



ASIAN LEGAL RESOURCE CENTRE

AN NGO WITH GENERAL CONSULTATIVE STATUS WITH THE ECOSOC OF THE UN
19 Floor, Go-Up Commercial Building, 998 Canton Road, Kowloon, Hong Kong
Tel:+(852)2698-6339 . Fax: +(852) 2698-6367 . E-mail: alrc@alrc.net . Web: www.alrc.net

Systematic and widespread torture by state institutions in Sri Lanka and absence of effective remedies for victims and their family members

**An alternative report to the second periodic report of
Sri Lanka to the Committee against Torture**

**Presented by the
Asian Legal Resource Centre**

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Glossary of terms

AG	: Attorney General
AHRC	: Asian Human Rights Commission
ALRC	: Asian Legal Resource Centre
ASP	: Assistant Superintendent of Police
CAT	: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CATA	: Convention against Torture Act (Act No 22 of 1994) of Sri Lanka
CHR	: UN Commission on Human Rights
CID	: Criminal Investigation Department
DIG	: Deputy Inspector General (of Police)
DIU	: Disappearances Investigations Unit (of AG's department)
DMO	: District Medical Officer
HQI	: Head Quarter Inspector
HRC	: (National) Human Rights Commission of Sri Lanka
ICCPR	: International Covenant on Civil and Political Rights
ICTY	: International Criminal Tribunal for the former Yugoslavia
IGP	: Inspector General of Police
IP	: Inspector of Police
JMO	: Judicial Medical Officer
NPC	: National Police Commission
OIC	: Officer in Charge
PA	: People's Alliance
PC	: Police Constable
PTPU	: Prosecution of Torture Perpetrators Unit (of AG's department)
RPC	: Reserve Police Constable
Sgt	: Sergeant
SI	: Sub Inspector
SIU	: Special Investigation Unit (of Police)
SSP	: Senior Superintendent of Police
UNP	: United National Party

Preamble

1. The Asian Legal Resource Centre (ALRC) is a regional non-governmental organisation holding General Consultative Status with the Economic and Social Council (ECOSOC), having its registered office at Floor 19, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong Special Administrative Region, People's Republic of China. It submits this document to the Committee against Torture (hereinafter, "the Committee") to coincide with the consideration of the second periodic report of the State party of Sri Lanka to the Committee in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, "the CAT").
2. More broadly, the ALRC has 20 years of experience in human rights and rule of law issues throughout Asia upon which to make its observations. It has actively engaged with international human rights mechanisms throughout this time. Since obtaining General Consultative Status of ECOSOC in 1998 it has regularly made written statements to the annual sessions of the Commission on Human Rights (CHR) on a huge range of issues throughout Asia, and of relevance to the global human rights movement. It has submitted 40 written statements to the 61st session of the CHR. It has submitted a number of alternative reports to various human rights treaty bodies. These include comments on the report of Cambodia concerning the implementation of the CAT (April 2003) and comments on the 16th periodic report of Nepal to the Committee on the Elimination of Racial Discrimination (December 2003). Together with the World Organisation against Torture (OMCT) it submitted an alternative report on state-sponsored violence in Sri Lanka in September 2003 to the Human Rights Committee, and attended the hearings of the committee on the same. This report extensively referred to the endemic nature of torture of Sri Lanka and put forward comprehensive recommendations. In 2004 it also submitted a proposal for a new agenda item under rule 5(4)(a)(ii) of the Guidelines for the Application by the Sub-Commission on the Promotion and Protection of Human Rights, with reference to the exceptional collapse of the rule of law in Sri Lanka (E/CN.4/Sub.2/2004/3, 7 June 2004). In March 2005, ALRC submitted an alternative report entitled "Institutional torture, extra judicial killings and uneven application of law in Thailand" to the Human Rights Committee on the occasion of consideration of the initial report by the State Party Thailand in accordance with the article 40 of the International Covenant on Civil and Political Rights (ICCPR).
3. Staff members of the ALRC have prepared this document in collaboration with colleagues in Sri Lanka based upon their accumulated experience regarding the situation of human rights there, in particular that of torture. The ALRC and its sister organisation the Asian Human Rights Commission (AHRC), have for many years pointed out the use of torture in Sri Lanka through statements, reports, press releases and urgent appeals. The ALRC has also sought to become increasingly involved in specific cases of violations of civil and political rights, with a view to proposing legal and institutional changes in order to prevent further abuses, and ensure punishment for the perpetrators and redress for the victims. The ALRC and AHRC have both increasingly communicated their observations and concerns to the relevant domestic and international agencies. These include the President of Sri Lanka, the Prime Minister, the Attorney General (AG), the Inspector General

of Police (IGP), the chairperson and the commissioners of the Human Rights Commission (HRC), the chairperson of the National Police Commission (NPC), the Special Rapporteur on Torture and other special rapporteurs.

4. The ALRC has submitted a number of written statements on torture in Sri Lanka to the annual sessions of the CHR. To cite a few, in 2000, to the 56th Session, 'Torture and detention in Asia' (E/CN.4/2000/NGO/62); in 2002, to the 58th Session, 'Torture in Sri Lanka' (E/CN.4/2002/NGO/71); in 2003, to the 59th Session, 'Torture committed by the police in Sri Lanka' (E/CN.4/2003/NGO/145); in 2004, to the 60th Session, 'The need for a witness and torture victim protection scheme in Sri Lanka' (E/CN.4/2004/NGO/36) and 'National Human Rights Commission of Sri Lanka in serious need of reform' (E/CN.4/2004/NGO/24) and in 2005, to the 61st Session, 'Threats to lives of torture victims in Sri Lanka and the lack of witness protection' (E/CN.4/2005/NGO/63), 'Threats and intimidation to those who seek justice in Sri Lanka' (E/CN.4/2005/NGO/108) and 'Poor quality staff undermining work of Human Rights Commission of Sri Lanka' (E/CN.4/2005/NGO/54).
5. The ALRC has studied the situation of torture in Sri Lanka in depth for many years. In August 2002 it released a 72-paged, 'Special Report on Torture Committed by the Police in Sri Lanka.'¹ The cases contained therein are attached to this report as Appendix 1. Subsequently, in 2004, ALRC released a 100-paged, 'Second special report: Endemic torture and the collapse of policing in Sri Lanka.'² The cases contained therein are attached to this report as Appendix 2.
6. The ALRC's sister organisation, the AHRC, has issued a number of urgent appeals and updates on the issues of torture, policing, prosecution and judiciary in Sri Lanka during the last 5-8 years through its Urgent Appeals programme. The number of reported torture cases has increased dramatically during the last several years. In 2000, the AHRC issued nine urgent appeals and related updates on torture and policing in Sri Lanka; in 2001, 12 urgent appeals and related updates were issued; in 2002, 37 urgent appeals and related updates were issued; in 2003, 50 urgent appeals and related updates were issued; in 2004, 98 urgent appeals and related updates were issued; and until August 2005, 74 urgent appeals and related updates were issued.
7. All the cases cited in this report have been submitted through the AHRC's Urgent Appeal programme to the UN Special Rapporteur on Torture and other relevant special rapporteurs after receiving the cases from local groups and individuals associated with the AHRC in Sri Lanka. These include the Citizen's Committee for Human Rights, Panadura; Dambulla Human Rights Institute, Dambulla; Families of the Disappeared, Katunayaka; Gampaha Human Rights Front, Gampaha; Human Resource Institute, Polpithigama; Janasansadaya (or People's Forum) in Panadura; Kandy Human Rights Forum, Kandy; Media Resource Centre, Kandy; Organisation for Human Rights, Galle; Organization to Safeguard Democratic and Human Rights, Ratnapura; People against Torture (PAT), Colombo; Right to Life Human Rights Centre, Katunayaka; Rule of Law Centre,

¹ALRC, Special Report: Torture committed by the Police in Sri Lanka, *article 2*, Vol. 1., No. 4, August 2002, Hong Kong

²ALRC, Second Special Report: Endemic torture and collapse of policing in Sri Lanka, *article 2*, Vol. 3. No. 1, February 2004, Hong Kong

Colombo; Socio-Economic Training Institute Kandy (SETIK), Kandy and Wayamba (Northwest) Human Rights Forum, Kurunegala

8. The ALRC has been unique among human rights organisations globally in bringing article 2 of the ICCPR to the forefront of all its work. It is unique in having a bimonthly periodical, *article 2*, named after this integral section of the ICCPR, which is dedicated to raising issues on effective implementation of human rights standards.

Scope

9. The scope of this report is to examine the practice of torture in Sri Lanka as well as the country's justice system, which allows the practice to continue. Any justice system is comprised of state institutions, which are also responsible for implementing the provisions of the CAT. The report thus focuses on the policing, prosecution and judicial systems of Sri Lanka.
10. The cases included in this report are only a fraction of the reported cases of torture during last 5 years. Appendix 1 and Appendix 2 includes number of reported cases of torture in Sri Lanka during the few years prior to 2004. Almost all of the cases referred to in the body of the report are recent reports occurred in 2004 and 2005. Most of these cases have been taken up by the UN Special Procedures and especially by the Special Rapporteur on Torture. Special Rapporteur on Torture has issued urgent appeals in many cases by himself and sometimes jointly with other special rapporteurs. Special Rapporteur on Torture has also cited most of these cases in his reports to the CHR during last few years. Therefore, cases included in this report are factually correct and comes through credible sources of the AHRC. It should be taken into account that there are hundreds if not thousands of unreported cases of torture in Sri Lanka mainly by the police in almost all parts of the country. The cases cited are a representation of the serious crisis faced by the law enforcement officers in terms of endemic torture.

Introduction

11. CAT entered into force on 26 June 1987. Sri Lanka acceded to the CAT on 3 January 1994 without any declaration or reservation. Subsequently, Sri Lanka enacted the Convention Against Torture Act (hereinafter, "CATA") or Act No. 22 of 1994. In accordance with article 19 of the CAT, Sri Lanka submitted its first periodic report "on the measures they have taken to give effect to their undertakings" to the Committee on 27 October 1997, which was due on 1 February 1995. The second report, due on 1 February 1999, was submitted by Sri Lanka on 29 March 2004. Its third periodic report was due on the 1 February 2003.
12. This report begins with responses by Sri Lankan human rights group Janasansadaya, a partner organization of the ALRC and AHRC, on the "List of issues to be considered during the examination of the third periodic report of Sri Lanka (CAT/C/48/Add.2)"³ by the Committee. The responses are followed by a detailed section examining Sri Lanka's implementation of the CAT provisions.

Responses to the 'List of Issues to be considered during the examination of the Third Periodic Report of Sri Lanka (CAT/C/48/Add.2)'

13. The following are responses to some of the issues raised by the CAT Committee to the Government of Sri Lanka by Janasansadaya, a human rights group based in Panadura, Sri Lanka and a partner organisation of the ALRC and AHRC.

Article 2

5. Please describe the measures taken to strengthen the independence, impartiality and effectiveness of the Human Rights Commission. Please give examples of successful interventions and of progress actually made, with particular emphasis on the 24-hour hotline, the central register of detainees and the effective monitoring of all places of detention. Please inform the Committee about the effectiveness of the National Strategic Plan of Action (2003-2006), in particular its specific programmed to combat torture through effective monitoring and follow-up.

Response

14. Since March 2005 Janasansadaya have observed that the HRC have begun inquiring into complaints made to them regarding police torture and have made recommendations and issued directives to the AG, NPC and IGP, as well as the

³ CAT/C/35/LKA (List of Issues) dated 30/06/2005

police perpetrators, to pay compensation to the victims and take appropriate disciplinary action against the perpetrators.

15. Janasansadaya have also observed that the said “24-hour hotline” does exist. However, those who answer the hotline decline to reveal their identity, making it difficult for victims to follow up on their complaints—for instance, inquiring into what action has been taken or the plight of their loved ones. Furthermore, there are apparently no permanent staff employed to respond to the hotline. After office hours, the hotline is thus connected to the mobile phones of HRC officers who may be otherwise engaged and not in a position to respond immediately. This reduces the efficiency of the hotline.
16. Janasansadaya are unaware of any "Central Register for Detainees". In fact, interviews with the police in May 2004 by the Law & Society Trust failed to reveal the existence of such. Thus to our knowledge this is a fabrication invented to impress the international community.
17. The HRC's powers to monitor places of detention are quite limited. The reason for this is that although the Commission's officers are empowered to enter the main police station building, they cannot enter other buildings within the premises, such as the garage, kitchen or private quarters. From victims' experiences, torture usually takes place in these other buildings, not in the actual police station. To enter other buildings, the HRC must inform the IGP or the Assistant Superintendent of Police (ASP) in advance, which defeats the very purpose of the visit, allowing concealment of any illegal activities.

6. What steps are being taken with regard to prevention, investigation, prosecution and punishment in response to allegations of torture, extra judicial executions, disappearances and other violations of human rights?

Response

18. It would not be false to say that there is neither effective nor comprehensive methodology adopted by the State party to prevent or combat torture. The first step towards prevention must be a firm conviction of the importance of prevention together with the intent to prevent torture. These can be ascertained through statements and policy directives issued by senior government officials and authorities. However, Janasansadaya have not noted any such statements or directives made publicly or privately by the IGP. Rather, his common response, whether made publicly or to individual incidents brought specifically to his attention, is to defend police behaviour—for instance, to justify police action by saying that the officers were using “minimum force” as required by the situation.
19. Furthermore, senior minister Ratnasiri Wickremanayake was recently quoted in the media as saying that the IGP should be given more powers *vis-à-vis* the NPC, which was set up as an independent body to monitor the police force. In fact, he stated that the IGP should actually be a member of the NPC, contrary to constitutional requirements. In the face of such attitudes, the mere denouncement of torture by late Lakshman Kadirgama, the former Minister of Foreign Affairs, while addressing the 61st Session of the CHR does not mean very much.

Article 4

10. What internal disciplinary processes exist within the police force? Is torture and ill treatment included in their competence and, if so, is the sentence different from the one provided for under criminal law? How are inquiries conducted and how long does it take to complete such an inquiry? How are these inquiries made public?

Response

20. The Sri Lankan Establishment Code sets out general departmental disciplinary inquiry procedures of state institutions. These procedures also apply to the police department. However, the partiality of police department disciplinary hearings maybe ascertained from the following facts: (i) the inquiring officer is always a senior police officer; (ii) the prosecutor is always a police officer; (iii) the defending officer is usually a senior retired police officer; and (iv) inquiries are held at police stations or within the office premises of senior officers. The result of such hearings then, is further victimization of torture victims. To illustrate, the inquiry may take an inordinate amount of time to be completed, being postponed on numerous occasions due to the absence of the inquiring officer, the prosecutor or the perpetrator. During these times, the complainants and witnesses are required to ‘hang around’ the police stations for hours and even days, which gives the perpetrators and their colleagues an ideal opportunity to pressurize the victims into either reaching a compromise or scaring them away. In other instances, the victims—who often belong to the poorer segments of society and have to forfeit their daily work and wages to attend these inquiries—simply give up in desperation. Then a verdict is given of ‘complainant not present’ and the inquiry discontinued (from the experiences of torture victim **Suresh Pradeep Kumara**⁴ who finally informed the inquiring officer that he will no longer attend the inquiry against his perpetrators).

21. Even with the victim's perseverance, disciplinary inquiries can take many years to complete. In the rare instances that a verdict is given, neither the victim nor the public is informed of the outcome. In fact, during a 2004 interview conducted by the Law & Society Trust with senior officers from the police legal division, the officers were unable to give details of even one completed disciplinary inquiry. The following table with statistics for completed and pending disciplinary inquiries by the police department in 2003 affirms the situation:

Year	2003
Complaints received	156
Inquiries pending	3
Inquiries completed	11

22. Finally, to give an appearance of transparency to these inquiries, sometimes civilian observers—usually retired judges—are allowed to sit in during sessions of disciplinary inquiries. They are not empowered to get actively involved or to raise objections during the sessions however. If they do, they are not invited again. It is thus clear that all these parody procedures are mere attempts to mislead public opinion.

⁴ AHRC UA Reference, UA-65-2005 (19 April 2005)

11. Do accused public officials remain at work during investigations of torture?

Response

23. The impunity granted to state officials in Sri Lanka is such that not only do police officers remain at their posts during investigations of torture, but continue to do so after being indicted by the AG before the High Court under the CATA for committing torture.
24. In fact, even after the Supreme Court—exercising its fundamental rights jurisdiction under Chapter III of the Constitution—rules that victims have been tortured and directs perpetrators to pay compensation, in almost 99 per cent of the cases the perpetrators continue serving at their posts.
25. The following are examples in which accused who have been indicted before the High Court under the CATA continue to serve as policemen—sometimes in the same positions:

Case No.	Court	Victim	Accused
HC/276/03	Kalutara HC	Ranjani Rupika	SI Senaka Samarasinghe of the Mathugama police
HC/294/03	Kalutara HC	M. Kusumawathi	SI Nishantha of the Beruwela Tourist police
HC/352/04	Kalutara HC	K.A. Samarasinghe	3 policemen of the Badureliya police
HC/1765/03	Panadura HC	S.A. Piyadasa	5 policemen of the Panadura police
HC/1350/03	Colombo HC No. 6	Sameera Madusanka	Policemen of the Peliyagoda police
NS 69930	Kalutara MC	Sanath Yasaratne (deceased)	Badureliya Police (the Magistrate held there was sufficient evidence against the accused and accordingly committed the case to the High Court)

Article 10

13. Please provide more detailed information on the instruction and training provided for law enforcement officials and other public officials with respect to the prohibition against torture, and specifically the treatment of detainees, and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please provide information on training in areas such as non-coercive investigatory techniques. What forms of monitoring and evaluation are used to assess the impact of these programmes, if any?

Response

26. The Sri Lankan police department conducts several programmes on torture and other abuses. However, these are largely for the purpose of obtaining promotions within the department as well as to serve as propaganda for the international community.
27. In fact, with regard to the practice of torture, police officers seem better trained at innovative methods of torture rather than non-coercive investigatory techniques. They are particularly adept at torture methods that leave minimal external injuries and thus minimize chances of detection, such as the piling of books on victims' heads and hammering with poles, which is known to cause severe internal head injuries but few external injuries.
28. Janasansadaya is not aware of any monitoring or evaluation of the few training programmes that exist. Furthermore, no mention was made of such monitoring and evaluation in the State party's second and third periodic reports to the Committee, or in the fourth and fifth periodic reports to the Human Rights Committee.

14. Please indicate further whether there are programmes to train medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims.

15. How many qualified Judicial Medical Officers (JMOs) have been accredited within the system? What training is provided to JMOs, particularly with respect to rape and sexual abuse? What safeguards are in place to ensure that JMOs are not subject to police intimidation and are able to examine victims independently of the police?

Response

29. Janasansadaya is unaware of any such training programmes for medical professionals.
30. There are an inadequate number of qualified JMOs in Sri Lanka; only around 30 in the entire country. These are mostly attached to general and teaching hospitals. In district, rural and base hospitals, the examination of torture victims and autopsies are therefore conducted by senior general practitioners or District Medical Officers (DMOs), who only possess basic medical degrees such as Bachelor of Medicine/ Bachelor of Surgery (MBBS); they do not have the qualifications to conduct such examinations. As a result, examinations are conducted improperly and vital evidence is lost.
31. With regard to police intimidation of medical officers, in the experience of torture victims the greater problem is the collaboration of these medical practitioners with the police to falsify medical reports, shield the perpetrators and thus promote the practice of torture. There are many incidents where after being tortured the victims were taken to a medical practitioner who issued a report stating that the victim was in good health without conducting any examinations.

32. In fact, often the police do not take the tortured person to a hospital but to a known medical practitioner, thereby obtaining false medical reports. These are then used in court to proclaim that the victim is in a suitable condition to be remanded.
33. Examples of errant medical professionals can be found in the Supreme Court case *Sriyani Silva vs. Iddamalgoda*⁵ as well as **Ajith Navaratne Bandara's**⁶ case (HRC inquiry), in which the HRC subsequently issued a warning letter to Dr. Sarath Siriwardena, the Panadura DMO, who is now Director of Health at the hospital.

Article 11

18. What steps has the State party planned to take to ensure that the supervision of detention facilities is effective and independent?

19. Are prisoners systematically examined by a doctor upon arrival at a prison? Are injuries recorded?

Response

34. Janasansadaya is unaware of any systematic medical examination of prisoners upon their arrival in prison. When a remandee complains of having been tortured, prison officials may admit such persons to the prison hospital; however, these usually lack qualified personnel and adequate facilities for the treatment of torture injuries.
35. At other times, even court orders for the remandee to be produced before a JMO are not complied with by prison officials.

20. Which institutions can visit places of detention? How often do these visits take place? Are the reports made public? Can NGOs make visits?

Response

36. As stated above the HRC is empowered to visit the main police station building. However, according to a circular issued by the IGP in 2004, the HRC was explicitly prohibited from visiting adjoining buildings within the police station premises—where it had been reliably noted that most torture takes—place the HRC obtained prior approval from the ASP in charge of the police station.
37. Furthermore, reports of such visits have not been made public.
38. Non-governmental organizations (NGOs) are not permitted to visit places of detention. In reality, not even lawyers can accompany their clients to police stations or be present during interrogations, unless the police agree.

⁵ Case Reference, 2003 (2) Sri L.R. p. 63

⁶ AHRC UA Reference, UA-20-2001 (19 June 2001), UP-69-2004 (12 November 2004) and UP-40-2005 (08 April 2005);

21. To what extent has the establishment of a 24-hour hotline and a Central Police Registry assisted family members of detainees in obtaining information on the detention? Please indicate which specific data are systematically recorded upon registration of a detainee by the police.

Response

39. Janasansadaya is unaware of any Central Police Registry for detainees and interviews with the police hierarchy failed to reveal such a Registry as well. Furthermore, oftentimes local police stations will refuse to give any information regarding persons detained, or are even unaware of such information.

22. Please describe how detained persons are informed about their rights (orally or in writing). Do these rights include the right to inform a relative and the right to a medical examination by a doctor of his/her own choice?

Response

40. While the above question presumes that detained persons are in fact informed of their rights, the reality is that they are simply dragged to the police station, or even severely assaulted before being taken. While Sri Lanka's Criminal Procedure Code (CPC) requires that a person be informed of the reason of arrest at the time of arrest, this provision seems to be confined to the legal statutes. For this reason many victims are produced in court on charges unknown to them. They then plead guilty to these charges, having been coerced by the police to do so, who threaten them with further torture.

41. Many police stations even objected to displaying posters printed by the HRC depicting the rights of an arrested person within their premises.

42. When individuals have mustered the courage to ask for the reasons of arrest, they have been mercilessly tortured for daring to question the police. After having drugs, illicit liquor or offensive weapons (bombs) planted on them, they have then been remanded and maliciously prosecuted.

43. To illustrate: On 9 March 2004, **John Pollage Udaya Saman Jayasuriya**⁷ was tortured by the Kadugannawa police to such an extent that he lost four front teeth, merely because he asked the identity of the two policemen in civilian clothes who asked for his driver's licence and insurance. Similarly, on 13 May 2004, A.G. Ravindra⁸ got his ear cracked by the Katupotha police after asking for the reason of his arrest.

Article 12

23. Which authority can order the initiation of a criminal investigation in cases of torture or cruel, inhuman or degrading treatment or punishment? Does this require a formal complaint by the alleged victim? Please update the data contained in the report and provide examples of cases investigated and indicate the results of the

⁷ AHRC UA Reference, UA-31-2004 (01 April 2004); E/CN.4/2005/62/Add.1 paras. 1524 and 1525

⁸ AHRC UA Reference, UA-63-2004 (09 June 2004) & UP-49-2004 (26 August 2004)

proceedings, both at the penal and disciplinary levels.

Response

44. In Sri Lanka criminal investigations have rarely been initiated after torture victims lodge complaints; investigations have only begun after international human rights organisations such as the AHRC, the Committee or the Special Rapporteur on Torture referred specific cases to the AG or the IGP and requested investigations. While these authorities have the capacity to initiate investigations, they do not do so without undue pressure from outside agencies.

24. How many police personnel are attached to the Special Investigating Unit of the Attorney-General investigating complaints of torture and ill treatment? How many lawyers are available to the Attorney General for the preparation of indictments? What steps is the State party taking to ensure that adequate resources are allocated for this purpose?

25. Please provide more detailed information about the specific measures that have been taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by State agents. What steps are being taken to ensure that State agents and others guilty of torture violations are brought to justice?

26. How many State officers have been found in torture-related cases to have violated the human rights guaranteed by the Constitution in recent years? How many State officers have been indicted under the Torture Act or the Penal Code, and how many successful prosecutions have taken place? What were the punishments meted out to such persons, and how many such officers have been dismissed from their employment with the State? The State party is requested to provide a list of these cases to the Committee if one exists.

Response

45. The Special Investigation Unit (SIU) is a non-permanent arrangement at the AG's department, which attend to cases on *ad hoc* basis. There are a very few personnel attached to the SIU and it is under resourced. There are also a very few personnel AG's department for the preparation of indictments. Due to such arrangements and inadequacy of staff and resources the cases get delayed for a very long time.

46. It is indeed difficult to think of specific measures that have been taken to fight impunity for human rights violations when measures provided by law and existing in statute books for decades have not been utilized. For example, the Establishment Code specifically provides for the interdiction of public servants charged or indicted on a criminal offence until the completion of the court case and they are exonerated. However, in numerous cases policemen indicted before the High Court under the CATA continue to serve at their posts. Not only does such action deter the course of justice, but it also sends a clear message to the perpetrators that torture is acceptable.

47. Sri Lanka ratified the CAT in March 1994 and enacted domestic enabling legislation—Act no 22 of 1994—in November 1994. In the 11 years this legislation has been in place, there have been only two convictions under the Act before the High Court, both in 2004.

Article 13

28. What role does the National Police Commission play with respect to complaints of torture and ill treatment? Has the National Police Commission established a public complaints procedure, as required under article 155 G (2) of the Constitution of Sri Lanka?

Response

48. The NPC cites a lack of resources and personnel as the reason for which it cannot investigate any complaints of torture received from the public. Therefore, when any of the five NPC coordinators—three of which are retired DIGs—receive a torture complaint they refer it to a DIG of police, who in turn sends the complaint either to the ASP or the SP in charge of the relevant police station. This officer then refers the complaint to the OIC of the station at which the victim alleges to have been tortured. Meanwhile, the ASP or the SP may summon the victim and witnesses to record their statements. These statements may then be referred to the police legal division but are usually not, unless the IGP is notified of the incident by international sources, in which case he will request a report from the relevant DIG, who in turn will request it from the ASP or the SP.
49. In a recent interview, the NPC chairman explained the absence of an established public complaints procedure through a lack of resources, operation and not seeing eye-to-eye with the incumbent.
50. Although the 17th Amendment to the Constitution of Sri Lanka grants significant power including authority over all police promotions, transfers, disciplinary action and dismissals with the exception of the IGP, the Commission has yet to fully assert its powers. Under the view that it cannot interfere with the daily functioning of the police, the NPC has delegated these powers with regard to officers at the rank of Inspector and below to the IGP. With regard to disciplinary action against officers above the rank of inspector, the NPC chairman has complained his instructions are not complied with.

29. Does the State party plan to establish an effective witness protection programme, particularly for victims of torture, extra judicial killings and other abuses? Is this matter under review? In particular, have financial or other resources been allocated for this purpose?

Response

51. Despite the Human Rights Committee's recommendation in 2003 of the importance of a witness protection scheme, to date there is no such programme. As a consequence, victims and other witnesses in torture cases and extrajudicial killings continue to be intimidated, threatened and even killed, such as **Gerald**

Mervyn Perera⁹. Janasansadaya is unaware of any financial or other resources being allocated for such purposes.

Article 14

30. Please provide information on compensation measures ordered by the courts and actually provided to victims of torture or cruel, inhuman or degrading treatment or punishment since 1998. Can torture victims obtain compensation through a civil suit in the absence of a guilty verdict in criminal proceedings? In this respect, please provide statistics and examples of compensation received by victims in such cases.

Response

52. Under its fundamental rights jurisdiction, the Supreme Court is empowered to award compensation to victims of human rights violations. This is to be paid either by the State, the individual perpetrators, or both. However, recently the court has been awarding amounts of compensation far below what would be proportionate with the gross human rights violations found.
53. In recent times the Apex Court has also shown a certain reluctance to grant leave to proceed in fundamental rights (FR) cases which may be seen as a regression from certain earlier developments that were held in a positive light, for example, the strong judgments in *Silva vs. Iddamalgoda* (2003) and in *W.R. Sanjeewa AAL (for Gerald Perera) vs. Sena Suraweera (Inspector of Police) and eight others case* (2003)¹⁰.
54. Another disturbing trend is the attempts made by court to induce the victims to enter into 'out-of-court settlements' with their perpetrators. This results in the perpetrators being fully exonerated, and also prevents the victims from petitioning court of further violations of their rights.
55. Torture victims or families of those killed in custody may seek compensation via a civil suit. In fact, a few victims have instituted action in the District Courts against their perpetrators and the State, for example, *L. Madusanka vs. Iddamalgoda et.al.*,¹¹ and *Kusumawathi's case*.¹² However, proceedings before the District Courts are time consuming and costly, and many victims cannot afford it.
56. In the case of *L. Madusanka vs. Iddamalgoda* for instance, although the case was instituted in 2002, it is only in November 2005 that a date for trial had been fixed. Inordinate delays occurred due to the inability or wilful neglect of the police in handing summons to the defendants and also due to the delay in filing answer by the AG's department. These court delays also provide ample opportunity for the intimidation of victims and for the perpetrators to abscond.

⁹ SCFR. 328/2002 - *W.R. Sanjeewa AAL (for Gerald Perera) Vs. Sena Suraweera (Inspector of Police) and eight others*; AHRC UA Reference, UP-44-2002 (21 June 2002), UP-47-2002 (02 July 2002), UA-157-2004 (21 November 2004), UP-74-2004 (23 November 2004), UP-76-2004 (25 November 2004), UG-05-2004 (30 November 2004), UP-79-2004 (09 December 2004), UP-89-2004 (17 December 2004), UP-01-2005 (03 January 2005), UP-14-2005 (16 February 2005), UP-23-2005 (08 March 2005) and UP-24-2005 (24 March 2005); E/CN.4/2003/68/Add.1, para. 1571; E/CN.4/2004/56/Add.1, para. 1557 and E/CN.4/2005/62/Add.1 para. 1576

¹⁰ Case Reference, SCFR. 328/2002 Supreme Court of Sri Lanka

¹¹ Case Reference, MR 32765 Colombo District Court

¹² Case Reference, MR 5130 Kalutara District Court

57. In a positive development, the HRC have also begun to recommend compensation for the victims. However, the compensation recommended has to date not been paid by any of the perpetrators.

31. What are the arrangements for payment of compensation to successful complainants? Does the State or the individual officer pay this compensation? Is the payment made in a lump sum or instalments, and what safeguards are in place to prevent further harassment or intimidation of complainants?

32. What provisions are made for victims to have their own legal representation in criminal cases? What rights do complainants' lawyers have to cross-examine defendants and witnesses?

Response

58. In accordance with the Criminal Procedure Code, the torture victims—the aggrieved party—has a right to retain a lawyer to look after his interests in court. However, in practical terms this right depends on the discretion of the court. In certain instances, lawyers may be prevented from conducting cross-examinations or even participate in the trial at all, such as in the Bindunuwewa massacre case.

59. This situation is worsened when cases are prosecuted in the Magistrates Court, for instance when police charged perpetrators with causing simple hurt. In such cases, it is the police who lead the prosecution against the defendant, who is a fellow policeman. With the victim's legal representative being unable to actively participate in the trial, the likelihood of partiality is enhanced.

33. What services exist for the treatment of trauma and other forms of rehabilitation of torture victims? What financial allocations have been made for this purpose?

Response

60. We are unaware of the existence of any such facilities and interviews conducted by senior police officials of the legal range of the police department and the Army revealed that there were no such facilities.

Article 16

34. What safeguards are in place to prevent cruel, inhuman or degrading treatment in schools?

Response

61. In May 2005, the Ministry of Education issued a circular (ED/01/12/01/04/24) prohibiting corporal punishment in schools and also warned that teachers found to mete out such punishment to students would be liable for disciplinary action. However, Janasansadaya found that many schools, especially among those falling under provincial councils, had not received this circular.

62. Regardless of the circular, corporal punishment and ill treatment are still prevalent in schools throughout the country. The following are a few examples:

62.1. When **Charmali, Dilshan and Ravishka**, three six-year-olds, were admitted this year to a junior school in Panadura, the school principal demanded their parents pay Rs. 2,000 per child as an ‘admission fee.’ When the parents refused because they could not afford it, the principal denied the children desks and chairs, forcing them to sit on the floor. After numerous complaints were made to the authorities, the children were given desks and chairs, but as of yet no disciplinary action has been taken against the school principal, either for soliciting a bribe or for the cruelty meted out to the children.

62.2. **Mahesh Madusanka**, a 17-year-old Advanced Level student of the Merrill Kariyavasam School in Matugama, was illegally remanded for five days in an adult remand prison after school authorities made complaints against him and the police misrepresented his age to the Magistrate. After being released on bail, Mahesh attempted to resume his studies but was chased away by the school principal. After his parents brought the matter to the notice of the relevant authorities, Mahesh was allowed into school but was continued to be marked as absent. According to Mahesh’s parents, this was a blatant attempt to forcibly remove their son from school on the grounds of absenteeism and also to prevent him from sitting for his Advanced Level examination the following year. After much lobbying, the provincial education authorities finally placed Mahesh in a new school but they have taken no action against the errant principal.

62.3. Ten-year-old **Sampath Madusanka** of the Halkandavila School in Payagala complained that his teacher assaulted him with a long stick when he failed to answer a question put to him. This assault resulted in his hospitalization for seven days and serious injury to his eye. Furthermore, the hospital subsequently wrote to the school principal voicing its concern about several students from the school seeking medical treatment at the hospital for being assaulted by school staff.

Other

38. Does Sri Lanka envisage signing and ratifying the Optional Protocol to the Convention against Torture? If so, does Sri Lanka envisage setting up or designating a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

Response

63. It is our opinion that it is very unlikely that Sri Lanka will ratify the Optional Protocol to the CAT or set up a national mechanism to conduct visits to places of detention. This is because last year when HRC officials attempted to visit police station where there was a suspicion that victims were being tortured, the HRC officials were abused and assaulted and prevented from inspecting the station. Subsequently by a circular the IGP had required prior notice of any impending visits of HRC officials, which, needlessly to say, would defeat the very purpose of such visits.

41. Please indicate whether there is legislation in Sri Lanka aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

Response

64. To our knowledge there is no need to export any special equipment for inflicting torture. The police seem to have an enormous talent to improvise ingenious instruments of torture as indicated by the numerous horrifying reports from victims of torture.

43. Describe the measures taken to disseminate information on the submission of reports and on their consideration by the Committee, particularly on the Committee's concluding observations.

Response

65. Janasansadaya is not aware of any measures being taken to disseminate information regarding the submission of reports to or the concluding observations of the Committee. To date the government has also not made any public statement in this regard.

Article 1: Definition of Torture

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

66. Under Sri Lankan law, the CAT Act No. 22 of 1994 defines torture as:

... any act which causes severe pain, whether physical or mental, to any other person, being an act which is - (a) done for any of the following purposes that is to say - (i) obtaining from such other person or a third person, any information or confession; or (ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed ; or (iii) 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.

67. **The restrictive definition of torture in CATA:** Since its enactment, various bodies have pointed to the problems with the definition of torture as set out in the CATA. In 1995 the UN Human Rights Committee in its concluding observations to the State Party Sri Lanka noted the restrictive nature of the definition and recommended the State party to amend the act to bring it in conformity with article 7 of the ICCPR.¹³ The Committee against Torture also urged the State Party Sri Lanka to bring the CATA in full compliance with the CAT in its 1990 concluding observations.¹⁴ Most recently, the Human Rights Committee in its 2003 concluding observations reiterated its concerns that the restrictive definition of torture in CATA continues to raise problems in the light of article 7 of the ICCPR.¹⁵

68. Article 7 of the ICCPR states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” (emphasis added)

69. Furthermore, the Human Rights Committee's General Comment 20 regarding article 7 of the ICCPR states that the prohibition of torture relates not only to that that cause physical pain but also to acts that cause mental suffering to victims. CATA confines the definition to “causing of severe pain” only and causing suffering as well as inhuman or degrading treatment or punishment are both notably absent from it. In a number of reports the Sri Lankan state has mentioned that judicial interpretation

¹³ CCPR/C/79/Add.56; A/50/40, paras 436-478

¹⁴ A/53/44, paras. 243-257

¹⁵ CCPR/CO/79/LKA

would take into account any suffering, physical or mental.¹⁶ However, given the severity of the crime of torture there need to be explicit and clear definition in the CATA itself to apply such provisions without leaving any room for ambiguity. The fact that “causing of severe pain” and “suffering” are mentioned explicitly in the CAT shows that these are two different things. If the drafters of CAT have retained word “suffering” as an important element in defining torture. For example one can say that sleep deprivation or prolonged exposure to bright light does not amount to “causing severe pain” but it certainly amount to causing suffering on a person.

70. This restricted definition of torture in the CATA completely leaves the matter on the hands of the judiciary to interpret it. The non-action on the part of the Sri Lankan State to amend the CATA to bring it in full conformity with the CAT, despite continuous calls from the Committee against Torture and the Human Rights Committee confirms the non-commitment of the State towards the elimination of torture. In fact there is no such draft law before the Law Commission in Sri Lanka.
71. In addition, subsection (3) of Article 2 of CATA stipulates that "the subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence" under the CATA. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences.
72. **Conflicting constitutional provisions:** Article 11 of the Constitution of Sri Lanka states, “no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This denotes the absolute prohibition of torture. However, according to Article 16, any law passed after legal procedure may not be challenged as being against fundamental rights as stated in the Constitution, and this gives room for legislation to inflict torture.¹⁷ Therefore, there is a need to remove this conflict by way of making Article 11 non-derogable.¹⁸

¹⁶ CAT/C/48/Add.2, Second periodic reports of States parties due in 1999, SRI LANKA, para 78

¹⁷ Dias, Noel, “The implementation of the anti-torture convention in Sri Lanka,” *Protection & Participation – South Asia Legal Reforms and Human Rights*,” Volume 2, No. 1, Asian Human Rights Commission, Hong Kong SAR, 2005, pp. 5-6.

¹⁸ Ibid.

Article 2: Domestic implementation and effective remedies

- 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*
- 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.*

73. Major part of this report concentrates on the absence of effective legislative, administrative, judicial or other measures to prevent torture in Sri Lanka. Three key arms, which will be brought under the scrutiny of this report, will be the police, the prosecution and the judiciary. These important institutions, which are to uphold rule of law, have effectively collapsed. There is a difference between deterioration and collapse. When something deteriorates, we could try to revive it. But when something collapses, there is no other alternative than to re-building it. Justice system today in Sri Lanka is in such a weak situation that it needs to be rebuilt rather than improved. When this very important point is missed all other solutions that may be proposed with good intentions becomes irrelevant and futile. The international community has long neglected the aspect of rule of law in the country and it need to seriously consider drastically changing its approach to human rights in Sri Lanka in terms of strengthening rule of law and related institutions. Only such approach would bring in lasting peace to the nation.

Policing in Sri Lanka

74. **Fundamental significance of the policing system:** In fact breakdown of the state machinery has been caused by a malfunctioning policing system where command responsibility is treated as a trivial matter. Although the problems currently plaguing Sri Lanka are attributed to politicians, rebels, corrupt businessmen or criminals, these are not fundamental. The underlying problem is the inability of the policing system to uphold the rule of law.
75. **It is an established fact that the key torture perpetrating institution in Sri Lanka is the police.** In fact it is not an exaggeration to state that torture is being routinely used in almost all the police stations in Sri Lanka. Police torture is carried out systematically and a widespread fashion. It was a misconception for the international community to believe that torture and other human rights violations are widespread and common in conflict areas only, and especially in the North and the East of the country. Reports show otherwise; in fact human rights violations such as torture has been used throughout the whole country and has been applied to all ethnic groups. This means all the people in Sri Lanka are vulnerable to be subjected to police torture regardless of where they are or what their ethnicity is.

76. **Use of torture by the police is not a new phenomenon:** In fact, police has been using torture for decades in Sri Lanka. A retired senior police officer admitted to the AHRC that even 30 to 40 years ago, torture has been used to a certain extent that it was “controlled” and carried out under the supervision of senior officers. What the officer implied was that torture was not used then so brutally and wantonly but in a more controlled manner. However, the use of torture became common in the early 1970s onwards, when the then governments used extrajudicial ways to suppress a Marxist Sinhala youth rebellion. Police and armed forces were given power to extra-judicially execute thousands of youth who were suspects of being members of a rebel group. It is estimated that over 10,000 youth were extra-judicially executed and many others were detained and jailed. State giving extra-judicial powers to institutions such as police that are primarily responsible to protect and implement law and order made them major violators of the law. Further, any measures of accountability were removed and such institutions could prevail with impunity. This laid down a foundation for a state-sponsored violence. This provided confidence to the law enforcement agencies to carry out similar activities should the government orders them to do so, completely disregarding rule of law. Ability to prevail with impunity became a hallmark of law enforcement institutions and they became immune to prosecution as prosecuting institutions such as AG’s department failed to file charges against police for such violations. Judiciary too was weakened that they failed to act promptly to protect the rights of people over state policies. What we see here is gradual deterioration of all these institutions from the 1970’s onwards and moving backward towards a complete collapse.

