

**An X-ray of the
Sri Lankan policing system
&
torture of the poor**

Editors

Basil Fernando
Shyamali Puvimanasinghe

Asian Human Rights Commission

Asian Human Rights Commission 2005

ISBN 962-8314-25-4

Published by

Asian Human Rights Commission (AHRC)
19th Floor, Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon
Hong Kong, China
Telephone: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: ahrchk@ahrchk.net
Web: www.ahrchk.net

September 2005

Printed by Clear-Cut Publishing and Printing Co.
B1, 15/F, Fortune Factory Building
40, Lee Chung Street, Chai Wan, Hong Kong

Table of Contents

Preamble : Three Reports on Police Torture	1
Introduction	5
Chapter 1 : Towards Eliminating Crime and Criminal links within the Policing System	19
Chapter 2 : Kadirgamar Killing Highlights Police Crisis	24
Chapter 3 : Women Speak Out: Interviews with Four Women	28
Chapter 4 : Equal access to Justice: Where Should it Begin to Ensure Human Rights?	52
Chapter 5 : Gerard Perera: One Man's Courageous Fight for Justice	60
Chapter 6 : Calling for an Inquiry to Probe into the Security Lapses that Resulted in the Assassination of Judge Ambepitiya	66
Chapter 7 : Case Reports	69
Chapter 8 : The Sri Lankan Police: A Historical Perspective	156
Chapter 9 : Tales of two Sri Lankan Massacres: The relevance of Embilipitiya to Bindunuwewa	164
Chapter 10 : The tussle between the Executive President and Public Authorities	172
Chapter 11 : The 1978 Constitution: Its Foundation is Flawed	181
Chapter 12 : Paranoia of Regimes in Power	193
Chapter 13 : Delays in Adjudication	199
Chapter 14 : Absence of Witness Protection	213
Chapter 15 : Collapse of Command Responsibility	240

Chapter 16 : Absence of Forensic Facilities	255
Chapter 17 : A Street Movement for Justice	273
Chapter 18 : A question and answer from the European Commission on Human Rights in Sri Lanka	277
Annex One : A sample of AHRC correspondence with local and international authorities	280
Annex Two : Janasansadaya responses to CAT	303

PREAMBLE

Three Reports on Police Torture

This is the third report produced on police torture and other abuses in Sri Lanka by the Asian Human Rights Commission (AHRC) and its sister organization, the Asian Legal Resource Centre (ALRC). The first report entitled *Special Report: Torture committed by the police in Sri Lanka* was published in the ALRC's bi-monthly publication *article 2*, vol. 1, no. 4 in August 2002. The second report entitled *Second Special Report: Torture and the collapse of policing in Sri Lanka* was published in the February 2004 edition of *article 2*, vol. 3, no. 1. Both of these may be found online at www.article2.org. They were widely circulated both in Sri Lanka and elsewhere. The reports were also submitted to all relevant state agencies in Sri Lanka as well as to relevant UN and other international agencies.

Together, these three reports present a significant number of cases establishing a pattern of systematic torture taking place at police stations and during routine criminal investigations throughout Sri Lanka. The cases are more than sufficient for a serious theoretical study into the nature of policing in Sri Lanka and also on the widespread practice of torture at police stations. That these reports have been shared with all concerned state authorities and have been well publicised within and outside the country supports the veracity of the contents. Furthermore, certain UN agencies, including the UN Special Rapporteur against Torture, have taken up many of these cases with the Sri Lankan government; the Rapporteur has reported on such correspondence in his reports to the UN Commission on Human Rights.

All three publications have included articles analysing the issue of police torture from different angles. Many of these articles have been separately published both locally and internationally, and have never been challenged.

In fact, in discussions with various state authorities on several occasions the contribution of these articles has been appreciated.

The factual material and analyses presented in these reports can give rise to serious studies in many fields such as political science, constitutional studies and sociological studies. The reports may even help to initiate new approaches to the study of Sri Lanka's political, social and cultural problems. Such studies are very much needed, if only to prevent the current shallow discussions that take place. The insights gained from the study of one of the primary institutions in the country—the police—can shed light on most other problems in Sri Lanka.

In presenting this material for research, a simple fact about theory that is often forgotten in theoretical discussions on human rights must be stressed. In the words of Carl G. Jung,

Since self-knowledge is a matter of getting to know the individual facts, theories help very little in this respect. For the more a theory lays claim to universal validity, the less capable it is of doing justice to the individual facts. Any theory based on experience is necessarily statistical; that is to say, it formulates an ideal average which abolishes all exceptions at either end of the scale and replaces them by an abstract mean. This mean is quite valid, though it need not necessarily occur in reality. Despite this it figures in the theory as an unassailable fundamental fact. The exceptions at either extreme, though equally factual, do not appear in the final result at all, since they cancel each other out. If, for instance, I determine the weight of each stone in a bed of pebbles and get an average weight of 145 grams, this tells me very little about the real nature of the pebbles. Anyone who thought, on the basis of these findings, that he could pick up a pebble of 145 grams at the first try would be in for a serious disappointment. Indeed, it might well happen that however long he searched he would not find a single pebble weighing exactly 145 grams. The statistical method shows the facts in the light of the ideal average but does not give us a picture of their empirical reality. While reflecting an indisputable aspect of reality, it can falsify the actual truth in a most

misleading way. This is particularly true of theories which are based on statistics. The distinctive thing about real facts, however, is their individuality. Not to put too fine a point on it, one could say that the real picture consists of nothing but exceptions to the rule, and that, in consequence, absolute reality has predominantly the character of irregularity.

Within global human rights discourse the 'ideal average' that is often used is the experience of economically and politically more developed countries. However, these experiences cannot facilitate an understanding of harsh realities in other countries. For instance, how do the 'ideal average' policeman, prosecutor, judge or government compare with their counterparts described in these three reports on Sri Lanka? Should this material be dismissed because the experiences described are different to the theoretical ideal average? Or, should the reality described here be taken as a challenge, indicating the need for greater global understanding and cooperation?

The purpose of these reports is to generate discussions on policy development, which is greatly needed to address the social instability and insecurity prevalent in Sri Lanka. At present such discussions are largely based on political doctrines without being supported by any serious studies. This merely serves to confuse the issues and contributes to the encouragement of various forms of violence. The dominant discussion within the country during the last few years has in fact legitimized the use of violence by the state, particularly the extrajudicial killing of alleged 'criminals' or 'anti-social' elements.

It is also important to bring a more rational discourse on Sri Lankan problems into the international discourse regarding development theories and conflict resolution studies. All three of these reports make clear that Sri Lanka cannot make headway towards economic and social development without resolving the colossal crisis faced by its law enforcement agencies. This is also true of conflict resolution, including ethnic conflict. It should be noted that in the development of insurgencies both in the South and in the North, the nature and practices of the Sri Lankan policing system played a key role. For this

reason, the problem of policing cannot be ignored in resolving the many political and economical issues plaguing the country.

These three reports are thus presented for serious consideration and discussion in the hope that a thorough debate may develop on policing and the conduct of criminal investigations through the torture of the poor in Sri Lanka.

We take this opportunity to thank the victims of torture whose stories are narrated in these three reports, for their courage in coming forward and publicly sharing their suffering. Their voices as heard through these reports are indicative of the way Sri Lankan society is slowly breaking away from the culture of silence that has prevailed over the centuries. Many of these victims have paid a heavy price in daring to come forward and speak out; Gerald Perera, who wanted his case to be a lesson benefitting others, was finally assassinated. Many others suffered further torture after speaking out. A number of persons had to leave their homes and villages to avoid being attacked or killed by their torturers.

There are many community organisations in different parts of Sri Lanka that came to the assistance of these victims and willingly undertook risks in doing so, which must also be recognised. In fact, without the efforts of these groups, the stories of routine brutal torture would remain unknown. It is these groups and individuals who have initiated a movement to actively protect human rights within the country. Finally, we recognise and express appreciation for the numerous persons outside Sri Lanka who have played a vital role in the development of this movement, in many instances with considerable sacrifices; daily reporting on these issues through the Internet and other means became possible largely due to their support and interventions. In this way, not only has a local movement been created in Sri Lanka, but a successful model of human rights work has also been initiated, which can be used in countries with similar economic, political and social problems.

Asian Human Rights Commission



Introduction to the Third Report

This third report is similar to a medical report indicating the extent and nature of a person's illness. A medical report also suggests the type of cure needed. In this way, details of an organisation's behavior patterns can also indicate the weaknesses and flaws of that organisation.

This report is not an attempt to apportion blame or cause shame. It is also not an attempt to condemn. Like a medical report, it is only a disclosure of the major causes affecting Sri Lankan society through the spread of illness within one major organ of society, the police force.

To think that the illness is about the policing system alone would be to think of a heart disease only as a problem of the heart. But if the heart fails, the whole body dies. Similarly, illnesses that affect vital organs of a society, affect the society in its entirety. This report is thus based on the assumption that the defects of the policing system affect the entire society. In looking for solutions to other problems within society, it is therefore essential that the problems of the policing system be addressed. Beliefs that other problems, such as the issue of ethnicity, are more pressing and that the problems of the policing system can wait are not rooted in reality.

That this report is launched at the time of a presidential campaign in Sri Lanka is purely coincidental. However, value may be added to the report if public discussion on fundamental problems affecting justice, the rule of law and stability in Sri Lanka is generated at this time. It is our contention that future political leadership in the country will not make even an inch of progress, unless serious consideration is given to the problem of law enforcement and radical reforms are undertaken. While most presidential candidates are probably unaware of the problems facing law enforcement,

political insight and a determination to put things right will be the test of success for anyone elected to power in the future. History will remember all post-1978 presidents as having contributed to the destructive political and social instability of the country. Therefore, the challenge of future leaders is either to undo such destruction or to be undone by the forces unleashed *by* such destruction. This is not a prediction, but simply a statement of fact that every Sri Lankan citizen is aware of.

This report, similar to the two previous reports, includes details of a number of torture cases reported to the Asian Human Rights Commission. This report includes more than 60 such cases. The stories emerging from these cases refutes any argument that may be put up in favour of the type of policing that exists in Sri Lanka (*see p28-155*).

These cases also establish patterns of torture: one is where police investigations begin with the use of severe torture in order to “obtain the truth” and another is where torture is practiced merely as an abuse of power. Both of these often conclude with the fabrication of court cases.

In cases where persons are tortured allegedly for the purposes of interrogation we see the following pattern—individuals are arrested without sufficient grounds, often on insubstantial information, without a warrant and without being given the reasons for arrest. For instance, as revealed in the Supreme Court in *Gerald Perera’s Case* (*see p60*), the insubstantial information relied upon by the police was that a person named ‘Gerald’ was involved in a crime. Hence, the first ‘Gerald’ the police came across they arrested and mercilessly assaulted—to such an extent that he suffered renal failure and was unconscious on a life support system for two weeks. Other cases are worse, such as the case of 17-year-old *Chamila Bandara* (*AHRC Urgent Appeal; UA-39-2003*), where the police had no other evidence than that some young boys were involved in stealing bunches of bananas. In pursuance of their ‘information’, the police arrested several young boys living in the area and severely beat them, all the while questioning them about their involvement in any thefts. The aim of the police in these instances seems to be to seek any information at all, which could somehow be used

in solving crimes they have hereto been unable to solve. Even if they are unable to extract any information, most victims are willing to confess to any crime and sign any statements after their brutal torture. The police then proudly produce them before courts as suspects of unresolved crimes in the vicinity. Sometimes these tactics result in tragedy. The case of a 52-year-old man, *Hettiarachchige Abeysiri (UA-122-2005)*, who died on 14 July 2005 as a consequence of being tortured during an inquiry into the alleged theft of a cordless telephone is one such example.

Another observed pattern in the practice of torture during interrogation is the rounding up of all those who have criminal records. These persons are then severely beaten, in order to induce them to admit to new crimes. The case of *Palitha Tissa Kumara (UA-18-2004)* is indicative. This type of case is extremely dangerous as the victim's previous criminal record creates the impression that the police have solved the new crime.

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

The second pattern of torture involves people being beaten up purely as a result of abuse of power. To illustrate, a three-wheel cab driver who was slow in stopping his vehicle after being asked to by police officers was kicked and tortured to death (see *UA-64-2005 re D.W. Munasinghe*); The owner of a motorcycle—which was mistakenly taken by two police officers—was assaulted with an iron rod and suffered a leg fracture for asking for its return (see *UA-136-2005 re Rohitha Upali Liyanage & friend*); A former illicit liquor seller trying to lead a normal life was beaten up because he refused to cooperate, as in the past, and admit to new charges (see *UA-135-2004 re R.A. Hemasiri*); A torture victim was beaten up in an attempt to

pressurise him to withdraw his complaints (*see UA-122-2004 re S.C.P. Fernando*); A man engaged in construction had hot water poured on his thighs by a police officer acting on the instigation of a neighbour (*see UA-07-2004 re J.V. Saman Priyankara*); A husband was beaten up by a policeman involved in a family dispute at which the police officer took the side of the wife (*see UA-96-2005 re H.H. Priyadarshana Fernando*); A cashier who demanded that police officers pay for their food was severely assaulted (*see UA-53-2005 re M. Riyas and M. Arsik*); and a manager of a restaurant who refused to sell liquor to some policemen on Poya Day—a day on which selling liquor is prohibited by law—was beaten so severely that he died of his injuries (*see UA-132-2004 re H. Quintus Perera*).

National instability – policing problems and torture

The central theme of this third report is that the problem of policing is a fundamental national issue, which is linked to the present instability in Sri Lanka. This theme is introduced through an open letter recently written to the Most Venerable Mahanayake Thero of Asgiriya and the Chief Justice of Sri Lanka (*p19*). The bitter experiences and strong feelings that have been provoked by the crisis in policing are reflected through a series of interviews with women directly affected by the crisis (*p28*). That torture is only used on the poor is reflected in an article by a senior police officer (*p52*). An article on the assassination of Gerald Perera, a victim who was to give evidence in a torture trial was shot one week before he was due to testify, reflects the depth of the problems faced in dealing with this issue (*p60*). Statements on the killing of a High Court Judge in October 2004 (*p66*) and the assassination of the Foreign Minister in July this year (*p24*) pursue the same theme.

Revisiting history

Included in this report are also several articles that attempt to explain how the current policing situation was made possible. Sri Lanka has had a historical tradition of terrorizing the ordinary people as a mode of social control. Cesare Beccaria, in an essay written in the late 18th century on crime and

punishment, made note of people who had hardly emerged from barbarity using severe punishments. In Sri Lanka as well, similar to many countries in those times, such severe forms of punishments were used.

In Sri Lanka however, this practice of severe punishments did not come to an end. It continued through colonial times and still continues via the policing system. The change into rational modes of social control through law and order, affording due respect to citizens, did not take place in the country. Therefore, while laws were introduced on the one hand, barbaric practices of dealing with the population continued on the other (see *'Sri Lankan Police: An Historical Perspective'*, p156). In times of crisis, unmitigated powers were then given to the armed forces and the police to terrorize the people with large-scale killings and other forms of cruelty. The enormous fear such acts instilled in the population made people so afraid that they were even willing to hand over their children to armed forces personnel, well aware that their children might be inhumanly tortured or even caused to disappear (see *'Tales of Two Sri Lankan Massacres...'* p164). Additionally, in recent times, particularly since 1978, even the limited development of public authorities collapsed with absolute power being handed over to the Executive President. The model of authority introduced through the 1978 Constitution resulted in a state of anarchy in the country, inevitably affecting the policing institution as well [see *'The tussle between the Executive President and Public Authorities'* (p172), *'The 1978 Constitution: Its Foundation is Flawed'* (p181) & *'Paranoia of Regimes in Power'* (p193)]

Aggravating situations

A series of statements and other publications previously issued by the AHRC is included in this report as follows:

- **A backward prosecution system**

Sri Lanka's prosecution system, organised under the Attorney General's (AG) department, is extremely backward and ill-staffed, and in the years following 1978 went through some negative transformations, the impact

of which still remain. The system has not substantially changed from the time of its establishment during British rule, while vast changes have taken place in prosecution systems worldwide. A major weakness of the system is that the prosecution depends entirely on police inquiries. Thus if 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 described in this report, the prosecution system is bound to suffer severe setbacks.

An attempt that was made to create an independent prosecutor's branch in the early 1970s, was scrapped after 1978. The present Attorney General himself has publicly admitted that he does not have a sufficient number of staff to successfully deal with the department's workload. As a result, there are enormous delays before the department is able to file cases in court. 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 Attorney General's department actually engaged in assisting those police and armed forces officials named as Respondents in Habeas Corpus applications. These officers advised the police and military to file false affidavits before the courts. This undermined the respect the law enforcement agencies held for the AG's department, which is essential in maintaining the independence and integrity of the department. Furthermore, following the 1978 Constitution all public institutions were in some way politicized, and the Sri Lankan Attorney General's department was no exception (*See p199 and also Annexes One & Two*).

- **Delays in adjudication**

Delays in Sri Lanka's justice system are well known and widely discussed. However, less widely discussed are how such delays are a major factor contributing to the country's social insecurity and violence. Delays in adjudication put parties who go before court in great danger by way of reprisals. They allow enormous space for corruption and encourage people to seek alternate methods of settling disputes—more often than not, violent

methods (*Several statements published by AHRC and pertaining to this topic are at pp199-212 of this Report*).

- **Absence of witness protection**

A complete absence of witness protection is one of the reasons why torture victims and victims of other human rights abuses are mortally scared to complain about their grievances or to pursue their complaints. No justice system can function when complainants and witnesses do not want to pursue their complaints. In a series of statements and letters to the Sri Lankan authorities this issue has been highlighted by the AHRC (*See pp213-239 and also Annex One*).

- **The collapse of command responsibility**

A monolithic system such as the police force can maintain internal discipline only by top-ranking officers of the force taking a firm position on matters relating to the discipline of all policemen. Internal discipline within the police however, has all but collapsed. The so-called inter-departmental disciplinary inquiries are looked upon with cynicism by both the people as well as the police officers themselves. By and large, the morale of the top-ranking officers is low. Subsequent to the enactment of the 17th Amendment to the Constitution, disciplinary control of the police force is a function of the National Police Commission (NPC). However, in maintaining disciplinary control over the police, the NPC has proved woefully inadequate. While the NPC states that the Inspector General of Police and other high-ranking officers resist its attempts to take disciplinary action against errant policemen, the justification given for this resistance is that such action would 'demoralize' the police. This argument is ludicrous.

The resistance to discipline leads to the conclusion that perhaps the behaviour of the police, as described in the cases within this report, is acceptable within the policing institution. Connected to this behaviour are the close links between criminal elements and police officers, including senior officials. Thus, the problem is much deeper than it appears (*See pp 244-254*).

- **Absence of forensic facilities**

Incompetence in handling criminal investigations is a commonly admitted reason for police failure. Higher-ranking police officers themselves have claimed that they do not have forensic equipment or training. In fact, the overall approach to the introduction of forensic science into the country remains poor; forensic pathologists are available only in city hospitals (*See pp255-272*).

The following suggestions for reforms are made subjected to the overall considerations mentioned above.

For the prevention of torture:

- **Arrest and production in court**

- Making 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.

- A 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 Judicial Medical Officer.

- Where a Magistrate has reason to suspect that torture has been inflicted, he should inform the Deputy Inspector General (DIG) of the area and request an independent inquiry. The findings of such an inquiry should be submitted to the court.

- 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 to the Magistrate, giving the nature of the charges and other information required by the Criminal Procedure Code of Sri Lanka.
- Where there are sufficient grounds to believe that any suspect 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.
- **Investigations under the CAT Act (Act 22 of 1994)**

When any of the government agencies such as the IGP, NPC, AG, HRC, and 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 Special Investigation Unit should be allocated sufficient staff to deal with torture complaints.

- **Indictments**

Indictments under the Anti-Torture Act should be filed by the Attorney General within the shortest possible time on the completion of inquiries and in no instance should there be any delay beyond three months. On the filing of indictments the Attorney General'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 Human Rights Commission (HRC) of Sri Lanka. When intimating the filing of an indictment, the Attorney General'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.

Furthermore, the 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.

- **Community protection**

Community organisations must be set up in every locality for the protection of witnesses. A nation-wide volunteer group should be formed to intervene when people are being tortured or witnesses are being attacked. Such volunteer groups have proven effective in other countries. The community groups must also be trained to use telephones, fax machines and email facilities to communicate information regarding rights violations and to seek assistance from local and international organisations. A major effort must be made by local human rights organisations regarding victims of human rights abuses who have to flee their villages and homes due to death threats and other dangers from police perpetrators. The sheer inhumanity of law enforcement officers pursuing persons who have made complaints against them needs to be addressed if any meaningful action is to be taken for legal redress against human rights abuse by police officers.

Regarding other matters, there are many recommendations contained in this report. However, all such recommendations either about the National Police Commission or the Attorney General or even the Human Rights Commission of Sri Lanka will merely remain of academic value until some basic scheme for affording protection is developed for the victims of torture and other human rights abuses.

In the near future, the defense of people's basic rights will not come from the Attorney General's department, or other institutions of justice. The main initiatives must come from the people themselves. People have little choice in this matter; either they continue to suffer under the yoke of a failed police system or they take an active role in reforming the system.

Solutions:

It would be naive to talk about easy solutions to the problems discussed in this report. It may first be useful to briefly outline the obstacles that exist in bringing about such solutions.

- **The lack of decision-makers and problem-solvers**

The problem that citizens face in terms of proposing solutions is that they no longer know to whom such proposals should be addressed to. Who is willing to listen, has become one of the major concerns for the average citizen as well as for any person or group that has some specialized knowledge on the issue. For, if there was someone to listen, enough has already been said and published on the issue of policing. However, in the absence of any authority that has the responsibility to listen and make decisions, what is heard from the countryside is a lamentation that is growing more bitter everyday, and the loss of expectations of any change.

A loss of expectation of change regarding serious problems is itself a grave societal problem. It gives rise to violence and other forms of negative behaviour. Some or even many may take advantage of the absence of authority to resolve grave problems by exploiting the situation. A common feeling of absence of authority to deal with problems is a breeding ground for criminals. While there is lamentation everywhere about the increase in crime in the country, the media that gives expression to such lamentation has not given much thought to asking whether there is any authority to bring about a rational solution to this problem.

Absence of an expectation of a reasonable solution to a problem creates a mental and psychological condition of resignation to accept unreasonable solutions. One such unreasonable solution that is being promoted these days is the encouragement of extrajudicial killings of those who are called “criminals”. Such solutions only aggravate the problem and do not solve it.

Political leadership

Thus, in looking for solutions to the crisis of policing it is essential to address the overall leadership problem in the country that has suffered greatly since the promulgation of the 1978 Constitution. This Constitution has proved what any adult should have known through common sense viz. that no single person can be in charge of a nation. A leader, to be effective must represent a system, and not just him or herself. Rebuilding a system based on political authority is an inescapable task if any problem in the country, including that of the policing system is to be resolved. At a time when another presidential election is being conducted, the whole nation needs to look into this overall loss of authority created by the 1978 Constitution and devise ways of resolving it.

Top-ranking police officers and the NPC

At the institutional level, higher-ranking police officers including the IGP and the NPC should try to address the overall problem of policing in the country in a serious manner and forward their proposals to the political authorities and the people at large. Overall political chaos in the country will not absolve them of their duty to address the problem seriously and tell the government and the people the truth. No one can help an institution that does not want to help itself.

In this regard the tussle between the NPC and top-ranking police officers on matters relating to policing, particularly those relating to discipline within the police force, amounts to a betrayal of the constitutional trust placed on both parties. It is childish to continue this state of tension between the NPC and the top ranking police officers. The Constitution should prevail and both parties should put effort into developing common grounds and utilize the provisions of the 17th Amendment to resolve the catastrophe facing their institution.

The statements of the top-ranking police officers including the IGP show that their responses to the institution's problems are contradictory. On the

one hand, almost everyone openly admits that there is a very serious problem affecting the institution. At a private level they go to quite a length to describe not only what ails their institution but the country as a whole. On the other hand regarding day-to-day administration, they engage in exercises of denial. They would use one case or another where culprit policemen have been arrested to illustrate that they are doing enough to resolve the problem. The lack of frankness in analyzing the problem and the lack of willingness to take serious action, therefore, has diminished the authority of these high-ranking officers themselves in the eyes of others.

Regaining authority will depend on the capacity to stop living in a state of denial. If they put forward their problems genuinely before the people, they will generate sympathy from the people as well as many others in political leadership and the administration to have their problems resolved. If on the other hand persons holding high positions within the policing institution do not think and act collectively but instead decide to go their own way, even exploiting the situation, then the low esteem that prevails among the public will continue. This is not in the interests of anyone, and especially not in the interest of the country.

Opinion makers

Opinion makers – be they intellectuals, media persons or leaders of social organisations in Sri Lanka — have not yet made a serious effort to understand and to articulate the problems of the policing system in Sri Lanka. Somehow this subject is not thought of as worthy of serious consideration by any one of them. There have been some Commissions appointed by the state in the past — such as the Justice J. Soertsz Commission which published its report in 1947, the Basnayake Commission Report published in 1970 and another committee entitled, “*Sri Lanka Police Service: Suggestions for improving its efficiency and effectiveness*,” which published its report in 1995 — to study the problem. However, in terms of the developments which have taken place in Sri Lanka that affect the policing system, it may be said that all these reports are now mostly outdated. Anyway, none of these reports received much consideration nor did they lead to much change. Ever since, thinking

on this subject has not developed much either.

The only development perhaps was the 17th Amendment to the Constitution, which among other things also created a National Police Commission with wide powers to depoliticize the policing institution and to strengthen it. However, even the thinking around this issue remains qualitatively poor. Who can create the debate? Obviously, debates on policing do not begin from the top; that is to say from the state or even the higher ups in the policing system. The only place where the debate can start is from among the affected people in the population itself. In other words, what is required is a popular movement for the reform and improvement of policing and other branches of justice. If such a movement will not take the initiative and attempt to bring the problem to the attention of society, it is very unlikely that much change will occur for the better, in the near future.

The Asian Human Rights Commission and its associates have tried in their small way to bring this message to the Sri Lankan people. By way of constant reporting on torture and police abuse, by supporting victims to pursue their cases, by attempting to create public opinion as well as by regular publication of statements and constantly engaging government agencies on this issue, some work has been done to create a popular debate on the issue. The recent move to launch a street movement for justice (*see p273*) is also motivated by the same desire to achieve this objective.

If people begin to articulate their immense frustrations and demand solutions some form of response is bound to develop from the state. And the sooner this can be made a reality, the better it will be for the people and the state.

Asian Human Rights Commission



CHAPTER 1

Towards Eliminating Crime and Criminal links Within the Policing System

An Open Letter to a Mahanayake Thero and the Chief Justice

19 August 2005

To:

1. Udugama Sri Buddharakkitha Mahanayake Thero
Asgiriya
Kandy
SRI LANKA
Fax: 94 81 2203180
2. The Chief Justice
Supreme Court
Supreme Court Complex
Colombo
SRI LANKA
Fax: +94 11 2 435446

Dear Sirs,

An open letter to the Most Venerable Mahanayake Thero of Asgiriya and the Chief Justice of Sri Lanka - on the issue of crime control

I am writing to you on behalf of the Asian Human Rights Commission (AHRC). The AHRC thought of writing this after seeing a news item today (August 19), which reports of a meeting between the Most Venerable

Udugama Sri Buddharakkitha Mahanayake Thero of Asgiriya and Chief Justice Sarath N. Silva on the occasion of the Chief Justice presenting a copy of a book. The central theme of the discussion at this meeting, as reported in the press, was the need to exercise criminal law more strictly so as to control the rapid increase of violence in the country.

The Most Venerable Mahanayake Thero also expressed his “deep concern over the escalation of violence and killings in cold blood...[and]...that steps should be taken to punish the lawbreakers severely.” The Most Venerable Mahanayake Thero also very wisely observed, “at the rate crime was increasing in the country and the number of persons involved, one cannot imagine the number of persons who are not involved in committing criminal offences”.

The AHRC believes that the public must be receiving this news with great relief as finally important personalities, such as these two men, are openly discussing an issue that is of vital importance to the community. On this important occasion our organisation hopes that you will consider our understanding of what we think is the single most important issue in resolving the crime rate problem in the country.

The AHRC has been closely observing the situation in Sri Lanka for several years and has been writing to government authorities and making statements on this issue on an almost weekly basis. Our organisation also has experience in other countries where similar problems regarding crime have existed but where they have been able to resolve this with a very high degree of success. Our organisation’s headquarters is in Hong Kong where the crime situation in the early 1970s was similar or worse than that in Sri Lanka now. However, to a great extent this problem was resolved and the manner in which it was done is well documented and even exists in websites maintained by the Hong Kong authorities.

The central problem of the elimination of crime is the ability to eliminate crime and criminal links within the policing system. Without facing this issue, whatever other gestures are made, such as allowing the alleged criminals

to be extrajudicially executed or executing the death sentence, is to basically avoid the issue. The determined attempt to intervene with the police by using the various aspects of the machinery of the state so that crime is not tolerated at police stations and criminal links with the police are eliminated, will bear fruit far beyond anything that can be imagined at present. Thus, the matter that was discussed between yourselves was in fact a matter that can be resolved within a very short time and is not a problem that defies solution. However, whether there is sufficient courage amongst those who lead the moral opinion and the judicial intervention in the country, is a matter that can be answered only by persons such as yourselves. So long as such courage is absent, crime will only increase. Filling the already overcrowded prisons will only create further expertise in crime in “universities for the tutoring of crime”, which is what prisons are.

Sri Lankan police stations today are places where crime is tolerated and where almost every week at least one person dies. There is no leadership that is competent nor has it the expertise to pursue crime in a sophisticated manner. This relays to the country that the police are incapable and unwilling to deal with crime. The serious criminals in the country, who do not come from among the poor, but from among those who have accumulated wealth, know that it is easy to bend the will of the police regarding investigations into their affairs. Thus, the powerful elements that are controlling crime have a deep belief that the policing system is unable and unwilling to deal with them. What we say here is surely nothing new to any judicial officer or senior officer in the police, and for that matter, any member of the public as well. We quote below what a Deputy Inspector General of Police wrote recently in a Sunday newspaper:

“I had the privilege of addressing about 100 Inspectors on “Investigation techniques to minimise 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 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 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 and persons of high standing in society, 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; 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.

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 defenseless, they sheepishly admitted it was so.

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

- D.I.G. J. Thangavelu – The Sunday Times, August 7, 2005

It is quite obvious that a policing system that is unable to investigate organised crime and is only capable of dealing with the poorer sections of society will be unable to find a resolution to the problem of crime. The example of Hong Kong demonstrates that in the 1970s an experiment was started where the key component was to first control the crime within the police

before attempting to control society. An entirely new institution (the Independent Commission Against Corruption) was created completely outside the police with wide powers and resources to conduct its work. The application of this principle of eliminating crime by establishing disciplinary control within the police resulted in overwhelming success in Hong Kong.

I therefore urge you, representing on the one hand high moral authority in the country, and on the other, the highest judicial authority, to reflect on the principle that to eliminate crime in the country, crime must first be eliminated from the chief law enforcement agency; which is Sri Lanka's police force.

Thank you.

Sincerely yours,

Kim Soo A
Programme Coordinator
Urgent Appeals Programme



CHAPTER 2

Kadirgamar Killing Highlights Police Crisis

The Asian Human Rights Commission (AHRC) expresses shock and condemns the killing of Sri Lanka's Foreign Minister, Mr. Lakshman Kadirgamar on 12 August 2005. In direct and indirect terms the Government and many other sources have accused the Liberation Tigers of Tamil Elam (LTTE) for the murder. The LTTE has denied this allegation. Though a ceasefire has been in force since 2002, there have been on-going killings, which particularly during the last year, have intensified in the North and East. In more recent months these killings have spilled over into Colombo claiming many lives, including prominent figures such as journalist, Mr. Sivaram, the Chief of the Military Intelligence Unit, Mr. Muthaliff, and now Mr. Kadirgamar. An immediate and thorough investigation has been urged by all concerned so as to bring the perpetrators to justice.

The business community organised under J-Biz, the umbrella organisation of the National Chambers criticised the authorities for the serious break down in law and order and said that the deteriorating security situation is now spilling over into Colombo. The AHRC has been drawing attention to this fact for several years now, by way of reminders almost three times a week to the Sri Lankan authorities, the Inspector General of Police, the Attorney General, National Police Commission and the Human Rights Commission of Sri Lanka. Such letters have also been sent to the President and the Prime Minister. In a newsletter addressed to the Members of the Sri Lankan Parliament, the AHRC has highlighted the deteriorating situation of the rule of law in the country and called for action to be taken to correct this situation. In a newsletter entitled "Command Responsibility" addressed to top-ranking police officers in the country the same point has been made vigorously. In a report submitted to the UN Sub Commission on Human

Rights in 2004 entitled “*Exceptional Collapse of Rule of Law in Sri Lanka*”, the situation of the country was highlighted in more detail. However, no significant action has been taken to improve this situation.

The result of the degeneration of the rule of law is that killings have become easy throughout the country not only for political reasons but also for any reason at all. Out of this situation has grown a strong lobby within the Sri Lankan media for the control of crime. However, instead of addressing the causes of escalating crime, which are basically due to serious defects in the policing system, the prosecution and the judiciary, this lobby mostly cries out for extrajudicial punishments against those who are named as ‘criminals’. The result is that the arrest and murder of ‘criminals’ under the pretext of trying to control those fleeing arrest spread with the connivance of some police officers at the top and the tacit approval of some politicians. This has resulted in the further breakdown of discipline within the policing system, thus depriving the country of an effective mechanism of criminal investigation without which there cannot be any successful elimination of crime.

The ease with which killings are carried out has also been reflected in many deaths and very serious injuries caused to arrested persons at police stations. Sometimes such assault on citizens by the police has been for no reason at all. One such example was the recent case at the Wattedagama Police where two brothers-in-law who were looking for their motorcycle, which was not in the place where they parked it, were attacked by two policemen with iron rods in such a manner that one of the men is now in hospital with three serious bone fractures on his leg which is now set to an external fixator. Also at the Peliyagoda Police Station, a 52-year-old man — who was suspected of having stolen a cordless telephone — was beaten to death by two policemen. Thus, almost every week similar allegations are made against police across the country but no serious action has been proposed by the authorities to correct this situation.

The National Police Commission (NPC), which is the constitutional body created for correcting this situation, particularly by being in charge of

controlling discipline, has complained that it does not receive cooperation from senior police officers and that the necessary resources for execution of the Commission's mandate has not been given. On its part the NPC has done very little to pressurise the authorities to give it the necessary resources and the backing to execute its function.

In a modern state, the protection of citizens cannot be guaranteed without a competent, efficient and resourceful police service. The simple fact is that Sri Lanka does not have one. Where there is no policing capacity to protect the individual citizens, there cannot be the capacity to protect its more powerful politicians. In recent decades a lot of emphasis has been placed on the increasing engagement of the police in protecting high-ranking politicians. In fact, one of the principal reasons for the deterioration of the investigating capacity of the police is that they have to work, in effect, as bodyguards for politicians. However, protection functions of the police lie essentially in its investigating capacity. Regarding the assassination of the Foreign Minister, it is said that the shooting was conducted from a nearby house to the Minister's residence. Though the Minister's residence has been extraordinarily guarded, apparently no investigation has been carried out regarding the surrounding neighborhood. The concept of investigations has been replaced with pure direct physical security.

While there is much shock about the senior Minister's assassination and the circumstances surrounding it, there is hardly any alarm or concern in the media or elsewhere about what has happened to the Sri Lankan policing system. If there is one lesson to be learned from this assassination, it is that there is a need to significantly and thoroughly reform the policing system. Failure to do so will only lead to greater insecurity in the country. The government, the opposition, the media and the public must address this single most important issue if repetition of recent events is to be avoided. We once more urge the international community, including those engaged in the peace process and those UN agencies, to bring this issue to the forefront.

Here we quote the statement made by Mr. Kadirgamar himself at the 63rd Session of the UN Human Rights Commission in Geneva in March 2005, and hope the government will implement what he promised which will address the concerns expressed in this statement: “***the government of Sri Lanka, taking serious note of recent allegations regarding torture while in police custody, has introduced short and long-term preventive mechanisms to address the issue in line with recommendations of treaty bodies. The government of Sri Lanka condemns torture without any reservation***”.



CHAPTER 3

Women Speak out: Interviews with Four Women

- **A Mother and Wife Speaks Out: An Interview with P. Rajitha**

(An interview with Pannalawithanage Rajitha, the 21-year-old wife of K. Palitha Tissa Kumara, a Sri Lankan victim of police torture; conducted by Shyamali Puvimanasinghe, on 6 May 2004.)

I understand that the police arrested your husband. Can you describe what happened when he was arrested?

At about 8:30am on 3 February, 2004, six police officers (from the Welipenna Police Station) arrived at our home in a Pajero police vehicle. The driver and Sub Inspector (SI) Silva alighted from the vehicle. One of them said to me, "Call Tissa Kumara out, we want him to make an emblem for us." (Tissa Kumara is a painter and craftsman by profession.) Therefore, I called for my husband, whom I refer to as Palitha. When Palitha came out SI Silva assaulted and kicked him right before my eyes. SI Silva also shouted at him in obscene language. Then the police pushed my husband into the back of the police jeep and threw his shirt onto him. When I queried why my husband was being arrested, I was also scolded in obscene language. The police jeep left with Palitha inside.

After that, what did you do?

I, together with my two children and mother, rushed to the Welipenna Police Station. We saw Palitha inside the station. He said that he had been assaulted but that he did not know the reason for his arrest. Then a policeman handcuffed him and took him inside the police station (and out of my

sight). Thereafter I left (with our youngest infant in my arms) to meet Palitha's employer in Aluthgama. I wanted to tell him of the terrible plight that has befallen Palitha and ask for his help.

My mother stayed in the police station with my five-year-old son. When I returned in the evening from Aluthgama, my mother told me that she had heard my husband scream in agony from within the police station. After I returned from Aluthgama, I stayed at the police station till evening. The police wanted me to bring my husband a bread roll, some plantains, and a Ginger Beer. I obliged and handed these items over to a policeman. I stayed there till 7:00pm and then having failed to see my husband, returned home.

When was your husband brought to court?

On 6 February 2004.

What happened from the date of arrest to the day the police brought him to the courts?

On the two days following his arrest, (the 4th and 5th), I visited the Welipenna Police Station in the morning but was chased away by the police. However the food I took for my husband was accepted. My brother too took food for Palitha, which was also accepted by the police. But none of us were allowed to see Palitha.

On 5 February, in desperation, I visited the office of the ASP (Assistant Superintendent of Police) in Kalutara. The ASP who is in charge of the Welipenna Police was not present at the time but I told my problem to another ASP. This gentleman gave me a 'chit' to be presented to the Welipenna OIC (Officer in Charge). Thereafter, I arrived at Welipenna Police Station and met with the station OIC. The OIC pointed to the accused and told me, "there he is", and I saw my husband lying on the ground and shackled to a bar of a police cell. I think that the OIC was not present at the police station at the time my husband was arrested. In fact the OIC had only come on 5 February, the day I met with him.

On the morning of the 6th I again visited the police station, with my children. This time, I was allowed to see my husband. Palitha spoke with me and showed our five-year-old son the injuries he received from the police beatings. He told our son, "Look son, this is what the police did to me."

Can you tell me what Palitha told you about his treatment at the hands of the Welipenna police?

There were several others who had also been arrested along with my husband on suspicion of robbing a boutique nearby. However the others had confessed to their involvement, so they had not incurred the wrath of the police. Palitha refused to confess, as he was not involved. One Sarath had been apprehended on suspicion and had falsely implicated Palitha as revenge (as Sarath had thought Palitha was somehow to blame for Sarath's arrest).

My husband told me that SI Silva severely assaulted him, demanding information and shouting, "Give me the bombs, give me the weapons and tell about the robbery." He had been beaten all over his body, especially over the chest and heart. While hitting Palitha on the heart SI Silva had remarked, "I am going to kill you." After each beating, Palitha had also been dragged and soaked with cold water. He also said that SI Silva had got Sarath, who was a co-suspect in the case for which Palitha was arrested, and who had been suffering from tuberculosis, to spit into my husband's mouth, saying, "You too will be dead within 2 months from today due to TB."

After the spitting incident, another policeman had given Palitha some water with which to rinse his mouth. This same policeman had taken pity on him and given him a mattress to sleep on. However SI Silva had subsequently arrived and had taken the mattress away, thus forcing my husband to spend the night on the floor. After the torture was over, SI Silva (also commonly known in the area as 'bomba (bomb) Silva' had unwrapped a bomb. He ordered Palitha to wet his finger with water and place his fingerprint on the bomb.

What happened on the day your husband was produced before the Magistrate's Courts?

On 6 February I together with my two children, my parents, my three brothers and some friends went to the Magistrate's Court of Matugama in the hope that Palitha would be brought to court that day. Then I saw the police van going past the court premises. I later found out that the police had been taking my husband to the Weththawe hospital. I do not know what happened at the hospital, but thereafter, my husband had been taken back to the police station. My husband also told me that the police had taken him to two hospitals, but both these hospitals had refused to admit him, as his injuries were so serious.

My family had also retained the services of a lawyer to appear on behalf of my husband and inform the court of the injuries caused to him at the hands of SI Silva. This lawyer had made several calls to the police inquiring as to what time Palitha would be brought to court, since he had to attend to some other business in the evening. My family and I waited patiently. Finally Palitha was brought to court only around 5:00pm, by which time the lawyer had left. The police rushed my husband into court, covered by a cloth. The police chased us away, and prevented us from entering the court. Thereafter, the police took Palitha away. I am not aware of what happened in court. I only know that my husband was further detained.

Tell me what happened after your husband was taken away from court?

I visited Palitha at the Kalutara remand prison every three days. He was treated as some kind of a 'special' remand detainee, segregated from the rest. During his period of remand, he had been taken to the Colombo National Hospital for an X-ray and several medical tests. He had also been operated on for a boil on his buttocks, at the prison hospital. This boil was a result of his assault at the Welipenna Police Station. I continued to give him Panadol and Siddhalepa [popular local ointment for aches and pains] for his ailments every time I visited the remand prison. I also did this while he was at the police station.

When I visited him on about 24 April he complained of chest pain and of coughing up blood. He also gave me a prescription for certain medicines. He had received the prescription from the prison hospital. The prison hospital had also told Palitha that he might be suffering from tuberculosis when he reported to them that he had been coughing up blood.

I purchased these medicines from a private clinic and sent them to my husband on 27 April. On 29 April, I met Palitha after he had been taken to the Nagoda hospital, where again he had been treated. He told me that two blood samples and his phlegm had also been taken to be tested at the Nagoda hospital. I visited him again on 3 May but his condition had not changed. I have not yet been able to know the results of these tests. (Accordingly, Tissa Kumara was suspected of having contracted tuberculosis.)

My husband also told me that he had been warded at the prison hospital ever since he started coughing blood with his saliva and complained of chest pains. Since then, he has been confined to a secluded room (formerly reserved for chickenpox patients) and for all intents and purposes, kept in isolation. Even his food is passed to him from under the door.

Can you please tell me how all this has affected your family?

As I told you before, I have two little sons. At the time of the arrest, the eldest was five years and the infant was nine months old. I am breastfeeding the little one. My husband was a talented artisan. He worked for an employer in Aluthgama as well as in several other places, including Galle & Matara. He usually worked away from home every other week, while during the intervening weeks he spent time at home. The income he earned from his work was adequate to maintain our little family. I do not go to work and do not have an income of my own. I looked after my two children at home. After my husband's arrest, I had to move in with my parents. My father sells betel leaves for a living, and with this meagre income he now supports my children and myself. Though I have three brothers and one sister, they are not in a position to help me financially.

