likely to have happened due to assault. The AJMO also mentioned that there were no marks on the buttocks but usually injuries can be there without visual marks for up to 24 hours and appear later.

The Assistant Superintendent of Police Kirulapana gave evidence mentioning various entries in the police books maintained at this police station during the relevant time. On 13 April 2001 this officer found a note in the book that mentioned the arrest of a suspect in a theft case. The suspect had been taken into custody as he was found loitering and was unable to give an explanation of himself. It was mentioned that Norman was arrested for theft of an electric iron and a wall clock. However, there was no statement from the person who was supposed to have lost these items. One Subesinghe recorded a complaint for information purposes only. There was also a note on the same day that the police used minimum force on Norman as he refused to enter the police jeep when requested. The witness admitted that normally when injury is caused by minimum force he should be produced before a doctor. However, there was no such note recorded. This police officer also stated that robbery and theft are serious crimes and regarding such crimes the statements are not normally recorded only for the purpose of information. The witness admitted that there was no clear reference in the books as to the reason why the police arrested Norman.

The accused gave evidence in defense and stated that he went to inquire into some complaint from Edrisinghe (Norman's former employer) and when he and other police officers were there an officer noticed a young man looking into Edrisinghe's premises from afar and questioned him. When questioning him this young man answered in a loud voice. At this point the accused felt suspicion about the young man's presence in the place and that he may be involved in robberies. He was brought for questioning to the police station. When he was put in the police jeep he resisted and was forced into the vehicle with the help of other police officers by use of minimum force. While Norman was struggling, his face struck the vehicle's doorpost. He was brought to the police station at 11:55am. During this time Norman's aunt and brother came in a three-wheeler and questioned the officer. After taking a statement by way of question and answer it was revealed that there was nothing to implicate Norman in any crime. As there was no reason to keep him any further he was released. The accused refused the suggestion that he gave a parcel of drugs to Norman and also denied having assaulted him. He also stated that at the police station Norman's aunt spoke to many persons over the phone and those persons called him back and made inquiries. Answering the court, the accused admitted that Norman's face was swollen when he was brought to the station but said that there was no bleeding or wounding. When asked as to why no treatment was given to Norman when he found that his face was swollen he said that Norman and his aunt said that

they did not want any treatment; however, he later admitted that he had not asked them about it. It was suggested to the accused that he had implicated Norman at the instigation of Edrisinghe (the former employer) but he refused the suggestion. However, he admitted that the note in the information book about the loss of the electric iron and the wall clock mentioned in the information book belonged to Edrisinghe and that another person had made the complaint on his behalf. He admitted that there were incorrect notes regarding this incident in the notebooks maintained at the station.

A police officer, Vijeysinghe, also gave evidence on behalf of the defence and admitted going to Edrisinghe's house on a complaint about some lost items. When looking around he saw a man and the accused asked him to stop that man and he did so. He stated that he questioned this person and later asked him to enter the police jeep to go to the station and he had refused and while refusing and struggling he collided with the hood of the van. Since he wanted to run away, he, the accused and another policeman used minimum force. He admitted that at the time of arrest Norman had no injuries and at the police station he did have injuries and when the statement was recorded his face was swollen. He did not know how the injuries came about.

The court after analyzing all the evidence in great detail held that quite clearly the 1st accused and some others who were not identified had assaulted Norman and thereby the accused was guilty of committing a crime under the CAT Act (Act No. 22 of 1994). The court rejected the argument of the defence lawyer that the prosecution had not proved that the injury caused pain of body or mind to the victim as required under the act. The court held that once the injuries had been established in the normal course of things it should be presumed that such injuries cause pain of body and mind.

The accused was sentenced to seven years of rigorous imprisonment and a Rs. 10,000 fine, for failure of payment of which a further two years of imprisonment would be added.

On the day of sentencing the accused did not attend court and it was reported that he had fled the country. After holding an inquiry into the matter and confiscating the bail deposit the court fixed the case in absentia and proceeded to sentence him. An open warrant was issued against the convicted accused.

## **Madiliyawatte Jayalathge Thilankaratne Jayalath v. State of Sri Lanka<sup>4</sup>**

The accused was the officer in charge of Wallawatte Police Station and was charged under the CAT Act (Act No. 22 of 1994) for torturing Abdul Rahim Mohammed Rafaideen on 27 May 1996 after arresting him on an allegation of theft.

As the accused pleaded not guilty to the charge the prosecution led the evidence of the complainant, A.R.M. Rafaideen. He stated in evidence that he was a broker by profession and he was taken into custody by the Wallawatte Police for the theft of some gems belonging to one Sahul Hajjyar. This Sahul Hajjyar was from the same village as the complainant and they had known each other for over 15 years. Sahul Hajjyar made an allegation that Rafaideen on 15 April 1996 had taken four out of the nine gems which were in his possession. The witness denied this allegation. Thereafter the witness's wife was called by Sahul Hajjyar to his residence and was threatened that if the witness did not accept that he had taken the gems he would get the police to arrest and assault him. Upon hearing this, the witness went to Sahul Hajjyar's and told him that he had not taken the gems. Sahul Hajjyar again threatened him and released him.

On 27 May 1996 the witness boarded a bus at around 9:30am and was traveling towards Colombo when a police officer also boarded the bus and asked for his ID card. After identifying him as the witness A.R.M. Rafaideen, he asked him to get off the bus, as the police wanted him. When the witness got off the bus he saw Sahul Hajjyar's van, which he could easily recognise, just behind the bus in which he had been traveling. About a hundred yards from there was a police checkpoint where the accused police officer waited with four others dressed in civilian clothes. The victim was taken by these officers in a van, which proceeded towards the seaside and then to the police station. The accused threatened him that he should hand over the four gems or otherwise he would be killed. Then he was taken to the Wallawatte Police station in front of which the witness again saw Sahul Hajjyar sitting in his van. The witness was taken to the Crimes Branch where the accused and other police officers accused him of theft of the gems and asked him to remove his shirt. He was forced to place his hand on a table and it was then beaten with a four-foot long club. He was also struck twice on the head. As a result he started bleeding from the nose. During this time Sahul Hajjyar was nearby and watching from outside. The witness was also hit with a cane by another police officer. The witness was then put in a police cell and the

accused came back at about 8pm. He was told to confess or he would be killed. As he denied the charge the accused left but returned at 11:30pm and again yelled at him demanding the gems.

The following morning his wife and brother-in-law visited him and he informed them of what had happened. He told them to get advice and to act accordingly. The brother-in-law returned at 5pm to find out why he had not been produced before court. He was thereafter taken from the cell and a statement was recorded. He was then placed in the main police cell.

He was taken out in a jeep on May 29 for the purpose of producing him before court but on the way he was produced before a doctor. The witness told the doctor what had happened to him. Then he was taken to the Mt. Lavinia Magistrate's Court where he was released on bail. In cross-examination the witness said that after his release he first saw an ayurvedic (homeopathic) doctor and later as his condition worsened he went to the South Kalubovila hospital. Thereafter he made a fundamental rights application in the Supreme Court.

Later, Sahul Hajjyar came to meet him and took him to the police station where he stated to the police that he had in fact found the missing gems and he asked them to do something about the case he had filed in court.

The witness's wife also gave evidence and confirmed the details of the story. She also confirmed that she visited her husband at the police station and saw that he was injured. She said that when she tried to visit the complainant the first time at the police station on the day of arrest she was prevented and only on the next day were she and her brother-in-law able to see the complainant due to the intervention of another police officer. She had later obtained the assistance of a lawyer. At the time her husband was released his face and hand were swollen and he complained of pain and not being able to sleep.

A Judicial Medical Officer, Dr. K. Sunil Kumar, gave evidence and stated that he had examined the complainant when he was produced by the accused at Colombo South Kalubovila hospital.

The accused gave evidence admitting to the arrest, the remanding and subsequent production of the complainant before the court, but denied the assault. The accused tried to make out that the complainant's injuries were due to a fall.

However, the court accepted the evidence of the complainant and his witnesses and rejected the version given by the accused. The court held that the accused's version of the complainant's injuries contradicted the medical evidence lead in court and the evidence of the complainant. The court held that the charge had been proved beyond reasonable doubt and sentenced the accused to seven years of rigorous imprisonment and a Rs. 10,000 fine, to failure of payment of which a further two years of imprisonment would be added. The accused has appealed the judgement and the appeal is pending at this time.

### **Comments**

The following features are common to the three cases:

- a. The victims were innocent persons.
- b. There were no reasonable grounds for arrest.
- c. The arresting officers behaved more like gangs following the orders of their leaders than law-enforcers trying to make arrests peacefully.
- d. The arrestees were not told of their rights to legal counsel.
- e. Threats and violence were used at time of arrest.
- f. Records were subject to tampering in order to match the police version of events.
- g. Higher officers failed to intervene to review the cause of arrests or processing of the cases or at any time thereafter.
- h. The accused officers continued to insist on their fabricated stories even after the true accounts of events had been revealed and verified in courts of law.

## **Dysfunctionality of investigations as seen in nine fundamental rights cases from the Supreme Court of Sri Lanka**

### **Kemasiri Kumara Caldera v. Somasiri Liyanage Inspector of Police & Others<sup>5</sup>**

Kemasiri Kumara Caldera, the petitioner, was driving his vehicle with some passengers when a Mercedes Benz driven by one Lakshman Fernando overtook and after that moved at a snail's pace thereby obstructing the vehicle driven by the petitioner. The petitioner then overtook the Benz but the driver of Benz once again overtook the petitioner's car and stopped in such a manner so to prevent the petitioner from proceeding further. Then Lakshman Fernando got out of the Benz, walked to the petitioner's car, pulled the

petitioner out, slapped him several times and stabbed him twice with a knife on the right side of his chest. At this stage others who were traveling with the petitioner came to his rescue and Lakshman Fernando drove away.

The petitioner's car was driven by his brother to Ragama hospital and on the way stopped at the Seeduwa Police Station to make a complaint. When they arrived at the police station they saw that Lakshman Fernando was already there. When the petitioner's brother got out of the car Lakshman Fernando came forward and assaulted him, as did the 1st respondent, the officer in charge of the police station. Then several other police officers joined in and took the persons who came with the petitioner and assaulted them. When the petitioner made a request to record his statement and be taken to a hospital for treatment "his pleas fell on deaf ears".

"The Petitioner on realizing that his statement would not be recorded had got into the van and driven out of the police Station premises and proceeded towards Negombo and then having decided to go to Ragama Hospital turned the vehicle round and proceeded in that direction and whilst so proceeding heard a sound similar to that of a gunshot and at the same time heard a sound of the rear glass of the vehicle being damaged and on seeing from the side mirror, a police van coming after him and some persons firing at his van by getting themselves 'half out' of the police vehicle the Petitioner claims that he dropped speed and stopped the vehicle and as soon as he stopped the vehicle he felt something piercing his back and also heard gun shots. The Petitioner has gone on to state in his affidavit that within a moment he saw a few police officers firing around the vehicle and one of them namely the 3rd Respondent (p.s. 4509) pointed a gun and shot at him over the windscreen from the front while Petitioner was still seated in the driving seat and that he at that time closed his eyes and lowered his head that the shot caused no harm to him. Thereafter he was dragged out of the van and one of them had said 'this fellow is still not dead' and attacked him with a blunt weapon on his back and as he fell he identified the 2nd Respondent as the person who dealt that blow with a gun. The Petitioner had then pleaded 'will you at least now take me to the hospital?' whereupon all the police officers who were there kicked him several times on his stomach and the sides of his abdomen. The Petitioner has stated that he thereafter lost consciousness."

The petitioner submitted a fundamental rights case under the constitution in the Supreme Court.<sup>6</sup> According to the evidence placed in this case, a report of the additional government analyst who made the examination of the vehicle

noted nine bullet entries from the rear with one of them being on the rear buffer. As a result of the injuries the petitioner was bedridden for one-and-a-half years and after several surgical operations he now has to use a catheter for the rest of his life to pass urine, he is impotent and therefore has no hope of entering into matrimony, he is unable to lead a normal life and is presently on a colostomy. “The Petitioner who was a musician and earned his living as a musician claimed that he is now not in a position to do so.”

The respondents tried to make out that those who came to the police station with the petitioner pulled Fernando into the compound and assaulted him, and that it was for the purpose of preventing that that they were arrested. They also tried to make out that it was someone else that tried to fire at the petitioner’s vehicle. Several entries from the books maintained by the police were produced to support this version.

The court rejected the version given by the respondents. The court also stated that,

“This firing by the respondents without rhyme or reason even after the van was brought to a stop and the assault that followed with hands, feet and gun was cruel and inhuman treatment meted out to the petitioner undoubtedly intended to punish the petitioner who had left the police station with a stab injury to seek treatment as the police did not record this statement or issue a medical legal examination form.

Further, some of the statements filed by the respondents disclosed that they were aware of the fact that the petitioner had an injury at the time that he came to the police station.”

The court declared that the respondents had violated articles 11 and 13 of the constitution and ordered compensation in the sum of Rs. 600,000 (around USD 6000), part of which the respondents had to pay.

The court made the following comment in the concluding paragraph of this case:

“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?"

### **Yogalingam Vijitha v. Wijesekara, Reserve Sub-Inspector of Police & others<sup>7</sup>**

The petitioner was a 27-year-old-woman from Kayts whose family was displaced in 1990 and who was living in Jaffna. Since she was displaced again in 1995 due to the military operations in Jaffna she moved to Kilinochchi. The petitioner's mother had gone abroad for employment in 1989 and her father had deserted the family. While in Kilinochchi, the petitioner worked as a volunteer primary teacher at the Sivapathakalaiyakam government school for a short period.

She went to live in Negombo in January 2000 and registered a marriage with one Thurairatnam Maheswaran, alias Babu. This was an arranged marriage. After the marriage she continued to live in her aunt's place and later learned that her husband was already married and had two children. She then refused to go through the customary Hindu marriage and live with him as husband and wife. Thereafter her husband started harassing her in an attempt to force her to go through the customary marriage ceremony. Fearing that she may be harmed she left Negombo and went to Trincomalee. Then she received several threatening calls asking her to come and live with him or he would use his influence with the police to harass her and to get her arrested and tortured as a member of an LTTE suicide squad.

On 21 June 2000 when she went to a bank in Trincomalee she was called out by a friend of her husband and then taken by a group of men in civilian clothes that handcuffed her and put her in a van. In the van she learned that these persons were police officers and that they had arrested her on information given to them by her husband. In the van she also found her brother handcuffed. She was brought to Negombo and kept in a garage until about 10pm, handcuffed and accused of being an LTTE suicide bomber. She was hit with a club on the knees, chest, abdomen and back, causing her unbearable pain. Thereafter she was put in a cell at the Negombo police station and an order was issued by a Deputy Inspector General of Police for her detention under the emergency regulations for 90 days. According to the court record:

“Whilst in detention between 21.06.2000 and 26.06.2000 the petitioner was subjected to torture. She alleges that her ear-studs had been removed and she was slapped with force. Her face had been covered in with a shopping bag containing chili powder mixed with petrol, which led her to suffocate. On one occasion, she had been asked to remove all her clothes except her underwear and the brassier and her face was covered with a shopping bag with the petrol and chili powder. After this she experienced a burning sensation all over her body. She was asked to lie flat on a table and while four policemen held her down pressed to the table, four other policemen had pricked paper pins under the nails of her fingers and toes. She was also assaulted with a club and wires and when she fell down she was trampled by the policemen wearing boots. On another occasion she was hung up in the air and assaulted with a club all over her body.

On or around 25.06.2000, the policemen who were torturing her had asked her to write her signature on some statements prepared by them. When she refused to sign one policeman had shown her a plantain flower soaked in chili powder and said that it would be inserted into her vagina unless she signed the papers. When she still refused to sign she was asked to remove her blouse and cover her eyes with it and lie down on a table. On the table, four policemen held her hands down and pulled her legs apart and inserted the plantain flower into her vagina by force. The proceeded to pull it in and out for about 15 minutes. She experienced tremendous pain and a burning sensation until she fell unconscious for a few minutes and remained lying on the table until about 9.30 p.m.”

On June 26 she was transferred to the Terrorism Investigation Division (TID). There too she was mercilessly assaulted and forced to sign a statement admitting that she was a member of the LTTE. Bleeding, she was taken to the national hospital and treated for 11 days. Later she was taken by the TID to Vavuniya where she was shown documents relating to Tamil persons who had made applications for travel passes and she was asked to identify the LTTE members among them. However, she could not identify any of them, as she had no LTTE connections. She was produced before a magistrate on 21 September 2000 with strict instructions not to talk to the magistrate. The magistrate remanded her under the Prevention of Terrorism Act and sent her to remand prison. It was when she was produced from the remand prison at the Colombo magistrate’s court that she, through her attorney, informed the court about the treatment that had been meted out to her and the court ordered her produced before a Judicial Medical Officer. She was later

examined by an AJMO, a consultant psychiatrist, a consultant obstetrician and gynecologist, and by a consultant radiologist. The AJMO's report was produced in court. Through some photographs she saw while she was in the remand prison she was able to identify the policemen who had inserted the plantain flower into her vagina.

The court upheld the petition and quoted from an earlier judgment in *Sudath Silva v. Kodituwakku* (1987/2/SLR119) that

“The facts of the case 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.”

The court held the 1st, 5th and 9th respondents had violated the petitioner's fundamental rights guaranteed under article 11 of the constitution and ordered a total amount of Rs. 250,000 (USD 2500) to be paid in compensation, and directed the Attorney General to consider taking steps under the CAT Act (Act No. 22 of 1994) against the respondents and others who were responsible for the acts of torture perpetrated on the petitioner.

### **Koralaliyanage Palitha Thissa Kumara v. Silva, Sub-Inspector**<sup>8</sup>

The petitioner K.P. Thissa Kumara complained of violations of articles 11, 13(1) and 13(2) of the constitution. An artisan by profession, skilled in painting and carving, he was arrested on 3 February 2004 by a group of police officers lead by Sub-Inspector Silva. According to the petitioner, the police invited him to come to the police station to paint the police emblem for the Independence Day celebrations the following day. However, when he came out of his house he was assaulted, put in a van and brought to the Welipenna Police Station. On the way, several other persons were also taken in the same van. Once inside the police station, Silva took him to another room together with a person named Sarath, who was suffering from tuberculosis. The petitioner stated that Silva hit him with a cricket stump over forty times all over the body, asking about the delivery of stolen goods and a bomb. The petitioner denied having engaged in any robberies or having any bombs in his possession. The medical report submitted by a Judicial Medical Officer (JMO) noted 32 injuries consistent with beatings with a cricket stump. One of the

injuries was categorised as grievous. The petitioner also complained that Silva forced the tuberculosis patient to spit into his mouth while threatening that he would acquire tuberculosis and die as a result.

Silva in his response admitted having used minimum force at the time of arrest, stating that the petitioner was found with a grenade in his hand and in order to subdue him he assaulted the petitioner with a police baton. He denied having hit the petitioner with a stump, and also denied having forced the tuberculosis patient to spit into his mouth.

The court after the examination of all the evidence accepted the version given by the petitioner as true and particularly on the basis of the medical report of the assault on the petitioner said that it could not be regarded as minimum force. The court held that article 11 of the constitution had been violated and awarded compensation of Rs. 25,000 (about USD 250). The court held that the allegation of violations of articles 13(1) and (2) had not been proved. The petitioner subsequently submitted an application to the UN Human Rights Committee stating that his right to an adequate remedy had been denied due to the scanty compensation awarded to him.

### **Gerald Mervin Perera vs Sena Suraweera (Inspector of Police) and others**<sup>9</sup>

The petitioner Gerald Perera was employed at Colombo Dockyard Ltd as a cook. He complained of violations of articles 11, 13(1) and (2) of the constitution. The respondents were officers attached to the Wattala Police Station. The petitioner's wife in her affidavit to the Supreme Court stated that on 3 June 2002 she and her daughter, a pre-school child, were taken into custody and placed in a jeep by a group of persons who were later revealed to be police officers. She was forced to call her husband under the pretext that her child was sick, asking him to come immediately. As a result of her call when the husband arrived he was arrested and taken away by the officers instead.

On the night of the same day, the petitioner's brother visited him and found him to be suffering physical pain and unable to stand. The following morning when the petitioner's wife together with some others went to the police station and demanded his release the officers then released him. However, he could not stand or walk and the petitioner told them that:

“He had been blindfolded, his hands had been tied, and he had been hung from a beam; that he had been assaulted by the 1st to 7th Respondents and another officer, with iron rods and wooden poles for about an hour, despite crying out in pain; that while being beaten he was questioned regarding a murder, of which he knew nothing; that he had then been laid on the floor and his hands burnt with lighted matches; that no statement had been recorded from him; and that later that day he was taken to the 1st Respondent who had told him that they had made a mistake and that he would be released the next morning.”

The petitioner was taken to an ayurvedic (homeopathic) hospital where the family was advised that the petitioner was suffering serious internal injuries and therefore should be taken to a hospital immediately. Accordingly he was taken to the Nawaloka hospital and admitted to intensive care. His wife was informed that his condition was critical and that his life was in danger. The medial evidence submitted by the Judicial Medical Officer (JMO) set out a history of torture:

“From the investigations done at the Nawaloka Hospital, he concluded that the Petitioner had ‘developed acute renal failure probably due to rhabdomyolysis which necessitated haemodialysis’, ‘changes due to axonal loss in the median and ulnar nerves’, and ‘loss of sensation over 8th cervical and 1st thoracic vertebrae’. The relevant medical records had been called for from the Nawaloka Hospital. According to the JMO, systemic examination of the Petitioner revealed complete loss of power of the muscles around both shoulder joints, and inability to move both arms at the shoulder joints; while he could move his fingers he could not grasp any object at the time of examination; and there was sensory loss around both elbow areas.

He noted certain injuries, consistent with the history given by the Petitioner: two blackish scars on the back of the right hand, consistent with the burns with lighted matchsticks; two scars, near the right and left wrists, consistent with being hung with a coir rope; a discolouration of the skin on the left shin, consistent with a blow with an iron bar; and weakness of both upper limbs, consistent with being suspended. In his opinion, such suspension could have caused neuromuscular and tendon damage and weakness of the upper limbs; and muscular contusions could cause rhabdomyolysis, which could cause acute renal failure, but there was no evidence of a considerable amount of contusions at the time of his examination. The Petitioner had completely recovered from renal failure.”

The police officers in their version stated that after the arrest the petitioner tried to escape and flee and fell several times, and that they had used minimum force to subdue him.

The court rejected the version given by the police officers and held that several of them had violated the fundamental rights of the petitioner by illegal arrest, detention and torture. The court also held that the officer in charge of the station responsible on the basis of knowledge and acquiescence for the actions of his subordinates.

Commenting on the liability of the Inspector General of Police, who was also cited as the 8th respondent, the court stated that:

“It was averred in the petition that a complaint had been made on or about 14.6.2002 to the Inspector-General of Police, the 8th Respondent. The 8th Respondent did not file an affidavit either denying the receipt of such complaint or explaining what action he took. 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) 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 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 condonation (if not also of approval and authorization).”

The court ordered compensation of Rs. 800,000 (about USD 8000) and payment of the medical expenses of the private hospital where the victim was treated (which were also around the sum of Rs. 800,000).

After the judgment there were criminal investigations of the police officers under the CAT Act (Act No 22 of 1994). Six police officers were later charged in the High Court for committing an offence of torture. When he was due to give evidence in court on the 21 November 2004, Perera was fatally shot. Later one of the police accused in the case was arrested along with a civilian and charged with his murder.

## **Wewalage Rani Fernando and others v. Officer-in-Charge, Minor Offences, Seeduwa Police Station and others**<sup>10</sup>

This case came up by way of an application by the wife and children of Lama Hewage Lal, who was arrested by officers of the Seeduwa police on an allegation that he had stolen two bunches of bananas, and who later died while in the custody of the Negombo prison officers.

On 5 November 2002 the deceased and one Shelton were arrested by three police officers and taken to the police station. According to the affidavits filed by the 1st petitioner, the deceased and Shelton were assaulted inside the jeep while being taken to the police station. This petitioner further said that she had seen the deceased at the police station and he was badly beaten and could not even drink the tea that was offered to him, as his hands were swollen. On 6 November 2002 the deceased and Shelton were produced before the Magistrate of Negombo, who ordered them to be remanded until the next day.

According to Shelton on November 7 after the count for the morning was taken he and the deceased were seated on the ground when two prison officers approached and started assaulting them. The deceased ran but as the path was circular he arrived back at the point he had started from. The prison officers then handcuffed him, shackled him and assaulted him until he fell unconscious. After that, two other officers carried away the deceased and Shelton did not see him again that day. Later Shelton saw the deceased tied to an iron gate. His hands were cuffed and his head had fallen to one side. Shelton was not allowed to go near him. Later he saw two inmates carrying the deceased on a stretcher and the prison officers looked as if they were panicking. Having learned that the deceased had been taken to hospital, his sister Maleni went there and found the body on a trolley in Ward No. 4. The prison guard who was there informed her that when he was brought to the hospital he was pronounced dead.

The police officers that were respondents in this case admitted to the arrest and said that they had taken prompt action to produce the deceased before a court. They denied assaulting him.

The 3rd, 4th and 5th respondents were officers of the Negombo Prison. They admitted using restraints on the deceased as he “became restless, violent, uncontrollable and a danger to other inmates and officers of the prison”. It was further stated that the “violent fits the deceased experienced were due

to the lack of alcohol in the blood, a common phenomenon in Negombo Prison.” And they denied the use of excessive force.

The Supreme Court also referred to the evidence given by Shelton at the inquiry by the magistrate:

“I was assaulted about five occasions on the 07th morning. The deceased was also assaulted five or six times. We did not utter a word when we were being assaulted. When it was simply impossible to bear the pain any longer, we pleaded with the officers not to assault us. Worshipping the officers, the deceased repeatedly begged, Sir, please don't hit me. Though the deceased was worshipping and pleading with the officers not to assault him, they continued their assault, stating that it is of no avail to worship them after stealing. The deceased was beaten on the back, buttocks, hands and legs. He was severely beaten with their batons for about two minutes. In severe pain the deceased attempted to run away from the officers, though unsuccessful. Subsequently, the officers stopped their assault. We continued to be seated. Later we were given meals and were permitted to go out. Once again, at about 12.30 to 1pm, the same two officers started to assault us at the same place, near the entrance to Ward 01. It was the same place that we were assaulted at about 7.30am in the morning. They used similar batons to assault us. To escape the beating, screaming in pain, the deceased ran towards the high wall of the prison. Screaming, I stood where I was. It was the wall around the remand prison. To escape their beating, the deceased attempted to climb the wall unsuccessfully. The officers did not chase him. The deceased failing to climb the wall, ran around the ward, and came to the same place where we were. It was around 1 to 1.30pm. The deceased did not say anything to me though he was able to speak. The officers who assaulted him handcuffed the deceased at this moment. Again the officers assaulted him two or three times yelling are you trying to run away? They beat his body, arms and legs with their batons. In severe pain the deceased who was handcuffed, unsuccessfully attempted to run to escape their beatings. At this point he was shackled by the same officers. Then the officers started to beat the handcuffed and shackled deceased. He fell on the ground. The officers mercilessly trod the deceased, who lay on the ground, withering to escape their boots and batons. The deceased screamed out in pain for a while and his voice faded away eventually.

According to the report of the Judicial Medical Officer the cause of death is stated as follows:

Shock and haemorrhage due to extensive soft tissue injuries of the trunk and limbs. These injuries are recent, blunt force-type injuries. They are consistent with multiple, repeated blows with blunt weapon(s) and are consistent with injury pattern seen and recorded in battering in custody. There were external (skin) injuries in the wrists and ankles consistent with injuries sustained due to handcuff and/or legation with traction. No skeletal injury found. Head and neck were almost free of injuries except few small abrasions. No signs of significant natural illnesses. We are of further opinion that these injuries could not have been sustained due to an ordinary force being used for restraining.”

The court accepted the version given by the petitioners and that the death of the deceased occurred due to the assaults which took place in Negombo Prison, and therefore that the prison officers who were respondents had violated article 11 of the constitution. The court referred to a view expressed by the Human Rights Committee:

“In *Thomas v. Jamaica* (communication No. 366/1989, views of UN Human Rights committee, 02nd November 1993) where a prisoner, who was awaiting execution, was assaulted with a rifle butt and stabbed with a bayonet by soldiers conducting a search of a prison. His clothes were also torn and were thrown back into his cell. No medical treatment was given to him. It was held by the UN Human Rights Committee that the treatment to be degrading and contrary to article 7 as well as article 10 of International Covenant on Civil and Political Rights.”

The court further referred to the standard minimum rules for the treatment of prisoners adopted by the United Nations Congress in 1955:

“The United Nations Congress on the Prevention of Crime and the Treatment of Offenders had adopted the standard minimum Rules for the treatment of prisoners (Adopted at the Congress held in Geneva in 1955 and approved by the Economic and Social Council its resolutions 663C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977) These standard minimum rules refer to Discipline and punishment and states that,

Rule 27 - Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well ordered community life.

Rule 31 - Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences.

The Standard minimum Rules for the Treatment of Prisoners also refers to the Instruments of Restraint and Rule 33 reads thus;

Instruments of restraint, such as handcuffs, chains, Irons and strait jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints; Other Instruments of restraint shall not be used except in the following circumstances;

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a Judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative Authority;±

Considering the Rules contained in the prisons Ordinance and the standard Minimum Rules for the treatment of Prisoners adopted by the First United Nations Congress, it is quite obvious that the prison Officers are bound not only to perform such duties for the purpose of preserving discipline and enforcing diligence, cleanliness, order and conformity to the rules of the prison, but also to treat the prisoners with kindness and humanity.”

The court held in conclusion that:

“For the aforesaid reasons I hold that the deceased’s fundamental rights guaranteed under articles II and 13(4) have been infringed and that his rights have accrued to and/or devolved upon the Petitioners.

On a consideration of the circumstances of this case it is apparent that the alleged assault and the consequent death occurred at the Negombo Prison where the deceased was incarcerated. However, although the 3rd, 4th and 5th Respondents have been named, there is no evidence as to who had taken

part in assaulting the deceased. Nevertheless, it is the responsibility of the 3rd, 4th and 5th Respondents to satisfy the basic requirements pertaining to the safety of the deceased. The 3rd, 4th and 5th Respondents, as the Officer in Charge, the Chief Jailer and the Superintendent of the Negombo Prison, respectively, were under a duty to take all reasonable steps to ensure that the persons kept in the Prison are treated with kindness and humanity. Moreover, it is of paramount importance that the lives of the Prisoners are safeguarded. Although there should be discipline and order that should be maintained with firmness, such discipline cannot invoke punishments, which are inhuman and violative of article II of the Constitution. On a consideration of the totality of the circumstances of this case, I declare that there had been dereliction of duties by the 3rd, 4th and 5th Respondents for not being able to prevent the assault on the deceased by some of the Prison Officials and therefore they too are responsible for the infringement of the deceased's fundamental rights guaranteed in terms of articles II and 13(4) of the Constitution."

The court ordered Rs 1,000,000 (about USD 10,000) as compensation.

### **Dalkadura Arachchige Nimal Silva Gunaratna v. ASP Ranmal Kodituwakku and others**<sup>11</sup>

The petitioner alleged that he was arrested on 19 June 2000 and was detained in ASP Kodituwakku's office, during which time he was held incommunicado. Initially he was handcuffed to a bed and denied food, water and toilet facilities. He was kept in the ASP's office from 19 June to 9 July 2000 during which time he was subjected to severe torture. He also saw others being tortured in this same office. As a result of a blow from a police officer, his eye began to bleed profusely and he subsequently lost his sight. The ASP, who was the 1st respondent in the case, admitted the arrest and said that according to information he had received the petitioner was an underworld element taken into custody through his quick response unit. He claimed that the eye injury was caused "while attempting to escape through the dense jungle."

The respondents claimed that the arrest was made on 8 July 2000. The petitioner also maintained that due to the injuries suffered he was unable to engage in his lawful occupation. The court held that "The medical evidence produced before court by the JMO and the eye hospital on the direction issued by this court, supports the virtual petitioner's allegation of assault and disfiguration of the right eye." On that basis the court held that the virtual petitioner had been subjected to torture while in police custody and hence

the allegation of the infringement of article 11 was sustainable. The court also held that articles 13(1) and (2) had been violated. However, it refused to grant a declaration under section 14(1)(g). Although the petitioner's main complaint was against the ASP, the court exonerated him and held that two of the subordinate officers were responsible for the violation of the rights of the petitioners.

### **M.A.M. Sarjun v. Kamaldeen (Reserve PC) 39753 and others<sup>12</sup>**

The petitioner's complaint was that his rights under article 11 of the constitution had been violated through torture, or cruel, inhuman or degrading treatment or punishment. The petitioner alleged that he was transporting furniture from Colombo to his permanent residence in Kalmumai in the east. Although he did not require a permit for such transport, out of an abundance of caution he obtained one under the Forest Ordinance for the transport of items of wooden furniture. During the journey, as he and his companions reached a spot by night where they had to pass through an area containing wild elephants, they stopped the vehicle on the wayside, intending to resume the journey the next day.

As they were resting, a police officer awoke them and told them that he wanted to take them to the police station, as the lorry could not be parked on the side of the road. He then demanded Rs. 5000 to refrain from taking further action. As the petitioner refused, he and his colleagues and the lorry with the furniture were taken to the station. At the station he was hit with a cable, causing him severe pain and injuries. Later the petitioner made complaints and also took treatment for his injuries.

The court after examining all the evidence held that it accepted that the petitioner's rights guaranteed under article 11 of the Constitution had been violated. It went on to say that to prove violations under this article it is not necessary to prove the purpose for which such torture is inflicted. The court went on to observe that:

“The facts of the case reflect the hapless plight of an innocent citizen who takes every precaution to comply with the law of the land. The concern of national security resulting from the threat of terrorism has made it necessary to impose safeguards and checkpoints on our public roads. This case typifies the vicious link between abuse of authority, pursuit of gratification and the infliction of torture on a citizen on insists on his right not to cave into illegal demands of gratification and abuse of power. Whilst security concerns

have to be addressed such action should be taken with the highest concern and respect for human dignity. The presence of groups of armed Police and security personnel who place illegal obstructions is a common sight on our roads. These officers as manifest in the facts of this case do not appreciate that roads constitute public property and that every citizen is entitled to the freedom of movement guaranteed by article 14(1)(h) of our Constitution being the Supreme Law of the Republic. Any interruption of the exercise of such freedom by Police/security personnel would amount to an arrest and has to be justified on the basis of reasonable suspicion of having committed an offense. A tolerant society wedged between ruthless terrorism and the abuse of authority has lost the tastes of freedom. It is only through a respect for human dignity and freedom guaranteed by the Constitution to all segments of our society that peace and normalcy could be restored. Therefore a heavy responsibility lies on all senior officials who detail armed personnel on our roads to take every precaution to ensure that ordinary officers such as the 1st Respondent (being only a Reserve Police Constable) do not abuse their authority, violate the law or inflict suffering on innocent citizens. Such personnel have to be firmly instructed that they have to act with the highest degree of caution and sensitivity with due respect for human dignity.

A person freely moving on the road in compliance with the law could be stopped and made to alight from the vehicle on a reasonable suspicion of illegal activity. Such suspicion would have to be justified in Court. Superior Officers who do not take precautions to prevent any infringement by their subordinates who are detailed for duty would themselves be liable for the infringement of the freedom of movement and the freedom from arbitrary arrest guaranteed by article 14(1)(h) and 13(1) of the Constitution.”

### **Malikage Padma Wijesooriya and M. Christie v. G.R.R.G Thileharatne Alias Loku Aiya (Police Constable and driver) and others**<sup>13</sup>

The two petitioners in this case were husband and wife and they had two minor children. The husband had been paralysed since 1996 due to a head injury and the family made their livelihood by selling illicit liquor in their small village shop. The officers of the Puttalam and Salliyawewa Police Post had arrested them several times and they paid fines for selling illicit liquor. According to the court record,

“They also in some instances were compelled to pay bribes to the police officers and also to voluntarily surrender bottles of illicit liquor to provide a

number of 'cases' for the police every month... There appears to have been a pattern of events with periodic prosecutions and the imposition of fines interspersed with bribery as alleged by the petitioners. The upshot of this pattern of events is that the petitioners remained in the business of selling UML to sustain themselves and also to earn sufficiently to pay the bribe and fines lest they get imprisoned in default of payment."

The incident relevant to the case was that on 26 July 2007 the officers of the Salliyawewa Police Post made a routine visit and asked the petitioners to hand over two bottles of illicit liquor and then searched the house. The petitioners' refused to hand over the bottles as requested and in searching the premises the police could not find any illicit liquor. The police then asked the petitioners to open the shop. At this stage one bottle of liquor was handed over to the police. The police also took the identity card of the 1st petitioner and asked her to report to the police post the following morning. A short while later two officers returned and asked for Rs. 2000 and a further Rs. 200 for petrol. The petitioners were only able to give half of the money requested and said that they had nothing left. The wife told the police that she had to pay some fines to court and that she would come and surrender to the police when she collected sufficient money to be given to the court. To this one officer responded by saying, according to the court record, that, "To help her she also must help him and further stated that he would return at midnight. This was understood by the 1st petitioner (the wife) as an immoral suggestion which she claims was refused."

However, this police officer came at the appointed time and tried to enter the house through the window of the room in which she was sleeping with her daughter. As she screamed and put on the light this police officer was seen struggling to get out and neighbours who gathered caught him. The officer struggled out and fled, leaving his motorcycle, which had no number plate, and also his T-shirt. About half hour later, 12 police officers came with the officer in charge of the post, and used clubs to assault the petitioners and also some neighbours who were present. The petitioners were detained overnight and further assaulted. The next day they were produced before a DMO and later in the magistrate's court. The medical report revealed injuries on the hands and legs of the 2nd petitioner, who is paralysed.

The police officers in their reply tried to make out that they visited the premises to make an arrest for the possession of illicit liquor. The court rejected their version and accepted the version given by the petitioners. It

held that the petitioner's rights under articles 11 and 13(1) had been violated and ordered the payment of a total sum of Rs. 150,000 (around USD 1500) to the petitioners as compensation. It made the following observations about police practices and their abuses relating to arrest and the filing of fabricated cases:

“The Court has in recent time entered judgments in several cases in which the fundamental rights guaranteed by the constitution for the equal protection of the law (article 12(1)); freedom, from arbitrary arrest and detention (article 13(1) and (2) and from torture (article 11) have been infringed in instances of false and fabricated arrests by the Police. These cases are from different parts of the country. To cite some: SC(FR) 559/2004 is from Dambulla, SC(FR)297/2007 is from Colombo and this case is from Puttulam. The problem of infringements is thus widespread. Only a few of the persons affected by these violations have the wherewithal and take the trouble to invoke the jurisdiction of this Court. Many persons pay up and suffer in silence leading to a general feeling of hopelessness, disbelief in the rule of law and the guarantee of fundamental rights. In the circumstances it is incumbent on this Court being vested in terms of article 118(a) and 126(1) of the Constitution with the sole and exclusive jurisdiction for the protection of the fundamental rights of the people to make direction for the prevention of violations of fundamental rights in respect of certain classes and categories of infringements, in terms of article 126(4) of the Constitution.

These instances of infringements related to alleged offenses under specific statutes such as the Motor Traffic Act, Excise Ordinance, the Forest Ordinance and the like, in which investigations do not stem from any complaint of a victim of an offence. The statistics of our Magistrate's Court reveal that the majority of cases are of statutory offenses. In instances where complaints are made of offenses in respect of persons or property (especially of house breaking, robbery, theft and the like) many investigations end as 'accused unknown' and classified as 'C3'.

Where complaints are made to the Court by persons who are accused of having committed offences under the Penal Code, of violations of fundamental rights by investigating Police Officers, the Court has invariably adjourned hearing of such matters until the criminal cases against the Petitioners are concluded. Thus attempts to thwart criminal prosecutions by recourse to the fundamental rights jurisdiction of this Court have been prevented and such investigations and prosecution offences have been safeguarded wherever such course of action is warranted.

The problem is in respect of statutory offences. It appears that respective Police Stations cover up lapses in investigating complaints of victims of offences by filling up statistic of detections of statutory offences. This lead to the process of "collection of cases" which the Petitioners have graphically described and which is borne out by the schedule of prosecutions produced by the Officer-in-Charge himself. It is manifest that the Petitioners have been sustained in the business of selling UML by the Police themselves. The periodic and alternative prosecutions for possession of limited quantities of UML has ensured that they remain in business and earn sufficiently to pay the bribes and the fines. Such arrangements can descend to the pursuit of sexual favours (as happened in this instance) violence and other forms of criminality. In the circumstances the officers who have now been promoted to higher ranks in large numbers should be invested with responsibility to study the patterns of criminality in the respective areas of supervision, particularly of 'collection of cases' and the failure to investigate genuine complaints of victims of offences and to arrest and apprehend the offenders. Commendations and rewards should not be on statistics of detections but on the successful prosecutions of offenders and the general level of law and order within a particular Police area.

As regards purported detections under the Motor Traffic Act that do not stem from any complaint of a victim of an accident, a similar process of 'collection of cases' is operative as revealed in the facts of SC(FR) 297/2007. It was noted in that case that unauthorised 'No Parking' boards have been erected purportedly by the 'SSP Traffic' and fines recovered illegally from hapless motorists. Such an illegal process would invariably be riddled with corruption especially because of the increased amount of 'on the spot fines' permitted now. Those unauthorised boards have now been removed on a direction from this Court and the people have been assured of the equal protection of the law and also relieved of harassment that stem from unlawful Police action.

Another flagrant violation of the guarantee of equal protection of the law relates to the impositions of speed limits on highways. It appears that signboards have been erected on different highways without specifying the officer by whose authority such boards have been erected...

The signposts that have been erected on highways purport to display speed limits as low as 50 kilometers per hour for all vehicles. Different sign posts are seen at different places leaving it wide open for Police Officers on the roads to make recoveries from hapless motorists. In the circumstances a direction is made in terms of article 126(4) of the Constitution for the removal of all sign

posts that have been erected displaying incorrect speed limits. The Inspector General of Police is further directed to notify all relevant officers that due exhibition of signs indicating the applicable limit and the point at which such limitation would cease is mandatory in terms of regulation 6(2)(b) of the Regulations dated 9.1.1987.”

### **V.I.S. Rodrigo v. Imalka S.I. Kirulapona and others**<sup>14</sup>

The petitioner in this case complained about illegal arrest and detention and breach of the right to be treated equally before the law thereby violations of rights guaranteed under articles 13(1) and (2) and 12(1). He also complained about violations of his right to the freedom of movement guaranteed under article 14(1)(h) of the constitution. During the arguments the petitioner’s counsel stated that:

“The case is being presented more from the perspective of the public interest in protecting, securing and advancing the fundamental rights of the people. That, the alleged infringements are typical of the travails, hardship and harassment the people, peacefully, engaged in their lawful pursuits and who travel on our public roads in the exercise of the fundamental right to the freedom of movement guaranteed by article 14(1)(h) of the Constitution are subjected to, thereby denying to such person the equal protection of the law guaranteed by article 12(1) and the freedom from arbitrary arrest and detention guaranteed by articles 13(1) and 13(2).”

As the issue of public interest was raised, the court permitted the petitioner to add the Secretary, Ministry of Defence, as a respondent in this case.

The incident that gave rise to this case is as follows. The petitioner, who was driving in his car on 28 July 2007, was stopped at a police checkpoint and asked for his driving license. As the original license had been lost the petitioner presented a duly authenticated duplicate. However, the petitioner was told by the police officer that his license was a forgery and that unless he paid a bribe he would be prosecuted. The police officer searched the petitioner’s vehicle and seeing a bottle of perfume, demanded that it be given to them. When the petitioner refused, the police officer threatened that his temporary license would be destroyed and that he would be prosecuted. The petitioner showed the receipt issued by the Commissioner of Motor Traffic who issued the duplicate license, to demonstrate the authenticity of the document. At this stage the officer abused the petitioner and asked him to leave while retaining the temporary driving license.

The petitioner went to a nearby police station and complained about the incident and was told to go back to the checkpoint and get his license. The petitioner returned to the spot and was greeted by the officers there with fury. They went with him to the police station and after recording a statement handed the petitioner over to the Fraud Bureau for possessing a forged driving license. The petitioner was detained overnight at the Fraud Bureau and was produced next day before a magistrate charged with committing offences under the Penal Code for possession of a forged temporary license. The court ordered the petitioner to be remanded and also ordered the police to check to authenticity of the driving license. The police later filed a report before the magistrate on the next day that the document was genuine and discharged the petitioner.

The Supreme Court on examination of the petition began its order with the following observations:

“On the basis of all the material that has been adduced in Court, it is common ground that the Petitioner had not committed any offence or done or omitted to do anything so as to be illegal or contrary to law, in respect of the incidents which resulted in his arrest and detention, including a period in remand custody.”

The Supreme Court took up the issue from the point of view of public interest and made several comments regarding various aspects of police abuse and violations of rights revealed in this case. The court commented on the abuse of authority by the Fraud Bureau, which filed a charge against the petitioner without any basis: “It appears that the Fraud Bureau has acted true to its name and has endeavoured to perpetuate a fraud on the court.” The court commented further on the abuse of power, rampant dishonesty and corruption, and misuse of the process of law that takes place at checkpoints, commenting that the erection of semi-permanent barriers on public roads is not authorised by any law. It cited an earlier judgement (SCFR 559/03), stating that direction has been given by the Supreme Court to the Secretary, Ministry of Defence, and Inspector General of Police regarding,

“Abuse of authority on the part of personnel who check vehicles and people traveling on our public roads in the exercise of their fundamental right to freedom of movement, particularly because such action is directed at persons who have not committed any offense and against whom there is no reasonable suspicion of having committed any specific offense.”

The court then summed up the law regarding lawful arrest under the law in Sri Lanka both under the Penal Code and under the emergency regulations:

“Section 32(1) of the Code of Criminal Procedure Act permits the arrest of a person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. The Emergency (Miscellaneous Provisions and Powers) Regulation has a wider power in Regulation 20(1), which reads as follows:

*‘Any Public officer any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force, or any other person authorized by the President to act under this regulation may search, detain for purposes of such search, or arrest without warrant, any person who is committing or has committed or whom he has reasonable ground for suspecting to be concerned in, or to be committing, or to have committed, an offence under any emergency regulation, and may search seize, remove and detain any vehicle, vessel, article, substance or thing whatsoever used in, or in connection with the commission of the offence.’*

Thus a reasonable ground of suspicion is essential to warrant a search. There is no provision of law which permits arbitrary action in stopping and searching persons who travel on our public roads in the exercise of the fundamental right to the freedom of movement... It is paramount that any restriction of the fundamental rights guaranteed by the Constitution should only be as ‘prescribed by law’. The Police and members of the Armed Forces have to bear in mind firmly that they don the uniform and bear weapons only as permitted by law; to uphold the law and to respect secure and advance the fundamental rights declared by the Constitution.

Although copies of the judgment were sent to the respective officials in the background stated above, as submitted by counsel for the Petitioner, no remedial executive action has been taken.”

The court then considered the submission of the counsel to make a direction under article 126(4) of the constitution in the public interest, to secure and advance the fundamental rights of the people on three specific issues:

1. The restriction of the freedom of movement that results at checkpoints and the general measures taken at times to stop traffic and check vehicles and persons travelling on public roads, causing heavy

- congestion of traffic, inordinate delays, hardships and loss;
2. The placing of signs indicating a total prohibition of parking of vehicles on certain principal roads that denies people equal protection of the law; and,
  3. The intermittent stoppage of all traffic to permit what has been described as “VIP movements”, which deny people the freedom of movement and the equal protection of the law.

On the first issue the court upheld

“The submissions of the Counsel for the Petitioner and make a direction that in terms of article 126(4) of the Constitution that the prevalent executive action in operating permanent ‘Check Points’ with unlawful obstructions of public roads and the stoppage of all traffic resulting in serious congestion be discontinued since such action amounts to an infringement of the fundamental right to the freedom of movement guaranteed by article 14(1)(h) of the Constitution and deny to the people the equal protection of the law guaranteed by article 12(1) of the Constitution The power to search seize arrest and detain should be exercised in terms of Regulation 20(1) of the Emergency (Miscellaneous Provisions and Powers) Regulations cited above on the basis of reasonable grounds of suspicion of the commission of an offence or being concerned in the commission of an offence under the Emergency Regulations. Officers assigned such functions should be duly informed of the fundamental right to the freedom of movement guaranteed by article 14(1)(h) and the guarantee of the equal protection of the law as contained in article 12(1) of the Constitution. It is to be noted that the S.O.P. (5R3) produced by the I.G.P makes no reference to these matters.”

On the second it held that,

“In the circumstances we make a direction in terms of article 126(4) of the Constitution that such illegal signs be removed forthwith and proper orders be made if necessary, in terms of provisions of the Motor Traffic Act. In making such an order suitable arrangements should be made to permit the parking of vehicles at least on one side of the road at alternate times depending on the intensity of the movement of the traffic.”

On the third it held that,

“In the circumstances 5th [Inspector General of Police] and 7th [Secretary,

Ministry of Defence] Respondents are directed to ensure that no such obstructions as alleged take place. If security measures have, to be taken to safeguard any person who is specially threatened such measures should be taken with minimum inconvenience to the citizens who are exercising the freedom of movement. Such measures should in any event be avoided at peak hours since they cause serious congestions that would itself pose a threat to security. The 5th Respondent is directed to report to court on 7.1.2008 on the action taken.”

The court allowed the petition and made a declaration that the petitioner’s fundamental rights guaranteed under articles 12(1), and 13(1) and (2) had been infringed and ordered the sum of Rs. 325,000 (around USD 3250) to be paid to the petitioner.

### **Comments**

- a. All the issues raised regarding the High Court cases above are also relevant to these cases before the Supreme Court.
- b. Some cases demonstrate that extremely cruel forms of torture are habitual.
- c. Illegal arrest, detention and torture are used for the purpose of obtaining bribes.
- d. Even cases that obtained heavy public criticism due to the severity of torture do not seem to have activated any internal police mechanisms where high-ranking officers take action on the allegations.
- e. Several of the cases reveal considerable frustration and even despair on the part of the Supreme Court about the failures of the Inspector General of Police and the Secretary, Ministry of Defense, to take effective action to enforce discipline within law-enforcement agencies.
- f. Petitioners in these cases are like litigants in civil cases, with the burden to prove the allegations themselves, while the state should itself have this responsibility. Instead, the state withholds the information needed to make a case and even allows its officers to present falsified versions of events.
- g. As there is no witness protection law in Sri Lanka, in all these cases the private citizens also have to look after their own security while engaging in legal battles with officers of the state, who hold enormous power and influence over their localities.

## **Dysfunctionality as seen in seven communications to the UN Human Rights Committee**

### **Tony Fernando: Communication No. 1189/2003<sup>15</sup>**

Tony Fernando came before the UN Human Rights Committee claiming that his rights under the Covenant were violated when the Supreme Court of Sri Lanka summarily convicted him for contempt of court on 6 February 2003 and sentenced him to one year's rigorous imprisonment. According to him, approximately two weeks later, a second contempt order was issued, the operative part of which stated that:

“The petitioner was informed that he cannot abuse the process of Court and keep filing applications without any basis. At this stage he raised his voice and insisted on his right to pursue the application. He was then warned that he would be dealt with for contempt of Court if he persists in disturbing the proceedings of Court. In spite of the warning, he persists in disturbing the proceedings of Court. In the circumstances, we find him guilty of the offence of contempt of Court and sentence him to one-year rigorous imprisonment...”

The author was imprisoned immediately and claimed that while in prison he was severely assaulted by prison guards. During this time the UN Special Rapporteur on the independence of judges and lawyers visited him, and expressed concern about the case.

In March 2003 the author filed a fundamental rights petition to the Supreme Court, which remained pending before court. He also submitted an appeal against his conviction for contempt on the grounds that no charge was read out to him before conviction, that the sentence was disproportionate, and that the matter should not be heard by the same judges, since they were biased. Nonetheless the same three judges who convicted him heard the appeal, which was dismissed.

The author claimed violations of his rights under several articles of the Covenant including article 14 (right to fair trial) article 9 (arbitrary detention), and article 19 (freedom of expression).

The author was released from jail in October 2003 and on 5 December 2003, following death threats the author requested interim measures of protection. On 9 January 2004, pursuant to rule 86 of the rules of procedure the Special Rapporteur on new communications requested the State party on behalf of the Committee to adopt all necessary measures to protect the life, safety

and personal integrity of the author and his family, so as to avoid irreparable damage to them.

### **Decision**

On the violation of articles 7 and 10(1) of the Covenant, regarding the author's alleged torture and conditions of detention, the committee noted that these issues were pending before both the magistrate's court and the Supreme Court. A delay of 18 months did not amount to an unreasonably prolonged delay within the meaning of article 5(2)(b), of the Optional Protocol. The claim was thus considered inadmissible for non-exhaustion of domestic remedies.

On the author's claim that his detention was arbitrary under article 9 as it was ordered after an allegedly unfair trial, the committee was of the view that this claim is more appropriately dealt together with article 14 as it relates to post-conviction detention. As to the alleged violation of article 14(3)(c), the committee found that this claim had not been substantiated for the purpose of admissibility and therefore was also inadmissible under article 2 of the Optional Protocol.

As to the remaining claims of violations of articles 9(1), 14(1), (2), (3)(a), (b), (d), (e), 14(5), and article 19, the committee considered these claims sufficiently substantiated with no other bar to their admissibility.

On the merits of these claims, the committee noted that courts in Common Law jurisdictions have traditionally enjoyed authority to maintain order and dignity in court debates by the exercise of a summary power to impose penalties for contempt of court. But here, the only disruption indicated by the state party was the repetitious filing of motions by the author, for which an imposition of financial penalties would have been sufficient, and one instance of raising the voice in the presence of the court and refusing thereafter to apologize. The penalty imposed was a one-year term of rigorous imprisonment. Neither the court nor the state party had given any reasoned explanation as to why such a severe and summary penalty was warranted in the exercise of a court's power to maintain orderly proceedings. Article 9(1), of the covenant forbids arbitrary deprivation of liberty. The imposition of a draconian penalty without adequate explanation and without independent procedural safeguards falls within that prohibition. The fact that an act constituting a violation of article 9(1) is committed via the judicial branch of government cannot exclude the responsibility of the state party as a whole.

The committee concluded that the author's detention was arbitrary, in violation of article 9(1). In the light of this finding, the committee did not see the need to consider the question of whether the provisions of article 14 may have any application to the exercise of the power of criminal contempt. Neither did it consider whether or not there was a violation of article 19.

In accordance with article 2(3)(a) of the covenant, the state party was obliged to provide the author with an adequate remedy, including compensation, and to make such legislative changes as necessary to avoid similar violations in the future. The state party was also requested to avoid similar violations in the future.

### **Jegatheeswara Sarma: Communication No. 950/2000**<sup>16</sup>

Jegatheeswara Sarma came before the committee claiming that the state party had violated his son's rights under articles 6, 7, 9, and 10 of the covenant and that he and his family were victims of a violation of article 7. He alleged that on 23 June 1990 the army abducted his son (together with himself and others) in a cordon and search operation on suspicion of being a member of the LTTE, and that army personnel tortured his son while in custody and then forcibly disappeared him. About one year later a high-ranking army officer told his wife that her son was dead, but about six months later still he saw his son in an army vehicle. He gave evidence before the Presidential Commission of Inquiry into Involuntary Removals and Disappearances in the Northern and Eastern Provinces and complained to the president. However, the army denied any knowledge of the abduction.

The state party maintained that the committee was not competent to judge the case as the alleged violation occurred prior to the entry into force of the Optional Protocol and also that the author had not demonstrated the exhaustion of domestic remedies. In reply the author claimed that the suffering of himself and his family was continuing to date. He also listed 39 letters and requests to various authorities regarding the disappearance without any tangible outcome to date. Thus he argued that he had exhausted all available domestic remedies.

On the merits of the case, the state party submitted that it did not—either directly or through the relevant field commanders of its army—cause the disappearance of the author's son. Instead, criminal investigations had revealed that one Corporal Sarath was responsible for his abduction, without the knowledge of responsible officers and independent of the cordon and search operation.

The author indicated that enforced disappearances are a clear breach of various provisions of the covenant, including article 7. There was little doubt that his son's disappearance was imputable to the state party because the Sri Lankan army is indisputably an organ of that state. Where the violation of rights is carried out by a soldier or other official who uses his or her position of authority to execute a wrongful act the violation is imputable to the state, even where the soldier or other official is acting beyond his authority. The author, relying on the judgment of the Inter-American Court of Human Rights in the Velasquez Rodriguez Case and that of the European Court of Human Rights concluded that even where an official is acting outside of authority, the state party finds itself in a position of responsibility if it provided the means or facilities to accomplish the act.

### **Decision**

On the admissibility of the communication, the committee's view was that although the disappearance took place before the entry into force of the Optional Protocol for Sri Lanka, its effects may have occurred or continued thereafter. Also, the author had exhausted the remedies that were reasonably available and effective in Sri Lanka.

On the merits of the communication, it was noted that the state party had not denied that the author's son had been abducted by an officer of the Sri Lankan army and had been unaccounted for since. Also, the committee held that for purposes of establishing state responsibility it was irrelevant that the officer to whom the disappearance was attributed had acted outside authority or that his superior officers were unaware of his actions. Therefore the state was responsible for the disappearance of the author's son and the violation of article 9 in its entirety. The facts also revealed a violation of article 7 both with regard to the author's son and the author's family. On article 6, it was noted that the author had not asked the committee to conclude that his son was dead and he had indicated that he had not abandoned hope for his son's reappearance. Therefore the son's death had not been presumed.

The committee held that the state party was under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation, the son's immediate release if he was still alive, and adequate information resulting from its investigation as well as adequate compensation for the violations suffered.

**Nallarattnam Singharasa: Communication No. 1033/2001**<sup>17</sup>

Nallarattnam Singharasa, serving a 35-year prison sentence, claimed violation of articles 14(1), (2), (3)(c), 3(f), 3(g); (5) as well as 7, 26 and 2(1), 2(3) of the covenant. He claimed that on 16 July 1993 he was arrested by state security forces on suspicion of supporting the LTTE and detained under the Prevention of Terrorism Act (PTA), which provided for detention without charge up to 18 months (renewable every three months). He further alleged that while in detention, he was not afforded legal representation or external interpretation, but was interrogated and subjected to torture and ill treatment before his statement was recorded and his thumbprint forcibly placed on it. This statement was later produced as his alleged confession. After 14 months of detention he was indicted in the High Court in three separate cases under the PTA.

In Case No. 6895/94, despite the High Court being informed that the victim had been tortured and the Judicial Medical Officer stating that he displayed scars and a serious eye injury that permanently impaired his vision, the High Court accepted his supposed confession. On allegations of torture, the court held that his failure to inform the magistrate of the assault amounted to him not behaving as a 'normal human being'. The author's testimony that he had not reported the assault to the magistrate for fear of reprisals on his return to police custody was not considered. Accordingly, he was convicted and sentenced to 50 years' imprisonment based solely on the alleged confession. The Court of Appeal affirmed his conviction but reduced the sentence to 35 years, while his petition for special leave to appeal to the Supreme Court was refused.

The author opined that among other things article 14(1) was violated when he was convicted by the High Court based solely on an alleged confession extracted under circumstances that violated his right to fair trial.

The delay of four years between his conviction and the denial of leave to appeal to the Supreme Court was a violation of article 14(3)(c), while not being provided with a qualified external interpreter when interrogated by the police (he could not read or speak Sinhalese) violated his rights under article 14(3)(f). In addition, the reliance on his alleged confession and shifting the burden on him to prove the confession was not made voluntarily violated article 14(3)(g), section 16(2) of the PTA violated article 14(2) (presumption of innocence), and the decision of the Court of Appeal to uphold his conviction despite 'irregularities' violated article 14(5). Articles 7

and 2(1) were violated because among other things there was a continuing violation of his rights as Sri Lankan law did not provide any effective remedy for his torture and ill treatment. Finally, the constitutional bar to challenge section 16(1) of the PTA violated article 2(3) when read with article 7 of the covenant.

The state party argued that the communication was inadmissible as the author was required to personally submit a communication or prove that he was unable to do so. The state party also asserted that he had not exhausted domestic remedies, such as requesting for a presidential pardon; applying to the Supreme Court under article 11 of the Constitution for a declaration of rights violation, compensation and if warranted an order of release; complaining to the police of his alleged torture and ill-treatment; or instituting criminal proceedings against the perpetrators in the Magistrates Court.

On the merits of the communication, the state party denied that the author's rights under the covenant were violated or that either the State of Emergency or PTA violated the covenant.

### **Decision**

On the admissibility of the communication, the committee found that the author had exhausted domestic remedies in that a presidential pardon did not constitute an effective remedy for the purposes of article 5(2)(b) of the Optional Protocol, and also on article 7 the Court of Appeal had already dismissed his appeal for lack of merit and refused leave to appeal to the Supreme Court.

On the merits of the communication, the committee's views were that the author had been denied a fair trial as guaranteed under article 14(1) when the courts relied solely on a confession obtained under the aforementioned circumstances. Article 14(3)(c) conferred a right to review of a decision at trial without delay. Thus a delay of more than two years (as in the present case) violated the author's rights under articles 14(3)(c) and 5 of the covenant.

Also, the wording in article 14(3)(g) that no one shall "be compelled to testify against himself or confess guilt" must be understood as the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused when obtaining a confession. It is implicit in this principle that the prosecution prove that the confession was made without duress. Even if the state argues that the threshold of proof is "placed very low"

and “a mere possibility of involuntariness would suffice...” the willingness of the courts at all stages to dismiss the complaints of torture and ill treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after) suggests that this threshold was not complied with. Hence by placing the burden of proof regarding the confession on the author, the state party violated article 14(2) and 14(3)(g), read together with articles 2(3) and 7 of the covenant. Therefore the facts disclosed violations of article 14(1), (2), (3)(c) and 14(g) read together with articles 2(3) and 7.

The committee held that the state party was under obligation to provide the author with an effective and appropriate remedy including release or retrial and compensation as well as to avoid similar violations in the future. The state should also ensure that the impugned sections of the PTA be made compatible with the provisions of the covenant. The state party was requested to inform the committee within 90 days of the measures taken to give effect to the committee’s views.

**Victor Ivan Majuwana Kankanamge: Communication No. 909/2000**<sup>18</sup>

Victor Ivan Majuwana Kankanamge, the editor of Ravaya newspaper, came before the committee claiming violation of his rights, among other things, under articles 2(3), 19 and 26 of the covenant. He claimed that the Attorney General indicted him thrice before the High Court for criminal defamation without proper assessment of the facts as required under Sri Lankan legislation, and this was designed to harass him. As a result, he had been intimidated, his freedom of expression restricted and the publication of his newspaper obstructed. Though not specifically raised, the committee also considered violation of article 14(3)(c).

Earlier, the author’s petition to the Supreme Court for a violation of his fundamental rights guaranteed under the Sri Lankan constitution had been refused leave to proceed.

The state party argued that the communication was inadmissible as the alleged violation occurred prior to the Optional Protocol entered into force for Sri Lanka and thus it was covered by the reservation made by the state. Also, it argued that the author did not exhaust available domestic remedies viz. making representations to the Attorney General, complaining to the Ombudsman or the National Human Rights Commission (NHRC). The state contended that section 393(7) of the Criminal Procedure Code afforded

the Attorney General a discretionary power to file indictments in the High Court and in the present case, the Attorney General acted in accordance with the law, impartially and in the best interest of justice.

### **Decision**

On the admissibility of the communication, the committee found that the alleged violations had occurred not only at the time of filing the indictment, but were continuing and constituted new alleged violations as long as the indictments remained in effect. It also held that the state party had failed to demonstrate that, in the light of the contrary ruling by the Supreme Court, making representations to the Attorney General, complaining to the Ombudsman or the NHRC constituted an effective remedy. Thus the communication was declared admissible.

On the merits of the communication, the committee found that as the three indictments against the author had not been adjudicated and had been pending for several years, the proceedings have been unreasonably prolonged and thus they violated article 14(3)(c) of the covenant. Regarding the nature of the author's profession and other circumstances, the indictments for criminal defamation for several years left the author in a situation of uncertainty and intimidation and had a chilling effect, which duly restricted the author's exercise of his rights to freedom of expression. Thus the facts also revealed a violation of article 19 read with article 2(3). The committee held that the state party was under an obligation to provide the author with an effective remedy including appropriate compensation, and under an obligation to prevent similar violations in the future.

Accordingly the state party was directed within 90 days to provide information about the measures taken to give effect to the committee's views.

### **Jayalath Jayawardena: Communication No. 916/2000**<sup>19</sup>

Jayalath Jayawardena, a medical doctor and politician, came before the committee claiming that (a) the public allegations made by the President of Sri Lanka of the author's alleged involvement with the Liberation Tigers of Tamil Eelam put his life at risk, but he had no remedy against the President as she was immune from legal suits; (b) that the state failed to protect his life when it refused to grant him sufficient security; and, (c) the state failed to investigate his complaints regarding death threats against him. Although not specifically invoked, the committee considered the communication under article 9(1) of the covenant.

The state party maintained that the communication was inadmissible, as the author had not availed himself of any domestic remedies under the Constitution and the Penal Code. It also contested the fact that the author had received death threats. Instead, it alleged that rather than vindicating human rights violations, the author was engaged in a political exercise to bring discredit to the government internationally.

### **Decision**

The committee found that while the state party did not contest that due to her immunity the President could not have been the subject of a legal action, it did not indicate whether the author had any effective remedies to obtain reparation for the harm allegedly caused by the President. Also the state party had failed to investigate the author's claims of death threats. Thus the author had exhausted domestic remedies regarding these issues.

The state party did not contest the allegation that the President had put the life of the complainant at risk, nor the fact that the statements were made. Also, because the head of state acting under immunity enacted by the state party made these statements, the committee concluded that the state party was responsible for the violation of the author's rights under article 9(1).

Accordingly, the author was entitled to an appropriate remedy. The state party was directed within 90 days to provide information about the measures taken to give effect to the committee's views.

### **Dissenting view**

The communication was not admissible, as the author had not exhausted domestic remedies. The fact that the president enjoyed immunity from suits did not mean that there was no procedure for redress against other state organs.

### **Lalith Rajapakse: Communication No. 1250/2004**<sup>20</sup>

Lalith Rajapakse came before the committee alleging that on 18 April 2002 he was unlawfully arrested, detained and tortured for purposes of obtaining a confession, as a result of which he suffered serious injuries and was rendered unconscious for two weeks. This amounted to a violation of articles 7 and 9 of the covenant. The state party's failure to adequately protect him from threats issued by police officers violated article 9(1) while the failure to ensure prompt and impartial investigation by competent authorities violated his right to an effective remedy under article 2(3) of the covenant.

Consequently he filed a petition for violation of his fundamental rights in the Supreme Court of Sri Lanka and obtained leave to proceed. But thereafter court hearings had been regularly postponed. Meanwhile, he had been subjected to constant pressure to withdraw his complaint and had been living under extreme psychological stress. This prevented him from working and supporting his family. Three months later the Attorney General had initiated an investigation into the incident and later filed a criminal action in the High Court under the Convention against Torture Act (Act No. 22 of 1994) against one police officer. This case remained pending. On 29 September 2003 the author was acquitted of two charges of robbery that had been filed against him, as the alleged victims had not made a complaint.

### **Decision**

The admissibility and merits of the communication were considered separately.

Regarding admissibility, the committee contended that the delay in disposing the author's cases before the High Court and Supreme Court amounted to an unreasonably prolonged delay according to article 5(2)(b) of the Optional Protocol. It was significant that the state party had not provided any reasons why these cases could not have been considered more expeditiously. Nor had the state referred to any complications that prevented investigation and judicial determination for nearly three years. Admissibility of the communication was reiterated despite the state party's objections that domestic remedies had not been exhausted; special mention was made about both court cases pending before court nearly one and a half years after the admissibility decision.

Regarding merit, the committee observed that criminal proceedings continued to be pending in the High Court since 2004 while the fundamental rights application before the Supreme Court had been adjourned pending determination of the High Court proceedings. Thus, in finding a violation of article 2(3) together with article 7 the following was considered:

- (a) Criminal investigations into the author's complaint of torture were initiated only three months after the incident—despite the author being hospitalised, rendered unconscious for 15 days and medical reports describing the numerous injuries;
- (b) There was a lack of significant progress in the criminal proceedings; large workload was not an excuse;

- (c) The delay was compounded by the state's failure to provide a timeframe for disposing of case;
- (d) The state party could not avoid its responsibilities under the covenant by arguing that domestic courts were dealing with the matter when it was clear that such remedies relied upon by the state were ineffective.

Also observed was the state party's failure to contest that the author had been arrested unlawfully, not informed of the reasons for arrest or of any charges against him and was not brought promptly before a judge. Thus, a violation of articles 9(1), (2) and (3) together with article 2(3), was held. Article 9(1) had also been violated because the author was repeatedly requested to testify alone at a police station, pressurised to withdraw his compliant to such an extent that he had to go into hiding. Additionally the alleged perpetrator was not in custody.

The committee concluded that the author was entitled to an effective remedy and that the state party was under an obligation to take effective measures to ensure that: (a) the High Court and Supreme Court proceedings were expeditiously completed; (b) the author was protected from threats and/or intimidation; and, (c) the author was granted effective reparation. The state party was also obliged to ensure that similar violation did not occur in the future.

### **R.K.G. Dingiri Banda: Communication No. 1426/2005**<sup>21</sup>

R.K.G. Dingiri Banda, a former officer of the Sri Lankan army came before the committee alleging a rights violation under article 7 of the covenant when on 21 October 2000 he was severely assaulted by two superior officers. The attack caused him severe injuries—including renal and respiratory failure—necessitating hospitalisation of more than one month. He later lost his job due to incapacitation. Also the state party's failure to ensure him prompt and effective remedies had violated his rights under article 2(3) of the covenant.

On the author's complaint, the army's Gajaba Regiment conducted a summary trial at which the alleged perpetrators pleaded guilty and were punished with a temporary suspension of their promotions. Later however, they had been promoted. A non-summary inquiry was initiated against the perpetrators at the magistrate's court for attempted murder. The inquiry was still pending. His case before the district court claiming civil damages from the alleged perpetrators also remained pending. On 19 August 2002, the author filed a petition for violation of his fundamental rights in the Supreme

Court of Sri Lanka. This application was withdrawn and proceedings terminated—despite specific instructions to his legal counsel not to enter into any settlement. His complaint to the chief justice and the Colombo Bar Association against this lawyer did not result in any inquiry.

The state party denied any rights violation insisting that the author had recourse to four different domestic proceedings. His criminal and civil cases were pending while the Supreme Court proceedings had been terminated appropriately. Thus domestic remedies had not been exhausted and were adequate avenues of redress. Also, the perpetrators had already been tried and punished at the summary trial, which amounted to a criminal trial. Thus, to hold other criminal proceedings based on the same facts was a violation of the ‘double jeopardy’ rule.

### **Decision**

Regarding admissibility, the committee contended that under article 2(3) domestic remedies must not only be available but also effective. In the present case, remedies relied by the state party were unduly prolonged and appeared to be ineffective. Thus the author’s claims on articles 7 and 2(3) were sufficiently substantiated, but the claim under 9(1) had not been adequately supported and was held to be inadmissible.

Regarding merit, the committee noted that proceedings against the alleged perpetrators were pending in the magistrate’s court seven years after the incident, while the author’s fundamental rights application before the Supreme Court had been terminated under unclear circumstances. The delay was compounded by the state’s failure to provide a timeframe for consideration of the case. The Army Court of Inquiry did not have jurisdiction to try acts of torture; the author was not represented; and the punishment meted out to the alleged perpetrators was only forfeiture of seniority—despite the author’s hospitalization for several months and medical reports describing his injuries. The state party could not avoid its responsibilities under the covenant by arguing that domestic courts had already dealt with the matter when remedies relied on by the state party was unduly prolonged and appeared ineffective.

The state party was found to have violated article 2(3) read together with article 7 of the covenant. The author was entitled to an effective remedy including compensation. The state party was under an obligation to take effective measures to ensure that: (a) the magistrate’s court proceedings were

expeditiously completed and (b) the author was granted full reparation. The state was also obliged to ensure that similar violation did not occur in the future.

### **The Supreme Court decision on the non-enforceability of the ICCPR and its Optional Protocol to Sri Lanka**

After the Human Rights Committee made its decision in Nallaratnam Singharasa's case, as the government did not comply with recommendations of the committee for the release or retrial of Singharasa and payment of compensation, an application was filed by way of Special Leave to Appeal to the Supreme Court for the purpose of getting such relief as had been recommended.<sup>22</sup> The Supreme Court examined the enforceability of a decision by the Human Rights Committee and for that purpose went on to examine the legal impact of the accession to the ICCPR by the Sri Lankan government in 1980, and the declaration relating to Sri Lanka's accession to the Optional Protocol in 1997 by the president of Sri Lanka. The Supreme Court pointed to Sri Lanka as having a dualist constitution and went on to state that,

“The Covenant is based on the premise of legislative or other measures being taken by each state Party ‘accordance with its constitutional processes ... to give effect to the rights recognized in the... Covenant’ (article 2). Hence the act of the then President in 1980 in acceding to the Covenant is not per se inconsistent with the provisions of the Constitution or written law of Sri Lanka. The accession to the Covenant binds the Republic qua state. But, no legislative or other measures were taken to give effect to the rights recognized in the Convention as envisaged in article 2. Hence the Covenant does not have internal effect and the rights under the Covenant are not rights under the law of Sri Lanka.”

The Court then went on to consider the Optional Protocol and stated that,

“The accession to the Optional Protocol in 1997 by the then President and Declaration made under Article 1 is inconsistent with the provisions of the Constitution specified above and is in excess of the power of the President as contained in Article 33(f) of the Constitution. The accession and declaration does not bind the Republic qua state and has no legal effect within the Republic.”

Since the making of this judgment although there have been many

declarations by the government to take the appropriate actions to bring the Sri Lankan law into conformity with the ICCPR and also in terms of the state obligations as a signatory to the Optional Protocol of the International Covenant on Civil and Political Rights, nothing has so far been done to achieve that purpose.

A direct result of the Supreme Court judgment in the Nallaratnam Singarasa case is that none of the decisions made by the Human Rights Committee in terms of the communications that it has entertained from Sri Lankan citizens have been implemented.

### **Comments**

These decisions together speak to the arbitrariness of decisions made in the Supreme Court and other superior courts and the absence of possibility to appeal against them. In the case of Tony Fernando, the committee held that his sentencing violated article 9 of the covenant. In the case of Nallaratnam Singharasa, a High Court convicted and sentenced the author of the communication to 50-years' imprisonment based solely on an alleged confession. The Court of Appeal affirmed the conviction and reduced the sentence to 35 years. The Supreme Court refused his leave to appeal. The committee held that by the denial of a fair trial a right guaranteed under article 14(1) of the covenant and the right to a review granted under article 14(3)(c) had been denied.

In the case of Victor Ivan the author's complaint was against the Attorney General for abusing his position by filing fabricated charges and harassing the author by delaying the prosecutions. The author also complained that the Supreme Court also violated his rights by refusing leave to proceed with his fundamental rights application against the actions of the Attorney General. The committee held that the author's rights guaranteed under 14(3)(c) and article 19 read with article 2(3) had been violated.

In the case of Jayalath Jayawardena it was the president of Sri Lanka who was accused of putting the life of an opposition politician in danger by a baseless statement that she made on television linking him to a terrorist group. As the president is immune from any proceedings in any court or tribunal [under article 35(1) of the constitution] the author was debarred from pursuing any legal action. Besides, he complained that the state failed to grant him sufficient security or investigate his complaint. The committee held that article 9(1) of the ICCPR was violated.

In the case of Jegatheeswara Sarma it was the entire state apparatus that failed in not responding with a thorough and effective investigation into a disappearance. The committee held that article 9 of the covenant had been violated in its entirety. The criminal justice system had not provided adequate remedy to the authors of the communication. Similarly, in the case of Lalith Rajapakse the author had been subjected to torture and the state did not provide him with an adequate remedy as the complaint into the investigations and the adjudication of the case were unduly delayed. The HRC committee held that articles 9(1)(2) and (3) together with 2(3) were violated. Likewise, in the case of R.K.G. Dingiri Banda the complaint was one of torture and failure to have an adequate remedy due to the delay. The committee held that prolonged delay in providing a remedy by the courts amounted to a violation of article 2(3).

### **Reports from two government-appointed bodies to investigate the police service in Sri Lanka**

There have been two government-appointed commissions and one committee to investigate and recommend changes to the police service in Sri Lanka. These have been the Police Commission of 1946, which was chaired by Justice Francis J. Soertz and two other members, P. Saravana Muttu and H. Sri Nissanke; the second police commission, which submitted its report in 1970 and was chaired by Justice Hema Bassnayake; and a committee that was appointed to report on the functioning of the police department, which submitted its report in August 1995, with Justice D.G. Jayalath, Col. Ivan Samaravickrema and W.T. Jayasinghe as members.

The following paragraph from the introduction to the 1946 report indicates the basic problem in orientation of the police, which was to become even worse in the subsequent period, as the force was changed from a primarily investigative agency to a riot-policing agency:

“It would be useful to sketch briefly the events that preceded the issue of the Commission to us, for such a sketch would afford some explanation of the dissatisfaction there has been on the part of the public with the Police Force as it exists to-day. Perhaps within the last 50 years it was during the Dowbiggin period—that the Ceylon Police, generally speaking, enjoyed its highest reputation, and it would most probably have gone from strength to strength as a Police Force but for the unfortunate Riots. They served to disturb the sense of proportion of that otherwise robust-minded Inspector-General, and obsessed him with what might be described as a Riot complex. From that

time on the Force, which had been gradually emancipating itself from its undoubtedly military origin in this Island and from its military traditions, began to go back to them. Parades and drills with band accompaniments, rifle practices route marches, bayonet charges, and similar military- exercises of which there was so much complaint made to us in the course of our inquiry, occupied most of the time of the members of the Force. Lapses and defaults on the part of the men in respect of these matters were punished with fatigues, penalty drills, confinement to barracks, and similar army punishments. The Force was fast falling away from Blackstone's conception of what a Police Force should be: Legal custodians appointed to preserve the peace, to keep watch and ward in the districts, and to bring criminals to justice. They were shaped and trained mainly to meet the emergency of riots. This would not have mattered very much if it was only a brief episode in the history of the Force, but Inspector-General Dowbiggin continued in the office of Inspector-General of Police for more than 20 years after the Riots, and the materialization of the Police went on much to the distaste, and even to the perturbation of the public. But in those days there was very little the public could do to alter that state of things, and so they endured what they thought could not be cured. It must, however, be admitted that despite this military bent, a considerable work of a truly police character was done in his time, and a number of very efficient Ceylonese officers adorned the force in those days."

This commission made many recommendations but judging from the report of the second commission it is quite obvious that none of the solutions to the problems that were identified by the 1946 Commission were implemented. The situation had become even worse by 1970. By the time of the 1995 report, many political factors emerged which had far worsened the riot police approach and militarized the policing system. In 2001 parliament recognised the serious collapse of public institutions including the police and overwhelmingly passed the 17th Amendment to the constitution, which created a Constitutional Council selected by consensus among political parties to make appointments for a number of commissions to be in charge of recruitment, promotion, transfers and the disciplinary control of several public services, including the police. During the debate in parliament there was recognition from all political parties that these public institutions had become overly politicised and utterly dysfunctional.

### **Promoting international norms and standards**

The promotion of international norms and standards relating to rights guaranteed under the ICCPR becomes possible only to the extent that

adequate investigations are held into credible complaints of violations of rights by competent agencies of the state. Without such investigations, the protection of these rights cannot take place. If this premise is accepted then there are many unavoidable conclusions to be drawn about the Sri Lankan criminal justice system.

What the cases cited above make plain is that the violations they entail are not merely a matter of culpability of particular officers but pertain to systemic problems. They are not random, the consequence of neglect or the behaviour of a few “bad eggs”. Within a reasonably functioning criminal investigation system there would be precautions to prevent the type of systemic abuse demonstrated in the details of the cases cited above, and the means to take quick remedial measures where for some reason such violations might occur. What is particularly shocking about these cases, even more than the details of the violent acts themselves, is that for years the state neglected to take any serious notice of these acts or to take any corrective action. There is apparently no effective formal responsibility within the criminal justice system between superiors and subordinates. Higher-ranking officers, including the Inspector General of Police, seem to have little if any role in the directing and supervising of investigations, or the taking of corrective action where complaints are received.

Added to the serious failures within the system and between superior officers and subordinates is the lack of overall state responsibility, in either the executive or legislature, for measures to address systemic problems that have for years manifest themselves and are known to all. The executive has not taken any action in order to better understand or resolve these problems. There is no state-sponsored research into the problems nor has any authority been established to probe and address them. In fact, the executive has even obstructed the limited measures taken by the legislature through the 17th Amendment. The Constitutional Council and several commissions, including the National Police Commission, were appointed shortly after the amendment was passed, but when the terms of office of the first members expired no new members were appointed as required. The failure of the executive president to appoint members of the Constitutional Council has disabled even the limited measures that had been adopted so far by the legislature to deal with the dysfunctional public institutions.

### **Seeking solutions**

**The problem:** There are very serious flaws in criminal investigative

mechanisms in Sri Lanka; the state has failed to take adequate remedial action to deal with them; as long as they persist, Sri Lanka will fail to uphold the international norms and standards set down in the ICCPR. All work on the promotion of international norms and standards in Sri Lanka, if it is to have practical value, must address this problem.

**UN mechanisms:** As they exist now, UN mechanisms are not capable of addressing this problem. Usually institutional flaws are addressed in terms of technical assistance; however, the systemic flaws of the criminal justice system in Sri Lanka are not purely technical. Nor can they be addressed solely by the provision of experts to advise and train local staff, or by financial or other assistance of a technical nature. Like many countries, Sri Lanka has trained staff who, if they were allowed to work as they have been trained, would be able to investigate and deal with many issues with effectiveness. While improvements are possible in any system, it is not the lack of personnel and technical means but willful neglect of the system that needs to be addressed. Nor are human rights agencies—such as the Human Rights Council, Human Rights Committee and treaty bodies—equipped with the means to address the problem. These agencies can make various recommendations, and in fact some have made recommendations that go to aspects of the problem; however, these recommendations are not implemented. The form of human rights discourse in these UN mechanisms, while useful, is inadequate when dealing with the systemic issues presented in this paper. The outcome of Nallaratnam Singharasa's case makes clear that there is no intention in any part of the state in Sri Lanka to give effect to such recommendations any time soon.

**New avenues:** Solutions to the problem, then, will have to come from new discussions in new forums. As the problem is rooted in a lack of political will, at least in the early stages local forums alone will not be adequate; this is also the case as in places like Sri Lanka where there are serious defects in the criminal investigative system, there are also various practices to restrict freedom of expression and delimit public discourse. Recent years has seen a mushrooming of projects around post-conflict justice. Perhaps discourse to address systemic issues of criminal justice systems and the creating of political necessities to deal with such problems could be brought more strongly into both international and local debate. If UN agencies set out a body of principles to form the basis of an international agenda to address these systemic issues, it could contribute to the opening of new and urgently needed avenues.

The UN Secretary General's report to the Security Council on "Rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616, 23 August 2004) recognises the role of the United Nations in "strengthening the rule of law of law and transitional justice in the wake of conflict, domestic reform constituencies, help build the capacity of national justice sector institutions, facilitate national consultations on justice reform and transitional justice and help fill the rule of law vacuum evident in so many post-conflict societies".

However, the situation that has been described with regard to Sri Lanka and is true of many countries today is not a result of one particular conflict. It is the result of many conflicts dating back to the very inception of a criminal justice system under the British colonial regime. Many other countries that became independent after an extended period of colonial rule are dealing with similar webs of multiple conflicts. Their colonial-era criminal justice systems, which were designed to afford colonial officers impunity, are unable to cope with these conflicts and end up contributing to them. In Sri Lanka, as universal franchise was introduced before the foundation of the rule of law had been solidly laid, the very development of democratic practice ignored the ground upon which it should have been built. In *The future of freedom: Illiberal democracy at home and abroad*, Fareed Zakaria has observed a similar experience of democratic elections undermining the rule of law in many countries around the world today.

Addressing the problem requires a different approach to the establishment of international criminal courts or truth commissions, the vetting of public service personnel or similar approaches proposed by the UN Secretary General in the report mentioned above. Political developments and the influence of such developments on the criminal justice system need to be studied and dealt with in trying to find solutions to improve the criminal justice system in a way that it can promote the international norms and standards.

### **The role for judicial intervention and interpretation**

The cases cited above are among many that have come before the courts and authorities in Sri Lanka which clearly demonstrate that torture and other forms of grave human rights abuse are prevalent at police stations in Sri Lanka, as well as in other institutions, including the military. While the Supreme Court has recognised the seriousness of the problem, it has not given it adequate attention and on the other hand has actively denied solutions

by declaring the recommendations of the Human Rights Committee unenforceable. That even the limited recommendations that the Supreme Court has itself made have been largely ignored among state agencies also speaks to the inaction of the courts on these issues. In fact, in one case a court remarked that it will not stultify itself by making further recommendations to the police authorities, when it finds that whatever recommendations it makes are largely ignored. This will not, of course, lead to any solutions either. There are many areas in which further judicial intervention and interpretation is desperately needed. Above all, the link between the right to life and the right to be free from torture and cruel and inhuman punishment must be strongly reinforced, through consideration of the following.

- a. The problem of right to life is not limited to people who die in custody but more broadly concerns the duties of the state to maintain competent and effective investigation mechanisms into torture and cruel and other inhuman punishment as well as other fundamental rights. The exercise of the Supreme Court's jurisdiction on fundamental rights would undergo vast change if the court could be assured that the investigation mechanism of the state, which under the Criminal Procedure Code is the police, could be relied on in dealing with complaints of abuse. Without any credible or competent investigation mechanism, many courts have done a praiseworthy job of investigating allegations of torture through affidavits. While in the absence of a credible system of inquiry the jurisdiction of the Supreme Court under article 126 of the constitution in particular is of enormous importance, given the limitations of the process and the fact that redress consists only of a declaration and compensation, the exercise of this jurisdiction is insufficient.

The courts have power to inquire into the workings of the investigation mechanisms of the state, to ensure credible and competent investigations into abuse of human rights as well as other crimes. It is the duty of the state to maintain effective protection mechanisms through a proper criminal investigation and prosecution system. The courts can only play a complimentary role in monitoring and guiding the development of such investigative and prosecuting machinery. Where the machinery has failed or is fundamentally flawed, they cannot be a substitute. The courts can examine how and where the state is carrying out its responsibilities and where it has failed to do so, and take appropriate judicial action to ensure that it upholds the right to life as it is obliged.

- b. The Supreme Court can also look into the issue of torture and related matters under article 14 of the ICCPR, as the Supreme Court has held that the ICCPR is incorporated into Sri Lankan law, given that the routine practice of torture demonstrates the failure of the state to maintain a proper mechanism in order to investigate crimes. Instead, practices have developed where the first source of information is usually regarded as an alleged suspect about whom the police know nothing or little; perhaps no more than that somebody has mentioned his or her name as the perpetrator of a particular crime. With that type of 'information' people are arrested and then assaulted in order to obtain a confession. The idea of collecting reliable evidence before arrest and acknowledging the right of a person to remain silent is hardly respected at all in Sri Lanka. Without this much done, there can be no fair trial, let alone reliable trial: hence the four per cent success rate of prosecutions.

Today, the officers who exercise torture are doing so with the full knowledge of their superiors. There is tacit acceptance that torture is not only necessary but is also unavoidable. Under these circumstances, the punishing of a few does not have a deterrent effect. Besides, powerful elements inside the policing system take every possible step to sabotage the bringing to justice of those who violate the law against torture. This contradiction between the Supreme Court's jurisdiction to protect fundamental rights and a policing system that as a matter of policy considers torture necessary and unavoidable needs to be resolved. Until then it will not be possible to ensure fair trial in most criminal cases, including cases where the specific falls under the CAT Act, Act No. 22 of 1994.

- c. A much larger question is whether or not the Supreme Court can exercise its jurisdiction to protect human rights within the framework of the 1978 Constitution at all. In 30 years executive powers have expanded enormously under this charter to the detriment of all other institutions, especially those needed to preserve the rule of law. The Supreme Court too has to exercise its jurisdiction on fundamental rights within this framework. The High Courts, in dealing with cases under the CAT Act, also have to exercise their jurisdiction with strong and increasingly direct interference.

Dealing with this contradiction too is a matter of political consensus. However, none of the political parties, including the opposition, have taken much interest in resolving this problem in favour of rule-of-law institutions. While an enormously frustrated population wants political initiatives to undo the excessive powers of the executive, they do not find expression of their wants in the political establishment. The executive meanwhile uses the media to suppress demands for a return to the rule of law. Any real attempt to expand the capacity of judicial intervention to protect rights requires strong support of political groupings and the media.

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1. H.C. 966/2002 of Court No. 1 of the Colombo High Court, decided on 20.7.2007, decision by High Court Judge of Colombo, Upali Aberatne.
  2. Since this act has been in effect around 60 cases have been filed in High Courts around the country under its provisions, most since 2000. So far only the three cases cited here have resulted in successful prosecutions.
  3. HC 1392/2003 of Court No. 3 of the Colombo High Court, decision delivered on 20.8.2004, by High Court Judge Eric Bassanayake.
  4. HC9775/99 of Colombo High Court No. 2, decided by High Court Judge S. Sri Skandarajah on 19 January 2004.
  5. SC (FR) 343/99, decided on 6.11.2001, a three bench judgment written by Edissuriya J.
  6. Under article 126, the Supreme Court has the sole and exclusive jurisdiction to hear and determine any questions relating to the infringement or imminent infringement by the executive or administrative action of any fundamental right or language rights recognised in the constitution. It has the power to grant relief or make directions as it may deem just and equitable in the circumstances. The Supreme Court by way of relief generally issues a declaration and grants compensation if a violation of a fundamental right is proved.
  7. SC (FR) 186/2001 decided 28 August 2002 by Fernando J.
  8. SC (FR) 211/2004, decided on 17 February 2006 by a three-judge bench, judgment written by Shirani A. Bandaranayake J.
  9. SC (FR) 328/2002, decided on 4 April 2003 by a three-judge bench, judgment written by Fernando J.
  10. SC (FR) 700/2002, decided on 26 July 2004 by a three-judge bench, judgment written by Shirani A. Bandaranayake J.
  11. SC (FR) 565/2000, decided on 16 November 2006 by a three-judge bench, judgment written by Jayasinghe J.
  12. SC (FR) 559/2003 decided on 31.7.2007 by a Three Member Bench written by S.N. Silva CJ.

13. SC (FR) 298/2005 decided on 25 January 2008 by a three-judge bench, judgment written by S.N. Silva CJ.
14. SC(FR) 297/2007 decided on 3 December 2007 by a three-judge bench, judgment written by S.N. Silva CJ.
15. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No. 1189/2003: Sri Lanka, 10 June 2003. CCPR/C/83/D/1189/2003. (Jurisprudence), decided on 31 March 2005.
16. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No. 950/2000: Sri Lanka, 31 July 2000. CCPR/C/78/D/950/2000. (Jurisprudence) decided on 16 July 2003.
17. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No. 1033/2001: Sri Lanka, 23 August 2001. CCPR/C/81/D/1033/2001. (Jurisprudence) decided on 21 July 2004.
18. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No. 909/2000: Sri Lanka, 26 August 2004. CCPR/C/81/D/909/2000. (Jurisprudence) decided on 27 July 2004.
19. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No 916/2000: Sri Lanka. 26 July 2002. CCPR/C/75/D/916/2000. (Jurisprudence) decided on 22 July 2002.
20. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No 1250/2004: Sri Lanka. 28 January 2003 (initial submission). CCPR/C/83/D/1250/2004, decision on admissibility dated 31 March 2005. Date of adoption of views: 14 July 2006.
21. Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights in Communication No 1426/2005: Sri Lanka, 20 June 2005 (initial submission). CCPR/C/83/D/1426/2005. Date of adoption of views: 26 October 2007.
22. SC SpL(LA) No. 182/99: Nallaratnam Singharasa – presently serving a term of imprisonment v. The Hon Attorney General – C.A. Appeal No. 208/95, H.C. Colombo 6825/94, decided on 15.9.2006 before a five bench court written by Sarath N. Silva C.J.