77. **Beginning of indiscriminate use of torture by the police:** Although police practiced torture, 1980s shows a sharp rise in use of torture, and it became unprecedentedly high during period between 1988 and 1992, the “terror era” in which estimated 60,000 or so number of young people were brutally tortured, extra-judicially killed and their bodies disposed of or made to disappear. The powers that were vested on the police and other armed forces during this time are incomparable to any other time. This was a time that headless bodies and bodiless heads were common scenes in almost all the parts of the South of the country. Most brutal torture was used on thousands. This era created tremendous fear among the public against the law enforcement officers – that they could come any time, take you away without any reason, detain for any long, torture indiscriminately, kill you, cut your body into pieces, let those body parts float on rivers or burn by road sides to create more terror among the public. While this fear was created among the public, the also lost any respect they had for the law enforcement officers. They could not see any difference between thugs and law enforcement officers. It was state-sponsored thuggery in the most brutal forms. The opposite effects in the police were that they felt more immune from justice than ever. They did not need to follow due process or long-established rules. They could completely ignore the Criminal Procedure Code of the country. They conveniently unlearned the little criminal investigations methods they learned before. Instead, they found an easy way–torture. Once they unlearned the good habits and learned bad habits, it was too difficult for them to give them up. Habits of committing torture, in fact, does not seems to be a “bad habit” in the eyes of the police today. It has become more than a habit, a way of life in the criminal investigation process.

78. **The most common method of criminal investigation is torture:** The recent cases shows that most cases of torture by the police in Sri Lanka have been committed during the process of criminal investigations. Often when a crime occurs the police in the jurisdiction of that crime are forced to find culprits. When a senior police officer recently asked a group of police personal about human rights and they have responded that they resort to torturing suspects because:

“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 such as personnel/vehicles, equipment etc. to pursue investigations; the period of custody of 24 hours being insufficient; and pressure from superiors to solve cases, with the implication 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.”¹⁹

Senior police officers in the Sri Lankan police have admitted police resorting to torture in the course of criminal investigations. A detailed article on this is by DIG J. Thangavelu is attached to this report as Appendix 7.

79. **Some common methods used for torture used by the police in Sri Lanka are:**

- Sitting on the spine or beating the spine, thereby dislocating disks in the spine, resulting in full or partial paralysis;
- Hitting on the head, or sometimes keeping books on the head and hitting with a pole, causing fractures and brain injuries
- Tying the hands behind the back, tying the thumbs together, pulling a cord through the thumbs and hanging the person from the ceiling, causing temporary or permanent loss of use of the arms;
- Tying the hands and legs and putting a pole through the legs in a way that a person can be rolled round, while beating on the head and soles of the feet;
- Beating while hanging, causing renal failure and other serious injuries;
- Hitting on the genitals;
- Inserting genitals into drawers and slamming them closed;
- Pumping high-pressure water through fire hose pipes onto the genitals;
- Inserting PVC pipes and other objects like glass bottles into the vagina;
- Beating on the ear, causing full or partial hearing loss;
- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles of the feet with a pole;
- Forcing the fingers into glass bottles, making it very difficult to remove them;
- Threatening to kill;
- Threatening to rape;
- Threatening to implant drugs and file cases in courts for possession of drugs, which carry high penalties;²⁰
- Hitting with cricket poles; and
- At least in one case a patient with a chronic contagious disease (tuberculosis) was forced to spit into a mouth of a suspect under interrogation.

¹⁹ Daily Mirror, “Police torture only the poor”, Justice Page, 26 August 2005, Sri Lanka

²⁰ ALRC, *Second Special Report*, pp. 17 & 18

Above is not an exhaustive list of methods. However, it is apparent that the methods used are brutal and barbaric.

80. Same methods of torture are being used by different police stations;

systematic nature of use of torture: There are a number of cases, which demonstrates that same methods are being used by different police stations. This confirms that incidents of police torture are not isolated events. They are well settled as ‘standard methods of criminal investigations.’ For example, the method of tying the thumbs behind the back and hanging from a beam has been used in the same manner by different police stations in distant geographical locations. In the case of **Galappathi Guruge Gresha De Silva**²¹ this method was used on 22 March 2002 at the Habaraduwa Police Station in the Southern part of Sri Lanka. Same method was used again on the slain torture victim **Gerald Mervyn Perera**²² on the 3 June 2002 at the Wattala Police Station in the Western part of the country which resulted him to fall into a coma and to be kept under a life support system for 12 days. Yet the same method was used at the Ankumbura Police Station in the Central part of the country on **B. G. Chamila Bandara Jayaratne**²³, a 17-year old child causing severe damage to his arms. Similarly beating on the soles, tying the hands and legs and putting a pole through the legs are used commonly in many police stations. This shows an organised pattern of using the same method for torture throughout the country. Using the same method also demonstrates that police officers are ‘trained’ to do torture or in other words often they do not spontaneously invent new methods. In fact this sort of ‘training’ of police officers to torture is through practical experience of either assisting other officers to torture or by watching other officers torture suspects. Unfortunately, police officers get trained to carry out torture as the only method they know to extract information from the suspects in the process of criminal investigations.

81. Intention to inflict permanent damage physically and mentally: There are number of recent cases demonstrates the police intended to inflict permanent damage physically to the victims through torture. A very good example of this is the case of **Koralaliyanage Palitha Tissa Kumara**²⁴ who was severely tortured at the Welipenna police station from 3-6 February 2004. During this torture, Palitha was subjected to a most horrendous form of torture that a tuberculosis patient was asked to spit into his mouth. The officer, SI Silva, who carried out this horrendous act has said during this time, that the intention of this act was to let Palitha catch tuberculosis and die. Further the officer has also said that Palitha would also pass the decease to his wife and family members and they would also die. Later, the said officer has punched on the chest of Palitha 13 times pointing,

²¹ AHRC UA Reference, UA-20-2002 (29 May 2002) and UP-44-2002 (21 June 2002); E/CN.4/2003/68/Add.1, paras. 1569 and 1570; ALRC, *Special Report*, p. 24

²² W.R. Sanjeeva AAL (for Gerald Perera) Vs. Sena Suraweera (Inspector of Police) and eight others, SCFR. 328/2002; AHRC UA Reference, UP-44-2002 (21 June 2002), UP-47-2002 (02 July 2002), UA-157-2004 (21 November 2004), UP-74-2004 (23 November 2004), UP-76-2004 (25 November 2004), UG-05-2004 (30 November 2004), UP-79-2004 (09 December 2004), UP-89-2004 (17 December 2004), UP-01-2005 (03 January 2005), UP-14-2005 (16 February 2005), UP-23-2005 (08 March 2005) and UP-24-2005 (24 March 2005); E/CN.4/2003/68/Add.1, para. 1571; E/CN.4/2004/56/Add.1, para. 1557 and E/CN.4/2005/62/Add.1 para. 1576

²³ AHRC UA Reference, UA-39-2003 (11 August 2003), UP-31-2003 (20 August 2003), UP-38-2003 (25 September 2003), UP-39-2004 (21 July 2004), UP-57-2004 (13 October 2004), UP-66-2004 (02 November 2004) and UP-33-2005 (29 March 2005); ALRC, *Second Special Report*, pp. 36-38; E/CN.4/2004/56/Add.1, para 1463; and E/CN.4/2005/62/Add.1 paras 1554 and 1555.

²⁴ AHRC UA Reference, UA-18-2004 (13 February 2004), UP-21-2004 (30 April 2004), UP-22-2004 (03 May 2004), UP-28-2004 (24 June 2004), UP-32-2004 (05 July 2004) and UP-84-2005 (11 July 2005); ALRC, *Second Special Report*, pp. 57-60; E/CN.4/2005/62/Add.1 paras. 1568, 1569 and 1571

“This is where your heart is and I am hitting so that you will die in two months.” In this case the intention was not only to bring permanent physical damage and death to the suspect but also his family members. SI Silva is now accused at a case filed against him at the Kaluthara High Court under the CATA.²⁵

82. **Sexual torture:** Sexual torture has commonly used by the law enforcement agencies and security forces during last 3 decades. During the period 1988 to 1992 many victims succumbed to sexual torture by the police, armed forces and the para-military. In recent cases sexual torture has been used on men and women both. Most brutal, humiliating and horrific methods were used on women. Thirty-nine-year-old **Herath Pathiranalage Nandini Sriyalatha Herath**²⁶ was sexually tortured and raped at the Wariapola Police Station on the 8 March 2002 during which she was stripped naked and a tube was forcibly inserted into her vagina until she bled severely. **Halneththi Susil Indrajith Silva**²⁷ (24) was kicked on his genitals by the OIC of the Payagala Police Station on 20 July 2004. **Horathelpedige Vijitha Dammika Nimalasiri**²⁸ (25) was illegally arrested by the officers attached to the Veyangoda Police Station on 5 September 2004 and was subjected to sexual torture by beating on his sexual organs.
83. **Death due to torture:** There are a number of persons who have been killed in police custody due to torture. In many such cases police have tried to associate such death to suicide or other causes in trying to cover-up such incidents. One important case of custodial death to cite is, the case of **Garlin Kankanamge Sanjeeva**,²⁹ a 25-year-old soldier, who 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, Mr Garlin Kankanamge'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 has insisted that a proper and impartial inquiry be held and a second inquest takes 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 Mr Garlin Kankanamge 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. Around the same date as Mr Garlin Kankanamge lost his life, 60-year-old **R M Loku BANDA**³⁰ had a dispute with two villagers about a road construction. Police from Maturata station intervened and took Mr Loku 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 has complained to the authorities, but an investigation has not yet begun. Meanwhile, the family has lodged a FR application in the Supreme Court. Some recent death due to torture cases are detailed below:

²⁵ Case reference, HC 444/2005, Kaluthara High Court

²⁶ AHRC UA Reference, UA-22-2002 (13 June 2002), (Special Report cited at note 16, pp. 12-15 (Appendix 1) and E/CN.4/2003/68/Add.1, paras. 1628, E/CN.4/2004/56/Add.1, paras. 1498, 1572 and E/CN.4/2005/62/Add.1 paras. 1582 and 1583

²⁷ AHRC UA Reference, UA-93-2004 (26 July 2004); E/CN.4/2005/62/Add.1 paras. 1549 and 1550

²⁸ AHRC UA Reference, UA-133-2004 (08 October 2004); E/CN.4/2005/62/Add.1 paras. 1560

²⁹ AHRC UA Reference, UA-43-2003 (02 September 2003); E/CN.4/2004/56/Add.1 Para. 1494, E/CN.4/2005/62/Add.1 para. 1619

³⁰ AHRC UA Reference, UA-43-2003 (02 September 2003)

83.1. Dehiwatte Gedera Jayathilaka:³¹ On 9 March 2004 Dehiwatte Gedera Jayathilaka was arrested by policemen led by SI Bandaranayake, from the Yatawatte Police Security Barrier -- under the Mahawela Police Station. When Mr. 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, Mr. 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 Mr. 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, Mr. Jayathilaka was released around 11:00pm 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, Mr. Jayathilaka said he would go to hospital the next morning. Because their house was located in a hilly area, Mr. 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 Mr. 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 Mr. 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 Mr. Jayathilaka were undertaken by the Mahawela Police. A FR application regarding the killing of D.G. Jayathilaka was filed before the Supreme Court. According to reports received, a criminal investigation into the alleged killing had also begun.

83.2. Muthuthanthrige Chamal Ranjith Cooray:³² 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 person named Felix and Babu had handed over Mr. Cooray 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 Mr. Cooray had been severely assaulted by the police and taken to the Moratuwa Police Station where he was further tortured. According to an eyewitness Mr. 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 he had seen Mr. Cooray collapse 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

³¹ AHRC UA Reference, UA-35-2004 (09 April 2004) and UP-59-2004 (15 October 2004); E/CN.4/2005/62/Add.1 paras. 1484

³² AHRC UA Reference, UA-42-2004 (22 April 2004); E/CN.4/2005/62/Add.1 paras. 1485

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 Mr. 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, was slim. Recently, they had been informed that the two persons responsible for Mr. Cooray's arrest – Felix and Babu – had been arrested and remanded for assaulting the deceased before handing him over. The deceased' family feared that the police were now shifting the blame on these two people in a blatant attempt to cover up their own excesses.

83.3. Madugoda Ralalage Don Saman Priyantha Gunaratne:³³ 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, an Army soldier was killed in action. According to Mr. Guneratne's fiancée, after her husband died, she was harassed by SI Silva (*of notorious repute – see Tissa Kumara's Case*³⁴) 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 Mr. Guneratna. Then on 30 May 2004, around 7:30pm, Mr. Gunaratne had been brutally murdered by two policemen of the Welipenna Police Station. He was shot dead with a T-56 weapon whilst 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 Mr. Guneratna 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' 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.

83.4. Senarath Hettiarchchilage Abeysinghe:³⁵ At the time of his death, Mr. Abeysinghe was a Reserve Police Constable (RPC) at the Trincomalee Police Station. On 17 May 2004, Mr. Abeysinghe had been found dead in his bed, and it was said, he died in his sleep. The message of his death was conveyed to his wife,

³³ AHRC UA Reference UA-63-2004 (10 June 2004)

³⁴ See note 24 above

³⁵ AHRC UA Reference UA-67-2004 (14 June 2004); E/CN.4/2005/62/Add.1 paras. 1486 and 1487.

C.P.E. Pathirana who was resident in Colombo at the time. The same day, Ms. Pathirana accompanied by her father went to Trincomalee. The inquest into the death was held the next day (18), during which Ms. Pathirana had 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, he would give her all the details later. Ms. 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 (18), 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, the wife was informed by some policemen at the Trincomalee station that the deceased was on duty even at the time of death -- as he had not signed off duty. Then ten days later when Ms. 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 Mr. 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 Ms. V. Mathiyaparam. Ms. Pathirana also discovered the diagnosis report from the hospital issued on 29 April 2004, which indicated that Mr. Abeysinghe had been a victim of police torture. The letter and medical reports provided reasonable grounds for suspicion in this case. Furthermore, Mr. Pathirana also said that her husband maintained a diary, but this could not be located as it was not handed over to her, by the police. She also recalled that while he was alive, Mr. Abeysinghe had complained about problems with his Mess Manager Mr. Jayathilaka. And in his complaint to the HRC-Trincomalee, he had mentioned that the said Mr. Jayathilaka had attacked him with a wooden stick used for cooking rice.

83.5. **M. Ramson Peiris:**³⁶ On 5 December 2004 around 2:00pm, a 59-year-old carpenter, M. Ramson Peiris, went to one Ms. 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 Mr. 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 Mr. Peiris. Later, the Deputy Mayor of the Moratuwa Municipal Council, Mr. D.C. Fernando informed the deceased's family of his arrest. He had also inquired about the deceased's arrest from the police, but the police now denied Mr. Peiris' arrest. However when some time later the deceased's relatives visited the police station, they saw Mr. 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 10:00pm the same day (5) 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 Mr. Peiris was in a critical condition, he was transferred to the Kalubovila General Hospital and later to National Hospital

³⁶ AHRC UA Reference, UA-176-2004 (17 December 2004) & UP-05-2005 (10 January 2005)

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' son too complained to the HRC on 13 December. 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' 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 (Case No 67417NS) into the deceased killing began in the Moratuwa Magistrate Court. However the deceased' family alleged that the Mt. Lavinia police who 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 13th, 14th, 15th, 16th of December 2004 and 5th 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, Mrs. Malani, who witnessed the victim's assault and illegal arrest by two Sergeants at her house, had already given her statement to the Mt. Lavinia Police and the Moratuwa Magistrate Court. Despite such clear medical and other evidence, Mt. Lavinia police has yet to arrest the alleged perpetrators. As a result, the two Police Sergeants involved in the torture of the victim are still working as police officers without any disciplinary/criminal action being taken against them. The ALRC suspects that such inaction and delay by the Mt. Lavinia police is mainly for the purpose of manipulating witnesses. Furthermore, the ALRC notices that Sergeant Silva, one of the two responsible police officers, continues to work as the Court Sergeant at the Moratuwa Magistrate Court where the case inquiry is being held. This makes witnesses reluctant to come to the court due to security concerns. Reportedly the Moratuwa Police has already attempted to unduly pressurise a crucial eyewitness to the victim's assault from testifying.

83.6. **N. Sandasirilal Fernando:**³⁷ According to the deceased' 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 (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 however, instead of attending to the victim and rushing him to hospital, simply left him lying there and proceeded with Deepal Fernando to the police station. On 28 March, 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

³⁷ AHRC UA Reference, UA-60-2005 (12 April 2005)

revive him. However the deceased' 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. However to date, they have received no information about any police investigation or inquiry into Sandasirilal Fernando's killing and neither have they been paid compensation. Sandasirilal Fernando was survived by his three school going children, aged 11, 14 and 17.

83.7. **H. L. Susantha Kulathunga:**³⁸ On 10 April 2005 around noon, five policemen of the Rakvana Police Station located Mr. 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, Mr. 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 Mr. 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 Ratnapura³⁹ on 27 April 2005. During the inquest hearing, the deceased' 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 '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. However, at the time of the AHRC's Urgent Appeal no action has been taken in this case. There has been no disciplinary action instituted against

³⁸ AHRC UA Reference, UA-80-2005 (17 May 2005)

³⁹ Case reference, Case No. 251/05, Ratnapura Magistrates Court

those responsible for the victim's death and to all intents and purposes, they continue to serve in their same posts.

83.8. Lelwala Gamage Nandiraja:⁴⁰ On 29 May 2005 several policemen from the Weliveriya and Pitigala Police Stations had arrived at Mr. 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 Mr. Nandiraja and when the sister asked them why they wanted her brother, they replied, 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 Mr. 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, Mr. Nandiraja was dragged naked and screaming from the house and taken away by the police in a van. The next day (30) at about 8:30am, Mr. 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 Mr. 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. The body was later transferred to the Colombo North Hospital in Ragama where a post-mortem examination was conducted on 1 June. A Magisterial inquiry was scheduled for 6 June.

83.9. Kosma Sumanasiri:⁴¹ On 20 May 2005, around 12:00noon, 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 Mr. 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. Mr. 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 Mr. Sumanasiri. When they asked the friends where he was they replied, 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 Mr. Sumanasiri had been transferred to the Intensive Care Unit (ICU) of the Karapitiya Teaching Hospital. Leelasili rushed to the

⁴⁰ AHRC UA Reference, UA-90-2005 (06 June 2005)

⁴¹ AHRC UA Reference, UA-111-2005 (29 June 2005)

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 Mr. 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 Mr. 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 7 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.

83.10. **Hettiarachchige Abeysiri:**⁴² H Abeysiri was a hardworking daily paid labourer, who worked in a house of Mr. Ratnayake, a former police officer who had gone abroad and was due to return soon. One day, the lady of the house, Ms. 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 Mr. 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 Mr. Abeysiri's elder sister, the policemen did not produce an arrest warrant but had slapped Mr. 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 Mr. Abeysiri back to his house and his nephew saw that he was handcuffed. The police then arrested Mr. Abeysiri's niece's husband, Mr. L.P. Asokakumara and demanded to know where the stolen good was sold. The police took the two men to Ms. Ratnayake's house and several people saw her slapping Mr. Abeysiri. The two were taken back to the crime section of the Peliyagoda Police Station. According to Mr. Asokakumara, at the police station, the police brutally assaulted Mr. Abeysiri with cricket wicket poles for about half an hour. An SI had walked in together with another policeman and he too tortured Mr. Abeysiri. Mr. 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 Mr. Abeysiri's lifeless body to hospital. Mr. 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 5:00pm, a

⁴² AHRC UA Reference, UA-122-2005 (19 July 2005)

policeman had gone to Mr. Abeysiri's house and asked someone to go to the Peliyagoda Police Station. When Mr. Jerome Allistace, a relative of Mr. Abeysiri, went to the police station, he was informed that Mr. Abeysiri was sick and that the police had taken him to the hospital, where he died. Thereafter, Mr. Allistace went to the mortuary along with several others. The Ass. JMO, Dr. G.A.B. Abeysinghe of the Colombo National Hospital, examined the deceased body, and stated in his post mortem report that Mr. Abeysiri had not died of natural causes; instead his death was due to injuries caused by blunt instruments. Mr. Allistace had noticed several injuries on the deceased' 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.

83.11. **R. Dammika Dissanayake**.⁴³ 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 Mr. Dissanayake missing and looking around saw him being accosted by 4 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 Mr. Dissanayake away. Later one friend had queried from a policeman where Mr. 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, Mr. 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 ½ 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 Mr. 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 have thus 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 Mr. Dissanayake committed suicide.

83.12. **Herman Quintus Perera**.⁴⁴ On 3 October 2004, the Polonnaruwa Police allegedly killed Mr. 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. Mr. 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 Mr. Perera and the other workers at the restaurant. Thereafter, the police forced Mr. Perera and his fellow workers into the jeep and took them away. The following morning (4), the restaurant's assistant manager visited the Polonnaruwa Police Station to inquire after the well-being of those who were arrested including Mr. Perera. The other workers told him, that Mr. Perera was not with them in the cell. The assistant manager then visited the local hospital but could not find Mr. Perera. He then visited the mortuary, where he found Mr.

⁴³ AHRC UA Reference, UA-124-2005 (20 July 2005)

⁴⁴ AHRC UA Reference, UA-132-2004 (05 October 2004); E/CN.4/2005/62/Add.1 paras. 1562 and 1563

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 Mr. 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.

83.13. **Don Wijeratna Munasinghe:**⁴⁵ 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 5:00pm on 10 April 2005. At the time, Mr. Munasinghe was driving the vehicle. One policeman had gestured to him to stop, which instruction 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 Mr. Munasinghe did not reply, screamed, "thamuse beerida?" (are you deaf?) But yet the deceased had remained silent. Seeing the policeman getting very angry Ms. 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 Mr. Munasinghe to get out of the vehicle. He also made a call on his radio. A few minutes passed, and she saw 2 policemen walking towards them. The one who was wearing No 22728, pulled Mr. Munasinghe by his shirt collar, and slapped him hard across the face. Thereafter he continued to mercilessly assault the deceased, all over his body. Ms. 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 2 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 (11) at about 1:50am Ms. Lalini had 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 Mr. Munasinghe on bail. Police officers also went to their home and handed over the three-wheeler to Ms. Lalini. When he arrived home, Mr. Munasinghe explained the severely tortured he had endured at the hands of the Maharagama Police. He said the police assaulted him with wicket poles 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. Whilst in hospital Ms. 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

⁴⁵ AHRC UA Reference, UA-64-2005 (20 April 2005)

also noticed a big bump on his head. When she visited him on 16 April 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.

84. **Gang behaviour of the police:** Police in Sri Lanka often operate not like professional law enforcement agents but thugs of gangsters. General public fear the police because of this reason and not because of they are law enforcement officers. This gang behaviour is often displayed through abuse, use of violence and torture. Many police officers have acted under the influence of alcohol while carrying out torture. In one instance, policemen attached to the Badureliya Police Station arrived the house of **M. Piyawathi**⁴⁶ (48) on 31 May 2004 in plain clothes and asked her for a bottle of *kasippu* or illicit liquor and when she said she does not have that, the three policemen started assaulting her brutally on her face and chest. They later searched the house and took 13,720 SLRs (about US Dollars 137) and gold ring. Similar recent cases are detailed below:

84.1. **Wijesekara Pathirana Lionel Weerasinghe:**⁴⁷ On 16 July 2004 around 11:00am W.P.L. Weerasinghe was working in a cinnamon plantation owned by one Mr. Kulathunga, when 6 policemen attached to the Yatawatta Police Station arrived in a white coloured van, handcuffed him and took him to his house without any explanations. There, they had told Mr. Weerasinghe, “we know you have a gun; hand it over to us” but when Mr. Weerasinghe denied possessing a gun, the policemen beat him with a wooden pole 3’ in length and 1” in diameter. They dragged him back into the van and continued the assault until they reached the Yatawatta Police Station, around 2:45pm. At the station the victim was taken to a room and his handcuffs removed. He was instructed to cross his hands, which were bound together. Then he was told to squat and lay his bound hands upon his knees and the police locked a pole between his knees and his arms. He was then bodily lifted, hanging on the pole, which was fixed between a windowsill and a table. They then swung the pole to and fro while assaulting the victim on his buttocks and soles with an iron bar [This method of torture is commonly known in police circles as ‘dharma chakra (wheel)’]. While being beaten the police questioned him about a theft of cinnamon worth 80,000 rupees – which the victim swore he knew nothing about. After being tortured, Mr. Weerasinghe was made to lie on the ground. The station OIC, Mr. Bandaranayaka, gave him two white coloured tablets and ordered him to take them. The OIC and two policemen took the victim back to his home and demanded him to give them ‘the goods (cinnamon). When he continued to insist his innocence, the police blindfolded him and sadistically paraded him around the village announcing to all the villagers that he was a thief. He was taken back to the police station and locked in a room. At about 5:30pm the police took Mr. Weerasinghe into another room and started pricking his fingertips and toes with needles all the while pressuring him to make a confession. Thereafter, they resumed their assault on his person, with a wooden pole until around midnight. The next morning (17) he was given two white tablets again, but when he refused to take them, the police threatened to kill him if he did not. He claimed he was tortured again in the ‘dharma chakra’ position for about 1

⁴⁶ AHRC UA Reference, UA-89-2004 (20 July 2004); E/CN.4/2005/62/Add.1 paras. 1545 and 1546

⁴⁷ AHRC UA Reference, UA-113-2004 (06 September 2004); E/CN.4/2005/62/Add.1 para. 1553

½ hours. That night he was taken to the Matale Police Station and charged with stealing cinnamon worth 80,000 rupees. He said that at no time was he offered medical treatment for the severe injuries he suffered. On 18 July 2004 Mr. Weerasinghe was produced before the Matale Magistrate's Court and remanded until 2 August, on which date he was enlarged on Rs.10, 000 cash bail and Rs.25, 000 personal bail. However being unable to pay the bail imposed, he was re-remanded until the 17th. After his release, he complained to the HRC of Sri Lanka and the NPC about the incident but claimed that -- more than 1 ½ months on -- these institutions had not begun their investigations.

84.2. Rathnasiri Senadheera:⁴⁸ On 29 September 2004 at about 9:00am, R. Senadheera went to the Horana Police Station to visit his brother who was in custody. He chatted with his brother a while, then left the station. When Mr. Senadheera returned to the station with lunch for his brother, SI Saliya said, "I was waiting for you", then, seized him by the neck and dragged him inside the police station. SI Saliya proceeded to slam Mr. Senadheera against the wall several times – while his brother watched helplessly. Thereafter the brutal policeman punched the victim on the abdomen and chest with his fists – for no conceivable reason. About 15 minutes into the assault, another policeman called out to SI Saliya to stop hitting the victim. At this point, the beating ceased and the victim was chased away. Mr. Senadheera is still unaware of the reason for his beating. Around 5.15pm that day, Mr. Senadheera released his brother on bail. Thereafter he entered the Horana District Hospital where he underwent treatment for 5 days and discharged on 5 October 2004.

84.3. Thusev Kamal Priyantha & Matarage Sudhrsana Priyakumara:⁴⁹ In the early hours of 26 April 2004, T.K. Priyantha and M.S. Priyakumara were returning home from a musical show at Beruwela, when they met several drunken policemen in civilian clothes – some of who were also bare bodied -- at the Pinhena Junction, Beruwela. The policemen stopped Mr. Priyantha and Mr. Priyakumara and for no conceivable reason, began to severely assault them with their fists, boots and T-56 weapons. The two hapless men were reportedly assaulted on their heads, faces, necks and sex organs. After this onslaught, the policemen forced one victim to enter a nearby boutique through the roof. When he refused, he was beaten again. Then one policeman deflated the tyres of the bicycle one victim was riding, and forced the other to carry the bicycle and run. They were chased away by the policemen who warned them to tell their fellow villagers not to travel on the road after 7:00pm and if they did this was the treatment they could expect. The injured victims were admitted to the General Hospital, Nagoda. Mr. Priyakumara was discharged on the 28 April 2004 while Mr. Priyantha received medical treatment until 3 May 2004. Earlier on 26 April 2004, they had also complained to the Assistant Superintendent of Police, Kalutara about the incident. On 14 May 2004, the Aluthgama Police Station OIC requested them to come to the station. But when they went, they were told there was nothing the police could do if the victims could not identify the policemen who assaulted them. And in an attempt to hush up the case, he had suggested a payment of Rs.2000 each, in settlement of the whole incident.

⁴⁸ AHRC UA Reference, UA-141-2004 (19 October 2004); E/CN.4/2005/62/Add.1 paras. 1558

⁴⁹ AHRC UA Reference, UA-57-2004 (02 June 2004); E/CN.4/2005/62/Add.1 paras. 1543 and 1544

84.4. **John Pollage Udaya Saman Jayasuriya:**⁵⁰ On 9 March 2004 around 8:15pm, J.P.U. Saman Jayasuriya was driving his elder son's Toyota Hi-ace Van from the Pilimalawa Town to his house. The passengers in the vehicle included, his younger son, Nandana Amarasooriya, and a worker, Kumara Senarath. Suddenly a motorbike started following them from the Kuda Oya Bridge and cut across their van near the Giragama Tea Factory. The two men on the bike came to the vehicle and asked for the driver's licence and insurance papers. Since the men were in civilian attire, Mr. Jayasuriya asked them, "Who are you?" They said they were policemen from the Peradeniya Police Station. Then one, who later identified himself as Inspector of Police Dushyantha Herath, punched Mr. Jayasuriya several times. The IP forcibly switched off the ignition. Thereafter, the two policemen dragged Mr. Jayasuriya and his son out of the vehicle and hit them with their police helmets. The victims said that at the time, the policemen smelled of alcohol. Somehow the victims managed to push the policemen away and escaped in their vehicle. When they arrived home, Mr. Jayasuriya told his elder son, Mr. Tilakasiri what had transpired. Mr. Jayasuriya was bleeding and the family prepared to take him to hospital around 9:00pm when suddenly a whole contingent of uniformed policemen in a jeep and civilians in a three-wheeler and on motorcycle came to their house, carrying weapons and poles. Mr. Jayasuriya said he recognised one of the men who assaulted him on the road. The policemen entered the house and the ones in uniform attacked Mr. Jayasuriya with a PVC-pipe – in front of his wife. Others in civil clothes captured the elder son, thinking he was a passenger in the vehicle. When they assaulted Mr. Tilakasiri, he told the policemen that he too was a police officer who was now disabled. Notwithstanding they dragged him to the road and dumped him into the police jeep. Inside, he saw his father in handcuffs. Mr. Jayasuriya and Mr. Tilakasiri were brought to the Kadugannawa Police Station around 9:30pm. Mr. Jayasuriya was locked in a police cell while his son was taken upstairs. Then, IP Herath had arrived at the station. He opened the cell door and together with others, brutally assaulted Mr. Jayasuriya with the S-long pipe. When he fell to the force of the blows, they kicked his face with their boots. Due to the assault, the victim was injured on his left eye and head. Mr. Tilakasiri was not assaulted but heard his father's cries. He pleaded with the police not to assault his father but the onslaught continued until finally, Mr. Jayasuriya fainted. When Mr. Jayasuriya became conscious he realised he was at the Kadugannawa Rural Hospital and an attendant was applying medicine on his head. Then the OIC, Kadugannawa Police Station came and questioned him about the incident and Mr. Jayasuriya told him what happened. The following day (10), Mr. Jayasuriya was taken by ambulance to the Peradeniya Teaching Hospital, but as the hospital authorities refused to accept him, he was taken to the Kandy Hospital. He was warded in Ward 10 and two operations were performed on him. Later he was transferred to Ward 22 where he stayed from 17-24 March. Whilst in hospital he said he was chained to the bed and kept under vigilance. The police filed case No. 04/54108 against him and the Magistrate came to the hospital to remand him. On 24 March 2004, his case was called before the Kandy Magistrate's Court and his younger son and Mr. Kumara Senarath, who were with him in the van were charged with obstructing the police. All three were enlarged on bail of Rs. 3000 but unable to pay, Mr. Jayasuriya was re-remanded and sent to the Remand Hospital. The Magistrate also ordered the victims to give statements at the Kadugannawa Police Station – ironically the

⁵⁰ See note 7 above.

same place Mr. Jayasuriya was so brutally tortured. Mr. Jayasuriya was released on 25 March after he paid the bail money. He was re-admitted to the Kandy Hospital and was discharged on 29 March. His medical certificate states that four of his teeth had been dislodged and he underwent an operation to adjust his chin with a wire. Mr. Jayasuriya and his family have written to the President asking for an independent inquiry into this shameful matter. They also sent copies of the letter to the IGP, the DIG, Central Province, The NPC and the HRC, Kandy.

84.5. Nagalingam Rishantha Kumar:⁵¹ On 21 February 2005, Mr. Nagalingam visited the Matale Courts to attend a court hearing of a friend, Elai Raj. During the lunch break at the end of the morning session, Mr. Nagalingam had been walking along a corridor, when he accidentally bumped into a passer by. Mr. Nagalingam apologised to this person for knocking into him but the person – who was Chief Inspector Gamlath of the Matale Police Station – had been infuriated. He grabbed the young man by his neck, assaulted him and dragged him outside the courthouse. There, the Chief Inspector had forced Mr. Nagalingam to sit on the ground, slapped him on his face and ear and also beat him on his back for about 20 minutes. A lawyer present at the courthouse witnessed this assault and reported it to the Police Superintendent.

84.6. Mohammed Riyas and Mohammed Arsik:⁵² M. Riyas was the owner of a small hotel in Weligama, Matale while M. Arsik, his brother, was the hotel cashier. On 28 March 2005, a group of 5 policemen visited the hotel and ordered some ‘take away’ food packets. But when the cashier requested payment, they reportedly refused to pay. When the cashier insisted, one policeman threw a 50-rupee note at him and struck him on his head. Thereafter, all five policemen assaulted the cashier as well as the other hotel workers and then fled, together with the food parcels, in their jeep. That same night the hotel owner, together with his brother, visited the Weligama Police Station to make a complaint. When they arrived at the station, they were brutally attacked by the same 5 policemen who then locked the victims overnight, in a police cell. It was after the intervention of several others, that the two men were released on police bail. Thereafter, they had to be admitted to hospital for medical treatment for their injuries, received at the police station. Subsequently the Weligama Police refused to entertain the victims’ complaints. And it was only after the intervention of the Assistant Superintendent of Police, that a complaint was recorded. The victims state that despite their complaints, no action has been taken to investigate the incident or prosecute the policemen involved.

84.7. B.C. Princit Perera and two friends:⁵³ On 2 March 2005, B.C.P. Perera was travelling in a three-wheel cab with his three-year-old child and 2 friends when near the Kandana Police Station they entered into an argument with two men in civilian clothes. These men however happened to be policemen who dragged Mr. Perera and his friend out of the cab. The policemen also grabbed the little child and handed him over to a passer-by. The two policemen then seriously assaulted the three victims with a shovel, some poles, as well as with fists and boots. Soon a group of policemen rush out from the police station and joined in assaulting the victims who were by this time badly injured. Not done, the

⁵¹ AHRC UA Reference, UA-33-2005 (04 March 2005)

⁵² AHRC UA Reference, UA-53-2005 (01 April 2005)

⁵³ AHRC UA Reference, UA-32-2005 (03 March 2005)

policemen dragged the victims into the station and continued to beat them up. The large crowd that had gathered at the scene witnessed this whole shocking episode. Late that night the police phoned Mr. Perera's brother-in-law and told him to come collect the little child – who until that time was being looked after by strangers. When the brother-in-law came to take the child, he noticed that the 3 victims were seriously injured. Around midnight Mr. Perera's two friends were produced before the Acting Magistrate and admitted to the Ragama Teaching Hospital. However Mr. Perera continued to be detained at the Kandana Police Station – despite his injuries and being in need of urgent medical attention. At the time of the Urgent Appeal a complaint had been made to the 'torture hotline' of the HRC of Sri Lanka.

84.8. Liyana Kankanamlage Vipula Saman Kumara:⁵⁴ On the morning of 4 June 2005 L.K.V. Saman Kumara walked by the Palmadulla Police Post – manned by RPC Jayantha (37473) and PC Sumanasekera (3703) – to buy a cigarette at a boutique nearby. As he passed by, the policemen commented that he was drunk, to which Mr. Kumara smiled sheepishly and admitted that he did consume a little too much alcohol the previous night at a wedding party. Thereafter the victim walked back to his three-wheeler vehicle. The two policemen, who had followed him, accosted him, pulled him out of his vehicle and mercilessly assaulted him. They accused Mr. Kumara of attempting to drive his vehicle whilst being in a state of intoxication. They dragged him to the police post and continued to beat him up. According to the victim's mother, when she visited her son in police custody later that day, he was wreathed with pain from the torture, and also had 'shoe marks' all over his body -- presumably from having been savagely kicked. She also claimed that he was bleeding from his nose and ears. Later when he was released on bail his parents took him home but because he was in unbearable pain they admitted him to the Ratnapura Hospital where he obtained medical treatment for his injuries for several days.

84.9. Halnetthige Nelsan Perera and Halnetthige Lenith Nuwan Peiris:⁵⁵ On 13 March 2004 around 8:30pm, H. Nelsen Perera and H.L.N. Peiris were returning to the Pinwatte cemetery to light candles for Mr. Perera's wife, whose funeral had taken place that evening. They had gone to a shop about 50 metres from the cemetery to buy the candles, but as there were no candles at the shop, they reversed their vehicle on to the main road -- to try elsewhere. At that point they saw a tanker coming from the direction of Colombo, so they moved the vehicle into the shop's compound again. Then, two policemen clad in uniform and reeking of alcohol walked up to them and queried rudely, "Are you trying to kill yourselves?" Mr. Peiris replied, that although they did not see the tanker at first, when they did, they moved out of its way. But one policeman commented: "You are being too smart" and forcibly took the key from the vehicle ignition. The other policeman pulled Mr. Peiris by his shirt collar out of the vehicle and hit him on his ear. Mr. Peiris insisted that he had not pulled his vehicle beyond the pavement and thus had not committed an offence. He requested they return his vehicle key. Mr. Perera also joined in and showed the policemen the graveyard -- where his wife had been buried only a few hours ago. He explained that they had come to pay their respects to her by lighting candles, so to please let them go. But the policemen began beating Mr. Peiris with their fists and boots. Mr. Perera alighted

⁵⁴ AHRC UA Reference, UA-98-2005 (21 June 2005)

⁵⁵ AHRC UA Reference, UA-39-2004 (16 April 2004); E/CN.4/2005/62/Add.1 paras. 1526 and 1527

from the vehicle and pleaded with them not to assault his friend, but they beat him too. According to him, they were beaten on their faces, chests and arms. A few minutes later a police vehicle approached, from which 7-8 policemen including the Pinwatte Police OIC, Kumarajeeva got down. The OIC proceeded to hit both victims with an iron bar, which was around 2' in length and 2" in diameter. Then the OIC ordered the other policemen to assault the victims further. Mr. Perera recollected that two policemen were carrying poles and the other five had guns with them, all of which was used to bash the victims. Mr. Perera began bleeding profusely and collapsed on the road. Meanwhile, a large crowd gathered at the scene. Several onlookers reminded the policemen that one man had just lost his wife and should not be assaulted. But, not only did the police ignore their pleas, but even attempted to assault the onlookers. Soon Mr. Peiris too collapsed with a massive injury on his leg. The police threw both victims into the back of their vehicle and drove away. According to Mr. Perera, when he regained consciousness, he heard his friend wailing in pain. The police continued to torture them whilst in the vehicle despite the victims' plea to stop beating them and to take them to a hospital. In desperation Mr. Perera said, "I came to light candles for my dead wife, but if you don't take me to hospital, I too will die". The victims were brought to the Panadura Police Station, but they could barely get out of the vehicle and collapsed in the compound. Later they were admitted to the Panadura Base Hospital around 9:30 that night. They were examined by doctors and admitted to Ward 1. Mr. Perera was later transferred to Ward 24 and Mr. Peiris to 26. At the hospital a large number of people visited them, one of which was a professional photographer who took several photographs of Mr. Perera's heinous-looking injuries. Mr. Perera was discharged on 15 March, with visible marks of injuries on his chest, back, head, face, hands and legs. Reportedly Mr. Peiris had been admitted to the National Hospital in Colombo for special treatment and surgery to correct the various fractures he had suffered from the police onslaught. Mr. Peiris was discharged from the hospital on 31 March and his Diagnosis Ticket stated that he had suffered from a compound fracture of the left lower limb as the consequence of an assault by policemen. According to Mr. Perera his eldest daughter had complained of the torture inter alia, to the HRC, NPC, IGP, DIG, Police (Colombo South), SSP and ASP, in Panadura. He also filed a FR case before the Supreme Court. Subsequently he received a letter from the HRC that an inquiry into his torture complaint had begun on 23 March in Case No. 1486/04. The ASP and an IP also recorded the victims' statements on 14 March. Thereafter, OIC Kumarajeeva was transferred with immediate effect from the Pinwatte Police Post. It is also interesting to note that at no time -- before or after their brutal torture -- were the victims charged with any offence; to date, no warrant was produced and no complaint was filed against them.