On the morning of 6 February, the day Palitha was produced in court, I visited him together with my two sons. Then my husband showed our five-year-old son the injuries on his arms, ears and back, caused by SI Silva, saying, "Look son, this is what the police did to me." After my eldest son saw his father's injuries, he cried incessantly and began to limp. Over the next few days, his limp advanced and finally he was unable to walk. His crying too was uncontainable. Thus I took the child to a private doctor, who said that there was an illness going around that affected children. Hence on 8 February I got scared and took my child to Nagoda hospital. There the child was admitted and kept under observation for two days. But when we told the hospital medical staff that the child's father had been arrested a few days earlier, they told me that the most probable reason for the child's symptoms was mental trauma. After two days they discharged the child from hospital. Now he appears to be all right. He seems to have recovered from the initial trauma and has come to terms with the absence of his father. However, his school attendance is disrupted every time he has to accompany me to visit his father.

My problems do not end there. My infant son had developed a hernia prior to my husband's arrest. I had been asked to bring the child to hospital on 16 February, most probably for a hernia operation. However, due to all these problems and my present state of mind, I did not do so. Then in March the child's condition became worse and he started vomiting and crying. I then rushed him to hospital in a three-wheeler. The child was admitted and surgery was performed to remove the hernia on 16 March. He was discharged from hospital after three days. The infant now needs further surgery for another physiological problem. But I am postponing attending to it and hope it can wait until all these problems are over.

Now your husband's plight has been given fairly wide publicity. To your knowledge, has anyone in authority visited your husband in remand as of yet and inquired into his present illness or complaints?

No, not to my knowledge.

(The Matugama Magistrate's Court finally released Palitha Tissa Kumara on bail on 28 June some five months after he was originally taken into custody. Subsequently steps

had to be taken by the AHRC and local organisations to provide medical treatment for him for his injuries as well as to protect him and his family from physical danger, as there have been attempts to bribe and threaten him into dropping his formal complaints made against SI Silva.)

* * * * *

• **A Widow's Words and Wisdom: An Interview with Padma Perera**

(Sri Lankan torture victim Gerald Perera was shot on 21 Nov. 2004, and died three days later. Perera was scheduled to testify at the criminal trial beginning on 2 Dec. against the seven police officers he accused of torturing him in the Wattala Police Station in June 2002. The assassin and the police officers believed to be involved in his murder have been arrested. It is the first time that a torture victim bringing a court case against his torturers has been killed in Sri Lanka and police officers thought to be responsible for the murder have been arrested. There are concerns, however, for the safety of Perera's family and for other torture victims in the country who have filed similar cases.

It is in this context that his widow, Padma Perera, shared her thoughts during an interview with Asian Human Rights Commission [AHRC] staff member Bijo Francis.)

Your husband was murdered in November 2004. Why do you think your husband lost his life?

My husband was a brave man. He was fighting for justice and against the evils that are currently present in Sri Lankan society. He was fighting against the violations he faced. He could not tolerate what he had to face from the police by way of torture. In this fight, he lost his life. However, those who think that this fight is over are mistaken. I will continue from where my husband left me. I will see that whatever he wanted to achieve and establish from the struggle he led will finally have results. In Sri Lanka, it is sometimes like this. Those who stand up and say something is wrong will have to face bitter consequences. I think, had it not been for a mad animal in uniform, my husband would not have lost his life.

Do you think that you will finally achieve justice?

My husband did not kneel down before anyone. He did not accept compromises. He could not betray those who supported him. He expected that justice would finally be done. I am also sure of this. No one can change this belief of mine. I will continue the fight that my husband could not complete. I am sure one day all will be finally settled, and I am sure that I will win the cause for which my husband lost his life.

Does the murder of your husband make you feel that you lost everything and that now you are all alone and your husband should not have done this?

It is a pity that I lost my husband. I used to get ready every day when it is time for my husband to return from his job. I used to clean the house and shower my children before their father arrives. Now sometimes I feel that I do not have to do any of these things since there is no one to wait for, but I understand that it is because emotionally I am weak and I am yet to fully cope with the loss. This is, however, personal. My husband did not do all this for his own personal benefit. He was a brave man; and when he found that injustice was done to him, he could not resist his urge to fight back and question. In fact, I feel that whatever he was doing was important for the people of Sri Lanka.

In fact, after the death of my husband, I got to know more people. My husband would come home and share his day's experiences. He would say he met Mr. Chitral, Fr. Reid and so on. I never knew that all these people are really backing and supporting my husband. I used to wonder whether these people were really concerned about what my husband faced, but the enormous support that I receive now proves that I was wrong and that these people are now my family too. My husband wanted to invite all these people for last year's Christmas. Unfortunately, he could not live that long, but now I know that these people do not require an occasion to reach us and for us to approach them.

What is your opinion about the police in your country?

The police in Sri Lanka work for their own interest. They have no concern about ordinary people. They work for personal gain.

Take my own example. When they arrested my husband, they later came to know that he was not the man they were looking for. Even then, once he was released, when he protested against the violations committed against him, they only thought of their promotion. When they realised that the case filed by my husband would affect their promotion and service, they did not mind killing him. They are beasts in uniform. I would be wrong if I generalised, if this incident had been one where only one officer was involved. However, in my husband's case, a few officers were involved. It means that they work in groups, like hungry dogs that prey upon anything that crosses their path. This approach is not towards criminals alone. This is the way they behave toward anyone, no matter whether the person is a criminal or not. I am aware that in my husband's case a few simple questions would have avoided the entire tragedy. But they did not care. They will not. Even if those involved in my case are punished, the rest of their colleagues will still behave the same. They will never change. They are beasts.

Do you mean to say that this is the general nature of the police in Sri Lanka?

Had my husband's case being initiated and caused by one single officer, due to whatever reasons, you can be justified in posing this question. Cruel people, to my limited understanding of the world, are an exception in any community or in any government service, but here in my country, if you are a policeman, it is understood that the person does not know what is meant by humanity. Rather, it is the contrary: A good person in the police force is an exception in Sri Lanka.

The manner in which your husband was assassinated and the background around his death — is it an exception?

The support my family received from the very moment of my husband's death might be an exception, but arrest on mistaken identity, then torturing people to make them confess or killing them are not exceptions in my country. You can read about them in newspapers. Since my husband started interacting with the human rights people, he, and through him — we all — came to know that there are a lot of people who face the same situations. However, in the corner of my mind, I feel that my case is unique. Arrest, killing and torture though is an everyday affair here.

Why do you think that your case is unique?

In fighting torture cases, the people of Sri Lanka run a great risk. However, if the majority of the people speak out against this practice, the situation will change.

When my husband started his fight, there was a lot of opposition. I know that it is hard for anyone to withstand this opposition. My husband withstood all this opposition. He did not go for any compromise. That requires strong determination. Had I been in his position, I would not even think of fighting the case, not that I do not want to, but because I am scared of these people. Now that I have undergone the worst, there is nothing else to fear. This fearless attitude and holding strong to one's beliefs and not betraying all those who stood with him, is unique.

You spoke about the human rights community in Sri Lanka that you claim stood with your husband. Do you feel that they did the right thing of taking up your husband's case now that he has been murdered?

The human rights community, which stood with my family all through the time of our need, are like our parents. They provided psychological, personal and financial support. I have the assurance that they will be there for my family. I lost my husband, and my children no longer have their father, but now I feel that I am the daughter in a bigger family. My children lost their father, but I am sure that they now have more grandparents, uncles, aunts, brothers and sisters.

Will you accept if I say that your husband was killed because of human rights?

My husband believed in his rights, and he fought for them. Maybe he might not be alive now to see his fight coming true and winning, but I am sure that it will come true. Those people who feel that they were successful in their effort to muzzle the voice of protest — they are wrong. My husband fought, and I will continue this fight. Since my husband fought his case, our children can live without disgrace. No one in this country should live with such disgrace. Our fight is to prove to the people of Sri Lanka that they need not live in disgrace. The reality that my husband is an innocent man is

now known to the world because he fought his case. Everyone should do this. This was possible because of the human rights community in this country and those outside. Everyone should fight so that his or her children and family can live without disgrace.

Do you think that fighting like this is worthwhile?

If there is a collective effort and a movement in the entire country, then it is worthwhile. We are doing what we can. I would say everyone should, and must, do the same. When there are political differences, people take to the road, and our leaders lead them. Those who suffer human rights violations should also do this. Aren't we also people who can take to the streets? Can't we also protest against what we have faced?

Do you think that the people responsible for your husband's torture and death will be punished ultimately?

Yes, I strongly believe that the perpetrators will be punished.

What else would you like to say?

There has been a great injustice thrown upon us. The murder of my husband will make our family suffer for the rest of our life. What happened cannot be erased. Please let it not happen again. I know that it is not within any of our control but is up to the beasts who will never realise the suffering they have caused. My only request to the people in uniform in this country is: Please do not repeat what you have done to our family to any other family.

* * * * *

**• A Woman Harassed by Police Recounts Fiancé's Death:
Sunethra Malkanthi's Account on Video**

(The following is the English translation of a verbatim statement made by a 26-year-old Sri Lankan woman whose fiancé was allegedly killed by two police officers. In her account videotaped recently by the Asian Human Rights Commission, Lankapurage Sunethra Malkanthi reveals that three police officers from the Welipenna Police Station had made

sexual advances to her for several years. Her relationship with M. R. D. Saman Priyantha Guneratna, 29, also made these officers jealous. They often harassed him in a bid to bring pressure on her. Mr. Guneratna was shot dead by two police officers at close range when he was driving his open lorry along a gravel road on 30 May. The two officers arrested claimed that they shot Mr. Guneratna because he refused to obey their order to stop the vehicle. Here, Malkanthi demands a proper inquiry into her fiancé's death and that the perpetrators be punished.)

I am Sunethra Malkanthi and I live near Kappettiyagahalanda Dalanda Nagaraya Village.

In January 1996 I was married to a soldier and moved into his home. On 18 June of the same year my husband was killed in combat. For about two years thereafter I continued to live at his home and then I returned to my parent's home where I met a person called Saman Priyantha who came to our home with my brother. At that time he was selling illicit liquor and I developed a relationship with him because I often had to rescue him when he got into trouble in connection with his illegal business dealings.

Later, I bought my own property at a place called Marindagoda and built my house there. It was during this time that the police at Welipenna often caught Saman whilst selling illicit liquor and took him to the police station and I would have to go to the station to rescue him. After some time he stopped selling illicit liquor. But the problems with the police continued. And though he was innocent of a crime, the police were adamant on implicating him in some case. Thus they filed fabricated cases against him saying that he was still selling illicit liquor. I pleaded with the Officer-in-Charge (OIC) of the station, Mr. Padmalal, not to falsely implicate Saman. I told him that Saman had a place to live (with me) and that I received a pension from the Army because my ex-husband, who is now dead, was a soldier.

Police jealousy

To earn a living, I bought Saman a machine to make cement bricks. I also bought him tools to do carpentry work. He started making bricks with the

machine and doing odd jobs using the tools. I then mortgaged my house to finance a company and bought a tipper lorry.

Saman used this lorry for his work, which took him past the Welipenna Police Station several times a day to buy sand and transport the bricks. Even though they knew that Saman was no longer engaged in illicit work, the police often caused us a lot of trouble. They knew that I was receiving a pension from the Army and that I was widowed. However, I was intending to marry Saman, which is why I bought the tools and the lorry.

It was during this time that a Sub Inspector (SI) by the name of Silva became very angry with me. There was a Sergeant Premasiri who was also angry with the two of us. I know that they were jealous of Saman. As a result, Saman and I considered selling the property and moving away from the village. However, I had to obtain a letter from the government village representative, (Grama Sevaka), every month to receive my pension. Without the letter I would not have been able to obtain the money. So when Saman suggested that we sell our property and move elsewhere, I was reluctant to do so. I was hoping that after we bought the lorry, Saman and I could get married and reside permanently in the house where we were living in at that time.

Guneratna's death

On 28 May, I went to Anuradhapura with Saman's father. Saman stayed at home and was working with his lorry, transporting sand and stones. I returned on the evening of 30 May and learned that Saman was shot. The shooting had taken place when he was returning home after transporting some timber. There were two people involved in the shooting and one of them was Sergeant Premasiri. When I learned of the shooting and that Saman was in hospital, I immediately went there but was not allowed to see him. Soon after, I learned that he had died.

I then prepared the funeral arrangements for Saman, covering all the expenses myself. The vehicle, which was hit by bullets during the incident, was at the Matugama Magistrate's Court and I learned that not a single lawyer from

that court wanted to represent me in the case. Neither the Matugama Court nor the police offered me justice.

I sincerely hope that the perpetrators will be punished and given the highest possible sentence they deserve.

Indecent proposals

Saman was often arrested and taken to the Welipenna Police Station and I had to go and get him released. Then, Sergeant Premasiri and SI Silva of that station told me that I should not marry Saman and that he was unsuitable for me. They said that there was no need for me to marry anyone and that if I needed any help, anything at all, they would help me.

Both before the shooting and afterwards, the police persistently made indecent proposals to me. However, I had chosen Saman and intended to spend the rest of my life with him. So I rejected any relationship with the policemen. However the police continued to harass us and arrested Saman because they knew that every time they did so I would turn up at the station to rescue him. Often when I visited the station I noticed that the officers were drunk. On those occasions they used foul language and made sexual innuendoes to me. It was so insulting and demeaning, that I cannot even bring myself to repeat what they said. And this happened ever so often.

Sometimes Saman would stay out working overnight or visit his mother and return home late in the evening. On those occasions the police visited my home, on the pretext of looking for Saman. If Saman were home they would talk briefly and then leave. But if he was not at home they would cajole me into giving them an assurance as per their suggestions, that I would not marry Saman and instead, rely on them for help. I told them that I would never agree to such suggestions, as I was not a woman who would do that sort of thing. I chose Saman because he was from my own village and we suited to each other. And I had every intention of marrying him.

Sometimes the police employed Saman together with his lorry to transport their things. I was worried about this and believed that the police were

looking for a way to harm him. I warned Saman about accepting work from them. I told him that we were under no obligation to accept personal requests from the police officers. But sometimes they just came and escorted him away, even using force to get their work done. Saman complied, mainly because he was afraid of them.

So I believe the police was angry at Saman and thought that if they could get rid of him then they could get to me. They tried to kill Saman in such a way that no one would be caught for the crime. But luckily, the villagers cornered the policemen who shot him — otherwise even today we would not have known who killed him. Later, when police officers from several other police stations arrived at the scene, the perpetrators had surrendered themselves.

Court Hearing

On 8 June, the case was taken up before the Matugama Magistrate's Court and the two policemen who shot Saman were remanded. No lawyers from that court were willing to represent me and it was clear to me that they all supported the police. I was offered no justice from the Matugama Magistrate's Court and to date, the case is still pending. However if I cannot obtain justice through this court, I hope there are other legal mechanisms available to punish these perpetrators.

On that fateful day, Saman had gone to a village to collect some timber from a house that had been demolished — near the place, the shooting occurred. After the shooting, the police claimed, he was transporting stolen timber and used that excuse for shooting at the lorry. They also stated that they ordered him to stop and opened fire when he did not. However, the road that Saman was driving along was a narrow gravel road and not one on which one could drive fast. Even a bicycle could not travel fast on that road. The police were able to get very close to Saman before they shot him. Also, at the time of the shooting there was no timber or wood in the lorry as he had unloaded the wood at another location and was returning home. However the case filed by the police falsely stated that at the time of shooting Saman's lorry was illegally transporting timber.

And though there was not one piece of timber or wood in the vehicle, the police filed a case stating that there was timber in the lorry. Reportedly, the police had taken some timber from another property and showed it to the judge as evidence in support of their case. Before I went to the vehicle the police tried to load the lorry with timber taken from somewhere else. I scolded them and told them not to put anything in my lorry. I told them that I would stop them even if they tried to kill me. So they stopped. After a Magistrate arrived at the scene, they took the lorry to the police station and then later to the court. Even then they were claiming that there was timber in the vehicle.

I admit that earlier Saman did make and sell illicit liquor, but I wanted him to give up this line of work and that is why I bought everything for him including the brick making machine and carpentry equipment. I spent my own money to buy the property and build the house. I did all these things to get him out of the illicit work and Saman took advantage of this to clean up his life.

Money matters

I also remember that when the police arrested Saman, I would visit the station and beg the OIC to release him by holding his feet. I would also strike my head against the ground and plead with the police not to implicate Saman. Nonetheless, the police continued to arrest him and falsify evidence against him and I was compelled to go and get him released. Even Saman would say that it was unfair that I was involved every time he was arrested. But both of us were afraid of the police.

Sometime ago we had a three-wheeler vehicle that Saman operated. One day a friend of Saman, without our knowledge, used the three-wheeler to transport illicit liquor. The police had intercepted the vehicle and apprehended the goods. But Sama told them the cargo did not belong to him. Nonetheless, the owner of the goods as well as Saman were taken to the police station and later produced in court. Saman was fined 125,000 rupees for possession of the illicit liquor even though it did not belong to him. I didn't have the money to pay such a huge fine and thus the police kept the vehicle for 10

months. As the vehicle was exposed to the elements, its condition deteriorated so badly that it became unusable. Also, anything useful in the vehicle, the battery for example, had been removed. I felt extremely helpless at that time because I could not get the three-wheeler back.

Luckily because I had an income from the pension I received, I was able to borrow money at an extremely high rate of interest of between 15% and 20% per month. But even with the loans I was still unable to retrieve the three-wheeler. I pursued the case before the Kalutara Courts, and had to visit court about 3-4 times before I finally got the fine reduced to 25,000 rupees. Thus Saman was constantly implicated and we could not confront the police, as we feared for our lives. Eventually I borrowed money from many places and retrieved the vehicle. The 25, 000 bail money as well as the other numerous amounts I have paid as bail for Saman, are still with the police.

* * * * *

- **Still Getting Over the Shock: An Interview with Sharma Lalini**

(Sharma Lalini was the wife of 49-year-old Wijeratne Munasinghe who was tortured whilst in the custody of the Maharagama Police Station on 10 April 2005 allegedly for not having stopped his three-wheel vehicle immediately as ordered by the police. A few days later Mr. Munasinghe died from his injuries. The following is an interview with the grieving widow conducted by Shyamali Puvimasinghe)

Tell me about your family?

My name is Sharma Lalini and my husband was Wijeratne, Munasinghe who died on 16 April 2005 after being assaulted by the police. I have two daughters, Rasika 24 who recently got married and Yamuna 21 who is pursuing her higher education in accountancy. My youngest Manoj Malinga, 16, is still at school and recently passed his O/L examination.

About 10 year ago, my husband worked in Switzerland, but then he returned to Sri Lanka and began working in a garage together with a friend as a motor mechanic. We also owned a three-wheeler in which he ran hires in his spare time. My husband suffered from heart ailment —in around 2003 he suffered his first heart attack and another one later on. He was to undergo heart bypass surgery next month at the National Hospital, Colombo.

So what happened on 10 April?

It was a few days to the (National) New Year and my husband had taken a few days off from work. So after lunch that day, my husband my son and myself decided to do some New Year shopping at the Delkanda market. On our way home we stopped at a shopping centre to buy my son a shirt, and while my son and I went inside, my husband parked the three-wheeler nearby. We finally returned around 4-4:30pm and the three of us set out for home in the three-wheeler.

We travelled along the road, then came to a junction where my husband attempted to turn towards Dehiwela. At that point, a traffic policeman on the road stopped us and gestured my husband to reverse the vehicle. My husband took some time to obey the instruction, but he did so eventually. But because he delayed, the policeman walked up to us and shouted at my husband, “thamuse beelada?” (are you drunk?). My husband did not reply. This apparently irritated the policeman who then screamed at him, “thamuse beerida?” (are you deaf?) But my husband still remained silent.

My son and I were seated on the passenger seat, at the back of the three-wheeler. I saw the policeman was angry and decided to intervene. I explained, “Officer, we have just been shopping. While we were away, I don’t know whether this man drank (consumed liquor). But please do let us go as we are returning from New Year shopping and also because he is not too well”. But the policeman ignored my pleadings and shouted at my husband to get out of the three-wheeler immediately. At that moment I also saw the policeman calling someone from his radio.

A few minutes passed, and I saw 2 policemen walking towards us. The one

who was wearing the number 22728, pulled my husband out of the vehicle by his shirt collar, and slapped him hard across the face. Thereafter he continued to mercilessly assault my husband, all over his body. I was very worried for my 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 my pleas fell on deaf ears.

By now, a large crowd was gathering around. I felt so ashamed because my husband was being assaulted like a common criminal on the middle of the road. I continued to plead with the policemen to spare my husband, but they simply chased my son and myself away, pulled our three-wheeler to the side of the road and continued with the assault. I saw my husband was struggling to escape this onslaught. I also heard him telling the policemen, "You only assault innocent people like us. There are drug dealers and underworld characters, but you cannot touch them, so you hit people like us."

Finally policeman 22728 kicked my husband on his spine, which resulted in him falling flat onto the floor space at the back of the three-wheeler. Then the policeman sat on the seat, put his feet on my husband's body and continued to kick and trample him, while another person drove the vehicle towards the Maharagama Police Station.

Did you follow your husband to the police station?

Yes, since the police station was only a few blocks from where the assault took place, my son and I rushed to the station to try and save him. When we arrived there we were directed to the 1st floor of the station, where a police personnel was recording a statement from my husband. While giving his statement, I heard my husband continuously complaining that 'the police only harassed innocent people like himself'. However at the station, I did not see the policeman who assaulted my husband.

I once again pleaded with the police to release my husband. I also told them that he had heart ailment and that his bypass surgery was fixed for next month. Someone suggested that I request the OIC, Marlon Perera for his release, so I met with the OIC and requested that Munasinghe be released

on bail. But the OIC insisted that my husband could not be released until the following day. The time was around 6:00pm. So though I was sick with worry, unable to do anything more, I together with my son, decided to go home.

That night I could not get any sleep, so I was awake around 2:00 in the morning when I received a telephone call from the Maharagama police requesting me come early in the morning and release my husband on bail. And around 6:45am, I received a second call from the said police to come soon and get him released. Thereafter around 8:30am I went with my son to the Maharagama Police Station to bring my husband home.

Inside the station, I saw my husband seated down and looking pale and worn out. Someone asked me to bring him some food, but my husband told me not to bother, and to take him home as soon as possible. However by the time we were allowed to leave it was almost 10:30am. Also though the police retained my husband's driver's licence and told him to attend courts on the 19th, they returned our vehicle. So the 3 of us got into the three-wheeler and returned home.

Explain what happened from the day Munasinghe returned from the police station until the day he died?

When we returned home, my husband complained that his chest was paining, so I gave him his pills. He took them and fell asleep. About 2 hours later he awoke and complained that his whole body was paining badly. He tried to go to the toilet but said that he could not because his body ached too much. He also told me that whilst at the police station on the 10th night, several policemen had taken turns assaulting him and that they had hit him with cricket wicket poles. He also wryly observed that had he been a leaner man, he probably would have died from the beating. One of his torturers had also commented that within 5 days, the results of the beating would bear fruit. And within 5 days he was dead!

I was worried about his condition, so I suggested that I take him to hospital. But he refused saying, he was too ashamed to tell anyone that he had been

assaulted by the police. He even forbade me from mentioning the incident to our eldest daughter or her husband. I also recall him mentioning that one policeman named Samantha on duty at the station that night, had not participated in the assault and had in fact asked the others not to hit him.

Anyway during the next few days, Munasinghe continued to complain of body pains and headache. I also noticed bruises on his body i.e. to his arms, thigh and lower chest. There were marks on his face and on his spine. He was also delusional at times and would suddenly get up from his slumber and question me fearfully, whether he was still at the police station.

I continued to beg him to go to the hospital but he insisted no, he was too ashamed to do so. Instead, he said some Panadol would make him feel better soon. So from 11 to 14 April he took Panadol as well as the Venivelgeta (medicinal herbs) I boiled for him in the hope that these will cure his injuries. But most of the time he simply slept. I asked him why he was sleeping and he replied, it was because of the pain. 14 April was New Year and I asked him to join me to go to the temple. But he refused and opted to sleep instead. On this day, I also noticed that he had developed a fever. And though he continued to take Panadol, towards nightfall he was burning like a furnace.

On the 15th his body was still burning. And after much pleading I finally convinced him to obtain some medical treatment. He still refused to go to hospital, so we visited a private clinic in Piliyandala. But due to the New Year holidays, only a junior doctor was on call at the time. This doctor gave him some medicine for his pain, and nausea and also a lotion to be applied on his body. When we returned I fomented his body with warm water, applied the cream and gave him the medicine.

That evening my eldest daughter and her husband visited us. I decided to go against my husband's wishes and confide in them about the police assault and about his fever. My son-in-law immediately insisted that we take him to hospital, especially since my husband's condition was rapidly deteriorating. And even when we did, my husband could not even walk to the vehicle

and had to be carried by my son-in-law. We took him to the Kalubovila hospital and after we told the doctor what had happened they admitted him to Ward 26.

As my husband was purging at the time, the doctor gave him a tablet to munch, but he was not able to do so. I was then told to give the tablet with some water. But when I attempted to give it to him, he could not even swallow it; and the liquid flowed from the sides of his mouth.

About 2 hours later he was transferred to Ward 5 where the doctors gave him Saline and Oxygen and inserted a urinal catheter. I am not sure whether he was conscious at the time. But he did not speak a word — even when the doctor asked him his name. The Ward 5 doctor wanted to know what happened, so I gave him the details of the police assault. He recorded these details and promised to do his utmost for my husband, but warned me not to get my hopes up too high. I guess his condition was serious. I also noticed that even though Munasinghe did not speak, when they pressed various parts of his body he screamed in agony.

That night after leaving the hospital around 8:00pm I visited the Piliyandala police to lodge a complaint against the policemen at the Maharagama Police Station who tortured my husband. But they refused to entertain my complaint. Instead they insisted that since the incident took place within the jurisdiction of the Maharagama Police Station I had to go there.

So the next day after visiting my husband in hospital I went to the Maharagama Police Station to lodge a complaint. I was scared to go alone so I went with my younger brother. We met with the OIC, Marlon Perera who told us to go upstairs and get the complaint recorded. This we did and one Woman Police Constable took down my complaint. But she did comment that I was complaining against the police. I retorted that if I were so interested in hurling accusations at the police I would have made this complaint the day after my husband returned home. But now I was compelled to do so only because my husband's condition was critical because of what the police did to him. In the complaint, I also remember mentioning

the registration number of the policeman who initially assaulted Munasinghe on the middle of the road as well as details of the assault as I witnessed it and what my husband told me. But though I requested a copy of the complaint, this was not afforded me. However I had bigger worries on my mind. I was so upset I could not even read what was written and my statement had to be read out to me before I signed.

Also on the 16th morning when I was applying some oil on his head I notice a big bump on his head. I don't think even the doctors noticed this. Anyway when I returned to the hospital from the police station, my husband had been transferred to the Intensive Care Unit (ICU). The doctors there told me to speak to him, but he did not reply me. Once I remember him shouting, 'water, water' but I don't think he was really conscious at the time. And when I visited him again that evening, he was dead.

Did you receive any response to your police complaint?

After I made the complaint Assistant Superintendent of Police (ASP) Ranasinghe had sent word for me to meet him at the Maharagama Police Station. But I visited the mortuary first, and met the ASP there. I once again, gave the details of how the police tortured my husband and also how one policeman had impliedly threatened him that within 5 days he would be dead. But the ASP told me that these days policemen only threatened; that they could not actually assault anyone anymore. He wanted me to visit the police station and make a statement to him.

After arranging the funeral arrangements I went once again to the Maharagama Police Station to meet the ASP and gave my statement. This statement was typed by another person. This was the second time I was compelled to visit the very police station where my husband was tortured. Of course I was scared, but then I had no other choice.

Now, the police tell me that if I want any help they will help me. But what help do I need now? He is no more. When I did need their help and pleaded with them not to assault him as he was suffering from heart ailment and weak, they ignored me. When I begged the OIC to refuse him on bail

on the night of the 10th he refused. So what help can they possibly give me now?

How will you manage now, that your husband is no more?

I do not have an income of my own. My husband provided for all our needs including the children's education — he did not burden me with anything. We were never in want while he was alive. Now I don't know how I will manage. After the funeral to date, family members have been financially supporting us, but I cannot expect them to do so everyday. So I guess I will have to find some means of earning a living and supporting my children.

Besides I too have been suffering from a form of gastritis and am due to undergo an endoscopy examination. I hope this will not turn out to be another problem in my life, now that I have to look after my family single-handedly.



CHAPTER 4

Equal Access to Justice: Where Should it Begin to Ensure Human Rights?

By Jayakumar Thangavelu

*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 minimise 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.

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 emphasise 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 a 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.



CHAPTER 5

Gerard Perera: One Man's Courageous Fight for Justice

It was with great shock and sadness that the Asian Human Rights Commission (AHRC) announced the death of Gerald Perera on 24 November 2004. Gerald had been due to give evidence in court against several police officers who were accused of having brutally tortured him in August 2002. However, on 21 November 2004, Gerald was shot at point blank range while travelling on a bus to his place of work, and succumbed to his injuries three days later. He leaves behind a wife and three children, the youngest of whom is only eight months old.



Arbitrary arrest, torture and the Supreme Court: A chronology

Earlier, at 12:45pm on 3 June 2002 Gerald Mervyn Perera was arrested in the presence of his wife, by police officers from the Wattala Police Station. They had dragged Gerald into their jeep saying, "You are the man we are looking for," although they gave no valid reason for his arrest. Gerald was taken to the Wattala Police Station, where he was subjected to the most severe and brutal torture by several policemen. 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 policemen then forced him to the ground and began to burn him with lit matches. During the torture, Gerald was interrogated about a murder he

knew nothing about. He was kept at the police station on the night of 3 June 2002, before being released the next day. On the morning of his release, Gerald's brother Ranjit Perera was informed by Sena Suraweera, the OIC 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 the result of mistaken identity.

Following his release, Gerald complained of severe body pains and his condition became precarious. He was taken to the Intensive Care Unit of the Nawaloka Hospital, Colombo, where he suffered from kidney failure and subsequently fell into a coma for two weeks. During this time, he was kept alive by a life support system. After examining Gerald, on 16 August 2002, the Judicial Medical Officer (JMO) concluded in his report that inter alia, Gerald Perera had developed acute renal failure, lost sensation in a part of his spine as well as completely lost power of the muscles around his 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 Fundamental Rights Petition regarding the gross violation of Gerald's rights was filed with the Supreme Court of Sri Lanka on 19 June 2002. On 26 June 2002 — while Gerald Perera was still unconscious — 3 Supreme Court Judges heard submissions on his behalf in the Fundamental Rights Case which was filed against the following policemen: the OIC of the police station Sena Suraweera, OIC Crimes, SI Kosala Navaratne, SI Suresh Gunaratne, SI Weerasinghe, SI Renuka PC Nalin Jayasinghe and PC Perera. The aim of the petition was to obtain an adequate amount of compensation for Gerald Perera for the suffering and injuries he endured at the hands of the said law enforcement officials, and for the Attorney General to be ordered to prosecute the perpetrators under Sri Lanka's anti-torture legislation viz. Act. No 22 of 1994, which prescribes a minimum punishment of 7 years imprisonment for those convicted of inflicting torture. Accordingly, the perpetrators were accused of having violated the following Articles of the Constitution of Sri Lanka: Article 11, which guarantees the freedom from

torture and other cruel and inhuman treatment or punishment; Article 13(1) which stipulates that a reason for the arrest must be given; and Article 13(2) which guarantees the freedom from illegal detention.

Then on 4 April 2003, in a landmark judgment, the Supreme Court awarded Gerald Perera a record-breaking amount of Rs. 800,000 as compensation and a further sum of Rs. 854,871 as medical expenses incurred by him for treatment at a private hospital. Of the Rs. 800,000 the state was to pay him Rs 650,000 and the policemen concerned, Rs 150,000. In his decision, Justice Mark Fernando (Justices Edussuriya and Vigneswaran in agreement) found that the police officers had breached the Constitution of Sri Lanka by resorting to illegal arrest and detention [Article 13(1) & (2)], and torture (Article 11). Concerning the matter of torture in particular, the Court's judgment was very strong when it stated that: *"while in Police custody the Petitioner had been subjected to severe torture endangering life. There is no doubt whatsoever that he had been tortured and how exactly he had been tortured does not matter in the least. The failure to release the Petitioner promptly, or at least to secure prompt medical attention for him, was cruel and inhuman."* Furthermore, while the OIC of the Wattala Police Station did not himself take part in the torture, the Court found him guilty as it occurred with his knowledge and acquiescence.

This record amount of compensation for a torture victim was widely welcomed as being a significant milestone in the fight against torture in Sri Lanka. Gerald Perera could easily have satisfied himself with this result and moved on with life. But as a man who was now dedicated to the cause of human rights and the struggle against the impunity of perpetrators of violations, he dedicated himself to seeking justice. For justice to be fully served, the perpetrators who subjected him to such severe torture had to face criminal prosecution, be convicted and punished. And finally after much agitation, the Attorney General filed indictment against the perpetrating policemen before the High Court and accordingly, the criminal case under Act No 22 of 1994 against the aforementioned perpetrators was scheduled to start before the Negombo High Court on 2 December 2004.

Shot and killed while seeking justice

Then, around 11:15am on 21 November 2004, Gerald Perera was shot by an unknown assailant at close range, while travelling on a bus in Welisara. His killer walked to where he was sitting at the back row in the bus and shot at him several times, before getting off the bus and returning to a car bearing license plate no. 65-6839. The bus driver drove the injured Mr. Perera directly to Ragama General Hospital, and from there he was dispatched to the Colombo National Hospital for emergency treatment.

As aforementioned, the shooting took place only a matter of days before Gerald was to appear as the victim and key witness in a criminal case before the Negombo High Court. At the time, the AHRC was convinced that the killing was carried out on the orders of those facing trial who continued to serve their posts without any suspension of duty despite having criminal charges pending against them. Also, several weeks prior to his killing, Gerald Perera had reported being under pressure from the accused policemen as well as their associates, to withdraw his complaint against the policemen. A Provincial Council member of Mabile, known to Gerald's family as Mr. Niroshan, had also visited his house and asked him to withdraw the complaint. However, he had refused to succumb to the pressure.

On 24 November 2004, Gerald Perera passed away around 1:00pm local time, at the Colombo National Hospital. He had been in a critical condition since he was shot on 21 November. He leaves behind a wife and three young children. At the time, nobody has been arrested for the shooting.

Instigators and planners of homicide

The investigation that was reportedly being conducted into Gerald's killing during the first few weeks failed to make significant progress, and this was despite the fact that the murder was committed in broad daylight and that a trail of clues left behind should have been sufficient to arrest the perpetrators. There were eyewitnesses present. The getaway car has been identified. A policeman who was with Gerald just prior to his being shot has also been identified. The motive for the killing was also obvious. Besides, two days before Gerald Perera was shot, a High Court judge and his guard were also

killed in a separate incident. Investigators have worked quickly in that case in order to obtain information from the public allowing them to apprehend the suspects. By contrast, Gerald's murder has been treated as relatively unimportant.

However, after constant agitation by the Asian Human Rights Commission (AHRC) and after the matter received extensive local and international coverage, on 23 December, The Criminal Investigations Department (CID) arrested Sub Inspector Suresh of the Wattala Police alleged to be the mastermind behind the killing of Gerald Mervyn Perera. According to top CID officials, the investigations had revealed that SI Suresh — a policeman accused of torturing Gerald Perera — and four other constables attached to Wattala Police were involved in the torture and subsequently killing. The CID investigations also revealed that the police had hired an underworld character to carry out the brutal killing — thus intensifying the alleged nexus between the police and the underworld.

The killing of a torture victim speaks to how the rule of law in Sri Lanka has totally collapsed, and how discipline in the police force has degenerated to the extent that some officers have become nothing better than the planners and instigators of homicide. Over the last ten years, the AHRC has repeatedly voiced concerns over the exceptional collapse of the rule of law in Sri Lanka. It is now a place where ordinary citizens lack even the most rudimentary security. Today the whole government apparatus stands as an accused party to this murder by reason of its failure to provide Gerald Perera with adequate protection. The AHRC points to the numerous appeals it has made to the Inspector General of Police and the Attorney General in particular to provide security for complainants in trials initiated by the state, which have come to naught.

With Gerald's fatal shooting on 21 November 2004, there has been a serious attempt to block the path to justice. The killing was manifestly aimed at jeopardising the criminal case against seven officers of the Wattala Police. However, following significant pressure from AHRC and others, a public prosecutor has been appointed to this case and the Attorney General is

pursuing ways to prosecute the case even in the absence of Gerald Perera as a witness. This is the first time that a torture victim pursuing a complaint before the courts in Sri Lanka has been shot dead at the instigation of the perpetrators of torture. If the complete collapse of rule of law in Sri Lanka is to continue, it may very well not be the last. The perpetrators of these abhorrent crimes must be brought to justice.

We salute this courageous and innocent man who dared to assert his rights, despite the threats that he received and the risks to his life that he endured. We urge all people of goodwill to rise up and defend this man's honour and seek justice where he is no longer able to do so. It is also vital that Gerald's family — notably his wife and three young children — be protected from further suffering and supported in every way possible.

For further detailed information concerning the developments concerning the case of Mr. Gerald Perera, please go to the AHRC website, where you can find all of the relevant urgent appeals, press releases, statements and press cuttings collected together on one page. This can be found at: <http://www.ahrchk.net/gerald>.



CHAPTER 6

Calling for an Inquiry to Probe into the Security Lapses that Resulted in the Assassination of Judge Ambepitiya

The assassination of the High Court Judge Sarath Ambepitiya took place on 19 November 2004. To date, no one has taken the responsibility for the failure to provide adequate security to the Judge, who held a senior position in the judiciary. In any democracy or in a country that respects the rule of law, persons would have resigned or been forced to resign as a result of such failure. However, in Sri Lanka there has not even been a serious probe into this failure and no one has come forward to tender an apology for this grave failure that resulted in an act of great brutality.

The public needs to know who was at fault for failing to provide security to this High Court Judge. Who, within the police system was in charge of providing security for judges in general and for this High Court Judge in particular? Who in the judiciary coordinates and supervises police measures for the protection of judges? Is there a regular control mechanism at all?

From the discussion that is being reported in newspapers the answers to these questions are not at all clear. After the event, it is now said that a Superintendent of Police will be put in charge of the security of judges. The question then is who has been responsible for this task until now. Only the Inspector General of Police (IGP) and the police hierarchy can answer this question. Were the arrangements purely ad hoc without any one officer directly responsible? If this was the case, then the tragic death of the judge is hardly a surprise.

What, if any, has been the practice in the past for providing security for judges? Are there any circulars or guidelines? Are there any headquarters' orders or any written instructions at all? More importantly, is there a memorandum of understanding between the judiciary and the police on the matter of providing security for judicial officers? Have there been negotiations on these matters between these two branches and are there minutes and notes of such discussions? Or are these expressions of concern by the judiciary merely ad hoc and only expressed on the occasion of serious lapses, such as in the case of the killing of Judge Ambepitiya? Over the years, when there have been occasions of tension, what type of understanding has been developed by way of guidelines and the like? Are there any files containing the nature of discussions into these matters?

At the political level, responsibility rests both with the Ministry of Justice and the Ministry of Public Security, Law and Order. Thus what discussions have there been on this matter in the past between these ministries and what guidelines were arrived at? Or, have there been no such discussions and arrangements?

If the promises given after the death of Judge Ambepitiya are to be taken seriously by anyone at all, it is time for a public inquiry to be conducted by a Commission tasked with looking into these matters. The Commission should preferably consist of senior judges, and they should be given a mandate to question any person at any level of any authority and also to seek the views of the public. A Commission of this nature should be able to produce its findings and recommendations quite rapidly.

It is quite obvious that the deadlock existing on the issues that arose due to the killing of Judge Ambepitiya could be dealt with only by way of such a public Commission. We urge the government of Sri Lanka, the parliamentary opposition of Sri Lanka, the President, Prime Minister and the Leader of the Opposition in particular to take the initiative to appoint a Commission and launch a public inquiry into this matter.

We call upon civil society organisations in Sri Lanka who have been expressing concern over the killing of this judge and the deteriorating situation of the rule of law in the country, to press for the appointment of such a Commission that has an adequate mandate and the necessary resources, as soon as possible. We also call upon the Human Rights Commission of Sri Lanka to play an active role in this regard. It is not possible for the Human Rights Commission to perform its mandate of promoting and protecting human rights unless the very serious problems arising from the death of the judge are discussed publicly and are resolved.

As important as the killing of the judge are the attacks on complainants and witnesses who are coming before courts. These attacks are being launched in order to prevent them from giving evidence. The example of Mr. Gerald Perera, who died on 24 November 2004, as a result of being shot while he was awaiting the opportunity to give evidence in a trial under the prevention of torture act (Act No 22/1994), is one of the many examples of attempts to paralyse the judicial process by way of assassinations, violence and intimidation. A Commission probing into the affairs of the security of the judiciary will also have to deal with the problems of witness protection, about which much is spoken and nothing is done. All of these considerations would require a high-level Commission, consisting mostly of judges, to probe into these matters and to make recommendations for an effective programme for the protection of judges to be set up as soon as possible.



CHAPTER 7

CASE REPORTS

(a) Cases of Extrajudicial Killings

1. Victim : D.G. Jayathilaka (45)
Police Station : Mahawela (Yatawatte Police Security Barrier)
Date : 9 March 2004
Urgent Appeal : UA-35-2004 (9 April 2004) & UP-59-2004
(15 October 2004)

D. G. Jayathilaka: Tortured and killed

On 9 March 2004 around 1:00pm D.G. Jayathilaka was arrested by policemen led by SI Bandaranayake, from the Yatawatte Police Security Barrier — under the Mahawela Police Station. Mr. Jayathilaka was at a bus station when he was accused of possessing illicit liquor and arrested. The police then 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. The son thus went to the police station along with a relative by three-wheeler. At the 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 postmortem 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 Fundamental Rights 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.

Then on 14 October 2004, the Matale Police arrested the mother and daughter-in-law of the deceased, who had continued to actively pursue the case of Mr. Jayathilaka. The charges against them were unclear.

* * * * *

2. Victim : M.C. Ranjith Cooray (30)
 Police Post : Modara (Moratuwa)
 Date : 17 to 19 April 2004
 Urgent Appeal : UA-42-2004; (22 April 2004)

M.C. Ranjith Cooray: Murder in Moratuwa

M.C. Ranjith Cooray was arrested on 17 April 2004 on suspicion of theft and he died in custody two days later allegedly as a result of police torture. At the time of arrest he was a resident of Egoda Uyana, Moratuwa and a labourer at a timber sawmill. Reportedly on this fateful day, two persons named Felix and Babu 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 within half hour and before they reached the hospital he was dead. The postmortem 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, were 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's family feared that the police were now shifting the blame on these two people in a blatant attempt to cover up their own excesses.

* * * * *

3. Victim : S.P Guneratna (29)
Police Station : Welipenna
Date : 30 May 2004

Urgent Appeal : UA-63-2004 (10 June 2004)

S.P. Guneratna: Romantic liaison ends in murder

S.P. Guneratna 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. Guneratna's fiancée, after her husband died, she was harassed by SI Silva (*of notorious repute – see Tissa Kumara's Case, UA-18-2004*) of the Welipenna Police Station to enter into a sexual relationship with him — which she had refused. Notwithstanding, SI Silva relentlessly pursued 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. Guneratna 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 Matugama Magistrate's Court on 8 June 2004, the lawyer looking after the interests of the deceased's family brought the following to the attention of the Magistrate:

- a) The police version that the victim was transporting illegal timber was false;
- b) The two policemen were in civilian clothes;
- c) The two policemen were using a private motorcycle;

- d) They tried to escape after the shooting;
- e) The projectile removed from the head of the victim during the postmortem 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.