# CASES



# Three recent case studies

## 1. A judgment not based on evidence: Lalith Rajapakse case

[Extracts from, *Documents regarding the judgment of the High Court of Negombo in Case No. 259/2003, regarding the torture of Lalith Rajapakse*, Asian Human Rights Commission, Hong Kong, October 2008.]

The Negombo High Court last week [9 October 2008] acquitted the accused in a torture case where a Sub Inspector of Police was charged with an offence under the CAT Act (Act No. 22 of 1994) punishable with seven years of rigorous imprisonment. As the basis of acquittal the court stated in the written judgement,

“If the suspect was assaulted on the soles of his feet, particularly if he was assaulted for about thirty minutes, there should be severe injuries on the soles of the feet. But the according to the medical report there is no mention of any injuries to the soles of the feet. For the suspect to have been struck on the soles of the feet for thirty minutes without any signs of injury is truly wondrous.”

In contrast to this finding by the High Court judge the medical report of the Assistant Judicial Medical Officer (AJMO) Dr. Kumudu Kumari Jooza, stated the feet as injuries nos. 9 & 10:

- “8. Contusion 2 inches x 2 inches on the sole of the left foot;
- 9. Contusion 2 inches x 1 inch on the sole of the right foot”

The AJMO gave detailed evidence on injuries Nos. 8 & 9 and explained in detail the nature of these injuries and stated categorically that these injuries could not have happened in any other way except by way of assault.

“Q. You came to a conclusion on the basis of injury no. 10 and injuries nos. 8 & 9?

A. It can be said that this is due to an assault. Injuries nos. 8 & 9 which are injuries to the soles of the feet cannot happen in any other way.

Q. Why is that?

A. Having injuries on the soles of the feet like injuries nos. 8 & 9 specially, can happen due to assault on the soles of the feet. It can happen also if a person falls from a height to the ground. If it is not like that there is no way for there to be injuries on the soles of the feet.

Q. If a person falls from a height injuries like this can happen?

A. Yes. If you fall from a height there would be bone fractures and accompanying injuries.

Q. Did you observe a fracture of the bones?

A. No.

Q. After examining this patient what is the conclusion you came to?

A. That the injuries are due to an assault.

Q. To come to that conclusion, injuries nos. 8 & 9 contributed a lot?

A. Yes.”

*(From a certified copy of the proceedings)*

Therefore the wonder is, not as to how there could be no injuries on the feet despite of a claim of the assault on the soles of the feet, but how the High Court judge failed to read the medical report and see injuries nos. 8 & 9 and the AJMO’s evidence on this injury. This conclusion of the High Court judge is even more shocking because in the latter part of her judgement she quotes from the medical report all the ten injuries recorded by the AJMO. This included injuries nos. 8 & 9. Thus the finding of the High Court judge about injuries nos. 8 & 9 are in contradiction with the facts recorded in the same judgement.

The State Counsel in this case was Anupama De Silva, Attorney-at-Law.

In her lengthy submission she emphasized in very great detail, the content of the medical report and the evidence of the AJMO, as well as two other doctors about these injuries. There is no way for the High Court judge not to be aware of these injuries and the evidence of the doctors, since these submissions were made orally in her presence. If due to the time lapse, she had forgotten this evidence and the submission, she had the written record of the case where the medical report, the doctor's evidence and the oral submission of the State Counsel was recorded. How did she then miss this evidence which is so vital to the offence of torture which was the crime being prosecuted before this judge?

In the submissions by the lawyer for the aggrieved party the medical report was also fully quoted and commented upon. Therefore, reading the lengthy submission made on behalf of the aggrieved party consisting of an analysis of all aspects of the case, including injuries nos. 8 & 9, the High Court judge could not have stated that these injuries had not been found in the medical report.

The Defence Counsel, who made his oral submission taking several days of postponements over a period of three to four months, stated to court that there was no record in the medical report about the injuries to the soles of the feet of the torture victim. Did the High Court judge allow herself to be misled by the submission of the defence counsel whose oral submission falsified the evidence that was before court through statements and documents?

Had the High Court judge come to the only conclusion that she could have come to on the basis of the evidence, that the claim of the torture victim about the assault on his feet was collaborated and confirmed by the medical report and the evidence of the AJMO, there would have been no option for her but to convict the accused. Thus, it was the result of her finding that no injuries to the soles of the feet of the torture victim, despite of his claims that he was assaulted, lead to the acquittal.

This amounts to a blatant error on the face of record. It has also caused a grave miscarriage of justice to a victim who suffered extremely serious injuries including a brain injury, which kept him unconscious for 16 days in hospital. The judgement comes after a trial that lasted six years. Even the UN Human Rights Committee concluded that this particularly trial had been too long and constituted undue delay. The committee held that there was a

violation of the victim's fundamental rights under article 2(3) of the ICCPR (Communication No, 1250/2004). Thus, the torture victim has made every effort to get justice. He also stayed away from his home village in a faraway place for over five years in order to avoid being a victim of threats by the perpetrators of this case. However, due to a blatant mistake regarding the facts, made by the High Court judge he has been deprived of justice.

This is not the only area where the High Court judge has misrepresented the facts in the case. Injury no 10 is a cerebral contusion. Two doctors including a specialist who treated the torture victim during the 16 days when he was semi conscious, stated very clearly that the cerebral contusion caused edema to the brain. According to the evidence of the doctors, this could have occurred either due to a severe assault to the head or due to a viral infection. The doctors very clearly and consistently stated that whether it was due to an assault or not needs to be considered in the light of the circumstances under which this has happened.

The circumstances of the injury were described by the torture victim in his evidence to court.

“Q. What was done after that?

A. I was taken out, books were placed on my head and the books were struck.

Q. How many books were kept?

A. About three books were put on my head and hit. They tied my hands.

Q. How were these books kept?

A. They were simply kept on my head.

Q. How many people hit?

A. Those two persons [the accused police officer and another].

Q. Was hit on the books?

A. Yes.

Q. Then what happened to you?

A. My head became disorientated.”

Thus, even on the grave injury of the brain, injury no. 10, the High Court judge completely misled herself and came to the wrong conclusion because the facts that were placed before her in the trial and were available on the written record were ignored.

What is involved in this case is not merely a wrong judgement but in the very least a case of clear incompetence. In Sri Lanka a High Court is the highest court of first instance regarding criminal trials. High Court judges are expected to have the required qualifications, competence and are expected to act without negligence. All judges are also expected to be fair and impartial.

We urge everyone to write to the Attorney General of Sri Lanka and request him to appeal in this case. He was the prosecutor and the state counsel who prosecuted did an excellent job in this case. It is a now a legal and a moral obligation to appeal in this case and give justice another chance. The AG also has the legal power to appeal from this judgement. The contact details of the Attorney General are as follows:

Mr. Priyasath Dep  
Acting Attorney General  
Attorney General's Department  
Colombo 12  
SRI LANKA

Fax: +94 11 2 436 421

***The letter written by the AHRC to the Attorney General is attached.***

Dear Mr. Dep,

***Re: Request for Appeal against the judgement of the High Court judge of Negombo bearing case No. 259/2003, relating to the torture of Sundara Arrachige Lalith Rajapakse***

We are writing to request you to appeal from the judgement made by the High Court judge of Negombo on 9th October 2008 acquitting the accused in this case under the CAT Act, Act No 22 of 1994. We are making this request because our perusal of the judgement clearly indicates that the judgement is wrong on the very face of record. In the attached draft appeal we have stated in detail the major grounds on which this judgement needs to be considered as wrong in law and fact.

In fact, it is a very strange judgment because the finding of the judge regarding material facts is contrary to what is in the proceedings. Just to give you one example of the many that are set out in the appeal the learned High Court judge came to the conclusion that the virtual complainant's claim that he was beaten on the soles of his feet cannot be believed because there is nothing to indicate any injuries to his feet in the medical report which was marked P1. In fact, the injuries No. 8 & 9 in the medical report are injuries to the soles of the feet of the virtual complainant and they are:

8. Contusion 2 inches x 2 inches on the sole of the left foot;
9. Contusion 2 inches x 1 inch on the sole of the right foot...

The AJMO Dr. Kumudu Kumari Jooza, gave detailed evidence on injuries Nos. 8 & 9 and explained in detail the nature of these injuries and stated categorically that these injuries could not have happened in any other way except by way of assault. (Kindly see the details of evidence in the draft appeal).

It is a very strange case where the learned judge has not read the evidence recorded in the proceedings and the documents before coming to a finding that there was no injury to the soles of the victim's feet.

If the judge came to a finding that there was injury on the soles of the feet of the victim that alone would have sufficed to convict the accused. The conviction was avoided by holding that the evidence of the injury to the soles of the feet of the victim was, in fact, false evidence. This was probably based on the learned High Court judge basing herself on the oral submission of the defense counsel without checking the veracity of the factual information by comparing it with what was, in fact the evidence recorded in the case.

Regarding injury No. 10, which is a brain injury that kept the virtual complainant unconscious for 16 days, according to the virtual complainant it was due to the accused placing books on his head and then beating them with a pole. According to the learned High Court judge the brain injury was probably due to a viral infection and not a result of assault on the head. In fact, the learned High Court judge omits the evidence given on the assault to the head in this manner from the judgement. It is completely contrary to the evidence of three doctors including a specialist who gave evidence on this matter.

There are numerous other errors of fact and law in this judgement which are not on the basis of evidence recorded in the case and which are very contrary to the conclusions that could have been arrived at if these facts were properly narrated in her judgement.

Clearly not at least being accurate on the recording of facts on the basis of the existing record is not mere error of law but in the very least, it implies incompetence. A judge is expected to maintain basic professional standards and the judgement fails in that regard.

The complainant in this case who suffered serious injuries thereafter spent six years pursuing this case despite of extremely serious threats. Out of those six years he spent over five years away from his village in Kandana, living in Kandy to avoid the pressures that were trying to silence him.

If the case was lost due to a problem of evidence or prosecution that is not a matter that anyone is entitled to complain of. However, when a case is lost on the basis of blatant incompetence and the causing of errors on record by the judge people have a right to request you as the prosecutor to use your right of appeal.

Anupama De Silva, the State Counsel, who prosecuted this case extremely intelligently and bravely, knows the details of this case. The aggrieved party also made a long submission consisting of 92 pages (a copy of which is sent herewith), which dealt with all aspects of the case. Had the learned judge read the submissions of the State Counsel and that of the aggrieved party instead of relying entirely on the falsified submission of the defence counsel she would not have made the blatant errors that are found in this judgement.

We urge you to consult the state counsel and file an appeal, as this is the least that can be done in order to justify your role in prosecuting this case and also to recognise the effort of the complainant and the dangers he has faced, thereby giving justice another chance.

We hope that you will do what is professionally appropriate in terms of the office of the Attorney General under the present circumstances.

Thank you

Yours sincerely,  
MOON Jeong Ho  
Asian Human Rights Commission

## **The abject failure of the CAT Act**

**Kishali Pinto Jayawardene, Focus on Rights, *The Sunday Times*, 19 October 2008**

It is now very clear that the Convention Against Torture and other Inhuman and Degrading Punishment Act No 22 of 1994 (the CAT Act) has signally failed in its intent to bring about an improved deterrent regime in regard to practices of torture in Sri Lanka.

As repeatedly pointed out in this column previously, Sri Lanka's High Courts have handed down only three convictions during the fourteen years of the CAT Act's existence. In contrast to this, three acquittals have been entered into while a number of trials are pending. The reason as to why we focus on this vexed issue yet again is that on 9th October 2008, the Negombo High Court delivered the fourth acquittal in terms of the Act in the case of Lalith Rajapakse. As in the case of the acquittal of Gerald Perera, (again by the Negombo High Court), the acquittal in the case of Lalith Rajapakse was judicially justified on the basis that the evidence was not sufficient to prove the guilt of the accused beyond all reasonable doubt.

### *The Rajapakse Case*

Rajapakse's complaint was that he had been arbitrarily arrested by several police officers, beaten and dragged into a jeep. During his detention, he was subjected to torture for the purposes of obtaining a confession which caused serious injuries. A medical report issued by the National Hospital stated that the "most likely diagnosis alleged to assault due to traumatic encephalitis." He filed a fundamental rights application in the Supreme Court which is still pending. Meanwhile, the Attorney General indicted a sub-inspector of police implicated in the torture, in terms of the CAT Act. The relevant acquittal handed down by the High Court early this month was in respect of this case.

While it is not the intention in this column to elaborate on the legal grounds of appeal which is a matter within the ambit of the legal process, some egregious discrepancies appear to be evident on a bare reading of the trial documents and the decision itself. For instance, rigorous scrutiny of the decision indicates that though the High Court had come to a conclusion that the medical record did not bear out the allegation by the accused that he had been mercilessly assaulted on the soles of his feet, this is refuted by the fact that injury numbers 8 and 9 on the medical report attests to injuries that

were, in fact, explained by the Assistant Medical Judicial Officer in court as having been caused by assault with a blunt instrument.

### *Judicial assessment of the evidence*

Further, the judicial assessment of the evidence seems problematic when evaluated against the evidence in particular, relating to the clear testimony that the victim was fit and healthy before being arrested by the police officers, that he sustained grievous injuries while inside and indeed, the evidence of the accused himself that the victim was taken in a virtually unconscious state to the hospital from the police station, that he had used minimum force in hitting the victim with a pole purportedly in order to prevent the victim from assaulting another policeman and inaccuracies that demonstrated the lack of credibility in the evidence of the accused.

### *No direct eyewitness to torture*

Generally, it must be said that examination of judgments relating to acquittals handed down by the High Court under the CAT Act indicate certain problematic features in the legal process. The acquittal of the torturers of Gerald Perera, a worker at the Colombo dockyard (who was tortured to the point of renal failure by officers attached to the Wattala Police Station with, as judicially held by the Supreme Court, the ‘consent and acquiescence’ of the officer in charge) is a case in point. A major reason for this acquittal was the lack of direct evidence testifying to the acts of torture being committed by the particular police officers who are indicted, even though the Court accepted the fact that Gerald Perera was a hale and healthy man when brought into the police station but had suffered multiple injuries when taken out of the station (see *Republic of Sri Lanka v. Suresh Gunasena and Others*, HC Case No 326/2003, Negombo High Court, HC Minutes 02.04.2008).

However, it is inherent in the very act of torture that it will not be committed on a public thoroughfare and with onlookers nearby. Rather, torture is committed in secret and in hidden places. In the circumstances, a judicial insistence on direct eyewitness evidence of torture practices is clearly problematic and defeats the very intent and objective of the CAT Act.

### *Judicial understanding of the CAT Act*

Problems with a lack of clear judicial understanding of the objective and

purpose of the CAT Act also emerge from analysis of the relevant judicial decisions; Thus, in one acquittal, the High Court judge concludes as follows; “Even though it appears that when considering the number of injuries, the accused has used some force beyond that which was necessary, that does not prove the charge against the accused in the case”(see Republic of Sri Lanka v. Havahandi Garwin Premalal Silva, Case No. 444/2005 [HC], High Court of Kalutara, High Court Minutes, 19.10.2006. This decision is being appealed against to the Court of Appeal).

*Another useless law*

The CAT Act was brought to the country’s statute books in 1994 with ambitious hopes of proving to be an effective legal deterrent to torture practices being perpetrated by custodial officers. However, coupled with the long delays in pending trials, lack of prosecutorial will to bring about convictions and manifest judicial reluctance to convict, it is evident that the legislation itself has lost almost all if not most of its force. Unfortunately, it has now been relegated to yet another useless law in Sri Lanka.

## Translation of the judgment (from Sinhala)

### In the Provincial High Court of the Negombo

Democratic Socialist Republic of Sri Lanka  
Complainant

vs.

1. Warnakulasuriya Mahavaduge  
Rohan Prasanga Peiris  
Accused

Negombo High Court No  
H.C. 259/2003

Before Ms. J.H.T.U.M.P. Tennakoon, High Court Judge, Negombo  
E.A.P. Kusumalatha, Stenographer.

Case No H.C. 259/2003

Date 09.10.2008

### Judgment

The Honorable Attorney General has presented the following indictment against the Accused Waranakulasuriya Mahawaduge Rohan Prasanga Peiris.

#### **Indictment**

During the time period between 18 April 2002 and 19 April 2002, in Kadana, within the jurisdiction of this court, you along with other persons unknown to the prosecution tortured Sundara Arachchige Lalith Rajapakse, who had been taken into police custody regarding a theft with the intention of obtaining some information regarding the said act or to frighten him and thereby you have committed an offence under Section 32 of the Penal Code read with and punishable under Section 2(1) of the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Section 12 (2) of this Act is the interpretation section. Section 2(1) is as follows

“Any person who tortures any other person shall be guilty of an offence under this Act.”

Cruel treatment has been defined in the interpretation sections as follows. “Torture” with its grammatical variations and cognate expressions means any act that causes severe pain, whether physical or mental, to any other person,

- (a) Being one of the following acts causing a person severe physical or mental pain
  - (i) Obtaining from a person or a third person, any information or confession
  - (ii) Punishing a person for any act which he has committed, or is suspected of having committed
  - (iii) Intimidating or coercing some person or some third person
- (b) Intimidating or coercing such other person or a third person; or done for any reason based on discrimination, and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.

When considering the above charge against the accused suspect, the first thing to be considered is if according to the definition clause the accused is a Public Officer. Section 12 defines a “Public Officer” and states that a public officer is as an employee whose salary is paid by the Republic. This fact has been proved by the evidence of the Plaintiff. In this case it has been factually established that the Accused Suspect had been serving as a reserve police inspector at the Kadana Police Station during the time of this incident. Accordingly it is not necessary to further establish that the accused suspect was a public officer.

It is stated that the person subject to physical and mental harassment was the first witness of the prosecution a person named Sundara Arachchige Lalith Rajapakse. This person has given evidence before court. In this evidence he mentions the fact that this unfortunate incident happened on 18 April 2004 [*should have been 18 April 2002*]. Evidence has been given that on 18 April 2004 [*18 April 2002*] the person named Lalith Rajapakse worked at the Badagamuwa timberwork shop and as the next day he had to go with a person named Nimal, he spent that night at Nimal’s house. Further evidence was given that previously too he had spent the night at Nimal’s house in this manner. Evidence has been given that on the next day at about 2am someone had called stating, “Police have come, open the door”, and Nimal’s

wife had opened the door. He has given evidence that on that occasion there were four police officers dressed in uniform. The officers had a torch. Nimal has given evidence that inside his house there was a lighted lamp. Lalith Rajapakse has given evidence that when they asked Nimal's wife if Lalith Rajapakse was there mentioning his name, he came forward asking "why". It was said that in that instance he was assaulted. Evidence was given that when questioned, "why are you hitting" the answer given was that because he had stolen. Giving further evidence he said that two persons assaulted him, and evidence was given that in the first instance he was kicked. Evidence was given that the kick had struck his forehead. Evidence was given that a handle of an axe handle without its blade, which was on the verandah of Nimal's house, was used to assault him on his back. Evidence was given that after assaulting 3, 4 times in this manner, his hands were tied in front and he was taken to the road and put into the jeep that was parked there. Evidence was given that after that they went in search of another person named Lalith at his house and got to know from his parents that the said person was not in the house. Evidence has been given that after that Lalith Rajapakse was taken to the Kadana Police Station and put into a cell, and by that time it was early morning of the 19th. It is stated that when he was put into the cell there were another 4 or 5 persons. It was said in the evidence that on the 19th Lalith Rajapakse's friends came to obtain bail but the police refused bail.

According to the evidence of this witness on the next day one by one those that were in the cell were taken away. Evidence was given that when they were taken in that manner they would be assaulted and that he heard them shouting "don't assault". However, the witness had not seen any of this. Afterwards on one occasion in the same way Lalith Rajapakse was taken out of the cell. Giving evidence on this he said that there was another room and that they were taken in this manner to that room. Distinct evidence regarding this room has been given. Evidence was given that there were poles in the room and two tables. There is evidence that Lalith Rajapakse was taken into that room and his hands and legs were tied and a pole passed through them and kept between the tables. It is stated that after that two persons from either side hit his soles with two poles. While he was assaulted in this manner he was questioned if he had stolen anything. Evidence has been given that in this manner he was assaulted for a considerable a time, after which he was untied and put into the cell and ordered to jump up and down. Evidence was given that since he was assaulted on his soles, he was unable to keep his feet on the floor and jump and as such he kept on falling while jumping.

Further evidence was given regarding this assault and it was stated that he was taken out of the cell and taken outside and three books were kept on his head and he was assaulted, and at that time his hands were tied. Giving evidence with regard to this assault he has said that his “head went like mad”. Evidence was given that afterwards Lalith Rajapakse was hung from his two thumbs and assaulted all over the back of his body while questioning him with regard to the theft.

Evidence was given that he lost consciousness and when he gained consciousness he was in the National Hospital and that he regained consciousness after about 16 days. The witness has accepted that he has given a statement to the Criminal Investigation Department with regard to this assault. He took part in an identification parade after he got well and left the hospital. Further evidence was given that the Respondent was one of the four officers who came to take him into custody and was one of the two officers who had assaulted him at the police station and at Nimal’s house. Evidence was given that it was this Respondent that had tied his hands and assaulted him and kept the books on his head and assaulted and that he was not wearing a uniform at that time. Further as stated at the end of his evidence in chief he was brought to the police station on the 19th at about 2am.

Further evidence was given that he did not commit any theft and that he did not know where this theft took place.

**1. What has to be inquired first by me is whether as stated in his preliminary evidence the Complainant in this case Lalith Rajapakse was subject to the assault of the Accused? Is there sufficient evidence educed by the Prosecution to prove this fact beyond reasonable doubt?**

As revealed from the evidence of Lalith Rajapakse, he had first been subject to this Accused’s assault at Nimal’s house where he was taken into custody. Evidence has been given that at the time of this assault Nimal and his wife were in that house. Lalith Rajapakse has clearly given evidence under oath to court that he was kicked, saying “you have stolen” and after that he was hit on his back with a handle of an axe without its blade, which was kept on the verandah. However, neither Nimal nor his wife has given evidence to corroborate this evidence. An officer from the Criminal Investigation Department who had conducted the investigations has given evidence in

court. From his evidence it has been revealed that a statement had been recorded from Nimal. In fact if the assault took place in Nimal's house, the two independent witnesses who would know best about this fact are Nimal and his wife. However, they have not been called as witnesses. In this regard the defence has argued that Nimal and his wife were not called as witnesses because if there were called it would have been detrimental to the prosecution. With regard to this the defence has also submitted these facts in their submission. Having so submitted, I have focused my attention to Section 114 (f) Evidence Ordinance. This section is as follows.

“Sec. 114 (f) If evidence which is not produced, but if produced it could be detrimental to the person that prevents it.”

In that case has the prosecution not called this evidence because it was detrimental evidence to the prosecution? Before saying anything with regard to that I focus attention on the medical report forwarded with regard to Lalith Rajapakse.

The doctor in this Judicial Medical Officer's Report has observed 10 injuries. Out of these 10 injuries not even one is stated to be on this witness's forehead or on his back. If Lalith Rajapakse was assaulted on his back with a handle of an axe without a blade, at least he should have had a contusion on the back. If he was kicked on his forehead, the forehead also should have a contusion or at least an abrasion injury. Since there is evidence that these officers were wearing their uniforms it is clear that they were wearing shoes. If that was so it is clear that there should have been at least an abrasion injury on his forehead. However there is no evidence that there was any such injury.

With regard to this, neither Nimal nor Nimal's wife, from whose house Lalith Rajapakse was taken into custody, has given evidence. If they gave evidence with regard to this assault it would have been eyewitness evidence. However such evidence has not been led before me. Accordingly the factor that is apparent is that the evidence given by Lalith Rajapakse that two police officers assault him at Nimal's house is not corroborated.

After the person named Lalith Rajapakse had recovered and was in prison on 17.05.2002 he was produced before the Additional Magistrate Wattala. There he made a request and gave a statement regarding the torture and inhuman assault by the police. In that statement he has said that the police had caught him while he was at home and that in that instance there was no one else in

the house. Thereafter he was assaulted while being taken. In that instance the witness has made no statement with regard to being kicked. However he has said that he was assaulted with the handle of an axe handle after the blade was removed. In this court the witness gave evidence that on the verandah there was an axe handle from which the blade had been removed and that he was assaulted with it. Further by that statement he has given evidence that he was assaulted on his head, shoulders, and cheeks. However when giving evidence in this court he has stated that he was assaulted only on his forehead and on his back. Therefore a doubt arises if the evidence given in this court is true.

## **II Was Lalith Rajapakse assaulted by the said Accused in the police station?**

According to the evidence in chief given by Lalith Rajapakse he was taken twice out of the cell and assaulted. It was stated that in the first instance he was taken to a room where there were poles and two tables, his hands and legs were tied and a pole passed through them and raised and kept on a table, after that his soles were hit with two poles by two persons from either side. In this regard Lalith Rajapakse has stated in his cross-examination that out of the persons in the cell he was the third to be taken out. However with regard to this Lalith Rajapakse in his statement to the Criminal Investigation Department has stated that he was the fifth to be taken out of those in the cell. This contradiction has been produced marked as "V.4. A". With regard to his further evidence, that his two hands and two legs were tied and he was hung by a pole which was on top of the table, and afterwards he was assaulted with poles for about an half an hour, he has said that he was assaulted with poles on his soles. In this manner if the accused [*this should have been the complainant*] was assaulted on his soles especially for half an hour his soles should have been seriously injured. However, according to the medical report there is no mention of any injury on the soles. This is a truly wondrous fact.

Another fact told by Lalith Rajapakse in his evidence is that thereafter he was again brought and put into the cell and was ordered to jump up and down. It was stated that in this instance he continuously fell while jumping.

Giving further evidence he has stated that he was assaulted again on the following day, that is, on the second day. Evidence was given that in that instance he was assaulted on his back and he was tied to a pillar and books were kept on his head and he was assaulted. However in this person's

statement to the Criminal Information Department there is nothing stated with regard to an assault on the second day... In that statement there is no such thing said. This has been marked as a deficiency by the accused. The witness in his evidence in chief stated that he was hung with his two thumbs from a roof beam. Nothing of this is mentioned in the statement made to the Criminal Information Department or in the statement made at the magistrate's court.

To corroborate Lalith's evidence the plaintiffs called Manjula, who gave evidence in court that at the time Lalith was taken into custody he was in a jeep. Evidence was given that Lalith was not assaulted in the jeep but he was brought with his hands and legs tied. However Lalith when giving evidence in court had not given evidence that after he was taken into custody he was taken to the jeep with his hands and legs tied. This fact was for the first time revealed in the evidence of Manjula. In further evidence he has stated that about half an hour after Lalith was put into the cell he was taken out and he heard the sound of him being assaulted. Evidence was given that he was again brought back put into the cell, and he sprawled lifelessly in the cell. To the question that how he knew that Lalith Rajapakse was assaulted he answered that when he left the cell he was well and when he came back his soles were blue and he was in a situation where he could not walk. Evidence has been given that he came back limping and fell down as if lifeless. Further evidence has been given that he talked to him and applied sidharlepa (balm). The problem that comes up here is how in the cell where suspects were kept in the Kadana Police station he got sidharlepa. This witness further stated in evidence that Lalith Rajapakse slept in the same place till morning, and even when food was brought and he was called, his head fell down lifelessly. Evidence was given that it was not possible to feed him since the food flowed out from the side of the mouth. Evidence was given that on the next morning he was taken to the hospital. However when this witness was further questioned he gave evidence that he did not see Lalith being assaulted, and that at no time did he hear Lalith shouting. Giving further evidence he stated that he had seen no injury on Lalith Rajapakse's body. However he gave evidence that his lower abdomen, face and body were bluish and showed contusions. Evidence was given that he went walking and came back limping and in that instance he had no strength even to talk.

Here the factor that the Court must look into is if the evidence that Manjula is giving is in fact true. Inspector of Police Fernando who took the person named Srinath Manjula into custody has given evidence in court.

In his evidence it was revealed that he had taken the person named Srinath Manjula into custody at about 5.30pm on 21 April 2004. At that time Police Inspector Fernando had been on duty at the Kapuwatte temporary checkpoint along the Colombo Road and when examining the vehicles he took suspects into custody. At that time one of the suspects taken into custody was stated to be the person named Srinath Manjula. Evidence was given that on that day when he assumed duty at 2.45 at the roadblock as usual he signed the daybook. These notes have been marked and produced as “F” and the witness’s signature as “F.1”. The prosecution’s notes with regard to the taking into custody are recorded on 21.4.2002 in page 247, paragraph 161 of the Grave Crimes book. This note is marked as “G” and the witness’s signature is marked as “G.1”.

The accused giving evidence has stated that the relevant notes had been made regarding the raid on 19.04.2002 in the MOIB Book. Evidence has been given that the note regarding leaving is recorded on page 176, paragraph 156 of that book. The time is stated to have been 22.00 hours. This note has been marked as “A” and the signature of the Accused as “A.1”. The person named Lalith Rajapakse has been taken into custody on that day. The time Lalith Rajapakse was taken into custody has been recorded as 2.20 hours on 20 April 2002. There is evidence given that when they returned to the police station it was 3.30 hours, accordingly notes were made in the MOIB book. Evidence has been given that on the same book where the leaving was noted the return was also noted and all that happened at the raid. The time 3.30 in the morning has been marked as “B” on page 176, paragraph 156, of the MOIB Book relating to 20 April 2002. The witness’s signature has been marked as “B.1” in the document marked “B”. On that day at 4am the person named Lalith Rajapakse was been handed over to the Reserve Police. It is stated that on 20 April 2002 at 8.30 hours Lalith Rajapakse was taken to hospital. The signature on that has been recognized to be that of Reserve Police Constable 8915 Kumaradasa. This note has been marked as “C” and the signature as “C1”. When considering this documentary evidence a fact that becomes clear is that when Inspector of Police Fernando took Srinath Manjula into custody at about 5.30 hours on 21 April 2002, and handed him over to the reserve, the person named Lalith Rajapakse was in hospital. In that case the evidence given by Srinath Manjula that Lalith Rajapakse and Srinath Manjula were in the police cell on the same night cannot be accepted. Accordingly the evidence given with regard to the assault of Lalith Rajapakse, the bathing of Lalith Rajapakse, and that Srinath Manjula also went with him

to the hospital, cannot be accepted. Further the fact that Srinath Manjula was in the jeep when Lalith was taken into custody and taken to the jeep cannot be accepted as true facts. Accordingly it is my conclusion that Manjula's evidence is not true evidence.

**When was Lalith Rajapakse taken into custody? At what place and what time was he taken into custody?**

Lalith Rajapakse has given evidence in this court that on 18 April 2002 he worked in the timberwork shop and since he had to go the next day with Nimal for a job he stayed the night over at Nimal's. Evidence has been given that on the 19th at about 2.00, four officers dressed in uniform had arrived and calling his name had assaulted him and taken into custody. In the fundamental rights application filed on behalf of Lalith Rajapakse (marked as "V.1" by the accused) it is stated that on 18 April 2002 when he was sleeping the police officers had pulled him by his hair and thrown him on the ground, assaulted his head with a shoe, and taken out of the house. However in the High Court evidence there is no evidence that he was pulled by his head in the house and that he was assaulted by a shoe on the head. He has clearly stated that his name was called and he came forward inquiring why. Accordingly there is contradictory evidence in the affidavit marked "V.1" where facts were sworn under oath and the sworn evidence given in this court. On 17 May 2002, Lalith Rajapakse made a statement before the Magistrate in the Wattala Magistrate's Court. In that statement he has stated that at about 8pm while he was in his house, the police took him into custody from his house. This contradictory evidence has been marked as "V.2.a". Accordingly, the fact that becomes clear is that contradictory evidence has been given with regard to the taking of the person called Lalith Rajapakse into custody, the time and place of taking into custody. Sub Inspector of Police Narasinghe Arachchi of the Criminal Information Department has been called to give evidence on behalf of the prosecution. Evidence has been given according to the MOIB book in relation to 20 April 2002, page 176 and paragraph 156. Evidence has been led that Lalith was imprisoned at 2.20 hours and at 8.30 hours he was taken to hospital. When examining this documentary evidence the next factor that becomes clear is that the person named Lalith Rajapakse was taken into custody on 20 April 2002 early in the morning, and on the same day at 8.30 hours he was warded in hospital. Another fact that becomes clear then is that the evidence given by Lalith Rajapakse in his evidence in chief that he was taken into custody at dawn on the 19th cannot be accepted.

Sub Inspector of Police Narasinghe Arachchi has been called to give evidence on behalf of the prosecution. He is the police officer attached to the Criminal Information Department investigating this incident. In his investigation it was revealed that the person called Lalith Rajapakse who had been taken into custody by Sub Inspector Peiris was detained in the cell of the Kandana Police at 2.20 hours on 20 April 2002. Accordingly the fact that is established is that Lalith Rajapakse had been taken into custody in the early morning of 20th April 2002. Giving further evidence in court Sub Inspector of Police Narasinghe Arachchi stated that he recorded the statements of those prisoners in the cell on that day, and from that it was revealed that Lalith Rajapakse was in the cell on the night of 18 and on the night of 19 he was assaulted. However from these prisoners only the person named Srinath Manjula was called to give evidence to corroborate these facts. Other witnesses have not given evidence in court. It must be stated that due to the contradictions in Srinath Manjula's evidence and the lack of dependability of his evidence, this cannot be taken as corroborative evidence.

Evidence has been given in court by Elaris, a witness called by the prosecution, who stated in evidence that on the night of April 19 Lailth stayed at the house of the person called Nimal at Batagama Road in Kapuwatte. From this too it is established that Lalith was taken into custody not on April 19 but on April 20. If that is so it is established that Lalith was not subject to any assault whatsoever on the night of April 19.

On 27.09.2002 Srinath Manjula made a statement to the police. In this statement what is recorded is that on the day after the Sinhala New Year in 2002 Manjula and his elder brother were taken into custody under suspicion. Lalith Rajapakse was brought to the police station four days after that around 11 to 12pm. This contradiction is marked as "V.7.d". The documentary evidence establishes that when Lalith Rajapakse was brought to the police station and handed over it was a time early in the morning. Accordingly it is difficult to accept the evidence given by Manjula in court.

There is evidence that a Fundamental Rights petition has been filed in the Supreme Court on behalf of the person of Lalith Rajapakse. This FR Case No. SCFR 267/02 has been filed by a lawyer on behalf of Lalith Rajapakse. In that affidavit it is stated that on 18 April 2002 at about 10pm several police officers attached to the Kadana police came and one of the police officers assaulted him on his forehead with a shoe and took him into custody. In that

instance respondents named as 2 and 3, the accused of this case and another police officer, were there. As stated by Lalith Rajapakse in evidence in this court, he was taken into custody not at 10pm of 18 April 2002. Accordingly the facts stated in affidavit “V.3” are contrary to the evidence. The facts are stated in the same manner in the “V.4” affidavit, which is connected to the “V.3” petition. Questions were asked from Lalith Rajapakse on the time in the petition filed in the Supreme Court “V.3” and the affidavit. He states with certainty that he was taken into custody at 2am. He has further stated in that affidavit that while he was sleeping a group of police officers pulled him by his hair and threw him on the floor and assaulted him on his head with a shoe and took him out of the house. However Lalith Rajapakse has not accepted anything like that when giving evidence in this court. He has repeatedly stated in court that as a result of his name being called he came to the front asking why. Accordingly it has been established that Lalith Rajapakse was taken into custody from Nimal’s house on 20.04.2002 at 2.20 hours.

**Was Lalith Rajapakse admitted to hospital as a result of the injuries sustained in the assault or due to any other health condition?**

The Assistant Judicial Medical Officer, Colombo Mrs. Jooza has been called as witness by the plaintiff. This lady medical doctor’s medical knowledge, specialist qualifications and expertise were not disputed by the accused. It has been marked as an admission under section 420 of the Criminal Procedure Code. Evidence has been given that the person named Lalith Rajapakse was examined by the witness on 28 April 2002 in ward no. 49 of the National Hospital. Evidence was given that this patient was a person transferred from the Ragama Hospital to the National Hospital. It has been accepted that the bed ticket relevant to this patient is S 554609. According to it the patient was admitted to hospital on 20 April 2002. The lady doctor had not been able to acquire any information with regard to the patient or his case history. The reason she has set out is that the patient was unconscious. Lalith Rajapakse’s Judicial Medical Report has been produced marked as “P.1”. A fact that becomes clear from this Medical Report is that even the patient’s name and brief medical history has been obtained from the bed ticket. From this lady doctor’s evidence it is revealed that nine external injuries were observed. These injuries are as follows.

1. Healing scab abrasion 2 inches x 3 inches on the right scapular region;
2. Healing scab abrasion 1 inch x 1 inch on the back of the right elbow;
3. Healing scab abrasion 2 inches x 1 1/2 inches on the front of the right

chest;

4. Contusion 2 inches x 3 inches on the back of the left hand;
5. Contusion 2 inches x 3 inches on the front of the left forearm;
6. Contusion 1 inch x 1 1/2 inches on the medical side of the left hand;
7. Contusion 1 inch x 2 inches on the lateral side of the left hand;
8. Contusion 2 inches x 2 inches on the sole of the left foot;
9. Contusion 2 inches x 1 inch on the sole of the right foot; and,

In addition to these there is evidence of a contusion in the brain. Evidence was given that this was revealed by a CT scan examination. However the lady doctor had not observed any injury. The CT scan examination was done not by this doctor. This health condition has been described as “encephalitis”. The witness giving evidence with regard to this said that encephalitis is caused by a germ entering the brain, and he was unconscious because of this.

When this witness was cross-examined, questions with regard to the condition of encephalitis were asked of her. She has given evidence that this condition of encephalitis could come about in two ways. She has given evidence that the condition of encephalitis can come about because of a germ entering the brain, and rarely it can come about by being assaulted. She has given evidence that out of the injuries observed in the patient, injuries nos. 1-9 are not serious injuries; the contusion observed on the brain by the CT scan is serious. Before this witness examined the patient Dr. Sivakumaran had examined the patient.

Dr. Sivakumaran has given evidence in court. Lalith Rajapakse had received treatment under the supervision of Dr. Sivakumaran at the National Hospital, Colombo. The hospital card on the admission to hospital has been produced marked as “Y”. At first Lalith Rajapakse was admitted to ward no. 72 of the National Hospital. But after it was concluded that the patient did not need to undergo surgery he was transferred to ward no. 55. After that he was transferred to ward no. 49. Ward no. 49 comes under the supervision of Dr. Sivakumaran. Lalith Rajapakse was admitted to ward no. 49 on May 1. Evidence has been given that by that time he was unconscious. Evidence has been given that on the day the patient was admitted to the National Hospital it had been observed that he had been semiconscious. This evidence has been given in respect of his bed ticket. Dr. Sivakumaran giving evidence to court stated that though he could talk, when he was questioned as to what happened he could not tell anything even though he attempted to do so. Dr. Sivakumaran had treated Lalith Rajapakse for 10 or 11 days. In that time

it was revealed that there was some weakness in his nerves. Giving further evidence this witness stated that the person named Lalith Rajapakse had fever and he was semiconscious and that he was not aware of anything. Evidence was given that there was no awareness of earlier incidents. In further evidence he revealed that the patient was observed with a condition of the brain being swollen. The witness had diagnosed the patient with signs of encephalitis that were, a tightening in the neck, falling asleep, not being fully conscious or unconscious, epilepsy and fits. Evidence has been given that in such a patient the fingers fall downwards or are raised. Evidence was given that this reveals that the patient's brain has in some way been affected. The CT scan examination had shown that there was no necessity for brain surgery. However it revealed the swelling on the brain. Further evidence was given by this witness, who stated that this condition of encephalitis could come about as a result of an assault. Evidence was given that the same symptoms of the illness can be seen after an assault on the head or by a virus entering. In that case the court would have to decide on evidence whether this person named Lalith Rajapakse got this medical affliction encephalitis or whether he got this symptoms as a result of an assault.

When Dr. Sivakumara was giving evidence in court the following questions were asked from him. Can a person with a medical history of an assault on a head and police assault be said to be suffering a rumetic encephalitis condition in his brain?

The doctor stated that with regard to that, the medical history must be examined. The medical history has been marked as "Y.2". According to the medical history "Y.2" and the Judicial Medical Record prepared by Dr. Mrs. Jooza and marked as "P.1", it is stated in the following manner in the small section called the medical history given by the patient. The patient was transferred from the Colombo North Teaching Hospital on 20 April 2002 to the National Hospital. It is stated that at that time the patient was semi conscious and it was in connection to a police assault of 19 April 2002. However this has been taken from the bed ticket.

The problem that arises here is that only on this short medical history can it be accepted that the police assaulted the patient. We know that the evidential value of the short history given by the patient is only as secondary evidence. This is because the patient himself has on an occasion told of his medical history to the doctor. Here the patient has not told anything with regard to his medical history to Dr. Mrs. Joozar. Evidence has been provided by the medical report itself that he was semiconscious at that time. In the same

manner it has been revealed from the evidence given in court by Mrs. Jooza and the evidence of Dr. Sivakumaran who examined the patient in ward no. 49 of the National Hospital on May 1, that by May 1 the patient was not in a position to state something and was in a semiconscious state. Dr. Sivakumaran's evidence further revealed that even by 12 May 2002, Lalith Rajapakse was a patient who had difficulty in talking. There is evidence that he was stuttering. This patient who was not in his senses was referred for physiotherapy on 9 May 2002 to enable him to walk. Accordingly, the fact that becomes clear is that according to the medical history given in "P.1", it is not possible for the court to conclude that this health condition was brought about by the police assault.

Further questioning of Dr. Sivakumaran proceeded as follows.

- Q. By keeping three books on his head and assaulting in some manner, can a sickness be caused to the brain as a result of an assault on the head?
- A. In this instance the sickness caused to the brain is very serious. Huge changes have taken place. It is difficult to give a decision. It can be done only by a specialist neurologist.

Considering this situation the court hoped to get the help of specialist neurosurgeon of the Colombo National Hospital Dr. Sunil Perera but did not succeed.

When Dr. Sivakumaran was being cross-examined, questions regarding the medical history were raised. He had stated that the medical history was obtained from a relative of the patient. Lalith Rajapakse was first admitted to the Ragama Teaching Hospital. When this doctor was asked his opinion regarding the illness, he had stated that this illness could happen on an occasion when the head is severely assaulted. In such an instance there would be a loss of consciousness as a result of continuously assaulting the head, and this illness could happen. However, in this case this condition that is, if this medical condition happened as a result of an assault, has to be decided by court after considering other independent evidence produced.

Srinath Manjula is the witness called by Lalith Rajapakse to corroborate the evidence given by him in court regarding the assault on him. The evidence given by him in court cannot be accepted as correct and true. Based on these facts my conclusion is that it has not been proved beyond reasonable doubt that Lalith Rajapakse who was taken into custody was treated in a cruel and inhumane manner by the accused.

The prosecution has called a person called Elaris who is the grandfather of Lalith Rajapakse to give evidence. This witness had seen Lalith Rajapakse being taken to be admitted to hospital. Regarding that instance he states that Lalith Rajapakse was lying unconscious on the floor and when he was spoken to he did not respond. Evidence was given that he was taken by two police officers who put their hands under his arms and carried him, his neck was bent to the front. My conclusion is that the reason for this condition is encephalitis.

### **What is the onus of proving a criminal case?**

Every criminal case has to be proved beyond reasonable doubt by the prosecution. This is clearly stated in the case of *Queen vs. Geekiyanage Don Jayaratna*. Until a criminal case is proved beyond reasonable doubt the accused is considered a completely innocent person. This is the golden theory that runs through the whole of the criminal law in Sri Lanka. In the case of *Don Gunaratne* proof beyond reasonable doubt has been discussed at length. If a doubt arises in the mind of a reasonable and prudent (intelligent) man then the benefit of that doubt should always be given to the accused. When examining the evidence presented in this case and when comparing and contrasting the evidence presented in this case it is clear that evidence is contradictory and the aforesaid benefit of the doubt arising from the said contradictory evidence should be given to the accused. In the evidence given by Lalith Rajapakse in court the evidence adduced is in a manner that the credibility of his evidence breaks down. There has been a Fundamental Rights application 267/02 in the Supreme Court filed on his behalf. The accused has been asked whether he advised any lawyer to file this Fundamental Rights case. He has stated “no”. Thereafter he had been questioned again in the following manner.

Q. Now think well and answer. After you went to Kandy did you give any instructions to a lawyer to institute an action at the human rights [commission]?

A. No.

The defense has marked as “V.1” an affidavit said to be signed by this witness. In that affidavit an Attorney-at-Law named Nirmala David signed as a Commissioner of Oaths. In the jurat section of the said affidavit the said lady Commissioner for Oaths has attested the swearing and signing. However

Lalith Rajapakse has clearly stated that there was no such lady lawyer at the time the document “V.1” was signed. On further questioning he has stated in evidence that he signed documents and there were two lawyers present but no lady lawyer was present. Accordingly it is not possible to convict the accused suspect accepting the evidence given by Lalith Rajapakse, as other independent evidence has not corroborated his evidence and the indictments against the accused have not been proved beyond reasonable doubt. Accordingly it is very clear that there is insufficient evidence adduced before this court to prove the case of the prosecution. Further, accordingly it is established that the prosecution case is not proved beyond reasonable doubts.

Taking the said facts into consideration, I find the accused suspect not guilty of the indictment raised against him, and acquit and discharge the accused suspect.

Signed by

(J.M.T.M.P.U. Thennakoon)

High Court Judge

Negombo

09.10.2008

### **Draft grounds for appeal to High Court (summary)**

1. The learned High Court Judge erred in fact and in law by stating that although the virtual complainant states that he had been assaulted on the soles of his feet for a considerable time, there is nothing in the medical record to record that there were any injuries to the soles of his feet.
2. The learned High Court Judge erred in law in assessing the injury number 10, which was “cerebral contusion”, by not recording the evidence of the virtual complainant, who stated to court in evidence that some books were placed on his head and the books that were on top of his head were beaten down on him with a blunt instrument.
3. The learned High Court Judge erred in law and fact by stating that the virtual complainant did not state in evidence he was brought to the jeep after his hands and feet were tied. In fact, the evidence on record clearly showed that he had made that statement, stating that after being hit three or four times his hands were tied in front with a rope and that he was taken away.

4. The learned High Court Judge erred in fact and law when answering the question which she has posed to herself as to whether Lalith Rajapakse was beaten by the accused inside the police station without taking into consideration any of the following facts which came out clearly in the evidence:
  - a. The accused very clearly and repeatedly in his evidence that at the time when the virtual complainant was brought to the police station, he was in a healthy condition and he had no injuries to be seen.
  - b. That the accused clearly and repeatedly stated that no note was made in the police records when the virtual complainant was handed over to the police reserve when he was brought to the police station after the arrest.
  - c. The accused in his evidence clearly stated that the virtual complainant was taken to the hospital from the police station in an unconscious state.
  - d. The medical report marks 1-10 injuries. These injuries would have occurred while the virtual complainant was inside the police station.
  - e. The virtual complainant has given details of assault on the soles of the feet, on the head on top of books and other parts of the body done inside the police station.
  - f. Under the above circumstances the learned High Court Judge should have assessed all the facts stated above in answering the questions that she has posed to herself as to whether Lalith Rajapakse was beaten by the accused inside the police station.
5. (a) The learned High Court Judge erred in law and fact in assessing the credibility of the witness Kasipillai Srinath Manjula by merely comparing it to the version of events given by police officer Sagara Nilatha Karasinghe Arachi without assessing the credibility of the said Sagara Nilantha Karasinghe Arachi. The learned High Court Judge without any assessment of this defence witness, who is also a police officer, accepted his evidence as true and decided that the evidence of Kasipillai Srinath Manjula was not true because his evidence was different to this police officer's evidence.

5. (b) The learned High Court Judge rejected the collaboration of evidence of the virtual complainant and the witness Kasipillai Srinath Manjula because the evidence of the police officer Sagara Nilantha Karasinghe Arachi was different to the evidence given by witness Kasipillai Srinath Manjula.
5. (c) The learned High Court judge did not take into consideration that Kasipillai Srinath Manjula was not cross-examined when he gave evidence that he was arrested by SI Sagara Nilantha Karasinghe Arachi on the 21.4.2002. If the defence believed that this police SI arrested Kasipillai Srinath Manjula on the 21st then it was the duty of the defense to confront him with this information and question him.
5. (d) There was no proof that the Srinath Manjula referred to by this witness and Kasipillai Srinath Manjula who gave evidence before the court were one and the same person.
6. The learned High Court Judge erred in law and fact by recording part of the evidence given by the virtual complainant regarding signing of the affidavit for the Fundamental Rights Application before lawyer Nirmala David, by initially stating that he did not remember signing the petition before her but correcting himself later by stating that he remembered that he signed the petition before the lawyer Nirmala David.
7. (a) The learned High Court Judge erred in law and fact in taking portions of the evidence of the accused, ignoring the major part of his evidence in which he repeatedly stated that he used minimum force by hitting the virtual complainant with a pole in order to prevent the virtual complainant harming a brother officer who accompanied him for the arrest. The learned High Court Judge has completely left out the major part of the evidence of the accused and selected from here and there a few references made by the accused without judging the veracity and credibility of the evidence of the accused.
7. (b) The learned High Court Judge ignored a long series of admissions made by the accused in his evidence by stating that on many of the relevant facts no entries were made in the relevant books at the police station about the matters on which he gave evidence. The matters on which no entries were made included the time and details about the

information received about the virtual complainant before going to arrest him, about the visit to the house of Nimal in order to arrest the virtual complainant, regarding non-used of an official vehicle but going in a private vehicle hired on the road, the whole incident narrated in evidence about waylaying in order to arrest the virtual complainant about the struggle the accused spoke of between the virtual complainant and a brother officer, the alleged attempt by the virtual complainant to use a knife and the alleged subduing of the virtual complainant by the accused beating him with a pole. The learned judge also failed to take into considerations that there were no productions of any knife or a pole that the accused said that he used on this occasion. There were numerous more omissions and contradictions in the evidence of the accused which the learned High Court Judge did not assess before accepting some pieces of his evidence as true.

7. (c) The learned High Court Judge also did not assess the fact that the evidence given by the accused to the effect that he took rest after handing over the virtual complainant to the reserve police was proven wrong by the documents produced by the OIC of the Kandana police station, who showed that according to the information recorded, the accused was on duty on the entire night of the 19th and that there was no record at all of his taking any rest.
7. (d) The learned High Court Judge failed to assess the credibility of the statements purported to be given by the accused to the reserve police though nobody from the reserve police gave evidence before the court.
8. The learned High Court Judge failed to act judiciously in not making distinctions between what are material facts relevant to the case and what are not material facts in assessing the facts given by the virtual complainant and two other witnesses of the prosecution, Elaris Alvis and Kasipillai Srinath Manjula.
9. The learned High Court Judge failed to act judiciously by merely narrating the submissions made by the defence council without comparing the matters of evidence with the notes recorded in the case records and thus without taking efforts to ensure that what is recorded as facts in her judgement are in conformity with what was recorded as evidence in the case record. In the earlier paragraph examples of the differences between what is recorded in the case record and what is narrated in the judgement has been demonstrated.

10. The learned High Court Judge erred in law and in fact and failed to act judiciously by omitting from the judgement the evidence given by the inquiring officer regarding Nimal and his wife and drawing an adverse conclusion to the prosecution on the basis on the basis that these two persons were not called as witnesses to give evidence in the case. The evidence of the virtual complainant was that at the time of his arrest it was the wife and children of Nimal who were at the house of his friend. The evidence of the inquiring officer was the Nimal's wife has left to work abroad and that after initially giving a statement Nimal also has left the house and his whereabouts were unknown. The learned High Court Judge has omitted this part of the evidence of the inquiring officer in assessing the importance of Nimal and his wife not being called as witnesses.
11. The Learned High Court Judge failed to consider the totality of the evidence lead by the prosecution in this case and failed even to sum up the totality of the evidence that the prosecution led in this case.

## 2. Attacks on a human rights defender: J. C. Weliamuna

[Extracts from, *Corruption and Abuse of Human Rights: Threats and Attacks on a Human Rights Defender, J.C. Weliamuna, Executive Director of Transparency International in Sri Lanka, and a human rights lawyer, Asian Human Rights Commission, Hong Kong, October 2008*]

In Sri Lanka the legal profession is very much a threatened profession. The recent grenade attack on September 27 on the residence of senior lawyer, J. C. Weliamuna, once again brought to the notice of everyone how much the profession has been undermined and how easy it is to attack lawyers. Almost a month has passed since the attack and there have been no arrests. Weliamuna had to leave his home and move to a safe house where he has to take enormous precautions for the security of himself and his family. This is despite the Bar Association of Sri Lanka holding a general meeting to condemn the attack and call upon the government to ensure immediate enquiries. Besides this lawyers took to the streets to protest. Internationally, almost all major organisations dealing with human rights, corruption and democracy intervened with the government, asking it to ensure effective investigations.

The question that now faces the country is whether the forces of repression, which at the moment have the upper hand, will be able to destroy those who still support the rule of law? The attacks on lawyers and witnesses are part of the overall strategy to crush the forces that support the rule of law and due process. It is a very real contest and the forces that support rule of law and due process, which in the recent years have been severely battered, need to fight back vigorously if the contest is to end in their favour.

This contest is not peculiar to Sri Lanka. In several neighbouring countries, like India and Pakistan, this battle is also being fought. The lawyer's movement in Pakistan, which came to be admired throughout the world, is one clear example of this contest and of the possibility that forces which support rule of law and due process can gain the upper hand until they are able to finally defeat the forces of repression.

The resolution passed by the Bar Association of Sri Lanka on this case was the first resolution of its kind. The very fact that it was not possible to prevent a common approach among the lawyers to deal with their problems is itself an indication that there is a fighting spirit within the legal profession and also within civil society, which responded to the call for support.

The Bar Association should not let this moment pass without a full mobilization of itself to push for the strengthening of the profession, the rule of law and due process within the country. It is not enough for the Bar Association to ask for an inquiry into the grenade attack, but it should ensure that effective investigation and prosecution happens as soon as possible.

Further, the Bar Association should study the process by which the police have managed to get the upper hand at the magistrate's courts and in other criminal proceedings to the detriment of the professional rights of lawyers. The forces of repression have been trying to promote corruption as a way to undermine the legal profession and due process, often at the level of the magistrate's courts, which are the institutions within which the rights of the citizens find their most vital contests. The overpowering presence of the police needs to be defeated. It is not possible to break the criminal/police nexus without the role of the lawyers to assert themselves in the courts, particularly the magistrate's courts. The Bar Association needs to develop its own strategies to strengthen lawyers' capacity to function with dignity and without fear.

The grenade attack was a serious attempt to reinforce existing fears among lawyers and introduce further intimidation. It was not an isolated act but a more violent expression of many dormant forms of intimidation that are exercised routinely throughout the country. The forces of repression want to create a timid legal profession. How this should be fought against is not merely important for lawyers but for the country as a whole.

### **Resolution of the Bar Association of Sri Lanka**

Whereas the residence of Attorney-at-Law was attacked with two grenades on the night of 27th September 2008, only one grenade exploded, as a result of which his premises suffered damage;

Whereas Mr. Weliamuna affirms that the incident of the grenade attack on his residence on the night of 27th September 2008 must necessarily be a reaction to his professional work, and an attempt to harm him and his family

and/or to intimidate him. He has stated that he has no personal enemies or family disputes, and has confidently ruled out the likelihood of any personal vendetta of that sort;

And whereas he is an active practitioner (Counsel) handling mainly Fundamental Rights and Writ Applications, many cases he has handled, and continues to handle, relate to public interest litigation and the protection/vindication of lawful rights of the community against alleged serious abuses of Executive and Administrative actions by powerful persons;

And whereas he is also the Executive Director of Transparency International Sri Lanka, it should be noted in this respect, that it is a long established tradition (in Sri Lanka and the world over) that lawyers, being versed with the gamut of jurisprudence relating to rights of persons, being trained and charged with promotion of same, for the betterment of society, have been involved in organizations, endeavors and efforts to secure the Rule of Law that can exist only with proper standards of transparency and accountability following exposure of wrongs;

And whereas it is a “fundamental right” and a duty of all Attorneys-at-Law to work in/with civil society organizations within the legal framework of the country; it is up to each Attorney at-Law to be able to opt to exercise thig right as he/she deems fit, without fear or favour. This right is subject only to the law of the land and cannot be sought to be denied, deprived or restricted by acts of violence, intimidation or threats of any type or form;

And whereas it is pertinent to note that on the morning of 27th September 2008 Mr. Weliamuna moved a resolution at the Bar Council Meeting of this Association, as a concerned Attorney-at-Law in respect of intimidation and threats being issued to litigants and Attorneys-at-Law in a case involving allegations of bribery and torture against certain members of the Sri Lanka Police. The attack took place, very soon thereafter on the night of 27th September 2008;

***And whereas the Bar Association of Sri Lanka being officially notified of the said incident having promptly condemned the said attack convened and emergency meeting of the Executive Committee of the Association on the 29th of September 2008.***

***And whereas when the said emergency session of the Executive Committee***

*of the Bar Association of Sri Lanka was in progress a delegation comprising of senior members of the profession led by Senior Attorney-at-Law Mr. R.K.W. Goonesekere submitted a requisition signed by more than hundred members of the Bar Association of Sri Lanka inter alia calling the President of the Bar Association to call for a Special General Meeting of the Bar Association of Sri Lanka.*

*And whereas the Executive Committee, having considered the prevailing situation and the request of the members of the Bar ratified the statement/press release issue by the Association unanimously and unreservedly condemning the said incident.*

*And whereas further considering the grave situation empowered the President to immediately take steps to liaise with the Inspector General of Police and to take appropriate steps to call upon authorities to launch and immediate inquiry into the said incident and have the perpetrators brought to justice and to make representation to the highest authorities of the state.*

*And whereas the Bar Association of Sri Lanka having considered the Requisition submitted by the Members of the Bar decided to call a Special general meeting of the Bar Association of Sri Lanka on the 11th October 2008 at 4.00 p.m. at Bar Association of Sri Lanka auditorium and accordingly instructed the Secretary to convene the meeting consequent to which today's proceedings are being held.*

*And whereas the President of the Bar Association of Sri Lanka thereafter took steps to make representations to the Inspector General of Police, Secretary, Ministry of Defence, His Lordship the Chief Justice and His Excellency the President with the view to requesting authorities to immediately commence investigation into the incident in order to bring the perpetrators to justice.*

*And whereas the President of the Bar Association of Sri Lanka having forthwith contacted His Excellency the President was able to secure a meeting with the President on 3rd October 2008 with the presence of the Inspector General of Police, Secretary to the Ministry of Defence, Secretary to the Ministry of Justice and D.S.G. on behalf of the Hon. Attorney-General.*

*The Bar association of Sri Lanka delegation to the said meeting was lead by the President and comprised the Deputy President, the Secretary, Treasurer, Assistant Secretary and Mr. R.K. W. Goonesekere, Attorney-at-Law.*

*And whereas during the said meeting the President and Mr. R.K.W. Goonesekere brought the grave concern of the Bar Association of Sri Lanka regarding the aforesaid incident to the notice of the authorities and Mr. Goonesekere emphasized and stressed the need to preserve and protect the rule of law and necessity to take steps to prevent a recurrence of such events in future.*

*And whereas His Excellency the President having given a patient hearing to the representation made by the Bar Association of Sri Lanka directed the Inspector General of the Police and the Secretary to the Ministry of Defence to investigate the incident with priority and to bring the perpetrators to justice.*

And whereas in the circumstance, the Bar Association of Sri Lanka, as representing the Legal Profession of Sri Lanka, and having sworn and being duty bound to uphold the Constitution of the Democratic Socialist Republic of Sri Lanka, hereby resolves that its position on the incident, circumstances and the likely consequences arising there from is as follows:

*The incident represents a threat to the fundamental right/duty of all Attorneys-at-Law to practice.* Every Attorney-at-Law has a right and a positive duty to represent and advise persons seeking their professional assistance, regardless of who they are what they have done or any such consideration. There is a positive obligation in the Supreme Court Rule 5 that requires Attorney-at-Law to represent the interests of those seeking their assistance. Accordingly, if this incident is not dealt with firmly, effectively and strongly, the rights and the value of an Attorney-at-Law would be seriously eroded.

In this context, it should be noted that it is the right and a tradition that Attorney-at-Law, being versed with the jurisprudence of rights and obligations and trained on how to promote same for the betterment of society, have been involved in organizations permitted by the law of the land, endeavours and efforts to secure honesty, integrity and the rule of law that can exist, only with proper standards of transparency, accountability and

compliance with laws. This right is only subject to the need to comply with the laws of the land.

The Bar Association of Sri Lanka cannot and will not tolerate this threat to the Legal Profession.

**Furthermore, in the circumstances, the Bar Association of Sri Lanka hereby:**

- A.) Unequivocally condemns the incident as an attack on/threat to the Legal Profession and its Members;
- B.) Demands that the matter be expeditiously, fully, honestly and impartially investigated;
- C.) Calls upon H.E. the President of Sri Lanka, Government, Opposition, Inspector General of Police and all other and authorities of the State to take meaningful and effective steps to have the perpetrators brought to justice and to prevent any future recurrence of attempted intimidation against any Member of the Legal Profession;
- D.) Resolves that the President of the Bar Association of Sri Lanka shall forthwith call upon the Inspector General of Police to intimate in writing what steps have been taken to have this matter investigated expeditiously;
- E.) Informs all persons, that the Bar of Sri Lanka will not tolerate or countenance threatening actions/conduct at any time or in any way, against any Member of the Bar.

The Bar Association of Sri Lanka will not hesitate to take appropriate action or measures in respect of such unlawful conduct.

(Signed)

W. Dayaratne,  
Proposed by President of  
Bar Association

Mohan Peiris, PC,  
Seconded by Deputy President of  
Bar Association

## **SRI LANKA: Attack against human rights lawyer threatens rule of law and independence of the bar**

*International Commission of Jurists, 29 September 2008*

The International Commission of Jurists (ICJ) strongly condemns the grenade attack on 27 September against prominent Sri Lankan human rights lawyer, J.C Weliamuna, and calls on the Government of Sri Lanka to launch a prompt, independent, impartial and transparent investigation.

At around 11.30 pm on the 27 September a grenade exploded on Mr. Weliamuna's balcony at his residence in Kohuwela, Colombo. The explosion shattered the windows of the house, but fortunately did not cause physical injury to Mr. Weliamuna, his wife or his two young children. A grenade pin was found outside the house, along with a second unexploded device that was defused by the police in the early hours of Sunday morning.

Mr. Weliamuna serves as Executive Director of Transparency International Sri Lanka, an NGO that highlights bribery and corruption and documents the misuse of public property by the state. He is also legal counsel in a number of sensitive fundamental rights cases, some of which involve allegations of torture, extra judicial killings and disappearances.

Earlier on the 27th, Mr Weliamuna had moved a resolution at a meeting of the Bar Council of the Bar Association of Sri Lanka in a case that involved death threats received by a lawyer appearing in a fundamental rights case against the police. About ten days ago, unidentified assailants killed one of his clients who had initiated a case of bribery against the police and a fundamental rights case.

Mr. Weliamuna is also active in a broad coalition of activists and professionals calling for the re-establishment of the Constitutional Council, a multi-partisan constitutional body that makes recommendations for appointment to the country's independent institutions and higher judiciary, including the Human Rights Commission, the Police Commission and Elections Commission. The Constitutional Council has been defunct for about two years and the President has refused to make new appointments as required by the Constitution.

“This attack against a senior and well-respected human rights lawyer must be seen in the context of rising human rights violations in Sri Lanka and increasing attacks on freedom of expression and the right to dissent” said Roger Normand, ICJ’s Asia-Pacific Director. “The growing climate of fear and intimidation in Sri Lanka constitutes a threat not only to individual human rights defenders, but to the country’s democratic institutions and traditions.”

Mr. Weliamuna has called for an effective investigation into the incident. He told the ICJ, “It is important to have a transparent and open investigation. This is more important than my personal security. This is the beginning of series of threats against the justice system in Sri Lanka. Unless this is stopped right now we will soon see attacks on prosecutors followed by attacks on judges. It is vital to investigate this impartially and independently, identify the perpetrators and bring them to justice if further attacks are to be prevented. It is important that the Bar takes a strong stand on the issue.”

Article 14 of the Constitution of Sri Lanka guarantees the rights of free expression and the right to practice one’s profession. Similar guarantees are found in the international human rights covenants to which Sri Lanka is a party and which the Government has publicly vowed to protect and promote.

The ICJ calls upon the Government of Sri Lanka to uphold the rule of law and protect the independence and security of the legal profession by initiating a prompt impartial and transparent investigation into the attack, in order to bring the perpetrators to justice. The independence of the judiciary and the legal profession have long been cornerstones of Sri Lanka’s constitutional government. The state must do its utmost to protect and promote these fundamental values.

## **Sri Lanka: Breakdown of law and order**

### *Media Release by Women’s Organisations and Networks*

A number of concerned women’s groups and networks join other organisations and individuals who have condemned the recent grenade attack on the residence of Mr. J.C Weliamuna, the well-known and respected human rights lawyer.

Women's organisations have in the past drawn the attention of the Minister of Women's Empowerment and Child Development and the National Committee on Women to acts of violence against women and children committed with impunity by armed persons in various parts of the country, including the North and East. We have in particular highlighted the failure to monitor and implement the Presidential Guidelines that seek to prevent abuse of authority.

The grenade attack on the Weliamuna residence took place at night, traumatizing his two infant children. The attack followed Mr. Weliamuna's professional involvement in two cases on police torture and bribery, and the gunning down of his client in the presence of the client's 11-year-old child. Despite the public outcry on the attack against Mr. Weliamuna, unidentified persons later attempted to force their way into his office, and escaped on a motor bicycle.

In the last few days the press has also reported an assault by army personnel on a doctor at the Ragama Hospital who made a police complaint regarding a drug crime. A woman doctor who had also filed a case of criminal intimidation was gunned down by the accused, a soldier alleged to be from the Embilipitya army camp. These incidents are all symptomatic of a dangerous breakdown of law and order, and the incapacity of the government and law enforcement authorities to protect men, women and children in all parts of the country from criminal acts of violence, perpetrated through a perceived sense of power and impunity.

It is time for the President and the Ministers specifically entrusted with law enforcement and the protection of human rights to inform the public of the specific measures that they have taken as well as put in place. It is their responsibility to ensure that there is no impunity for criminal acts committed by members of the police and armed forces, and gunmen who move around easily with their weapons. Mere condemnation of these acts and promises of investigation are no longer acceptable. It is in times of conflict and military offensives that specific measures are vital to prevent impunity, enforce discipline and ensure public confidence in the rule of law. Everyone in the police and the army must be held accountable for protecting the life, liberty and property of civilians, men, women and children in the community.

### *Endorsing Organisations*

1. Centre for Women's Research (CENWOR)

2. Muslim Women's Research and Action Forum (MWRAF)
3. Women's Education and Research Centre (WERC)
4. Academy of Adult Education for Women
5. Women and Media Collective (WMC)
6. Women in Need (WIN)
7. Agromart
8. Kantha Handa/Voice of Women
9. Kantha Shakthi
10. Women's Centre, Ja-Ela
11. Siyath
12. Wilpotha Kantha Ithurum Parishramaya
13. Sri Lanka Muslim Women's Conference (SLMWC)
14. Sri Lanka Women's NGO Forum
15. Action Network for Migrant Workers (ACTFORM)
16. Suriya Women's Development Centre (SWDC)
17. Women's Development Centre, Kandy
18. Uva Wellassa Farmer Women's Organization
19. Mothers and Daughters of Lanka (MDL)
20. Community Encouragement Foundation, Puttlum
21. Women's Resource Centre, Kurunegala
22. Women's Support Group
23. Women's Development Centre, Kurunegala
24. Dabindu Collective, Katunayake
25. Women's Development Centre, Badulla
26. Association of War Affected Women
27. Devasarana Independent Women's Action Committee, Kurunegala
28. Binthenna Women's Front
29. Community Education Centre, Malabe
30. Sunile Women's Centre, Welikanda

### **Press Release by the Organisation of Professional Associations of Sri Lanka**

The Organisation of Professional Associations of Sri Lanka wishes to express its strong condemnation of the grenade attack on the residence of Mr J C Weliamuna, Attorney at Law Member of Bar Association of Sri Lanka which is a constituent member of the OPA.

Mr Weliamuna has been in the forefront in the campaign against bribery and corruption. He has also been a strong advocate for the implementation of the 17th Amendment to the Constitution, an important piece of good

governance legislation enacted in recent times in which the OPA played a major role in the drafting.

The OPA considers this attack as an attempt to harm and intimidate a fellow professional, a lawyer and through such attacks to send a broader message to those who represent the cause of good governance, accountability and integrity in public life. It also represents a clear challenge to the independence and integrity of the legal profession, and contempt for the rule of law.

As the Apex body of Professionals the OPA wishes to express solidarity with the Association of Sri Lanka and wishes to call upon the Inspector General of Police to take immediate action to ensure that the culprits are brought to book.

### **Fear for safety: J.C. Weliamuna, human rights lawyer and his family**

#### ***Amnesty International Action Appeal***

Human rights lawyer J.C Weliamuna and his family survived a grenade attack on their home in the capital, Colombo, on 27 September. He has since gone into hiding, as he remains at risk of further attack.

The grenade attack came at 11.40pm as J. C. Weliamuna, his wife and two sons, aged four months and two years, were asleep. The grenade exploded on the balcony of their bedroom though luckily they were not harmed. However, the explosion caused extensive damage to their home. Police found a second, unexploded grenade in the compound of the house and which they managed to defuse.

J.C. Weliamuna is the head of the Sri Lankan branch of Transparency International, an international NGO, which campaigns against government corruption. On 23 September, the NGO published a report naming Sri Lanka as 92nd out of the list of 184 corrupt governments around the world. He also represents a number of citizens, who claim that state officials have violated their “fundamental human rights” under the Sri Lankan Constitution.

In September, J.C. Weliamuna had been the legal representative in a case involving serious police malpractice, which was heard by the Supreme Court. As a result, the court ordered an investigation into police intimidation and

the filing of false charges against his client. At 1.30 pm on 30 September, a man forced his way into J. C. Weliamuna's offices. He gave the name of an unknown person he claimed to be looking for. However, staff in the office believe he was really looking for J. C. Weliamuna.

## BACKGROUND INFORMATION

During 2008, at least 5 human rights defenders have reported receiving death threats, often in the form of threatening phone calls. The threats have been intended to stop them from speaking out on human rights issues. Attacks on journalists have included stabbings, abductions and ill-treatment as well as targeted killings. The Sri Lankan authorities have failed to prosecute any perpetrators for attacks on Human Rights Defenders in 2008. The latest attack on a prominent human rights lawyer sends a chilling message to anyone prepared to stand up and expose human rights violations.

### **Letter to the President of Sri Lanka and president of the Bar Association by Lawyers for Lawyers Foundation, Netherlands**

7 October 2008

Dear President,

Re: Mr. J. C. Weliamuna

The Dutch Lawyers for Lawyers Foundation ('Stichting Advocaten voor Advocaten') would like to express its grave concern about the recent attack against human rights lawyers J.C. Weliamuna.

Lawyers for Lawyers seeks to promote, throughout the world, the freedom and independence of lawyers while exercising their profession in or out of court and - in this context - to promote the principles of fair trial.

On the 27th September the house of Mr. J.C. Weliamuna, a senior lawyer, came under attack when two grenades were thrown at it. One grenade exploded, while the other was later discovered inside the house by the police. Mr. Weliamuna, and lawyers who are aware of the incident, believe that the attack is a result of the cases in which he has been appearing, most of which involve the government and agencies of the state.

Mr J.C. Weliamuna is the executive director of the Sri Lankan branch of Transparency International. He is also one of the best-known anti-graft lawyers in the country who had been pursuing many sensitive cases. He also has a long track record of making legal representation in cases involving human rights abuses such as torture, extrajudicial killings and forced disappearances.

The intimidation and harassment that Mr. Weliamuna endured is contrary to international principles adopted by the United Nations and applicable to Sri Lanka.

The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1990, provide for a number of rights and responsibilities for lawyers based on the international agreement that in the interest of fairness and equality, all individuals, including those accused or convicted of criminal activity, are entitled to unfettered legal representation.

In particular paragraphs 16 and 17 of the United Nations Basic Principles on the Role of Lawyers, states that the government is obligated “to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.

Further: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.

According to Article 11 of the 1998 U.N. Declaration on Human Rights Defenders “everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession”. These principles are universally applicable. Therefore, your government is under an obligation to duly protect and support its lawyers and human rights defenders.

In view of the above, Lawyers for Lawyers:

- call for the Attorney General to order an immediate, thorough and impartial investigation into this incident, with the results made public, and for those responsible to be brought to justice;
- urge the President and the Minister of the Interior of Sri Lanka to

ensure that immediate measures are taken to guarantee the safety of mr J.C. Weliamuna and other lawyers working to protect human rights, in strict accordance with their wishes;

- remind the authorities that human rights defenders have a right to carry out their activities without any restrictions or fear of reprisals, as set out in the UN Declaration on the Rights and Responsibilities of Individuals, Groups and Institutions to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Thank you for your attention to this very important matter. Lawyers for Lawyers in confident of your good will and sense of justice and we will continue to monitor this case closely.

On behalf of the President of Lawyers for Lawyers, Phon van den Biesen,

Sincerely,

(Singed)

Adrie van de Streek

Executive Director

Dutch Lawyers for Lawyers Foundation

## **SRI LANKA: Grenade attack at the house of a senior lawyer: The Bar Association of Sri Lanka should now act to protect the professional dignity and the independence of lawyers**

### **A Statement by the Asian Human Rights Commission, AHRC-STM-252-2008, 29 September 2008**

All eyes have now turned to the Bar Association of Sri Lanka as to how effective their actions will be in the aftermath of a grenade attack on the house of a senior lawyer, Mr. J.C. Weliamuna, on night of Saturday, 27th September.

The Asian Human Rights Commission was able to talk to many lawyers in Sri Lanka who are eager to see a courageous plan of action from the Bar Association to counteract what almost everyone feels to be a terrible situation that is emerging in the country to intimidate lawyers from practicing their

profession without fear. The lawyers we spoke to about the attack on Mr. Weliamuna's house, see it not as an isolated incident, but as part of a very comprehensive scheme within which the fight for the rule of law and justice is brought under severe attack.

The lawyers speak about a general state of intimidation that has been developing in recent years. At the local level in all areas of the country, the police have emerged as a draconian power, capable of inflicting serious harm on anybody who might come into conflict with them on matters of justice. Making of complaints, pursuing such complaints in courts, honest representation of clients exposing what they have faced at the hands of the police or powerful persons, have all become dangerous activities, which may bring serious harm to the lawyers themselves. It is in this light that they see the grenade attack on Mr. Weliamuna who has had a reputation for a long time now for appearing in sensitive cases on issues such as corruption and grave human rights abuses. The killing of complainants of torture such as Gerald Perera and Sugath Nishanta Fernando are just two glaring examples of a very common experience of witness intimidation.

The duty of the Bar Association is to protect the lawyers, so that they can engage in their profession and maintain the highest standards of integrity. The rule of law cannot be sustained if the Bar Association fails to protect all its members.

While condemnation of the grenade attack by way of a resolution is to be appreciated, no one would consider this an adequate response to the type of threat faced by the whole profession besides the actual victim of this attack. The Bar Association should demonstrate its strength as a professional body of lawyers to get across the message that it is capable of successfully retaliating to such attacks.

The bar associations of Pakistan, Nepal, Bangladesh and India in recent times have demonstrated their will and capacity to fight against threats to their profession by way of strikes and legal actions initiated for their defence. The threat faced by the legal profession in Sri Lanka is such that they should also resort to such actions and thereby demonstrate to the members that they do not have cow down to such acts of intimidation.

The Bar Association should demand from the executive guarantees of protection and develop a permanent mechanism within which the association

can deal with the executive arm of the government in the event of threats to lawyers and also to develop more permanent ways to protect the profession.

The Bar Association should also go before the Supreme Court as a body representing lawyers against the violations of the fundamental rights of one of its members to practice his profession in a peaceful environment. The association can seek the intervention of the Supreme Court to lay down a number of guidelines for action by the state to protect the lawyers.

The threats that the lawyers faced in the late 80s, when several of them were killed, is still in the memory of the lawyers as well as the nation. It cannot be said that the Bar Association then did enough to safeguard these lawyers or to pursue justice on their behalf. This grenade attack on the house of a lawyer will remain in the memory of the lawyers as well as the country. What the Bar Association does at this moment will also be reviewed by lawyers in the years to come. The AHRC hopes that the Bar Association will not succumb to pressure but carry out its obligation towards its members at this important moment.

## **Open Letter to the President of the Bar Association of Sri Lanka**

*29 September 2008*

Mr. W. Dayaratne,  
President, Bar Association of Sri Lanka  
Hulftsdorp  
Colombo 12

Dear Mr Dayaratne,

### **GRENADe ATTACKS AND THREATS AGAINST LAWYERS FOR ATTENDING TO THEIR PROFESSIONAL RESPONSIBILITIES**

As concerned lawyers, activists, human rights organizations and professionals, we view with great alarm, the grenade attack on the residence of human rights lawyer and Executive Director of the Sri Lanka chapter of Transparency International, JC Weliamuna at 11.40 pm on Saturday, 27th September 2008.

The pattern of threatening lawyers for attending to their professional responsibilities has heightened in recent times and has been characterized by inaction on the part of the authorities in bringing to brook, those responsible. In the result, this has had severely negative consequences on the ability of lawyers to appear in good conscience for their clients in an environment where the prevalence of human rights violations is extremely high.

As you are aware, Mr Weliamuna has been appearing in highly sensitive cases involving corruption and human rights violations and there is little doubt that this attack is an attempt to intimidate him. Moreover, the very day of the attack, he had moved a motion at the Bar Council regarding a lawyer who has received death threats due to appearance in an extra-judicial killing case where the victim had been the complainant in two cases regarding police officers, for bribery and torture. The Bar Council unanimously resolved to pursue the complaint of the lawyer and condemned the interference into the work of lawyers and resolved to pursue the matter with the Inspector General of Police and other authorities.

We consider it fortuitous that though damage was caused to physical property, no harm was caused to the life of Mr Weliamuna or the members of his family.

However, it is the bounden duty of the Bar Association of Sri Lanka, of which you are the current President, to take immediate action in this regard to protest officially in regard to this incident, including the passing of a resolution of the Bar Council condemning attempts to prevent lawyers from engaging in their professional work and engaging in at least a one day strike at the minimum.

We request the Bar Association to also call upon the Inspector General of Police to hand over investigations in this regard to a Special Investigation Unit (SIU) of the Criminal Investigation Division (CID). Further, it is opportune that the Bar bring the matter of continued intimidation of lawyers to the notice of the Judiciary in order that appropriate judicial directions be issued to the investigative authorities to effectively prevent the recurrence of such threats.

It is imperative that the Bar should closely monitor the progress of these investigations in order to ensure that justice is done speedily and effectively and that human rights lawyers are not hindered from carrying out their professional responsibilities,

We write in expectation of immediate action by the Bar Association of Sri Lanka in this regard,

Sincerely,

*Organisations*

1. Rule of Law Centre, Colombo
2. Rights Now Collective for Democracy
3. Right to Life, Katunayake
4. Mothers and Daughters of Lanka
5. Law & Society Trust
6. Janasansadaya, Panadura
7. International Friends for Global Peace
8. Institute of Human Rights
9. INFORM Human Rights Documentation Centre
10. IMADR Asia Committee
11. Home for the Victims of Torture, Kandy
12. Home for Human Rights
13. Families of the Disappeared, Katunayake
14. EQUALGROUND Sri Lanka
15. Conference of the Major Religious Superiors, Sri Lanka
16. Centre for Peace Building and Reconciliation
17. Commission for Justice and Peace of the National Christian Council
18. Association of Family Members of the Disappeared
19. Asian Human Rights Commission, Hong Kong
20. Asian Forum for Human Rights and Development (FORUM-ASIA)

*Individuals:*

21. Rev. Sr. Christine Fernando
22. Rev. Fr. S. Maria Anthony, S.J. Provincial of the Society of Jesus
23. Rev. Fr. Sarath Iddamalgoda, Catholic Priest
24. Sanjana Hattotuwa, Editor, Groundviews
25. Ruki Fernando
26. Dr. Nimalka Fernando, Attorney at Law
27. Dr Mario Gomez, Member, Law Commission of Sri Lanka
28. Prof. Kumar David, Democratic Left Front
29. Kishali Pinto Jayawardena, Attorney at Law
30. Silan Kadirgamar - Formerly Senior Lecturer, University of Jaffna
31. Prof. Jayanatha Seniviratne, University of Kelaniya
32. Dishani Jayaweera, Attorney at Law
33. Chulani Kodikara
34. Mr. B. Skanthakumar
35. Ms. Anberiya Hanif

## **Intervene to defend the lawyers of Sri Lanka against attacks, threats and intimidation**

### **An Open Letter to lawyers and bar associations throughout the world, AHRC-OLT-023-2008, 30 September 2008**

The Asian Human Rights Commission (AHRC) based in Hong Kong wishes to bring to your attention the serious threat to lawyers in Sri Lanka by way of attacks, death threats and other forms of intimidation to prevent them from practicing their profession independently.

On the 27th September 2008, the house of Mr. J.C. Weliamuna, a senior lawyer, came under attack when two grenades were thrown at it. One grenade exploded while the other was later discovered inside the house by the police. Mr. Weliamuna and lawyers who are aware of the incident believe that the attack is a result of the cases in which he has been appearing, most of which involve the government and agencies of the state.

Mr. J.C. Weliamuna is the executive director of the Sri Lankan branch of Transparency International. He is also one of the best-known anti-graft lawyers in the country who had been pursuing many sensitive cases. He also has a long track record of making legal representation in cases involving human rights abuses such as torture, extrajudicial killings and forced disappearances.

The Bar Association of Sri Lanka passed a resolution condemning the attack and has called for inquiries into the incident. The executive committee of the Bar Association is to meet the Chief Justice of Sri Lanka to discuss the need to take protective measures to safeguard lawyers. Three hundred and fifty lawyers have signed a petition calling for the Bar Association to hold a general meeting to discuss the issues relating to the protection of lawyers. This meeting has been fixed for 11 October 2008.

The lawyer's petition states:

“We consider this incident not purely as an attack on an individual but against our profession as a whole, a motivated, concerted and calculated attempt aimed at curtailing, suppressing and hindering their freedom of engaging in the practice of their profession and performing their Constitutional duty towards the citizenry who have cast such responsibilities upon them.”

The European Union and the Embassy of the United States in Sri Lanka have issued statements condemning the attack and calling for prosecution of the perpetrators. In its statement the European Union urged the government to bring the perpetrators to justice. “The EU notes with concern the trend in attacks and threats to journalists, civil society organisations and now a lawyer.”

The defence of lawyers facing such threats needs to be the concern of lawyers throughout the world and for the bar associations representing them. We therefore urge you to take this matter up at your Bar Association and write to the Sri Lankan government and the President of the Bar Association of Sri Lanka to take credible action to provide protection to lawyers who are facing or could face such attacks and threats and also to take necessary steps to defend the dignity and the independence of the legal profession.

Thank you.

Yours sincerely,

John J. Clancey

Chairman

Asian Human Rights Commission

Basil Fernando

Director

Asian Human Rights Commission

## **Threats to the senior lawyer and human rights activist J.C. Weliamuna continue**

### **A Statement by the Asian Human Rights Commission, AHRC-STM-254-2008, 1 October 2008**

Yesterday (September 30, 2008) at 1:30 pm an unknown person tried to enter the premises of Transparency International (TI) Sri Lanka at the address 28/1 Bullers Lane, Colombo. The TI officers obstructed him and closed the gates, preventing the person from entering the premises. Then, a person on a motorcycle arrived and whisked away this person from the premises. At this time Mr. Weliamuna was not in the office. Following this incident, on the advice received for his security, Mr. Weliamuna has vacated his residence and is being forced to take alternative shelter. Complaints have been made to the police about this incident.

The office of TI at Bullers Lane is situated in a zone of high security in Sri Lanka. Many embassies are located in the vicinity. Some high state officers who are provided with heavy security also reside in the area. There are traffic barriers in close vicinity. Despite of all this, this person was able to arrive at the TI office and to be whisked away by a motorcycle rider.

On the 27th of September, at 11:40 pm there was a grenade attack on his house at Kohuwela. Mr. Weliamuna and his family live in this house and his personal office premises are also in the same house. Despite of investigations being launched on this incident, no one has yet been arrested or taken to questioning.

The Bar Association of Sri Lanka condemned the attack and called on the Inspector General of Police to conduct inquiries and provide protection to Mr. Weliamuna. The Bar Association also resolved to meet the authorities and the Chief Justice of the Supreme Court to discuss this issue and to urge actions in order to protect Mr. Weliamuna as well as other lawyers who may face similar threats.

Yesterday a large number of lawyers and civil society organisations gathered near the supreme court of Sri Lanka and held a demonstration condemning the grenade attack and calling for steps to defeat the climate of fear that is being spread throughout the country. Several President's Counsels, Bar Association officers including the president, and representatives from the Colombo Law Society attended this demonstration and the meeting.

350 lawyers have signed a petition calling for the Bar Association to hold a general meeting to discuss this issue and to adopt appropriate measures for the protection of lawyers. The Bar Association has fixed the general meeting for the 11th of October.

The EU and the US Embassy in Sri Lanka have issued statements calling on the Sri Lankan government to conduct inquiries into the grenade attack on the premises of Mr. Weliamuna and also expressed concern about continuous threat to journalists, civil society organisations and lawyers. Transparency International, International Commission of Jurists and the Asian Human Rights Commission have also drawn attention to the situation of increased threats to human rights activists in the country.

Meanwhile, this second attempt to harm Mr. Weliamuna clearly demonstrates that there is an organised attempt to silence him and perhaps to communicate a message against all those who are vocal on human rights abuses. This second incident has taken place despite of heavy publicity received in response to the grenade attack and the promise of inquiries to be conducted by the Inspector General of Police.

Under these circumstances, it is essential to keep up the vigil on this issue and to exert pressure on the Sri Lankan government to investigate the matter and bring the perpetrators to justice.

Further, under these circumstances the Bar Association of Sri Lanka need to intervene forcefully and go before the Supreme Court of Sri Lanka by way of a fundamental rights application on imminent threat to life and violations of right to practice one's profession as a lawyer, and thereby make a concerted attempt to ensure the involvement of the judiciary in the protection of the rights of lawyers to practice their profession without fear.

### 3. Death threats against lawyers: The Mahason Balakaya

[Extracts from, *In defence of the legal profession: Death threats to lawyers and the public (Sri Lanka)*; A pamphlet relating to a letter of threats sent to lawyers by a group calling itself Mahason Balakaya, *The Battalion of the Ghost of Death*, Asian Human Rights Commission, Hong Kong, November 2008.]

On 22 October 2008 it became news that an announcement was received by registrars of all courts and a number of human rights lawyers by a group that calls itself the Mahason Balakaya. The notice threatens death or other serious physical harm to any lawyers who appear for any suspected terrorist in any court in Sri Lanka. The lawyers who appear for such persons are referred to as traitors, who should be treated in the same way that the terrorists treat their enemies. In the present context the vast majority of those who are charged under anti-terrorism laws are Tamils. The letter, issued under the name of the Mahason Balakaya (Battalion of the Ghosts of Death), has been translated in full as follows:

To those who represent the terrorists today

The innocent people of our motherland have been subjected to the killing sprees of terrorists for over three decades. Expectant mothers and farmers have been among those killed—chopped to pieces—by the terrorists. These terrorists now engage in bombings intended to kill innocent civilians in various parts of the country, in a bid to escape defeat at the hands of the valiant forces.

To date, the number of innocent that have fallen victim to these terrorist bombings extends into the thousands. Thousands more have been maimed. But there is no one today to speak for the human rights of these innocent people.

However, we know that there are many traitors who voice their concerns for the human rights of the evil terrorists and those who assist them in carrying out these indiscriminate killings.

Can such people who strive to free these terrorists when they're captured and imprisoned for their crimes against the innocent be considered anything but traitors? We have the names and addresses of these traitors who take home salaries numbering into hundreds of thousands and even accept bribes in exchange for acting as enemies of our beloved motherland and its innocent people.

We have decided that all those who try to split our motherland in two and all those who represent the interests of and speak on behalf of the terrorists who kill our innocent civilians will be meted out the punishments that they deserve. There is still room for those who sell out on the cause of the nation, of the motherland, for financial gain, to cease such treacherous acts. In the future, all those who represent the interests of the terrorists will be subject to the same fate that these terrorists mete out to our innocent people.

Traitors to the nation, mouthpieces of the terrorists,

Remember the faces and bodies of those innocents who have been killed and maimed by the terrorists. Be warned that meting out the same fate to you in the name of our motherland would be a favour that we would render to the entire nation.

*The **Battalion of the Ghosts of Death** that represents the interests of those who have lost their lives and those who have been maimed at the hands of terror.*

Lanka E-News carried a news item on the letter as follows:

All the registrars of Colombo Magistrate Courts received a letter Monday (20) threatening that those who appear for the terrorist suspects those who represent their human rights would be killed, maimed or blinded.

The ill-famous `Mahason Balakaya` that issued similar threats previously as well had posted these letters.

Parcels containing 50 copies each of these letters were received by all eight Registrars of Colombo Magistrate Court.

Almost all the lawyers in Colombo rose against the bomb attack at the house of renowned human rights counsel J.C. Weliamuna. Fifty civil organizations held a rally in Colombo New Town Hall recently condemning the attack.

The threatening letter reached to the registrars of Magistrate Courts several days later had no mentioning about lawyers.

The counsel of Colombo courts Manjula Pathiraja said to 'Lanka-e-News' that no lawyer of any courts in Sri Lanka would be meek to give up the respect of the law profession in such a situation. ('Mahason Balakaya: Who?' 22 October 2008)

The letter from the Mahason Balakaya threatening lawyers who appear for terrorists raises many questions that go far beyond the matter of the protection of the individual lawyers who have received such threatening letters.

Why is it necessary to deprive a terrorist, alleged or real, representation by lawyers at legal proceedings? An inquiry into that question could take us to many of the complex problems involved in contemporary Sri Lanka.

The threat is made to those lawyers who appear in criminal proceedings. All criminal proceedings are against alleged criminals. Some cases may be about thieves and robbers, about murderers or rapists, about fraudsters and corrupt persons, and also involving those state officers who may be charged for crimes such as torture and extrajudicial killings. Thus, a criminal proceeding that is not related to an allegation of a crime cannot exist.

Criminal proceedings involve lawyers on the side of the prosecution and on the side of the defence. The main contesting lawyers belong to these two groups while a lawyer for an aggrieved party may also represent the interests of the aggrieved party and his family.

The duty of the defence lawyer is to defend the criminal. The defence lawyer does so by presenting the accused's version concerning the crime that he or she is alleged to have committed. Thus, a judge can come to the conclusion of the guilt or otherwise of the accused in a just and fair manner only if the accused person's version is presented with competence and ability.

From all these premises many conclusions follow that are very relevant to an understanding of the intentions of those who have published the death threat letter under the name, Mahason Balakaya.

To begin with, the threat implies that terrorism is not a crime but something

worse than that; however, the law does not know anything worse than a crime. Therefore, to consider terrorism as something worse than a crime can only happen outside the framework of law. In that case an alleged terrorist needs not to be brought to court at all. The simple reason is that courts are supposed to consider everything according to law and for this reason they are called “courts of law”.

Can a court of law have any other proceedings than those permitted by law? The obvious answer is no. If a court of law is expected to carry out proceedings outside the law it is no longer a court of law. It would not make any sense if a person were brought to a court with the expectancy that it would act outside the law. Yet, this is what is implied in the letter of Mahason Balakaya. Though any reasonable person would consider this implication to be devoid of meaning, those behind the Mahason Balakaya do not think that way. They want a court verdict to justify a punishment even if it means that the court should act outside the law.

