

Sri Lanka: Report on torture cases

The Asian Human Rights Commission (AHRC) has compiled a report of 1500 cases of police torture in Sri Lanka between 1998 and 2011. This particular report summarizes 323 of the most serious cases of torture. The most notable finding of this report is that almost all of the victims whose cases were summarized were randomly selected by the police to be arrested and detained for a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges.

The failure of the complaints system

The reason for such arrests lies in the inefficiency and ineffectiveness of the complaint system. Firstly, complaints give rise to opportunities for the police to make social, political or financial gains, by means of bribery or extortion of the victims. If victims fail to pay these bribes, they may be tortured. There are numerous complaints made by citizens regarding crimes and disputes that the police are unable to resolve by way of competent criminal justice enquiries. The inaction of the police leads to a rise in public pressure which the police counter by randomly selecting people, usually from those of less privileged socio-economic statuses, as perpetrators of these crimes. These unsuspecting people rightly deny their involvement in the crime in question, and torture is used to force them to sign confessions written by police officers. There may be occasions in which the police are able to determine who the true offender is, but these offenders are often well-experienced in the art of bargaining with the police and manoeuvring the criminal justice system, and are thereby kept from their rightful punishments.

The loss of command responsibility

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

The failure of ASPs to supervise police stations

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

high-ranking officers are supposed to supervise the OIC and other police officers, and ensure that police duties are carried out with efficiency and professional integrity. However, such responsibilities exist only in name, and are rarely carried out in practice.

The control of the policing system by politicians

At this point, an examination of the factors that led to this deplorable state is required. It is clear that the 1978 Constitution had an extremely negative effect on the policing system. This constitution led to the politicization of the police by politicians-- particularly the President and the Minister of Defense, as well as powerful members of the ruling party--who began to control the actions of the police. Since professional etiquette had to be flouted in order to meet the needs of these politicians, investigations were not carried out according to the rule of law. Politicians would demand for certain citizens to be arrested or released for reasons of social gain or political expedience. Police officers have repeatedly said that to deny requests from high-ranking state officials would result in demotions, transfers or even the loss of their jobs. Nevertheless, this is not a sufficient excuse for their departure from the procedures of the law. The law states that police officers should not obey any orders other than lawful orders from lawful superiors, i.e. the OIC up to the IGP. However, this hierarchical order embodied in the command responsibility doctrine does not operate effectively in Sri Lanka. As a result, the policing system is failing. Moreover, the police officers themselves have lost confidence in the political system due to their constant need to grapple with the internal contradictions of the inability to enforce command responsibility and a presumed obligation to use their roles to meet the needs of politicians.

A few case examples

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

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

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

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

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

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

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

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

Why has this system ruptured?

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

The constitutional reasons for the collapse of the police--Replacing legal mechanisms with extra-legal measures

The fissures within the institution of the police are symptomatic of a deeper collapse of the rule of law in Sri Lanka. The 1978 Constitution paralyzed public institutions. The 17th Amendment, which introduced a system of credible selection of higher officers on the basis of merit rather than political interference, was passed to remedy the effects of this constitution. However, the 17th Amendment was indirectly abolished by the 18th Amendment, which nullified the statutes outlined in the 17th Amendment. As a result, there is no working rule of law system in Sri Lanka. In the absence of such a system, the state must rely on extralegal methods to control crime and other forms of civil unrest. Numerous problems then arise

because it is not possible to control extralegal methods through legal means. Those who adopt ad hoc mechanisms to deal with civil unrest cannot be expected to act according to the rule of law. It is this difficulty that makes it almost impossible for Sri Lankan society to effectively counter police torture, extrajudicial killings, disappearances and corruption. When all effective mechanisms are extralegal, and there is no legal mechanism that functions effectively, the rules by which society operates lack structure and order.

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

Impossibility of investigations into state approved extra-legal actions

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

Stopping investigations into torture by Special Investigations Unit of C.I.D

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

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

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

Stopping inquiries by the National Human Rights Commission

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

The changes in the adjudication of Fundamental Rights cases

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

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

Delays and absence of witness protection

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

Displacement of the law

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

on extralegal forces to control civil unrest and other illegalities. Thereafter, there is greater potential for military agencies to play a primary role in the maintenance of societal control.

Criminals allowed function as enforcers of law

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

The executive is above the law

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

Please see the link to the report: <http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011/>