* * * * *

- 4. Victim : S.H. Abeysinghe (39)
- Police Station : Trincomalee
- Date : 17 May 2004
- Urgent Appeal : UA-67-2004 (14 June 2004)

S.H. Abeysinghe: Torture and death of a policeman on duty

At the time of his mysterious death, S.H. Abeysinghe was a Reserve Police Constable stationed at the Trincomalee Police Station and worked at the police mess serving food. 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, C.P.E. Pathirana who was resident in Colombo at the time. The same day, Ms. Pathirana accompanied by her father had left for Trincomalee. They reach there, around 9:30pm and were provided with a place to stay by the police.

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 Human Rights Commission 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. Jayatileke. And in his complaint to the HRC-Trincomalee, he had mentioned that the said Mr. Jayatileke had attacked him with a wooden stick used for cooking rice.

5. Victim : M. Ramson Peiris (59)
Police Station : Moratuwa
Date : 5 December 2004
Urgent Appeal : UA-176-2004 (17 December 2004) &
UP-05-2005 (10 January 2005)

M. Ramson Peiris:

A 59-year-old is killed under mysterious circumstances

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 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 Human Rights Commission (HRC) of Sri Lanka and the deceased's son too complained to the HRC on 13 December. The HRC had told the complainants to produce the postmortem report to begin an investigation, however, these documents are usually not made public, even to the deceased's immediate family. And at the time of the 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's killing began in the Moratuwa Magistrate's Court. However the deceased's 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 Judicial Medical Officer (JMO), who conducted an inquest on the victim's body, had earlier stated in his postmortem 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's 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 AHRC suspects that such inaction and delay by the Mt. Lavinia police is mainly for the purpose of manipulating witnesses.

Furthermore, the AHRC notices that Sergeant Silva, one of the two responsible police officers, continues to work as the Court Sergeant at the Moratuwa Magistrate's 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.

6. Victim : N. Sandasirilal Fernando (36)
Police Station : Panadura
Date : 27 March 2005
Urgent Appeal : UA-60-2005; (12 April 2005)

N. Sandasirilal Fernando: Assaulted and left to die

According to the deceased's brother, Deepal Fernando, on 26 March 2005 a fracas had ensued at a neighbouring house and he went to intervene. Thereafter a neighbour had accused Deepal Fernando of stabbing him, an allegation that he denied. The next day (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 revive him. However the deceased's 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 Human Rights Commission, the National Police Commission 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.

* * * * *

7. Victim : H.L. Susantha Kulatunga, (30)
Police Station : Rakwana
Date : 20 April 2005
Urgent Appeal : UA-80-2005; (17 May 2005)

H.L. Susantha Kulatunga:
“The same fate of your father will befall you”

On 10 April 2005 around noon, five policemen of the Rakvana Police Station located Mr. Kulatunga 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. Kulatunga’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. Kulatunga'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 postmortem was held. According to the victim's sister, though the deceased was alleged to have committed suicide by hanging himself, the postmortem revealed no injury to his neck. Instead the postmortem report had revealed more than 107 injuries spread over all parts of the victim's body. On 21 April the victim's brother and sister also made complaints to the ASP, Ratnapura. The inquest hearing into the death began at the Magistrate's Court of Ratnapura on 27 April 2005 (Case No. 251/05). During the inquest hearing, the deceased's daughters gave evidence about policemen visiting their home on 19 April – while their father was in custody. In court they also identified the two policemen who visited them. Subsequently the children said that they were threatened by the policemen who said '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 Human Rights Commission of Sri Lanka, the National Police Commission and the IGP. However, at the time of the Urgent Appeal no action has been taken in this case. There has been no disciplinary action instituted against those responsible for the victim's death and to all intents and purposes, they continue to serve in their same posts.

* * * * *

8. Victim : L.G. Nandiraja (53)
Police Stations : Weliveriya & Pitigala
Date : 29 May 2005
Urgent Appeal : UA-90-2005; (06 June 2005)

L.G. Nandiraja: Dragged naked and screaming to his death

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 postmortem examination was conducted on 1 June. A Magisterial inquiry was scheduled for 6 June.

9. Victim : Kosma Sumanasiri (41)
Police Station : Rathgama
Date : 27 May 2005
Urgent Appeal : UA-111-2005; (29 June 2005)

Kosma Sumanasiri: “Closer to the next world, than this”

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 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 dependent 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 JMO was called to give evidence on the autopsy findings by the Galle Magistrate 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.

* * * * *

10. Victim : H. Abeysiri, (52)
 Police Station : Peliyagoda
 Date : 13-14 July 2005
 Urgent Appeal : UA-122-2005; (19 July 2005)

H. Abeysiri: Dead over a cordless telephone

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 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 Asst. 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's body, including to his head

and left leg. The victim's body was released to the family on 15 July and his funeral took place on the 17th.

* * * * *

11. Victim : R.D. Dissanayake
Police Station : Kadawatha
Date : 30 April 2005
Urgent Appeal : UA-124-2005; (20 July 2005)

R.D. Dissanayake: “sent off” to the bottom of the well

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 of 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.

* * * * *

12. Victim : H. Quintus Perera (40)
Police Station : Polonnaruwa
Date : 3 October 2004
Urgent Appeal : UA-132-2004 (5 October 2004)

H. Quintus Perera: Killed on Poya Day for refusing to sell liquor

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. 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.

* * * * *

13. Victim : D.W. Munasinghe (49)
Police Station : Maharagama
Date : 10-11 April 2005
Urgent Appeal : UA-64-2005; (issued on 20 April 2005)

D.W. Munasinghe: “Do not assault him, he is a heart patient”

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 severe torture 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 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.

(b) Cases of Police Torture

1. Victim : K.P. Kumara de Silva (37)
Police Station : Kalutara North
Date : 19 December 2004
Urgent Appeal : UA-02-2005; (4 January 2005)

K.P. Kumara de Silva: Hit on the head with wooden poles

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 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 center 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 Human Rights Commission of Sri Lanka, the National Police Commission and the Attorney General. 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.

* * * * *

2. Victim : D.M. Karunapala (41)
 Police Station : Bandaragama
 Date : 17 January 2005
 Urgent Appeal : UA-16-2005; (1 February 2005)

D.M. Karunapala: Brutally tortured by wife's police paramour

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 Tilekeratne, 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 Tilekeratne was his wife's paramour and this was the reason for the inhuman treatment he had received.

That same night around 9:00, IP Tilekeratne 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 take any action. Then around 10:00am, the victim was taken before the Circuit Magistrate's Court, Bandaragama. Before being produced before the Magistrate, IP Tilekeratne threatened him that if he sought medical 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 Human Rights Commission 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 Tilekeratne had been transferred from the ASPs office, Panadura to the minor complaints division – also in Panadura.

* * * * *

3. Victim : M.A. Anura Dissanayaka (43)
Police Station : Wadduwa
Date : 24 January 2005
Urgent Appeal : UA-21-2005; (8 February 2005)

M.A. Anura Dissanayaka: Ruptured eardrums for saying ‘hello’

At 12.30am on 24 January 2005, M.A. Anura Dissanayaka was awakened by a neighbour and told that someone, who had come to meet him, was standing outside his house. Mr. Dissanayaka went outside and recognised the visitor as Sergeant Nimal of the Wadduwa Police Station. So he greeted the visitor saying ‘hello’. But Sergeant Nimal, who was in plain clothes and rather intoxicated at the time, was presumably enraged by the greeting and charged towards Mr. Dissanayaka shouting; “who the devil are you to say hello to me?” (kavuda yako umba mata hallo kiyanna). The policeman proceeded to hit Mr. Dissanayaka about the head, violently striking at his face and ears. It was only after Mr. Dissanayaka’s wife intervened that the policeman ceased his assault. According to Mr. Dissanayaka, 5 other policemen — including SI Rajapaksha of the Wadduwa Police Station and who had accompanied Sergeant Nimal — witnessed the assault. But none of them attempted to prevent it. Finally, when neighbours gathered around the victim’s house, the police had driven away. Before leaving, Sergeant Nimal threatened Mr. Dissanayaka not to inform any higher authority about the incident.

Around 10:00 that morning, the victim boldly went to the Wadduwa Police Station to lodge a complaint. But SI Rajapaksha told him not to make the complaint. When Mr. Dissanayaka insisted, PC Upali refused to take down the complaint and instead, directed him towards the OIC of the Station who likewise, refused to accept his complaint. With no alternative, Mr. Dissanayaka went to the SSP-Panadura and lodged a complaint on 25 January 2005.

On 27 January the victim was admitted to Ward 11 of the Nagoda Government Hospital, as he was suffering from terrible earache. Whilst in

hospital the victim's statement was recorded by a policeman attached to the hospital police post. In hospital, he was also examined by the JMO. On 31 January Mr. Dissanayaka was discharged from hospital and he was requested by a specialist doctor to return for further treatment. However, Mr. Dissanayaka continued to suffer from pain in his ears and was taken to the Nawaloka Hospital in Colombo for treatment. There, he was examined by Prof. Ravindra Fernando (Consultant JMO - Faculty of Medicine, UoC) and Consultant Surgeon Dr. Chandra Jayasooriya of the Colombo National Hospital. Dr. Jayasooriya observed that both the victim's eardrums had been ruptured; therefore he required immediate hospitalisation and treatment. Accordingly, the victim was admitted to Ward No. 7 of the hospital.

After he was discharged, the victim complained in writing to the Human Rights Commission of Sri Lanka, the National Police Commission the IGP, and the Attorney General. He also filed Fundamental Rights Application No. 50/05 before the Supreme Court and was granted leave to proceed on 03.03.2005. However thereafter, the victim informed his lawyers that he wished to withdraw his case as his alleged torturer had offered him Rs. 25, 000, not to proceed with the matter. Currently the HRC is conducting an inquiry into the incident.

There has been no police departmental inquiry into the matter and the alleged perpetrators are continuing to serve in their posts.

* * * * *

4. Victim : A.P.S. Jayaweera Sandanayake (43)
 Police Station : Mundal
 Date : 15 December 2003
 Urgent Appeal : UA-25-2005; (17 February 2005)

A.P.S. Jayaweera Sandanayake: Hammered with a hosepipe

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 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. Subsequently, the victim lodged complaints with the Human Rights Commission 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 Legal Aid Commission 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 policeman 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.

Recently the Police SIU had recorded Mr. Sandanayake's statement regarding his torture.

* * * * *

5. Victim : A.M. Shriyantha Bandara (12)
 Police Station : Wattagama
 Date : 28 January 2005
 Urgent Appeal : UA-27-2005; (25 February 2005)

**A.M. Shriyantha Bandara:
 12-year-old assaulted over his father's liquor collection**

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.

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 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.

* * * * *

6. Victim : Nagalingam R.K. (20)
 Police Station : Matale (Place of incident: Matale courthouse)
 Date : 21 February 2005
 Urgent Appeal : UA-33-2005; (4 March 2005)

Nagalingam R.K: Beaten for bumping into a policeman

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 passerby. 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.

The Police Chief Inspector then 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 locked 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.

* * * * *

7. Victim : Mahesh Kumara (11)
 Police Station : Wattegama
 Date : 9 & 10 February 2005
 Urgent Appeal : UA-35-2005; (4 March 2005)

Mahesh Kumara:

“If you wish to see your son again, get him to sign”

On 6 February 2005 young 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 Wategama 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 Police Constable at the Wategama Station handed over a written statement to Mahesh and insisted he sign it. When Mahesh's father objected as he did not know the 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.

* * * * *

8. Victim : Chintaka Deshapriya (32)
 Police Station : Kiriella
 Date : 2 February 2005
 Urgent Appeal : UA-36-2005; (8 March 2005)

Chintaka Deshapriya: "We are going to bring two bottles of Kasippu and put your seal on them"

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 these tactics 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 Human Rights Commission of Sri Lanka, the HRC has now begun an inquiry into the incident.

* * * * *

9. Victim : M. Riyas and M. Arsik
Police Station : Weligama
Date : 28 March 2005
Urgent Appeal : UA-53-2005; (1 April 2005)

M. Riyas and M. Arsik: Tortured by thieving policemen

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.

* * * * *

10. Victim : V.A.N. Krishantha Jayawardana (43)
Police Station : Wattagama
Date : 4-5 March 2005
Urgent Appeal : UA-61-2005; (14 April 2005)

**V.A.N. Krishantha Jayawardana:
‘This is a Mitsubishi Pajero, not a Trooper’**

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 Wattagama 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 Wattagama 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 Fundamental Rights Application before the Supreme Court (Case No: SC/FR/97/2005) but to his knowledge no serious action has been taken against OIC Samarakoon.

* * * * *

11. Victim : U.J. Abeyratne (42)
 Police Station : Wadduwa
 Date : 25 October 2004
 Urgent Appeal : UA-46-2005 (16 March 2005)

U.J. Abeyratne:

False implication of innocent man sees culprits walk free

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 thing 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 filed 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 advice he retained a lawyer and pleaded ‘not guilty’ to the charges 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.

* * * * *

12. Victim : I.P.K. Alwis (26) and S. Nissanka
Police Station : Panadura North (Keselwatte)
Date : 16 February 2005
Urgent Appeal : UA-43-2005 (15 March 2005)

I.P.K. Alwis & S. Nissanka: Tortured consolation

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

13. Victim : B.C.P. Perera and 2 friends
Police Station : Kandana
Date : 2 March 2005
Urgent Appeal : UA-32-2005 (3 March 2005)

B.C.P. Perera and 2 friends: Assaulted for being argumentative

On 2 March 2005, B.C.P. Perera was travelling in a three-wheel cab with his 3-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 rushed out from the police station and joined in assaulting the victims who were by this time badly injured. Not done, the 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 Human Rights Commission of Sri Lanka.

* * * * *

14. Victim : W.G.G.A. Bernard Janapriya (32)
 Police Post : Agaliya
 Date : 10 February 2005
 Urgent Appeal : UA-63-2005 (15 April 2005) & UP-76-2005
 (29 June 2005)

W.G.G.A. Bernard Janapriya: Attacked for wearing a tracksuit

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 on board 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 Human Rights Commission, the National Police Commission and the IGP.

Mr. Janapriya said that he believed the police hierarchy was deliberately delaying investigating his case and several attempts had been made to induce him to withdraw his complaint.

Then in a letter dated 25 May 2005 the IGP informed the Asian Human Rights Commission (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 PS Chaminda (15794), and two other 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”.

15. Victims : W. Gamini Senadeera (31) &
K.L. Ganga Kalyani, (31),
Police Station : Embilipitiya
Date : 21 April 2005
Urgent Appeal : UA-57-2005 (4 May 2005) & UP-75-2005
(27 June 2005)

**W. Gamini Senadeera & K.L. Ganga Kalyani:
“It is you who are pregnant, not me”**

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.

* * * * *

16. Victim : H.H. Priyadarshana Fernando (26),
 Police Station : Panadura
 Date : 19 May 2005
 Urgent Appeal : UA-96-2005; (issued on 17 June 2005)

**H.H. Priyadarshana Fernando:
 Beaten until torturer's arms were sore**

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 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.

* * * * *

17. Victim : L.K.V. Saman Kumara (25)
Police Post : Palmadulla
Date : 4 June 2005
Urgent Appeal : UA-98-2005; (21 June 2005)

L.K.V. Saman Kumara: Beaten up for being drunk

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 wretched 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.

* * * * *

18. Victim : A. Jeevananda, (23)
 Police Station : Morantuduwa
 Date : 2 July 2005
 Urgent Appeal : UA-118-2005; (12 July 2005)

A. Jeevananda: The 'dharma chakraya'

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 notice a man pointing in his direction, saying, "this is he 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 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 Human Rights Commission 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 got. 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 about 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.

* * * * *

19. Victim : P.H.K. Sanjeewa Ranasinghe, (31)
 Police Station : Criminal Investigation Unit, Chaithya Road, Colombo
 Date : 7 - 19 July 2005
 Urgent Appeal : UA-123-2005; (19 July 2005)

P.H.K. Sanjeewa Ranasinghe: Illegally detained for over 12 days

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 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 Urgent Appeal the victim's family had complained to the Galle branch office of the Human Rights Commission of Sri Lanka and also to the IGP, but had not received any replies from these authorities.

* * * * *

20. Victim : R.B.C.K. Wanninayake (30)
Police Station : Galkiriyagama
Date : 3 February 2005
Urgent Appeal : UA-56-2005 (6 April 2005)

R.B.C.K. Wanninayake: Policemen assaulting policeman

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 Human Rights Commission of Sri Lanka and the National Police Commission 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 Urgent Appeal the authorities had failed to take any action.

* * * * *

21. Victim : J.P.U. Saman Jayasuriya
Police Station : Kadugannawa
Date : 9 March 2004
Urgent Appeal : UA-31-2004 (1 April 2004)

**J.P.U. Saman Jayasuriya:
Lost four teeth for asking “who are you?”**

On 9 March 2004 around 8:15pm, J.P.U. Saman Jayasuriya was driving his elder son's Toyota Hi-ace Van from the Pilimalalawa 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 an S-lon 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-lon 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 being 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 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 National Police Commission and the Human Rights Commission, Kandy.

* * * * *

22. Victim : H. Nelsen Perera (44) and H.L.N. Peiris
 Police Post : Pinwatte
 Date : 13 March 2004
 Urgent Appeal : UA-39-2004 (16 April 2004)

**H. Nelsen Perera and H.L.N. Peiris:
 Brutally tortured for ‘being too smart’**

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 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 Human Rights Commission, National Police Commission, IGP, DIG, Police (Colombo South), SSP and ASP, in Panadura. He also filed a fundamental rights 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.

* * * * *

23. Victim : E. Amal Fernando (22)
 Police Station : Kalutara North
 Date : 19 January 2004
 Urgent Appeal : UA-46-2004 (30 April 2004)

E. Amal Fernando: Assaulted in his own front yard

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 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 National Human Rights Commission, 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.

* * * * *

24. Victim : U.L.D.S. Chandana, (29)
 Police Post : Bentota
 Date : 16 April 2004
 Urgent Appeal : UA-46-2004; (30 April 2004)

U.L.D.S. Chandana: Beaten on the soles of his feet

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.

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. In the evening as instructed 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.

25. Victim : K.E. Sampath (28)
Police Station : Thebuwana
Date : 16 April 2004
Urgent Appeal : UA-53-2004; (28 May 2004)

K.E. Sampath: A mother is forced to beat her son

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 Matugama 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, Human Rights Commission, as well as the National Police Commission. Later, the victim filed a fundamental rights application in the Supreme Court in Case No 80/2004 against the Thebuwana Police.

Ever since he filed the FR application, Mr. Sampath complained that he had been pressurised by the Thebuwana 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 Matugama Police arrested Mr. Sampath and handed him over to the Thebuwana Police. He was arrested on the allegation of stealing a kitchen sink. When he was produced before the Matugama Magistrate the OIC of the Thebuwana 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.

* * * * *

26. Victim : W. Mahinda (32)
Police Station : Wattala
Date : 13 May 2004
Urgent Appeal : UA-55-2004 (31 May 2004)

W. Mahinda: Shot in the hand

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 Babu Mahathaya attempted to grab the policeman's 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 National Human Rights Commission and the National Police Commission of this incident.

* * * * *

27. Victim : T.K. Priyantha (25) & M.S. Priyakumara (23)
 Police Post : Aluthgama
 Date : 26 April 2004
 Urgent Appeal : UA-57-2004 (2 June 2004)

**T.K. Priyantha and M.S. Priyakumara:
At the receiving end of drunken policemen**

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 whom 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.

* * * * *

28. Victim : A.G. Ravindra (26)
 Police Station : Katupotha
 Date : 13 May 2004
 Urgent Appeal : UA-63-2004 (9 June 2004) & UP-49-2004
 (26 August 2004)

A.G. Ravindra: Penalised for asking why

On 13 May 2004 around 7:30pm, according to A.G. Ravindra, he was sipping tea at a boutique, which was also fraternised by several other customers. Then several policemen in civilian clothes — including IP Attapattu of the Katupotha Police — arrived in vehicle No. 61-7410 and arbitrarily arrested A.G. Ravindra and three others. They were taken to the Katupotha Police Station without informing them of the reasons of arrest. At the time of arrest, IP Attapattu had assaulted Mr. Ravindra causing his toenail to come off.

At the police station, Mr. Ravindra had queried from IP Attapattu the reason for his arrest. In reply IP Attapattu assaulted him and pushed him back into the police vehicle. Mr. Ravindra was taken to the Katupotha Hospital where the doctor in charge issued a medical report — without even examining him and ignoring his complaint of assault. IP Attapattu took Mr. Ravindra back to the police station and inhumanly tortured him with fists and a wooden pole as well as kicked him all over his body with boots. As a consequence, the victim's left ear was cracked. Later he was released on police bail on the condition that he appears before the Wariyapola Magistrate's Court on 23 May 2004. He was charged with unlawful assembly and causing disturbance in a public place. After being released, the victim received medical treatment at the Kurunegala Teaching Hospital. He had also complained to the DIG – North Western Province and the Senior Superintendent of Police, Kulyapitiya regarding the incident.

On 23 July 2004, the Katupota Police once again illegally arrested Mr. Ravindra — apparently for complaining again the police to the Human Rights Commission of Sri Lanka. Accordingly, on the 23rd around 10:45pm one IP Jayaweera assaulted and arrested Mr. Ravindra, who was told en route that the police wanted to take his statement. However when the victim arrived at the station, a false complaint made by one Thusara had been recorded and he was locked in a cell. The next day, the station OIC Attapattu once again severely assaulted the victim with wooden poles and demanded to know why Mr. Ravindra had complained to the HRC. When Ravindra collapsed from the assault, the OIC ordered another policeman to charge

him in court and to have him remanded. The OIC further instructed the policeman to inform court that an identification parade would be needed before the victim could be released. Consequently, the Wariyapola Magistrate remanded Mr. Ravindra until 29 July 2004, on which date he was released on bail.

* * * * *

29. Victim : M.A. Dilhara De Silva (17)
Police Station : Panadura
Date : 7 June 2004
Urgent Appeal : UA-77-2004 (24 June 2004)

M.A. Dilhara de Silva: 17-year-old tortured over theft in policeman's home

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. 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 policemen 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 locked 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.

* * * * *

30. Victim : P.K. Nimal (37)
Police Station : Horana
Date : 6 June 2004
Urgent Appeal : UA-71-2004 (18 June 2004)

**P.K. Nimal: "I will falsely charge you with possessing a bomb,
if you do not tell the truth"**

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, 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 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.

* * * * *

31. Victim : Five residents of Mallagahawila
Police Station : Badureliya
Date : 27 June 2004
Urgent Appeal : UA-82-2004 (6 July 2004)

**Five residents of Mallagahwila: All assaulted;
one forced to plead guilty**

On 27 June 2004, J.S. Chaminda, B.W.L. Ajith Kumara and W. Wijethilaka were travelling in a three-wheeler, when 7 policemen including the OIC of the Badureliya Police Station stopped them. The three men were dragged from the vehicle and assaulted by the police. According to Mr. Wijethilaka two policemen held his arms while another slapped him hard on his ears with open palms. As a consequence, the victim momentarily lost consciousness. While being beaten, all three were asked the whereabouts of one Ananda Wijekoon. Then the policemen forced the men into a police jeep and took them to the Badureliya Police Station where they were locked up. Because Mr. Wijethilaka had fainted again, he was taken to another room and put on a mat. About an hour later he gained consciousness and was allowed to sit on a chair.

At about 5:00pm the victims were taken to the official residence of the Badureliya District Medical Officer (DMO), who saw it fit to issue medical certificates regarding the health of the three victims without a proper examination of any of them. Allegedly, the DMO also issued a false report indicating that Mr. Ajith Kumara was drunk when arrested. Later the same day, 4 policemen involved in the illegal arrest and ill treatment of the victims had visited the residence of Ananda Wijekoon and reportedly assaulted his wife, M.K. Gnanawathi and son, Roshan. The next day (28) at about 10:00am Messrs. Chaminda and Wijethilaka were released on police bail and no charges were filed against them. Mr. Ajith Kumara however was charged with driving whilst under the influence of alcohol and produced before the Matugama Magistrate's Court. According to Mr. Kumara, before being produced in court, the police had demanded that he plead guilty to the charge. They also threatened to confiscate his three-wheeler, as well as to cause further difficulties unless he pleaded guilty. Due to these threats, Mr. Kumara pleaded guilty to driving while being drunk, was fined and released.

Meanwhile, because of the beating he received on his ears, Mr. Wijethilaka suffered severe pain and bleeding from his ears. But he did not visit the

hospital due to economic reasons — i.e. he could not afford to miss work — and also had to complete work already undertaken. However, on 8 July 2004 due to serious ill health he was admitted to the Kalutara General Hospital, where he underwent treatment for several days in Ward 8.

* * * * *

32. Victim : W.R. Terrance Fernando
Police Station : Kaduruwela
Date : 21 February - 25 June 2004
Urgent Appeal : UA-83-2004 (7 July 2004)

W.R. Terrance Fernando: Torture of the innocent

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 neighborhood 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 was half-naked.

On 23 February 2004 he was produced in the Polonnaruwa Magistrate's 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 fundamental rights case in the Supreme Court against his arrest, torture and illegal detention.

* * * * *

33. Victim : M. Piyawathi (48), D. Kumari (22) and
K. Priyantha (16)
Police Station : Badureliya
Date : 31 May 2004
Urgent Appeal : UA-89-2004 (20 July 2004)

**M. Piyawathi & kids:
Reporting police mischief gets them into trouble**

On 31 May 2004, three men in civilian clothes visited Ms. M. Piyawathi's house and asked her for a bottle of *Kasippu* (illicit liquor). When she replied she had no *Kasippu*, the three men assaulted her by slapping her hard on the face, punching her arms and kicking her on the chest. They — whom she soon found out were policemen — then searched her house and took Rs. 13,720 (about US\$ 137) and a gold ring. Thereafter they took Ms. Piyawathi, her 22-year-old daughter D. Kumari and 16-year-old son, K. Priyantha to the Badureliya Police Station. From the station, Ms. Piyawathi was taken to

the private dispensary owned by a government doctor, whom she informed about the police assault on her person. Later, the police charged Ms. Piyawathi and her two children with obstructing police duty and produced them before the Matugama Magistrate's Court. The Magistrate ordered that Ms. Piyawathi be remanded for 10 days while her 2 children were released on bail. At the remand prison she was again examined by a doctor and given medical treatment for her injuries.

According to Ms. Piyawathi the police harassed her family thus, because on a previous occasion she had complained to the Badureliya Police OIC, about policemen being involved in the illicit liquor business. Namely, she had complained that a Woman Police Constable (WPC) of the Badureliya Police and a male PC from the Ingiriya Police had been engaged in the trade on a large scale with the help of their relatives in the area. She also admitted that though she too had previously sold *Kasippu* she ceased to do so about 4 months prior to the incident.

After her release on bail, Ms. Piyawathi lodged a complaint with the Human Rights Commission of Sri Lanka and the National Police Commission demanding that they take immediate legal and disciplinary action against the OIC and other policemen of the Badureliya Police Station.

* * * * *

34. Victim : N. Roshan Jayaweera (26)
 Police Station : Wariyapola
 Date : 14 July 2004
 Urgent Appeal : UA-92-2004 (24 July 2004)

N. Roshan Jayaweera: Beaten with a belt

On 14 July 2004 around 9:00 in the morning, N. Roshan Jayaweera, his wife and another person reported to the Wariyapola Police Station as requested by the police. Upon arrival at the station, a policeman from the crimes branch escorted Mr. Jayaweera into a room. Here, the policemen had slapped Mr. Jayaweera several times, pulled his hair and demanded to

know where he had been on 18 & 19 June. The policeman removed the victim's shirt and beat him with a belt. The victim was handed over to two other policemen who also assaulted him for about 15 minutes. The police ordered him to sit on a chair until 4:40pm, and then released him. The following day (15), Mr. Jayaweera boldly visited the Wariyapola Police Station and complained to the OIC about his assault the previous day. However, the OIC had ignored him and refused to record his complaint.

The same day, being in severe pain from the police assault, Mr. Jayaweera visited the Kurunegala General Hospital for medical treatment. He was admitted to Ward 35 for two days and then discharged. Whilst in hospital he also complained to the hospital police post about his assault by the Wariyapola Police. In addition the JMO too examined him. However he alleged that little or no action has been taken by the police authorities to investigate the incident.

* * * * *

35. Victim : H.S.I. Silva (24)
 Police Station : Payagala
 Date : 20 July 2004
 Urgent Appeal : UA-93-2004 (26 July 2004)

H.S.I. Silva: Kicked on his genitals

On 20 July 2004, H.S.I. Silva and his brother walked home from their village shop. When they reached home, Mr. Silva stood by the roadside to finish a cigarette while his brother went inside. Then a jeep belonging to the Payagala Police stopped by and several policemen beckoned Mr. Silva threateningly, but he ignored and entered his house. The policemen followed him inside dragged him out and beat him. They took him to the garden where the OIC hit and kicked him. When he was kicked on his genitals, he fell screaming in pain. But the other policemen forced him to stand and hit him mercilessly with wooden sticks — for 5-6 minutes. Thereafter, the police dragged him to the jeep and took him to the Payagala Police Station where he was locked up.

The following afternoon (21) Mr. Silva was produced before the Kalutara Magistrate's Court charged with possessing cannabis (marijuana) – a charge, which Mr. Silva insisted was fabricated. His lawyer then informed court that Mr. Silva was tortured by the police, after which the Magistrate recorded Mr. Silva's statement and documented his injuries. He was remanded with instructions to prison officials to afford him with required medical treatment. They were also told that the JMO's report on his health condition should also be submitted.

The incident was reported to the Human Rights Commission of Sri Lanka, which assured that appropriate steps would be taken to safeguard the victim's rights.

* * * * *

36. Victim : B. Shiwabalan (17) & friends
 Police Station : Matale
 Date : 22 July 2004
 Urgent Appeal : UA-99-2004 (11 August 2004)

B. Shiwabalan & friends: Torture of 4 Tamil youths

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. Thereafter, the three were taken to the District Medical Officer (DMO), but no medical treatment was provided despite Mr. Shiwabalan complaining of chest pains.

When Mr. Shiwabalan's father visited the Matala 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 Matala Magistrate and released on bail. After release the victims were admitted to the Matala Hospital and underwent medical treatment for several days. And they claimed that though they informed the JMO and DMO of their assault, they were not taken seriously.

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.

* * * * *

37. Victim : 600 employees of Bata Shoe Company
Police Station : Mount Lavinia
Date : 12 August 2004
Urgent Appeal : UA-104-2004 (19 August 2004)

**600 employees of Bata Shoe Company:
Peaceful protest met with brutal force**

About 600 employees of the Bata Shoe Company Ceylon (Ltd) were conducting a peaceful sit-down protest opposite the Company premises in Ratmalana against the sacking of a trade union leader and other workers. On 12 August 2004 the strike was into its 52nd day and the protesting workers had decided to sleep on the road to obstruct the company's trucks from passing by. The workers were unarmed at the time when suddenly the Police Riot Squad arrived at the scene. They used tear gas, water cannons and batons to brutally attack and forcibly evict the peacefully protesting workers. The attack caused 13 workers to be seriously injured and subsequently to be hospitalised. Another 15 workers were taken into custody, including two women activists. One said she was kicked in the stomach by a policeman and another said her hand was crushed by a policewoman — reportedly after the management made a complaint against them.

The next day (13), three union activists of the 15 arrested workers were produced in court and remanded till 16 August 2004 while the rest were released on bail.

* * * * *

38. Victim : W.P.L. Weerasinghe (33)
Police Station : Yatawatta
Date : 16-17 July 2004
Urgent Appeal : UA-113-2004 (6 September 2004)

W.P.L. Weerasinghe: Whirled on the wheel

On 16 July 2004 around 11:00am W.P.L. Weerasinghe was working in a cinnamon plantation owned by one Mr. Kulatunga, 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 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 released 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 Human Rights Commission of Sri Lanka and the National Police Commission about the incident but claimed that — more than 1 ½ months on — these institutions had not begun their investigations.

* * * * *

39. Victim : W.R.V. Herath (40)
 Police Station : Pologahawela
 Date : 5-6 September 2004
 Urgent Appeal : UA-118-2004 (15 September 2004)

W.R.V. Herath: 'Kitul' pole treatment, but cause unknown

On the evening of 5 September 2004, W.R.V. Herath went to the Pologahawela 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.

Thereafter, the police took the injured Mr. Herath by jeep to the Polgahawela Government Hospital where he was shown to a doctor. The victim however said that the doctor did not examine him nor question him, instead falsely commented that he was drunk. He was taken back to the station and locked in a cell. The following morning (6) he was released on bail after which his family rushed him to the Polgahawela Hospital where he was admitted and treated for over one week.

To date Mr. Herath is unaware of any charges against him.

* * * * *

40. Victim : S.C.P. Fernando (27)
Police Station : Negombo
Date : 15-17 September 2004
Urgent Appeal : UA-122-2004 (22 September 2004)

S.C.P. Fernando: Private shindig of Sergeant Subasinghe

On 15 September 2004, late in the evening, S.C.P. Fernando was on his way to meet a friend at Munnakaraya, Negombo when a group of unknown people, in a white van abducted him. They tied his hands, inserted a cloth in his mouth and assaulted him. A while later, Sergeant Subasinghe of the Negombo Police Station got into the van and threatened Mr. Fernando; "Are you trying to play with the police? Today I will show you what I can do" the policemen hit Mr. Fernando on the head with his pistol and the victim fell down unconscious.

When Mr. Fernando regained consciousness the next morning (16), he found himself in a lonely room in an unknown place. His hands remained tied and

his mouth stuffed with cloth. Then Sergeant Subasinghe walked in, severely assaulted him and demanded he write a letter withdrawing his complaint against the policeman. Mr. Fernando refused and the policeman left, leaving the victim tied to a bench in the room. Sergeant Subasinghe returned the following day (17) and resumed his assault on the victim. This time however, unable to withstand the torture anymore the victim agreed to write a letter addressed to the IGP, in which he withdrew his complaints against the policeman. According to the victim, he was then forced to write a suicide note to his mother, saying he had committed suicide on his own free will. The policeman hit him on the head with his pistol, and the victim fell unconscious — yet again.

Mr. Fernando awoke late that night and found that his hands were no longer tied nor his mouth stuffed. He pushed open the room door and ran until he reached a main road. There he met a security guard and complained about what befell him. When his relatives received news about his whereabouts they arrived and accompanied him to the nearby Dankotuwa Police Station where he lodged a complaint regarding the incident. He was hospitalised and received treatment for his injuries at the Negombo Hospital for two days.

* * * * *

41. Victim : H.M. Punchibanda (39)
 Police Post : Samanalaweva
 Date : 26 August 2004
 Urgent Appeal : UA-126-2004 (24 September 2004)

H.M. Punchibanda: Tortured with a rope around his neck

According to the H.M. Punchibanda, on 26 August, 2004, around 4:30pm Sub Inspector (SI) Dhammika Bandara and Sergeant Mahinda of the Samanalaweva 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 Maranghavilla, untied his hands, allowed him to wear his shirt and proceeded to the Samanalaweva 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.

42. Victim : H.V.D. Nimalasiri (25)
Police Post : Veyangoda
Date : 5 September 2004
Urgent Appeal : UA-133-2004 (8 October 2004)

H.V.D. Nimalasiri: Rendered unconscious after being forced to inhale petrol

H.V.D. Nimalasiri was a three-wheel cab driver. On 5 September 2004 about 2:00am his father was awakened by shouting and knocking at the front door. When the father opened the door, he saw 5 men outside — all were in civilian clothes except one who was in police uniform. The persons said they were from the Gampaha Police and asked whether there was a three-wheel driver inside the house. The father replied that his son was sleeping inside. The policemen entered, awoke Mr. Nimalasiri and demanded he accompany them to the police station. When Mr. Nimalasiri asked the reason for his arrest, they replied he would be informed at the station. Reportedly, the policemen did not produce an arrest warrant or their ID cards at the time.

The policemen took Mr. Nimalasiri to a police vehicle parked some distance away. As they approached the vehicle they assaulted him with their fists, beating him on his chest, stomach and back. In the vehicle Mr. Nimalasiri said that he was continuously assaulted with rifle butts and fists and also trampled with boots. And he still did not know the reason for his arrest and torture. When the vehicle stopped at the Naiwela junction, a policeman seated in the front seat again ordered the others to attack the victim and while he was being brutally beaten, the officer had queried: “Did you carry any stolen goods in your three-wheeler?” Mr. Nimalasiri was surprised and denied the allegation. But the police insisted he did and said they had brought his cab to the police station.

When they reached the station, Mr. Nimalasiri realised he was at the Veyangoda Police Station instead of Gampaha as falsely stated by the policemen to his father. There, he was taken into a dark room and 4

policemen ordered him to take off his clothes. Then they ordered him to lie, face downward on a wooden box and raise his legs. The 4 policemen hit on the soles of his feet for about 15 minutes. He was told to turn and the policemen assaulted him with poles on his legs, knees and sex organs. He was turned face down again and forced to inhale from a polythene bag containing petrol, which they tied around his neck. The pain was excruciating he said, and he had screamed in agony, but the policemen continued regardless. Finally he was rendered unconscious. When he came to his senses around 6:00am he noticed that the polythene bag had been removed. The police forced him to get dressed. However when he dusted his shirt before putting it on, the dust had apparently irritated a policeman nearby who became very angry and hit him so hard that he fell unconscious again.

When the victim regained consciousness, he was told to stand but was unable to do so and fell down. He was taken behind the police station where 4-5 policemen told him to follow them across a barbed wire fence. But as the victim was too weakened and injured to obey, the policemen had little option but to carry him to a vehicle outside. The victim vaguely saw his brothers at the entrance of the station — apparently he was being taken away to avoid being seen by his brothers. In the police vehicle, the police ordered the victim to tell his homfolk that he was brought to the police station only a little while ago. The vehicle then took a detour and entered the police station from the main gate. One SI Wijewardene announced to his relatives that the victim was only now being brought to the station and not a single blow was given him. He was locked up and around 10:00am released after his statement was recorded. After his release, Mr. Nimalasiri informed his family of the nightmare he underwent at the hands of the Veyangoda Police.

Mr. Nimalasiri had to be hospitalised on 10 September 2004 and this incident was given wide publicity in local newspapers. His father also complained in writing to the Human Rights Commission of Sri Lanka, the Chief Justice and the President.

43. Victim : R.A. Hemasiri (40)
Police Post : Kuruvita
Date : 19-20 September 2004
Urgent Appeal: UA-135-2004 (12 October 2004)

R.A. Hemasiri: Many times a victim

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's 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.

* * * * *

44. Victim : R. Senadheera, (42)
 Police Post : Horana
 Date : 29 September 2004
 Urgent Appeal : UA-141-2004 (19 October 2004)

R. Senadheera: “I was waiting for you”

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 was discharged on 5 October 2004.

* * * * *

45. Victim : K.G. Dharmasiri (32)
 Police Post : Hasalaka
 Date : 2 August 2004
 Urgent Appeal : UA-142-2004 (26 October 2004)

K.G. Dharmasiri: Fractured bones

On 2 August 2004 a policeman named Kithsiri of the Hasalaka Police Station approached K.G. Dharmasiri — who was near a boutique in the village of Ulpathagama — and began to assault him. The victim was assaulted and injured on his left hand, left arm, left rib cage, back and head. The policeman accused him of distilling illicit liquor — an allegation the victim strongly denied. On 16 August 2004 Mr. Dharmasiri visited a local human rights organisation and told them about the incident. In response, the organisation

had, on behalf of the victim, lodged an official complaint with the Kandy Police Station, the National Police Commission and the National Human Rights Commission. On the same day (16) this HR organisation also admitted Mr. Hemasiri to Ward 10 of the Kandy General Hospital for medical treatment. The next day, (17) the victim's left hand was put in plaster and he also received treatment for his numerous other injuries. On 21 August he was discharged but advised that his hand required a surgical operation. On 24 August, his hand was operated on and a fractured bone attended to. However the doctors told him that it was not possible to correct the injury caused to his little finger and the damage might be permanent. At the time of the Urgent Appeal he still complained of pain in his hand.

Meanwhile the case against him was called before the Magistrate's Court but because he was hospitalised he was unable to attend court. According to Mr. Dharmasiri the Hasalaka Police visited him at home and insisted that he withdraw his complaint against policeman, Kithsiri. They also warned him not to attend court. On 18 October, the victim attended court, only to be threatened by the police to plead guilty to the charges against him. They said that if he did not plead guilty and also withdraw his complaints he could be charged again for possessing illicit liquor. Nonetheless, the victim withstood this pressure and pleaded not guilty. As a result, he was enlarged on bail and the case was postponed to 13 December 2004.

However, because the victim did not yield to police threats, he suffered continued harassment from them. Consequently he went into hiding in fear of his life and the safety of his family.

* * * * *

46. Victim : E. Ravindra Kumara (23)
 Police Post : Kalutara
 Date : 14 October 2004
 Urgent Appeal : UA-150-2004 (9 November 2004)

E. Ravindra Kumara: Tortured over an allegation of theft

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 continued 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 Human Rights Commission 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.

47. Victim : P. Kanagaraj (20)
Police Station : Pussellawa
Date : 23 September 2004
Urgent Appeal : UA-156-2004 (18 November 2004)

P. Kanagaraj: Arbitrarily assaulted to appease bus owner

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, 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.

* * * * *

48. Victim : D.M.D. Weerasuriya (21)
 Police Station : Panadura North
 Date : 5 November 2004
 Urgent Appeal : UA-161-2004 (23 November 2004)

D.M.D. Weerasuriya: Falsely implicated for failing to inform on uncle

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 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 locked 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.

* * * * *

49. Victim : V.D.T. de Mel (21)
Police Station : Moratuwa
Date : 1- 3 June 2004
Urgent Appeal : UA-59-2004 (3 June 2004)

V.D.T. de Mel: A mother’s search for her son

At about 9:00pm on 1 June 2004, V.D.T. de Mel was arrested by the Moratuwa Police at Laxapathiya. The reason for the arrest was not known. When his mother Ms. P.K. Peiris visited the Moratuwa Police Station the next day (2) to see her son, he told her that the police had brutally tortured him as a result of which his right hand was broken. He also added that he was unable to walk because the police assaulted him on the soles of his feet. He had also shown his mother the resultant injuries. After her visit, the station OIC told her to return at 5:00pm to release her son. But when she went back to the police station as informed, a policeman scolded her in foul language and chased her away. The desperate woman waited outside the police station till about 10:00pm but her son was not released, neither was he produced before court, as required by law.

On 3 June 2004, Ms. Peiris again went to meet her son, but he was not in a cell and the other detainees told her that the police had removed him from the cell. When she queried from the policeman on duty, the whereabouts of her son, he informed her that her son had been taken to the Dehiwela Police Station. This was the first time she heard about her son's transfer, which the Moratuwa Police had not even bothered to tell her. She rushed to the Dehiwela Police, who informed her that no person by her son's name was in their custody. But this mother insisted that she saw her son at the Dehiwela Police Station and to her, he looked seriously injured.

* * * * *

50. Victim : L.A. Pradeep Kumara (14) & L. Chathuranga, (15)
 Police Station : Ambalangoda
 Date : 7 August 2004
 Urgent Appeal : UA-100-2004 (13 August 2004)

**L.A. Pradeep Kumara & L. Chathuranga:
 The torture of two minors**

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 treated in Ward 1.



CHAPTER 8**The Sri Lankan Police:
A Historical Perspective**

Basil Fernando

To understand what has become of Sri Lankan policing, it is essential to consider the modes of social control that have prevailed in Sri Lanka and how these have contributed to the creation of the Sri Lanka police force as it is today.