The expectation of courts acting outside the law is not an original one. There have been many instances of mock courts installed by various dictatorships and authoritarian rulers to bring alleged enemies of the state before so-called courts to give an appearance of legitimacy where there is none. As glaring examples we may cite King Henry VIII’s trial of Thomas Moore, and the trials under Joseph Stalin and Adolf Hitler. The underlying reasoning in their sorts of ‘trial’ and the expectations of trial contained in the letter of the Mahason Balakaya are the same.

What is further implied in the ‘vision’ of justice contained in the Balakaya’s letter is that the version of the accused should not be presented at all. This of course offers a big advantage. If an allegation is untrue, as they often are, the public has no way to know the truth. Any person can be brought to ‘trial’ and punished, whether the allegations against him or her are true or not. All that would be needed is to say that someone is a terrorist or that someone is even indirectly linked to terrorists. With that a verdict can be obtained to punish such a person.

This vision of the Balakaya can be expressed through two experiences relating to the case of a well-known LTTE leader of one time. Kuttimani was tried on various counts relating to terrorist acts before the High Court of Colombo. One of the most revered judges, Tudor De Alwis, presided over this trial. Kuttimani was given all the rights that any other accused would have in

criminal proceedings in a court in Sri Lanka. At the end the court found Kuttimani guilty. Before pronouncing the death sentence, Tudor De Alwis got up from his chair and addressed Kuttimani, saying, "I do not think of you as a common criminal who would commit a crime for private reasons. I would be a happy person if I were to hear that the president wanted to grant you a presidential pardon from the death sentence." Then he sat down and pronounced the death sentence. Kuttimani made the request that in the event the death sentence were carried out it was his wish that his corneas be donated to someone so that that person may see Eelam. Obviously Tudor De Alwis did not believe in the ideological premises of Kuttimani. However, this great judge was able to convince Kuttimani, as well as the public, that he received a fair trial.

Sometime later a different type of trial took place. That was inside the Welikade Prison. While riots were taking place in July 1983 there was a well-planned massacre of many persons awaiting trials or serving sentences for crimes relating to terrorism. A well-armed group attacked unarmed prisoners and hacked them to death. Among them was also Kuttimani. It is also reported that the murderers removed his eyes.

The trial at the High Court and the 'trial' at the Welikade prison represent two completely different concepts of justice. In the 80s these two different versions existed. Those who condemned the type of barbarity involved in the Welikade massacre could urge that all matters of justice be done through courts and the process of law; however, those who are expressing their vision through Mahason Balakaya want to destroy any possibility of a proper criminal trial for those alleged to be terrorists, which can extend to all those who are considered enemies of the state. There cannot be a more complete denial of justice than this.

Though the Balakaya's letter has been published and the government should have official notice of this letter, there has been no report of any inquiry into the matter. Does the silence of the government imply consent? These are matters that no one who cares about decent standards of society or basic norms of the rule of law can ignore without inviting greater peril to themselves and society as a whole.

### **A prominent politician also complains of death threats**

Mangala Pinsiri Samawareera, a cabinet member in several governments and presently the leader of a political party and Member of Parliament on 6

November 2008 told the media that he has been receiving death threats due to the exercise of his freedom of expression by establishing a forum called 'Defence Watch'. According to one report in an online publication, Lanka Dissent, Samaraweera has been receiving telephone calls threatening him with death and the "callers appear to be linked with the military". Most of the calls have warned him "traitors have no punishment other than death".

Samaraweera was the foreign minister until he was sacked in 2007 due to a difference of opinion. Prior to his sacking he had been the chief organiser for the Sri Lanka Freedom Party in the southern city of Matara, since 1983. He also held various positions such as assistant secretary of the party and coordinating secretary of the Mother's Front. In the previous government he held the position of minister of post and telecommunications. He also served as the minister of urban development, construction and public utilities in the same cabinet.

Several members of the United National Party, which is the leading opposition party, have complained in parliament that they too have received death threats from an organisation called Mahason Balakaya (Battalion of the Ghosts of Death), which they claim to be connected with the ruling regime. It is interesting that the ruling regime has made no announcement that it intends to conduct inquiries or make any effort to identify, let alone distance themselves from, this group.

Observers have warned that in the south a serious situation is developing in which opposition politicians, journalists and lawyers, particularly those dealing with human rights, intellectuals, and trade unionists and others, may become targets of unidentified assailants. Sri Lanka has a record of extrajudicial killings, forced disappearances and torture that has continued since 1971 in various parts of the country.

It is the duty of the state to provide security to everyone and this applies even more seriously to politicians and personalities who engage in public life. The opposition politicians of whatever colour need to be given effective protection. It is the duty of society to demand from the state that such protection be ensured.

## **Death threats to Sri Lankan Lawyers International Bar Association**

His Excellency the President Mahinda Rajapaksa  
Presidential Secretariat  
Colombo 1  
Sri Lanka  
Fax: +94 112446657  
Your Excellency,

### ***Re: Death threats to Sri Lankan Lawyers***

We are writing you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern about death threats reportedly made to lawyers representing suspected terrorists in Sri Lanka.

In its role as a dual membership organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies, the International Bar Association (IBA) influences development of international law reform and shapes the future of the legal profession. Its member organisations cover all continents. The Human Rights Institute works across the association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

We have received reports that a notice was sent to a number of Sri Lankan lawyers on 21 October 2008 from a group calling itself 'Mahason Balakaya'. This notice reportedly threatens lawyers representing suspected terrorists, calling them 'traitors' and warning that they will meet the 'same fate' as innocent victims killed by terrorists. The notice also reportedly warns that they have the names and addresses of 'traitors'.

These threats follow reports of the incident on 30 September 2008, in which a grenade attack was apparently launched on the home of Mr J.C. Weliamuna, a senior lawyer working in human rights and anti-corruption cases.

The IBAHRI is extremely concerned that failure to act upon these issues contravenes the Sri Lankan constitution, as well as international obligations.

Article 14 (1) of the Constitution of the Republic of Sri Lanka states that

‘home, correspondence and communications and shall not be subjected to unlawful attacks on such person’s honour and reputation.’ Furthermore, article 20 (1) outlines that ‘every citizen is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise’ and article 24 states the ‘right to safe conditions of work.’

Sri Lanka ratified the International Covenant of Civil and Political Rights (ICCPR) in 1980. According to Article I of this document, all people have the right to ‘freely determine their political status and freely pursue their economic, social and cultural development.’ Article 9 of the ICCPR states that ‘Everyone has the right to liberty and security of person,’ and the right to life is outlined in article 6.

We would also like to remind you of the United Nations Basic Principles on the Role of Lawyers, which provide standards by which lawyers worldwide should be treated. According to principle 16, ‘governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference’. In addition, article 18 states that ‘lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.’ Furthermore, article 3 of the General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms declares that ‘everyone has the right, individually and in association with others, inter alia, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.’

The IBAHRI calls on the Sri Lankan authorities to ensure a full investigation into these allegations and ensure protection for all lawyers working to uphold the rule of law in Sri Lanka. We urge you to take steps to ensure all professionals defending the rule of law are able to carry out their work without fear of harassment and violence.

We look forward to receiving your urgent response, and would appreciate updates on the progress of these cases.

Yours sincerely

(Signed)

Ambassador Emilio Cardenas

Justice Richard Goldstone

## **The case of Mr. D.W.C. Mohotti: A lawyer complains of harassment at the Bambilipitya police**

D.W.C. Mohotti, an Attorney-at-Law of the Supreme Court of Sri Lanka, (Membership Number of the Bar Association M. 859) by way of an affidavit has narrated the harassment that he has suffered while accompanying a client to the Bambilipitya Police Station. This lawyer is a junior of Ranil Samarasuriya, a senior lawyer practicing in Colombo. On the instruction of the senior lawyer, he took one of the clients, K.P. Anil Rupasinghe, to the Bambilipitya Police Station on several occasions. However, the police stated that this person was not wanted and that if needed, they would call him later.

As the client received a notice to go to the police station on 24 October 2008, Mohotti accompanied him and they arrived at the police station at around 10am. The lawyer met the officer in charge of the Crimes Branch and this officer introduced him the Headquarters Inspector (HQI), Upul Seneviratne.

The lawyer states that the HQI became extremely angry with the client, scolded him in filthy language, and told him to admit that he had engaged in a robbery regarding some money. According to the lawyer, the HQI did this in a threatening manner. Further, the lawyer states that the HQI continued to scold and threaten his client for about 30 minutes in his presence and stated that he would take out a detention order against the client. The HQI also said that he would assault the client and blame the incident on him. During this entire period the client over and over again denied any involvement of any robbery of money, stating that he was an innocent person.

At this stage the lawyer stated that, in his presence, the HQI while scolding the client, suddenly got up from his chair and tried to assault the client. At that stage the lawyer intervened and stated that as the client was protesting his innocence the case should be reported to court and that if there was any need to obtain a detention order the HQI could do that. Mohotti told the HQI that he was willing to make a statement saying that he had handed over the client to the police. He also reminded the HQI that he should do whatever the law required him to do and, if necessary, he himself was willing to make a statement to the police.

When the lawyer said this, the HQI became extremely angry and threateningly told the lawyer to get out of his office. In reply the lawyer told

the HQI that he was representing his client and therefore it was not possible to leave the office. He again asked the HQI to act according to the law.

At this stage the lawyer states that the HQI began to behave with unbelievable anger. He got up from his chair saying, "Get out of my office." And, "Lawyers can't show off to me." The HQI shouted in a very loud voice and the lawyer states that he couldn't believe that a senior police officer could behave in such a manner. The HQI further said, "Before hearing filthy words from me get out from here." The lawyer states that from the manner of the HQI he was afraid that the HQI would assault him and as he thought that there was no point in talking any further, he decided it would be better to make a statement and leave the place. At this stage a police inspector came in, put his hand on the lawyer's shoulder and threateningly told him to get out. The lawyer immediately left the HQI's office and the HQI still scolded him saying, "Get the hell out of here gentleman (mahattaya), before you hear filthy words from me." The HQI even continued to shout from the verandah of the police station that he would write to the lawyer's associations to get his tie and the coat removed and that lawyers are useless fellows. The lawyer was able to record this tirade.

The lawyer went on to say that the HQI was shouting that, "This is my place." The lawyer got the impression that the HQI treated the police station as his private property and not as a public place where people come to have the law enforced.

Mohotti also states that his lawyer's identity card was forcibly taken from him by the police inspector who took him out of the HQI's office and that if he saw this inspector again he would be able to identify him.

The lawyer told the police inspector that he wanted to make a statement about this incident but was told that due to the instructions of the HQI this was not permitted. Thereafter the lawyer was asked to sit in the area where the suspected criminals waited. At this time he called his senior and requested his senior to come to the police station immediately. He explained the entire incident to his senior over the telephone.

A little later the same inspector who took the lawyer's ID card returned it to him and stated that it was not possible to record a statement and asked him to leave the place. Later he learned that his senior lawyer made a telephone call to the DIG Legal of the police, Gamini Dissanayake, and that this officer instructed the inspector mentioned above to return his lawyer's ID card.

The lawyer further states that if his senior had not contacted the DIG Legal he believed that he would have been detained inside the police station and that there was quite a good possibility, judging from the behaviour of the HQI, that he may even have filed fabricated charges against him.

Mohotti said that, accompanied by another lawyer he went to Police Head Quarters and made a complaint about the incident.

### **A presidential advisor writes to the president regarding attacks on human rights lawyers**

Vasudewa Nanayakkara, a long-standing politician, a former Member of Parliament and an advisor to the president on 10 December 2008 released an open letter concerning an item on the Ministry of Defence website attacking human rights lawyers who have filed fundamental rights applications before the Supreme Court on behalf of alleged terrorist suspects. The letter, which is reproduced below, states that it amounts to an attack on these lawyers and further that most of the alleged suspects have even been discharged due to lack of evidence:

10-12-2008

His Excellency Mahinda Rajapakse,  
President of the Democratic Socialist Republic of Sri Lanka  
Presidential Secretariat,  
Colombo.

Your Excellency,

I write this as citizens of Sri Lanka, an Attorney-at-Law and colleague of Your Excellency and expect Your Excellency's speedy intervention into an extremely urgent matter.

The Defense Ministry Website: [www.defense.lk](http://www.defense.lk) carried a Report titled "Who are the Human Rights Violators". This report was uploaded on 16-11-2008 but is still on the web with one amendment. The original Report that appeared in the website is annexed for Your Excellency's easy perusal.

This Report deals with 9 cases, which were filed in the Supreme Court under the Fundamental Rights Jurisdiction. The intention of this Report is clearly to create an opinion that those who file Fundamental Rights cases for LTTE

Suspects are unpatriotic and working against the interests of the country. This Report has the effect of inciting people to condemn the Lawyers and even possibly to attack them. Some of the cases are still pending and my information suggests that most of those cases referred to in the Report was withdrawn after the Attorney General agreeing with the Petitioners to discharge the suspects in the absence of any evidence.

The names of the Counsel who are appearing in those cases are not mentioned in the Report. It has also carefully avoided mentioning the Sinhala Lawyers who filed the cases. The Report has singled out the Tamil Lawyers who filed cases. Exposing the Tamil Lawyers in this manner is extremely dangerous and discriminatory.

Civilized citizens agree that every person is presumed innocent, until proved guilty by a court of law. The so-called terrorists are also entitled to obtain the services of a Lawyer. Further, 'Legal Ethics' requires Lawyers not to decline to appear for a client on the basis of ethnicity. The recent happenings clearly indicate that there is a powerful unit operating within establishments to discourage Lawyers in appearing in cases for LTTE suspects.

Your Excellency will recall that about a month ago a group claiming to be "Mahason Balakaya" circulated a 'Threatening Notice' intimidating Lawyers. A copy of this Notice is also annexed for Your Excellency's easy perusal. In late October, Senior Human Rights Lawyer, Mr. J. C. Weliamuna's house was attacked but there is nothing to suggest that there was a fair Police Investigation into the attack despite a strong request from the Bar Association.

I therefore, request you as the Head of the State, to immediately take action to remove the Defense Ministry Website Report naming as traitors for appearing for clients which is a fundamental rights guaranteed under the Constitution. I hope Your Excellency will forthwith instruct those who are responsible for running the Website to desist from intimidating, threatening and inciting against the lawyers for carrying out their professional duties. Finally, let me request Your Excellency to protect those Lawyers whose names have appeared in the website from any form of coercion or physical harassment.

I have no doubt that as a person who stood for Human Rights in late 80's Your Excellency is sensitive to this issue and intervene forthwith.

Yours Faithfully,

Vasudeva Nanayakkara

# Two hundred cases of torture and abuse in Sri Lanka

*Compiled and edited by Vanessa Sanderson*

These two hundred cases were selected from over a thousand cases recorded by the Asian Human Rights Commission and which have been issued since 1998. The cases are based on interviews done by local human rights organisations linked with the AHRC, and which were sent to the Urgent Appeals desk. Thereafter, the facts narrated were verified again through various sources and then immediate letters were written to the Sri Lankan authorities, which often are the president, IGP, the Human Rights Commission of Sri Lanka, the National Police Commission and the Attorney General's Department. The stories are also simultaneously sent to a large number of concerned persons and organisations in Sri Lanka and outside through a large email distribution network. Thereafter, in most cases where the affected persons wish to take action, legal and otherwise, assistance is provided for this purpose. In many cases things are followed up for several years, sometimes for seven or eight years. All the reported cases are stored in the web at the archives of the AHRC. The summaries of these two hundred cases have been made from AHRC documentation.

Despite consistent follow-up, hardly any redress has been obtained in any of these cases. Careless investigations, delayed and selective prosecutions and extraordinary delays in the system of administration of justice, including heavy witness intimidation, cause the failure of all attempts to seek justice. In a few cases some perpetrators have been punished, in fewer instances some disciplinary action has been taken, and in even fewer, some paltry compensation has been paid. Perpetrators have been acquitted mostly due to the weaknesses of the legal system itself. Overall, justice has not been achieved for these victims, and nothing done to discourage the continuation of routine police torture at all police stations throughout the country.

The preservation of information relating to these cases is due to the efforts of many persons who are gratefully acknowledged here. Primary thanks must go to the local human rights organisations linked to the AHRC and those who

have managed the Urgent Appeals desk at the headquarters in Hong Kong. The editors of various publications, particularly those of *article 2* and *Human Rights SOLIDARITY* must also be acknowledged. This particular edition of two hundred cases has had Vanessa Sanderson as its compiler and editor, and we thank her for her painstaking work in putting it all together.

These case studies illustrate what has been explained in other parts of this book: that a system of un-rule of law now exists in the country and that above all this is both a consequence and cause of the predominant position achieved by the police over criminal justice administration in Sri Lanka.

## List of cases by year

### 1998

1. March 8, V.K. Swarnarhka
2. May 21, Michael Edward
3. August 6, Weerasinghe Arrachige Janaka Chaminda
4. December 30, Anura Sampath

### 1999

5. October 28, Basnayake Mudiyanseelage Ariyathilake Dissanayak

### 2000

6. June 12, Lasantha Jagath Kumara Mullakandage
7. December 3, Angaline Roshana Michael

### 2001

8. January 7, L.P. Maithreepala Senadira
9. January 9, Amarasinghe Morris Elmo De Silva
10. January 11, Anura Wijesiri
11. January 29, Rajapakse Pathirage Kavinda
12. March 19, Wigikala Nathakumar and Sivamani Arjunan
13. March 24, Uchitha Thussara Kumaea
14. May 2, Ajith Nawaratne Bandara
15. September 11, Ranjini Rupika Hewage
16. October 6, Namal Fernando
17. November 11, Kodithuwakku Arachchige Samarasinghe
18. November 24, Sathasivam Rathykala

### 2002

19. February 19, Bandula Rajapakse, R.P. Sampath Rasika Kumara, Ranaweera and Chaminda Dissanayake
20. March 8, Herat Pathirannehelage Nandini Sriyalatha Heart
21. March 22, Galappathi Guruge Gresha De Silva
22. April, Yoga Clement Benjamin
23. April 20, S. Lalith Rajapakse
24. May 28, Eric Antunia Kramer
25. June 3, A R.L.Ananda
26. June 3, Waragodamudalige Gerald Mervyn Perera
27. June 4, H. Fonseka
28. July 9, Shazyed Mohomad Issas Hussane Moulana

29. June 12, Ehalagoda Gedara Tennekoon Banda
30. June 28, Kasturi Arrchige Janaka Perera and Mahamarakkalge Tilan Perera
31. June 29, Maldeni Kankanamge Piyaratne
32. June 29, Uduwa Widanelage Susil Jayalath
33. June 30, Arthur Vithange and Anusha Vithana
34. July 8, T.K.Hiran Rasika and E.A Kasun Madusanka
35. July 9, V.G.G. Chaminda Premalal
36. July 30, S.A. Piyadasa, S.A. Milantha and Aruna Kumara
37. August 1, Hettiarachchige Krishantha Sampath

### 2003

38. January 1, Koralagamage Sujith Dharmasiri
39. January 8, Bambarende Gamage Suraj Prasanna
40. February 1, T.A. Premachandra
41. February 6, Michael Anthony Fernando
42. May 10, Kurukulasuriya Pradeep Niranjana
43. June 29, Sunil Hemachandra
44. July 7, R. Dhanapalasingham, R.Saravanaraj and M. Prabhakaran
45. July 20, B.G. Chamila Bandara Jayaratne
46. July 20, Bandula Padma Kumara and Saman Kumara
47. July 29, Wijekone Mudiyanseleage Sujith Priyantha Wijekone
48. August 7, Udayanga Perera
49. August 17, Kurupanawa Gamage Nihal
50. August 27, Garlin Kankanamge Sanjeeva
51. August 27, R.M. Loku Banda
52. August 30, M. Riswan, S.Ravichandran and A. Latief
53. September, Hikkaduwa Liyanage Sandun Kumara
54. September 1, Dawundage Pushpakumara
55. September 5, C.P.S.Anthony and C.J.Lafaber
56. September 5, Okanda Hevage Jinadasa
57. September 6, Raman Pillai Kesam Nayar Ashokan
58. September 10, Hikkaduwa Liyanage Sandun Kumara
59. October 22, Dope Pathiranalage Lasantha Priyankara
60. November 1, Bamunuarachchi Pathiranalage Sathkumara
61. November 10, Samarathunga Liyana Arachchige Kulathunga
62. December 3, Nishantha Kumara
63. December 6, Shiron Jeewantha Pallekanda
64. December 7, Jayasekara Vithanage Saman Priyankara
65. December 31, Ashoka P. Kumara, Saman Puspakumara, N. Ratnayaka,

W.P.Piyadasa, Nilantha K.Rajapakse, Chaminda Sureshkumar, U.N.  
Jayantha Premalal and S. Niyamaka

66. December 31, Tennakoon Mudiyanseelage Gunesequera

#### 2004

67. January 8, D.G. Premathilaka
68. February 2, Korallalayanage Palitha Tissa Kumara
69. February 16, D.G. Athula Saman Kumara
70. February 22, Bellanavithanage Sanath Yasaratne
71. March 9, Dehiwatte Gedera Jayathilaka
72. April 17, Muthuthanthrige Chamal Ranjith Cooray
73. May 17, Senarath Hettiarchchilage Abeysinghe
74. May 30, Madugoda Ralalage Don Saman Priyantha Gunaratne
75. August 7, Alagiyawadu Lakmal Chathuranga and L.P. Pradeep Kumarage
76. September 2, Bamina Hannadige Gamini Fernando
77. September 29, Rathnasiri Senadheera
78. October 3, Herman Quintus Perera
79. December 5, M. Ramson Peiris

#### 2005

80. March 26, N. Sandasirilal Fernando
81. April 10, Don Wijeratna Munasinghe
82. April 10, H.L. Susantha Kulathunga
83. April 30, R. Dammika Dissanayake
84. May 20, Kosma Sumanasiri
85. May 29, Lelwala Gamage Nandiraja
86. July 13, Hettiarachchige Abeysiri
87. December 18, B. Nimal

#### 2006

88. April 7, Indika Kulasekara
89. April 29, Thilakarathana
90. May 12, name withheld
91. May 27, D. Chamara Lanka
92. June 9, Illukumbura Mudiyanseelage Mudiyanse
93. June 11, Mallikage Ariyadasa
94. June 28, Amitha Deepthi Kumara
95. June 28, M.S.F. Perera
96. July 2, Dhanuka Tisara

97. July 9, Gune Ayyas
98. July 11, Hevamarambage Premalal
99. August 2, D. Dilan Samaranayake
100. August 23, I A. Nishantha Chandrasiri
101. August 24, Suddage Sirisena
102. August 24, Wasantha Kumara
103. September 13, P. Gnanasiri
104. September 21, Lalith Rajapakse
105. September 26, Duwandage Pushpakumara
106. October 3, Chamara Nuwansiri
107. October 27, Pasquelge Don Dudley Mervyn
108. October 29, Nishantha Perera
109. November 8, Weligoda Ananda
110. November 29, R.H. Dhanapala

## 2007

111. January 8, Marisan Annachcheli
112. January 13, Rev. Nallathamby Gnanaseelan
113. January 15, Wijeshinghe
114. January 17, Kapu Kankanamalage Mahesh Maduranga
115. January 27, W.S. Anthony Raja, W.S. Jude Sampath, W.S. Sumith  
Thamel, Anthony Tyrone Fernando, Sivanaiah Ranjith and W.S.  
Luckshman Newton Fernando
116. February 3, A. Dushmantha Silva
117. February 12, A.A. Priyantha Kumara
118. February 26, A.A.D.I A. Attanayake
119. March 1, Randeniyage Yureshani Damayanthi
120. March 3, Daluwattalage Gamini Weerasinghe
121. March 4, Jayasingh Archchilage Somadasa
122. March 11, Lakam Mohottilage Anthony Newton Appuhamy
123. March 14, Rajapaksage Don Saman Nilantha
124. March 15, Kuruthanthrige Lakshman Gunasekera
125. March 16, Dammika
126. March 24, Senaka Ekanayake
127. March 24, Wannakuwatta Waduge Tharaka Aruna Shantha Kumara,  
Dombagaha Pathirage Jayalath Kumara and Baminiyahandige  
Wasantha Barathi Peris
128. March 25, Ajith Shantha Fernando
129. March 26, B. Sumith Priyantha Fernando
130. March 26, Maha Hewage Sumith Perera

131. April 6, Lal Fernando
132. April 17, Alagappen Prabu
133. May 10, S. Kinsley de Silva
134. May 18, B.G. Premasiri
135. May 20, Gnanapragasam Benedict Rosery
136. May 22, Ruwantha Chrishantha Dias
137. May 22, Thalahitiya Gamaralalage Chaminda Weerawardene
138. May 28, M.A.K. Wickramasinghe
139. June 21, Jayarathne
140. June 27, U.A. Chandrasena
141. July 4, Patikiri Arachchige Nihal Sarathchandra
142. July 7, Balasuntharam Thavamani
143. July 21, Thadallage Chamil Weerasena
144. August 2, K.W. Upali
145. August 9, Meera Mohideen Gafar
146. August 12, Periyasami Niroshan
147. August 29, Vimalawathi and Chandrasir
148. September, Chandrasiri
149. September 8, S. Siripala
150. September 16, Manoj Kumara
151. September 27, Priyantha Fernando
152. October 9, M.A. Prasantha Ruwan Kumara
153. October 14, M.I. Fausil Ameen
154. October 31, Dorairaj Jayachandran
155. November 12, S.K.A.S. Nishanta Fernando
156. November 24, Ven. Dodangoda Ariyadamma
157. December 16, Ajith Kumara
158. December 17, name withheld
159. December 29, Sugath Rohana

**2008**

160. January 5, Mohamad Maharooof Mohamad Pasmı
161. January 15, Shiraz Buhran
162. January 18, Hiriyaage Gratian Lasantha Prasantha Perera
163. January 20, Umesh Chaturanga
164. February 3, Thanuja Lakshmi
165. February 6, Joseph Arul Fernando
166. February 7, Delwala Nakathige Keerthi Padmakumara
167. February 8, Uduwana Athukoralage Don Lal Lasantha
168. February 28, Dodampe Gamage Asantha Aravinda

169. February 28, Pitchchai Thambi Marikar Faiz
170. March 6, M.L. Basil Perera
171. March 7, Uspatabandige Buddhi Ivantha Gunasekara
172. March 9, name withheld
173. March 11, Shanthigara Suresh Kumar
174. March 20, Peer Adumai Mohamed Rafeek
175. March 26, Muthuwahennadi Roshan Koitex
176. March 28, Nuwan Chamara
177. April 4, Sureen Kinson
178. April 17, Nanda Kumar and Ramesh
179. April 28, Janaka Pradeep Kumara
180. May 1, Kathiravelu Sathyawan
181. May 1, Wengappuli Arratchige Milan Chanaka
182. May 2, Malik Roshan Wijayaratne
183. May 5, Kandagoda Rajapaksa Pathirnalage Nilantha Kumara and Chathuranga
184. May 7, Ramiah Ruba Sandran
185. May 13, Maddumage Dharmadasa
186. May 17, Uswatte Liyanage Stanley Senaviratna
187. May 30, Solomons Caspas Poul
188. June 27, Galapitahene gedara Nandani Kumari
189. July 3, Seynool Arbdeen Seynool Aswar
190. July 5, Sarath Kumara Naitos
191. July 7, D.N. Nimal and Ranjith
192. July 23, Ravindra Indrasiri Wanniarachchi
193. August 18, Sarath Kumara
194. August 21, Malayappan Kali Dasan
195. August 21, Prasantha Pradeep Kumara Francis
196. August 31, Buddhika Mahesh
197. September 1, Madushani Subasinghe
198. October 1, Erandaka Bulathsinghela
199. October 20, Udayarathne
200. November 10, Kurugamage Don Predeep

## **Glossary of terms**

AG	Attorney General
AHRC	Asian Human Rights Commission
ALRC	Asian Legal Resource Centre
ASP	Assistant Superintendent of Police
CID	Criminal Investigation Department
DIG	Deputy Inspector General (of Police)
DMO	District Medical Officer
HQI	Head Quarter Inspector
HRC	Human Rights Commission of Sri Lanka
IGP	Inspector General of Police
IP	Inspector of Police
JMO	Judicial Medical Officer
NPC	National Police Commission
OIC	Officer in Charge
PC	Police Constable
RPC	Reserve Police Constable
Sgt	Sergeant
SI	Sub Inspector
SIU	Special Investigation Unit (of Police)
SSP	Senior Superintendent of Police

**1. V.K. Swarnarehka: Murdered by fellow police officers**

V.K. Swarnarhka was a healthy 30-year-old police officer at Vavuniya Police station. She left home on 8 March 1993 to report to work and by noon the next day her family was called to come and collect her body, with a message that she committed suicide. The family was not called to be present at the post mortem inquiry or even to identify the body. All that was done by the police themselves by the time body was handed over to the family. The investigating doctor identified cause of death as a cardio-respiratory failure following ingestion of insecticide. He did not send any samples for toxicological analysis. The family was suspicious and went to the nearby magistrate's court to call for exhumation of the body. The court debated the issue for one year before a new magistrate arrived and made an order for exhumation. A second doctor issued a report declaring a lack of evidence of insecticide and ordering that parts of the body be sent for toxicological analysis. He deferred his final findings till he discussed them with the doctor who made the first inquiry.

The government analyst's department reported negatively on the presence of any poisonous element. The doctor however, after talking to the doctor who did the first inquiry, opined that the first report was correct. All three medical reports were sent to the medical college for expert opinion. A professor of forensic science gave his view that the first doctor should have sent the body parts for toxicological analysis and that there was no evidence of death by taking insecticide. On the available evidence it was not possible to determine whether death was due to suicide, homicide or just for natural reasons.

This debate on medical reports has gone on for nine years now. It is obvious that this healthy young woman's death was never suspected to be due to natural reasons. If suicide is excluded, the other possibility is homicide. There are many reasons that have made the family believe that this is a case of homicide. The last thing known about the deceased person's whereabouts was a telephone call from the local police station by the ASP asking Swarnarehka to come to his office immediate with a divided skirt worn by athletes. She had obeyed the orders and reported accordingly. Within two hours she was dead. Within the next two hours, the post mortem, embalming and everything was done without any information being given to the family. The police have not answered the questions of the family about the details of the death and were very hostile to the family. The family has heard conflicting versions about the death from different officers. The family believes that higher-ranking police officers have made secret inquiries about the death and have hushed up the findings.

This is a case where the only persons who know about the death are the police officers of this particular station. The family believes there were over 40 officers, including women, at the station. Only through rigorous interrogation of the police officers can what really took place be found out. The suicide story, which has been discounted, casts suspicion that there has been police complicity. The case should have been referred for inquiry to the CID. However, for over nine years no inquiry had been undertaken. The family has written to every one, including the Attorney General and the HRC. However, there had been no attempt to assure the family that justice would be done.

## **2. Michael Edward: Brutal assault**

The AHRC received testimony of severe torture from a prisoner, Michael Edward (Prison No. 2143) of Kandy, being held at Bogambara Prison and previously at Kalutara Prison. Talathu-oya Police took him as a terrorist suspect on 21 May 1998. He was kept in police custody until he was produced before the magistrate on the 9th October 1998. On an application by his wife there is a court case pending in High Courts, Kandy (Case no: 1294/99).

The torture he has received has been extremely brutal, including beatings and genital torture. We include part of his statement here below. The AHRC's representative in Sri Lanka has verified the accuracy of Edward's statement regarding his torture. More than 6 months have passed since this statement, and still there has been no action -- no investigation, no redress and still no date set for his court case. The only development is that Edward's health condition has worsened especially his hearing, sight and use of limbs. Edward's wife and six children are also suffering hardship through the lack of income and the fear of the threats.

Statement from Edward on 13 September 1999 (Prison No. 2143; Case No.1294/99):

- “01. I was blindfolded and beaten like an animal. The blows dislodged one of my teeth.
02. They placed some books on my head and hit with a pole. Then they hit my head on the wall. As a result of this torture I suffer severe headaches, weakness in my eyes. My eyes tear frequently and at times my sight in quite blurred.

03. Once they squeezed my sex organs and hammered me. As a consequence of this I have severe pain when I urinate, also pass blood with my urine.
04. Once they tied me to a bench and my feet with a pole. Then they put me flat on the face and hit me with the pole thus I suffer severe pain in my feet..
05. Another time they sent in a wire through my anus and drew it out. As a result I suffer severe pain when excreting; also I bleed at such times.
06. They press Petrol bags on to my face then I faint.
07. They threatened to sexually abuse my wife and eldest daughter.”

### **3. Weerasinghe Arrachige Janaka Chaminda: Screams of pain overheard**

On 6 August 1998 at 3.15 pm, a man named Weerasinghe Arrachige Janaka Chaminda was taken to Ja-ela police station. He was severely beaten up by Inspector Weerasinghe. He was beaten several times during the day and night.

A person who went to see him one Milroy was also pulled inside the police station and beaten up by a Police Constable Wicrema. Several persons heard both screaming in pain.

No one was allowed to see the victim. The mother of Chaminda tried to visit him but she was not allowed.

The reason for arrest was not immediately known. However, it was believed that the police were acting under the influence of some one.

### **4. Anura Sampath: Post mortem reveals 24 internal injuries**

Anura Sampath was taken to the Police station at Moratuwa on the 30 December 1998, by some police officers who said that he was needed for the taking of a statement. He was taken from his sister's house where he was helping with some construction work. As he did not return till late, his brother visited him at the Moratuwa Police station at night and he saw Anura Sampath. Anura Sampath told his brother that he was severely beaten up by

some police officers and that they might kill him. On the basis of this, family members sought intervention of many persons to get Anura Sampath released from the police station. Next day when the family members visited the police station, Anura Sampath was not found there. A police officer told them that he had been taken away to take a statement.

The family was later told by the OIC of the police station that Anura Sampath was dead. The police provided misleading information about the whereabouts of Sampath's body. Later, the family found the body of Anura Sampath at Kalubovilla Hospital. Due to the family's protest the body was produced before a doctor at the Colombo General Hospital. At the post mortem inquiry, the finding was that the death was due to assault. The inquiry revealed that there were 24 internal injuries.

News of the death at police station provoked protests at Moratuwa town. During the funeral procession people carried banners condemning the police. Teargas was spread during the funeral to prevent the people marching to the police station carrying the corpse of Anura Sampath. Some Sinhala newspapers in Sri Lanka reported this incident.

Subsequently the police tried to create the impression that the death was caused due the suspect trying to jump out of the police jeep. No satisfactory inquiry had been conducted about this death.

### **5. B.M.A. Dissanayake: Policeman dies from gunshot injuries**

In this case, the magistrate of the court at Vavuniya held on 22 January 2001 that, "According to the available evidence before inquest proceedings that the death of the deceased Basnayake Mudiyansele Ariyathilake Dissanayake PC 33921 attached to Vavuniya Police [Station] has been caused by gunshot injuries in suspicious circumstances". The court ordered proceedings to arrest the suspects and produce them before the court. The court criticized the poor police investigation on the death of police personnel. The court directed DIG Vanni to pay personal attention to this inquiry. The court further directed that the Registrar forward the findings to the DIG, IGP and Attorney General for special instructions. The findings were based on the following facts, summed up in the court order. The deceased was admitted to the General Hospital, Anuradhapura, with a firearm injury on 28 October 1999, and died on November 12. The deceased made a 'dying declaration' to his father Dissanayake Mudiyansele Gunathilake, to the effect that he had been fired upon from the back. According to the post mortem examination

the death was “due to firearm injuries to the abdomen”. Further, the consultant surgeon recorded his findings as death due to an “entry wound, back of chest”. No police investigation team visited the hospital to record his statement.

It surprised the court that police personnel had been injured and admitted to hospital with gunshot injuries without proper investigation by the Police Headquarters, Vavuniya, and their superiors. The parents and lover of the deceased made allegations against Police Headquarters Vavuniya to indicate that “the police have not recorded the statement from his son or lover respectively [and] did not hold investigation between the incident took place and his death (15 days)”. The court accepted the allegation and instructed that the Police Headquarters should respond. Despite the magistrate’s order, no inquiry had taken place and no one had been arrested.

### **6. Lasantha Jagath Kumara Mullakandage: Beaten to Death**

Police allegedly beat to death Lasantha Jagath Kumara Mullakandage, a 23-year-old soldier, living in Payagala with his wife and child. Officers of the Payagala Police station arrested him on 12 June 2000, and illegally detained him for five days, during which time he was subjected to torture and abuse. He was produced before the Kaluthara Magistrate’s Court on June 17 and remanded in custody. Due to continued severe assaults, he died at Welikada Prison on June 20. The JMO who conducted the autopsy ruled that the death was due to damage caused to muscles and tissue by blunt weapons, which rendered the kidneys ineffective. The magistrate who held the enquiry into the death was of the opinion that this was a homicide. An enquiry into this death was held at the Colombo Magistrate’s Court. The police failed to even appear in court for six months, in order that an investigation may be undertaken into the case. Subsequently, the investigation was handed over to the DIG South.

The suspects are all police personnel belonging to Payagala Police station including OIC Iddamalgoda and IP Prasanna. The police officers investigating this murder and presenting materials before court are all protecting their fellow police personnel. They have invariably presented incorrect materials before court. Evidence given by witnesses has not been recorded, while some witnesses have been threatened. The police submitted a report on this murder to the Attorney General that was full of incorrect material.

### **7. Angelina Roshana Michael: Tortured over a wristwatch**

At around 7:30pm on 3 December 2000 a group of people arrived at the house of Angelina Roshana Michael, 25-years-old, in Narahenpita by private vehicle. One of them later identified as the OIC Crimes of Narahenpita Police station, IP Selvin Saleh called for Angelina Roshana to go to the police station.

This person did not wear any police uniform nor did he inform Roshana or her family about the reason for her arrest. Her family members protested and even asked how were they to know that Angelina was, in fact, being taken to the station. The OIC then threatened to break their teeth, and forcibly took her to the vehicle and left.

Angelina was then taken to a house where she had part-time employment washing clothes. At the house, she was told that some items in the house, including a valuable wristwatch, were missing. When she said that she knew nothing about these items, she was then told to go search and find them. She was forcibly kept in the house for about five hours. Meanwhile, members of the family of the house and the OIC drank liquor and enjoyed themselves.

At about 12:30am, she was brought to the Narahenpita Police station where three officers armed with a rubber hose, a wooden club and another object with wires around it assaulted her. She was also laid on a table and the soles of her feet were hit. The assault continued up to around 2am. She was also forced to sign a confession. She was detained at the station on December 4 and 5, and the police often threatened to hang her up and beat her. These threats were usually made when the lady of the house where the wristwatch had allegedly gone missing visited the station.

During the day, a lawyer from the Human Rights Institute, W.R.Sanjeewa, visited the police station and asked for her to be produced in court. Dr. Nalin Swaris, an associate member of ALRC, was approached by Angelina's family and also visited the police station and talked to the OIC. When Dr Swaris asked the OIC to respect Angelina Roshana's legal rights, the officer replied that, "The laws of the country are too weak." When asked when she would be produced in court, the OIC only cynically smiled. However, due to frequent interventions on her case by her parents, Sanjeewa, Dr. Swaris and others, she was produced before a magistrate, to whom she complained of being tortured. The magistrate ordered her to be produced before a JMO, who recorded several injuries, as follows:

1. Contusion 4 by 3” lateral and postero-lateral left shoulder area.
2. Contusion 2 by 2” back of the upper left arm close to the arm pit.
3. Contusion 3 by 1” obliquely across the back of mid-left upper arm
4. Contusion 3 by 3” lateral right shoulders area
5. Contusion 3 1/2” the mid left buttock
6. Contusion 2 1/2” diameter lower left buttock extending down to the upper left thigh
7. Contusion 3 by 1 1/2 lower right buttock

The JMO concluded that all the injuries were caused by assault with blunt objects like a rubber hose, wooden club etc., and that the age of the injuries matched the date and time that Angelina Roshana claimed to have been assaulted. Witnesses also submitted affidavits on her behalf. IP Saleh denied that he had tortured her or otherwise violated her rights.

A magistrate in Colombo subsequently dismissed the case of theft filed against her by the Narahenpita Police station. Angelina Roshana submitted a fundamental rights application to the Supreme Court with the assistance of the AHRC, and was represented in court by W.R.Sanjeewa. The OIC invoked the names of powerful persons to support his case and further stated that the daughter of one of the president’s counsel had initiated the complaint against Angelina. Vivika Siriwardene de Silva, a state counsel, also appeared for the defence when the fundamental rights application first came before the Supreme Court. On an earlier occasion the Supreme Court was informed by the alleged perpetrator that the Attorney General’s Department would not assist the defence in this case as the matter was one of torture, and he produced a letter to that effect. It is not clear as to how this earlier decision was reversed.

Notwithstanding, on 2 August 2002 the Supreme Court vindicated Angelina Roshana by handing down a judgement in her favour. The court held that the police had violated her rights guaranteed under articles 11, 13(1) and (2) of the constitution. In the judgement delivered by Justice Mark Fernando the court awarded her compensation of Rs.100,000.

The court’s judgement included the following remarks:

“The Petitioner [Angelina Roshana] seeks relief from this Court for the alleged infringement of her fundamental rights under Articles 11, 13(1) and 13(2), by reason of her arrest by the 1st Respondent the Officer-in- Charge

(Crimes) of the Narahenpita Police [IP Selvin Saleh] at about 8.00 p.m. on 3.12.2000; her detention in Police custody thereafter until she was produced before a Magistrate shortly before noon on 5.12.2000; and the cruel inhuman and degrading treatment to which she was subjected whilst in Police custody.

The principal issue is whether the Petitioner was arrested at 5.10 p.m. on the 4th [or 8p.m. on the 3rd, as attested to by the Petitioner]. If so there was by then a complaint of theft against her, which would probably have given rise to a reasonable suspicion justifying arrest. The Petitioner did not allege any assault after 5.10 p.m., and she was produced in Court within 24 hours. If she had been arrested at that time this application has to be dismissed.

There are several reasons why the 1st Respondent's version is unacceptable, while the Petitioner's is credible.

The Petitioner's position that the Complainant came with two Police officers in civils on the 3rd night is amply corroborated by her neighbour and her mother, and is inherently probable. It is to some extent confirmed by the Complainant's statement that she 'got down' the Petitioner to her residence. It is of course, possible that the Complainant 'got her down' in some other way - by sending a message, or sending some one else - but there is no evidence of any such thing. Her only other employee was away on leave. The Petitioner was hardly likely to have come alone and gone back alone, at that time of the night.

The supporting affidavits establish that at several subsequent points of time the Petitioner was observed to be in Police custody - at the Complainant's residence and at the Police station. As against those, the 1st Respondent has failed to submit affidavits from the Complainant or any member of her family, or from Tissera or any other Police Officer.

Finally, the 1st Respondent's affidavit is not worthy of credit. He averred that he set out to investigate with two officers, although his 'Out' entry refers only to one. He gave the time of arrest as 5.10 hours which his Counsel says was a mistake for 5.10 p.m. He did not explain how he came to use a private vehicle, for over eight hours - from 10.00 am till 6.30 p.m.

Who was the owner of that vehicle, and who drove it? Why did he make it available? Were official vehicles not available? Besides, the 1st Respondent does not explain why it took him over seven hours to arrest the Petitioner. Considering that the Complainant had already delayed fifteen hours to make a complaint, it was essential that he should have acted promptly to question the suspect and to try to recover the watch.

Further, the Petitioner had averred that the 1st Respondent and a Police party had searched her house at 1.30 p.m. The 1st Respondent simply denied that, and said nothing whatever about a search but his notes, purportedly written at 5.10 p.m., do refer to a search before arrest.

In an attempt to explain the delay in arresting the Petitioner, his Counsel referred to the 1st Respondent's 'In' entry which mentioned a telephone call, supposed to have been received at 11.30 am on the 4th to the effect that a suspect who was already under arrest on a charge of rape had pointed out the scene of the alleged offence, and that the 1st Respondent had gone to the scene of the alleged offence, and made his observations.

That was a matter that should have been averred in the affidavit, and it is unsafe to rely on the Police statements and notes, which are by no means the best evidence, as substantive evidence. However, in the certified copy of his notes produced by the 1st Respondent, the portion relating to the period between 11.30 am and 5.10 p.m. has been omitted. The delay has not been satisfactorily explained. It is far more likely that entries were made to cover up an illegal arrest on the 3rd. I hold that the 1st Respondent's claim that he had arrested the Petitioner on 4.12.2000 was false, and I hold that the Petitioner has established beyond reasonable doubt that the 1st Respondent arrested her at about 8.00 p.m. on the 3rd although there was then no complaint which could have given rise to a reasonable suspicion of theft. Further, the 1st Respondent failed to make a correct entry in regard to her arrest, and subjected her to cruel, inhuman and degrading treatment. In direct consequence of his failure to make a correct entry, the Petitioner was detained for a period in excess of that permitted by law. I grant the Petitioner a declaration that her fundamental rights under Articles 11, 13(1) and 13(2) have been infringed by the 1st Respondent, and I award her compensation and costs in a sum of Rs 100,000 payable on or before 30.9.2002, of which Rs 70,000 shall be paid by the State and Rs 30,000 by the 1st Respondent personally."

The Prosecution of Torture Victim's Unit also inquired into Angelina Roshana's complaint of torture and filed an indictment against IP Saleh and another officer. Meanwhile, IP Saleh fled the country for an unknown destination. The High Court in the criminal case also decided in favour of the victim and sentenced the accused to imprisonment. (Details provided elsewhere in this publication)

### **8. L.P. Maithreepala Senadira: Beaten with pipe and sticks**

L.P. Maithreepala Senadira, a resident of 155, Pansalgodella, Galamuna, was taken into custody of the Polannaruwa tourist police on 7 January 2001 at

3am on suspicion of selling illicit liquor. The police had gone to the house of the suspect and asked for arrack (liquor) and when they were told that there is no arrack he was blindfolded and taken to the police jeep. When the wife objected to the husband being taken by the police, she was threatened with forceful removal by Sub-Inspector Manawadu of Polonnaruwa and was asked to remain inside. On this occasion the two brothers of Maithreepala Senadira were also taken into custody.

At the Polonnaruwa police station, Maithreepala Senadira was tied to a pillar, his clothes were removed and he was beaten with a pipe and sticks by SI Manawadu. As a result of this torture his sexual organs were severely injured and the bleeding was so serious he was taken to the Polonnaruwa hospital by the torturer himself. Maithreepala Senadira's injuries to the sexual organs required six stitches, and his back and spine showed signs of severe beatings. The SI had threatened those who knew this not to reveal the information to anyone. For this reason Maithreepala Senadira was also transferred from Polonnaruwa hospital to Peradeniya hospital.

### **9. Amarasinghe Morris Elmo De Silva: Arrested after visiting police station**

In an earlier case that the AHRC has been made aware of, one Amarasinghe Morris Elmo De Silva, a naval officer, went to the police station on the morning of 9 January 2001 with his wife and her cousin, to see his wife's uncle, who was in custody. A PC Sugath started uttering filthy words to his wife and her cousin. Elmo politely told the police officer not to talk to the women like that. Then Constable Sugath took him by the T-shirt neck and asked, "Who the hell are you to teach me how to talk?" He dragged Elmo inside the police station and slapped him twice. Then his wife and her sister began to cry out loud and they were pushed aside. Elmo was put in a cell. At 12:30pm PC Sugath and some other police officers took him out of the cell. One of them put one of his hands between the victim's legs and tightly held his neck with the other. Then PC Sugath, IP Suriyakumara, IP Pushapakumara and several others hit him with their hands, feet, belts and hose pipes. IP Pushapakumara ordered him to take off his clothes, after which he was tied with his tee shirt and his soles beaten with belts and hose. The police officers then used offensive language about naval officers, and forced Elmo to lie face down so they could sit on his back and continue to beat him. Finally, he was forced to sign some documents of which he did not know the contents.

On January 10 a naval legal officer and medical officer came to the station and examined Elmo de Silva. A complaint was lodged against the police officers at Je-ela Police station itself and the ASP's office at Peliagoda. Then the victim was put into a ward at the Ja-ela Hospital. The same evening he was taken to a magistrate and four charges were brought against him. Till then he did not know that he had been charged with anything at all. The magistrate ordered a JMO to examine him and submit a report, after which he was sent to the Negombo General Hospital, where he stayed till January 16, with pains in the chest and abdomen where he had been hit. He was taken back to the magistrate on that day and bail granted, after which he remained at the hospital for another two days. In this case also a complaint was made to the HRC. On 20 May 2002 a fundamental rights petition was submitted to the Supreme Court against the officers who beat him, the OIC Ja-ela, the IGP and the Attorney General, on the grounds that his arrest and detention were illegal.

Similarly, Uchitha Thushara Kumara, a 33-year-old father of two, was tortured to death by police at Ja-Ela Police station on 24 March 2001. Officers from the station had arrested him just that morning, using a warrant for a minor offence. He was sent to the remand prison in Negombo on the evening of the same day. On March 26, when his family made inquires about him, they learned that he had died and that remand authorities had informed the Ja-ela police about the death, with an instruction to inform the family. To that date, no such communication had yet been made by the police. The magistrate of the area visited the remand prison to see the body and made an order for it to be sent for examination by the JMO of Ragama Hospital. This examination was completed and the sealed report sent to court. The family found out that the medical officer's report stated that the death was due to internal injuries understood to have been caused to the victim while he was still in Ja-ela Police station.

### **10. Anura Wejesiri: A corpse with two hearts and four lungs**

On 11 January 2001 Anura Wijesiri told his brother, Jagodege Ranjit Wejisiri, who visited him in custody at the Ingiriya Police station that he had been assaulted by the police on the previous night and was likely to be assaulted again that night. He named the two people who assaulted him as Sgts Lal and Ranjith. Sgt Ranjit's father-in-law also visited Anura's mother and told her of the arrest of her son and that he had been assaulted. He told her to pay Rs. 10,000 to the police to have her son released. She said that she did not have the money. The next day she learned that her son had been

killed in the police station. Later the family was informed that, according to the police, Anura had hanged himself inside his cell. The DMO made a report stating the cause of death as suicide.

At the coroner's inquest, the brother of the deceased told that the deceased pleaded to have him saved from the police assaults. The family obtained an order from the magistrate for a second post mortem to be done by a JMO. During the post mortem, the JMO found two hearts and four lungs inside the corpse. The family suspects that the body was in the hospital mortuary at the time the magistrate gave an order for the second post mortem inquiry. In order to subvert the second post mortem, the dead body was reopened, and body parts taken from other dead bodies were put inside Anura's dead body, and his body was closed again. Over a year after Anura's death, the mystery had not been solved.

### **11. R.P.Kavinda: "Are you the dog who says he's from the army?"**

On 29 January 2001, Rajapakse Pathirage Kavinda, a disabled lance corporal, was travelling as a pillion passenger on a motorbike when he was stopped at about 11:30am by a police officer of the Padukka Police station, at Padukka Junction, for not wearing a helmet. He explained that he was rushing to get an urgent loan from a government office and that he was a disabled officer of the Sri Lankan Army. The two fell into an argument, and instead of letting him go on his way, the police officer assaulted him and then radioed his colleagues for back up while Pathirage lay on the ground. Four officers came in a jeep and assaulted him with clubs. Pathirage pleaded for the police to stop, begging that he was already disabled, but the police ignored his pleas. R.P.Kavinda was then taken to the Padukka Police station in the jeep. At the police station he was pulled before the OIC who in public view asked, "Are you the dog who says he is from the army? (Thoda armyeke kiyana balla?) You do not know what the police are like! (Tho danne nae policeye hati!)", and boxed him hard on his ears. Then the OIC said, "You should show respect for the police certificate that you took to get into the army!" and began to assault Pathirage. He was then pulled inside and beaten all over his body by six police officers with clubs, fists and feet—including kicks to the lower abdomen—and also verbally assaulted.

After the beatings, the police took him to Padukka Hospital where the doctor did not even bother to examine him, but just asked his age. On January 31 he was brought before a magistrate and remanded for 14 days. On the morning of February 1 he was brought from remand prison to a doctor at MO.Base

Hospital, Avissawella. The medical report found injuries to Pathirage's face, limbs and abdomen, including "both eardrums showing fresh perforations", consistent with the assault described above. As a result, Pathirage suffered impaired hearing and pain in his ears, dizzy spells, headaches and pains in the abdomen. On February 28 he was admitted to the National Hospital in Colombo, where he was kept under observation until March 14. The victim identified most of the police officers that tortured him. Despite availability of strong medical and other evidence, the Attorney General had not taken action to file charges of torture.

## **12. Wigikala Nathakumar and Sivamani Arjunan: Stripped and raped**

The rape of a 22-year-old pregnant woman, Wigikala Nathakumar, (already with one child) and 24-year-old Sivamani Arjunan, a mother of three children, were the latest in a series of brutal torture incidents at the hands of the navy and police on the island of Mannar. The two young women were arrested by about ten navy/police personnel who entered the private lodge at Uppukulam, Mannar where they were staying at 10:30pm on 19 March 2001 and took them away in a white van to the SIU, Mannar, where they were repeatedly raped and tortured by the officers. The following is a quote from Sivamani, describing part of the incident:

"Two men then pinned me down on the van's floor while another stripped me and raped me. I was screaming and pleading when a policeman put his foot on my mouth to stifle me. Inside the building they forced Wigikala, who was standing naked, to strip my underwear. I was hung upside down in a knot from a pole placed between two tables, with my hands and feet tied. Then the men in the room poked our genitals and tortured us until dawn."

The following is from a report by the Catholic Bishop of Mannar who has submitted this report to the Navy:

"Incident Report by the Catholic Bishop of Mannar, 30th March 2001:

This is a report of Navy brutalities in the island of Mannar brought to my notice in the month of March 2001. All my efforts to get the Navy to respect the basic human rights of our people so affected by the prolonged war are proving futile. Their atrocities are growing bad to worse daily and I have again appealed to the Commander General of the Sri Lankan Navy for redress in the name of the civil public of Mannar

On the 19th of March 2001, about ten Navy personnel entered a private Lodge at Uppukulam, Mannar at 10.30 night and arrested two ladies, by

name Wigikala Nathakumar 22 yrs, an expectant mother already with one child and Sivamani Arjunan 24 yrs, a mother of three children. They had been living in the Refugee camps in Vavuniya and had come to Mannar on their private business. On the way they started to make sexual advances on these helpless females and on arrival at the Special Investigation Unit (SIU), Mannar at 11.30 night, Wigikala was taken in and along with some Navy personnel, some SIU personnel joined up in a room and forcefully stripped her naked, tied her hands and laid her on a table and sexually assaulted her in ways so inhuman and so brutal. Consequently, two of these men brutally raped her repeatedly.

In the meanwhile, Sivamani who was kept in the vehicle used by the Navy (a white Van) had been made naked by the Navy and sexually molested by them and one of them blindfolded her with his stocking. The driver of the vehicle was holding both her hands behind and a Navy man forcefully raped her. After a while Sivamani was also taken with her dresses on, to the above room and was forcibly stripped naked again and in a brutal way sexually assaulted by all present in the room while rest of the Navy personnel were peeping into this sex-torture room through the openings on the walls. Their cries could only be heard by the detainee at the SIU. When they, in tears related their trauma to me on my visit to them in the company of a nun in the prison lock-up in Mannar on the 27th inst., they told me that they will identify most of these criminals and they mentioned frequently the names of one Raja (a Tamil speaking one) and of one Wimal of the SIU who were mercilessly extra brutal to them. They also said that the person whom they came to know as the OIC of the SIU was also taking part in this brutality.

These victims then, were threatened with further torture and were forced to sign a statement to say that they were from the LTTE. Three days later they were taken to the DMO, Mannar. These victims were told by the SIU that they will be killed if they revealed anything to the DMO. The helpless victims told the DMO out of fear, being in the presence of the SIU, that they had no complaints to make and they were briskly taken away by the SIU. This is how the medical examination of these poor victims was made to end up. The victims were taken before the Mannar Magistrate by the SIU only on the 27th inst. at 6.30 pm. On my appeal to the Magistrate and to the DPDHS, Mannar in the name of the public, a fresh medical examination of these two unfortunate victims had been undertaken by the DMO, Mannar on 30.03.2001.”

[The Bishop goes on to describe the 13th of March torture of fishermen by the Navy at Thalaimannar; the strangulation of Mr. Kandaiah Uthayakumar of Chavakadu, Mannar aged 42, father of seven children; and forced collection of fish from the meagre catches of Mannar fishermen.]

**13. Uchitha Thussara Kumaea: Tortured to death**

Uchitha Thussara Kumaea, 33 years old, married and the father of two children was tortured to death at Ja-ela Police station on 24 March 2001. Kumaea was arrested on that morning, under a warrant for a minor offence. He was sent to the remand prison in Negambo on the evening of the same day.

On the 26th, when his family made inquiries about him, they learned that he had died and that remand authorities had informed Ja-ela police about the death, with an instruction to inform the family. The police did not make any such communication.

The magistrate visited the remand prison to see the body and made an order for it to be sent for examination by the Judicial Medical Officer of the Ragama Hospital. This examination has been completed and the sealed report has been sent to court. The family, on making inquiries, found that the medical officer's report stated that the death was due to internal injuries. The family is of the view that the injuries were caused at the police station before the prisoner was handed over to remand custody.

**14. Ajith Nawaratne: Five days to recover from injuries**

Around 12:30pm on 2 May 2001, Ajith Nawaratne Bandara was taken into custody of Keselwatte Police personnel, and subsequently assaulted by IP Prasanna Silva, Sgt Palitha Perera, security assistant Sunil, and jeep driver Upasiri, among others. Subsequently, the assailants—except for the OIC—took Ajith to the Panadura Hospital DMO's official residence, but the doctor did not examine him. The DMO simply gave the police a form, which was filled out on the boot of the car, and then handed back to the DMO.

Ajith was then taken to a house at Wellabeda, Panadura, and left in the company of the assistant outside, while the other two went inside the house and came out with a document. That house turned out to be the bungalow of the local magistrate. The magistrate did not examine Ajith nor question him. Later he was taken to the remand cells. On May 4 he was presented before the court on charges of possessing heroin, and was bailed out. He entered Kalubowila Hospital on the same day, and was there for five days recuperating from his injuries. Complaints made to the OIC Panadura and to the HRC to take action in this case were unfruitful.

**15. Ranjini Rupika Hewage: Assaulted while pregnant**

Ranjini Rupika Hewage was tortured on 11 September 2001 by IP Samarasinghe of Mathugama Police station. The police came to her home looking for her husband, and when she replied that he was not at home they hit her with wooden poles and kicked her in the belly. When she cried that she was pregnant, the assaults were continued. Then she was taken into a jeep where there were others. She was then taken in the jeep for about two hours, after which she was kept at the police station. She began to bleed at about 9:30pm and complained to the woman warden. Nothing was done to help her.

On September 15 she was handed over to her mother and mother in law. She was instructed to come to the Mathugama Magistrate's Court on September 21. Her family took her to the Pimbura District Hospital. She was kept at the hospital for three days, to stop the bleeding. She was advised by the doctor not to get down from bed and to take complete rest. Thus, she could not go to the court on September 21 as instructed. She started bleeding again on September 23, and was again taken to the same hospital from where she was immediately dispatched to Kaluthara General Hospital (Nagoda) by ambulance. As it was not possible to stop the bleeding of the womb, the womb was washed and she lost the child. She was three months pregnant at the time.

**16. Namal Fernando: Victim of rajakariya**

On 6 October 2001 at about 8pm, three police officers and some others in uniform came to the house of Namal Fernando, 37, a full time social worker and father of three from Pitipana Duwa, Negombo. The officers arrived in a white van. Inside the van was Sunanda Appuhamy, who identified Namal. The police took Namal away, saying it was their rajakariya (state duty) to do so. The police gave neither Namal nor his family any reason for his arrest. At this stage Namal's wife and brother also were put into the van and they were driven to the house of Herman Sarath Fernando, a friend of Namal, at Wennupuwa. As Sarath Fernando was not at home the police guarded the house and waited for about three hours. At this stage attorney Chaminda Silva arrived and took down the numbers of all police officers. The OIC was Mathew of the Mundalama Police. After that, Namal was put into another police van and taken to Puttlam. At about 12:45am the van stopped at Madampe and the police drank liquor inside the van. At this stage someone in civilian dress hit Namal in the face three times with his fist, causing him to shout in pain. Then the van was driven to Mundalama Police station, about

70km away from Negombo, where one police officer used his fists and feet to assault Namal and then put him inside a police cell.

A Catholic priest, Gerald Jayawardene, came to the police station with a group of others and inquired about the reason for Namal's arrest. They were told by the police officer who had assaulted Namal that Namal had threatened him by putting a pistol against his head. Namal was put back inside the cell and kept there for another half an hour. After that the OIC and four other officers got into a jeep and took Namal to Wennupuwa. They stopped the jeep near Sarath Fernando's house and took Namal out towards the house and assaulted him. Then Namal was pressed to the ground by two police officers. They put their feet on both sides of Namal's shoulders while another officer pointed a gun at him. Another officer shouted, "Yakko (you devil)! Unload that gun!" Then the officer holding the gun said that if the gun fired he would say he had shot because the prisoner had tried to escape.

Again they put Namal back into police jeep and took him to the Green Villa Guesthouse at Haldaduwana. The officer in charge got out of the jeep there and the other police officers took Namal to another house and hit his chest and knees with the butt of a T-56 firearm. Due to severe pain Namal involuntarily evacuated his bowels. Thereafter he was taken to the office of the SSP Chilaw and on the October 7 was taken back to Mundalama Police station. Later Sarath Fernando was also brought to the station and a Catholic nun, Sister Benedict, visited Namal there also. After that the OIC showed a statement to Namal and Sarath, which they signed in fear, though the content was not read to them. At 2:30pm Namal was taken to the hospital at Mundalama and a doctor examined him. At 3:30pm a police officer took statements from Namal and Sarath and told them that they had been taken into custody regarding a robbery that had taken place at Marrinawatte. Only at that stage was Namal informed of the charges. At 8:30pm, Namal was produced before a magistrate and was remanded in custody. Next day, however, he was released without charge. It appears that his arrest was a case of mistaken identity. Namal was sent to Ragama Hospital for treatment.

### **17. K.A. Samarasinghe: Physical and mental incapacitation**

Kodithuwakku Arachchige Samarasinghe was allegedly tortured throughout the day of 11 November 2001 at the Baduraliya Police station, Kaluthara. He was kept in the station till November 14. On the night of 11 November he was taken out of his cell and—handcuffed behind his back—beaten with wooden sticks, causing injuries to his buttocks, thighs, feet, knees and

dislocation of his left shoulder. The following morning he was again taken from the cell, slapped on the head and ears, beaten behind the knees and on the buttocks with broomsticks. Police also forced him to drink illicit liquor by pouring it down his nostrils. As a result he lost consciousness. He was then taken to the mental hospital in Mulleriyawa. Due to the wounds and his mother's representation that he had been tortured, the mental hospital refused to admit him. He was then taken to the Kaluthara General Hospital (Nagoda), and was admitted. He regained consciousness on November 16, and was hospitalised till November 22, however, the wounds were not cured and he took ayurvedic (homeopathic) treatment to address persistent problems.

On December 3 a human rights group based in Panadura, Janasansadaya, took K.A Samarasinghe to the HRC and through the Commission produced him before a JMO in Colombo. The JMO noted the presence of scars on his left cheek, back, right arm and forearm, wrists, right thigh, lower right leg, knees and right foot, and swelling of the left foot with "restriction of movements of ankle and the toes"; x-rays revealed a fracture in his left foot. The JMO found that the scars were consistent with beating and with "struggling on a rough surface, rough manhandling, and assaulting with rough blunt weapons", handcuffing, falls and prolonged kneeling, such that, "Aging of the scars and fracture was consistent with the history given by the patient." After examination the JMO referred him to the Orthopedic Clinic at Colombo General Hospital and from there he was referred back to the Kaluthara General Hospital. He was again admitted to the hospital from December 4 till 10. Complaints have been filed at the HRC. As result of torture he has lost the capacity to work as a carpenter, his former occupation. K.A Samarasinghe has named the OIC Baduraliya and SI Dammika as the persons who tortured him. No steps have been taken by the Attorney General's department to file criminal charges against the perpetrators.

### **18. Sathasivam R.: "No female in this universe could bear it"**

Four officers from Methigiriya police station came for 23-year old Sathasivam Rathykala while she was on duty as a casual attendant at Pollonaruwa General Hospital on 24 November 2001. They asked her to come and make a statement, and took her to their jeep. Once in the jeep they began slapping and kicking her, and abusing her with filthy language. Once at the police station they handed her over to CID personnel of Polonaruwa police station. Sathasivam describes what happens next as follows:

“Twelve CID personnel took me into a dark room where I was alone and there weren’t any females, either police or civilians. In the room they assaulted me, hit me with clubs and ropes, and trampled me all over my body with boots. They removed all my clothes except my panties and brassiere. I begged them to free me and give my clothes back, and I also told them that I was totally innocent. Then they removed my remaining clothes, and I was completely nude. They were all under the influence of liquor, and the whole room smelt of it. Then they started burning with cigarette butts all over my body and blew the smoke on my face.

After doing all this unbearable torture the 12 of them raped me one after another. When I started groaning in unbearable pain and I was able to feel that I was profusely bleeding and my body was swelled up, one of them gave me a glass of milk tea. Feeling so thirsty, I took the glass of tea, but no sooner had I took it than I was feeling giddy and the whole room was turning. Then I fell unconscious. When I came to, I found myself on a bed in a different room, all alone and completely nude. A few minutes later the same CID personnel came and mixed chilli powder with water and poured it into my eyes. When I started shouting in agony they forced rags into my mouth. Then they threatened to kill me. They wanted me to admit that I belonged to the LTTE.[Liberation Tigers of Tamil Eelam] cadre, and I was to be used by them to throw a bomb at Minister Maithripala. Then they recorded my statement in Sinhala.

As I couldn’t bear the agony and unbearable pain as a result of the severe torture, and also fearing further torture, I was compelled to admit to all they wanted of me according to their version, of which I never even dreamt. They wrote all what they wanted and never read the statement recorded by them, neither in Tamil or Sinhala, and forced me to sign it. Out of fear and the threat of further torture I signed against my will. At about 10pm on this day, after taking down my statement, the 12 of them came and raped me over and over again. They were drunk and I was completely nude, sleeping all alone in that room. The next day, November 24, they blindfolded me, tied my hands, and took me in a jeep to my village. The 12 CID personnel who caused maximum damage to me came in the same jeep to my village. Reaching my house they scolded me in unbearable filthy language, and wanted me to show to them where the LTTE.cadres were living. When I begged them that I knew absolutely nothing about them they brought me back to the police station.

On November 25 they handed me over to the Kaduruwela police. At this time the Kaduruwela police humiliated me more than I could bear by asking irrelevant questions while I was very badly hurt mentally and physically. No female in this universe could bear such questions and remarks made by them.

They continued accusing me of being LTTE and that I was hiding the facts. I was kept in solitary confinement there for one month. I was almost going mad and I even wanted to put an end to my life. But, I thought I must live and explain all these atrocities to the authorities concerned, so that other women in Sri Lanka would not have to bear similar incidents. Although the Kaduruwela police knew I was innocent, they didn't want me to expose them so they sent me to the Magistrate's Court at Polonaruwa on 14 March 2002, and from there I was taken to the Anuradhapura Prison. Out of the 12 CID personnel who tortured me and raped me, four accompanied me to the prison. On the way they told me not to divulge the incident, and threatened to kill me if I did."

Sathasivam was later transferred to Welikada remand prison.

Meanwhile, the police fabricated and submitted three cases against her in the high courts. She did not undergo a proper medical examination until after one was ordered by a high court judge on 30 August 2002, at which time she told the JMO and other medical staff all the details of what had happened to her at the police station. Sathasivam was subsequently released on bail and on 20 November 2002 made a complaint to the HRC. Since then, she has experienced continual harassment by the police. On 8 February 2003 she made another complaint to the HRC about an event the day before, when two men on a motorcycle, one of whom was among the 12 perpetrators, stopped next to her and her mother as they were walking along the road. The officer told Sathasivam to come to the CID office and forced her to accept 20 rupees for the fare. He told her that if she didn't come they would come and arrest her. Meanwhile, the charges against Sathasivam were pending in the high court.

### **19. Bandula Rajapakse, R.P.Sampath Rasika Kumara, Ranaweera & Chaminda Dissanayake: Company scapegoats**

In February 2002 four employees of the North Pole Lanka (Pvt) Ltd were taken into custody at the Ja-Ela Police station over the loss of 46 rolls of cloth from the company stores. They were Bandula Rajapakse (forklift operator), R.P.Sampath Rasika Kumara (officer in charge of the stores), Ranaweera (security guard), and Chaminda Dissanayake (an executive officer). After several days in detention the four persons all repeatedly denied any involvement in the theft, which trade unionists believe is a case of the management trying to shift the blame onto the workers, rather than accept responsibility personally. Thereafter, on February 19 & 20 the four men were savagely assaulted, allegedly at the instigation of OIC Crimes

IP Suriyakumara, by two police officers not yet identified. The policemen attacked the three suspects using rubber hose and PVC pipes on their backsides, for 15 minutes. Before the attack the suspects were ordered to keep their hands on the wall; when Rasika turned the other way he got blows on the knees and fingers “ as well. Ranaweera got blows only from the PVC pipe. Chaminda was spared much of the assault, but was kicked by a policeman.

Hearing of the violence, about a thousand persons organised by the trade union movement picketed the front of the police station. With popular pressure mounting, the suspects were taken to a DMO at night, and thereafter produced before a magistrate. Four lawyers appearing for the suspects moved for bail, which the magistrate granted and then ordered the suspects must be produced before a JMO.

## **20. Nandini Herat: Beaten and raped in custody**

Herat Pathirannehelage Nandini Sriyalatha Herat was a 39- year-old unmarried woman who was arrested by several police officers from Wariapola in civilian clothes on 8 March 2002. She was arrested at her home in the presence of her family and was kept for two days in the Wariapola Police station, during which time she was severely tortured. The forms of torture included stripping her naked and inserting a pipe-like object in her vagina, which made her bleed and caused immense pain. Once she was produced in court, she complained to the magistrate, who ordered an inquiry. Her own hand-written statement is as follows (translated from Sinhala).

“I was brought to the Wariapola Police station on 8 March 2002 around 6:15pm. [The police] came to our home in a white coloured vehicle. There were four people dressed in civilian clothes. Because I was bathing at the time, they asked my father if Nandini was at home. Hearing that I peeped from the wall near the well. Because I saw someone known to me I wrapped a towel above by bathing clothes and went there. One of them was examining my younger sister’s identity card. His name is Warnakulasuriya. He said they needed to record a statement by me. When I asked about what, they did not tell me. Warnakulasuriya, the OIC Crimes and a person I did not know came inside our house. They did not give me room to put on my clothes. When I asked Rathnatileke, who was standing at the door, to move away as I wanted to dress he did not do so.

My mother came to the vehicle to accompany me. But they did not allow her to get into the vehicle. When I was getting into the vehicle I saw a person with his head covered by a white sheet. I do not know who he was. They brought me [to the station] and made me sit on a bench. At that time there

were no women present. 10-15 minutes later an elderly woman arrived. Between 7:15 and 7:30pm Ananda arrived. He was dressed in gurupata trousers and a white T-shirt. He said that today had been good for getting a bite. I asked that I be taken home. I was not given any food or drink that evening. I asked several times why I was brought there but I was not told the reason. Around 8:30pm Ananda, Rathnatileke and Warnakulasuriya arrived. I heard the reserve policeman calling out to some individuals and to a woman. Those three were very drunk. Warnasuriya first beat me with a pole. I felt my left arm becoming lifeless. I felt faint. Ananda removed my clothes. I asked him not to remove my clothes. I screamed. After my clothes were removed someone struck me a blow from behind. I could not recognise who it was. Ananda put something like a tube into my vagina. Warnakulasuriya kept my mouth shut with his hand. Rathnathileke stood by the front door and watched. At that time the back door was closed. [He said] 'This is only a foretaste. It is tomorrow that the job will be done.'

Blood was pouring from my vagina and I felt a sharp pain in my underbelly. The blood was dripping onto the cement floor. Ananda called the woman and told her to cut a piece from my towel and bring it. The woman brought the towel. Ananda tore it in half and gave me one piece. I wore it. With the other piece he wiped the blood on the floor. After that he asked Rathnatieleke something. I did not hear what he said. I heard Rathnatileke say 'Put it in Cupboard 4 of the Crimes Division. Tomorrow let us throw it far away.' A little while later because I felt sick I slept right there. I vomited around 5.30am. The OIC told the woman to wash the vomit. 'Can't say if the ASP might come round,' he said. I asked the OIC for medicine and to send me to hospital. He paid no attention to that but gave me a blow. He scolded me with raw filth. After a short while I went to the OIC's room and asked again why I was brought there. Then Rathnaileke said, 'You have no house to go now; they have given it the works also.' I could not think about anything at that time.

Around 10:30 that morning the OIC beat me again with a large pole. At that time I was terribly sick. The OIC Crimes asked him not to beat me. After that I was not beaten. By that time I was in a semi-conscious state. The following night the woman who was locked up with me gave me tea and two snacks from what had been brought for her. There were some others also locked up. I cannot remember who they were. I heard them talking, but I have no memory of what was said. The next morning Warnakulasuriya took me to the Crimes Section, opened a big book and told me, 'Sign your statement.' At that time no statement had been recorded from me, therefore I hesitated to sign it. But because WPC No. 2212 kicked me hard from behind and because I could not endure any more pain and because I was terribly hungry, I thought whatever might happen it does not matter and signed the statement.

Around 12:30 that day I was forcibly taken again in a white coloured vehicle. I refused to get in and did not get in. I was forced into the vehicle. Inside the van was the driver of the vehicle and Warnakulasuriya dressed in civilian clothes. Rathnatileke was dressed in uniform. There was another constable in civies. The vehicle went along Nikaveratiya Road. It stopped near a large Mara tree and Rathnatileke and Warnakulasuriya went there. There were officers in civilian clothes standing by the door of the vehicle. After that I was taken to the Wariapola courthouse. While I was in the van Warnakulasuriya went inside the courthouse. He came back after 5 to 10 minutes. I remember that he had a paper in his hand. After that I was taken to the Wariapola hospital. I told a doctor about my sick condition. Though he asked me to sit down there was nothing there to sit on. Rathnatileke and Warnakulasuriya were there all the time. On the way to Kurunegala the vehicle stopped near several shops. I was handed over to the Kurunegala Prison. Till I came to the prison I had had nothing to eat. They gave me food brought from Kurunegala.

On March 10 I was taken to hospital. [Then after making a complaint to the warden of prison] on March 13, 14 and 15 I was taken to the hospital for visits. On March 17 around 3pm I was examined in the orthopedic section of the hospital. I am still being taken to hospital. On the day I was brought to court I made a public statement to the lady magistrate.”

Nandini has been unable to go to private doctors or to pursue investigations into the case of her own accord as she is being kept in prison in remand. Her father has been severely threatened by the local police and higher officers not to pursue the complaint. Lawyers are reluctant to help the victim’s family because of fear of repercussions. Nonetheless, Nandini made a similar statement to the magistrate of the Wariapola Magistrate’s Court, who issued the following order:

“While the police have the right to arrest an accused and investigate and take a statement from him about the relevant happenings, the police have no power to inhumanely assault anyone. I order Deputy Inspector General Wayaba to investigate this matter and submit a complete report to this court. I order the registrar of this court to send a copy of this order to the Deputy IGP.”

The Prosecution of Torture Perpetrators Unit of the Attorney General’s department forwarded the information provided by the AHRC on this case to the CID and asked the CID to conduct a criminal investigation into the allegations. The letter from the Attorney General’s department further stated that upon completion of the criminal investigation, the investigative material

should be studied to consider the institution of criminal proceedings against the perpetrators.

At the start of August, the five officers—including the OIC—of the Wariapola Police station were charged before the Wariapola Magistrate's Court. The DIG in charge of the Wayaba area filed the charges. However, the charges are merely causing simple and grievous hurt to Nandini. These are comparatively less serious offences than charges of rape or torture. What is more, the gravity of state officers inflicting torture on a civilian has been brought down to merely physical hurt caused by one civilian to another. The officers pleaded not guilty to the charges. When a bail application was made on behalf of the police officers, Priyantha Gamage, the attorney who appeared for Nandini, objected to bail on the grounds that the officers were still holding their positions, and also that they would be likely to interfere with the witnesses and to harass them. Gamage also stated that the police officers should have been charged for torture under Act No 22 of 1994, and the offences under that act are unbailable. The magistrate granted Rs. 10,000 bail for each of the accused. She also ordered that their passports be impounded and the immigration and airport authorities be informed of this order. The magistrate severely warned the accused not to harass the witnesses. She also stated that it was embarrassing to have the same officers who prosecute others to appear in court as the accused. Therefore she requested that the Judicial Service Commission assign a different court to hear this case.

The accused police officers were reported in the press to be engaged in a campaign to oust the DIG who filed the charges against them, with the help of some powerful local politicians. The Minister of Women's Affairs, who lives very close to the police station where Nandini was tortured and sexually harassed, throughout tried to defend the police officers. When asked by the BBC Sinhala service whether she talked to the victim to find out her side of the story, she said only that she had promised to talk to the victim. However, the minister had not spoken to the victim. It was widely believed that she was trying to protect the police officers.

### **21. Galappathi Guruge Gresha De Silva: On orders from above**

Galappathi Guruge Gresha De Silva was the 32-year-old manager of the Green Garden Hotel, Katugoda. He was taken into police custody on 22 March 2002, together with one Buddhika, a relative of his, by police officers from Habaraduwa Police station. They were taken to the Habaraduwa Police station in a police jeep. Both were told to sit on a bench while the OIC of

the Police station talked to someone over the telephone. Gresha heard him saying, "We have brought in Gresha. Okay, Sir! Right, Sir." Then Gresha was told, "Tell the truth, if you want to be saved." The officer was talking about a murder that took place on March 9. Gresha answered, "On that day I was with a group of tourists at Nuwara-Eliya. I do not know anything about this."

Then the OIC took Gresha to the police barracks at Ahangama. His clothes were removed by force. His hands were tied behind his back. He was hung from the beam. He was beaten with wooden poles and pipes by OIC Satisgamage, Si Ariyaratne, Si Lekamvasam, Sgt Chandrasoma, and others in civilian clothes. He was hung and beaten five times the same way by the same persons, and was also hung by the fingers. He asked for water and was told, "When you tell the truth, the water will be given." He asked, "How can I tell something that I do not know?" He was not given water. He was brought back to Habaraduwa Police station. Buddhika had been released by then. Gresha found his hands to be numb and he could not even take any food with them. Some sympathetic officers told Buddhika that Gresha was assaulted on "orders from above". Attorney Chandrika Ranmalla visited Gresha on the same night and was told the whole story.

Gresha was released at noon of March 23. He was hospitalised from March 23 to April 11. He was examined by Prof Niriella, a well-known forensic specialist, and was told that the loss of use of both hands is likely to be permanent. Gresha made a complaint to the Police station at Galle through his lawyer Kumara Bandara.

## **22. Y.C. Benjamin: Victim of relentless police harassment**

Until April 2002, Yoga Clement Benjamin, a 47-year-old father of three, sold illicit alcohol. In those days he had reportedly bribed SI Sunil Perera and several other officers at Kaluthara South police station. In addition to this business, he had a pig farm. After that date, although he stopped selling alcohol and took to selling vegetables, the police still collected bribes from him, including getting pork free of charge. After June 2002, when Benjamin refused to supply pork for a wedding, the police became hostile towards him and he decided to sell the piggery. However, he became the subject of police threats and conflicts over the payment of bribes continued. On 5 February 2003, two police officers from the Kaluthara South came to collect bribes. When Benjamin refused to pay, the two allegedly beat him. At about 7:30pm on the same day, SI Perera arrived with a group of men and threatened

Benjamin, calling him *dhemalaa* (a derogatory term for a Tamil person), and telling him that he would not be allowed to reside there any more.

At 10:30pm on the same day, another sub-inspector and about ten police officers in plain clothes arrived at the house in a Fargo van, carrying swords and wooden poles. They broke into the house and abused Benjamin's wife and daughter in foul language, destroyed furniture, and took away a gold chain with two sovereigns. They also broke the glass on their wedding photo and took the picture with them. When the family went to complain at the police station they were scolded and chased away. On February 7, the same group arrived at about 2:30am and entering the house from the back door threatened to kill the family. At 9:30am the family complained to the HRC. At 2:30pm on the same day, a big group of police arrived at the house and destroyed all the furniture. At 5pm, they found Benjamin and an officer in plain clothes started to hit him with a steel pole. His son intervened, resulting in a fight. The family then fled.

On February 9 the family went with Nanda Mapalagama Godagama, attached to the Galle Court, to make a complaint to the IGP. However, on February 19 Benjamin's son was arrested and falsely charged at the Kaluthara South police station. On February 22 a neighbour called the officers of Kaluthara South over a land dispute. At about 4:30pm, the police arrived again, in the neighbour's van, as well as their own vehicles. They confiscated Benjamin's motorcycle and appeared to leave. The neighbour then called for Benjamin to come out. When he did, some police appeared and shot at him and his son. However, on this occasion he escaped unhurt. Finally, on February 26 the police shot and killed Benjamin while he was walking on the road. The police claimed to have acted in 'self defence', and alleged that a pistol was found next to the victim. However, Benjamin had never previously owned or used a gun, and the series of incidents leading up to the killing suggest that it was a calculated murder.

### **23. Lalith Rajapakse: "Minimum force"**

19-year-old S.Lalith Rajapakse was taken to hospital in an unconscious state by police officers of the Kandana Police station on 20 April 2002. He had been arrested two days earlier and was tortured on April 18 and 19. His condition was described in the interim medical report as most likely due to assault. The JMO's report, which was submitted later, notes the following injuries:

1. Healing scab abrasion 2 inches x 3 inches on the right scapular region;
2. Healing scab abrasion 1 inch x 1 inch on the back of the right elbow;
3. Healing scab abrasion 2 inches x 1 1/2 inches on the front of the right chest;
4. Contusion 2 inches x 3 inches on the back of the left hand;
5. Contusion 2 inches x 3 inches on the front of the left forearm;
6. Contusion 1 inch x 1 1/2 inches on the medical side of the left hand;
7. Contusion 1 inch x 2 inches on the lateral side of the left hand;
8. Contusion 2 inches x 2 inches on the sole of the left foot;
9. Contusion 2 inches x 1 inch on the sole of the right foot; and,
10. Cerebral contusion.

The last injury is described in the report as 'grievous', that is, sufficient to cause death.

Lalith Rajapakse was arrested on the night of April 18 at about 10pm by several police officers of the Kandana Police station. When he was arrested, he was hit with a boot on his forehead by one officer and beaten with the wooden handle of an axe on the back and other parts of his body and dragged to a jeep waiting outside his house. He was then taken to the Kandana Police station and put inside a cell. On the evening and night of April 19, several police officers hit him all over his body after he was put on a bench. He was severely hit on his soles with blunt instruments. In addition, books were placed on his head, and these books were vigorously hit with blunt instruments. He was then bathed in water. On April 20 at about 10am, his grandfather, Elaris, found his grandson's body lying on the floor of the cell in the Kandana Police station, and he appeared to be dead. Elaris immediately sought the help of a local politician (Member of Parliament Jayalath Jayawardene) who made inquiries. When Elaris returned to the police station he was told that Lalith had been taken to Ragama General Hospital. At the hospital, Elaris found Lalith on a stretcher, still in a state of apparent unconsciousness. Later in the day on April 20 Elaris and Lalith's mother learned that he had been taken from Ragama General Hospital to the National Hospital in Colombo.

Lalith remained in a completely unconscious condition for 15 days from April 20. He began to recover slowly after this period of time and began to speak, sometimes with clarity, only after May 13. On May 15, he was transferred to the remand hospital in Welikade. After sending Lalith to the hospital, the police had to create an explanation of how the suspect came to

have these injuries. For this purpose, they opened three files, two relating to robbery charges and one attempt to resist arrest, which resulted in the police claiming that they needed to use “minimum force” to subdue the victim. Then the police officers took these files to an acting magistrate and, without producing the suspect before the magistrate, got an order to remand him in custody. On this basis, Lalith was in remand custody until May 17. On that day, when an application was made for bail, the magistrate vacated this order on the basis that the original order, made without producing the suspect, was illegal.

A complaint on behalf of Lalith Rajapakse was made to the magistrate of the Wattala Magistrate’s Court under Act No 22 of 1994. It respectfully requested that the matter be brought to the notice of the Attorney General of Sri Lanka and be investigated and prosecuted by the special unit functioning under the Attorney General for the enforcement of the Act. The court granted leave to appeal and ordered the respondents be given notice. The outcome of that case, and other events, are detailed in a separate section on the case of Lalith Rajapakse in this publication.

#### **24. Eric Kramer: “Tell the truth or you will be killed”**

Eric Antunia Kramer, a 43-year-old father of three, of Katunayake in Colombo, is a welding mechanic for Ceylon Grain Elevators Ltd. The company, which produces poultry food and is owned by a Singapore national, has employed him since 1995. At about 4:30pm on 28 May 2002, Piyadasa, a company security officer, asked Kramer to identify two oxygen cylinders that he used for welding, which Eric did. Two other members of the company, Neil Jayaweera and Stanley Christopher, and a police sub-inspector from the Mutuwal Police station also questioned him inside an office of the company’s security division. They asked how these oxygen cylinders that may have been used in an attempted burglary on the company’s money safe, were found on the fourth floor of the building. Eric responded that he did not know. At about 6pm he was taken to the Mutuwal Police station in a jeep.

After being in detention for about an hour, the OIC Crimes, the SI who arrested Eric and two other officers wearing civilian clothes began to torture him. The SI beat him with all over his body except his head with a leather belt, and the OIC Crimes slapped him and kicked him twice. He was then held by his hair and taken near the window, to show Stanley Christopher that he was being beaten by all four of the police officers. Afterwards, Eric

was taken to another room by the SI and two other officers, told to lie down and beaten on the soles of his feet and all over his body with a leather belt and wooden poles for about two hours. At about 2am on May 29, the OIC Crimes became drunk and put a leather belt around Eric's neck, tightened it and threatened him: "Tell the truth, or you will be killed." The next day, May 30, he was released at about 9:45pm.

On June 3, Eric Kramer was taken to the Weralabadda Police station where a statement was recorded by a police officer named Perera, and he was kept there overnight. He was questioned by the OIC of that police station at about 10am on June 4. At about 5pm, this officer told him that he was no longer a suspect in any investigation. Eric Kramer continued to suffer from the torture inflicted on him, as he could not walk properly because of the beatings on the soles of his feet and he has chest pains. He went to a private hospital for medical tests. He made a complaint to the chief justice and other authorities.

### **25. A.R.L. Ananda: Falsely charged for making toddy**

Another similar case recently reported in the media of A.R.L. Ananda, a 50-year-old farmer granted leave by the Supreme Court to proceed in a fundamental rights petition after allegedly being tortured and falsely charged by toddy-hunting police. Ananda alleges that on 3 June 2002, Sgts Witharana and Mendis of the Deniyaya Police station came to his home in civvies and aimed a pistol at him, asking for toddy. The officers then began to beat him in the presence of his wife, brothers and six children in a humiliating manner, when he told them he had no toddy. The police officers then ordered him to come to the police station, where his signature was obtained on a blank document, under threat. Later that night, he was released from police custody, with a warning that he should not make any complaint to any higher authority. After his release, A.R.L. Ananda was admitted to Deniyaya Base Hospital for seven days. He was also compelled to obtain ayurvedic (homeopathic) treatment.

On leaving the hospital, he made a complaint to the ASP of Weligama-Akuressa area. In response, on June 5, the OIC Deniyaya filed a plaint against A.R.L. Ananda in the Morawaka Magistrate's Court, charging him with the illegal possession of 80 drums of toddy. He pleaded not guilty to the charge and alleged it was an attempt to cover up the torture. In granting leave to proceed with the case, the Supreme Court bench also directed the Registrar to call for medical reports from the hospital where petitioner

Ananda was warded after he was allegedly attacked by the police officers. The court further ordered the DIG of Southern Province to forward a copy of the report submitted by him to the court.

## **26. Waragodamudalige Gerald Mervyn Perera: Surviving on life support**

Waragodamudalige Gerald Mervyn Perera a 39-year-old father of two children was tortured by eight police officers at the Wattala Police station (Colombo), resulting in him being put on a life-support system. On 3 June 2002 after finishing his work at the Colombo Dockyard around 9am, Gerald Perera went to his mother's place at Alwis Town. Having spent some time there, around 11am he went by bus to Ekala. At Ekala he bought some groceries to take home and then took the Gampaha bus to his home at Gonagaha. Around 12:45pm he got off at the Welikada junction and started walking towards his home. Suddenly, two persons dressed in civilian clothes grabbed him by the hands and took him to a jeep that was parked nearby, saying, "It's you we want. We were waiting till you came", and pushed him into the jeep. Seeing his wife and three-year-old son inside the jeep, Gerald asked, "Where is our daughter?" Sobbing she replied, "They did not allow me to fetch her from the preschool." Realising that the men in the jeep were police officers, Gerald Perera pleaded with them, "Please collect my daughter and drop the three of them at my sister's house in Alwis town." This request was not heeded. His wife and son were dropped on the roadside and he was taken away blindfolded.

He was not given any reason for his arrest, let alone a warrant issued by a court of law. Ten officers were present at the time of the arrest and none of them wore police uniform. He was taken into the Wattala Police station and was brutally assaulted by the officers attached to this station, namely, OIC Sena Suraweera, SI Kosala Navaratne, OIC Crimes, SI Suresh Gunaratne and several other police officers. Gerald Perera's hands were tied behind his back, his eyes were blindfolded and he was hung from a beam and brutally tortured for about one hour. He was severely beaten with an iron bar on his back, legs, abdomen, and other body parts. Thereafter he was untied and brought upstairs. He was laid on the floor and his hands were burnt with matches.

He was questioned about a murder case of which he knew nothing, and was kept at the station on the night of June 3. Around 10am on June 4, his brother Ranjit Perera visited the station along with the Chairman and Vice Chairman of the Pradhesiya Sabha (Provincial Council) and inquired about him from the OIC. They were told that Gerald Perera had been taken into

custody due to false information relating to a triple homicide. Gerald Perera was released from the police station on the morning of June 4. Complaining of severe pains, he was taken to Yakkala Wickramarachchi Ayurvedic Hospital. The doctor who examined him advised that he should be taken to an emergency hospital as he was in a serious condition. He was then taken to Nawaloka Hospital in Colombo. While in the hospital Gerald Perera made a statement to an officer from another police station about the torture. Gerald survived the injuries and treatment, but was later killed before giving evidence against the police in the High Court. Please visit the AHRC website for further details.

### **27. H. Fonseka: Thrown into the river**

On 4 June 2002 an officer known as “Boxer” Jayasinghe of Panadura Police station is recorded as having arrested one H.Fonseka and thrown him twice into the Panadura River. H. Fonseka managed to escape the first time he was thrown in, was caught and again thrown into the river by “Boxer” Jayasinghe. Some people intervened and saved him. He was unconscious when he was saved, and would surely have drowned but for their assistance. The medical report of June 6 from Panadura Base Hospital mentioned several injuries due to the attempted drowning. A complaint of attempted murder has been made in this case, but no action was taken. It was also been brought to the attention of the HRC.

### **28. Shazyed Mohomad Issas Hussane Moulana: “Give the items!”**

Shazyed Mohomad Issas Hussane Moulana was the owner of the Shek Medical Centre situated at Thakiya Junction, Bandaragama. On 9 July 2002, two men with T-56 guns and IP Prasanna Silva, the OIC of Keselwatte Police station, entered his house at about 10:30pm, where he was sitting with his assistant, Baba. They came in a police jeep and a van, but none were wearing uniform. The OIC put a revolver in Baba’s mouth and said, “Give the items! (Buditika deepan!).” IP Prasanna turned and asked Ejan, “Are you Ejan Moulana?” to which he replied that he was. The OIC then began using obscene language and threatened him, “If you don’t want to get beaten up give the two vehicles worth thirty lakhs (Rs. 300,000) and the other thing.” As Ejan did not know what the officer was talking about he was shocked and just stayed motionless, not knowing how to reply. IP Prasanna then hit him with his hand and began to search all over the house, opened the cupboards and taking things out, throwing them onto the floor. He beat Ejan repeatedly and banged his head against a wall six times. Thereafter the two victims were put inside a van and taken to the Shek Medical Centre. The

assailants searched the medical centre, pulling things out of cupboards and looked everywhere. IP Prasanna then pushed Ejan into a wall, pushed his head against it and assaulted him repeatedly. Altogether this event took about 30 minutes. Afterwards, Ejan Moulana was taken to the Keselwatte Police station, assaulted again, and told to tell the truth or otherwise he would be hung up and beaten. After this he was put in a cell.