85. **Lack of police discipline:** Lack of discipline within the police force has contributed in aggravating the use of police torture. This aspect was dealt in detail in a statement issued by the AHRC entitled "Lack of police discipline a threat to Sri Lanka's national development" (see Appendix 4). This lack of discipline was evident in the behaviour of the police in such ways as: failing to produce a warrant before entering premises; failing to produce a warrant before arresting a person; failing to wear uniforms in the course of duty; failing to identify themselves before entering a premises or before arresting a person; acting under the influence of alcohol and failing to take down a statement. The duty of the law enforcement agency is to enforce the law according to the procedures established. The duty of

the head of the police department is to ensure that the department enforces the law of the land. The IGP should above all be concerned about the discipline in the police force that he commands. It is publicly admitted that there is a complete collapse of discipline in the law enforcement agency, particularly in the recent decades. If we consider discipline as a component of development, he should above all be concerned about the discipline in the police force that he commands. It is publicly admitted that there is a complete collapse of discipline in the police, particularly in the recent decades. Discipline only becomes a part of civilian life when it prevails within state agencies. Lawless agencies create an obstacle to the establishment of discipline within society. This obstacle cannot be overcome in any way but through attempts to reinforce discipline within the state bureaucracies, particularly the police department.

86. Absence of command responsibility within the police: Any disciplinary forces like police are organised according to rigid command structure. Such command structure is paramount in implementing orders from the top to the bottom of the police force. Another important aspect of such structure is the command responsibility of the senior officers. The principle of command responsibility is well-established under the international law. Although this principle has been derived in cases pertaining to international humanitarian law and crimes against humanity, the same principle could be applied in domestic circumstances when massive human rights violations tantamount to crimes against humanity takes place, systematic and widespread use of torture by the police in Sri Lanka. The ICTY in the Celebici case elaborated three requirements to establish command responsibility:

“1) the existence of superior-subordinate relationship; 2) that the superior knew or had reason to know that the criminal act was about to be or had been committed; and 3) that the superior failed to take the reasonable measures to prevent the criminal act or to punish the perpetrator thereof.”⁵⁶

Applying this to the situation of police torture in Sri Lanka we could easily conclude that: 1) there is a clear existence of superior-subordinate relationship within the Sri Lanka Police force; 2) the superior officers, for example officers such as OICs, HQIs and up, are well aware of the eminent use of torture by their subordinates and are also aware of the past acts of torture and 3) these superior officers failed to prevent such torture being committed and also failed to punish perpetrating officers. In fact there is evidence to prove that superior officers directly took part in carrying out torture. In such circumstances, the command responsibility of the superior police officers in Sri Lanka is relevant not only to prevent and punish the perpetrators but also to hold them criminally responsible for the acts committed by their subordinates. However, although torture has been endemic none of the senior supervising officers involved are being arrested or prosecuted. Only some lower-ranking officers are ever arrested and investigated, if at all, even that after much public outrage and domestic and international pressures. This lack of accountability means that those ultimately responsible for all actions and behaviour within a police station—the OIC, HQI, ASP and SP—are allowed to escape the chain of command responsibility that is fundamental to the effective functioning of any institution. Police torture and extra-judicial killings should thus not be treated as isolated incidents caused only by a few

⁵⁶ “Command Responsibility: The Contemporary Law”, Humanitarian Law Center, February, 2005 (Website: www.hlc.org.yu)

lower-ranking officers, but as by-products of a system that deliberately neglects command responsibility. It is from this viewpoint that civil society must hold responsible the IIGP, the AG and the NPC, not only for individual violations, but for allowing the policing system to fall into a state of decay and thereby affecting the performance of other public institutions.

87. Why do top-ranking police officers ignore criminal acts or other acts of indiscipline on the part of Police officers?: A collection of views on this matter include the following:

- Some top ranking officers may feel compromised due to many reasons and therefore wish to turn a blind eye to matters of discipline;
- Many may feel that things have gone too badly wrong for too long and that attempts to correct the situation may not bear any positive results. To live with it may be the only option; there may be a feeling that any attempts to impose discipline will incur a backlash and a general state of non-cooperation may be more strongly manifested making it impossible for top officers to get even limited compliance with their orders;
- They may be acting on the basis that many of their cadres are not qualified and competent and therefore much errant behaviour is to be expected from them;
- Those top ranking officers who have at one time or another, cared for discipline and had tried to do something about it may have learned the hard way that they do not get support and cooperation from other top ranking officers;
- Given the poor salary scales of police officers it may have become an institutional belief that corruption of one form or another is inevitable and the top ranking officers may think that it may not be possible to fight such deep institutional beliefs and habits;
- Some top ranking officers may fear that their subordinates have political patronage which may make the lower ranking officers more politically powerful than some top ranking personnel;
- Some may remember of those better top ranking officers who tried to do whatever they thought was right and honorable and therefore did not end up well within the institution. Some may feel that the level of violence within the institution is too great and that if they interfere with it they will themselves have to suffer serious consequences.

These views collected from many knowledgeable persons including senior police officers who are now retired may provide a good starting point for the study and analysis of this issue. Such studies can contribute a great deal not only to the understanding of the behaviour of top ranking officers and the general behaviour within the policing institution but also an understanding of Sri Lankan society as a whole.⁵⁷

88. Threatening, torture and ill-treatment of family members of torture victims: There are ample evidence of threatening and ill-treatment of not only torture victims but also their family members. The family members often face such

⁵⁷ AHRC, *Command Responsibility – A newsletter addressed to the top-ranking police officers in Sri Lanka*, Volume1, Number 1, August 2005, Asian Human Rights Commission, Hong Kong

treatment on the hand of the police when they tried to inquire of victims when they are in the custody of the police. Other instance where family members are threatened is when the victim pursues a FR application at the Supreme Court against the perpetrators or the victim and/or family members are witnesses of a criminal trial when the AG's department indicts perpetrators under the CATA. While harassment could be physical there are many instances of causing psychological trauma by threatening to kill the family members etc., through anonymous telephone calls etc. One example of involvement of physical violence is described in the following example. **Vidanalage Dinesh Tharinda de Mel**⁵⁸ (21) was arrested without a reason by the Moratuwa Police on the 1 June 2004 and was severely tortured. When the victim's mother, Ms. P. Kusumawathi Peiris went to visit him at the police station on the 2 June 2005, she was scolded badly and the Officer In Charge of the police station chased her away. In a separate case Police officers at the Badureliya Police Station were looking for a suspect named Ananda Wijekoon and arrived at his residence on the 27 June 2004 and assaulted his wife, **M. K. Gnanawathi**⁵⁹ (58) and her son **Roshan Wijekoon**⁶⁰. **I. D. Karunawathi**⁶¹, the wife and **I. G. Niluka Aluthgedera**⁶², the daughter-in-law of **Dehiwatte Gedera Jayathilaka**⁶³ who died due to torture by the officers attached to the Mahawela Police Station on 9 March 2004, were arrested by the officers attached to the same police station on 14 October 2004. This arrest meant to intimidate and dissuade Karunawathi and her daughter-in-law who were pursuing a FR application at the Supreme Court of Sri Lanka on the death of her husband.

89. **Connivance between the police and the health professionals to produce false evidence:** There have been a number of occasions where health professionals such as JMOs and DMOs conniving with the police to cover up the evidence. This is a clear violation of professional standards and work ethics of these health professionals. Such connivance has contributed to fabrication of evidence against the torture victims. Torture victims are vulnerable in the hands of medical professionals. Reports of medical professional are crucial in any further legal proceedings in relation to the alleged acts of torture suffered by the victims. However, medical professionals conniving with the police to provide false reports seriously undermined the effectiveness of this process. There are many instances where medical professionals issuing medical certificates or documents without seeing or examining the victims. The independent and professional functioning of the medical personnel attending to the torture victims will help the victims not only in getting immediate medical attention but also recording injuries suffered by them in details. Following are some of the cases wherein medical personnel such as JMOs and DMOs assisted the police in trying to cover up facts or in producing fabricated evidence. In the case of **Aththana Gamaralalage Ravindra**⁶⁴ (26) who was severely tortured on 13 May 2004 by the Inspector of Police (IP) Attapattu of the Katupotha Police Station. Later IP Attapattu managed to obtain a fabricated medical report in cooperation with the DMO at the Kalupotha Hospital even without examining the victim. In the case of **J. S. Chaminda**⁶⁵ (21), **B. W. L.**

⁵⁸ AHRC UA Reference, UA-59-2004 (03 June 2004); E/CN.4/2005/62/Add.1 paras. 1570

⁵⁹ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶⁰ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶¹ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶² AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶³ AHRC UA Reference, UA-35-2004 (09 April 2004) and UP-59-2004 (15 October 2004); E/CN.4/2005/62/Add.1 paras. 1484

⁶⁴ AHRC UA Reference, UA-63-2004 (09 June 2004); E/CN.4/2005/62/Add.1 paras. 1530

⁶⁵ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

Ajith Kumara⁶⁶ (30) **W Wijethilaka**⁶⁷ or Ananda Baas, after being tortured by the police officers attached to the Badureliya Police Station and were taken to the DMO of Badureliya Government Hospital, he has issued medical certificates on 27 June 2004 regarding the health of the three victims without conducting a proper examination. The DMO has also issued a false report stating that Ajith Kumara was drunk at the time of arrest. After **Welgama Ralalage Wijitha Herath**⁶⁸ (40) was severely tortured by the Officer In Charge of the Polgahawela Police Station on the 5 September 2004, he was taken to the Polgahawela Government Hospital and produced before a doctor (whom the victim could identify if seen again). The said doctor commented to the police that Mr. Herath is drunk without questioning or examining him. After **Mohottalalage Punched Banda**⁶⁹ (39) was severely tortured by the officers attached to the Samanalawewa Police Post, Balangoda on 26 August 2004 he was taken to the Oluganthota Government Hospital and the doctor at the hospital issued a report after listening the police officer and without talking to examining the victim. **B. Shiwabalan & friends**⁷⁰ who were severely tortured by the officers attached to the Matale Police Station on and after 22 July 2004, when were taken to the DMO, no medical treatment was provided despite Mr. Shiwabalan complaining of chest pains. And they claimed that though they informed the JMO and DMO at a later day of their assault, they were not taken seriously. A recent similar case is detailed below:

89.1. **Nagalingam Rishantha Kumar**:⁷¹ In the case of Mr. Nagalingam who was tortured on the 21 February 2005 by Inspector Gamlath of the Matale Police Station, the same police officer later took the victim to a hospital where he requested a doctor to examine him and record a statement that the victim was acutely intoxicated. The doctor agreed and issued a statement accordingly. Around 2:15pm the victim was taken to the local police station and lock up while Chief Inspector Gamlath left the premises. Around 3:00pm another policemen had visited the victim and recorded his statement in which Mr. Nagalingam detailed the incident that had just occurred. At 5:00pm, this policeman accompanied Mr. Nagalingam to the hospital where a different medical officer examined him and issued a report that indicated the victim was *not* intoxicated. Mr. Nagalingam was once again taken back to the police station and detained until 6:00pm. He was finally released on police bail and asked to return on a later date to receive his summons – for what, he is still unsure.

90. **Illegal and arbitrary arrests and torture**: There have many cases of illegal arrests by the police officers of torture victims. This is in clear violation of the Criminal Procedure Code of Sri Lanka. In most cases police failed to produce a warrant. Police have also arrested without revealing their identity, in plain clothes and without giving any reason. In the case of **Aththana Gamaralalage Ravindra**⁷², he was beaten up because he just asked the police the reason for his arrest. **J. S. Chaminda**⁷³ (21), **B. W. L. Ajith Kumara (30) W Wijethilaka** or Ananda Baas were illegally arrested and tortured by the police officers attached to

⁶⁶ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶⁷ AHRC UA Reference, UA-82-2004 (06 July 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

⁶⁸ AHRC UA Reference, UA-118-2004 (15 September 2004); E/CN.4/2005/62/Add.1 paras. 1559

⁶⁹ AHRC UA Reference, UA-126-2004 (24 September 2004); E/CN.4/2005/62/Add.1 paras. 1557

⁷⁰ AHRC UA Reference, UA-99-2004 (11 August 2004)

⁷¹ AHRC UA Reference, UA-33-2005 (04 March 2005)

⁷² See note 64 above.

⁷³ AHRC UA Reference, UA-126-2004 (24 September 2004); E/CN.4/2005/62/Add.1 paras. 1536 and 1537

the Badureliya Police Station on the 27 June 2004. Some recent cases of such illegal arrests are detailed below:

90.1. **Heeralu Mohottalalage Punchibanda:**⁷⁴ According to the H.M. Punchibanda, on 26 August, 2004, around 4:30pm Sub Inspector (SI) Dhammika Bandara and Sergeant Mahinda of the Samanalawewa Police Post, Balangoda, visited his house and dragged him out. SI Bandara hit him on the head and as he fell, kicked him savagely. The policeman demanded to know where the local trap gun (*bandina thuwakkuwa*) was, but the victim claimed he knew nothing of such a weapon. The SI hit the victim repeatedly on the head with a wooden pole, severely injuring him. Mr. Punchibanda's wife pleaded with the policemen not to harm her husband, but ignoring her, the policemen proceeded to wind a nylon rope around the victim's neck and tug at the rope – until the his neck began to bleed. Then the victim's hands were tied behind his back and he was taken to the jungle in search of the trap gun. However Mr. Punchibanda claimed that though they walked for about 1 km, no trap gun was found. Then the policemen took him to Marangahavilla, untied his hands, allowed him to wear his shirt and proceeded to the Samanalawewa Police Post around 8:30pm. At the Police Post Mr. Punchibanda was forced to sit on a mat and was handcuffed to a table leg. He was kept thus, until 6:00 the next morning (27) – despite his injuries and without any medical treatment. Later SI Bandara had taken him to the Oluganthota Government Hospital. But before leaving, the policeman instructed him to tell the doctor that his neck was injured by a forked tree branch. At the hospital the policeman related this fabricated story and the doctor without any examination or inquiry filled in the requisite document and handed it over to the policeman. Later Mr. Punchibanda was charged by the police for causing fatal injuries to a villager using a local trap gun, a charge that the victims denied. He was then produced before the Balangoda Magistrate who remanded him at the Balangoda prison. There, he complained to the prison officers about his torture and the next day (28) he received medication from a first aid worker – but only after his sister paid 100 rupees to the prison officer. Later he was taken to the Kuruvita Prison where a doctor examined him and warded him at the prison hospital until 8 September. On the 9th he was released on bail. After being released, Mr. Punchibanda continued to suffer severe pain on his head, neck and chest and was admitted to Ward 6 of the Ratnapura General Hospital. He was discharged from hospital on 15 September 2004.

90.2. **Moningal Akila Dilhara De Silva:**⁷⁵ On 7 June 2004 six policemen from the Panadura Police Station, including Sergeant Livera, arrested M.A. Dilhara de Silva at his home. No reasons were given for his arrest. Apparently there had been a theft in a neighbouring house of police officer Prasanna Ginige and the police wanted him regarding the incident. At the police station Mr. de Silva was taken to the crimes branch and handcuffed while seated on the floor. Later the victim alleged he was assaulted on the face, head and back by some policemen, who accused him of breaking into Mr. Ginige's residence. Afterwards, he was locked up in a cell, without food. At about 1:00 the following morning, Sergeant Livera pulled him out of the cell and handcuffed his hands together while keeping one hand over his shoulder and the other behind. He was then beaten with a rubber hose on the head, lower stomach, buttocks, legs and toes -- for about 45 minutes.

⁷⁴ AHRC UA Reference, UA-126-2004 (24 September 2004); E/CN.4/2005/62/Add.1 paras. 1557

⁷⁵ AHRC UA Reference, UA-77-2004 (24 June 2004); E/CN.4/2005/62/Add.1 paras. 1534 and 1535

While being beaten the victim was ordered to confess stealing from Mr. Ginige's residence. At about 2:10am he was put back into the cell. Mr. de Silva said, throughout the day he was repeatedly taken out from the cell, threatened and handcuffed in the same manner. Sergeant Livera assaulted him multiple times with a rubber hosepipe. Whilst in the cell, other policemen mentally tortured him by threatening to produce him in court. In the evening the policeman began consuming liquor and the victim was invited to join them. About 2:00am he was taken by car to Prasanna Ginige's house and threatened that he would be chased away from the village if he did not confess to theft. Next, he was taken to Egoda-uyana, as the police was desirous of arresting others. Mr. de Silva was however brought back to the station alone, as the police failed to arrest anyone else. At the station the victim was asked to sign a statement and put back in the cell. On the morning of 9 June 2004 he was fingerprinted and further assaulted. He was lock up till about 8:00pm and only released after his mother signed some statements. On 10 June 2004 Mr. de Silva suffered from severe pain all over his body and was bleeding from the nose. He was admitted to the Kalubovila Government Hospital as an in-patient in Ward 27 where he was examined by the JMO and discharged the following day.

90.3. **Punchi Kankanamge Nimal:**⁷⁶ On 6 June 2004, at about 9:00am P.K. Nimal reported to the Horana Police Station upon an earlier request by the police. When he reached the station, the policeman who had visited his workplace the previous day, took him to a room and began assaulting him severely, interrogating him about the loss of a motor at the workplace. The policeman hit Mr. Nimal with a hosepipe on his face and ears; then on his buttocks and thighs – for about 10 minutes. Then Mr. Nimal was handcuffed and locked in a holding cell. About 15 minutes later, the same policeman arrived, dragged him out of the cell and into the same room. He ordered the victim to kneel down and slapped his face and ears for about 15 minutes. Thereafter the policeman ordered the victim to strip off his clothes except his underwear and brutally kicked the victim's thighs and lower part of the stomach with his boots. According to Mr. Nimal he fainted twice during the ordeal, but whenever he fainted, the policeman pulled him up and forced him into a kneeling position. The policeman beat him again for about 20 minutes on his shoulders, chest and back. After a while, Mr. Nimal – who was lying in pain -- was ordered to stand up and get dressed. The policeman took him to a hall and sat him on a chair. He was then questioned about the missing motor, to which he denied any knowledge. The same policeman dragged Mr. Nimal back into the room – in which he was tortured earlier – and threatened him, “I will falsely charge you with possessing a bomb if you do not tell the truth”. The torture resumed with the policeman grabbing the victim's sarong, pulling him up and then dropping him on the ground. Again, he was assaulted with the rubber hose and taken back into the hall. At about 5:30pm another policeman questioned him about the missing motor and forced him to sign a document prepared by the police. Later a friend of Mr. Nimal's released him on bail and took him back home around 8:00pm. As his condition was serious and he was in pain, the victim's family took him to the Ingiriya Government Hospital the next day where he was warded and treated until 11 June 2004. Soon after the admission, the victim was given Saline. The doctor who examined him noted all his body injuries. On 10 June 2004, the victim's wife, Ms. H.M. P.J. Gunarathna, reported the incident to

⁷⁶ AHRC UA Reference, UA-71-2004 (18 June 2004); E/CN.4/2005/62/Add.1 paras. 1532 and 1533

the Assistant Superintendent of Police, Horana. However reportedly, no one came to the hospital to take the victim's statement about the incident and he was not produced before a JMO either.

90.4. Balakrishnan Shiwabalan (17), Muniyandi Neelamugam Selvakumar (17) & Anthonysamy Anandakumar (19):⁷⁷ At around 8:30pm on 22 July 2004, a group of policemen including PC Ekanayake of the Matale Police Station visited B. Shiwabalan's home and accused him of breaking into PC Ekanayake's house and stealing 12, 000 rupees. They also alleged that his two friends, T. Parameshwaran and M.N. Selvakumar – who were at the time, helping him dig a lavatory pit in his house – of being involved. The police demanded to record the statement of the three young men, forced them into the jeep and took them to the police station. After about an hour, the police released Mr. Parameshwaran but detained Messrs. Shiwabalan and Selvakumar. At the station, the two men were stripped and blindfolded before being beaten with iron rods and slapped and kicked savagely by several policemen. Whilst being tortured they were told to confess to the theft. The police also said, they would be released if they admitted to the crime, but as they refused, the policemen repeatedly assaulted them. Mr. Shiwabalan said he was beaten on his chest and on the soles of his feet with a cricket post. He was also made to lie down on his stomach and assaulted on the back and thighs. Mr. Selvakumar alleged he was made to lie naked on a table and beaten on his thighs and back. The next day (23) around 10:00am several policemen brought one Anandakumar -- a close friend of the victims -- to the police station. He too was beaten with poles and kicked with boots. When Mr. Shiwabalan's father visited the Matale Police Station to see his son, he noticed the victims handcuffed and chained to a bench. Having heard that his son and his friends had been brutally tortured he was anxious to know when they would be released. The police said they would be released at 4:00pm and then again at 9:00 that night, but the victims were not released. The police then said they needed more time to question the victims and threatened the father to leave or face a beating. Eventually the victims were released on 24 July 2004 – more than 40 hours after their illegal arrest. They were produced before the Matale Magistrate and released on bail. After release the victims were admitted to the Matale Hospital and underwent medical treatment for several days. According to Mr. Shiwabalan, PC Ekanayaka was building a house nearby and had requested the victims to help in the construction. But they had failed to go, as they were building a lavatory pit at Mr. Shiwabalan's house. He opined that the policeman falsely accused him of theft and tortured him because he was angry with the victim for refusing to work for him.

90.5. Kavirathna Priyantha Kumara de Silva:⁷⁸ On 19 December 2004 around midnight a group of people visited the house of K.P. Kumara de Silva, smashed up the doors and windows and accused him of stealing a mobile phone. They also threatened to cut him into pieces. Terrified, his sister and brother-in-law ran to the Kalutara North Police Station to complain about the incident. Thirty minutes later, four policemen came to Mr. de Silva's house in a police jeep and arrested him -- without an arrest warrant – instead of arresting those who broke into his house. Mr. de Silva was then taken to the crimes branch of the Kalutara North Police Station. At the station, Kumara was brutally tortured by Constable Amitha and another

⁷⁷ AHRC UA Reference, UA-99-2004 (11 August 2004); E/CN.4/2005/62/Add.1 para. 1551

⁷⁸ AHRC UA Reference, UA-02-2005 (04 January 2005)

policeman. They severely beat him with wooden poles and fists, and kicked him all over his body including his soles, legs, face and back. They placed books on his head and continue to hit using wooden poles. According to the victim, the torture continued for more than four hours, till around 6:00am. Another half-hour later he was again assaulted with a pole by SI Weerasiri of the crimes branch, who asked him where the mobile phone was. Mr. de Silva was then locked up in a holding cell without food or drink until 4:00pm. Mr. de Silva was produced before the Kalutara Magistrate's Court at around 4:30pm that same day. The Magistrate ordered him to pay Rs. 3500 as cash bail and Rs. 25,000 personal bail, but unable to make good the bail money he was remanded at the Kalutara Remand Prison. In prison, he informed the prison officers that he had been tortured by the police. He was thus sent to the prison hospital, where he received medical treatment and was warded until 3:00pm the following day. Mr. de Silva was once again produced before the Magistrate's Court that afternoon (December 20) and released on bail. Immediately after release, he was admitted to Ward 11 of the Nagoda General Hospital where the Judicial Medical Officer (JMO) examined him and discharged him on the same day. In the Medico-Legal Report (No. 1590/04 dated 21.12.2004) the JMO identified the following injuries on the victim's body: A contused area of 15x10cm on the outer of the right hip. In the centre of this area, 1x1cm grazed abrasion was found; Generalised swelling on both soles of the feet, caused by blunt weapons. On 22 December, Mr. de Silva's mother lodged a complaint about her son's torture with the SSP, Kalutara. On the same day, the victim too complained in writing to the HRC of Sri Lanka, the NPC and the AG. At the time of issuing the Urgent Appeal, Mr. de Silva was still suffering from severe pain and unable to walk freely. He was undergoing Ayurvedic treatment for his injuries.

90.6. Asaru Pulige Sarath Jayaweera Sandanayake:⁷⁹ Mr. Sandanayake was a bus driver by occupation. On 14 December 2003, being tired after a bus trip from Colombo to Puttalam District, he went to bed around 8:30pm. A little while after midnight, he heard someone shouting and going to investigate found 5 policemen standing outside his house. No sooner he opened the door, the policemen held him by his neck and ordered him into a waiting police jeep. When Mr. Sandanayake asked the reason for his arrest, the policemen simple replied that the OIC of the Mundal Police Station wanted to meet him. Suddenly PC Upali hit the victim's head with his electric torch. Another Sergeant hit his head with a broken pole. The policemen also removed some wooden rafters from his gate and continued assaulting Mr. Sandanayake severely. At this commotion and hearing his screams, some neighbours came out and begged the policemen to stop assaulting the victim. The police temporarily ceased their assault and assured the neighbours that Mr. Sandanayake would be released after his statement is recorded. However no arrest warrant was produced at the time of his arrest. At the Mundal Police Station, the OIC beat the victim with a rubber hosepipe, notwithstanding the victim's plea not to hurt him. He was then taken to the Mundal Hospital. The police awakened a doctor who asked the victim to sit down and recorded something in a book. When the victim complained of chest pains, the doctor asked him to stay at the hospital. However, the police took Mr. Sandanayake back to the police station and put him in the lock-up. According to the victim no medical attention was afforded to him, and neither was he given any food or water whilst at the station. Then around noon on 15 December, the victim was released on police bail, and the police told

⁷⁹ AHRC UA Reference, UA-25-2005 (17 February 2005)

him they would not produce him in court. The reason for his arrest remained unknown. Upon being released, Mr. Sandanayake visited the Chilaw Hospital and was admitted to Ward 4. The next day (16), one Dr. N Edirisinghe from the JMO's office examined him and found 28 injuries on his body.

90.7. Vidana Arachchige Norman Krishantha Jayawardana:⁸⁰ V.A.N. Krishantha Jayawardana was the Assistant Regional Manager of the Sri Lanka Cashew Corporation for the Matale and Polonnaruwa Districts. According to Mr. Jayawardana, on 4 March 2005 around 6:45pm he left his office at Naula, Matale to go to his home in Kandy. When he reached the Alkaduwa Junction at about 8:30pm his vehicle (bearing no. 32-4991) was stopped by three policemen of the Wattegama Police Station. When he asked the policemen why they stopped him, they replied that the motorcycle belonging to the OIC (Admin), of their station had collided with a blue coloured 'Trooper' vehicle and they had been ordered to search for this vehicle. Mr. Jayawardana told them "this is a Mitsubishi Pajero", not a 'Trooper", and they agreed. Nonetheless, the policemen checked his vehicle using their flashlights, but reportedly found nothing suspicious. The policemen requested Mr. Jayawardana to accompany them to the Wattegama Police Station. And though he said he wanted to go home since he only went home once a week and also assured them he would attend any further inquiry if required, the policemen insisted he went with them. Mr. Jayawardana had no cause for concern except for the inconvenience, so he followed the police jeep in his own vehicle. About 20 minutes after his arrival at the station, the OIC (admin.) Samarakoon walked in. He immediately began to brutally assault Mr. Jayawardana on his head and body without any inquiry. So severe was this assault that the victim was rendered unconscious. But after he regained consciousness he pleaded with the OIC to stop beating him and to discuss the problem instead. However the OIC continued his assault, slamming his knee into the victim's abdomen and abusing him verbally. The OIC then ordered another policemen to smell the victim's mouth and spoke to someone over the phone saying, "This guy is not drunk". The police then made an entry in a book and put him in a cell. Though injured and in pain, Mr. Jayawardana was not provided any medical treatment. The next morning, when the OIC of the police station came to see him, Mr. Jayawardana related the incident of the previous evening and told the OIC that he had been arrested and tortured by OIC Samarakoon without reason. The OIC permitted him to phone his family. He also directed a policeman to take the victim to the office of the Superintendent of Police, Matale who recorded his statement and also sent him to be medically examined by the DMO. Accordingly, the DMO's examination revealed several injuries to his body. Mr. Jayawardana was further questioned by an officer of the Matale Police and HQI and released at 8:00pm. To date, Mr. Jayawardana has not been informed of the reason for his arrest and is unaware of any charges against him. After being released, Mr. Jayawardana filed a FR application before the Supreme Court (Case No: SC/FR/97/2005) but to his knowledge no serious action has been taken against OIC Samarakoon.

90.8. P.H.K. Sanjeewa Ranasinghe:⁸¹ According to the father of P.H.K. Sanjeewa Ranasinghe, on 8 July 2005 at 12:30pm., a group of about six persons dressed in civilian clothes and carrying firearms came to his house in Bataganwilla, Galle, Sri Lanka. They banged at the front door and demanded

⁸⁰ AHRC UA Reference, UA-61-2005 (14 April 2005)

⁸¹ AHRC UA Reference, UA-123-2005 (19 July 2005)

entry. When the family asked for identification, the intruders answered that they were from the Criminal Investigation Department. Since the family members were suspicious, they told them to return with the officers of the Galle Police Station, which is the nearest station. However, the banging and kicking at the door continued. At this stage the family phoned the Galle Police and several policemen from that station arrived. However by the time the intruders had broken down the doors and entered. The six people who entered were in civilian dress and did not possess a search warrant, but they searched the premises, pulling many things down and saying they were conducting an inquiry. At the end they took Rs. 300,000 (USD 2,990), bank receipts, a torch, three cellular telephones and three wallets. They also took into custody Mr. Ranasinghe who was not informed of the reason for his arrest, nor shown the warrant of arrest. One IP Prasanna Alwis handed over a receipt written on a small piece of paper, stating that he had taken Rs. 25,000 (approx. USD 250). He had written the address of the Criminal Investigation Unit at Chaithya Road, Colombo. And though the victim's father requested a proper counting of the money, a noting of the exact amount and for the document to be signed his requests were refused. After his son was taken away, the father and other family members went to the Criminal Investigation Unit at the given address several times between 8 and 15 July but could not find the victim and his whereabouts were not revealed. On 16 July they sought the help of a lawyer and together with this lawyer the father visited the Criminal Investigation Unit to inquire about his son. The victim was then shown to the lawyer but nothing was revealed about the reasons for the inquiry, detention or whether he was suspected of any crime. Neither was the family allowed to talk to the victim. The family feared that the secret nature of their son's detention might indicate that he is being tortured and that his life is in danger. In fact they believe that he has already been assaulted and could be more cruelly treated in the future. At the time of issuing the AHRC UA the victim's family had complained to the Galle branch office of the HRC of Sri Lanka and also to the IGP, but had not received any replies from these authorities.

90.9. **Embathanthirige Amal Fernando:**⁸² E. Amal Fernando ran an animal husbandry in front of his home. On 19 January 2004, around 12:00noon when he was working on his farm three men in civil clothes came and asked him who made Kasippu (illicit liquor) in the locality. When Mr. Fernando said he did not know, they informed him they were the police and assaulted him on his hand, chest, legs and back using wooden and iron bars. Minutes passed and another five persons in civilian clothing came to the farm. Mr. Fernando was forced to stand up and taken to a police vehicle nearby, whose driver was dressed in police uniform. He was taken to about four places in Maggona -- in an apparent attempt to locate Kasippu dealers -- and finally to the Kalutara North Police Station. About 20 minutes later the police took him to the private dispensary of Dr. Mubarak who examined him without asking questions, and then filled out a form given by the policemen. Mr. Fernando was taken back to the police station and locked up. At about 9:30pm he was fingerprinted and released. His right hand was injured and swollen so he visited the Nagoda Hospital and was admitted. He also informed the hospital authorities that the police had assaulted him. The next day, (20) a policeman attached to the hospital police post recorded Mr. Fernando's statement. On the 21st the JMO, Hemantha De Silva examined him and discharged him. However on the

⁸² AHRC UA Reference, UA-46-2004 (30 April 2004); E/CN.4/2005/62/Add.1 paras. 1516 and 1517

22nd he was readmitted to hospital due to his deteriorating health condition and received treatment until the 26th. Thereafter he sought Ayurvedic treatment for his injuries. Mr. Fernando complained to the HRC, which informed him that his complaint was registered. But at the time of the Urgent Appeal no action had been taken against the policemen who tortured him.

90.10. Ukwatte Liyanegge Don Sumith Chandana:⁸³ On 16 April 2004 at about 8:30am two policemen including SI Silva, from the Bentota Police visited Mr. Chandana's residence and told his mother to produce him at the police station that day. In accordance with the message Mr. Chandana went to the station with his mother around 11:30am. SI Silva told the mother to go home and detained Mr. Chandana. He was instructed to sit next to a Police Sergeant who after a while took him into a room near the kitchen and ordered him to remove his clothes. He removed his clothes except his underwear. He was asked to lie on a bench. His legs were wrapped with his denim trousers and tied with his belt and a nylon rope. One policeman held his hands while another brutally beat his soles with a 4-foot long bar. In the victim's estimation the beating went on for about one and half hours. As instructed, in the next evening Mr. Chandana went to the police station and was put into a cell. He was taken out of the cell around 9:00pm and allowed to sleep on a bench. He was detained the next day (18) as well. On 19 January he was produced before the Balapitiya Magistrate and charged with having stolen the belongings of a foreign tourist -- a charge he vehemently denied. The lawyer who appeared for the victim informed court that he had been assaulted and detained by the police for over 3 days. Subsequently he was released on bail and required to appear in court on 17 August 2004. Later Mr. Chandana was admitted to the Nagoda General Hospital, where he was treated as an in-patient in Ward 52B for several days.

90.11. Kurundukarage Eranjana Sampath:⁸⁴ K.E. Sampath was arrested by the OIC of the Thebuwana Police Station on 2 January 2004 around 9:00am. He was taken to the police station and illegally detained for two days. According to Mr. Sampath, there had been a theft at a rubber estate and its owner had wanted to implicate him in the incident, so the police had arrested him on the instigation of this rubber estate owner. On 5 January 2005, at about 10:00am, Mr. Sampath was taken to the OIC's office. The estate owner was also been present in the room. The OIC first slapped Mr. Sampath and then proceeded to assault him with a wooden pole about 2 ½ feet long. He was brutally assaulted on the soles, elbows, knees, fingers and toes. Soon thereafter, Mr. Sampath's mother visited the station to inquire about her son. When she saw her son being savagely beaten, she begged the OIC not to beat him. However the OIC had got angry at this interruption and handing her the pole, forced this hapless woman to beat her own son. On 6 January 2004 -- i.e. 4 days after his arrest -- the Thebuwana Police produced Mr. Sampath before the Mathugama Magistrate, who released him on bail the same day. After being released, Mr. Sampath was admitted to the Nagoda General Hospital and treated as an in-patient till the 9th. Thereafter he complained about his torture to the SSP Kalutara, and sent copies of his written complaint to the IGP, HRC, as well as the NPC. Later, the victim filed a FR application in the Supreme Court in Case No 80/2004 against the Thebuwana Police.

⁸³ AHRC UA Reference, UA-46-2004 (30 April 2004); E/CN.4/2005/62/Add.1 paras. 1528 and 1529

⁸⁴ AHRC UA Reference, UA-53-2004 (28 May 2004); E/CN.4/2005/62/Add.1 paras. 1541 and 1542

90.12. **Ranawaka Arachchige Hemasiri:**⁸⁵ On the night of 19 September 2004, policemen from the Kuruvita Police Station arrested R.A. Hemasiri and took him into custody, alleging that there was a warrant for his arrest. But as no such warrant was produced the victim suspected he had been illegally arrested and detained – presumably for the fabricated allegation of possessing illicit liquor. He admitted that though he had earlier sold illicit liquor, he was no longer involved in the trade. However the police had been needling him to re-start his trade and ‘oil their palms’. But when he refused he opines the police took revenge by fabricating charges against him. According to him, around 2:00am the next day (20) and while he was still in custody PC Sunil had wanted to speak with him. When Mr. Hemasiri ignored him, the policeman put his hands through the iron cell bars and dragged him forward. Mr. Hemasiri had bravely informed the policeman that he did not believe there was an arrest warrant against him and that he was not in possession of illicit liquor as the police alleged. In response, the policeman scolded Mr. Hemasiri and warned him, the police could fabricate charges if they wanted to. Then Constable Sunil instructed another policeman to hold the victim through the cell bars while he repeatedly and viciously shoved a broomstick into the victim’s lower abdomen. The victim fell down in excruciating agony. Seeing the extent of his injuries Constable Sunil requested the policeman in charge of the cell keys to open the cell door, but the policeman refused. So despite his desperate cries for help Mr. Hemasiri remained unattended to, till morning. In the morning Mr. Hemasiri’s wife visited him and he relayed to her what happened. About 1:30pm the OIC of the station had arrived and the victim informed him about the torture and that he was badly injured. The OIC then removed the victim from his cell, and asked a Woman Police Constable (WPC) to record his statement. Mr. Hemasiri claimed he gave his statement and signed it, though he was not allowed to read its contents. Later in the evening the police took Mr. Hemasiri to the Ward 6 of the Ratnapura General Hospital, where he told the doctor about what the police did to him. By this time the police had obtained a court order from the Ratnapura Magistrate -- ironically this order had been made without the victim even being presented before courts. Around 7:00pm, a prison official took charge of the victim and chained his leg to the hospital bed. By 21 September 2004, Mr. Hemasiri’s condition had further deteriorated; he had difficulty in passing urine and a catheter had to be inserted into him. He remained in this condition till the 24th, when he was taken to the Kuruvita prison. Upon arrival and on the instructions of the prison doctor he was transferred to the Welikada Prison Hospital where he received treatment until the 29th. Then on the morning of 30 September, Mr. Hemasiri was taken to Ratnapura Magistrate Court -- where he complained that his lawyer demanded a retainer of 1000 rupees from his wife, and entered a guilty plea on his behalf – without any instructions to that effect. Accordingly, Mr. Hemasiri was found guilty and fined Rs.11, 000; he paid Rs. 7,000 and was released on the condition he paid the balance due later. Thus ended the ordeal of Mr. Hemasiri who was not only illegally arrested and detained on fabricated charges, but also brutally tortured by the police. He was then unfairly remanded by a Magistrate who did not even see him and as a last straw in the saga, his lawyer pleaded guilty without any instructions to do so.

90.13. **Rathnasiri Senadheera:** On 29 September 2004 at about 9:00am, R. Senadheera went to the Horana Police Station to visit his brother who was in

⁸⁵ AHRC UA Reference, UA-135-2004 (12 October 2004); E/CN.4/2005/62/Add.1 para. 1561

custody. He chatted with his brother a while, then left the station. When Mr. Senadheera returned to the station with lunch for his brother, SI Saliya said, “I was waiting for you”, then, seized him by the neck and dragged him inside the police station. SI Saliya proceeded to slam Mr. Senadheera against the wall several times – while his brother watched helplessly. Thereafter the brutal policeman punched the victim on the abdomen and chest with his fists – for no conceivable reason. About 15 minutes into the assault, another policeman called out to SI Saliya to stop hitting the victim. At this point, the beating ceased and the victim was chased away. Mr. Senadheera is still unaware of the reason for his beating. Around 5.15pm that day, Mr. Senadheera released his brother on bail. Thereafter he entered the Horana District Hospital where he underwent treatment for 5 days and discharged on 5 October 2004.

90.14. **Edirisuriyage Ravindra Kumara:**⁸⁶ On 14 October 2004 around 1:30pm, E. Ravindra Kumara was at the Diyagama junction close to his residence, when two policemen attached to the Kalutara North Police Station approached him. They proceed to arbitrarily arrest him without a word about the reasons for arrest. The policemen took him to a house where allegedly a theft had occurred and demanded he confess to the theft. When he denied any knowledge of the crime, one policeman assaulted him. He continue to insist on his innocence, hence he was pushed into the police jeep and taken to the police station. At the station, Mr. Kumara was locked in a cell. Later a Sub Inspector took him to the police kitchen where he was repeatedly assaulted. Several policemen nearby ordered Mr. Kumara to kneel, then tied his hands and proceeded to bite and kick him innumerable times. They untied his hands and forced him to lie on the ground where he was beaten with iron bars by several policemen. He said he was beaten on the soles of his feet, legs, and buttocks. Throughout the assault the police yelled at him to confess to the theft. Brutally tortured, Mr. Kumara was returned to his cell again. The next day (15) the victim was produced before the Kalutara Magistrate’s Court and he informed court about the torture he had suffered and also showed the injuries and swelling on his body. However, Mr. Kumara was charged with theft – along with 3 other persons – and remanded to the Kalutara prison. At the prison too, Mr. Kumara complained about the police assault. On the 18th his mother complained to the HRC of Sri Lanka. On the 19th he was taken to the Nagoda Hospital and examined by a doctor. On 28 October 2004, though an identification parade was held in which Mr. Kumara and two others participated, none was identified. As a result, Mr. Kumara was discharged. Subsequently Mr. Kumara underwent severe mental and physical trauma due to the torture he encountered at the hands of the Kalutara Police. Finally he alleged that despite his numerous complaints to the authorities, no action had been taken again his police torturers.

91. **Fabrication of evidence in the course of torture:** There have been many cases where police have planted objects on suspects and get the suspects to place their fingerprints on them in order to use such objects as evidence in criminal cases. It is easily understood that police engage in such activities in order expedite unresolved crimes in the easiest manner. Often the victims of such fabrication of evidence are either former suspects or anyone police suspect of having committing the offence and in some cases even without any reason. Often such

⁸⁶ AHRC UA Reference, UA-150-2004 (09 November 2004); E/CN.4/2005/62/Add.1 paras. 1565

arrests and torture of suspects have been arbitrary. Following are some similar cases occurred recently.