Often the history of the Sri Lankan police is thought of from its inception during the British times. This assumption is based on the premise that a British or Irish model policing system existed in



Let us not return to the barbaric past

the country and that any defects in the present system should be looked at from that point of view. The defects are often attributed to the colonial character of the British governance in Sri Lanka and consequently the modelling of the police for the achievement of the ultimate goals of colonialism. Such aims were to secure the economic interests of the British in most areas of life, for example, plantation, construction and taxation. Conversely, maintenance of the colonial regime required political control over the population so that hostile political movements would not develop and create a challenge to the empire. The brutal manner in which the 1915

riots were controlled by the British is often cited as an example of how the police were used to suppress the people. The Justice Soertsz Commission (1947) attributes the manner in which the 1915 riots were suppressed, to the military character of the police.

Valid as these explanations may seem, they still do not sufficiently explain the nature of Sri Lankan policing, particularly regarding its relationship with the people. The type of utter brutality that is exercised in the day-to-day affairs of the police, when investigating petty crimes e.g. the theft of a bunch of bananas, cannot be explained purely on the basis of the colonial beginnings of the institution. The fact that almost 60 years since independence, the system has not seen any positive development, but instead has witnessed a massive degeneration, definitely indicates that there is much more than pure colonialism to blame.

Even understanding the colonial aspect itself requires a reflection upon the fact that for the most part, colonial administration was carried out through “local partners.” The growth of what was then referred to as the ‘Mudaliyar’s Class’ and the elites as well as the manner in which these local entrepreneurs established local institutions to serve the colonial interests and their own, reveal that the psychosocial roots of the system are quite local.

To understand the collaboration between the colonial masters and their local agents in the shaping of the local institutions also requires an understanding of the modes of social control prior to colonial takeover. Those modes of social control that existed before were carried into the local institutions including the police, which were built during the colonial times. In other words, the manner in which people were controlled previously did not come to an end with the British takeover, but instead continued into the form of social control developed by the British themselves.

Social control in pre-colonial Sri Lanka

The mode of social control of pre-colonial Sri Lanka was not substantially different to how it was done in other South Asian countries. The control of the people by the king, or local ruler who exercised such power through a small group of elite landlords, was heavily influenced by the local caste

system which was itself entrenched in the country at least from about the Polonnaruwa era, 1070-1215. The previous Anuradhapura period may not have seen a rigidly structured caste system as in the Polonnaruwa period. It is quite likely that the more radical ideas of Buddhism, in relation to equality of people, would have prevailed during this period. Among Buddhist monks in particular some historians have noted rather radical practices, even with regard to their clothing and food.

In India too, the period of Ashoka is known also as a period of egalitarian ideas spread mostly through Buddhism. The stone inscriptions in India on education of the people, on healthcare and other matters are regarded as indications of a vibrant period of local movements based on egalitarianism. It was for this reason that Dr. B.R. Ambedkar — who brought more converts to Buddhism in recent times than anyone else in India — regarded Buddhism as a social revolution against the social control of Brahmins, the architects of the caste structure of India. The fact that most converts to Buddhism during the Buddha's life time were from the Dalits, earlier recognised as low castes, shows also that Buddhism was a liberating force for all those people who found themselves in chains under the abhorrent caste system.

The situation in India however changed a few centuries later, with what Dr. Ambedkar called a counter-revolution by which the Brahmins were able to reinforce the caste system. This was through a systematic and calculated campaign accompanied by the use of violence against Buddhist institutions and Buddhists in general. This resurgence of social control based on the caste system also made its inroads into Sri Lanka. Hence, while Buddhism remained the religion of the people, a caste structure developed giving the upper castes power and control over the population. Caste based discrimination began to seep into society. And as deep-seated caste divisions appeared, this became an important factor in the development of modes of social control. The fact that some groups earlier tainted as being 'low caste' later received social prominence due to the acquisition of wealth and influence, did not bring about a noticeable change in the situation, as they too used the same model of police controls on the less socially powerful.

In the Tamil community too, a similar or even more drastic form of caste discrimination prevailed.

Controlling the people amidst such deep discrimination is possible only by using extreme forms of physical violence to maintain rules of society and to prevent expressions of dissent. The Brahmins for instance, developed the doctrine that there was no worse crime that a person could commit than killing of a Brahmin. Of course this was probably to safeguard against the inevitable reactions of those faced with the cruel forms of exploitation exercised by the Brahmins. And although there was no sizeable Brahmin class in Sri Lanka, there were the landlord elites who too strived to control the populations by the use of terror. Thus, the use of terror by the powerful on the socially weak was the dominant mode of social control in pre-British Sri Lanka.

The police force, which was shaped by the British in collaboration with the ruling elite classes, carried into their system the rule by terror from the earlier social system. Recently, a Deputy Inspector General of Police (DIG) who interviewed about 100 Officers-in-Charge of police station had the following to say about the social relationships of the police with the poor and the rich:

“I had the privilege of addressing about 100 Inspectors on “Investigation techniques to minimise 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 proper modes of investigations;*
- *The period of custody of 24 hours (prior to producing the suspects in court) 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 unfavorable 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 and persons of high standing in society, 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; 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.

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 defenseless, they sheepishly admitted it was so.

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

Equal Access to Justice/Where should we begin to ensure human rights? Jayakumar Thangavelu The Sunday Times 7 August, 2005

Why couldn't the terror approach be changed?

Shifting from terrorising the people as a mode of social control, into winning their consensus on the nature of social controls, as well as maintaining a relationship based on reason between the state and the people does not take place automatically. That shift requires on the one hand changes in social consciousness that involves a change in the thinking of both the people and the state. It needs to be reiterated that a transformation in the thinking of the state is imperative for the achievement of such a shift. The mere fact

that the population in general undergoes a change in consciousness due to various social factors and attitudes does not itself suffice to alter the terror approach a state applies towards its people. In fact, improvements in social consciousness in favor of equality and against the application of terror by the state, may sometimes cause greater use of terror by the state agencies such as the police and the military.

In Sri Lanka, despite many changes taking place during the 19th and 20th centuries, there was no conscious attempt on the part of the social elite that controlled the state machinery to abandon their earlier modes of social control in favour of a more egalitarian system of actual social relationships. The equality principle was introduced to Sri Lanka by various legal instruments, particularly after independence. But the introduction of such legal principles by the Constitution or otherwise, was not followed by state initiatives to actualise such principles. There was also no serious attempt to reflect upon and develop institutions required for the abandoning of social control through the use of terror. Especially regarding the police and military, one saw minimum attempts at transformation in the direction of abandoning the terror principle.

In fact, when faced with challenges like those that arose from trade unions and insurgent groups, the state abandoned even the external facade, which proclaimed changes towards a modern state and resorted to the use of terror in the most barbaric forms. From 1971 to date, in the South, North and the East, the use of terror by the state has reached the most primitive and abominable proportions. Massive disappearances, huge numbers of extrajudicial killings, the large-scale use of torture, maintenance of death camps and mass graves, were among the common experience of the people during these times.

It is indeed remarkable that these were the decades when the social consciousness of the people in Sri Lanka of their rights, enhanced at a more rapid pace than at any time before in the entire history of the country. This maybe attributed to educational and other reforms that brought in new opportunities to even the marginalised sections of society. It is also due to other positive changes such as the opening of new roads, which

ended rural isolation, the spread of communication facilities and improved access to information of the people. However as the capacity of understanding and expression improved the quality of the population, the use of the terror principle by the state apparatus, increased.

Continuing brutality towards the poor

The torture by police of persons belonging to poorer classes is rooted in the history of the country. There continues to be a line of thinking within the country that the use of extreme forms of terror on the poor is legitimate. Some of the groups who were formerly included within the category of those being thus brutalised, may have migrated to other social strata and now be outside the boundary of those who are susceptible to be brutalised and tortured. Due to various types of employment, improved social skills and the acquisition of some form of social power, they may have emancipated themselves. Thus, in modern times caste alone is not the criterion of dividing people. Caste and class considerations have created new boundaries. They no longer become the rational explanation for brutality. Of course, in some parts of the country the caste system still remains visible. But, particularly in urban and suburban areas, it is not that clearly visible. The demarcating line now is poverty.

Among the poor those who are most subjected to torture are people in the remotest villages. In many of these villages torture remains the paramount mode of social control. The landlords, the rich and even middle class groups use violence on the poor, often to obtain services at cheap rates. The police in these areas are instruments of those groups who are more socially powerful. However, the police in these areas engage in torture, not just as a service for others, but also for their own personal benefit. Getting the poor to cultivate a policeman's land is not a rare occurrence. Besides, the police may also expropriate what belongs to the poor by intimidation. A farmer's son from Tambutthegama, a village in the Anuradhapura area, summed up this situation thus: "When the Officer-in-Charge (OIC) of the police station has a party for his friends, he comes and shoots one of our bulls and takes it away. Then by the evening my mother prepares the chillies and gives them to my father to handover to this police officer for

the preparation of his dinner. And my father would go and do just that.” Obviously the villagers had accepted their fate and did not even demonstrate any anger towards their exploiter.

In this type of village people did not even complain about torture. The fear instilled in them was so great that most would encourage a victim of torture to accept his or her lot and refrain from even complaining, lest complaints bring further misery. For no doubt, they would have experienced the fate that befell those who dared to make complaints and the bigger problems they were faced with thereafter. One example from the same village Tambutthegama was a man named Piyadasa, a small-scale businessman, who was influenced by a certain leftist political party. Influenced by his party’s liberal ideas and together with other party members, he began to speak out against what the police did in his village. Some of these incidences were even published in the political party’s newspaper and soon became the talk of the village. Then a few days later, a few people known for their criminal activities in the village, dragged Piyadasa into a quarrel and killed him. Apparently the OIC of the police station had assured the perpetrators that no adverse consequences would befall them for their illegal actions, and in fact no consequences followed. It was also later said that these persons had criminal records and were involved in the illicit liquor trade. And, they had obviously gained the patronage of the police.

While this type of terror persisted in almost all villages some decades ago, through the ages there have been considerable changes in some parts resulting in upward social mobility of the people. However some social and communication changes have brought about new types of poverty. These poorer groups are also victims of torture. The fact that these poorer sections do not have a capacity for retaliation allows them to be perceived as “weak”. And it is on the weak that the police perpetrate torture. As the grandfather of Lalith Rajapakse, a young boy who was brutally tortured at the Kandana Police Station told the author of this article, “these things happen to us because we are poor.”



CHAPTER 9

Tales of two Sri Lankan Massacres: The relevance of Embilipitiya to Bindunuwewa

Basil Fernando

Hardly any one looks into the massacres, killings and other violence in Sri Lanka during recent decades from the point of view of justice and its absence. Each such event is reduced to mere confirmation of a racial or ideological perspective of one kind or another: Tamil killed by Sinhala, Sinhala killed by Tamil, communist JVP (Janata Vimukti Peramuna) killed by military, politician killed by JVP, and so on. The actual events are buried under self-serving ideological positions. From these, there is little possibility of gaining insight into what actually happened, or to provide some redress for past atrocities committed upon victims and prevent similar incidents in the future.

What happened at Embilipitiya, and why

This situation may explain in part why there is nowadays, hardly any reference to the Embilipitiya schoolchildren's massacre. At Embilipitiya, 48 schoolchildren were abducted and murdered between 2 August 1989 and 10 January 1990. The murderers were Sinhala, the victims also Sinhala. The murderers were members of the Sri Lankan Army, or their associates. The victims were not insurgents nor suspected insurgents. So the massacre does not fit with those same conventional categories. It upsets all of the polarised ideological positions that characterise discussion about the bloodshed in Sri Lanka. Therefore Embilipitiya is avoided.

There were two reasons for the deaths of the schoolchildren at Embilipitiya. The first was that some of the boys had teased the school principal's son over a love affair. The second was that a few students had protested that some of the school's land had been transferred to a businessman friendly with a local politician. These two facts are now well established. The military was used to obtain revenge by the school principal and interested parties in the land through personal contacts with officers.

In a video interview made by the Asian Human Rights Commission during June 2005, Shelton Handuwela, a father of one of the victims and a founding member of the Association of Disappeared School Children at Embilipitiya, recounted some of the events of the time. He recalls that he received a message from an Army officer to bring his son to a particular place at a designated time, which he did. The officer met him there and asked him to bring his child to the nearby Thimbalkuliya Army camp, close to Udawalava, and meet the Colonel who was in charge. This also he did; the Colonel spoke politely and calmly and asked him to leave the child with him for one week, and to bring a toothbrush, towel and other necessities. Not knowing what else to do, the father followed his instructions. Before the end of the week he received a call to collect the boy. The Colonel told him that the boy had swallowed some keys and glass, and that he needed medical treatment. He told the father to take his child to a doctor and then bring him back in one week. After collecting his boy, the father heard from him that he was forced to swallow the keys and shards of glass. After one week, the boy was not yet healed. The father brought him back to the Colonel but asked for more time. He was given another week. Coming back with the child the following week, the camp authorities hurriedly turned the two of them away, telling them to come the next week. The father began to take his son home by motorbike. A yellow Lancer car followed them from the entrance of the camp. Some men alighted and hit the father, then took the boy away. He was never seen again. Another 47 children from the same school disappeared under similar circumstances. How they were killed and what happened to their bodies has not been revealed. At the time, their disappearances and deaths were not unusual: at least 15 per cent of disappeared persons in the South of Sri Lanka alone were under 19 years of age.

Anyone hearing this story would ask some very obvious questions. Why did the father take his child to the Army camp in the first place? Why did he leave him there for a week? Why did he take him for a second and third time, even though he knew his son had been severely tortured during his first stay? The father was not an ordinary villager. He was the Deputy Director of Education in the country. He had many years of professional experience and specialised in English, so he was able to communicate in the language commonly used by the social elite and upper bureaucracy. When asked these questions, the only reply he could give was that, "We had faith that they would not do something like this."

In retrospect, other questions arise. Could the father have done anything else? Could he have hidden the child somewhere, for instance? Under the circumstances that prevailed in 1989, he could not have taken such a risk. To hide one child would have put the father's other two children, and even his entire family, at risk. Could the whole family have fled to some other part of the country? Perhaps, but no part of the country was safe. Terror had spread everywhere; others would have asked questions, and may also have been put in danger. Could they have sought help from the courts? In those days, the courts had hardly any influence over what was happening. At least 30,000 persons were killed in the South alone, with the courts powerless to intervene. There were no controls over the military and Army personnel were at liberty to do as they wished. Apparently, even the teasing of a classmate over a love affair was within the scope of military affairs. An arrest could take the form of 'an invitation' for a father to hand over his son, as in this case. Detention could continue indefinitely. Extremely cruel torture could be inflicted and the family given responsibility for medical treatment and then told to return the victim. And once a decision was made to dispose of the victim, kidnapping could be organised from an Army camp itself. Such was the extent of power exercised by those in authority at the time.

If the rule of law had existed in the country to at least a minimum degree, how would this scenario have been different? The father would have asked why his son had to be taken to the Army camp and on what legal grounds. Without reasonable explanation, he would have refused to comply with the

Army's instructions. If necessary, he would have sought the help of a lawyer, and taken the matter before court. He would have taken his case to the media, politicians and civil society organisations. Had his son still been taken and tortured, he would have reacted with ferocity, especially when he heard how his son was forced to swallow keys and glass. He would have united with the families of the other 47 children early on and fought, probably successfully, to save their lives. However, none of those possibilities existed for the Embilipitiya parents.

Failure to protect the Bindunuwewa victims

Nor did any such possibilities exist for the parents of the youths killed at Bindunuwewa. At the Bindunuwewa rehabilitation camp, 25 young men were hacked to death by a local mob on 25 October 2000. The murderers were Sinhala, the victims Tamil. The policemen and others responsible for the camp were also Sinhala and did nothing to stop the attack. No doubt the motivation for the killings at Bindunuwewa was racial. But does that factor alone explain what happened? We could ask why the victims were not protected? Why were the police and armed forces not mobilised to foil the attack?

The common feature of the two massacres, lost among all the racial and ideological positions taken on the killings, was the absence of the rule of law. Had a minimum degree of protection been available in either case, the massacre would never have occurred. The basic preconditions that allowed each massacre were the same. Instead, the Army was given freedom to act or not to act as it chose, and the victims were everywhere and from every background. Observing what happened to the 48 innocent children at Embilipitiya, one can imagine the far greater horrors that were unleashed in the North of the country at that time. But although the scale may have been different, the quality of the military actions was the same, and permitted in each case by the lack of any external and internal restraints.

Discipline is enforced with an Army through internal policing and investigation. Under normal circumstances, where Army personnel are believed to have committed crimes, they will be brought before a military tribunal, even when a related case may be going on in a civilian court.

However, during and after the disappearances and killings in Sri Lanka, these elementary practices were discarded. There has never been a military inquiry into what happened at Embilipitiya. Presumably, in nearly every instance of military atrocity during that period the story is the same. Had there been inquiries, there would be records of how victims were arrested and detained, and what finally happened to them. Above all, there would be records showing who gave the orders. However, no such evidence exists. In all probability, there were never any records kept of the 48 children at Embilipitiya, as the Army officers involved did not feel any obligation to keep them. They felt free to do what they liked, not only at Thimbalkuliya but also at any other place throughout the country, including Bindunuwewa.

What are the implications of this for the prospects of peace in Sri Lanka? Over the last 20 years or so a huge amount of literature has been turned out, mostly on how to solve the ethnic conflict in the North and East. It is common to read and hear about how peace can be brought about between the 'Sinhala Army' and 'Tamil rebels'. As discussed, although race may aggravate the violence, it does not help us to understand it or bring us closer to a solution. The real issue is the question of legal restraints on the armed forces, both from within and without. Without highly visible and far-reaching changes to the management and control of the Sri Lankan Army, how will peace become possible? How will the parents of dead children in Embilipitiya be able to trust the Army, let alone the parents of the dead from Bindunuwewa, or countless other killings in the North? If the Army was let loose to roam freely in the South today, would the people there be any happier about it than the people in the North? Would they trust that there would not be more massacres? What reason would they have for such trust? And what mechanisms exist to ensure that the Army can be restrained?

These are all questions about institutions. Conflict cannot be stopped through goodwill and hope. It requires institutions to control the warring factions. If the Sri Lankan armed forces cannot be brought within the confines of a functioning justice system, then can there be any resolution of the country's conflict? To the average Sri Lankan, the answer is obvious. However, the many scholars and theoreticians who dominate the discussion on the conflict,

particularly those from abroad, have difficulty with obvious answers. One reason for this may be that they have built-in assumptions about minimally functioning institutions, acquired through a different lifestyle, which cause them to miss this fundamental point. Another may be that it is easier to reduce everything to religious, ethnic or political conflict than go into the minutiae of administration and justice.

Politics versus justice

Talking about justice is different from talking about politics. Of course, the two are related, but they are distinct. It is true that at one point Embilipitiya became a political rallying point and gave momentum to demands for change in the South, whereas Bindunuwewa never obtained such attention: it was almost universally condemned, but was not followed by any real action. That young Tamils could be slaughtered without political implications speaks to fundamental problems in Sri Lanka's political process. But more importantly, in neither case were there any judicial implications either. That is, there was no input from the side of justice to affect the political discourse, because of course, there must first exist something called a discourse on justice. Such a discourse is at present quite absent from Sri Lanka. It follows that the same is absent from any discussions about Embilipitiya and Bindunuwewa. In its absence, no tools exist with which to penetrate the rhetoric and propaganda of political and theoretical talk.

Many will challenge this position. It can be argued that, at least on the surface, there is talk about justice in Sri Lanka, and talk about justice for the victims of massacres. At least, there is some talk about some justice. Embilipitiya and Bindunuwewa are contrasted because in the former case eventually some persons were found guilty of abduction, whereas those accused in the latter were eventually acquitted. So it is said that the parents of the Embilipitiya schoolchildren obtained 'at least some justice'. However these parents are still unaware of what happened to their children. Where and how were they (presumably) killed? By whom? And what happened to their remains? Hence what does 'at least some justice' mean under these circumstances? It is simply a reference to a measure of punishment, without the reference to a basic level of credible justice — in fact quite similar to the limited talk about justice that lacks credibility.

In fact, when talk is reduced to 'some justice', it is still political discourse. What is meant is this: What kind of justice can be obtained through political pressure that would not otherwise be obtained in the absence of that pressure? Another contemporary example exists of this type of thinking about justice. At present, a strong lobby exists in Sri Lanka over the government's failure to reduce crime. The effect has been to allow for the extrajudicial killing of those described as 'dangerous criminals'. The political lobby is sated. Opponents to the killings are abused, or accused of being in league with the criminals. There is greater encouragement of vigilante-style justice, on the ground that law enforcement agencies are unable to do their jobs. This is a version of justice that comes from political pressure. It is symbolic justice, rather than legitimate justice, and it indicates that the justice system as a whole is in grave danger. It may have gone so far as to have already entered the justice system itself. The courts may put people in prison without much regard to the norms of justice so as to avoid serious political embarrassment. Under these circumstances all that people can demand is 'some justice': a symbolic act to make them feel there has been a societal response to their suffering.

Symbolic justice is no justice

Symbolic justice is the symptom of a sick society. Legitimate justice operates through institutions that function irrespective of political pressure. Independence of the judiciary is the characteristic of a sane society. Endless demands for symbolic justice for this group or that, this incident or that, will not bring about sanity. The overall circumstances in the society will remain unchanged. In fact, the situation gets worse every day.

This is the present situation of Sri Lanka. Thus, the missing discourse on justice must be brought about consciously and actively. Above all, it must be brought into the talk of peace and conflict resolution. Until this is done, fundamental problems with the state and its institutions will be missed, and there will be little hope of finding a lasting solution. Recommendations and actions based upon a dialogue that neglects these problems and pretends that the state and its agencies are functioning to the minimum degree necessary will not serve anybody's interests in the long run. The example of post-war Germany is quite telling. After defeat in 1945, serious discussions arose as

to how it had not been possible to stop Hitler arising and dragging the country into conflict. It was recognised that new institutions were needed to prevent future occurrences of the same. As a result the Constitutional Court of Germany was established and given extensive powers. Therefore, prevention of future disasters was not left to the politicians alone. A similar approach is needed to ensure peace in Sri Lanka today. This does not mean replicating European models. It means that peace depends upon the rebuilding of institutions needed to protect society from conflict, particularly those of the judiciary.

In conclusion, the following areas should be given high priority in studies on peace, conflict resolution, democracy and human rights in Sri Lanka:

1. The conduct of Army operations since independence, particularly after 1971 — Apart from giving factual details, including extrajudicial killings, torture and other gross abuses of human rights, research should concentrate on the internal and external military controls or the lack thereof, and record-keeping by the armed forces.
2. Existing avenues for complaints against the armed forces and police in emergency or conflict situations, and quick redress, with particular reference to constitutional provisions.
3. Controls exercised through Parliament on these occasions, with particular reference to their limitations.
4. Role of the courts in safeguarding rights on these occasions. Do they face limitations when emergencies are declared or are there more inherent defects that make them unable to play a decisive role when it is needed most? Have political allegiances, including ethnic bias, affected the work of the courts in protecting the rights of citizens?
5. Implications of over 30 years of conflict on the legal fabric of Sri Lanka, especially its administration in the hands of the police, Attorney General and judiciary. Emphasis must be placed on the constitutional provisions to strengthen the higher judiciary so that it can intervene to protect the country from further catastrophes.
6. Reactions or lack thereof from the Sri Lankan middle class to gross human rights abuse by the armed forces and the police. Has the middle class acted to discourage, condone or even encourage abuses?
7. Role of the media with regards to all of the above.



CHAPTER 10

The tussle between the Executive President and Public Authorities

Basil Fernando

Under the Gaullist Constitution one of the major responsibilities of the French President is that he/(she) shall ensure, by his/(her) arbitration the proper functioning of the public authorities (A5). However, within the last few decades Sri Lanka has witnessed a situation where not only have Executive Presidents failed to ensure the proper functioning of public authorities, but have in fact become the enemy of public authorities.

This is the situation that gave rise to the 17th Amendment to the Constitution. At the time, it was thought that the development of strict constitutional provisions were essential in order to place obstacles in the path of those – including the Executive President – who attempted to politically interfere with the appointments, promotions, transfers and other matters relating to officers of public authorities that are considered vital in the country. The authorities recognised in the 17th Amendment are the Election Commission, the Public Service Commission, the National Police Commission, the Human Rights Commission of Sri Lanka, the Permanent Commission to Investigate Bribery or Corruption, the Finance Commission and the Delimitation Commission. According to the 17th Amendment, 41(b)(1), no persons shall be appointed by the President as the chairman or member of any Commission specified in the Schedule to the Article, except on a recommendation of the Constitutional Council. Also, all important appointments of persons within the departments controlled by these Commissions — except those specified in the 17th Amendment — cannot be made without

the recommendation of the said Commissions.

This restriction placed on the President and others regarding the appointment of persons to some of the most vital public authorities, has a history. That is, since the promulgation of the 1978 Constitution, recruitment and control of important officers working in the various public authorities were arbitrarily carried out often according to the dictates of politicians or on political consideration. This had reached such calamitous levels that a specific amendment to the Constitution itself was needed to put an end to the practice. Accordingly, the amendment was certified on the 3 October 2001 and the common term used to describe the evil that the 17th Amendment was supposed to cure was 'politicisation'. In the unanimous passing of the 17th Amendment, there was common consensus among all the political parties that appointments to positions in public authorities should be based on objective criterion and merit rather than on other considerations.

Under the 1978 Constitution, there had developed a practice where the Executive President was directly involved in doing away with merit-based and objective criteria for appointments to public authorities. Once this happened, there existed little possibility for these public authorities to function and perform in the manner expected from such authorities. Hence, public authorities had become dysfunctional due to undue interference by the Executive President and those acting on his behalf. The 17th Amendment was proposed as a check against the President acting in such a manner.

While a Constitutional safeguard had been created against the arbitrary intervention of the Executive President in the running of public authorities, on a practical level, the Executive President was still in a position to prevent the operation of these safeguards. There are three methods that could be used: Firstly, the President could make the Constitutional Council – which is the effective body in the structure proposed by the 17th Amendment – dysfunctional and this may be done by delaying or obstructing the appointments of Council members. The second method, is to delay or obstruct the appointments to the various Commissions i.e. by not submitting the nominations of proposed candidates for such positions, whose merit

the Constitutional Council is to consider. The third method and the most resorted to, was not to provide the funding and other resources essential for the functioning of the Commissions. By this method, it was also possible to prevent a Commission from doing what it is supposed to do, due to the lack of competent personnel, equipment or other financial resources.

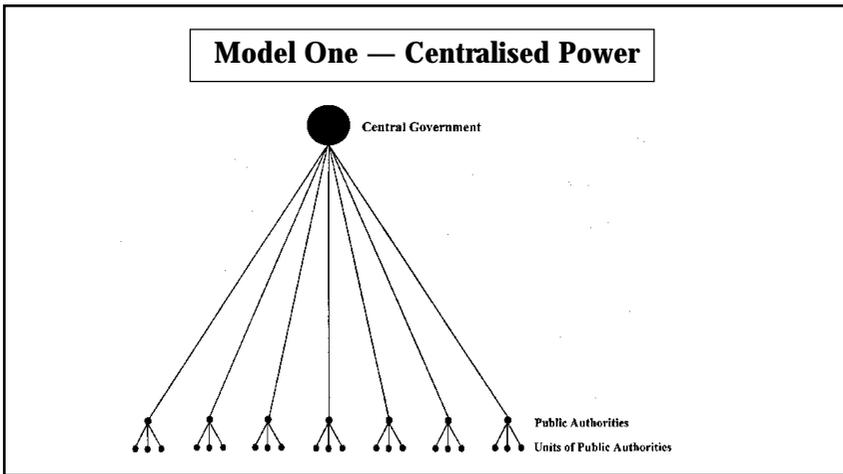
So, while the 17th Amendment proposed some serious measures to control the President from behaving in the arbitrary manner that the 1978 Constitution made possible, nonetheless, the tussle between these institutions and incumbent Presidents goes on. And sadly, the balance is still in favour of the President and the President can still prevent these public authorities from benefiting from the measures proposed by the 17th Amendment. This malady has currently befallen many of the public authorities.

The 17th Amendment was one of the most significant measures adopted by the Parliament, to check the powers of the Executive President. Thus, we also see a tussle between the Parliament and the Executive President over the functioning of the public authorities. However it must be noted that while Parliament has proposed a Constitutional framework for the control of the public authorities and thus the powers of the President, it has not followed up with any practical measures to ensure the proper implementation of the law it created. It seems the parties, which collaborated, to bring about the 17th Amendment have not pledged allegiance to their brainchild in any decisive or consistent manner. Thus, the tension between the Executive President and Parliament on this matter is yet to be resolved.

Today the Sri Lankan public is faced with a grave crisis as these public authorities are proving incapable of providing the services and facilities they were expected to provide. The provision of the 1978 Constitution still overpowers them in favour of the Executive President's capacity to act arbitrarily. Much of the ideological crisis and the resultant loss of hope prevalent in the country, currently also centres on the frustrations felt by the citizenry due to their inability to get vital public authorities in the country to function adequately.

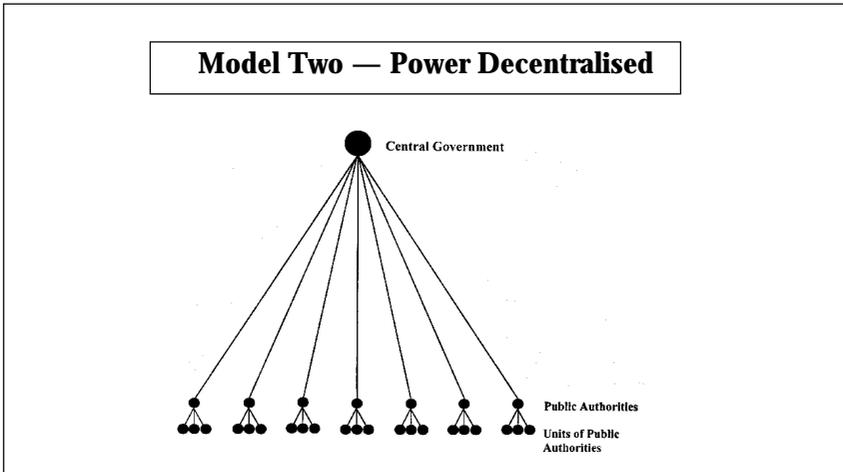
The Distribution of Power between the Centre and Public Authorities

We give below three diagrams describing the use of power in three different types of systems.



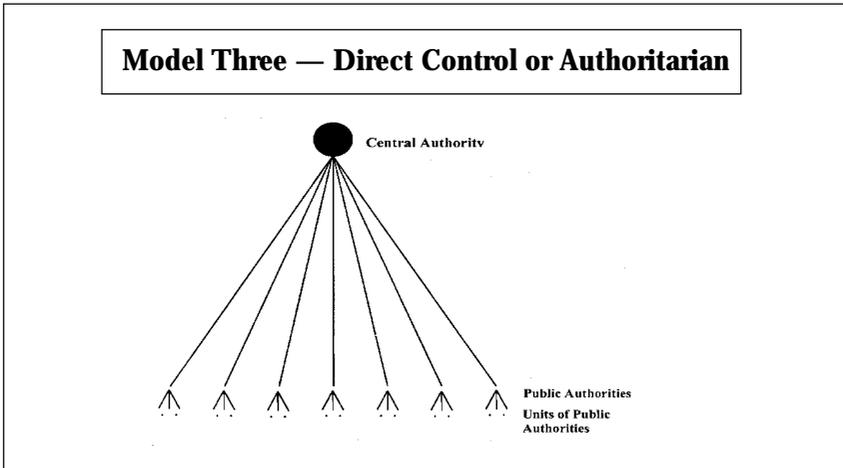
In this model, responsibilities and decision-making power is LESS distributed. That is, LESS power is entrusted to the public authorities while the centre controls more power.

The **First Diagram** gives 'centralised power' where the central government has greater control of public authorities. However, the public authorities also have a certain degree of independence and allowance for the use of discretion. The limits of power of the authorities are defined and therefore a public authority can safely work within their boundary of power without feeling in any way that thereby they will be in conflict with the central authority. The differentiation with the second model is on the extent of power that has been allowed to the public authority – which, when compared to the second model – is much more limited. It may be said that the model of power distribution between the central government and public authorities under the Soulbury Constitution (1948) and the autochthonous Constitution of 1972 was based on this first model.



In this model, responsibilities and decision-making powers are distributed. Public authorities are entrusted with more powers while the centre controls less power.

The **Second Diagram** gives a situation where power is decentralised. Here, definite powers are assigned to public authorities by way of law and recognised practices. Some powers are kept at the centre. The relationship between the centre and the public authorities is defined by very clear legal demarcations. The public authority can feel safe in making decisions in several areas and thereby the initiative of the public authority to address the purposes for which it was created. This is the model usually followed in developed democracy. But, none of the Sri Lankan Constitutions developed their constitutional ideas on the basis of this model. Perhaps what the 17th Amendment was attempting to do was to introduce this idea of a more independent public authority in several areas required as vital to the state. However, it is difficult for that type of distribution of power to coexist with the type of absolute power vested in the centre as in the third model. As a result the central authority functioning under the 1978 Constitution has obstructed the development of public authorities, which were proposed under the 17th Amendment of the Constitution.



In this model, responsibilities and decision-making powers are NOT distributed and no REAL power is entrusted to the public authorities. The centre is supposed to control it ALL.

The **Third Diagram** shows where central authority more or less completely controls power. In this model public authorities do not have any decision-making powers or avenues to use their discretion in order to achieve the objectives for which the particular public authority is created. In almost any matter, the public authority looks up to the orders from above, to act. If orders from above have not arrived, the holders of authority in the public institutions do not feel confident to act. They would always feel unsafe that what they do may be found fault with by the central authority. Thus, the public authority develops a sense of dependence on the central authority to take decisions even on day-to-day routine issues, which they are supposed to do. The consequence of this on the public authority is that it begins to avoid its responsibilities, which are the objectives of the public authority for which it is established.

In the first two diagrams we have used the term 'Central Government'. In the third diagram we have used the term 'Central Authority'. This is because in **Models One and Two**, a government as an executive means a system through which an executive operates. For example, in a government headed



Jean-Bedel Bokassa, Central African Republic dictat who is generally compared with Idi Amin

by a Prime Minister, the government will be the Cabinet of Ministers and the system through which they operate. There can also be a government within a presidential system where the President also acts through parameters laid down by law and works together with other agencies that are considered part of the government. Nonetheless, be it the prime ministerial system or the presidential system, the functions of the government is controlled by an intricate web of checks and balances, not by a single individual. Here, the system processes all actions. However in the power model shown in **Diagram**

Three, the centre can in fact be just one person. This one person can decided on policy as well as ensure that his will is carried out. Hence, here it is not the government that rules, but a single individual acting as the authority. This is the model on which the 1978 Constitution is made.

Within this model every aspect of rational government will be killed by the one authority at the helm that controls all real power. Thus in the absence of adequate checks and balances, this authority usually tends to act irrationally. The reasonable framework that is needed to maintain relationships within the system and to act and interact through a wide web of power distribution – in a limited manner as demonstrated under Model One (Diagram 1) or a much wider distribution of power as per Model Two (Diagram 2) cannot exist under the application of power within the framework described in Model Three.

The direct consequence of the use of power under Model Three (Diagram 3) is the creation of anarchy. This is the reason Dr. Colvin R. de Silva described the 1978 Constitution as being modelled after the Constitution of Jean-Bedel Bokassa, the Central African leader who declared himself as emperor. The implication is that to



J. R. Jayewardene, ex-President of Sri Lanka who created a Bokassan-style Constitution

get back to any rational form of government, the 1978 Constitution should be abandoned, that is the power model depicted in Diagram 3 should be eliminated.

Can such abandoning of the 1978 Constitution be done by proper implementation of the 17th Amendment? Perhaps such implementation can pave the way for restoring or creating a new relationship between public authorities and the centre. This of course requires that the centre be genuinely willing to part with the absolute power given to it under the 1978 Constitution and allow the authorities created under the 17th Amendment to act in an independent and authoritative manner.

However, can a Constitution work purely on the basis of goodwill of any single individual? A fundamental principle within a democratic model is not to trust anyone who is in power but to create the conditions that will prevent these persons from abusing power. Thus the axiom, *power corrupts and absolute power corrupts absolutely*. Thus, what is needed is to remove the absolute power concentrated at the top. To this end, there needs to be a government at the top – whether it is a prime ministerial or presidential model. Then, it is only when the intricacies of this model are worked out and powers are distributed into various organs of government with the power of the chief executive being legally articulated in clear terms and prescribed, can a rational form of government be established. Such a form of government can relate to the public authorities described in the 17th Amendment and give life to these authorities.

In terms of this Special Report, which is about the policing system in Sri Lanka, the collapse of the policing institution is not merely due to the defects of the policing system only. Its defects are the direct consequence of the prevailing Power Model (as per Diagram Three) through which it is compelled to operate. Whatever defects existed in the pre-1978 policing system could have been corrected by various measures adopted by the policing system itself with the support of the government. However, the problems that now exist within the policing system cannot be cured without a changed in the Constitutional Model (Diagram Three).

The attempt to de-politicise the system and create a rational system of policing by introducing an independent National Police Commission (NPC) has not produced the expected results. The main reason for this failure is that the centre (the Executive President) has sabotaged the proper implementation of the 17th Amendment by inter alia, depriving adequate resources for its operation. Within the policing system itself, there has been a serious attempt to sabotage the NPC. This of course, is to be expected as with any institution that is undergoing serious change. However, the lack of opportunity for the NPC to exercise its authority – due to the lack of the requisite resources — has created many tensions. The result is that the fundamental problems of the policing system do not get redressed.



CHAPTER 11

The 1978 Constitution: Its Foundation is Flawed

Basil Fernando

For more than 27 years, since the promulgation of the 1978 Constitution of Sri Lanka it has repeatedly been said that this Constitution is modelled on the French Constitution of 1958 — known also as the Constitution originated by Charles de Gaulle. Constitutional pundits and politicians alike have harped on a ‘de Gaullian Constitution’ for so long that this misnomer has now become almost an article of faith. The reference is mostly to the institution of the Executive Presidency created by the 1978 Constitution, which is compared to the position of the French President under the 1958 Constitution.

The opening two lines in the French Constitution regarding the President of the Republic are as follows (A5): ‘The President of the Republic shall see that the Constitution is observed. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the state.’ It is thus amply clear that the primary function of the Presidency in the French Republic was to see that the Constitution is observed. It is also his or her primary duty to ensure the proper functioning of the public authorities and continuity of the state. The French Constitution of 1958 is thus credited by observers with ushering in an era of stability.

That is, France has one of the richest constitutional histories in the world. Along with the United States, it was one of the first countries to put into practice the modern idea of a Constitution. But the 1787 American Constitution is still in effect today, while the French Constitution of 1791

did not last even one year. A good dozen regimes followed on the heels of one another thereafter until the idea of the Republic triumphed and finally, in 1958, the Fifth Republic brought a stable regime to France. (<http://www/france.diplomatie.fr/label>)

Chaos

How is it then that the 1978 Constitution did not bring about stability to Sri Lanka? In fact, it maybe said that the most chaotic period in Sri Lankan history was during the operation of the 1978 Constitution with horrendous atrocities, killings and ‘disappearances’ witnessed in the South, North and East. Also, national institutions have been at their weakest during this era. So how has the French Constitutional model affected Sri Lanka? Or is it simply a bogus claim? And is it that, on some superficial aspects, the two Constitutions are similar but on a more substantial and fundamental level they are inherently different?

The answer perhaps lies in a further question as to whether the Sri Lankan President has the duty to see that the Constitution is observed. The basic duty of the French President, as mentioned in that Constitution, is to see that the Constitution is observed. This may be considered in the light of certain observations made by the National Police Commission Chairman, Ranjith Abeysuriya at a seminar held recently. He had observed that the Constitutional Council had been non-functional for more than one year and this had resulted in the failure to appoint High Court judges, which in turn affected the functioning of courts in dealing with the heavy backlog of cases.

The Chairman of the NPC had further said that the non-functioning of the Constitutional Council might affect the appointment of the IGP — when the present incumbent reached his retirement age in October this year — since a new IGP has to be nominated by the Constitutional Council. He was also quoted: “*It is almost a year after the Constitutional Council had ceased functioning and irregularities are rampant in public administration. The appointment of a new Constitutional Council is vital for a sound administration.*” So who is to solve the tremendous deadlock that had developed in the operation of public

authorities as a consequence of the non-functional Constitutional Council? If it is the duty of the President to ensure the Constitution is observed, then the responsibility would be on the President, to ensure that such a deadlock does not arise, and if it does, to resolve it immediately. To fail in this sacred duty is to fail in the most primary function of the President - that is if the Constitution itself is based on the French model. However, to say that there is no such obligation on the President under the Sri Lankan Constitution, to see to the observance of constitutional provisions, is tantamount to saying that the 1978 Constitution is substantially and fundamentally different to the French model.

Who is the guarantor of the Constitution?

If the President of Sri Lanka was to say that there was no responsibility on the part of the President to ensure the proper functioning of the Constitution, then the question is, who is the guarantor of the observance of the Constitution? It cannot be the Parliament, which itself can be dissolved at the whim of the President. In any event, no action of the Parliament can be executed by itself. Executive power rests entirely with the President. Now, in this respect too, Sri Lanka seemed to have been under the disillusion that the relationship between Parliament and the Executive President is similar - in France and in Sri Lanka. However, this too is far from reality as one constitution expert, Oliver Duhamal noted:

“As defined by classic categories of constitutional law, France has a parliamentary system, since the government is answerable to the Parliament. In the eyes of public opinion, however, France has a presidential system, since the President is elected directly by the people. So specialists defined France’s system as a mongrel one, since it mixed traditional notions, until the jurist Maurice Duverger conferred more dignity on it by dubbing it “semi presidential.”

Constitutional Council

The third important difference between the two Constitutions pertains to the Constitutional Council itself. The French Conseil Constitutionnel is a powerful judicial body. Independent of both the executive and legislative branches, it had gradually carved out a role of a constitutional court. Among

the world's greatest judicial authorities on Constitutions are the Constitutional Court of Germany and the French Conseil Constitutionnel.

Sri Lanka's Constitutional Council is at best an administrative body dealing basically with appointments to important posts. It is not a judicial body at all. Furthermore, its functioning can be disrupted by the President or due to other contingencies. Currently this Council is experiencing such a disruption. Sri Lanka does not have a judicial body similar to the Conseil Constitutionnel and this lacuna is one of the fundamental differences between the Sri Lankan Constitution and its French counterpart.

Public authorities

The French President has also to ensure the proper functioning of public authorities. (A.5) Once again it may be asked, who is to ensure the proper function of public authorities in Sri Lanka? Today almost the entirety of the public administration is in a state of collapse. Public administration relating to policing, elections, public health and education, as in many other areas of life, is in a state of anarchy. Almost everyone including members of the ruling parties and Opposition agree on that point, so does public opinion and the media. The average citizen's daily complaint is the fact that public authorities function to his detriment and not for his benefit. And within the Constitution, there is no one to ensure the proper function of these public authorities.

If in all these fundamental aspects, the Sri Lankan Constitution differs from the French model then the question is, who created this big lie, about the similarities with the French model. However, what is more important is as to why this lie is being perpetuated. Has not whole generations of lawyers and law students been mis-educated about the paramount law of their country? Will the educational institutions carry on their educating based on this false notion, to yet other generations of students? And is not the entire civic education in the country based on such serious misinformation about one of the most vital areas of the nation, which is its Constitution? If there is an attempt to answer these questions the people may begin to see the whole constitutional debate in the country in a different light.