Finally, he was released at 1:30pm on July 1, after being forced to sign a document, the contents of which were not revealed to him. After being released Ejan Moulana went to his sister's house at Panadura and then entered the Panadura Hospital. He made a statement to the Panadura hospital police post. He was discharged from the hospital at about 4pm on July 12. He was advised to take further treatment. He later learned that the police officers entering his house had told people that he was a thief; however, no charges had been laid against him, nor to his knowledge, complaints made by anyone. Nor had any magistrate issued an arrest warrant for either of the victims of this incident. Ejan Moulana made complaints to the OIC Panadura, SPP Panadura and HRC. A fundamental rights application was made to the Supreme Court against IP Prasanna, the IGP and Attorney General.

### **29. Tennekoon Banda: "Where is the toddy?"**

Ehalagoda Gedara Tennekoon Banda, a 36-year-old farmer and father of three children, was arrested at his home in Perakanatte, Wilgamuwa, at about 7:30pm on 12 June 2002 by two police officers from the Wilgamuwa Police station. He was then taken and mercilessly assaulted during the night by SI Nalin Gunawardene and PC Ratnayake (No. 2304). While being tortured he was asked, "Where is the kassipu (toddy) and dagara (a raw material used to make toddy)?" These questions indicate that the police may have been given a tip-off by someone that Tennekoon Banda was engaged in the illicit liquor business. Coming from a deeply Buddhist family with a brother who is a monk, Tennekoon Banda had not been involved in any such activity. While being tortured, he told the police officers that he had had surgery twice not long ago and showed the marks on his lower abdomen. However, this made no impression on the police, as they continued to beat him.

At about noon on June 13, the police released Tennekoon Banda to his wife and his sister's son, in a critical condition. He was not charged with anything. He could not eat, could not talk and could not walk. He was admitted to the Kolongoda Government Hospital where he was treated until June 21. The

admitting doctor recorded his injuries as including contusions on the inside of his upper lip, on the back of his shoulder, on his forehead, and on both hands. Because of the torture, the farmer was unable to do his work for a considerable period of time.

### **30. Janaka & Tilan Perera: Assaulted without knowing why**

Kasturi Arrchige Janaka Perera and Mahamarakkalge Tilan Perera are brothers-in-law who live in the same residence in Panadura. At about 5pm on 28 June 2002, PC Lal Gunathilaka and seven other police officers arrived at their home with two motorcycles and a three-wheeler. Several of the officers immediately assaulted both the men, hitting and kicking them, dragging them along the road and finally putting them in the three-wheeler. At the time, none of the police officers were wearing uniforms or anything to identify them as police officers in any other way.

Janaka and Tilan Perera were taken to the Panadura Police station without being told the reason for their arrest. At the station, they were again assaulted by several police officers led by PC Lal, after which, at about 10:30pm two officers took them to the Panadura Hospital. A medical officer examined the men and advised that they needed to be hospitalised for further treatment. The two officers refused to allow them to be hospitalised. They were then taken back to the police station and further assaulted by several officers. They were then put inside a police cell and spent the night there. At about 6:30pm on June 29 the two men were brought out of the cell and produced before SI Liyanarachchi, who swore at them obscenely, threatened to break their hands and legs, and to kill them. After this they were forced to sign statements, the contents of which were not explained to them. At no point were they informed of why they had been detained. They were subsequently granted bail and told to appear at the Panadura Magistrate's Court on July 2, after which they were again released on bail.

Janaka Perera went directly to the Panadura Base Hospital after his release from the police station and was warded there until midday on July 1. He made a statement to the hospital police post while there. After leaving the hospital he began to vomit blood, and he again went for medical help, at the Kalubowila Teaching Hospital, from where he was directed to go to the National Hospital in Colombo for special treatment. Thereafter, his nose was operated on several times. Tilan Perera has been taking ayurvedic (homeopathic) treatment. The men lodged a fundamental rights application with the Supreme Court, against PC Lal, SI Liyanarchi, the OIC Panadura, the IGP and the Attorney General.

**31. Maldeni Piyaratne: Beaten to death in under 45 minutes**

Maldeni Kankanamage Piyaratne, a 33-year-old father of one, obtained a special degree in zoology in 1996. After graduation, he worked as a research assistant on a project conducted by the International Water Management Institute (IWMI) in collaboration with the University of Peradeniya, Department of Zoology. On 29 June 2002, Maldeni was admitted to Peradeniya Teaching Hospital with a fever. Before admission to the hospital, blood tests were taken and test reports showed that the blood was normal. After admission, blood samples were again taken and sent for a report, which was received on July 3. His wife, Nilmini Herat, visited him at the hospital that morning, and he had been quite normal and talked to her in the usual way. At about 10:30am on July 3, one of Maldeni Piyaratne's colleagues, Ranasinghe, called Nilmini to say that police were assaulting her husband by the police near the Gatabe Temple. This colleague, who had been passing the place on a bus, had seen Piyaratne being beaten and had left the bus to intervene. The colleague told the police of his and Maldeni's identity and asked them not to beat him. At this time, Maldeni still had a canula attached to his hand and was wearing the sarong he had on in the hospital. Both of these indicated that he was an in-patient, however, despite this and Ranasinghe's assurances, he was chased away, and Maldeni Piyaratne was taken to the nearby Peradeniya Police station.

Ranasinghe rushed to the university and came back to the police station with Prof Parakkrama Karunaratne to intervene on his colleague's behalf. The time it took for the two men to return to the police station was no more than 30 minutes, however, by the time they arrived it was being washed clean of blood, and they were told by the police that Maldeni had been taken to hospital. At this time Nilmini Herat also arrived and saw the blood being washed off. The whole incident, ending in the victim's death, had taken only approximately 45 minutes. This suggest an extremely brutal type of assault. Nilmini Herat rushed to Peradeniya Teaching Hospital and saw her husband on a trolley. There were wounds on his hands and face, and he was bleeding; he was still alive. His hands and feet remained bound with iron cuffs. According to her, the doctors had attempted to give him oxygen but were hampered by the chains on his hands and feet. The police went back to the station to get the keys for the locks, but by the time they returned, Maldeni was dead.

Nilmini Herat immediately lodged a complaint stating that the Peradeniya police were responsible for her husband's death. The OIC Peradeniya is

K.M.S. Bovela. A post mortem inquiry conducted by the JMO at Kandy Hospital revealed injuries to the head as well as other parts of the body. There was speculation as to how Piyaratne came to be out of the hospital not long after his wife had seen him sitting and talking normally. Some injection may have been administered to him, causing mental disorientation. However, no explanation was offered or confirmed. The reasons for the police actions were completely unknown.

### **32. Susil Jayalath: A mysterious fall**

Uduwa Widanelage Susil Jayalath, a 19-year-old of Sapugaskanda, was arrested with two other people. According to the family, when the police arrested him he was drinking from a coconut in an area where the police had made a raid against drug-users. The family maintains that the boy did not use any drugs and in fact he did not even smoke. Precisely what happened to Susil after his arrest remains a mystery. What is certain, however, is that he died on 29 June 2002 while in custody of the Sapugaskanda Police station. The medical report issued by doctors at Colombo North Teaching Hospital indicates that injuries to his lower body were consistent with blunt force type injuries sustained due to direct blows. The lower injury is consistent with an injury sustained due to kicking and the upper injury is consistent with injury due to a direct blow on the back with a blunt weapon such as a wooden pole. However, according to the medical report, his death was not caused by these injuries, rather, the report observed: "The injuries to the head, back and the elbow mentioned above, when taken together, are consistent with injuries sustained due to the body forcibly coming into contact with a hard, rough surface (such as tarred-road) following a backward fall with some amount of movement thereafter."

The family claims that the boy was thrown out of the van in which the police were taking him. The police claim he jumped. What is not in dispute is that prior to either being thrown from the van or jumping from it, Susil Jayalath was in police custody, and had been beaten by the arresting officers. On receipt of the medical report, the magistrate at Gampaha Magistrate's Court issued instructions for a full inquiry. To date the case has not yet undergone a criminal investigation as required by the criminal procedure law or a judicial inquiry as required under the law. This case led to the largest protest by the people of the Sapugaskanda area in recent times. The police had to be removed from the area, and the military had to be deployed to bring the situation under control. The protest showed a very deep-seated resentment against the practices of the police.

### **33. Arthur Vithange & Anusha Vithana: “You will both be put in the house and burned”**

Arthur Vithanage, 60-years-old, and Anusha Vithana, 20-years-old, are a father and daughter living in Ovitigala, Mathugama. At about 1pm on 30 June 2002, a group of police officers from Mathugama Police station arrived at their house in a police jeep. Only the driver wore a uniform. SI Thennekone entered the property and in reference to Arthur Vithanage’s son began saying, “You prostitute dog (Tho vesa balla), where is Jayantha?” Arthur Vithanage was beaten with a club and dragged to the back of the house. While he was dragged he fell down several times. He was pulled up each time he fell down and was beaten. As the father was being beaten, his daughter Anusha ran towards him. Sgt Vithana hit her with a baton saying, “Go prostitute girl, find your brother (Palayan vesa kelle, ayyawa gihin hoyapan)”. Arthur Vithanage was dragged into the back of the house and beaten by both SI Thennekone and Sgt Ajith Vithana. The officers remarked, “Let us beat and break the leg of this old fellow, then his son will come running from wherever he is.” When his daughter again intervened saying, “Do not hit my father”, SI Thennekone hit her and pushed her. Arthur was then dragged to the police jeep while being beaten by Sgt Vithana, who shouted, “Get in, you son of a prostitute,” and pushed him inside. He was beaten further inside the police jeep, and his head was pushed onto an iron bar. Sgt Vithana further threatened Anusha, “This old fellow and you will both be put inside the house and burned.” SI Thennekone threatened to rape and kill her, saying that, “We will kill her after playing with her (Api mekiwa maranne mekith ekka selamkarala evarwela).”

Arthur Vithanage was taken to the Mathugama Police station, where Sgt Vithana continued beating him. PC Liyanage (No. 26166) and PC Anil (No. 13543)—who had travelled together with the party in the jeep—also beat him, in the presence of about 15 others. Then he was put inside a police cell. He was taken out at about 12:30pm the next day, July 1. He was threatened that his son’s hands and legs would be broken. He was told to sign a statement and then put back in the police cell again. He was produced before the Mathugama Magistrate’s Court at about 2pm the same day, with the charge of helping a suspect escape, and the magistrate gave him bail. Arthur Vithanage was hospitalised the same day, until July 3. While in hospital he made a complaint to the hospital police. Later he made complaints to the ASP Kaluthara, the IGP and the HRC. The Kaluthara General Hospital medical report indicated “grievous injuries... sufficient in the ordinary course of nature to cause death” inflicted with a blunt weapon. A fundamental rights

application on his case was also lodged in the Supreme Court, against the police officers involved in the assault, the OIC of the police station, the IGP and the Attorney General.

### **34. T.K.Hiran Rasika & E.A Kasun Madusanka: Torture of children**

On 8 July 2002 two children studying at Millika Mahavidyala (High School), were arrested and taken to the Hiniduma Police station over a theft from the school canteen. The two were 10-year-old T.K.Hiran Rasika, from grade 5, and 12-year-old E.A Kasun Madusanka, from grade 8. According to Hiran, the brother of the school canteen officer, Gamachige Saman, came to his house at about 6pm on 8 July 2002 and called for him to go to the Hiniduma Police station regarding some thefts. Hiran refused to go, and shortly after Gamachige came back with two officers from the police station, who were not in uniform. They took Hiran and Kasun to the police station together. As they went, one of the two police officers pulled Hiran by his ear and hair and said, “Kasun broke into the canteen, no? (Kasun cantena kaduwa, neda?)”. They went together with the canteen officer and his brother. At the police station the boys were told to admit their involvement in the theft. Two officers began assaulting Hiran, telling him to say that Kasun broke into the school canteen. They also tortured Kasun, demanding that he admit to breaking into the school canteen.

The boys were first made to kneel on the floor inside a room at the police station and were told to stretch out their arms, while heavy objects covered with police uniforms were placed on his hands. After some time, they were told to get up and hold both ears and to keep on jumping. Thereafter, Hiran was hit with clubs on his legs, thighs, and the back of his body. Objects were inserted under his fingernails. His hair was pulled with pliers. His penis was pulled several times, he was hung up by the legs, and the soles of his feet were beaten with a club. Kasun was also hit with clubs on his legs, thighs, and the back of his body, then his testicles were put inside a drawer and the drawer closed. His fingernails were pulled. The police assault took place from about 6:15pm to 12pm, when, due to intense pain and suffering, Kasun became willing to admit to breaking into the canteen. However, Hiran refused to admit to witnessing him having done it, so the assaults continued until he finally also agreed to do as the police instructed. Throughout the ordeal the boys yelled and screamed, but no other police officers came to investigate.

The boys were released without charge around noon on July 9. They were both taken to Hiniduma Police Hospital and then the Karapitiya Teaching Hospital at Galle, where they were treated until July 27. However, both are

suffering ongoing ill-effects from the torture, physical and psychological. Hiran Rasika and his father have submitted a fundamental rights petition to the Supreme Court with the assistance of W.R.Sanjeewa. The respondents are the OIC Hiniduma, the ASP Galle, the IGP, Attorney General, school principal, Palitha Hettigama, and school canteen manager, Shirromi Deepika and his brother. Hiran's father maintains that not only was his son not charged with any offence, but also at no time was his family informed of the arrest. In fact, Hiran was never detained with the intention of charges being laid against him, but rather to have him confess against his schoolmate.

The incident was reported on television and in other mass media. A leading newspaper, Divayina, questioned why the police were called to investigate the theft. It recalled the incident in Ambilipitiya where 28 school children disappeared after a school principal conspired with some soldiers to assist him with his private dispute. Meanwhile, the ASP Galle, rather than ordering a prompt inquiry into the incident in order to punish the perpetrators, reportedly said on the radio that the two torturers had since been transferred elsewhere.

### **35. Chaminda Premelal: "We will kill you and throw you away"**

V.G.G.Chaminda Premalal, a 16-year-old grade-11 student at Dibulagala Mahavidyalaya (High School), Polonnaruwa, was arrested and taken to Aralaganvila Police station while he was at home on 9 July 2002, at about 7:40pm. The arresting officers said that he was being taken for questioning over several theft cases. At the station, he was told that he was responsible for breaking into a hair salon and some houses in the area, which he denied. He was then beaten with a PVC pipe on his back, including his spinal cord, and on the soles of his feet. His head was pushed hard against a wall several times. He was then pushed onto the floor, and the officers trampled upon his body. He was held at the station overnight.

The following day, July 10, two police officers of the Crimes Division, Lalith Rajamantri and Nihal, who were drunk, and several other officers, took him to the top floor of the station. They showed him a rope and said, "We will hang you up; we will kill and throw you away. You know we can escape. We can say that you ran away on the way. We will break your hands and legs. We will hit you in a way you will die in a month." After that they continued to assault him. During the assault, Chaminda yelled and screamed, but no other officers came to investigate. Finally he shouted, "Don't hit me. My head is aching. I will admit to anything."

Then the torture stopped. He was taken home, but his personal belongings, including the bicycle he uses to go to school, a screwdriver and a calculator were kept in police custody. He was taken back to the police station and held there. The next day he came before a magistrate, and was ordered released on bail. As a result of being tortured, the soles of Chaminda Premalal's feet were swollen, and he had pain in his spine. He had headaches, vomiting, and confusion. He was treated at the hospital in Aralaganvila. A fundamental rights application was lodged on his case in the Supreme Court, against the police involved in the assault, the OIC Aralaganvila, the SSP Polonnaruwa, the IGP and the Attorney General.

### **36. S.A. Piyadasa, S.A. Milantha & Aruna Kumara: "A good meal"**

Subasinghe Aarachchige Piyadasa was a retired civil servant, married with three children, who now sells coconuts for a living. At about 8am on 30 July 2002, S.A. Piyadasa went to the Diamond Jubilee School to meet his grandson. At that time he became involved in a dispute with the security watchman of the school premises. Then a few teachers from the school intervened and settled the matter. Piyadasa's son, S.A. Milantha, learned about the dispute and came to the school, as their home is only about 500 metres away. After that they went home together. When S.A. Piyadasa arrived home he got ready to go to cut coconut. It was about 9am when five persons arrived at his home from the Panadura Police station. Two of them wore police uniforms and the other three were in civilian clothes. One of the persons in civilian clothes asked him, "Who is Piyadasa?" He replied that it was he. Later he learned that the person who questioned him was known as "Major". He then asked him where his son was. S.A. Milantha stepped out of the house. They called him to the compound in front of the house and told him to stay beside S.A. Piyadasa. They also called Piyadasa's son in law, Aruna Kumara, who was at home at that time, saying, "You too come here." Saying that, the "Major" took a stick and assaulted him with it. After that they removed the tee shirt of S.A. Milantha and used it to tie his hands behind his back. Then "Major" assaulted all three of them with the stick. The other four persons surrounded them and also started beating them. As they were being beaten, Piyadasa's wife and daughter watched from within the house.

Continuing to assault them, the police officers loaded all three into the jeep. They were taken to the school and told to get down. They were brought near the school gate and the police started beating them, asking, "Will you come to this school again?" The police ordered Piyadasa and Milantha to kneel

down and pay respect (by putting hands together and bowing) to the peon of the school, Gamini. Since they could not tolerate the beatings, they did so. After that the police ordered Piyadasa and Milantha to kneel down in the middle of the road. They ordered Aruna to leave. Then they ordered the two men to walk on their knees towards Galle Road. While they were walking on their knees, the police continued to beat them. They walked like this for about 100 metres. Then the police assaulted them again with sticks and took them into the jeep. From there the two men were taken to the Criminal Division of the Panadura Police station and after they arrived there the "Major" remarked, "This is a good meal." Inside they were assaulted again.

They were told to place their hands on a table and their hands were beaten with a stick. When that beating was coming to an end the police officer known as "Boxer" Jayasinghe began beating S.A Piyadasa on the head with a rubber pipe, causing him to become dizzy, so that he was made to kneel down. After that "Boxer" Jayasinghe beat S.A. Milantha with the rubber hose. Then a policeman who had been typing in the room began beating him also. "Boxer" Jayasinghe ordered Milantha to beat his father's feet. When he hit his feet only mildly, "Boxer" Jayasinghe began beating Milantha. After that he was forced to beat his father hard, who told his son, "Beat me, and there is no sin for that." At no point was an attempt made to record a statement from them or question them in a normal manner, and no complaint was made by anyone, nor any other evidence on the basis of which they would be suspected of any offences was told or explained to them.

After about one hour of this treatment, both of them were locked up in a cell. At about 3pm, "Boxer" Jayasinghe and another police officer took the two men to Panadura Hospital. S.A. Piyadasa told the doctor that he has been beaten and showed the wounds to the doctor, but the doctor ignored them. After that he and his son were brought back to the cell in the police station. At night S.A. Piyadasa cried out in pain, and for lack of medical treatment. At about 4:15pm the next day, July 31, both of them were released on bail. "Boxer" Jayasinghe threatened that if they were to go to a hospital, their house would be burnt. Because of that they did not go to hospital. Instead, on August 1, they got treatment from an ayurvedic (homeopathic) doctor. Due to the threats by the police and financial difficulties, S.A. Piyadasa did not make any complaint about the assault by the police. On August 7, however, they were brought before the HRC after their case had become known. Having made a complaint there, on August 8 they went to the Police Headquarters and complained, after which Piyadasa was interned for

three days while examined by the Pandura DMO. The doctor discovered that a bone in his lower left arm was broken and bones in the right arm were broken and crushed. Piyadasa then made a further complaint to the DIG Panadura. A fundamental rights application was also lodged with the Supreme Court, against the police involved in the assault, the OIC Panadura, the IGP Panadura Division and IGP of Police Headquarters, and the Attorney General.

### **37. H.K.Sampath: “I will plant bombs in your house and implicate you”**

Hettiarachchige Krishantha Sampath was a 22-year-old vegetable seller, and the sole income earner in his six-member family. At about 11am on 1 August 2002, six unidentified police officers from the Panadura Police station came to the Petitioner and told him, “We have to take a statement from you, get into the jeep.” Four of the six officers did not have uniforms on. The policemen also asked Krishantha, “Who were your friends who broke into the house opposite of yours?” When Krishantha said that he did not know about that the police officers told him, “Let us look into that at the police station.” At the Panadura Police station Krishantha was ordered to sit on a bench till about 2:30pm. Then an out of uniform police officer took him into a container in the police station compound. There he began severely beating Krishantha with his fists, on his cheeks, head and stomach. While beating him, the police officer used obscenities, and said, “Tell me who your friends are who broke into the house.” After beating Krishantha for about 10 minutes, he ordered him to sit on the bench in the police station again. He was subsequently forced to sign a statement, and released from the police station at about 5:45pm.

At about 2am on 3 August 2002, around five policemen from the Panadura Police station again came in to take Krishantha from his house. None of the police officers wore uniforms or informed him of their identities, nor why he was being arrested. None of them showed a warrant for his arrest. The police officers told Krishantha’s parents that he would be sent back home after giving a statement. Then they threatened the parents not to follow them to the police station, saying that if they did, they would cut off the tongue and then the head of their son, or would beat him till he become insane or mentally ill. A neighbour also witnessed Krishantha’s arrest, and submitted an affidavit on what occurred. Krishantha was taken back to the station by jeep, and after passing through a number of junctions arrived there at about 3:30am. After the jeep arrived in the compound, Krishantha was taken out of it. One IP Indrajith immediately began to beat his cheeks and head with

his fists. Then he was told to sit on the floor of the station and IP Indrajith assaulted him severely using a rubber hose. He then squeezed Krishantha's neck tight and dragged him by it to a cell and threatened him, saying, "I will hang you up and beat you, I will plant bombs in your house and implicate you for that and file cases against you."

At about 8am on August 3, Krishantha's aunt came to visit him. Krishantha informed her that IP Indrajith had beaten him. At about 9am Shiran de Silva was also shown to him. Shiran De Silva asked Krishantha about some things and then signed for his bail. Shiran de Silva is a former village security officer. Later Krishantha learned that his aunt had complained before the HRC. Subsequently, HRC staff spoke to the OIC Panadura and the latter agreed to release the detainee on bail. After his release, he was admitted to Kalubowila General Hospital, where he stayed from August 3 to 6. On August 5 about five police officers from Panadura Police station visited Krishantha at the hospital and questioned him about the incident, recorded a statement and obtained his signature for it. He lodged a fundamental rights petition in the Supreme Court against IP Indrajith, the OIC Panadura, the IGP and the Attorney General.

### **38. Koralagamage S.D.: Illegally detained and tortured for a week**

Police of Kaluthara South CID arrested Koralagamage Sujith Dharmasiri (aged 23), an army deserter, on 1 January 2003 and held him until January 9, during which time he was allegedly tortured. IP P.L.Abeysinghe and several other police officers took him while he was attending a funeral, and kept him in custody illegally for the week. Although his mother went to the police station daily from January 2, she was abused with filthy language and chased away on every occasion until January 7, when she was finally permitted access to her son. On January 8, she was challenged, "Try if you can to get him out by complaining to the HRC. We will see that he will not get bail." After that she was again chased away. Nonetheless, the family sought intervention by the HRC and local human rights groups, and after Sujith went missing for a short period on January 9, he was produced before a magistrate.

According to the family, Sujith was being deliberately kept somewhere outside the police station. During that time, the police took him to a doctor and attempted to get a medical report to the effect that there were no injuries on his body. However, Sujith told the doctor he was assaulted severely. The police then went to a magistrate and applied to hold Sujith on the grounds that he was needed for an identification parade. Without seeing or

questioning Sujith, the magistrate reportedly remanded him until January 20. He was subsequently bailed out, and has since filed a fundamental rights application in the Supreme Court against the police for torture, illegal arrest and illegal detention.

### **39. Bambardene Gamage S.P.: Beaten and humiliated for alleged theft**

SI Romiyal of the Matugama police station entered the house of 17-year-old Bambardene Gamage Suraj Prasanna together with another officer and arrested him around 1pm on 8 January 2003. SI Romiyal then allegedly began hitting Suraj in the face and asking him whether he was the one that stole the money from the temple, after which he pulled off his T-shirt and used it to tie his hands behind his back. He then continued to beat Suraj while dragging him along the road to a Dolphine van (licence plate 56-5183), which he then used to take the boy to the Matugama police station. After putting him in a cell, the sub-inspector reportedly took hold of Suraj's hair and beat his face against the iron bars. A number of other officers took turns hitting his face against the bars with his hair. At about 4pm, Suraj was taken out of the cell and made to crawl on his knees for fifteen minutes, during which time SI Romiyal beat him with his hands and feet and ordered him to kneel and worship other police officers by holding their feet.

The police released Suraj at about 4:30pm with the strict warning that if he returned home before dusk he would be killed. Through fear, the boy stayed near a shop until about 8pm, after which time he returned home; narrated the whole incident and was admitted to the Wattawe government hospital. He was treated there until January 10, after which time he was transferred to Nagoda General Hospital for further treatment.

### **40. T.A. Premachandra: Shot dead because of alleged traffic offence**

On 1 February 2003 at about 10:30pm, T.A. Premachandra, a father of two children, was driving his motorised trishaw home from his work as an electrician at the Ceylon Electricity Board, with two companions in the back. Two officers of the police traffic unit at Kaluthara South overtook the vehicle from the left on their motorcycle and shot the driver in the head with a T-56 rifle. The bullet entered the victim's head near his left ear and came out at his right eye, killing him instantly. The vehicle crashed into a lamppost and overturned, causing severe injuries to the two men in the back. When one of them tried to use his mobile phone to call his family for help, the police reportedly kicked him and confiscated the phone. A jeep from the Kaluthara South police station arrived shortly and took the two injured and the dead

man to the Base Hospital at Nagoda, where the dead body was handed over to the hospital, while the two injured were taken to the police station and arrested. They were not even given water till the post mortem examination was conducted the following day, February 2, after which time they were allowed to enter the hospital.

The two police officers responsible said that the driver was shot because he refused to stop when ordered to do so. They claimed to have been acting on information received from Wadduwa police station that the said vehicle had been involved in an accident with a van. They also claimed that the shot was fired at the tire of the vehicle but due to ruts on the road it went astray. ASP Jayantha Kulathilaka, heading the post mortem investigation, told journalists that the police had acted within the law.

#### **41. M.A. Fernando: “Get up, you are just pretending”**

While presenting his petition before the Supreme Court of Sri Lanka, Michael Anthony Fernando was sentenced to one year in prison for contempt of court by the same judge against whom he was bringing a petition. On 6 February 2003, while Fernando was presenting a writ before the Supreme Court of Sri Lanka he was convicted for contempt of court and sentenced to one-year rigorous imprisonment. One of the presiding judges was a respondent to Fernando’s claim. After Fernando was taken to Welikada Prison he was hospitalised there due to a serious asthmatic condition. As his health worsened, he was taken to the Intensive Care Unit of the General Hospital. On February 8, he was taken out of that unit and put in Ward 44, but there he was not given a bed and was instead made to sleep on the floor with his leg chained, as required by the prison authorities. Two prison guards stayed with him. Due to sleeping on the floor, he developed a chill and his condition again worsened. He was placed on a bed, but tossing and turning, he fell and injured himself. Then, although he was suffering pain all over his body, he was transferred back to the prison. Between 2 and 5pm on February 10, as he was being taken back to prison, he was beaten and kicked by the prison guards on the roadside and in the van used to carry him. On February 16 he submitted a complaint, as follows, which takes up the story:

“On 10 February 2003, I had an asthma attack again. By then, I was discharged from the hospital. Because of the unbearable pain from the asthma attack, I turned on the bed, and I fell. The pain in my back due to the fall was very severe, making it very difficult for me to get up. One hospital servant began to shout, “These prisoners do not want to leave, even when they are all right.

It is a terrible headache to us'... Then the prison guards prepared to take me to the prison. I got up and shouted, 'I cannot [go] as my back is severely in pain.' Then a person wearing khaki trousers, a white shirt and boots asked, 'Aren't you the person from Dehiwela? We know who you are. Get up, get up. You are just acting. We will look after you.' However, since I could not get up, I remained without moving. Then the prison guards carried me out of the hospital to a vehicle. I was put down by the road near the hospital, and the prison guards began to assault me in front of my father. The person who assaulted me was the one in plainclothes... When I was shouting in pain, my father (Oswald Emmanuel Fernando) came forward and begged the prison guards, saying, 'You cannot take him except in an ambulance.' The person in plainclothes did not listen to any of that. He caught me by the neck and pushed me inside the police van. My father shouted, 'Ayyo, they are trying to kill my son.' People at the ward gathered around the van hearing my father's cries. The only prisoner in the van was myself. Other than me, there was a prison officer, two guards and the driver. The person who pushed me into the van kicked me very hard and slapped me on both cheeks. I knelt down inside the van. Then I was kicked several times on my spinal cord with his boots. I felt frightened that I would be killed. I shouted and begged, saying, 'Do not kill me...'

When the van reached the prison premises, the same person said, 'You have no sickness. Get down without pretending,' and he gave me a few kicks. I felt as if my spinal cord had been broken. I simply could not get up. I told him I couldn't get up. Then I was put on a stretcher, which looked like those used for carrying corpses, and taken to a nearby extremely foul-smelling toilet and told, 'If you cannot get up, stay there.' Though I shouted many times 'I cannot bear the terrible foul smell; take me away from here,' no one helped. They were saying, 'You have no illness. You are pretending.'

Meanwhile, some prisoners came and told me to get up, to not pretend, and they harassed me. I felt that these prisoners came at the instigation of someone else. I begged them not to harass me. I may have been kept near the toilet for more than 24 hours. Then I wanted to go to the toilet. I shouted, asking for help. However, no one helped me. 'You are lying. Get up and go to the toilet,' someone cried from afar. As I could not bear the pain, I excreted there. I also found it very difficult to urinate. Though I shouted again to remove me from that spot, no one came to help me. Then someone came and removed all of my clothes, making me completely naked. He said, 'If you find it difficult to stay like this, get up and come.' I stayed a further 24 hours near the same toilet. Then I refused to eat or drink and observed a fast, demanding that I be given medical treatment...

Then my urine became blood red. My blood was passing with my urine, and the prison authorities became fearful. They brought me back to the intensive care ward of the hospital [Ward 72] on February 17, at night. I was brought in a van as I was told that the prison does not have ambulances. I was told that however, serious the prisoner's condition was, this is how a person would be brought to the hospital. At the hospital, I told the doctor about all of the cruelty and torture. I was told that what I had said was not recorded in the bed-head ticket—maybe because it was thought that it is not good to record that prison officers have treated a patient in this way...”

After Fernando's release from prison on 17 October 2003 he was subjected to continuous threats due to his active campaigning for his rights. He filed several cases against the prison guards who tortured him; however, the dates for hearings were postponed. He also filed a communication before the United Nations Human Rights Committee, and for a discussion of the outcome of that case please read the analysis of cases elsewhere in this document. Finally, he and his family moved abroad to escape harassment, including further threats on his life.

#### **42. Kurukulasuriya P.N.: Tortured, then imprisoned for 21 months**

Rev. Fr. Alfred Bernard Costa was killed on the night of 10 May 2001 at his mission house in Thillanduwa, Negombo. On May 13, Negombo Police arrested Kotagalage Gamini, and after gathering information from him, arrested Kurukulasuriya Pradeep Niranjana, a 30-year-old worker and father of four. As soon as Kurukulasuriya entered the Negombo police station, the police asked him whether he knew Kotagalage Gamini, and he told them he had only heard of him. Then he saw Kotagalage there, who told Kurukulasuriya to tell the truth about killing Fr Costa. He shouted at Kotagalage that he did not know anything about this. He realised that the police were falsely and purposefully implicating him and pleaded his innocence. The policemen began torturing Kurukulasuriya. They mutilated his hands and fingers and then they hung him upside down with his legs tied, while four policemen, supervised by IP Nishantha, hit him with cricket stumps on his back, legs, and soles of his feet.

At about 8pm the police took Kurukulasuriya to the house of Acting Magistrate Godfrey Cooray at Kandana. In the meantime his wife had come to look for him but could not enter the police station; people yelled that she was the wife of a priest's murderer. She could hear Niranjana begging not to be tortured. Then she went to the ASP's office and pleaded her husband's innocence, but the ASP did not respond. Meanwhile, the police took

Kurukulasuriya to Negombo Remand Prison, but did not register him as an inmate. Jailer Somaratne the next day beat him on a table while naked. After that the staff registered his name, and then another jailer named Senadeera tortured him, saying he murdered a priest. Then they took Niranjan to court, where the magistrate recorded his statement. Subsequently the Central Intelligence Bureau took over the investigation and ASP Priyantha Jayakody took him to Police Headquarters in Colombo and again recorded his statement. After that he was returned to remand where he languished until February 2003.

On 21 February 2003, the magistrate released Kurukulasuriya on instructions from the Attorney General, and said there would be no legal action against him. For 21 months Kurukulasuriya stayed in the remand prison and during this time people abused and defamed his family such that his children could not even enroll in school. They were also excommunicated from the church. Kurukulasuriya continued to suffer from the after-effects of torture and could not work outdoors to support his family.

#### **43. S. Hemachandra: Death for winning lottery**

Sunil Hemachandra, a 32-year-old rubber tapper, won Rs. 3,003,100 (USD 30,030) in a lottery on 29 June 2003. A few days later, hearing the news, some police officers visited his house and tried to extort money from him, without success. According to the family, at about 12:15am on July 24, police from Moragahahena station again came to the house, and arrested Hemachandra without charge. When his family went to the police station the next morning, July 25, they found him lying unconscious in a cell, bleeding from the nose. They claim that according to an eyewitness account, OIC Maheepala, PC Muthubanda and PC Wijemanna savagely beat Hemachandra. He was taken to the Horana Hospital and then transferred to the National Hospital in Colombo. However, he died in hospital on July 26.

According to the Moragahahena police, Hemachandra was arrested along with another person, Chanaka, who was wanted by them. When he objected to the arrest, he was also taken to the police station and locked up, police said. An officer from the station spoke on radio that Hemachandra had an epileptic fit and collapsed while at the station. However, he has no history of any illness. The DIG–Western Province South, K.P.P. Pathirana, meanwhile told journalists that the man had fallen and hit his head because he was drunk. A complaint regarding the arrest, torture and death was made to the ASP-Horanam, but he failed to take any action. Furthermore, according

to newspapers, the ASP was assigned to conduct inquiries into this case, along with the police officers from Moragahahena police station allegedly responsible for the death. The victim's mother and sister filed a fundamental rights application in the Supreme Court.

#### **44. R. Dhanapalasingham, R. Saravanaraj & M. Prabhakaran: An accident leads to assault**

While Ramaiya Dhanapalasingham, aged 23, Ramaiya Saravanaraj, aged 26, and his brother Muragaiya Prabhakaran, aged 25, were walking from the town of Bogawantalawa towards Chapelton between 5 and 6pm on 7 July 2003, two motorized trishaws came at high speed from the opposite direction. The first one hit Dhanapalasingham, throwing him off the road. Since the vehicle failed to stop after the accident, the men went to make a complaint at the Bagawantalawa police station. But before they arrived at the station, three police in civilian clothing stepped down from a jeep with batons and poles and began assaulting them. The men came to understand that one was the OIC of the Bagawantalawa police. Following the assault, they were then taken to the police station and beaten again. At about 10pm, a doctor arrived and after a discussion with the OIC, examined Saravanaraj. According to Saravanaraj, the OIC warned him not to tell the doctor that the police had assaulted him, but rather to blame it on the trishaw driver. While being examined, the OIC held a pistol against his brother and threatened to shoot him if he told the doctor what had really happened. According to Saravanaraj, the doctor did not ask him anything anyhow, and did not examine the wounds on his back caused by beatings with a pole, nor the injuries sustained by his brother.

The men were subsequently taken for treatment to the hospital, but while there when the men's parents, the chairperson of the District Council, and a local trade union representative tried to visit them the OIC chased them all away and told them they could come to see things in the court. After they were remanded in custody, a neighbour brought them food for the night but had hot water thrown at him. On July 8, the OIC forced the men to sign a document, which was later submitted as evidence to the Magistrate's Court at Hatton.

In the complaint, the police allege that the three men assaulted the trishaw driver. The men's lawyer pointed out that the three were actually assaulted by the police, and had Saravanaraj lift his shirt to show the wounds on his back. However, the magistrate was not interested and instead asked the

police why the guns given to them were not used on such occasions. The men were then remanded for a further 14 days. While at Bogambara prison, Dhanapalasingham was kept in the hospital ward for three days of treatment on the wounds he sustained at the hands of the police. After the men were bailed out, they were admitted to the Nuwaraeliya hospital and remained there for four days, during which time they made a statement to the police officer on duty.

However, efforts to make a complaint to the SP-Hatton had been unsuccessful. The ASP also refused to accept their complaint, but when presented with evidence by a representative of a local human rights group he recorded separate statements from each of the three men.

#### **45. C. Bandara Jayaratne: “Tell the truth, otherwise we will kill you”**

B.G. Chamila Bandara Jayaratne, a 17-year-old high school graduate, was hung from a ceiling and beaten by the police, causing serious injury to his left arm. He described what happened to him as follows:

“At around 4:30–5pm of 20 July 2003, one civilian personnel attached to the Ankumbura police station (Kandy) came to my family’s house. At that time I was the only one at home. He told me to come with him and took me to a waiting police jeep. There a police officer, whose name I later learnt is Sgt Premasiri, took hold of me and gave me several blows, saying, ‘You have scolded someone who helped us to catch some thieves!’ He hit me hard on the face and body about ten times, then handcuffed me. I was put in the police jeep, and saw one of my cousins, Upali, was also there. There were two uniformed officers in the jeep, and one kept the butt of his gun on Upali’s head. He said, ‘You tell the truth, otherwise we will kill you.’ Another boy was also in the jeep. We were then taken to the Ankumbura police station. Inside the station, SI Senevirathna held me, bent my head, and hit me very hard on my spine. Then he hit me on my face with his boots and pushed my head against the wall. I was taken to a hall inside the station, and handcuffed to a bedpost. I was verbally abused in crude language and told by the same officer that he would come at midnight and if I didn’t tell the truth, he would teach me a lesson. However, nobody came at that time.

The next morning, at about 9am the OIC of the police station came and told me to tell the truth or I would be assaulted. I was then taken to another place where there was a bed, and the OIC told me to remove my shirt and lie face down on the bed. There were several officers present. One person, who was not wearing a uniform, sat on my back. Someone held tight onto my legs. Then the OIC and another officer hit the soles of my feet. The OIC hit me

with a cricket stump and the other officer hit me with a cane. I was told to admit to thievery. I said that I didn't know anything about any theft. They continued to hit me. Then petrol was put into a polythene bag and poured out, after which the polythene bag was tied onto my face. I was told that if I didn't tell the truth, I would be burnt. I was hit for about one hour more. I was told to get off the bed and to keep jumping, but because I did not jump high enough, the OIC hit me with a pole. I said that I didn't know about any thefts. Then the OIC said that, 'No one knows you have been arrested,' and called out, 'Let's kill him.' He told the others to hang me from the ceiling beam. My hands were swung behind my back and my thumbs tied together with a string, then they put a rope between my thumbs and hung me from a ceiling beam. One officer pulled the rope so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numb. The OIC kept hitting me on my legs and soles with the cricket stumps. He hit me on my thighs, and asked me who my friends were. Because of the unbearable pain I gave him names and said, 'Though I didn't do any thefts I am willing to admit to anything.' The OIC said, 'That won't do. Till you tell us about all the thefts you have done, one by one, we will keep you hanging—we will tie a stone to your legs.'

After that I admitted to every theft they told me about, one after the other, just to escape this unbearable situation. The police officers then told me that they would take me to a jewellery shop at Ambathenna. I was told to say that I had stolen two rings and a chain. After about half an hour, four police officers put me along with another person in a jeep and took us to my friend Saliya's house. Saliya was brought to the jeep. He asked me why I did all this but I didn't say anything. We were all taken to Ambathenna. The police pointed towards a person and told me to say that I had given the stolen items to him. I was again threatened that I would be hung up by one hand. I did as I was told. Although I didn't know the person at all, that person was also taken to the police station with Saliya and I. I later learned that another friend was also brought to the police station. I was brought before these persons and asked whether they had also engaged in the robberies. Because of fear, I did not dare to answer. They told me that I could be made a state witness if I said that the other two had committed the thefts, but they said I was not to tell anyone that they had tortured me. If a doctor asked me, I was to say that the handcuffs damaged my hands. I was told that if I mentioned anything about the torture there would be trouble in the future. The OIC said that 'everything is in our hands' and 'don't get things messed up'.

On July 27, Upali, my friends and I had our fingerprints taken. After that, we were made to sign in the middle of a page among four or five empty pages. At about 6pm we were all taken near the Ankumbura Government Hospital and

while we waited in the jeep, officers went in and brought some papers back to us. We were not taken to the doctor. We were later taken to the magistrate's official house. The police told the magistrate something and then we were taken to the Bogambara prison, where Saliya and Upali were detained. Three others and I were taken to the remand prison at Rajaveediya. When I was admitted to the prison I informed the prison authorities about the injuries I had suffered at the hands of the police and requested treatment. I was given some tablets but no medical examination was done. I was also not kept in the prison hospital. On July 28 my mother was finally able to meet me there. I was released on bail on July 30.

On July 31, I was admitted to the General Hospital in Kandy and was under treatment for six days. The doctors told me that due to the torture the damage to my left arm is likely to be permanent. When I went to the police post of the General Hospital of Kandy to make a complaint about the torture, the request was refused and I was told to make the complaint at the Ankumbura police station. On August 11 I was readmitted to hospital, and told that I will have to have an operation to try to correct the injuries caused by the torture.”

Chamila and his family were forced into hiding after they made complaints about the case, and filed a fundamental rights application in the Supreme Court. The case also received enormous publicity in Sri Lanka. A local human rights organisation protected Chamila. The alleged perpetrators meanwhile coerced local criminals into intimidating the family, and police directly threatened Chamila's mother.

The alleged perpetrators attempted to fabricate a case against Chamila by forcing some boys to testify that the victim's injuries were caused by a fall. Chamila attended the UN Human Rights Committee session held in Geneva at the end of October 2003 as part of a delegation from the ALRC and the World Council Against Torture (OMCT). When the Human Rights Committee met the delegation, Chamila narrated his case to the Committee. On the next date of the session, the Committee inquired about Chamila's allegations with the Sri Lankan government delegation. One of the delegates stated to the Committee that the allegations were completely false. The basis of this statement was a report filed by the Kandy Area Coordinator of the HRC. This report was compiled without even taking a statement from Chamila or his family, and without referring to the medical certificates. The AHRC immediately demanded that the chairperson of the HRC dismiss the area coordinator without delay. The HRC then reopened the inquiry and named its Director of Investigations as the inquiring officer.

A further inquiry was initiated into the conduct of the Kandy Area Coordinator. Shortly thereafter, several local human rights organisations took exception to the manner in which the reopened inquiry was being conducted. Thereafter an independent inquirer, Dr Irvine Jayasuriya, was appointed to conduct both inquiries. The OMCT organised for a specialist to examine Chamila while in Geneva. The doctor concluded that the injuries he had sustained were consistent with his allegations of torture. Fortunately, the doctor was able to report that Chamila was likely to be able to make a recovery due to his youth and good health. Had such torture been inflicted on an older person, it is almost certain that the injuries would have been permanent, as suggested by the doctors who did the initial examination.

#### **46. Bandula Padma Kumara and Saman Kumara: Tortured for allegedly stealing a bunch of bananas**

Chamila Bandara was not the only child being tortured by the police at Ankumbura between 20 and 28 July 2003. Bandula Padma Kumara and Saman Kumara, two brothers aged 14 and 17 respectively experienced similar treatment from the same police. On July 20, Bandula was arrested for allegedly stealing a bunch of bananas. After his arrest, his mother was refused access to him. His brother was arrested at home at about 7pm on July 22. Both boys were kept at the police station until July 28, when they were remanded in custody by a magistrate after police fabricated cases against them through the use of torture. The torture included hanging by the thumbs and being pulled on the legs, and a practice cynically described as dharma chakka ('Wheel of Law'; a Buddhist doctrine). In this method, the victim's arms are tied to the knees so the body forms a circle; a pole is inserted between the arms and body and the person is rotated on this while being beaten on the soles of the feet. The boys were later released on bail.

#### **47. S.P.Wijekone: Seven-year-old tortured over shop theft**

At about 4:30pm on 29 July 2003, OIC Wijeratne and two other policemen of Polipithigama went to the house of seven-year-old Wijekone Mudiyansele Sujith Priyantha Wijekone, in a vehicle belonging to the Polpithigama Multi Purpose Cooperative Society, and looked for him. Sujith's mother was not at home, so the OIC sent someone to bring her to the house. After she arrived, the OIC said that he wanted to take Sujith to the police station because he had broken into a cooperative shop and stolen some goods. His mother protested his innocence, but the OIC told her to bring her son and his sister to the police station before 7am the next day.

As she could not refuse, the mother took her two children to Polpithigama police station the next day. A constable questioned the children until 1pm. Then the OIC took Sujith into his room alone. His mother heard her son scream, but was helpless. The OIC kept Sujith for about one hour. Later Sujith told his mother that the OIC had beaten and threatened him. In the afternoon the police took Sujith and his sister in a police vehicle and searched for a 13-year-old boy called Aruna. After arresting Aruna, the police released Sujith's sister. At about 7:30pm they put Sujith and Aruna into a cell. When Sujith's mother protested the treatment of her son, the police turned her away.

On the morning of July 31, Sujith's mother came to the police station again and saw Aruna's family there also. OIC Wijeratne told them that he would release the two boys if they would pay for the goods stolen. They refused, and at about 3:30pm went to an attorney. After the attorney intervened, the OIC agreed to bring the two boys before the magistrate at Mahava. At midnight the magistrate released the two boys on bail.

#### **48. Udayanga Perera: Torture victim continues to be victimised three years after incident**

On 7 August 2003, Udayanga Perera, an 18-year-old schoolboy at the time, was arrested and subjected to severe torture by policemen attached to the Wewelwatte police post. As a result, Udayanga suffered injuries to his ear and had to be warded for several days at the Ratnapura hospital. Later, he lodged a complaint regarding the incident to the relevant authorities, including the HRC.

Udayanga says that the Ratnapura police then fabricated a false charge against him and several others before the Ratnapura Magistrate's Court (Case No. B1318/03; 54821), namely for causing minor harm to a policeman. Subsequently, the police officer in charge (OIC) of Wewelwatte police post then allegedly told Udayanga that the police were willing to withdraw the case against him in exchange for his withdrawing his own complaint before the HRC. However, Udayanga refused any such suggestions, and as a result, the case was referred to the Mediation Board on 21 January 2004 for possible settlement.

When the case was called on 22 February 2004, Udayanga refused to settle the case, and thus the Mediation Board sent the case via the police back to the Ratnapura Magistrate's Court. However, for the next two and a half

months, the police mysteriously failed to forward these case documents to the court, though clearly required to do so by law.

This was an unacceptable situation to Udayanga who was anxious to clear his name and move on with his life. Therefore, on 28 August 2006, he forwarded a motion through his lawyer to the court, requesting that his case be called up before the court. The Ratnapura Magistrate's Court has since called the case four separate times—i.e. 18 September 2006, 16 October 2006, 29 November 2006, and 17 January 2007. However, the case was unfortunately postponed on each of these dates due to the non-appearance of the complainant (the police). The magistrate then issued a warrant for the arrest and production before the court of the accused, but according to Udayanga, the police are deliberately shirking their responsibilities in executing this warrant, despite the fact that the complainant has been seen in the vicinity. Udayanga claims that this purposefully caused court delay was a further attempt by the police to harass him.

Therefore, Udayanga once again complained to the IGP, Attorney General, NPC and HRC about this extremely unsatisfactory state of affairs and furthermore, demanded that the Ratnapura police act in accordance with the law and proceed with the case.

#### **49. Kurupanawa Gamage N.: Beaten and framed**

Around 7-8pm on 17 August 2003, officers of the Udugama police station arrested Kurupanawa Gamage Nihal near Kondalawatta Bridge, while he was going to the lake for a bath. Six or seven people wearing civilian clothes came and asked whether he was Nihal or not. Even before he answered, one later identified as SI Wijekoon immediately began to assault him with a pole, until the pole broke and Kurupanawa was on the ground. Then SI Wijekoon and other officers continued by kicking his legs, face, back and other parts of his body, breaking his nose and causing bleeding from his nose and face. Although Kurupanawa's brother arrived on the scene and pleaded for the police to stop, they did not do so.

After the police took Kurupanawa to Udugama police station he bled constantly, so three officers took him to Udugama District Hospital. The doctor who examined him advised that he be hospitalised immediately. Kurupanawa was admitted to the hospital and two police officers remained with him. While there, SI Wijekoon and another officer from Udugama station forced him to put his thumb print on a bottle and also forced him to

sign some documents. They did not explain what the documents were about, and under any circumstances Kurupanawa was only semi-conscious, and at that time thought he was dying. The next day two police officers forced Kurupanawa to leave the hospital and go with them to a magistrate. The magistrate ordered him remanded for 14 days, but Kurupanawa did not even know the charges against him. When he was brought to the prison at Galle, he asked the prison officers to be sent back to hospital for medical treatment; however, they ignored his complaints.

On August 21, Kurupanawa's relatives succeeded in bailing him out. He then went back to the Udugama District Hospital. The doctor who examined him told him that his condition was serious and that he should be hospitalized immediately. He was admitted to the Teaching Hospital at Karapitiya and discharged on August 27, after being advised to get further treatment. According to the medical report given by the JMO K.I Premathilaka, Kurupanawa had the following injuries to his head:

1. 3cm horizontal lacerated injury on the left side of the parietal region 3cm from the mid line and 11cm above the left ear
2. Bilateral black eye below the eyes
3. 6cm circular in swelling on the left parietal region

The family complained to the ASP of Udagama.

### **50. Garlin Kankanamge S: Body buried in hope of second post mortem**

Garlin Kankanamge Sanjeeva, a 25-year-old soldier, was going home on 27 August 2003 when officers of the Kadawatha police station arrested him on allegations of robbery. The next day he was dead in a cell. The police claimed he had hanged himself with the belt of his trousers. However, Garlin's mother said that her son's feet were on the floor of the cell when she saw his hanging body, although the sketch made by police does not show his death this way. She also claims to have seen blood flowing from the lower part of her son's body, and a wound on one of his arms. The family insisted that a proper and impartial inquiry be held and a second inquest take place because they do not accept the post mortem conducted in the police station. On September 1 they buried the body in a private garden out of fear that the police would come to try to take it and destroy the evidence of their actions.

As Garlin was a soldier, the military police conducted an inquiry into this case. In their report, a copy of which was issued to his mother, the inquirers

cast doubts about the police version of events. Despite this report, the police authorities are not known to have undertaken any further inquiry into the case, after interdicting the two police officers on duty at the time for negligence over the alleged suicide.

### **51. R.M. Loku Banda: Found dead in prison cell**

Around the same date as Garlin lost his life, 60-year-old R.M. Loku Banda had a dispute with two villagers about a road construction. Police from Maturata station intervened and took Banda away. He was later found dead in his cell. Although the reason for his death has not yet been revealed, local human rights groups alleged torture. His son complained to the authorities and the family lodged a fundamental rights application in the Supreme Court.

### **52. M. Riswan, S. Ravichandran & A. Latief: Beaten with a brick and broomstick**

On 30 August 2003 at about 12:30pm 23-year-old Suppaiya Ravichandran was driving a motorised trishaw carrying 23-year-old Mohamad Ameer Mohamad Riswan and 30-year-old Abdul Karim Mohamad Roshan Latief. A van containing about six plain-clothes police officers from Wattala station stopped them. The police forced the men into the van, blindfolded them and took them to the police station. At about 7pm several police officers, particularly SI Navaratne, severely assaulted the men. The assault continued during the next day, and that night they were taken to the office of the DIG North Colombo at Peliyagoda, which is the police headquarters for the area. There a senior officer assaulted the men on their legs, stomachs, chests and hands, and forced them to confess to involvement in a robbery, about which they knew nothing. When the men pleaded innocence the officer assaulted them with a brick, and when he beat Riswan on the ears with the brick, the victim began to bleed from the nose. After the brick broke into pieces an officer from Wattala brought an old broomstick, which the senior officer used until it also broke. All the men suffered severe injuries, especially Latief, who was continuously assaulted for about 30 minutes. He was also stabbed with the broken end of the broomstick and was bleeding from the chest. Latief was again attacked the following night, and he alleged that he was tortured while hung from a beam.

On September 1 the men were brought back to the Wattala Police station, where they were locked up. They were given only some water while in the cell. That evening, their family members came to the police station to meet

them, as did three officers of the HRC, after receiving a complaint from the family. They took written statements and also noted their injuries. They ordered the police to produce the men before a JMO, and the police obliged. After the JMO's examination, the victims were produced before a magistrate, from whom the police obtained a detention order so as to investigate alleged involvement in the drug trade. However, throughout the torture the police reportedly never questioned the men about such activity. Rather, it was only after the HRC visit that SI Navaratne told the men that since they complained to the HRC they would be implicated for possession of narcotic drugs. The men have since been charged with theft, and drug-related offences, which they deny. Latief and Riswan have since filed fundamental rights applications in the Supreme Court.

### **53. Hikkaduwa Liyanage S.: Innocent boy endures week of agony**

Hikkaduwa Liyanage Sandun Kumara, aged 16, had to leave school after his father's death to support his family, and started work at a factory owned by one Piyasena in early August 2003. However, he later left this work and went to Ampara. On 10 September 2003, Sandun's aunt was informed that the Rathgama police were looking for him. He came back home and went to the Rathgama police station on the morning of September 12. The police questioned him until 3pm and threatened him to reveal the whereabouts of stolen goods, about which he knew nothing. Then they released him and told him to come back the next day. At about 1pm on September 13, Sarath and Bandula Silva, family members of Piyasena, came with their brothers to the Sandun's house, to take him to the police station. They told him it was only to record a statement and promised to return him within an hour. However, they took him to Piyasena's house instead, and called the police station saying that they had caught the thief.

After that, at around 3pm they brought him to the Rathgama police station, and handed him over to SI (Crimes) J.T. Ramyasiri. Sarath and Bandula Silva, their brothers, and some police officers took Sandun to the backyard of the police station. SI J.T. Ramyasiri held him by his T-shirt collar and lifted him off the ground, demanding he reveal the whereabouts of the goods that he had stolen. He kicked Sandun's legs and dropped him onto his back. Then, he trampled him with his shoes, and hung him up on a tree by the waistband of his trousers before dropping him onto the ground. While the police assaulted Sandun, Bandula Silva spoke to the police inspector. After that, at about 5pm Bandula and Sarath Silva and their brothers took Sandun together with some officers in civilian clothes to Piyasena Mudalali's house.

There they served alcohol, cigarettes and food to the police. While they were drinking, the police officers assured the brothers that they would get the lost items from Sandun. Then, they threatened him that they knew what to do to him if he did not tell them the whereabouts of the stolen goods.

All of them returned to the police station at about 6:30pm. The police took the victim to a cell containing beds with iron railings and handcuffed one of his hands to one. They gave him some food, but no water. The next day, September 14, the police took Sandun to another small building further away from the backyard of the police station, where there were beds and a bathroom. The officers ordered him to remove his clothes and applied chilli powder to his genitals while he begged them to stop. After that, they wrapped his head and face with his T-shirt and poured water on it, suffocating him. They held the T-shirt for about one minute and repeated it about four times at two to three minute intervals. After that, they freed his hands and ordered him to face the wall. They then beat his back, buttocks and legs with their hands and wooden sticks. After assaulting him, they put him back in the cell, where he was handcuffed to a bed again. At about noon, the police officers took Sandun to a cemetery in front of the navy camp at Boosse, near his home, and ordered him to dig a grave. Then, they immersed him in a water pit. Bandula and Sarath Silva and their brothers were present in their white van nearby. Sandun was brought back to the police station at about 1:30pm and was cuffed to the bed again. Several police officers took turns assaulting him with hands and wooden sticks. At about 4pm, the police took him inside the small building again, removed his clothes, repeated the suffocation torture, and assaulted him.

On September 15, the police repeated the torture. He was also dragged along sandy cement floors until his feet were bleeding. That evening, Sgt Silva and another officer took Sandun to the beach behind the police station and ordered him to run. They threatened to shoot him, and then assaulted him with a stick while he was handcuffed. The assaults continued into September 16. At about 12:30pm on September 17, the victim's mother was permitted to meet her son for the first time since he was taken into police custody. She noticed how he walked with great difficulty, had a black eye, and his skin below the ankles was swollen and red. His elbows and knees were wounded, and he could sit only on the edge of the chair. After seeing her son's serious condition, she requested the police to provide him medical attention, which was denied. That evening, Sgt Silva hit Sandun's head against a wall, and struck his ears with his shoes about five times. He also kicked and trampled his legs.

The police produced Sandun in court on September 19, and then sent him to the Kithulampitiya Remand Home. The officers of the remand home admitted him to the Karapitiya Teaching Hospital on September 21, where he was treated and discharged, but readmitted on September 23 because of severe headaches, chest pains and hearing loss. On September 24, Sandun was produced in the Galle Magistrate's Court and released on bail. His family filed complaints with the HRC, NPC and in the Supreme Court, which has ordered the NPC to investigate. However, after making the complaints they received death threats.

**54. Dawundage P: "It is good that you came, otherwise I would have been killed"**

At around 10:30pm on 1 September 2003, about six police officers from the Saliyawewa police post in Puttalam, dressed in civilian clothes, came to the house of 14-year-old Dawundage Pushpakumara's sister and threatened to shoot their cousin, Nishantha, if Pushpakumara did not go with them. They grabbed his neck and pushed him into their van, where he saw four bottles of liquor. According to Nishantha, the police officers went to Pushpakumara's house from the house of one Jayathilaka, where they had drunk liquor and threatened to shoot Nishantha if he did not show them Pushpakumara's house. Inside the van several police officers assaulted Pushpakumara, telling him to confess to stealing a gold chain. They took him to Saliyawewa police post and threw him into a cell. Then they tied his hands behind him and hung him on a beam, and the OIC and several others assaulted him. Then they put him in a room full of ants with his hands still tied. When his parents went to police station to see their son, they saw Pushpakumara hanging from a beam with his hands tied behind him with a fibre cord. His mother asked an officer to get access to her son, but a police officer told her that the OIC was not there and to come the next day. Meanwhile about ten to fifteen persons claiming to be the owners of the chain came to the police station and threatened to get the police to harm her son if he did not return the chain. The police officers did not react to any of the threats.

The next morning, Pushpakumara was allowed to speak with his mother and sister, and he showed them his wounded hands, legs, head and chest. He added, "It is good that you came last night, otherwise I would have been killed." The OIC asked Pushpakumara whether he took the chain and he said no. Then the OIC allowed him to go home with his mother. After Pushpakumara went back home, he complained of headaches, and fainted. The next morning the General Hospital of Puttalam admitted him. On

September 5 the police officers told the mother and sister that Pushpakumara was not a thief and the real culprit had been arrested. The police officer told them to remove Pushpakumara from the hospital and asked the supposed owner of the chain to give one thousand rupees to the mother. Then two police officers and the owner of the chain took the mother and sister to the General Hospital, Puttalam at about 7-8pm. There, the police forced Pushpakumara to leave the hospital, fearing that a medical record of his injuries could be used against them in court.

Pushpakumara fell very ill at home, and the next day a person told him the thief was going to be released and that he would be re-arrested, so he should go back to the hospital. However, due to police pressure the hospital would not admit him. Attempts to get help from the child welfare office also failed for fear of the police. A human rights organisation reached the family and tried to take the child to a hospital outside the area. The National Child Protection Authority was informed of the situation and took Pushpakumara to a hospital in Colombo, where he was treated.

Meanwhile, a complaint was filed on his behalf in the Supreme Court. The family came under severe pressure from the police to stop making complaints. Police officers of the Saliyawewa police post, as well as prominent politicians, threatened to burn the family's house if they pursued the matter. Pushpakumara was taken under the protection of a local human rights organisation, and his parents were forced to flee their home, fearing for their lives.

### **55. C.P.S. Anthony & C.J. Lafaber: Victims of dispute over plastic cups**

On 5 September 2003, 29-year-old technician Conganige Pradeep Surendra Anthony and 23-year-old hairdresser Christopher Junius Lafaber were helping a friend, Anthony Jurie, manage his stall at a church fete. At about 10pm two drunken officers from the Mutwal police station came to the stall to get two plastic cups. When a dispute broke out over the cups, the police abused and slapped Jurie, and asked him, "Are you selling these cups to the police?" Jurie then went to Mutwal police station with his son, but the officer there refused to record a complaint. After that, he went at about midnight to Police Headquarters in Colombo Fort to lodge a complaint. Meanwhile, Anthony and Lafaber stayed at the stall. After Jurie had gone SI Sujith Ganganath and three other officers drove up to the stall and arrested the two men without charging them or explaining anything. They took them back to the police station and began to beat them with hands and feet. The two men

asked why they were being beaten, but the blows just continued until they couldn't stand any longer. SI Sujith Ganganatha then hit Pradeep's nose with the handle of his pistol, causing bleeding from both nostrils, after which he was told to go and wash away the blood. The two men were then put in a cell.

At about 3am the police took Anthony and Lafaber to a DMO in Ragama, who instructed the police to admit Anthony to a hospital. They then took the two men to the Accident Ward of the National Hospital in Colombo. Lafaber was kept in the vehicle, while Anthony was taken inside and X-rayed, but brought back despite advice by doctors that he should be kept in the hospital, as his nose was fractured. The two men were brought back to the Mutwal police station, and when family members came they were told that the men were not there and chased away.

At about 1pm on September 6 the police took Anthony and Lafaber to a magistrate at Hulftsdorp and fabricated a story about a clash between the two men and some other persons who escaped—hence the men's wounds. The two men were released on bail, after which they went to complain at Police Headquarters. On September 24 ASP Nanayakkara held an inquiry into the complaint, and took statements from all three of the men involved.

### **56. Okanda Hevage J: Beaten to death over 284ml of alcohol**

On 5 September 2003, Okanda Hevage Jinadasa, a 50-year old mason and father of five, was returning home by bicycle after work. Two civil personnel attached to the Okkampitiya police post stopped him and searched his belongings. They found two packets of illicit liquor, equalling 284ml. They beat him and brought him to the police post, where they reportedly beat him again with fists and posts, and squeezed his testicles and neck until he died. Police personnel took his dead body to the Okkampitiya government rural hospital, pretending that he was unconscious. A doctor examined the body and pronounced that he had died before arrival.

The police said that Okanda fell from a chair and died. The Monaragala Magistrate who held the inquiry on September 7 ordered the body to be sent to Karapitiya [Galle] Teaching Hospital for an autopsy. The JMO who did the autopsy reported that he found injuries on the body caused by blunt weapons. But he further stated that Okanda's death was not due to these injuries, and reserved his decision on the cause of death till further investigation was completed.

**57. Raman Pillai K.: Robbery victim tortured**

On 6 September 2003, unidentified robbers attacked 42-year old Raman Pillai Kesam Nayar Ashokan while he was carrying the money from the till of a wine store where he was working as cashier. The robbers put him inside a van and used some chemicals on his face, which made him unconscious. When he regained his consciousness, Raman found himself inside a police jeep. Around 8:30pm, he was brought to the Katugastota police station and was questioned. He told the police that he was robbed. Around 9:30pm his employer arrived at the police station. After the owner talked to the police for about 10- 15 minutes, the police accused Raman of stealing the money and assaulted him while asking questions. Then they put him in a cell, and later took him to a doctor at Katugastota hospital, and then to the DMO. After examining him, the DMO said that a chemical like chloroform had been used on him, and that the police should take him somewhere with better facilities for an examination. However, the police brought Raman back to the station and returned him to a cell.

According to Raman, the police then took him upstairs and removed his clothes. They ordered him to lie down and blindfolded his eyes. Then, they beat him hard with something that felt like a cane or a pole. The police kept asking him whether he took the money, and where he put it. They threatened to push him out from upstairs and kill him. One officer told him to tell the truth while hitting his soles and feet. Then the police forced him to jump up and down. They also told him to carry a police officer and walk stamping his feet heavily on the ground. After that, a police officer hit his nose with a baton. He again forced the victim to lie down and three civil personnel sat heavily on his back, while the police again hit him on the soles.

Later, the police put Raman back in a cell. Then they forced him to sign a statement about which he knew nothing. They took him to a magistrate, who ordered that he be remanded. While in remand, he had difficulties breathing and had severe pain in his back and soles. He was bailed out only on September 16, and received medical treatment at a private clinic on September 17 and 18. However, his condition became worse and he was hospitalised at the Peradeniya General Hospital on September 22. While in hospital, his family received threats from some unknown persons.

**58. Hikkaduwa Liyanage Sandun Kumara: Hung from a tree and dropped to the ground**

In September 2003, a 16-year-old boy, Hikkaduwa Liyanage Sandun

Kumara, was arrested by the Ratgama Police over false charges and was subsequently tortured. He was arrested over allegations he stole an item which he knew nothing about. The police kicked his legs, dropped him on to his back and trampled him by his shoes. They also hung him up to a tree using his trousers waistband before dropping him to the ground.

### **59. Dope Pathiranalage L.: Hung by the thumbs**

On 22 October 2003, police attached to Bentota police station brutally tortured Dope Pathiranalage Lasantha Priyankara, a 33-year-old labourer and father of two. At about 1:30pm that day, he had gone to the police station to inquire why some police had come looking for him. When he asked the OIC why he was wanted, the OIC, SI Silva and two other policemen took him to a back room, without any explanation. At the time, all of them were wearing civilian clothes. As soon as they entered the room, all of them started to assault Dope. They used a cricket bat, wooden clubs and a rubber hose. While they assaulted him, they kept asking him whether he had broken into a house and stolen some goods. As he denied this, the OIC and others stripped him, tied his thumbs together and hung him up by them. While in that position, all four policemen assaulted him again. He repeatedly stated his innocence—even in that position—and then the police brought him down, untied him, and threatened to kill him. The OIC pressed his trousers and T-shirt to Dope's face, until he was nearly suffocated. When they failed to get a confession, the police twisted his arms behind his back, tied his thumbs together and hung him up again. They renewed their assault, and SI Silva started to stab Dope's belly with a broken bottle. They continued this until he fell unconscious.

After that Dope was taken to a rural hospital several kilometres away, bypassing Bentota Government Hospital. He was given a saline injection and brought back to the police station. Then the OIC told him to go back home. Dope told them that he could not even move, and showed them blood still coming from his wounds. Then the police took him to the Bentota Government Hospital. While he was in the police vehicle, the OIC went inside and spoke with the DMO. After some time, the OIC brought some medicine and gave it to him. Then, the police told him to get out of the vehicle and go home. He went back home with great difficulty, after which his family took him for treatment.

### **60. Bamunuarachchi Pathiranalage S.: Hung from the ceiling**

At 10:30am on 1 November 2003, two police officers in civilian clothes

from the Kuliypitiya police station arrested Bamunuarachchi Pathiranalage Sathkumara at his friend's house. The police did not give any reason for his arrest. On the way to the police station, they collected a woman whom Bamunuarachchi recognised as living nearby his friend's house. At the police station, the officers took Bamunuarachchi into a room and ordered him to remove his shirt, belt, and wristwatch. Then they started to beat him severely with a wooden pole. They asked whether he had broken into a house and stolen some goods, of which he knew nothing. Later he found out that a burglary had occurred at the woman's house. The police ordered Bamunuarachchi to lie on the floor and beat the soles of his feet hard for ten minutes. After that, they put his hands behind his back and hung him from a ceiling beam by a nylon rope. Officer Pushpakumara and another policeman then swung him for 45 minutes, causing extreme pain to his shoulders and arms. After he was removed from the beam, the police officers ordered Bamunuarachchi to jump up and down and run outside, also causing him great pain after the torture.

After that, a policewoman took Bamunuarachchi's money and bought some medicine for him. He was released at 6:45pm, at which time they warned him not to go for hospital treatment, lest records of his injuries be produced. Nonetheless, his brother took him to the Kuliypitiya Hospital and he was kept there until November 4. While there, the police officer on duty at the hospital took a statement from him about the torture. A JMO also examined him and took a report. His brother also made a complaint to the DIG-Kurunegala.

### **61. S.L. Kulathunga: Public outcry after custodial death**

Three officers in civilian clothes, led by Sgt G.W. Siripala, arrested and beat 29-year-old Samarathunga Liyana Arachchige Kulathunga on 10 November 2003 at the front of his family house in Nivithigala, for 'indecent behaviour'. Kulathunga was taken to the Nivithigala police station, where he was reportedly assaulted and suffered serious head injuries. However, PC Sugath claimed he was injured when jumping from the police jeep on the way to a medical test. On November 11 they admitted him to Wathupitiya Base Hospital. When local people heard about the assault, it provoked a huge outcry. Thousands of persons gathered around the police station, cut down trees, barricaded the road and burnt tires to express their anger. Around one thousand persons also gathered at the hospital. However, Kulathunga was transferred to the National Hospital in Colombo, where he died of his injuries on November 12.

On November 13 Kulathunga's father told the Additional City Coroner M.Ashroff Rummy that his son had been savagely beaten in front of him. He claims that around 6:30pm on the day of the arrest he heard his son shouting to someone not to kill him, at the front of their house. "I saw two policemen beating my son on his head and neck. Thereafter they bent him and hit him on his back," he reported. "When I attempted to save him a policeman beat me on my shoulder and I ran away in fear." Around 15 other villagers witnessed the attack, including his brother; however, they did not assist Kulathunga out of fear that they would also be assaulted.

### **62. Nishantha Kumara: Fifteen-year-old beaten for failure to locate illicit alcohol seller**

At 11:30am on 3 December 2003, four officers from the Department of Excise came to 15-year-old Nishantha Kumara's house in a cab. One officer called Nalaka was in uniform, and the others were in civilian clothes. At that time Nishantha was at home for lunch after working in the paddy fields. The officers immediately handcuffed him and asked him whether he knew a person called Chutte, an illicit alcohol seller. The officers accompanied Nishantha to search for Chutte, however, they could not find him. Then the officers took Nishantha to a nearby forest, and on the way there, the officers beat him. They then put his hand on a stone and pounded it. After that Nishantha was brought back to his house, by which time his father was there. The officers then took both of them to the forest, and Nishantha's father was forced to take a barrel to the place where the cab was parked. Then the officers forced Nishantha and his father to sign some forms, about which they knew nothing. Nishantha's aunt, who came to see him at that time, also had to put her signature on the forms. After that, the officers threatened to charge Nishantha with possession of illicit alcohol if somebody did not come to certify the forms. The officers also threatened to take Nishantha's aunt if they were unable to appear before the court. Nishantha was admitted to the government hospital of Pimbura on the same day. He was discharged after three days, although his hand had not yet healed. He has lodged a complaint with the police; however, they have not taken any serious steps to investigate this case.

### **63. S.J. Pallekanda: Accused of car theft**

On 6 December 2003, officer Hemantha and other police from the Katugastota police station came to the house of P.M.Hemapala in Pallewatta, Pitawala, Nawalapitiya, and searched for his 22-year-old son Shiron Jeewantha Pallekanda. As he was not at home, they took his photo from the

house and told his father to sign a statement, the contents of which they did not explain. Then they told him to bring his son to the station on December 7. He replied that his son could not go because he had been told to report to the Kekirawa police station on Sunday. The officers told him to bring his son in the afternoon. Pallekanda went to report to the Kekirawa police station at about 11am on December 7, with his father. The police kept him until 7:30pm, on request of the Katugastota police. Around 7:30pm the police from the Katugastota arrested him on suspicion of vehicle theft, and took him back to their station. His father followed them in a lorry, and then went home.

The next day, December 8, when Pallekanda's brother went to see him around 4pm, he found that his brother had been severely beaten. He came back home and informed his father, who arrived at the station around 7:30am the following morning, December 9. His son told him that he had been severely beaten and vomited as a result, after which he had been taken to a private doctor but not given any proper treatment. The police told the father that they could not produce Pallekanda before a magistrate because their investigation was incomplete. An hour later, he came back to the station with a lawyer, and the police promised the lawyer that they would produce the victim in court on December 10. The father came to visit again around noon, and an officer told him that his son had been taken into a room to record a statement. Then the father heard his son cry out. After Pallekanda came out he told his father that the police were beating him in the room. When the father complained, the officers threatened him that they would remand his son if he came to the police station again. At the time of the Urgent Appeal being issued, Pallekanda was still in custody.

#### **64. Jayasekara Vithanage S.: “I will make sure that you will no longer have a normal sex life”**

On 7 December 2003 Jayasekara Vithanage Saman Priyankara, a 32-year-old poultry farm owner and father of two, went to Matale police station after being called by the officer assigned to his village. The officer told him that there was a complaint against him by some local authorities regarding the dredging of sand for his new house. However, the concerned personnel did not come to the station, and eventually the officer asked him some questions and told him he was doing nothing illegal. He then had Jayasekara buy a bottle of glue and two pens, and give Rs. 500, after which he prepared a document and gave it to Jayasekara to sign, while assuring him it would end the matter. Although Jayasekara did not understand the document, he signed

it out of fear and with the assurance that he could continue to dredge the amount of sand he needed. Then the officer told him that he would come to the village on December 13, at which time Jayasekara could dredge the sand. Jayasekara went home, and on December 13 dredged some sand as he was assured he could, and noticed the police officer in the village.

However, the officer then approached him and told him to stop dredging at once, to which Jayasekara replied that the officer had told him he could do so. After that, the officer began hanging about at the front of his house, and out of nervousness Jayasekara called the ASP Matale to inform him that he was being intimidated. The ASP asked him to come to the office to complain. When, at around 5pm, a group of officers from Matale police station arrived at the house by jeep, Jayasekara's wife told them that her husband had gone to the ASP's office to lodge a complaint. One officer asked about the details of the complaint, and she explained. The officer then spoke to the police station using the house telephone, and stated that the problem was only about sand dredging, and not about a theft. After that the police left. At about 4:30pm on 5 January 2004, SI Panagoda, a sergeant, and three other officers in civilian clothing from the Matale police station arrived at Jayasekara's home. They entered the house and told Jayasekara that they needed to take him to the police station. When he asked why, he was given no reason and nor was he charged. Instead, SI Panagoda hit him on his cheek and back, handcuffed him and told him to get into the jeep.

When they arrived at Matale police station, the police took Jayasekara, still handcuffed, into SI Panagoda's room. There, SI Panagoda told the officer assigned to Jayasekara's village to plug in an electric kettle. After some time the officer came back with a large jug of boiling water and a small cup. SI Panagoda approached Jayasekara and told him that they would take revenge on him for arguing with their colleague, and while ordering him to tell the truth began pouring the boiling water very slowly down his right leg. Doing this, the officer pouring the boiling water told Jayasekara that he would see to it that he would not have a normal sex life in the future. The water in the jug took about 10 minutes to finish, during which time Jayasekara begged the officers not to go on with the torture. After that the officer assigned to his village removed the handcuffs and put him in a cell, where he removed his sarong and checked the burns. Then Jayasekara saw that the whole of his thigh was covered with blisters. The policeman then gave him a bottle of medicinal oil and told him to apply it to the wound. After that, Jayasekara was left in the cell for the whole night, during which time he was given no food, water or other medication.

At around 12:30pm the next day, January 6, Jayasekara was taken from the cell and told to leave the police station by the rear door. There, SI Panagoda warned him not to report the incident or seek medical help for the wound, or he would be killed. He also said that the police would keep a watch on him, and visit his home often to check. Jayasekara went home, and out of fear complied with the police instructions. The officers also followed through with the warning, visiting his home several times in uniform, and a number of other times in civilian clothes. Finally, at around 12:30pm on January 20, SI Panagoda himself and another officer came looking for Jayasekara at a time that his mother was conducting an alms giving. Jayasekara hid in the house, and SI Panagoda called out that but for the alms-giving event, he would not have spared Jayasekara that day.

After that, Jayasekara made a written complaint to the ASP's office, and approached a photographer to document his wounds. On January 21 he went into Kandy General Hospital, where he was treated and examined by a JMO. On January 22 he complained to the Kandy Police station while on his way home, and on January 30 the ASP called him to his office in Matale on January 31 to take a statement. The NPC Officer in Kandy also investigated the case, and according to its chairman has "initiated necessary action" against three police officers. Jayasekara filed a fundamental rights application in the Supreme Court on February 2.

**65. Ashoka P. Kumara, Saman Puspakumara, N. Ratnayaka, W.P. Piyadasa, Nilantha K.Rajapakse, Chaminda Sureshkumar, U.N. Jayantha Premalal & S. Niyamaka: Victims of New Year's revelry**

On 31 December 2003 four policemen in civilian clothes from the Gokarella police station came to Baddegama village in Madahapola and sought information about illicit liquor. They approached 20-year-old Ashoka Pradeep Kumara and 17-year-old Saman Puspakumara and asked, "Where do you get illicit liquor?" When the men said that they don't get it, the policemen severely assaulted them and took them to their vehicle, later abandoning them. The two were hospitalised in the rural hospital at Polgolla, but the following day, 1 January 2004, they were forcibly dismissed. Saman was admitted to Kandy Hospital on January 6. According to the doctor's examination, his lower abdomen was damaged and he was complaining of dizziness due to blows on the head. The doctor recorded his statement describing torture by the police.

In the meantime, at about 5pm on December 31, Saman's mother went to the Gokarella police station to lodge a complaint. When she met OIC Janaka Manapperuma, he said that he was not aware of the incident. At that moment, there were over 200 people at the police station having a New Year party. Most were policemen, retired policemen and their friends. Most were also drunk. Among them was IP Weeraratne, who is a suspect in a pending murder case who has nonetheless stayed on in the police service. Under his leadership, most of the people at the party went to the village. Arriving at the village, this group of some 200 policemen and their supporters mercilessly assaulted the villagers with poles and cycle chains. They went inside the only shop and destroyed its contents. The villagers could not resist because the policemen were armed with rifles. The OIC came later with the torture victim's mother and saw what was happening, but could not stop the assault. Five persons were seriously injured during the attack: R.M. Newton Ratnayaka, a 29-year-old amputee, was pushed to the ground and trampled; U.N. Jayantha Premalal was also beaten on the stomach and shoulders; Nilantha Kumara Rajapakse was seriously injured in the right ear; W.P. Piyadasa, aged 70, was dragged along the ground, causing serious injuries to his knees, hands and face; and Chaminda Sureshkumar was also wounded.

The police arrested Premalal, Rajapakse, and one S.A. Somaratne, and charged them with obstructing police actions against illicit brewing. However, the people in the village had in fact been conducting an anti-drug and anti-alcohol campaign, and had themselves organised many activities to prevent thefts and other social problems in the village. After arresting the three men, the police took them to a private medical centre at Ibbagamuwa. The doctor who examined them told the police that Premalal and Kumar should be admitted to hospital. However, IP Weeraratne took all three to the Gokarella police station and locked up Somaratne before taking the other two to the rural hospital at Polgolla, in Ibbagamuwa. The next day the police produced Somaratne before a magistrate and remanded him at Kegalle Prison. However, the doctor at Polgolla did not want to admit the two injured men as their conditions were serious and the hospital not equipped for such cases. She gave the hospital ambulance and requested the police go to the Teaching Hospital in Kurunegala. The men were taken under guard and admitted. On January 1, Premalal was operated on, but Rajapakse did not receive proper treatment. On January 2, the Kurunegala Magistrate came to the hospital and ordered the men remanded at the Prison Hospital in Kegalle. On January 8 all three appeared at the Kurunegal Magistrate's Court and were granted bail. The next hearing will be held on 25 March 2004.

After being released, Premalal re-entered the Teaching Hospital at Kurunegala. Rajapakse went to Colombo to have his ear examined. Meanwhile, after the arrests 25 villagers and the abbot of the Buddhist temple had gone to the police station to ask for the men to be released. The police allowed only three people and the monk to go inside, and only the monk could speak to the OIC. The OIC told the monk that if he had any complaints, he should refer the matter to the ASP, who had just arrived for the New Year party. However, the ASP said that he had come for a celebration, not to entertain complaints, and promised he would come to the village with two typewriters at 11am the following day to inquire into the incident. Unfortunately, he did not keep his commitment. The villagers went to the police station again to lodge their complaint, but the police did not take any action. After this the villagers selected five representatives to report the incident to the NPC and HRC in Colombo, and officials from HRC came to investigate. However, because of this visit and media attention, the police at the Gokarella station came to the village and threatened people to withdraw their complaints. They also stopped the bus service to the village.

#### **66. Tennakoon Mudiyansele G.: Beaten over a missing bicycle**

On the evening of 31 December 2003, Tennakoon Mudiyansele Gunesekera, a 39-year-old waiter and father of three, was sleeping in front of the Chandrasena Hotel after work. Around 10:30pm six drunken policemen attached to the Mahiyanganaya police station came to look for a policeman's bicycle parked near the hotel. When they could not find it, they woke up Tennakoon and questioned him. When he could not answer, they surrounded him and severely assaulted him with wooden bats. When he fell to the ground, they trampled him. The following evening, 1 January 2004, Tennakoon's wife found her husband lying on the ground in the marketplace. She later went to Mahiyanganaya police station to lodge a complaint, but the police tried to hush up the case by offering her Rs. 500, and refused to record her complaint. Tennakoon was hospitalised in Mahiyanganaya and his statement taken by the police officer on duty at the hospital, at the request of the DMO. His ribs were damaged due to the attack. A local human rights organisation helped his wife send letters to the NPC, HRC and DIG-Uva.

#### **67. D.G. Premathilaka: "It's you we're searching for!"**

Around 8:30pm on 8 January 2004, D.G. Premathilaka and his wife went to buy some biscuits for their little daughter from the local shop. On the way, someone shouted, "It's you we're searching for!" and suddenly some people started to assault him. He was hit hard on the head and face, then pulled into

a van and driven away, while his wife was by the roadside. The next morning, January 9, his wife received a call that her husband was at the Katugastota police station. She sent her brother there to get the facts. Upon arrival, he saw Premathilaka collapsed on the floor in the remand cell. After signing a paper, he could bring his brother home. According to Premathilaka, some of the police had severely assaulted him at the station.

That afternoon, the family admitted Premathilaka to the Kandy Public Hospital. However, about 1:30pm the next day, January 10, the hospital forcibly discharged him, saying he had no serious injuries, even though he complained of a severe headache and inability to move his neck. There were also some wounds on his legs and arm. After being discharged, he was admitted to the Peradeniya Hospital. Speaking to a local human rights group, Premathilaka explained that he had previously been involved in illegal liquor sales, but had left the business. After he gave it up, the police were angered that he no longer was paying the bribes necessary to conduct such business and fabricated charges against him. According to Premathilaka, they were further angered when he pleaded innocence in court, and the attack seems to have been punishment.

**68. Koralaliyanage P: “This is where your heart is and I am hitting so that you will die in two months”**

Koralaliyanage Palitha Tissa Kumara is a prominent artisan and 31-year-old father of two engaged in restoring two houses in Galle Fort in their original 17th century style. He took leave from this work on 2 February 2004 and returned to his house at Halwala, Matugama that night. About 8.30am the next day, February 3, a police jeep and Pajero arrived at Koralaliyanage’s house. There were four officers in the jeep and six officers in the Pajero. SI Silva got out of the Pajero and called for Kumara. He told him to come to the Welipenna police station and help to make the police emblem for Independence Day celebrations on February 4. Koralaliyanage put on his shirt and came out as instructed. But when he reached the Pajero, SI Silva took his pistol and hit him on the chin three times, drawing blood. Then he booted Koralaliyanage’s back and told him to get in. Koralaliyanage was pushed underneath a seat, and the car proceeded. The two vehicles went to the house of Galathara Don Shantha at Galathra junction. Galathara was also brought out of his house, and put in the jeep. Several other young people were picked up on the way back to Welipenna police station.

After arriving at the police station, the police took Koralaliyanage to SI Silva’s

room, and he was told to sit on the floor. The other persons were taken to the cells. A little later, Galathara was brought in and made to sit opposite Koralaliyanage. Then SI Silva took a cricket stump and started hitting Koralaliyanage repeatedly, between the shoulders. While hitting him, he told Galathara, “Look—this is how the others will also be treated.” He pulled up Koralaliyanage and kept hitting him hard all over his body. Then he told Koralaliyanage, “Give the bombs, give the weapons, and tell about the robberies you have committed.” Koralaliyanage said he knew nothing about weapons or bombs, and begged the officer to stop hitting him. However, the beating went on for possibly two hours, and in that time Koralaliyanage recalls being hit about 80 times, on all parts of his body, soaking his clothes with blood. The blows were at times so forceful and wild that the officer also hit and smashed an electric bulb on the ceiling. Throughout this time, Galathara was watching in terror. Koralaliyanage noticed that he had involuntarily urinated on seeing the manner in which Koralaliyanage was beaten up. After this, other officers became concerned at the relentless beating and savagery of the attack. Another came in and said to SI Silva, “Are you trying to kill this man? Stop this hitting.” However, he did not stop. Then the officer left and came back with about eight other officers, and one of them pulled the cricket stump out of SI Silva’s hands.

At this stage SI Silva left and came back with a person named Sarath who according to him had tuberculosis. The officer forced Koralaliyanage to open his mouth and had Sarath spit into it, telling Koralaliyanage that he would also get tuberculosis and die. Koralaliyanage pleaded not to do this, saying that he would catch the disease and spread it to his wife and children, but to not avail. On seeing this, the officer who had already intervened brought a bottle of water and told the petitioner to wash his mouth. At this stage Koralaliyanage began to lose consciousness. After a while, he found himself in a cell. There, at a later time the same officer brought a mattress for him to sleep on, but about 30 minutes after SI Silva showed up took it away.

Koralaliyanage was first kept in the cell for about three days. In that time he often vomited, and could not eat or drink. He could not even urinate in the corner hole, despite attempts by Galathara, who was locked in the same cell, to help him. Each time he tried to stand up, severe pain in his right ear caused dizziness and disorientation. On the third day SI Silva came and told Koralaliyanage to get up, raise his arms and bend down. Koralaliyanage found it very difficult, and so the officer punched him in the chest about 13 times, and once in the face. While punching him he said, pointing, “This is

where your heart is and I am hitting so that you will die in two months.” On another occasion SI Silva came and handcuffed Korallaliyanage to a bar of the cell door, and then pulled the door up and down, injuring his wrist.

During these three days, Korallaliyanage’s wife was able to visit him on February 4 and 5, and give some medicine to treat his wounds. The officer who had earlier intervened in his case also brought surgical spirit. Also, on February 5, 40–50 persons were brought to the police station at various times and shown the detainees. Two cameramen in civilian clothes also came and took separate photographs of the detainees. On February 5, the third day of detention, some other officers took Korallaliyanage to Itthapana District Hospital. The doctor who examined him refused to admit him because his injuries were too serious. The police brought him back to the station and then again took him to the hospital, to be examined by another doctor, who also said he could not be admitted there. After that the police took Korallaliyanage to the Wetthewa Government Hospital, where he was likewise refused admission. But while there, a lawyer came and met him and talked to the police officers, after which he followed them back to the station. The lawyer demanded the police bring Korallaliyanage before a magistrate, and waited for some time at the station. However, eventually he came to the cell and told Korallaliyanage that it did not seem that the police would bring him before a magistrate and because of other commitments he had to leave.

That night SI Silva came back to the cell and took a grenade out of its packing. Then he pulled Korallaliyanage’s hand through the bars and took his thumbprint with warm ceiling wax, which he in turn he planted on the grenade. He took down Korallaliyanage’s personal details and came back with a statement that he forced him to sign, without explaining anything of the contents. He also fingerprinted Korallaliyanage. In the morning of February 6 Korallaliyanage was again taken to Wetthawa Government Hospital, but he received no treatment and was kept handcuffed while the police went to get a signature on some documents from one person there. Then the officers brought him back to the police station. At about 5.30pm he was taken to an office in the Magistrate’s Court of Matugama, where he was produced with several others before an acting magistrate. Korallaliyanage told the acting magistrate that he was severely assaulted and that his thumbprint had been planted on a grenade, and asked for medical treatment. A lawyer appearing on his behalf requested that he be examined by a JMO, which the acting magistrate duly recorded. After the hearing, Korallaliyanage was taken to Kalutara Remand Prison and admitted to the prison hospital. On

February 10 he was again brought before a magistrate, and on February 12 he was taken to a JMO at the General Hospital of Colombo. Several doctors examined and noted his injuries, took X-rays and photographs. The JMO has instructed that he be brought for further examinations. Two cases were filed against Korallaliyanage, for possession of a grenade and for robbery. Meanwhile, he lodged a fundamental rights application in the Supreme Court.

**69. D.G. Athula Saman Kumara: Taken from the marketplace**

On 16 February 2004, a group of police officers came to the wholesale market at Katugastota, in Kandy, where D.G. Athula Saman Kumara was carrying out his business, and took him to the Katugastota police station. His wife went to see him in the evening of the same day and found that her husband was severely wounded by torture conducted by the police officers. Kumara told his wife that the police did not give any reason for his arrest, or make any record. Later that night his wife went to see him again and saw her husband suffering in great pain caused by the torture.

At the time of this report, Kumara was still in detention and his full circumstances unknown. His wife has lodged complaints with the HRC and NPC in Colombo and sought urgent intervention to get medical treatment for her husband.

**70. Bellanavithanage S.Y.: Shot dead because of a family quarrel**

On 22 February 2004, four officers of Baduraliya police station led by SI Dammika went to investigate a complaint of a family quarrel at the house of Ayasha Damayanthi, the sister of 22-year-old Bellanavithanage Sanath Yasaratne. Finding no one at the house, they were returning to the station when they saw Bellanavithanage at a shop. Recognising him, PC Suriyaarachchi approached him to question him about the complaint. While investigating him, PC Suriyaarachchi reportedly started to beat Bellanavithanage hard with his truncheon. The victim tried to escape the blows by running away. Another officer fired two shots and Yasaratne fell in the street. According to the many eyewitnesses, the police abandoned Bellanavithanage and did nothing to help him. Later, his brother and several other people took him to the Wattaewa Hospital. However, he died while being transferred to the General Hospital in Colombo.

A post mortem inquiry by the JMO at Nagoda Hospital confirmed that the death was caused by gunshot. The victim's family wanted a full inquiry; however, they feared that the perpetrators would attempt to make a false story to avoid liability for the death.

**71. Dehiwatte Gedera Jayathilaka: Accused of possessing illicit liquor**

On 9 March 2004 policemen led by SI Bandaranayake, from the Yatawatte Police Security Barrier under the Mahawela Police station arrested Dehiwatte Gedera Jayathilaka. When Jayathilaka was at a bus station, the police accused him of possessing illicit liquor and took him to the Mahawela Police station. At about 6:30 that evening, Jayathilaka's son, D.G.S. Rupakumara, was informed by the Mahawela Police that his father was in custody and to come, bail him out. When the son thus went to the police station Jayathilaka told him that the police brutally assaulted him and he was suffering from severe pain all over his body due to torture. After the son signed the bail form, Jayathilaka was released around 11pm and they left the police station in the three-wheeler. On the way home the victim had asked his son to buy a bottle of wine saying he wanted to have a drink to relieve the pain in his body. The son obliged and though he also wanted to take the victim to see a doctor, Jayathilaka said he would go to hospital the next morning. Because their house was located in a hilly area, Jayathilaka got out of the vehicle and walked towards the house, while the son parked the three-wheeler nearby. When the son got home his father was not there, but thinking his father had gone somewhere nearby, he went to sleep keeping the front door open.