91.1. **Chintaka Deshapriya.**⁸⁷ On 2 February 2005, around 8:45am, Chintaka Deshapriya visited his friend, Ariya Kumara, who was in custody at the Kiriella Police Station. After meeting his friend, when he was about to leave, SI Mayadunne and PC Ramanayake, who were both in civilian clothes, beckoned him into a room. When Mr. Deshapriya approached, SI Mayadunne grabbed his shirt collar and struck him hard on both sides of the face. Almost simultaneously he was hit from behind with a pole. When he turned to see who hit him, he saw PC Ramanayake standing nearby with a pole in his hands. The policeman continued his assault on the victim with the pole, striking him in different parts of his body. The victim shouted in unbearable pain and also noticed that he was bleeding. PC Ramanayake then dragged Mr. Deshapriya by the shirt and threw him into a holding cell. While in the cell, the PC Ramanayake told the victim: "we are now going to bring two bottles of Kasippu (illicit liquor) and put your seal on them". He then brought two bottle of Kasippu and forcibly placed the victim's fingerprints on the bottles. The police also forced the victim to sign a book, which they took to his cell. Finally the police threatened him that if this tactic did not work, they would keep him in custody. Meanwhile, having received information about his assault and detention at the police station, Mr. Deshapriya's wife and brother went to the station and pleaded with the police to release him. The police insisted they would not do so until the OIC arrived, which was around 7:30pm. The same plea was made to the OIC and after much delay; the victim was released at 10:00pm. Of his detainment, Mr. Deshapriya said: "they (the police) did not record any statement from me. When they eventually released me they only once again obtained my signature on some printed pages and told me to attend court on 8 February". After arriving home, Mr. Deshapriya continued to suffer excruciating pain from the injuries and his whole body was swollen. The next day, he visited the Horana Hospital to seek medical treatment. After explaining to the doctor that the police assaulted him, the doctor examined him and admitted him to hospital. He remained in hospital for five days receiving medical treatment for his injuries. On 5 February, the JMO also examined him and recorded his injuries. Mr. Deshapriya also told the JMO about the inhuman torture he was subjected to by the Kiriella police. On 4 February, the victim's mother complained to the Superintendent of Police, Ratnapura of the assault carried out on her son. However to Mr. Deshapriya's knowledge, no serious action had been taken to investigate the incident. He also said that although he attended the Ratnapura Magistrate's Court on 8 February -- as demanded by the police -- his case was not called before the court. Finally upon a complaint made by the victim to the HRC of Sri Lanka, the HRC has now begun an inquiry into the incident.

91.2. **Don Mahesh Duminda Weerasuriya.**⁸⁸ On 5 November 2005 around 7:00pm D.M.D. Weerasuriya was at a pharmacy in Pallimulla Panadura to buy some medicine. He had been scheduled for surgery on his ear in a few days. When he came out of the pharmacy, about 8 policemen from the Panadura Police Station surrounded him and searched him but failed to find anything on him. Then they asked whether one Janaka was his uncle. The victim replied 'yes' and the policemen arrested him immediately. They had also arrested two others but did

⁸⁷ AHRC UA Reference, UA-36-2005 (08 March 2005)

⁸⁸ AHRC UA Reference, UA-161-2004 (23 November 2004)

not state the reasons for arrest or produced an arrest warrant. The police took the 3 arrestees to a lorry and assaulted them until they reached the police station. The beating also continued at the police station. One Sub Inspector Dhananjaya had ordered him to remove his T-shirt and tortured him by hitting him with fists and kicking him with boots. All the while he was questioned about the whereabouts of his uncle. The police also threatened him saying “if you do not give us information about your uncle we will falsely implicate you for possessing a bomb and produce you in court”. Thereafter Mr. Weerasuriya was lock up. At about 11:00am the next day (6) the police forcibly took the victim’s fingerprints on a blank sheet of paper. About 5:00pm he was produced before the Acting Magistrate of Panadura – allegedly on false charges -- and remanded to the Kalutara prison. He also said that he was again assaulted by the prison officials. Finally on 10 November 2004 Mr. Weerasuriya was enlarged on bail. At the time of the Urgent Appeal, he did not know why the police was pursuing his uncle.

91.3. W.G.G.A Bernard Janapriya.⁸⁹ W.G.G.A Bernard Janapriya was the volleyball coach at a leading school in Galle. On 10 February 2005, at 5:30pm, Mr. Janapriya had returned home from work and was attending to his cattle, when he was accosted by 3 policemen from the Agaliya Police Post. The policemen – one of whom he later identified as Sergeant Chaminda – alighted from the bicycle they were riding and suddenly started to assault him. They punched and kicked him and the Sergeant also hit him on the head. Apparently they had attacked him for no reason other than wearing a tracksuit while in the field (and thus looking ‘suspicious’). The police, however, pushed hard to implicate him for selling liquor and forced him to give them a bottle of liquor. As Mr. Janapriya did not have any alcohol, the police planted a bottle of Kasippu (illegal liquor) on him and claimed that this was evidence against him. The victim was shouting in pain when another policeman, PC Tilak also from the Agaliya Police Post, arrived onboard a police vehicle. Mr. Janapriya begged him to stop his fellow policemen from hurting him further but his pleas were ignored. He was dragged towards the police vehicle. Luckily for Mr. Janapriya, this incident caught the attention of the villagers, including the local government official (Gramasevaka), E.S. Kumarage, who surrounded the police vehicle and demanded that the police stop harming Mr. Janapriya and release him. They conferred to the victim’s claim that he did not sell liquor – in fact he did not even smoke or drink. Accordingly Mr. Janapriya was released, reluctantly. Upon arriving home, Mr. Janapriya felt severe pain all over his body. So he went to the Elpitiya hospital where he was admitted and treated for three days. On 11 February Mr. Janapriya lodged a written complaint with the Elpitiya Hospital Police. The JMO examined his injuries and asked him to describe how he acquired the injuries. The Elpitiya ASP, Vidana Pathirana had also recorded his statement together with that of the Gramasevaka and other witnesses. On 11 February, the victim's brother reported the incident to SSP Ayupala, at the Elpitiya Police. Subsequently the victim complained in writing inter alia, to the HRC, the NPC and the IGP. Mr. Janapriya said that he believed the police hierarchy was deliberately delaying investigating his case and several attempts and been made to induce him to withdraw his complaint. Then in a letter dated 25 May 2005 the IGP informed the AHRC that the DIG, Southern Range had conducted an inquiry into the alleged torture of Mr. Janapriya. According to this inquiry, a police team comprising of PS Chaminda (15794), and two other

⁸⁹ AHRC UA Reference, UA-63-2005 (15 April 2005) & UP-76-2005 (29 June 2005)

policemen had gone out that day to verify information they had received regarding the illicit distilling of Kasippu at Nambarawatta. Mr. Janapriya had been walking towards the police vehicle with another person suspected of dealing with Kasippu, so PS Chaminda had suspected him too, and questioned him. Mr. Janapriya had disobeyed orders to get into the police vehicle, and the policemen – according to the IGP – "had to use minimum force and managed to get him into the jeep". However, they released him from the jeep after the intervention of the Gramasevaka. The letter further mentioned that the DIG inquiry stated that the victim was admitted to hospital, where he was examined by the JMO who reported that he had suffered "non-grievous injuries caused by a blunt weapon". According to the IGP the DIG Southern Range has been instructed to lay charges against PS Chaminda and the other PC before the Magistrate's Court under section 314 of the Penal Code -- "voluntary causing simple hurt". The DIG had also been instructed to transfer the accused out of the Agaliya Police Post, and to initiate an inquiry into the "departmental lapses on part of the accused officers".

91.4. **Athurugiriyage Jeevananda:**⁹⁰ On 2 July 2005, five policemen from the Morantuduwa police, including OIC Kumarajeeva, visited Mr. Jeevananda's house and inquired from his wife, his whereabouts. At the time he was not at home, so the wife phoned and told him to come home as the police were looking for him. When he returned, the police had left. Later Mr. Jeevananda together with his wife had gone to the nearby junction where he saw the police jeep parked. When he approached he noticed a man pointing in his direction, saying, "this is the person called Kumara". The OIC beckoned to Mr. Jeevananda, then grabbed his mobile phone and said, "let us go to the police station". He forced the victim into the police jeep and took him to the Morantuduwa Police Station. At the station, the victim was taken to the OIC's room and informed that he had been brought in connection with a cattle theft and that he must confess his involvement immediately. When he refused, the OIC slapped him hard on the face. The OIC also struck him in the stomach, using a pole and then told another policeman to lock him up. Around 12:30am the OIC and three others visited Mr. Jeevananda in his cell and took him to their private quarters. They demanded that the victim remove his shirt. They tied his hands with the shirt and handcuffed him. He was told to sit on the ground and put his hands on his legs. A pole was locked between his elbows and knees and he was lifted on the pole, which was hung across two tables. (This torture method is commonly known in police circles as the 'dharma chakraya' – 'dharma wheel'). Two policemen swung the pole, on which the victim hung to and fro while another beat on his soles. According to the victim, this continued for about 2 hours and though he screamed in pain, they continued ruthlessly. As a result the victim had suffered severe back pain. The victim was then locked up without food or water. On the third day, his two brothers had heard of his detention and visited him. The OIC told them, "Your brother is an ace cattle thief. So are your brothers getting together and stealing cattle?" The brothers denied vehemently of any involvement and protested at the injustice meted out to the victim, but the OIC threatened to lock them up too. A little while later, the OIC brought three persons called Cyril, Sunil and Vajira Fonseka to meet the victim. Sunil said, he saw something akin to cow dung on the victim's shirt (so he had suspected the victim was a cattle thief) but when the OIC queried whether he was sure of seeing cow dung on the victim's shirt, Sunil replied, he was now

⁹⁰ AHRC UA Reference, UA-118-2005 (12 July 2005)

unsure whether it was cow dung he saw, or mud. That day around 5:30pm the police informed Mr. Jeevananda that he would not be released on bail. Later his relatives had complained to the HRC about his illegal arrest and torture at the hands of the Morantuduwa Police. Again his brothers had attempted to see him but the OIC refused boasting, "I hear you have gone to the HRC to complain against me. I have about seven cases against me, but I am not afraid." Then around 10:00 that night, Mr. Jeevananda was taken to the Gonaduwa Government Hospital. On the way, the OIC threatened him to remember that he will be brought back to the same police station, thus if he told the doctor he was assaulted by the police, he would get worse treatment than he had gotten. The victim was presented to the doctor as a drug addict but the doctor had commented that drug addicts did not have his build. When the doctor queried whether he had been hurt, he remained silent and did not dare inform on the police. Finally on the fourth day of his ordeal, around 2:00am Mr. Jeevananda was taken to the Wadduwa Police Station and later produced before the Panadura Magistrate where he discovered that he had been falsely charged with four cases. However, he was released on bail and immediately admitted himself to the Nagoda Hospital where he received treatment as an in-patient for three days. After his discharge from hospital, he complained about the incident to the Senior Superintendent of Police, Panadura.

91.5. **Wanigabaduge Mahinda.**⁹¹ On 13 May 2004 around 10:00pm, W. Mahinda was sleeping in his house, when he heard a noise outside and got up to enquire. He saw a three-wheel vehicle parked close to his house and the visitors who had arrived in the vehicle, upon seeing W. Mahinda, informed him they were from the police. They also told him to open the door of his neighbour's house -- apparently they had come in search of one Babu Mahathaya who lived in that house. Mr. Mahinda's brother, who was also sleeping in the house, then, forced opening the neighbour's front door. In the ensuing commotion of opening the front door, Babu Mahathaya ran away from the house. When he was escaping, one policeman who had a rifle in his hand shot at him. Unfortunately he misaimed and the bullet hit Mr. Mahinda, going straight through his right hand. Mr. Mahinda yelled that he had been shot and injured. Thereafter, the policemen took Mr. Mahinda to the Wattala Police Station, accompanied by his wife and brother. From the station, he was taken to the Ragama Teaching Hospital and transferred to the National Hospital Colombo due to his serious condition. Reportedly, the police had asked his wife to sign the hospital admission paper, but she refused. Thus a police officer, SI Anusha, signed the admission papers. The victim was treated for 7 days at the hospital. Since, the police failed to record any statements regarding the police shooting, on 17 May 2004, Mr. Mahinda's relatives lodged a complaint at the Peliyagoda Police Station. Consequently on the 20th someone presumably from the Police Department had visited the hospital to record a statement from the victim. It may be noted that there had been no search warrant when the police arrived to arrest Baba Mahathaya. The people were ignorant to ask for such a warrant, simply obeying police instructions. No warning was given to Baba Mahathaya or Mr. Mahinda about the intention to shoot. There was no senior officer at the scene to give orders to use firearms. The policeman on duty had taken the law onto himself and shot an innocent civilian who came to the aid of the police. Subsequently the victim's family said that the errant policemen were fabricating a story viz. that Baba Mahathaya attempted to grab the policeman's

⁹¹ AHRC UA Reference, UA-55-2004 (31 May 2004)

rifle and in the ensuing scuffle the rifle went off accidentally injuring the victim. Reportedly the police had also requested the relatives to make statements supporting this version of events. Upon being released from hospital on 23 May 2004, Mr. Mahinda complained to the HRC and the NPC of this incident.

92. **Police torturing the police:** Victims of police torture have not only been the civilians and criminal suspects, but also fellow police officers themselves. Often torture has been used on fellow policemen to avenge personal anger or discontent. Such torture has resulted in custodial death of fellow police officers as detailed in paragraph 83.4 of this report in the case of **Senarath Hettiarchilage Abeysinghe**.⁹² Another recent case of police torturing police is detailed below.

92.1. **R.B.C.K. Wanninayake**⁹³: R.B.C.K. Wanninayake was a policeman serving the Thelippalai Police Station, Jaffna. On 3 February 2005 he had taken leave from work and –together with a friend – was going for a sports meet at Andiyagala Central College. At the Andiyagala junction a policeman had beckoned their motorbike but neither Mr. Wanninayake nor his friend realised the policeman was signalling them. In the evening, on his way home, Mr. Wanninayake stopped at the same junction to chat with another friend. Suddenly the policeman began verbally abusing them. Mr. Wanninayake ignored the policeman, who became more abusive. Then Mr. Wanninayake walked up to the policeman but before he could utter a word, the policeman grabbed his shirt and screamed at him. The policeman, PC Ratnayake also pushed the victim towards the police post and severely assaulted him. The victim shouted in pain and told the policeman to let him go. Another PC, Madduma Bandara then appeared and assisted PC Ratnayake to drag the victim to the police post. Once inside, these two policemen with two others proceeded to beat the victim. About 50-60 people who gathered around at the sound of the commotion witnessed the incident. Some time later, Mr. Wanninayake appeared from the police post bruised and beaten, and his friend rushed him to the Andiyagala Rural Hospital. There, the victim was admitted and medically treated for 2 days. He was later referred to an ENT surgeon at the Kurunegala Teaching Hospital, who noted that the victim's left eardrum had been damaged and required emergency treatment. Meanwhile, the Galkiriyagama Police charged Mr. Wanninayake for obstructing the duty of the police and based on a report sent by the OIC, Galkiriyagama to the DIG, Northern Province, the victim was suspended from duty. Subsequently Mr. Wanninayake petitioned the HRC of Sri Lanka and the NPC regarding the violation of his fundamental rights under Articles 11, 12(1), 13(1), 13(4), and 14(1) of the Constitution. He also sent the HRC and NPC affidavits by several onlookers to the incident. But to the time of the AHRC UA the authorities had failed to take any action.

93. **Involvement of senior police officers in committing torture or trying to cover up incidents of torture:** It is also a apparent that most torture takes place either direct or indirect involvement of senior police officers such as in the ranks of Inspector of Police (IP) and Sub-inspector of Police (SI) who are often OICs of police stations. Therefore, some allegations that use of torture only by the junior police officers such as constables only, and the officers in charge are unaware of these incidents does not make any sense. Further, under the command

⁹² AHRC UA Reference, UA-67-2004 (14 June 2004); E/CN.4/2005/62/Add.1 paras. 1486 and 1487.

⁹³ AHRC UA Reference, UA-56-2005 (06 April 2005)

responsibility, senior officers in charge, whether they are aware of incidents of torture or not, are responsible for acts of torture committed by the officers under their command. For example, in the case of **Aththana Gamaralalage Ravindra**⁹⁴ cited above, IP Attapattu directly carried out the torture. In the case of **Thusev Kamal Priyantha**⁹⁵, the OIC of the Aluthgama Police Station tried to hush up the case by suggesting settling the case by offering 2,000 SLRs. In the case of **Jayasekera Vithanalage Saman Priyankara**⁹⁶ was informed on the 7 July 2004 by SI Panagoda that he would pay Saman Priyankara 200,000 SLRs if Saman Priyankara withdraws his allegation of torture. **Nanumuralage Roshan Jayaweera**⁹⁷ (26) was tortured by several officers attached to the Wariyapola Police Station on the 14 July 2004 and when he later complained to the OIC of the same police torture of the said torture, the OIC ignored his complaint and refused to record it. In a separate case, **Halneththi Susil Indrajith Silva**⁹⁸ (24) was tortured by the OIC of the Payagala Police Station on 20 July 2004 and brought false charges against him for possessing cannabis. Some recent cases in detail below would demonstrate this further.

93.1. **Welgama Ralalage Wijitha Herath**:⁹⁹ On the evening of 5 September 2004, W.R.W. Herath went to the Polgahawela Police Station to visit some friends in custody. When he entered the station someone had asked him whether he was drunk, but being a teetotaler he thought it a ridiculous question and ignored the question. But when he approached the cell area, where his friends were being held, someone suddenly kicked him from behind. Turning around, he recognised the person who had asked him the question (whom he later found out, was a Constable at the station). Whilst he was being assaulted, the station OIC arrived at the scene and ordered the Constable to bring the victim into his room. According to Mr. Herath the OIC was in pants and T-shirt and appeared rather drunk. Immediately the OIC had begun to assault the victim with a 'Kitul' pole (a very hard wooden pole). After about 8-9 blows the OIC took the victim to the station compound, and ordered him to fold his sarong (amude gahanne) and lift his arms. He was once again brutally beaten all over his body with the Kitul pole. Then the OIC ordered the victim to crawl around the compound and while crawling, continuously kicked him. He was taken to a cell, where the assault continued for another 15 minutes. To date Mr. Herath is unaware of any charges against him.

93.2. **W. R. Terrance Fernando**:¹⁰⁰ W.R. Terrance Fernando was a home guard attached to the Police Post at Galvihara. In early February 2004, a double murder took place in the neighbourhood and on 21 February 2004, Mr. Fernando received a message to report to the Kaduruwela Police Station. He was arrested with no charges explained to him. Allegedly, policemen at the station beat him before locking him in a cell. Around 9:00pm he was taken to the criminal branch of the police station and beaten again, then taken to the police mess, strung up and severely tortured for several hours by IPs Rajapakse, and Herath as well as PC Susil and another. Barely able to move, he was dragged back into the cell, where he was kept overnight and the whole of next day. When his parents visited him he

⁹⁴ See note 64 above.

⁹⁵ AHRC UA Reference, UA-57-2004 (02 June 2004); E/CN.4/2005/62/Add.1 paras. 1543 and 1544

⁹⁶ AHRC UA Reference, UA-07-2004 (26 January 2004), UP-33-2004 and UP-34-2004 (08 July 2004), UP-47-2004 (14 July 2004), UP-74-2005 (22 June 2005) and UP-80-2005 (06 July 2005); E/CN.4/2005/62/Add.1 paras. 1538, 1539 and 1572

⁹⁷ AHRC UA Reference, UA-92-2004 (24 July 2004), E/CN.4/2005/62/Add.1 paras. 1547 and 1548

⁹⁸ AHRC UA Reference, UA-93-2004 (26 July 2004), E/CN.4/2005/62/Add.1 paras. 1549 and 1550

⁹⁹ AHRC UA Reference, UA-118-2004 (15 September 2004); E/CN.4/2005/62/Add.1 para. 1559

¹⁰⁰ AHRC UA Reference, UA-83-2004 (07 July 2004), E/CN.4/2005/62/Add.1 paras. 1520 and 1521

was half-naked. On 23 February 2004 he was produced in the Polonnaruwa Magistrate Court and his lawyer informed court of the torture he endured at the police station. This complaint was recorded in case No. B218/04. The Magistrate ordered that Mr. Fernando be remanded and afforded medical treatment. Consequently, Mr. Fernando was admitted to the Polonnaruwa General Hospital and the JMO recorded his injuries -- contusions in his right buttock, right and left feet, and left leg, as well as an abrasion along the pelvic area. Throughout his stay in prison the victim suffered immensely from his injuries. He was unable to move and had to be assisted by fellow remandees to use the toilet. The victim was released on bail four months later i.e. on 25 June 2004. On 28 June, the Assistant Superintendent of Police informed Mr. Fernando that the police now knew the culprit behind the double murder but could not make an arrest due to insufficient evidence. He also suggested that Mr. Fernando make an application to be reinstated in his job – which he had lost due to his false arrest and detention. Mr. Fernando’s children were adversely affected by this fiasco and had to leave school due to their father’s tarnished reputation. Mr. Fernando subsequently wrote to the ASP and requested that all charges against him be withdrawn. He stated that his arrest was based on no evidence and that he had an unblemished record as a home guard. He also said that he could identify the policemen who tortured him and that it was unlikely he would have been tortured unless higher officers had ordered it. At the time, Mr. Fernando was also in the process of filing a FR case in the Supreme Court against his arrest, torture and illegal detention.

94. **Involvement of the police in illicit activities and corruption:** Although the police are supposed to curb illegal activities such as manufacturing and selling of illicit liquor, they often use such activities to their own advantage as police often take bribes from the illicit liquor sellers. When the sellers of illicit liquor give up their business then police officers lose a source of extra income. When **M. Piyawathi**¹⁰¹ complained of alleged involvement of the police in the manufacturing of illicit liquor in the area to the OIC of the Badureliya Police Station it resulted in she being severely assaulted by the police officers attached to the same police station on 31 May 2004 police making up a charge against her for “obstructing police duty.” Some similar cases recent cases are detailed below:

94.1. **A.M. Shriyantha Bandara:**¹⁰² In the case of torture of 12-year-old Shriyantha Bandara on 28 January 2005 by the police officers attached to the Wattegama Police Station, according to the boy’s father, A.M. Tikiri Banda, he had been charged for the possession of illicit liquor in 2004 and the case was pending in court. He insisted that though the police visited his house 13 times, they had failed to find any incriminating evidence. He said that he usually worked as a carpenter to support his family and that his wife worked at a private company in the area. Mr. Banda further said that a policeman named Wijerathne of the Wattegama Police Station visited his house about a month ago and informed him that he could brew illicit liquor if he wanted to and that the police would turn a blind eye, as long as he paid them Rs.5000 per month. But Mr. Banda refused. Then, a week later another policeman named Angamma, also of the Wattegama Police, had approached and asked him to give him a 'case'. According to Mr. Banda this was a common practice in village areas, where the police periodically approached villagers to give incriminating evidence against fellow villagers in

¹⁰¹ AHRC UA Reference, UA-89-2004 (12 July 2004), E/CN.4/2005/62/Add.1 paras. 1545 and 1546

¹⁰² AHRC UA Reference, UA-27-2005 (25 February 2005)

court -- mainly for the offence of brewing illicit liquor. The police then settled the case upon receipt of payment. Therefore, Mr. Banda strongly believed his son was assaulted because he refused these requests. The illicit liquor business is often a lucrative enterprise for policemen, as such business can only be carried out by paying bribes to the police.

94.2. **U. Jayasiri Abeyratne:**¹⁰³ On 25 October 2004 U.J. Abeyratne was on his way to buy some schoolbooks for his daughter when he met a relative and friend, Asanka Kumarasiri, who was riding a bicycle. After a brief chat, Mr. Abeyratne got on the bicycle with his friend and they rode off in the direction of the bookshop. But soon a lorry came speeding down the road and knocked into their bicycle. The victim only remembered that he and his friend were thrown high into the air before crashing to the ground – unconscious. The next he recalled is waking up at the Panadura Hospital the following morning. He had been admitted to the hospital (Ward 1), together with Mr. Kumarasiri – both suffering severe injuries from the accident. According to the victim's wife, when she visited the Wadduwa Police Station that night, a policeman on duty informed her that her husband was knocked down by a lorry that had been travelling without brakes. The next day (26) after being examined by the JMO, both men were discharged from hospital. Then – as requested by the Wadduwa Police – they visited the police station on their way home. A policeman at the Motor Traffic Division of the station recorded Mr. Abeyratne's complaint regarding the accident and obtained his signature to the statement, though according to Mr. Abeyratne, he was not read or explained its contents. Mr. Kumarasiri also made a complaint. At the time, Mr. Abeyratne noticed the lorry driver together with several others, present at the police station. Later one person offered Mr. Abeyratne and his friend 2000 rupees each in settlement of the case – an offer both men refused. The police informed them that a case pertaining to the accident would be file in due course. Upon returning home, Mr. Abeyratne became ill again and had to return to the Panadura Hospital -- where he was treated for a period of 3 days. Ten days after the accident, Mr. Abeyratne went to the police station to retrieve the bicycle. He also requested the registration number of the lorry, but the police refused to give him the details. About 3 months later in February 2005, two policemen from the Wadduwa Station visited Mr. Abeyratne at his home. They handed him a court summons and told him to attend court on 15 February. One policeman also instructed him (a) that he should not retain a lawyer in court, (b) he should get into the dock and plead guilty and (c) that he should bring 7500 rupees with him. If not, the policeman threatened, the victim would be sent to prison for 6 months. The victim was also told not to bring his relative Mr. Kumarasiri to court. However, according to Mr. Abeyratne, he was not informed of the offence he is supposed to have committed. "I am extremely perturbed, as I cannot understand why I am charged with a crime, when it was I who was knocked down and seriously injured by the lorry" he said. Mr. Abeyratne suspected that the reason for this miscarriage of justice was because the lorry—that knocked him down—belonged to a major business enterprise (Kandurata Kuda—Up-country Umbrella—Makers), and it was an attempt to cover up the incident by falsely charging him with negligently riding a bicycle 'into the lorry'. Subsequently after meeting HR activists at Janasansadaya, Mr. Abeyratne attended court on 15 February 2005. And contrary to police advise he retained a lawyer and pleaded 'not guilty' to the charges

¹⁰³ AHRC UA Reference, UA-46-2005 (16 March 2005)

against him. After the lawyer had explained the details of the incident to the Magistrate, he was released on bail and the inquiry was fixed for 7 June 2005. To the victim's knowledge to date, neither the lorry driver nor lorry owner was charged with any offence.

94.3. Walakadage Gamini Senadeera & Kodituwakku Liyanaarachchige Ganga Kalyani:¹⁰⁴ On 21 April 2005, in the early hours of the morning, four police personnel, including PC Somadasa and police driver Bandu Silva visited the home of W. Gamini Senadeera and his wife, K.L. Ganga Kalyani in Omalpe, Embilipitiya. They had arrived in a police truck. They kicked at the front door and shouted for Mr. Senadeera. When the door was opened PC Somadasa grabbed Mr. Senadeera by his throat, dragged him out of the house and brutally beat him with a pole. Awakened by the disturbance, Mr. Senadeera's wife came running outside. Upon seeing her, PC Somadasa slapped her hard on both sides of her face. She pleaded with him not to hit her as she was five-months pregnant. To which the ruthless policeman replied, "It is you who are pregnant, not me". He continued with his assault, and then kicked her in the stomach. The force of the blow was so severe that she was thrown several meters away where she fell to the ground, screaming. Later the policemen dragged Mr. Senadeera to the police truck and once again assaulted and kicked him mercilessly. When they hit him on the head, he bled from his mouth. They then took him to the Embilipitiya Police Station, where his torture continued. At 8:00 the next morning, when Mr. Senadeera screamed that he was unable to urinate due to the pain, he was taken by police jeep to the Embilipitiya Hospital. At the hospital he was informed that his wife too had been hospitalised. Whilst in hospital Mr. Senadeera and his wife complained about the torture they had endured at the hands of the police and the hospital doctors recorded their complaints. Mr. Senadeera received in-patient treatment at the hospital for six days until 27 April while his wife received medical treatment for five days. Both were also examined by the JMO. On 29 April the wife's condition deteriorated and the next day she was re-admitted to the Embilipitiya Hospital. On the same day, she gave birth to a stillborn child who was only 5 months old at the time of delivery. The wife and her dead child were taken to the Ratnapura General Hospital where the JMO examined her. On 2 May a distraught Ms. Kalyani was released from the hospital. According to updated information, the couple was tortured at the instigation of a private party on paying a bribe of Rs. 15,000 and five bottles of Arrack (liquor) to the police. The alleged reason had been a land dispute. At the time of the Updated Appeal, the Police Department had interdicted PC Somadasa and steps were also being taken to charge him before the Magistrate's Court. No steps had been taken to compensate the couple for the loss of their child or for the injuries caused to them.

- 95. Use of torture by the police as a punishment for personal disputes between civilians:** It has come to that extent that the police has resorted to use torture as a punishment on civilians who engage in disputes with their family members or others. Such torture has been carried out in most arbitrary manner. The sad part of it is such punishment could result in permanent physical damage to victims due to the severity and barbarity of the torture used. Some recent examples of this sort are set out below.

¹⁰⁴ AHRC UA Reference, UA-57-2005 (4 May 2005) & UP-75-2005 (27 June 2005)

95.1. **Pushparaj Kanagaraj:**¹⁰⁵ On 5 June 2004, the villagers of Pussellawa protested against the assault by a private bus driver on a youth who had written a newspaper article about how private bus operators charge exorbitant rates from people of the area. P. Kanagaraj had also participated in the protest. Soon the Pussellawa Police had arrived on the scene and inquired who had attacked the bus during the protest. According to Mr. Kanagaraj, about 500 protesters owned up. The police had proceeded to randomly record the names of about 20 people – including Mr. Kanagaraj’ – and ordered them to be present at the Gampola Magistrate’s Court on a certain date. According to Mr. Kanagaraj, though he went to court that day, a policeman at court had informed him that his name was not ‘on the list’, so he had left the courts. On 22 June 2004, Mr. Kanagaraj went to Moratuwa, where he was employed. More than three months later, on 23 September 2004, four policemen from the Pussellawa Police Station visited him at his workplace and informed him that they had a warrant for his arrest – for causing damage to the bus on 5 June. Mr. Kanagaraj tried to explain how he had visited the Magistrate’s Court but was told by a policeman, his name was not listed. But the policemen ignored him, shoved him into a private van and took him to the Pussellawa Police Station. At the time, he observed that only one policeman was in uniform. Throughout the long journey by van, the policemen had severely assaulted him. He also noticed that the private bus owner was in the van and had brought a bottle of whisky, which he liberally shared with the policemen. At about 9:30pm they arrived at the police station and Mr. Kanagaraj was lock up immediately. A little while later, policemen in civilian clothes came to his cell and inhumanly assaulted him on his buttocks, back and legs – with a hard wooden pole. They ordered the victim to sit down and assaulted him again on the soles and hands. During the torture, the policemen -- who seemed thoroughly intoxicated -- accused him of stealing a CD player from the bus, to which he vehemently denied. The assault continued for several hours, till around 1:00am the next day (24), when the victim was produced before the Gampola Magistrate and remanded to the Kandy prison. When prison officials inquired whether he had injuries on his body, the victim had told them about his torture at the Pussellawa Police Station. However no medical treatment was provided to him in remand prison. Later on 7 November he was released on bail. At the time of the Urgent Appeal, Mr. Kanagaraj was still unaware of the exact charges against him and alleged that the police arbitrarily arrested him to appease the bus owner who had bribed them.

95.2. **Hevana Hennadige Priyadarshana Fernando:**¹⁰⁶ On 19 May 2005 at about 8:45am when H.H. Priyadarshana Fernando arrived at his workplace one Sumanawathi told him that the Panadura Police wanted to meet him. Hence, Mr. Fernando went to the police station, where he also saw his wife with 7-8 of her relatives. Then, the Station HQI, Illangakoon, came forward and accused Mr. Fernando of being involved in a fight. While the others were allowed to leave, Mr. Fernando was detained inside the Police Station upon orders of the HQI. He was later taken to the crimes division where he was met by SI Ranaweera. Without much ado, SI Ranaweera grabbed Mr. Fernando by his shirt, twisted his arms behind his back and punched his neck and head. This policeman also badmouthed, scolded and threatened to kill Mr. Fernando who was screaming in pain, while two other policemen aided SI Ranaweera in holding him down. SI Ranaweera continued to torture the victim and then instructed the two policemen to force the

¹⁰⁵ AHRC UA Reference, UA-156-2004 (18 November 2004); E/CN.4/2005/62/Add.1 para. 1564

¹⁰⁶ AHRC UA Reference, UA-96-2005 (17 June 2005)

victim's head down between his legs while he repeatedly hit him on the spine. Mr. Fernando was then handcuffed to the table used by SI Ranaweera, who ordered him to kneel before him. When Mr. Fernando knelt down, the police savagely kicked him in the back. At this point Mr. Fernando collapsed, but even while the victim lay on the ground SI Ranaweera repeatedly trampled and kicked the victim's legs – severely injuring them. The policeman also hit the victim on his head with a hosepipe brought by the other two policemen. Mr. Fernando cried out in pain, but SI Ranaweera continued regardless. It was when Mr. Fernando complained that he was having difficulty breathing that the SI ceased his assault even temporarily. But then he grabbed the victim's ear and pinched it hard to cause bleeding. After the short respite, the SI once again began his assault on the victim and continued until he complained his arms were sore. He then ordered his men to place Mr. Fernando in a detention cell. Around 2:00pm, Mr. Fernando's mother visited him with medicines for his asthma. But a policeman guarding him confiscated the medicine and told him to ask if he needed them. After the victim complained to one SI Fernando about the severe pain all over his body and chest, SI Fernando, SI Ranaweera and two other policemen took the victim to the private dispensary of one Dr. Siriwardena, who was also the Director of the Panadura Hospital. When the victim showed this doctor his badly injured legs, which had been repeatedly trampled and stamped on during his ordeal, Dr. Siriwardena had informed the policemen that nothing could be done for his legs. Instead, the doctor gave a note instructing the outpatients unit of the Panadura Hospital to dispense medicine to the victim. The police took the victim to the Panadura Hospital but warned him not to mention what had happened. However according to Mr. Fernando, he disclosed the details of his torture to the doctor who examined him. He has also complained that his chest was aching and that he could not move his legs. After examining his legs, the doctor insisted that Mr. Fernando be admitted to hospital. But the police refused and took him back to their station. Later a policeman from the criminal division interviewed him and recorded his statement. But Mr. Fernando suspected that the policeman changed the timing of his arrest, to make it appear that his injuries existed prior to being taken into custody. The next day Mr. Fernando was once again taken to hospital and gave details of his assault to the doctor who wrote down the details. He was taken back to the police station. Another policeman attached to the hospital also took a statement from him and had him sign it. Later that day he was produced before the Magistrate's Court, Panadura on allegedly fabricated charges, which his lawyer brought to the attention of court together with the details of the torture he endured. Accordingly, he was released on bail and then went to the Kalubovila Hospital for medical treatment. While confined in hospital on 21 May, a policeman from the hospital police post took his statement. On the same day, another medical officer examined him and recorded his statement regarding his torture at the Panadura Police Station. Yet despite these developments and recording of complaints, there have been no charges filed against the policemen involved. They continue to perform their duties despite the serious allegations against them.

96. **Arrest and torture of persons on mistaken identity:** Incidents of arrests of innocent persons on mistaken identity by the Sri Lankan police are not isolated ones. Not only these innocents get arrested, but they often undergo torture in the hands of the police. This sort of police behaviour also demonstrate lack of skills and non-abiding of procedures. It is evident from many cases documented in this report that police officers make little or no effort to verify the correct identity of

the persons arrested. Sometimes, police officers arrests persons with name sounding similar to the real suspects. In the case of **Gerald Mervyn Perera**¹⁰⁷ cited in this report, the suspect's name was 'Jeyaraj' and in the cause of finding 'Jeyaraj' the police arrested and seriously tortured an innocent person named 'Gerald.' Verification of identity of a suspect is a very serious matter. Arresting of an innocent person on mistaken identity making such innocent persons undergo horrific torture need to be dealt with seriously. Utter carelessness and negligence on the part of police leads to such arrests and torture. Following are some of such cases of arrests and torture of person on mistaken identity. **W. R. Terrance Fernando**¹⁰⁸ was arrested on mistaken identity and was severely tortured on the 21 February 2004 by the police officers attached to the Kaduruwela Police Station. The JMO of the Polonnaruwa General Hospital documented his injuries as contusions in his right buttock, right and left hand, and an abrasion along the pelvic area. On 28 June 2004, Assistance Superintendent of Police Teja Tillaksiri informed him that the police now knew the real culprit behind the double murder but could not arrest him due to lack of evidence. Fernando has lost his job due to this arrest and his children had to be removed from school due to his tarnished reputation.

97. **Police using torture to settle personal matters with civilians:** There are a number of cases wherein police officers have tortured innocent civilians just to settle some personal affair. In such cases police have abused their power and acted in their official capacity to take civilians into custody and subject them to torture. Sometimes when civilians have personal relationships, often favourable to the police, in cases involving such civilians, the police have failed to conduct fair and impartial investigation often ending up in torturing the suspects. There are number cases to illustrate such behaviour of the police and some the recent ones are detailed below.

97.1. **D. M. Karunapala:**¹⁰⁹ D.M. Karunapala became a policeman in 1987. On 15 August 2004 while on duty in Jaffna, he met with an accident and became disabled. Since, he has been using a neck brace and crutches and worked at the crimes division of the Panadura ASP's office. On 17 January around 6:30pm, Mr. Karunapala was illegally arrested by the Bandaragama Police sans an arrest warrant and taken to the Bandaragama Police Station. At the station, he was severely assaulted by IP Tilakaratne, SIs Gihan and Mangala, and locked up in a cell. His wife, who was living separately from him and had filed for divorce, was also present at the police station at the time. Mr. Karunapala was not aware of the reasons for his arrest. However, he alleged that IP Tilakaratne was his wife's paramour and this was the reason for the inhuman treatment he had received. That same night around 9:00, IP Tilakaratne had taken the victim out of the cell and again brutally assaulted him with a wooden pole. And although he had fallen due to the unbearable torture, his perpetrator continued to kick and punch him all over his body – until Mr. Karunapala became unconscious. The following morning (18) the OIC, Bandaragama Police Station had come to office and seen Mr. Karunapala's plight, but did not any action. Then around 10:00am, the victim was taken before the Circuit Magistrate's Court, Bandaragama. Before being produced before the Magistrate, IP Tilakaratne threatened him that if he sought medical

¹⁰⁷ See note 22 above.

¹⁰⁸ AHRC UA Reference, UA-83-2004 (07 July 2004), E/CN.4/2005/62/Add.1 paras. 1520 and 1521

¹⁰⁹ AHRC UA Reference, UA-16-2005 (01 February 2005)

treatment at the hospital, he would be falsely charged for possessing a bomb, and remanded. He was produced in Court and the police charged him under Section 81 of the Penal Code of Sri Lanka. However despite the police insisting that Mr. Karunapala be remanded, the Magistrate released him on bail. On being released, he visited the Horana Government Hospital for medical treatment. He complained to the SP, Panadura about the torture he suffered at the hands of the police. The victim also complained to the HRC of Sri Lanka and an inquiry into the incident is currently being conducted. However, to date no disciplinary or criminal action has been taken against the errant policemen. Recently it was reported that the main perpetrator IP Tilakaratne had been transferred from the ASPs office, Panadura to the minor complaints division – also in Panadura.

97.2. W. Inuka Prasad Kumara Alwis and Sithura Nissanka:¹¹⁰ I.P.K. Alwis had a dispute with his neighbour, who complained against him to the Panadura North Police Station (Keselwatte). On 15 February 2005, three policemen including the station OIC visited Mr. Alwis' home and as he was not in, left a message for Mr. Alwis to report to the police the next day. As instructed on 16 February 2005, Mr. Alwis went to the police station accompanied by 4 friends. While 3 friends stayed outside, one named S. Nissanka went with Mr. Alwis inside the station. A Constable (No. 22197) accosted Mr. Alwis and inquired about two people named 'Jeevantha' and 'Rohan'. When Mr. Alwis said he did not know where these men lived, the policeman threatened him. Mr. Nissanka said, "My friend does not know Jeevantha. So why are you arresting him instead of Jeevantha?" Overhearing this conversation the OIC ordered the policeman to bring Mr. Alwis and his friend to him. No sooner were they brought, the OIC, slapped Mr. Alwis on the face saying, "Are you trying to be difficult?" Mr. Nissanka was similarly assaulted. Mr. Alwis informed the OIC that he suffered from a chest ailment. Then the OIC stopped his assault on the victims but threatened them by mentioning names of underworld characters saying, "Ask their minions about me, they know me well." He continued to threaten the victim boasting how he had broken one person's arm and shot another person. The OIC then told Mr. Alwis to leave the room while he continued brutally torturing Mr. Nissanka. According to Mr. Alwis, the complainant (his neighbour) was present at the police station when they were being tortured; in fact he was watching the assault. Mr. Alwis was again brought to the OIC who threatened to plant a bomb on him and falsely charge him with 'possessing a bomb'. The OIC also demanded that Mr. Alwis apologise to his neighbour. Fearfully, Mr. Alwis tendered his apology and was told to make a police statement and leave. But his friend was detained at the station. Before leaving, the police recorded their addresses and ordered to report to the police station every Saturday. They were also accused of stealing from the complainant, a charge they denied. The complainant was told to "leave without fear" and was also promised 'police protection, henceforth'. Later that evening when Mr. Alwis set out to meet Mr. Nissanka, still in custody at the police station, he met 4 policemen and several family members of the complainant in a police jeep. One of the policemen told Mr. Alwis sarcastically, "You are trying to be a big man, aren't you? Why are you harassing these people?" Mr. Alwis said he was visiting his friend in custody. They laughed and went away. Mr. Alwis alleged that his neighbour was on 'good terms' with the police and their

¹¹⁰ AHRC UA Reference, UA-43-2005 (15 March 2005)

torture by the police without any investigation into the complaint against them, was an attempt to console the complainant.