What is most important however, are the practical questions raised by the NPC Chairman about the present non-functioning of the Constitutional Council and the implication of such non-functioning. Somebody must be held responsibility to stop such non-functioning. The country's institutions cannot function until this responsibility is attributed to some office. Perhaps this will be the most important constitutional question to be resolved if there is to be a constitutional form of government in the country.

Dissolving Parliament

According to Article 12 of the Gaullist Constitution:

“The President of the Republic may, after consulting the Prime Minister and the Presidents of the Assemblies, declare the National Assembly dissolved.”

Thus the French President does not have the power to dissolve Parliament without consulting the Prime Minister and the Presidents of the Assemblies. However, under the Sri Lankan Constitution the President can dissolve Parliament without consulting the Prime Minister or the Speaker. As it was demonstrated in one instance, the Sri Lankan President dissolved Parliament when the Opposition party (UNP) was in power not only without consulting the Prime Minister or the Speaker but in fact, having given assurance to the elected representatives and the people that Parliament would not be dissolved. The Sri Lankan President can take everyone by surprise by dissolving Parliament as and when he or she wishes. Such power places the government and Parliament completely at the mercy of the President devoid of checks and balances and with little control over the President's power to dissolve Parliament.

The purpose of such dissolution could simply be to disrupt a government or to accrue some advantage for the President and/or the political party to which he or she belongs at a given time. Thus, purely for personal reasons a government can be dissolved by the wish of a single individual who does not have to convince even the Prime Minister or the leader of the National State Assembly (the Speaker) as to the necessity or justifiability of such action. Such power in the hands of the President is one of the major

causes of political instability for any government in power in Sri Lanka.

Emergency powers

The French Constitution states:

“Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take the measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the assemblies and the Constitutional Council.”

Thus, emergency can be declared only upon certain conditions that obstruct the functioning of public authorities as well as after formal consultation of the Prime Minister, Presidents of the Assemblies and the Constitutional Council. Perhaps most important is the fact that the President is required to formally consult the Constitutional Council. The Constitutional Council is the highest judicial body on constitutional matters in France. Thus, declarations of emergency and the contents of such declarations come directly under the scrutiny of a judicial body. Further, such emergency measures should be for the shortest time possible and “the Constitutional Council shall be consulted with regard to such measures.

Thus, in these matters the President is under the strict control of an independent judicial body, which wields the highest authority on constitutional matters in France. However, as far as Sri Lanka is concerned there is no such control. Thus it is of little surprise that in the South of Sri Lanka alone over 30,000 people “disappeared” — meaning that they were illegally arrested, detained and killed during the operation of the emergency. Much larger numbers have also been killed in the North and East of the country. The wide powers afforded to the armed forces, under the emergency regulations were the cause of such gross abuses. Conversely however, in France such actions would have been considered by the Constitutional Council, which would have controlled the powers of the President.

The Judiciary

The Gaullist Constitution enhanced judicial power in two ways. The first was the creation of the Constitutional Council and the other was through the functioning of the judicial authority. The Constitutional Council, consists of nine members having power over several vital areas, it has to ensure the proper conduct of the election of the President and shall examine complaints and declare the results of the vote; it also shall rule on the conduct of the elections of deputy and senators in disputed cases; it has to ensure proper conduct of referendum proceedings and declare the result of such. Also institutional acts and rules of procedures of parliamentary assemblies must be referred to it and it shall rule on their conformity with the Constitution.

Acts of Parliament should also be referred to the Constitutional Council before their promulgation. The determinations of the Constitutional Council are binding on all public authorities, all administrative authorities and all courts. Other than the Constitutional Council there is the judicial authority. The President is the guarantor of the judicial authority and is assisted by the high council of the judiciary. The high council of the judiciary shall consist of two sections, one for the jurisdiction of judges and the second for public prosecutors. Thus, the creation of the post of the President under the Gaullist Constitution did not limit the power of judicial bodies but in fact, enhanced it enormously.

On the other hand, under the 1978 Constitution judicial power was extremely limited. Judicial review was confined to the Supreme Court and no authority similar to the Constitutional Council was created. Acts of Parliament were referred to the Supreme Court for review before their promulgation, for the limited purpose of looking into the constitutionality of the provisions. This form of review is far more limited than the powers vested in the Constitutional Council. In Sri Lanka, there is no authority similar to the Constitutional Council to check the interference of the Executive President with the judiciary.

Hence, while the Gaullist Constitution wanted the Conseil Constitutionnel to act in balancing the powers of the Parliament and the President of France,

the Sri Lankan Constitution primarily treated the independence of the judiciary as a threat to the Executive President. Therefore the 1978 Constitution gives complete immunity to the President and weakened the capacity of the courts to ensure proper checks and balances on the power relationships. While the Constitutional Council in France can be a major challenge to the arbitrary use of power either by the President or the Parliament or other public and administrative bodies, the role that can be played by the courts on such matters in Sri Lanka has been curtailed significantly by the 1978 Constitution.

Constitutional logic, pretext and fancy

Constitutional logic is based upon sound principles that determine the relationships between different parts of a Constitution and their implications. These principles are rationally applied case by case.

For instance, there may be demands for a referendum to be held on a specific issue. These demands should be met with reference to general principles under the Constitution regarding referendums, as well as contemporary concerns. A proposal for a referendum seeking for people to forgo their right to elect a government by allowing earlier elected representatives to continue for another term, must be looked at through the constitutional logic of the Gaullist Constitution of 1958 — on which the Sri Lanka Constitution claims to be based. Such logic however, would regard the proposal as absurd, as it contradicts all constitutional principles of democracy. The constitutional logic of the US Constitution would say the same.

A constitutional pretext is giving a semblance of logic to a proposition that falls outside the structure of the Constitution. This can be done by simply referring to any constitutional process, such as procuring the necessary majority in Parliament. For instance, a pretext could be made that any proposal accepted by way of a referendum is valid if passed with an absolute majority. That the proposal contradicts the basic tenets of the Constitution can hence be completely disregarded. Under constitutional pretexts then, even the most absurd proposals may acquire legality. This is how presidents

are able to acquire the powers of dictators under a constitution that declares the nation to be a democracy.

The Constitution of a democracy, as mentioned above, has principles that determine the relationships between the people and the state. In the Gaullist Constitution these principles are stated under the following headings:

PREAMBLE;

Title I. On sovereignty (As. 2 to 4);

Title II. The President of the Republic (As. 5 to 19);

Title III The Government (As. 20 to 23);

Title IV. Parliament (As. 24 to 33);

Title V. On relations between Parliament and the Government (As. 34 to 51);

Title VI. On treaties and international agreements (As. 52 to 55);

Title VII. The Constitutional Council (As. 56 to 63);

Title VIII. On judicial authority (As. 64 to 66);

Title IX. The High Court of Justice (As. 67 and 68);

Title X. On the criminal liability of members of the government (As. 68-1 to 68-3);

Title XI. The Economic and Social Council (As. 69 to 71);

Title XII. On territorial units (As. 72 to 75);

Title XIII. Transitional provisions relating to New Caledonia (As.76 to 77);

Title XIV. On association agreements (A. 88);

Title XV. On the European Communities and the European Union (As. 88-1 to 88-4);

Title XVI. On the amendment of the Constitution (A. 89).

The principles stated in each section are linked to those in other sections. The position of the President under the Gaullist Constitution is thus clearly defined and is linked to principles in other sections of the Constitution. The position of the President of France is different to that of the Sri Lankan President under the 1978 Constitution And according to Gaullist constitutional logic, the concept of the Executive President in the Sri Lankan Constitution could be described as a constitutional monstrosity.

Constitutional fancy

A constitutional fancy is an idea of power and relationships based not on constitutional logic, but on imagination. The type of power attributed to the Sri Lankan President under the 1978 Constitution can only be fanciful. In reality such a presidency is a constitutional absurdity. This is because the Sri Lankan President has almost absolute power, which is the very thing a democratic constitution is designed to prevent.

In practical terms, this presidency can destroy every other constitutional body it relates to, such as the Parliament, the government, and the judiciary. In fact, it does not even have a body to oversee the interpretation of the Constitution, like the French Constitutional Council, which is a powerful body that ultimately determines all constitutional matters. The internal absurdities contained in the Sri Lankan Constitution make it impossible for the state to function.

Fundamentally flawed?

The question is, can there be constitutionalism when a constitution itself is fundamentally flawed? The answer seems a resounding NO. The Sri Lankan Constitution is one that is fundamentally flawed despite the pretensions that it is based on the Gaullist Constitution. The Sri Lankan Constitution helped the Executive President to escape from all constitutional controls and become a creature capable of using power arbitrarily. Thus, the purpose of this Constitution was not to create a constitutional government but to liberate the President from a constitutional form of government.

Under such circumstances the references to the Constitution in courts of law can only be on minor matters. Even the forms of references to courts can often be a pretext rather than of any substantive value. There have been many glaring examples of this since 1978. Perhaps most demonstrative of those was the 1982 referendum to allow the existing Parliament to continue for another term without an election. Such absurdity is possible only because constitutionalism has hardly any meaning in the Sri Lankan context since the promulgation of the 1978 Constitution.

Looking back into the experience resulting from the implementation of the 1978 Constitution one may question the validity of the following assertion made by Dr. M.J.A. Cooray in a book published in 1982 entitled *the Judicial Role under the Constitutions of Ceylon/Sri Lanka*: “It is a truism that the modern administrative and judicial system of Sri Lanka has its origins in the institutions introduced by the British in Ceylon at the time it was ruled by them.”

At the time this comment was made, the 1978 Constitution had been in existence only for 6 years and there was a prevalent assumption that despite some changes such as the executive presidency, introduced by this Constitution, there was a continuity of tradition from the British times. However, now — after almost 27 years of the practice of this Constitution — it becomes starkly clear that a claim of any continuity with British practices is farcical. Perhaps around 1982 much of the constitutional analysis consisted of purely looking into the text and comparing it with the text of the earlier two Constitutions and the practices under those Constitutions. However, looking into the political interpretations given to the 1978 Constitution, it becomes evident that what was envisaged was an authoritarian form of government in which the President had unfettered powers without any of the checks and balances developed within the British constitutional system and mostly followed during the periods of the two previous Constitutions.

Dr. Cooray even thought that while the 1972 Constitution — which was said to be an autochthonous constitution — did not recognise the separation of powers, the 1978 Constitution recognised this separation. However, the basic rules of the separation of powers had been flouted under the 1978 Constitution when the Executive President acted in sheer disregard for the Parliament as well as the judiciary. People who have had the experience of living during the administration of the earlier two Constitutions cannot imagine the extent to which the Executive President could act arbitrarily — as was subsequently been done under the 1978 Constitution.

Thus, what took place by way of the 1978 Constitution was to lose the continuity of the laws and practices of constitutionalism, which prevailed with varying degrees of modifications up to 1978. In a constitutional sense

what took place was a rupture with the past and a return to sort of dictatorial practices that is not possible within the concepts of constitutional government, which prevailed before it.

If these departures from the administrative and judicial system of Sri Lanka were justified under the pretext of adopting a French model of a Constitution we have earlier shown that this claim is untenable.



CHAPTER 12

Paranoia of Regimes in Power

Basil Fernando

The paranoia of regimes in power has sometimes led to major national catastrophes. Many examples of this phenomenon are available from Asian countries in recent decades. Perhaps the most glaring, is that of Cambodia under the Khmer Rouge regime (1975-1979). The Khmer Rouge in power were paranoid that the city population would become a threat to the regime as the group was well aware that foreign elements — meaning Americans as well as Vietnamese — could manipulate such groups against “the people’s regime”. It also feared that money circulation could be a means by which foreigners manipulated and destroyed the regime. Therefore, two measures the regime resorted to immediately upon gaining power were to evacuate entire city populations to the countryside and also to abolish the use of money as a medium of exchange. Both these measures contributed enormously to one of the greatest catastrophes the world has witnessed in recent times.

The Sri Lankan catastrophe, which will be discussed in this article, cannot of course be compared with that of Cambodia. However, it also cannot be denied that what has been witnessed in Sri Lanka within the last 30 years or so is a significant catastrophe. Hence what is proposed to be discussed here is one aspect of this catastrophe viz. the plight of the judiciary of Sri Lanka.

In recent decades when in power, all major political parties have had a tremendous fear of the judiciary as a possible enemy or at least a possible destabiliser of their regimes. Led by such fear, these regimes resorted to

various actions, which in turn affected not only judicial institutions but also other public, political and other institutions. The consequences were the level of insecurity and instability that is now experienced in Sri Lanka.

The coalition of 1970 - 1975:

In 1970 a coalition of three parties, the Sri Lanka Freedom Party (SLFP), the Lanka Samasamaja Party (LSSP) and the Sri Lanka Communist Party (CP) won the general elections with a large majority in Parliament and formed the government. The coalition parties, which came to power considered themselves as the 'left' of the political spectrum, while their major opponents, the United National Party (UNP) was considered as the 'right'.

This 'left' considered itself also as progressive as compared to the 'right', which was considered conservative. These parties portrayed themselves as representing the common people as against the 'right', which represented the interests of the more affluent middle class and the rich. The 'left' was fearful of the conspiratorial capacity of the 'right' and the possibility of threats to their regime that might be more sophisticated and subtle. Fighting this was considered one of the vital aims of their strategies.

This 'left' considered the judiciary, particularly the higher judiciary, as part of the conservative lobby that could oppose what they thought to be their 'progressive' programmes and ideas. Thus, a major component of their political strategy was to reduce the conservative influence of the judiciary.

The mode of implementing this strategy came with the introduction of a new Constitution in 1972 and the promulgation of what was called an autochthonous Constitution as against the first Constitution that was known as a 'Westminster Constitution'. (However, leading British Constitution expert O. Hood Phillips, thought it would be more appropriate to call it "a White Hall Model" as the ideas of this Constitution were evidently conceived in the old colonial office).

One of the major features of this autochthonous Constitution was to displace separation of powers with what was referred to as the "fusion of powers".

Thus, judicial power of the people was to be exercised by Parliament through the courts. The 1972 Constitution removed the power of judicial review from the Supreme Court and limited its power to look into the constitutionality of laws before such laws were passed in Parliament. This was a significant departure from the previous Constitution, under which the Supreme Court had developed considerable powers regarding the interpretation of laws. The apex court had also developed a body of case law generally referred to as “judicial power cases”.

The attacks on the independence of the judiciary, as it was conceived prior to the 1972 Constitution, marked the beginning of a rapid decline of judicial authority in dealing with constitutional matters. However, it was not only the power of judicial review that was lost to the Supreme Court, but also the prestige and authority attached to an institution that could involve itself in the making of vital decisions relating to important political and social issues within the framework of constitutional law. Whereas in more vital jurisdictions this power was enhanced by such bodies such as the Constitution Court of Germany and the Constitution Council of France, Sri Lanka witnessed a leap backwards.

The post-1977 regime:

The ‘right’ came to power in mid-1977 with over 80 percent majority in Parliament. The fears of the ‘right’ were of a very different kind to that of the ‘left’. This particular regime was headed by a person who wanted to rise above all institutions and establish an executive presidency in which all power was concentrated. He thus envisaged going far beyond the limitations of the separation of powers placed by the earlier regime. He too promulgated a Constitution that is known as the 1978 Constitution.

This Constitution kept the phraseology in traditional liberal democratic terms while in content the powers of the President were in contradiction with checks and balances usually prevalent within a democratic framework. The phraseology was such that early commentators of the 1978 Constitution even believed that the concept of separation of powers — which was displaced by the 1972 Constitution — was in fact replaced by the 1978

Constitution. However later experience was to prove that such commentators were too naïve in understanding the political scheme behind the 1978 Constitution.

The paranoia of this regime and particularly its leader was that almost everyone in the country were “enemies.” The foremost among such enemies were the political parties opposed to it, viz. the leading opposition party, SLFP. This enemy had thus to be subdued and suppressed if the dream of staying in power beyond legal limits was to become a reality. Then there were the bases of the opposition parties, which too, could interfere with the ambitions of the new regime. These were the trade unions and other organisations of the masses. Then there was the growing militancy of disgruntled minorities particularly the Tamils. Elements, which pledged their allegiance to more liberal attitudes, were also enemies. And to suppress them all required more direct force than the mere use of constitutional means — as with the case of the earlier regime.

The new regime’s approach to the judiciary was determined by this factor of how to deal with its ‘enemies. This was because, the judiciary with greater powers and basic liberal attitudes — though some members of it may have been more conservative than others — was seen as a hindrance to the direct use of violence this regime was to perpetrate on the population. Thus it too, like the earlier regime treated the judiciary as an ‘indirect enemy’. The methods adopted to suppress the judiciary was more confrontational than that of the 1972 regime. Firstly, all Supreme Court judges had to be re-nominated to continue under the 1978 Constitution. In doing this, a number of judges were left out, thereby breaking a cardinal principle of the continuity of the tenure of a judge of the Supreme Court until retirement. The message was clear: the new regime would not tolerate the traditional conceptions relating to the independence of the judiciary. Later on, the confrontation grew into an open battle between the Chief Justice and the regime. The struggle continued in many other ways of open confrontation and subtle pressures with a view to achieve a more subdued judiciary with as little power to influence constitutional matters as possible.

The period that followed was one of the most violent periods in the history of Sri Lanka. There was colossal violence in the South, North and East. Emergency and anti-terrorism laws were introduced and were used to conduct tens of thousands of illegal arrests, torture, and summary executions. In the operation of such laws it was also possible to reduce the powers of the judiciary to adjudicate on such matters. Besides, even where adjudication was possible i.e. in Habeas Corpus applications, there was heavy interference by even getting the Attorney General's Department at the time, to coach police and military witnesses to provide false evidence relating to the allegations made in these Habeas Corpus applications. By interfering in the criminal investigation mechanisms, inquiries into large-scale disappearances, torture, maintenance of illegal detention centres and even crimes that would amount to crimes against humanity, were prevented. Thus, not only were the judicial powers limited, but the mechanisms, which make the functioning of the judiciary possible, were also subverted.

Though several regimes have come into power, and have solemnly pledged to undo what has been done since 1970, in actual fact these regimes too considered the judiciary as 'an enemy'. Expansion of judicial power and particularly its powers to influence the constitutional discourse within the country is considered by all these regimes as having negative effect on their power.

Other factors:

Besides the negative impact of regimes in power as mentioned, there is yet another factor that mitigates against the enhancement of the powers of the judiciary and the strengthening of the independence of the judiciary. Culturally persons belonging to socially stronger social classes as against the ordinary folk, have resisted the enhancement of laws within the country. Their idea of privilege includes the possibility of remaining outside the law in as many areas of life as possible. For example, imposed taxation laws, laws against corruption and the like have been strongly resisted by them. The law is perceived more to apply to the ordinary folk and the poor.

Expansion of the constitutional powers of courts under the modern state

involves the 'equalisation of citizens' before the law. The measures for the implementation of laws in all areas of life are part of the conception of a modern democracy. There is serious resentment to this approach in Sri Lanka and this remains one of the serious obstacles to the enhancement of the judicial role in the country.

The demand for equality before law and re-establishment of the rule of law comes mostly from those groups comprising ordinary people or the "common man". Due to enhanced opportunity in the pursuit of education, in recent decades, the sophistication and the capacity for articulation among these groups have greatly increased. Participation of these groups in the political debate has also increased. Perhaps future demands for the improvement in the rule of law will also come from these folk. If only there is greater understanding on constitutional matters among these groups, then the demands for enhancing the role of the judiciary will also be heard from them.

Therefore, it seems certain that the future of the democratic state of Sri Lanka would rest largely on the shoulders of the common man than on those who are usually considered the more important sections of society.



about subject regarding the defects of the justice systems in Sri Lanka for many decades. However, there has been little attempt to link this with issues such as the increase of crime, social insecurity and loss of faith in the judicial process as a whole. There seems to be a reluctance to make these linkages.

Causal link

If in fact, these issues are seen as intrinsically intertwined, then any attempt to find a serious solution to crime and social insecurity and to establish confidence in the justice process, would require the undoing of such delays. Instead, when this linkage is forgotten and these problems are discussed in isolation, it results in hyped-up emotional responses that in turn could be mobilised for ulterior purposes. However, none of those social outbursts are capable of producing real solutions until the issue of delay in adjudication is seriously addressed.

There is also a general feeling among most decision-makers in the area of adjudication, that delays will remain an unalterable fact in the judicial process in Sri Lanka. However, this fatalistic acceptance of the situation only means that there is little belief in finding solutions to the increase of crime, social insecurity and other associated problem with the rule of law arising from the delay in justice. The result is a willingness to accept rather crude solutions to social problems viz. extrajudicial killings, torture and mob violence.

In a discussion seeking real solutions, the causal link between the laws delays and the collapse of the rule of law with all its manifestations, should be reasserted. In fact, this should be the starting point of such a discussion. Cited below are 4 cases randomly chosen pertaining to 4 young victims. These cases are not the worst from the point of view of delays. Instead they are randomly selected to show what transpires in an average criminal case in terms of delays and the consequent impact on the victims.

Case studies

Case 1: 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 Human Rights Commission 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.

Case 2: 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.

Case 3: 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 2-3 years to be completed. And in the meanwhile the victim will most likely face the same prolonged wait and adverse experiences as aforementioned.

Case 4: 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.

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 4%. And many of those convicted have pleaded guilty to the charges against them.

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 5-6 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.

Pressure

Another problem associated with judicial delays is the pressure brought upon persons not to give evidence or to change such evidence. When some members of their own communities bring heavy pressure over a long period of time, it is quite likely that many will succumb to fear. It is also possible that witnesses' fear may be realised and they come to harm. By having trials within the shortest period of time such pressure is much reduced and the providing of witness protection is made much easier. Thus, achieving effective witness protection requires that cases be heard within the shortest possible time.

When the right to a speedy trial is denied, many other rights are also automatically denied. Aggrieved persons may not wish to lodge complaints about crimes committed against them, knowing very well that justice if any will only be done, years later. They may instead chose to suffer in silence and try to get on with their lives as best they can.

Hence laws delays 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'.

* * * * *

(ii) Civic action to make courts more efficient

The Asian Human Rights Commission (AHRC) has said that though the four percent conviction rate prevalent in Sri Lanka's criminal justice system is often noted, what is less emphasised is the primary cause for this dismal rate – the delays in justice. And though these delays are usually attributed to



In a society where the rule of law has completely fallen down, how can we talk about peace? (Photo from the Street Movement for Justice)

heavy court workloads, the problem of workloads is itself the product of far serious defects.

Why do delays occur in Sri Lankan courts, particularly in serious cases tried in the High Courts? The AHRC said that a former High Court judge had once recounted the first lesson given to him by a senior colleague in whose court this judge had begun his work. Accordingly, he was told that at least ten cases should

be completed per month. Twelve cases if completed would be reasonable, while 15 cases, would be a good performance. He recalled those days with some admiration, stating that today not even two cases are completed within a month.

Jury trials are now optional. The choice is with the accused, or rather, with the lawyers of the accused. One advantage of a jury trial is that when a hearing begins it will usually continue each day until completed. However, when trials are heard without juries there are usually many postponements. Many partly heard cases would be fixed for a single working day and often, only parts of a witness's evidence can be heard on that day. In some cases the evidence of a single person is stretched across several days that are spread over several months or more. From the evidence of one witness to the next there may be gaps of one or two years, prolonging the whole trial process and defeating the possibility of speedy justice, the AHRC said. Judges and prosecutors are unable to work effectively under these conditions. With a pile of partly heard cases, they have inadequate time to prepare for each one, in contrast to when a case is heard from start to finish. Also, to succeed under the adversarial justice system prosecutors need to develop a strategy and carry it through. This is made much more difficult when cases are spread out across months and years. Meanwhile, a judge may be transferred before a case is completed and to hear the case to its end, the judge must be gazetted to return to the same court. Alternatively, trials are

begun all over again, particularly when judges are promoted to higher courts or retire.

Victims of crime and their witnesses face even greater obstacles. Many endure threats and harassment until the giving of evidence is completed. The threats are often realised, as in the case of Gerald Perera, who was killed allegedly to prevent him from giving evidence against the policemen accused of torturing him. In many other cases, lesser known victims and witnesses have suffered a similar fate. The exacerbation of threats against witnesses by delays in justice is of particular concern in view of the absence of an effective witness protection scheme in Sri Lanka. A Solicitor General recently admitted that the low conviction rate is mostly due to the fact that witnesses do not come to court — or change their evidence — due to fear of retribution.

The delays in justice experienced by Sri Lankans will not be overcome simply by increasing the number of judges, prosecutors and courts the AHRC reiterated. The question is how the workload can be better managed to enhance basic principles of fair trial and improve efficiency. This is a question that needs close examination by competent and independent judicial authorities. Whereas in many countries reviews of judicial management and adoption of new approaches through well-considered recommendations are common, the same cannot be said of Sri Lanka.

Social stability depends upon speedy and effective courts. An enlightened public discussion is desperately needed in Sri Lanka in order that justice institutions function more efficiently. The protection and promotion of human rights is not possible without strong expressions of public interest. Therefore the delays that currently occur in Sri Lanka's courts deserve a far greater amount of concern among those who care for the rule of law as well as social stability, the rights group said.

* * * * *

(iii) Awakening to the delays in the adjudication process

The Asian Human Rights Commission notes a slight awakening in the Sri Lanka legislature to the delays in the adjudication process in the country. Such delays virtually negate the very purpose for which the adjudication process exists: to maintain the rule of law. This awakening, albeit slow, is manifested in two proposed laws that are now under discussion. The first is the 18th Amendment to the Constitution. The second is the conclusion of proceedings relating to serious criminal charges within 90 days.

The 18th Amendment is for the purpose of creating appellate courts in places outside of Colombo, where they currently exist. The idea is to create more court locations and judges for the appellate court and to make it possible for them to sit in provinces where access to courts for litigants may be easier and less expensive. The possibility of increasing the number of judges and court premises has been mooted for some time as a necessity for dealing with the overload of cases that are causing considerable delays in the court system. The implementation of provincial appellate courts, therefore, is an attempt to resolve this problem. In spite of other political considerations that might exist, the 18th Amendment is valid in itself, as the increase of the number of courts and judges is imperative if the issue of delays is to be resolved.

The criminal justice system has arrived at a virtual standstill with a mere 4 % conviction rate and the failure of witnesses to appear in court in 85% of cases, due to fear of their perpetrators. The power that perpetrators hold over witnesses is due in large part to the long years of delay in the adjudication process. A witness protection programme does not exist. Even if it did, it would be impossible to maintain such a programme for cases that take many years to resolve. To provide the necessary services for witness protection for extended periods of time in terms of personnel and material resources would be enormous and impractical. The cost of such an exercise would be exorbitant and the stress of such a system would weigh too heavily on the law enforcement agency. Thus, effective witness protection should accompany a speedier adjudication process, such as the 90-day limit for the disposal of cases, which has been implied.

The speed of the adjudication process will also depend heavily on the manner in which the Attorney General's Department deals with the overload of cases. Presently, the filing of a case with the Attorney General's Department can take anywhere between one to three years - and sometimes even more. At the High Courts, the average wait is between two to five years. It is not possible to resolve this issue without an increase of personnel at the Attorney General's Department and without additional High Court judges being appointed and court premises being found.

Much can also be achieved in the speeding up of the adjudication process by introducing computers and training persons involved. As it is now common practice to computerise documentation relating to adjudication in many parts of the world, it is time for Sri Lanka to do likewise and to reap the benefits of this.

While there is ample material available regarding the speeding up of the adjudication process, what is absent is the making of necessary decisions to implement it. This decision making process begins with the legislators of the country. It is they who must provide the necessary legal framework for the expansion of the court system. It is also they who must approve the necessary funds for the realisation of this aim. The critical function that needs to be exercised by the legislators cannot be replaced by anyone else.

However, how the legislators exercise such functions depends very much on their party's policies. If parties do not have a policy towards the resolving of adjudication delays, then there is very little that legislators can do to resolve such an issue. Thus, it is the duty of political party leaders and their members to arrive at an agreement on the measures necessary to speed up adjudication and to pursue the realisation of such measures through the legislature.

None of the country's present problems will ever be resolved without achieving a reasonable degree of success in the speeding up of the judicial process. The Sri Lankan model of governance is a law-based one.

However, when the law cannot enforce itself due to its own inner contradictions — such as the extreme delays that exist in Sri Lanka — then the entire social system cannot function. A dysfunctional legal system means a dysfunctional society as a whole. At the core of this dilemma is the issue of the law's delays.

Such dysfunction within one aspect of Sri Lanka's administrative system transcends into other areas as well. The issue of tsunami relief work is attracting global criticism. The world is at a loss as to why aid and available funds are not reaching those who most require it. Such confusion, however, ignores the dysfunctional element that exists within all of Sri Lanka's administrative mechanisms; be it aid, the law, or any other area in question.

The measures currently being taken to speed up the adjudication process are a welcomed move. Though they fall short of fully rectifying Sri Lanka's judicial delays, they are a positive first step in attempting to do so. The current delays are destroying the right to justice in Sri Lanka. If the legislators can acknowledge this fact and make attempts to overcome it, then there is hope that the problem is not beyond control and that the delays can be reduced.

* * * * *

(iv) Justice delayed for want of a fax machine

Courts in Sri Lanka are so poorly equipped that simple communication facilities, such as fax machines, can help safeguard the administration of justice and civil liberties of defendants, the Asian Human Rights Commission (AHRC) said. Victims of such circumstances are unjustly being kept longer in jail due to a time lag between the issuance and the implementation of court orders for their release, the Hong Kong-based regional Human Rights group said.

“It is time to end such a painful and ridiculous situation,” said Basil Fernando, Executive Director of AHRC. The plight of such victims could be eased

by installing fax machines in all courts to enhance communication and avoid delay in carrying out the release orders, Mr. Fernando said and added that it is unfortunate that the Magistrate's Courts, the District Courts and the High Courts still do not have such facilities, which are commonly used by many small businesses and private individuals in Sri Lanka. "The prevailing primitive condition of the communication systems in courts simply shows the carelessness of the authorities and their disregard for the administration of justice and the civil liberties of the people," he said.

Therefore, the AHRC called on the authorities in Sri Lanka and the local Bar Association to help remedy the problem as soon as possible. The Human Rights group noted that many of the victims are poor and illiterate and do not know and are unable to defend their rights. The situation could worsen when there are technical aspects that cause delay and some unscrupulous officials take advantage of these conditions, the group said.

Accordingly, it cited the case of Koralaliynage Palitha Tissa Kumara, who was tortured and infected with tuberculosis when a Sub Inspector of the Welipenna Police Station forced a TB patient to spit into his mouth. Thereafter, Mr. Kumara was forced to admit to charges of bomb possession and armed robbery that were most likely framed against him while he was detained by the police. A state counsel said in court that Mr. Kumara's complaints against the police re his torture were correct and that the charges against him were likely to be fabricated. Although both the Appeal Court and High Court granted Kumara bail earlier, the 31-year-old artisan was kept in jail awaiting the completion of the formalities for his release.

The Magistrate's Court said it had yet to carry out the bail order because the documents sent by the Appeal Court contained typographical errors. "Kumara may still be remanded in prison for a few more days to wait for the correction of the errors as communication and the transfer of the papers takes time. Had there been a fax machine in the Magistrate's Court to receive the relevant information quickly, he would have been released and obtained proper medical treatment earlier," Basil Fernando said.

(v) Lawyers at Magistrate's Courts and protection of rights

The Asian Legal Resources Centre (ALRC) has expressed serious concern over the manifold forms of denial of the right of proper legal representation for criminal suspects at the Magistrate's Courts in Sri Lanka in contravention to the rights guaranteed under Article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR).

When these allegations are of serious crimes, such denial can result in vitiating the Magisterial Court defence, and this could later have dire consequences on the trial before the High Court, the Centre said after Wednesday's ugly scenes where lawyers allegedly hooted in a courtroom, when a top lawyer appeared for the suspect in the case involving the killing of a High Court Judge. The ALRC also says it has gathered considerable information that police officers, attached to various stations, refer cases to preferred lawyers and obtain commissions of up to 50% of the legal fees charged by such lawyers from their clients.

ALRC further says that in a letter written by the Wattala Branch of the Bar Association to the OIC, Wattala Police Station sometime earlier, lawyers had complained that some officers of the Wattala station were referring suspects to specified lawyers for legal representation in court. This letter, which was also copied to high-ranking police officers and to the Bar Association of Sri Lanka, had received wide publicity. Following the publication of this letter, it was revealed that this practice is not confined to Wattala, but takes place in numerous other locations throughout the country. The reason for such references to specified lawyers is that there are arrangements with such lawyers to obtain commissions, which can sometimes even exceed 50% of the fee charged. As the cases are postponed for several days the commissions will also be received for each of those days. After some time, considerable daily income can be obtained through cases thus referred, ALRC says.

Other than the corruption involved, such commission taking also gives rise to many other questions regarding investigations, prosecutions and fair trial

at the Magistrate's Courts by the police. As even initial inquiries, production of suspects before courts and non-summary inquiries regarding more serious crimes are also handled by the police, this practice of collusion between the police and some lawyers can affect criminal inquiries in a serious manner. The ALRC says, when the suspects are produced in court the police act as the investigators and the prosecutors. The suspect seeks lawyers for the purpose of defense. When police officers obtain commissions from defense lawyers they are very much compromised in the conduct of further inquiries and also the conduct of defense. Often, on the other hand, the lawyers too are compromised in the proper conduct of the defence.

In many instances the result is a plea tendered by the suspects on the advice of their lawyers who have to please the police who sent them the cases. This would amount to the suspects not getting fair legal advice on the actual nature of their cases. It also hinders them putting up a proper defence in court. Thus, irrespective of the guilt or otherwise of the suspects the limited option open to them would be to tender a guilty plea. If any suspect were to abandon this procedure, for example, by insisting that the lawyers fight for his innocence, then the lawyer would be compromised and likely to discourage such attempts. If the suspect seeks another lawyer for the purpose of his defence then he might antagonise his former lawyer as well as the police. In such circumstances he may even be implicated in other cases.

If the court is under pressure to deal with an excessive workload and therefore is not quite willing to put up with persons pleading not guilty and who insist on trial – as may often happen – then such an atmosphere will contribute to the sort of collusion between the police and some selected lawyers as mentioned above. As a result, the public's perception of the legal process can be adversely affected and the concept of fair trial compromised. Settlement making could become the general atmosphere of courts. Finally such collusion can have an extremely demoralising effect on all stakeholders involved, with the self-respect of the profession in Magistrate's Courts, degenerating significantly.

These practices need to be scrutinised by the Bar Association of Sri Lanka

as well as the police. However, there had been much criticism published in newspapers and journals about the degeneration of the BASL in recent times, says the ALRC. The Association's first Secretary who later became its President, Desmond Fernando was quoted as follows: "We have experienced how arbitrarily issues concerning the judiciary have been dealt with. We have experienced how some members of the Bar including those in the official Bar have been dealt with. We have experienced how damning allegations have been made against the members of the judiciary. In all these instances the BASL had maintained a deafening silence and had continued unperturbed, engaging solely in welfare work obviously mixing up its priorities. Many members of the Bar have taken up these issues from time to time in the Bar Council with no response." (*Reported in The Daily Mirror, 21 January 2005*).

As a result of this deterioration, says the ALRC, complaints made by litigants against alleged malpractices of lawyers are not dealt with in a prompt and professional manner. For instance, the case of Dingiri Banda, a torture victim, illustrates how such complaints can even be fully ignored. Dingiri Banda had complained that his lawyer in his fundamental rights application had arrived at a settlement with the respondents, when his instructions were not to settle at all. Despite many reminders this matter has still not been investigated. And due to the lack of proper procedure to conduct inquiries into professional misconduct the dissatisfied litigants has no avenue to pursue their complaints.

Thus, ALRC urges the Government of Sri Lanka to take appropriate action to ensure compliance with Article 14 (3) of the ICCPR, relating to fair trial.



CHAPTER 14

Absence of Witness Protection

A Series of Statements by the Asian Human Rights Commission

(i) HRC's role in protecting victims

During the last two weeks there were two occasions in which victims of brutal police torture sought protection from the Human Rights Commission (HRC) of Sri Lanka claiming that they were now facing serious threats, including threats to their lives. We are glad to state that on both occasions a Commissioner took urgent steps to help the victims while they were undergoing such threats. While such positive action by the HRC needs to be commended, nonetheless the overall treatment of both victims on these occasions is a matter of serious anxiety.

1. *The case of Palitha Tissa Kumara* – this is a case that received wide publicity in Sri Lanka. An article in the Sunday Leader on 17 July 2004 catches a glimpse of a family fleeing from their home to escape alleged threats. Subsequently the Asian Human Rights Commission (AHRC) and its local associates informed the HRC about the situation and also took the trouble to accompany the fleeing family — who were worried about finding a safe haven — to the HRC to make a statement. Thereafter they had continued their journey to find a place of safety.

However it is sad to note that the entire discussion at the HRC centered on a slight discrepancy or an omission in the family's statement, rather than about ways and means to help the family in their hour of crisis. There seems to be a basic lack of understanding regarding the role of protection

required during such a crisis. This role is different from the general role of conducting inquiries with the ultimate aim of punishing perpetrators. During moments of imminent threat the duty of a human rights body is to basically verify whether there is a prima facie case of alleged threat and if so, to take whatever steps necessary to provide immediate protection to the victims — leaving inquiries into boarder issues of liability for a later time. There were sufficient details given by Tissa Kumara about his situation for any human rights body to act upon. But even until the writing of this statement, discussions and verifications were ongoing and the victim has to fight his own battle for safety.

2. *The case of Saman Priyankara* — The second case is that of Saman Priyankara who was tortured for the second time by the Matale police. Even while attending to his injuries and meeting with doctors, he managed to write an affidavit and sent a copy of it, together with a covering letter of a lawyer, to the HRC, seeking help. He got an amazing reply from the HRC, which requested him to report at the HRC office Colombo at 3:30pm on 20 July 2004. The letter was sent on behalf of Mr. Nimal P. Punchihewa, the HRC, Director of Investigations.

Surely any layperson reading the document sent by and on behalf of the victim, would have realised that Saman Priyankara is in remand prison. Thus, the lack of concern and insensitivity is beyond belief. The wife of this unfortunate victim who is rushing around to do whatever she can for her seriously injured husband had also to go to the HRC headquarters in Colombo to remind the HRC that her husband was still in remand prison. Such suggests the ineptitude and neglect a victim could face at the HRC, thereby undermining the very purpose of its establishment. The issue clearly pertains to the duty imposed upon a human rights body for providing protection for a victim of human rights violation. What was required at the time was the willingness of the HRC staff to at least use their telephones to inquire about the incident and to take whatever preliminary steps possible to help the victim.

Perhaps one way to solve the problem is to separate the task of protection from the investigating unit and to give the initiative to some one else to deal

with such urgent matters. Protection and conduct of final inquiries are completely separate matters. Perhaps a human rights body like the HRC of Sri Lanka is more suited to attend to protection as its first priority. This also requires a change of attitude, as is evident from the above example.

Therefore, the AHRC wishes to record its serious concern over this matter and urges the Chairperson and the members of the HRC to give specific instructions to its staff about the importance of protecting the victim in the work of a Human Rights Commission.

* * * * *

(ii) Inadequate staff, not HRC's only problem

The following is an open letter to the Chairperson and other Commissioners of Sri Lanka's Human Rights Commission, regarding the Commission's delay in dealing with complaints:

A news item appearing in a Sinhala newspaper on 1 December 2003, mentioned the increase in complaints received by the Human Rights Commission, (HRC) and the delay in dealing with these complaints. The news item was based on a press release issued by the HRC Chairperson, Dr. Radhika Coomaraswamy. The statement apologises for the delay in dealing with complaints but also explained that the Commission had received an average of 500 complaints a month, and in the month of October 2003, about 700.

Explaining the reasons for this delay, the statement goes on to say that there are only four full-time inquiring officers at HRC but that steps are nonetheless being taken to improve the complaint procedure to obtain greater results including increasing the number of inquiring officers and legal officers and also improving the resources of the Commission. The new procedure was expected to begin in March 2004. The public was asked to understand the situation and the Commission expressed its apologies for the difficulties arising from this situation.

The Asian Human Rights Commission (AHRC) is gravely concerned about this situation. AHRC is aware from the reports received from a partner organisation that intense human rights violations are taking place in the country. This includes extremely cruel kinds of torture taking place in most police stations, almost on a daily basis. Deaths in police custody have also increased. There has also been an increase in the number of complaints received by those who complain about HR violations including death threats and other forms of intimidation. The United Nations Human Rights Committee, too in its 79th session that ended on 3 November 2003, referred to the intimidation of witnesses that plagues the country and called for its immediate elimination.

Under these circumstances, the difficulties faced by the Human Rights Commission can cause serious harm to the victims of such violations. Therefore, the delays made by the Commission should be viewed from the point of view of the victims.

At this juncture it must be emphasised that the recently highlighted lack of sufficient numbers of inquiring officers and lawyers are not the sole reasons for the Commission's delay; there are indeed other defects. Though there may only be four officers at the head office, there are ten or more regional offices and staff at these offices. These officers have the primary duty to inquire about complaints and to deal with them. However, as illustrated by the incident relating to the Kandy office of the HRC, corruption is rampant, and collaboration with perpetrators is common in that office. The office provides services not to the victims but to the alleged perpetrators. It has also been revealed that there are fraudulent practices, such as listing complaints as being sent by the area office to the head office in Colombo, but the head office never receiving such complaints. All of these matters have been brought to the notice of the Chairperson of the Commission and the other Commissioners. Therefore, it is very clear that there are other factors affecting the Commission's work besides a mere limitation of the number of staff.

The increase in complaints shows that people are facing violation and seeking redress eagerly. This eagerness of victims to seek redress should be welcomed

by anyone who cares about human rights. A major problem in the past has been a deep-seated fear victims have of making complaints. That there has been a change in this attitude should be an encouragement to all those who are committed to the promotion of human rights. Everything should be done to encourage this process and not to demoralise the victims.

The three-year-plan of the HRC has called for 'A ZERO TOLERANCE OF TORTURE'. The policy will have little meaning if there are no prompt inquiries. Therefore, AHRC suggests the following to deal with the present situation.

- That the HRC give priority to investigations into torture, deaths in police custody, intimidation of victims etc;
- That the HRC weed out the bad elements within their staff and thereby morally boost others to attend to their mandate; also to take immediate steps to punish corruption and collaboration with alleged perpetrators;
- Seek volunteers from among human rights groups and other concerned persons to record statements and do other preliminary activities relating to investigations. AHRC is aware of many persons, who would be willing to volunteer if the HRC takes the initiative and calls for their help;
- On an urgent basis, lay down in writing the basic investigation procedure. This will help anyone to assist in the process of many activities relating to investigations and protection;
- Establish contact with the Attorney General and make arrangements to refer serious cases of torture and similar violations to the Special Investigation Unit working under the Prosecution of Torture Perpetrators Unit for immediate investigation and victim protection; also to make arrangement to receive the investigation report and to use these as preliminary material at the investigations;
- Establish a mobile unit of volunteers to help in quick interventions, such as visits to police stations and similar activities, and issue necessary authorisation to a group of selected persons for this purpose;
- Implement an emergency plan to deal with the situation until the

HRC finds resources and implements its new policy plan, hopefully in March next year. This emergency plan should include calling for special help, such as funds on an emergency basis from the government, other funding agencies and the others to deal with the present situation. The plan should also call for resources from the human rights groups by way of personnel and also materially;

- Get all Commission members involved in dealing with such a situation for a few months.

The AHRC expresses its willingness to support the HRC in every way it can, to deal with the present situation, so that no discouragement will be caused to the victims who suffer acute forms of violations and cannot wait.