However, on the following morning, a neighbour, Somawathie, found Jayathilaka's dead body in front of his house. His son rushed to the Mahawela Police station to lodge a complaint about his father's torture and resultant death. But according to him, the police did not properly write down his statement. The same day, people of the village gathered in Mahawela Town to protest against the OIC and SI Bandaranayake of the Mahawela Police station for causing the death of Jayathilaka. The victim's body was taken to the Kandy Hospital for the post mortem examination and returned to his house on 11 March. The JMO, Kandy who examined the body certified at the inquest that the victim's ribs were broken and there were bruises found all over his body. It was also reported that funeral arrangements of Jayathilaka were undertaken by the Mahawela Police. A fundamental rights application was filed before the Supreme Court.

**72. Muthuthanthrige Chamal Ranjith Cooray: Died in custody**

Muthuthanthrige Chamal Ranjith Cooray was arrested on 17 April 2004 on suspicion of theft and died in custody two days later, allegedly as a result of police torture. At the time of arrest he was a resident of Egoda-uyana, Moratuwa and a labourer at a timber sawmill. Reportedly on this fateful day, two persons named Felix and Babu handed Cooray over to the Modara Police

Post accusing him of breaking open the till placed at the statue of St Mary and stealing the collection. At the police post police had allegedly severely assaulted Cooray and taken him to the Moratuwa Police station, where he was further tortured. According to an eyewitness, Dinesh, who was also arrested together with the deceased, the police had hit the victim on his head and brutally kicked him on the rest of his body with boots. As a consequence of the onslaught Cooray collapsed unconscious but the police did not afford him any medical treatment. The next day the deceased had been produced before the Moratuwa Magistrate and remanded. On 19 April he was released on bail. Upon arriving home his relatives noticed that he was in a critical condition and rushed him to the Panadura Government Hospital. But within half hour and before they reached the hospital he was dead. The post mortem was conducted on 20 April at the Panadura Government Hospital and the coroner reported that the victim's death was due to assault. However, Cooray's family opined that since they were very poor the chances of a fair and impartial hearing into the death of their loved one were also slim. They were later informed that two persons responsible for Cooray's arrest, Felix and Babu, had been arrested and remanded for assaulting the deceased before handing him over. The deceased's family feared that the police were now shifting the blame on these two people in a blatant attempt to cover up their own excesses.

### **73. Senarath Hettiarchchilage Abeysinghe: Death due to 'natural' causes**

At the time of his death, Senarath Hettiarchchilage Abeysinghe was a Reserve Police Constable (RPC) at the Trincomalee Police station. On 17 May 2004, Abeysinghe had been found dead in his bed, and it was said that he had died in his sleep. The message of his death was conveyed to his wife, C.P.E. Pathirana, who was resident in Colombo at the time. The same day, Pathirana accompanied her father to Trincomalee. The inquest into the death was held the next day (May 18), during which Pathirana expressed her doubts about the cause of her husband's death. That is, she said that the deceased had earlier confided in her that he had been severely assaulted at the police station and admitted to the Trincomalee Hospital (from 23 to 29 April 2004). However, when she had inquired about the incident, he told her that he would give her all the details later. Pathirana complained that despite her inquiries, no one had given her a plausible explanation for her husband's sudden death. Some have told them that it was a death due to natural causes, while others stated that he had died due to drinking.

After the inquest the victim's body was brought to the Trincomalee Police

station and on the same day taken to Balangoda with police escort. The Trincomalee Police had undertaken all funeral arrangements and the deceased's wife was also paid Rs. 25,000 from the police welfare fund. The funeral was held on 20 May 2004 with police honours. Later, some policemen at the Trincomalee station informed the wife that the deceased was on duty even at the time of death, as he had not signed off. Then 10 days later when Pathirana opened the bag containing her husband's belongings, she discovered some papers from one of his shirt pockets. Included was a photocopy of a letter sent by Abeysinghe (during his stay in hospital) to the HRC in Trincomalee to which a prompt reply had been sent by the HRC dated 28 April 2004 and signed by one V. Mathiyaparam. Pathirana also discovered the diagnosis report from the hospital issued on 29 April 2004, which indicated that Abeysinghe had been a victim of police torture.

The letter and medical reports provided reasonable grounds for suspicion in this case. Furthermore, Pathirana also said that her husband maintained a diary, but this could not be located, as the police had not handed it over to her. She also recalled that while he was alive, Abeysinghe had complained about problems with his Mess Manager, Jayathilaka. And in his complaint to the HRC-Trincomalee, he had mentioned that Jayathilaka had attacked him with a wooden stirrer used for cooking rice.

#### **74. Madugoda Ralalage Don Saman Priyantha Gunaratne: Murdered by police**

M.R.D.S.P.Gunaratne was a businessman dealing in building materials. He conducted his business from the residence of his fiancée who was a main investor in his business. She had been widowed earlier when her husband, a soldier, was killed in action. According to Guneratne's fiancée, after her husband died, she was harassed by SI Silva of the Welipenna Police station to enter into a sexual relationship with him, which she had refused. Notwithstanding, SI Silva relentlessly harassed her by way of night visits to her home and other unsolicited approaches. She had complained to the police about SI Silva's behaviour, but little or no action had been taken to stop him.

Meantime, she had developed a romantic liaison with Guneratna. Then on 30 May 2004, around 7:30pm, Gunaratne had allegedly been brutally murdered by two policemen of the Welipenna Police station. He was shot dead with a T-56 weapon while returning home in his vehicle. Eyewitnesses to the incident said that the two policemen had tried to escape after the shooting

but that villagers had apprehended them and prevented their escape. After they were apprehended, the two policemen attempted to justify their illegal action saying that they were compelled to shoot the deceased when he refused to stop his vehicle as ordered. They also said that Gunaratne was transporting illicit timber, but eyewitnesses said that his vehicle was empty at that time. At the inquest held in the Mathugama Magistrate's Court on 8 June 2004, the lawyer looking after the interest of the deceased's family brought the following to the attention of the Magistrate: a) The police version that the victim was transporting illegal timber was false; b) The two policemen were in civilian clothes; c) The two policemen were using a private motorcycle; d) They tried to escape after the shooting; e) The projectile removed from the head of the victim during the post mortem was handed over to the police and taken away by them without proper sealing; f) Though there were many witnesses to the incident who came forward, the police had not recorded their testimonies.

Despite these disturbing facts being brought to the attention of the court, the magistrate had not made any order or observations on them. An ASP was put in charge of collecting evidence at the inquiry. However, the victim's relatives were pessimistic about the impartiality of the police inquiry and were of the view that there was a blatant attempt to fabricate facts and justify the homicide.

#### **75. Alagiyawadu Lakmal Chathuranga and L.P. Pradeep Kumarage: Pressure by Ambalangoda police on torture victims**

On 7 August 2004, police in civvies from the Ambalangoda Police station arrested Alagiyawadu Lakmal Chathuranga, aged 15 and L.P. Pradeep Kumarage, aged 14, on the accusation of stealing a gold chain. The two boys were then taken to the police station without being accompanied by their parents, in violation of law.

The boys were then allegedly stripped naked and blindfolded at the police station, where they were brutally assaulted by the police officers with wooden sticks. The two boys were released on 9 August 2004, after their parents paid Rs. 3000 (USD 29) to the police and signed a dubious statement written by the police.

Later on the parents of the boys lodged a complaint against the concerned police officers to the IGP, NPC, HRC, Attorney General and others. The HRC began an inquiry into the incident, while the IGP referred the case to

the Special Investigation Unit (SIU) whose officers had visited the victims' home and recorded several statements.

Meanwhile the alleged perpetrators started threatening the family of Alagiyawadu Lakmal Chathuranga to withdraw the complaint made against them. The mother of L.P. Pradeep Kumarage also made several complaints to the HRC of Sri Lanka, the NPC and the Attorney General regarding the threats made from the police authorities against her and her family.

Apparently, the HRC of Sri Lanka has conducted an inquiry into this complaint made by the victims' families however, it seems there are no recommendations directed to the police authorities on this matter.

#### **76. Bamina Hannadige Gamini Fernando: No criminal action against two policemen after HRC confirms torture of a man**

On 2 September 2004, Police Sergeant R.W.W. Palihawadana (Police ID No.22488) and SI K.A Padmasiri of Moratuwa police station arrested Bamina Hannadige Gamini Fernando. These two police officers, without a warrant or any evidence, arrested and allegedly inhumanly tortured Gamini while in custody at Moratuwa police station. Gamini was stripped, hung and assaulted brutally with cricket stumps. As a result, his legs were swollen and his feet were cut and bled. It was learned later that Gamini was accused of stealing some goods such as arrack and TV cassettes. He was tortured in front of the owner of the allegedly stolen items. As there was not sufficient evidence to prove his guilt Gamini was allegedly tortured in order to force a confession from him.

On 9 September 2004, Gamini was brought before the Moratuwa Magistrate, and then remanded for several days at Welikada prison and Kalutara prison. On September 19, the court finally released Gamini as no complaint was brought against him. Gamini was subsequently hospitalized at the Nagoda General Hospital for medical treatment. His wife, K.U. Shiromi Dias, lodged a complaint to the HRC. After conducting an inquiry, the HRC found the two police guilty of breaching the basic rights of the victim.

On 28 March 2007, two-and-a-half years after the incident, the HRC finally recommended that the two perpetrators pay compensation of Rs. 12,500, that is Rs. 7500 from Sergeant Palihawardana and 5000 from SI K.A. Padmasiri, to the victim. The recommendation by the HRC was a clear indication of the lack of respect for, or understanding of international norms

and standards by the commission. It is quite simply an insult to the victims to declare a quantum of a little over a hundred US dollars for the causing of serious torture.

**77. Rathnasiri Senadheera: Police investigation of a severe torture case drags on with no transparency**

SI Saliya, the then-OIC of the Horana police station, on 29 September 2004 allegedly brutally tortured Rathnasiri Senadheera while he was visiting his brother, who was in police custody. After the incident, he complained to the HRC, NPC and Attorney General.

The HRC conducted an inquiry into the incident [No. HRC/5048/04/I(iv)] and on 4 July 2006 recommended that derisory compensation of Rs. 5000 (around USD 50) be provided by the respondent, SI Saliya, to the petitioner (the victim). A copy of the recommendation was sent to the IGP, Attorney General and NPC for suitable disciplinary and legal action to be taken against the concerned SI. However, no action was known to have been taken.

Meanwhile, the police inquiry into Senadheera's case dragged on and on and over two years after the actual incident, had not ended. The victim suspected that the undue delay was caused by bias against him and towards the police. He reported that the inquiry officer working on his case is the ASP in charge of supervising the Horana Police station, where he had been tortured, and the prosecution officer is the Headquarters Inspector (HQI) of the Panadura Police station, which is in the same division as that of the Horana police station. Considering the fact that the concerned SI was the former OIC of the Horana police station, it could only be assumed that the inquiry and prosecution officers are colleagues of the alleged perpetrator.

For example, Senadheera informed that on 4 September 2006 he received a letter requesting him, along with other witnesses, to attend a departmental inquiry conducted against the perpetrators by ASP Nagahamulla of Horana district. The inquiry was to be conducted at the office of the SSP of Panadura division at 10am on 11 September 2006. However, when Senadheera together with three other witnesses went for the said inquiry at 10 am, ASP Nagahamulla was not in his office and they waited more than 12 hours until 11:15pm. As the inquiry officer ASP Nagahamulla had still not arrived at the office for the inquiry. Senadheera and the other witnesses then left the police station. He says that he no longer maintains any faith in the police inquiry and wonders what justice can be expected under the current circumstances.

He complained to the SSP of the Panadura division, the IGP and the NPC regarding the negligent attitudes of the inquiry officer and also raised his concerns about the impartiality of the police inquiry with them; however, he had not received any responses.

### **78. Herman Quintus Perera: Beaten for refusing to sell alcohol to police**

On 3 October 2004, the Polonnaruwa Police allegedly killed H. Quintus Perera, a restaurant manager and father of two. According to the restaurant owner, as it was Poya Day—on which the sale of liquor was prohibited by law—he closed the liquor counter at his restaurant. However, two policemen arrived at his restaurant by motorbike and demanded a bottle of liquor. Perera, who was the manager, politely refused them, explaining that the liquor counter was closed. The policemen had left but soon returned with a large contingency of policemen in a police jeep. They proceeded to beat up Perera and the other workers at the restaurant. Thereafter, the police forced Perera and his fellow workers into the jeep and took them away.

The following morning (October 4), the restaurant's assistant manager visited the Polonnaruwa Police station to inquire after the well being of those who were arrested including Perera. The other workers told him that Perera was not with them in the cell. The assistant manager then visited the local hospital but could not find Perera. He then visited the mortuary where he found Perera's body. The police authorities however, told the local media that a fight had ensued when the police raided the restaurant – that they suspected of selling illicit liquor and that Perera had been killed during the commotion. Ironically, the Polonnaruwa Police -- at whose hands it is alleged the deceased died – failed to confirm this story.

### **79. M. Ramson Peiris: Assaulted with a blunt weapon**

On 5 December 2004 around 2pm, 59-year-old carpenter M. Ramson Peiris went to one Malani's house to have a drink. Two police sergeants, Silva and Jayantha Perera of the Moratuwa Police, had been present there, and for no apparent reason, they severely assaulted Peiris and took him away to the Moratuwa Police station in a three-wheeler cab. At the station, they had resumed their brutal assault on Peiris. Later, the Deputy Mayor of the Moratuwa Municipal Council, D.C. Fernando informed the deceased family of his arrest. He had also inquired about the deceased arrest from the police, but the police now denied Peiris' arrest. However, when some time later the deceased relatives visited the police station, they saw Peiris lying in a police holding cell. As he looked severely injured, the relatives requested

the police to take him to the hospital for medical treatment, but the police refused. Then around 10pm the same day the Moratuwa Police had taken the deceased to the Lunawa Government Hospital – without informing his family. They allegedly had given a false statement to the hospital that they had found the deceased on the roadside. As Peiris was in a critical condition, he was transferred to the Kalubovila General Hospital and later to National Hospital Colombo where he succumbed to his injuries around 11:30am on 6 December 2004.

On 8 December 2004 villagers complained of the incident to the HRC of Sri Lanka and the deceased's son too complained to the HRC on December 13. The HRC had told the complainants to produce the post mortem report to begin an investigation; however, these documents are usually not made public, even to the deceased's immediate family. And at the time of the AHRC's Urgent Appeal the HRC had not made a serious attempt to obtain this document. Several days later, the non-summary inquiry into the deceased killing began in the Moratuwa Magistrate's Court. However, the deceased's family alleged that the Mt. Lavinia Police officer that was in charge of investigations into the incident, was intentionally and constantly evading the said Magisterial Court inquiry. Accordingly they have been absent in court on five inquiry dates viz. on 13, 14, 15, 16 of December 2004 and 5 January 2005. The JMO, who conducted an inquest on the victim's body, had earlier stated in his post mortem report that the victim had been assaulted with "a blunt weapon" and the cause of his death was spontaneous intra cerebral haemorrhage. He further stated that the victim had multiple minor injuries on his neck, upper limbs and lower limbs suggestive of blunt force injuries and evidence of high blood pressure. But the victim's family said that the victim had never taken any treatment for high blood pressure before.

In the meantime, Malani, who witnessed the victim's assault and illegal arrest at her house, had already given her statement to the Mt. Lavinia Police and the Moratuwa Magistrate's Court. Despite such clear medical and other evidence, Mt. Lavinia Police did not arrest the alleged perpetrators.

#### **80. N. Sandasirilal Fernando: Left by police lying in the road**

According to the deceased's brother, Deepal Fernando, on 26 March 2005 a fracas had ensued at a neighbouring house and he went to intervene. Thereafter a neighbour had accused Deepal Fernando of stabbing him, an allegation that he denied. The next day (March 27) the neighbour visited Deepal Fernando's house with two policemen from the Panadura Police

station. The police proceeded to arrest him and dragged him into the police jeep – despite his claim of innocence. At this juncture, the deceased saw his brother being taken away and being under the influence of liquor, rebuked the police for arresting his brother. This apparently annoyed the police, who alighted from the jeep and hit the deceased on his back, neck and face. One policeman shoved him in his jaw. Losing his balance the deceased had fallen backwards, hit his head on the tarred road, and become unconscious.

The police, instead of attending to the victim and rushing him to hospital, simply left him lying there and proceeded to go with Deepal Fernando to the police station. On March 28, Deepal Fernando was released on bail and went home to find his brother in a critical condition. So he rushed the deceased to the Panadura Hospital where the doctors attempted to revive him. However, his condition deteriorated further and he began to vomit and lose control of his bowels. He was transferred to the National Hospital, Colombo but died a few hours later. The family complained to the HRC, the NPC and the IGP about the incident, but later decided against pursuing the matter for fear of reprisals from the police. They had received no information about any police investigation or inquiry into Sandasirilal Fernando's killing and neither had they been paid compensation. Sandasirilal Fernando was survived by his three school going children, aged 11, 14 and 17.

**81. Don Wijeratna Munasinghe: Assaulted for failing to stop immediately**  
D.W. Munasinghe had been returning home with his wife Sharma Lalini and 16-year-old son after shopping for the National New Year, when their three-wheeler vehicle was stopped by policemen from the traffic branch of the Maharagama Police station at about 5pm on 10 April 2005. At the time Munasinghe was driving the vehicle. One policeman had gestured to him to stop, which he failed to obey immediately. And though he subsequently stopped, because of the delay the policeman walked up to them and shouted “thamuse beelada?” (Are you drunk?) And then, when Munasinghe did not reply, screamed, “thamuse beerida?” (Are you deaf?) But yet he had remained silent. Seeing the policeman getting very angry Lalini had intervened and explained: “Officer, we have just been shopping. While we were away, I don't know whether this man drank. But please let us go as we are returning from New Year shopping and also because my husband is not too well”. But the policeman ignored her pleadings and shouted at Munasinghe to get out of the vehicle. He also made a call on his radio. A few minutes passed, and she saw two policemen walking towards them. One who was wearing badge No. 22728, pulled Munasinghe by his shirt collar, and slapped him hard across

the face. Thereafter he continued to mercilessly assault him all over his body. Lalini said that she was very worried for her husband's health and pleaded with the policemen not to assault him as he was a heart patient, had suffered two previous heart attacks and also carried his medicines with him. But her pleas seemed to fall on deaf ears.

By now, a large crowd had gathered around. She had continued to plead with the policemen to spare her husband, but they simply chased her and the son away, pulled the three-wheeler to the side of the road and continued with the assault. Finally the policeman (No. 22728) kicked her husband on his spine, and when he fell onto the floor space at the back of the vehicle, the policeman sat on the seat, put his feet on his body and continued to kick and trample him, while another person drove the vehicle towards the Maharagama Police station. Early next morning at about 1:50am Lalini received a phone call from the Maharagama Police to come to the station in the morning and release her husband. At around 6:45am, the police called again and asked her to "immediately come and take her husband home". She rushed to the police station but had to wait until the OIC arrived at 10:30am. The police then released Munasinghe on bail. Police officers also went to their home and handed over the three-wheeler to Lalini.

When he arrived home, Munasinghe explained the severe tortured he had endured at the hands of the Maharagama Police. He said the police assaulted him with cricket stumps all over his body. However, despite his serious injuries and unbearable pain, he was reluctant to go to the hospital out of shame as well as fear. And though his family treated him with paracetamol and herbal remedies his condition gradually worsened. Finally they persuaded him to seek medical treatment at a private clinic nearby and later at the Kalubovila Hospital Wards 26 and then 5. While in hospital Lalini saw a lot of dark blue marks on her husband's body as well as injuries to his hands, face, thighs, legs, and back. She also noticed a big bump on his head. When she visited him on April 16 he had been transferred to the Intensive Care Unit. The doctors had told her to speak to her husband, but he had not replied. Once he had shouted, 'water, water' but she doubted if he was really conscious at the time. Finally, when she visited him that evening, he was dead.

### **82. H. L. Susantha Kulathunga: Daughters told they will not see their father again**

On 10 April 2005 around noon, five policemen of the Rakvana Police station

located Kulathunga at a neighbour's house and arrested him. Apparently he was wanted by the police and had two arrest warrants issued against him. According to eyewitnesses, the police severely tortured the victim whilst he was being arrested and they presumably continued to do so all the way to the police station as well as inside the station. On 19 April, two policemen visited the victim's house and told his two daughters; aged 11 and 8, that they would not see their father again, so they had best go and visit him for the last time. On the same day, the police also approached the victim's mother and enquired about his whereabouts. When the mother replied that her son was in police custody, the policemen denied arresting him. The mother, however, insisted that they had taken him away. On 20 April, Kulathunga's brother visited him in police custody and also gave him some food. Thereafter, the brother had left the Rakvana Station and caught a bus back home. However, along the way a motorcyclist had stopped the bus and urgently informed the brother that the victim had hanged himself whilst in custody. So the brother immediately alighted from the bus and rushed to the police station, where he saw the deceased hanging from a strip of cloth (torn from his sarong) that was attached to the grill of his holding cell door. The brother also noticed that as the deceased was almost 6 feet tall, he was in fact, taller than the height of the holding cell; thus he was hanging with his knees on the floor and his hands at his back – a rather unusual position to commit suicide.

The police took Kulathunga's body to the Rakvana Hospital, but the hospital refused to accept it. Thereafter the body was taken to the Ratnapura Hospital where, on 22 April, the post mortem was held. According to the victim's sister, though the deceased was alleged to have committed suicide by hanging himself, the post mortem revealed no injury to his neck. Instead the post mortem report had revealed more than 107 injuries spread over all parts of the victim's body. On 21 April the victim's brother and sister also made complaints to the ASP, Ratnapura. The inquest hearing into the death began at the Magistrate's Court of Ratnapura on 27 April 2005. During the inquest hearing, the deceased's daughters gave evidence about policemen visiting their home on 19 April – while their father was in custody. In court they also identified the two policemen who visited them. Subsequently the children said that they were threatened by the policemen, who said that "you will suffer the same fate as your father if you mention us again".

When the case was called on 4 May, this fact was brought to the attention of the Magistrate, who warned the policemen against similar behaviour in the future. The victim's relatives also complained to the HRC of Sri Lanka, the NPC and the IGP.

**83. R. Dammika Dissanayake: “We have sent him off”**

On 30 April 2005, R.D. Dissanayake together with his friends attended a musical show. According to his friends, they had all danced and enjoyed themselves at the show. Suddenly they noticed Dissanayake missing and looking around saw him being accosted by four policemen. One was holding him by his shirt collar while two other policemen were holding him and restricting his movements. The friends alleged that these policemen took Dissanayake away. Later one friend had queried from a policeman where Dissanayake was. The policemen had replied, “We have sent him off”. According to the police report no. B1703/05 filed by the Kadawatha Police in the Magistrate’s Court, Dissanayake’s body had been found in a well near his home. The well had been approximately 20 feet deep and 7 feet in diameter, but the water level was only up to about 4-and-a-half feet. There was one bloodstain on a wall near the well and another bloodstain on the well wall.

The JMO examining the body had recorded 36 injuries – none of which were found to be fatal. However, based on the medical report, which stated the cause of death as ‘drowning’, the court too gave a verdict of ‘death due to drowning’. However, Dissanayake’s family and friends were deeply suspicious about his death and believed that the police had caused his death and then disposed the body in the well. They called for an official inquiry into the circumstances of the arrest, the injuries found on the body and how the body ended in the well. They also said that there was no evidence to suggest Dissanayake committed suicide.

**84. Kosma Sumanasiri: Head repeatedly slammed against a wall**

On 20 May 2005, around noon, about five policemen of the Rathgama Police station walked into Kosma Sumanasiri’s home allegedly on a tip-off that gambling was taking place at his home. Upon seeing Sumanasiri playing cards with three friends, the policemen arrested all of them. According to the victim’s sister, Leelasili, who witnessed the incident, Police Sergeant Jayaratne assaulted her brother before he was taken away. Sumanasiri was produced before the Galle Magistrate that same day, but unable to pay the fine of Rs. 3000 imposed, he was remanded. The following day, on hearing that the victim and his friends were remanded, Leelasili and her elderly mother went to prison to see him. However, though they were able to meet with the others, they were not allowed to meet Sumanasiri. When they asked the friends where he was they replied that he was ill. They also said that while at the police station, the victim had been brutally assaulted by the police who

kicked him all over his body and repeatedly slammed his head on the wall. As a result, the victim had bled from his ears and fallen unconscious. They also said the police tortured him because he withdrew his finger when his fingerprints were being obtained.

Again on 23 May Leelasili visited her brother but the prison authorities insisted he was still unwell. When she visited the remand prison on 24 May, the prison officials told her that Sumanasiri had been transferred to the Intensive Care Unit (ICU) of the Karapitiya Teaching Hospital. Leelasili rushed to the hospital to see her brother in the ICU, and asked a doctor about her brother's condition. The doctor had replied that the victim was suffering from a brain haemorrhage and that "he was closer to the next world, than this world". On 27 May Sumanasiri was dead. On 2 June, the deceased's mother, Vitharana Varalishamy gave evidence at an inquest held at the Rathgama Magistrate's Court. Leelasili said that at the time of his arrest, her brother was in good health and thus the only reason for his untimely death was the inhuman torture meted out by the police. However, neither the Rathgama Police nor the prison authorities in Galle accepted that any ill treatment in their premises occurred. The prison authorities claimed that Sumanasiri was drug dependant and that he developed withdrawal symptoms while in the prison. According to them, the injuries sustained by the victim may have been caused as a consequence of an assault by fellow prisoners if not by a fall. In the meantime, a retrospective scene visit to the Galle prison was performed on 30 May.

An autopsy on the victim's body was also performed on 29 May and a report on the autopsy findings was afforded to the investigating authorities on 1 June. The Galle Magistrate called the JMO to give evidence on the autopsy findings on 15 June. Accordingly the autopsy report had stated that the cause of death was cranio-cerebral injuries and secondary brain injury with cerebral infarction. It said that there were injuries of multiple ages on the external examination and some superficial injuries were more than seven days old. The report concluded that the fatal injuries were to the head and that the musculo-cutaneous injuries observed were not compatible with a fall and would have most likely been caused by blunt force.

### **85. Lelwala Gamage Nandiraja: Police carrying guns and clubs**

On 29 May 2005 several policemen from the Weliveriya and Pitigala Police stations had arrived at Nandiraja's house at night. According to his sister two policemen were wearing uniforms, four others were in civilian clothes and

they were all carrying guns and clubs in their hands. The police had knocked on the door looking for Nandiraja and when the sister asked them why they wanted her brother, they replied that they had come to arrest him. When she told them her brother was asleep inside the room, they immediately entered the room and severely beat him all over his body. When his sister pleaded with them not to hurt him, they ignored her. Likewise, they did not respond when she asked where they were taking Nandiraja or what the charges against him were. (It was later discovered that the victim was suspected of stealing goods from a furniture shop.) A short while later, the police dragged Nandiraja naked and screaming from the house and took him away in a van.

The next day at about 8:30am, Nandiraja was reportedly rushed to the Gampaha District Government Hospital. However, it is believed that the victim might have already been dead at the time. His sister further said that when policemen from the Pitigala Police station visited her house that evening to interview her and obtain her statement, they did not even bother to inform her about her brother's death. Instead, she only received the sad news of his demise on the morning of 31 May. The sister firmly believed that Nandiraja died as a consequence of being tortured by the police and said that he had no serious health problems that could have caused his death. She added that he had only a scratch mark on his forehead, when he was arrested.

### **86. Hettiarachchige Abeysiri: Assaulted with cricket stumps**

H. Abeysiri was a hardworking daily paid labourer, who worked in a house of Ratnayake, a former police officer who had gone abroad and was due to return soon. One day, the lady of the house, Ratnayake complained to the Peliyagoda Police that she had lost her cordless telephone from her house. Hence on 13 July 2005 around 11:30pm a group of policemen from the Peliyagoda Police station visited Abeysiri's house. He had been sleeping at the time, but the police awoke him and took him into custody saying that he was wanted for theft. According to Abeysiri's elder sister, the policemen did not produce an arrest warrant but had slapped Abeysiri's several times before taking him in. Furthermore, except for the police driver, they had all been wearing civilian clothes at the time. The next day (14), the police took Abeysiri back to his house and his nephew saw that he was handcuffed. The police then arrested Abeysiri's niece's husband, L.P. Asokakumara and demanded to know where the stolen good was sold. The police took the two men to Ratnayake's house and several people saw her slapping Abeysiri. The two were taken back to the crime section of the Peliyagoda Police station.

According to Asokakumara, at the police station, the police brutally assaulted Abeyisiri with cricket wicket poles for about half an hour. An SI had walked in together with another policeman and he too tortured Abeyisiri. Asokakumara could not bear to watch because it was all too brutal, so he had moved away from the scene. When he returned about half an hour later, he saw the four policemen in civilian clothes, carrying Abeyisiri's lifeless body to hospital. Asokakumara was not tortured and the police recorded his statement and released him at 7:30pm. When he asked the police about his uncle, they said he was hospitalised because he was sick. In the meantime, around 5pm, a policeman had gone to Abeyisiri's house and asked someone to go to the Peliyagoda Police station. When Jerome Allistace, a relative of Abeyisiri, went to the police station, he was informed that Abeyisiri was sick and that the police had taken him to the hospital, where he died.

Thereafter, Allistace went to the mortuary along with several others. The AJMO, Dr. G.A.B. Abeyinghe of the Colombo National Hospital, examined the deceased body, and stated in his post mortem report that Abeyisiri had not died of natural causes; instead his death was due to injuries caused by blunt instruments. Allistace had noticed several injuries on the deceased's body, including to his head and left leg. The victim's body was released to the family on 15 July and his funeral took place on the 17th.

**87. B. Nimal: brutally tortured and illegally detained by the Wanduramba police because his son had disappeared with a young lady**

On 18 December 2005 at about 9:30pm, several policemen from the Wanduramba police station visited B. Nimal's home and demanded to know the whereabouts of his 23-year-old son. The police informed Nimal that his son had run away with a young woman and gave Nimal two days to produce his son at the police station.

Thereafter, on December 22 between 10:30-11pm, while Nimal, his wife and younger son were asleep, the police again visited their home and knocked on the door. Nimal opened the door and saw two policemen at his doorstep, one in uniform and one in civilian dress. The one in uniform asked Nimal "where is your son?" Nimal replied that he did not know where his son was. The police then insisted that in the absence of his son he had to accompany them to the police station and then forced Nimal into their vehicle. When his wife pleaded with the policemen not to arrest her husband, they told her to go to the police station the next morning to claim her husband. Nimal was then taken to the Wanduramba Police station.

The policemen, who escorted Nimal, took him to the OIC and said, "Here sir, we brought him." The OIC asked, "Where is your son?" Nimal reiterated that he did not know. The OIC then began assaulting him in the most brutal and inhuman fashion all the while demanding to know the whereabouts of his son. Nimal pleaded with the OIC not to hit him, as he did not know where his son was. But the OIC insisted that he knew and continued to torture him. The OIC then grabbed Nimal by his shirt collar and lifting him, threw his body against the bars of the holding cell. According to Nimal, his head and spine slammed against the bars causing him unbearable agony. The OIC had then pushed him into the cell and slammed the door shut.

Nimal was locked up until the evening of the following day (December 23). When his wife visited him, she too was forced on to a bench and detained at the police station by the OIC. At about 4:30pm, both their statements were recorded and they were forced to sign them without knowing what the police had written. They were then taken to the Beddegama Magistrate's Court and as the Magistrate was absent, they were then produced before the Galagedera Acting Magistrate, Buddhika J. Edirisinghe. Though the victims attempted to explain matters, they were remanded for more than a week until 2 January 2006.

Buddhika J. Edirisinghe, who was acting magistrate on the day Nimal and his wife were produced before the Beddegama Magistrate's Court, thereafter represented Nimal and his wife at the bail hearing. The ethical conduct of the legal professional is highly questionable as she first appeared in the capacity of the magistrate and then as counsel for the victim. Ironically, they were charged with some offence, of which neither had any idea and strangely, their lawyer did not take the trouble to inform them of the details.

According to Nimal, the problem began when his 23-year-old son fell in love with an 18-year-old girl whose parents opposed the relationship. They then ran away together and got married. He strongly believes that the girl's relatives had unduly influenced the Wanduramba police to harass him and his wife. Finally on 25 December 2005, Nimal's son and his bride visited his parents' home. That day, a policeman named Samaranayake from the Wanduramba police came to their home and took away their marriage certificate. When they requested that he return the certificate, the policeman told them that he had handed it over to the courts.

**88. Indika Kulasekara: Assaulted with helmet**

On 7 April 2006, at 7.20am Indika Kulasekara was driving his bus and was collecting passengers as usual. The bus was traveling towards Kandy. At about 7.40am the bus came to Digana-Madarwala junction and Indika wanted to stop the bus at the bus shelter. However, there was a van stationed at the shelter, and so the bus could not be stopped in the shelter. Therefore Indika stopped the bus just prior to the stationed van and bus shelter.

PC Sarath was on a motorbike and approached the scene. PC Sarath parked the motorbike behind the bus, and then went to the driver's window. PC Sarath inquired with Indika as to why he had stopped the bus before the designated bus shelter. Indika replied that there was a van in the bus shelter and as such he could not stop the bus there. He also asked the policeman, "Can you not see the van?" After Indika's response, PC Sarath shouted at Indika not to instruct him on the rules and regulations. PC Sarath then requested Indika to get down from the bus, and to come and meet him behind the bus, where the motorbike was stopped.

After getting down from the bus, Indika followed PC Sarath's instructions, and went behind the bus. Indika did not have his licence, but only a temporary licence of which he presented to PC Sarath. Indika did not have his proper licence because the Manikinna police station was holding his license due to another incident involving the bus's tyres. Again, Indika explained that he could not stop in the bus shelter because of the van. PC Sarath then scolded Indika telling him no to tell such stories. PC Sarath told Indika he would let the incident slip, if Indika gave him money considering it was the New Year season. PC Sarath continued, "If you want to go, you can give Rs. 500 and then you can go." Indika did not have this money, for this was the first journey of the day, and so he told PC Sarath that if it were alright, he would give this money later to him. PC Sarath again asked Indika for the money, and again he replied that he did not have anything now but could give it later. PC Sarath then scolded Indika, before Indika interrupted telling PC Sarath officer not to scold him and to issue a receipt for him to pay later. PC Sarath then told Indika not to be so smart, after which he took Indika's temporary licence, crumpled it up and threw it away. At the same time, PC Sarath started to assault Indika with a helmet, causing Indika to yell out not to hit him. PC Sarath ignored these cries, and continued to hit Indika, and also yelled out to "bring the weapon".

During this time, Indika's father, Kulasekara had got down from the bus

and was approaching the scene. Kulasekara yelled to Indika to run. Indika then pushed the policeman and ran, believing he was about to be shot. While running, Indika got onto a bus heading towards Kandy. Indika got off the bus at Kengalla. After which he then got on another bus heading towards Kandy from Mahiyanganaya. After about one kilometre the bus approached the Kengalla Junction (close to BOI project) and Indika noticed several civilians getting on the bus. These civilians then approached Indika informing him that they were police officers from Balagoola police station and that Indika was to get down from the bus. Indika proceeded to get down from the bus, after which the eight officers escorted him to a jeep parked on the right hand side of the road.

The officers then drove Indika to Digana village. Here, Indika was told to get down from the jeep, as the Balagolla police were to hand him over to the Teldeniya police who had brought another jeep. Of the Teldeniya police, there were five police officers and one SP present at the scene. As Indika was getting into the Teldeniya jeep, the SI started to hit him after which the other five officers joined in causing Indika to fall to the ground. One of the officers commented that they were not to hit him too much but were to take him to the scene of the incident. He continued that they were to keep hitting him, but were not to make any visible external damage. The jeep then took Indika to the scene of the incident, where the bus was still parked there.

At the Digana-Madarwala junction, Indika was again told to get out of the jeep. PC Sarath was still present at the scene. The other officers told PC Sarath that they had brought the man. Indika noticed that PC Sarath was holding a two-foot pole. As Indika was getting down from the jeep, PC Sarath then proceeded to beat Indika's legs and lower back. He then told Indika that we are the people who will take you to the Courts; you do not have the strength to fight with us. Indika eventually fell onto the road. After which PC Sarath placed his foot on Indika's head and applied pressure, following this he kicked Indika. PC Sarath then told Indika to get up, but Indika was unable to get up and there was blood flowing from his nose and mouth. Therefore, the officers picked Indika up and again put him into the jeep. Once inside the jeep, two officers held Indika up, whilst another officer continued to beat him in the chest region. The jeep then drove to the Teldeniya police station.

Upon arrival at the gate of the police station, the officers told Indika to get down from the jeep. As Indika was getting down from the jeep, the officers

again kicked and beat him. Once inside the police station, three officers assaulted Indika with a pole, after which Indika was placed into a cell. After about three hours the officers recorded some details down and asked Indika to sign the document, but Indika was never asked anything. Indika refused to sign the document, but the officers told him that if he refused to do so they would proceed to break his legs and arm. Due to fear, Indika signed the document but it was not with his proper signature. The officers then put Indika back into the cell.

After another two hours the officers took Indika to the hospital to get some medical certificates. At the hospital, Indika received no treatment or medication and there were no examinations conducted. However, the officers left with medical documents.

Following the hospital visit, Indika was taken to the Teldeniya Magistrate's Courts, after which he was then taken to the prison and admitted to the prison hospital. Indika remained at the prison hospital until the April 17. Indika tried to get bail on April 11 but it was refused. However, on April 17 he was given bail and released for Rs. 2500 with a guarantee of Rs. 200,000.

### **89. Thilakarathana: Tied and hung from a pole and beaten mercilessly**

On 29 April 2006, Thilakarathana and his wife were to travel by bus to Kandy along Teldeniya Road. Thilakarathana and his wife got onto a private bus at Teldeniya. As they were sitting down, Thilakarathana noticed that two men dressed in civilian clothing had also boarded the bus and were asking for him, in order to make some inquiries. Upon hearing this, Thilakarathana got up and went to speak with these men, who informed him they were police officers. After which, he told the police officer that after letting his wife know of the situation, he would accompany them to the police station. The policeman responded that he was not to do this, and then escorted Thilakarathana to the Teldeniya police station. It was approximately 11am. While being escorted, the police officer told Thilakarathana, "You know what you have done; you have broken into four boutiques in Teldeniya and stolen goods including potatoes, dahl and soap. Where are you keeping these things?" Thilakarathana responded that he did not know of anything concerning this matter. He protested his innocence, stating that he never broke into a boutique and stole anything. He continued that on the days in question from April 11 to April 17 he was staying in Maiyangana, Bebella and therefore could not have done the act in question. The police officers failed to respond, and continued to escort Thilakarathana to the police station; the time was then approximately 11:15am.

Upon arriving at the station, Thilakarathana was taken to the Crime Branch of the police station, and subsequently into the office for SI Rasika. As Thilakarathana was being taken into SI Rasika's office, he noticed that in the corner of the room there were batons, and coconut strings which are used for tying objects. The police officers proceeded to pick up these objects and commented, tell the truth or we are going to beat you. Thilakarathana again told the officers, that he did not know anything, that he had not done anything and was innocent. Upon entering the room, the officers scolded Thilakarathana with obscene words, whilst attempting to tie his two thumbs together with the coconut string. However, due to some difficulties they were unable to do it, therefore the officers then decided to tie together Thilakarathana's hands and legs. The officers in addition put handcuffs on Thilakarathana before hanging him by his legs from the ceiling.

At this time, there were about four or five police officers in the room. All of the officers then proceeded to kick and hammer Thilakarathana all over his body while he was suspended from the ceiling. Thilakarathana was shouting for help and yelling that he was innocent. The police officers ignored these cries and continued to beat Thilakarathana. After sometime, the officers proceeded to remove all of Thilakarathana clothes whilst he was suspended, and then continued to beat him. During the beating, the officers told Thilakarathana that unless he told the truth that they would kill him and throw him into the Victoria Reservoir, and that they could do this, as there were no witnesses. Everywhere Thilakarathana was paining and felt damaged, but again and again they continued to ask him to tell the truth.

After some time passed, the officers then took Thilakarathana down from the ceiling. They then took a big wooden rod, and placed it in between Thilakarathana's still tied legs and arms, before suspending the rod between two tables. The officers proceeded to then beat the soles of Thilakarathana's feet with a blunt instrument, causing him to lose consciousness momentarily. He was not sure what was going to happen to him but eventually the beating stopped.

Later on, the officers untied Thilakarathana's hands and legs, after which two officers picked him up by the hands and asked him to walk. However, at this time Thilakarathana had no strength and was unable to put any weight on his legs. Therefore he was asked to sit on the chair in the room.

At about 2.30pm, Thilakarathana was taken out of SI Rasika's room into the

general Crime Branch area. Here, SI Rasika was present, and he proceeded to tell Thilakarathana that he knew Thilakarathana took drugs, and that he knew how to get the truth from him. SI Rasika continued that if he gave Thilakarathana drugs he would then tell the truth. SI Rasika continued that he had worked in Colombo and could get the truth from drug users by beating them and providing them drugs; this is what he was going to do to him. SI Raskia then told Thilakarathana what was going to happen, he explained that at 10pm that evening he would take Thilakarathana into his room and provide drugs to Thilakarathana if he gave the truth. During this time, there was another female police officer present, Allakoon who following SI Silva's proclamation, commented to SI Raskia why you are waiting, give him some drugs now and get the truth. SI Raskia then kicked Thilakarathana, causing blood to flow from his mouth. After which, Thilakarathana proceeded to fall onto the floor unconscious. At about 7pm, he regained consciousness, to find himself in a jail cell covered in blood.

Early the next day, (April 30), some officers came to the cell again telling Thilakarathana that they wanted to conduct some inquiries. After which, they took him into SI Silva's room. Here, the officers recorded some details down, but the officers never asked Thilakarathana anything. The officers then asked Thilakarathana to sign the document, telling him that they wanted to take him to the Courts, so not to worry just to sign.

At about 9am the officers took Thilakarathana to the hospital. Thilakarathana was feeling very sore, tired and in pain. At the hospital, Thilakarathana asked a Doctor to provide some medication for his pains. However, the Doctor did not provide any medication, or conduct any examination, but gave the police a report. Thilakarathana was again taken back to the police station, having not received any treatment at the hospital. Upon entering the station, Thilakarathana saw his wife was seated in a chair, however, he was taken straight to a jail cell. After this, Thilakarathana's wife managed to meet with him at the jail, where he proceeded to tell his wife of the police's treatment.

At about 2pm, the police officers came to take Thilakarathana to a senior officer's room. Inside the room, the Senior Officer proceeded to tell Thilakarathana that he was not to go to the human rights community, for the police were not going to file a case against him. The officer continued, that if Thilakarathana went to the human rights community, they would again remand him and keep him for fourteen days. The officer then told Thilakarathana that he would now be sent home, but again reiterated that he

was not to talk to anybody about the incident. After meeting with the Senior Officer, Thilakarathana went home with his wife, at about 2.30pm.

**90. (Name withheld): Leg twisted around neck and severely assaulted**

On 12 May 2006 the victim received a message from the Thelikada police instructing him to attend the police station. Accordingly he visited the station and was ordered by the OIC to stay until 1.30pm. SI Priyantha came and escorted the victim into an interrogation room where he was interrogated about the theft of a mobile telephone. During this process the victim was allegedly shouted at and abused in obscene language.

Soon after, PCs Soysa and Premasiri joined in the interrogation and together the officers began assaulting the victim. It was learnt that PC Premasiri twisted one of the victim's legs around his neck and whilst in that position severely assaulted him. They continued to mercilessly beat him all the while demanding for the return of the stolen mobile phone. PC Premasiri then proceeded to grab the victim by his neck, force his head between his knees and then press so hard that the victim described the experience as suffocating. The police then removed his clothes and dragged him into the backyard where he was whipped with a piece of wire and sexually molested. After several hours of inhuman and brutal torture, the policemen recorded a statement from the victim before releasing him at approximately 4pm.

Following the incident, the victim returned home but suffered severe pain in his entire body, especially his neck, stomach and spinal cord. Thus the next day on May 13, he visited the Karapitiya Hospital and was kept for treatment as an in-patient.

**91. D. Chamara Lanka: Handcuffed to a window and assaulted with metal pole**

On 27 May 2006 two policemen from the Kurunegala Police station came to the house of D.Chamara Lanka, 24-year-old three wheel driver, in Puttalam Road, Kurunegala, Sri Lanka. As Chamara Lanka was not at home at that time, the policemen left a message for him to come to the police station. After receiving the message upon his return home, he went to the police station at around 5:30pm according to the police's instruction. As the police also ordered his parents to accompany him they also went along with their son to the police station.

The OIC of the Crimes Branch then accused Chamara of being involved in

a theft at a nearby house. Even though Chamara denied this accusation and claimed that he knew nothing about the incident, the OIC simply turned down his claim and instructed a policeman to detain him. Accordingly, this policeman handcuffed Chamara to a bar of a window at the police station and chased his parents away.

Chamara remained handcuffed to a bar of the window for several hours until about 9pm to 10pm that night. Thereafter another policeman in civilian clothes walked up to Chamara and began questioning him about the theft. He also assaulted him with a pole whilst questioning him. Although Chamara denied his involvement, the policeman continued to brutally beat the whole of his body, especially on his feet, buttocks and back for about half an hour. He then left him handcuffed to the window bar until the following morning (May 28).

At around 2:30pm on May 28, several policemen took him to another room at the police station. They forced him to lie on the ground and placed his arms and feet together. They then inserted an iron pole between his arms and legs and suspended the pole between two tables. Due to this, Chamara was left precariously dangling by his limbs on the pole. They then began to assault him all over his body, while demanding him to confess where he hid the stolen goods. Chamara screamed helplessly due to unbearable pain but the policemen did not stop torturing him. After that, the policemen poured water on his face causing him to almost suffocate. Despite the fact that he was severely injured and unable to walk, they put him into the lock-up without giving any medical attention.

Chamara was taken to the Kurunegala General Hospital only in the afternoon of the following day (May 29). He reported to the doctors, who examined him, that he was brutally tortured by the police. However, he was brought back to the police station after receiving inadequate medical treatment. The police then recorded his statement and forced him to sign a document the contents of which he was not informed of.

Even though a person arrested must be brought before a Magistrate's Court within 24 hours after his/her arrest, Chamara was only produced before the Kurunegala Magistrate's Court only on May 30 (three days after his arrest) with charges of theft. However, the victim insists that the police fabricated the charges. The court ordered to release him on bail. However, no one was present at the court to pose bail for him as the police did not properly inform

the victim's family of his appearance in court. Subsequently, Chamara was remanded until June 4 on which date he was released on bail. As soon as he was released, Chamara was rushed to the Cooperative Hospital in Kurunegala where he obtained medical treatment for his serious injuries.

## **92. Illukumbura Mudiyanse: Lost hearing from torture**

Illukumbura Mudiyanse, a 49-year-old trader, was severely tortured by the Thalathuoya Police on 9 June 2006. Due to torture, the victim received considerable injuries over most parts of his body and suffered complete loss of hearing in his left ear. According to the victim, the police falsely charged him with selling cannabis due to his complaint against a timber mill owner who has good connections with the OIC of the Thalathuoya Police. Despite his complaint to the HRC, no serious action has yet been taken against the alleged perpetrators.

According to the victim, he got into a heated disagreement with the owner of the local "Sugath Timber Mills", who refused to pay him his due broker fee of Rs. 9000 (approximately USD 100), plus the additional cost of damages to the culvert and the road due to the transportation of timber logs. Mudiyanse lodged a formal complaint against the owner with the Thalathuoya police station on 8 June 2006, but they took no action.

At around 1:30pm on the following day (June 9), Police Sergeant Thushara visited Mudiyanse at his family home, where he then proceeded to shout at him with extremely abusive language. That same night, at around 8pm, two Thalathuoya police officers in civilian dress entered Mudiyanse's home. They stated that the OIC of the Thalathuoya police station wished to get a formal statement from him, following his complaint. They then took Mudiyanse in a jeep to the police station. Upon arrival, Mudiyanse claims that he saw the timber mill owner with whom he had had a disagreement the previous day.

The OIC arrested Mudiyanse on the charges of selling marijuana, an allegation which Mudiyanse ardently denies, and which was not substantiated by the local police with any conclusive evidence. According to Mudiyanse, the OIC took a green hosepipe and proceeded to beat him over the head with it at least 20 times. He then placed a small packet wrapped in paper in Mudiyanse's hands, saying, "Here is the ganja!" Mudiyanse threw the packet onto the officer's table. Some hours later, another police officer ordered Mudiyanse to place his fingerprints on the packet of ganja. Mudiyanse outrightly refused to do so; and was again taken to the OIC, who allegedly

ordered the police officer to obtain Mudiyanse's fingerprints on heated lacquer. The police officer did as requested; severely burning Mudiyanse's fingers in the process. Mudiyanse was then detained overnight at the police station.

The following day (June 10), the Assistant Superintendent of Police (ASP) made one of his routine inspection visits to the Thalathuoya police station. When he came to the detainee lock-up, Mudiyanse told him of his ordeal, and that he was completely innocent of the charges that had been brought against him. The ASP questioned the Thalathuoya OIC on this. After the ASP left, the OIC came to the lock-up and verbally abused Mudiyanse.

The JMO of the Thalathuoya Government Hospital later examined the victim, and the following day, he was presented before the additional magistrate of Kandy, who remanded him to the Bogambara prison. Mudiyanse was subsequently released on the June 15, on bail of Rs. 1000 (approximately 10 USD).

Mudiyanse incurred injuries to his head and most other parts of his body, and burns on his left thumb, and suffered complete loss of hearing in his left ear as a result of his torture. He lodged a complaint with the HRC regarding the incident with the help of a local human rights organisation in June 2006.

### **93. Mallikage Ariyadasa: Brutal assault on a 65-year-old by the Kananke Police at the instigation of a third party**

On 11 June 2006 around 10pm, Mallikage Ariyadasa, 65, was arrested by the Kananke Police and taken to the Kananke Police station in Matara District—allegedly at the instigation of an influential third party. At the Police station, he was handcuffed and severely assaulted by several policemen in the most inhumane and brutal manner. Ariyadasa says that they assaulted him with their fists and boots until he collapsed to the floor. Then they dragged him along the floor to a holding cell where he was kept without food or water for almost two days.

The next day (June 12, 2006) the police took Ariyadasa to see a doctor at the Immaduwa District Hospital where he managed to tell the doctor that the police had assaulted him. On June 13, Ariyadasa was taken to the Matara Magistrate's Court and charged with a criminal case, which he insists the charge was fabricated. However, he was remanded by the Magistrate and sent to the remand prison. After he brought his injuries to the notice of remand

officials, they afforded him medical treatment for his injuries at the remand hospital.

During this time, Ariyadasa's son Indika Kumara visited the Kananke Police OIC and inquired from him the status of his father. The OIC had advised him to meet with a lawyer named Priyani who would assist him in obtaining bail for his father. Accordingly, Kumara visited lawyer Priyani, paid her the required fees and got Ariyadasa released on bail. He however, later discovered that lawyer Priyani was in fact the wife of the said OIC of the Kananke Police.

Later Ariyadasa complained about the incident to the Assistant Superintendent of Police, Galle and in response was informed to attend the Kananke Police station on 12 July 2006 at 9:30pm presumably for an inquiry into the incident. Ironically this was the same police station at which he was severely assaulted and thus it is hardly likely that justice would be served at that police station. When Ariyadasa arrived at the Police station a policeman informed him that the OIC was not present and thus to return after 2pm. When he returned at the said time, he was taken to meet with the OIC who addressed him rudely and in threatening language. The OIC told him that if Ariyadasa ever again complained to 'high-up places' (e.g. the ASP-Galle), he would (falsely) charge the victim for the possession of bombs and put the victim into larger problems including long time imprisonment at the remand prison.

At this point it is worth noting that under the Offensive Weapons Act, bail can only be obtained from the Court of Appeal in Colombo. As most people in rural areas are financially and otherwise unable to travel to Colombo, retain a lawyer and obtain bail from the Court of Appeal, it is not unusual for suspects to languish in remand for a few years until their cases are finally heard and disposed of. Thus it is common that this law is frequently utilised by the police to intimidate, threaten or harass torture victims and their families subsequent to the torture.

Ariyadasa further said that on 11 June 2006 a little while before he was arrested, several of his neighbours known as 'Dokan', Peththa', Wiliyens' and others had forcibly entered his house and stolen Rs. 37, 000 in cash. They had then maliciously lodged a complaint against Ariyadasa implicating him with sexually abusing two boys.

On 20 July 2006, Ariyadasa also complained about this incident to the Matara branch of the HRC. On 27 March 2007 he received a reply in the form of a letter in which the HRC informed him that the information provided by him did not have enough evidence to support the claim that his fundamental rights have been violated, and therefore the HRC was disposing of the case. To this response, Ariyadasa, from the little legal knowledge he has acquired during this rather traumatic period, wonders how the people could deny the violation of the rights of the victim while noting that he was arbitrarily arrested and detained for over two days, brutally tortured and threatened to be charged with a fabricated case.

Ariyadasa complained in writing to all the authorities concerned including the IGP, NPC, the HRC Head Office in Colombo, and others demanding immediate disciplinary and legal action be taken against the alleged perpetrators of the Kananke Police. He also requested that future inquiries regarding his case be held at the HRC Head Office.

#### **94. Amitha Deepthi Kumara: Arrested with a friend and illegally detained**

At around 8:30am on 28 June 2006, Meegahathenna Police arrested Amitha Deepthi Kumara (22) along with a friend, while they were walking along the road. The police did not show any arrest warrant during the process of the arrest. The two men were then taken to the Meegahathenna Police station where they were brutally assaulted by the police. The police accused Kumara of involvement in a case of theft. After being informed her son's arrest, Kumara's mother went to see her son on the next day (June 29) but the police did not allow her to meet him. However, she did learn about the brutal police torture of her son. The mother then informed the HRC via telephone and fax regarding her son's illegal arrest and torture on the same day.

On June 30, a local human rights group called Janasansadaya also reported this incident to the HRC via fax about the continued torture of Kumara. However, Kumara remained in police custody and continued to be tortured. The Meegahathenna Police had not brought the victim to the magistrate's court six days on from his arrest (i.e. 28 June to July 4) and had detained him illegally. Janasansadaya brought the case to the notice of the IGP, NPC, DIG - Legal Division, SSP of Kalutara and Attorney General by sending the letters both by fax and postal mail. All these institutions were urged to take immediate steps to secure the release of Kumara or have him produced before the courts without delay.

**95. M.S.F. Perera: Arrested on mistaken identity on the allegation of making bomb threats by telephone**

Mudalige Sunil Fermin Perera, a 55-year-old man residing at 55 1/A Pitakotte Kott, died from injuries received as a result of torture he allegedly suffered while in prison custody and another man namely Linton Gamini Munaweera, who was arrested along with M.S.F. Perera, was severely injured. On 28 June 2006, the two men mentioned above were arrested by Ratnapura Police on the information supplied by the Vice Principal of Mihindu College, Ratnapura which is about 90 km south-east of the capital Colombo, regarding the bomb threat creating a false alarm in the College.

The two men were taken in by the Ratnapura Police at midnight on June 28 and produced before the Magistrate, N.V. Karunatileke, on the following day (June 29). They were remanded on the plaint filed by the Ratnapura Police. They were arrested due to the allegation that Linton had made a telephone call delivering a message regarding bomb threats and causing a situation of fear among the school community. However, both men denied the charges. They were remanded at the Kuruwita Remand Prison. After being jailed on June 29, the two men were severely tortured by the Jail Guards.

It is now alleged that a school vice principal had wrongly supplied information to the police upon which they had depended and arrested these two and remanded them without any foundation. Only later when they checked they found that the persons tortured had not given calls on that particular day and earlier they had taken some calls on account of a business deal of supplying balloons to some celebration in the college. This call had been misrepresented as the alleged misdeed on June 28. The police in their motion had declared that they had already identified another person who had given the call. Police Officer B. Solngarachchi submitted a motion on July 3 and wanted them released because they were innocent and that day they had not made any telephone calls from their cell to the Mihindu College.

Accordingly, on July 3, the magistrate ordered both accusers to be released, but prison officials did not execute the order. On July 4, the victims were brought before the magistrate's court. The magistrate noticed that M.S.F. Perera had problems walking and was escorted by the two jailors. As he was barely conscious, he was given a seat. He was in fact severely tortured on the lower legs. Furthermore, he was unable to say anything because of his condition. Then the second accused Linton Munaweera was asked to enter the box and then his lawyer Ben Abeyratne stated that his client was also tortured by the jail guards while in prison.

The magistrate ordered that a statement be obtained from the vice principal and his inability to read the records from the telephone be further investigated. The magistrate noted the difference of the appearance of the first accused and when a relative requested that he be taken to the National Hospital, the magistrate ordered the police post at the hospital to take a statement when he gained full consciousness. Subsequently, the two men made a report to the HRC. Meanwhile, M.S.F. Perera succumbed to his injuries at the hospital in Colombo on July 6.

### **96. Dhanuka Tisara: Illegal arrest, brutal torture and fabrication of charges**

On 2 July 2006, Kalutara South Police arrested Dhanuka Tisara and took him to the police station on the accusation of committing murder, without any evidence to support this. He was then brutally tortured to extract a confession. He was later released on the same day without charges being filed against him.

After he submitted to his written complaints regarding his case to IGP and police department, Dhanuka Tisara received a notice to appear before the ASP of Horana by 10am on 27 October 2006 for an inquiry into the complaint. On that day, he went to the ASP's office along with his mother Malini Soysa in time but they were made to wait for one-and-a-half hours.

At about 11:30am, a policeman began recording the statements of Tisara and his mother. But according to the victim's mother, the policeman, instead of inquiring into the details of the victim's brutal torture, asked questions, which were totally irrelevant and in fact degrading to them. These questions include (i) details of Soysa's parents and her children, (ii) where she gave birth to Tisara, and, (iii) whether she was legally married at the time of his birth.

The policeman had also perused a document written in English and commented, "So you are taking legal action with the help of some Asian organisation" (presumably the AHRC). He also commented, "Those from Pinwatte commit wrong and then run for human rights, heh?" Tisara alleges that he also referred to the other children in the family in a disparaging manner. At the same time, the policeman recorded few details of the actual incident and asked them to leave. The victim and his mother had a strong impression that the inquiry was conducted in a biased and improper manner in favour of the alleged perpetrators.

**97. Gune Ayyas: Beaten and humiliated by police who threatened to 'disappear' him**

On 9 July 2006, at about 1.30am, police stopped the victim while he was returning home after attending the funeral home of Gune Ayyas' mother. The police were in civil clothes at the time. They told the victim's friends to go away as it was he who they were after. At that point they began to brutally beat the victim.

After beating the victim for some time the police then asked him where the kasippu (illegally made liquor) was located. The victim maintained that he was not in possession of any kasippu. The police then made the victim take off his shirt and tied this around his mouth. They then put him in their nearby jeep and drove to the police station.

Once at the police station the victim was forced to strip naked and to walk around the building. During this time he was also beaten once more. He was then told to sit on a table where he remained until 6am that morning. At that point SI Hettiarachchi came and warned, "If you don't tell me the place, even now, I know where you should be left". When, one of the victim's fellow villagers phoned the police station and asked whether he was there, Hettiarachchi replied "no". Further, he told the villager that the person in question (the victim) was not taken to the police station. Such a statement led to the victim's fears that he might be disappeared.

On July 10 at about 9.30a.m, the police released the victim. At 1.30pm he went to the Peradeniya Government Hospital due to the severe pain that he was suffering. As patients were not being admitted that day, the victim instead went to the Kandy General Hospital where he was admitted. The JMO attended to him and wrote down his details. He was discharged the following day. Upon his release from hospital the victim approached the Human Rights Office in Katugastota to lodge a complaint.

**98. Hevamarambage Premalal: Beaten mercilessly with poles causing extensive injuries**

On 11 July 2006, between 1:30 and 2am police approached the victim, Hevamarambage Premalal, at his home by officers from the Wanduramba police. They told him to put a shirt on and to accompany them, as they needed to take a statement from him. One of the officers the victim identified as PC Lasantha.

As he walked from his home, Sgt Samaranayake struck the victim in the mouth with a wooden pole. The victim was taken in a jeep to a place where police sign patrol logbooks and then on to the police station. At the police station the victim was handcuffed and hung from above, with his feet unable to touch the ground. The officer who drove the jeep was the one who hung the victim in the cell.

While the victim was hanging from the handcuffs, Sgt Samaranayake approached with a wooden pole and began beating him across the back and head. In fact the beating was so severe that the pole broke into pieces. The police then left the victim alone but returned a short time later evidently drunk and holding iron poles. They then began beating the victim again with the poles, until the point that he lost consciousness. When he regained consciousness the victim asked for water, which PC Lasantha brought to him. PC Nimal Ranjith then asked what happened to him and the victim explained the events.

The following morning Sgt Samaranayake returned with a sarong. He took the victim outside with two other persons and bathed him. After that he was put behind a jeep where he overheard discussions amongst the police saying that they would take him away along small remote roads, being careful to avoid the main roads. It was then that the victim realised he was at the mortuary of the Karapitiya Teaching Hospital. At that point the victim lost consciousness again and is unaware what happened to him at that time.

Some time later when he regained consciousness the victim discovered that he was in hospital. He was still handcuffed and there was a chain attached to the handcuff and the bed. He realised that he was under remand custody but did not know the reason for this or what the charges were that had been laid against him.

An examination was conducted on the victim at the hospital. According to the JMO, the victim has been seriously assaulted with a blunt weapon and is under dialysis. He also noted that (direct quotes from his report):

- “1. This person’s upper body and lower body has been beaten. According to the marks on his body he has been assaulted with two types of blunt weapons.
2. The upper part of his body has been beaten with a blunt weapon and there have been internal injuries, there are not much external injuries visible, however, internal muscles have been harmed, there have been injuries to internal organs.

3. The marks due to beatings below waist are very visible. There are external injuries. Due to that internal muscles has been broken and there have been internal bleedings.
4. There have been a lot of blows been given the back side of the victim. One could count some of the injury marks below waist but not some others.
5. Due to beatings there have been internal bleedings and due to that there have been malfunctioning of kidneys. He is passing urine through a tube. He will take months to recover and at least has to spend 1-and-a-half months in the hospital.
6. There are injuries on the wrists indicating that he has been handcuffed and possibly hanged from them.
7. His legs too are swollen due to injuries to muscles.”

### **99. D. Dilan Samaranayake: Assaulted after crashing into police bike**

On 2 August 2006, a mysterious phenomenon occurred in Sri Lanka when people reported seeing ‘rays’ of light emanating from Buddha statues around the country. Hence around 7pm 15-year-old D. Dilan Samaranayake, a student of Sri Sumangala Boys’ School in Panadura, rode his bicycle towards the Galthude temple in Panadura to satisfy his curiosity. Suddenly a bicycle ridden by SI Neville of the Panadura (South) Police station came from the opposite direction and crashed into young Dilan and knocked him down.

Even though Dilan fell down, the SI Neville began assaulting and kicking him. The SI then pulled Dilan up and dragged the boy towards his home. He took hold of Dilan’s bicycle, while the boy was forced to wheel his bike. On the way the SI continued to assault Dilan and also scold him with abusive language. At his house, the SI recorded Dilan’s name and address and also threatened Dilan that unless he repaired his bicycle, he would confiscate Dilan’s bicycle. Dilan was then chased away.

When Dilan returned to his home, he was thoroughly shaken and began vomiting and feeling feverish. Hence the following day on August 3, his parents visited SI Neville and inquired as to why he assaulted their son. The SI then scolded and shouted at them. Later the parents visited the Panadura (South) police station and tried to lodge a complaint against SI Neville. According to the parents, SI Neville remained by their side and constantly interrupted the recording of their complaint. Finally the parents were forced to sign a statement without being informed about its content.

Thereafter the parents brought young Dilan to Ward No. 1 of the Panadura Hospital, where a JMO also examined him and recorded details of the

incident. According to the doctor's report, Dilan sustained injuries on his head and sexual organs. No serious action was taken to investigate the incident.

**100. I.A. Nishantha Chandrasiri: Forced abduction and brutal action against victim's family by police**

On 23 August 2006, six or seven persons abducted I.A. Nishantha Chandrasiri while he was visiting the house of a sister, who put him in a white van. At the moment of abduction he and his family members were beaten with rifle butts, hands and feet. The family members were blamed as to why they allowed Nishantha Chandrasiri in their house. His hands were tied with a T-shirt he was wearing and he was taken out to a van.

According to the family, some weeks before the abduction on August 23, the OIC of Navagamuwa had visited the family house of Nishantha Chandrasiri and told them that he was wanted for some robbery. However, the family is not aware of any such involvement. The following day, those who were subjected to the beating went to Nishantha Chandrasiri's house and informed his wife, W. Dinasha Sangeewani Kumari about what had happened. With suspicion that the victim might have been taken to the Navagamuwa Police station, the victim's wife and brother went to the station. They reached the station at 9am and complained to the OIC, who shouted at them asking, "Is it now that you have thought of the police and why have you come?" The two persons explained that had come to look for Nishantha Chandrasiri.

The OIC told them that, "We have not brought him. If we get hold of him, we will kill him. Even by now there won't even be pieces of him." The OIC did not allow a statement to be recorded from them. He told them to go to other police stations and have a look. The two family members went to the Mirihana Police, the police stations at Hanwella, Athugiriya and Pellyyagoda but could not find him. On the same day they visited the Human Rights Commission of Sri Lanka and informed the commission that the Navagamuwa police had refused to take a statement. An officer from the commission talked to the Navagamuwa police and thereafter the victim's family members were asked to go back again to the station. At around 8pm, they went and informed the officers the reason for their coming and then a statement was recorded. They left the police station at around 10pm.

About a week after having received news that he was being kept at the Criminal Investigation Unit at Dematagoda the members of the family

visited the place and were shown Nishantha Chandrasiri through a small peephole, seated on a bench in a dark room. They were not told any details and thereafter despite attempts they were unable to obtain any further information. The family believes that the OIC of Navagamuwa was aware of what might have happened to Nishantha Chandrasiri. They visited the one-man Commission on Abductions and Disappearances appointed to look into disappearances, which is headed by Mahanama Thilakaratne, and made a complaint. Despite attempts by the victim's family in making complaints to the police, the HRC and the one-man Commission on Abductions and Disappearances, the family could not get any information.

### **101. Suddage Sirisena: Brutal torture by intoxicated police**

At around 11am on 24 August 2006, Suddage Sirisena was leaving a meeting at his village's Buddhist temple in Millewa, Maradankadawela, when two police officers on motorcycles signalled for him to approach them at the gate. The officers were in uniform and had Sirisena's son Piyasiri with them who had originally pointed his father out to the police.

As soon as Sirisena approached the policemen, one officer (wearing badge No. 47934) immediately assaulted him. He was struck on his ears and was then forced to lay his head on the ground while the policeman punched him on the back of his neck. The policeman then viciously kicked Sirisena before ordering him to get onto one of the motorcycles. When Sirisena refused to comply with the order, one of the officers grabbed his helmet, which was dangling on the motorbikes handles and smashed into his face so hard that he lost consciousness.

Sirisena awoke and found himself under a tree lying in a pool of his own blood beneath a crowd of onlookers. He felt dazed and was unable to comprehend what had befallen him. A relative and his neighbour then helped take him to a local hospital where he told the doctors that the police had assaulted him. However, the village hospital was apparently not equipped to treat his injuries and refused to ward him. He then was rushed to the Kekirawa hospital where he was admitted and once again he gave the details of what had happened to him to the doctors.

Sirisena says that as a result of the assault he suffered two dislodged front teeth. Three other teeth were loosened and were later extracted at the hospital. On August 28, Suddage he was discharged from the hospital after being cleared by the JMO.

After Sirisena was discharged from hospital, various policemen attached to the Kekirawa police repeatedly harassed him, including the perpetrator, who has tried to amicably settle the matter. He says that the perpetrator now begs him not to pursue the issue in consideration for the welfare of the policeman's family. He also says that on August 26, the ASP of Anuradhapura visited the scene of the incident and recorded statements of witnesses.

Sirisena was not aware of why he was brutally assaulted by the Kekirawa police but thinks that his son, who is a suspected illicit liquor trader in the area, as well as an army deserter who has a personal animosity with him, induced the police to beat him.

### **102. Wasantha Kumara: Torture victim threatened to withdraw complaint**

Wasantha Kumara, who tried to register the case of robbery, was brutally assaulted by one sub inspector of the DIG-Galle Office on 24 August 2006. The victim then began receiving threats from the ASP after he attempted to lodge a complaint against the concerned SI. It is alleged that the ASP further threatened the victim that he would be abducted and subsequently disappeared if he pursued the case.

A robbery took place at the house of Wasantha Kumara's aunt in Pamunugamuwa, Tal-ambara, Matara. On 29 June 2006, Kumara complained with the Weligama police regarding the incident. Although the police had an eyewitness who identified a suspect, the officer of the CID in the Wasantha police station allegedly suggested to the victim to drop the case. Disturbed by the police inaction, Kumara and his aunt complained to the ASP of Akuressa on 4 July 2006, then with the ASP of Matara on 27 July 2006, and to the Police Headquarters in Colombo on 28 July 2006. When he visited the police HQ a second time to inquire about the case, DIG Jayasundara advised Kumara and his aunt to complain to the Galle DIG, Jayantha Gamage.

On 24 August 2006, Kumara accompanied by his aunt went to the office of the South province DIG, Jayantha Gamage in Galle to lodge the complaint. However, there they were kept waiting for more than six hours from 9:30am to 3:45pm, while some other people who came late were allowed to go in. Kumara then inquired from SI Nishanka why they were kept waiting for so long and informed him that he came there upon the instruction from the police HQ. However, SI Nishanka became abusive and shouted at Kumara to

go back to Colombo and settle the matter on his own. He also refused to let Kumara and his aunt meet the DIG. When Kumara protested, SI Nishanka punched Kumara's face hard and continued to beat his face several times. Kumara felt faint and his aunt escorted him outside the office.

Later Kumara was warded at the Karapitua Hospital due to severe pain caused by the assault. In hospital, the JMO examined him and later Chief Inspector (CI) Pushpakumara from the Galle Police station visited the victim in the hospital and recorded his statement regarding the police assault. The CI then asked the victim's aunt to bring him to the police station as soon as he was discharged from the hospital. Upon instruction, on 31 August 2006, Kumara along with his aunt went to the Galle police station where CI Pushpakumara referred them to ASP Kumaratunga of Range III.

While inquiring into the incident, the ASP Kumaratunga allegedly told Kumara, "I will find the stolen goods for you; I will also give a warning to the policeman who assaulted you; but are you willing not to pursue the matter any further?" When Kumara refused to do so, the ASP got angry and ordered his aunt to leave the room. He then threatened Kumara not to get on the wrong side of the police and warned that it was not a good thing to antagonize police because the ASP was even empowered to cause the abduction and disappearance of a person like him. The ASP then called a typist and dictated a written statement himself to which Kumara was forced to sign. Kumara did so as he feared for further assault by the senior police officer.

### **103. P. Gnanasiri: Brutal torture of a fisherman by Weligama police**

The illegal arrest and brutal torture of P. Gnanasiri and the vicious assault of members of his family, by officers of the Weligama police in Matara district II, Matara division, on 13 September 2006.

Gnanasiri, a fisherman in the southern coastal town of Weligama, was internally displaced by the tsunami of December 2004. Since then, he, his wife Mallika and their five children have been living in the ramshackle Weligama camp for internally displaced persons.

On 13 September 2006, Gnanasiri had a heated argument with one of his neighbours in the camp. That same evening, at around 7:30pm, two policemen attached to the Traffic Division of the Weligama Police station visited his tent. The officers verbally abused him, using foul and offensive language, and then arrested him without producing a valid warrant.

Gnanasiri claims that he requested the officers not to use such abusive and offensive language in the presence of his family. In response, one of the policemen is reported to have said; “We will teach you a lesson not in word, but by deed”, and started to severely beat Gnanasiri. The policemen then handcuffed him to a tent pole, and continued in their inhumane assault of Gnanasiri for a period of around 20 minutes. Then, Gnanasiri claims that he saw one of the policemen making a telephone call to the Weligama Police station. A few minutes later, several policemen arrived at the scene, in police jeeps, and joined in the brutal assault of Gnanasiri.

Gnanasiri’s wife Mallika, seeing this merciless attack on her husband, began to weep profusely, begging the police officers to desist in their assault. In response, one of the officers viciously assaulted Gnanasiri, kicking her hard on her spinal cord. Seeing their parents being viciously beaten by so-called law-enforcement officers, their children too began to cry. The police officers then allegedly assaulted the children; one of their daughters, a twelve-year-old girl was also kicked in her spine and then thrown over a table to the ground, while their nine-year-old son was aggressively slapped several times on his face. Mallika’s sister, Chandralatha, seeing this inhumane assault, questioned the police officers as to what her sister and family could possibly have done to deserve such a brutal attack. An officer then began to beat her severely, and dragged her by her hair into one of the police jeeps. They then forced Gnanasiri into the jeep, before proceeding to the nearby Weligama Police station. Inside the jeep, Gnanasiri claims that he was pushed to the ground while several officers aggressively trampled and kicked him with their heavy boots all the way to the station.

At the station, Chandralatha was forced to sit on a bench and witness the further brutal attack and torture of her brother-in-law, this time with heavy wooden poles. Apparently, Gnanasiri repeatedly told the officers that he was still slowly recovering from prior injuries suffered in a motorcycle accident, but they continued in their wreaking of terror and torture nonetheless. The police officers later removed Gnanasiri’s handcuffs and pushed him into a police holding-cell overnight, where he was deprived of food, water and medication. In addition, the police did not allow any of his family members to visit him even though they had come to the station with that very purpose.

The next day, 14 September 2006, at around 10am officers took both Gnanasiri and Chandralatha to the Matara Magistrate’s Court in a police van. On their way to the Magistrate’s court, they passed by Gnanasiri’s wife and

told her to also get into the vehicle but officers later demanded money from the wife for the van journey. At the court, Gnanasiri was fined Rs. 5000 (USD 50). But he insists that at no time during his arrest, torture, detention and court visit was he informed of the charges filed against him, nor was he asked at the court whether he wanted to plead guilty, or not guilty. Meanwhile, his sister-in-law, Chandralatha was charged with 'obstruction of police duty'.

On 15 September 2006, Gnanasiri's condition took a turn for the worse and he was rushed to the nearby Matara Hospital, where he was warded for several days. That same night, the hospital-based police recorded his statement. The JMO also recorded his statement, but did not perform any further medical examination of Gnanasiri's torture-inflicted injuries. His wife, Mallika was also warded in the same hospital for the grievous assault-injuries caused to her by the accused Weligama police officers.

Gnanasiri is adamant that the reason for his torture and unwarranted arrest is because a neighbour with whom he had had a dispute has close personal associations with officers of the Weligama Police.

#### **104. Lalith Rajapakse: Life-threatening injuries**

Medawachchiya Police and Anuradhapura prison officials in Anuradhapura district, Anuradhapura division, on 21 September 2006, tortured a 25-year-old man named Lalith Rajapakse from Kirigallewa.

Rajapakse had surrendered himself voluntarily to the police via his lawyer once he learned that a complaint was lodged against him at the local police station on 21 September 2006. Once he was detained, the Medawachchiya police allegedly began to mercilessly beat him. The torture was so severe that Rajapakse lost consciousness, which forced the police to bring the victim to the Medawachchiya hospital where he was then administered saline. However, later that day and against the doctors orders, the police allegedly discharged the victim from the hospital and forced him to take six Panadol pills so that he could be presented before the court. Rajapakse's family claims that he was in so much pain that he vomited blood in the courtroom.

Once the magistrate witnessed the victim's condition, he ordered the Anuradhapura Prison guards to immediately take him to a medical facility. However, in a direct contravention of the court's orders, the guards allegedly returned the victim to the remand prison where they once again brutally assaulted him. As a consequence, Rajapakse's condition deteriorated and he was in grave danger of losing his life.

(Full details of this case and the subsequent trial of accused police are provided in a separate section of this publication.)

### **105. Duwandage Pushpakumara: Attempt to harm a torture victim**

Torture victim Duwandage Pushpakumara faced an attempt to harm him by the alleged perpetrators on 26 September 2006, when his case was heard at Chilaw High Court. This is not the first incident of intimidation made by the alleged perpetrators. Since filing the complaint against the accused officer, Pushpakumara and his family have been constantly threatened and have had to flee home. The victim, who was a 14-year-old boy at the time of the incident (see Case No. 54, above), was allegedly tortured by the then OIC and other officers of the Saliyawewa Police Post in Putlam on 1 September 2003.

On 26 September 2006, D. Pushpakumara was accompanied by a few others to attend the Chilaw High Court from Kandy, for the purpose of which they traveled in a van. He had filed the complaint against SI Samarakoon who was responsible for his torture in September 2003 (Case No. 24/2004 Chilaw High Court). On their way, they found that the son of the accused SI, who is also a police officer, with a gang of about ten to fifteen persons wearing civilian clothes followed their vehicle from Kandy in two vehicles. The two vehicles bore the registration numbers W.P.U.9562 and 262-9177 and there were also two motorcycles. These persons came to court and the friends who accompanied the D. Pushpakumara noticed their presence and heard some of their conversations.

On the way back to Kandy after the court hearing, D. Pushpakumara and his group decided to take a different route so as to escape the gang that was following them. However, the group of persons in the aforementioned vehicles kept following them. Fortunately, D. Pushpakumara's driver was able to change some routes and to go to Colombo instead of towards Kandy and thus avoided the gang that was following them. The victim's case against the concerned SI has been before the Chilaw High Court for a long time and there have been many attempts in the past to pressurise the victim and his family to withdraw his complaints. For example, police officers of the Saliyawewa Police Post, as well as prominent politicians, are threatening to burn the family's house if they pursue the complaint on this matter. Later on, D. Pushpakumara and his parents had to flee due to threats from the police. Moreover, He also received several death threats from the accused SI and other police officers before the first hearing of the criminal case against the concerned SI at the Chilaw High Court on 9 February 2005.

The AHRC was also informed that there was also pressure on the human rights groups who are supporting the victim. We brought this to the notice of the police and other Sri Lanka authorities on earlier occasions but no serious action has yet been taken to stop constant threats to D. Pushpakumara. Considering previous threats and harassment, we strongly believe that this was an attempt to kidnap the victim or do him harm. The AHRC therefore urges the Sri Lankan authorities to provide immediate and effective protection to the victim and take urgent action against those responsible for the threats to the victim. Meanwhile, the accused SI is trying to prevent the case from being taken up in court. On many occasions when the case was to be taken up, he disappeared from the premises of the court and later sent in medical reports.

**106. Chamara Nuwansiri: Torture of a 15-year-old boy from Batuwatte**

The arbitrary and illegal detention and use of death threats and torture against a 15-year-old boy, Chamara Nuwansiri, from Batuwatte, Bangalawatte, by police officers in Balangoda reportedly took place following an attack on his family at their home by several people. The boy was detained at the Balangoda police station when he, his mother and two brothers went to the police station to lodge a complaint about the attack on their house. Police officers reportedly tortured him while he was in custody and forced him to confess to a theft that he had not committed. The boy has now been charged with the crime of theft based on this confession and has been released on bail. The boy was also threatened by the police not to talk about the assault after he was released.

On 3 October 2006 at around 10:15pm, several people from the Batuwatte area came to the house of Chamara Nuwansiri, a 15-year-old boy, in Batuwatte, Bangalawatte, and attacked his family, including his mother and two brothers. The father of the family, who is a soldier in the army, was not at home at that time. The people who attacked the family first attempted to set fire to Chamara's mother, however, they failed to do so. They then start assaulting Chamara.

After the attackers had left, the family rushed to the Balangoda police station to lodge a complaint about the attack. As they were approaching the police station, Chamara saw the attackers talking with police officers at the station. At the station, the police did not receive the family's complaint. The family was ordered to go back home, but Chamara was told to stay.

Another person known as Chanaka is also alleged to have been with the attackers when they were talking with police officers at the station. Chamara was brought to a room in the station along with Chanaka and both were severely assaulted by police officers. The police officers accused both of them of stealing a purse of a person called “Samantha” and demanded that they reveal where it was.

Chamara, who reportedly did not steal the purse, was subjected to harsh interrogation as a result of which he admitted to stealing the purse because he could no longer tolerate the pain. Later on, Chamara and Chanaka were taken from the room where they had been interrogated to a place near the holding cells, they were forced to kneel on the floor with their hands handcuffed together for another three hours, after which time they were offered food. After the meal they were again handcuffed together and taken to a cell.

When Chamara made a request to use the toilet outside of the cell (which is more sanitary than the one in the cell), the police officers answered him with abusive language and accused him of attempting to escape. At this point, the police officers reportedly hit Chamara using their fists and rubber hose pipes and kicked him repeatedly. Chamara was not handcuffed to Chanaka while he was being assaulted by police officers, but was again handcuffed to him after the assaults. Chamara’s father, M. Bandusiri, went to the police station later on that day, along with Chamara’s mother, to attempt to have their son released; however, they failed.

Chamara and Chanaka were detained in the cell until around 6pm the next day (October 4, 2006). They were then moved to a warehouse, where they spent the night. On October 5, both of them were handcuffed together again, and locked in a holding cell. At around 3:00 pm on the same day, Samantha and several other people came to the police station and threatened Chamara. The police officers also said, “Tell the truth. If you tell the truth you can go home right now.” Chamara however, did not bend to these threats and kept stating that he had been assaulted by the police and handcuffed with Chanaka in the cell.

On October 6, the police took Chamara and Chanaka’s fingerprints and then produced them before the Balangoda Magistrate’s Court. At the court, they were charged with committing theft. Chamara was released on bail later the same day and his parents were told to take him to the probation office.

On October 7, Chamara was suffering from health problems and was brought to the Balangoda government hospital by his parents. Chamara complained to the medical doctor about the torture he had been subjected to by the police officers. On that evening, a police officer came to the hospital to see Chamara and threatened him by saying, “Don’t you say the police hit you; come to the police station later and sort it out, or else we will dispose of you”. On October 8, 2006, Chamara told the JMO and the hospital police that he had been tortured.

**107. Pasquelge Don Dudley Mervyn: Brutal torture of man who was wrongly arrested**

The victim was arrested in relation to the charge of robbery of the house in Prasanna Sandaruwan, which is under the area of control of the Seeduwa police station. The victim had allegedly claimed that he was not involved in the robbery. However, the police allegedly tortured him in order to force him to confess his involvement in this crime. At around 11:30 am on 27 October 2006, several police officers took Pasquelge Don Dudley Mervyn, a 56-year-old casual labourer to the Seeduwa police station in Seeduwa. Negombo District II, Negombo Division, Sri Lanka and arrested him in charge related to a robbery of a house of Prasanna Sandaruwan, which Pasquelge claims that he did not commit. The mother of the victim, Pasquelge Dona Violet Lilian, learned of the detention of her son in the evening of the day he was arrested.

When Lilian visited her son to the Seeduwa police station with food, Dudley told her that he had been severely tortured and had been forced to admit to the robbery that he did not commit. Lilian saw the injuries on his body and realised that her son was in great pain. On November 2 when Lilian again visited the police station to see her son, she witnessed that he was not in the holding cell but was seated on a chair in the police mess and handcuffed to a steel bed by his right hand.

Dudley had been detained at the police station for seven days until November 3 without being produced before a magistrate.

**108. Nishantha Perera: Arbitrary detention and ill-treatment of man suffering from mental illness**

The arbitrary and illegal detention of a man suffering from mental illness at the Wadduwa Police station is thought to have followed a conversation in which he upset the OIC. The victim, Nishantha Perera, was detained in one of the police station’s holding cells for over nine hours without being

issued an official warrant of detention. The detention frightened the victim, reportedly causing him to become hysterical. As a result, the OIC allegedly stripped the victim naked and insulted him, before forcing him to run back home without any clothes on and with his belongings left back in the police station.

M. Jayawathi Perera, the victim's father, was outraged by the illegal detention and inhuman and degrading treatment to which his son was subjected. The police reportedly knew of his psychological condition. A complaint was not dealt with seriously; there was no investigation into the case.

### **109. Weligoda Ananda: Illegal arrest, torture and secret detention**

A 49 year-old man, Weligoda Ananda, was severely tortured in the Welikada Magazine prison while he was interrogated by police officers. Ananda was taken by police and arrested without being informed of the charges laid against him. He had been held in so-called "secret detention" since police took him on 8 November 2006, and his family had not known his whereabouts.

Ananda was arrested by 10 police officers in plain clothes from the CID of Peliyagoda and Divulapitiya detachments at around 11:30am on November 8. The family members were forced to leave the room by the police officers and went upstairs after they saw Ananda was handcuffed, however, they heard the police officers questioning the victim and asking about some information on a telephone number. They also heard the sounds of the victim being tortured.

Despite the family's pleadings to the police on the reason why the victim was arrested and where he will be taken, the police did not give any answer to the family when they left the victim's house. The family had lodged complaints with several local police offices and the CID office asking them to search for the victim. However, the police never treated their complaint seriously and they could never find his whereabouts. A few days after the arrest, Indra Kanthi, the wife of the victim, received a telephone call from her husband saying that he was safe and that the police were treating him well and that he would be home soon. On November 15, she received another message from her husband via an unknown messenger. While on November 16, the Divulapitiya Police finally agreed to enter a complaint and went to Indra Kanthi's residence to take a statement the following day.

The victim's whereabouts were not known by the family until the magistrate

ordered the victim's wife to go to the Welikada Magazine Prison which is where the police indicated as the place where the victim had been detained. The victim's wife visited the prison, and saw that her husband had wounds all around his body and had difficulty walking. The victim told his wife that he was tortured severely by police when he was arrested.

### **110. R.H. Dhanapala: Man illegally arrested and assaulted by excise officers**

About 4am on 29 November 2006, five mysterious men including one in uniform began pounding on the door of R.H. Dhanapala's home while he and his family were asleep. At the sound of shouting, one of the victim's children opened the door. The five men entered the house and identified themselves as officers from the 'Excise Department'. One man who was wearing civilian cloths then pulled Dhanapala by his sarong and shouted, "Come on, show us where the kasippu (illicit liquor) barrels are!"

Dhanapala maintained that he was not in possession of any kasippu. The officers then verbally abused him in front of his family and began assaulting him on his head. When Dhanapala's children began screaming in fear, the officers dragged him outside the house only after they had forcibly obtained the signatures of the victim and his wife without informing them of what they were signing. The excise officers then took Dhanapala to nearby shrubbery and pressed hard upon him, demanding to know where the barrels of kasippu were. When Dhanapala continued to insist that he had no idea, the officers grabbed him by his beard and hair. They then began to severely assault him with their fists and kicked him with their boots.

Meanwhile, officers took a second person into custody and brought that man to the same shrubbery and brutally assaulted him and Dhanapala with a pole. At that time, Dhanapala saw that two barrels of kasippu were presented there but did not know from where the police got these barrels. The officers then took that man and Dhanapala back to the other man's house and told Dhanapala that he would be charged in court. He was then released and instructed to be present at the Ratnapura courts on 14 December 2006.

On 30 November 2006, Dhanapala who was accompanied with his employer Shantha Kumara, visited the Ratnapura Excise Department to lodge a complaint regarding the incident. They were informed that the relevant officer was not in and were told to return on 5 December 2006 at 9am. When they returned on December 5, one of the officers who had arrested

and assaulted Dhanapala came forward and verbally abused both Shantha Kumara and Dhanapala. Furthermore, Dhanapala's complaint was not accepted.

On 14 December 2006, Dhanapala went to the Ratnapura courts where he discovered that he had been falsely charged with the possession of illicit liquor. He pleaded not guilty to the charges against him and was released on bail by the court.

According to Dhanapala, ever since the incident, his children who had seen him assaulted and dragged out of their house have been suffering from mental trauma and are now living in fear. Dhanapala has complained in writing to the IGP, Commissioner General of Excise, the HRC and other relevant authorities regarding the illegal arrest, assault and fabrication of charges against him. He is requesting that these authorities take immediate legal and disciplinary measures against the errant excise officers.

#### **111. Marisan Annachcheli: Mother of three threatened with her life if not consenting to sex with police official**

Marisan Annachcheli, a mother of three children, a resident of Karainagar in Jaffna complained that a group of officials from Vavuniya Police station threatened to kill her if she would not consent to sex with them.

She remembers the number of one police official who was among them was No. 28445. Marisan Annachcheli, accompanied by a parliamentarian, lodged a complaint to Jaffna DIG Prathap Siriwardhana. However, no investigation had taken place.

She had faced the situation when she went to Vavuniya to look for her husband Marikkawasan, who was abducted on 8 January 2007 by a group that appeared to consist of police while he was working in a liquor shop in Mattakkuliya, Colombo.

She said that the police officials spread rumours naming her as a bad woman and her lodge keepers had been urged to expel her.

#### **112. Rev. Nallathamby Gnanaseelan: Brutal killing of a pastor in Jaffna**

Rev. Nallathamby Gnanaseelan, 38-year-old pastor of Tamil Mission Church in Jaffna, was brutally gunned down at the roadblock at Library Junction, Wembedy School Road, Jaffna, around 10:30am on 13 January 2007. On

that fateful Saturday morning, he had gone on his motorbike to Jaffna Hospital with his wife Serena and his eldest daughter who was sick. He had left the mother and daughter at the hospital at about 10am asking them to return home by bus after the medical treatment was over.

The killing took place at Chapel Street when Rev. Gnanaseelan was heading to his church to conduct a daylong prayer fast at the church. According to eyewitnesses, Rev. Gnanaseelan was shot in the stomach and then as he lay on the street, shot in the head and killed by soldiers on duty stationed at the junction. The soldiers were sauntering along Chapel Street at that time. His Bible, bag, ID card and motorcycle were taken away and he was left lying on the road. Eyewitnesses say that the pastor had not done anything provocative.

According to the Sunday Leader newspaper, Rev. Gnanaseelan's body lay on the road for more than an hour till the police officially discovered him at around 11:30am. The acting Jaffna District Judge M. Thirunavukkarasu went to the scene for a preliminary inquiry and instructed police to trace the victim's identity. The "unidentified" body was taken to the Jaffna Hospital morgue. On the following day, the family was looking for the missing pastor. They went to the morgue and found the pastor's body there.

The soldiers on duty at Wembady Road Junction reported that that Rev. Gnanaseelan was carrying explosives. On January 13, the Media Centre for National Security (MCNS) website ([www.nationalsecurity.lk](http://www.nationalsecurity.lk)) posted a brief news item that one person who was to be searched at the road block at Library Junction, Wembady School Road, Jaffna, attempted to hurl a hand grenade and the troops shot him dead in self-defence. It also claimed that a grenade was found in the pastor's possession. The Defence Ministry posted a similar story on its website ([www.defence.lk](http://www.defence.lk)) on January 13. However, it was reported that the military changed its claims after it discovered that the dead man was a well-known Christian pastor. Later it claimed that the pastor was shot because he did not stop when the soldiers instructed him to do so. Military officials reportedly pressured the pastor's wife to sign some documents but she refused to do so.

In its statement, the National Christian Evangelical Alliance wrote, "Rev. Gnanaseelan was a member of the National Christian Evangelical Alliance Clergy Fellowship in Jaffna and was not involved in any political activity. He was a law-abiding citizen and the pastor to his congregation." The statement also said that, "His death is not an isolated incident, but one of many, which

takes place in the North East of Sri Lanka, daily.”

Rev. Gnanaseelan is survived by his wife and four children; the oldest daughter is seven-years-old and youngest is one-year-old.

### **113. Wijeshinghe: Alleged torture and fabrication of charges by Wattagama Police**

According to the information we have received, at around 10am on 15 January 2007, Wijeshinghe was summoned to the Wattagama Police station with his lawyer Saman Ratnayake. He was accused of having failed to return some jewellery and money as promised, but he denied such accusations. He was asked by the police to give a statement about this accusation. Meanwhile, a sub-inspector of police, Upali Chandrasiri was very rude to him. After his lawyer left, Wijeshinghe stayed to clarify that he was not guilty of such accusations, but Upali and another police sergeant, Thilakarathna, physically abused him. He was kicked and beaten, and then locked up and tortured. Wijeshinghe told the police that he had heart disease, but the officers did not pay attention and threatened to kill him. He was handcuffed with his hands behind his back.

On the same day the police filed a case at the Teldeniya Magistrate’s Court against him, claiming that he had obstructed the duty of SI Upali Chandrasiri, based on a fabricated document. On 22 February 2007, the case was called at the court but Wijeshinghe was hospitalised and unable to attend the court. Therefore, the court remanded him into police custody from 22 February to 1 March 2007.