98. Double standards in speeding up prosecution and lack of clear policy:

According to the latest media reports, the IGP, has said that the police will apply to the AG's department to have a trial at bar in order to speed up the sensational Royal Park murder trial, where a foreigner was murdered. The IGP says this will "send a clear message" to all that crime will be punished. The question here is a matter of principle. By what criteria does the IGP decide which cases are to be speeded up and where clear messages are to be sent? Is the urgency of a trial determined by the particular person who has been killed? If a judge or a foreigner is murdered, is this sufficient ground upon which to decide that the crime is heinous and speedy justice is needed? Surely the factors that deserve consideration include the positions of the alleged perpetrators and the circumstances of the crime, rather than the personalities involved. There are no more heinous crimes than those crimes allegedly committed by law enforcement officers, whose duty it should be to protect, not undermine, the rights of the people. One glaring example of such a crime is the murder of **Gerald Mervyn Perera**¹¹¹, a prominent torture victim who was killed a few days before he was to give evidence in court of his ordeal at the hands of local police. Gerald was apparently murdered to prevent him from giving this evidence. After thorough investigations, the culprits were remanded. However, no attempt has been made by the police or by the Attorney General's department to expedite this trial. Almost every week a murder as a result of torture is reported from Sri Lankan police stations. Were the daily, weekly, and monthly killings at police stations tallied, they would make a long list by the end of a year. What is needed here is that the IGP "sending a clear message" to his own police officers on such murders and torture. By sheer inaction, the message that is being delivered to the police officers is that that of impunity – they will be protected in every possible way. Some gestures made in order to appease public anger would create a false impression in the international community. That the trial of a murder victim should be sped up because of social standing or nationality denies the principle of equality before the law and ignores the disproportionate effects of different crimes on the entire system of law enforcement. When law enforcement officers are the accused, the police have an even greater obligation than usual to protect the victim and witnesses, as the perpetrators have an extraordinary capacity to commit further harm. The clear message the IGP should be sending would be to the law enforcement officers who are destabilizing the rule of law in Sri Lanka. That could only be done through speedy prosecution of law enforcement officers themselves who have committed the crime of torture.

- 99. Police's failure to provide evidence denies justice to victims:** On 25 October 2000, more than 25 young Tamils at a rehabilitation centre in Bindunuwewa¹¹² near Bandarawela in the south-central part of the island were attacked and killed by a Sinhalese group. The massacre killed 27 detainees and injured 14 others and that the modes of killing were so ugly and cruel. The Sri Lankan law enforcement authorities guarded the Centre at the time when the massacre took place. Subsequently following domestic and international outrage, forty-one persons were charged with participating in the massacre. However, the Sri Lankan courts

¹¹¹ See note 22 above

¹¹² Detailed documentation on Bindunuwewa Massacre could be found at <http://massacres.ahrchk.net/bindunuwewa>

have gradually acquitted all of these persons on the basis that there was no evidence to convict them. The last of these acquittals came on 27 May 2005 when the Supreme Court acquitted the remaining accused on the basis that the evidence against them lacked merit. After nearly five years the survivors of this massacre and the relatives of the dead are still left with questions such as who was responsible to the massacre unanswered. This most horrendous act of killing young people, who were in a rehabilitation centre, which was under the protection of the Sri Lankan government, has proved only one thing; that the Sri Lankan system of justice is guilty of ensuring immunity for offenders. The primary responsibility for this failure lies with the Sri Lankan police who had the legal responsibility to investigate into this matter and to provide all evidence that was necessary to secure a successful conviction. Obviously the investigators failed in their task. Will there be an investigation into the failure to conduct proper investigations by the police? Given the magnitude of the crime, such an investigation is imperative. Who will initiate such an investigation? The obligation lies with the IGP and with the government itself. The failure to properly investigate such a massacre is a serious breach of trust by the police service in Sri Lanka. If the IGP and the government do not conduct a thorough investigation into the issue, significant credibility will be lost in regards to the policing system as well as the Sri Lankan government's claims to ensure justice and respect for human rights.

100. **Torture of children:** There are a number of cases in different police stations where the police have brutally tortured children. In almost all such circumstances the police has done so in the process of a criminal investigation. However, what is difficult to understand here are that how these police officers could inflict severe pain on innocent children. The level of the police officers have been morally so deteriorated that that they would resort to these brutal methods also on children. One of the youngest of the victims of child torture was **Wijekone Mudiyansele Sujith Priyantha Wijekone**¹¹³, a seven-year-old child who was detained and tortured by the Officer In Charge of the Polpithigama Police Station on the 30 and 31 July 2003 for an alleged theft. During the time of the detention the parents were not allowed to visit the child, despite child mother helplessly witnessed the screams of her son who was being tortured by the OIC of the police station in his room. Following are some child torture cases in detail:

100.1. **B G Chamila BANDARA Jayaratne:**¹¹⁴ 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. On the 20 July 2003, police personnel attached to the Ankumbura police station (Kandy) took him out of his house and gave him several blows, saying, "You have scolded someone who helped us to catch some thieves!" The Officer hit him hard on the face and body about ten times, then handcuffed him. He was then taken to the Ankumbura Police Station and inside the police station, SI Senevirathna held him, bent his head, and hit him very hard on his spine. Then he hit Chamila on his face with his boots and pushed his head against the wall. The next morning, Chamila was then taken to another place where there was a bed, and the OIC told him to remove his shirt and lie face down on the bed. There were several officers present. One person, who was not wearing a uniform, sat on Chamila's back. Someone held tight onto his

¹¹³ AHRC UA Reference, UA-69-2003 (03 November 2003); E/CN.4/2005/62/Add.1 paras 1492 and 1493

¹¹⁴ See note 23 above

legs. Then the OIC and another officer hit the soles of Chamila's feet. The OIC hit him with a cricket stump and the other officer hit him with a cane. Chamila was told to admit to thievery. When he said that he didn't know anything about any theft, the police officers continued to hit him. Then petrol was put into a polythene bag and poured out, after which the polythene bag was tied onto Chamila's face. He was told that if he didn't tell the truth, he would be burnt. He was hit for about one hour more. Chamila was told to get off the bed and to keep jumping, but because he did not jump high enough, the OIC hit me with a pole. When Chamila repeated that he didn't know about any thefts, the OIC said that, "No one knows you have been arrested", and called out, "Let's kill him." He told the others to hang Chamila from the ceiling beam. Chamila's hands were swung behind my back and his thumbs tied together with a string, then they put a rope between his thumbs and hung him from a ceiling beam. One officer pulled the rope so that Chamila was lifted from the ground. When he was lifted, his hands were twisted at the elbow and they became numb. The OIC kept hitting me on his legs and soles with the cricket stumps. He hit Chamila on his thighs, and asked him who his friends were. Because of the unbearable pain Chamila has given 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 Chamila admitted to every theft the officers told him about, one after the other, just to escape this unbearable situation. The police officers then told him that they would take me to a jewellery shop at Ambathenna. Chamila was told to say that he had stolen two rings and a chain. The police officer told Chamila not to tell anyone that they had tortured him. If a doctor asked him, he was to say that the handcuffs damaged his hands. He was told that if he 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". Later, Chamila was taken near the Ankumbura Government Hospital and while he and his other friends arrested waited in the jeep, officers went in and brought some papers back to them. They were not taken to the doctor. They were later taken to the magistrate's official house. The police told the magistrate something and then Chamila and his friends were taken to the remand prison at Rajaveediya. When Chamila was admitted to the prison he informed the prison authorities about the injuries he had suffered at the hands of the police and requested treatment. He was given some tablets but no medical examination was done. He was also not kept in the prison hospital. On July 28 his mother was finally able to meet him there. He was released on bail on July 30. On July 31, he was admitted to the General Hospital in Kandy and was under treatment for six days. The doctors told him that due to the torture the damage to his left arm is likely to be permanent. When he went to the police post of the General Hospital of Kandy to make a complaint about the torture, the request was refused and he was told to make the complaint at the Ankumbura police station where he was tortured. On August 11 he was readmitted to hospital, and told that he will have to have an operation to try to correct the injuries caused by the torture.

100.2. **T K Hiran Rasika & E A Kasun Madusanka**¹¹⁵: On 8 July 2002 two children studying at Millika Mahavidyala (High School), were arrested by officers attached to the Hiniduma Police Station investigating a theft from the school

¹¹⁵ AHRC UA Reference, UA-30-2002 (16 July 2002); E/CN.4/2003/68, paras. 1598 to 1600

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 FR application 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, Shiromi 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 has been 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 Embilipitiya 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, has reportedly said on the radio that the two torturers have since been transferred elsewhere.

100.3. **V G G Chaminda Premalal**¹¹⁶: a 16-year-old grade 11 student at Dibulagala Mahavidyalaya (High School), Polonnaruwa, was arrested by several officers of Aralaganvila Police Station while he was at home on 9 July 2002, at

¹¹⁶ AHRC UA Reference, UA-31-2002 (19 July 2002)

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, he was taken to the upper floor of the station by two police officers of the Crimes Division, Lalith Rajamanthri and Nihal, who were drunk, and several other officers. 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 are swollen, and he has pain in his spine. He faints periodically and has headaches, vomits, and is confused. He has been treated at the hospital in Aralaganvila. A FR application has been 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.

100.4. A.M. Shriyantha Bandara:¹¹⁷ On 28 January 2005, five policemen of the Wattagama Police Station visited the house of 12-year-old Shriyantha Bandara at a time when his parents were not at home. The policemen demanded to know where his father kept his illicit liquor collection. When the boy replied that he did not know, the policeman called Ambepitiya slapped Shriyantha hard on his left cheek and ear several times. Consequently, due to unbearable pain in his left ear, Shriyantha had to be hospitalised at the Kandy General Hospital and treated for 5 days. One month on, the boy suffered from a blocked feeling in his left ear and hearing impairment.

100.5. Mahesh Kumara:¹¹⁸ On 6 February 2005 11-year-old Mahesh Kumara was playing with his friends at his school playground. He got into a fight with his friend Bandara as a consequence of which Bandara fell and hurt his head. The School Principal immediately sent Bandara to a nearby hospital for treatment. The Principal also informed Mahesh's father of the incident and the father went to visit Bandara in hospital. On 8 February, the Principal attempted to settle the matter between the boys' parents but Bandara's parents demanded a certain sum of money to do so. Mahesh's father could not afford to pay, hence the meeting ended without resolve. On 9 February, a policeman took Mahesh and his father to the Wattagama Police Station, and told the father to go bring Bandara to the station. However, Bandara's parents refused to let their son go saying the matter would be settled by a Police Sergeant who was a relative of the family. Around 8:30pm that night, a PC at the Wattagama Station handed over a written statement to Mahesh and insisted he sign it. When Mahesh's father objected as he did not know the

¹¹⁷ AHRC UA Reference, UA-27-2005 (25 February 2005)

¹¹⁸ AHRC UA Reference, UA-35-2005 (04 March 2005)

contents of the statement, the policeman threatened the father saying, “if you wish to see your son again, you should get your son to sign it”. Thus under duress Mahesh signed the statement, though neither he nor his father had any knowledge of its contents. The police detained 11-year-old Mahesh overnight at the police station. The boy claimed that during his detention, he was abused in foul language and threatened by a policeman who was a relative of his friend Bandara. The following morning, the petrified young boy was produced before court, charged with a criminal offence – which Mahesh’s parents insisted is false -- and then released on bail.

100.6. **L.A. Pradeep Kumara & Lakmal Chathuranga:**¹¹⁹ On 7 August 2004 around 10:30 pm, policemen of the Ambalangoda Police Station accused two minors L.A. Pradeep Kumara (14) and L. Chathuranga (15) of stealing a gold chain and arrested them – without the knowledge of and unaccompanied by their parents as required by law. They were taken to the station, stripped naked, blindfolded and brutally assaulted with wooden poles. Later the police also threatened their parents that if they did not pay 300 rupees, the children will be prosecuted and remanded for 14 days. With little alternative available, the parents agreed to pay the ‘ransom’. They said that after they signed a statement written by the police, the boys were released on 9 August 2004. As the boys were severely bruised and also suffering from mental trauma, the parents took them to the Balapitiya Government Hospital, where they were admitted and medical attended in Ward 1.

101. **Efforts to reform the police:** There have been some early efforts to reform the police. There have been various attempts by way of studies and reports by several Commissions to look into these aspects in Sri Lanka in different times. These have been, “Report of the Police Commission Sessional Paper VIII” which is also known as the Soertsz Commission Report (hereinafter “Soertsz Commission Report”) published in February 1947, “Final Report of the Police Commission: Printed on the Orders of the Government” also known as the Basnayake Commission Report (hereinafter “Basnayake Commission Report”) published in July 1970 and “Sri Lanka Police Service-Suggestions for Improving its Efficiency and Effectiveness: Report of the Committee Appointed on 24-02-1995” also known as the Jayalath Committee Report (hereinafter “Jayalath Committee Report”).¹²⁰ The Soertsz Commission Report examined how the police force came into disrepute by drastically changing the fundamental role of the police from keeping peace and bringing criminals to justice, to riot control. Thus the militarization of the police in Sri Lanka started early in the 20th Century.¹²¹ The report suggested that the role police played at that time by leading evidence in criminal trials should be removed from the police and more competent persons from legal profession should be appointed to do such tasks.¹²² Later the Basnayake Commission Report stressed the importance of removing the monopoly of criminal investigations by the police to another department, namely, a Department of Public Prosecution. The Report suggested that the introduction of a Public Prosecutor, independent from the Police would improve effective prosecutions.¹²³ When the Jayalath Committee came into existence, the police had

¹¹⁹ AHRC UA Reference, UA-100-2004 (13 August 2004); E/CN.4/2005/62/Add.1 paras. 1552

¹²⁰ AHRC, *Selected Readings on Police Reforms in Sri Lanka*, Asian Human Rights Commission, Hong Kong, 2001

¹²¹ *Ibid.*, p. 33

¹²² *Ibid.*, p.38-39

¹²³ *Ibid.*, p.44-45

already deteriorated tremendously due to politicisation of the police, corruption and the use of the police for extra-judicial activities such as torture, killings and disappearances in trying to contain dissent to the Government in the cover of emergency regulations. The Jayalath Committee Report stressed the urgency to reform the police due to low morale and low public confidence. This report agreed with the recommendations of the Basnayake Commission that a department of Director of Public Prosecution should exist to deal with criminal investigations effectively and efficiently.¹²⁴ All three bodies in their reports mentioned the importance of having an independent procedure to deal with complaints against the police. What is apparent from these three reports is that efforts have been made to study and highlight the problems with regard to the policing system in Sri Lanka from as early as 1947. However, practically, there has been no effort to implement most of the recommendations in the report. The most recent effort was made by way of the 17th Amendment to the Constitution of Sri Lanka, which established the NPC in 2002.

Prosecution:

102. CATA becomes relevant only if it is successfully used to prosecute the perpetrators. Prosecution in criminal cases is carried out in Sri Lanka by the AG's department. However, it is not an exaggeration to state that the AG and his department have completely failed in the effective and efficient prosecution of torture perpetrators. It was 10 years after the enactment of CATA the AG's department managed to successfully prosecute the first perpetrator of torture under the Act and to date there have been only 2 successful prosecutions.¹²⁵

103. **Backward prosecution system which depends entirely on investigations by the police into crimes:** Sri Lanka's prosecution system, organised under the AG's department is extremely backward, is ill-staffed and in the years following 1978, went through some negative transformations the impact of which still remain. A major weakness of the system is that the prosecution entirely depends on police inquiries. Thus if for some reason or another, the police do not investigate or are negligent in investigating crime, there is hardly anything the prosecutors can do to remedy the situation. And given the type of crisis that exists in the policing system today, as describe in this report, the prosecution system is bound to suffer severe setbacks. Therefore and urgently needed reform is the separation of the public prosecution function from the AG's department and the creation of a public prosecutor's office. We would like to highlight the fact that such a separation has been recommended by numerous bodies in the past, including the Justice Soertz Commission (1946), Basnayake Commission (1970) and Jayalath Committee (1995). In 1973 with the introduction of the Administration of Justice Act, the position was created but abolished after 1977. If the inherent inefficiency in the present set-up is to be negated, a separate department for the public prosecutor

¹²⁴ Ibid, p. 49

¹²⁵ The first case is the case of *The State v. Madiliyawatte Jayalathge Thilakarathna Jayalath*, CASE NO: H.C 9775/99, Decided on 19 January 2004 and the second was the case of *Police Inspector Kirthi Bandara Hedirisingha*, who was found guilty on the 20 August 2004, for an of torture. Thus it took almost 10 years to just to get two convictions under the Act.

needs to be created wherein prosecuting functions could be more thoroughly specialized and pursued. If the existing obstacle for proper prosecution were changed it would remove one of the major impediments to the rule of law in Sri Lanka. In 1973 the Office of the Public Prosecutor was created in Sri Lanka. However, this office was abolished after 1978. In the subsequent years like all other public institutions the independence of the Department suffered a great deal. In recent years there has been some attempt to improve the situation. However, without the development of an independent public prosecutor's department it is quite unlikely that a suitable prosecution department dealing with serious crimes can be instituted. This is particularly so in relation to crimes where the alleged perpetrators are police officers and other state officers. Due to the nature of the complete separation between criminal investigations and prosecutions prevailing in the country, the AG's department has a close connection with the police officers in relation to crimes that are being prosecuted as the department depends entirely on the police for investigations. The investigation of normal crimes is in the hands of the police. The officers of the AG's department base their prosecution on the investigations done by the police. Thus a close co-operation between such investigators and the prosecutors is inevitable. Some of these very same police officers or their colleagues are often being accused of torture, custodial deaths and the like. Naturally in such circumstances conflicts and even public perception of conflicts of interest does arise.

104. **Without fundamental changes in the way of prosecution, other efforts such as different units created to address issues cannot be efficient and effective:** Some units have been created under the AG's department for the prosecution of state officers, for example, the Disappearances Investigation Unit (DIU) established in November 1997 and the Prosecution of Torture Perpetrators Unit (PTPU) established recently. These units function under the direction of the AG's department. While they may be free to investigate when direction is given to investigate they do not have the power to initiate investigations independently on receipt of reliable complaints. Further prosecution into matters entirely depends on the discretion of the AG's department. However, the units suffer from the same general defect of the AG's department. For example, though the Presidential Commission "recommended prosecution of a large number of persons only a handful of cases were filed and even some of them were lost due to the defects of prosecution. Due to much delay in prosecution, such as 12-year delays before vital witnesses make their statements in court, the prosecution has been abandoned."¹²⁶ Even in torture cases when complaints are made immediately after the incident, often the investigations begin quite some time later, thereby creating doubts about the credibility of evidence and of identification. The impression that such investigations and prosecutions are delayed or otherwise hampered by the unwillingness of the state to prosecute state agents is quite prevalent. That often investigations by such units are conducted only due to pressure particularly from the international community is also a common criticism.

105. **Delays in prosecution:** In its concluding observations on the periodic state party report to the Committee in 1998, the Committee notes that there were "few,

¹²⁶ E/CN.4/2003/NGO/88, ALRC written statement to the CHR in 2003 entitled "Enforced or involuntary disappearances in Sri Lanka

if any, prosecutions or disciplinary proceedings” being initiated against police and other officers alleges to have committed torture and called upon the Government of Sri Lanka to promptly, independently and effectively investigate allegations of torture and to ensure speedy trial. However, since then, there has not been any notable progress in the AG’s department in dealing with torture cases. The present AG himself has publicly admitted that he does not have a sufficient number of staff to deal with the department’s workload. The result is that there are enormous delays within the department itself before cases are filed in court.

106. **Politicisation and loss of independence of the AG’s department:** Another serious setback that occurred after 1978 was during the operation of emergency and anti-terrorism laws, when the country was beset with tens of thousands of disappearances. During these times, some officers of the AG’s department actually engaged in assisting policemen and armed forces officials named as respondents in *habeas corpus* applications. Thus the AG’s department lost its independent functioning in upholding the rule of law. A team of officials from the Department assigned to this task, broke with tradition and allegedly advised military and police officers to file false affidavits before courts. This virtually changed the internal relationship between the police and the AG’s department in that it undermined the respect the military and law enforcement agencies held for the AG’s department officers—a respect that is essential in maintaining the independence and integrity of the Department.
107. **Failure of the AG’s department to effectively and efficiently prosecute torture perpetrators:** Though the CATA was enacted in 1994, hardly any cases were filed until there was a serious civil society campaign and pressure from the international community to enforce it. As a result, according to statistics given by the AG’s department, about 40 cases are now pending before various high courts. In two cases there have been convictions. These two convictions and the increasing number of investigations leading to the filing of more cases have had a chilling effect on the police in recent months. The use of torture, once accepted as the only mode of conducting criminal investigations, has now become a visible offence carrying a mandatory seven-years’ imprisonment and of a fine SLRs. 10,000 (US\$ 1,000).
108. **Failure to prosecute senior police officers:** AG’s department of Sri Lanka have consistently ignored the issue of command responsibility, thereby indirectly allowing police violence and extra judicial killings to continue. The AHRC has made constant submissions to both offices regarding the necessity of prosecuting supervising officers when acts of torture and custodial deaths occur at police stations, to no avail. In fact, the AG’s department appears to have taken an official decision not to prosecute senior officers except where the officer is directly and physically involved in acts of torture. Even in instances of direct involvement, action is only taken against policemen up to the OIC rank. The ALRC is aware of many cases where senior officers have not been prosecuted, such as one ASP, allegedly accused of running a torture chamber at his office and causing an arrestee to lose an eye, who has not been indicted despite a SIU inquiring into the case. In two famous cases from the Wattala and Kandana police stations where representations were made on behalf of the victims of the direct involvement of the OICs of the two police stations, there was no response from the AG. In another instance, the AG’s department withdrew an indictment against an OIC on

the basis that his responsibility was that of civil and not criminal liability. However, under the CATA, command responsibility is recognised for acts of omissions on the part of senior officers, and this is a principle of criminal law.

109. **Inability to prosecute heinous crimes such as Bindunuwewa Massacre:** In terms of the Bindunuwewa Massacre, with regards to the denial of justice to the victims and family members of victims, there is clearly also a failure on the part of the AG's department itself. The Supreme Court of Sri Lanka acquitted all accused police officers in the case due to "lack of evidence" or "lack of merit in the evidence." The AG's department should not have filed indictments against persons if they did not have sufficient evidence to prove a case successfully before a court. To the accused, it is a great injustice to bring them before a court without sufficient evidence. To the survivors of the massacre and the relatives of the dead such prosecutions amount to deception. Also for the public, who would have sought justice, this is also a betrayal of their trust. However, how can there be successful prosecution without a criminal investigation system that is able to conduct professional and thorough inquiries before proceeding to court? Further, how can there be successful prosecution without a prosecuting system that thoroughly measures the evidence before prosecutions are filed? The reason for the low rate of success for convictions is thus the defective police investigation system and the prosecution system themselves.

Judiciary

110. While judiciary made a number of rulings in fundamental rights violations cases in favour of the torture victims there were concerns in relation to a standard or consistency in awarding damages/compensation, prolonged legal processes and the independence of the judiciary itself.
111. **Judiciary's inability to assert its power:** Special Rapporteur on the Independence of Judges and Lawyers observed that "[T]he perception of a lack of independence of the judiciary was in danger of becoming widespread and that it was extremely harmful to respect for the rule of law by ordinary citizens".¹²⁷ This observation is further fortified from the fact that innumerable judgments of the Supreme Court in finding state officers responsible for violations of human rights have directed that their departmental heads, including the Inspector General of Police, the Army Commander etc. should take disciplinary action against those officers responsible, have been ignored. Police officers in charge of stations, who have been held responsible for heinous rights violations, continue to remain at their posts. This trend has taken a new turn with the Court itself, in recent times, making statements that has detracted from its own authority. Thus, for example, in a recent verdict of the Supreme Court of Sri Lanka, the court among other issues answered the issue regarding torture and the resultant inquiry against law enforcement officers while considering their claim for promotion.¹²⁸ While deciding the case the court opined that even though the respondents were subjected for departmental inquiry against fundamental rights violation and torture

¹²⁷ E/CN.4/2002/72, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39 dated 11 February 2002.

¹²⁸ S.A.D.M.P Gunasekera Officer in Charge Examination and Training Division & Others V A.K. Samarasekera Officer in Charge Police Radio administration & Others. SCFR 607/99 & 608/99 (12-01-2000), Supreme Court of Sri Lanka

and thus punished, this would not in any way, be held as a disqualification for promotion.

112. **Inconsistency in awarding damages/compensation to torture victims:** The efforts by the Supreme Court of Sri Lanka to order compensation to be paid to torture victims were commendable in a few cases. In the case of **Gerald Mervyn Perera**¹²⁹ who suffered severe torture in the hand of Wattala Police, the Supreme Court awarded about 15,000 US\$ in total as compensation including his medical fees. This was the highest compensation. In the case of **Lama Hewage Lal**¹³⁰ who was arrested for the alleged offence of stealing a bunch of bananas (worth 850 SLRs of about 8.5 US\$) and later tortured to death by the police officers attached to the Seeduwa Police Station and Negombo Jail, the Supreme Court awarded SLRs. one Million (or 10,000 US\$) as compensation to his wife. In the case of **Kemasiri Kumara Caldera**¹³¹, who was assaulted and then shot by the officers attached to the Seeduwa Police Station causing him severe physical damage, was awarded SLRs. 700,000 (about 7,000 US\$) in total by the Supreme Court. These were important judgements where the relevant judges of the Supreme Court regarded commission of torture as a serious offence. However, a subsequent judgment by the Supreme Court of Sri Lanka in the case of **Brahmanage Arun Sheron Suranga Wijewardana**,¹³² the Supreme Court found that the Suranga Wijewardana was tortured by the police officers attached to the CID. The Supreme Court relied on the report by the JMO on the victim he was assaulted by Police officers on 26 August 2003 and injuries are of blunt force type causing damage to the victim's bladder. In the same judgement the Supreme Court awarded SLRs. 12,000 (1,200 US\$) in total to be paid directly by the perpetrator police officers to the victims, SLRs. 5,000, SLRs. 5,000, and SLRs 2,000, respectively by 3 police officers. The implication of such compensation is significant. Such small amounts of compensation could easily give a green signal to police officers that they could torture suspects and could get away with paying sums such as SLRs. 5,000. Further, the same judgement did not make any suggestion to the IGP for any further disciplinary action on the perpetrating police officers or to the AG to initiate any investigation to prosecute in the light of the CATA. The judgement has rather treated torture as an action that can be settled with petty monetary compensation only and by that undermining the grave nature of torture. Average costs attend to the proceedings of such cases including the fees for lawyers are much higher than the amount awarded in this case. Thus such judgements encourage the torture perpetrators to torture and discourage the victims to seek justice. Such judgments also double victimise the victims by further humiliating them. Thus absence of consistency in dealing with torture cases could undermine the meaningfulness of the whole judicial process.

113. **Delayed cases prolong the trauma and suffering of victims:** Although there laws, judges, courts and lawyers, the pace in which a case is progressed in Sri Lanka is shamefully slow. In torture related cases such delays affects the victims in many different ways. In the circumstances where there is no witness protection

¹²⁹ See note 22 above

¹³⁰ *Wewalage Rani Fernando (wife of the deceased Lama Hewage Lal) and others Vs. Officer in Charge of Seeduwa Police Station and others*, SCFR. 700/2002, Supreme Court of Sri Lanka

¹³¹ *Kemasiri Kumara Caldera Vs. Somasiri Liyanage (Inspector of Police) and others*, SCFR. 349/99, Supreme Court of Sri Lanka

¹³² *Brahmanage Arun Sheron Suranga Wijewardana Vs. Priyasan Ampawila Inspector of Police, Criminal Investigation Department and others*, SCFR. 553/2002, Supreme Court of Sri Lanka

law or system, victims themselves are responsible to provide their protection, ironically from the police themselves. In such situation when a case is prolonged over few years and often many years, the victim needs to go through the process bearing his/her trauma, feeling insecure and often experiencing the stigma from the society as well. This is worst especially for child rape victims. Some such delayed cases are detailed below:

113.1. **J.R.:** J R was allegedly raped at the age of 16 on 12 August 2001. No immediate investigation was carried out. Instead investigation only came about much later, after the intervention of certain human rights groups. A case bearing No. 32151 in the Magistrate's Court, Nuwara Eliya, was filed and evidence was recorded. In October 2002 the case was committed to the High Court for trial and the file was sent to the AG's department. However to date, the victim has heard nothing further about her case. The victim made several complaints regarding this matter to the AG and also the HRC of Sri Lanka. However, to her knowledge, no case has yet been filed in the High Court. Generally, after indictment is filed in the High Court, it takes between 3-5 years before final judgment. Then there can be an appeal, which itself may take another 3-5 years. Thus, J R may have to wait up to 12 years from the date of her alleged rape, for a conclusion of her case before court. When a young victim, such as J R, is forced to go through this type of prolonged ordeal for justice, she also encounters many other associated problems. During this long waiting period, she may be subjected to further threats or violence at the hands of her perpetrators. As a result, as well as due to the social stigma attached to a person claiming rape, the victim is often forced to leave her home and seek shelter elsewhere. Furthermore, another woman seeing the suffering of J R caused by the delay in the justice system, might think twice before complaining about a similar crime perpetrated on her.

113.2. **Y.S.:** Y S was a mere 13-years-old at the time of her rape on 2 September 2002. After the police conducted an initial investigation a case was filed in the Magistrate's Court of Kandy (Case No. 25248). This case is still pending before the Magistrate's Court. It is not possible to predict when the Magistrate's Court Non-Summary proceeding will conclude. However, once it has ended it will be sent to the AG's department for the filing of indictments. And going by earlier cases, Y S can expect to wait at least 3 years before the indictment is prepared and sent to the High Court, where the trial is likely to take a further 3-5 years for judgment. If the case is appealed, which is most likely, one may expect a further delay of 3-5 years before a final judgment. During this period the victim is also likely to experience similar problems as mentioned in JR's case.

113.3. **K.A.:** K A was raped on 2 July 2003. Her case bears the number B 40152 at the Magistrate's Court. Having a 'B' number for a case means that the non-summary inquiry has not yet begun. Going by earlier cases, a non-summary inquiry often takes two to three years to be completed. And in the meanwhile the victim will most likely face the same prolonged wait and adverse experiences as aforementioned.

113.4. **I.S.:** I S was 17 when she was raped on 7 April 2002. The case bears No. B 37112 at the Kandy Magistrate's Court. Again, bearing a 'B' number means that not even Non Summary proceedings have begun. Thus, she can expect to wait a decade or more before receiving any form of justice for the violation of her rights.

114. **Delay in cases prevents victims from obtaining a fair trial:** Delays create extreme difficulties for the realisation of fair trial. In Sri Lanka, for example, the official figure of the number of successful convictions in criminal cases is four per cent. It has been revealed also that 85 per cent of witnesses fail to attend criminal trials. And many of those convicted have pleaded guilty to the charges against them. This may explain low conviction rate. Long delays in adjudication affect fair trial in the following ways: Over the years witnesses who initially come forward to give evidence withdraw for various reasons. Often they have to attend court many times for several years and thus their lives are seriously disrupted. Whether the trial takes place or not witnesses who come to court often have to wait the whole day. Thus, the witnesses experience a heavy sense of frustration and futility. Others—who become aware of the travails, they are likely to suffer if they come forward as witnesses—often withdraw at the very beginning even if they have vital evidence regarding a case. Their sense of civic obligation to the community on the one hand and their awareness of the many inconveniences they have to suffer during civic duty on the other, come into conflict. It is difficult for people to remember every detail of an event that they experienced many years earlier. When witnesses are cross-examined about something they may have seen or heard five to six years ago, they are likely to make many mistakes when giving evidence. A clever cross-examiner may be able to exploit this situation and have the witness appear unable to recall the truth. If this is to be avoided then the court must hear evidence while the event is still fresh in the minds of witnesses.
115. **Delayed justice helps perpetrators and demoralises and double victimise the victims:** Delay in legal cases inevitably favour perpetrators of crimes, not the victims. And the worse affected are innocent persons who are accused of crimes, for they will have to wait years for a declaration of innocence, by the judicial process. Therefore, until the problem of delays is addressed in a serious manner and solutions are found, the talk about the re-establishment of the rule of law in Sri Lanka will remain 'mere bluff'.

Negligence by medical professionals

116. In many cases of torture it has been revealed that there are serious doubts about the professionalism of some of the JMOs and DMOs. Some cases to cite on this regard are:

116.1. In the case of **M. K. Lasantha Jagath Kumara**¹³³, who was produced before a DMO the day before his death, the DMO did not examine him properly or prescribe immediate medical attention. There is also the case of Sunil Hemachandra, who died due to injuries suffered from torture in police custody. There are several eyewitnesses who saw him being severely beaten by the police. He was 32 years of age and had no history of epilepsy or any serious illness. His family specifically denies him having any fits at all. However, the medical report left out the possibility of injuries due to assault and speculated on the possibility of a fall due to fits caused by an illness. The family strongly believes that the medical examination has not been carried out professionally.

¹³³ Kotabadu Durage Sriyani Silva (Wife of Mulle Kandage Lasantha Jagath Kumara – now Deceased) vs. Chanaka Iddamal goda, OIC Payagala police station and 6 others, SCFR. 471/2000, Supreme Court of Sri Lanka; AHRC UA Reference, UA-20-2001 (19 June 2001) and UP-69-2004 (12 November 2004)

116.2. In the case of **Garlin Kankanamge Sanjeewa**¹³⁴ who the police alleged to have committed suicide inside the police station, the family of the victim has seriously doubted the verdict of the medical officer and even keeps the dead body buried in the family garden with the hope of getting an impartial medical inquiry. The family alleges that even the sketch of the body as found was fabricated. Further observers have challenged the possibility of an adult male being able to hang himself with a belt, which the police allege happened. Further evidence that there were two persons inside the same police cell at the alleged time of hanging but they had seen nothing at all has also increased suspicion.

116.3. In the case of **B. G. Chamila Bandara Jayaratne**¹³⁵ who has lost the use of his left arm due to police torture, the Kandy Hospital did not even produce him before a DMO for examination despite the fact that they recorded the allegation of the young boy of having been tortured by the police. He was discharged without any treatment and it was only possible for him to get treatment after he had been re-admitted to Peradeniya Teaching Hospital where after examination the doctors declared that he has permanently lost the use of his left arm. Many such complaints about failures by the DMOs and JMOs are being received by human rights organizations. However, there are still a number of state medical officers who carry out their duties with great care and professionalism.

Role of HRC and the NPC in providing effective remedies to victims

Human Rights Commission of Sri Lanka

117. Human Rights Commission of Sri Lanka was established in 1997 through Human Rights Commission of Sri Lanka Act, Act No. 21 of 1996.¹³⁶ According to the Act, the term human right is defined as ‘the rights declared and recognised under the ICCPR and International Covenant on Economic Social and Cultural Rights (ICESCR). Sri Lanka is a part to the ICCPR and ICESCR.¹³⁷ The above Act provides the HRC with wide powers to investigate into human rights violations.¹³⁸ Further, the HRC is well protected by law. For example, it cannot be called as a witness in any court or be sued for matters relating to its official duties. This is a good provision to protect it from perpetrators, who are often powerful and holding positions in law enforcement agencies.¹³⁹ The first group of commissioners was appointed in September 1997 when the HRC became functional. The present group of Commissioners was appointed in 2003. While the mandate set out by the Human Rights Commission of Sri Lanka Act, set out large scale investigative powers to the HRC of Sri Lanka as set out in the Part II of the

¹³⁴ AHRC UA Reference, UA-43-2003 (02 September 2003); E/CN.4/2004/56/Add.1 para. 1494, E/CN.4/2005/62/Add.1 para. 1619

¹³⁵ See note 23 above

¹³⁶ Web site of the “Asia-Pacific Forum of National Human Rights Institutions,” <http://www.asiapacificforum.net/member/srilanka.htm>

¹³⁷ Sri Lanka acceded to the ICCPR and ICESCR on the 11 September 1980.

¹³⁸ Part II of the Human Rights Commission of Sri Lanka Act, Act No. 21 of 1996.

¹³⁹ AHRC “The National Human Rights Commission of Sri Lanka Has Used Its Powers to Bite the Victims and Not the Perpetrators,” A statement by the AHRC, Janasansadaya, and Niveka (12 December 2003), Hong Kong, Web site reference: AHRC Web site <www.ahrchk.net>, see under statements, archive, 2002

Act, it limits the scope of application to fundamental rights (meaning civil and political rights) set out in the Constitution of Sri Lanka. However, within the existing scope, the HRC of Sri Lanka has failed to effectively address the key human rights violation prevalent in the country namely, torture. The functions set out by the Human Rights Commission of Sri Lanka Act, states that the HRC of Sri Lanka has the power: “(c) to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental rights; [and] (d) to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards; (emphasis added).”¹⁴⁰ More importantly the HRC can initiate its own investigations into the human rights violations. However, HRC remains an ineffective and inefficient institution failing to provide effective remedies to the torture victims under its mandate. There are many reasons for this ineffectiveness and inefficiency. Some are detailed below.

117.1. Incompetence of the HRC staff in handling investigations: A reliable source to the AHRC has revealed that over 75 % of the staff of the HRC are not qualified and some are extremely unqualified. Some coordinators, responsible for a whole province (Sri Lanka has 9 provinces) have only a grade ten (Secondary School) education. This is in a country where there is an excess of university graduates! Many staff even lacks a grade ten education. Such low education contributes to many problems, in relation to application of international human rights norms and standards, relating to victims, dealing with the perpetrators etc. Dealing with the victims needs utmost sensitivity to their emotional situation. Most of victims, such as victims of torture, suffer from trauma. Recording a complaint from such victims need to be done with care and diligence. Professional training of officers dealing with the victims should include not only interview skills to extract information, but also insights into mental health of a victim after suffering a violation. When dealing with perpetrators, officers need to make conscious efforts to maintain their integrity and impartiality. Educational and professional incompetence of the staff would make them appear weak in front of perpetrators, making them vulnerable to manipulation and connivance with the perpetrators. Thus incompetence of staff of the HRC is a fundamental problem, which affect all the areas the HRC is working adversely. Although involvement of retired judges in some investigations conducted into torture cases by the HRC recently should be seen as a positive more in this regard, there need to be policy level changes in relation to hiring competent staff.

117.2. Attempts by the HRC staff to settle cases rather than seeking a just solution: At present, one of the major tasks of HRC of Sri Lanka is to entertain individual complaints on human rights violations. Even in this aspect, there have been attempts made by the HRC members to conciliate between the police and the victims through monitory means. Such efforts have double victimized the victims. While torture is a crime punishable with a mandatory prison sentence of seven years and a fine, the HRC of Sri Lanka have attempted settle cases after the payment of small amount of money to the victim by the perpetrator. HRC has often violates principles of international and national law in dealing with torture cases by allowing the perpetrators to escape criminal punishment by trying to settle

¹⁴⁰ Articles 9(c) and 9(d) of the Human Rights Commission of Sri Lanka Act, Act No. 21 of 1996

cases for amounts as little as SLRs. 1,000 (less than 10 US Dollars). As a result of such settlements, the victims are prevented from pursuing criminal cases. Further, the victims are often pressured to accept settlements by the HRC officers. According to the complaint of a person who was thrown into a river by a police officer with the intent to kill, the victim was told by the HRC's inquiring officers that he really did not have a case and that it is better for him to accept a small payment and end the matter. Because most victims are poor, not educated in legal matters and not represented by lawyers, it is often easy to confuse such victims.¹⁴¹ Such practices have further demoralized the victims and also have created a public perception of duplicity and corruption by the officers of the HRC.