* * * * *

(iii) Complainants of police brutality continue to suffer

Numerous torture victims, their families and other witnesses have reportedly been threatened with death or other violence due to persisting with their complaints against initial injuries. In most instances, the victims and their families are harassed by the police against whom complaints are filed. The law in Sri Lanka does not provide any avenues for victims to obtain speedy redress in situations when they are facing threats because of the complainants they have made. Nor does there exist, any witness protection programme that can offer support to the victims facing such threats, as was pointed out by the Attorney General in a public speech last year.

It is thus not surprising that the family of 40-year-old *Herman Quintus Perera* and other eyewitnesses to his unfortunate death are now facing harassment by the police and their associates. According to the family's lawyers, the Polonnaruwa police have been threatening Perera's family not to appear before the Polonnaruwa Magistrate's Court to testify. The accused in the case are a police Sub-Inspector, a Sergeant and two Constables. Many of the eyewitnesses to the murder in early October 2004 had fled in fear of

their lives, making it very difficult to obtain relevant material and affidavits. Now the police are attempting to scare away the victim's family as well.

In the case of 16-year-old *H.L. Sandun Kumara*, who was allegedly tortured by several policemen attached to the Rathgama Police Station from 12-19 September 2003, his family has complained of numerous threats and harassments, the latest of which occurred this week. While a case has been filed in the Supreme Court (No. 570 of 2003) re the incident, the family currently is desperately searching for a place of safety for the boy. According to the boy's lawyers, although he has been in hiding, a fabricated case against him instituted by the Rathgama police requires that he appear before the Galle Magistrate's Court from time to time and this has affected his well being and safety. Furthermore, the police officers are now demanding that Sadun Kumara and his family accept a paltry sum of compensation and drop the charges against them.

Torture victim *Kadawatha Gedara Dharmasiri*, a 32-year-old labourer, received severe threats from the police to withdraw his complaint of torture against officers of the Hasalaka Police Station, requiring him to stay away from his home for some time. Being a father of four children, he had to return home, at which time he was threatened again. According to a human rights organisation assisting him, on 22 October 2004 the policeman who allegedly tortured Mr. Dharmasiri had visited him and told him the Hasalaka Police Station OIC wanted to see him the next day. But when the victim went to see the OIC, he was asked to withdraw his Fundamental Rights Case against the police for a payment of Rs. 7500.

In these three cases, as in many others, the victims, their families as well as other witnesses are put into extremely difficult and trying positions. The victims' families are in most instances unable to provide the protection and security necessary for the physical and mental well being of the victims. And instead of receiving justice, the victims in such situations are forced to suffer further for having made complaints about their earlier grievances.

Therefore, the Asian Human Rights Commission urges all relevant Sri Lankan authorities to:

- Inquire into these and other cases and provide adequate protection and redress to victims;
- Take action against the intimidation of all complainants and witnesses; and
- Improve the legal protection available to complainants and victims.

* * * * *

(iv) Lives of torture victim's children in jeopardy

Since the attempted murder last Sunday, (21 November 2004) of Gerald Perera, a victim of police torture in Sri Lanka, no protection has been provided to either him or his family. Mr. Perera who was shot 1 week before he was to give evidence against his alleged torturers before the Negombo High Court in Case No. 326/2003, is currently fighting for his life in hospital. Meanwhile, at a time when his family is in deep shock and fear, senior police officers appear to be cynically manipulating their distress by attempting to obtain their statement that they were unaware of who killed their loved one. These officers seem to be conspiring to cover up the inevitable conclusion that the shooting is connected to the case pending before the court. However, the family and others close to Mr. Perera have categorically stated that he had no personal enemies outside those connected to the case.

The police who are the respondents in the case have good reason to be worried about the outcome. Gerald Perera had already won a fundamental rights case in the Supreme Court of Sri Lanka over the same incident of torture (case no. SC/FR/328/2003), and had obtained an order for a record amount of compensation. The accused if found guilty in the pending criminal case would face a minimum sentence of seven years, imprisonment and a fine of Rs. 10, 000 under the Convention against Torture Act (No. 22 of 1994). Inevitably, Mr. Perera was under pressure to go back on his complaint that led to the Attorney General filing the case, in which he was due to appear on 2 December 2004. Tragically, the court summons was still in his pocket when he was shot.

According to the law, police officers facing criminal charges should be suspended or interdicted from their service pending the outcome of the trial. However, the accused men in this case have been allowed to remain at their jobs even after the case had been lodged. The National Police Commission is inquiring into this matter. Despite numerous interventions in the case from many quarters, no steps have yet been taken to give protection to Gerald Perera and his family. Neither has anyone been arrested over the attempted murder, despite the shooting having taken place on a public bus around 11:15am and an eyewitness confirming that he could identify the attacker in a line-up.

The family is now terrified that the children may come to harm. The Asian Human Rights Commission (AHRC) is again calling upon the authorities to intervene urgently in this situation of immense cruelty. Both the hospitalised victim and his family need security, and now. Recent claims by the government of Sri Lanka that it intends to get tough on crime are being made a mockery by this shooting and failure of the responsible agencies to respond by way of quick investigations and thorough protection. The AHRC also calls upon the diplomatic community and international groups in Sri Lanka to take up the case and express concern over the extreme injustice and gross abuse of human rights as yet being experienced by the victim and his family.

* * * * *

(v) Gerald Perera: The needless sacrifice of a noble man

The Asian Human Rights Commission (AHRC) announces with great shock and sadness that Gerald Mervyn Perera — who was due to give evidence in court against seven police officers accused of torturing him — passed away at around 1pm local time today, 24 November 2004, at the Colombo General Hospital, Sri Lanka. He had been in a critical condition since he was shot on 21 November. He leaves behind a wife and three children, the youngest of whom is eight-months old.

This is the first time that a torture victim pursuing a complaint before the courts in Sri Lanka has been shot dead at the instigation of the perpetrators of torture. The injuries suffered by Gerald Perera consequent to being tortured by the Wattala Police in June 2002, were so serious that he was left in a coma for over two weeks. But Gerald was a courageous citizen who stood up for his rights despite his suffering. He filed a fundamental rights application before the Supreme Court of Sri Lanka that held in his favour on 4 April 2003 and also awarded him a record amount of compensation. The criminal case in the Negombo High Court, where he was to appear on 2 December, was the next step.

The responsibility for filing criminal charges for torture in Sri Lanka lies with the Attorney General's Department and this step will only be taken when the AG is satisfied that there is sufficient evidence to obtain a conviction. However, although the state files the cases, it does not have any agency to take responsibility for the security of witnesses. Today the whole government apparatus stands as an accused party to this shameful murder by reason of this failing. The AHRC points out the numerous appeals made to the Inspector General of Police and the Attorney General in particular to provide security for complainants in trials initiated by the state. However these requested have come to naught.

The AHRC utterly condemns both the brutal torture and the subsequent murder of this innocent man. The killing of a torture victim speaks to how the rule of law in Sri Lanka has totally collapsed, and how discipline in the police force has degenerated to the extent that some officers have become nothing better than the planners and instigators of homicide. Over the last ten years, the AHRC has repeatedly voiced concerns over the exceptional collapse of the rule of law in Sri Lanka. It is now a place where ordinary citizens lack even the most rudimentary security. The AHRC has again and again warned government agencies of the dangerous situation prevailing in the country. Sadly, the government has turned a blind eye to these and other expressions of concern, and allowed the situation to deteriorate until murder is easy. The death of Gerald Perera is symbolic of the fate of every citizen in the country; that is, that anyone who dares to assert his or her rights might face the very real threat of violent and abrupt death.

The judicial process is also mired in a deep crisis. A High Court judge was killed two days before Gerald Perera was shot; several investigators belonging to customs authorities, the Auditor General's Department and other agencies too have been seriously attacked. Judges, complainants and investigators are all under severe threat from criminal elements with strong links to policemen. It is often said that the cause of the increase in crime in Sri Lanka is the underworld. On the occasion of this barbaric killing, the AHRC categorically states that the primary reason relates to these links between police officers and criminal elements, which the authorities have not made any serious effort to break.

We have been reliably informed that Gerald Perera's wife and other family members are now in fear of their lives. They live in mortal fear because they see that law enforcement officers have set murderers onto them. Even the noise of a vehicle outside is said to cause the whole family to run and hide under a bed. Therefore we call upon the government of Sri Lanka to provide protection to Gerald Perera's family and to enable his funeral rites to be performed in an atmosphere of peace. Although we are aware that the local community has also been chilled by dread, we urge all friends and neighbours to rally around so that the family can perform their funeral obligations.

We call upon the government of Sri Lanka to take all steps necessary to thoroughly investigate this murder, which has been done under the cover of state protection. In particular, the authorities must answer why policemen facing criminal charges for torture since 2003 could still be serving their posts. These men have used the opportunity given by their official positions to plan and implement this killing.

We call upon all people of goodwill in the country to rise up and defend their basic freedoms even now, when the space to fight is very limited. Sri Lanka may be heading towards a major catastrophe characterised by lawlessness and a lack of basic security that only extremely urgent action can avert. Finally we salute an innocent person who dared to assert his rights and express our deepest sympathies to his family members. And we call upon everyone to rally around and support them now.

* * * * *

(vi) Lives endangered due to lack of witness protection

On the 21 November 2004, Gerald Mervyn Perera, victim of a well-known torture case was shot as he was travelling to work in a bus in the early hours of the morning. In his pocket was the summons issued by the High Court of Negombo, asking him to give evidence against 7 policemen accused of torturing him. Earlier, when his fundamental rights case was heard before the Supreme Court, a bench of three judges had unanimously decided that he had been severely tortured after being arrested on mistaken identity.

The SC judgment received wide publicity. A few days before the shooting, Gerald Perera had told several persons that he had been pressurised to accept Rs.5 million (US\$50,000) and withdraw his previous complaint. But he had categorically refused the offer, only to be shot shortly afterwards. The police inquiry into this case was handed over to the Criminal Investigation Department (CID). However, to date, the inquiry has not led to the arrest of any person for the murder. This is despite huge concerns shown in the media regarding the case and the involvement of several institutions including the Human Rights Commission of Sri Lanka and the National Police Commission.

This murder has also raised serious concerns about the future of cases under the CAT Act (Act No. 22 of 1994). That is, with the disposing of a chief witness of such a trial, it becomes virtually impossible to proceed with the said trial under this Act. The result might be that more alleged perpetrators accused in criminal cases, particularly those regarding torture, may be tempted to kill important witnesses with the expectation of destroying the trials against them. There have been other cases where there have been attempts to murder or re-torture victims with the same intention no doubt, of terminating legal proceedings

Though the Anti-Torture Act of Sri Lanka was adopted in 1994, hardly any cases were filed before the government was pressurised to implement the Act by civil society as well as the international community. As a result,

according to statistics given by the Attorney General's Department, about 40 cases are now pending before the High Courts. In two cases there have been convictions. Under the Act, the mandatory sentence is seven years rigorous imprisonment and a fine of Rs. 10,000 (US\$100). 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 an offence carrying a serious prison sentence. It is this fear that leads some policemen to take the easier alternative of trying to eliminate witnesses prior to the trial.

Though serious representations have been made to the Inspector General of Police, Attorney General and other relevant state agencies to implement a witness protection programme, there has not been any attempt to bring about such a law. Although regrets about the deaths are expressed, no positive attempt has been taken to introduce a witness protection programme or to provide resources towards it. Under these circumstances victims of torture who are awaiting trials are faced with serious concerns. On one hand, they wish to carry on with the complaints they have made and to seek justice. On the other, they are afraid of jeopardising the life and freedom of themselves and their family members. Many torture victims have relocated to other places in search of protection.

Under these circumstances, the relevant UN agencies such as the Rapporteur on the Question of Torture, the CAT Committee and the Human Rights Commission itself, should take effective action to look into the possible legal changes that should be introduced, in order to protect victims of crime in general and victims of torture in particular. It is essential that the UN mechanism makes itself aware of the extreme nature of violence taking place against torture victims in Sri Lanka. If these persons withdraw their cases due to fear of repercussion, it will no doubt bring about the demise of the Anti-Torture Act in Sri Lanka. The years of effort that have been invested in persuading the Sri Lankan state to agree to enact a law against torture and also the effort spent in trying to implement this act, may very well be lost due to the enormous fear that has spread among the people, particularly following the death of Gerald Perera.

The government of Sri Lanka must take immediate action to implement a witness protection law and also provide the necessary resources for its functioning. It is also obligatory on the part of the UN agencies dealing with such issues, to negotiate with the government in order to bring about such a witness protection mechanism particularly for torture victims. The present trend of genuine fear of assassination or serious physical harm to the victims themselves or their family members should be understood fully, and an alternative policy of promoting human rights, particularly by way of providing protection to witnesses, seems to be the only answer to this problem.

* * * * *

**(vii) The habitual torture and intimidation by
Sri Lankan policemen**

D.G. Premathilaka was initially arrested without any charges and tortured on 8-9 January 2004 by officers attached to the Katugastota Police Station. Mr. Premathilaka subsequently made a complaint and inquiries were initiated. Subsequently however policemen from the same station threatened Mr. Premathilaka and asked him to withdraw his torture complaints. He refused, and made further complaints to the authorities including the National Human Rights Commission.

In response, on 23 January 2005 he was once again seriously tortured by 12 policemen including the OIC of the Katugastota Police Station. The officers forcibly entered his house and took him to the police station stating there was a court warrant issued against him. On the 25th the victim had to appear before the Kandy Magistrate and new charges were filed against him for selling illicit liquor. He was not granted bail and was remanded till 8 February. Being thus remanded prevented him from pursuing his complaints against the policemen as well as to obtain proper medical treatment.

Police retaliations against those who make complaints against the police are

increasing and there is no witness protection offered by either the Attorney General's Department or the Police Department. Gerald Perera was killed just a few days before he was to give evidence in a police torture case. The culprits — who were 3 policemen accused of torturing him — have now been arrested.

Another torture victim, *Channa Prasanna* — whose case was being investigated — was kidnapped and only narrowly escaped from being killed. While two cases regarding these incidents were ongoing in the Magistrate's Court of Negombo, a further attempt was made on his life at midnight as he was sleeping, but the victim luckily awakened and ran away. In the case of *Lalith Rajapakse*, there were numerous threats on his life and he is at present in hiding, while there is a police guard to protect his family and neighbour U. L.F. Joseph, an HR activist, was also threatened with death for helping the torture victim. *Morris Elmo De Silva*, who was allegedly tortured by some officers of the Ja-ela Police Station, had to flee the country after threats were made against him and his wife for complaining against the alleged perpetrators and initiating a case before the Negombo High Court.

Despite the numerous appeals and complaints in the above cases, government agencies have failed to provide adequate witness protection ensuring the security and well being of the victims. They have also failed to interdict the police personnel against whom inquiries are pending. The brutal and criminal behavior of such officers is thus allowed to take place with impunity, while the personal security of citizens is callously abandoned.

The Asian Human Rights Commission urges that it is essential that policemen against whom inquiries are pending and / or charged with offences are transferred or even suspended. It is also necessary for the Inspector General of Police to prepare a list of policemen accused of torture, and subject them to psychological tests. If habitual torturers are allowed to remain in their posts as police officers and even promoted to higher positions, the security of citizens is exposed to serious threats and the morality of the entire police force becomes questionable. Persons with serious psychological problems or habitual criminals — torture is a crime in Sri Lanka — should not be allowed to continue as law enforcement officers.

* * * * *

**(viii) Independence Day: An opportunity for
fundamental change in Sri Lanka**

This year's Independence Day is celebrated amidst a complex background. The disastrous consequences of the 26 December 2004 tsunami have merely added to the burdens faced by Sri Lanka's political and legal systems due to the authoritarian model of governance introduced through the 1978 Constitution, which gave rise to conflicts in the South, North and East. At this annual event, some thought must be given to the dire situation faced by Sri Lanka and perspectives for the future.

While reconstruction and rehabilitation following the tsunami will be occupying people throughout the country, these issues are intrinsically connected to the acute problems faced by the Sri Lankan political and legal systems for almost three decades now. The prevalent situation can be described as one of an exceptional collapse of the rule of law. All the basic institutions of society are in a state of crisis. The totalitarian political model, which was established in 1978, was continued by all major political parties in power since then. Under this model of governance, democracy became a façade while the basic institutions of democracy, such as the Parliament, courts, government bureaucracy and law enforcement agencies significantly disintegrated and lost much of their credibility. Although the Executive President was to call the shots, he was in fact unable to do so as the model of governance established through previous Constitutions and the new model conflicted at every point. The result has been a situation of anarchy, where in almost every sphere of life effective systems of decision-making came to a standstill.

This experience has made clear that the Sri Lankan system of executive presidency has no real link to either the American or French models of presidency. Both of these systems have well developed forms of checks and balances, and operate within the basic framework of democracy; these models are not totalitarian in nature. The Sri Lankan system is more akin to the dictatorships achieved through constitutional means by persons such as

Ferdinand Marcos of the Philippines and Jean-Bedel Bokassa of the Central African Republic, as a leading constitutional lawyer and former Minister of Constitutional Affairs, stated when the 1978 Constitution was being promulgated.

After decades of practicing this model, the entire system has become dysfunctional. This is demonstrated by the manner in which the post tsunami crisis has been handled. Despite the incredible amount of foreign assistance that poured into the country following the tsunami, basic documentation of those who suffered loss and destruction does not exist. Nor is there even a tentative plan for the rehabilitation of those worst affected due to their proximity to the sea, such as the fisher-folk. There is no proper attempt to even get the tsunami-affected children back to school. While money for such plans is available, an effective decision making system is absent.

Impact of such totalitarian rule has been felt most seriously within the framework of Sri Lanka's justice system, in which — as is commonly acknowledged — people have lost confidence. The policing system, the judiciary, and the prosecution system — which is handled through the Attorney General's Department — have suffered to the extent that effective control of crime through a justice process has become impossible. For this reason there is popular demand for dealing with crime through extrajudicial means. Demands for doing away with the principles of fair trial arise from mass insecurity: with the failure of the system, minimum levels of security can only be maintained when minimum levels of decency are abandoned and anyone perceived as a criminal is dealt with as cruelly as possible. Reliance is thus no more on the operation of the rule of law, but on methods that satisfy an insecure public.

The major defects of the justice system include the absence of any witness protection and the unreasonable delays faced by complainants. A rape victim who makes a complaint for instance, may have to wait 10-15 years before the adjudication process results in a verdict regarding her complaint. This means that the police, if they do investigate the case, will take many months to complete their inquiries. Thereafter, the case will at least go for 3-4 years

to a Magistrate's Court through Non-Summary inquiries. The file will then go to the Attorney General's Department, where depending upon the number of files already there may remain for a further period of 1-3 years or even more. After that it is a matter of 2-5 years before the High Court and thereafter 3-5 years before the courts of appeal. Such a system does not inspire confidence in the victims of crime and further exposes them to grave dangers. The victim, throughout this process, has no sense of security against being threatened, harmed or even killed by those she is complaining against.

The near collapse of the policing system is another crucial defect of the justice process. The monolithic nature of the system has been disturbed by political control; even under the present national emergency, provisions allow the Executive to directly appoint police officers, ignoring the constitutional provision that places all appointments, transfers, promotions and disciplinary control relating to the police force (except the IGP) in the hands of the National Police Commission. The National Police Commission itself is unable to undertake its mandate with the puny staff it has and is furthermore under constant pressure to not assert disciplinary control upon police officers. Meanwhile, torture, corruption and abuse of power occur within the Police Department with impunity. Those who complain against the police may be killed as in the case of torture victim Gerald Perera, or habitually tortured and threatened to withdraw complaints as in many cases reported to the Inspector General of Police. They may even be implicated in false cases with serious charges filed against them.

Finally, the extraordinary loss of confidence of the people in the legal profession is also a defect of the justice system. The control of the litigation process by the police — particularly in the Magistrate's Courts — is such that they direct complainants to lawyers selected by them, who then pay the police substantial commissions from their fees. Apart from such corruption, the fear people have of long years of litigation gives numerous opportunities to lawyers to betray their clients.

It is an illusion that the aftermath of the tsunami as well as problems related

to the minority conflict with the Tamils can be resolved despite the political, constitutional and justice system crisis that exists in the country. This illusion is propagated by articulate sections within the country who are spokespersons for political parties, 'peace groups', alternative policy groups and others. However, none of them are serious about finding solutions to any of these problems. There is no attempt to engage the ordinary people in a discourse about their problems. Great deception is practiced, often with the support of foreign funds, exploiting those who are little familiar with the political culture of Sri Lanka.

What then are people's prospects as they arrive at another Independence Day? It is most likely that hundreds of thousands of tsunami victims will face intense poverty despite the massive contributions from compassionate people, outside and inside the country. A 'displaced persons camp culture' is very likely to take root. Tales of neglected children and children who lost their educational opportunities also are likely to be increasingly heard. Above all, the country's sea dependent people will be exposed to greater levels of poverty than those they would normally face. Inevitably, the loss of faith in the justice system will cause arbitrary forms of revenge when people take the law into their own hands.

This bleak picture can be changed only if more courageous voices rise against the widespread anarchy, corruption and lack of the rule of law. The only way out is by ending the authoritarian style of rule introduced through the 1978 Constitution. This requires greater articulation by people themselves of their problems and formulations of policy on this basis. Until this happens every Independence Day will be a day of disappointment and a day that reminds the population of the damage that is being caused to future generations of Sri Lankans who will be denied the right to live in a democracy with full respect for the rule of law.

* * * * *

(ix) Torture and intimidation by a high-ranking policeman

The Asian Human Rights Commission (AHRC) is concerned about another

case of a torture complainant being threatened, similar to that of Gerald Perera. Nimal Silva Gunaratne, a victim of brutal torture, has complained to the Sri Lankan authorities including the Inspector General of Police, the Attorney General and the Human Rights Commission (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 CAT Act. 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 Attorney General 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 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 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 Perera, 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 extrajudicial 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 Human Rights Commission urges that immediate protection be provided to Mr. Guneratne 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 CAT Act.

* * * * *

(x) Are we heading towards the terror of the 80s?

The recent increase in death threats and intimidation of human rights activists and journalists in Sri Lanka is alarming, and gives rise to the concern that the situation may degenerate into something akin to the terror period in the late 1980s, the Asian Human Rights Commission (AHRC) said in a statement this week.

The law enforcement authorities have lost all semblance of control, with extrajudicial killings and death threats being made openly, said the AHRC. Two prominent journalists have recently received death threats as have individuals from the Centre for Policy Alternatives. These threats, consisting of nasty letters, were common in Sri Lanka during the late 1980s and were followed by killings, even in broad daylight. The number of disappearances in the South itself during that time is estimated to be around 30,000.

At that time, certain persons were seen taking advantage of the prevailing lawlessness to settle personal grievances. Hence a large number of children were killed in the 1980s, merely for reasons of family rivalry and pettiness, but with some political pretext as a cover. It is quite likely that the current threatening letters will soon multiply around the country and be used as a cover for many crimes. And life throughout Sri Lanka is becoming extremely dangerous yet again, said the AHRC.

One of the groups most attacked today are the independent, non-

governmental organisations (NGOs). These groups are being portrayed as traitors to the motherland, which is the latest justification for extrajudicial killings and other abuses. However, the existence of these independent groups is essential to the functioning of a democracy and to the defence and protection of vulnerable and marginalised groups in society, such as the poor, said the AHRC.

According to the Commission, there are two major causes for the present instigation of violence. One is the arrival of foreign money for the projects relating to the tsunami. As is usual all over the world, part of this money is channelled through independent, NGOs, to ensure that the money and services reach the recipients as promptly and effectively as possible. In Sri Lanka however, this may have caused resentment within the government bureaucracy and certain political parties. While their criticism of these independent groups is that the NGOs may swindle the money, in fact, they want control of the funds for political or even personal gain. It is for this reason that a tremendous struggle to wrestle the tsunami funds from these groups is occurring, the AHRC said.

Secondly, Sri Lanka is a country with a long history of caste discrimination and minimum consideration for the poor. Thus the fact that the poor are now becoming more vocal and making claims for themselves maybe greatly resented by the ruling elite. There have been many instances where affluent groups and individuals have attempted to grab the share of the poor, such as when 'three-posha' designed for malnourished pregnant women, was taken to feed pigs owned by the wealthy. There are also political groups who want to gain influence among the people and want to use the funds for their own work, the AHRC said.

The uncertain political situation is also a reason for the current instigation of violence and intimidation. The likelihood of elections in the not so distant future is an opportunity to create greater chaos that could be mobilised for various political purposes. Such chaos also makes it possible to engage in voter intimidation and electoral fraud on a larger scale, as well as to intimidate and assassinate political opponents. Above all, creating such a cycle of fear can seriously hamper political participation by the ordinary people.

Ultimately however, the root cause for the persistence of this violence and its possible degeneration is the ineffectiveness of the law enforcement agencies, which the AHRC has consistently pointed out. By this ineffectiveness, the agencies play a passive role in the prevention of grave human rights abuses. In Sri Lanka as elsewhere, the connivance of the police either directly or by their passivity is what leads to the escalation of violence. Despite constant calls for improved law enforcement through better investigation and facilities, the situation continues to worsen. There is no way out of this situation but to pressure the Sri Lankan police to perform its duties competently and without corruption.

Therefore, the AHRC urges the Sri Lankan government, the opposition parties and the public to intervene forcefully to get the law enforcement agencies to perform their basic tasks. A thorough investigation into police performance of law enforcement is essential. To avoid this issue may mean not only a large-scale loss of life, but a return of society to a more primitive state.

Sri Lanka's prospect of being caught up in another brutal cycle of violence is now very real. If action is not taken immediately, there may hardly be time to reverse this process. Finally the AHRC also urges the international community to take note of this situation and to encourage and assist Sri Lanka to address it.

* * * * *

(xi) Death-threat to a judge is a threat to the system itself

Just as the trial into the murder of High Court Judge Sarath Ambepitiya has concluded, another judge, former Magistrate Janaka Bandara of the Wellawaya Magistrate's Court, has received death threats. The threats, which were made via a telephone call, demanded that the Magistrate resign from the Judicial Service and refrain from attending an inquiry to be held on 13 July 2005. The President of the Bar Association of Sri Lanka has called

upon the IGP to provide protection for the interdicted Magistrate and also requested investigations into the identity of the persons who are threatening the Magistrate and who are attempting to prevent him from attending the inquiry.

These threats undoubtedly stem from Judge Bandara issuing a warrant on one SSP Sherifdeen who was alleged to have been involved in a fatal accident case but whose driver was produced before court as the culprit. The Magistrate, having heard evidence, issued a warrant to produce Mr. Sherifdeen before court. Subsequently however, the Magistrate himself was interdicted by the Judicial Service Commission. The Magistrate's interdiction caused one of the most vocal protests from the Bar Association of Sri Lanka and from other sources in the country. The new Bar Association President fought his election campaign on the basis of ensuring a fair inquiry into this controversial case. Now that the inquiry has begun into this case, it is little coincidence that the judge is being subjected to death threats and told not to attend the inquiry. The demand that he should resign is directed towards exculpating the persons who are behind the interdiction, which has been largely perceived as unjust.

That a Magistrate is facing death threats is an indication of the extremely dangerous security situation prevailing in the country. More often than not, death threats are carried out. Within the last 25 years the number of persons who have been slain in this manner can be counted in the thousands. Those who have been slain belong to a variety of social strata and include intellectuals, journalists, civil rights activists, politicians, and crime victims who are pursuing their cases in courts, particularly those involving complaints against state officers and political dissidents of various sorts. Just recently there was a public meeting organised by journalists to condemn death threats and to defy those who take such action.

The Magistrate's case is seen by the legal profession as a very important one as the Magistrate has resisted cowing down to pressures to demand justice in his case. The legal profession has viewed the action taken by the Magistrate of issuing a warrant on an alleged suspect as an exercise of his legitimate

duties. The legal profession also believes that any action taken against the legitimate use of power by a judicial officer threatens the independence of the judiciary itself. The legal profession has whole-heartedly supported this Magistrate's endeavour to seek justice. The general perception has been that if judges themselves are prevented from carrying out their duties, there cannot be any expectation of justice for the average citizen.

The Asian Human Rights Commission requests the IGP and the Attorney General of Sri Lanka to ensure that a complete inquiry is held into the death threats made against the Magistrate and bring those persons who have issued such threats to justice. Also to ensure that this takes place inquiries should be transferred to the Special Investigating Unit, which is technically equipped to handle this case more effectively. Such inquiries should include the analysing of all telephone exchanges relating to the death threats and the sources from which these emanated.

As a mark of protest, when Justice Ambepitiya was assassinated, his dead body was taken to the Supreme Court premises and an impressive ceremony was held. The idea behind that action was to demonstrate that those who threaten the judiciary will be resisted and they will not succeed in undermining the judiciary by behaving in such a manner. Now that another Magistrate is facing death threats, it is the duty of the Judicial Service Commission to act on his behalf and to protect him from the dangers he faces. The AHRC calls for the same determination — as shown after the death of Justice Ambepitiya — to be demonstrated in the face of death threats against Judge Bandara.

The civil society of Sri Lanka should not underestimate the enormous implications of death threats issued against a judge. A death threat to any citizen is a gross violation of human rights and a threat to social security. However, the threat to the life of a judge is much more. It is a threat to the system of justice itself. If judges were allowed to be killed or threatened in this manner it would indeed be a trumpet call to all types of evil elements of society. Thus, the death threats against Judge Bandara require a strong resistance from civil society.

Additionally, the new President of the Bar Association of Sri Lanka, who came to power on the promise of fighting these kinds of threats to the administration of justice in the country, should show his capacity to bring such words to fruition by mobilising the entire Bar. The Bar Association of Sri Lanka should demand an immediate inquiry by a special investigative unit into these threats; the findings of which should be made available to all as soon possible.



CHAPTER 15**Collapse of Command Responsibility****(i) Bring them to book*****Why does the police hierarchy ignore criminal activities or acts of gross indiscipline by their juniors?***

A collection of views on this matter include the following:

- Some top-ranking police 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 badly wrong for too long and that any attempts to correct the situation may fail to bear fruit. They may feel that to live with it is the only option available.
- There may also be a feeling that any attempt to impose discipline on the general cadre would result in a backlash and generate a state of non-cooperation which would be strongly manifested, making it impossible for higher officials to obtain even limited compliance with their orders.
- They may be acting on the basis of their awareness that many of their cadres are unqualified and incompetent and therefore much errant behaviour is to be expected from them.
- Those high-ranking officers who at one time or another did care for discipline and also tried honestly to do something about it, may have learned the hard way that it is not always easy to obtain the support and cooperation of other top ranking officers.

- Some might even ruefully reminisce of those higher-ranking officers who attempted to do what was right and honorable, but that did not go well with their institution.
- Given the rather poor salaries of the general police cadre, it may have become an institutional belief that corruption of one form or the other is inevitable; and top-ranking officers may think that it is not possible to fight such deeply entrenched 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-rankers.
- Finally some may feel that violence has become so engrained within the institution that any interference by them may cause them serious consequences thereafter.

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 analyses 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.

* * * * *

(ii) Impunity for the high-rankers

- ***Institutional collapse of the policing system resulting from the absence of command responsibility***

The increasing violence and extrajudicial killings at Sri Lankan police stations reflect the absence of command responsibility within the Police Department. Incidents of serious police torture, often resulting in death, are daily reported from all over the country. And, in most of these cases, victims are tortured for the most trivial of reasons, such as stealing bananas or failing to stop a vehicle when requested to do so.

The most recent of such incidents made known to the Asian Human Rights Commission (AHRC) is the custodial death of 52-year-old Hettiarachchige Abeyesiri at the Peliyagoda Police Station on 13 July 2005. After being arrested and taken to the police station at midnight, Mr. Abeyesiri was reportedly brought back to his home the next day. Together with one of his relatives, Mr. Abeyesiri had been then taken to the home of a woman — who had earlier complained of losing a telephone and allegedly blamed the victim — and the woman had slapped him. Thereafter he was taken back to the police station and tortured by several policemen — right before the eyes of his relative. According to this person, the torture inflicted on Mr. Abeyesiri was so horrifying that the relative could not watch anymore and moved away. Upon his return however about half an hour later, he had seen Mr. Abeyesiri's lifeless form being carried away by four policemen in civilian clothes. And though Mr. Abeyesiri was taken to hospital, he had died there — reportedly without regaining consciousness. Later, his family had visited the mortuary and seen the horrendous injuries on the victim's body. A subsequent postmortem confirmed that death was due to injuries caused by blunt instruments.

What is disturbing about this and numerous other cases of police torture and killing is that regardless of the circumstances, it is extremely unlikely that any senior police official involved in the incident would be arrested or prosecuted. If at all, some lower-ranking policeman might be questioned and arrested, affording impunity to those responsible senior officers. This lack of accountability means that those ultimately responsible for all actions and behavior within a police station — the Officer-in-Charge, Headquarters Inspector, Assistant Superintendent of Police and Superintendent of Police — are allowed to escape the chain of command responsibility that is fundamental to the effective functioning of any institution.

The Inspector General of Police and the Attorney General's Department of Sri Lanka have consistently ignored the issue of command responsibility, thereby indirectly allowing police violence and extrajudicial killings to continue. AHRC has made frequent submissions to both offices emphasising the importance of prosecuting supervising officers when acts of torture

and custodial deaths occur at police stations — but to no avail. In fact, the Attorney General'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. But even when there is evidence of direct involvement, action is taken only against policemen up to the rank of Officer-in-Charge. Accountability thus, rarely reaches higher.

The AHRC is aware of many torture cases, in which senior officers have been directly involved but not prosecuted for instance; there is the case of an Assistant Superintendent of Police who had earlier been accused of conducting a torture chamber at his office and also for causing a torture victim to lose an eye. To date however, this ASP has not been indicted by the Attorney General despite a special unit inquiring into the case. In two notorious cases from the Wattala and Kandana Police Stations, though representations were made on behalf of the victims regarding the direct involvement of the 2 station OICs in the torture, there was no response from the Attorney General. In another instance, the Attorney General'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 Convention Against Torture Act (Act No. 22 of 1994), command responsibility is recognised vis-à-vis acts or omissions of senior officers, and this is also a principle of criminal law.

This reluctance to prosecute senior officers leads to a dysfunctional policing institution, as no institution is able to function properly without command responsibility. It is essential for all officers of an institution to perform their duties competently and if they err to be held accountable for their actions. The Police Department is a vital public institution with enormous influence on the functioning of other public institutions. If it fails to function in a manner required of a public institution, then it paves the way for a state of neglect to set in amongst the entire state machinery. In fact, this charge can justifiably be brought against the contemporary policing system of Sri Lanka; that is, the breakdown of the statement machinery has been caused by a malfunctioning policing system where command responsibility is treated as a trivial matter. And although the problems currently plaguing our country

are attributed to politicians, terrorists, corrupt businessmen or criminals, these are indeed ancillary causes. To us, the underlying problem besetting our country is the inability of the policing system to uphold the rule of law and succumbing to decay through the abandoning of its command responsibilities.

Police torture and extrajudicial killings should thus not be treated as isolated incidents caused only by a few lower-ranking officers. Instead it should be treated as by-products of a system that deliberately neglects command responsibility. It is from this viewpoint that civil society must hold responsible the Inspector General of Police, the Attorney General and the National Police Commission — 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. The AHRC therefore urges all concerned groups and individuals to demand the enforcement of command responsibility within Sri Lanka's policing system in an attempt to address broader issues of rule of law and collapsing institutions.

* * * * *

(iii) Breaking the criminal-police nexus

In a hypothetical world divided between good guys and bad guys, the underworld is responsible for crime, and the police is responsible for fighting back. A black world of criminals is pitted against a force of white angels. This notion of crime brought to us through popular magazines and film, however, does not exist — as far as Sri Lanka is concerned anyway — because the real cause of crime in Sri Lanka is the *nexus between the police and the criminals*.

This nexus consists of simple and complex exchanges. Some transactions involve taking bribes to permit the illegal trade in alcohol or other illicit goods, as well as desisting from investigating crime or sloppy investigations and recording of statements. Others involve much higher profits, as for example when drugs are traded. Still others include joint operations between

criminals and crooked policemen in the committing of crimes. Here it is important to understand that without this nexus, many crimes could not be committed, or if committed, would soon be exposed. However with this nexus, most crimes are readily committed, and all but impossible to expose. Hence any real world discussion on how to prevent crime must essentially address this criminal-police nexus as one of its root causes.

Why does the nexus exist? Money — Police links offer criminals the opportunity to earn far greater profit than they would otherwise. Criminal links offer police officers access to financial gains and other resources far beyond their limited salaries. And the rewards are shared across all ranks. The few policemen who decline to get involved may themselves become victims of the others who are cooperating closely with criminals. Such officers find it difficult to fight the nexus, even if they are holding a high rank. Attempts to impose discipline may cause them serious trouble, or, at least, see them transferred to an inactive post.

What is the overall effect of the nexus? Anarchy — Many parts of Sri Lanka are now virtually lawless mainly due to the nexus between police and criminals. In fact, the country may well be on the brink of a catastrophe far beyond anything it has faced before. The effects are now being felt by the middle and affluent classes, no longer just the poor. Unable to control the deeply destructive forces that have banded together, society seems to be slowly moving towards disaster. While most people find the current state of affairs difficult, for many, the near future holds much worse in store.

Who polices the police? Nobody — At present, the criminal justice system lacks the means to investigate errant policemen. Even relatively narrow inquiries into police wrongdoing have had the effect of causing a strong backlash from within the police who have even threatened to strike work if they are investigated. In recent times, witnesses in criminal torture cases against the police have been subjected to threats, attacks, and most recently, murder. The police officers involved have been able to use the unique combination of their authority and links to the underworld to obstruct investigations into their wrongdoing.

Can the nexus be broken? Unlikely — Any serious attempt to counter this nexus has always encountered obstacles. For instance policemen have threatened to strike work if any attempt is made to impose discipline. Even minor attempts at limited action by the National Police Commission (NPC) have been seriously resisted on the ground that these steps would hinder crime prevention. Such rhetoric barely conceals open defiance of discipline. Some senior police officers who spoke earlier about crime prevention, have now begun to justify inaction by asserting that they must prevent a crisis within the police force.

Instead the police hierarchy is now heard to talk of a 'balance', which amounts to intentionally downplaying the importance of discipline. Business must be allowed to go on as usual lest even the minimally functioning police system, collapses altogether. Thus senior officers shy away from dealing with the nexus and are even afraid to take disciplinary action in minor cases. In short, a systemic paralysis prevents this ominous criminal-police nexus from being addressed.

Can crime be prevented through the death sentence?

This question could be re-phrased as, 'would society agree to execute a large number of its policemen?' The same persons who readily say yes to the first question would no doubt stop short of replying in the affirmative to the second. The reason is that in proposing the death sentence the objective is not in fact to prevent crime, but to avoid having to address the nexus that is its progenitor.

Increasing crime provokes social insecurity. People need to feel safe. The easy way out is to exaggerate the powers of the hangman to mythical proportions. The public is asked to believe that when the death sentence is introduced, crime will magically disappear. Such disingenuous solutions appear most often in response to dramatic crimes, such as the recent killing of a High Court Judge. However, no victim of crime will really believe that the hangman is a saviour, or a means to prevent further crime.

Is there another way?

The answer to this question depends largely upon the extent to which citizens are willing to speak openly. Among those issues that need to be addressed are the following.

- **Exposing weaknesses** — The weaknesses of the police hierarchy, particularly the Inspector General of Police, and the Attorney General must be fully exposed. This effort should concentrate on how to establish the rule of law and provide a functioning and disciplined police service. Rhetorical commitment to people-friendly policing and the like should be condemned as hypocrisy unless accompanied by strong measures to break the criminal-police nexus.
- **Special units of investigation** — The management of criminal investigations through police stations should be abandoned in favour of special units of investigation. This will allow inquiries to be carried out by competent officers. It will also weaken the links between local police and criminals. At present, OIC of police stations have the status of petty warlords. Promotion to the rank of OIC is usually an invitation to get rich quick. Abuses in stations happen with the connivance of those in charge. Some, judging by their records, are habituated criminals; some can even be characterised as 'serial killers'. Therefore, breaking the nexus will require significant changes to allow specialised units to carry out criminal investigations. Keeping police stations functioning as they are now will only encourage further crime.
- **Prosecutor General** — The Attorney General must also be given greater control over criminal investigations — right from the start. Present arrangements typically have the Attorney General spread across many functions, denying criminal prosecutions the requisite attention. The Attorney General is also heavily dependent on police investigators. The role of the Attorney General must be enhanced in order to counteract the negative effect on investigations of the criminal-police nexus. The best method to realise this is to create a Prosecutor

General's office in order to deal with criminal prosecutions. For this a political decision is required. There are vast differences between political bluff and genuine political decisions to resolve serious problems. To talk of the hangman's mythical powers and not create an effective Prosecutor General's office with strong powers and resources is nothing but political bluff.

- **Witness protection** — A strong witness protection programme with sufficient resources for effective functioning is an urgent need. In the absence of security, complainants and witnesses live in mortal fear. The average citizen fails to cooperate to ensure the proper administration of justice for this reason, despite being deeply aware of the criminal-police nexus. Such fear can only be laid to rest through a well-publicised and highly effective witness protection programme. Thailand has recently taken the initiative to establish a witness protection office, and a number of victims of gross police abuse have been the first to benefit, and by this, it is hoped a strong precedent will be set. The Sri Lankan authorities could study this model, particularly in the light of the recent killings of complainants in criminal cases, e.g. Gerald Perera, some customs officers and other state officers, and even a High Court Judge. All these lives were needlessly lost due to the lack of an adequate witness protection programme.
- **Reforming the Bench and Bar** — The judiciary must take a degree of responsibility in regulating itself. There had been too much of unresolved scandals regarding the judiciary. The Bar Association too has been beset by constant public scandals that it has been unable or unwilling to address. Judges are now subjected to threats of death, rape or otherwise, partly due to the low esteem in which the public holds the Bench and Bar. Therefore both the judiciary and the legal profession must face up to this challenge. However if the Bar Association proves incapable or unwilling to do so, or becomes a political tool, then lawyers must take matters into their own hands. In fact, public liberties in Sri Lanka for the most depend upon the willingness of lawyers to rebel against the widespread mal-

administration of justice. Some self-interested lawyers in powerful positions will inevitably oppose efforts at serious reform. However, they and their cohorts must be overcome to break the restraints on reform from within. It may also be said that senior members of the Bar have failed the young.

- **National Police Commission** — The National Police Commission (NPC) should assert its prerogative and take disciplinary control of the police as required by the 17th Amendment to the Constitution. Recently, elements in the police hierarchy, some officers' unions and politicians have severely pressured the NPC to desist from asserting this role. However, as the NPC was brought about by public pressure that gave rise to the 17th Amendment, it is duty-bound to speak frankly to the public regarding its problems. One of those relates to the number and quality of its staff. To date the NPC remains understaffed. Also in the recruitment of policemen, it should be advised to opt not only for former police officers, but also for persons of integrity from other walks of life. Some new blood in the agency could give it a lease on life to help it achieve its role as mandated under the Constitution.
- **Human Rights Commission** — The Human Rights Commission (HRC) of Sri Lanka can play a tremendously important role if it adopts an appropriate working style. Unfortunately, it has yet not gone beyond expressing nice words about human rights protection, even while its own affairs are in disarray. The rogue elements within the HRC -- who have brought an extremely bad reputation to the HRC both at home and abroad — have greatly benefited the criminal-police nexus. Thus, these rogue elements and their bad practices must be ended post haste. It is also high time, civil society encouraged the HRC to critically examine itself and to become a visible force generating a positive spirit to win the battle for the rule of law. Indeed, the Commission should be at pains to influence policy in the areas described above, notably in establishing an effective management of a witness protection programme. It is sad that had

there been a strong Human Rights Commission in Sri Lanka, those like Gerald Perera would still be alive today and many others too would not be facing harassment and intimidation at the hands of the police. But for too many victims, the HRC remains an empty hope, but a hope nonetheless, and one that at least should undermine, not support, the criminal-police nexus.