Although Wijeshinghe was hospitalised in the Wattagama Hosiptal, on February 22, the police transferred him to the National Hospital Kandy under custody, where he was admitted into the intensive care unit. On February 23, he was transferred to the cardiology ward. He remained under police custody until February 27.

Wijeshinghe was brought before the judge on 1 March 2007, where the police claimed that he was a mental patient. His lawyers denied this accusation, showing medical certificates from the hospital, and he was released on bail later the same day.

On 9 March 2007 and 23 April 2007, the HRC office in Kandy summoned SI Upali Chandrasiri for an inquiry into the complaint made by Wijeshinghe, but he did not come.

**114. Kapu Kankanamalage Mahesh Maduranga: Beaten with tree a branch**

Police officer Abeygunawardena came to the house of Kapu Kankanamalage Mahesh Maduranga (aged 16) to search him at around 11am and 12pm on 17 January 2007. The police officer and another came to the victim's house by car and found only Mahesh's mother at home. They told the mother to tell her son to come to the Eheliyagoda police station at 4pm the next day, but did not explain the reason for their request.

Later on the same day at around 10pm, the two police officers came to the house again searching for Mahesh Maduranga with one of his neighbours, Dushmantha. The father of Mahesh Maduranga opened the door for them. As the door was opened, they came into the house and found Mahesh Maduranga, who was sleeping at that time. They started to shout at him with foul language, and told him to get up otherwise they would kick him. Then they handcuffed him and took him out of the house.

In front of the house, they broke a thick branch from a tree and used it for beating Mahesh Maduranga, accusing him of stealing a cassette from Dushmantha's car the other day and forced him to confess to the theft. The two officers did not stop beating Mahesh Maduranga despite of his and his father's pleas. On the contrary, they hit Mahesh Maduranga's father with a gun and pushed him aside from the site where his son was being assaulted. Abeygunawardena beat the victim with the stick until it was broken and he tried to impale Mahesh's fingers with a part of the stick. Due to this brutal violence, Mahesh has lost the use of the little finger on his left hand.

After they beat Mahesh, they brought him into Dushmantha's three-wheeler and brought him to premises that belong to a person called Mallawarachchi. The two officers forced the victim to admit to the robbery of a cassette tape in front of this person and started to beat him with the stick again. Despite such outrageous violence, the victim kept denying the involvement in the robbery of the cassette tape and he was brought to the police station at around 11:30 pm that night.

At the police station, his hands were cuffed and he was kept under police custody until the following morning. While he was in custody, police officers ignored his request to use the toilet until a few hours later.

The next morning, when the father of the victim visited the police station

he saw his neighbour Dushmantha there and asked him not let his son be beaten by police officers again. Then Dushmantha talked to one of the police officers and later on the victim was released and told to come back to the police station on a designated date. The father and the victim went back to the police station on the said date and were told by the police officer Abeygunawardena that Mahesh had to pay the same amount of money for the stolen cassette since he was under suspicion of having stolen it. The victim and his father refused to pay for it and again denied the victim's involvement in the robbery. The officer then said that the case would be brought to the court later on.

The victim sustained severe back pains and headache due to the severe torture he received at the hands of the police officer. He was brought to the Eheliyagoda Hospital and admitted on 8 February 2007. He received a medical examination from the District Medical Officer due to the report that the victim's father made at the hospital that his son's injuries were due to torture. The hospital police recorded the statement on the use of torture.

The victim was discharged from the hospital on February 13, however, he returned to the hospital again on February 14 because his condition became worse. On February 15, the victim's neighbour Dushmantha and another person called Sumith allegedly attempted to abduct the victim from the hospital but failed because of the intervention of the hospital staff. The victim and his father wanted to report this attempted abduction but did not because they were afraid of going to the police station.

**115. W.S. Anthony Raja, W.S. Jude Sampath, W.S. Sumith Thamel, Anthony Tyrone Fernando, Sivanaiah Ranjith and W.S. Luckshman Newton Fernando: Sri Lankan Navy allegedly attacks, arrests and assaults fishermen from Negombo**

On 27 January 2007 at 4am, six fishermen set out from Negombo and stationed themselves 20 nautical miles off the coast and outside the high-security zone that is patrolled by government forces. They then dropped their nets. At around 6:30am, the fishermen noticed a navy ship approaching, at which point the men raised a flag to inform them that they were fishermen and had nets in the water. The fishermen saw the navy open fire on another boat in the area, which then caught fire. The navy then approached the fishermen and demanded that they all jump into the sea and remove their clothing. The government forces then allegedly tied the victims' hands behind their backs and brought them back to land. The men were allegedly

blindfolded and assaulted during an interrogation that lasted until 4:30 pm, at which point they were placed in a holding cell.

The following day on 28 January 2007, the victims were released into their families care but did not have their boats or fishing equipment returned. Meanwhile, another six fishermen were arrested, with two of their boats seized by the navy. One of the boats was allegedly destroyed while the navy conducted a search. The fishermen's families were informed that the Antiterrorist Investigation Unit was questioning the men; however, they were denied access to the victims.

Meanwhile, the Sri Lankan Navy publicly stated that the fishermen often receive payments from insurgents in exchange for information. The statement was published in the Lanka Deepa newspaper.

#### **116. A. Dushmantha Silva: Alleged brutal assault of a man by the Panadura police**

A. Dushmantha Silva is a 29-year-old manual worker living in Temple Road, Dibedda, Panadura. On 3 February 2007 about 3pm, he was on his way to a motor garage to buy a silencer for his motorcycle when four policemen from the Panadura police led by SI Upul Kumara illegally arrested him and assaulted him all over his body with a length of rubber from a vehicle door, while demanding that he tell them where he had hidden illicit liquor. Silva insisted he was no longer engaged in that illegal business but the policemen did not listen to him and continued to brutally assault him. After that he was handcuffed and taken to a shrubbery nearby where the police had allegedly recovered several barrels of illicit liquor, a gas stove and cylinder. They put these implements into a hand-tractor and proceeded to the police station.

At the police station, Silva was fingerprinted and locked up in a holding cell. At about 11:30am on February 4, the police took Silva to the Panadura Hospital, where presumably they hoped to fraudulently obtain the 'all clear' for a remand order from the court. However, Silva complained to the doctor regarding the police assault and the doctor requested him to show his injuries. Silva removed his shirt and showed the doctor the marks on his back. Later the doctor requested him to leave the room and had a long animated conversation with the policemen who escorted Silva to hospital. Silva believes the doctor must have refused to sign the medico-legal form enabling his remand, because the police simply brought him back to the police station and threatened him with death if he approached any human

rights organisation regarding his case. The police then recorded his statement and released him on bail. The police also ordered him to appear in court on 9 February 2007.

As soon as he was released, Silva rushed to the Kalubowila Hospital, where he complained about the police assault. On February 5, Silva complained about his case to the ASP, who recorded his statement and afforded him a medico-legal form, which he took to the hospital. Later a JMO examined him, to whom he again complained about the police assault.

Meanwhile, Silva lodged written complaints to the HRC, NPC, IGP and other relevant government authorities demanding action against his torture perpetrators and adequate compensation for the serious injuries sustained from torture.

### **117. A.A. Priyantha Kumara: Brutal assault of an innocent man by the Dodangoda police**

On 12 February 2007, A.A. Priyantha Kumara (27) was returning home from work and had just visited a shop at the Madabada Junction in Dodangoda, Kalutara District III, Kalutara Division to buy some biscuits. He then saw three policemen from the Dodangoda police station standing in front of the shop. Two were security assistants (home guards) one of whom he recognized as 'Rukmal'. The third was in police uniform. The policeman confronted him and asked, "What are you doing?" To which Kumara replied he was on his way home. The policeman told him to stand up straight and allegedly slapped him soundly on his face and also assaulted him on his head. Kumara queried as to what he had done wrong and why he was being assaulted. But the officials did not answer but continued to assault him on his head. They shouted at him in filthy language saying, "You do not know us... Do not rouse the devil in us."

Kumara was still quite unaware of why he was assaulted and afterwards, slowly walked towards Matugama. Luckily three persons acquainted with him named Manju, Karunathilake and Upul saw him and after being told about the assault rushed him to the Nagoda Hospital, where he was warded for nine days.

At hospital a JMO examined him and together with the police attached to the hospital police post recorded his statement. A policeman named Gunasekera from the Dodangoda police station also recorded his complaint. Kumara says this policeman was not wearing a registration number.

On February 17, Kumara's mother met the OIC of the Dodangoda police station and lodged a complaint, which had been reluctantly recorded. But she says she was forced by the police to sign the statement without being afforded an opportunity to read it or having it read over to her. On February 19, Kumara's mother attempted to meet with the ASP of Kalutara regarding the incident, but she was unsuccessful. Subsequently, Kumara lodged his written complaint to the HRC, NPC, the Attorney General, IGP, DIG-Legal Division and SSP Kalutara regarding the incident.

**118. A.A.D.I.A. Attanayake: Brutally kicked and beaten by the police**

On the night of 26 February 2007, A.A.D.I.A. Attanayake was quarrelling with his wife over some financial matters. His sister-in-law, Nilanthi Chaturani Silva, reported their argument to the police by calling the Emergency Hotline. Officers from Matale Police station, including Sgt Ekanayake, Sgt Gunawardene (No. 54332), PC Jayatilaka (No. 57156) and a number of village security guards then forcibly entered Attanayake's house, bound his hands and dragged him to a (police) jeep. While Attanayake was being taken to the jeep, he was forced to lie on the floor and was severely kicked on his chest, by the policemen with their boots.

Another officer with a wooden pole beat the victim, at which point he lost control of his bowels. He was then taken to a doctor at the Matale Hospital, who examined him for marks of torture. Following his complaint, the doctor made a sketch of the injuries and admitted the victim to the hospital for treatment of the wounds on his body, following which Attanayake was then taken in the same jeep to the Matale Police station, where he was again beaten. The victim was not given any food. He was then taken to the minor complaints section and a statement was taken. According to him, he mentioned the police torture but it was recorded in the statement that he was remanded for trespassing and stealing Rs. 15,000 on 26 February 2007 and for threatening behaviour on 25 February 2007.

On being admitted to the section for prisoners in the Matale Prison, Attanayake told a sergeant major about the torture. Consequently, the officer examined the victim on the understanding that he would also take a statement. In Attanayake's statement, he included that three members of the Matale police, including Sgt Ekanayake, had severely beaten him. That night, he was taken to the Kandy Prison on Raja Weediya and at around 8:30pm was examined by the sergeant major. After giving a statement under section 761, the victim was then taken to the Bogambara Prison and then taken to

the pre-trial detention section, after being produced before the court on 26 February 2007, where he was remained until 5 March 2007. After his release, the photos of torture marks on his body were taken immediately.

The victim has complained to the HRC regarding the torture but no action had been taken.

**119. Randeniyage Yureshani Damayanthi: Brave woman exposes unlawful arrest, detention and torture of a young fisherman**

On the morning of 1 March 2007, two officers from the Special Unit of the Kalutara police went to the house of Mihindukulasuriya Varnapelige Maheshan Manojith Silva. The officers were in civilian clothes and travelling by bicycle. They detained Silva but they did not explain the reason for his arrest and nor did they produce a warrant. Silva was handcuffed and taken to the Kalutara Police station.

When the victim's wife Randeniyage Yureshani Damayanthi (aged 18) asked why her husband was being arrested, she was told by one of the officers that if she wanted to know then she needed to go to the Kalutara South Police station.

Accordingly, she went to the police station and asked IP Udayanga why her husband was arrested. She was told that her husband was not there and she should go and speak with IP Nimal Karunaratne at the office of the ASP. When Damayanthi went to the ASP's Special Unit office, she discovered that one of the officers who had taken her husband into custody was present. She asked again about her husband to the officers; however, they claimed that no such person had been brought there.

Damayanthi did not give up and she insisted that the officer whom she was talking to was one of the police officers who arrested her husband. The officer then admitted that the victim was at the office and said that she could see her husband but could not speak to him.

The officer then brought her to a dark room where all the windows had been closed. There, she witnessed her husband handcuffed on a chair. She asked why he was brought there; IP Nimal Karunaratne responded for him and said that he had stolen three bangles (bracelets). In retorting the remark, Damayanthi strongly denied such accusations. However, the officer threatened her that he would arrest her, since she was suspected for her involvement in the theft.

After the conversation, Damayanthi was violently forced to leave. The officer strongly pushed the eight-month pregnant woman by her stomach. The police used such force that it may have jeopardized the health of her soon to be born child. Then when she asked the officer not to beat her husband since he was still recovering from chicken pox, IP Nimal Karunaratne yelled at her with disrespectful language and said that her husband had a mistress. The IP continued to verbally attack the woman and said that her family was disgraceful.

Later on, Damayanthi informed her husband's parents about the situation. The father of the victim went to the police station to see his son in the afternoon that same day. However, IP Nimal Karunaratne threatened his life.

The victim's father left the police station and came back with a lawyer who was able to figure out that Silva was arrested on a charge of theft that had happened in Payagala. Then IP Karunaratne said that the victim would be kept at the police station for further inquiry and that he would be handed over to the Payagala police.

The second time Damayanthi visited the victim it was already after he was brought to the Payagala Police station. When she arrived at the station, she was not allowed to go inside of the building. When she refused to leave and continued to stay outside the police station she saw IP Nimal Karunaratne.

About an hour later, Damayanthi was allowed to see her husband at the police station and heard that he had been severely beaten and was forced to confess to the theft of several items from a house in Payagala. The victim's wife then asked the OIC of Payagala about the original complaint made against her husband. She learned from the OIC that IP Nimal Karunaratne lodged a complaint accusing her husband of a robbery involving gold jewellery from the daughter of an ASP, named Camilus. However, when Damayanthi visited Camilus to ask about the complaint made against her husband, she soon learned that the family had never made such a complaint.

#### **120. Daluwattalage Gamini Weerasinghe: Assaulted by police at bathing spot**

On 3 March 2007, Daluwattalage Gamini Weerasinghe was with his friends at a public bathing spot, Julis Mudalalis Bar at Pathulpana. By accident, a fight broke out between Gamini Weerasinghe's side and another set of people who were also enjoying themselves at the same spot. One of Gamini

Weerasinghe's friends was seriously injured and they were scattered. On the way to his home, Gamini Weerasinghe and his friend, Suranga, encountered some people in three-wheelers, including some persons who had fought with Gamini Weerasinghe at the bathing spot, came and caused injuries to them. Then those who assaulted Gamini Weerasinghe and his friend took them to the Ratnapura Police station saying that they were from the police. Gamini Weerasinghe and his friend were once again brutally violated in the police station.

On 4 March 2007 Gamini Weerasinghe's father lodged a complaint over the phone to the HRC at around 7:30am. When the victim's father and some neighbours went to the police station to see the victim at 8:30am, they were not allowed in. They could not meet him until they complained about it to the HRC again. When the family met the victim at the police station, they saw the assault marks covering the victim's body and were told that he had been violated in a most inhumane manner. The victim could hardly speak at that time.

On the same day, at 7pm, the victim was brought before the magistrate's court on a fabricated case. Lawyer Gamini Ratnayaka requested that the victim should be given immediate and proper medical treatment but the victim was kept in the Kuruvita Prison hospital, which did not have sufficient medical facilities.

Gamini Weerasinghe lodged a written complaint to the HRC, NPC, IGP and Prison Commissioner. No serious action had been taken to investigate the incident and arrest the alleged perpetrators so far.

### **121. Jayasingh Archchilage Somadasa: Alleged assault of two men by the Meegahatenna police in Kalutara**

On 4 March 2007, Jayasingh Archchilage Somadasa, an 80-year-old man residing in Saman, Wele Gewatte, Palawatte, received a letter from the Meegahatenna police station calling him to report to the police station for an inquiry on the next day. The letter was delivered to the house where his relative named Mallawa Archchige Pradeep had lived. He thought that the letter would relate to a complaint that he had made at the police station on 27 September 2006, which had been completely ignored at that time.

On 5 March 2007, J.A. Somadasa went to the Meegahatenna police station as he was instructed. But once he arrived at the police station, he came to

know that the matter was not about his complaint of 27 September 2006 but another complaint over a land dispute in which his name was identified as a disputing party. According to the victim, one SI Hemapala abused him with foul and filthy language while inquiring about the details of the land dispute. When J.A. Somadasa said that he gave the disputed land to his nephew M.A. Pradeep, SI Hemapala shouted at him and told him to bring his nephew.

At that time, M.A. Pradeep was by coincidence at the same police station to withdraw a complaint he had made before. When he was leaving the police station he heard his uncle J.A. Somadasa calling him from behind. When he turned back, he saw SI Hemapala hitting his uncle's chest with a huge book.

Then SI Hemapala hit M.A. Pradeep on his ear and shoulders and dragged him by his shirt and pushed him towards a table. Although he repeatedly asked the SI for the reason of his assault, SI Hemapala simply ignored him and assaulted him again. M.A. Pradeep was then ordered to sit on a bench nearby. Other people in the police station witnessed the incident. The victims report that the SI Hemapala seemed to be under the influence of alcohol.

Later, the uncle and the nephew lodged written complaints to various government authorities, including the NPC, IGP, ASP-Legal, and SP Kalutara, demanding disciplinary and legal action against the concerned SI. However, no serious action had been taken to investigate the incident and punish the responsible SI.

### **122. Lakam Mohottilage Anthony Newton Appuhamy: Alleged brutal assault of a bus driver by a traffic police officer**

A 39-year-old bus driver was allegedly tortured by a traffic police officer near the Waikkala Railway Gate on 11 March 2007. Lakam Mohottilage Anthony Newton Appuhamy was driving a Wenappuwa Depot bus bearing registration No. 62-3973 along with a conductor named Rohana Kumara on the Negombo-Wenappuwa bus route. When the bus approached the Waikkala Railway Gate at about 2:15pm, a traffic police officer pulled over the bus for what appeared to be a routine road check.

The victim reports that he was brutally tortured without being informed of any offence that he might have committed. The victim states, "A police officer gave the signal for me to stop the bus. Accordingly I stopped the bus on the left hand side of the road and walked up to the police officer. Then the police officer too came forward and said 'Is this the way to drive you bastard?'

and slapped me. Then I asked him, ‘Sir, why are you assaulting me?’ Then again he slapped me.”

The police officer continued to violently assault the victim and used verbal threats. Although the victim continued to plead for his life, the police officer did not listen to him. The police officer then pushed the victim towards the police car and hit him once more. The victim also stated, “Then he called me near to the other police officer and said ‘Just watch what I am going to do to you’. Then I told him ‘Please forgive me if I did anything wrong, if I made a mistake give me a charge sheet’. Then he said ‘I do not care about those f\*\*\*king things. Take this and get out.’” The officer then handed the victim a temporary license that identified the perpetrator as PC S.L. Amaranath (No. 28441).

Once the incident had ended, bus conductor Rohan and other passengers who witnessed the attack assured the victim that they would be willing to testify and provide any evidence they could. When the victim returned to the Wennappuwa Depot, he complained to the transport manager, Sisira, who then reported the incident to the Emergency Unit and made arrangements for the victim to be admitted to hospital. The victim was warded at the Government Hospital, Marawila between March 11 and 13, where he was treated for injuries to his right ear as well as severe headaches. After the victim was released, he had to undergo continued medical treatment for another three days.

### **123. Rajapaksage Don Saman Nilantha: Alleged arbitrary arrest and brutal assault of a policeman by other police**

The victim, Rajapaksage Don Saman Nilantha (aged 42), a sub-inspector of the traffic police in Benthota, was off duty between 13 and 15 March 2007. At around 9:05am on March 14, when the victim stopped and got off his motorcycle in front of the Baduraliya Police station to talk with a friend, three officers from the station started publicly assaulting him both verbally and physically.

In great amazement, the victim then tried to identify himself as a police officer; however, they ignored him and continued beating. After being handcuffed, the victim was brought to the room of the OIC, where he was allegedly stripped of his clothes and had his wallet as well as his motorcycle taken. The officers did not provide any explanation why the victim was being arrested and he was not allowed to inform his family about the detention.

R.D.S. Nilantha then had to sit on a chair in front of a cell. Later at around 10am, SI Dammika recorded a statement and the victim was forced to sign it. He remained sitting on the chair in front of the cell until around 3:30pm. During that time, he was not provided with any food or drink.

Later on that day, R.D.S. Nilantha was produced in front of the Mathugama Magistrate's Court. The victim claims that he was framed with false charges of obstruction police duty and criminal obstruction. R.D.S. Nilantha was released on bail of Rs. 2500 and surety bail of Rs. 50,000. His wallet and motorcycle were returned when he was released.

The brutal assault resulted in R.D.S. Nilantha sustaining injuries on his body that were so severe he had to be admitted to the Waththawa Government Hospital on March 14. There were many marks on the victim's body, and he claimed that he experienced great discomfort because of the pain in his chest and other parts of his body. Due to the seriousness of his injuries, R.D.S. Nilantha was transferred to the Nagoda General Hospital where he could receive intensive medical treatment. He remained in hospital until March 19.

On March 23, R.D.S. Nilantha was informed that he had been suspended because of the charges laid against him by the Baduraliya Police. At around 10am on the same day, the victim's wife answered his phone, since he was not at home at that time. The caller then told her that her husband would be sent to jail soon.

R.D.S. Nilantha requested that disciplinary action be taken against the three police officers of Baduraliya Police station: Namal Liyanage, Sgt Perera (No. 30073) and Sgt Gunaratne (No. 30117) on grounds of unlawful assault, no presentation of warrant and allegedly filing fabricating charges with lack of substantial evidence.

R.D.S. Nilantha sent a written complaint to the authorities including the HRC, NPC, IGP and DIG of the Legal Division.

#### **124. Kuruthanthrige Lakshman Gunasekera: Alleged brutal assault of a man by Ratnapura Police**

At around 11:30pm on 15 March 2007, Kuruthanthrige Lakshman Gunasekera from Dambuluwana, Ratnapura, was patrolling around his farm with his gun as usual to protect his cultivation from wild animals. He then heard someone talking to him using foul language and then two persons

appeared and grabbed him. These two persons who were wearing civilian clothes identified themselves as police officers but did not produce any official identification. They asked the victim that if he was a criminal and then one of them allegedly started to hit him about the head, face and spine with a gun. The other officer also hit the victim with his fist and kicked him while another person came to the site by police jeep and also joined in the assault.

Meanwhile, the victim's wife and the mother-in-law rushed to the scene and kept pleading with the police officers stop beating the victim. However, the officers continued beating him. Some other people from the village also came to the site and pleaded with the officers to stop beating the victim but they too were ignored. Eventually the victim was taken to the police jeep and pushed inside.

The victim was taken to the Ratnapura Police station. On the way to the station, he was continuously beaten. The victim's neck was squeezed. While travelling in the jeep, the victim noticed that the three police officers had taken alcohol and appeared to be drunk.

From the police station, the victim was then taken to the JMO to whom he reported the assault by the police officers. The victim complained that he had severe pain in his head and in the eyes, which were swollen due to the assault. The JMO asked the victim if he was drunk at the time of the incident and he replied that he had taken some alcohol as he usually does, but he was not drunk.

After the interview with the JMO, the victim was brought back to the Ratnapura Police station, where he was detained in the lock-up. In the cell, the victim allegedly heard a conversation between police officers who assaulted him and the other officers saying that the victim approached the officers with intent to shoot them when they were mending the wheel of the jeep.

The victim was released the following morning without being charged. Later on, the victim was admitted to the Ratnapura Hospital, due to severe pain in his head and the eyes. A JMO in the hospital again examined him; however, the police stationed at the hospital did not record a statement from him.

On 22 March 2007, the victim complained about his assault to the ASP of Sabaragamuwa. The ASP then sent a letter to ask for further action from the

SSP of Ratnapura division. Subsequently, the police restored the victim's statement. Furthermore, the victim sent a written complaint to several authorities, including the HRC, NPC, IGP, DIG of the Legal Branch, and the Attorney General.

### **125. Dammika: Illegal arrest and torture of a mentally impaired man**

At around 2pm on 16 March 2007, Dammika was on a bus with his mother, Haththatuwa Gamage Mallika, and some other family members. He is 22-years-old and mentally impaired. Mallika recalled that she saw a police officer in plain clothes named Laksiri shout to them, "There is the thief, catch him." When Dammika and his family got off the bus, four police officers in plain clothes arrested Dammika, and took him in a jeep to the Akmeemana Police station. Mallika asked why her son was taken, but she was only told to come to the police station.

During police custody, Dammika was allegedly assaulted and interrogated, despite his mental disability. He was asked about the location of the stolen goods, and he replied that the goods were in his home. Dammika was then taken back home and asked to give out the stolen goods. Two police officers named Somapala and Bolai searched, and took some imitation goods with them. While they were going to leave the house, the victim's father told them that the goods were only imitation. The officers threw them away, and assaulted Dammika again. The victim's parents tried to stop that, but they were assaulted too. The victim was then taken back to the police station.

On 17 March 2007, Mallika visited the victim in the police cells. An officer told her "not to wipe her thief son clean" and that mother and son both "will be put into the lock up"; the officer known as Bolai then pushed her away. When the police officers were not there, Dammika told his mother that he was assaulted, and he was also threatened not to tell that to his mother.

Police officer Somapala then took a statement from Dammika. Somapala allegedly shouted at him, "Tell this woman were you assaulted by us?" "Tell us at what price did you sell the golden goods for? Tell us that you took Rs. 4700." The victim then agreed to everything, and admitted that he had given everything to his mother. Somapala and the other officer then threatened Mallika to confess that she had brought a TV with stolen money, and threatened that she and her son would be produced in court.

On the same day, the Akmeemana Police brought Dammika home again. He

was asked to show the location of the stolen goods once more. His father and the youngest brother were at home. Dammika again showed the police the imitation goods. The officers were very angry, and shouted to his father if he raised his children as thieves.

The officers then took the Dammika to the houses where the theft happened. The residents of the house said the victim was completely unknown to them. The officer again beat him and took him back to the police station.

On 19 March 2007, through attorney-at-law Mohamed, the family learned that Dammika was produced to court. When Dammika met his parents, he was in a very bad condition and could hardly talk. He said he was assaulted again on his head, chest, hands and feet with batons.

### **126. Senaka Ekanayake: Alleged torture and fabrication of charges against a journalist by Kalpitiya police**

Senaka Ekanayake is the editor of Satana, a local newspaper meaning 'fight for justice', which has been published bi-weekly for 19 years. On 24 March 2007, Senaka Ekanayake visited Kalpitiya and collected information regarding certain activities of the OIC of the Kalpitiya Police, Lakshman Ranwalarachchi. He also had with him a list of persons who had disappeared from that area. At 6:30pm on the same day, he was stopped at a checkpoint on his way back by officers of the Intelligence Unit of Kalpitiya Police. They were in civilian clothes and all were under the influence of liquor.

According to the information received, the officers searched and confiscated all his items: his national identity card, media pass, passport, Fuji camera, Panasonic digital camera, Sony cassette recorder, two CDs, his books, wristwatch, a gemstone worth Rs. 6000 and Rs. 6280 cash.

After they took Senaka Ekanayake to the Kalipitiya police station, they handcuffed and tied him to a cell bar and severely assaulted with an s-lon pipe (PVC pipe). Senake Eknayake identified them as OIC Lakshman Ranawalarachchi, SI Arawin, PC Sunil (bearing badge No. 12601), PC Dhammika (No. 33446) and Sgt Indunil (No. 24011) among others. While beating him, they scolded him in foul language and told that they could make him out to be a criminal in just one minute with their pens. They removed the handcuffs some time later and then put him in a cell after kicking him several times.

At around 10pm, some police officers came and started pouring kasippu, illegal local liquor, on his body and forcibly into his mouth, to which he protested. They took all his clothes off and photographed him nude while making fun of him, saying that a great media person was naked after consuming liquor. After they left, Senaka Ekanayake managed to cover himself with the few clothes available and found that he was bleeding from his nose. There was blood on his face and two of his teeth in the upper jaw were also damaged. At around midnight, when he tried to lie down on a bench, some police officers came again and poured cold water on his half naked body from a hosepipe for about thirty minutes.

At 6am on the following day, March 25, he received his trousers and SI Arawin and PC Indunil told that he would be given police bail if he signed a statement in the complaint book, which he refused. Then, SI Arawin took a pistol and pointed it at his head, threatening to kill him if he did not comply. He then asked to be allowed to read the statement but this was denied. Finally, he was forced to sign the unread statement and again put into the cell. Later he was given some bread for breakfast but he was not in a position to consume it and for that too he was scolded. Senaka Ekanayake says that his whole body was aching and he felt lifeless.

At 3pm, the police returned his bag and his books to him but did not give other items including his national identity card. When he had queried the missing items he was told that they had been confiscated. He only received Rs. 702 back. He was taken to a medical doctor who refused to examine him. Then, he was produced before the Magistrate, Puttlam where the police obtained a detention order under the Emergency Regulations. (Iqbal, attorney-at-law, was appointed as an acting magistrate due to the absence of a judge.) He attempted to talk to the acting magistrate but failed due to the interference by the police officers.

He later learned that he faced three charges. The charges were (1) indecent behaviour being under the influence of liquor within the Kalpitiya police area, (2) threatening the OIC and police officers with death threats; and, (3) insulting and defaming the president and his defence secretary.

At 8pm he was taken to the detention centre in Puttalam. A jail officer, Gunepala, recorded a statement from him about the incident and he signed it without reading it.

Next day, on March 26, he was transferred to a prison in Negombo. Another jail officer, Samarjeewa, recorded a statement from him and he was warded in the prison hospital in Negombo because of the wounds caused by torture.

When he was taken to Puttalam and produced before Additional Magistrate Anusha Fernando, Kalpitiya Police objected to bail so he was re-remanded and his case was fixed on April 23. Senaka Ekanayake was very sick so he could not attend the court on that day. Due to his absence, the court issued an open warrant and the next date was fixed on July 30. (An open warrant is a warrant that a magistrate gives authorities to all police to take action as indicated on the warrant. It is normally used when the police cannot find a person charged. However, in this case, the court was seemingly not aware of his whereabouts and that he had already been in custody since 24 March 2007).

On November 5, Senaka Eknayake was granted bail at the hearing but he could not find anyone to fulfil the bail conditions. On December 3, his case was again taken up whereupon one of the conditions of Rs. 25,000 was removed and the next date was fixed on March 26, 2008. On January 4, a provincial council member from Kalpitiya signed for his bail and he was released.

According to Senaka Ekanayake, while he was in the police cell, he overheard that Lakshman Ranwalarachchi, the OIC of Kalpitiya Police station, had tried to collect information from various sources to prove that he is a rebel, a terrorist and had spoken against the president and the defence secretary in order to fabricate a case against him. His relatives and friends received several threatening calls concerning him. He further said that under the conditions of bail he is in a very dangerous situation because he has to go out to the Kalpitiya Police to report every last Sunday of the month.

**127. Wannakuwatta Waduge Tharaka Aruna Shantha Kumara, Dombagaha Pathirage Jayalath Kumara and Baminiyahandige Wasantha Barathi Peris: Three men violently assaulted by police over alleged fabricated charges**

According to the information we have received, at around 7pm on 24 March 2007, Wannakuwatta Waduge Tharaka Aruna Shantha Kumara, Dombagaha Pathirage Jayalath Kumara and Baminiyahandige Wasantha Barathi Peris were arrested by police officers of the Panadura North Police station near the Keselwatte mosque. The police officers, some of whom were in uniform

and others who were in civilian clothes, did not produce any arrest warrants or other valid documentation before the arrest. The police also failed to offer any explanation as to why the three workers were being arrested. It has been reported that the victims were violently hit and kicked about their heads, faces and stomachs during the arrest.

The three victims were then taken to a jeep and brought to the Panadura North Police station. Once again the victims were brutally assaulted at the police station by the OIC Prasana and another officer called Lalith. Due to brutal assault, one of the victims, B.W.B. Peris, suffered several broken teeth.

The victims were then sent to the Panadura Hospital on the same day. However, out of the three, only W.W.T.A. Shantha Kumara was examined, and then they were asked to sign a blank paper. When B.W. Barathi Peris refused to do so, the doctor wrote down something on the blank paper and gave it back to him; however, the police officer present immediately took the paper before he signed it and allegedly assaulted him in front of the doctor. Two police officers (Nos. 35188 and 63974) threatened D.P. Jayalath Kumara that he would be charged with either illegal possession of drugs or with carrying out bombings.

After that, the three victims were all admitted to the Panadura Hospital and their hands were cuffed to the beds. On March 25, when the magistrate examined them at the hospital the three victims told the magistrate that they had been tortured. However, the magistrate ordered them remanded in police custody at the hospital. The victims also reported the incident to the JMO when the officer examined them on March 26. However, it is unknown whether either the magistrate or the JMO recorded the victim's statements.

On March 26, W.W.T.A. Shantha Kumara was transferred to the remand prison in Kalutara. The other two victims were brought to the Panadura Magistrate's Court, which ordered both men remanded at the Kalutara remand prison later that evening.

On March 29, the three victims were again produced before the Panadura Magistrate's Court, facing allegedly fabricated charges by the police. Each of them was released on bail of Rs. 7500 and surety bail of Rs. 75,000.

The victims sent a written complaint about the incident to various governmental authorities, including the HRC, NPC, IGP, DIG of the Legal

Branch, and the Attorney General. However, no action had been taken by any of these authorities.

**128. Ajith Shantha Fernando: Assaulted and threatened on a personal matter**

On 25 March 2007 an inspector working at the office of the SSP of Negombo allegedly assaulted and threatened a man thereby abusing his authority. The victim is in fear for his security because a group of policemen came to look for him after he lodged a complaint against the concerned inspector.

Ajith Shantha Fernando was a resident of No.51/3, Anthony's Road in Periyamulla, Negombo. At around 10pm on 25 March 2007, when he was parking his three-wheeler at Periyamulla Bus Depot Junction, IP Clement Fernando while wearing civilian clothes parked his motorcycle alongside. IP Fernando, who smelt heavily of wine, asked Ajith if he had a knife. When Ajith answered he did not carry anything like a knife, IP Fernando started shouting and assaulting him, demanding to know why Ajith had attempted to assault his driver named Riffas.

Ajith was seriously assaulted on his chest, neck and stomach. Despite the fact that Ajith was protesting his innocence the IP continued to beat him. When the assault was over, Ajith told the inspector that he would go to the police station to lodge a complaint against him. IP Fernando then allegedly threatened Ajith saying, "Even though you go to the police station, you can do nothing to me. Once I give a call to the police station, you will be arrested."

According to Ajith, five days earlier he had asked Riffas to return Rs. 5000 which Ajith loaned him over one year ago. Instead of paying the money, Riffas immediately went to IP Fernando and allegedly asked for help in dealing with this private matter. Ajith says that this is the reason behind his assault and intimidation by the said inspector.

That night, Ajith could not sleep due to the pain and went to Negombo Base Hospital with his friend at 1:15am on March 26 to get medical treatment. On the way to the hospital Ajith was stopped by two traffic police officers. When he told them he was on the way to see a doctor because he had been assaulted by a police officer, he was told to go to a private hospital because all the doctors at the government hospital were very busy. The officers also told

Ajith to come to the office of the SSP tomorrow to meet them. The victim could not help but going to the private hospital to be treated.

On 26 March 2007, Ajith did not go to the office of the SSP fearing further harassment by the police there. Instead, he went to Police Headquarters in Colombo to lodge a complaint against the said inspector.

The following day, several unidentified police officers in a car came to Ajith's village and looked for him. The police officers neither identified themselves nor informed the reason as to why they were looking for Ajith. When the officers asked about Ajith, one of his friends pointed in the wrong direction, as he was concerned about Ajith's security.

**129. B. Sumith Priyantha Fernando: Brutally tortured and denied food by SIU officer**

On 26 March 2007, several policemen had arrived at the place where B. Sumith Priyantha Fernando was working. The policemen, who were later discovered as attached to the SIU in Katukurunda, Kalutara police division, asked Fernando if his name was 'Manju'. When Fernando replied that he is known as 'Suddha' but his real name is Sumith, the police quickly told him he is the person they are looking for and immediately handcuffed him.

One of the policemen carrying a handgun immediately forced Fernando towards the motorcycle rickshaw the police are using as service vehicle. He was taken towards the house of Sumith Perera in Kitumithugama, Maggona. But since Perera at the time was not at home, they proceeded to the SIU in Katukurunda. Fernando was taken inside a room and was forced to sit on the floor with his handcuffs on until about 9pm. While in custody, the police repeatedly shouted at him and verbally abused him with foul language.

At around 9pm, Nimal Karunaratne, OIC of the SIU, arrived and started questioning Fernando regarding a theft. Karunaratne verbally abused him with extremely foul language. He ordered Fernando to stand against the wall at the corner of the room and started brutally beating him with a wooden club. The assault and questioning of Fernando lasted for almost one hour. Fernando suffered severe injuries to his body and had his left toenail damaged causing him unbearable pain. Before leaving the room, Karunaratne instructed Fernando to sleep on the floor. Despite serious injuries and unbearable pain, the policemen did not bother giving him medical attention, food or water.

The following day, March 27, Fernando's family arrived at the police station to visit him but they were not allowed to see him. The food items they were carrying also never reached him. On that day also, Fernando was forced to sit on the floor with his handcuffs on. At noon, Fernando was taken to a storeroom where lunch was served to him two hours later. While eating, although the police briefly removed his handcuffs, they kept his left hand handcuffed to a window. At the time, another person named Amal was also taken inside the room with him. About 7pm, Fernando and Amal were taken to Karunaratne's room.

While inside the room, Fernando noticed seeing Sumith Perera in another room. It was Perera whom the police had earlier looked for at the time of his arrest. At 9pm, Karunaratne went inside their room and once again severely beat Fernando and Amal separately.

On March 28, Fernando was locked inside a storeroom. At night, Fernando was taken inside Karunaratne's office. He allegedly saw Karunaratne and some other policemen having a drinking session inside. Suddenly, Karunaratne received a telephone call. Soon after he left, telling his companions he would join them later. On March 29, while inside Karunaratne's room, the police forced Fernando to make a statement and had him photographed. About 7pm he was taken to the Payagala police station where he was detained until the next day, March 30.

On March 30, at about 4pm, Fernando and Amal was taken towards the magistrate's court where the police allegedly filed fabricated charges against him. On May 5, Fernando was released on bail after appearing before the court. After his release, Fernando's sister and brother-in-law told Karunaratne had warned them that, "However long it takes he will ensure he [Fernando] is arrested again or else that he will be eliminated". It was his sister and brother-in-laws who assisted him in securing bail for his temporary release.

Fernando had since been suffering from severe pain and bruises as a result of brutal beatings inflicted on him. He has been taking ayurvedic (homeopathic) medicine to treat his injuries. Fernando filed a complaint against Karunaratne and his men before the IGP, NPC, HRC and SSP of Kalutara.

### **130. Maha Hewage Sumith Perera: Torture by the SIU, Kalutara**

Maha Hewage Sumith Perera is a 32-year-old three-wheeler operator residing at 52/A Henawatte, Maggona. On 26 March 2007, officers of the SIU of

Kalutara Division came in search of Perera, who was not at home at that time. The police then left a message with his wife requesting him to go to the office of the SIU at the Kalutera Police station.

At around noon on the following day, Sumith Perera went to the SIU office, where he was allegedly handcuffed and made to sit on the floor. At about 9pm that evening the OIC of the SIU, Nimal Karunaratne, came in, ordered the victim to stand and questioned him about certain thefts using foul language. Sumith Perera then realised that he was being detained in the said OIC's room.

When Perera told the officer that he knew nothing about the thefts, the OIC made him lean against the wall and assaulted him with a pole about three feet long. The OIC beat the victim's feet, back and shoulders in a most inhumane manner. After the brutal assault, the OIC questioned the victim about the theft cases again. When Perera kept insisting on his innocence, the OIC again assaulted him. According to Perera, the OIC interrogated him while torturing him until 11pm on that night. The OIC then left the office, saying that "we will see in the morning".

Sumith Perera said that there were three other detainees who were arrested on suspicion of being involved in the same theft case. He said that all three persons were also tortured. All four of them were kept handcuffed within the room of OIC Nimal Karunaratne overnight.

On the following morning, the four men were not given anything to eat or drink. The OIC came to the office at about 11am and sent the three other persons out of the room. He then interrogated Sumith Perera in a similar manner as he had done the previous day. When the victim insisted his innocence, the OIC hit him with his fist on the right cheek and on his chest.

There were three other police officers in civilian clothes present in the room at the time. The OIC allegedly told the officers that it was useless to hit the victim like that and ordered them to bring him a pole. One of the officers then handed the OIC the same pole with which Perera had been tortured the previous day. The OIC then got Sumith Perera to lean against the wall and assaulted him.

The OIC also took Sumith Perera's mobile phone and threatened him continuously saying, "Even if you escape this time, I will not let you live, I

will place a bomb and catch you or I will see that you die with a bomb, or I will plant heroin. You will then be put to the High Court and then you have to pay at least Rs. 5000 to lawyers.”

After the assault, the OIC and some other officers took the victim into a white van and brought him to his sister’s house. The vehicle did not stop right at the house. Instead it stopped ahead and Perera was taken down in handcuffs and forced to walk to his sister’s house, apparently in order to embarrass him. At his sister’s house her TV was taken into police custody.

The police then took Sumith Perera to his house where they searched his household. The victim’s house windows were not completed and OIC Nimal Karunaratne took out one of them. Sumith Perera’s wife was not at home at that time.

Perera was brought back to the SIU’s Office and again questioned about the alleged theft cases and tortured in the same manner. In the meantime, three TVs were taken into the custody of SIU from the areas of Beruwala, Payagala and Maggona. On that night after the OIC left the office, the victim and three others once again slept inside the OIC’s room like the previous day.

On March 28, the victim’s wife Vidanalage Renuka Subashni complained about her husband’s unlawful arrest, detention and torture to the HRC, NPC and IGP. According to the victim, his wife and a relative who visited him at the SIU office several times witnessed the injuries sustained by the assault of OIC Nimal Karunaratne.

On the same day, the SIU officers took a statement from Perera and three other detainees. An officer named Suminda also took the victim’s photograph. When taking the photograph, the officers covered the victim’s handcuffs with a T-shirt so that they did not appear in the photograph. Photographs were taken of Perera both alone and in the company of the three other persons.

At around 6:30pm on the same evening, a person came to meet OIC Nimal Karunaratne. At that time Perera and the three others were shifted to a room behind, which was filled with bottles and cans of illicit liquor that had been confiscated in raids. They were kept there until 8pm and taken back to the OIC’s room. On that occasion, the OIC and some other officers allegedly consumed liquor in front of Perera and the three others. All the four were

then sent to another room and were not tortured on that night. The officers drank and left the office. That night too the victim and the three others slept while being handcuffed like on the previous nights.

On March 29, OIC Nimal Karunaratne arrived at the SIU Office about 10:30am. He did not harass Sumith Perera on that day but detained him in the room where the illicit liquor was kept. At about 8pm on the same day, Sumith Perera and the three others were taken into the same white van and handed over to the Payagala police. Finally their handcuffs were removed and they were put into the police lock-up.

All the four were then detained at the Payagala Police station until around 3pm on March 30 when they were produced before the Magistrate's Court of Kalutara on alleged fabricated charges and sent to a remand prison until April 5. Due to the brutal torture, Perera was in a poor condition and he reported this to the officials of the remand prison. However, they did not arrange any medical attention for him.

On April 5, Sumith Perera was again produced before the Magistrate's Court of Kalutara and released on a bail of Rs. 5000 and on a surety bail of Rs. 150,000. After his release, the victim lodged a written complaint to the HRC, NPC, IGP and SSP of Kalutara division.

### **131. M. Lal Fernando: Severe torture by the Negombo Police on the inducement of a third party**

On 6 April 2007 at about 7:45pm between 15 and 18 armed policemen in civilian clothes in three police vehicles visited a house in Kudapaduwa, Negombo where M. Lal Fernando was residing at the time. Several of them broke into the house through the back door. Fernando heard the commotion and came outside. Two of the policemen pounced on him shouting "you are our man" and gave Fernando two hard slaps on his face.

Fernando recognised three policemen as Fernando, Bandara and Priyanath and queried them why they had broken into the house and assaulted him. The policemen replied, "How dare you spit on Bada (big-tummy) Nimal"? Bada Nimal was a prominent businessman of the area involved in the fisheries industry. Fernando denied spitting at Nimal and insisted that he only had an argument with him. Nonetheless the policemen handcuffed him and dragged him outside the house. Outside, Fernando says he saw eight policemen nearby and seven more further down the road. The policemen continued to

drag Fernando up to the Kudapaduwa Church and severely assaulted him. The Negombo Police OIC also arrived at the scene and striking him queried sneeringly, "How dare you spit on the face of Bada Nimal?" When Fernando continuously denied doing so he says the policemen thoroughly assaulted him for about 15 minutes.

At the time, Fernando's wife came outside the house with a pair of trousers and asked the policemen to give her husband room to at least wear them, as he had been wearing only a towel at the time. But instead, the police pulled her by the hair, verbally abused her in foul language and chased her away. Then the towel-clad and injured Fernando was shoved into and taken away in a police jeep. The policemen continued to pummel him inside the vehicle. They took him to the Kamachchode Junction in Negombo and pushed him outside the vehicle. Fernando says that as he fell to the ground the towel around him was thrown away and he was rendered completely naked. When a bystander attempted to help him wear the towel, he too was assaulted and scolded in foul language by the OIC. The policemen then repeated their assault on Fernando despite the fact he was lying on the ground injured.

The OIC then instructed someone to fetch Bada Nimal. After about 15 minutes when Bada Nimal came, the policemen dragged Fernando to him and forced Fernando to kneel before him and seek his forgiveness. Two policemen, Lakshman and Fernando trampled his head with their boots. Then the OIC told Bada Nimal to spit on Fernando, at which Bada Nimal spat on the ground nearby. Thereafter the OIC pulled Fernando to his feet and viciously punched his stomach. Then the OIC spat on his face.

The police put Fernando into the jeep and took him to the Negombo Police station. Fernando alleges that even at the station gate, the OIC repeatedly assaulted and spat on him. Then, some other policemen were instructed to 'lock him up'. Policemen Bandara and Fernando asked what case to charge Fernando with at which the OIC replied "let us put a robbery case on him and send him in for a few years". Accordingly, Fernando was locked up in a holding cell until 9:30am the next day.

The next day at about 11:30am he was taken before a JMO at the Negombo Hospital. However, before leaving, the police warned him that if he told the JMO he was assaulted by the police, they would falsely implicate him in a case and send him to jail for 3-4 years. Fernando also says the policemen boasted that they had the licence to do whatever they wanted;

they decided what to write and what cases to construct. At the hospital, the JMO examining him saw the injuries on his face and asked him whether he had been assaulted. But because two policemen were by his side, Fernando remained silent. He was taken back to the police station where he says the OIC indicated to a couple of small bombs and an old revolver and said, “We had already prepared the goods to implicate you with but since you remained silent we will not do so.” Fernando was then ordered to sign a statement prepared by the police. After reading its contents, Fernando refused to sign, saying that he was not involved in the incidents mentioned therein. But policemen Piyaratne and Fernando threatened him that next he would be hung and tortured unless he signed immediately. Out of fear, Fernando says he had little choice but to sign the document.

About 2:30pm, the police took Fernando to the magistrate’s official residence and obtained an order to remand him for three days; however, fortunately for Fernando, remand officials noticed his injuries and warded him at the remand hospital. On 9 April 2007 he was released on bail. However, two days later, April 11, Fernando had suffered from nosebleeds and severe body pain. He had to be admitted for about three days at the Negombo Hospital.

Fernando complained to the IGP, DGP (North Western Province), HRC, NPC, the Attorney General and chief justice about the severe torture, degrading treatment, and illegal arrest and detention he suffered at the hands of the Negombo police.

### **132. Alagappen Prabu: Beaten up after son knocked down by motorbike**

At 6:30 pm, on 17 April 2007, 3-year-old Akash was knocked down by a motorcycle in Nattaranpotha Road, Kundasale, Kandy. The family of Akash scolded the motorcyclist for his carelessness, which resulted in the small child’s injury. Some time later on the same day, 20-25 men came to the family’s house and started beating up the family members and damaging their house.

Police officers who received a call from Akash’s father, Alagappen Prabu shortly after he knew about the assault of the family by the gang men, also beat the victims without asking what happened upon arriving at the scene on the same day. It seems that the alleged perpetrators had good relations with the police officers of the Balagolla Police station.

Small Akash was taken to the Kandy General Hospital and warded there for three days. That same evening, Akash’s uncle Mahendran Sandanam

and grandfather K. Selliah went to the Balagolla Police station to make a complaint; however, the police officers again assaulted them both verbally and physically and detained them instead of registering the case and writing down the victim's statement.

The alleged perpetrators were protected by the police officers, while the real victims were charged with an unknown reason. Akash's uncle, Mahendran Sandanam, and grandfather, K. Selliah, were detained in the Balagolla Police station until they were produced before the Kandy magistrate on April 18. Without any explicit inquiry or proper action on the part of the magistrate, Akash's uncle and grandfather were remanded into police custody for three more days.

The victim's family made a complaint to the ASP about the police officers of the Balagolla police station and relocated in order to escape continued assault and harassment.

### **133. S. Kinsley de Silva: Brutal torture by military officers**

On 10 May 2007 at about 6pm, three military men in uniform together with another wearing civilian clothes arrived at the home of S. Kinsley de Silva. The military men, riding in a blue van bearing military license plate No. 28-210, entered De Silva's house while he and his family were asleep. Two of them entered by the front while two others entered by the back. They were able to do so due to the fact that De Silva's house was unfinished and the doors and windows had not yet been installed.

The person wearing civilian clothes and a companion entered De Silva's bedroom. This person pointed a T-56 machine gun at De Silva's chest and warned him not to stand up. Soon after, he started brutally beating De Silva, using his gun, before giving it to another soldier. The perpetrators forcibly dragged De Silva by his hair and arm. While De Silva struggled his sarong fell and he was dragged naked into the hall where two other military men, also carrying guns, looked on.

At the hall area, all the four soldiers started brutally beating De Silva with their fists, boots and guns one after the other. When De Silva fell to the ground the person in civilian clothes grabbed his neck and strangled him for few minutes. De Silva pleaded with them to stop but they ignored his plea. The other occupants inside the house likewise tried to stop them from assaulting De Silva, but they threatened them not to intervene otherwise they

would be assaulted too. When De Silva's neighbours started gathering outside their house after they heard commotion, the military instead told them to 'mind your [their] own business'.

Only when De Silva's injuries and eyes started to bleed the military officer stopped assaulting him. Had De Silva's wife not been able to put on his sarong and a shirt, the military would have dragged him naked outside their house towards their vehicle. De Silva was taken to a nearby Gardenia Village, where the person in civilian clothes was residing. They opened a room showing him a gun and other items to intimidate him.

Later the military men took De Silva towards the Wadduwa Police station. When they arrived, De Silva was surrounded by three of the military men while the person in civilian clothes went inside to meet the OIC. The OIC subsequently had De Silva detained inside the detention cells. While in detention for about five to six hours, the police did not provide him medical attention even though his face and injuries were bleeding. De Silva was later taken to the OIC's office where several military officers and a woman were waiting. The military officers were seen talking to this unnamed woman.

One of the military officials introduced himself to De Silva as the Commanding Officer (CO) in charge of the area where the incident took place. He also claimed to have jurisdiction over the four military men involved. The said officer threatened De Silva that he could do anything to him. He also asked De Silva whether or not he was willing to enter into a settlement or file charges against the military men in court. De Silva remained silent. At this time, the OIC quickly said that he had nothing to do with De Silva's arrest and advised De Silva to seek treatment at the hospital. The OIC also told him he would refer the matter regarding the assault to the Conciliation Board.

It was only this time where the police started recording De Silva's statement. The OIC, however, did not allow De Silva to read what the police had written nor explained to him its content. He was simply told to sign it and given a Medico-Legal Examination Form. De Silva then went to the Panadura Hospital with his family.

At the hospital, De Silva reported the torture. Several stitches had to be inserted under his eye and he had to be confined at the hospital. On May 14, a JMO examined him. He was instructed to visit the hospital three days later

for follow-up medication. While in hospital, De Silva's his wife, Pushpalatha, also lodged a complaint at the Wadduwa Police station. Separate complaints were filed before the Army Commander, HRC, NPC, IGP, SSP in Kalutara and other authorities. De Silva had no charges filed against him to warrant his arrest and subsequent detention. The victim believes that an argument he had with a military man one day before the arrest could have been the reason for it.

#### **134. B.G. Premasiri: Attempted poisoning by prison officer in Kandy**

B.G. Premasiri surrendered himself to the Divisional Police Office in Asgiriya, Kandy escorted by a priest on 18 May 2007 as police accused him of being involved in a murder case. After he surrendered, he was produced before the magistrate's court and remanded at the Bogambara prison. Since it was reported that there were attempts to poison him in the prison, he was transferred to Raja Veediya prison in Kandy later in 2007.

In Raja Veediya prison, Wijesinghe, a prison officer, took him to a room and slapped and assaulted him on the pretext of questioning him on November 17. On another occasion, when Premasiri returned from a court at around 3pm on 28 January 2008, the officer again called him and forced him to face the wall of a room and assaulted him till he bled from his mouth and nose.

A non-governmental organization, the Kandy Human Rights Office, wrote to the prison commissioner regarding this incident on February 19 after being informed by Premasiri's wife. However, no investigation had been conducted.

#### **135. Gnanapragasam Benedict Rosery: Murdered by police**

In another case, Gnanapragasam Benedict Rosery, a 25-year-old three-wheeler driver living at Uda Peradeniya, Kandy, was brutally tortured by the Peradeniya Police. On the evening of 20 May 2007, one three-wheeler driver named Boniface asked him to go for a bath together with another man named Suresh. According to the victim, Boniface and Suresh accompanied him to his house after the bath and he said goodbye to them.

On the following morning (May 21), Benedict came to know that Suresh had been murdered. He says that strangely, on that morning Boniface sent him Suresh's wallet, which he refused to receive. Benedict then went to the Peradeniya police station to inform them of the incidents of the previous day and the morning. However, the police immediately took him into

their custody instead. Benedict was allegedly brutally tortured and forced to confess to murdering Suresh. Meanwhile, Boniface was also reportedly arrested on a charge of murder.

On May 22, the HRC Hotline in Kandy was informed of the case and asked to intervene to stop the on-going torture of Benedict. He was only produced before court on May 23, in violation of the law. The court then ordered him to be remanded until June 4. He was further remanded on June 4.

Benedict's mother Arulmary moved to her sister's house at Meekanuwa Ampitiya, fearing possible intimidation and harassment by the police. She insists upon the innocence of her son and believes that the police implicated Benedict into Suresh's murder case without concrete evidence in order to conclude the case quickly.

### **136. Ruwantha Chrisantha Dias: Alleged illegal detention and torture**

Ruwantha Chrisantha Dias, a 17-year-old boy residing at 122, Tekkawatte, Vavuniya, was allegedly picked up by the SIU of the Vavuniya Police on 22 May 2007, when he was going to a tailor. One of the officers who illegally arrested him was identified as Karunaratne. The police did not produce any arrest warrant or other valid documents for his arrest.

He was then taken to the Vavuniya police station, where he was brutally tortured. The police removed his clothes and tortured him, while forcing him to accept the charge of possessing five bullets. However, Ruwantha denied the accusation. Ruwantha was only produced to the court with false charges of possessing five bullets on June 7, 16 days after his illegal arrest and detention. He was then remanded.

Meanwhile, Ruwantha's parents lodged a complaint to the HRC office in Vavuniya. The parents challenged the police claim against their son and believed that the police mistakenly arrested and then tortured Ruwantha and then framed the false charge against him to cover up the incident.

### **137. Thalahitiya Gamaralalage Chaminda Weerawardene: Alleged torture and fabrication of charges by the Katadeniyawa police**

Thalahitiya Gamaralalage Chaminda Weerawardene was residing at Akkara Nine Waththe of Ullapola, Divulapitiya, Negombo district, Negombo division when on 22 May 2007 he went to Ragama Teaching Hospital to see his wife. He returned home at around 4pm. When he was having a meal

two policemen in civilian clothes entered the house and apprehended him and his father Thalahitiya Gamaralalage Weerawardene. Despite repeated requests, the two men in civilian clothes did not reveal their identities. Then T.G. Chaminda Weerawardene immediately went to the Divulapitiya police station and reported the illegal entry into his house of two unidentified men. When he came back to home along with the officers of the Divulapitiya Police station, it was learned that the two men in civilian clothes were officers of the Katadeniyawa Police station. The two Katadeniyawa Police officers then left. Subsequently, the father and the son made individual entries at the Divulapitiya police station regarding this incident.

At around 7:30pm on 2 June 2007, officers from the Kotadeniyawa police station arrested T.G. Chaminda Weerawardene when he was waiting for his mother, who went to the Buddhist temple at the Ambagahamula Hardware Stores in Ullapola village. The police neither told the victim the reason for his arrest nor presented an arrest warrant. Soon after arresting the victim, the police officers allegedly assaulted him in a severe manner. The victim was then taken to the Rural Hospital at Horagasmulla for a medical check-up. T.G. Chaminda Weerawardene said that the police officers threatened him to lie to the attending doctor that he got injured by falling from a bicycle. Due to fear, he made a false statement to the doctor. After that he was taken to the Kotadeniyawa police station. On the way, he was again brutally beaten by the police officers and while in the police station he was also tortured.

On the following day (June 3), T.G. Chaminda Weerawardene was released on police bail. He then got admission at the Rural Hospital at Horagasmulla for treatment for the injuries sustained from torture. However, the Kotadeniyawa police visited the victim at the hospital and allegedly threatened him with death. Due to the threats by the police he had to discharge himself from the hospital and went to the Negombo District Hospital, where he was admitted.

Meanwhile, the police post in the Negombo District Hospital did not record any statement from the victim until June 6. When an activist inquired about this matter by phone, they allegedly refused to do so. The victim says that the police post at the hospital took down his name between 4 to 5pm on June 6 but did not record his statement relating to torture. It is also alleged that the JMO delayed examining the victim until June 7. The JMO examined the victim at around 11am on June 7 and recorded the victim's statement regarding his torture by the police.

The Kotadeniyawa Police filed an allegedly false case of selling illicit liquor against the victim.

**138. M.A.K. Wickramasinghe: Savage assault of a father of five**

At around 7:30pm on 28 May 2007 43-year-old M.A.K. Wickramasinghe was returning home from work when four policemen attached to the Eheliyagoda Police station accosted him. They immediately began to inhumanly assault him all over his body. They allegedly assaulted him with their fists and poles, kicked him and even struck him with the torch he was carrying. Unable to withstand the blows, the victim had fallen down only to be kicked and trampled by the policemen's heavy boots.

The policemen then pushed the victim into the police vehicle and took him to the Eheliyagoda Police station, where he was handcuffed and thrown into a holding cell. He was thus handcuffed throughout the night, even though he was in severe pain from the assault.

The next afternoon, the victim was taken to the magistrate's court and there he informed the magistrate about the inhuman assault by the police. Nonetheless, the magistrate ordered him to be remanded until 6 June 2007. Accordingly, he was taken to the Kuruvita remand prison where a prison officer recorded his statement regarding the incident. The victim says that he told the prison officer details about the savage attack by the Eheliyagoda police. Thereafter the victim had to be warded at the prison hospital and treated for his physical injuries. He was enlarged on bail on June 6.

The victim complained that consequent to the assault, his legs swelled up and there was a large wound on one leg caused by a pole used by the police to thrash him. The victim also says that he believes this police attack was as a result of a complaint made by his wife against him.

According to the victim, all four policemen were in uniform and arrived in a police vehicle. While recognising PC Ajith among his attackers, the victim was confident that he could recognize the others if seen again. The victim complained to the HRC, NPC, IGP and SSP of Ratnapura District.

**139. Jayarathne: No investigation into alleged police torture of local council member in Kandy**

On 21 June 2007, Jayarathne, a 45-year-old member of the Hasalaka local council (Pradesey Saba), visited the Hasalaka Police station in Theldeniya District, Kandy Division. The purpose of his visit was to inquire about an

allegation of SI Nuwan Wickramasinghe's involvement in selling illegal liquor.

Being questioned, SI Nuwan Wickramasinghe allegedly started abusing Jayarathne in filthy language and physically assaulted him in front of others in the police station. While assaulting Jayarathne, the SI further was reported to say, "We, the police, have all powers to arrest, torture and kill anybody." The OIC of the Hasalaka Police station later intervened and stopped the beating.

The following day, June 22, Jayarathne went to the same police station to lodge a complaint of assault against the SI. However, the police refused to register his complaint. On June 23, Jayarathne he again went to the police station and finally registered his complaint. However, the police did not initiate any investigation or arrest the responsible SI.

#### **140. U.A. Chandrasena: Severely tortured by the Badureliya police; denied medical examination by court**

At 11:30am on 27 June 2007, the victim, U.A. Chandrasena, was on his way to a funeral when four policemen in civilian dress stopped him and asked him where the kasippu (illicit liquor) was. The victim replied that he did not know. The policemen took him to a nearby volleyball court and mercilessly assaulted him with thick wooden sticks broken from an Albesia fence. He was beaten on his legs, thighs, buttocks, hands, and even on his head. The severely injured victim was then taken to the police station and locked up in a cell where he saw three other villagers who had met similar fates.

Soon the victim's head began to throb and he vomited several times. He begged the police to take him to hospital. The police replied that he could go to hospital if he wished, but if he revealed even a word about his assault they would fabricate a case against him for possessing hard drugs (heroin) or ganja (marijuana) and lock him up again. That night the victim was given police bail on the condition that he appeared in court on June 29 on the charge of possessing kasippu. When the victim denied the charge, the police laughed and told him they already had the 'goods' and all they needed were a few scapegoats.

The victim returned to his home. He says he was very sick but was too afraid to go to hospital to seek medical treatment for his injuries. Instead, he visited a private dispensary and told the doctor that the police had assaulted

him. But when he asked for a medical report, the doctor refused and even withdrew the medication dispensed.

The victim appeared in court on the 29th. His lawyer discovered that he had not been charged with the possession of kasippu but with possession of an illegal substance called 'goda', used to distil kasippu, which was a much graver charge. The victim pleaded not guilty. The lawyer informed court that the victim had been severely assaulted by the police who had now fabricated charges against him. The magistrate asked the victim if he had any injuries. In reply the victim showed the magistrate contusions visible on his body. However, the magistrate did not make any direction that he be taken to hospital or medically examined. The victim returned home and decided to seek medical treatment from another private dispensary.

The victim was brought to a local human rights organisation, Janasansadaya, which immediately rushed him to the Nagoda Hospital for treatment. They also made provisions for him to be medically examined by a specialist at the Karapitiya Teaching Hospital, where a JMO confirmed the severity of his injuries. The victim complained in writing to the HRC, NPC, IGP, and other relevant authorities.

#### **141. Patikiri Arachchige Nihal Sarathchandra: Driver brutally tortured and falsely charged by the Ganemulla Police**

At around 4:30pm on 4 July 2007, Patikiri Arachchige Nihal Sarathchandra was in Ganemulla, Gampaha District, parking his three-wheel near the Ganemulla Police station. Two policemen wearing plain clothes arrived and asked him to come with them to their police station. The police were inquiring into the complaint of Beatrice Nikalanda of Kossinna in Ganemulla made in 13 July 2006 about the theft of a necklace and a watch.

When Nihal Sarathchandra inquired as to why he was being asked to come, he was only told that he would know the reason once they arrived at the police station. They also did not explain to him as to why he was called in for questioning a year after the complaint was made. Shortly after arriving at the police station, two policemen took him inside a room. There they began questioning him in connection with the complaint of Nikalanda. He replied that he did not know the complainant, nor had he met her previously.

According to the complaint recorded by the police, Nikalanda was riding in a three-wheeler on her way home when two unknown persons snatched her

gold necklace and wristwatch soon after alighting close to her house. She claimed her necklace was worth Rs. 21,000 while the wristwatch was worth Rs 3500. She did not mention the victim's name in her original complaint. However, she later alleged that it was the Sarathchandra who was driving the three-wheeler and that he knew the two persons who snatched her items.

The police began questioning the victim based on Nikalanda's complaint. But every time he denied any involvement, three policemen had him repeatedly beaten for 20 minutes. The complainant was present when the police were torturing him. They pounded his face using a pole and their hands. The victim was bleeding from his mouth due to beatings but the police either ignored or deliberately paid no attention to it. They also did not help him treat his wounds.

When the police subsequently conducted a parade of supposed suspects, Nikalanda identified the victim as one of those responsible in the theft of her jewellery. The police subsequently filed charges against him. The parade though was done following the victim being taken into police custody and tortured in front of the complainant. That Nikalanda could identify the victim during the parade was expected as she had witnessed the police torturing the victim.

The following day, July 5, he was produced before the Magistrate of Gampaha and was subsequently remanded until July 10. He was only released when his lawyers informed the magistrate he was suffering from injuries and required medical attention at the prison hospital.

On July 14, the victim filed a complaint with the police and IGP. His affidavits were likewise sent to the chief justice and Attorney General. After receiving those complaints, a police inquiry was initiated which resulted in an identification parade of police officers attached to the Ganemulla Police on August 8. The victim identified two of those who tortured him.

#### **142. Balasuntharam Thavamani: Young woman brutally stabbed to death by members of armed forces**

On 7 July 2007 Balasuntharam Thavamani (aged 27) her mother and about 20 other persons displaced by the ongoing armed conflict were seeking refuge in a single house at Paduwankarai in the Batticaloa District, Eastern Province. This area had been a stronghold of the Liberation Tigers of Tamil Eelam (LTTE).

Around 9:30pm that night several men in military uniform suddenly stormed into the house and shouted for the victim by name. As the victim failed to respond due to intense fear, the personnel entered the home and forcibly escorted her out.

When the victim's mother followed them wailing and shouting, they stabbed the young woman in the presence of her mother—a distance of about 100 meters from the home. She died on the spot after being stabbed about 12 times.

Subsequent to this killing, about 35 families in the village, fearing for their lives, fled the village and went to a nearby area. Thereafter they related details of the story to their Member of Parliament, Ariyanthiran. They are reluctant to report the incident to the authorities due to fear of reprisals. However, some of the witnesses to the incident insist they can recognize the alleged perpetrators if they are seen again.

#### **143. Thadallage Chamil Weerasena: Yet another custodial death in Ratgama Police station**

At round 5am on 21 July 2007, an anonymous caller informed Thadallage Chamil Weerasena's mother Kande Gamis Hamy that her son had been taken to the Ratgama Police station. The phone number was recorded and Hamy redialed, but the person who answered it denied calling and hung up.

At 8am Hamy went to the Ratgama police station. She saw her son detained inside the police cells. When she tried to go near him a female constable and another officer chased her away. Her son, however, signalled to his mother by his hands that he needed a shirt.

Then Hamy went home to get a sarong and a shirt and cooked a lunch packet for her son. She asked one of the victim's friends, Kosma Nandaseeli, to give those to him. The reserve officer allowed Nandaseeli to visit the victim, but did not allow her to give him food and the shirt that she was carrying for him, only the sarong. At this time the victim told her that the police had assaulted him mercilessly. He had shown her the marks he sustained from the assault.

When the victim's elder brother, Thadallage Suriyasena, went to visit him between around 2 and 4pm, the police did not allow them to meet. Later that night, at about 11:20pm two police officers from the Ratgama Police

came to the victim's house in a jeep and took his father, Thadallage Tyman, to the police station.

The victim's youngest brother, Thadallage Jayantha, arrived shortly after and informed his mother that his brother had already died. Upon hearing the news, Hamy and her elder son immediately rushed to the police station. There they saw the victim's dead body still inside the cell. It was covered with a sarong given to him by his mother. Hamy said her son's trousers were tied to the prison cell's door, as high as her height. When she started crying loudly, the OIC threatened to put her inside the cell if she didn't stop.

On July 22 when Hamy went to the police station she noticed that her son's trousers, which had been tied about as high as her the previous day, had now been tied in a place even higher. At about 9am, a doctor came and took some photographs. At about 9:30am the magistrate came as well. While they were conducting their inquiry, Hamy told them about what she noticed and told them that her son's death was suspicious. Hamy however, was not aware whether the doctor and magistrate had recorded her statements. Thereafter the body was taken to Karapitiya.

The victim's dead body was taken to the Karapitiya Hospital. His mother there noticed injuries on the back, chest and face. She also saw blood on his head and had observed bloodstains in the detention cell. But when the findings came out, a letter signed by the Additional Magistrate, Galle indicated the victim died of hanging.

No further investigations were conducted into Hamy's observations regarding the death of her son and what the victim had said before his death. It was only on July 27 that the Additional Magistrate, Galle took a statement from Hamy and her husband. There were witnesses that could give testimonies to the police regarding the death of the victim but the police did not include them.

#### **144. K.W. Upali: Assault of a 40-year-old labourer by the Dodangoda Police**

On 2 August 2007, the OIC and two other policemen of the Dodangoda Police arrested 40-year-old K.W. Upali (married with three children) at the Thudugal Junction. At the time, according to the victim, he was carrying half a bottle of arrack (a local alcoholic beverage distilled from fermented coconut sap). It is legal to obtain such liquor but the police arbitrarily arrested him.

The police took him to a house nearby and questioned him as to whether he purchased the arrack from that house. When the victim told them he bought the liquor elsewhere, the OIC lost his temper, accusing him of lying. He assaulted the victim on his neck, face and head. The victim was then taken to the Dodangoda Police station, where his friends later bailed him out. The victim complained of severe pain on his neck due to the OIC's assault.

The following day, August 3, the victim went to the Nagoda Hospital where he was admitted for medical treatment. There he complained to the doctor examining him that he had been assaulted by the police officers. On August 4 the hospital police recorded his statement. The JMO likewise examined him. But later that day, the OIC and three other policemen visited him at hospital asking for his forgiveness, urging him not to file charges against them. As an inducement, they offered to withdraw the fabricated charge they filed against him for possessing an illegal alcohol.

On August 5, the OIC again went to visit the victim and took him to the hospital police post. The OIC once again asked for his forgiveness and reiterated that in return they would withdraw the case they filed against him. Then he allegedly forced the victim to sign a paper of which the OIC did not explain the contents nor allow him to read before signing it.

On August 6, the victim was discharged from the hospital. He was advised to continue attending a medical clinic regularly to treat his injured neck. Subsequently the victim filed a written complaint with the HRC, NPC, IGP and the Kalutara SSP.

#### **145. Meera Mohideen Gafar: Brutal torture of a 20-year-old man by Galaha Police**

At 1:50pm on 9 August 2007 Meera Mohideen Gafar accompanied by his lawyer, Kularatna Bandara, went to the Galaha Police station. The ASP had earlier summoned Meera Mohideen and his uncle, Abdul Kader, to inquire into a murder case that took place at the end of July 2007.

Meera Mohideen was handed over to a female police inspector, Ranasinghe. His lawyer, Bandara, then requested the OIC of the CIB, Talwatte, to question his client properly and without using violence. But when Meera Mohideen's father visited him later at the Galaha Police he discovered that his son had been severely tortured. On the following day, he immediately informed his son's lawyer by phone. It is learned that the police officers

brutally tortured him by hanging him from the ceiling allegedly inside the Galaha Police while he was being interrogated.

Upon learning that his client had been tortured while in police custody, Bandara immediately informed the OIC Talwatte about the torture his client had suffered, but he instead denied it; effectively exonerating his men without conducting any investigation.

On August 10, Meera Mohideen was taken to the Kandy Magistrate's Court. While being presented by the police, he stated that he had been severely tortured by the officers on the evening of August 9. He revealed the wounds to his legs and mouth. He could not even walk when he appeared to the court because of his injuries. But nevertheless the magistrate's court remanded him. No medical examination was conducted to verify the torture. No further investigation was likewise made into his supposed involvement in a murder case to which he maintained his innocence.

In the meantime, the victim's family and lawyer informed the HRC Hotline in Colombo about the torture and also lodged a written complaint with the HRC of Kandy. A similar complaint was filed with the DIG in Kandy.

#### **146. Periyasami Niroshan: Police hold neck and repeatedly pound victim against the wall**

At around 8:15pm on 12 August 2007, Periyasami Niroshan (aged 15) and his uncle Subramaniam Nanda Kumar went out together to purchase kerosene oil. On their way, they saw and passed through a group of five persons drinking liquor inside a parked bus. When they were returning home, the same group suddenly alighted from the bus and assaulted them. Following this they were forcibly taken to the nearby Nawalapitiya Police station.

When they arrived at the police station, the men accused Niroshan and Nanda Kumar of stealing a battery and turned them over to the police. Immediately the police took the two inside a room and started assaulting them. They did not conduct any inquiry into the charge, nor did they inform the victims of what they were accused.

While inside the room, one of the policemen held Nanda Kumar's neck by his hand and repeatedly pounded him against the wall. Nanda Kumar vomited blood due to the severity of the beatings he suffered. The police also

accused them of being “terrorists”. The police slapped the boy, Niroshan, hard.

From the time they were arrested until 2pm the following day, August 13, the two were held in police custody. It was also only then that the two victims were produced in court. On the same day, the police falsely charged them for theft based on the information of the group of persons who turned them over. They were released on bail on the same day. On August 14, they had admitted themselves to the Nawalapitiya Hospital for treatment. The following day they were discharged but were told to return to the clinic for further treatment.

The victims believe that the group of persons who assaulted them and took them to the police, namely Ruwan, Bandula, Chandana, Ranji and Sula, are friends of the policemen attached to the Nawalapitiya Police station.

#### **147. Vimalawathi and Chandrasiri: Slapped and kicked**

Vimalawathi and her husband Chandrasiri went to the Ahangama Police station at 10am on 29 August 2007 after they had received an order to come for an inquiry into a dispute regarding a fence with another person. In the station, they met PC Chameera, who informed them to wait for a while because the party who had lodged the complaint had not arrived. The couple waited until 1pm, and were then told by the same PC to go home. On August 30, an officer from the same police station came to the couple’s home and left a note asking them to come to the station on September 26.

The couple went to the police station on the given date and saw the person with whom they had a dispute talking with PC Chameera. Then, the officer brought the two parties together and asked what the complaint was. The person then started to scold Vimalawathi and humiliate her in foul language in front of the officer. Meanwhile, Vimalawathi asked the officer, “Sir, What is the complaint? We are not here to get or give character certificates; please tell us what the complaint is.” However, the person slapped Vimalawathi on her cheek. In addition, PC Chameera stood up and also scolded her soundly, using foul language and accused her of slapping the person. He further allegedly slapped her several times on her cheek and kicked her in the stomach.

Then, Chameera caught her by her hair and dragged her to the room of the OIC. In the room, the officer called the person also. He told the OIC that

Vimalawathi had assaulted the person and continued to scold her in foul language in front of the OIC. When the OIC saw Chandrasiri he scolded him saying that he did not know how to bring up his wife, and attempted to assault him. The OIC then threatened Vimalawathi that if she were not a woman they would 'do her good' and then asked the PC to put her into the police cells. Vimalawathi was put into a cell after two male inmates were removed. The two who were taken out of the cell were told to sit on a bench nearby. A little while later, a woman police officer named Niranjala took Vimalawathi from the cell and recorded her statement but Vimalawathi was neither allowed to see what was written and nor was it explained to her. Vimalawathi said that her ear and cheeks were swollen at that time due to the assault and that they were painful. Then, Vimalawathi was told to sit on a chair while the person and other inmates were put back into the police cell. The person was also later put into the cell.

Later on the same day, both Vimalawathi and the person were produced before the Magistrate, Galle and sent to a prison. Vimalawathi got to know later that she was charged with obstructing police duties. Vimalawathi informed the prison officers of the police assault, and a prison officer took down her statement regarding the incident on the next day.

After Vimalawathi was released on bail from the Magistrate's Court, Galle on September 28, she went with her husband to meet the ASP, Galle and told him this injustice perpetrated on them. The ASP took down their statement and told them that legal action would be taken against PC Chameera attached to the Ahangama Police station. Later the couple went to the HRC branch office in Matara to report this matter. However, an officer refused to accept the complaint stating, "It is strange that they (the police) had only put one case against you. The police can even break a chair and say that you broke it." The officer further said, "In this instance, the police have the right to hit you."

After this incident, Vimalawathi made a written complaint to the HRC, NPC, Attorney General and other authorities. No substantive action was taken following the complaint.

#### **148. Chandrasiri: Police issue threats and intimidations**

In September 2007, Chandrasiri commenced a contract to do the timberwork on a house being built by Kumara Kothalawala and his wife Thanuja, at 95, Senanayake Road, Nawala. Chandrasiri worked with his men until April 11,

when he stopped, stating that he will begin work again in three weeks after the New Year holiday. However, before even two weeks had passed after the New Year holiday, Kumar Kothalawala and his wife Thanuja came to Chandrasiri's house and scolded him in a demeaning manner in front of his neighbours. Chandrasiri lodged a complaint regarding this incident at the Panadura Police station.

After this incident, Chandrasiri was called to the Kollupitiya Police station, where the OIC scolded and intimidated him in a demeaning and humiliating manner. Furthermore the OIC threatened Chandrasiri that if he did not finish the work in Kumar Kotalawala's house soon he would be arrested and brought to court. Chandrasiri claims that he was further threatened by an officer named Nandapala.

Frightened, Chandrasiri decided to go back to work on the house of Kumar Kotalawala. While working there, Chandrasiri was continually scolded by the client's wife, Thanuja. Furthermore, Kumara Kothalawa tried to assault him. Chandrasiri lodged a complaint with regards to this attempted assault but the Welikada Police had not taken any steps regarding his complaint. Chandrasiri also alleged that Thanuja was stealing timber and complaining that the completed work was not up to standard. He was forced to re-do the work at his own personal expense. Since it was not possible to work under such trying conditions he stopped the work.

At this point, Chandrasiri was again called to the Kollupitiya Police station where the OIC and Nandapala again threatened him that if he did not recommence the work on the house they would fabricate a case against him and summon him to court. As such, Chandrasiri again started work at Kumar Kotalawala's. However, he stated that he was only going to complete the work already begun and not start any new work. He further requested that his timber and his equipment, which he alleged to have been confiscated by his employer, be returned to him. In addition, a sum of money owed to him by Kumar Kotalawala should be paid. Chandrasiri stopped work on July 12.

On July 16, Chandrasiri went to the Welikada Police and lodged a complaint, asking that his machinery and timber worth about Rs. 20,000 be returned to him. He further asked that the sum owed to him amounting to Rs. 60,000 be paid. The Welikada Police took no steps regarding this complaint. On July 24, the Panadura Police informed Chandrasiri to present himself at the Kollupitiya Police station at 11am on July 26. Chandrasiri

did not go because he was worried that they would again harass him. He complained in writing about the incident to several government authorities.

**149. S. Siripala: Dragged to shed and mercilessly assaulted**

On 8 September 2007, S. Siripala, while he was inside his newly-built house, to which he had not moved yet, was visited by a group of men who removed the grills from his house, smashed goods inside, assaulted him and left. Frightened, he ran away and hid, but he continued to observe his house in case the attackers returned. About 3pm, that same day he went to the Panadura Police station to lodge a complaint. But a policeman therein informed him that his complaint could not be recorded and to go away and come back next morning.

The victim returned to the home in which he had been residing. The next morning, September 9, he went to his new house and he saw a man known as 'Rathu Aiya' (Red Brother) hovering about with a sword-like weapon in his hand. It looked awfully like this man was waiting for the victim. So he surreptitiously came from behind and grappled for the weapon in Rathu Aiya's hand and assaulted him. He immediately thereafter went to the Panadura Police station, reported the incident and surrendered himself to the police.

The victim says that there was a dispute over land between himself and Rathu Aiya, that is, over the ownership of the land on which he was building his new house. But he had been instructed to build his house by the Panadura Police and this he informed the Panadura Police HQI (Head Quarters Inspector). The HQI had instructed another policeman to 'look into the matter and take down the complaint'. Contrary to instructions however, this policeman did not ask any questions nor write anything down. But the victim was kept waiting at the police station for more than one hour after which another policeman took him and unceremoniously threw him into a police holding cell until the following day morning, September 10.

On 10 September 2007, about 9am, three policemen visited him and saying that he was to be taken out of the cell, pulled the victim by his shirt collar and smashed his head against the iron bars of the cell. The policemen then escorted him to a shed within the station premises and ordered him to lie down on the floor. Then one policeman hammered him with a wooden pole while another assaulted him with a hosepipe. While this brutal assault was taking place, two or three other policemen came to where the incident was

taking place. One policeman said that “this is not the way to hit him” and viciously kicked the victim on his spine with his policeman’s boots. The kicking continued for some time, while the victim screamed in pain. He pleaded with them to stop torturing him this way but they only trampled his body and continued kicking and beating him.

The victim says that after the torture, he was unable to stand up on his feet or walk, and he suffered from unbearable pain in his entire body. But the policemen just demanded that he stand up and dragged him to the holding cell. At about 3pm, the victim was taken to ‘lodge a complaint’. But instead the police wrote down the complaint and the victim was forced to place his signature on the document.

Later that day, the victim was produced before a magistrate’s court but he was unable to obtain bail because his wife (who intended to appear as the surety) had not brought her National ID card. The victim also courageously informed the court that the police had assaulted him, and the magistrate queried whether he could identify those who assaulted him. He replied in the affirmative. The magistrate then ordered him to be warded in hospital. Accordingly the victim was admitted to hospital by prison officials and received medical treatment for his injuries for two days. He told the doctor who examined him about the assault and the JMO who examined him. On 12 September 2007 the victim was discharged from hospital after he was given bail.

On 11 September 2007 the victim’s wife via fax complained to the HRC, NPC, IGP and SSP, Panadura about the inhuman police assault on her husband. Later, probably in revenge for complaining, the Panadura Police allegedly fabricated a criminal case against the victim.

On 13 September 2007 the victim’s physical condition worsened and he had to be re-admitted to hospital, this time to the Kalubowila Hospital. Again, the victim informed the doctor as well as the JMO who examined him about the police assault and also gave details to the hospital police, who took a statement from him. He was discharged from hospital on the September 14.

Thereafter, the SSP of Panadura requested him to present himself at an inquiry into the incident on 20 September 2007. At the so-called inquiry, the SSP told him to lodge a complaint regarding the damages caused to his house but to omit mentioning the police assault. The policeman recording

his complaint reiterated the same advice and recorded a compliant minus details of the police assault. So on 21 September 2007, a written complaint against the SSP of Panadura was made to the HRC, NPC and IGP. In his complaint, the victim requested that these authorities immediately inquire into the incident and take appropriate disciplinary and legal action against:

- (a) The policemen attached to the Panadura Police station for their inhuman and brutal treatment of the victim and also for fabrication of charges;
- (b) The SSP of Panadura for his aforementioned unprofessional and unethical conduct.

### **150. Manoj Kumara: Panadura South police mishandle case of assault**

On the night of 16 September 2007, eight persons arrived at the residence of Manoj Kumara aboard a three-wheeler and assaulted Manoj and his wife Chandrika. Manoj Kumara and his wife made a complaint about this incident on the same day to the Panadura South Police, identifying two of their assailants, Upali and Ranki, who were residents of Arukgoda village. They could identify other assailants if seen, but whose names they did not know.

The basis for this incident was supposedly a disagreement between Chandrika and Upali's wife in relation to money. Upali's wife made a complaint to the Panadura police about Manoj Kumara and his wife, and the police called both parties for an inquiry and forced Manoj Kumara and his wife to agree to pay a sum of Rs. 1000 every month to Upali's wife at the police station.

Manoj Kumara alleges that the police called him and his wife Chandrika for an inquiry based on the complaint lodged by Upali's wife while ignoring the complaint that was lodged previously by him with regard to the assault.

At the inquiry Chandrika recognised a certain officer whom she alleges was among their assailants. Upon inquiry, Manoj Kumara came to know that this officer was Home Guard Kulasiri in the service of the Panadura Police.

Manoj Kumara informed the OIC of the Small Complaints Office about the home guard. The OIC then called and questioned Kulasiri stating: "Is it true these people say that you assault them? Now they are going to report you to higher up authority." Home guard Kulasiri immediately denied this fact. The OIC then assured Manoj Kumara and his wife that it was not necessary to take the trouble to report the matter to higher authorities and that he would look into the matter since Kulasiri was a very junior officer.

Manoj Kumara had then asked the police what action had been taken upon the complaint lodged by them on the assault. The officer informed them that a case had been filed and it has been referred to the Mediation Board. He also informed them that they would receive a letter from the Mediation Board and the case had been fixed on 16 January 2008.

On another occasion when they came to the Panadura Police station to pay the Rs. 1000 to Upali's wife, the latter had asked them why they did not come to the Mediation Board. She also informed them that their letter had been returned stating that there was no such person residing at the given address. Manoj Kumara seeing the letter sent by the Mediation Board in her hand had asked the OIC Small Complaints if it was possible to get a photocopy of the letter. But Upali's wife did not agree to this. She told them to come to the Mediation Board on 15 December 2007. The victim then requested from the OIC a letter to go to the Mediation Board. The OIC had written the number of the case and the date on 15 December 2007 stating that they should go to the Mediation Board at Bandaragama at 9am.

On December 15, when Manoj Kumara went to the Mediation Board, Upali's wife did not come. Manoj Kumara showed the Mediation Board the letter obtained from the OIC Police Panadura. The board then informed him that since the victim had not been present on the earlier date, a certificate of non-settlement had been issued. Manoj Kumara stated that they did not receive the letter from the Mediation Board. The board then stated that it could be that the other party got the letters through an office assistant and hence Manoj Kumara did not receive it. Manoj Kumara then asked for a letter to the police stating the present position. Upon this the Board wrote and gave him a case number recorded unsettled. He then went to the OIC Small Complaints and reported the matter but the OIC said that he was not the one who handles these matters but officer Palitha.

The Panadura Police then filed a case and sent it to the Mediation Board. Manoj Kumara says that the Panadura Police are biased and acting in support of Upali and his wife who allegedly instigated the assault. He also says that Home Guard Kulasiri who was one of their assailants has got together with other persons known to them and is threatening them that he will fabricate a charge of bombs or drugs and send them to prison. He further mentions that upon the influence of Home Guard Kulasiri, the Panadura police are harassing and wasting their time by not properly recording their initial complaint, by indicating wrong dates and case numbers thus subjecting them to great inconveniences.

He reported this incident by written complaint on 20 December 2007 to the HRC, NPC, IGP and SSO in Panadura.

**151. Priyantha Fernando: “It is only with you we will go”**

Priyantha Fernando (aged 27) is a three-wheeler driver who hires the three-wheeler from the owner, Umesh Indika, by paying Rs. 250 every day.

On 27 September 2007, Priyantha Fernando was parking the three-wheeler in the parking lot in front of the Moratuwa police station as he usually does. Suddenly two persons approached him and demanded that they wanted to hire his vehicle to take them to Katubeddha, a few kilometres away. However, he told them he could not accept the hire because he had been hired in advance to drive for the wife of an officer of the Moratuwa police station named Prasanna.

As Priyantha Fernando told them this they became aggressive and stated that “it is only with you we will go”. Then, one of the persons gripped Priyantha Fernando by the neck and wanted to see his identity card. While the person gripped Priyantha Fernando, the other searched the victim’s hip pocket and took out the paper which had been given to him by the police when his original identification card was lost. They added that “it is you we are looking for” and squeezed his neck and held it tight against the bar of the three wheeler which is behind the drivers’ seat.

According to the victim, he thought that they intended to steal the three-wheeler, and told them that the three-wheeler did not belong to him. At that time, he saw that the owner of the three-wheeler, Umesh Indika, coming towards them. The victim then said, “The owner of the three-wheeler is coming”. Then, the two persons identified themselves as police officers and pushed the victim away. They then caught hold of Umesh Indika, put him inside a van and drove away.

Following the incident the victim went to the Moratuwa police station to make a complaint but the police refused to accept the complaint. Instead they gave oral messages to deliver to the household of Umesh Indika. It was at the police station that the victim later came to know that the two persons who had taken Umesh Indika were from the Piliyandala police.

On the next day, September 28, the victim went to the Panadura North Police station with his mother to make a complaint. However, once again

the police did not accept the complaint but told them to go to the Moratuwa Police station. When they went to the Moratuwa police station they were told again to return to the Panadura North Police station. The Officer-in-Charge of the Panadura North Police telephoned to the Piliyandala police and told them to inquire into the incident and asked the victim to go to the Piliyandala police station.

On September 29, the victim and his mother went to the Piliyandala Police station to again lodge a complaint. According to the victim the Officer-in-Charge of the Piliyandala Police station and the officer in charge of the Crimes Branch of the police station scolded them in a very low manner, using foul language against them. They even threatened that three persons had already been killed and that the victim will be next. They then refused to record the victim's complaint. On the same day the victim was admitted to the Kalubowila Hospital for treatment for injuries suffered in the attack. The victim informed to a doctor from the Kalubowila Hospital that he had been assaulted by the police. The doctor diagnosed that the nerve on the left side of his neck had been damaged and that he should wear a plaster case on the neck for about one month. At around 3:30pm on September 30, the victim again went to the Moratuwa Police station but the police denied recording his complaint.

On October 2 the victim reported the incident to Ranjan de Mel, the coordination officer of Minister Jeewan Kumarathunga who lives in Rawatawatte. Ranjan de Mel gave him a letter to present to the SSP in the Mt. Lavinia Police station. This officer read the letter and signed it and asked for the victim to hand it over to the ASP at the Moratuwa Police station. Accordingly the victim met ASP Dayananda and handed over the letter. It was only then that the victim's statement was recorded by a woman police officer and a form to get admitted at the Kalubowila Hospital police station was given to him. The victim was again admitted to the Kalubowila Hospital. The victim showed the doctor the hospital card and the x-ray which had been given on his first admission on 29 September 2007.

On October 3, the police attached to the hospital recorded a statement from him and on the following day, October 4, the JMO examined the victim. The victim was discharged on that day and asked to attend the clinic to continue his treatment on October 11. As a result of the attack, the victim had difficulty in turning his neck freely and in continuing his job. He also wrote to the HRC, NPC, IGP, and SSP at Mt. Lavinia Police station; however, no investigation had started.

**152. M.A. Prasantha Ruwan Kumara: brutally assaulted with fists and boots when refusing to pay bribe**

M.A. Prasantha Ruwan Kumara (aged 35), a lance corporal (S/404896) in the Sri Lankan Army, took seven days leave on 3 October 2007 and went home. At about 9pm on 9 October 2007 he visited his friend Nandana's home, consumed a few beers and together with Nandana took his motor bicycle to a garage nearby to attend to a minor bike repair. The victim admits he was neither wearing a helmet nor carrying his motorbike licence with him, in contravention of traffic law, mainly because he only intended to travel the little distance to and from the garage.

On route Kumara and his friend were stopped by five policemen including PCs Amarasiri, Benet and another wearing a badge marked No. 42706, at Atakalampanna Madampe. The police demanded to know why they were without their helmets. Kumara tried to explain that as he was only going to a garage nearby he was not carrying his licence nor wearing a helmet. He says, the policemen then shouted at him in obscene and rude language. He requested them not to insult him as he too was an officer of the state like the police.

One policeman walked up to him and whispered in his ear that if he was willing to pay a small bribe to the policemen, he would be allowed to proceed without any trouble. But Kumara staunchly refused to do any such thing and told them to let him know of their decision. Consequently, another man in civvies came forward and repeated the request. But the victim still refused.

According to Kumara, no sooner had he refused to pay the bribe, policemen Benet, Jayalath and Officer No. 42706 pulled him from his bike, threw him on the road and mercilessly assaulted, kicked and trampled him. The victim, Kumara, requested them to stop assaulting him and repeatedly reminded them that he was an army soldier. But the policemen only retorted that the victim's official duties are limited to his area of duty and that this area was under police jurisdiction, thus the victim was 'under' the police. The victim also says the policemen acted as if intoxicated and he had a strong stench of alcohol. Several people of the area also witnessed the assault while his friend too watched helplessly until the police chased him away.

Subsequently, the policemen confiscated the key of his motorbike and forced the victim into a whitish coloured lorry. They pushed him onto the floor and sat on his body, one policeman even trampling his neck with his boots. The

victim was taken a short distance in the lorry, then transferred to a police jeep and taken to the Rakwana police station where about 11pm he was locked up in a cell. A little while later the police took him to the Rakwana District hospital to ascertain whether he was intoxicated. He was returned to the station and locked up. On the return journey, the victim says, PC Benet repeatedly and savagely assaulted him all over his body.