117.3. Collaboration between the HRC officers and the perpetrators: There are also cases where strong proof of collaboration by the officers of the HRC with the perpetrators. The case of 17-year-old (at the time of the incident) **B. G. Chamila Bandara Jayaratne**¹⁴² of Ankumbura is well known. The Kandy Provincial Coordinator of the HRC reported the complaint of young Chamila Bandara, who was hung and assaulted by the police, as untrue, without even interviewing the victim. Young Chamila Bandara testified before the members of the UN Human Rights Committee when it took up Sri Lanka's 4th Periodic Report under the ICCPR in October and November 2003 in Geneva, of the torture he suffered in the hand of the police. The Solicitor General of Sri Lanka, representing the Sri Lankan Government, relied on the HRC Kandy Coordinator's report in replying to the Human Rights Committee, stating that HRC Coordinator in Kandy confirms that such torture has not taken place. Human rights organizations later carried out a protest demanding the removal of the Kandy Coordinator of the HRC. Over fifty persons demonstrated before the HRC of Sri Lanka headquarters in Colombo demanding the immediate sacking of its Kandy coordinator, Mr Sumanasekara, on November 6, 2003. During the protest, members of ten human rights organisations carried placards reading, "Sack the coordinator who is in close co-existence with police torture perpetrators", "Investigate allegations of rape against the coordinator", and "The coordinator helps the perpetrators and not the victims". Other placards alleged that, "The coordinator hands confidential information and documents given by victims to the perpetrators", "The coordinator is a security threat to the victims", and "The coordinator works to discourage human rights activists from helping victims."¹⁴³ This was not the only case where this particular coordinator of the HRC has collaborated in the police. In a meeting with the Chairperson of the HRC, Dr. Radhika Coomaraswamy, two activists reported that this Coordinator, has been referred to by the police as "our man" and has been backing the perpetrators in all cases. For this reason the number of complaints at the Kandy provincial office of the HRC have fallen. It was also pointed out to her that many previous allegations have been made against the same coordinator including rape claims by women who had gone to seek his protection. None of these accusations have been properly investigated or acted upon.¹⁴⁴

¹⁴¹ AHRC, "The National Human Rights Commission of Sri Lanka Has Used Its Powers to Bite the Victims and Not the Perpetrators," as cited above.

¹⁴² See note 23 above.

¹⁴³ AHRC, "Sri Lankan protestors call for dismissal of NHRC-Kandy coordinator," A press release by the AHRC, (7 November 2003), Hong Kong, Web site reference: AHRC Web site <www.ahrchk.net>, see under press releases, archive, 2003

¹⁴⁴ Asian Human Rights Commission (AHRC), "Sri Lankan protestors call for dismissal of NHRC-Kandy coordinator," cited above.

118. **HRC’s “zero tolerance” policy on torture is has its deficiencies:** In 2003, the HRC announced in its “Three-year Strategic Plan” that the restoration of rule of law and elimination of torture as their top priority. There have been some efforts by the HRC such as designing of a poster to be displayed in all police stations detailing the rights of arrestees which include their right not to be tortured.¹⁴⁵ However, such practical efforts have not been sustained consistently. The HRC in May 2004 adopted a "Zero Tolerance Policy" regarding torture. AHRC commented to this by stating (see Appendix 4), that ‘zero-tolerance’ is not in itself a police objective. Under the international law torture is regarded as one of the most heinous of crimes. When it comes to crimes such as murder, rape, etc., we do not talk of ‘zero-tolerance’; we talk of them as crimes, and the perpetrators as criminals. To begin with anything less is to soften the fight against torture.¹⁴⁶
119. **Twenty-four-hour Hotline needs improvements to make it more effective and efficient:** HRC has a 24-hour hotline receive complaints of human rights violations. However, those who answer the hotline decline to reveal their identity, making it difficult for the victims to follow up on their complaints for example, to inquire into what action has been taken and the plight of their loved ones etc. ALRC have also learned that there is no permanent staff employed to respond to the hotline. Thus after office hours the hotline is connected to the mobile phones of HRC officers who may be otherwise engaged and not in a position to respond immediately at the time of receiving the call. This reduces the efficiency of the hotline.
120. **Limited power of HRC officers to visit places of detention:** HRC's powers to monitor places of detention are quite limited. This is because though HRC officers are empowered to enter police stations only. From many cases documented in this report it is evident that torture often takes place not in the police station itself but in adjoining buildings such as police garages, kitchens, barracks and private quarters. These places have been placed out of bounds to HRC officers unless they inform of impending visits to the IGP or AG. Several HRC officers who demanded access to these places were attacked by the police and prevented from doing so. The requirement of prior notice of visits to the police stations certainly defeats the very purpose of such a visit because it gives ample notice to the perpetrators to conceal their illegal activities.
121. **Recent positive developments:** From about March 2005 ALRC have observed that the HRC has begun to inquire into complaints made to them regarding police torture and also make recommendations and issue directives to the AG, NPC, IGP as well as the police perpetrators to pay compensation to the victims and also to take appropriate disciplinary action against the perpetrators. Recently subsequent to an inquiry on the complaint lodged by Channa Prasanka, the HRC of Sri Lanka has held that the respondent E.M.P. Subasinghe (P.S. 31545) has violated the rights of Channa Prasanka guaranteed under Article 11 of the Sri Lankan Constitution, which prohibits torture and cruel and inhuman treatment. The inquiry into the complaint of Channa Prassanka (Complaint No.:

¹⁴⁵ AHRC, “Slighting the democratic process to undermine the rule of law in Sri Lanka,” A statement by the AHRC, (5 November 2003), Hong Kong, Web site reference: AHRC Web site <www.ahrchk.net>, see under statements, archive, 2003

¹⁴⁶ AHRC, “SRI LANKA: The inadequacies of the torture prevention policy adopted by the Human Rights Commission of Sri Lanka,” A statement by the AHRC, (15 May, 2004), Hong Kong, Web site reference: AHRC Web site <www.ahrchk.net>, see under statements, archive, 2004

HRC/2666/04/I(viii)) was conducted by a retired high court judge P.W. Edisuriya and the recommendations were made after the inquiry was communicated to Channa Prasanka by Nimal Punchihewa, the Director of Inquiries and Investigations of the HRC. The HRC's order is dated 21 August 2005. In this order, the HRC has instructed the said police officer to pay to the complainant Rs. 25,000 (USD 250). The AHRC was informed by the victim's lawyers that they would pursue the matter for compensation under the civil procedure of Sri Lanka at an appropriate district court. A copy of the HRC's order has been also sent to the IGP, the Chairperson of the NPC and the AG to urge appropriate action against the police officers responsible for Channa Prasanka's torture.

National Police Commission(NPC)

122. In accordance with the Seventeenth Amendment to the Constitution of Sri Lanka, the NPC was set up in 2002. Powers of the NPC includes,

“(1) (a) [To] appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, ... in consultation with the Inspector General of Police.

...

(2) [To] establish procedures to entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance with the provisions of any law enacted by Parliament for such purpose.

(3) [To] provide for and determine all matters regarding police officers, including the formulation of schemes of recruitment and training and the improvement of the efficiency and independence of the police service, ... codes of conduct, and the standards to be followed in making promotions and transfers, as the Commission may from time to time consider necessary or fit. ...¹⁴⁷

Thus the NPC has vast powers vested on it, which are instrumental in attending to problems within the police and also to take effective measures to improve and reform the police force.

123. **NPC lacks resources for efficient functioning:** The NPC cites a lack of resources and personnel as the reason for which it cannot investigate any complaints of torture received from the public. Therefore, when any of the five NPC coordinators—three of which are retired DIGs—receive a torture complaint they refer it to a DIG of police, who in turn sends the complaint either to the ASP or the SP in charge of the relevant police station. This officer then refers the complaint to the OIC of the station at which the victim alleges to have been tortured. Meanwhile, the ASP or the SP may summon the victim and witnesses to record their statements. These statements may then be referred to the police legal division but are usually not, unless the IGP is notified of the incident by international sources, in which case he will request a report from the relevant DIG, who in turn will request it from the ASP or the SP.

¹⁴⁷ “17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka,” certified on 3 October 2001, Chapter VIIA, Article 41A, web site reference: <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html>

124. **Absence of public complaints procedure:** In a recent interview, the NPC chairman explained the absence of an established public complaints procedure through a lack of resources, operation and not seeing eye-to-eye with the incumbent. In fact AHRC has submitted a draft public complaint procedure to the NPC in 2003.¹⁴⁸ However, NPC has failed to implement this important procedure and AHRC has learned that this procedure has not yet been drafted.
125. **Lack of trained investigators:** NPC also lacks trained investigators. In relation to this, the AHRC has learned that the NPC had requested the IGP that two or three officers from the SIU are given to the NPC to carry out effective investigations, however, IGP has refused this request.
126. **Inability to assert its constitutional powers:** Although the Seventeenth Amendment to the Constitution of Sri Lanka grants significant power including authority over all police promotions, transfers, disciplinary action and dismissals with the exception of the IGP, the NPC has yet to fully assert its powers. Under the view that it cannot interfere with the daily functioning of the police, the NPC has delegated these powers with regard to officers at the rank of IP and below to the IGP. With regard to disciplinary action against officers above the rank of IP, the NPC chairman has complained his instructions are not complied with.
127. **Ineffective investigations due to lack of co-operations by the Police:** NPC has established the Public Complaints Investigation Unit (PCIU) in October 2004. In terms of its work, the NPC relies upon the police hierarchy because there is as yet no team of investigators who could be sent to the field directly by the NPC. The NPC also cannot directly file cases. When a senior officer is the accused in a case, the matter is referred to the IGP for action by the SIU. However, such investigations do not go much far due to "insufficient evidence" upon which to take action. This may be because the investigation was not properly conducted, or due to the lack of—or inadequate—witness testimonies. The chairperson of the NPC has admitted the limitations of this system of investigation, but they do not see any immediate alternative until something better can be established.
128. **Threatened continuity of the NPC:** The term of the present NPC is due to expire on November 24. Due to the absence of the Constitutional Council there is no clear sign of extending of the term of the NPC after November 24. Although the president is understood to have the power to extend the term of the commission, this is viewed as unlikely. Thus the continuous existence of the NPC itself is threatened.

¹⁴⁸ Asian Human Rights Commission (AHRC), "Procedural Implementation of Article 155 G (2), 17th Amendment, A Basic Draft to Begin Discussion" (June 2003), Web reference: srilanka.ahrchk.net

Article 4: Torture as a crime

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.

129. **Convention against Torture Act (Act No. 22 of 1994):** Torture was made an offence under the criminal law of Sri Lanka through the CATA in Sri Lanka. The question arises as to the purpose of enacting of this Act. The timing of the enacting of this Act was notable. 1994 was the year when there was a major regime change in Sri Lanka after 17-year rule of the United National Party (UNP) regime during which the country witnessed most horrendous acts of violence and human rights violation that tantamount to crimes against humanity. Immediately preceding this regime change was one of the most violent period of the country, 1988-1992 when about 60,000 persons in the South and Central parts of the country were tortured, extra-judicially killed and the bodies disposed of which made thousands were involuntarily disappeared. At the time of the enacting of the CATA, the disciplinary and armed forces of the country have earned its lowest reputation having engaged in decades of extra-judicial acts. The discipline of these forces were at the lowest having enjoyed wide-range of impunity to “follow orders from the above” and mostly from the politicians. The police have lost its central command structure or in other words government politicians had the control over the police personnel rather than its own superiors. The police officers at the highest rank had blood in their hands having overseeing torture and extra judicial killings and disposal of thousands of bodies without record paving the way to the phenomenon of enforced or involuntary disappearances. The higher-ranking police officers were also could not make decisions professionally and independently as they were highly influenced and controlled by the politicians in power. In terms of the AG’s department, the AG and its department played a passive role turning blind eye to massive extra judicial killings and incidents of torture in Sri Lanka. It lacked professionalism in terms of its ability to carry out prosecution independently and especially without any political influence. The judiciary was a sitting duck when the country was traumatized with extra-judicial acts. This was the backdrop of enactment of CATA in 1994. In 1994 people in the country had very high hopes especially to not to return to dark and terror era of late 1980s and early 1990s. These hopes were instilled in them especially by the PA government, which came into power in 1994. Ratification of a number of human rights treaties including CAT and enactment of domestic legislations added to people’s hopes. However, legislations were created when the institutions, which were to implement those legislations, were in disarray or at a virtual collapse. The use of word ‘collapse’ here is intentional and has its own rationale. For example, in terms of the police, ranks, names and uniforms themselves only does not create an and effective and efficient police force. At the time of the enactment of CATA what remained were the ranks, names uniforms and buildings. The Police have unlearned and lost long-trained discipline and skills. Rather it had acquired ‘very bad habits’ of torture, extra-judicial killings, and corruption and to be able to be manipulated by the politicians. This does not means that these bad habits did not exist in the police force prior to this time. What it means is that these bad habits

became a way of life for the police in carrying out its official duties. In other words committing torture on selective targets before transformed into committing torture on each and every suspect. Thus use of torture became normalised and institutionalised if not officially. Therefore, if one would have expected that enacting of CATA itself would bring an end to torture in Sri Lanka in 1994 it was false. On the contrary the successive governments used the very same argument when they have to report to UN agencies and to outside world about the human rights situation of the country. Thus the enacting of the CATA was only the first step of the process to eliminate torture. CATA was enacted and the relevant institutions fell short of this process and sadly many human rights groups neglected or forgot about this process. The result was torture became endemic in the country in the years to come. It took 10 years after the enacting of CATA to successfully prosecute a perpetrator of torture especially after heavy domestic and international pressure by the civil society and human rights groups.

Article 10: Education of law enforcement officers

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

130. **Education of the police on torture itself will not prevent torture:** The Sri Lanka Police Department claims that it educates its officers on torture. However, effects of such education are nowhere to be seen. Torture by the police is increasing despite so called efforts to educate the police. Why this is happens? It simply because lack of criminal investigation skills among the vast majority of the police force. When a police officer is not trained well to conduct skilful and efficient criminal investigation and the only method of criminal investigation he or she knows is torture, then teaching such officers on torture itself does not make much sense. The most important thing is to teach and train police officers in advanced methods of criminal investigation especially with the use of scientific and forensic skills. This is a major problem facing the Sri Lankan Police. Often those who become police constables are those with low level of education. The training they undergo in police training schools pays much attention to physical development and handling of firearms etc. Therefore, it is very important to address these fundamental aspects of education and training of the police. Then only the education on torture on the police could effectively prevent torture in Sri Lanka.

131. **The need for education of JMOs, DMOs and other health professionals:** As described above in the paragraph 89 in this report there are many reported cases of negligence and connivance of JMOs and DMOs with the police resulting in false medical reports. Many are the incidents in which victims report that they were first tortured, then taken to a medical practitioner who issues a medical report that the victim was in good health, without even examining the victim. Such could affect the victims' cases adversely. Further, a thorough examination and a genuine and impartial report by the JMOs and DMOs on torture victims gives a clear message to the law enforcement officials that they cannot get away easily with physical injuries they have caused to victims. Thus, JMOs and DMOs need to be educated on the various aspects of torture, especially on detection of new tactics used by the police to minimize external injuries but to cause grave internal injuries. JMOs and DMOs should be thoroughly educated on the Istanbul Protocol and copies of which need to be given al all JMOs and DMOs in the country.

132. **The need to train more JMOs:** There are an inadequate number of JMOs—around 30 in total—for the whole of Sri Lanka. These are mostly attached to general and teaching hospitals. Thus in district, rural and base hospitals examination of torture victims as well as autopsies are conducted by senior general practitioners, DMOs who possess only the basic MBBS degree only, who

to our knowledge possess no special knowledge in conducting such examinations. As a result in many an instance examinations are conducted improperly and vital evidence is lost.

Article 12: Prompt and impartial investigations

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

133. **Absence of prompt and impartial investigations:** In Sri Lanka, prompt and impartial investigation is triggered only when such cases are highlighted especially from outside the country. For example when the Special Rapporteur on Torture intervenes with the Sri Lankan authorities there have been fairly quick initiation of investigation into cases. However when a victim himself/herself complains directly to relevant authorities, first such persons are faced with resistance and if the complaint is accepted it would go at a snail pace or just stop at that. This is true for the police, the AG's office, the NPC and the HRC. These are detailed in the sections above dealing with prosecution authorities and the HRC of Sri Lanka. Therefore, it is rather important for each and every institution seriously consider complaints on torture with the genuine will to provide expedient remedies.

Article 13: Witness protection

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken 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.

134. **The importance of witness protection:** Article 13 of the CAT requires the state to ensure the right to complaint of any individual who alleges that he or she has been subjected to torture. Further the Article 13 states that complainants and witnesses are protected by the state against all ill treatment or intimidation. The right to complaint could only be effectively implemented when the complainants feel free and safe to do so without intimidation or harassment. Witness protection laws and systems effectively could do many things including protecting the victim and taking care of the welfare of the victim during the time of such protection. In Asia there are a number of examples of such effective witness protection laws and programmes. One such example is the Witness Protection Ordinance of the Hong Kong SAR, which sets out a very comprehensive system of dealing with witnesses when it comes to their protection. Thailand has enacted the Protection of Witnesses in Criminal Cases Act 2546 (2003) and set up an Office of Witness Protection under the Ministry of Justice in 2004. As a consequence, a number of victims of police abuses, including torture and cruel and inhuman treatment, were afforded short-term security by this office. Although this Office is under-resourced victims and witnesses of human rights violations in Thailand sees enormous potential of it in providing protection. Such examples could be inspirational to work on a witness and victim protection legislature and a system in Sri Lanka. There is an immediate need for such a law and a system.

Lack of Witness and Victims' Protection

135. **Absence of witness and victims' protection law and a system in Sri Lanka:** The absence of a witness protection scheme seriously affects criminal justice system. Because victims are frequently and seriously threatened, many fear to come forward to pursue their complaints. Meanwhile, despite a lot of talk about how to deal with increasing crime rate in the country, there have been hardly any efforts to develop a witness protection scheme. In a situation where the law and order is at a record low the need of such a law and a program is fundamental. The most vulnerable persons are those who have made complaints against the state authorities, and particularly police officers accused of torture, as the following cases illustrate. The immediate beneficiaries of absence of such a system are the perpetrating police officers. There are ample evidence to show how the police officers have continued to intimidate, threaten with death, torture and even to kill the victims of torture who have pursued the complaints against the relevant perpetrating police officers by way of FR applications at the Supreme Court of Sri Lanka or by way of being a witness at a criminal trial under the CATA. Not only the victims, their family members also have been threatened and intimidated by the police. Victims then become completely helpless where the agencies who are supposed to protect them become intimidators and murderers. There have been

earlier calls by the UN agencies to the Sri Lankan authorities to establish a witness protection programme. Human Rights Committee in its concluding observations on the periodic report by Sri Lanka on ICCPR noted in 2003 that, “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.”¹⁴⁹ (emphasis added) The AG himself in a speech on 2 December 2003 admitted that there is a need for a witness protection law. But such concerns have been limited only to speeches and stopped short of any effective action.

136. **Intimidation and torturing of torture victims who pursue legal cases and complaints against the police: Jayasekera Vithanalage Saman Priyankara**¹⁵⁰, a torture victim was severely beaten up by the about 10 officers attached to the Matale Police Station on 7 July 2004. Prior to that Saman Priyankara has been visited by the police officers attached to the Matale Police station about five times between 6 to 20 January 2004 forcing him to withdraw his allegations of torture. He and his family have been living under constant fear for their lives from the Police. In another case, **Aththana Gamaralalage Ravindra**¹⁵¹ who was tortured by the officers attached to the Katupotha Police Station on 13 May 2004 was re-arrested by the police officers attached to the same police station on 23 July 2004 based on the false complaint and was assaulted by the Officer In Charge of the police station, Inspector of Police Kelum Attapattu for making a complaint on his previous torture to the HRC of Sri Lanka. In another case, **S. Channa Prasanka Fernando**:¹⁵² was kidnapped on the 15 September 2004 by a group of unknown persons who were later joined by Sergeant Subasinghe (no. 31545) attached to the Negombo Police Station against whom Mr. Fernando has made a complaint. Later he was tortured for three days by the said Sergeant forcing him to withdraw his complaint. **Amarasinghe Morris Elmo De Silva**¹⁵³ who was allegedly tortured by officers of the Jaela police station, was forced to flee the country due to threats to him and his wife because of a case against the perpetrators ongoing at the Negombo High Court. Some of many similar cases are detailed below:

136.1. **Michael Anthony Fernando**:¹⁵⁴ Michael Anthony Fernando has filed a FR application in the Supreme Court regarding torture by the police, and another in the Magistrates Court of Colombo. He also has a complaint before the Human Rights Committee pertaining to abuse of power by the Chief Justice of Sri Lanka after sentencing him to one-year imprisonment for contempt of court. As a result, he has received death threats. He has since sought the Human Rights Committee to offer interim protection measures. Human Rights Committee later, in 2005, declared its opinions in favour of him and asked the government to compensate him for the imprisonment he suffered.

¹⁴⁹ CCPR/CO/79/LKA (December 2003)

¹⁵⁰ AHRC UA Reference, UA-07-2004 (26 January 2004), UP-33-2004 and UP-34-2004 (08 July 2004), UP-47-2004 (14 July 2004), UP-74-2005 (22 June 2005) and UP-80-2005 (06 July 2005); E/CN.4/2005/62/Add.1 paras. 1538, 1539 and 1572

¹⁵¹ See note 64 above.

¹⁵² E/CN.4/2005/62/Add.1 paras. 1573 and 1574

¹⁵³ ALRC, *Special Report*, pp. 27 and 28

¹⁵⁴ AHRC UA Reference, UA-09-2003 (22 February 2003), UP-07-2003 (24 February 2003), UP-11-2003 (17 March 2003), UP-13-2003 (21 March 2003), UP-14-2003 (10 April 2003), UP-19-2003 (29 May 2003), UP-26-2003 (16 July 2003), UP-45-2003 (20 October), UP-49-2003 (01 December 2003), UP-07-2004 (02 February 2004), UP-08-2004 (10 February 2004) and UP-86-2005 (18 July 2005); E/CN.4/2004/56/Add.1, para. 1465, E/CN.4/2004/62/Add.1, para. 684, E/CN.4/2005/62/Add.1 paras 1566 and 1567 and CCPR/C/83/D/1189/2003

136.2. **Lalith Rajapakse:**¹⁵⁵ Lalith Rajapakse, a young man who suffered serious injuries as a result of the torture by police officers at Kandana Police Station, made several complaints to the Special Rapporteur on torture. After filing a fundamental rights case against the perpetrators in the Supreme Court, and with the state also filing a criminal case in the court under the CATA, he was threatened to settle or withdraw the case. He has since complained further to the NPC and the HRC.

136.3. **Dawundage Pushpa Kumara:**¹⁵⁶ Saliya Pushpa Kumara, a 15-year-old boy tortured by the police at Puttlam, has also complained of serious harassment of him and his family by the alleged perpetrators. They have threatened him to withdraw his fundamental rights application in the Supreme Court, and his complaint to the PTPU. He has alleged that the police tried to obstruct him from getting hospital treatment, as they feared it would result in a medical report. Only after the National Child Protection Authority intervened was he able to get medical treatment. He has since been given shelter by a charitable organization, away from his village.

136.4. **B G Chamila Bandara Jayaratne:**¹⁵⁷ After Chamila J. Bandara, a 17-year-old boy allegedly seriously tortured by some officers of the Ankubura Police Station, there was an attempt to kidnap him from the hospital where he was receiving treatment. He was removed from the hospital for his safety, and ever since has been living away from his village, under the protection of local human rights organizations. His mother was also forced to leave the village due to constant severe harassment. His two younger sisters have been unable to go to school due to death threats. Complaints have been made to the Special Rapporteur on torture, the NPC and the HRC. Human rights organizations have also complained to the HRC that its Area Coordinator has been collaborating with the alleged perpetrators in this case, and harassing the victim and his family.

136.5. **D. G. Premathilaka:**¹⁵⁸ On Jan. 8 and 9, 2004, D. G. Premathilaka was arrested and tortured by officers attached to the Katugastota police station in Sri Lanka for giving up his illicit liquor business, which is profitable for many police officers. Following this incident, Premathilaka lodged a complaint, the outcome of which is still ongoing. On Nov. 16, 2004, officers from the same police station threatened Premathilaka, demanding that he withdraw his complaint against them. Afterwards Premathilaka lodged a second complaint with the Sri Lankan authorities, including the HRC of Sri Lanka. Despite two complaints having been lodged against police officers from the Katugastota police station, a further incident of torture against Premathilaka has taken place. On Jan. 23, 2005 at about 2 a.m., Premathilaka was tortured by 12 police officers, including the officer-in-charge of the Katugastota police station. The officers broke the lock of Premathilaka's front door and forced their way into his home. Claiming that a warrant had been issued for Premathilaka's arrest, the officers dragged him out of

¹⁵⁵ AHRC UA Reference, UA-18-2002 (13 May 2002), UP-29-2002 (17 May 2002), UP-27-2003 (18 July 2003), UP-39-2003 (30 September 2003), UP-42-2003 (16 October 2003), UP-74-2004 (25 November 2004), UP-77-2004 (25 November 2004), UP-81-2004 (17 December 2004), UP-01-2005 (03 January 2005), UP-17-2005 (22 February 2005), UP-50-2005 (03 May 2005); E/CN.4/2003/68/Add.1, paras 1625 and 1627 and E/CN.4/2004/56/Add.1, para. 1556

¹⁵⁶ AHRC UA Reference, UA-50-2003 (17 September 2003), UP-37-2003 (27 September 2003), UP-47-2003 (06 November 2003); E/CN.4/2004/56/Add.1, para. 1489

¹⁵⁷ See note 23 above

¹⁵⁸ AHRC UA Reference, UA-03-2004 (12 January 2004), UP-72-2004 (19 November 2004), UP-08-2005 (27 January 2005); E/CN.4/2005/62/Add.1 paras 1514 and 1515

his house and into their jeep. The following day Premathilaka's wife went to the police station. She could see that her husband's sarong was wet with blood, and he complained to her about the brutal assault he had received. At 1 p.m. on the same day, Premathilaka was presented before the Kandy magistrate, and a lawyer - appointed by the same police officers who had beaten him - appeared on his behalf. On Jan. 25, Premathilaka had to appear before the Kandy magistrate again where he was charged with selling illicit liquor. He was not granted bail and remained in custody until Feb. 8. The purpose of instituting new charges against Premathilaka and getting him remanded was to obstruct him from pursuing a further complaint against the police and getting proper medical treatment.

136.6. **Gerald Mervyn Perera**¹⁵⁹: Gerald Mervyn Perera was a cook working at the Harbour Authority in Colombo. He had three children; a girl (8), and two boys (5 and 8 months). At 12.45 on 3 June 2002, Gerald was arrested in the presence of his wife by police officers from the Wattala Police Station. Gerald was taken to Wattala Police Station, where several policemen subjected him to torture. Gerald's hands were tied behind his back; he was blindfolded and hung from a beam before being severely beaten with iron rods and wooden poles for about one hour. The officers then forced him to the ground and began to burn him with lit matches. During the torture Gerald was interrogated about a murder case concerning which he knew nothing about. He was kept at the police station on the night of 3 June, before being released the following day. On the morning of his release, Gerald's brother was informed by Sena Suraweera, the Officer In Charge (O.I.C.) of the Wattala police station, that Gerald had been mistakenly arrested and detained based on erroneous information. Gerald had therefore been subjected to torture as a result of mistaken identity. Following his release and due to the effects of the torture, Gerald was taken to the Navaloka Hospital's Intensive Care Unit in Colombo. On arrival he suffered kidney failure and fell into a coma for two weeks. During this time, he was kept alive by a life support system. In a report written by the Judicial Medical Officer (JMO) of Colombo, who had observed Gerald on 16 August, he concluded that Gerald had developed acute renal failure, had lost sensation in a part of his spine, had complete loss of power of the muscles around both shoulder joints and lacked the ability to move both arms. He further noted that there was sensory loss around both elbow joints, that there were blackish scars on the back of Gerald's right hand, rope scars around both wrist and bruising to the left shin. A petition was filed with the Supreme Court on 19 June 2002 by a human rights lawyer concerning violations of Gerald Perera's rights that are guaranteed under of the Constitution of Sri Lanka. The aim was for Gerald Perera to receive adequate reparation for the suffering and injuries that he endured, and that the AG would prosecute the perpetrators. The perpetrators were accused of having violated the following articles of the Constitution of Sri Lanka: Article 11, which guarantees freedom from torture and other cruel and inhuman treatment or punishment; Article 13.1 which stipulates that a reason for an arrest must be given; and Article 13.2 which guarantees the freedom from illegal detention. On 26 June 2002, while Gerald was still unconscious, three Sri Lankan Supreme Court judges heard submissions made on his behalf in a fundamental rights violation case concerning his torture at the hands of the following policemen: Sena Suraweera, the Officer In Charge (O.I.C.) of the police station; Sub Inspector (S.I.) Kosala Navaratne, O.I.C. Crimes: S. I. Suresh Gunaratne: S.I. Weerasinghe:

¹⁵⁹ See note 22 above

S.I. Renuka; Police Constable (P.C.) Nalin Jayasinghe and P.C. Perera. On 4 April 2003, the Supreme Court gave a landmark judgement concerning Gerald Perera's case and awarded him a record-breaking 800,000 Rupees (about 9,000 US\$) cash as well as full medical costs in damages. Mr Perera's medical costs exceed the amount awarded in cash and the total amount was about 15,000 US\$. The perpetrators (relevant police officers) of the torture that Gerald was subjected to had to face criminal prosecution. Some of them approached Gerald many times. They first asked him to accept money to the value of USD\$50,000 and to then withdraw his witness statement from the forthcoming criminal trial. They also threatened him that if he went ahead with the trial, his life would be in danger. The criminal case under Act. No 22 of 1994 against the aforementioned alleged perpetrators were scheduled to be heard before the Negombo High Court on 2 December 2004. At around 11:15am on 21 November 2004, Gerald Perera was shot by an unknown assailant at close range, while travelling on a bus. The AHRC is convinced that the killing was carried out on orders of those facing trial. The police officers facing criminal charges still maintain their positions without any suspension of duty pending the outcome of the trial. On 24 November 2004, Gerald Perera passed away at around 1pm local time, at the Colombo General Hospital. Immediately after the murder of Gerald, his family became terrified after the death of Gerald. They lived in fear and did not even attempt to recover Gerald's body. The police inquiry into this case was handed over to the Criminal Investigation Department and after some time and much pressure one police officer and an underworld character were arrested on suspicion of Mr Perera's murder.

136.7. Ukwatte Liyanegge Don Sumith Chandana:¹⁶⁰ In the case of U. L. D. S. Chandana who was tortured by the police officers attached to the Bentota Police Station on the 16 April 2004, on the following morning (17) SI Silva had visited his home and told his mother to come to the police station in 15 minutes. When she arrived she was instructed to take Mr. Chandana home and bring him again in the evening around 4:00. Before they left the station, the victim and his mother were threatened that if they complained against the police, Mr. Chandana would be tracked down wherever he was and killed.

136.8. A.P.S. Jayaweera Sandanayake:¹⁶¹ In the case of A. P. S. Jayaweera Sandanayake who was arrested without any reason and severely tortured by the officers attached to the Mundal Police Station, after his release from custody he lodged complaints with the HRC of Sri Lanka and the Chief Justice of Sri Lanka regarding his torture. Accordingly, the Chief Justice took notice of his petition and referred his case to the LAC who appointed a lawyer and filed Fundamental Rights Application No. 33/04 before the Supreme Court. On 8 February the Court granted leave to appeal in the case, which is now fixed for inquiry. The incident is also being investigated by the HRC. According to information received, to date, no disciplinary action had been taken against the errant policemen. In a separate incident, on 15 February 2005, a policemen who got on his bus, threatened Mr. Sandanayake to withdraw his court case. Now the victim fears for his life and the security of his family.

¹⁶⁰ AHRC UA Reference, UA-46-2004 (30 April 2004); E/CN.4/2005/62/Add.1 paras. 1528 and 1529

¹⁶¹ AHRC UA Reference, UA-25-2005 (17 February 2005)

136.9. **Kurundukarage Eranjana Sampath:**¹⁶² In the case of K. E. Sampath who was tortured by the Thembuwana Police, ever since he filed the FR application, Mr. Sampath complained that he had been pressurised by the Thembuwana OIC via local “goondas” (henchmen of the police) and politicians to withdraw his case or face serious trouble. When Mr. Sampath refused to succumb to this pressure, the OIC had reportedly threatened to arrest and charge him with a fabricated case if he did not withdraw the case. On 22 May 2004, the Mathugama Police arrested Mr. Sampath and handed him over to the Thembuwana Police. He was arrested on the allegation of stealing a kitchen sink. When he was produced before the Mathugama Magistrate the OIC of the Thembuwana police had strongly objected to bail, thus Mr. Sampath was remanded till 1 June 2004. At the time of the Urgent Appeal there was a grave fear that the victim would be subjected to further torture and harassment, to force him to withdraw his complaints and court case against his alleged torturers.

137. **Police enjoy impunity after threatening, intimidating and torturing victims:** As shown in the cases above, criminal behaviour by police officers, including threats and intimidation to complainants of police abuse, occurs with impunity in Sri Lanka. These officers are allowed to continue in their posts with no disciplinary action taken against them. Not only does this encourage further criminal behaviour, but it denies any personal security for those who seek justice for crimes committed against them. A few such cases are detailed below:

137.1. **Nimal Silva Gunaratne:**¹⁶³ Nimal Silva Gunaratne, a victim of brutal torture, has complained to the Sri Lankan authorities including the IGP, the AG and the HRC that the alleged perpetrator, ASP Ranmal Kodithuwakku, has made attempts on his life through other police officers as well as attempting to implicate him in several fabricated cases. Mr. Gunaratne has alleged that in 2000, while Mr. Kodithuwakku was the ASP at Panadura, he maintained a torture chamber and kept Mr. Gunaratne under detention for 96 days. During that time he was brutally tortured and as a result, he lost his sight in one eye and also suffered several other serious injuries. After filing a Fundamental Rights Case (no. 565/2000) in the Supreme Court, Mr. Gunaratne and his family came under serious pressure to settle the case – but he refused to succumb to the pressure. In the Supreme Court, the case has been postponed several times until it was heard on 15 November 2004 and it now waits judgment. Mr. Gunaratne and his family have faced constant threats throughout this time and have made numerous complaints regarding these to higher police authorities and the HRC. Upon the instructions of the Attorney General, a special criminal investigation was conducted into the matter with a view to prosecuting the ASP under the CATA. In June 2002, Senior State Counsel Yasantha Kodagoda advised the Criminal Investigations Department to "cause a criminal investigation into the complaint, and upon conclusion of the investigation, forward the corresponding notes of investigation, enabling the consideration of institution of criminal proceedings". This investigation has now been completed and is before the AG for prosecution. It is under these circumstances that the threats to Mr. Gunaratne and his family have increased. On 6 March 2005 at around 9:45pm shots were fired towards Mr. Gunaratne's house from the vicinity of neighbouring homes – where it is alleged, a

¹⁶² AHRC UA Reference, UA-53-2004 (28 May 2004); E/CN.4/2005/62/Add.1 paras. 1541 and 1542

¹⁶³ Case Reference, SCFR 565/2000; AHRC UA Reference, UA-41-2005 (11 March 2005), UP-42-2005 (08 April 2005); E/CN.4/2003/68/Add.1 para 1573 and E/CN.4/2004/56/Add.1 para 1558

policeman also lives. Mr. Gunaratne and his family lay on the floor until a neighbour called out to them that the people who fired the shots were escaping. From his gate, Mr. Gunaratne insisted that he saw three uniformed police officers and two plain clothed persons running to a white vehicle and driving away. Mr. Gunaratne made an immediate complaint to the police, including to the SSP of the area. Although police officers came to his house and took statements, no action has yet been taken to investigate or arrest the perpetrators. The NPC and HRC have also been informed of the incident. However, the inaction by all authorities has meant that Mr. Gunaratne and his family are living in fear of their lives, shuttling from place to place to ensure their own security. Their fear is not unreasonable given the gruesome shooting and killing of torture victim, **Gerald Mervyn Perera**¹⁶⁴, who was shot just a few days before he was to testify in court against his allegedly perpetrators. Furthermore, the current drive against crime in Sri Lanka has given enormous liberties to the police to arrest and even conduct extra judicial killings of persons who appear to be criminals. Given the rank and position of ASP Kodithuwakku, Mr. Gunaratne is afraid that action can be taken against him through the manipulation of these liberties. ASP Kodithuwakku is the son of a former Inspector General of Police and has a notorious reputation. The Supreme Court recently issued leave to appeal in another fundamental rights case where a person alleged that Kodithuwakku assaulted him in broad daylight because he refused to give way to his car. Previously, ASP Kodithuwakku also allegedly threatened the investigations' director of the HRC inside the Commission's premises. His fabricated cases against Mr. Gunaratne have led to Mr. Gunaratne being arrested and produced in court several times. He was released only after the court was made aware of the conflict between ASP Kodithuwakku and himself. However, due to his connections and rank, Kodithuwakku is not held accountable for his actions and continues to commit human rights violations. It has become common in Sri Lanka not only for police officers to violate the rights of citizens, but to further harass and threaten these citizens for seeking redress against the injustice done to them. The lack of witness and victim protection as well as the lack of legal and disciplinary measures taken against the perpetrators allows violations to continue with impunity. Therefore, the Asian HRC urges that immediate protection be provided to Mr. Gunaratne and his family while an investigation is conducted into the recent shooting and the fabrication charges against him. Furthermore, the Attorney General's department must post haste proceed with ASP Kodithuwakku's prosecution under the CATA.

137.2. **Kadawatha Gedara Dharmasiri**:¹⁶⁵ (32) who was tortured by the officers attached to the Hasalaka Police Station on 2 August 2004 was visited by the police officers attached to the same police station a day prior to his case to be taken up at the Mahiyangana Magistrate's Court on October 18, 2004. The police officers demanded that Dharmasiri plead guilty to the charge and withdraw his complaint against the police and threatened him with physical violence if he failed to do so. The police also threatened to plant illicit liquor on the victim, if the complaints against the police are not withdrawn. As a result of not pleading guilty and not withdrawing the complaints against the police for committing torture, Dharmasiri has been subject to continuous police harassment and he had to stay away from his home to avoid them.

¹⁶⁴ See note 22 above.

¹⁶⁵ AHRC UA Reference, UA-142-2004 (26 October 2004); E/CN.4/2005/62/Add.1 paras. 1556

Article 14: Redress and fair and adequate compensation

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation, which may exist under national law.

138. **Absence of fair and adequate compensation:** As a matter of principle the AG's department does not appear for respondents in fundamental rights applications under article 126. Though this is a positive step, representatives of the AG's department urge the court to reduce the quantum of compensation that may be granted by the Court. This does not conform to principles of international law relating to compensation. Even on cases where the AG's department admits violations of rights, as for example in the instance of torture, illegal Arrest and imprisonment of **Kurukulasuriya Pradeep Niranjana**,¹⁶⁶ who was in remand for 21 months after being falsely charged with the murder of Fr. Aba Costa and tortured, the AG made an order to release him. However, no steps were taken to compensate the victim and the family, for having been made to suffer, in an attempt to protect the real culprits. Further, in the Fundamental Rights cases, as mentioned earlier in this report, pathetic amount of compensation awarded by the Supreme Court of Sri Lanka to the torture victims in Sri Lanka gives completely wrong message.

139. **Ignoring of HRC's recommendations on compensation by the perpetrators:** In a positive development the HRC too have begun to recommend compensation for the victims. However, the compensation recommended has to date not been paid by any of the perpetrators. Thus such efforts remain ineffective and fail to contribute towards prevention of torture or to bring any redress to victims.

140. **Absence of full rehabilitation:** There is complete absence of a state-sponsored programme or mechanism to rehabilitate torture victims physically and psychologically despite increasing number of torture victims.

141. **Absence of physical rehabilitation:** Most torture victims physically suffer long term and at time permanent damage. Most of these torture victims are also poor and engaged in jobs that require them to work physically such as labourers, drivers etc. When they suffer from long-term or permanent physical damages they are not able to continue in the jobs they are used to do prior to incidents of torture. This has long-term and widened effect as the victims' family and children would also suffer from financial and other difficulties due to the physical problems of the victims. So far the state has not take any steps to rehabilitate these victims. In

¹⁶⁶ AHRC UA Reference, UA-51-2003 (18 September 2003); E/CN.4/2005/62/Add.1 paras. 1488 and 1489

doing so they have completely ignored the existence of large number of torture victims.

142. **Absence of psychological rehabilitation:** Almost all the torture victims also suffer from psychological effects or trauma after the torture. This is even worst for child torture victims and girl-child rape victims. Almost all the torture victims suffer from posttraumatic stress disorder, which affect their day-to-day lives. In fact mental rehabilitation is as important as physical rehabilitation and both should be given equal importance. Trauma suffered by the torture victims has long-term effects, which affect their future mental health. Those effects could affect their social and family relationships, relationships at work, could affect their sleeping patterns etc. State has paid no attention at all to this aspect of the victims and there is no existing programme from which torture victims from benefit.

Article 16: Cruel, inhuman or degrading treatment or punishment

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

143. **CATA does not include ‘inhuman or degrading treatment or punishment’**: As mentioned earlier in this report under section under Article 1, a major problem in relation to CATA is the non-inclusion of ‘inhuman or degrading treatment or punishment’ into the definition of torture. In contrast, there are an increasing number of incidents, which falls under inhuman or degrading treatment, or punishment that may not tantamount to torture in strict sense. Therefore, there is an urgent need to bring CATA in full conformity with the CAT in terms of the definition of torture, which should include inhuman or degrading treatment or punishment.