* * * * *

(iv) No investigators to investigate crime

The lack of qualified criminal investigators hampers the criminal investigations in Sri Lanka, said Sri Lanka's Solicitor General, C.R. de Silva, in an interview with the BBC Sinhala Service, Sandeshaya on 5 September 2004. What the Solicitor General said on this occasion is what all spokesmen for government agencies, including the police service, have been saying so often and for so long. The fact that the Police Department lacks sufficient qualified criminal investigators is a matter on which there is complete consensus among officials, politicians as well as the general public.

The more important question therefore is what is subsequently to be done? This is a question however, that no one seems to ask. There is thus only the statement of a problem without the corresponding attempt at analysing it or looking for solutions. The simple answer to the question is that there should be an increase in the number of qualified criminal investigators. There is no other viable solution.

The question would then arise as to how to increase the number of qualified investigators. Either the better ones among the qualified should be given additional training or more qualified ones must be recruited. Perhaps both ideas might be considered. It stands to reason that if there are good enough persons who qualify for higher training such persons should be offered this training. If there are not enough personnel then people can be recruited from outside and given a higher degree of training.

The next question would be who has the duty to make that decision? It is the government that has to make the decision to take the necessary action to obtain more qualified investigators. Until the government makes a decision on this matter and makes adequate resources available, nothing but the constant lamentation of official would be heard. Every time there is a report of an increase in crime and every time there are reports of torture used at police stations there will be a repetition of the phrase “we do not have a sufficient number of qualified investigators.” The only way out is for the government to make a decision to solve the problem and to allocate resources for this purpose.

It can be said that Sri Lanka does not have a sufficient number of qualified criminal investigators only because the government has not decided to have them. Consequently, the increase of crime and the widespread use of torture are both products of the government’s inaction. In fact there is no escape from this logic. It is the government’s inaction that is responsible for the increase of crime and the use of torture in police stations. It is the inaction of the government that deprives the Sri Lankan police force the qualified criminal investigators it needs to carry out its basic obligations to society.

The question then is who can move the government from this state of inaction? To begin with, it is public opinion. If the media and civil society organisations demand more qualified criminal investigators, the government cannot maintain such inaction for long. It is here that public opinion has failed. Public opinion in Sri Lanka has not gone beyond decrying the increase of crime and the failure of the police to properly investigate crimes. It has not made the necessary connection between the failure of the government to take the necessary decision to improve the quality of criminal investigators in the country and the increase of crime and police torture. If public opinion lays the responsibility for the increase of crime and the endemic use of torture at police stations to where it belongs, that is to say, at the very feet of the government, soon some decisions may take place to move from mere lamentation and rhetoric to finding some real solutions affecting everyone in the country.

(v) Are you condoning police killings, Mr. IGP?

Some of the views expressed by Police Chief, Chandra Fernando, at a discussion with Professor Carlo Fonseka over the SLBC last Monday, were alarming in their attempt to justify police shootings of civilians, the Asian Human Right Commission (AHRC) said. This comes at a time when there are reports of numerous civilian deaths after police arrest, the AHRC said.

Spelling out a Lee Kwan Yu doctrine of ‘discipline, development and democracy’, IGP Fernando has explained such killings as acts of self-defence, that is, the victim either tried to flee or harm the police officers who were then compelled to shoot and kill them. The defence of such acts — also termed as crossfire or encounter killings — by the highest police authority is tantamount to the encouragement of such behaviour, AHRC said.

‘Minimum force’

The earlier defence against police acts of violence was that they were using ‘minimum force’. However this use of minimum force led to a spate of deaths in police custody and grave injuries such as skull fractures and kidney damage. Two of the latest cases in which ‘minimum force’ was supposed to have been used lead to the death of Wijeratne Munasinghe, who was allegedly tortured at the Maharagama Police Station, and the alleged assault on a man and his 5-month pregnant wife, at the Embilipitiya Police Station, causing the woman to give birth prematurely.

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 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, AHRC said.

According to AHRC, 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 Parliament. The duty of the law enforcement agency is to enforce the law according to the procedures established. And the duty of

the Head of the Police Department is to ensure that the Department enforces the law of the land.

Breakdown

To his credit, the IGP did admit during the radio discussion that the rule of law in Sri Lanka has broken down. However, this is not the first time the present IGP as well as his predecessors have so admitted. Merely admitting and repeating this is not enough. Instead, the leader of the law enforcement agency must undertake to end this collapse of the rule of law NOW. And to this end, the IGP needs to 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.

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 near-complete collapse of discipline in the law enforcement agency, particularly in recent decades. As for the cause of this collapse, in passing the 17th Amendment to the Constitution almost unanimously, all political parties in the country attributed it to the politicisation of the police force. And the proposed solution was its de-politicisation 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 acts of police misbehaviour, thereby reinforcing 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, and hold no public confidence. Ironically, policemen who have been indicted in various High Courts are still serving within the Police Department.

Therefore if the IGP is genuinely advocating discipline, then he should understand that discipline is brought about 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 does its officers have in their attempt to enforce discipline elsewhere?

Lessons from Hong Kong

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.

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 AHRC has in the past, consistently communicated with the IGP about the exceptional collapse of the rule of law in the country and also underlined as its primary cause, the indiscipline amongst the police. Therefore it once, again urges the IGP 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.



CHAPTER 16

Absence of Forensic Facilities

(i) Review of initiatives adopted for effective documentation of torture in a developing country

By Dr. Clifford Perera,

Department of Forensic Medicine, Faculty of Medicine, Galle, Sri Lanka¹

A good starting point for this discussion is to define few important terms of the title. As it is known the term “**developing country**” is a term with many meanings depending upon the context of each country we are discussing. For the purpose of this discussion a “developed country” and a “developing country” may be considered within the context of the justice systems prevailing in these countries. In “developed countries” there are centuries of development of the rule of law over which there has also developed a court system within which the idea of fair trial has been entrenched through detailed laws and procedures. Added to the laws, the concept of the law enforcement officer has been evolved over the years and the mechanisms of ensuring that law enforcement officers work within the strict confines of the law alone has been established although there may be some exceptional cases where particular individuals or groups defy the norms and standards thus developed. It is the absence of laws, procedures and enforcing officers who abide by such standards to some degree or the other that distinguishes a developing country system from the developed ones. Perhaps in the discussions, which are to follow, this distinction can

¹ Presented and distributed at the International Conference of Forensic Sciences held in Hong Kong from 21-25 August 2005

throw more light on the actual problems that we have to deal with in the implementation of the Istanbul Protocol.

“Effective documentation” implies documentation that by objective circumstances will assist in revealing the truth about the presence or absence of torture on particular individuals. The effectiveness will depend on whether such documentation meets the criterion that will be acceptable to a court of law, which operates on the basis of ensuring fair trial to the parties concerned. Thus, the nature of the documentation and the norms and standards of fair trial are deeply linked. If for example in a particular country’s context the laws and procedures are not sufficiently developed to meet with internationally recognised norms and standards of fair trial, then naturally this will have a direct effect on the possibilities that have been developed within that country for documentation of torture.

The term **‘torture’** itself depends very much on the legal status afforded to it within a particular jurisdiction. For example is torture recognised as a crime? How has torture been defined in the law? That is, has it been defined narrowly or in a comprehensive sense as under international law? What judicial or other redress is available for which the documentation of torture will serve as a useful tool in obtaining such redress? Perhaps those who are used to normal practices in this matter in developed countries may be surprised to find that in the whole of Asia there are only two countries where torture is recognised as a crime. They are the Hong Kong Special Administrative Region and Sri Lanka.

The status of torture within criminal and civil litigation also very much depends on what investigative mechanisms are available within the state itself for the investigation of torture. A common complaint in many countries in Asia is that while, except in military situations the main perpetrators of torture are the police, the investigators too are the police themselves. When the whole machinery existing within a country is replete of compromises and attempts to subvert investigations, then the role not only of documentation but also of every other form of collecting evidence can be of little use. The sense of futility of documentation will act to retard the development of these procedures.

One major area of difficulty is the documentation of mental torture. In most countries in Asia psychological examination of torture victims as well as treatment is still woefully inadequate. Even where there are some facilities for treatment it is mostly done by ad hoc modes of treatment rather than by elaborate examination and documentation. Particularly in the area of trauma examination and documentation the developments are extremely limited.

“The medical documentation” is linked to other forms of documentation such as the recording of statements by the police, by judicial officers and by other means. However when the system of recording such statements itself is defective, this could adversely affect the medical documentation of torture. For example if a statement made to the police omits to mention the circumstances under which a person was tortured, it may become difficult for a medical officer to verify whether the complaint of torture and the injuries that are found on a person are compatible.

Added to this, cultural factors also affect documentation. For example people in a particular country or in a particular area within a country, maybe too afraid to make complaints or else there maybe no readily available means of recording such complaints. In such instances, a medical officer may later find it difficult to correlate the initial incident and the details that he may find at the stage when the victim comes before him. Fear or shame can also lead a victim to make false declarations about the actual incidents, but later decide to make alterations when the victim feels freer to speak the truth. However this may lessen the credibility of the victim. Thus, there are many forms of cultural impediments that could jeopardise proper documentation.

Furthermore, periods of extreme repression in countries can make medical documentation of torture impossible and even extremely dangerous. For instance, in cases of disappearances, when the ‘disappeared’ person has been tortured, killed and then the body buried or burned, there is hardly any means by which medical documentation can be made about such incidents. Once again an outside observer may be surprised to know that tens of thousands of such disappearances have occurred in many countries in Asia. A further obstacle to documentation is when a tortured person is

kept in detention without access to doctors for a long period of time, during which many of the marks of torture on the victim's body may disappear.

Sri Lanka:

Let's turn to the situation in Sri Lanka, regarding the issue of documentation of torture. Under Article 11 of the Constitution of Sri Lanka torture is considered a violation of a fundamental right. Also according to the Anti-torture legislation (Convention against Torture Act No. 22 of 1994) since 1994, torture has been recognised as an offence punishable with a mandatory prison sentence of 7 years and a fine of 10, 000 rupees. There is also a rudimentary form of investigation conducted relating to allegations of torture that has been developed through a Special Investigation Unit (SIU).

Legal documentation in criminal cases has been developed over a long period of time. The profession of the forensic pathology is duly recognised and forensic pathologists are officially known as Judicial Medical Officers (JMOs). They are medical officers with local and international postgraduate training in forensic medicine. Although their numbers are wholly inadequate to meet the requirements of the population of 20 million the recognition of judicial medical work has been established over the last three decades.

As aforementioned, torture was made an offence in Sri Lanka only in 1994. However, a specific format for the documentation of torture has not been developed. Since the 1970s, two medico-legal formats were in use for documentation of injuries — the Medico-Legal Examination Form (MLEF) to document injuries on living persons and the Postmortem Report (PMR) to document findings on deceased. Thus for instance, it is the format used to record injuries relating to offences such as grievous hurt that is also being used to document the findings of torture cases. If a person is alleged to have been killed as a consequence of being tortured, the format that is used will be that which is used for documenting post-mortem findings of homicide. Conversely, in developed countries there are quite extensive formats for detailed documentation of torture. Thus we see a vast gap in the documentation formats used in Sri Lanka to record injuries caused by torture and those used in developed jurisdictions.

The consequence of using limited formats is that in the courts information contained within these limited formats can result in much information being left out. In Sri Lankan courts judges place heavy reliance on medical reports of the victims. When important information is left out due to the limitations of the formats, courts are compelled to rely on the limited information offered. This often works to the detriment of the torture victim and in favour of the perpetrators. It should also be noted that by and large local courts take a rather conservative approach and interpret the information in such a manner as to cast a heavy burden on the victims to prove their allegations of torture. In addition, there is a problem of less trained medical officers e.g. the District Medical Officers (DMOs) using these formats. These officers often lack the requisite training in forensic pathology to effectively utilise these formats and as a result important information may be lost.

Although JMOs have been recognised in Sri Lanka for a long time, currently they number around 35 — who are available only in the Teaching, General and Base Hospitals of the major cities. However there are many smaller hospitals throughout the country, which are visited by people of rural areas. Here, only the non-trained medical officers are available to conduct examinations on torture victims. It has constantly been pointed out that the use of non-trained medical officers to conduct such examinations is a great hindrance to the development of forensic medicine in the country. Such practices also cause grave injustice to the people who are deprived of the opportunity to have a proper forensic examination, and thus jeopardising their court cases too. This situation is definitely a problem in all cases involving murder and other forms of bodily hurt. However, it is more so in cases involving torture because a person without forensic pathological training often does not pay attention to the causes of injuries that may have been inflicted by torture.

Proper documentation also requires the appropriate equipment to enable investigations to be carried out with precision and sophistication. Unfortunately in Sri Lanka ultra violet and infrared lamps, x-ray machines, ultra sound scanners that are necessary for identification of hidden injuries, are not provided. In fact, even basic essential equipment which facilitate

documentation such as digital cameras, dictaphones and computers are not available and often have to be purchased by the individual forensic pathologists if they want efficiently to carry out their work.

In cases of investigations into mass scale human rights violations such as enforced disappearances, DNA profiling is often essential in the attempt of establishing specific identification. However there are no proper facilities available to the JMOs or at the Government Analyst's Department to enable such DNA profiling. Worse than those university laboratories, which do conduct DNA tests, are more often than not, reluctant to avail their facilities for forensic purposes.

Another factor hindering documentation is the frequent intimidation exerted upon medical officers conducting forensic examinations, by the police or military personnel. While JMOs in the major cities may resist such pressures, it is often difficult for the DMOs working in remote areas to work in an independent manner in conflicts involving the citizens vs. the law enforcement agencies or the armed forces. Under these circumstances even courts have begun to look upon reports given by DMOs with suspicion. The following newspaper report relating to a recent case illustrates this point:

"... 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."

**[Deputy Inspector General J. Thangavelu, Head - Legal Range, of the Police
Dept. Published in the Sunday Times, 7 August 2005]**

Also, in the documentation of torture cases, forensic pathologists have to work closely with the police. However, while the police usually cooperate with medical professional in investigating into other crimes such as murder and assaults, there is not much cooperation given when it comes to torture cases. This of course is largely due to the fact that the findings of these medical professionals re: torture cases are usually used against police officers. Another matter is that habits pertaining to documentation among the Sri Lankan police leave much to be desired, with tampering and altering documents a common occurrence. So notorious is this practice that the Supreme Court in the Case of *Kemasiri Kumara Caldera* commented as follows:

“I may add that the manner in which the B.C.I.B.s, R.I.B.s etc. have been altered with impunity and utter disregard of the law makes one wonder whether the supervising ASPs (Assistant Superintendents of Police) and SPs (Superintendents of Police) are derelict in the discharge of their duties or in the alternative condone such acts. In a case in which I pronounced judgment a few days ago too, I found that the B.C.I.B. had been altered, and therefore it appears that, that was not an isolated instance. Thus, the police force appears to be full of such errant officers. The question is what is the 5th Respondent Inspector General of Police doing about it? In my view, it is unsafe for a Court to accept a certified copy of any statement or notes recorded by the police without comparing it with the original. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law. We may ask with Juvenal, quis custodiet ipsos custodies? Who is to guard the guards themselves?”

[S. C. (F.R.). Application No. 343/99 - Case of Kemasiri Kumara Caldera]

Another factor adversely affecting documentation in Sri Lanka is the lack of any database in which reports pertaining to forensic examinations could be recorded and stored. To date, there is yet no computerised formats afforded to these professionals to enter data and they are compelled to handwrite their reports. This absurd situation requires immediate change. However despite numerous discussions among the medical profession as well as health authorities in the country, practically, little has changed. One suggestion is for such a database to be established by the Human Rights Commission (HRC) of Sri Lanka who could then request the medical professionals conducting examinations on torture victims to send in their

report to the HRC headquarters in Colombo. The submission of examination reports could be made compulsory by the HRC by issuing a regulation to that effect.

The above considerations make it imperative to consider in a detailed manner the changes that need to be brought about in the local context. A few suggestions many of which have come up over and over again in discussion relating to this matter are mentioned below.

- If forensic pathological interventions are to be effective in any particular country regarding torture, then torture needs to be recognised as a crime by the enactment of the requisite legislation. This is a prerequisite without which such development cannot take place. Thus those engaged in promoting the Istanbul Protocol should ensure that countries ratify the Convention Against Torture and enact domestic legislation enabling the implementation of such legislation. In such enactments the definition of torture should be comprehensive enough to include modern developments and to enable forensic pathologists to do their examinations within the framework of a well-established legal principle.
- Procedures of examination of torture victims by the law enforcement agency, other authorities and the work of forensic pathologists should be combined so that examinations of victims can be conducted in the speediest possible manner. However, at no time should the independence and impartiality of the forensic pathologist be compromised during these examinations.
- The proper formats for documentation of cases should be developed. Accordingly, previous archaic forms for documentation of cases based on either the limited definition of crime or the limited understanding of medical science need to be abandoned in favour of formats based on an expanded view of torture, which is recognised by international and modern developments relating to forensic pathology. In the drafting of such formats it is imperative that initiative be given to the pathologists themselves.

- There is an urgent need to increase the numbers of forensic pathologists as well as the resources made available to them. It is not possible to evolve ways to realise the Istanbul Protocol without expanding the cadre provisions for medico-legal profession.
- Ensuring the security of medical officers attached to the Judicial Medical Office must become high priority. Only last November 2004 a torture victim who was to give evidence in court was assassinated allegedly by the police officers who were the perpetrators of the torture he suffered. Almost daily reports are received from torture victims of intimidation and even second time torture as a result of having made complaints regarding torture. This overall ethos of fear affects medical professionals as well especially those who live and work in remote areas. Thus, the issue of witness protection is also important in terms of the JMOs who are called upon to give evidence in court as expert witnesses. If there is to be a significant improvement in the implementation of the Istanbul Protocol, the witness protection remains one of the major problems to be resolved.
- Delays in adjudication affect the work of JMOs. They often have to attend courts many times before finally giving evidence. Thus, these medical professionals are compelled to waste valuable time, which they would otherwise use for more productive work. This could be overcome by introducing new modes of giving evidence e.g. using through video conferencing. However, the best way to solve this problem is to expedite the adjudication process through effective reforms. Another problem of delay is that though a medical officer may collect evidence professionally spending a great deal of time, the victims may after sometime — due to the delays, intimidation of perpetrators or due to sheer frustration — cease to pursue their cases. As a result, products of hard labour are wasted. This in turn may create a psychological disillusionment in the minds of the medical professional not to too enthusiastically and vigorously involve in the scientific pursuit of such cases.

- A database needs to be opened by the Human Rights Commission of Sri Lanka for the purposes of gathering, and documenting medical reports by doctors. The doctors who make reports regarding torture may be requested to send all the reports they make to be computerised at the Human Rights Commission. The submission of reports can be made compulsory by making a regulation to that effect.
- The lack of basic equipment needed by doctors for proper documentation such as ultra violet and infra red lamps, cameras, computers, Dictaphones and others must be provided immediately and the requisite funds need to be allocated.
- For cases where DNA profiling is essential such as investigations into disappearances, it is of utmost necessity to establish proper DNA profiling facilities within the state sector. This is imperative not only for inquiries by forensic pathologists but for all types of medico-legal inquiries.

Documentation of torture is a distinct multi stage and multidisciplinary process. Therefore unless and until a cohesive collaboration is established between all disciplines concerned, a positive development on documentation process cannot be anticipated.

* * * * *

(ii) Crime goes unsolved for want of DNA facilities

The killing of the Hamer family in Dehiwela in Sri Lanka has added to the list of horrible crimes that are taking place in the country on an almost daily basis. The murder of the 79-year-old father, 35-year-old son and 29-year-old daughter took place in their home on the night of 7 May 2003 and their severely stabbed bodies were found the next morning. According to reports, the killings are suspected to have been carried out by contract killers, who have supposedly been hired by a party involved in a land dispute with the Hamer family. Investigations into the case are continuing.

This week it was also revealed that the Sri Lankan government has not yet provided investigators of the case facilities to conduct DNA testing. While the Government Analyst Department is not equipped to conduct DNA tests, the procedure for obtaining funds for DNA testing at private laboratories has been hampered. Moreover, the police's investigative methods are crude and careless. The result is that people have lost confidence in the country's criminal investigators. Instead, there is an emerging lobby demanding executions — judicially sanctioned or otherwise — in favour of the niceties of a fair trial.

The chief government spokesperson on the issue of crime, Internal and Christian Affairs Minister, John Amaratunga, is strangely silent about the matter of improving the capacity of the police to investigate crimes. There is also no discussion on budget allocations for DNA testing or about improving forensic facilities. Unfortunately, investments towards improving the criminal investigation system are neither on the government's agenda nor in the Minister's speeches. Instead, his rhetoric seems to be confined to introducing judicial executions and the removal of safeguards for trials through the Organised Crimes Bill — a proposed law that attempts to modify the country's Criminal Procedure Code.

Such political talk camouflages the government's lack of policy to invest in improving the country's criminal investigation system. In short, the government has no real policy towards eliminating serious crimes. Though the Minister speaks about the deterioration of social morality, he fails to speak of the deterioration of the quality of criminal investigations, an issue on which he is no doubt much more equipped to comment.

Part of the reason no policy on improving criminal investigations is formulated is that the ruling party itself has a bad record regarding organised crime. Even last week, a mob was allegedly mobilised by some ruling party members to attack the Government Printing Press and create a violent scene in order to stop a gazette notification issued by the President from being published. According to some media reports, Minister Amaratunga himself accompanied the mob to the Government Press. Apparently similar to criminals, politicians too like taking the law into their own hands.

The continuing lawlessness in the country has left people with no strategy to deal with the horrible crimes that are visiting them every day. Desperate people end up lobbying lawyers not to appear for alleged criminals. In some instances, alleged criminals are summarily executed. Some police officers have even been heard to boast that the only way to deal with criminals is to get rid of them. Accordingly, in one case when family of about six people was killed by two Army deserters, a Police Inspector arrested and then summarily executed them. Then he filed a report that they were shot while trying to escape. Sadly, similar stories are frequently received from various parts of the country.

The basic solution for this crisis is for the government to introduce a proper policy re criminal investigations including the provision of adequate funding and facilities to improve forensic capabilities e.g. DNA testing and also for the requisite training. However, until such facilities and training are made available, funds need to be allocated to enable the use of private facilities for investigative purposes. The amounts involved may not be excessive — sometimes 5,000 rupees for a test — however due to bureaucratic obstacles; it may take years to release the money. In one instance, a non-governmental organisation (NGO) was reported to have even given the money for a DNA test in a criminal investigation.

It is these issues that the government must address if it truly wants to stop the crimes that are shaking the stability of Sri Lankan society.

* * * * *

(iii) Questionable 'cause of death' by medical practitioner

Sunil Hemachandra was arrested on the night of 23 July 2003 by the Moragahena police and his family alleged that when they visited him the next morning he was unconscious and bleeding from the nose. Subsequently, he was taken to hospital and into surgery but he died on the morning of the 26th.

The postmortem for this case was fixed for 27 July. However, the OIC of the police station did not show up and it was postponed to a later date on which the officer once again failed to attend. On both these dates the medical officer who was to perform the inquiry was Assistant Judicial Medical Officer (AJMO) Ratnayake. However according to the victims' family, a different medical officer was on duty the following day when the OIC finally showed up for the inquiry. At the end of the inquiry, when the family asked the inquirer of his finding he said, "Go to court and you will be told". However media reports quoted the medical officer as stating that the victim's death was caused by head injuries due to a fall. As a result the family is suspicious of this verdict, just as they were suspicious of the earlier postmortem postponements. They demand a fresh postmortem by an independent medical officer.

The circumstances of this case as summed up in a letter by the Director of Investigations, Human Rights Commission of Sri Lanka to the Inspector General of Police as follows:

"Sunil Hemachandra of AKKEARA 72, Kidelpitiya, Millaeva was arrested on 23 of July 2003 by the Moragahahena Police and was assaulted by police and later taken to Horana Hospital, which transferred him to General Hospital, Colombo. While being treated at the Intensive Care Unit of the General Hospital in Colombo, he died on 26-07-2003.

"Sunil Hemachandra had won a lottery worth Rs. 300,000 (three hundred thousand) about three weeks back. Officers from Moragahahena Police demanded money from him. The complaint made states that since Sunil refused to give the money, this was done to him by way of revenge.

We have come to know that the ASP Horana has been appointed to conduct the inquiry into this death. The Complainant objects to this inquiry being conducted by him. To ensure the inquiry is conducted in an independent and impartial manner, I request for the appointment of an officer from outside this area."
(Translated from Sinhala)

This is not the first occasion victims' families have expressed dissatisfaction with the way postmortem inquiries are conducted. Even in the present case, how a healthy 28-year-old male came to suddenly fall at a police station and seriously injure his head, which resulted in immediate surgery, and then dies needs to be explained. The present findings do not negate the complaints of the victim's family. In fact, previous attempts to extort money from the victim subsequent to his lottery win will no doubt cast serious doubts on the story of the policeman who arrested Mr. Hemachandra and in whose custody he died. The family's call for justice falls on deaf ears, reminding us of one comment made by the Supreme Court of Sri Lanka recently, regarding the careless disregard by the Inspector General of Police towards the complaints of torture committed by the police:

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

Therefore, the Asian Human Rights Commission calls for a full and thorough inquiry into this allegation of torture, murder and extortion; calls for the immediate suspension of all involved officers and their prosecution under Sri Lanka's law against Torture (Act No. 22 of 1994); and calls upon the National Police Commission to take effective action regarding this case and all other complaints against the routine practice of torture by the Sri Lankan Police.

(iv) Desecrated in both life and death

As people read obituaries and find out about the death of someone they know, the first thing many think to do is visit the person and pay their last respects. The body becomes a sacred thing, which family and friends venerates by keeping clean and tidy, and ensuring that it is disposed of, with due care. A body kept in a mortuary before being handed over to the family should also be handled respectfully.

For legal purposes, a dead body is the last and best evidence when foul play is suspected. The loss of evidence due to decay can dramatically affect the outcome of a court case. Usually, the law requires qualified and licensed Judicial Medical Officers to undertake meticulous examination of dead bodies. If a doctor fails in this duty, it may mean that a criminal investigation cannot proceed.

Sadly, in recent months many reports coming from Sri Lanka reveal careless neglect of bodies in local mortuaries. The latest, reported in the *Sunday Observer* of 4 January, was that the freezers at the Anuradhapura Hospital mortuary do not work, and as a result bodies sent there are rotting. The article, by *Athula Bandara*, went on to indicate a litany of failures at the mortuary that have resulted in postmortems at the hospital being stopped, including that “Although one body should be placed in one drawer at a time, [staff] have no choice but to place two bodies in one drawer. Unidentified bodies as well as bodies awaiting court orders for postmortems have to be kept outside in polythene bags, as new bodies brought to the morgue are given preference. The bodies left outside are decomposed, infested with maggots and flies swarm over them, posing a threat to the patients at the hospital.”

These days there is much campaigning about the rights of the victims of crime. One of the most important rights that a victim of murder has is for his or her dead body to be preserved in a manner that will permit proper medical examination. To allow bodies to rot is an act of deep inhumanity. In Anuradhapura this is occurring within a hospital, which has a duty to

protect and preserve the bodies in its care. To allow mortuary refrigerators to collapse is not just a technical matter but also a serious violation of human rights. It is no excuse to claim that the financial and other resources necessary for proper maintenance have not been received. The state has an obligation to provide these resources. In this case, bodies are rotting due to both bureaucratic and political ineptitude.

But the ultimate duty lies with the public. It is shocking that reports of such neglect can spread without provoking angry mass protests. Why have inquiries not been publicly demanded? Why have officials not been forced to resign? Organisations claiming to protect the rights of victims of crime have not even murmured protest against this gross denial of human rights. While some newspapers have raised concern, victims' families have themselves remained silent.

These days it is also fashionable to attribute low arrest and conviction rates to the poor state of forensic science in Sri Lanka. The Attorney General himself recently gave a lecture to this effect. The conditions of mortuaries are also a matter for forensic science. If a body cannot even be adequately preserved to allow for proper investigation to take place, then what hope is there for forensic science in the country? In the past, one of the few achievements in Sri Lanka was that competent doctors could hold proper postmortem inquiries. If even this has been lost, how can we expect any other advances? The conditions of mortuaries should be of concern to the health authorities as well as those who have a duty to ensure proper enforcement of the law. The Attorney General in fact has the authority to call for reports on the state of the country's mortuaries, and take appropriate legal action to ensure that no further neglect occurs.

The Government of Sri Lanka should act to normalise the situation at the Anuradhapura Hospital without delay. It should then study all the mortuaries in the country with a view to bringing about widespread improvements. The government also must apologise to the families of the deceased whose bodies have been desecrated, and compensate them for their suffering. Finally, the National Human Rights Commission should take up the matter

as a serious violation of human rights. A report from the Commission would be useful to awaken public opinion.

* * * * *

(v) A call for better forensic facilities

AHRC supports Deputy Solicitor General's call for top priority to be given to the improvement of forensic facilities in Sri Lanka. "Sri Lanka is now at the threshold of a major disaster", said Deputy Solicitor General, (DSG) Palitha Fernando. Speaking at a conference organised by the Sri Lankan Medical Association, Mr. Fernando said that more than 80% of those accused of murder were discharged because witnesses were unwilling to appear out of fear of reprisals. It has also been regularly quoted that the present rate of conviction was a dismal 4% — largely attributed to the same reason.

Mr. Fernando urged, therefore, that top priority be given to the establishing of modern forensic services so that DNA evidence could contribute where witnesses were unwilling. Stressing the importance of this Mr. Fernando stated, "It is time that we take this issue up at the highest possible level because the country is now at the threshold of a major disaster. Police have confessed to me that people are scared of giving evidence in fear of gangsters". At the same workshop forensic science Professor Ravindra Fernando said, "the estimated cost of constructing a forensic lab would cost only around Rs. 30,000,000 (US\$ 300,000)". He further added, however, that the policymakers are not interested in this idea, despite the enormous potential it would have in bringing justice to criminal cases.

The Asian Human Rights Commission (AHRC) has constantly stated that the rhetoric surrounding crime control in Sri Lanka is mere political propaganda and that there is no serious effort being made to ensure the control of crime within the country. Writing to the Sri Lanka authorities when they were preparing for last year's budget, the AHRC urged that monies be allocated for the improvement of forensic facilities. On an earlier occasion too it was revealed that Sri Lanka does not have a proper

finger printing facility, and as a result, for about ten years fingerprint records sent from the Magistrate's Courts had not been analysed. Upon making inquiries into this matter the AHRC discovered that the estimated cost of such a facility would be around 1.5 Million Euros. However, this cost has not been provided for by the government, nor has there been any attempt to raise such funds from donors who are interested in the rebuilding of the rule of law and improving social stability.

The Attorney General, in a public address made in 2003, also questioned the failure to invest in the rule of law when he said: "I will only pose a simple question. Is it more important in a civilised society to build roads to match with international standards, spending literally millions of dollars, rather than to have a peaceful and law abiding society where the rule of law prevails?" (*K.C. Kamalabayson, PC Attorney General of Sri Lanka, 13th Kanchana Abhayapala Memorial Lecture, 2 December 2003*) Therefore, it is time that the issue of providing resources for the building of forensic facilities is publicly debated in Sri Lanka and that the outcome of such is resolved as soon as possible.

We urge all members of the Sri Lankan Parliament to make their views known to the public on this issue. We further urge the President, the Prime Minister and the Opposition Leader in Sri Lanka, in particular, to unequivocally state their position on the issue and to set a time frame within which such financial resources will be made available for the realisation of this goal. We also urge all political parties to do the same. We appeal to civil society associations, particularly those who are working towards the re-establishment of the rule of law in Sri Lanka, to make this issue a top priority amongst their programmes.

We fully support Mr. Fernando's call to have top priority afforded to the improvement of forensic facilities. Without such facilities, the crises in Sri Lanka's criminal conviction rate will continue to worsen, allowing people to walk free from their crimes. We therefore call on the entire community to wholeheartedly support the establishment of forensic facilities in Sri Lanka, to ensure that criminals are brought to justice and that the rule of law is upheld.





What the posters say (L to R): (i) While the police commit crimes, the Attorney General is sleeping (ii) Ensure speedy trial for Gerald Perera as in the Justice Ambepitiya Case (iii) We want Justice, not corruption. (Photo from the Street Movement for Justice)

CHAPTER 17

A Street Movement for Justice

Recently the Asian Human Rights Commission (AHRC) announced the beginning of a street movement for justice in Sri Lanka. The following is an explanation of the context for the movement:

The concept of a street movement is based on the model followed by Argentinean mothers whose son's and other loved ones disappeared during the era of terror in that country. Perhaps the street movement was only one aspect of the Argentinean Movement. It involved several mothers or other relatives of those who had disappeared gathering at a particular place on a

regular basis (for example, once a week), holding photographs of their disappeared loved ones and strolling around the vicinity during the day.

Several important components of the Street Movement are:

- a. Regularity — such visits must be regular.
- b. Same vicinity — they must be more or less within the same vicinity.
- c. Clear message — the message must be a very clear one.
- d. Visibility — the movement must be visible.

Regularity is the means by which public attention to a particular issue is drawn repeatedly and the public is then forced to take notice and not allowed to forget the matter.

Thus, this type of activity is not a one-time event, as many protests tend to be. The persons participating are aware that the issue they are raising has far-reaching implications and therefore they will have to keep at it for a considerable time if they want to bring about change. The wish for some reform of a fundamental type is the reason for the regular visits.

The idea of conducting the Movement in the **same vicinity** is to make it a mental reference for those watching it. There should be many who will become constant observers of such demonstrations. When these events are consistently held in one place, media attention will also be drawn and enhanced publicity will be afforded to the issues involved. If however such demonstrations were held at different times and places that kind of regular concentration would not take place.

In the Argentinean case the **message** was to end impunity regarding disappearances cases. Those who watch this type of regular protest will ask what it is for, and what is expected. By the very manner in which the protests are conducted, its purpose and objectives should become clear. But the fact that the message should be clear does not mean that the message should necessarily be a narrow one. In fact, the issues raised in the disappearances protest were broad, profound and complex. However they

were linked to a single theme — the causing of hundreds of thousands of disappearances and the failure of the system to bring the perpetrators to justice.

In the proposed protest in Sri Lanka the theme is that of justice. The expected reflections are about the defects of the justice system especially the abominable delays in the courts as well as the way in which these defects could be corrected with the involvement of interested people. And to carry forward the discussion on a particular issue — that has become a serious problem — all materials at the demonstration, should be focused and not shift from one topic to another.

The size of the group that gathers together also does not really matter. Instead they should be identified immediately by their dress and the materials they carry and distribute. People should at once say, 'yes, this is that group of people'. Hence, **visibility** is important in drawing the attention of the people to the Movement so that the issues involved will begin to be discussed from one person to another in mostly informal conversations. Visibility is also essential for media purposes.

The overall purpose:

The overall purpose of this Movement is to unleash the thought processes that are taking place in the minds of people in a particular society or community and to help develop a common conversation on these issues involved. The protesting group does not create the theme. In fact society most probably has already decided on the theme, which now occupies the minds of the people largely based on the experiences a particular society or community. However, despite the common experiences a community may have undergone, a common conversation may not have emerged among the people due to various factors. Thus, each person may be thinking of the common experiences of everyone, but doing that thinking individually or as a small group. Many people may also prefer to live in denial than delve too deeply into painful experiences.

For instance, the scores and score of disappearances in Argentina was no doubt such a traumatising experience of the Argentinean people. The extent of the denial of justice in Sri Lanka is also a painful experience. The protesting group — by their regular activities — therefore attempts to resuscitate people's hidden thought and feelings and to develop these as a common theme of the whole society. By reviving that conversation, the feelings of dissatisfaction and resentment already within people may find a way to be expressed and also to create new conversations among them. Gradually, the conversations deepen and soon numerous reflections on various types regarding the same issue are expressed. When this happens, changes, both in the thinking and feeling as well as in the practical environment begin to take place.



CHAPTER 18

A question, Answer and Follow up Question from the European Commission on Human Rights in Sri Lanka

Written question P-1864/05 by Poul Rasmussen (PSE) to the Commission:

Subject: Human rights situation in Sri Lanka

In the EU cooperation agreement with Sri Lanka dating from March 1995 the parties reaffirm the importance of the UN Charter and their respect for democracy and human rights. Article 1 of the agreement even emphasises that the agreement is in its entirety based on respect for human rights, which must inspire the domestic and external policies of the parties involved. When the parties met on 29 October 2004 to discuss progress in their mutual cooperation, they exchanged — according to the official joint press communiqué — views on good governance and human rights and agreed on the importance of full implementation of all human rights conventions.

Yet there are continuing reports of breaches of human rights — particularly the widespread use of torture — in Sri Lanka. The human rights situation does not therefore seem to have improved in the country. This being so, what information can the Commission provide about the current human rights situation in Sri Lanka, in particular, the use of torture by the military and the police?

Answer P-1864/05EN by Mrs. Ferrero-Waldner on behalf of the Commission:

(on 10.6.2005)

According to the Sri Lanka Human Rights Commission and to Amnesty International, torture is one of the most common forms of human rights abuses in Sri Lanka. The most widespread occurrence is considered to take place during police custody, although there are also reported cases of torture by the military. In October 2003, the United Nations (UN) Committee against torture reported a “disturbing number of cases of torture and ill-treatment” but concluded that the practice was “not systematic”.

Torture cases are mostly taking place in connection with the conflict and the provisions of the 1979 Prevention of Terrorism Act, which allows for easy arrest of suspects and prolonged custody without trial or release. The situation is generally considered to have improved since the Ceasefire Agreement of February 2002. While Sri Lanka acceded in 1994 to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatments or Punishments, the Convention’s provision for a minimum punishment of seven years was invoked for the first time in 2004 and led to the conviction of two perpetrators. Two bodies (the Prosecution of Torture Perpetrators Unit and the Criminal Investigation Division) have now been entrusted with torture investigation, but their affiliation with the police has raised doubts as to their ability to conduct unhindered investigations. Sri Lanka’s Human Rights Commission also adopted a Zero Tolerance of Torture policy in March 2004, the effects of which are still to be witnessed.

While acknowledging the specific security situation prevailing in Sri Lanka, the Commission has consistently called on the Government — as well as other parties to the conflict — to respect civil liberties, renounce the use of violence and put an end to the culture of impunity surrounding violations of human rights. The Commission has repeatedly asked the Government of Sri Lanka to abide by the provisions of the UN Convention against Torture to which it is a signatory. It will continue to ensure that these issues figure prominently in European Union-Sri Lanka political dialogue. The

Commission is also strongly committed to progress towards a lasting peace settlement in Sri Lanka, which would greatly help to improve the human rights situation.

Follow up question by Ms Gitte Seeberg from the Danish Conservative Party:

(on 30.8.2005)

On 6 June 2005 the Commission (Commissioner, Her Excellency Mrs. Ferrero Waldner) answered a question from Member of the European Parliament Mr. Poul Nyrup Rasmussen. The question regarded the serious human rights situation in Sri Lanka, especially referring to torture cases in a large number. In the answer, the Commission acknowledged that the human rights situation is serious. Reference was made to the Sri Lanka human rights commission (an official authority), according to which "torture is one of the most common forms of human rights abuses in Sri Lanka". It was also said in the answer, that the Commission has consistently called on the government to respect civil liberties and to renounce the use of violence.

It follows clearly from the development, that no changes to the better have taken place. Many more serious cases are reported, also cases of killing of victims of torture, obviously committed by the police in order to avoid public cases. On this background, I shall ask the Commission whether it will again address the government and request that more effective measures be taken to avoid this regime regarding especially torture in police custody. And whether the Commission will also ask, which concrete measures the government will take. Referring to the answer of the Commission, I would like to add that the cases of torture very often refer to police behaviour, which has nothing to do with the ongoing conflict in the North and Northeastern part of the country.



Annex One

**A Sample of AHRC Correspondence with
Local and International Authorities**

1.

24 June 2004

Mr. Theo C. van Boven
Special Rapporteur on the Question of Torture
OHCHR-UNOG, 8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND
Fax: +41 22 917 9016

Dear Mr. Theo C. van Boven,

**Re: SRI LANKA: Police pressure the torture victim to withdraw
case and his family threatened with death**

The Asian Human Rights Commission (AHRC) is writing to bring to your attention the death threat to the family of torture victim Koralaliyanage Palitha Tissa Kumara. (*Case detail is attached.*)

According to the information received, Tissa Kumara received a message through a third party that his wife and their child will be crushed to death by a vehicle if the complaint is not withdrawn against the perpetrator, Sub Inspector (SI) Silva. In a separate incident, he also was offered 500,000 rupees (US\$4,922) from the police (also through a third party) if he withdraws the case on 16 June 2004.

These are serious attempts by the culprits to terrify the victim and his family. Therefore, AHRC requests you to demand the government of Sri Lanka to ensure security of the victim's wife and son and conduct an inquiry into this matter immediately.

A fundamental rights case is pending in the Supreme Court regarding the torture, illegal arrest and detention of Tissa Kumara. At the preliminary hearing, the state counsel, appearing for the Attorney General, said that he is satisfied that the allegation by the victim is true and that a special investigation unit (SIU) is conducting an inquiry to prosecute the perpetrator under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Act, or Act 22 of 1994. However, the alleged perpetrator, SI Silva, still continues to work at the police station. Therefore, AHRC also requests you to suggest local authorities to remove the culprits (SI Silva) from police service at the Wellipenna Police Station to ensure the safety of the victim's family.

AHRC also recommend you to ask the government of Sri Lanka to release Tissa Kumara, who needs urgent medical attention, on bail as soon as possible. He is still in jail awaiting completion of the formalities to release him. The police must drop the false charge of possessing a bomb against Tissa Kumara.

Your immediate intervention is necessary in this matter.

Kim Soo A
Urgent Appeals Programme
Asian Human Rights Commission (AHRC)

* * * * *

2.

12 July 2004

Mr. Theo C. van Boven
Special Rapporteur on the Question of Torture
OHCHR-UNOG, 8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND
Fax: +41 22 917 9016

Dear Mr. van Boven,

A Special Appeal

**Re: The Second Assault on the Torture Victim on whom
boiling hot water was earlier poured by an
Officer of the Matale Police Station**

The Attack on Jayasekara Vithanage Saman Priyankara, his elder brother J. V. Susil Chinthaka and also deaths threats to his wife.

A torture victim who complained of a most brutal act of torture by way of the pouring of boiling hot water on his thighs is now once again seriously tortured along with his brother while death threats are made to his wife in an attempt to force him to withdraw the complaints he has made regarding the initial act of torture. He has made his complaints which have been inquired into by the Assistant Superintendent of Police (ASP) and the National Police Commission (NPC) reported that disciplinary inquiries are proceeding against the perpetrators of the initial act of torture.

Subsequently Saman Priyankara came under serious pressure to withdraw his complaint or to face serious consequences. However, he did not agree to such pressures. On the 26th June, which was the International Day against Torture, he made a public speech at the Sri Lanka Foundation about the

manner in which he was tortured and the pressures he was under to withdraw the case. This speech was videotaped and is available from the Asian Human Rights Commission (AHRC).

On the evening of the 7th July, a number of persons who were identified as policemen arrived at his house and mercilessly assaulted him. And when he was lying on the ground they trampled his neck. The manner of the assault suggests an attempt on his life. However, as some neighbours gathered while he was being assaulted, two of his assailants started shouting, “we are police, don’t interfere”. Saman Priyankara’s brother Susil Chinthaka, was also assaulted at the same time. Then they were both taken to Matale Police Station where he was again assaulted.