Again around 12:30pm the victim heard the voices of the policemen who had brought him in demanding: “where is that fellow, take him out”. Immediately the cell door was opened and the other inmates of the cell were taken to another place. The policemen walked in and cruelly twisting his arm proceeded to assault him. He remembers PC Benet bending him forward and striking his spine and neck with his elbow. PC Amarasiri kicked him on his back. The others too had attacked him with their fists and boots repeatedly, after which he was locked up again. The police did not afford him any food or drink, whilst in detention. Towards morning when he requested the police to bring him some tea with his own money, they still refused. Neither did they allow him to inform his family about his whereabouts.

At about 8am on 10 October 2007, the victim was taken outside the cell and allowed to sit on a bench. The OIC of the police station came in a little later and informed the victims’ family that he was in police custody. PC Benet then recorded the victim’s statement and forced him to sign it without allowing him an opportunity to read it or explaining its contents. About 11am the victim was taken to the Rakwana Magistrate’s Court and charged with driving under the influence of liquor and for not wearing a helmet. The victim informed the Magistrate that he was assaulted by the police. He was released on bail and the next court date was fixed for 12 December 2007. That same day, the victim went back to the Rakwana police station and obtained possession of his motorbicycle and keys.

On October 11, the victim was admitted to ward No 6 at the Ratnapura hospital seeking medical treatment for the injuries sustained from the police assault. He also informed hospital authorities that he was assaulted by the police. On October 13 he was examined by the JMO who he also informed of the police assault. The victim was discharged from hospital on the same day.

The victim complained in writing to the relevant authorities including the HRC, NPC, IGP and DIG-Legal Branch.

### **153. M.I. Fausil Ameen: Prolonged and brutal torture by the Kalutara South police**

On 14 October 2007 about 12:30pm M.I. Fausil Ameen (aged 27) and another man named Gratian were riding a motorcycle when they were stopped for a traffic offence by about eight policemen also on motorbikes. The policemen searched them and had allegedly discovered a gold chain in Gratian's trouser pocket. The two were then taken to the Kalutara South Police station where SI Tennakoon of the Traffic Branch interrogated them and recorded their statement. Thereafter the victim was locked in a police holding cell.

According to Ameen, around 9pm that day OIC Udayanga ordered a policeman named Palitha to escort him to the OIC's office. Then OIC Udayanga instructed him to remove his clothes and accordingly he had removed his vest and T-shirt. OIC Udayanga then took a baton about one-and-a-half feet in length and brutally assaulted the victim several times on his back and neck, pulling the victim's head down in front before each blow. Due to the severity of the assault, the victim says he fell down several times. But each time, the OIC forced him to stand up and continued the assault. After some time, the victim felt faintish and lost count of how many times he was assaulted. Eventually the victim had been dragged back to the holding cell by policeman Palitha who told him to put on his clothes.

But his ordeal was not over. According to the victim, around midnight another policeman visited his cell. The victim was handcuffed and taken down a flight of steps to what looked like a bathing room. Again, OIC Udayanga was present this time accompanied by five other policemen. OIC Udayanga removed the victim's handcuffs, forced him to strip completely naked and lay face upwards, on a bench. Taking a rope, he then tied the victim's body to the bench and cuffed his feet together. On OIC Udayanga's instructions one policeman fixed a hosepipe to a water tap. The OIC then tied the victim's face and head with his vest and slammed water from the hosepipe onto his face. The victim struggled desperately as he found himself suffocating under the water pressure on his face, nose and mouth. Soon he lost consciousness.

This treatment continued each time he regained consciousness. After a while OIC Udayanga had removed the clothing covering the victim's face and head and inserted the hosepipe into his mouth. Another policeman tightened the victim's lips around the hose while the water tap was opened - choking

the victim and making blood and phlegm spurt out of his nose and mouth. Once again the victim became unconscious. This time when he regained consciousness, he was kicked and assaulted all over his body by the policemen around him. The police proceeded to yet another stage of torture by filling a shopping bag with petrol and tying it around the victim's head. Again the victim fell unconscious and when he awoke they struck him many times with a cane. Finally the victim was untied and told to wear his clothes. He was handcuffed and dragged out of the police station from the rear exit. The victim also says that throughout his torture, the police continuously demand he confess to possessing weapons - he did not have.

Outside the station, the victim says he was thrown into a police jeep and driven to a lonely place. He was told to kneel down on the ground and a pistol-like object was forced into his hands. The police then told him to run. But the victim resisted - partly because he was unable to and partly because he was suspicious of the policemen's motives. So they took him to the Kalutara Bridge and told to jump into the river below. Again, the victim had refused. Finally, the police had taken him back to the police station and he was locked up. According to the victim, he was quite disoriented by then and is unable to say exactly what time all these events took place.

Next morning, October 15, the victim says he was again taken to the bathroom and forced to re-live the terrible ordeal of the previous day. That is, he had been once again stripped and tied to the bench with his feet cuffed. Again his head and face was tied and water from the hose was splashed on his face, choking and suffocating him. Again a shopping bag filled with petrol was tied around his head and face and he fell unconscious. When he regained consciousness, he had been untied from the bench but his hands were still cuffed. This time however, the policemen applied 'Siddhalepa' ointment (a strong balm similar to Chinese Tiger balm) on his wounds as well as his penis and anus. The water hose was once again focused in full force on his body. The pain caused by the ointment and water pressure was unbearable and he had screamed in agony.

Finally after what seemed a never-ending nightmare, his handcuffs were removed and he was told to put his trousers on. But even while he dressed, he was continuously hit and kicked. Again the victim became disoriented and is unable to tell at what time or for how long the torture continued. But he says this time, about six policemen were involved.

The police took the victim to the Crimes Branch office, forced him to sit on the floor and handcuffed him to a table leg. From time to time, OIC Udayanga kicked him. One time, according to the victim, OIC Udayanga brought petrol in a bottle and threw it into his face. His fingerprints were taken and he was then produced in court about 2:30pm. Luckily, his family members had managed to retain a lawyer to appear on his behalf and he was released on bail. However, not a word about the terrible torture inflicted on his person was mentioned in court. That same evening the victim visited the Kalubowila Teaching Hospital and was admitted to the accident service ward. On October 17, he was transferred to Ward 26 of the same hospital and continued to receive medical treatment for the many injuries he had sustained.

The victim complained in writing to all the relevant authorities including the HRC, NPC, IGP, DIG-Legal Branch and the SSP of Kalutara.

#### **154. Dorairaj Jayachandran: Brutally assaulted with a copper cable**

On 31 October 2007, Dorairaj Jayachandran (aged 28) together with V. Velamuni, J. Jeyaraj and another, all casual labourers, went in a lorry to collect scrap iron as usual. Around 2pm they returned to handover the collected scrap iron to a shop belonging to one 'Lasantha' along Agalawatte Road, in Matugama. While they were unloading the scrap iron from the lorry, crimes branch, OIC, Chaminda and three other policemen from the Dodangoda Police walked up to them. Only one policeman was in uniform. Without much ado and with no reason afforded, the policemen pushed the victim and his colleagues into a van and took them to the Dodangoda Police station. En route, the victim and the others were questioned about 'cutting electrical wires' at Malabadawatte. The men denied any knowledge the incident.

Upon reaching the police station, Crimes OIC, Chaminda escorted the victim and his friends to a new but unused building within the premises of the police station. The victim was taken to a separate room. OIC Chaminda closed the door and immediately began assaulting the victim with a copper cable all over his body in an inhuman manner. OIC Chaminda stamped on the victim's feet and toes with his boots, injuring the victim's left toe. Thereafter, the men were taken to another building where Velamuni was taken inside a room and assaulted.

OIC Chaminda recorded their statements and told J. Jeyaraj and the lorry driver to leave. The victim was handcuffed together with Velumuni and ordered to sit on a bench until the following day. They could not rest and were not offered any food or water. On 1 November 2007, about 10am the victim and Velumuni were taken into separate rooms and their statements recorded. According to the victim, even while his statement was recorded, OIC Chaminda repeatedly assaulted him with the copper cable causing him serious bodily injuries. The victim was then forced to sign the statement; he was not shown its contents, neither was the statement read and explained to him. About 11am the victim and Velumuni were charged with cutting electrical wires and produced before the Magistrate of Matugama where they were released on bail.

Soon thereafter, the victim and Velumuni visited the Nagoda Hospital and were admitted to ward no 11 for medical treatment for injuries caused by the police assault. The victim told the doctors about the police assault and made a complaint to the hospital police. On 6 November 2007, he was examined by the JMO to whom he also complained. He was discharged from hospital the same day while Velumuni continued to be in hospital. On November 2, the victim's father complained to the HRC via fax.

Subsequently, the victim also complained in writing to the HRC, NPC, IGP, DIG-Legal, and Matugama SSP.

### **155. S.K.A.S. Nishanta Fernando: “We are taking you to the beach to kill you”**

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

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

**156. Ven. Dodangoda Ariyadamma: Police allegedly assault and fabricate charges against three men for refusing to pay bribe**

One Buddhist organisation, the Sambodhi Vihara Samitiya located at No 106, Wijerama Mawatha Colombo 07, releases cattle condemned to slaughter and gives them freely to villagers and homes. According to the local custom it is a great meritorious act to release cattle that are condemned to slaughter upon a money payment. Usually these cattle are given to temples and individuals who will look after them. The cattle released by the organisation are transported with a letter requesting permission for such transport written on the organisation's letterhead in place of the relevant legal permit required for the purpose.

On November 24, 2007, Ven. Dodangoda Ariyadamma head priest of the Bodhirajarama Viharasthana in Anuradhapura, who had been working with this group for the last two years, obtained twenty five cattle from the organisation to be distributed among villagers along with the letters requesting permission for such transport.

The letters were signed by the Rev. Dharagama Kusaladamma Thero the head priest of the Sambodhi Vihara. He had earlier transferred 40 cattle to the Mihintale police and 15 cattle to the Kahatagagiliya police to distribute the cattle amongst the people of those areas, which he had obtained from the Colombo Sambodhi Vihara.

This time, out of the 25 cattle obtained that day by the Ven. Dodangoda Ariyadamma, 15 cattle were given to Peter Lenus and H.M. Dharmadasa to be distributed among the villages. Peter Lenus and H.M. Dharmadasa transported their fifteen cattle in a lorry bearing license No. 226-5226.

At around 2:30am on November 25 when they reached the village Angomugama, they did not have room in their properties to keep the cattle. They then knocked on the door of Nuhulebbege Mohomaddu Padil, known as Angamuvegama Padilige, and asked his permission to tie the cattle in his property till the next day. Peter Lenus and H.M. Dharmadasa said that they were acting in accordance to the instructions of the Ven. Dodangoda Ariyadamma.

At 3am on the same day, some four officers from the Galgamuwa police came in a jeep to the house of Angamuvegama Padilige with the driver of the lorry and another person whom Dharmadasa and Peter Lenus came with. The police inquired after the cattle. Angamuvegama Padilige told them how the cattle came to be in his property and then phoned and told Dharmadasa that the police were inquiring about the cattle. After a while Dharmadasa and Peter Lenus came to his house. The police sent the lorry driver and other person to bring the lorry to the Angamuvegama Padilige's property and got them to pack the cattle back into the lorry.

The police then assaulted Peter Lenus, H.M. Dharmadasa and Angamuvegama Padilige many times with their hands and feet while accusing them of having brought the cattle to make them into meat (slaughter). After this assault, the police took by jeep Peter Lenus, H.M. Dharmadasa, Angamuvegama Padilige to the Galgamuwa police station. They also took the lorry containing the 15 cattle into custody and got the victims to let out and tie the cattle in the police property.

At the police station, the police asked Angamuvegama Padalige to pay a bribe of Rs. 50,000 to be set free. After negotiation, he paid Rs. 20,000 and the police released him. However, Peter Lenus and H.M. Dharmadasa were put into the police cell. Angamuvegama Padalige does not want to reveal this fact due to fear of his life.

Upon being informed of the incident, Ven. Dodangoda Ariyadamma went to the police station to clarify this matter at 6am on November 25. However, he was taken into custody and put into the cell. When he was explaining, he told that the other 10 cattle obtained from the Sambodhi Vihara Samithiya on the same day were grazing in his temple property, Bodhirajarama Viharasthana in Anuradhapura. As the police heard this, they went to the temple at 5pm on that evening and brought the cattle to the police station.

While he was in the cell, SI of police Chandrasiri solicited a bribe of Rs. 50,000 to be set free, which he refused. In the afternoon on November 26, the police showed a statement and forced him to sign it of which Ven. Dodangoda Ariyadamma did not know the contents. The police also got a signature from Peter Lenus and H.M. Dharmadasa on the statements, the contents of which were not revealed to them. At 3pm on that day, three of them were produced before the Galgamuwa Magistrates and they were remanded till 6 December 2007 and released on bail.

### **157. Ajith Kumara: Alleged torture and laying false charges against family members by Kolonne police**

On 16 December 2007, at about 8:30am two police officers, Udaya Kumara and Premalal in civilian dress from the Kolonne Police station came looking for Ajith Kumara at his parent's house, saying that there is a warrant issued for his arrest. When they were told that he was in the bathroom taking a wash, they went into the house and dragged him out of the bathroom naked. They allegedly assaulted him with a pole and then forced him to the floor where they trampled his naked body including his sexual organs.

Ajith Kumara's mother, W.H. Rosalin (aged 67), his father who was bedridden and his sister, Ramyalatha were in the house at that time. While Ajith Kumara was being beaten, Rosalin and Ramyalatha came forward to stop the police officers assaulting him. However, his mother was also assaulted and fainted. Ramyalatha managed to snatch the pole from one officer. In the ensuing confusion Ajith Kumara ran from the premises. The police then also left leaving behind the mother, unconscious on the floor.

Meanwhile Seemawathi, another sister of Ajith Kumara, came to the house to attend to her sick father. She saw her mother fallen on the floor and after failing to revive her, took her by a three wheeler to the Kolonne hospital. On the way to the hospital, four officers arrived on motor cycles and threatened them not to take the mother to the hospital. However, Seemawathi ignored them and carried on to the hospital. When Seemawathi returned home, she found that Ramyalatha (her sister) and her young child had been taken to the police station.

In the afternoon, Ajith Kumara and Chanaka Thusitha Perera (Seemawathi's son) were stopped at an army check point when they were found riding a motor cycle. The army officers after examining their bags and identity cards had informed the police that they had found Ajith Kumara. Soon after,

eight police officers from the Kolonne police station came and arrested them. Once again the police assaulted them by forcing them to the floor and trampling them. At that point, the army officers warned the police officers “Not to assault them like assaulting dogs”. The police then took them to the Kolonne police station. The police again assaulted Ajith Kumara until he lost consciousness at the Kolonne police station. Ramaylatha and her child who were also in a cell witnessed this incident. Ramyalatha shouted from the cell not to assault her brother in such a cruel manner.

In the morning on December 17, Ajith Kumara’s wife, Ayesha Tharangani (who was 6 month’s pregnant) went to see Ajith Kumara in the police station. Inside the police station, Ramyalatha told her that her brother had been assaulted in a most vicious manner and had been taken to the Kolonne hospital the previous night. Ramyalatha told her to go to the hospital to see if her husband was still alive as he had been assaulted so badly. Ayesha Tharangani went to the hospital but the police would not allow her to see her husband. Later she came to learn that her husband had been transferred on the same day to the Embilipitiya Hospital.

On the same day, Ramyalatha and Chanaka Thusitha Perera were produced before Embilipitiya Magistrate’s Court and remanded. Rosalin (the mother) had been transferred from the Kolonne Hospital to the Embilipitiya Hospital. After that, whenever the family went to visit Rosalin, the police officers threatened and tried to force them to get her discharged from the hospital. Later the family learned that she had been arrested from the hospital and sent to the prison.

When the family visited Ajith Kumara in the Embilipitiya Hospital, he was very sick and told them that the police officers had assaulted him very badly. Ajith Kumara, Rosalin (his mother) and Ramayalatha (his sister) were transferred to the Tangalle prison. The family got to know later that all three with Chanaka Thusitha Perera were charged with possession of firearms, assaulting the police and obstructing the official duties of the police officers.

On December 24, Seemawathi reported this incident by a written complaint to the HRC, NPC, IGP and Police Headquarters. She also submitted her complaint to the DIG-Legal and SSP, Ratnapura.

On 17 January 2008, the police officer Udaya Kumara who assaulted Ajith Kumara in the house threatened and scolded the family while they were in

the premises of the Embilipitiya Magistrate's Court for complaining. The OIC of the Kolonne Police station also threatened the family in the premises of the court, on January 31 in the presence of the family including Ayesha Tharangani (Ajith Kumara's wife), Seemawathi (his elder sister) and her husband and Sิริyalatha (Seemawathi's sister). Also present were the lawyer of the family, Kulasuriya and bystanders who had come to the court on that day.

According to Ramyalatha and Ayesha Tharangani, the OIC threatened them saying that, "if these two men are freed, we will get them shot and killed. We will get their houses burned down. Otherwise, we will get a villager to stab them to death with a knife. Only one bottle of arrack and a sharp knife is necessary. When this incident happened I was on holiday. I came after four days. I telephoned and told them to shoot all four of them. I have marked their houses. So go anywhere and make complaints."

Ajith Kumara was then sent to receive treatment at the Ratnapura Hospital under the custody of the Kuruwita prison officials while Rosalin (his mother) and Ramyalatha (his sister) were in the Kuruwita prison. Chanaka Thusitha Perera was released on bail on January 31.

Seemawathi complained of this situation to the HRC, NPC, Attorney General, IGP, and police headquarters on February 5. On February 6, Ayesha Tharangani also complained. Rosalin and Ramyalatha were released on bail on February 21 and Ajith Kumara was remanded in Kuruwita prison. No investigations had been taken by any government authorities with regard to the alleged torture of this man and the fabrication of charges against his family members.

### **158. (Name withheld): Raped by police**

On 17 December 2007, a 17-year-old "Y" (name withheld for security reason) suffered a chest pain while she was working in "Ceramic World" Biyagama. Her employer arranged medical treatment for her and after getting permission from her supervisor, she left at about 7pm. While she was walking towards the boarding house, she noticed that someone was following her. She looked back and saw four men following her; she attempted to run but three of the men caught her while the fourth pressed a white coloured handkerchief soaked with an unknown substance over her nose. Before she lost consciousness she heard a vehicle stopping nearby.

When she regained consciousness she was lying on a bed in a room. She saw the Deputy Chairman Pradeshiya Sabaha (Provincial Council) Weligepola and his friend both of whom she named in her affidavit sitting at the end of the same bed drinking alcohol. She was still dressed in all her clothes and as she tried to open the door and escape they caught her and threw her back on the bed. She lost consciousness again and could not remember what happened after that. When she regained consciousness she found that she was lying on the bed with a sheet thrown over her naked body. The Deputy Chairman was there and he was half naked. Y then saw her clothes on the bed and started to get dressed while crying and asking the man “Why did you do this to me?” In answer the Deputy Chairman broke an empty arrack bottle and held it to her neck saying “If you dare to tell anyone about this incident I will kill you and every one in your family.” The victim was terrified and pleaded with him to let her go and return her to the boarding house. Then, the Deputy Chairman ignored her plea and again threatened her.

At 7am on December 18, the Deputy Chairman took her out of the room after covering her face so that no one would be able to recognize her. He took her to his friend’s three-wheeler. On her way out she noticed a board with the word ‘Guest House’ written in English. They dropped the victim at the cross road near her boarding house, threatening her for a third time that “If she reports the incident to anyone that they will kill her and everyone in her family”. The victim went to her boarding house. She did not tell anyone of the incident because of the death threats made by the Deputy Chairman.

On December 18, the victim’s mother came to see her and finding her looking very sick asked her to take medicine. The victim had then told her that she preferred not to do so since medication made her even more uncomfortable. She managed to work for two days but asked for one week’s leave due to ill health on December 21 with the intention that she would not return to work during that time. However, since she had not paid her boarding fees she had to return to the boarding house on 29 December. The matron was not there and she had to wait till 31 December to pay her boarding fees and return home.

On 13 January 2008, the victim’s mother was asked to meet her sister and her husband P.K. Premadasa who advised her not to let Y live in the village but to take her and go lest great harm would befall her. When the victim’s mother demanded to know the reason for this they refused to tell her but repeated that she should take the girl and leave the village. When the victim’s

mother returned home she asked her daughter what all these statements meant. She then broke down crying and told her mother everything that had happened. The victim's mother then phoned police emergency number 119, and made a complaint regarding the incident and left the village with her daughter on January 14.

A little while later the mother's sister informed her by phone that the police had arrived. The police officer, speaking on the same phone advised her to go to the Godakawela Police station and make a complaint about the incident. The victim and her mother took a bus to the Godakawela police station but while on the way the victim received a mobile phone call in which she was threatened that if she so much as opened her mouth to say anything against the Deputy Chairman, she would be killed.

At 10pm they reached the police station. However, the OIC Crimes Branch, Godakawela, told them that since the crime had been committed in Biyagama that they should make a complaint at the Biyagama Police station. The victim's mother also informed him that her daughter received a death threat on her mobile phone on their way to the police station and gave him the number of the incoming call as registered on the phone. Even though the Godakawela Police refused to record the complaint, due to the mother's insistence a female officer was instructed to record the complaint at about 11pm. The mother was not allowed to come near her while the complaint was recorded. The victim was told to sign the complaint but was not allowed to see what was written. Neither were they given the serial number of the complaint even though they requested it. After the complaint, the female officer and two other officers took the victim to be admitted to the Godakawela District Hospital.

The victim was warded and given medical treatment. While she was warded, a friend of the Deputy Chairman came to the hospital and suggested that they would settle the matter saying that "we are all people of the same village". However, the victim's mother did not accept any settlement. The victim was transferred to the Ratnapura General Hospital by the hospital ambulance on January 16. During the hospital visiting hours in the afternoon, an unknown young man came in to the ward and having asked who the victim was and told her that the Deputy Chairman had come and is waiting near the gate and to go and meet him. However, when the victim told this to her mother, the mother held the young man by hand and wanted to know more information which he did not provide but simply went away. On January 17,

a JMO declared that the victim had been raped and mentioned that if expert evidence was needed in court to forward the documentation provided.

On January 18 when the victim's father was returning home after visiting her in hospital two persons known to be friends of the Deputy Chairman and five others blocked his way and tried to assault him with a bottle. However, he managed to evade the assault. On January 19, the victim was discharged from the hospital with referrals to medical clinics. During this period the Biyagama Police sent a message to the victim's mother to come with the victim and lodge a complaint at the Biyagama Police station. The victim's mother went to the police station on the same day and informed them that a complaint had been taken down in the Godakawela Police station. She gave the two complaint numbers which she had managed to get from them as G.CIB.288/61 and MCEN.22/08. When she asked for the complaint number from the Biyagama Police station she was informed that the investigation would be conducted under the same complaint made to the Godakawela Police and therefore it would be registered under the same number.

Subsequently, a police officer accompanied the victim and her mother in a vehicle so that she could identify the Guest House to which she was taken. After visiting five guest Houses, Y recognized the fifth Guest House, the Kalani Nadi Guest House, as the place where she had been held and raped. The police had thereafter searched the premises. They also looked into the Guest Information Book and found that the name and identity card number of the Deputy Chairman Pradeshiya Sabaha Weligepola entered as a guest who had stayed the night on 17 December 2007. The police then searched the room recorded as the one occupied the Deputy Chairman and took into custody the bed linen (which had since been washed) and the Hotel Guest Information Book.

The police also questioned the waiter who had been in service on the 17 December. The waiter recognized the victim. Then the police took the waiter to the police station in order to get his statement, after which he was released. The Biyagama police then having taken the contact phone numbers of the victim's household told them that they would contact them when the need arises. The victim and her mother left for home. Since the Biyagama police had not contacted the victim, the victim's mother phoned them and was told that the investigation was in progress. She was also asked if she could provide a vehicle so the police could arrest the Deputy Chairman, to which she replied that she did not have the money.

On January 28 when the victim's father was in the garden he noticed three strangers on the road opposite the house carrying that which appeared like iron bars. The victim's father had quietly evaded them. In this regard, the victim's father made a complaint at the Godakawela Police station. Since this incident, the victim's family members moved from the village for their protection and safety.

According to the victim, after she was abducted and raped the perpetrators still live as free men, the police have not notified them of any further action taken on the crime, and it was only through a friend of the victim's mother that they had got to know that a case had been filed in the Magistrate's Court, Gampaha. According to this information the victim's mother had gone on February 13 to the court but when the case was called, she was not allowed to come forward and was chased away by the Biyagama Police and the lawyer of the accused.

The victim and her mother made written complaints of the incident to the IGP, DIG-Legal, SSPs in Colombo and Ratnapura, NPC, HRC, Child Rights Authority and Women and Children's Bureau. Furthermore, the victim's family got to know that the suspect applied for anticipatory bail on 19 March 2008. After learning of this, the victim set out all details of the incident in an affidavit and handed it over to the Magistrate of Gampaha.

### **159. Sugath Rohana: Assaulted due to private quarrel with police**

At around 9pm on 29 December 2007, Sugath Rohana, was returning home from work. He consumed a beer at a restaurant and stopped at a shop to buy something to eat. Inside the shop, Sugath Rohana saw Manikka, a police officer, in the company of another police officer from the Tissamaharama police station.

According to the information received, on a previous occasion, Manikka had asked Sugath Rohana to lend him his motorcycle for personal reasons. Sugath Rohana refused this favour, saying that the motorcycle belonged to his employer's company. Then Manikka threatened him by saying, "Is that so? The day will come when you will need us!" Manikka showed his displeasure at that time and later on the occasions when they met on the road.

On December 29, seeing Sugath Rohana enter the shop, officer Manikka came out and called him to one side and asked if he was drunk. Sugath Rohana replied that he had only consumed beer. Officer Manikka stated,

“That is enough for us”. Sugath requested the officer not to bother him as he had done no wrong and that he was on his way home. Officer Manikka then slapped him on the cheek, saying “We will see about that”. Sugath Rohana pleaded with the officer not to hit him as he had done no wrong. Manikka taunted him and repeated the word “wrong... wrong...” and again slapped him brutally across his cheek.

Another police stepped in and said, “Your mouth is too big”, and struck him severely on his head with the T-56 rifle he was carrying. He then made a call on his mobile phone and asked for a police jeep to be dispatched, stating that their officers were being assaulted. Sugath Rohana asked officer Manikka why he was being treated like a criminal, and in response the officer said sarcastically, “Look, now he is trying to teach us the law.”

The police jeep then arrived with more officers who also started to assault Sugath Rohana. He was unable to recognise the officers who assaulted him or their numbers in the group, because at that time he began to feel faint and his vision became blurred due to his head injuries from the assault. His head was bleeding and his T-shirt was soaked in blood.

At that time, Sugath Rohana’s sister, Ayanthika, came to the scene. However, she was also scolded by the police. Shortly, officer Chandimal of the same police station came to the scene on his motorcycle. He scolded Ayanthika with foul language and attempted to assault her, at which point Ayanthika became frightened and ran away. Officer Chandimal then assaulted Sugath Rohana who fell unconscious. The victim was taken to the Debarawewa hospital. Officer Manikka, Chandimal and some other officers were around the victim’s bed when he regained consciousness.

Allegedly, officer Manikka had deceitfully reported to other parties, including the doctor in the hospital, that Sugath Rohana had intended to purchase illegal drugs and while drunk had fallen from the bike and injured himself. Upon hearing this false report, Sugath Rohana shouted out that he did not use drugs, and that this was a gross injustice as he had been assaulted by the police. He also stated to the doctor that his purse and mobile phone were missing. Officer Manikka then produced both these items. The doctor then asked the police that brought in Sugath Rohana, if he had any injuries. Officer Manikka stated that the victim did not have serious injuries, as he had only fallen off his bike. The victim objected again to the false statement and added that he had a severe headache. However, officer Manikka was able

to have him discharged from hospital and brought him to the Tissamaharama police station where he was placed in a cell. He was also not given any food or drink that night. Sugath Rohana is unable to state at what time he was taken to the police station.

On December 30, officer Manikka took Sugath Rohana out of the cell and announced loudly, “This is the guy who came to assault the police”, and took him to a table to record his name and workplace. Sugath Rohana was not shown what else was recorded but was forced to sign the book. Officer Manikka then threatened to have him imprisoned for two years. Another officer suggested cancelling his driver’s license so that he would be out of a job. The victim was then returned to his cell. Sugath Rohana was still not given any food or drink that morning. While Sugath Rohana was in his cell, officer Chandimal came to the cell and showed him a packet of drugs, stating that this was the evidence they would use to have him imprisoned for two years.

Later, officer Manikka came and took Sugath Rohana to another cell and told him to remove his T-shirt, asking if his family brought him another shirt as he could not be produced in court in such a state. Subsequently, when Sugath Rohana’s brother-in-law, Anil Priyantha, came to see him, he asked him to bring another shirt so he could be produced in court. Anil Priyantha then did so.

At around 12:30 on the same day, Sugath Rohana was produced in Tissamaharama court under the allegedly fabricated charges and remanded. He later came to know that the fabricated charges against him were possession of illegal substances (drugs) and driving his motorcycle under the influence of alcohol. On 1 January 2008, Sugath Rohana was produced in the Tissamaharama court and received bail. On January 2, due to the discomfort and pain in his body, Sugath Rohana sought treatment from a private doctor. However, due to the severity of his injuries, he was admitted to the Hambantota General Hospital for further treatment. The victim informed the doctor who examined him, and the JMO, that he had been tortured by the police. Sugath Rohana was warded and received medical treatment until January 8. He was advised to continue treatment with a specialist. The victim continues to suffer from severe headaches, dizziness and fainting spells, due to the assault on him by the police.

Sugath Rohana made a written complaint to the HRC, NPC, IGP, Attorney General, DIG Legal, DIG Southern and SSP Hambantota.

**160. Mohamad Maharoo Mohamad Pasmı: Police allegedly assault and fabricate charges against two men**

On 5 January 2008, Mohamad Maharoo Mohamad Pasmı, a driver, drove his van with five passengers toward Galle from Tangalla. When he arrived at the main bus stand of Galle at about 3:30am, the passengers went to a mosque to pray and Mohamad Pasmı went to drink tea at a hotel nearby with Mohamad Riyaf. According to the information received, while they were drinking tea, three police officers in civil dress from Ahangama Police called Mohamad Pasmı and asked whether he is a van driver. When Mohamad Pasmı came out, one officer had grabbed his T-shirt and took him near the police jeep. The officer questioned him about a lorry that had transported some cattle. When Pasmı said he did not know anything, the officer hit him on the left side of his face, which broke a tooth in his upper jaw. Then, the officers hit Mohamad Riyaf too. They pushed them into the police jeep and wandered from place to place in Galle town. When they saw cow dung in the clothes of two persons near the Navy camp, they forcibly took them too in the jeep.

After being questioned, the two men showed the police a place where the cows were being kept. Then the police officers told them that they needed diesel for the jeep and ordered them to bring a can of diesel and power oil. Within a few minutes after receiving the diesel and oil the police released the two persons. The police took Mohamad Pasmı and Mohamad Riyaf to Galle Harbour police and kept them for two hours before transferring to Ahangama police station.

On January 6, the next day, they were taken to the official residence of the Magistrate and charged with robbery and unlawful transport of cattle and produced before Galle magistrate's court. They were remanded till January 8 and released on bail after paying Rs. 40,000 respectively.

Mohamad Pasmı went to the Thangalla Basic Hospital for three days. In the hospital, he informed about the JMO of the police assault. On January 31, they sent a written submission to the HRC and also informed the SSP in Galle, NPC and the IGP on February 6.

**161. Shiraz Buhran: Mirihana SIU tortures man after arbitrary arrest**

On 15 January 2008, at about 4pm, Shiraz Buhran and his assistant returned to his workshop "R. Tec" at the Rukmale Vijeyapura junction at Pannipitiya, after attending to a purchase order. According to the information received,

Shiraz Buhran observed that a Tata Signal Cab was parked outside his workshop. He then saw a police officer in the cab and heard him calling him. The police officer asked Shiraz Buhran where he had been. The police officer then called Shiraz Buhran's assistant and wrote down his name and address. Then he told the assistant to take Shiraz Buhran's motorcycle home as he was taking Shiraz Buhran to the Mirihana police station because the OIC requested to see him.

There were six officers in the cab and he recognised Police Constable Nandasena, who was carrying a T-56, a SI, a driver and three others. Shiraz Buhran was then taken to the Mirihana Special Crimes Branch and told to stand in the corner of the room. Shiraz Buhran was then told that he was apprehended as a suspect of a jewellery theft that had taken place in the house of his cousin, Dr. Sampath Pradeep Kumara Athukorala, who lived next door to Shiraz Buhran. According to Shiraz Buhran, the two families were angry with each other and his cousin had purposely implicated him to avenge him.

An officer at the police station asked the officer who brought him in "is this the fellow?" Then the officer came near him and asked, "Where are the goods?" The officer then suddenly slapped Shiraz Buhran on his cheek and with his fist hit him on his stomach several times. Then five officers who were there crowded around Shiraz Buhran and began to hit him with their hands and feet for about 15 minutes, shouting at him "to give the goods". Among those who assaulted him, Shiraz Buhran recognised the SI who brought him to the station. Shiraz Buhran was then hand cuffed and was told to sit on a box.

At about 7pm Shiraz Buhran heard the voice of his mother and saw his mother talking to a SI. He immediately went up to her and told her that he had been assaulted by the police. The officer then scolded him and chased him away telling him to return to his place on the box. Thereafter he was visited by his wife and another relative. His work assistant also came to see him. He informed them that he had been assaulted by the police. He was handcuffed to an iron chair for the whole night. At 8am on January 16, police constable Nandasena came and threatened him "at least now tell the truth" and slapped him many times on his cheeks.

At about 9:30am Shiraz Buhran's mother came and met the OIC with Shiraz Buhran. The OIC then threatened his mother that if she talked or reported the incident to human rights activists, he would send her son to prison for

14 days. Thereafter he was fingerprinted. At about 4:30pm a statement was recorded and he was released. However, he was not allowed to see what was written nor the statement that he had recorded. When he was leaving the police station, the OIC threatened him that he had heard that his mother had consulted human rights activists and if he tried to continue such steps they would fabricate a charge and send him to prison.

Shiraz Buhran alleged that he was falsely implicated in the theft and was assaulted and harassed by the officers of the Mirihana Special Investigation Unit on the instigation of his cousin Dr. Sampath Pradeep Kumara Athukorala as an act of revenge. He then said that his cousin, a doctor, is married to a doctor who is the daughter of the Assistant Superintendent of Police Kalutara. He then argued that the offence should have been investigated by the Homagama police under whose jurisdiction it lies but was instead investigated by the Mirihana SIU.

On January 19, Shiraz Buhran reported this incident by a written complaint to the HRC and NPC, IGP and DIG Legal.

### **162. Hiriyaage Gratian Lasantha Prasantha Perera: Threatened and illegally detained**

Hiriyaage Gratian Lasantha Prasantha Perera's job was polishing wood furniture. On 18 January 2008, Gratian was called to the Payagala Police station where he was told that a complaint had been made against him by a client. Gratian had worked on a polishing job at the client's house from 1 to 23 December 2007. About one week after Gratian had completed the work at the house, the client made a complaint against Gratian to the Payagala police saying that he had not completed the work satisfactorily and he should re-do the work at his own cost.

Gratian was kept in the police cell for about 20 minutes and released only after the OIC came to the police station. The OIC threatened him that he will be beaten if he does not sign a statement saying that he will re-do the work at his own cost at the client's house. Gratian signed the statement and went home.

On January 31, Gratian was again called to the Payagala police station. But he was unable to go, and so he sent his wife to the police station. When his wife went she met the OIC who scolded her loudly and insisted that Gratian re-do the work. The OIC threatened her that if Gratian does not re-do the

work he will fabricate a case against him and send him to prison for years.

On February 2 at about 10:30am, the client's brother with five other persons went to Gratian's house but he was not there at that time. They confronted his wife who was 8 months pregnant and threatened her by saying that her husband will not be allowed to walk on the street and that they will kill him if he does not re-do the work. His wife says that one of them, a woman tried to hit her.

Between 10 to 11pm, the client's brother again went to Gratian's house with three officers of the Payagala Police station. The officers told his wife to ask Gratian to come and meet the OIC Gratian's wife then asked them if they could give her a note to that effect. The officers then told her that they did not issue notes and to see that her husband comes and meets the OIC Gratian reported this matter to the SSP (SSP) Kalutara in the presence of the OIC Payagala on February 6. The SSP instructed an officer to take down a statement from Gratian. Then the OIC, who was on the premises then met Gratian and told him that he would file a case against him. When Gratian was leaving the premises, the OIC had threatened him with saying, "be careful!" On the same day evening an officer from the Payagala Police went to Gratian's house and had given him a note instructing him to come to the Payagala Police station the next day.

At 9am on February 7, Gratian and his wife went to the Payagala Police station as the note indicated. The client was also there. He re-told the whole incident but the officer who conducted the inquiry stated that it is pointless fighting with the police, and that they have put the matter to the courts. The officer gave him a form (receipt of arrest) and put Gratian into a cell telling him that he would stay there until he was taken to court. The receipt recorded that the reason for arrest was "criminal breach of trust".

Gratian was put into the cell at 11:15am till 12:15pm. Then, he was taken out of the cell and a statement was taken from him before he was produced before the Magistrate's Court of Kalutara. He was released on bail.

Gratian's wife went to the Payagala Police station with a written request asking for the 'complaint' document on which the case was based on February 8. A female police officer told her that a letter from an attorney-at-law is required for the purpose. The letter was then produced on February 18 to the same female officer. The officer taking the letter, asked Gratian's wife

to come on February 25 to collect the document. Accordingly his wife went to meet her on February 25 but was told that there was still more time for the case and the officer did not give the said document.

Gratian informed the HRC, NPC, IGP and SSP OF Kalutara of this situation on February 1 and 7. His wife and his mother also informed the same persons between February 5 and 26. However, no action had been taken.

### **163. Umesh Chaturanga: Police and jail guard torture boy to confess**

Umesh Chaturanga was a 16-year-old student of H/Meegahajadura Maha Vidyalaya. At about 2:30pm on 20 January 2008, Umesh Chaturanga went to the Sooriyawewa police station with his parents after they had been asked to report there. His school principal Sunil Kumara was also at the police station. One of the officers, Sgt Premadasa called him inside and asked him, in front of his school principal, whether he had broken the door of the home science room with his friends. When he denied the accusation, Premadasa started beating him on his shoulders with a 2 to 3 foot long wooden pole. In addition Premadasa asked him what else he had done after breaking the door. Soon thereafter, Officer Anura, a member of the Traffic police came into the room and slapped him on his right ear. His father was in front of the station but not allowed to come inside.

After the two police officers assaulted him, Umesh was locked him up in a cell. His father tried to call him and retrieve him from the station but the officers chased him away. When he refused to leave the officers shouted at him that he could bring something to eat for his son. At around 5:30pm his father returned with two rolls and buns and left. The principal also left at the same time.

At midnight, the two officers above mentioned took Umesh out of the cell. Premadasa dragged him by his shirt collar and shouted, "Tell the truth! You took a television set and an amplifier". When Umesh denied the charge, they beat him again on his shoulders, lower back and both legs for about half an hour. Then they asked him which other boys were involved. He stated that on 7 December 2007, as the room door was not locked, he entered the room with Nuwan Rana and prepared and drunk some tea, but neither boy stole anything. The officers again beat him and put him back in the cell. Even though he was in severe pain due to the torture, the police did not provide any medical treatment.

At 5am on 21 January, the officers took him out of the cell and demanded to know where he was hiding the jewellery stolen from Coranel Ralahamy's house and started hitting him again. As he could not bear the pain caused by the torture any longer, Umesh Chaturanga forcibly confessed to the accusations. Then Premadasa wrote something in a police entry book. The officers took him to the principal, teachers and his parents and forced him to confirm his confession. He had no choice but to accept everything because he was afraid that the officers might torture him again if he refused. Premadasa said to the others, "Now you heard he accepted everything."

Then, the officers took him and his parents in a three-wheeler. They dropped his parents off near his house, before proceeding to his friend Nuwan's house. Nuwan was not at home but on the way to another friend's house, Dinesh, they came across Nuwan on a bicycle with another person. They arrested Nuwan and put him into the three-wheeler. Premadasa slapped Nuwan on both cheeks and legs. The officers then went in search of a boy known as Rana (Chatura Maduranga) and arrested him too. They took the boys with them out to Kinissayaya Junction. Premadasa got a wooden pole and shouted at the boys asking them to identify the location of the stolen goods. When the children said that they did not steal anything, the officers repeatedly hit them with the wooden pole and then put them into the cell at the police station.

On 23 January the police filed two robbery charges against them and then brought them before the Hambanthota court. The children were taken to Hambanthota prison as they were unable to pay the fine Rs. 10,000 and put in a room with nine other inmates. Guards at the jail tortured Umesh with hose pipes and put him under a table in order to humiliate him in the guards' room on the night of the 24th. On 25 January the children were produced before Hambanthota court again and released on bail.

On 3 February Sgt Premadasa picked up Umesh, Nuwan and Lahiru from their respective houses and brought them altogether to the police station. On the way, he threatened them by saying, "Give us all the stolen goods, otherwise we will call the villagers and hold a meeting and tell them that you are thieves." After travelling about one kilometre, he stopped the vehicle and told Umesh and Nuwan to run. When Umesh went to the police station on Sunday to sign in as required under his conditions of bail, Premadasa once again threatened him saying, "I tortured Lahiru, he would hold a meeting and hand you over to the villages unless you return the goods you

have stolen.” However, Umesh has strongly denied any knowledge as to the whereabouts of the goods.

Umesh Tharanga submitted a complaint to the IGP, SSP Tengole, HRC and OIC of Sooriyawewa Police station. He also sent his affidavit to the chief justice, NPC and National Child Authority.

#### **164. Thanuja Lakshmi: Hit with an axe**

Thanuja Lakshmi is the mother of 14-year-old Kaushalya Ratnayake and one-and-a-half year old Sashini Sehara Ratnayake. Her husband Cyril Ratnayake worked as a security officer, attached to the Housing Authority, since 1987. He was stationed in Amparai and came home only for weekends.

At about 10am on 3 February 2008, Thanuja saw Rasika, who was employed with the Divisional Secretary’s office at Kataragama, drinking alcohol with two other persons whose names she did not know but could identify. Thanuja heard that they were talking about the house of Mahindasiri, an accountant attached to the office of the Divisional Secretary which is situated behind her own house.

At 4pm, Rasika came to her house and asked for her husband and Thanuja replied that he was at work. Rasika then repeatedly asked her about her husband and become more threatening. Thanuja then asked him who he was and he showed her his identity card. Then he asked her “What is the dispute you are having with accountant Mahindasiri’s land?” Thanuja told him that she was not aware of anything and he had better ask her husband about it. Then again Rasika shouted, “Where is Ratnayake? Tell him to come out.” Then he attempted to enter the house which Thanuja tried to prevent. However, Rasika pushed his way inside, pushing Thanuja into a room and on to a bed. In the process he caught her and pulled her dress and in the struggle her skirt was torn. Thanuja started to shout for help. Then he took an axe which was lying in a corner of her house and hit her with the handle. Thanuja fell down under the weight of the blow and Rasika struck her again several times. Then the accountant Mahindasiri too came with his sarong raised and asked for her husband. Thanuja Lakshmi noticed that he too was drunk.

Hearing the noise Thanuja’s neighbor Sunil Dayaratne came and pulled Rasika by his shirt while Rasika struggled with Dayaratne. At that moment Premasiri, Podi Dayaratne, and Weerakoon who are employees attached

to Town Development Authority, and some other persons who had heard Thanuja shouting came running and pulled everyone out. Then Rasika and Mahindasiri started to fight with those people.

Thanuja says she was in severe pain due to an injury to her hand and went to the Kataragama Police station to lodge an entry. Inside the police station, while the police officer was taking down her complaint, another officer told him that there was a phone call from the Divisional Secretary. After answering the call the officer came back and continued to write down her complaint. After finishing, the police just got her signature on it but did not make her read the contents. Then the Police sent her to the Kataragama Hospital. Thanuja says that while the Doctor was checking her, he too got a telephone call from the Divisional Secretary. The Doctor told her that he could not treat her and sent her to Hambanthota Hospital in an Ambulance. The same day at about 8pm they operated on her arm. She was in the hospital for three days and in the afternoon of 5 February 2008 she was discharged. Since then, she has been unable to work and her arm is still in plaster.

On 6 February she went to the police station and the police asked her to go to the Mediation Board and settle the matter, which she refused. A case was instituted in court. Based on her complaint, the police started investigation into the alleged assault however, no progress has been reported. In addition, due to the alleged influence by the office of the Divisional Secretary the case had not been investigated.

### **165. Joseph Arul Fernando: Last seen on his way to navy camp**

It was on 6 February 2008 that victim, Joseph Arul Fernando, was last seen on his way to the Kalpitiya Navy Camp. Joseph went there after he had been requested by one of the Navy personnel to join a party for his daughter's birthday. From his home, Joseph was carrying some bottles of alcohol and some small food for the party which was supplied to him by his brother's wife, Varuni. However, since then Joseph has not returned home. When inquiries were made with the navy personnel, they denied that there was a party although they had acknowledged that they had requested a party.

There was information that two days after Joseph disappeared, he was seen inside the camp. Meanwhile, some of the navy officers had also begun extorting money from Joseph's family in exchange for his release. Wanting to get him back, on February 28 and 29, Joseph's family decided to pay over Rs. 150,000 to these persons. However, even after getting the money they never produced Joseph or revealed his whereabouts.

On February 8, Joseph's family made complaints regarding his disappearance with the Kalpitiya Police station; the HRC in Colombo on February 8 and 13; the Ministry for Disaster Management and Human Rights on February 12 and Police Headquarters on May 12.

**166. Delwala Nakathige Keerthi Padmakumara: Police torture with pole**

Delwala Nakathige Keerthi Padmakumara ran a hair salon in the village of Godakawela. On 7 February 2008 when he was busy working in his salon, a school boy who Keerthi Padmakumara knew to be a resident of the area, but whose name he did not know, came into the salon and showed him a mobile phone. The boy asked Keerthi if he would help him sell it and Keerthi asked the boy to leave the phone in the salon. After a while a person came into the salon and Keerthi told him that there was a phone for sale. Keerthi asked him if he would be able to sell it. The man took the phone away after telling Keerthi that he will get it sold.

At about 4pm a police officer from the Godakawela Police station came to the salon and took Keerthi Padmakumara to the phone shop in Godakawela. The owner of the shop was present. The officer asked Keerthi Padmakumara if he had stolen a phone from the shop. When Keerthi replied that he had not the officer slapped his cheek. Keerthi Padmakumara was then taken to the Godakawela Police station and put in the cell. Later in the evening an officer took him out saying that he wanted to take Keerthi's statement. The officer then told him to admit that he had stolen a phone or otherwise he will hit him. Keerthi again said that he had not stolen the phone. Then the officer asked him to turn his back and stretch out his hands up on the wall. The officer then took a pole which was about 4 feet in length and started to assault him severely on his shoulders, spine and legs for about 10 minutes. He further says that due to the severity of the blows he could not breathe.

He confessed to the accusation in order to escape the continuing assault. Only then did the officer stop the assault. Keerthi Padmakumara says that the officer who assaulted him was referred to as the 'Saame mahaththaya' meaning sergeant. Keerthi was then taken to the room of the Officer in charge (OIC), where he was again asked if he had stolen the phone. It was out of desperation and fear that he would be tortured again that he felt he had no choice but to say 'yes'. The officer who assaulted Keerthi then proudly stated that when 'the works were given (meaning that when he was tortured) that Keerthi Padmakumara had accepted that he stole the phone'.

The next day, February 8, another officer proceeded to take a statement from Keerthi Padmakumara but when he asked to see the statement he was refused. Keerthi says that he was not allowed to see what was written nor was it explained to him but he was forced to sign the statement never-the-less. He was then returned to the police cell. Later that day Keerthi Padmakumara was produced in the Magistrate's Court of Palmadulla. Keerthi Padmakumara got to know that, inter alia, he was charged with the offence of 'inducing a minor to commit an offence' and 'racketeering for a long period'. The police objected to bail but he was later released on a cash bail of Rs. 6000.

Subsequently on February 26 and 27, Keerthi went with his parents to meet the ASP Ratnapura. However, they were not able to meet the ASP on both those days and only met him on the 1 March 2008. They informed the ASP of the incident and the police assault which resulted in his confession. The ASP advised them to go back to the Godakawela police station and make a statement and if justice was not done to come back to him. On the same day Keerthi Padmakumara and his parents went to the Godakawela police station and met the OIC, and told him what the ASP had said. However, the OIC did not show any interest and said he could tell his story in court when the case is called.

Keerthi Padmakumara sent written complaints giving details of the incident to the HRC, NPC, Attorney General, IGP, DIG Legal Branch and the ASP of Ratnapura.

### **167. Uduwana Athukoralage Don Lal Lasantha: Police allegedly fabricated charges against a man and his family members**

Uduwana Athukoralage Don Lal Lasantha ran a shop in the front room of his house. At about 8pm on 8 February 2008, two men walked straight into Lal Lasantha's house through the shop and began to search his home throwing things around. Lal Lasantha was minding the shop at the time. When he saw what was taking place he ran out of the shop and suspecting them to be robbers began to shout for help. Lal Lasantha's parents who live in a house opposite to his house also came running out. Lal Lasantha's two sisters and a brother who were also living in that house came out. As soon as he got out of his shop, he saw Karu and Susantha from the nearby R & R Construction Company standing near his shop.

Hearing the commotion and seeing the people gathering outside the shop, the two men, who had gone inside Lal Lasantha's house in search of

something came out and said that they were from the police and left with the two from the company. Lal Lasantha heard one of the men taking a call from a mobile phone he carried to the police station. Lal Lasantha identified the two as SI Dammika and SI Buddika of the Baduraliya police station.

At 7pm on the following day, February 9, when Lal Lasantha was minding the shop, a police jeep drove up and stopped by his shop. There were several police officers inside including the OIC of the Baduraliya police station and SI Dammika and SI Buddika. The OIC and the two SIs got out of the jeep and came into the shop. They demanded from Lal Lasantha where the two batteries were. Lal Lasantha said he did not know anything about it. As he denied knowledge of the batteries the police handcuffed Lal Lasantha and pushed him into the police jeep.

The jeep drove to the premises of the R & R Construction Company. The OIC and the two SIs got down and went inside. Lal Lasantha saw them speaking with Karu from the company. SI Dammika came to the jeep and began to threaten Lal Lasantha. "Don't think we will let you go so simply," he said. "We will put bombs or drugs and fabricate a case against you and send you to prison. We are licensed thugs!" Then they took Lal Lasantha to the Baduraliya Police station and put him into the police cell. Lal Lasantha was only dressed in a sarong but they did not allow him to get a shirt or close his shop. They did not give Lal Lasantha anything to eat that night.

At 8:30am on February 10, Lal Lasantha was taken out of the cell and told to sign a statement he never made. He was neither allowed to see what was written nor was anything explained. He was simply forced to sign. He was then taken to the Baduraliya hospital and shown to the DMO. After that Lal Lasantha was put back into the cell. He was not given anything to eat during the morning or for lunch.

At around 2:30pm Lal Lasantha was produced before the Mathugama Magistrate's court and remanded for five days. At the end of this period he was again produced in court and bailed. Later Lal Lasantha got to know that he was charged with the obstruction of police duties. He also got to know that his sisters Anoma Chitrani, Deepa Damayanthi and his brother Sarath Wickramasinghe had also been made parties to the charge.

Lal Lasantha informed by written complaint to the HRC and NPC, Attorney General, IGP, DIG Legal Branch and SSP of Kalutara about this situation. However, no action had been taken.

**168. Dodampe Gamage Asantha Aravinda: Acid thrown in his face**

Dodampe Gamage Asantha Aravinda and K.J. Thusara Chaminda were young friends and on 28 February 2008, they set out on a motorbike with plate No. SPTF1330, to go to the house of a relative in the Pitabaddara area of Matara District. As the relative they were visiting was not yet at home they went to refuel the motorbike. At around 5:30pm, they passed a truck with plate No. 227-7805. The driver of this vehicle alighted from the truck and crossed the road without checking for oncoming traffic. As the motorbike was passing this driver's hand slightly touched the motorbike's rear view mirror upon which the driver was very angry and there was some exchange of words between the parties. The driver thereafter, said, "You go ahead and let us see." The two young people ignored this and continued their journey. However, not long thereafter the truck pursued them from behind and struck the motorbike. Due to the impact, Aravinda was thrown some distance from the scene of the collision.

When he managed to get up and return he saw that Thusara Chaminda and the motorbike were both lying beneath the truck. The driver got out of the truck and ran away from the scene. Aravindra pulled his friend out from under the truck and found that Thusara Chaminda was bleeding severely from an injury to his leg. Aravindra tried to find a vehicle to take Thusara Chaminda to a hospital but could not find one. He left Thusara Chaminda near a house where he also kept the damaged motorbike and went looking for a three-wheeler to take his friend to the hospital.

As he was searching, a taxi stopped from which some people alighted and claimed that they were from the Pitabaddara Police station in the Matara District. Among the group was the driver of the truck and the group had guns in their hands. The truck driver went forward and said, "You are the one who collided with my truck," and started beating him. Thereafter, Aravindra's hands were tied behind his back and his legs were also tied and they continued to beat him. The police officers picked him up and dropped him several times. When Aravindra fell in the gutter, they pulled him out and continued beating him.

Aravindra called for water and then the truck driver took a bottle, put something into a cup and gave it to him to drink. Aravindra soon realised that he had been given acid. He shouted asking, "Isn't it acid that you have given me to drink." The truck driver said, "So you can't drink it," and threw the acid into his face; the liquid also spread to his eyes. Aravindra then

shouted in pain. By this time someone also brought Thusara Chaminda to the same place and he was also beaten by the police officers. The officers who were identified as those who carried out the assaults are the OIC of the police station, Karunasena (who passed away some time after this incident), Sgt Athapathu (No. 21899), PC Gamini (No. 58881), PC Sugath (No. 3089) and some other officers.

Aravindra and Thusara Chaminda were taken to the police station and the truck driver arrived later with some liquor. The OIC of the police station and the driver opened the police cell and assaulted the two friends again. When Aravindra shouted in pain because of the acid burns and with the further pain of the beating some police officers came and poured liquor on the burns. Aravindra's father learned about the incident at around 11pm on that day and went to the Pitabaddara Police station, in Matara District to see his son and Thusara Chaminda. Several other friends and family members of the two young men also arrived. However, they were refused permission to see Aravindra and Thusara Chaminda. Aravindra's father, with his wife and younger son went to see him on the morning of the next day (February 29) but were not allowed to meet him. The family was not even allowed to bring food and drink to the two men. At around 11am, Aravindra's father arrived at the station with the president of the Provincial Council but once again permission to see the two young men was refused. The police told the father that some local people had assaulted Aravindra and thrown some acid at him and that they have discovered a gun in the possession of Thusara Chaminda. Aravindra's father insisted that since his son had not committed any offense he wanted to see him. When they were again refused the father pleaded with the police to take Aravindra to a hospital. The officers replied that they would do that soon.

Aravindra's father went to the station several times during the day to renew his request that his son be taken to the hospital but the officers refused to do so. Aravindra's father kept on trying on March 1 and he saw that at around 3pm Aravindra and Thusara Chaminda were taken out and shown to some cameramen and journalists. The OIC asked Aravindra to remove his shirt and then his father saw that the left side of his chest showed severe burn marks. There were also wounds on one of Thusara Chaminda's legs. The cameramen took pictures of both from various angles. Thereafter, the OIC of the station ordered Aravindra's father to pay for the photographers. He paid Rs. 175 to the cameramen through Sergeant Athapathu. Thereafter the two young men were taken back to the cell.

Aravindra's father contacted an Attorney-at-Law who made a telephone call to the police station. The lawyer was told that these two persons would be taken to a hospital. Later someone called to Aravindra's father by a mobile phone and told him that the two men had been taken to Moravoka Hospital. However, when he went to the hospital he could not find either of them so he returned to the police station. There a police officer approached Aravindra's father and said, "You better go away otherwise somebody may kill you." He replied that, "Even if I am killed, I will not move away."

At about 7pm, Aravindra and Thusara Chaminda were put in a police vehicle and Aravindra shouted to his father, "Please don't go home they may kill us." At this the father replied that he would not leave but would follow them. The police car took the two people to the Matara Hospital. Aravindra was hospitalised at Ward No. 24 on March 1. He was treated there up to the 5th March. During this time his father talked to the specialist doctor who was treating his son. The doctor stated that due to delayed treatment the situation of Aravindra's eye was serious and that he had lost the sight in that eye completely.

On April 3, an operation was performed on the eye. After this the situation became even worse and he was transferred from the Matara hospital to the Colombo Eye Hospital. By then Aravindra had completely lost his sight in one eye and his hearing in one ear had also deteriorated. Aravindra is still taking treatment at the Colombo Eye Hospital. Meanwhile the Pitabaddara Police has filed charges against Aravindra and Thusara Chaminda for possessing a fire arm, attempting to shoot some person and attempting to engage in a robbery. No action had been taken against the truck driver and the police officers for their actions in throwing acid as well as severely beating Aravindra and Thusara Chamindra. Also no inquiry had been taken for keeping Aravindra and Thusara Chamindra for two weeks at the police station beyond the 24 hours permitted by the law, thus preventing them from getting medical treatment for their serious injuries.

### **169. Pitchchai Thambi Marikar Faiz: Whereabouts unknown after arbitrary arrest**

Pitchchai Thambi Marikar Faiz, returned to Sri Lanka after working in the Middle East for about one and half years. He lives with his family in his village of Wanathawilluwa and works as a farmer. Faiz owns a gun for the protection of his harvest and holds license No. D790957.

At about 11:30pm on 28 February 2008, Faiz's family members heard someone was shouting Faiz's name outside the house. Faiz's wife asked them who they were and was told that they were from the police and to open the door. When she opened the door, a police officer in uniform and two others in civilian clothes forcibly entered the house. One officer in civilian dress pulled Faiz up and told him to dress and accompany them with his Identity Card. Faiz did so. Faiz's wife asked them where they were taking him and the officer in uniform told her that they were taking him to the Wanathawilluwa Police station. They took him in a white van without a number plate.

At 6am on following day, on February 29, K.M. Samsudeen (Faiz's brother-in-law) went to the police station and had seen the white van parked near the station, with Faiz inside. Then the police officer shouted at Samsudeen not to interfere and also not to come back. He then took his identity card too. Faiz's wife too had gone to the Puttalam Police station in search of her husband. While she was away from their home, a man in civilian clothes who identified himself as being from the CID went to their house and made inquiries from the children about the weapon Faiz owned.

On March 3, Faiz' younger brother went to the police station and inquired about him. Then the police told him that they had sent Faiz to Colombo as he has had connections with the Liberation Tigers of Tamil Eelam (LTTE). The officer further told him to surrender the gun to the police station. On following day, March 4, Faiz's brother handed over the gun along with the license and recorded it in the Police Information Book. At this time the members of Faiz's family informed the HRC over the phone about the incident.

On March 6, Faiz's wife and two brothers went to the Wanathawilluwa Police station to lodge an entry. However, a police officer bearing badge No. 55108 told them that it was no use in making an entry there and told them to inquire at Colombo Fort Police station. They then made inquiries from that station but the officers told them they did not know anything about it. Faiz' family said that Faiz is an innocent man and he does not have any connections with LTTE. He is the only breadwinner in the family and they cannot survive without him.

### **170. M.L. Basil Perera: Warned not to report torture**

On 6 March 2008, M.L. Basil Perera was taking a cow to be handed over to a buyer and was walking in the Negombo Road near Welisira. An officer of a

checkpoint questioned him about his journey and after he explained he was allowed to proceed. While he went further he was stopped by some village guards who arrested him and took him to the Kandana Police station.

PC Wijeratne placed Basil Perera in a cell and later took him out of the cell for a statement. While recording the statement, the officer suddenly hit Basil Perera over his right eye. Basil Perera felt severe pain and closed his eyes and then the officer struck his face once again. Due to this assault he felt severe pain in his head. Later the same officer told the victim not to make any complaints.

After the OIC of the station came he was released. Later the victim entered the Ragama hospital and was admitted. There were visible marks of injury about his right eye. A JMO examined him and made a medical report. The victim also made complaints to the relevant authorities.

**171. Buddhi Ivantha Gunasekara: “By hitting the boy like that it will not work; a pole would do the trick”**

At 3pm on 7 March 2008, a police search party comprising of SI Athukorale of the Meetiyaogoda Police station, another officer and a Home Guard came to the house of Uspatabandige Buddhi Ivantha Gunasekara (‘Buddhi’). The SI and the home guard were in civilian dress. The home guard had a bandage on his arm. They were following a police dog who led them to three houses in the vicinity. Later the family discovered that the search party had come in the van belonging to Siripala (who was a man from the village and was also with the search party).

SI Athukorale asked Buddhi’s mother where her husband was. She told him that her husband had gone to work in the paddy fields about 6 kilometres away. The SI then told her to take them to him. She refused and asked her son Buddhi to show the way to where his father worked. Buddhi obliged and got into Siripala’s van with the police search party. However, the police took him straight to the Meetiyaogoda Police station.

They took him to the room of the OIC. The OIC grabbed him by his hair and banged his head on the wall several times. Surprised and frightened Buddhi fell to the floor. Then the OIC trampled and kicked the boy with his boots. Then he instructed SI Athukorale to take the boy to the Crimes Branch. The SI dragged the boy to the door of the room of the Crimes Branch and kicked him inside making Buddhi go sprawling into the room.

Then he slapped Buddhi and demanded that he give “the stolen goods”. Buddhi replied that he had not stolen any goods. SI Athukorale then bent him forward and hit him hard on the back of his neck.

The home guard who had been one of the search party and was watching this scene piped in saying that “by hitting the boy like that it will not work, and a pole would do the trick”. SI Athukorale then asked him to fetch a pole and a pole was brought. The SI then held Buddhi tightly by his shoulders while the home guard hit him hard with the pole on his buttocks. SI Athukorale then asked the home guard to bring him a lighted cigarette. The cigarette was kept close to Buddhi’s ears till the heat became unbearable and Buddhi closed his ears with his hands.

Then, SI Athukorale and the home guard took Buddhi to another room at the rear of the police station. They tied his hands behind his back with a thick rope and threw the other end of the rope over a beam on the roof. Thus they hung Buddhi while SI Athukorale supported him by holding him by his legs. The home guard then hit him with a pole on his buttocks while continuing to ask him about the money. Buddhi told them that he did not have any money with him. However, he told them that his brother (eleven year old Tharindu) had some money. The officers then took Buddhi to his house in Siripala’s van and asked him to show it to them.

When Buddhi was taken home, his father was getting ready to come to the station. When Buddhi met his father, he told that the police were torturing him. But the officers scolded every one in filthy language and shouted at Buddhi to give them the money. Buddhi showed them his brother Tharindu’s purse. Then they took both boys back to the police station. Their father followed. They took Buddhi to the Crimes Branch while his brother Tharindu was made to sit on a bench outside. They demanded to know from Buddhi how they had got the money, and Buddhi told them that his brother Tharindu had picked it up from the road. They also questioned Tharindu about the purse. SI Athukorale told his father to beat Buddhi and find out where the “stolen goods and money” was. The boy’s father refused to do this. Instead he asked Buddhi if he had any part in the accusation. Buddhi told his father that he had no hand in it. Buddhi was kept in the Crimes Branch while his father and brother Tharindu were told to wait outside.

At about 8pm, the OIC arrived at the station and asked SI Athukorale to put Buddhi into the cell. There were two adults in the same cell. Buddhi’s father

and brother Tharindu were told to go home. That night Buddhi saw Siripala and his relative Somalatha her husband and son in the police station.

The next day, (May 8) Buddhi was produced before the Balapitiya Magistrate. A lawyer appearing for Buddhi obtained bail for him. Buddhi's father says he was not aware of the charge against his son. Buddhi was taken back to the police station. At the Meetiyaogoda Police station, Court Sergeant Wijeratna forced Buddhi and his father to affix their signatures to some documents. They were told it was regarding bail, but they were not allowed to read what was written. Buddhi went home with his father. The trauma of the ordeal was too much for the boy. That night he became very sick; his body and head hurt. On March 9, he was admitted to the Balapitiya Hospital. He told the doctor who examined him that he was tortured by the police. On March 13 he was examined by the JMO and the hospital police also recorded a statement from him. He was discharged on March 13 but readmitted again on March 14 and received treatment until March 24. The JMO had again examined the boy.

On March 11, Buddhi's father made a complaint about the incident to the Elpitiya ASP and to the HRC on March 19. In response to his complaint, officers from the HRC visited Buddhi's house to inquire into the incident on March 27. ASP Fernando also visited the house of Buddhi on same day but scolded his parents referring to the fact that the incident had appeared on local TV. He told Buddhi to come to the Meetiyaogoda Police station at 1pm that day. Accordingly Buddhi went with his father to the station where the ASP took down a statement from him. Buddhi's mother was called to the Elpitiya ASP's office to record a statement on March 28.

On March 29, Buddhi's father made a written complaint about this incident to the HRC and NPC, IGP and DIG Legal. However, no further action had been taken.

**172. (Name withheld): Raped by police officer conducting inquiry**

On March 9, 2008, at about 11:30am, a police officer attached to the Hakmana Police station came to X's house (name withheld for security reasons) to inquire about the complaint she had made earlier regarding a land dispute with her neighbours. The officer entered her house and sat in the hall to take down details of the dispute. She told the officer that as a result of the land dispute her neighbours had damaged her plantation and had thrown stones at her house causing the tiles on her roof to break. The officer recorded

all these details and gave her a note instructing her to come to the Hakmana Police station on March 15 for an inquiry. The officer then walked around the house assessing the damage to the plantation and the roof and observing that there seemed to be some damage to the tiles over the bedroom asked her to show him into the bedroom to see it from inside.

When she showed him into the room, the officer suddenly caught her in his arm. Surprised, she tried to get away but he held her tightly and kicked the bedroom door shut. She struggled to get away from him but he then hit her spine hard with his hand and threatened her not to make noise. He then threw her onto the bed. She tried to get up and escape by pushing the officer away from her. However, the officer forcibly raped her and she lost consciousness.

When she regained consciousness, she was so terrified that she was unable to make a move. She saw the officer picking up a used condom from the floor; the officer lingered for some time and then left the house. Even after the officer had left the house, she could not move from the bed. When her mother came that evening, she found her daughter in bed. Her mother asked her why she had not cooked a meal and she said she did not feel well.

On March 15, she went to the Hakmana Police station for the police inquiry regarding the land dispute where she met the OIC to report the incident of rape. However, being frightened by the OIC's stern mannerism, she only mentioned the complaint regarding the land dispute. The OIC called another officer told him to look into the matter and put it to court. This officer then took up the inquiry. On March 16, she went to the Deyyandara Hospital to get treatment. She told the doctor who examined her that she had been raped by an officer of the Hakmana Police station. The doctor advised her to get warded and sent her to meet another doctor. When she went to meet the said doctor, she saw other villagers there. She did not want her situation to be known to them so she left and returned home.

Subsequently, she informed her sister-in-law about the incident of rape and went with her to the office of the ASP in Matara to report it. They made a complaint to an officer of the ASP's office since the ASP was not available. The officer who took down the complaint then called the OIC Hakmana Police station and notified him of the complaint. The officer also instructed her to go and meet the OIC and gave her a note to be given to the OIC; however, she was too sick to go to meet the OIC and got admitted to the

Matara General Hospital where she received treatment for ten days (March 17 to 27). The hospital police took a statement from her and a female police officer also came and took down a statement. The Judicial Medical Officer of the hospital also examined her. The victim was discharged from the hospital but she was still in shock and feeling unwell. She did not want to go back to her house and live by herself as she had done earlier so went to live with a relative.

She submitted a written complaint on April 1 to the HRC, NPC, IGP, Police Headquarters, SSP Matara and the DIG Legal. On her request to know if any action had been taken against the police officer, the OIC of Hakmana Police station informed her that the said officer had been suspended. However, no further information on the progress of this case has been reported.

### **173. Shanthigara Suresh Kumar: Schoolteacher brutally tortured in police detention**

Shanthigara was the master in charge of hockey for the primary school at Trinity College. He was requested to go to the Kandy Police station on 11 March 2008 at around 2:30pm on the pretext that his help was needed to organise a hockey tournament. He visited the police station as requested and was arrested without being informed of the charges and placed in a police cell. The same day two uniformed officers and three others in civilian clothes went to his house and removed his computer, laptop and some CDs. On same day he was questioned and subjected to severe torture. He was again interrogated on 30 March and in the morning of 31 March. He complains that he was stripped naked, hung from the ceiling and beaten by several police officers. He also complains of being kicked and being burned on the head with cigarettes. Chilli smoke was also blown into his face and he was also subjected to electric shocks. He was told to admit that his school principle at Trinity College was involved with terrorists, which he refused to do. He was repeatedly asked to commit suicide.

IPs Nishantha, Yatawara and Karunarathne, Sgt Nihal and PCs Ratnapala and Jalielm were allegedly responsible for torture.

Shanthigara was produced before a magistrate on March 31 and ordered to be remanded at Bogambara prison. He was granted bail on 18 July, after 68 days of his detention, and asked to sign in at the Kandy Police station every Sunday. After suffering the torture Shanthigara states that he has developed asthma and suffers from headaches. There are marks of torture all over his

body and he is being constantly threatened not to take any action against the police. The police have filed fabricated charges of providing information to terrorists and training terrorists.

Shanthigara's wife was a teacher at Ashoka Vidyalaya and her job was terminated because of the incident.

**174. Peer Adumai Mohamed Rafeek: Whereabouts of man detained for questioning unknown**

Around 9:30pm on 20 March 2008, seven persons in civilian dress and another in the uniform of the Special Task Force (STF), all bearing firearms rushed into the house of Peer Adumai Mohamed Rafeek. One of them pulled Peer by his shirt and identified the team as being from the CID Head Branch in Colombo. They further said that they wanted to question him but failed to provide specific reason for his arrest. They then took him in the white van and told his wife to come to the Slave Island Police station the following day.

The next day, March 21, when his wife went to the Slave Island Police station, she was told by the police that they knew nothing about her husband and this incident. From the information received, the police did not receive any complaint regarding this case on the same day but a case in this regard was filed on March 22 at the police station in the area where Peer resided. The victim's wife informed the HRC, the Presidential Commission and the CID Police Headquarters about this incident, but obtained no information.

**175. Muthuwahennadi Roshan Koitex: Policeman assaults partner of woman with whom he had an affair**

Muthuwahennadi Roshan Koitex, a fisherman, had been cohabiting with a woman for over six years who was later found to be having an affair with another man, SI Sanjeeva Senevirathne attached to Hikkaduwa Police station. According to the information received, SI Senevirathne started coming to Roshan's house in search of him for no apparent reason, which made Roshan fear that he was being persecuted.

On 26 March 2008, Roshan decided to go to the Hikkaduwa Police station with his father to meet OIC and make a complaint regarding the abuse of power by SI Senevirathne. However, when they went to the station, the OIC was not available to meet and another officer took down the complaint and recorded Roshan's statement. Roshan noticed that when he came to the part about the harassment by SI Senevirathne, the officer ignored his comments and did not take them down.

On March 27, the woman told Roshan that SI Senevirathne was coming to catch him that night. Due to fear, Roshan left his home and went to his father's house. At about 11:30pm Roshan crept up close to his house and saw that SI Senevirathne was inside with the woman. Roshan was later informed by the woman that SI Senevirathne had threatened to kill him 'like a dog'.

On March 28, Roshan went to the Hikkaduwa Police station again, met SI Senevirathne and asked him why he was looking for him. The SI accused Roshan of frequently quarreling with the woman and being addicted to ganja (cannabis) and heroin which Roshan denied. The SI called the woman to come to the station and, in front of the woman, asked Roshan to leave the house so that she could live in it. Roshan refused the SI Senevirathne's suggestion with saying that the house belonged to him and that he did not want to live with anyone who was having a relationship with other men. Roshan could do nothing but go back to his father's house, while the woman returned to his house.

A few days later, Roshan came to know that other men had begun to frequent his house and had stolen his poultry. Roshan made a complaint at the police station where he was told by an officer to sort out the ownership of his house with the Divisional Secretary and to lodge a complaint regarding the poultry on the following day. Meanwhile, Roshan heard that the woman had left his house. He went home and changed the locks of the doors and returned to his father's house. On April 2, Roshan heard that the woman had broken the locks and entered his house. Based on this news, he went to his house and saw his personal property being loaded onto a tractor. SI Senevirathne and a police constable known as Suranga attached to the same police station were also present. On seeing Roshan, the SI immediately ordered the constable to catch Roshan and assault him. Roshan ran away to his father's house but, the SI and the constable followed him and assaulted him in front of his father and his neighbours. The constable Suranga held Roshan, which enabled the SI to assault and kick him. Although he was frightened, Roshan's father asked them the reason for assaulting his son. At that, SI Senevirathne also assaulted Roshan's father who is 60 years-of-age. After the assault, the two officers took Roshan and his father to the Hikkaduwa Police station and put them in a cell.

After a while SI Senevirathne took Roshan out of the cell, pushed him into the floor and hit his head several times. Thereafter he made him to lie face down while the SI got on the top of his body and assaulted him with his fists

and boots. Meanwhile, constable Suranga assaulted the sole of Roshan's feet with a chain which looked like a bicycle chain. They assaulted him for about 15 minutes before returning him to the cell. Thereafter Roshan and his father were taken to the Arachchikanda hospital where the doctor asked Roshan's father if he was under the influence of liquor. Roshan's father denied it and said that he did not take liquor or cigarettes since he had a heart problem. He further told the doctor that they were assaulted by police. Then, the doctor asked the SI if both were in the same case. The SI stated that they were two separate cases. However, the doctor did not test or examine Roshan and his father but wrote something and gave it to the SI

Then, the SI took Roshan and his father to the place where the woman was living and made them stand on the road in front of her house, scolding loudly saying, "Look!, Both father and son are handcuffed". The SI also slapped Roshan several times. Then, he took them to the police station where he brought ganja and forcibly took Roshan's finger print on it. Roshan was forced to sign a paper in which admitted his being in possession of ganja and he was not allowed to read what he signed. On April 3, Roshan was called before the OIC of the Hikkaduwa Police station to whom Roshan had explained what had happened. The OIC then indicated, "This is a typical case of our fellows. I will try to do something about it." In the meantime, Roshan's father was charged for acting under the influence of liquor and produced before the Magistrate's Court Galle and bailed. He was informed by the police to be present before the court on April 8.

Roshan later was produced before the Magistrate's Court in Galle where he was released on bail. After being given bail, Roshan was admitted to Karapitiya hospital to receive medical treatment for the wounds caused by the police assault. The JMO from the hospital examined him and hospital police recorded a statement from him. Roshan was discharged on April 5. On April 6, Roshan complained of the incident to the SSP, Galle and to the OIC Hikkaduwa Police Sation. On April 8, Roshan's father attended the court as instructed by the police but found there was no such case on the given date. Roshan's father also complained of this to the OIC of Hikkaduwa who instructed the police officer to give the correct date without harassing people.

**176. Nuwan Chamara: Bare feet hit with a baton, fingers with a table leg**  
According to the information received, at 10:15am on 28 March 2008, Katugastota police arrested Nuwan Chamara in Katugastota town on suspicion of stealing car cassettes. On March 29, the police took Nuwan to

several shops to identify some productions and to his house where they took a tool kit.

At night on same day, the police officers who arrested Nuwan reportedly assaulted his bare feet with a baton and forced his fingers under one leg of a table and hit the top of the table. Nuwan further said that police officers removed his clothes making him naked and assaulted him. In the evening of March 30, the officers forced him to sign a statement which was not recorded or explained to him. On the next day (March 31), he was produced before the chief of Kandy Magistrate where his attorney-at-law specifically informed the magistrate about the alleged torture and illegal detention. The magistrate ordered Nuwan to be remanded until April 7 and also ordered the prison officers to bring him before JMO at Kandy hospital and to present the report on April 7. It also instructed Nuwan to make a petition of fundamental rights application to the Supreme Court.

The police officer who represented the Katugastota police before the magistrate told the defence lawyer who appeared that they are ready for anything. Nuwan was returned to the Bogambara remand prison.

### **177. Sureen Kinson: Custodial death of young man**

According to the information received, at 6:30pm on 4 April 2008, Sureen Kinson left his house to meet a friend named Jude, but did not return home that night. At 9am on next day, Jude informed Sureen's grandmother that police officers attached to the Gampaha Police station had arrested Sureen and had taken him to the police station. On receiving this information, Sureen's grandmother went to the station and found Sureen in the lock up room where she was able to speak to him. Sureen told her that while returning from Jude's house, he was arrested on 'suspicion'. However, he was not given any further details. Sureen's grandmother met with a lawyer at 10:30am who later informed her after visiting the police station that Sureen would be released after the police officer took down a statement.

On April 6, when Sureen's grandmother went to the police station, an officer told her that all officers concerned with her son's case had gone to the site of a bomb blast and asked her to return the following day. While she was waiting for the lawyer on April 7, an officer named Priyantha asked her to see OIC of Crime Branch. When she met the OIC Crime Branch, the OIC told her to see the Head Quarters Inspector (HQI). When she met this officer she was told that Sureen had committed suicide in the lock up room and asked

her to go to the Gampaha Hospital and give a statement. She identified the dead body as that of her grandson in the hospital. She also witnessed wounds all over his face and a wire mark around his neck. Gampaha Magistrate Sahabdeen conducted the post mortem where she was asked to be present for the medical examination.

On April 8, she went to the office of the ASP in Paliyagoda where she made a report. On April 9, the medical officer, after the examination, told her that there were wounds on his head, back, right arm, left hand side, eye brows, and on the forehead. The officer further stated that there was a wire mark around his neck and that it was difficult to judge whether the mark revealed that Sureen had committed a suicide. His body was handed over to her on April 9 and a ritual was held on April 10.

On May 5, she informed about this incident to the IGP, DIG Legal, CID, SSP and ASP in Gampaha, and various other authorities. However, no action had been taken nor had she received any response from the aforementioned officers.

### **178. Nanda Kumar and Ramesh: Police severely torture brothers**

Nanda Kumar, married with a child, was working as a security guard at the Tile Company, at the Board of Investment, Balagolla, Kandy. At 5:30pm on 17 April 2008, while on the way to his workplace he was arbitrarily arrested by officers attached to Kandy Police station without a warrant. After arresting him, the officers took him to their police station and later transferred him to the Daulagala Police station on April 26.

Nanda's family members state that they have not been properly informed of his arrest by the police. Since he failed to return home, his relatives went searching for him. On April 20, when they went to the Teldeniya Police station to make a statement, the police told them they did not have any information and instructed them to come back the following day. It was only on April 21, when they returned that they came to know that the police in Kandy had arrested Nanda and his brother Ramesh. They then proceeded to the Kandy Police station on the same day. However, when they arrived at that police station, an officer told them that the officer who had informed them of the brother's arrest was not present at that time and they were told to return the following day.

At 2pm that day, around 20 police officers from the CID in Kandy arrived

together with Nanda in two jeeps and other vehicles. They started searching his house for something and then searched his mother's house as well, which is about a kilometre away. They conducted thorough searches of both properties without a warrant from a court and questioned his wife as to whether there were bombs or weapons in the house. When they failed to find any evidence from the two houses, the police officers instead took all the receipts from a pawnshop that the family had kept when they pawned their jewellery in order to travel to Tamil Nadu, India, for a religious worship in January 2008. The police officers told the relatives of the victims to bring some clothes for Nanda and his brother, Ramesh, who have also been arrested.

Ramesh had been arbitrarily arrested at around 2:30pm on April 19 by around five police officers also attached to Kandy Police station at a park in Aluthwatta in Digana town, Kandy. Ramesh is a three-wheeler driver whom the police accused of being a terrorist. The police took him to their police station and later transferred him to the Katugasthota Police station on April 26. On April 28, the police transferred Nanda to the Daulagala Police station and on April 29, his relatives went to the police station with a police officer attached to Kandy Police station. When the relatives met him, Nanda claimed that after being arrested, four or five police officers stripped of his clothes and that he was hung to a ceiling after his legs were bound with string. While he was hanging upside down, the police had him beaten all over his body for an hour while questioning him.

Nanda's relatives visited him about 20 times there. The police, however, informed them that they could only visit him on Sundays and Wednesdays. Whenever a relative went to visit him they were prevented from talking in their own native language and a police officer always sits closely to monitor their conversation.

On May 16, the police produced Nanda and Ramesh before the Kandy Magistrate's Court. Despite Nanda informing the Court that they had been tortured by the police, the Court did not take action to investigate their complaints of torture. After the court, the police then took Nanda to Daulagala Police station and his brother Ramesh to the Katugasthota Police station. On June 1, when the relative went to Daulagala Police station to see Nanda, he said that he asked for some medicine for his headache from the police but police said they would need permission from Kandy Police station. There two officers told the relatives about Nanda's health condition

and told them that he was showing signs of a psychological disorder, stomach problems and fever. They also said that he often lost consciousness and is displaying strange behaviour; for instance, sleeping naked; and could no longer remember what he was doing while in police custody.

At 10pm on May 27, Ramesh was again transferred back to the Kandy Police station where he was allegedly beaten by around eight police officers. Ramesh said the police had the soles of his feet and his ears beaten with an iron bar. The police officers too, like his brother, stripped off his clothes he was naked. They, too, grab, pulled and hit his sex organ repeatedly with their hands causing him severe pain. The officer also pulled out his moustache and hair from his chest while questioning him.

On May 28, Ramesh's relatives visited the police station but were not allowed to meet him and were chased away by the police telling them: "bring the food and go". When they went to the police station again on June 1, the police told them that he had already been transferred back to the Katugasthota Police station.

When they reached the Katugasthota Police station, they were told that they needed to secure permission from the Kandy Police station first before seeing him, or wherever he was being held. His relatives also said that every time they come to the police station, the policemen too labelled them as terrorists. The police had also threatened them that they could also be arrested under the Emergency Regulations, including Ramesh's two-year-old child.

### **179. Janaka Pradeep Kumara: "I will break his bones and produce him at court"**

Having received an order from the police station, Janaka Pradeep Kumara, a 14-year-old student, went with his father and mother to Deniyaya Police station to give a statement regarding the loss of a cell phone on 28 April 2008. At the CID section in the police station, a police officer took Pradeep inside a room along with a man named Ananda who resides the Deniyaya area and came out after about 10 minutes. The police officer said to Ananda, "This fellow had not taken your cell phone. It is your responsibility to safeguard your phone. It shows your carelessness. We cannot do anything and you had better to make an entry of losing your phone." Meanwhile, Pradeep and his parents were waiting for an officer to take down his statement.

Suddenly, another officer, SI Wimalakeerthi came and took Pradeep by the

hand with saying, “are you the man?” and took him inside the room again. When Pradeep’s mother attempted to follow them, the SI Wimalakeerthi ordered her to remain outside. However, as they were concerned, Pradeep’s mother Gamage Indrani went inside where the SI had taken Pradeep and saw that the SI was holding Pradeep by his shirt collar and slapping him. On seeing the assault, Indrani shouted at him not to hit Pradeep. Then, the SI told her, “If you want to take him away, pay the value of the phone. Otherwise, I will break his bones and produce him at the court tomorrow.”

In order to prevent Pradeep being assaulted again and avoid him to be produced before the court, Indrani decided to pay the value of the phone. But, Pradeep shouted, “Do not pay any money for a thing I have not done. If you are paying, it means we are admitting.” Pradeep also told the Inspector of Police not to accept the money saying, “If you take the money from my mother, it means that you are turning me to a culprit for a crime I have not committed. Hereafter, I would not [be allowed to] attend school and would commit suicide.”

However, with the intention of saving Pradeep, Indrani paid Rs. 6000 and asked for a receipt. SI Wimalakeerthi refused to give her a receipt and threatened to remand them including his parents. Pradeep started shouting at mother with saying, “You paid money, now I have become a culprit.” After being released on at 4:45pm on April 28, he went to a hotel, swallowed sixteen tablets of Panadol. He also tried to jump from the top of a building but was prevented by other people.

At 6pm on the same day Pradeep was admitted to Deniyaya hospital due to the overdose. As his condition deteriorated he was transferred to Karapitiya Hospital. Although Pradeep survived he suffered mental trauma from this incident. He was discharged from the hospital on May 4. His parents submitted a complaint to various local authorities on May 6.

### **180. Kathiravelu Sathyawan: Forcibly taken away in white van**

On 1 May 2008, 18-year-old Kathiravelu Sathyawan had gone to a friend’s place where he spent time playing a board game. Soon after, several persons, who were described later by witnesses as officers from the CID, arrived. They were travelling in a white van and accompanied by another person on a red motorcycle. At around 10pm to 11pm the said officers approached the victim and forcibly took him away towards their van. Kathiravelu’s friends witnessed the incident.

The following day, May 2, Kathiravelu's friends informed his parents about the incident. At about 5pm, Kathiravelu's mother, Subramaniam Mariamma, went to the Katharagama Police station to report her son's forcible abduction and subsequent disappearance. However, the police officer who was on duty had scoffed at her and refused to record her complaint which is in direct contravention of the regulations laid out in the Sri Lankan Police Orders. She was told: "Your son must have eloped with a girl. You can make some inquiries". The said police officer, too, did not record her complaint.

For several days, from May 3 to 5, Kathiravelu's parents had repeatedly made follow up visits to the Katharagama Police station about their son's case. However, the police, in contravention of the aforementioned regulation, repeatedly refused to register the complaint on the pretext that their son could have just eloped with a woman. They also did not help them either in locating their son's whereabouts or obtaining information about his case. It was only in May 6 that the police had finally accepted their complaint and allowed her to make a short entry. The police recorded the complaint and had it signed by Kathiravelu's parents. However, they never allowed the couple to read or explained to them what was written in the police entry.

Prior to his disappearance, Kathiravelu's parents recounted that there have been several occasion wherein unknown persons, who had introduced themselves as the officers attached to the CID in Katharagama, had come to their house. They asked details about the family, particularly about Kathiravelu. On May 8, when Kathiravelu's parents went to the Katharagama Police station, they were told that some of the police officers had come to their house while they were away. They had conducted searches and took a photograph of Kathiravelu. On the same day also these persons had gone to Janadhipathi Vidyalya where Kathiravelu was studying and had inquired from his school principal about him. When Kathiravelu's parents heard that their son had been detained at the army camp near the Katharagama Depot, they proceeded to the place but he did not find him there. They likewise did not get any information about him.

Kathiravelu's parents filed a complaint about his forcible abduction and subsequent disappearance with the IGP, DIG Legal, SSP of Hambanatot, OIC of the Katharagama Police, HRC, NPC and the Special Unit of the Ministry for Disaster Management and Human Rights.

### **181. Wengappuli Arratchige Milan Chanaka: Police assault and falsely charge five men**

On 1 May 2008, Wengappuli Arratchige Milan Chanaka, an army officer from the Army Commando Unit at Vavuniya, went to the Kataragama bus station in order to meet someone there, on his motorcycle. He was on official leave at the time. On his way, a Woman SI (WSI), crossed in front of him on the road on which he was travelling and prompted him to stop.

Before leaving for the bus station, Milan asked the said police officer “Is that the way for you as a police officer to cross the road?” While he arrived at the station to meet his friend he saw the female police officer, who came later together with two other police officers, approached him. As they tried to take him to their police station without explaining the charge, he resisted, telling them “I am innocent” before he returned to his home.

Between 2pm to 3pm that day, 15 heavily armed police officers attached to Kataragama Police station came to the house of Milan’s father, Wengappuli Aratchige Siripala. Out of the group, Siripala recognised two of them as SI Amaradivakara and Sgt Lalith. As soon as the officers reached the house, they arrested his two sons, Milan and Gayan Chaminda, as well as three of Milan’s friends who were present at the time, once again without giving them any reason. They severely assaulted the group for about 20 minutes inside the house. When some of their neighbours saw them being assaulted, they tried to intervene and the police also assaulted them. Then, the officers dragged the brothers towards a road where they had parked their police jeep and forcibly put them into the vehicle.

The father, Siripala, went to the Kataragama Police station where his two sons had been taken but he was not allowed to meet them. However, he was able to meet them later following the assistance of SI Bandusiri, a police officer attached to Ambalanthota Police station. On May 2, all five arrestees were produced before the Thissamaharama Magistrate’s Court. The police filed charges against them for sexual harassment, attack on the police officer, obstruction of police duties and supposedly for being deserters. All of them were sent to the Tangalla prison. As the injuries of Milan and his brother Chaminda worsened while they were in prison, the prison officers sent them to Hambanthota Hospital for treatment on May 6. On May 14 all of them were released on bail. Milan returned for duty to his army company on May 17. However, the following day, Milan was once again admitted to the Anuradhapura Hospital for two days.

Their relatives submitted a complaint to the concerned authorities, including the IGP, local SSP, OIC of the Kataragama Police station, NPC and HRC on May 12. They also sent affidavits to the chief justice on May 22. No action had been taken.

### **182. Malik Roshan Wijyaratne: Police severely torture a young man in custody**

At about 3pm on 2 May 2008, SI Dammika and Sgt Jayalal, both attached to the Kekirawa Police station, had taken Malik Roshan Wijyaratne into their custody at the station. He was taken on pretext that he was supposed to identify someone at the station. Malik went to the police station on his motorcycle with Jayalal who sat behind him. When they arrived at the police station, the officers checked Malik's motorcycle. When SI Dammika came to the place, he suddenly slapped Malik's face and questioned him about a cassette and a phone that he was not aware of. Then, the officers took him to a place they described as the 'conference hall', an empty space inside the police station. There, they forcibly removed Malik's shirt and tied his hands with it. They bend him over and inserted a wooden pole between his legs and arm. Then they put both edges of the pole on two separate chairs thereby suspending him.

While Malik was in this position, the soles of his feet and body were beaten. After some time, he fell down to the floor when the shirt that was used to tie him loosened. He remained unconscious from the fall for some time. Then, Sergeant Jayalal poured petrol from a polythene bag he was holding into Malik's face to awaken him. Malik, who was already in immense pain at the time, had asked for water from the policemen. The police, however, ignored his plea and forced him to stand up. They ordered him to jump up and down for several times. When he was unable to perform the order, the officers removed his belt and used it to beat his back. The policemen again asked him to run around the said empty space. Malik tried doing what the policemen had asked him to do because he was frightened but he could no longer run.

At 6:30pm, police officers brought him to the CID where the police made him sit on a bench. Before going out, they told Malik that they were going out for a drink and would be back in a few minutes. At the time also, Sgt Jayalal had slapped him. When the other officers had returned at around 10pm, they ordered him to perform what he had done earlier. At about 10:30pm, Malik's mother went to the police station with his uncle to see him. When they arrived, the policemen then ordered them to take him with

them on a motorcycle and to leave the police station. But before leaving, the police made him sign a statement, which was already prepared by the police, but the contents of which were not revealed to him.

At 4:30pm on May 4, Malik was released from police without having been produced before the court. Immediately after his release, he was taken to the Dambulla Government Hospital for medical attention. After the incident, Malik continuously suffered bleeding from his nose and mouth. On May 11, Malik's father, B.G. Michael Edward, went to the Kekirawa Police station to register a complaint regarding the arbitrary arrest, detention and torture of his son; however, the police refused to take his statement relating to the police torture in contravention of the police orders, sections A-3 and C-1.

Malik's relatives submitted a complaint to the IGP, DIG North Central Province, HQI of Kekirawa Police station and other authorities on May 17. They also sent affidavits to the chief justice on May 22.

### **183. K.R.P. Nilantha Kumara and Chathuranga: Emergency surgery after torture**

On the night of 5 May 2008, Kandagoda Rajapaksa Pathirnalage Nilantha Kumara and Chathuranga were among the guests at a wedding party in their neighborhood. An argument arose between the hosts and some of the guests and it developed into a brawl. Goods in the house were smashed and three motorcycles belonging to the guests were torched.