Recommendations

1. In light of the above, the ALRC urges the Committee against Torture to regard Sri Lanka as a place of special concern, where there is a dire need to eliminate the grave and prevalent torture. To this end, the **Committee against Torture** should act under rules 68 (1) and (2) and 78 of Part II of the Rules Relating to Functions of the Committee, in relation to reports from state parties under article 19 of the Convention, and consider it appropriate to **appoint a rapporteur to follow up with the compliance of the Committee's conclusions and recommendations.** The Committee should also consider **designating one or more office members to make a confidential inquiry and to make its report** within a prescribed time limit.
2. The Committee is also urged to raise with the State party that it adopt the following key measures in order to enhance its compliance with the provisions of the CAT:
 - 2.1. **Enact a witness protection law and ensure the physical security of persons** who make complaints against state officers for violations of rights relating to torture. Without the fulfilment of this basic requirement there is no possibility for victims of torture to come forward and make their complaints. Only the most daring will come forward, and they may suffer a fate similar to that of Gerald Perera. As long as the pursuit of torture complaints involves risks to life, further torture or being charged with false cases, the majority of victims will either not come forward or will soon abandon their complaints.
 - 2.2. **Introduce suitable legal provisions that allow for criminal suspects to be produced before magistrates only in the courts** and not in private residences of magistrates or acting magistrates outside normal working hours. The prevailing practice of producing persons in the private residences of magistrates outside working hours has been manipulated to deprive victims of their right to legal representation, particularly in instances where they have suffered serious injuries due to torture.
 - 2.3. **Assign a permanent special investigation unit** to investigate into all allegations of torture. The present *ad hoc* arrangement of the SIU acting from time to time should be discontinued. The AG's Department be encouraged to assign state counsels for the drafting of indictments on torture cases immediately after receiving reports of investigations from the SIU. Further, an arrangement should be discussed with the High Courts to have torture cases adjudicated as soon as possible.
 - 2.4. **Urge the IGP to cooperate with the NPC in accordance with the constitutional provision vesting the responsibility for disciplinary control of the police with the NPC.** At present the IGP and other senior officers refuse to accept the NPC's authority over certain matters regarding their department. To this end, the State party must also ensure that the Constitutional Council is functional at all times and avoid circumstances in

which the NPC may seize to function due to the Council not being in a position to make the necessary recommendations.

- 2.5. **Review the Supreme Court's approach to fundamental rights violations, particular torture**, in terms of Sri Lanka's international obligations as a party to the ICCPR as well as the CAT. In particular, the court's habit of granting paltry sums as compensation for torture should be discontinued; such a practices trivialises the act of torture. Also, the 30-day limit imposed by the Constitution for the filing of Fundamental Rights Applications should be abolished.
- 2.6. **Establish command responsibility of senior police officials, whereby they are held responsible for all acts of torture committed by subordinate officials**. Furthermore, it should be seen that the AG's Department do not exclude senior officers from prosecution, when they are directly or indirectly accountable for acts of torture. To this end, the NPC and the HRC should also be encouraged to take measures to enforce command responsibility within the police department.
- 2.7. **Enforce the public complaints procedure of the NPC as required by Section 155G(2) of the Constitution (17th Amendment) in the shortest possible time**.

Further to the above key measures, the ALRC asks the Committee to pursue the following recommendations as well with the State party:

3. Insist, as a matter of policy, on measures to eliminate torture and to reform the law enforcement agencies in Sri Lanka.
4. Ratify the Optional Protocol to the CAT.
5. **Set up an inter-departmental committee to review recommendations made to the State party by various UN bodies**. A review committee consisting of one representative each from the HRC, NPC and AG's Department should be set up to review recommendations to prosecute offenders via UN bodies such as the Committee against Torture, Human Rights Committee and the UN Working Group on Enforced or Involuntary Disappearances. Such a committee should review the progress of such prosecutions and inform the families and lawyers of the victims of the progress.
6. **Take immediate steps to amend the CATA and the Constitution of Sri Lanka to bring them in full conformity with the CAT**. This can be done by a) making freedom from torture a non-derogable right in the Constitution and b) by including inhuman or degrading treatment or punishment into the definition of torture in the CATA.
7. **Urgently reform the policing system**. The submissions made in this report clearly demonstrate that the major reason for torture lies in the **policing system**, as it exists now. Without major police reform, it will not be possible to overcome the present institutional difficulties that make torture a routine event at police stations. Such reforms have been suggested to the State party by various groups including

the ALRC for many years. At present, the morale of police officers as well as the credibility of the policing system are both at an all time low. They can only be rebuilt through serious reform in the following areas:

- 7.1. **Improve and strengthen the Criminal Investigation Department.** This can be done through the recruitment of competent staff, both by way of education as well as experience. The department must also be equipped with forensic facilities and other necessary technology, as well as the skills to make use of them. Above all, the department must have adequate resources and professional independence to carry out criminal investigations without fear.
- 7.2. **Separate criminal investigation work from law and order and peacekeeping functions.** The present system of criminal investigation under the Criminal Procedure Code gives undue importance to the OICs [Officers in Charge] of police stations in conducting criminal investigations. Given the nature of the police stations situated in various localities, OICs of police stations have manifold duties other than conducting criminal investigations. Thus, suitable changes must be made to reduce the importance of the OIC of a police station in criminal investigations.
- 7.3. **Hand over serious crimes to the Criminal Investigation Department.** Police stations should be used more for receiving initial complaints of crimes, and then more serious crimes should be handed over to special investigation units outside the police stations.
- 7.4. **Visible, practical and effective measures must be taken by the IGP to improve the discipline of the police force.** Measures to impose and maintain discipline should be widely publicised through mass media and other means. Such measures should be carried out as a comprehensive programme of action regular reviews to determine the impact of the measures. These should be held with the participation of the civil society.
- 7.5. **Declare a three-year transitional period for the effective restoration of discipline in the police force.** Such a declaration would go in conjunction with the above recommendation. A judicial committee should be appointed to supervise discipline among the police with powers to take corrective action. The committee's mandate should last for at least the three years of the transitional period, and it would report directly to the Constitutional Council appointed under the 17th Amendment to the Constitution.
- 7.6. **Provide better training for police officers in forensic science and investigation.** There is an urgent need for the training of almost all police personnel in the use of scientific methods in criminal investigations. An underlying problem at present is that being untrained in these methods, police officers resort to torture to extract confessions from suspects. Torture prevention measures should therefore incorporate such training. A strategic plan must be developed with an agreed timeframe within which to achieve this end. A clear policy statement on this matter from the government would help to expedite the matter.

7.7. Devise a speedy and effective way to deal with complaints of torture.

When any senior police officers such as the IGP, area DIG, SP, or ASP receive a complaint of torture, an immediate preliminary inquiry to ascertain the validity of the complaint should be ordered. Then, if the complaint is found to be valid, a complete inquiry into the matter should be conducted within two weeks or in the maximum, one month. For this purpose, the SIU should be allocated sufficient staff to deal with torture complaints.

7.8. Subject police officers who have committed torture to psychological tests.

The IGP should make a list of officers who are accused of torture and have them take psychological tests. The need for such tests seems obvious when considering the types of torture carried out by many police officers. It is difficult to believe that any person in a normal psychological state could inflict such pain on innocent persons unless they have serious psychological problems. Measures should be taken for such officers to receive psychological treatment.

- 8. Enact witness and victim protection legislation and set up a comprehensive witness and victim protection programme.** The need for a witness protection scheme is an urgent one. Sri Lanka needs to work expediently on establishing such a programme. In order to do that a comprehensive and effective witness and victim protection legislation need to be enacted. In the interim there need to be a mechanism to address the need for victims and witness protection and take steps to prevent intimidation, harassment and torture of victims and witnesses. Such mechanism may include:

8.1. Take disciplinary and/or legal action against any police officer found to have threatened and intimidated a complainant of police abuse. In this regard immediate disciplinary action should precede any legal action and such legal action would take some time. It is also important for the police force to devise impartial mechanisms for the speedy determination of alleged intimidation and/or threats by the police officers.

8.2. Provide protection to any victim, particularly of torture, who lodges a complaint against the police. If there is genuine concern for the elimination of torture, it is fundamental to provide protection for the victims of torture, who are an indispensable part of such a process. The reality is that most such victims are directly and indirectly threatened and intimidated and one such person has even been killed with the involvement of the police. The police department needs to set up an interim witness protection program especially for torture victims, until a comprehensive and permanent witness protection programme is in place. Such a programme should be given wide publicity and should be easily accessible to the victims of torture.

8.3. The investigation and prosecution of torture cases in Sri Lanka should also follow the same procedure as applies to other crimes; when a *prima facie* case is established, the accused should be arrested and immediately produced before a magistrate. However, this procedure is not followed in torture cases under CATA. There is no reason to deviate from this standard procedure. Police officers charged with crimes should not be treated differently from other alleged criminals. If the provisions of the Criminal

Procedure Code were applied to the alleged perpetrators of torture, they would provide some measure of protection to the complainants and victims.

9. The prosecuting authority, the **Attorney General's Department** of Sri Lanka, is instrumental in providing effective remedies for victims of torture especially by way of initiating effective and efficient prosecutions of state officials responsible for torture. In this regard the AG and his department need to:
 - 9.1. Ensure strict compliance with the CATA, by prosecuting all cases of torture perpetrated by state officers. To this end, the Prosecution of Torture Perpetrators Unit, functioning under the AG's department, must be provided with the necessary personnel or material resources to investigate and prosecute according to its mandate.
 - 9.2. **Enforce the CATA with rigour and enthusiasm.** To this end, seek resources to improve the PTPU so that it can win public confidence and trust. The AG's department also needs to make clear policy statements on pursuing its anti-torture prosecution. Such policy statements need to be followed by action, demonstrating that there is no ambiguity in the state policy to eliminate torture.
 - 9.3. **File Indictments under the CATA within the shortest possible time.** Indictments under the CATA must be filed on the completion of inquiries and in no instance should there be any delay beyond three months. On the filing of indictments, the AG's Department should also inform the complainants so that they could take measures to protect themselves. Copies of intimation of filing of indictments should be sent to the NPC and the HRC of Sri Lanka. When intimating the filing of an indictment, the AG's Department should also inform the complainants that they are entitled to witness protection and that they could contact the state counsel of the relevant High Court regarding appropriate legal measures to protect them.
 - 9.4. **Assist in the development of a policy towards adequate compensation for victims of torture.** Such policy should strictly abide with international standards on compensation and state obligations under international human rights agreements. In seeking such international standards the AG's department should look to more developed standards, set out especially by the institutions such as the European Court on Human Rights in dealing with torture.
 - 9.5. **Recommend the establishment of a public prosecutor's office.** As an effective measure towards eliminating impunity, in Sri Lanka there is a need to break the total dependency on the police criminal investigation information for prosecution by the AG's department. This is a serious bottleneck in carrying out effective prosecutions especially in relation to torture or enforced disappearances where police themselves are the perpetrators. Thus the establishment of an independent public prosecutor's office with wide powers to carry out criminal investigations could initiate a breakthrough in this impasse.
10. **Improved judicial procedures could assist victims to obtain effective remedies.** The first judicial arm torture victims come across are magistrates, before whom

these victims are produced by the police in almost all cases. In this regard the judiciary is urged to:

- 10.1. **Make provisions to ensure that suspects are produced *only* before courts and not in the residences of Magistrates or Acting Magistrates:** By this, the possibilities of producing an impersonator can be avoided and legal representation for the suspect is ensured. However, due to exceptional circumstances if someone were to be produced outside court, the reasons for such must be given by the police in writing and included among the documents produced in court. On such occasions the Magistrate should order that the person be produced in open court on the very next day of the sitting of the court.
- 10.2. **Request for a medical examination for torture made orally, in writing or through a lawyer should be accepted by the Magistrate** at any time once a person is under arrest. The Magistrate must then make appropriate orders for the conduct of such a medical examination, preferably by a JMO.
- 10.3. **Magistrate should inform the DIG in the area on suspected torture cases:** Where a Magistrate has reason to be suspicious that torture has been inflicted, he/she should inform such to the DIG of the area and also request for an independent inquiry by the DIG. The findings of such inquiry should be submitted to court.
- 10.4. **The need for an OIC to send charge sheet to the Magistrate in advance by fax:** At least two hours before anyone is produced in court for the first time, a report pertaining to relevant investigations should be faxed by the Officer-in-Charge of the investigation to the Magistrate giving the nature of the charges and other information required by the Criminal Procedure Code of Sri Lanka. In this regard, there is also a need to equip all the magistrate courts with fax machines which could facilitate speedy communications.
- 10.5. **Take speedy measures to ascertain the veracity of charges when suspect found tortured by the Magistrates:** Where there are sufficient grounds to believe that any suspect – who has been charged with an offence -- has been tortured, the Magistrate should order an independent investigation through the Superintendent of Police (SP) of the area, to ascertain whether the charges are fabricated and merely an attempt to cover up the torture.
11. **National Police Commission:** The establishment of the NPC in 2002 created some optimism about the possibilities for dealing with the extreme crisis in the policing system. However, resources have come to the NPC very slowly, and it does not yet have a strategic plan for its effective development and functioning.
 - 11.1. **NPC is allocated sufficient human and other resources to function effectively:** This could include sufficient staff and financial resources for the head office and other regional offices of the NPC to function.

- 11.2. **Speedy implementation of public complaint procedure by the NPC:** The most urgent need in relation to the NPC is the establishment of the public complaint procedure under article 155G(2) of the Constitution.
- 11.3. **NPC to take speedy action when allegations of police intimidating torture victims are reported:** The NPC should also act to deal quickly with police accused of such abuses. NPC also need to pursue seriously to make sure there are immediate and effective disciplinary actions against such perpetrating police officers. When such police officers continue to operate in the same police stations, the perpetrators of torture and other serious crimes are a threat to the safety of the complainants, and also are able to destroy evidence.
12. The **Human Rights Commission** of Sri Lanka could do lot more for the prevention of torture as well as in the area of seeking effective remedies for victims and family members of victims of torture. In this regard, HRC must,
- 12.1. **Make a clear policy statement on the elimination of torture** based on Sri Lanka's obligations under the CAT, as well as the CATA of Sri Lanka. Such a policy will help the public to understand and cooperate with the HRC on this matter.
- 12.2. **Concentrate on implementing the CATA while at the same time trying to improve it in line with the CAT:** Develop strategies and methodologies to cooperate critically and monitor criminal investigations and prosecutions currently taking place under the *ad hoc* arrangements of the PTPU. Critical cooperation means studying how investigations and prosecutions are done now and taking suitable action to ensure improvements. The HRC can also monitor investigations and prosecutions to ensure effective remedies in terms of article 2 of the CAT and ICCPR.
- 12.3. **Develop and adopt a complaint receipt and investigation procedure without delay:** This is to serve as the basis on which all investigations on torture are conducted and reported. This implies abandoning earlier procedures for dealing with torture cases, such as the reaching of settlements. The procedure should be made available to the public so that people will be aware of what actions will be taken when they make complaints.
- 12.4. **Set deadlines to complete inquiries:** Set a time within which to complete inquiries, and require that complainants be kept informed about the progress of their complaints.
- 12.5. **Better coordination with the AG's Department:** Have better coordination with the AG's Department by informing it of where *prima facie* evidence of torture is uncovered, and ensure that proper criminal investigations and prosecutions follow.

- 12.6. **Establish effective internal measures to deal with staff misconduct:** Establish and enforce a disciplinary procedure over inquiring officers who deliberately sabotage the process and side with the perpetrators. Take other measures to prevent negligence by investigating officers. Take prompt action to investigate and make appropriate decisions, particularly where corruption is alleged.
- 12.7. **Employ competent staff to the HRC:** One of the main problems facing the HRC is the incompetence of its staff. To improve the its effectiveness and efficiency in long run the HRC need to employ more educationally qualified, experienced and competent staff, especially in dealing with human rights investigations and liaison with the victims.
- 12.7. **Enforce command responsibility for torture, from OICs of police stations to ASPs and all others up to the IGP:** The HRC need to take measures to enforce command responsibility of senior police officers within the police forces or other correctional service institutions such as prisons. Enforcing of such command responsibility would expedite measures to prevent torture and other human rights violations.
- 12.8. **Give special priority to trauma and Post-Traumatic Stress Disorder among torture victims:** HRC need to take appropriate action for the government to recognize and respect its responsibilities in this regard. Establish a unit within the HRC, even with volunteers, to provide services to such victims. Refer all torture victims who make complaints of torture to the HRC to qualified professionals for medical and psychological examination and treatment.
- 12.9. **Treat torture as an institutional problem arising from the nature of the police force as it exists now:** Make suitable studies and generate public discussion and debate on the ways to overcome the institutional limitations legitimating torture. Engage the NPC, Police Department, and other responsible agencies—such as the Department of the AG—in a policy discourse for institutional reform. Provide the necessary technical assistance to the NPC and Police Department to evaluate and adopt practices that eliminate torture. In this regard, engage the government as well as the civil society for quick implementation of the Public Complaints Procedure envisaged by Article 155G(2) of the amended Constitution, which requires that the NPC establish such a procedure.
- 12.10. **Undertake nationwide education on the CAT and CATA of Sri Lanka:** Such education need to incorporate ways to implement legal obligations arising from these. For this purpose, expand

human rights education, particularly by constant and regular use of mass media, including radio and television.

- 12.11. **Decisively abandon the practice of seeking settlements for torture cases:** And instead undertake serious preliminary investigations in order to pursue an aggressive policy to ensure prosecution.
- 12.12. **Provide all police officers with a copy of the CATA, and teach police about it:** Assist police officers of higher ranks to train lower ranks on prevention of torture.
- 12.13. **HRC of Sri Lanka should improve its 24-hour hotline** so as to be able to intervene urgently and effectively on occasions where torture victims are being threatened or attacked. Full time personnel need to be employed to monitor this hotline rather than the present ad hoc arrangement to divert the hotline to the personal numbers of the HRC staff during outside office hours. The persons who are answering this hotline need to be able to clearly identify themselves with their name, position and contact telephone numbers (if other than the hotline) and should be able to provide them immediately with the complaint reference number.
- 12.14. **HRC need to help to develop a policy for adequate compensation of victims, and an effective legal aid system:** HRC should take a leading role in developing a policy and mechanisms for adequate compensation for torture victims and victims of other human rights violations. HRC should look to developed systems such as Europe in creating such standards. Compensation should also take into account the prolonged effects on the victims in terms of his/her future income. In case of a victim physically disabled, such compensation should be adequate to sustain the victim for a reasonable time until he/she is included in another permanent welfare scheme to receive regular allowance for subsistence. HRC also need to work towards an effective legal aid system which could be easily accessed by torture victims and victims of other human rights violations.
- 12.15. **Need to develop a comprehensive rehabilitation programme for torture victims:** The HRC should initiate a comprehensive rehabilitation programme for torture victims. Such programme should be efficient and effective. They should be easily accessible to victims. The HRC could seek overseas help in establishing such programmes from countries who has experience on this area. Rehabilitation should include both physical and and mental aspects. Improving the mental health of torture victims should be attended seriously and diligently through such programmes. There is also a need to employ professionals who have competence to deal with mental health of victims especially those who are with Post-Traumatic Stress Disorder (PSTD). Such rehabilitation should be

available free of charge to the victims of torture and their family members.

13. State medical officers such as **JMOs and DMOs** plays a vital part in production of evidence of torture. In this regard such state medical officers need to,

- 13.1. **JMOs and DMOs need to demonstrate high standards of professionalism** in conducting investigations and helping victims, and waive charges where possible to alleviate the unnecessary suffering of torture victims. A prompt and good quality medical report would not only assist the victims in pursuing legal action against perpetrators, they would assist them in getting proper treatment. Such action by the JMOs and DMOs would also work as a deterrent for carrying out torture as the police would get a clear message that medical reports would go against them in any legal or disciplinary actions to be conducted.
- 13.2. **JMOs and DMOs need to conduct their duty professionally and impartially**: It is of utmost importance that the JMOs and DMOs do not connive with the police officers as such connivance would not only affect the process of seeking the justice by the victims but also strengthen the impunity of the police personnel. It is important for the JMOs and DMOs to maintain professional integrity by strictly adhering to the ethical standards provided by international guidelines and protocols such as Istanbul Protocol.
- 13.3. **JMOs and DMOs need to undergo further training on forensic aspects relating to torture**: Make arrangements for JMOs and DMOs to undergo ongoing training and retraining on forensic aspects on torture, especially in the line of Istanbul Protocol.
- 13.4. **Take steps to increase the number of JMOs**: There is a severe shortage of JMOs in the country. It is of utmost important to take measures to increase this number in order to facilitate the needs of forensic examinations.
- 13.5. **Improvement of forensic facilities**: Sri Lanka lacks improved and modern forensic facilities. For example, still the country do not have a single DNA testing facility. In order to facilitate forensic experts there need to be a significant improvement into the forensic facilities and equipments in the country. This aspect need to be evaluated seriously with the participation of senior forensic experts in the country and remedial measures need to be taken urgently.

Appendices

Appendix 1: Case studies of torture committed by the police in Sri Lanka (2000-2002)¹⁶⁷

There are a huge number of torture cases in Sri Lanka every year. Below are a few that the Asian Human Rights Commission has selected to illustrate the epidemic. The following cases are just a small fraction of the total number, however, they are useful as they all suggest a pattern, as follows.

- (a) The most common method of criminal investigation is torture.
- (b) When questioned, perpetrator police officers are almost always unrepentant and state that this is the way criminal investigations are conducted.
- (c) Torture is used with the knowledge and approval of higher officers. With a few exceptions, the policy is to permit and encourage torture.
- (d) Police discipline has been undermined due to this policy, and there is tacit agreement to ignore and pooh-pooh complaints by victims and their families or advocates.
- (e) Act No 22 of 1994 makes torture by a state officer a serious offence punishable for not less than a seven-year mandatory sentence, but this law is ignored.
- (f) The responsibility for implementation of the Act is with the Attorney General who in a report to international bodies has said that there is a special unit to conduct investigation under the Act. However, there is no known case of an indictment or conviction. As torture is a non-bailable offence, if there were cases it would not be difficult to find out.
- (g) There is no established policy to compensate victims of torture. Sometimes compensation is granted but is insignificant by international standards.
- (h) The consequences of all the above are an inordinate escalation in acts of torture, their level of barbarity and concomitant brutality.

For this study we have chosen routine cases happening in ordinary police stations (police stations where the routine business of criminal investigation takes place) to ordinary people, and have deliberately avoided references to cases in areas where there is civil strife, conflict or security operations. These cases from ordinary police stations indicate how intense the practice of torture can be in areas devoid of extenuating circumstances. However it should be noted that under any circumstances Act No 22 of 1994 states that neither war, nor civil strife or a superior's orders are excuses for committing torture.

1. Angeline Roshana Michael: Tortured over a wristwatch

At around 7:30pm on 3 December 2000 a group of people arrived at the house of Angaline 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 Angaline 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 Angeline 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.

¹⁶⁷ ALRC, *Special Report*, pp. 8-41.

Angeline 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 she was assaulted by three officers armed with a rubber hose, a wooden club and another object with wires around it. 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 & 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 Angeline's family and also visited the police station and talked to the OIC. When Dr Swaris asked the OIC to respect Angeline 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, Mr 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 Angeline 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.

Angeline Roshana submitted a fundamental rights application to the Supreme Court with the assistance of 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 complaint against Angeline was initiated by the daughter of one of the President's counsel. 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 Angeline 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 13(2) of the Constitution. In the judgement delivered

by Justice Mark Fernando the court awarded her compensation of 100,000 rupees (US,172). The court's judgement included the following remarks:

The Petitioner [Angeline 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 has also inquired into Angeline Roshana's complaint of torture, and has filed an indictment against IP Saleh and another officer. Meanwhile, IP Saleh has fled the country for an unknown destination.

2. Nandini Herat: Beaten and raped in custody

Herat Pathirannehelage Nandini Sriyalatha HERAT is 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 tee 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 Rathnatieleke 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 #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. Rathnatieleke was dressed in uniform. There was another constable in civies. The vehicle went along Nikaveratiya Road. It stopped near a large Mara tree and Rathnatieleke 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. Rathnatieleke 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 Inspector General of Police.

The Prosecution of Torture Perpetrators Unit of the Attorney General's department forwarded the information provided by AHRC on this case to CID and asked 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. Mr 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 10 000 rupees 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 next hearing has been fixed for 1 October 2002.

There has been strong pressure locally and from outside to bring the culprits to justice. A huge crowd of villagers came to court to witness the case. Many people expressed frustration with the accused police officers, as they continue to be in service after being charged with a criminal offence. In fact, the law requires that any government officer charged with a criminal offence should be interdicted from service till the end of the case.

In another dramatic development, 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, has 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 has not yet spoken to the victim. Instead, it is widely believed that she is simply trying to protect the police officers.

AHRC has since sent a letter to the Prime Minister, the Attorney General and DIG Wayaba, requesting the filing of charges against the police officers for committing the offence of torture as defined under Act No 22 of 1994.

This case recalls that of HEWAGE Ranjini Rupika, who 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 she was hit with wooden poles and kicked 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.

3. 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 Supreme Court of Sri Lanka has also issued leave to proceed in a fundamental rights application on the case. The petitioner is W R Sanjeewa, attorney at law, on behalf of S Lalith Rajapakse. The respondents are IP N D B ATTANAYAKE, OIC Kandana; SI PEIRIS and PC WIJERATNE (#311125), both of whom are officers attached to the same police station; the IGP and the Attorney General.

On August 1 the Attorney General also ordered the Prosecution of Torture Victim's Unit to initiate an inquiry into Lalith Rajapakse's case. The CID recorded his statement, and that of other witnesses, on the same day.

Since complaints have been made, the police have threatened Lalith's family. A certain Madu Madurawala visited a dry fish trader, Lal Appuhamy, who has a long time acquaintance with Elaris, with a message from the OIC Kandana:

- (a) Tell Lal Appuhamy to put poison on the dry fish that will be purchased by Elaris, who has refused to withdraw the complaints made on behalf of Lalith Rajapakse of torture by the Kandana police;
- (b) Inform of any place that Elaris may be going to have liquor, so that people can be told to put poison in Elaris's drinks;
- (c) Gangs will come and destroy Elaris's house; and,
- (d) A contract has been given to a person at Hunupitiya to kill Lal Appuhamy [if he fails].

Meanwhile, messages were sent for Lal Appuhamy to come to Kandana Police Station. He was brought on one occasion by force, but was rescued by the intervention a lawyer.

This kind of beating, with blunt weapons, and subsequent intimidation of relatives and associates of the victim, is occurring with alarming regularity in Sri Lanka. In a similar incident, MULLAKANDAGE Lasantha Jagath Kumara, a 23-year-old soldier, living in Payagala with his wife and child, was beaten to death. 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 have since submitted a report on this murder to the Attorney General. This report too is full of incorrect material. No response has been received from the Attorney General's Department as yet. The magistrate has not issued orders to arrest the suspects.

4. Gerald 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 go 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 pre-school." 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 uniforms. 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. To date, whether or not he will survive the injuries remains uncertain.

The victim's wife has written a testimony on his case. Extracts follow:

My name is Pathma Wickremaratne. I am the wife of Gerald Perera, who is at the moment undergoing treatment in the intensive care unit of the private hospital in Nawaloka.

I am the mother of two children who are respectively 5 and 3 years old. My husband is an employee of the Colombo Dockyard...

On June 3 this year, my husband was returning home after working his shift from noon of June 2 until 9am on June 3. While walking home, some police officers of the Wattala Police Station, dressed in civilian clothes, took him by jeep to the Wattala Police Station on suspicion of having committed murder. At the station, his hands were tied behind his back, and he was suspended from a beam. He was mercilessly beaten with wooden poles and an iron rod in order to extract a confession of murder from him. As the murders were committed at about 2:30pm on June 2, my husband was at work [at that time].

The next morning the police released him, saying that they had arrested the wrong person and that it was a case of mistaken identity. My husband though was suffering intense pain

throughout his body. We took him to a local doctor who said that his condition is very serious and that he must be admitted immediately to a hospital with modern emergency care facilities.

We rushed him to the Nawaloka Hospital where he was admitted to the intensive care unit. On June 14, my husband's condition became critical, and he lapsed into unconsciousness. He is now on a life-support system due to renal failure because of the injuries inflicted on him.

My husband is on the kitchen staff of the Colombo Dockyard. He was able to support our little family in modest comfort with his salary. We rushed my husband to a private hospital for emergency treatment. The hospital bills to date, excluding the fees of the specialists, have risen to more than 500,000 rupees (US,859). I do not have the means to pay such huge bills. The members of our family will have to sell the little property we have to pay them, and we will fall into destitution. My husband's kidneys are only 10 percent functional and are supported by a kidney machine. If my husband's renal failure becomes chronic, he will die. I will then be widowed, and my children will lose their father, our family's breadwinner.

This terrible tragedy has overcome us because the police did not do a proper investigation and took my husband away on a mistaken identity.

My husband is a God-fearing and law-abiding person, respected by the community and loved by his fellow employees at the Colombo dockyard. Since June 4, I have been keeping vigil every day at the hospital outside of the intensive care unit, praying and hoping my husband will regain consciousness and recover from his massive injuries.

AHRC has demanded that the government of Sri Lanka guarantee that all medical care is supplied to this torture victim. If the victim does not survive the crime committed by the police officers involved will be one of murder. A fundamental rights violation application has also been filed on Gerald Perera's behalf with the assistance of AHRC. Pressure is being brought by some officers to have their names removed from this application.

On 17 June 2002 three judges of the Supreme Court heard submissions of the petitioner in a fundamental rights violation case. At the time the petition was being made Gerald Perera was still unconscious on life support system. The court granted leave to proceed. Meanwhile, when the BBC Sinhala Service interviewed a police officer regarding the case he said that they used only "minimum force" on Gerald Perera. Around 500 residents of the area where he used to live also organised a protest meeting and demonstrations over this act of violence. The BBC Sinhala service quoted an organiser of the demonstration as saying that complaints have been made to the Prime Minister, the IGP, Chief Justice, and opposition party leaders. The case has also been taken up by the World Organization Against Torture (OMCT).

5. 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 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 postmortem, embalming and everything was done, without any information to, or participation by, 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 now no inquiry had been undertaken. The family has written to every one, including the Attorney General and the NHRC. However, there has been no attempt to assure the family that justice will be done.

The case is similar to that of D M A DISSANAYAKE. In his 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 postmortem 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 has taken place and no one has been arrested.

6. 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 treatment to address persistent problems.

On December 3 a human rights NGO based in Panadura, Janasansadaya, took K A Samarasinghe to the NHRC 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 NHRC. 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.

7. 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 beams. 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 hospitalized 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 has made a complaint to the Police Station at Galle through his lawyer Kumara Bandara. A representative from the Deputy Inspector General recorded a statement from him while he was in hospital, but to date no action has been taken.

8. Anura Wejesiri: A corpse with two hearts and four lungs

On 11 January 2001 Anura WIJESIRI was visited by his brother, Jagodege Ranjit Wejisiri, while in custody at INGIRIYA Police Station. Anura said 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 10 000 rupees 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.

It is now more than one year since Anura's death, but the mystery has not been solved. Unfortunately, it is not likely to be solved, either. The reason for this is that no one is investigating the case, although it falls under the scope of Act No 22 of 1994, and furthermore, is a brutal murder, the investigation of which has been blatantly sabotaged.

9. 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 Station. 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. The 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.

10. 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 arrested by police from 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 1000 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 be produced before a JMO.

AHRC has requested the DIG Sri Lanka, B M Liyanage, to conduct a criminal investigation and proceed in this case under Act No 22 of 1994 to prosecute the culprits. AHRC has also asked that OIC Suriyakumara, the alleged instigator of not only this but many other regular acts of torture at Ja-ela Police Station, be suspended pending the results of the inquiry.

Indeed, JA-ELA Police Station has become notorious for its acts of brutality against ordinary people, which in part explains the outrage felt after this most recent incident. In an earlier case that 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 tee 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 that he did not know the contents of.

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 NHRC. 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 the March 26, when his family made inquiries 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 has 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.

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 traveling 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! (Thodanne 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 both 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 has identified most of the police officers who have tortured him. Despite availability of strong medical and other evidence, the Attorney General has not yet taken action to file charges of torture.

12. 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 (#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. The JMO's report is still awaited. Because of the torture, this farmer will now be unable to do his work for a considerable period of time.

This case bears a resemblance to another 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. A R L 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 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 A R L 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. That case has been fixed for hearing on September 26.

13. 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, Eric Kramer was asked by Mr. Piyadasa, a company security officer, 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 subinspector 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 is still suffering from the torture inflicted on him, as he cannot walk properly because of the beatings on the soles of his feet and he has chest pains. He has gone to a private hospital where he has received medical tests, and the medical investigation is continuing. Meanwhile, he has made a complaint to the Chief Justice and other authorities.

14. Susil Jayalath: A mysterious fall

UDUWA WIDANELAGE Susil Jayalath, a 19-year-old of Sapugaskanda, was arrested by the local police 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 has 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 by the people against the practices of the police.

15. 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 by officers attached to the HINIDUMA Police Station investigating 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 has been 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, has reportedly said on the radio that the two torturers have since been transferred elsewhere.

16. 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 by several officers of 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, he was taken to the upper floor of the station by two police officers of the Crimes Division, Lalith RAJAMANTRI and Nihal, who were drunk, and several other officers. 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 are swollen, and he has pain in his spine. He faints periodically and has headaches, vomits, and is confused. He has been treated at the hospital in Aralaganvila. A fundamental rights application has been 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.

17. 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 her husband was being beaten 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 suggests extremely brutal types 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 is 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 has been offered or confirmed. In fact, there has been no inquiry into the matter at all. The reasons for the police actions remain completely unknown. The victim's wife feels that there has been an attempt to hush-up the incident, particularly as in this case not only the police but also the hospital authorities are answerable. In the latter's case, the question is one of negligence, for failing to be adequately responsible for a patient in their care.

This case has also been taken up by the American Association for the Advancement of Science (AAAS) Science and Human Rights Program, which is concerned with human rights violations committed against scientists and medical practitioners.

18. 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 where ever 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, "We will kill her after playing with her (Api mekiwa maranne mekith ekka selamkarala evealwela)."

Arthur Vithanage was taken to the Mathugama Police Station, where Sgt Vithana continued beating him. PC LIYANAGE (#26166) and PC Anil (#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 NHRC. 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 has also been 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.

19. S A Piyadasa, S A Milantha & Aruna Kumara: "A good meal"

SUBASINGHE AARACHCHIGE Piyadasa is 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, who was at home at that time, learned about the dispute and came to the school, as their home is only about 500 metres away. After that they went home together.

After 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 him. Later he learned that the person who questioned him is 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 a stick 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 was 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 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 NHRC 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 has also been 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.

This is not the first reported instance of brutality by "Boxer" JAYASINGHE of PANADURA Police Station. On 4 June 2002 he also 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 has been taken. It has also been brought to the attention of the NHRC.

20. H K Sampath: "I will plant bombs in your house and implicate you"

HETTIARACHCHIGE Krishantha Sampath is a 22-year-old vegetable seller, and is 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, and none informed him of their identities, nor what he was being arrested for. 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. Krishantha's arrest was also witnessed by his neighbour, who has 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 NHRC. Subsequently, NHRC 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 has since lodged a fundamental rights petition in the Supreme Court against IP Indrajith, the OIC Panadura, the IGP and the Attorney General.

21. 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 motor cycles 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 treatment. The men have since lodged a fundamental rights application with the Supreme Court, against PC Lal, SI Liyanarchi, the OIC Panadura, the IGP and the Attorney General.

22. Ejan Moulana: "Give the items!"

Shazyed Mohomad Issas Hussane MOULANA is 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 uniforms. 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 (300,000 rupees) 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 11, 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 earlier told people in the village that he was a thief, however no charges have been laid against him, nor to his knowledge, complaints made by anyone. Nor has any magistrate issued an arrest warrant for either of the victims of this incident. Ejan Moulana has made complaints to the OIC Panadura, SPP Panadura and NHRC. A fundamental rights application has also been made to the Supreme Court against IP Prasanna, the IGP and Attorney General.

The OIC of KESELWATTE Police Station, IP Prasanna SILVA, has more than one recorded assault against him. It is known that at around 12:30pm on 2 May 2001, one Ajith Nawaratne BANDARA was taken into custody by 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 NHRC to take action in this case have so far been unfruitful.

End Note

* Gerald Perera's case was referred to by Dr Nalin Swaris, 'Between the blinds: Torture and the human reed', article 2, vol. 1, No 3, June 2002.

Appendix 2: Cases of torture and killing committed by the police in Sri Lanka (2002-2003)¹⁶⁸

Asian Human Rights Commission

Police in Sri Lanka committed the following cases of torture and killing between January 2003 and February 2004. The 31 cases and 46 victims of 29 police stations referred to here do not amount to the total number of cases received by the Asian Human Rights Commission in the said period, as some cases have been excluded from this report due to factual inconsistencies or other deficiencies.

All but one of the cases have been reported and acted upon through the Urgent Appeals (UA) programme of the Asian Human Rights Commission. The UA number and date of issue in each case is given in the column notes. Inquiries are pending in most cases.

1. Korlagamage S D: Illegally detained and allegedly tortured for a week

Police of Kaluthara South CID arrested KORLAGAMAGE Sujith Dharmasiri (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 NHRC. We will see that he will not get bail." After that she was again chased away. Nonetheless, the family sought intervention by the NHRC 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.

2. Bambarde Gamage S P: Child beaten and humiliated for alleged theft

SI Romiyal of the Matugama police station entered the house of 17-year-old Bambarde 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 till, 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 Wattave government hospital. He was treated there until January 10, after which time he was transferred to Nagoda General Hospital for further treatment.

¹⁶⁸ ALRC, *Second Special Report*, pp. 26-60.

3. 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 motorized 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. The case has been investigated further, but the results have not been made public.

4. 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. For full details of the case, please see *Sri Lanka Legal Reforms and Human Rights*, (vol. 1, no. 3, October 2003), and regular updates on the AHRC website (www.ahrchk.net).

On 6 February 2003, while Mr 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 Mr Fernando's claim. After Mr Fernando was taken to Welikada Prison he was hospitalized 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...

Since Mr Fernando's release from prison on 17 October 2003 he has been subjected to continuous threats due to his active campaigning for his rights. He has filed several cases

against the prison guards who tortured him, however the dates for hearings have been postponed. He has also filed a communication before the United Nations Human Rights Committee challenging the validity of the Supreme Court Judgement as having no basis in law and as a violation of his fundamental rights. AHRC also presented Mr Fernando its inaugural Human Rights Defenders Award coinciding with his release. The former Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumararswamy, has publicly denounced the Supreme Court judgement against Mr Fernando as an "act of injustice". He had complained about death threats to the local authorities as well as to the Human Rights Committee.

Although on 9 January 2004 the Human Rights Committee instructed the Sri Lankan government to take all necessary measures to "protect the life, safety and personal integrity" of Mr Fernando, the government has failed to do so. On February 2, a group of unknown persons made an attempt on Mr Fernando's life. As he was walking out of his house in the morning, a man ran up and sprayed chloroform onto his face, while a van pulled up nearby to take him away. He managed to escape by running in the opposite direction and hid in a shop managed by a friend. He was then taken to Kalubowila Hospital for treatment, and after his discharge on February 7, wrote the following:

From February 2, two armed police officers who has come under the instruction of the Ministry of Defence provided me with security at the hospital. They were there till I was discharged on February 7. They brought me back home, then they told me that they had instructions to give protection only at the hospital and till I was brought back home. They said there is nothing more that they can do and that if I need further protection I should talk to higher-ups and get such protection. Since then I have had no communication from the Ministry of Defence or any one else. I am in a completely helpless position. I cannot attend to my daily work or even help my family. I have to go from place to place looking for shelter like a fugitive.

...

I am frightened to think of what would have happened to me if the conspirators succeeded in taking me to the van and had taken me away. There were altogether three persons in the Van, which was waiting to take me. So, far no one has been arrested, though many statements were taken down from me. Though the UN Human Rights Committee has issued Interim Measures to the Government of Sri Lanka to take action to protect my life and those of my family and report to the HRC by 9th February 2004, I am completely without protection now. I have to live in hiding. I call upon everyone to intervene on my behalf to find protection for me.

In a letter of February 13 to the Attorney General Mr Fernando has also written that

I have no personal enemies. The only people who I can think of who would be behind such a conspiracy are those affected by the cases filed on the basis of my complaints. This is further confirmed by the fact that the threats I received before the 2 February 2004 incident were from people who wanted me to withdraw the cases in the magistrates court in Colombo, the Supreme Court and the UN Human Rights Committee. The investigators should give serious attention to this matter.

On March 2, the Australian government expressed concern over the case of Mr Fernando, and directed its High Commission in Colombo to make inquiries.

5. 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. Ms 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 taken 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 Magistrates 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.

Ms 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.

Ms Sathasivam was subsequently released on bail and on 20 November 2002 made a complaint to the NHRC. Since then, she has experienced continual harassment by the police. On 8 February 2003 she made another complaint to the NHRC 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 Ms 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 Ms Sathasivam are still pending in the high court.

6. 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 Mr 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 Mr 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 Mr 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 Mr 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 NHRC. 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 Mr 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 Mr Nanda Mapalagama Godagama, attached to the Galle Court, to make a complaint to the IGP. However, on February 19 Mr 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 Mr Benjamin's motorcycle and appeared to leave. The neighbour then called for Mr 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 Mr Benjamin while he was walking on the road. The police claimed to have acted in 'self defence', and allege that a pistol was found next to the victim. However, Mr 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.