After to a telephone call made to a human rights group by his wife the group contacted the National Human Rights Commission (NHRC) and other authorities urgently while he was still in police custody. On receipt of the information the AHRC contacted police higher authorities and also the Chairperson of the National Police Commission (NPC). The police higher authorities immediately made inquiries about the matter and informed that the police at Matale had been instructed to take Saman Priyankara to a hospital. However, officers of the local police station defied these instructions and took him to some doctor with strict instructions that he should not reveal anything. Following which he was again brought back to the Matale Police Station. The police higher authorities and the NHRC were further informed about the situation by the AHRC and further informed that he would be brought before a Magistrate the next day at 9:00 a.m. However, Saman Priyankara was not brought to court at that time and the higher authorities were informed of this. At 11:00am Saman Priyankara was finally produced before court. The lawyers who appeared for him submitted to the court that he wished to make a statement to the Magistrate about the circumstances of his arrest and the torture that he had suffered afterwards. This application was allowed and Saman Priyankara made a detailed statement about his situation to the Magistrate who recorded the same.

The Magistrate ordered him to be produced before the Judicial Medical Officer (JMO) and to take him to the Army Headquarters as the police alleged that he was an Army deserter. The Magistrate then released him on bail.

Saman Priyankara was later produced before the JMO who also wanted him to be produced before an Ear Nose and Throat (ENT) Specialist as he complained of the loss of hearing in one ear. He is due to be produced by the remand authorities before the ENT Specialist today.

Saman Priyankara's brother was assaulted on the chest and the neck. After his release on bail he also enter the hospital where he was discharged after treatment and asked to return today (Monday) to undergo chest x-rays. Meanwhile, the wife of Mr. SP who is nursing a three-month old baby is being harassed every night by unknown telephone callers who are threatening to kill her and her husband.

Meanwhile the AHRC has learned that the story fabricated by the police is that some people were assaulting Saman Priyankara and that the police came and rescued him. The Sri Lankan police in other instances have often made similar fabrications.

The AHRC states that this is clear case of punishing a torture victim who has not bowed down to police pressure to withdraw his complaint he had made of being brutally tortured. Saman Priyankara in his statement to the Magistrate's court also told that the police officers who had assaulted him also accused him of bribing the ASP who conducted an impartial inquiry regarding the first act of torture he had complained of. Obviously there is a revolt against an attempted act of enforcement of discipline by the higher authorities by some of the officers of the Matale Police Station. Given the extent of the degeneration of the police, particularly in the rural areas such revolt against discipline is not surprising.

Under these circumstances Saman Priyankara and his family is faced with the serious threat of death and bodily harm. We urge that significant steps

be taken to remove the culprit police officers from the Matale police and to restore order at this station. We also urge that Saman Priyankara and his family be provided with special protection as deserving of person complaining serious crimes. Witness protection is a fundamental obligation of the state and this was reminded by the UN Human Rights Committee in its Concluding Observations made in November 2003 on the Sri Lankan Periodic Report.

AHRC kindly requests the Sri Lankan authorities to take appropriate action to protect Saman Priyankara and his family and to inform the actions that have been taken to the family concerned.

Copies of two pictures showing the initial wounds caused by the initial act of torture on Saman Priyankara are attached.

Thank you.

Yours sincerely,

Kim Soo A
Urgent Appeals Programme
Asian Human Rights Commission (AHRC)

* * * * *

3.

27 August 2004

Mr. Theo C. van Boven
Special Rapporteur on the Question of Torture
OHCHR-UNOG, 8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND
Fax: +41 22 917 9016

Dear Special Rapporteur Mr. Theo C. van Boven,

RE: Protection needed for torture victim seeking redress

The Asian Human Rights Commission (AHRC) is deeply troubled that A G Ravindra was illegally arrested and assaulted on 23 July 2004 by the Katupota police for making a complaint against them to the National Human Rights Commission (NHRC) on 14 June 2004 about his previous torture of May 2004.

The Katupota police illegally took the victim into custody, assaulted him and got him remanded after falsely charging him in court, all in order to force him to withdraw his complaint to the NHRC. This case illustrates the collapse of rule of law in Sri Lanka and the blatant corruption and abuse of power by the police. The case also shows that it is imperative that all those who seek redress against such brutality by the police be given protection.

The AHRC requests you to pressure the government of Sri Lanka to take immediate legal and disciplinary action against the responsible Katupota police officers, including their prosecution under Sri Lanka's Convention Against Torture act of 1994.

Yours sincerely,

Kim Soo A
Urgent Appeals Programme

4.

7 September 2004

Mr. Mahinda Rajapakse
Prime Minister
Cambridge Place
Colombo 7
SRI LANKA
Fax: +94 11 2 682905 / 575454

Dear Prime Minister,

**Re: A Complaint Relating to the Serious Security Threat to
a Former Lieutenant of the Sri Lankan Army,
Mr. R.K.L.G. Dingiri Banda of No. 69, Track 02
Orubandisiyambalwa, Bakamuna, a Complainant of
Three Cases against Two Army Captains**

The Asian Human Rights Commission (AHRC) has received information from Mr. R.K.L.G. Dingiri Banda on the serious security threat by two unknown men on 3 September 2004. Mr. Dingiri Banda has complained of his fear that some persons have been contracted or mobilised to harm his life due to three cases he is pursuing against two army officers regarding the severe assault on him which took place on 21 February 2000 at the officer's mess of Gajaba Regiment at Saliyapura. The assault was so serious that his life was saved only with great difficulty. As a result, he had to stop his military career and took early retirement. The said two army officers were later promoted and are army captains now. Mr. Dingiri Banda strongly believes that the two men might have been contracted or mobilised to harm his life due to his complaints.

The three pending cases are:

1. A Non-Summary Inquiry regarding attempted murder before the Magistrate's Court at Anuradhapura

2. A case in the District Court of Anuradhapura in which Mr. Dingiri Banda has claimed compensation for serious injuries and damages caused to him
3. A fundamental rights application before the Supreme Court. With regard to the this case, Mr. Dingiri Banda has appealed to the Sri Lankan Bar Association regarding the alleged misconduct of his defense lawyer on his case.

According to his testimony, on 30 August 2004 at around 3:00 pm, Mr. Dingiri Banda came to Colombo to meet his lawyers who are attending to his fundamental rights application matter in which the respondents had tried to force a settlement by way of payment of Rs.100,000/= which Mr. Dingiri Banda refused to accept. He went to meet the lawyers for the purpose of taking steps to get his case re-listed before the Supreme Court and also to pursue the complaint he had made to the Bar Association of Sri Lanka. He returned from Colombo at around 3:00 pm on September 3.

On the same day (September 3) at about 9:00 pm two unknown men arrived on a motorcycle at Mr. Dingiri Banda's sister's house at Athurugiriya and asked for Mr. Dingiri Banda. Mr. Dingiri Banda was not there at that time. His sister, who was suspicious of the two persons, told them that there was no such person in her house. Thereafter the two men told her that they knew that Mr. Dingiri Banda was staying there and again asked her where he was. The sister replied, "He has gone back." The two men then left the place saying "we know how to find him."

The sister reported this incident to Mr. Dingiri Banda over the telephone immediately. He then made inquiries with all of his relatives and friends as to whether any of them had tried to visit him at his sister's house but he found that no one had. Mr. Dingiri Banda firmly believes that the two men who visited his sister's house at the late hour of the night are very likely to be persons with a contract to harm his life. He claims that there is no other reason for anyone to harm him except the cases he is pursuing regarding those two army officers who had made an attempt on his life while he was a lieutenant and who had virtually ruined his career. He also stated that he has no other enemies.

Mr. Dingiri Banda, as a complainant in a case, has a right for protection from the state. In particular, there is more reason to provide protection to him, as his opponents are in powerful positions in the Sri Lankan army. The rate of assassinations in Sri Lanka is very high and intimidation including attempts on the lives of complainants and witnesses is also very common. Under these circumstances, Mr. Dingiri Banda has a genuine and well-founded fear for his life.

Under these circumstances, AHRC strongly urges you to order to provide immediate and adequate protection to Mr. Dingiri Banda. AHRC also requests you to take up this matter with the Commander of the Sri Lankan Army Lt. Gen. Sanath Kottegoda since the alleged opponents of former Lieutenant Dingiri Banda are two captains in the army. A thorough investigation must be conducted and the responsible persons punished.

Thank you.

Truly yours,

Kim Soo A
Urgent Appeals Programme
Asian Human Rights Commission (AHRC)

* * * * *

5.

4 November 2004

Mr. Theo C. van Boven
Special Rapporteur on the Question of Torture
Attn: Mr. Safir Syed
C/o OHCHR-UNOG
1211 Geneva 10
SWITZERLAND

Fax: +41 22 917 9016 (general)
E-mail: ssyed@ohchr.org

Dear Mr. Theo C. van Boven,

**Re: Continuous threats to the torture victim, Sandun Kumara by
the perpetrators (SCFR application No. 570/2003)**

The Asian Human Rights Commission (AHRC) is deeply concerned by the continuous threats to the 17-year-old boy Hikkaduwa Liyanage Sandun Kumara and his family by the police officers who were involved in the brutal torture of the victim.

H.L. Sandun Kumara had been illegally detained, brutally tortured and sexually abused for nearly one week after he was arrested by the Rathgama police on 12 September 2003. Regarding this case, the AHRC had previously sent an appeal letter to your Department. (Reference: the AHRC appeal letter dated on 4 November 2003) For your information, we attach the detailed information of the original incident with this letter.

At the time of the incident, the Officer-in-Charge (O.I.C) of the Rathgama Police Station encouraged the degrading and inhuman torture and ill-treatment on the victim and did nothing to prevent it.

Accordingly, the victim filed a fundamental rights application before the Supreme Court on 21 October 2003 (SCFR application No.570/2003). The case is still pending. In paragraphs (j) and (k) to the prayer of the Petition, it was pleaded as follows:

(j) direct the 08th and 09th Respondents to immediately transfer the 01st to the 05th Respondents out of the Rathgama Police Station area to facilitate a fair inquiry pending final determination of this application;

(k) make an appropriate direction to ensure the safety of the Victim, the Petitioner and the witnesses;

The 08th and 09th Respondents are the Inspector General of Police (IGP) and the Chairman of the National Police Commission (NPC) respectively. The 01st to the 05th Respondents are (1) R. Chandimal de Silva, Officer in Charge (2) J. T. Ramyasiri OIC-Crimes, (3) Silva -17462, Police Sergeant, (4) Chandrasiri Silva - PC 11579 and (5) Upul-PC 28014. All of them are attached to the Rathgama Police Station, Rathgama.

In the complaint, the victim also stated that the 01st - 05th Respondents have constantly threatened the boy as soon as they became aware that action is being taken against them for their illegal acts. As a result, the victim's mother had to send him out of the village for his safety.

However, since a false case has been filed by the Rathgama Police against H. L. Sandun Kumara, it is mandatory that he appeared before the Magistrate's Court, Galle, from time to time. This fact has affected the mental and physical well being and the safety of the victim. The destitute mother, a widow, has no means of providing the required protection to her son.

According to the victim's mother, the threats on her son and family members have been intensified by the 01st - 05th Respondents, who are pressuring the family to withdraw the case against them and accept a small sum of money as compensation. The said SCFR 570/2003 application is due to be taken up on 10 December 2004.

Under the circumstances, the AHRC kindly requests you to urge the local authorities to ensure that an immediate protection be provided to the victim and his family. The AHRC also requests you to pressure the local authorities to inquire the alleged threats to the boy and his family by the responsible officers and take suitable disciplinary/legal action against them.

We look for your immediate intervention into this case.

Thank you.

Yours sincerely,

Kim Soo A (Ms)
Programme Officer
Urgent Appeals Programme

* * * * *

6.

22 November 2004

AHRC SPECIAL LETTER TO THE ATTORNEY GENERAL OF SRI LANKA REGARDING THE ATTEMPTED ASSASSINATION OF MR. GERALD PERERA

Dear Mr. Mr. K. C. Kamalasekera,

The victim in Case No. SHC326-2003 Negombo High Court.

The Asian Human Rights Commission has earlier informed you about the shooting of Gerald Perera who was summoned to give evidence at the High Court of Negombo on the 2nd December. Previous to the shooting several police officers and even a local politician visited his house to pressurise him not to go to court to give evidence and asking him to withdraw “the case”.

The family of Gerald Perera categorically states that to their knowledge he had no other enemies and his only fears were about possible attack relating to the said criminal case before the High Court.

Even the lawyer who appeared in the Supreme Court fundamental rights case for Mr. Perera was approached by two police officers who were accused in the case before the Negombo High Court asking him to exert pressure to withdraw the case.

We are writing this to make the following requests.

- To intervene to cause a proper inquiry into the shooting of Gerald Perera on the 21st November at around 11:45 a.m.
- To cause the state counsel attending to Gerald Perera's case at the Negombo High Court to be informed about the shooting and to take appropriate action to bring the matter to the notice of the learned High Court judge.
- As the probable expectation in the attempted assassination is to prevent the victim giving evidence before court and thereby to be free of the charges to study the possibilities of pursuance of the case even without the evidence of Gerald Perera in case of his death or his being permanently incapacitated. At the moment we have been informed that Mr. Perera is in very critical condition and that his survival cannot be guaranteed. It would be a strange mockery of justice if the alleged accused can escape responsibility by such means.
- To cause some emergency measures for the protection of other torture victims whose cases are pending before the courts.

Thank you.

Yours sincerely,

Kim Soo A
Programme Coordinator
Urgent Appeals Programme

7.

20 December 2004

Mr. Chandra Fernando
Inspector General of Police (IGP)
New Secretariat
Colombo 1
SRI LANKA
Fax: +94 11 2 440440/327877

Dear Mr. Chandra Fernando,

**RE: SRI LANKA: Another alleged police murder of a man
by the Moratuwa police**

The Asian Human Rights Commission (AHRC) is writing to you to bring your attention to the case of Mr. Ranson Peiris, who succumbed to his injuries in the Lunawa Government Hospital after illegal arrest and torture by two sergeants Moratuwa Police Station on 6 December 2004.

The detailed information of the case is as follows:

Name of the victim: Mr. M. Ranson Peiris, a 59-year-old carpenter, married with 7 children

Address of the victim: No. 30, Gnanaloka Mawatha, Egodauyana, Moratuwa, Sri Lanka

Alleged perpetrators:

1. Sergeant Silva of the Moratuwa Police Station (Court sergeant at the Moratuwa Magistrate's Court)
2. Sergeant Jayantha Perera of the Moratuwa Police Station

Date of illegal arrest and torture: 5 December 2004

Date of death: 6 December 2004

Case details:

On 5 December 2004 at around 2 p.m., a 59-year-old carpenter, Mr. M. Ranson Peiris, went to Mrs. Malani's house to have a drink. Two sergeants, Mr. Silva and Mr. Jayantha Perera of the Moratuwa Police Station were already present there. For no apparent reason, these two police began to assault Mr. Peiris brutally and took him to the Moratuwa Police Station in a three-wheeler by which they had come to the house. They then severely assaulted Mr. Peiris again at the police station.

Mr. Dhammika Chandranath Fernando, the Deputy Mayor of the Moratuwa Municipal Council, informed the victim's family of his arrest. He then inquired the Moratuwa police about the victim's arrest, but they told him that such a person had not been brought into their custody. However, some time later when Mr. Peiris's relatives went to the Moratuwa Police Station, they saw that the victim was lying in the police cell. As he looked severely injured, the relatives asked the police to take him to the hospital to receive medical treatment. However, the Moratuwa police refused to do so.

At 10:00 pm on the same day (December 5), the Moratuwa Police took the victim to the Lunawa Government Hospital without informing his family of this. They allegedly gave a false statement to the hospital that they found the victim on the roadside. As Mr. Peiris was in a critical condition, he was transferred to the Kalubovila General Hospital and later to National Hospital Colombo. However, he succumbed to his injuries at around 11:30 a.m. on the following day (December 6).

A post-mortem on the victim's body was conducted by Judicial Medical Officer (JMO) from the Colombo General Hospital. In his report, the JMO declared that Mr. Peiris had been assaulted by blunt weapons. He found nine external injuries on the victim's body and damage of his thyroid glands due to the assault on his neck. The JMO concluded that the victim's death was caused by the rupture of blood vessels of his brain. The *Moratuwa Magistrate's Court* has begun an inquest into Mr. Peiris's death (Case No. 6741NS/2004).

In the meantime, Mrs. Malani, who witnessed the victim's assault and illegal arrest by two sergeants at her house, gave her statement to the Mt. Lavinia Police and the *Moratuwa Magistrate's Court*. However, none of the Mt. Lavinia Police was present for two days while the magisterial inquest was being held. The next inquest is scheduled for 16 December 2004.

According to the latest information, the two accused police sergeants have not been arrested. In particular, Sergeant Silva continues his service as a court sergeant at the *Moratuwa Magistrate's Court*, where the inquest of the case is going on. More seriously, it is alleged that the Moratuwa police have been pressuring Mrs. Malani, a crucial eye-witness of the case, not to give a statement against the two police sergeants.

The villagers informed this incident to the Human Rights Commission (HRC) of Sri Lanka on December 8, and the victim's son also lodged a complaint to the NHRC on December 13. However, the HRC officer, who received the complaint, told the son that they needed the post-mortem report to start the investigation. In fact, it is difficult for ordinary citizens in Sri Lanka to obtain post-mortem reports. In many cases, the post-mortem reports are not open to the public, even to the family of the victims. So far, no serious action has been taken by the HRC of Sri Lanka into this case.

This incident occurred while no person has been arrested regarding the case of Gerald Perera who died on November 24, after being shot by an unknown person who allegedly linked to the accused police officers three days before. The AHRC is deeply concerned that the government's inaction on violence by state officers has helped to encourage perpetrators to continue such crimes with impunity against ordinary citizens in Sri Lanka.

Therefore, the AHRC strongly urges you to immediately inquire into this case and arrest/prosecute the responsible police officers. The AHRC urges you to provide full protection to Mrs. Malani and the victim's family, and immediately suspend the accused police officers while the investigation is being conducted. Finally, appropriate compensation should be given to the victim's family as well. Again, the AHRC urges you to fulfill international

obligation of the government of Sri Lanka by introducing effective and realistic legislative measures for witness protection, and take genuine steps to bring about the implementation of the Convention Against Torture (CAT) Act, which was ratified and accepted as domestic law.

Do genuine and fulfill implement to stop torture so that your government will be able to regain the trust and confidence of the people.

Thank you.

Yours sincerely,

Kim Soo A (Ms)
Programme Coordinator
Urgent Appeals Programme

CC.:

1. Mr. Mahinda Rajapakse, Prime Minister
2. Mr. K. C. Kamalasekera, Attorney General
3. Mr. Ranjith Abeyseriya PC, Chairperson, National Police Commission
4. Dr. Radhika Coomaraswamy, Chairperson, Human Rights Commission of Sri Lanka
5. Prof. Manfred Nowak, Special Rapporteur on the Question of Torture
6. Mr. Philip Alston, Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions

* * * * *

8.

January 26, 2005

Prof. Manfred Nowak
Special Rapporteur on the question of torture
Attn: Mr. Safir Syed
C/o OHCHR-UNOG
1211 Geneva 10
SWITZERLAND
Fax: +41 22 917 9016 (general)

Dear Prof. Manfred Nowak,

Re: Constant threat to a torture victim (Case No.: H.C. 404/2003 at Negombo High Court and UN Special Rapporteur on Torture's Report - Paragraph No. 1583 of E/CN.4/2003/68/Add.1)

Amarasinghe Morris Elmo DE SILVA was severely tortured by police officers at Ja-ela Police Station on 9 January 2001. The indictment in this case was filed on November 20, 2003. However, to-date the five police officers who were interdicted are continuing to work as police officers. They are:

Inspector S.M. Lakpriya Niroshan Suriya Kumara,
P.C. 10282 Sugath Jayantha Kumara,
P.C 38599 Tapusha Kumara,
P.C. 37495 Deepti Saman Seneviratne,
P.C. 25961 L.A. Siriwardene.

It was the first accused in this case, Inspector Suriya Kumara that tortured the victim the most. Thereafter, the victim was approached many times, on the one hand with offers of money in order not to attend trial, or to deny what he had stated in his complaint, and on the other hand to threaten him, saying that there will be problems "if he persists in the case."

The UN Special Rapporteur on question of torture has intervened in this matter and made representation to the Sri Lanka government. This is reported in his report to the UN Commission on Human Rights for the

year 2003. This reference is **Paragraph No. 1583 A.M.E. De Silva** in the Special Rapporteur's report (**E/CN.4/2003/68/Add.1**).

The AHRC kindly requests you to inquire into as to how these officers continue to be in service after they have been indicted in High Court. Please be kind enough to take action urgently.

Thank you.

Yours sincerely,

Kim Soo A (Ms)
Programme Coordinator
Urgent Appeals Programme

* * * * *

9.

May 5, 2005

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

Dear Mr. Kamalabeyan,

**Re: The case of Lalith Rajapakse, HC 259/2003 Negombo
High Court**

I draw your attention to the Human Rights Committee (UN) decision dated March 8, 2005 relating to the admissibility of the communication by Lalith Rajapakse's allegations of torture and illegal detention. A copy of this decision has been sent to you by the Asian Human Rights Commission earlier.

The next hearing of this case before the Negombo High Court is on May 26, 2005.

On the last occasion the learned counsel for the state and the lawyer watching the interests of the victim made submission to court requesting the court to fix the date for trial on a day to day basis and for a speedy trial. The learned judge who was to go on transfer stated that due to his transfer and due to a new judge having to allocate dates he was unable to grant this request.

During the last hearing the lawyer watching the interests of the victim brought to notice the threats faced by the victim from the police and this matter was recorded by the learned judge. The accused was also warned not to harass the victim and if he did so the bail orders issued would be withdrawn. The victim's counsel brought to the notice of the court that the victim was not living at his house anymore due to the fear of serious reprisals and is now living far away under the protection of some concerned persons.

The victim's lawyer has also on an earlier occasion written to the Honorable Attorney General requesting a senior state counsel to take charge of this case in the similar manner as Gerald Perera's case due to the threats faced by the victim.

The Asian Human Rights Commission respectfully urges you to take appropriate action on this matter, particularly by considering the assignment of a senior counsel for this case and ensuring that the case be heard as soon as possible. We are aware that the victim is unable to return home or able to go to a fixed place of work due to threats faced to prevent him from giving evidence in this case.

Thank you.

Yours sincerely,

Kim Soo A
Programme Coordinator
Urgent Appeals Programme

10.

May 5, 2005

Mr. Palitha Fernando
Deputy Solicitor General
Attorney General Department
Colombo 12
SRI LANKA
Fax: +94 11 2 436 421

Dear Mr. Fernando,

**Re: The case of Silvestrige Channa Prasanka Fernando of 1012/2
Pitipana South, Negombo. Case Nos 73396 & 71169 at Negombo
Magistrate's Court**

The Asian Human Rights Commission (AHRC) refers our earlier correspondence on this matter with you and the correspondence you have had on this matter with Silvestrige Channa Prasanka Fernando.

These two cases were called for trial on April 26, 2005. The AHRC wants to inform you as to what happened on that date.

When **case no. 73396** was called, a former assistant of the accused police officer, who is now a Sub Inspector, appeared for the prosecution on behalf of the police. He was very much eager for the case to be taken up immediately. All the lawyers of the Negombo Bar, about 17 of them, appeared for the accused police officer who was the former court sergeant in the same court. These lawyers were also eager to take up the trial immediately. It appeared to the victim/complainant and others who accompanied him that there was collusion between this prosecuting officer and the accused.

A lawyer who appeared to watch the interests of the victim/complainant at this stage tendered the letter written by you earlier to the victim/complainant requesting the next date of the case. After filing the said letter, the Magistrate took notice of the interests of the Attorney General's Department in this matter and postponed the case until **May 30** for trial. We are writing this to request you to ensure that a counsel from your department be assigned to prosecute this case. Please be kind enough also, to take notice of the date of the case.

As there is very clear collusion between the present prosecuting officer who is known to be a close colleague of the accused officer and considering the fact that the accused officer was the court sergeant in this very same court where the trial is being held the interest of justice would better be served by transferring this case to another court, preferable to Colombo. As you also know, the victim/complainant was first tortured and then there was an attempt on his life in order to prevent him from giving evidence in this case. He has ever since been under pressure not to pursue the case.

Case No. 77169 refers to the second incident of attempted murder on the victim/complainant. Under these circumstances consideration of witness protection and ensuring the security of the victim/complainant will also be better served if the case is heard elsewhere and prosecuted by a state attorney. The AHRC would be most grateful if you could consider these requests and also inform the victim/complainant about your decision on these matters prior to the date of trial.

Yours faithfully,

KIM Soo A
Programme Coordinator
Urgent Appeals Programme



Annex Two

Janasansadaya² responds to CAT

The Following are answers given by Janasansadaya to the issues raised by the Committee Against Torture (CAT) to the Sri Lankan Government regarding the State Party's Third Periodic Report (CAT/C/48/Add.2)³

1. Please explain the reasons, if any, for the long delay in submitting the second periodic report of Sri Lanka.

Article 2

2. Please update the information already provided in respect of remedial action taken to comply with the conclusions and recommendations of the Committee, both following the consideration of the initial report of Sri Lanka and the conclusion of the inquiry under article 20 of the Convention.

3. What progress has been made in the constitutional reform process and what steps have been taken to ensure compatibility of the draft Constitution with the Convention?

4. Please describe in detail recent developments in respect of the Peace Agreement of February 2002, with particular emphasis on the freedom of

² Janasansadaya is an extremely active grassroots level organisation in Sri Lanka working with victims of police torture since 1992.

³ Questions answered are in BOLD and answers are in *italics*.

movement, arrests, detention, prosecutions and instances of torture brought to the Government's attention. Please clarify which emergency power legislation remains in force and is actually applied. Has the Declaration of Human Rights and Humanitarian Principles been adopted?

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.

A

- *From about March 2005 we 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.*
- *We have also observed that said 24-hour hotline exists. However those who answer the hotline decline to reveal their identity, making it difficult for the victims to follow up on their complaints e.g. inquire into what action has been taken and the plight of their loved ones etc. also we have been informed 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.*
- *We are unaware of a "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.*
- *HRC's powers to monitor places of detention are quite limited. This is because though HRC officers are empowered to enter police stations proper from our victims'*

experiences we know that torture often takes place 'not in the police station proper' 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 (as per a circular issued by the IGP on the advise of the AG last year after several HRC officers who demanded access to these places were attacked by the police and prevented from doing so). The requirement of prior notice certainly defeats the very purpose of such a visit because it gives ample notice to the perpetrators to conceal their illegal activities.

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

A.

- *We could honestly say that there is no effective and comprehensive methodology adopted by the State to prevent and/or combat the menace of torture. The first step towards prevention is the intention to prevent and a firm conviction of the importance of prevention, which could be ascertained via the pronouncements and statements made by senior government officials and authorities. However we note that we have not seen or heard a single statement either in public or private made by the IGP, the head of the police force, re the importance of preventing police torture. Instead his common response in public or to individual incidents brought specifically to his attention seems to be that of defending the actions of his policemen e.g. that they were using 'mminimum force' as required by the situation.*
- *The (Late) Minister of Foreign Affairs addressing the 61st session of the UN did denounce the practice of torture. But then, we have another senior minister, Ratnasiri Wickremanayake, who was recently quoted by the media as stating that the IGP should actually be given more powers vis-à-vis the NPC which was set up as an independent body to monitor the police force and thus a key institution in the prevention of torture. He also expressed misgivings at the setting up of the NPC by Parliament by the 17th Amendment to the Constitution and said that the IGP should be a member of the NPC (contrary to Constitutional requirements).*

7. Does legislation prohibiting torture and cruel, inhuman and degrading

treatment contain specific provisions regarding gender-based breaches of the Convention, including sexual violence? Please also describe the effective measures taken to monitor the occurrence of, and to prevent such acts, and provide data, disaggregated by the sex, age and ethnicity of the victims, and information on investigation, prosecution and punishment of the perpetrators.

Article 3

8. Please inform the Committee about the specific safeguards against non-refoulement to a State where there are substantial grounds for believing that a person would be in danger of being subjected to torture that are in place and the practice of the State party in this respect. Please provide examples of cases where the authorities did not proceed with extradition, return or expulsion because of a risk that the persons might be tortured.

9. Please describe the procedure followed by the State party in respect of the return of persons who have failed to obtain asylum abroad. Please make particular reference to suspected members of the Liberation Tigers of Tamil Eelam (LTTE).

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?

A.

- *The Establishment Code sets out the general departmental disciplinary inquiry procedure of State institutions. These procedures also apply to the Police Department. However the partiality of police dept. 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 policemen. Thus from our victims' experiences we know that these officers combine their efforts not to further justice but rather to further victimise the torture victims. That is, firstly, the inquiry takes an inordinate time to be completed. The inquiry is postponed on numerous occasions i.e. due to the absence of the inquiring officer, the prosecutor or the perpetrator. During these times, the complainants and his/her witnesses are required to 'hang around' the police stations for hours and days and this presents an ideal opportunity for the perpetrators and/or their colleagues to pressurise the victims into settling the matter, reaching some sort of compromise, or to simply scare them away. Or else the victims — who most 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 who finally informed the inquiring officer that he will no longer attend the inquiry against his perpetrators.).

- *If the victim perseveres nonetheless these inquiries take many years to complete. Eventually in the rare instances a verdict is given, neither to the victim nor the public is informed of the outcome of the inquiry. In fact during an interview conducted by the Law & Society Trust (2004) with senior police officers of the police legal range, the police were unable to give details of even one such disciplinary inquiry conducted to its completion by the Police Department or the outcome of any one of them. However the following statistics were afforded: (Also see LST Review March 2005)*

Table containing details of disciplinary inquiries pending and completed by the Police Department for 2003

Year	2003
Complaints received	156
Inquiries pending	3
Inquiries completed	11

- *Finally sometimes to give an appearance of transparency to these inquiries, several civilian observers are allowed during sessions of disciplinary inquiries e.g. retired judges. They are however not empowered to get actively involved or to raise objections. If they do*

become 'unpleasant' they are not invited again. Thus according to the victims and HR activists these are merely attempts at misleading the public.

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

A.

- To us the question is, not whether policemen remain at their posts during investigations but that they are allowed to do so, even after indicted by the Attorney General before the High Court under the CAT Act No. 22 of 1994 for committing torture.*
- In fact, even after the Supreme Court — exercising its fundamental rights jurisdiction under Chapter III of the Constitution — finds that victims have been tortured and makes order for perpetrators to pay compensation, the perpetrators continue serving in their previous posts in almost 99% of the incidents.*
- following are examples in which accused who have been indicted before the High Court under the Anti-Torture Act (No. 22 of 1994) continue to serve as policemen — sometimes in the same posts. (the following details were also afforded to the NPC recently)*

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

Article 5

12. Please provide information on domestic legislation establishing universal jurisdiction over the offence of torture.

Article 10

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?

A

- *We are aware of few such programmes mainly conducted for the purposes of obtaining promotions within the police force and maybe also to impress upon the international community.*
- *We think that instead of training on using non-coercive investigatory methods policemen seemed to have acquired training in using more innovative methods of torture as well as methods that minimise external evidence and thus minimise the chances of detection e.g. the method of piling books on victims heads and hammering with poles is known to cause severe internal head injuries but few external injuries.*
- *To our knowledge there is no monitoring and evaluation. There is also no monitoring and evaluation mentioned in the 2nd & 3rd state reports to CAT or the 4th and 5th report to HRC; nor did the interview with the police hierarchy by the Law & Society Trust reveal such.*

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.

A:

- *We are unaware of any such training programmes for medical professionals.*

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?

A.

- *There are an inadequate number of JMOs — around 30 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 [District Medical Officers (DMOs) who possess only the basic MBBS degree] 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.*
- *In our victims' experiences in numerous instances it is not police intimidation of these JMOs and DMOs that is the serious problem but the collaboration of these medical practitioners together with the police to falsify medical reports, shield the perpetrators and thus promote the practice of torture. 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.*
- *Sometimes the police do not take the tortured person to hospital but to one of their 'favourite' medical practitioners, so they can obtain a false medical report and proclaim in court that the victim is in a suitable condition to be remanded.*
- *Examples of errant medical professionals can be found in the SC case Sriyani Silva vs. Iddamalgoda (reported in 2003 (2) Sri L.R. at p 63), Ajith Navaratne Bandara's case (HRC inquiry) in which the HRC issued a warning letter subsequent to its inquiry to Dr. Sarath Siriwardena, the Panadura DMO now Director of Health at the hospital).*

Article 11

16. Please comment on the allegations by international non-governmental organisations of torture in custody, including rape and other sexual violent acts against women.

17. Please provide updated information on the number of imprisoned persons and the occupancy rate with respect to capacity for 2002, 2003 and 2004.

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?

A.

- *In our experiences there is no systematic medical examination of prisoners upon their arrival at a prison. Sometimes when a remandee complains of having being tortured, prison officials may admit such person to the prison hospital where unfortunately there are no qualified medical doctors and woefully inadequate facilities for the treatment of torture injuries.*
- *Other times, even a court order to produce the remandee before a JMO, is not complied with by the 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?

A.

- *As stated above (A5) the HRC is empowered to visit the 'police station proper'. However according to a circular issued by the IGP in 2004, the HRC was explicated prohibited from visiting the ancillary building attached to the police station (e.g. officers' mess, barracks, kitchen) where it had been reliably noted that most torture takes place*

unless they notify and obtain prior approval from the ASP in charge of the police station.

- *Reports of any such visits have not been made public.*
- *No — NGOs are not permitted to make such visits. In reality, not even lawyers are permitted to accompany their clients to the police stations or demand they be present during interrogations — unless such is agreed to, by the police.*

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.

A.

- *We are unaware of any Central Police Registry for detainees and interviews with the police hierarchy failed to reveal such a Registry either. In reality there have been instances when even the local police stations either refuse to give out such information or are oblivious to 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?

A.

- *The question seems quite amusing to us as it presumes that detained persons are actually informed of their rights. Of course the local law in accordance with the Criminal Procedure Code requires that a person be informed for the reason for his/her arrest and the time of arrest. But this provision seems to be confined to the legal statutes. In reality people are — if they are lucky — simply dragged to the police station or else are severely assaulted and tortured before being taken to the police. There has been many a victim who have been produced before court without knowing the reason for their production, then plead guilty (because they were coerced to do so by the police who threaten them they will be further tortured if they do not) for offences they did not understand and/or were not explained to them.*

- *Besides actually reading out an arrestee's rights, many police stations even objected to displaying in their premises posters printed by the HRC depicting the rights of an arrested person.*
- *There have also been instances where persons have mustered the courage to ask the police the reasons for their arrest, only to be mercilessly tortured for precisely doing so. Thereafter some have had drugs, illicit liquor or offensive weapons (bombs) planted on them, remanded and then, maliciously prosecuted thereafter.*
- *E.g. On 9 March 2004, J.P.U. Saman Jayasuriya was tortured by the Kadugannawa police to such an extent that he lost 4 front teeth, because he asked the identity of the two policemen in civilian clothes who asked for his driver's licence and insurance (AHRC — UA-31-2004). Again, on 13 May 2004, A.G. Ravindra got his ear cracked by the Katupotha police presumably because he asked the reason for his arrest (AHRC — UA-63-2004 & UP-49-2004).*

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 proceedings, both at the penal and disciplinary levels.

A.

- *Generally it may be said that criminal investigations have rarely been initiated solely on the complaint of a torture victim. Instead investigations have only begun after the incidents were reported to International HR organisations such as the AHRC and upon their constant agitation for investigation or upon the incidents being referred to the CAT Committee of the Rapporteur on torture who in turned has referred the cases to the AG or the IGP. Therefore it seriously seems that complaining to local sources is insufficient; the victim must also somehow ensure his/her case is also referred to an international organisation that can espouse the cause on his/her behalf and initiate investigations. Thus complaining to local authorities may serve little purpose.*

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?

A.

- *It is indeed difficult to think of specific measures that have been taken to fight impunity for HR violations when measures that are provided by law and existing in statute books for decades have not been utilised. E.g. the Establishment Code very specifically provides for the interdiction of public servant (including policemen) who are charged with or interdicted for a criminal offence until the completion of the court case and he/she is exonerated. However numerous are the instances in which policemen indicted before the High Court under the Anti-Torture Act continue to serve their posts. Allowing policemen indicted for torture in contradiction to existing legal provisions to remain in their posts in our view, not only seriously hinders the courts case, but also send out a clear message to the perpetrators that torture is ok.*

- *For specific examples (some of which were recently brought to the notice of the NPC) see Table in A 11 above.*

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.

A.

- *Sri Lanka ratified the Convention against torture in March 1994 and enacted domestic enabling legislation viz. Act no 22 of 1994 in November 1994. However 11 years since there have only been 2 convictions under the Act before the High Court in 2004.*

27. How many cases were brought with respect to rape or sexual assault in custody? What mechanisms have been established to counter these crimes? How many persons were convicted, and for what offences? What were the punishments meted out to such persons? The State party is requested to provide a list of such cases to the Committee if one exists.

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?

A.

- *There are 5 NPC coordinators 3 of which are retired DIGs. When these NPC coordinators receive a complaint of torture from member of the public, they refer the said complaint to a DIG of police who in turn sends the complaint to the ASP/SP in charge of the relevant police station. The ASP/SP refers the complaint to the OIC of the station at which the victim alleges to have been tortured. Meanwhile, the ASP/SP may summon the victim and his/her witnesses and record statements. These statements may then be referred to the legal range but often not unless the IGP is notified of the incident via international sources and in turn requests a report from the relevant DIG who then requests it from the ASP/SP.*

- *The public complaints procedure referred to has still not been implemented. In a recent interview, the NPC chairman explained that lack of resources, and lack of cooperation and not seeing 'eye to eye' with the incumbent IGP prevents him from establishing this complaint procedure.*

- *Also the NPC do not in anyway investigate into complaint of torture made to the NPC and instead merely refers them back for investigation to the police. The NPC chairman again cites the lack of resources and trained personnel as the excuse for this lacuna.*
- *Though the 17th amendment explicitly empowers the NPC over all promotions, transfers disciplinary action and dismissals of policemen (with the exception of the IGP) it has still to fully comprehend its powers. The NPC is under the view that it cannot interfere with the day-to-day functioning of the police and had thus delegated these powers re policemen the rank of Inspector and lower back to the IGP. Even re the disciplinary action again policemen above the rank of inspector, the chairman NPC complains that though he may instruct the police to take the necessary action, the police hierarchy do not comply with such instructions.*

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

A.

- *Despite the Human Rights Committee's recommendation in 2003, of the vitality 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 (e.g. Gerald Perera). We are also not aware of any financial or other resources being allocated for the 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.

A.

- *Under its fundamental rights jurisdiction, the Supreme Court is also empowered to order compensation to the victims of violations to be paid either by the State, individually by the perpetrators or both. However unfortunately there seems to be recent trend in which the court has been awarding amounts of compensation that are far below what would be proportionate with the gross HR violations found.*
- *In recent times the Apex Court has also shown a certain reluctance to grant leave to proceed in FR cases which may be seen as a regression from certain earlier developments that were held in a positive light e.g the strong judgments in Silva vs. Iddamalgoda (2003) and in Gerald Perera's case (2003).*
- *Another disturbing trend is certain 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.*
- *Torture victims or families of those killed in custody may seek compensation via a civil suit. In fact a few have instituted action in the District Courts against their perpetrators and the state e.g L. Madusanka vs. Iddamalgoda et.al., (MR 32765 Colombo DC) and Kusumawathi's case (MR 5130 /Kalutara DC). However proceedings before the District Courts are time consuming and costly and many victims cannot afford it.*
- *E.g in L. Madusanka vs. Iddamalgoda's (MR 32765) case, the case was instituted in 2002. Inordinate delays occurred due to the inability or willful neglect of the police in handing summons to the defendants and also due to the delay in filing answer by the Attorney General's Department. These Court delays also provide ample opportunity for the victim intimidation and also for the perpetrators to abscond. Finally it is only in November 2005 that a date for trial had been fixed.*
- *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.*

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 installments, 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?

A.

- *In accordance with the Criminal Procedure Code, the aggrieved party (the torture victim) has a right to retain a lawyer to look after his/her interests in court. However practically this right depends on the discretion of court. And in the high court (e.g. the Bindunuwewa case) the lawyers were not allowed to cross-examine or in any way to participate in the trial and to all intent and purposes had to inactively 'look after the interest of their clients'.*
- *This position is more detrimental to the victim when the police prosecute cases in the Magistrate's Court. E.g. when the perpetrators are charged with causing simple hurt. Then ironically it is the police who lead the prosecution against the defendant who is also a fellow policeman. And in the absence of the victim's legal representative being able 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?

A.

- *We are unaware of the existence of any such facilities. And interviews conducted by senior police officials of the legal range of the police dept. 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?

A.

- *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 our investigations found that many schools especially among those coming under the provincial councils — had not even received this circular. Obviously the Ministry of Education had not bothered to verify whether in fact ALL schools had received the said circular.*
- *However physical and mental torture and ill treatment is still very much a phenomenon prevalent in local schools in the country. The following are a few examples:*
- *When **Charmali, Dilshan and Ravishka** 3 six-year-olds were admitted to school this year to a Junior School, in Panadura the school principal demanded their parents pay Rs. 2000 per child as an ‘admittance fee’. When the parents refused because they could not afford it, the principal took revenge from the little ones by denying them their desks and chairs and forcing them to sit on the floor — thus utterly humiliating the children before their colleagues. Subsequent to numerous complaints to the authorities the children were given back their desks and chairs but to date no disciplinary action had been taken against this errant and cruel principal either for soliciting a bribe or for the cruelty meted out to the children.*
- ***Mahesh Madusanka** a 17-year-old A/L student of the Merril Kariyavasam School in Matugama was illegally remanded for 5 days in an adult remand prison after his school authorities complained against him and upon the police misrepresented his age to the Magistrate. Upon being released on bail, he had attempted to resume his studies, but said that his school principal prevented him from entering the school and chased him away. After his parents brought the matter to the notice of the relevant authorities, Mahesh was allowed into school, but said he 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 A/L examination, next year. Finally after much agitation the Provincial Education Authorities have finally found him a new school but they have, to date taken no action against the errant principal.*
- *Ten-year-old, **Sampath Madusanka** of the Halkandavila School in Payagala complained that his teacher thrashed him with a long stick when he failed to answer a*

question put to him. So severe and rash was this assault that it caused serious injury to his eye and forced him to be warded in hospital for 7 days. Since the incident, Sampath's mother said that there have been many attempts by the teacher, the principal as well as educational authorities to conceal the matter. Most disturbing was the fact that according to the mother, the hospital subsequently wrote to the school principal voicing its concern about several students from the same school, seeking medical treatment at the hospital for being assaulted by the school staff.

35. Please elaborate on the steps taken to improve conditions in detention centres.

36. Is it envisaged to repeal legislation that allows the imposition of corporal punishment? What steps is the Government taking to remove from its legislation penalties such as whipping, which may be considered to be in violation of the Convention?

37. Please comment on the allegations by international non-governmental organisations of the continued recruitment of child soldiers by the LTTE? Does Sri Lanka envisage prohibiting the recruitment of children into any armed forces or groups? Has any progress been made in light of the Action Plan for the demobilisation and rehabilitation of children?

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?

A.

It is our opinion that it is very unlikely that Sri Lanka will ratify the Optional Protocol 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.

39. Please inform the Committee about progress made in the active consideration of making a declaration in terms of articles 21 and 22 of the Convention. When does the State party expect to submit these declarations?

40. Does Sri Lanka envisage signing and ratifying the Rome Statute of the International Criminal Court?

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.

A.

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 victim of torture.

42. Please provide information on the legislative, administrative and other measures the Government has taken to respond to the threat of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice.

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.

A.

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