The Elpitiya police were informed by the hosts and arrived at the scene. Nilantha, who had gone home by then, was told by a friend that Chathuranga was being assaulted by the police. Nilantha and a friend went to the scene. They did not see Chathuranga but instead were given chase and caught by the police, who severely beat Nilantha at the time of his arrest while his friend escaped.

Then, the officers took Nilantha to a police jeep where his trousers and shirt were stripped off. His hands and feet were tied together with a piece of wire on the floor of the jeep. The officers beat Nilantha's entire body using their hands, feet and some poles. He was taken to the Elpitiya Police station where Nilantha saw his friend, Chathuranga in a cell. They attacked Nilantha for the third time and put him into the adjoining cell.

On May 6, Nilantha was feeling very sick and pleaded with the officers to

take him to the hospital for treatment. His request was denied. When he continued to ask, a female Constable Officer threatened him and told him to stop being a nuisance. In the morning, the mothers of Chathuranga and Nilantha came to the police station bringing them food. They saw their sons locked up in two adjoining cells but they were not allowed to speak to them. The officers scolded them and chased them away saying sarcastically, "It is not necessary to bring food. We will give them food and some good medicine too".

Only later was Chathuranga's mother allowed to give him the food they had brought and speak to the boys. Chathurang and Nilantha then told her that they had been assaulted by the police and were unable to take any food. They asked her to request the authorities to hospitalize them. Subsequently an officer named Balendra opened the cell, grabbed Nilantha by his abdomen and asked him to come to get medicine.

The officer took Nilantha to a room inside the police station where he demanded Nilantha strip completely and lie face down on the bed there. The officer tied both Nilantha's hands and legs. Another officer named Batuwatta, who had also previously beaten Nilantha, stood on his legs, while officer Balendra beat the soles of his feet with an iron pole and a cinnamon stick. As Nilantha screamed in pain and begged them to stop hitting him, the officers began to ask him about the incident at the wedding. They particularly wanted information about who was responsible for setting the motorcycles on fire.

When Nilantha screamed that he did not know anything about it, the officers started beating him for the fifth time. Officer Balendra said that Nilantha was telling lies. He took a bag filled with petrol and tied it around his head, completely covering his face. After some time, he took it off and pressed Nilantha to tell the truth. Then, Nilantha was told to sit on the floor and hunch up his knees and keep his tied hands around them. The officer inserted an iron pole between his knees and hands and lifted the pole and wedged it between two beds. Then the officers standing on either side of him alternately struck the soles of his feet with poles.

After a while they took him down, untied his legs, and took him to a nearby washroom where they doused him with water. Thereafter, he was taken back to the room and assaulted for the seventh time. Later, Nilantha was taken down and his feet were untied. His hands were however, tied with a rope behind his back and he was hung from a beam on the roof and assaulted once

again. After about five minutes, he was taken down and received blows to his chest, stomach and the rest of his body.

Chathuranga was also brought in and roughed up in the same manner. While Chathuranga was assaulted, Nilantha was forced to keep jumping. Chathuranga was also taken to the washroom where water was thrown on him and brought back and assaulted again. After that, Chaturanga and Nilantha were both hung from the roof beam while their hands were tied behind their backs and assaulted. This was the tenth beating for Nilantha. It was about 4pm when they were told to put their trousers back on and return to the cell. Half an hour later, officer Balendra took them out of the cell to record their statements.

At 3pm on May 6, Chathuranga's mother went to see her son at the police station. Nilantha's mother was also there and they were told by the officers that the boys had been taken to water the garden. They waited outside till about 4:30pm and went into the police station again where they saw a police officer taking statements from them. They also saw that their sons were dripping wet but wearing trousers that were not wet. They saw that their sons' bodies were swollen all over.

When officer Balendra saw the mothers, he shouted at them to come inside and sit down near the boys since they too were involved in the wedding party case. The mothers saw that the boys appeared to be unable to stand straight but nevertheless the officer kicked them and shouted at them to stand straight. The officer stomped on Nilantha's feet and shouted at him to stand straight. After the statements were completed, the boys were forced to sign them. They were put back into the cell without being allowed to see the contents of their statements. Chathuranga's mother was later allowed to see her son and she asked him why they were soaking wet. He replied that they had been cruelly assaulted, tortured and had been doused with water in order to revive them.

Later that evening, May 6, Chaturanga and Nilantha were taken out of the cell and ordered to slap each other. However, officer Balendra said that they were not doing it hard enough and started slapping them himself. A little while later, the officer told them to do likewise until one of them lost consciousness. The boys were threatened into doing this until Nilantha fainted. The officer threw some water on his face and when Nilantha regained consciousness, he told him to continue until 7pm. Then, they were put back

into the cell. As Nilantha tried to drink some water from a bottle in the cell, officer Batuwatte immediately grabbed the bottle from him.

At around 9pm, they were taken to the Elpitiya Hospital but no doctor there examined them. Then they were brought before the Magistrate at his official residence. Officer Balendra threatened them not to talk. When the Magistrate asked them why their feet were swollen, the officer told the Magistrate that the boys had been beaten up badly at the wedding. The boys were too frightened to speak up due to the fear of being assaulted again.

After this, they were taken to a prison near the Elpitiya court house. Nilantha was in great pain and he shouted to be taken to a hospital. An officer then gave him some medicine. Later that night, Nilantha started to vomit blood and was taken to the Elpitiya hospital. From there he was rushed to the Karapitiya Hospital where emergency surgery was performed on his stomach. He was hospitalized under guard.

Nilantha was treated in ward No 9 of the Karapitiya Hospital from May 6 to 18. He told all the doctors who examined him that he had been assaulted by the Elpitiya police. However, the hospital police did not take any statement from Nilantha.

During Nilantha's hospitalisation, officer Balendra came to see him and said, "For lies, you were assaulted." The officer furthermore made the statement that, "We will give you bail on the 27th" and with that he gave Nilantha his mobile phone number and left.

On May 18, Nilantha was taken to the Galle prison where he received medical treatment until May 22. He was taken to the Karapitiya Hospital clinic once a week. On May 22, he was produced in the Elpitiya Magistrate's Court and released on bail. Charges were also imposed on them that they had displayed fire arms, assaulted and injured people, damaged goods in the house, and torched three motorcycles.

While the two were in prison, their mothers reported this incident in a written complaint on July 1. Nilantha reported this case of torture in a written complaint on August 5 to the relevant government authorities such as the HRC, NPC, IGP and DIG General Southern Province, Galle.

#### **184. Ramiah Ruba Sandran: Tortured to confess to being a terrorist**

On 7 May 2008, Ramiah Ruba Sandran was asked to come to the Balagolla Police station, where he was questioned and released. On May 10 he was again requested to come to the police station where he was held overnight before being released the following day. He was repeatedly questioned as to whether he was involved in terrorist activities. On May 13, on his way to work, officers attached to the Balagolla Police station forced him into a cab and took him away.

On hearing about his abduction, his relatives went to the Balagolla police station where officers denied that he had been arrested. They returned the following day and were again told that Sandran had been arrested. When his relatives went to the police station the following day, now the third visit, they were told that he was being held in the Kandy Police station. However, when they attended that police station his relatives were not permitted to see him.

On May 17, he was brought to his home in handcuffs. The accompanying officers searched the house for weapons during which time the family saw him being kicked and beaten by police officers, including IP Nishantha of the Kandy Police station. The family also noted that the police were under the influence of liquor at the time. Finally, on May 19, his brother was allowed to see him but was ordered to speak only in Sinhala.

On July 23, his brother, wife and 19-year-old daughter were asked to come to the Kandy Police station. At the station, the wife and the daughter were taken into a room and made to stand in front of Sandran. The officers threatened that they would arrest his wife and daughter if he did not confess that he was a terrorist. The relatives stated that he appeared very pale and was crying. He was forbidden to speak about his torture.

It is reported that, during the entire period of his detention of four months, he had never been examined by a JMO. He was produced before a court in the first week of September and subsequently detained at the Kandy Police station. On September 19, he was arraigned before the Kandy Magistrate's court where his detention was extended until September 22, with no charges till then laid against him.

#### **185. Maddumage Dharmadasa: Hung from ceiling by toes and beaten with baton and rubber pipe**

At 5:30pm on 13 May 2008, four officers from the Sigiriya Police station

went to the house of Maddumage Dharmadasa asking him whether he had been given money by a person called Premadasa. When he denied either knowing the said person or receiving money from him, the policemen took him to the station supposedly to obtain a statement from him. The following morning, after Dharmadasa had failed to return home, his wife and mother went to the Sigiriya Police station looking for him. The two waited for almost an hour before being assisted. Eventually, one of the policemen, whom they recognised as one of those who had arrested Dharmadasa from their house, approached them and took them towards the back portion of their police station where the victim was being held. There, they found him lying on the ground and saw that he could not speak properly. The police officer told them that they had given him only a few slaps for not telling them the truth.

Meanwhile, despite experiencing difficulty in talking, Dharmadasa managed to tell his family members that the policemen had stripped off his clothes, hung him from the ceiling by his toes and had then beaten him with batons and rubber pipes all over his body. He further stated that they assaulted him twice in the same manner during the night. Dharmadasa said that there were four officers of the Sigiriya Police station, who were responsible for torturing him, but he only identified two of them, namely Sergeant Ekanayake and Ariyawansa. The two were wearing plain clothes. He further claimed that after having been beaten he was forced to sign a blank paper and had been warned against telling anyone about what had happened to him.

When they released Dharmadasa from their custody, the police officers told his family not to take him for medical treatment but to take him home directly. As they were frightened of what could happen to them if they did not follow the police orders, they took him home. However, when Dharmadasa's condition worsened, they took him to a private hospital close to their house where the victim had obtained treatment.

With the fear and shame Dharmadasa had suffered following the incident, he took poison in an attempt to commit suicide. His life was saved but the extent of his injuries due to the poison could not be immediately ascertained. Soon after, he was then taken to Dambulla hospital where he was admitted in ward number 7. Upon having been informed about the incident, local human rights groups had Dharmadasa transferred from Dambulla Hospital to the General Hospital of Matale for further treatment. While he was at the Matale Hospital some local activists had him presented to a JMO to get a Special Medical Certificate.

The alleged incident of torture was brought to notice of the HRC, NPC and SP of Matale. The police superintendent's office of Matale likewise forwarded the complaint to the Dambulla Superintendent's office. On May 23, the Dambulla office took up the case requiring a Special Medical Certificate for judicial action which was also provided.

Dharmadasa had not been able to fully recover from the injuries he sustained from the torture by the police. Though his bruises healed, he was unable to move his arms and legs normally as before and unable to do any work.

**186. Uswatte Liyanage Stanley Senaviratna: Torture victim suffers hearing loss following assault**

On 17 May 2008, four officers attached to the Excise Station of Panadura went to the house where the victim, Uswatte Liyanage Stanley Senaviratna and his wife, Wijesuriya Arachchige Dona Shirani, were living. The said officers were looking for Stanley, who reportedly sells prohibited liquor, but he was not there. Shortly after the officers left, Shirani saw her husband being assaulted by the officers when she heard some noise near their house. She ran to the scene and begged the officers to stop assaulting her husband. However, the officers ignored her and continued beating him. Shirani, however, was able to recognize three of the four officers and remembered that they were noted as drug addicts. These officers assaulted her husband with poles. They also punched and kicked him.

After beating Stanley, the Excise Officers then demanded from him bottles of prohibited liquor that he was reportedly selling. He gave them two bottles of arrack. As he passed on the money worth Rs. 850 from his pocket to his wife, one of the officers forcibly took the money from her by suddenly thrusting his hand into her blouse where she had kept the money. The same officers then took Stanley into their vehicle towards the Excise Station of Panadura. Shirani then followed them by taking a three-wheeler. Stanley, however, was released on bail from the officer's custody and went back home on the same day. The officers though warned him from going to hospital to get medication for the injuries he sustained following his arrest. They also told him to return to the Excise Station on the following day.

As Shirani and Stanley went to the Excise Station on May 18, the OIC sent Stanley outside the room. He then took another officer in order to forcibly take Shirani's finger prints from about ten bottles of prohibited liquor. When Shirani refused to do so, the officers threatened her that they would assault

her husband once again if she refuses to comply with their order; thus, she had no choice but to cooperate with them. The OIC summoned Shirani into his room and told her that he could arrange for some settlement or relief on her husband's case if she would closely follow his orders and cooperate with him. The OIC asked her to come close to his place and when she went, she was told, "I will put you into a job. But, you must send your husband to work everyday. Do not keep him at home. And you must keep the phone near you." Shirani then realized that the OIC was giving her ugly messages in an attempt to take sexual advantage of her and the situation. On the same day, Shirani went to the Panadura South Police station where she met the HQI. There she filed a complaint about the assault of her husband and about the officer who attempted to take sexual advantage of her. The HQI then referred her case to the 119 Police Squad who recorded her statement.

On May 19, Stanley had himself admitted to the Panadura Hospital. There, Stanley and his wife Shirani described the story of physical torture that the Excise Officers had perpetrated on the victim to the doctor examining him. The medical examination revealed that he suffered from hearing loss after his ears were seriously affected by the assault.

On May 21, Stanley was discharged from the hospital. On the same day also, Shirani lodged complaints about her husband's arrest and subsequent torture before the Commissioner General of Excise, the HRC and IGP. However, there had not been any substantial progress so far regarding any action taken by any of the authorities.

### **187. Solomons Caspas Poul: Police continuously detain and torture a man arrested without charge**

Sometime during the months of April this year, four police officers attached to the CID in Colombo went to a house where the relatives of the victim, Solomons Caspas Poul, were residing. The officers asked his relatives of his whereabouts as they were searching for him and they told them that Poul was staying with his wife in Nawalapitiya. The police left shortly after.

At 9pm on 30 May 2008, six police officers attached to the Theldeniya Police station, three of them were wearing plain clothes, once again came back asking Poul's sister and his mother of his whereabouts. Once again they told the policemen of where he was staying. At 7am the following morning Poul's sister received a phone call from his wife telling her that the police had arrested Poul at 2am that morning but she did not know where he had been

taken. Then at 4pm, Poul's wife called again to say that he was being held at the Nawalapitiya Police station. They were then asked to go and see him there. At 8:30am on June 1, Poul's sister and his younger brother went to the Nawalapitiya Police station. However, the police officers did not allow them to speak with him. When his sister asked a police officer whether he would be transferred to another place, she was told he would be transferred to the Theldeniya Police station in two hours.

At 11:30am, three officers attached to the Theldeniya Police station arrived and took him from the custody of the Nawalapitiya Police to their station on a public bus. The victim's relatives took the same bus, but when a police officer recognised them, he confiscated the mobile phone of Poul's sister, telling her that he would return it once the bus reached the town of Kandy, which he did. Poul told his sister to come to the station to see him. At 2:30pm, when Poul's sister and mother went to the Theldeniya Police station, he told them that he had been beaten by policemen attached to the Nawalapitiya Police station whilst he was in their custody. They had beaten him on the head and on his hands for about an hour with a police baton and some plastic material. When Poul said he was in pain, his sister gave him some painkillers and medicinal oil.

Upon learning of her brother's experience while he was in the custody of the Nawalapitiya police, she asked the policemen at the Theldeniya Police station not to beat him, to which they have agreed. They also claimed that they did not beat prisoners in their police station. Getting this response, his sister and mother gave him some food and went home at around 5:30pm. At 8am on June 2, when his sister and mother went back to the police station, they saw Poul being subjected to questioning by a police officer inside a room. When they were able to speak with him Poul was crying. He told them to look after his wife who was eight months pregnant as he had been told he would not be released for three or four months.

A police officer, who was wearing plain clothes and one of those who were questioning the victim, asked the victim's sister to come and see him to another room inside the said police station. There, there were three men who had asked her whether she also had any involvement in "terrorist" activities. When she denied it, they pressured her to say something relevant about the said activities. This time, the police officer told her that the reason why they arrested her brother was that he had been to Kilinochchi, in the northern part of Sri Lanka, sometime in 2003 together with his friends. Though the police

claimed that they knew Poul was knowledgeable about firearms and that he is supposed to have been involved in terrorism, they could not provide any credible evidence nor substantiate the allegations.

After the questioning was completed, his sister asked Poul about the allegations the police have made against him and he told her that he went there only to visit the relatives of his friends. He also said that he only stayed there only for three days. He told his sister that at that point in time he had not been beaten by the policemen at that station. She gave him some food and medicine before leaving. When the victim was visited again at the police station on June 3 by his relatives at around 8am, they saw him lying on the floor half naked. When his sister tried calling him, he could not talk properly prompting them to ask him what had happened. The victim made the following statement:

“At 2am today (June 3), around 6 persons in civil clothes having been drunk beat me and tied up my legs and hang me on the ceiling. Then, they tied up my hands as well and severely beat me for about 2 hours. They especially hit my head, arm, heap and the sole of my feet. I can’t move my left arm due to the assault”.

Poul could no longer walk properly. Later his sister gave him some food and medicine but he could not eat it by himself because of the severity of his injuries. Then, his sister informed a police officer, whom they have identified as Dissanayake, about the incident. When asked by the said officer, Poul told him that he had been tortured, but the policeman nevertheless ignored him saying that they had never tortured him. He instead gave his name card to the victim’s sister telling her of his brother: “Poul has a weapon, ask him to hand over the weapon to the police. If there is any information regarding the weapon, immediately contact me”. When asked whether they would be releasing Poul or taking him to a court, the same police officer told her: “At the moment, we will neither bring him to the court nor release him. We will keep him for further investigation.” After learning this, her sister had to ask this police officer again not to torture her brother anymore.

Poul’s sister later asked him whether he had any weapon and he told her he was not aware of what the police are accusing him of. He told her that the police had been putting pressure on him to admit that he had a weapon and that he has had connection with terrorists.

### **188. Galapitahene Gedara Nandani Kumari: Ill-treated after private argument**

On 27 June 2008, at about 2pm, Galapitahene Gedara Nandani Kumari (aged 45) had a quarrel with a neighbour known as R.M. Padmakumari, the wife of the OIC of the Matale prison, H.M. Ekanayake. Nandani says that Padmakumari assaulted her and her son. Consequently Padma Kumari had admitted herself to the Raththota Hospital.

At about 3:30pm on the same day, officers attached to Matale Police station came and arrested Nandani and took her in a private van to the police station. Nandani's husband also went with her and at the police station met the OIC and made a statement regarding the incident. The OIC declared that since the first complaint made was against Nandani, they had taken her into custody. Nandani was made to sit on a chair near the police cell.

At about 5pm Nandani was taken to another room upstairs and a statement recorded. The officer who recorded the statement talked to her sternly. He accused her of cutting and injuring Padmakumari with a knife. Nandani denied this. After the statement was recorded, Nandani requested that she wanted to read it before signing. The officer then shouted at her saying: "Who do you think you are that I should give this to be read?" He further scolded her saying that she was too forward. He forced her to sign the document that she was a suspect. Nandani was again taken downstairs and told to sit on a wooden bench. Nandani's husband brought her a meal. For the night an old woman was kept with Nandani and at night they both went upstairs and slept on a bench.

The next day Nandani had got her menses and her head and back ached badly. Nandani told the elderly woman about it and she took her to a tap and told her to wash her soiled garments, in which she had to dress again in their wet state.

Nandani was taken back downstairs and told to sit on the wooden bench, which she found very uncomfortable. At about 8am Nandani called a Woman Police Officer (WPC) and told her of her position and asked her for medicine. The WPC refused to oblige saying that they were busy getting ready for the arrival of a senior officer.

Later again Nandani spoke to another WPC and asked her for sanitary wear. She too refused to oblige saying: "Where are we to find such things; are we

to go home and bring them?” Nandani was in great discomfort and found it easier to stand and wait. The officers however, shouted at her to sit down. Nandani then told one of the officers her position. The officer told her to tell one of the WPCs. When Nandani next spoke to a WPC, she told Nandani that she would be taken to a court in a little while and to bear it somehow and wait patiently. Shocked Nandani asked why she was to be taken to court and was told that it was to obtain bail.

While Nandani waited, she heard the OIC reply to a phone call saying that he will be sending (someone) at 11:50pm, which she immediately knew was with reference to her.

Nandani was taken to court. Her husband too joined her. An officer who was there told them that it was not a court day, and that there will be no lawyers, however, if they could reload his mobile phone with Rs. 100, he could get them a lawyer he knew. Nandani's husband provided him with the money; however, he took the phone call without reloading the mobile phone. Nandani then was taken with some others who were also in police custody and her husband to the Magistrate's Court Matala.

At the court, the officer who had said he would find a lawyer asked Nandani how much money they had. When she replied that she had Rs. 500 he scoffed at it. Nandani then gave her gold chain to her husband to be pawned. For this they got another Rs. 2000.

The officer then went and spoke to the lawyer whose name was given as Darshani Gunasekera. The lawyer asked Nandani to relate the incident in brief since she was busy, and asked for Rs. 4000. Nandani told her that they had only Rs. 2500 in hand to which the lawyer said was not enough since she has to give money to the police as well. However, she agreed that they would pay the remaining Rs. 1500 on the next date. When the case was called, the lawyer appeared for Nandani. Nandani says that a charge had been fabricated against her stating that she had cut and injured Padmakumari with a knife. The police opposed bail and Nandani was remanded till June 30.

Nandani was then taken to the Matala prison, where the OIC is the husband of the said Padmakumari. The officer who had introduced the lawyer to Nandani went and spoke to the OIC in a friendly terms referring to him as machan ('brother-in-law'). Clapping their hands together in a gesture of congratulating on a job well done, the officer told the OIC that he had done

his part and now the rest was up to him. The OIC then inquired about the lawyer that had appeared for Nandani. The officer told him that it was the “same one”. The officer further asked the OIC if they will be “looked after”. To which the OIC said that such things can be discussed later. Nandani claims then the OIC took a phone call and said that he is sending a person and to send a bus. Nandani was then sent to the Kandy prison on that same day.

At the Kandy prison, several women jailors got together and intimidated her saying; “So you came after assaulting our OIC’s wife? The jailors on duty tomorrow will assault you”, they told her and gave her food to eat.

On June 29, Nandani was taken to the room of the woman Jailor who asked her if she came from Matale. When Nandani did not speak, she was threatened and told to speak. Nandani then related the incident, referring to the OIC as the “Guard Aiya” the name by which he was known in the village. The woman jailor then scolded her asking, “To whom do you think you are referring to as Guard Aiya? Learn to talk, properly! Did you not assault the wife of the OIC?” saying this she took Nandani to another room.

On the way to the room Nandani slipped and fell on the floor. Several women jailors in the vicinity then pounced on her, and kicked and trampled her, shouting at her to get up. Nandani got up with difficulty. The women jailors now surrounded her and started to assault her in a most cruel manner hitting her head against the wall. They told her that they had got instructions to ‘half kill her’. When Nandani was so assaulted that she passed urine and blood. The women jailors then gave her a piece of cloth and told her to clean up the mess and then have bath.

Nandani says after she had a bath she became very sick and vomited. Nandani was then taken to a doctor. However, the woman jailor who accompanied her threatened her not to tell of the assault. Afraid Nandani complied.

On June 30, Nandani was taken to the Matale Magistrate’s Court. Again the women jailors threatened not to reveal that she was assaulted and if she did that she would be assaulted again when she is taken back.

Nandani was then sent back to the Matale prison, where the OIC of the prison H.M. Ekanayake asked her if she had enough of it (“parippu ethitha?”) He further threatened her that if there is any problem again in

the neighbourhood, she would be killed and sent home. Speaking to other officers, he told that it was a shame that they could not have got the prisoners to have done the rest too, which means rape. Nandani was put into a prison cell. Nandani's husband was not allowed to see her but the clothes that were brought by him were given to her.

Nandani was produced before the Magistrate's Court. The same lawyer Priyadarshani Gunasekara appeared for her. Nandani paid her the remainder of Rs. 1500. Nandani instructed the lawyer to tell court that she was assaulted in the prison but she did not do so. Nandani was given bail and released.

On the same day, due to the trauma sustained on her body and pains, Nandani got herself admitted to the Matale Hospital. She told the doctors that she was assaulted by the women jailors of the Kandy prison. The hospital police recorded a statement from her. The JMO examined her. Nandani was discharged on July 8, after about one week of treatment. Nandani says that as a result of the assault, her ears had to be treated. She was sent by the Matale Hospital to the Kandy Hospital where it was declared that her ears had been injured of the assault.

On July 4, Nadani's husband complained about the incident to the Kandy branch of the HRC. On July 8, a written complaint about the incident was sent to the HRC in Colombo and to the Commissioner General of Prisons and the IGP. Consequent to the complaint made to the IGP the complaint was referred to the DIG of Central Province.

**189. Seynool Arbdeen Seynool Aswar: "We will come and see you at home"**

Seynool Arbdeen Seynool Aswar went to Negombo Prison to see his brother, Seynool Miswar, an inmate in the prison at 3pm on 3 July 2008. While talking together, Miswar told Aswar that prison officers had threatened to assault him unless he would pay Rs. 25,000. Miswar asked Aswar to come the next day with the money. At that time he would show Aswar the person to whom he should hand over the money. He also asked Aswar to pay Rs. 1000 to the officer present at the meeting. Aswar had only Rs. 500 on him but he handed it all over to that officer.

Just before Miswar died, Seyedu Mohmad Abhu Ubeyda, another inmate, was going for a bath at 4pm on July 3. He saw Miswar holding his chest and abdomen. When asked, Miswar told him that Budhika and two other guards

had assaulted him, which caused him severe pain. Abhu Ubeyda advised him to go to the hospital. On his way back from the bath, he saw that Miswar had fallen down dead on the floor.

When the investigation was initiated, Abhu Ubeyda testified to officers from the Crime Section of the Negombo Police station as to what he had heard from Miswar. Based on his statement, Negombo Police took the two jail guards, Warnakulasuriya Loreto Meril Frances Lowe and M. Budhika Jayasanka into custody and put them on remand.

After making his statement, two inmates came, took him behind Ward 11 and pretended to hit him. They did not beat him but pushed him so that he fell down. He was admitted to the prison hospital because of this incident. The Chief Jailor, Jagath, asked Ubeyda to meet with him. After he was discharged from the hospital, he went to his office. He asked questions about this incident and made notes but, without Ubeyda's signature. While Ubeyda was in the office, he heard some officers outside calling his name saying that he was granted bail. The chief jailor told him, "You have been bailed out. It is good for all of us that you are leaving. If you stay here, we may all have to go to prison. We will come and see you at home. I will give you Rs. 150,000 if you do not mention my name in the incident." However, Ubeyda did not accept this offer.

At around 9:45pm on July 17, four persons in helmets came to his house, tied him to the window grille and beat him with a pole for some time. They warned him not to come forward before the court as a witness in the case of Miswar. According to Ubeyda, he recognized two of them as the jail guards, Peiries and Jagath.

With respect to the death of Seynool Miswar, the Supreme Court has granted leave to proceed with a fundamental rights application in respect of articles 11, 12, 13(4) and 17 of the constitution (Case No. 342/2008).

### **190. Sarath Kumara Naidos: Life in danger at Moratuwa Police station**

Sarath Kumara Naitos, aged 38 years, was arrested on 5 July 2008 around 12.30pm while he was working at Kesalwatta in a house, in Panadura. The arrest was carried out by officers from Moratuwa Police station. The officers came in a three wheeler and at the moment of arrest started assaulting Sarath. The place from where Sarath was arrested is under the jurisdiction of Panadura South (Kesalwatha) Police station, which is outside the jurisdiction

of the Moratuwa police. However, the arresting officers were from the Moratuwa police and Sarath was held at that station.

The allegation against Sarath was theft, which he has denied. When the police were assaulting him they demanded that he return some articles which the police accused him of stealing. Sarath denied the charge. Representations were made to the Moratuwa police and to other superior police officers; however, Sarath was neither produced before the court nor released.

Due to repeated assaults Sarath lost control of his bowel movements. There was grave concern that he could die from his injuries.

Despite the case being reported to the ASP of Moratuwa, no enquiry or any action had taken place.

### **191. D. N. Nimal and Ranjith: Arrested and assaulted for helping a female student who fell down**

D. N. Nimal and Ranjith were working in Hambantota, Gannoruwa School. Nimal is the principal and Ranjith was a teacher in the school. On the morning on 7 July 2008, D. N. Nimal and Ranjith came to school and observed that the majority of children were absent. Only two teachers reported to the office of the school while the rest of the teachers had not arrived. The few children who came to the school were taken back to their homes by their parents.

On the same day, a campaign was going to be held at Hambantota town asking for a bus from the authorities for people to travel to their working places and for children to go to school. All of them have no choice but to walk for long distances due to the absence of a bus line in the village. Principle Nimal thought that the children might have participated in the campaign. He went to report the situation to the provincial education office with two teachers and some of the parents. Due to the lack of a vehicle, the principal rode a bicycle belonging to Ranjith, who was about to leave for Hambantota town on a private matter, and other people started to walk toward the town.

While Nimal and Ranjith were on the way to the town, they saw people were taking part in the campaign. They saw many of the children of Gannoruwa School accompanying their parents. At that time the campaigners were at Siribopura Junction and they were walking to the town. Some police officers were also at the junction inspecting the campaign.

Principal Nimal and teacher Ranjith stopped the bicycle and stayed at the junction, looking at the children of Gannoruwa School. Suddenly they heard a big noise and saw a female student of the school yell and fall down. (They later came to know the noise was a gunshot to chase away elephants destroying crops.) Ranjith rushed to the student and bent down to pick her up. At that time, Kalinga, HQI attached to Hambantota Police station came to Ranjith and assaulted him. He also scolded Ranjith in bad words. Some police officers who came with the HQI also assaulted him with batons.

Seeing the assault, children tried to save Ranjith but the police chased them away and pushed him to a police jeep. There were another eleven people in the jeep. When police attempted to assault Ranjith again in the jeep, other arrested persons prevented the assault. The police took them to the police station and put them into a cell. While the people were in the cell, the HQI and other police officers scolded at them using foul language.

Meanwhile, Nimal and eight parents went to the police station and asked for the release of the arrestees. However, HQI Kalinga scolded them. Principal Nimal was very ashamed in front of parents. Some parents were afraid of the HQI and left but principal Nimal and two people remained. Then, HQI Kalinga ordered an SI to put principal Nimal and other two parents into a police jeep saying, "We want you to clean some rubbish on the roads. You get ready to be road cleaners." Officers put them into the jeep and took them around the village, constantly scolded them. Later, they dropped them at Gannoruwa School.

Meanwhile, Ranjith and another eleven people stayed in the cell from 10:30am to 6pm. Then, HQI Kalinga took them to a magistrate and submitted a report saying that Ranjith and another two people were conducting a campaign at the Siribopura Junction and had bothered passengers in the road which caused traffic congestion, including ambulances taking injured soldiers to hospital. In response, the magistrate said that the accused had not done anything wrong. However, when the accused asked for release on bail, the HQI did not allow it. The HQI claimed that the police wanted to investigate them and keep them at the police station for a further length of time. Finally, the magistrate allowed the police to keep them for further investigation. The accused were kept in police custody for two days and released on bail on July 8 after paying Rs. 100,000 in total and being asked to go to the police station for signatures every Sunday. The HQI Kalinga allegedly threatened Ranjith and Nimal that they would be dismissed

from their jobs. He told that he would inform the education ministry that they organised the campaign and had behaved badly. He also said that he would inform this to the IGP.

**192. Ravindra Indrasiri Wanniarachchi: Assaulted for intervening in police assault of customers**

Ravindra Indrasiri Wanniarachchi (aged 30) married with two children, was a small businessman who managed his family's hotel in Athura, Bulathsinhala.

On 23 July 2008 at about 9:30pm, Ravindra was sitting as usual in the cashier's seat when Sgt Jayantha (No. 12296) of the Bulathsinhala Police station came in and assaulted two of his customers, namely K. P. Mahesh Bandy Kumara and Samantha Pushpa Kumara. They were attacked and slapped on the sides of the face below the eyes.

When Ravindra asked why they were assaulted, Sgt Jayantha turned, hitting him on the cheek saying, "It is none of your business." During the assault, he tripped and fell, striking his head on a nearby cupboard, and blacked out.

Ravindra was then taken in a three-wheeler by his mother to the Bulathsinhala Hospital. He was given some tablets to take and referred to the Horana Hospital. On the way to the Horana Hospital the three-wheeler stopped at his shop so that he could pick up some clothing.

At this point, some police officers including sergeant Jayantha of the Bulathsinhala Police station came in a police jeep and tried to stop Ravindra from being taken to the hospital. Sgt Jayantha scolded and threatened Ravindra's mother and father, finally shoving the father. As a result, Ravindra's father, who has a cardiac condition, had to be given medical treatment. Ravindra was taken to the Horana Hospital where he was treated and discharged the next day.

Ravindra informed the doctors who examined him at the Horana Hospital that he had been assaulted by sergeant Jayantha of the Bulathsinhala Police. The hospital police took a statement regarding the assault. Ravindra claims that the hotel had to be closed due to threats made by these police officers.

On August 4, Ravindra lodged complaints with the HRC, NPC, IGP and DIG of Kalutara.

**193. Sarath Kumara: Assaulted for overtaking a police cab**

On 18 August 2008, Sarath Kumara, a police driver attached to Angunukolapelessa Police station was returning to Angunukolapelessa after completing his tour of duty at the Esala Perahera in Kandy. He left Kandy at about 9:30am, driving along the Ratnapura Embilipitiya road in Police Cab License No. WP LF 0694. In the cab were Sgt Hemantha of Hoongama Police and her husband, PC Wijesekara (No. 28999) of Ambalanthota Police and their 10 year-old son and PC Malinda (No. 60787), PC Nalaka (No. 60651) and PC Bogahawatte (No. 60885) from Ambalanthota Police.

Enroute at Hiddallana, Ratnapura, Sarath overtook another police cab. This police cab then over took Sarath's cab. Again Sarath overtook the other cab. And again Sarath was overtaken. Then the other cab blew his horn and signalled for Sarath to stop his cab. Sarath stopped. It was about 4pm.

An HQI, IP, sergeant and constable alighted from the other cab and came up to Sarath's cab. They removed the key from the ignition, opened the cab door, pulled Sarath out of the cab and started to assault him, all the while reprimanding him harshly using foul language. All of the four officers joined in the assault which took place on the main road and witnessed by ordinary civilian onlookers. Sarath was given no opportunity to ask the reason for this assault.

The HQI assaulted PC Nalaka too, who was in Sarath's cab. After that they took Sarath and the others to the Ratnapura Police station. There, they were again assaulted, this time in front of other police officers. The inspector held Sarath by the neck and pushed him into a police cell, knowing full well that Sarath and Nalaka were police officers. The other police officers who travelled in Sarath's cab saw all these things and submitted written statements about the incident.

After about an hour-and-a-half, the inspector who assaulted Sarath took him and Nalaka in his cab to a private nursing home. The inspector told them to stay outside and went inside to meet a doctor known as Deputy Medical Officer Athula Ratnaweera. After about five minutes he came back and told Sarath and Nalaka to go inside and see the doctor. The doctor asked Sarath whether or not he was an alcoholic. Sarath told the doctor he had not taken any alcohol. Sarath told him that they had been assaulted by the police. The doctor however, informed him that there were no visible signs of injuries of the assault on them. At this Sarath informed him that he was experiencing

severe pain in his ear, neck, head and back where he had been beaten. Taking no notice, the doctor got Sarath to sign a document. Sarath and Nalaka having no power over this situation were helpless and signed the document, not informing him of what the document contained.

At about 9pm on the same day, the Ratnapura Police made an entry in the police book, saying that Sarath and Nalaka were brutally assaulted and got Sarath to sign it. He was then asked to report to the court on 25 August 2008. At about 11pm Sarath and Nalaka were bailed out by Police Woman Sergeant Hemantha (No. 1664) who signed for the bail. That night Sarath's group stayed at the home of one of Sarath's friends and continued their journey the following morning at about 5am.

Back home Sarath made a statement regarding the incident at the Kuttigala Police station where Sgt Wilson (No. 12477) recorded it and gave a judicial medical form to the doctor to fill out. At the Kuttigala District Hospital, Sarath received medical treatment for four days. According to the medical report issued, there was swelling around the neck, the lower back and the sternum. It also noted that a blunt weapon had been used to beat Sarath. On August 22, Sarath was discharged from the hospital.

On August 23, when Sarath and Nalaka reported to Angunukolapelessa Police station, they were informed that their services in the police force had been terminated. On verbal instructions from the OIC Sarath and Nalaka entered everything regarding the incident in the police log book.

On August 25, Sarath and Nalaka went to the Ratnapura Magistrate and waited until 1pm to be called. The clerk at the courthouse said that the case was not to be taken up that day. Next Sarath and Nalaka went to meet the ASP of Sabaragamuwa. Sarath and Nalaka informed the ASP about all the details of the incident and went back to court. The case was taken up at about 3pm. The false medical report was produced in the court. Sarath was charged with drunk driving, negligent driving, dangerous driving and obstruction of other vehicles. At the court, Sarath also made known that he was beaten by the HQI of Ratnapura. The case was postponed to August 29.

At the trial on August 29, the accused made a statement to the judge who subsequently ordered the Deputy Inspector of Police, Ratnapura to inquire into the incident and report back to the magistrate. The relevant authorities started inquiries into this case. In addition, the Medical Council confirmed

that the doctor who noted in his report that Sarath had liquor on his breath was not registered as a JMO.

**194. Malayappan Kali Dasan: “This is not enough; hang him”**

Several police officers from the Gampaha Police station went to the house of Malayappan Kali Dasan at around 10:30am on 21 August 2008 and inquired about other persons living on the premises. Dasan replied that only his wife and two children were with him. Then, the officers asked Dasan to accompany them to a neighbour’s house. As soon as Dasan entered the premises of the neighbour’s house, an officer suddenly caught him by his shirt collar and forced him into a car.

When seeing this, his wife and his eldest daughter came crying and asked where the officers were taking him but the officers scolded them in filthy language. Then, the officers took him to the Gampaha Police station. According to Dasan, on the way to the police station, he was threatened with a pistol and asked to hand over the jewellery he had stolen from the neighbour’s house. At this time, he came to know that the neighbour might have complained to the police that he had stolen jewellery and for that reason he had been taken into custody. He was, in fact, taken to the police station in the neighbour’s vehicle.

Without any questioning, the officers took him to the upper floor of the police station. There were four police officers including OIC Bandula Perera and PC Weerasiri. The OIC asked him to hand over the jewellery of which he had no clue. He beat him with a hose pipe on his body, his back, knees, elbows and the soles of the feet. Then, the OIC said, “This is not enough. Hang him.” Then, Dasan was blindfolded and his mouth was covered with a piece of cloth to prevent him shouting. His clothes were removed. The officers tied his hands behind with a piece of cloth and the tied a rope to the cloth.

They put the end of the rope over the beam of the roof and pulled on it so that his body was suspended. When he was hung, an officer hit his head with a hose. This lasted for about one and half hours. He was almost unconscious when he was brought down. When he was taken down, he was asked to lie down and an iron bar was placed on his legs and two police constables stood on each side of the bar which caused severe pain. Officers said, “if you have no money, we will get some from your neighbours, but hand over their jewellery”. Then, he was brought back to the ground floor and his legs were chained. He was caned on the following day.

In the morning on August 26, police recorded his statement and asked him to sign it. He was brought before the Gampaha Magistrate at noon. The Police claimed that the inquiry was not over but Dasan was granted bail of Rs. 100,000 and the day of the trial was fixed for 3 November 2008.

On August 27, Dasan went to a private doctor for medication. As his pain continued, he was admitted to Warakapola Hospital from September 1 to 3 where he told a doctor what had happened to him in the police station. The doctor informed this to the Dadigama Police and an officer took down his statement.

**195. Prasantha Pradeep Kumara Francis: “We know how to extract information from you”**

On 21 August 2008 at about 9am Prasantha Pradeep Kumara Francis went to the Panadura South Police station to get a certified copy of a complaint he had made on 18 August 2008 with regard to the loss of his national ID card.

As Prasantha was leaving the premises after obtaining the certificate, a police officer dressed in civilian clothes asked him if he was also known by the name of Chooty or Patty. Prasantha said he had no other names. The officer then told him that he wanted to record a statement from him and took him to the Crimes Branch in the station.

Prasantha was made to sit on a chair and the officer in civilian clothing asked him why he had come to the police station. Prasantha said that he had come regarding the certificate, showing him the document in his hand. There were about 4 other officers also dressed in civilian clothes. One of the officers then asked if he was also known as the “buthaya”, or ghost? He also asked Prasantha if he had a younger brother and what he looked like. Prasantha then described his younger brother. Another officer then asked Prasantha if he had stolen any bicycles and that if he showed them where they were, they would not harm him. Prasantha denied having stolen any bicycles. He said he worked as an electrician. The officer then said that if he was not the one who had stolen the bicycles, then it must be his brother. He asked him if his brother was at home. Prasantha said that he did not know the whereabouts of his brother. The officers then called a person who reported his bicycle stolen. They presented Prasantha to him and asked if he could identify him as the thief. The person said that the thief looked like Prasantha but was definitely not him.

The officers then took Prasantah to his home. The door was closed and there was no one in the house. After examining the surrounding area, they went back to the police station taking Prasantha with them.

Prasantha was again taken to the Crimes Branch and asked if he knew where his brother was. Prasantha again said that he was not aware of the whereabouts of his brother. Then the officers saying “we know how to extract information from you” took him into a hall adjoining the Crimes Branch.

Prasantha recognized this as an officers’ dormitory, since there were bunk beds, mosquito nets, clothes racks and two tables visible.

The officers then stripped him of his shirt, tying his hands in front with a blue cloth. They made him sit on the floor with his knees hunched up against his chest and placed his hand still tied around them. Then they passed an iron pole through his hands and under his knees. In this manner, they hung him from the iron pole raising and wedging it between two tables (the “Dharma chakra” or “Wheel of Law”). Prasantha was thus hung upside down. The officer who had taken him into custody then beat him with a wooden pole. Each time he was hit, the impact swung Prasantha’s body around until it stopped with his head upside down. In this position the officers beat the soles of his feet with a pole. Prasantha was tortured in this manner for about one hour.

Then the torture was stopped. They pulled his hands to his sides, supporting his spine and making him stand up. Both his hands and legs were numb but the officers made him walk before he was put into the cell. Prasantha was given lunch and dinner that day.

On August 22, the officer who had taken Prasantha into custody was wearing his uniform bearing No. 14241. On this day Prasantha’s mother came but she was not allowed to see him. The whole day Prasantha was kept in a cell and given regular meals.

At noon on August 23, the officer bearing identification No. 14241 took him out of the cell. He began assaulting and kicking him about the face and body before taking him to the Crimes Branch.

Again Prasantha was asked where his brother was. He again said he did not know the whereabouts of his brother. Then the officer saying “we will find

out” took him to the same hall where he had been tortured previously. Then, he was tortured, beaten over the body and soles by the same officer. The officer used another means of torture. Prasantha was shown some ‘kochchi’ (chilli) and was told that the juice was going to be put into his eyes. Then the officer made a wad, wrapping the chilli in a cloth. He then squeezed the juice into Prasantha’s eyes and nose. This was done while Prasantha still hung upside down from the iron pole and in between the time that he was assaulted with the wooden pole. Prasantha screamed in pain asking for water. This lasted for about one hour until he lost consciousness.

Prasantha was then lowered to the floor and like on the previous day made to stand and walk. Prasantha could not open his eyes. The pain he felt in his body and eyes was so severe, that Prasantha was not aware of what happened after that.

But Prasantha was aware when he was taken to a wash room where a tap was opened and he was made to sit under it and told to bathe. Prasantha says he sat under the tap for about 15 minutes. Prasantha was then returned to the Crimes branch, made to sit on a chair handcuffed to the leg of a table. Prasntha felt faint and he was not aware of what happened after that. He vaguely remembers having eaten.

When Prasantha fully recovered his senses, it was August 24 and he was in the police cell. He was then presented before the Panadura Magistrate at his official bungalow. The magistrate did not ask any questions and Prasantha was remanded in the Kalutara Prison.

On August 25, Prasantha was arraigned before the Panadura Magistrate’s Court. A charge had been made against him of stealing a bicycle. An attorney-at-law Abeysinge appeared for Prasantha. He informed the magistrate that Prasantha had been assaulted by the police and that he needed medical treatment. The magistrate granted bail. However, since there was no one to furnish bail, Prasnatha was again sent back to prison.

On August 27, Prasantha was released on bail. The date of the next arraignment was scheduled for December 15.

Prasantha’s mother sent a fax, dated August 22, to the HRC, NPC, IGP and SSP of Panadura concerning his plight. Prasantha sent a written complaint, dated August 27, setting out the details of his incident to the same persons.

**196. Buddhika Mahesh: Kuruwita police assault on road**

On 31 August 2008, while 17-year-old Buddhika Mahesh was at home, he was informed by his neighbour, Amitha, that his elder brother, Chamila Jeevantha, was involved in a brawl at the Kuruwita bus stop. Chamila was returning home after a party. Upon hearing this, Buddhika went to the spot with his younger brother Isuru and managed to get his brother out of the fight. On their way home, they met their mother, Don Theverepperuma Leelawathi

At 5:30pm while they were walking home, a jeep from the Kuruwita Police station came and stopped them near Kuruwita Lorry Park. One officer named Sunil got out of the jeep and two traffic motorcycle police dismounted. Without warning the traffic officer broke a pole off a fence and started to assault Buddhika, making him sit on the ground while continuing to beat him. The mother begged the officer to stop the beating. She said her son had done nothing wrong but simply had gone to bring his brother home from the bus stop. Buddhika also tried to explain his innocence to the officers. However, the police would not listen. They continued the assault. A crowd gathered and was allowed to watch the scene.

Then, officer Sunil pushed Buddhika into the jeep. While the mother pleaded with them not to take her son, the officer forcibly pushed her away so that she fell down into a pool of mud on the road. He then dragged Chamila and put him in the jeep too. There were about four officers in the jeep which had its own driver. They left without giving any reason for the arrest.

The mother followed the jeep to the Kuruwita Police station where she was told by officer Sunil that the boys had to be tested to see if they were drunk. Chamila and Buddhika were then taken to the Ratnapura General Hospital, where officer Sunil asked a hospital aid where a certain doctor was at this time. He was told that the doctor was at a private clinic in Palmadulla. Officer Sunil then called the doctor on his mobile phone and told the other officer that the doctor would be in Palmadulla until 10pm.

At this point, the boys were taken to Palmadulla to a private dispensary called 'Instant Medicare', located at 34, Main Street. They met Dr. Kamal Pattiyawattege, the JMO of the Ratnapura General Hospital. Officer Sunil met with the doctor first and later sent the boys in individually to be examined by him.

Dr. Kamal Pattiyawattege asked Buddhika how much he had drunk and Buddhika replied that he had not drunk anything but that he had been assaulted and taken into custody when he was bringing his brother back from the bus stop. Then, the doctor wrote up his notes. The boys were taken back to the jeep and officer Sunil again met the doctor, Sunil coming out of the room carrying a piece of paper. Then, the boys were taken back to the police station and put in a cell at about 10pm.

The mother was told to bring a fresh set of clothes. While the mother was absent, the boys were taken out of the cell and forced by officer Sunil to sign under something written in a book. Buddhika asked that he be allowed to read what was written but was refused. At 11:45pm, the boys were released on bail and told to appear in the Ratnapura Magistrate's Court on September 4.

They appeared in court and were charged separately with being drunk and disorderly behaviour. Even though the mother paid Rs. 500 to the lawyer Kithsiri Arabagethara to appear in court on behalf of her two sons, the lawyer did not appear. The court asked Buddhika if he pleaded guilty or not. He was not given a chance to answer because the police officers dragged him out of the witness box in the presence of the judge. However, it was recorded that Buddhika pleaded guilty. Both boys were each fined Rs. 2500.

On September 11, Buddhika sent a written complaint to the HRC, NPC, IGP, SSP of Ratnapura and Secretaries of the Bar Association and Medical Council.

### **197. Madushani Subasinghe: Forced to sign document and put fingerprints to bottle**

On 1 September 2008, Madushani Subasinghe (aged 16) was returning home from her aunt's house at about 7:30pm. Opposite her house, she saw an armed group of officers in civilian clothes. One officer asked her where her parents were. Madushani told them that she was not aware, since she had been at school the whole day.

In response, two officers suddenly assaulted Madushani on her thighs and hands and kept on threatening and asking her parent's whereabouts. When Madushani tried to avoid the beating by covering herself with the hands she got a severe blow to her hand and she fainted.

Later on she came to know that one of the officers who had assaulted her was named Banadara. The officers then forced her into the police jeep along with her sister Subadrika Chandrasani Subasinghe and her two children.

As a result of the assault Madushani's both hands became numb and she complained of a severe pain in her chest. Madushani was feeling so ill that she had to lie down on her sister's lap. The officers who heard her complaints did not afford her any comfort or medical examination or treatment, they told her that she was making it all up. Madushani, her sister and the two children were then been taken to a room behind Ambalanthota Police station.

At about 8:30pm, two police officers tied two pieces of wooden rods--a kind of native treatment on to Madushani's hands with a piece of old cloth, thinking that they were broken. At about 8:40 pm an officer brought a woman to stay with them in the room. That night Madushani, her sister and the two children were told to stay in the room till morning. They were not given anything to eat that night and were told not to leave the room.

At about 6am on September 2, Madushani's sister removed the wooden rods from her hands as Madushani's hands were sore and she was in pain. After that officer Bandara had come and asked them why they removed the wooden rods. Then, they were taken out from the room and made to sit on a bench till 4pm.

Meantime, at 1pm, they were forced to sign some papers whose contents were not known to them. Then, Bandara and one sub inspector forced to apply their finger prints on a bottle and a barrel of illicit liquor. They threatened them to oblige and out of fear they did so. Madushani's aunt and the other sister met the OIC of the station. Madushani and her sister were released on bail. They were asked to report to court on September 4. The police also got Madushani's aunt to sign a document saying that Madushani was in good health. They also threatened Madushani's relatives not to speak to anyone with regard to this incident.

At 8pm, Madushani was admitted to Hambanthota General Hospital and received treatment and discharged on September 3. However, due to her health condition, she was admitted to Tangalle Hospital again on September 4 where she received treatment for another three days and discharged on September 6. During her hospitalization, the hospital police took a statement from her and JMO examined her.

Madushani and her relatives later got to know that the police filed a false case against her at the Hambanthota Magistrate's Court stating that she was in possession of illicit liquor.

**198. Erandaka Bulathsinghela: Severely assaulted for defending boy from police assault**

Erandaka Bulathsinghela attended a celebration for Children's Day held at S.D.S. Jayasinghe grounds on 1 October 2008. After the celebration, he boarded a bus getting off at Weligampitiya junction where he transferred to another bus to his home in Ganemulla. At the junction, he stopped by a restaurant to buy some food at 2am on October 2.

While he was waiting, he noticed three men in a white car stop near the restaurant. One man got out and asked a boy who was in the restaurant to come out to him. When the boy approached, the man started hitting him without uttering a word.

As the boy was being beaten, Erandaka went to him and told him not to hit the boy. Then, the man asked, "What authority do you have to tell me not to hit the boy? Do you know who I am?" Erandaka replied, "I don't care who you are but please don't assault the boy". Then, the man identified himself as IP Nalin from Kandana Police station. He asked who Erandaka was. Erandaka said that he was a photo journalist. Then IP Nalin said, "Ohh!, people like you are wanted." He then released the boy and started assaulting Erandaka. The IP Nalin ordered two other plain clothes policemen to take him to the police station by taxi. Erandaka was brought to the police station and held in a cell.

After some time, IP Nalin came to the police station. He asked an officer for the key to the cell where Erandaka was being detained. When the officer refused to give up the key, the IP scolded him and got the key anyway. The IP opened the cell and started beating Erandaka again. He punched him in the stomach. Erandaka fell to his knees, with the IP striking him about the face for about 30 minutes. Due to this assault, his mouth, eyes and ears sustained multiple injuries and started bleeding. Erandaka was ordered to remove his shirt and mop up his own blood, which he did.

The IP only stopped the physical violence against Erandaka when two other officers, inside the car with him, came and restrained him. Then, he wrote something in a book in the police station. Erandaka was unaware of what he

wrote. Erandaka's mobile phone, watch and sun glasses were confiscated by two other police officers.

Erandaka suffered severe pain. His lips were cracked and one of his eyes was swollen. Due to the unbearable pain, he begged a police officer near his cell to take him to a hospital. But the officer refused saying, "this is an order from higher officers. I can do nothing".

At 4:30am, a police officer, a friend of Erandaka, working in the same police station came and took him out of the cell. At the same time, the two plain clothes officers changed into uniform and took Erandaka to Ragama Hospital. The police officer, Erandaka's friend, accompanied them. Erandaka was admitted to the hospital at 5:30am and surgery was performed on his cracked lips. A doctor examined Erandaka post-op and wanted to discharge him. However, a second doctor who further examined him decided to admit him. At the hospital, he was able to inform his wife of his situation. He was discharged on October 3 and allowed to go home.

After being discharged, he went to a private medical centre where a doctor diagnosed bulging below his ear and a cracked jaw.

On being informed, Erandaka's relatives, on October 2, questioned the reason for his arrest and assault to the OIC of the Kandana Police station. The OIC replied that there was no complaint filed against him at the police station, but failed to mention his illegal arrest and assault. Erandaka's relatives lodged a complaint at the Police Headquarters in Colombo on October 3. Erandaka was informed on October 24 that headquarters was investigating the complaint, although there was no evidence of this. Erandaka continued to suffer pain as a result of the assault.

### **199. Udayarathne: "We will kill you"**

Udayarathne was accused of theft and detained in Kegalle prison on 20 October 2008. He was produced before the Kurunegale court which ordered him released on bail on October 22. He was then taken to the fiscal department at the court accompanied by his wife Seetha. Here the jailors asked him to sign a statement before returning home.

A jailor, with a document of bail, asked for Rs. 1,000.00 (USD 9) for his release. When Udayarathne said that he did not have the entire amount, the jailor asked him to pay half and Udayarathne paid half. Then the jailor took

Udayarathne to see Rathnayake, Full-in-Charge (FIC) of the department and asked him whether it was all right to release him. The FIC then asked Udayarathne, "Did you promise something to the jailor?" When Udayarathne replied negatively, the FIC ordered the jailor to return Udayarathne to the cell in the fiscal department. Meanwhile, the money that Udayarathne paid was given back to his wife.

Udayarathne was kept in the cell until 7:30pm when he was again taken to Kegalle Prison. When his wife questioned the jailors about this, they said that he would be brought back to Kurunegala on the following morning. Udayarathne spent the night of 22 of October in the Kegalle Prison.

At 5:30am on October 23, jailors started getting ready to transfer those remanded to Kurunegala prison but they did not include Udayarathne. Udayarathne appealed to the FIC Jayathilaka Banda to take him too. However, Jayathilaka asked, "Do you have money?" When receiving a negative response, he said, "If you don't have money, tell your family to bring Rs. 10,000. He asked "How much did you pay your lawyers?" Udayarathne replied "about Rs. 200,000". He scolded Udayarathne saying, "You have money to give to the lawyers but you don't like to give money to us." Then, Jayathilaka refused his transfer to Kurunegala Prison.

After that, Udayarathne began crying because of the injustice and violence done to him. While he was crying, others remanded with him advised that he go to the welfare office at the prison. He went and told all about the incident to a welfare officer. The welfare officer dispatched a prisoner as messenger to the jailors asking the reason why they would not allow Udayarathne to go home. A little while later, the messenger returned and said that the jailors asked Udayarathne to come to the office. He went to the prison office where the jailors scolded him saying, "Why did you go to see the welfare officers and tell them about the incident?" The jailors again put Udayarathne back into a cell.

At 6am when cells were opened for breakfast, Udayarathne did not go to eat but appealed to a jailor to let him go. He said, "We will let you go only when we want to let you go. If you are going to argue with us, I will slap you."

At 1:30pm while in a cell, Udayarathne was told to come to the office where he was told him to get ready to go to Negombo Prison. He told them that he was released on bail and did not need to go to Negombo Prison. He also

reiterated that there was no case against him. However, the jailors ignored him and sent him to Negombo with two prison guards reaching the prison at 5pm. The jailors at Negombo Prison refused to admit Udayarathne, saying that there was no reason to admit him.

At 8:30pm Udayarathne was again brought back to Kegalle Prison. He saw the FIC Jayathilaka Banda at the entrance of the prison. As Udayarathne entered the prison, three jailors began scolding and ridiculing him using foul language. He begged, "Please don't scold me. I am so tired. Please ask what happened from the other two who went with me to the Negombo prison." Suddenly Jayathilaka came up to Udayarathne and slapped him. Another jailor joined in the slapping. Yet another ordered him to remove his slippers. When Udayarathne bent down to remove his slippers, the jailor kicked him and he fell to the floor. Then, Jayathilaka kicked him in the stomach, saying, "We will kill you." In like manner, all four jailors beat Udayarathne using both hands and feet. He was then dragged and put him back into the cell. They did not provide any food for his dinner.

As a result of this assault, Udayarathne started vomiting blood and bleeding from his mouth. His left ear was damaged. Stomach pain caused him to lose control of his bowels.

On October 24, he was so sick that he did not wake up and continued sleeping. At 10:30am, a jailor came and said, "Now we are going to release you. But, keep in mind that we are the people who decide to release you or not. You can do nothing until we decide." Even though he was released, he was unable to go home alone and was sitting in a visitor's room of the prison building. He borrowed a mobile phone from a visitor and called home. When his son and a relative came to Kegalle Prison to bring him home, he decided to inform the chief jailor of the prison of the incident. He was allowed to meet the chief jailor telling him the whole story. Then, the chief jailor said, "Oh! They had no right to assault you. Please be seated outside and I will take action on this."

A while later, a jailor came and took Udayarathne to a room where he had earlier been assaulted. The jailor started to take down a statement from him. He related the story in full but the jailor did not write it down. Udayarathne said that the jailors who assaulted him were under the influence of liquor at the time. The jailor told him, "you cannot say that without seeing them drinking." He also said he vomited blood as a result of the assault. But the

jailor refused to write it down saying, “We did not see you vomiting blood, so we cannot write it down.” Due to his repeated appeals, the jailor finally wrote it down.

While the statement was being taken, another jailor came into the room. Udayarathne identified him as one of jailors who assaulted him. He said, “Sir, that jailor also assaulted me.” The jailor taking his statement said, “I can write his name down only if you can tell me his name.” Udayarathne replied “I do not know his name but you know it sir.” However, the jailor did not write down the name. After completing the statement, the jailor asked Udayarathne to write ‘I read the statement and I agree with this’ and sign it. Even though he declined to write down and sign the statement, because it was incorrectly written, he was forced to sign it.

After his release from prison, he went to Dambulla Hospital where he was hospitalized for 6 days. He was later transferred to Matale Hospital and stayed for three days. He was then transferred to Kandy Hospital for a test on his damaged ear and came back to Matale Hospital where he was discharged on November 1. He could not hear out of his left ear due to the assault and is now facing financial problems because of his hospital bills.

### **200. Kurugamage Don Predeep: Unable to walk or stand up straight**

After work, Kurugamage Don Predeep went to a restaurant to have dinner with his friend Laksiri, a driver at the Kalubowila Junction at 8:30pm on November 10 2008. While they were ordering dinner, Pradeep asked Laksiri to put a ‘Reload’ in his cellular phone. (‘Reload’ is one of the card connection systems used in Sri Lanka not requiring a monthly fee. People reload money to the phone by using a reload card.)

An officer named Manoj of the traffic branch of the Kohuwala Police station, without saying a word, suddenly began to beat both Pradeep and Laksiri. Within a short time, a police mobile unit and a team of emergency search and investigation police came to the junction. Five police officers including the driver of the police jeep also started beating them. They beat them using police batons, their hands and legs.

Later they were admitted to Kalubowila Hospital. It is reported that Manoj had the nickname of ‘Reload’ because he took bribes from drivers. He used to tell the drivers that if they wanted to be released, they must give him a reload. He thought that Pradeep and Laksiri insulted him by using the word ‘Reload’.

On November 11, Manoj came to Kalubowila hospital telling them that the acting magistrate had ordered a remand for Pradeep and Laksiri without giving them any further detailed information. Their family members had not been informed about this matter.

On November 12, Pradeep's mother and sister went to the Kohuwala Police station to lodge a complaint. Officers of the police station made them wait for four or five hours and then did not register their complaint.

After being contacted, IP Lakshmen said that according to the police record book, Pradeep and Laksiri were drunk and fell down on the road. Manoj called the police to investigate. The record also noted that the two were admitted to the hospital to get medicine for their wounds. The IP further admitted that he did not know much about the case except for what was in the record book.

Pradeep's brother-in-law Sarath made a complaint to the office of SSP at Mt Lavenia on November 13. Pradeep's relatives also lodged a complaint with the HRC on November 14. At this time, Pradeep was transferred to the Welikada Prison hospital.

A JMO from the Kalubowila Hospital gave instructions to check Pradeep's eyes and ears and get X-rays from the private hospital as there were no facilities at his hospital.

According to his mother, Pradeep's right ear was injured to the extent that he could not hear anything. A spinal vertebra was also damaged making him unable to stand up straight. His body was racked with pain due to the assault by the police.

# APPENDIX

# **Memorandum on the compatibility of the practice of bringing fabricated charges with international human rights standards, national jurisprudence and international standards on policing**

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## **1. Introduction**

This Memorandum has been prepared by REDRESS to provide legal arguments to support the Asian Human Rights Commission in its litigation of cases concerning ‘fabricated charges,’ two of which are described in more detail below. It has been drafted in response to several cases in Sri Lanka in which such charges have been used, often in combination with torture and ill-treatment either to detain and prosecute a person and/or to deter (the pursuit of) complaints of torture. This practice is of utmost concern because it constitutes an abuse of power that undermines the rule of law in Sri Lanka, facilitates the use of torture in the course of criminal proceedings and contributes to impunity.

The Memorandum provides an analysis of the compatibility of such practices with international human rights standards and international standards applying to the conduct of law enforcement officers. It focuses on violations inherent in the use of fabricated charges. The Memorandum does not include an analysis of incidental violations that may and often do occur in cases of fabricated charges, such as denial of custodial safeguards, in particular the right to access a lawyer and the right to habeas corpus, torture and ill-treatment, and a violation of the right to be tried within a reasonable time.<sup>1</sup> The legal standards pertaining to these violations, some of which were alleged in the two cases described below, and the arguments to be made would need to be analysed, in addition to the issue of ‘fabricated charges,’ taking into account the circumstances of the case at hand.

The term ‘fabricated charges’ denotes a practice where the police knowingly bring unfounded charges against an arrested or detained person, which may serve one or several of the following purposes:

- (i) justifying the initial arrest and/or continued detention of a person, including preventing that a person is released on bail; and
- (ii) securing a conviction against a person.

The case of Dodampe Gamage Asantha Aravinda illustrates this practice. According to the Asian Human Rights Commission:

“Dodampe Gamage Asantha Aravinda, a young man was traveling on a motor scooter with a friend when he was struck behind by a truck. In the accident Aravindra’s friend suffered injuries while Aravindra was thrown to the side of the road. The truck driver, who was a businessman in the area, ran from the scene and came back with a group of policemen from the Pitabaddara Police Station, Matara. The group included the Officer-in-Charge of the station. The policemen arrested Aravindra and assaulted him severely. When he cried for help and asked for water, instead of water the truck driver offered him a cup containing acid. When Aravindra refused to drink it, the acid was thrown in his face. The police later took Aravindra and his friend to the police station and held them for several days without medical treatment. Finally due to the pressure exercised by the families, they were brought to a hospital where the doctors declared that Aravindra had permanently lost the use of one eye. In the meantime, the Officer-in-Charge of the station filed charges against Aravindra for being in possession of a live bomb and stated in the report to the Magistrate that some unknown person had thrown acid in Aravindra’s face. Due to the fact that it was dark at the time the acid thrower could not be identified. As one of the fabricated charges filed, the possession of a live bomb, is a non-bailable offense, the victim who suffered the acid attack and lost the sight in one eye is now in remand prison while the acid thrower remains at large. Despite of complaints made to the Assistant Superintendent of Police, Akuressa, other senior police authorities in the area, the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission, about the acid attack and the fabrication of charges, no inquiries have been held and nothing has been done to release Aravindra from the fabricated charges.”

The police may also, in addition or separately, fabricate charges against a person (or threaten a person with bringing such charges) who has complained about torture and/or other forms of ill-treatment in order to deter him or her from pursuing such complaint further.

This is what happened in the case of Sarath Kumara Naidos according to the Asian Human Rights Commission:

“Sarith Kumara Naidos is a young construction worker. He was arrested on the 5th July 2008, at noon at a place close to his sister’s house where he was residing. From the moment of arrest, members of Mr. Naidos’ family visited him several times each day at the Moratuwa Police Station where he was being held. The family members and others, including two lawyers, heard his complaint that he was being beaten severely several times a day and that the police officers were demanding that he should hand over the gold he was supposed to have stolen. Pleas by him and his family that they were unable to return what they had not stolen were of no avail. From the 5th to the 13th July he was held at this police station. The family members made complaints, including written complaints to the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission with regard to illegal detention and torture and pleading that Mr. Naidos be brought before a magistrate. Angered by these complaints, the police filed an added charge when he was finally produced before a magistrate on the 13th July. According to this charge Mr. Naidos was arrested in possession of 2,300 milligrams of heroin at 11:30 p.m. on the night of the 12th. As Mr. Naidos was in police custody from the 5th to the 13th July it was physically impossible for him to have been found in this manner on the evening of the 12th. The charge of possession of such a quantity of heroin is a non-bailable offense and if proved also carries the death sentence. The complaints made to the Superintendent of Police, Moratuwa, other local police authorities, and the offices mentioned above have not lead to any inquiries. Despite of lengthy representations with oral and written evidence in proof of the illegal detention and torture of Mr. Naidos, nothing has yet been done to release him and take action against the officers who have fabricated the charges.”

An obvious challenge to using the concept of ‘fabricated charges’ is the difficulty of determining whether charges are genuine, i.e. based on sufficient prima facie evidence, or the result of the deliberate framing of the person concerned. This is essentially an evidentiary matter, the outcome of which depends on the circumstances of the case concerned and the applicable rules of evidence. The following considerations are based on the assumption that it can be shown that the charges were unfounded and the police knew them to be unfounded.

## **2. Violations of due process and fair trial rights**

### **2.1. Violation of the right to liberty and security of the person**

Article 9 (1) ICCPR requires that any arrest and/or detention must be carried out in accordance with the law and must not be arbitrary: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary

arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

**(i) Lawfulness: The existence of reasonable suspicion**

There is often no information or facts to warrant an arrest and/or detention. Subsequently, the police may plant evidence or obtain it by unlawful means, prior or subsequent to the arrest, to show that facts and/or information existed that would have justified the arrest. An arrest that is not based on the existence of facts and/or information according to which the person concerned may have committed a criminal offence is unlawful.

The European Court of Human Rights elaborated on the meaning of ‘reasonable suspicion’ in the case of *Gusinkiy v Russia*:

“The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 29-30, § 53). Neither is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). **However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words “reasonable suspicion” mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence** (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32). [Emphasis added].”<sup>2</sup>

“...[What] may be regarded as ‘reasonable’ will ... depend on all circumstances of case”

as held by the Court in the case of *Fox, Campbell and Hartley v. the United Kingdom*.<sup>3</sup>

Most domestic laws that govern the arrest of a person suspected of having committed a criminal offence require an arrest to be based on a reasonable

suspicion. The arrest of a person irrespective of any available evidence against him or her with a view to obtaining a confession/information by unlawful means and/or fabricating charges (either from the outset or subsequently) in order to justify prosecution will be contrary to most if not all national laws.

National courts have repeatedly found arrests unlawful where the police had failed to show that there were sufficient factual grounds for a ‘reasonable suspicion.’

The Tonga Court of Appeal, in the case of *Fifita & Anor v Fakafanua*, held that:

“the respondent was not arrested on reasonable grounds of suspicion of having committed an offence but simply because the police wanted to interrogate him” and that “assumed facts do not provide any grounds for suspicion.”<sup>4</sup>

The Constitutional Court of the Seychelles found in *Charles v. The Attorney General* that:

“In the case of ‘reasonable suspicion’ for the burden to be discharged the state’s evidence must disclose the grounds for so holding (*Talma v Sauzier* 1974 SLR 163 applied). However, in this case, there is only a bare averment regarding the issue in the affidavits of the two arresting police officers which does not disclose any act done or even the presence of C at the scene of the fire. In these circumstances, the burden has not been discharged....”<sup>5</sup>

The Sri Lankan Supreme Court has found a violation of the fundamental right to liberty under Article 13 (1) of the Constitution in several cases where a reasonable suspicion was lacking, such as in *Hewagam Korallalage Maximus Danny v IP Sirinimal Silva & Ors*:

“Therefore for the petitioner to be lawfully charged under the Ordinance there must have been evidence that he had committed an offence under it. However, there was neither a complaint nor any reasonable suspicion that he had done so as he was merely a passive occupant staying overnight with a companion. In these circumstances his arrest was clearly unlawful violating his fundamental rights under Art 13(1).”<sup>6</sup>

## (ii) Arbitrariness

Intentionally bringing charges that are unfounded, i.e. not based on facts and/or information obtained lawfully, as a means of justifying arrest and/or continued detention grossly violates the fundamental tents of due process of law. An arrest and/or the detention of a person based on such charges would be arbitrary.

Even where an arrest may be lawful under applicable domestic law, the arrest and detention of a person may violate the right to liberty and security of the person if it were arbitrary. According to the decision of the Human Rights Committee in *Mukong v. Cameroon*:

“Arbitrariness is not to be equated with ‘against the law’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law... remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances...”<sup>7</sup>

The Inter-American Court of Human Rights applied the notion of arbitrariness in the case of *Gangaram Panday v. Suriname*:

“No one may be subjected to arrest or imprisonment for reasons and using methods that – although classified as legal – can be considered incompatible with regard for the fundamental rights of the individual, because they are, among other matters, unreasonable, unpredictable, or disproportionate.”<sup>8</sup>

Following the initial arrest and investigation, any continued detention must be based on specific charges. Moreover, according to the Human Rights Committee in the case of *Mukong v Cameroon*:

“remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances,”<sup>9</sup> and, “in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification.”<sup>10</sup>

Deliberately accusing someone of a crime that he or she has not committed and laying charges to this end violates fundamental principles of criminal justice, in particular the presumption of innocence. Arresting someone on those grounds and/or seeking to remand or remanding him or her in custody on the basis of charges known to be false for which no appropriate justification can be provided (even where there had been a reasonable

suspicion at the time of arrest) constitutes an apparent injustice that is clearly not reasonable in the circumstances.

There is ample national jurisprudence by courts that have applied notions of ‘arbitrariness’ in finding a breach of fundamental rights of liberty and security and/or the commission of the tort of ‘false imprisonment,’ often in combination with the tort of ‘malicious prosecution.’

The Sri Lankan Supreme Court has in several instances found a violation of the fundamental right to liberty in cases of fabricated charges on the grounds that conclusions resulting in arrest and detention were “wilfully false, perverse and unreasonable.”<sup>11</sup> In addition, the Court held that arbitrariness may be inferred where the police fails to file a plaint in connection with a charge within a reasonable time, in particular where other evidence corroborates the arbitrary nature of arrest or detention.<sup>12</sup>

Arrest and detention will also be arbitrary if the public authority acted *mala fides*, i.e. abused its power where it cannot be established that it genuinely pursued the purposes it avowed to pursue. The Court of Appeal in Malaysia held in *Mohamad Ezam Bin Mohd. Noor & Ors v Inspector General of Police* that this was the case where petitioners were detained for questioning about their political beliefs rather than the purported national security grounds.<sup>13</sup>

Arrests and detentions that are malicious are by their very nature arbitrary. As held by the Judicial Committee of the Privy Council in *Harracksingh v Attorney General of Trinidad & Tobago & Anor*:

“If illegal acts are really done for some motive other than an honest desire to execute a legal duty and without an honest belief that they are done legally, e.g. from a desire to injure a person, then the Act is no defence (dicta of Scrutton LJ in *Scammel and Nephew Ltd v Hurley* [1929] 1 KB 419 at page 427 applied). ...The charging of a person with an offence, which the arresting officer knows he has not committed, necessarily involves a lack of honest belief on the part of the officer, and his motive can only have been improper, and liability for malicious prosecution in such a case is ‘irresistible’.<sup>14</sup>

## **2.2. Violation of the right to presumption of innocence**

Arresting and detaining a person, and even seeking to prosecute him or her on the basis of charges known to be unfounded, which may be accompanied by efforts to corroborate such charges by means of coercion, reliance on false witness statements, planting of evidence or other methods designed to

falsely implicate a person is fundamentally opposed to the presumption of innocence.

The presumption of innocence is a fundamental principle of criminal proceedings enshrined in article 14 (2) of the ICCPR and recognised in all regional human rights treaties.<sup>15</sup> According to the General Comment 32 of the Human Rights Committee on article 14:

“The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of the doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”<sup>16</sup>

The presumption of innocence is so fundamental to criminal justice that there is a high threshold for the establishment of guilt. The Inter-American Court of Human Rights, for example, has emphasised the importance of the presumption of innocence in the case of *Calderon v Ecuador*, where it made clear that:

“This Court has stated that the principle of presumption of innocence constitutes a foundation for judicial guarantees. ... It would constitute a violation to the Convention to keep a person whose criminal responsibility has not been established detained for a disproportionate period of time. This would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law.”<sup>17</sup>

Accordingly, prosecutors and investigators must do their utmost to establish the facts, identify the perpetrators and bring charges where the evidence warrants it provided it has been obtained in the course of investigations complying with international standards.<sup>18</sup> Seeking to portray a person as guilty knowing that there is no evidence to support such claim, constitutes a violation his or her right to be presumed innocent and perverts the course of justice.

### **3. Right to an effective remedy and reparation in case of arbitrary arrests and detention**

International human rights treaties, in particular article 2 (3) of the ICCPR, provides victims of violations with the right to an effective remedy. The act of

wrongfully arresting and/or detaining a person on the basis of charges known to be unfounded gives rise to the right to a remedy and entails a duty of the state authorities to investigate those responsible for the violation, and to prosecute and punish them accordingly.

### **Cessation (release) and the duty to investigate violations**

Anyone who has been arrested must have the possibility to challenge promptly the lawfulness of detention and, in regular periodic intervals, the lawfulness of continued detention.<sup>19</sup> The cessation of an ongoing violation, which would, in the case of fabricated charges, consist of release from custody in order to stop the continued unlawful detention (or to prosecute the person without undue delay),<sup>20</sup> constitutes an integral part of the right to an effective remedy.

State parties also have a positive obligation to investigate allegations of violations and to take appropriate measures, including sanctions against the perpetrators, in order to prevent repetition. These principles have been recognised by the UN Human Rights Committee in its General Comment 31:

“Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States Parties’ establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. ... A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.”<sup>21</sup>

In case of complaints that detention is arbitrary because it is based on fabricated charges, or where a judicial body orders the release of a detainee on such grounds, the competent authorities should commence a prompt, impartial and effective investigation with a view to establishing the facts and to identifying the persons responsible. Where the latter have acted unlawfully or have even committed a criminal offence, the person(s) concerned should be subject to disciplinary or criminal proceedings, as appropriate, and should be given adequate punishments.<sup>22</sup>

## Compensation

Victims of arbitrary arrests and detention are entitled to compensation and other forms of reparation.

Article 9 (5) of the ICCPR explicitly stipulates a right to compensation for the victims of unlawful arrest or detention: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

The Human Rights Committee has found in a series of decisions that states parties are under an obligation to provide adequate compensation in cases of arbitrary arrest and detention, without, however, specifying the amount of compensation.<sup>23</sup>

In case of arbitrary arrest and/or detention based on false charges, any award should reflect the material damages and the mental harm due to the powerlessness stemming from the knowledge that the law enforcement authorities deliberately fabricated such charges. According to the Human Rights Committee, states parties must make reparation, which comprises compensation and other appropriate forms:

“Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”<sup>24</sup>

According to the jurisprudence of regional human rights courts, victims of violations of their right to liberty are entitled to material damages, which need to be proved, and to moral damages proportionate to the violation. Human rights courts have awarded moral damages for arbitrary arrest and detention for the distress, anxiety and frustration suffered by the victim, for example the European Court of Human Rights in the case of *Rakevich v Russia*:

“The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary loss. She referred to the emotional stress and anxiety caused by her detention in the psychiatric institution. She underlined that she had also felt helpless because of the manner in which her detention had been effected and the inability to challenge it.

The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, § 96). This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered prejudice requiring financial compensation. In the present case, it is reasonable to assume that the applicant suffered distress, anxiety and frustration because her detention, for many days, was not based on a judicial decision.

Deciding on an equitable basis, the Court awards the applicant EUR 3,000 under this head.”<sup>25</sup>

There is ample national jurisprudence according to which anyone who knowingly arrests and/or detains someone without lawful grounds or arbitrarily incurs liability for the tort of false imprisonment. In addition, bringing a prosecution on the basis of fabricated charges gives rise to liability for the tort of malicious prosecution. For example, in the case of *Thompson v Commissioner of Police of the Metropolis*; *HSU v Commissioner of Police of the Metropolis*, the police were found by the jury to have deliberately fabricated a case of assault on police officers against both of the plaintiffs to cover up their previous wrongdoing, i.e. in once case physical assaults and racial abuse before arrest.<sup>26</sup> The Court awarded aggravated and exemplary damages to both plaintiffs for several violations, including wrongful arrest, false imprisonment and malicious prosecution.

The Supreme Court of the Bahamas held in *Tynes v. Barr*, that, whilst “special damages must be strictly proven”, “damages for the tort of assault, battery and malicious prosecution were at large.” As such, there is no limit to the amount of damages, which:

“should include an amount for the humiliation, i.e. the injury the plaintiff had endured to his dignity and pride; mental suffering (as the plaintiff suffered from claustrophobia); and loss of reputation.”<sup>27</sup>

The Nigerian Supreme Court held in *Odugu v. Attorney-General of the Federation & Ors* that:

“Compensation in cases such as this should reflect not only the actual pecuniary loss of the victim but also the abhorrence of society and the law for such gross violations of human rights. This is especially so for cases involving a breach of personal liberty, which is a commodity of an inherently high value. An unwitting trivialisation of a serious matter by an inordinately low award should be avoided.”<sup>28</sup>

Awards in tort cases frequently include exemplary damages for ‘oppressive, arbitrary or unconstitutional action.’<sup>29</sup>

Courts have frequently awarded compensation for a breach of the right to liberty in fundamental rights cases. In South Asia, the Indian Supreme Court has awarded damages for a number of pertinent fundamental rights violations since its judgment in the case of *Rudul Shah v. State of Bihar* in 1984, which concerned unlawful detention. Justice Anand specified, in the case of *Nilabati Behera v State of Orissa*, that in fundamental rights cases:

“the compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty [of not protecting the fundamental rights of its citizens] and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.”<sup>30</sup>

“The quantum of compensation will depend upon the peculiar facts of each case... [and is] awarded by the court (and paid by the state) to redress the wrong done...,” as held by the Indian Supreme Court in the D.K. Basu case.

The High Court of Sind, Karachi, Pakistan, held in *Mazharuddin v State*, a case of unlawful arrest where there was no “material whatsoever before the court to show that M’s arrest was legal or that there were reasonable grounds for believing that M was involved in an alleged offence (Government of Sindh & Ors v Raeesa Farooq & Ors 1994 SCMR 1283 (Pak SC) followed)” that:

“No credit whatsoever could be attached to his statement, which had been falsely made to cover up the illegality of his action.”... “The right to recover compensation, provided for under the CPC, is now internationally recognised

in Art 9(5) of the International Covenant on Civil and Political Rights. Such compensation is payable by way of a public law duty of the state and its officers and is independent of the private rights that a citizen may have to claim damages in tort through ordinary proceedings... The amount of such compensation should be determined by the court in its discretion, keeping in view the principles applied in awarding general damages in cases of false imprisonment and exemplary damages in cases of mala fide conduct of public officers under the law (dicta of Kaikaus J in *Nawab Din v Muhammad Yousuf* PLD 1957 Lahore 283 (Pak Lah HC) followed). Special damages sustained by a victim of unlawful imprisonment, however, can only be proved through ordinary civil suit. Compensation ought to be substantial and not nominal.”<sup>31</sup>

The Sri Lankan Supreme Court has also awarded compensation in several cases of unlawful arrest and detention constituting a breach of the fundamental right to liberty, such as in *Weerawansa v. Attorney-General & Ors*, *Hewagam Koralalage Maximus Danny v IP Sirinimal Silva & Ors* and *Faiz v. Attorney-General & Ors*.<sup>32</sup>

#### **4. Violation of the right to complain of torture and the duty to investigate allegations of torture promptly, impartially and effectively**

Bringing charges known to be false as a means of deterring (the pursuit of) complaints about torture constitutes a violation of the right to complain of torture and the state’s duty to investigate allegations of torture promptly, impartially and effectively.

Article 13 of the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment stipulates a right to complain about torture and to have the complaint investigated promptly, impartially and effectively. States have a corresponding obligation under international human rights treaties, such as article 12 of the UNCAT and article 7 of the ICCPR, to conduct such investigations following a complaint or *ex officio*.

Article 13 of the UNCAT expressly requires states to take steps:

“to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Article 33 (4) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that:

“Neither the detained or imprisoned person nor any complainant ... shall suffer prejudice for making a request or complaint.”

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law recognise that states should:

“... ensure their [victims and their representatives] safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims.”<sup>33</sup>

A person who complains about torture or ill-treatment may subsequently be charged with an offence related to the alleged torture, for example having resisted police officers (and incurred injuries in the process), or any other offence, which may relate to the initial arrest or a separate incident.

Bringing such charges will constitute a violation of the right to complain about torture if the charge is unfounded and the state authorities take such action in response to the complaint and in order to deter the person from pursuing the complaint further. The obstruction of an investigation intended by such conduct will also constitute a violation of the state’s duty to investigate a complaint promptly, impartially and effectively. The same reasoning applies to unfounded charges being brought against any person in anticipation of any complaint if it is clear that its purpose is to deter him or her from pursuing a complaint.

The Committee against Torture, in its conclusions and recommendations on Germany’s state party report, expressed its concern about:

“Some allegations that criminal charges have been brought, for punitive or dissuasive purposes, by law enforcement authorities against persons who have brought charges of ill-treatment against law enforcement authorities.”<sup>34</sup>

Fabricated charges brought against the relatives of the complainant or his or her lawyer also constitute a violation of the right to complain if they are aimed at deterring the complainant him or herself from pursuing the complaint.

In the case of *Kurt v. Turkey*, the applicant's son had been forcibly disappeared by soldiers and village guards. Subsequent to the applicant filing a petition to the then European Commission on Human Rights, the Turkish Government charged the applicant's lawyer with aiding and abetting the PKK, which was considered a terrorist organisation in Turkey at the time. The Court held that the bringing of charges constituted an interference with the applicant's right to petition the Commission:

“The Commission concluded that the authorities had not directly coerced the applicant. Nevertheless, and with particular regard to the circumstances of the applicant's two visits to the notary in Bismil, they had applied improper indirect pressure in respect of her complaint to the Convention institutions. Furthermore, the threatened criminal proceedings against the applicant's lawyer also gave rise to a serious interference with the exercise of the right of individual petition.

As to the threat of criminal proceedings invoked against the applicant's lawyer, the Court does not agree with the Government's assertion that these were unrelated to the application lodged with the Commission (see paragraph 157 above). The threat of prosecution concerned the allegations which Mr Şakar made against the State in the application which he lodged on Mrs Kurt's behalf. While it is true that the statement of complaint which was submitted to the Commission contained allegations which were found to be false and which Mrs Kurt herself repudiated, it must be stressed that the task of examining the substance of particular complaints falls to the Commission in the context of its fact-finding powers and having regard to the procedures which the Convention offers the respondent State to challenge the merits of the accusations levelled at it. It is not for the authorities to interfere with that process through the threat of criminal measures against an applicant's representative.

For the above reasons, the moves made by the authorities to institute criminal proceedings against the applicant's lawyer, even though they were not followed up, must be considered an interference with the exercise of the applicant's right of individual petition and incompatible with the respondent State's obligation under Article 25.”<sup>35</sup>

## **5. Standards for law enforcement officials and prosecutors and abuse of power**

The practice of fabricating charges in order to justify arrest and/or detention and/or to dissuade persons from pursuing complaints about police

misconduct, in particular torture, constitutes an abuse of power that violates internationally recognised standards of policing.

International standards on policing are based on the principle that law enforcement officials must adhere strictly to the law and respect national and international human rights standards. Article 1 of the UN Code of Conduct for Law Enforcement Officials<sup>36</sup> stipulates that:

“Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.”

According to Article 2 of the Code of Conduct:

“In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”

Any abuse of power, including by means of fabricating charges, with which the police has been vested for the public good is fundamentally incompatible with these principles.<sup>37</sup>

The European Code of Police Ethics adopted by the Council of Europe<sup>38</sup> specifies police duties in the course of the exercise of their functions, in particular criminal investigations, such as that:

“Police must always verify the lawfulness of their intended actions”...“Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence of crime” and “Police investigations shall be objective and fair...” Moreover, “Public authorities shall ensure effective and impartial procedures for complaints against the police.”

It is evident that the bringing of fabricated charges, be it as a means of justifying arrest and/or detention and/or to secure a conviction or as a means of deterring complainants, violates the fundamental principles laid down in the European Code of Ethics.

The principle of respecting the rule of law and human rights also applies to prosecutors. The Guidelines on the Role of Prosecutors<sup>39</sup> stipulate that

“Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.”

This imposes a specific duty on prosecutors to act where they become aware that charges may have been the result of fabrication. If a prosecutor finds this to be the case, he or she should also seek to establish the methods used to obtain evidence against suspects and other forms of misconduct, and shall investigate and prosecute those responsible accordingly, as stipulated in paragraphs 15 and 16 of the Guidelines:

“Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

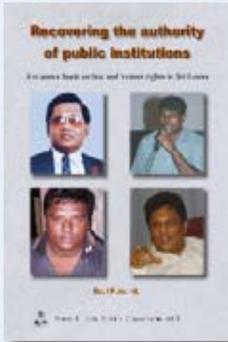
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1. These rights are guaranteed in particular in articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR).
  2. *Gusinskiy v. Russia*, (Application no. 70276/01, 19 May 2004), para.53.
  3. *Fox, Campbell and Hartley v. the United Kingdom* (Application no. 12244/86; 12245/86; 12383/86, 30 August 1990), para.32.
  4. *Fifita & Anor v Fakafanua*, [2000] 1 LRC 733.
  5. *Charles v Attorney General*, Constitutional Case No 5 of 1998, unreported; (2002) 3 CHRLD 316.
  6. *Hewagam Koralalage Maximus Danny v IP Sirinimal Silva & Ors SC* (Application) No. 488/98, unreported; (2000) 3 CHRLD 210.
  7. *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), para.9.8.
  8. *Case of Gangaram Panday v. Suriname*, (Merits, reparations, and costs), Judgment of January 21, 1994, Series C No. 16, para. 47.

9. *Mukong v. Cameroon*, supra n.7, para.9.8.
10. *Mr. C v. Australia*, Communication 900/1999, UN Doc. CCPR/76/D/900/999, 28 October 2002, para. 8.2: "As to the claims relating to the first period of detention, in terms of article 9, paragraph 1, the Committee recalls its jurisprudence that, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification."
11. *Weerawansa v. Attorney-General and others*, [2000] 1 LRC 407; (2000) 3 CHRLD 211.
12. *Faiz v Attorney-General & Ors*, [1996] 1 CHRLD 79.
13. *Mohamad Ezam Bin Mohd. Noor & Ors v Inspector General of Police, Court of Appeal, Malaysia*, (2002) 4 MLJ 449; (2003) 4 CHRLD 91.
14. *Attorney General of Trinidad & Tobago & Anor*, [2004] UKPC 3.
15. Article 6 (2) of the European Convention on Human Rights, Article 8 (2) of the American Convention on Human Rights, and Article 7 (1) (b) of the African Charter on Human and Peoples' Rights.
16. Human Rights Committee, General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para.30.
17. *Case of Acosta Calderón v. Ecuador* (Merits, Reparations and Costs), Judgment of 24 June 2005, Serie C. No.129, para.111.
18. See also Guidelines on the Role of Prosecutors, discussed in more detail below at (5).
19. See in particular article 9 (4) of the ICCPR.
20. *Cagas v. Philippines*, Communication No. 788/1997, UN Doc. CCPR/C/73/D/788/1997, 23 October 2001, para.9.
21. Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para.15.
22. *Bautista de Arellana v Colombia*, Communication No. 563/1993, UN Doc. CCPR/C/55/D/563/1993, para.8.6.
23. See, for example, *Fernando v. Sri Lanka*, Communication No.1189/2003, UN Doc. CCPR/C/83/D/1189/2003, 10 May 2005, paras. 9.2 and 11; *Rouse v. The Philippines*, Communication No. 1089/2002, UN Doc CCPR/C/84/D/1089/2002, 5 August 2005, paras. 7.7, and 9, and *Marques v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002, 18 April 2005, paras. 6.1- 6.6 and 8.
24. Human Rights Committee, General Comment 31, supra n. 21, para.16.
25. *Rakevich v Russia* (Application no. 58973/00, 28 October 2003), paras.50, 52 and 53.
26. *Thompson v Commissioner of Police of the Metropolis; HSU v Commissioner of Police of the Metropolis*, [1997] 2 All ER 762; (1997) 2 CHRLD 161.
27. *Tynes v. Barr*, (1992) 45 WIR 7; [1996] 1 CHRLD 117.
28. *Odugu v. Attorney-General of the Federation & Ors*, [1996] 6 NWLR (PT 456) 508; [1996] 3 CHRLD 432; [2000] 2 HRLA 82.
29. See for example *Samuels v The Attorney General*, Judgment of the Jamaican Supreme Court, [1996] 1 CHRLD 120.

30. *Nilabati Behera v State of Orissa* (1993) 2 SCC 746 (Ind SC).
31. *Mazharuddin v State*, P Cr LJ 1998 1035; (1998) 2 CHLRD 305.
32. *Weerawansa v. Attorney-General & Ors*, supra n.11, *Hewagam Korallalage Maximus Danny v IP Sirinimal Silva & Ors*, supra n.6 and *Faiz v. Attorney-General & Ors*, supra n.12.
33. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 16 December 2005, Principle 12 (b).
34. Conclusions and recommendations of the Committee against Torture: Germany, UN Doc. CAT/C/CR/32/7, 11 June 2004, para.4 (b).
35. *Kurt v Turkey*, (15/1997/799/1002, 25 May 1998), paras.158, 164 and 165.
36. UN Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979.
37. See, for example, commentary to article 7 of the Code of Conduct for Law Enforcement Officials.
38. The European Code of Police Ethics, Recommendation Rec(2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum.
39. Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.







This book makes a shocking revelation. It confirms that all those who suffer human rights abuses face the same fate that the assassinated journalist, Lasantha Wickramatunga, predicted for himself in addressing the President of Sri Lanka. "In the wake of my death I know you will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry. But like all the inquiries you have ordered in the past, nothing will come of this one, too."

This book is the product of nearly 15 years of work of many persons. Literarily, thousands of persons were interviewed and hundreds of cases were pursued over the course of several years. This journey took us to magistrate's courts, high courts, the Court of Appeals, the Supreme Court and on some occasions, the United Nations Human Rights Committee. On all these occasions we had the opportunity to observe how the government of Sri Lankan and its agencies acted in the face of the serious complaints raised in these cases. The basis of this book is the detailed records of these cases.

Two hundred cases of police torture, mostly from the South, have been summarised here. During most of this period, parts of the North and East were not under the control of the government of Sri Lankan. However, these cases are from the areas under government control and from places far away from the conflict. Therefore, they speak of a far greater crisis of the Sri Lankan political and legal system than the ethnic conflict.

For many years the AHRC has commented on the crisis of the rule of law system in Sri Lankan and these views have been shared with a large audience for a considerable time. The analysis of the problem has found the agreement of almost everyone, except those who are professionally obliged to deny that human rights violations exist in the country. No part of this book can be said to be an exaggeration. Perhaps on the other hand, it may be justified to say that these revelations are, in fact, an understatement of the actual situation.



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