7. S Hemachandra: Death for winning lottery

Sunil Hemachandra, a 32-year-old rubber tapper, won Rs.3,003,100 (US,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 Mr 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 Mr 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, Mr 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 Mr 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 matter has now come before the Department of the Attorney General, and inquiries are reportedly continuing. Meanwhile, the victim's mother and sister have filed a fundamental rights application in the Supreme Court, which is due to be heard in March 2004.

8. 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 describes 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 jewelry 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 have since been forced into hiding after they made complaints about the case, and filed a fundamental rights application in the Supreme Court. The case also has received enormous publicity in Sri Lanka. A local human rights organisation is protecting Chamila. The alleged perpetrators have meanwhile coerced local criminals into intimidating the family, and police have directly threatened Chamila's mother.

The family has learned that the OIC and other alleged perpetrators have attempted to fabricate a case against Chamila by forcing some boys to testify that the victim's injuries were caused by a fall. Several of the boys have already retracted their statements, taken under duress.

Chamila attended the UN Human Rights Committee session held in Geneva at the end of October 2003 as part of a delegation from 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 NHRC. This report was compiled without even

taking a statement from Chamila or his family, and without referring to the medical certificates. AHRC immediately demanded that the chairperson of the NHRC dismiss the area coordinator without delay. The NHRC 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, which are still continuing.

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 is 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.

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 released on bail on August 15; the case is continuing.

9. Garlin Kankanamge S: Body buried in garden in hope of second post mortem

Garlin Kankanamge Sanjeewa, 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, Mr 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 has 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 Mr 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.

Around the same date as Mr 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 Mr 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 has complained to the authorities, but an investigation has not yet begun. Meanwhile, the family has lodged a fundamental rights application in the Supreme Court.

10. R Dhanapalasingham, R Saravanaraj & M Prabhakaran: An accident leads to assault

While Ramaiya DhanapalaSingham, aged 23, Ramaiya Saravananaraj, 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 Mr 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 Mr Saravananaraj. According to Mr Saravananaraj, 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 Mr Saravananaraj, 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 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 Mr Saravananaraj 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, Mr Dhanapalasingham was kept in the hospital ward for three days for treatment of 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 have 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. The case is continuing, and has also been reported to the NPC and NHRC.

11. 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, making a pretense that he was unconscious. A doctor examined the body and pronounced that he had died before arrival.

The police have said that Mr Okanda fell from a chair and died. The Monaragala magistrate who held the inquiry on September 7 ordered the body 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. He further stated that Mr Okanda's death was not due to these injuries, and reserved his decision on the cause of death till further investigation was completed. The case is continuing.

12. 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 motorized trishaw carrying 23-year-old Mohamad Ameer Mohamad Riswan and 30-year-old

Abdul Karim Mohamad Roshan Latief. They were stopped by a van containing about six plainclothes police officers from Wattala station. 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 Mr 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 Mr. 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. Mr Latief was again attacked the following night, and he alleges 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 NHRC, 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 NHRC visit that SI Navaratne told the men that since they complained to the NHRC they would be implicated for possession of narcotic drugs. The men have since been charged with theft, and drug-related offences, which they deny. Mr Latief and Mr Riswan have since filed fundamental rights applications in the Supreme Court.

13. 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 Puspakumara'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 fiber 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 if there was a medical record of his injuries it 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 organization 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 has since come 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 pursue the matter. Pushpakumara has been taken under the protection of a local human rights organisation, and his parents have since been forced to flee their home, fearing for their lives.

14. 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 Mr 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 Mr Kotagalage there, who told Mr Kurukulasuriya to tell the truth about killing Fr Costa. He shouted at Mr Kotagalage that he did not know anything about this. He realized that the police were falsely and purposefully implicating him and pleaded his innocence.

The policemen began torturing Mr 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 wickets on his back, legs, and soles of his feet.

At about 8pm the police took Mr 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 Mr 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 Niranjana 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 Mr Kurukulasuriya on instructions from the Attorney General, and said there would be no legal action against him. For 21 months Mr 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. Now Mr Kurukulasuriya suffers from the after-effects of torture and cannot work outdoors to support his family.

15. 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 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 Mr 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 Mr Kurupanawa's brother arrived on the scene and pleaded for the police to stop, they did not do so.

After the police took Mr 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 hospitalized immediately. Mr 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 Mr Kurupanawa was only semi-conscious, and at that time thought he was dying.

The next day two police officers forced Mr Kurupanawa to leave the hospital and go with them to a magistrate. The magistrate ordered him remanded for 14 days, but Mr 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, Mr 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, Mr 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 has complained to the ASP-Udagama.

16. C P S Anthony & C J Lafaber: Victims of a dispute over two 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 drunk 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 Mr Jurie, and asked him, "Are you selling these cups to the police?" Mr 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, Mr Anthony and Mr Lafaber stayed at the stall. After Mr 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 Mr Anthony and Mr Lafaber to a DMO in Ragama, who instructed the police to admit Mr Anthony to a hospital. They then took the two men to the Accident Ward of the National Hospital in Colombo. Mr Lafaber was kept in the vehicle,

while Mr Anthony was taken inside and X-rayed, but brought back despite advice by doctors that he 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 Mr Anthony and Mr 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. The case is continuing.

17. Raman Pillai K N A: 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, Mr 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 Mr 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 Mr Raman back to the station and returned him to a cell.

According to Mr 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 Mr 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 hospitalized at the Peradeniya General Hospital on September 22. While in hospital, his family received threats from some unknown persons.

18. 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 Mr 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 Mr 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 Mr Dope's belly with a broken bottle. They continued this until he fell unconscious.

After that Mr Dope was taken to a rural hospital several kilometers 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. Mr 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.

19. 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 Polpithigama went to the house of 7-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. At the time of the Urgent Appeal his mother reported that Sujith had not yet recovered from the trauma caused by this torture, and was refusing to go to school.

20. 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 a Mr 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 Mr Piyasena, came with their brothers to 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 Mr 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 a bed. 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 Magistrates Court and released on bail. His family has since filed complaints with the NHRC, NPC and in the Supreme Court, which has ordered the NPC to investigate. However, since making the complaints they have received death threats. The perpetrators are all still serving at the Rathgama station, and the family fears for their security.

21. 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'. Mr 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 the 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, Mr Kulathunga was transferred to the National Hospital in Colombo, where he died of his injuries on November 12.

On November 13 Mr 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 Mr Kulathunga out of fear that they would also be assaulted.

Inquiries into the case are reportedly continuing.

22. 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.

Mr 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 Mr 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 Mr 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 Mr 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, Mr Pallekanda was still in custody.

23. Bamunuarachchi Pathiranalage S: Hung from the ceiling

At 10:30am on 1 November 2003, two police officers in civilian clothes from the Kuliyaipitiya 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 Mr Bamunuarachchi recognised as living nearby his friend's house.

At the police station, the officers took Mr 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 Mr 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 Mr Bamunuarachchi to jump up and down and run outside, also causing him great pain after the torture.

After that, a policewoman took Mr 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 Kuliyaipitiya 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 has also made a complaint to the DIG-Kurunegala, who asked him to report the case to the regional ASP, and promised to take action within 10 days. However, at the time of writing the Urgent Appeal no serious steps had been taken to bring the perpetrators to justice.

24. 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 near by 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.

25. 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 Kurunegala Magistrates 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 NHRC in Colombo, and officials from NHRC came to investigate. However, because of this visit and media attention, the police at the Gokarella station have come to the village and threatened the people to withdraw their complaints. They also stopped the bus service to the village. The villagers have also reported the incident to the DIG of North Western Province, and he appointed ASP Charles Wijewardene for further inquiries.

26. 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 Mr 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 arms. 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, angered by him no longer paying the bribes necessary to conduct such business, 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.

27. Tennakoon Mudiyansele G: Beaten over a missing bicycle

On the evening of 31 December 2003, Tennakoon Mudiyansele Gunsekera, a 39-year-old waiter and father of three was sleeping in front of the Chandrasena Hotel after work. Around 10:30pm six drunk 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 Mr 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, Mr 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 500 Rupees, and refused to record her complaint.

Mr Tennakoon was hospitalized in Mahiyanganaya and his statement taken by the police officer on duty at the hospital, at the request of the DMO. His ribs have been damaged due to the attack, and he finds it difficult to breathe and lie down. A local human rights organisation has helped his wife send letters to the NPC, NHRC and DIG-Uva.

28. 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 Mr Jayasekara buy a bottle of glue and two pens, and give 500 Rupees, after which he prepared a document and gave it to Mr Jayasekara to sign, while assuring him it would end the matter. Although Mr 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 Mr Jayasekara could dredge the sand.

Mr 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 Mr 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 Mr 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, Mr 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 Mr Jayasekara's home. They entered the house and told Mr 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 Mr Jayasekara still handcuffed into SI Panagoda's room. There, SI Panagoda told the officer assigned to Mr 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 Mr 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 Mr 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 Mr 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 Mr 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, Mr 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, Mr 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. Mr 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 Mr Jayasekara at a time that his mother was conducting an alms giving. Mr Jayasekara hid in the house, and SI Panagoda called out that but for the alms-giving event, he would not have spared Mr Jayasekara that day. After that, Mr 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 has also investigated the case, and according to its chairman has "initiated necessary action" against three police officers. Mr Jayasekara filed a fundamental rights application in the Supreme Court on February 2.

29. 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 Mr 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 Mr 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. Mr 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 Mr Koralaliyanage's back and told him to get in. Mr Koralaliyanage was pushed underneath a seat, and the car proceeded. The two vehicles went to the house of Galathara Don Shantha at Galathra junction. Mr 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 Mr 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, Mr Galathara was brought in and made to sit opposite Mr Koralaliyanage. Then SI Silva took a cricket post and started hitting Mr Koralaliyanage repeatedly, between the shoulders. While hitting him, he told Mr Galathara, "Look-this is how the others will also be treated." He pulled up Mr Koralaliyanage and kept hitting him hard all over his body. Then he told Mr Koralaliyanage, "Give the bombs, give the weapons, and tell about the robberies you have committed." Mr 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 Mr 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, Mr Galathara was watching in terror. Mr Koralaliyanage noticed that he had involuntarily urinated on seeing the manner in which Mr 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 post 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 Mr Koralaliyanage to open his mouth and had Sarath spit into it, telling Mr Koralaliyanage that he would also get tuberculosis and die. Mr 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 Mr 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.

Mr 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 Mr 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 Mr Koralaliyanage to get up, raise his arms and bend down. Mr 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 Mr Koralaliyanage to a bar of the cell door, and then pulled the door up and down, injuring his wrist.

During these three days, Mr Koralaliyanage'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 Mr Koralaliyanage 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 Mr Koralaliyanage 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 Mr Koralaliyanage before a magistrate, and waited for some time at the station. However, eventually he came to the cell and told Mr Koralaliyanage 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 Mr Koralaliyanage'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 Mr Koralaliyanage's personal details and came back with a statement that he forced him to sign, without explaining anything of the contents. He also fingerprinted Mr Koralaliyanage.

In the morning of February 6 Mr Koralaliyanage 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 Magistrates Court of Matugama, where he was produced with several others before an acting magistrate. Mr Koralaliyanage 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, Mr Koralaliyanage 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 have been filed against Mr Koralaliyanage, for possession of a grenade and for robbery. At the time of this report, he is in Kalutara Remand Prison. Meanwhile, he has lodged a fundamental rights application in the Supreme Court.

30. 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 NHRC and NPC in Colombo and sought urgent intervention to get medical treatment for her husband.

31. 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 Mr 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 Mr Bellanavithanage hard with his truncheon. The victim tried to escape the blows by running away. Another officer fired two shots and Mr Yasaratne fell in the street. According to the many eyewitnesses, the police abandoned Mr 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 postmortem inquiry by the JMO at Nagoda Hospital has confirmed that the death was caused by gunshot. A magisterial inquiry has not yet been held. The victim's family wants an inquiry, however they fear that the perpetrators will attempt to make up a false story to avoid liability for the death.

Appendix 3: The inadequacies of the torture prevention policy adopted by the Human Rights Commission of Sri Lanka

14 May 2004

AS-12-2004

A statement by the Asian Human Rights Commission

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

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

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

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

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

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

"Posters with regard to the rights of suspects shall be displayed in all three languages in all police stations, training programmes on human rights at the Police Training Institute will be strengthened. Family members and lawyers will be able to visit anyone held in detention. Officers-in-Charge (OIC) of

stations to be held directly accountable for cases of torture at the police station. The HRC, the Inspector General of Police (IGP) and the Police Commission to consider the possibility of indicting police officials who been held guilty of fundamental rights violations before the Supreme Court."

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

'Zero-tolerance': A soft expression hiding an inadequate policy

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

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

What does dealing with torture as a crime imply?

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

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

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

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

- i. Treat all investigations into allegations of torture as possible cases for prosecution. This would imply that torture complaints would be investigated with a view to gather all the evidence with which to prove an offence of torture in a criminal case, which at an appropriate stage would be shared with the Department of the Attorney General, to pursue prosecutions.
- ii. Critically monitor the PTPU investigations and prosecutions and make official representations where reason exists to be dissatisfied.
- iii. Engage civil society on torture and the ways by which legal redress can be obtained for acts of torture, through education and other means.
- iv. Engage the National Police Commission (NPC) and the Police Department and instruct police officers that torture is a crime for which they will be punished, thereby establishing a different set of principles in dealing with torture.

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

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

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

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

'Investigation on torture cases will begin within 24 hours of the incident being reported': What does it mean?

This is a welcome change from the present position, where often even months after a report no investigation really takes place. However, what the 'beginning' of investigation means has not been made clear. To make it clear it is necessary to have an investigation procedure.

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

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

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

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

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

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

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

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

Why the qualification? The qualification for HRC intervention in custodial deaths only 'with

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

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

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

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

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

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

Doctors are also liable: One of the major impediments to torture victims seeking redress are the inaccurate and even sometimes false medical reports filed by some District Medical Officers and Judicial Medical Officers. Often local relationships and other obligations cause

medical officers to issue misleading medical reports. The HRC should discuss with the Medical Council about ways to prevent this practice. Where the HRC has evidence of false reports being issued, the doctors should be summoned to the HRC and also officially reported to the Medical Council.

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

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

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

Trauma and Post-Traumatic Stress Disorder

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

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

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

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

Institutional liability for torture

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

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

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

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

The educational role of the HRC towards eliminating torture

A strong educational component is missing from the HRC's policy on torture, as it has been since the beginning of its work. This is interesting, as some other national human rights

commissions, even where they have failed in other areas of their mandate, have tried to fulfil their educational function.

Strong educational work via electronic media and other means would do much to eliminate torture. Widespread education on the CATA would benefit civilians as well as security officers. Education on legal remedies and how to obtain them would be useful to everyone. Public education would create the pressure needed for policy changes. The HRC can have free access to public media channels. Even private media channels are likely to respond to a call to support this mission. Creative persons in the human rights field, legal field and in the media can collaborate and achieve results within a short time.

Recommendations

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

- a. Make a clear policy statement on the elimination of torture based on Sri Lanka's obligations under the International Covenant on Civil and Political Rights (ICCPR) and CAT, as well as the CATA of Sri Lanka. Such a paper will help the public to understand and cooperate with the HRC on this matter.
- b. Concentrate on implementing the CATA while at the same time trying to improve it in line with the CAT. Develop strategies and methodologies to cooperate critically and monitor criminal investigations and prosecutions currently taking place under the ad hoc arrangements of the Prosecution of Torture Perpetrators Unit. Critical cooperation means studying how investigations and prosecutions are done now and taking suitable action to ensure improvements. The HRC can also monitor investigations and prosecutions to ensure EFFECTIVE REMEDIES in terms of article 2 of the ICCPR.
- c. Develop and adopt a complaint receipt and investigation procedure without delay, to serve as the basis on which all investigations are conducted and reported. This implies abandoning earlier procedures for dealing with torture cases, such as the reaching of settlements. The procedure should be made available to the public so that people will be aware of what actions will be taken when they make complaints.
- d. Set a time within which to complete inquiries, and require that complainants be kept informed about the progress of their complaints.
- e. Inform the Department of the Attorney General where prima facie evidence of torture is uncovered, and ensure that proper criminal investigations and prosecutions follow.
- f. Establish and enforce a disciplinary procedure over inquiring officers who deliberately sabotage the process and side with the perpetrators. Take other measures to prevent negligence by investigating officers. Take prompt action to investigate and make appropriate decisions, particularly where corruption is alleged.
- g. Enforce command responsibility for torture, from OICs of police stations to ASPs and all others up to the IGP.
- h. Give special priority to trauma and Post-Traumatic Stress Disorder among torture victims. Take appropriate action for the government to recognise and respect its responsibilities in this regard. Establish a unit within the HRC, even with volunteers, to provide services to such victims. Refer all torture victims who make complaints of torture to the HRC to qualified professionals for medical and psychological examination and treatment.
- i. Treat torture as an institutional problem arising from the nature of the police force as it exists now. Make suitable studies and generate public discussion and debate on the ways to

overcome the institutional limitations legitimating torture. Engage the NPC, Police Department, and other responsible agencies--such as the Department of the Attorney General--in a policy discourse for institutional reform. Provide the necessary technical assistance to the NPC and Police Department to evaluate and adopt practices that eliminate torture. In this regard, engage the government as well as the civil society for quick implementation of the Public Complaints Procedure envisaged by Article 155G(2) of the amended Constitution, which requires that the NPC establish such a procedure.

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

A word of gratitude

What the HRC will do to eliminate torture depends very much on the pressure exerted by civil society organisations. Up to now these groups have exerted most of the effort in dealing with torture, working closely with the victims, providing them emotional and even financial support, helping them through the legal process, and also trying to use the media to gather support. In the future too the main burden will remain with civil society. Whether the Human Rights Commission of Sri Lanka will change its inadequate policies and practices will depend very much on the pressure of these groups. We take this opportunity to express our appreciation to all those persons and organisations engaged in this struggle, and urge them to sustain their efforts in the fight to eliminate torture.

Appendix 4: Lack of police discipline a threat to Sri Lanka's national development

May 4, 2005
AS-48-2005

A Statement by the Asian Human Rights Commission

Some of the views expressed by Inspector General of Police (IGP) Chandra Fernando, at a discussion with Professor Carlo Fonseca over the national radio (SLBC) on Monday, 3 May 2005, were alarming in their attempt to justify police shootings of civilians. Spelling out a Lee Kwan Yew doctrine of 'discipline, development and democracy', Mr Fernando explained the killings as acts of self-defense; the victim either tried to flee or harm the police officers, who then had to shoot them, leading to their deaths. The defense of such acts--also termed as cross-fire or encounter killings--by the highest police authority is tantamount to the encouragement of such behaviour. This comes at a time when there are reports of numerous civilian deaths after arrest.

The earlier defense against police acts of violence was the use of 'minimum force'. This minimum force led to a spate of deaths in police custody through grave injuries such as skull fractures, kidney damage and the like. Two of the latest cases involving such use of minimum force are the death of Wijaratne Munasinghe at the Maharagama police station and a husband and wife assaulted at the Embilipitiya Police Station, as a result of which the wife gave birth prematurely, being five months pregnant.

Hundreds of cases of police violence have been submitted to the IGP and other Sri Lankan authorities. Everyday more cases are added, clearly indicating a total breakdown of discipline within the police force. Under these circumstances, the IGP would do better to promote discipline within the department and ensure that the law is enforced according to established procedures, rather than discussing political ideology. The guide for the police is the law that exists in the country, not ideology. This law is made by the people through their elected representatives in the parliament. The duty of the law enforcement agency is to enforce the law according to the procedures established. The duty of the head of the police department is to ensure that the department enforces the law of the land.

To the credit of the IGP, he admitted during the radio discussion that the rule of law in Sri Lanka has broken down. It must be said however, that this is not the first time the present Inspector General of Police as well as his recent predecessors have admitted this fact. Merely admitting and repeating this is not enough; the leader of the law enforcement agency must undertake to end this collapse of the rule of law. To this end, he should clearly spell out a programme of action proposed by his department on ways to reinforce the rule of law. The Sri Lankan public is unaware of any such plan proposed or published by the police department. From the view of law enforcement, the IGP and his senior colleagues would make a more useful contribution to Sri Lanka by examining why the police department is failing to enforce the rule of law in the country.

When the IGP speaks about discipline as a component of development, he should above all be concerned about the discipline in the police force that he commands. It is publicly admitted that there is a complete collapse of discipline in the law enforcement agency, particularly in the recent decades. Mr Fernando's writings themselves acknowledge this collapse. As for the cause of this collapse, in passing the 17th Amendment to the Sri Lankan Constitution almost unanimously, all political parties in the country attributed it to the politicisation of the police

force. The proposed solution was a de-politicisation process, under the strict supervision of the National Police Commission.

The 17th Amendment further provides for the establishment of a public complaints procedure ensuring prompt and thorough inquiries into all acts of police misbehaviour to reinforce discipline within the police force. This constitutional provision has not been complied with however, and the old provisions of internal disciplinary inquiries are still in place, which hold no public confidence; officers who have been indicted in various high courts are still serving within the police department. No attempts have thus been made for strict compliance of the law within the department itself, whose function is law enforcement. If the IGP is genuinely advocating discipline, then he should understand that discipline is respected through the strict enforcement of disciplinary procedures; anyone committing disciplinary violations must be punished according to the law. When law enforcement agencies get away with such violations, what credibility do its officers have in their attempt to enforce discipline elsewhere?

The link between discipline and the development is no other than the link between development and law. A lawless society cannot produce the discipline needed for the functioning of basic economic and social institutions, which deliver the required services for a vibrant economy. With a breakdown in law, corruption becomes widespread and inevitably affects the economy. Sri Lanka is a glaring example of this trend. The failure to enforce discipline within state bureaucracy remains the primary cause for Sri Lanka's failure in the economic sphere.

Discipline only becomes a part of civilian life when it prevails within state agencies. Lawless agencies create an obstacle to the establishment of discipline within society. This obstacle cannot be overcome in any way but through attempts to reinforce discipline within the state bureaucracies, particularly the police department. The transformation of law enforcement in Hong Kong since the 1970s is a clear indicator that any reinforcement of discipline must begin in the policing system itself. When proper discipline is enforced within the policing system, other government bureaucracies, the private sector and the population at large follow a similar course. The belief that errant law enforcement officers with the freedom to shoot at will can bring about a disciplined society is misleading and irrational.

The Asian Human Rights Commission has consistently communicated with the IGP in the past, emphasizing the exceptional collapse of the rule of law in the country and underlining its primary cause as the failure of discipline amongst the police. We once again urge the Inspector General to take up the task of restoring discipline within the police force through serious attempts at reforming disciplinary procedures. This task requires courage, as there is bound to be great resistance from those within the institution who benefit from the present state of indiscipline. However, this is the price that anyone who talks of discipline in a serious manner should be willing to pay. Any form of encouragement for acts of violation, including torture and extrajudicial killings, can only make the situation worse.

Appendix 5: Letter to the Attorney General of Sri Lanka from AHRC

6 May 2004
Hon. Mr. K. C. Kamalasesan
Attorney General
Attorney General's Department
Colombo 12
SRI Lanka
Fax: +94 11 2 436 421
Email: attorney@sri.lanka.net or counsel@sri.lanka.net

Dear Mr. Kamalasesan,

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

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

2. So far, the response to torture issues in Sri Lanka has been mainly due to external pressures. Today United Nations agencies and even major donors to countries like ours exert pressure for the implementation of human rights obligations. Of particular interest to the international lobby is the issue of the prevention of torture, which through centuries of struggle has been established in the Western world as one of the foundations of modern criminal justice. The criticism that even the American administration is now receiving with regard to the soldiers who engage in torture in

Iraq is a clear indication of a deeply established international principle that torture is a heinous crime and should not be tolerated under any circumstances. UN interventions are founded on principal. However, when the principle itself is not assimilated into our own legal culture what often happens is that we make some public response to the external pressures and stop at that. It is perhaps this very approach that you could help the Sri Lankan administration move away from. This could be done in the manner described above through an attempt to convince people that it is the principle of the elimination of torture that we have to assimilate for our own benefit. Such groupings as the Inter-Ministerial Working Group on Human Rights Issues and other ad-hoc groupings have been established in the past, not so much with a view to eliminate human rights violations such as torture, but to engage in limited activities in response to external pressure. It is this approach that needs to be changed if we are to acquire as part of our legal culture the principles enshrined in the CAT.

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

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

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

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

d. A further aspect of the prosecution of torture cases is that it requires special training on the part of the state counsels themselves. Perhaps due to the prevailing

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

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

I appreciate the opportunity of presenting these suggestions to you.

Thank you.

Yours sincerely,

Basil Fernando
Executive Director

Appendix 6: Equal access to Justice: Where should it begin to ensure Human Rights?

By Jayakumar Thangavelu¹⁶⁹

*We shall have to repent in this generation
Not so much for the evil deeds of the wicked people,
But for the appalling silence of the good people.*

- Dr. Martin Luther King

I had the privilege of addressing about 100 Inspectors on “Investigation techniques to minimize violation of human rights” at a police training programme conducted by the United Nations Development Programme (UNDP) in early July 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 implication 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.

After listening to their response, I posed the question whether they had ever carried out acts that could be classified as torture, or whether they had heard of torture being perpetrated on members of the privileged classes such as politicians, the rich or persons of high standing in society. This was notwithstanding accusations or evidence to believe that such persons had been concerned in murder, sometimes multiple murders, fraud involving millions of rupees, rape and other such serious crime. I also asked whether force had been used on such persons to extort information or evidence relevant to the crime committed; whether force or physical intimidation had been used to obtain information on the weapons used for the murders or to trace the stolen/defrauded loot. The answer was negative. 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.

The irony of the situation is then, that torture had been directed against the weakest sections of society – the sections that needed the highest protection from the state.

At the end of my address I shared with the participants my experience as a criminal investigator where I successfully investigated and obtained convictions, amongst other serious crimes, the convictions for crimes committed by the insurgents of the North East as well as the South, after obtaining valuable information from the suspects themselves and without threats or physical intimidation or abuse. I also explained to them the in-depth training we received in the Criminal Investigation Department on investigational techniques. They then identified lack of training on investigational skills as another key factor for perpetration of torture.

¹⁶⁹ DIG Legal of the Sri Lanka Police Department

In my experience of 37 years in the Police Department, (of which more than 20 years had been as a CID investigator), I found that the principal cause for torture of suspects appears to be the absence of legal representation when a suspect is produced before a Magistrate at the very first instance. It should be noted here that I do not emphasize access to legal representation whilst in police custody as there is no provision in the current law to entitle a suspect in police custody to have recourse to legal representation.

Although the criminal law is founded on the cardinal principle of “presumption of innocence” as enshrined in Article 13(5) of the Constitution, Article 13(3) provides 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. However Article 13(3) is silent on legal representation whilst in police custody and this Article has been interpreted to mean that suspects are entitled to legal representation only in court. However notwithstanding the above, since there is no expressed legal or departmental regulation that prohibits suspects being afforded the opportunity of legal representation whilst in police custody, the police are free to exercise their discretion selectively and subjectively, and without being faulted, as to which suspect could be given this privilege.

My past experience has shown that it is invariably the privileged class that is afforded such concession. More curiously many of the people falling into this category, even though they may have committed the most heinous crimes, enter private nursing homes before being taken into custody and remain there until the appropriate court grants them bail. Thereby they avoid the distress of even brief confinement in police cells or remand.

In contrast, in the case of the less privileged, not only is physical intimidation the norm during questioning, but especially where injuries have been inflicted on suspects during such investigations, the injured suspects are held incommunicado and produced before the magistrate, not in open court, but in the Magistrate’s bungalow, after adjournment of court. This is done because if suspects are produced in open court, the suspects have the opportunity to complain directly, or through a lawyer of the trauma and physical abuse they have been subjected to and the Magistrate could also note the injuries and call upon the police to explain. To ensure that there are no lawyers present when such suspects are produced at the bungalow of the Magistrate, a macabre cat-and-mouse game is enacted where the suspect’s relations and lawyers are given misleading information as regards the time and the particular Magistrate before whom the suspect is to be produced.

Moreover, when suspects are taken to the Magistrates’ bungalows, the Magistrates are understandably disinclined to have suspects, who are mostly with criminal background, to be brought into their private dwellings. The police use this opportunity to their advantage, and leaving the suspects in vehicles on the road, only take the reports before the Magistrates and obtain the magisterial orders thereon. Thus the police avoid the Magistrates noticing the injuries, or preclude the suspect complaining to the Magistrate of any ill treatment. Another reason why suspects do not complain to a Magistrate, even in the rare instances where they are produced before one, is because after the Magistrate orders remand, the suspect is handed back to the police to be taken to remand jail. Under these circumstances the suspects naturally entertain fears that they will be subjected to further harm of a graver nature, if a complaint of ill-treatment is lodged with the Magistrate.

Producing suspects in Magistrates’ bungalows assumes graver concern when innocent persons, are remanded without being given an opportunity to be heard either in person or through a lawyer. The moment an innocent person, especially a youth, is unjustly incarcerated even for a single day, he loses all confidence in the legal and judicial system and develops hatred, contempt and bitterness towards the establishment in particular and society in general. This is one of the foremost reasons for youth to rebel and resort to anti-social behaviour.

A further controversial issue has been the production of suspects for examination before medical officers. In several instances where suspects have complained of torture, the police have held that the suspects were subjected to a medical examination before being remanded and that the medical examination revealed no injuries. The police contention has been refuted by the victims of torture, who have alleged that they were never produced before a doctor. A case in point is when the Attorney General recently directed me to interview and re-record the statements of five doctors of whom, the doctor who first examined the victim reported not observing any injuries whereas the other four doctors, who examined the victim subsequently, found grievous injuries on the victim.

When the first doctor was questioned in minute detail he admitted that he could not say with certainty that the youth whom he examined was in fact the youth purported, by the police, to be the suspect taken into custody for the crime committed. This is because he, the doctor, did not ascertain the identity of the suspect he examined, by checking his identity card or by taking his fingerprints on the Medico-Legal Examination Form, for record and for future comparison, if a question as regards identity arose. The prevailing situation as regards misrepresentation of identity exists because there is no compelling requirement in the Medico-Legal Examination procedure to make it mandatory for a doctor to have a record of the identity of the examinees produced before him.

Suggestions:

As discussed earlier, there is no legal provision under Sri Lankan law to enforce legal representation at a police station though the facility is available in most developed countries. Since the Sri Lanka Police lack the hi-tech resources and advanced technical skills available to their counterparts in the developed world, it would be a reasonable requirement for the police to have exclusive custody of the suspect, for their initial investigation without the interference of lawyers for a maximum period of 24 hours, or 48 hours as the case may be according to the recent amendments to the Code of Criminal Procedure Act.

However, the thrust of my contention is that after the police complete their investigation and just before they produce the suspect before a Magistrate, the suspect should be granted access to a lawyer, who could explain, to the Magistrate, the suspect's case -- for example if the suspect has an irrefutable and obvious alibi -- and/or the ill-treatment he had been subjected to. Since Magistrates are averse to suspects being brought into their residences it would be prudent to have an Acting Magistrate available in court after adjournment of court. I suggest that Colombo be identified for the pilot project where one Acting Magistrate could act, after adjournment of court, on behalf of all the Magistrates in Colombo. This could be extended to other parts of the country after improving on the shortcomings that may surface in the pilot project.

To ensure legal representation, it should be mandatory, that the police should be required to inform the relevant Magistrate by fax, details of the suspect arrested and at least six hours prior to their production before such Magistrate, the time they would be produced before the Magistrate. Arrangements must be effected to have such information exhibited at the relevant Magistrate's Court. This would grant an opportunity for friends or relations of the suspect to retain a lawyer to interview and represent the suspect when the suspect is produced before the Magistrate.

For the "Equal Access to Justice" project of the United Nations Development Programme and the Legal Aid Commission to be effective and meaningful, access to legal representation must be available when a suspect is produced in the very first instance, before a Magistrate. The prevailing concept of providing free legal assistance to the needy, does not address the issue where, under the circumstances described above, the chances are greatest, especially in cases of torture, that grave injustice is caused the very first instance the suspect is produced before

the Magistrate, where the risk of remand of a totally innocent person is real and the probability of injuries going unnoticed, is high.

The proponents of free legal assistance to the needy envisage a mechanism where contributions under this scheme would come in only when the suspect is charged in court. But by the time a suspect is produced in court, he has already been through the trauma and injustice perpetrated during the initial period of incarceration. Once arraigned in court, the process reduces to a formality of the accused being found guilty or innocent. The infringement to a suspect's human rights has already taken place before a suspect is charged in court. If the proposed "Equal Access to Justice" system provides for access to legal aid as described above, such a system would be an effective deterrent to human rights abuses.

Therefore the concept of "Equal Access to Justice" should necessarily begin at that very inception of the procedure – else it would be a matter of too little being done too late. It would be prudent for legal aid lawyers to be available in the court of the Acting Magistrate after adjournment of court, to give legal assistance to the needy. Such presence will also facilitate the handing over of the suspects directly to the prison authorities, who should be required to be present at the Acting Magistrate's court. This procedure will address the problem where suspects are handed back to the police, to be taken to remand prison.

As regards examination of a suspect by medical officers, the medical officers should be required to denote the Identity Card particulars, where available, of the suspects examined in the Medico-Legal Examination Form and the medical officer should be required to obtain, on the Medico-Legal Examination Form, the left thumb impression (or in the case of mutilation of left thumb, the right thumb or any other accepted physiological feature), which could be used at a later date to ascertain whether the suspect was in fact the person who had been originally produced for examination.

Apart from the above, the importance of training the police in investigational skills is another key factor, which will contribute to the reduction of the chances of perpetration of torture in obtaining information from the suspects. The examples and arguments presented above make it obvious, that if excesses by law enforcement officers are to be discouraged, the concept of Equal Access to Justice should necessarily begin from the first instance the suspect is produced before a magistrate, else such concept will have little or no effect in upholding the human rights of suspects taken into custody.

'Information can be elicited without torture'

The writer joined the Police Department as a Probationary Sub Inspector in 1968 and was absorbed to the Criminal Investigation Department in 1972 where he served for more than 20 years and received his promotions up to the rank of Senior Superintendent of Police. During his tenure in the CID he investigated all types of serious crimes both locally and internationally. Amongst the cases investigated, of significance were those committed by insurgents, not only from the North-East but also from the South. As regards the North-East insurgency cases, under investigation by the writer, a senior member of the group gave information as to where Rs. 3.1 million of the Rs. 8.1 million robbed from Neerveli Bank was buried. Subsequently at the trial, he specifically mentioned that of the officers, who conducted the investigations, the writer was one who conducted his investigations without assault or duress. In a separate case the writer apprehended three armed members of the North-East insurgent group, who were fleeing after a bank robbery in Chenkalady in 1977 and recovered the loot. At the 'voire-dire' inquiry the suspects did not complain of assault while they were in the custody of the writer. The suspects were found guilty and sentenced to five years rigorous imprisonment.

As regards the southern insurgency, a principal suspect, who confessed to the writer of murders, robberies and abductions and who was in police custody for more than two weeks in

1987, summoned the writer as a matter of urgency one evening. The suspect told the writer that though he had confessed to the writer about the many crimes committed, he had withheld a vital piece of information and that this had troubled his conscience. The suspect then informed the writer of an impending attack on a military installation close to Colombo. The information given concerned an attack that took place the very next night, where the Kotelawala Defence Academy was attacked and nine soldiers killed and their weapons stolen. The same night, the Katunayake Air Force Base too was attacked. Two insurgents were killed in this incident.

In all the instances, the suspects gave the information on a voluntary basis. The writer would like to point out that he was also never subjected subsequently, by the organisations concerned, to any intimidation or threat arising from his investigations. The writer wishes to place on record that the events described amply illustrate the point that, culpable and admissible information vital to the case can be elicited from suspects without the use of force.

Appendix 7: Sri Lanka: the Human Rights Commission's anti torture policy-- an interview with Radhika Coomaraswamy¹⁷⁰

Last month REDRESS' Lorna McGregor met with **Dr. Radhika Coomaraswamy**, Chairperson of the Sri Lanka [National] Human Rights Commission (HRC) headquartered in Colombo with regional offices around the island, to ask her about its anti-torture work.

Editorial Note: Since 2002 the Government of Sri Lanka and the LTTE (Liberation Tigers for Tamil Eelam, commonly referred to as the 'Tamil Tigers') have been engaged in a peace process (which is currently stalled) to end years of protracted conflict. Throughout the conflict and even under the ceasefire, both sides have committed serious violations of human rights and humanitarian law. Against this background, the [National] Human Rights Commission (HRC) adopted an Anti-Torture Policy, due to the endemic nature of the abuse.

Can you tell us a little about the background to the Human Rights Commission's anti-torture policy?

Dr. Coomaraswamy: Over the last two years we have had an increase in the daily number of torture complaints. I don't know whether this is due to an increase in the actual number of torture cases taking place or because of an increase in the reporting of such cases, as there are a number of very active international and national NGOs in Sri Lanka now working in this area. Either way, we felt that we should urgently respond to this situation, so we adopted a zero-policy on torture. Furthermore, our discussions with the police and other individuals and agencies have revealed that the police had not really been trained in basic investigative skills. For some reason, the training was more of a paramilitary nature. Torture is often a short cut to getting information, and as a result it is systematic and widespread.

What are the main elements of the anti-torture policy?

Dr. Coomaraswamy: The first priority is to investigate all complaints of torture within twenty-four hours. In the south of Sri Lanka complaints are skyrocketing. We don't receive many torture complaints from the north. Since the ceasefire we have much fewer complaints against the security forces, probably as a result of the presence of counter-veiling forces, such as the LTTE. Both sides are much more careful. We don't receive many torture complaints against the LTTE either, although we receive many complaints about abduction and child-recruitment which we report to the Sri Lanka Monitoring Mission and the LITE offices, which have their own complaints' mechanism. From 1 March 2005 we have set up a special unit to inquire into torture allegations as quickly as possible, and to try to deal with any backlog of torture cases within three months. The backlog will address cases brought before the NHRC over the last year.

Procedurally, we first investigate complaints made by survivors. As there are now strong NGOs in Sri Lanka, such as People Against Torture, and the Asian Human Rights Commission (which has offices throughout the country), survivors usually

¹⁷⁰Redress, Issue 5/May 2005

come to the NHRC through an NGO. Following our initial investigation, there is an inquiry at which both parties are present. The process takes up to a year, but regrettably survivors are often not able to find out the progress of their case due to lack of resources. We also don't have a clear policy on protection and that is something that has been raised, but again we don't have enough resources. We intervene to make the police provide protection. At the end, the NHRC as an informal body makes recommendations.

Is the NHRC now involved in police training?

Dr. Coomaraswamy: We have had discussions with the Inspector General of the Police on training and investigative methods for the police.

What other steps have you taken to improve police behaviour?

Dr. Coomaraswamy: We have tried to educate both the police and the public about the rights of persons during detention. We have put up posters in every police station advising suspects of their rights. To an increasing extent we have agreed with the police that families and lawyers can visit detainees. There was previously some controversy about that. We also make surprise visits to police stations, which we are now doing in a widespread manner. We find all kinds of things, especially in the police barracks, like blood on the floor.

We have suggested to the Police Commission that when the Supreme Court makes a finding against a person following torture allegations, that it affect their promotion. [The Supreme Court can find a human rights violation and ask for compensation to be paid, based on affidavits filed]. The police have argued, however, that as the finding is made at the Supreme Court level, there is no fact-finding process in the sense of a trial - it is all done on affidavits - so their officers are not given a fair hearing. They say that promotions should only be affected if there is a conviction of torture through a criminal conviction, with which we disagree.

How does the new anti-torture policy work in respect of compensation for torture victims and the prosecution of offenders?

Dr. Coomaraswamy: Under previous human rights commissions, complaints were dealt with by way of mediation, and compensation was paid in lieu of prosecution. We stopped that practice. Now we still recommend compensation but we also send all the materials and facts we have gathered to the Attorney General for prosecution. In terms of compensation, we recommend that both the police and the individuals concerned pay compensation and we try to make the compensation substantial - given the realities of Sri Lanka, of course. The problem is that previously there was a willingness to pay the compensation because of the guarantee of non-prosecution. For the last three months we have begun recommending compensation and prosecution, so we don't yet know whether people will actually pay. For survivors of torture, our regional officers claim that many are less concerned about prosecution and more concerned about compensation. Many are perturbed by this shift in policy because they need to pay for their health needs. They are worried that they won't get anything, whereas under the old system they could be more or less guaranteed some measure of compensation. They favour compensation because of their belief that prosecution will not occur.

The Attorney General's department has indicted thirty-three alleged perpetrators of torture, and there has been one conviction so far, in August 2004. Given the number of complaints we receive - at least two or three a day - you can see prosecution is not taking place. Those indicted are also mainly lower ranking officers. But things are moving. We passed the Torture Act in 1999, and for some years nothing happened. Now at least there is movement.

What would you say have been the HRC's main successes, and what are still the main challenges in the struggle against torture in Sri Lanka?

Dr. Coomaraswamy: I think torture is so endemic that it is going to take a long time before we turn the tables, but to some extent at least the NHRC has created some kind of restraint. The police are aware of the HRC's role. But that has also created a backlash. The police are hostile to us. I am very worried about extrajudicial killings; recently there have been eighteen cases of shootouts with the police. The challenges are really training the police force in a way that makes it a community police. **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.**