

ACAT-France, in collaboration with the Asian Legal Resource Centre (ALRC)



When arbitrariness prevails

A STUDY OF THE PHENOMENON OF TORTURE IN SRI LANKA

JUNE 2012

ACAT-France, in collaboration with the Asian Legal Resource Centre

JUNE 2012

When arbitrariness prevails

A STUDY OF THE PHENOMENON OF TORTURE IN SRI LANKA



This document was produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of ACAT-France, and under no circumstance may they be deemed to reflect the position of the European Union.

English translation: MY Translations Ltd (www.mytranslations.co.uk)

Executive summary

Three years after the conflict between Governmental forces and the Liberation Tigers of Tamil Eelam (LTTE) came to an end, ACAT-France, in collaboration with the Asian Legal Resource Centre, wanted to provide an overview of the phenomenon of torture in Sri Lanka using the testimony of those involved: victims, human rights advocates, lawyers and doctors. The findings are devastating. The use of torture and ill-treatment remains routine, daily and endemic; the impunity of authors of torture is generalised.

Torture is used by security forces across the country to, for example, extract information, obtain false confessions to close criminal cases or extort money or favours. Furthermore, the situation is worrying for those suspected of having ties with the LTTE. They are arrested and detained, sometimes in secret, for an unlimited period without access to a lawyer or their families. The use of cruel and degrading treatment is also frequent in prisons and seems to act as a form of detention management.

Although the Government continues to tell the international community that it is implementing a zero tolerance policy as regards torture, it must be acknowledged that these claims are only empty shells. There is a total lack of sincere political will to eradicate these practices. The 1994 anti-torture law has become virtual and has been replaced by an illegitimate regime which encourages confessions obtained by force, secret detention and immunity for the security forces.

Despite the thousands of cases of torture documented by NGOs and submitted to the justice system, the latter has only passed four sentences for torture since the anti-torture law was adopted 18 years ago. The judiciary has collapsed in thrall to the political authorities. All attempts to fight impunity are hampered. There are no investigations following allegations of torture. The courts no longer exercise independent judicial control in most cases and the Attorney General protects State officers accused of torture by blocking criminal cases.

Victims and witnesses are subjected to intimidation and reprisals. Some have been killed or have disappeared after being kidnapped. In February 2012, a man was kidnapped in front of his wife and children in broad daylight by men armed with assault rifles. He had complained to the Supreme Court after 28 months of arbitrary detention and torture and was supposed to testify two days later before the Court, implicating senior police officers. He has not been seen since. Against this background, many people prefer to remain silent, considering that it is dangerous and pointless to complain.

A number of local NGOs have developed initiatives to provide legal and psychological assistance to those requiring it. They are trying to overcome, in a limited way, the failings of the State which has no public health policy in terms of rehabilitation for victims of torture. However, it is difficult for local NGOs to promote human rights in the country. They are regularly denounced as “traitors” and “enemies of the State” by Government representatives because they dare to criticise the offences committed by State officers or the inaction of institutions.

The collapse of the rule of law and the denial of justice can only encourage the use of torture and a continuation of the illegal acts committed by State officers.

The Sri Lankan authorities must open their eyes at last, end torture and ill-treatment and ensure that their authors are severely punished.

Sommaire

Foreword	7
Definitions: Torture and ill-treatment	9
Background: A shattered rule of law	11
Chapter 1. A widespread practice of torture	15
1. Analysis of the practice of torture	16
2. The institutions responsible for torture and ill-treatment	21
Chapter 2. Legal protection against torture: when arbitrary and exception prevail	28
1. Virtual anti-torture law	28
2. When the exception becomes the rule: the impact of the Emergency Regulations and the Prevention of Terrorism Act	31
Chapter 3. Systemic denial of justice	35
1. The judiciary under the control of the Executive	35
2. Inefficiency of complaint and inquiry bodies	36
3. The difficulty of gathering medical proof in cases of torture	40
4. Threats and assassinations of plaintiffs	42
5. No effective justice before the High Court and the Supreme Court	43
6. Compensation and rehabilitation	45
7. Alternative remedies: international bodies	45
8. FOCUS: Civil society activism	46
Chapitre 4. Recommendations to the Sri Lankan authorities	48
Bibliography	51
About ACAT-France and ALRC	54

Foreword

Within the framework of a project funded by the European Commission called “Strengthening the investigation, information, alert and follow-up mechanisms for cases of torture and other ill-treatments”, ACAT-France is publishing this report to provide an overview of the phenomenon of torture in Sri Lanka.

The report aims to analyse the practice of torture since the end of the conflict. It does not therefore consider human rights violations and torture committed during the hostilities between the Governmental forces and the *Liberation Tigers of Tamil Eelam* (LTTE) which ended in May 2009. Significant pressure from the international community has concentrated on the need to investigate accountability for the abuse committed at the end of the war and establish a reconciliation process in the north of the country. This is absolutely indispensable to combat impunity, enable the victims of these mass crimes to obtain justice and therefore ensure sustainable peace.

Nevertheless, the evolution of the current human rights situation in Sri Lanka must also be considered. Numerous violations have been committed since the conflict ended and they continue to be perpetrated with impunity across the country.

Within the framework of this project, ACAT-France has gathered information on the use of torture in Sri Lanka since the conflict ended. In particular, a mission composed of Christine Laroque, Asia programme manager at ACAT-France and Sanjeewa Weerawickrama, Attorney-at-Law and legal adviser at Asian Legal Resource Centre (ALRC) and the Asian Human Rights Commission (AHRC), travelled to Sri Lanka in June and July 2011 to meet the various players involved in preventing and repressing torture, particularly victims of torture, their families, doctors, lawyers, psychologists, human rights activists or journalists. For security reasons relating to the organisation of the mission, ACAT chose not to inform the authorities of its aims and therefore did not request any official meetings. Further, ACAT’s representatives did not visit the north or east of the country which were subject to restricted access by the Ministry of Defence at the time.

Information gathering and the mission itself were achieved in collaboration with the ALRC and the AHRC, working in partnership with ACAT-France on this project. AHRC has been observing the human rights situation in Sri Lanka since 1986. It documented more than 1,500 cases of torture between 1998 and 2011¹.

For their own protection, the names of some sources have not been provided systematically.

1 Sri Lanka: A report on 323 cases of police torture, 24 June 2011 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-085-2011>



Sri Lanka
General Logistics Planning Map

Scale: 1:200,000
0 10 20 30 40 Kilometers

- National Capital
- Major Town
- Intermediate Town
- Small Town
- Village
- Airport
- Airfield
- Port
- Ferry Crossing
- Primary
- Secondary
- Tertiary
- Trail
- Railway
- National boundary
- First level admin boundary
- Surface Waterbody
- River

Date Created: 16 DEC 2010
Map Name: Logistics - SLA - 01-02
Coordinate System: UTM
Projection: UTM
Datum: WGS84
Scale: 1:200,000
Author: WFP
Logo: WFP
Logo: LOGISTICS CLUSTER
Email: info@logistics.org
Website: www.logistics.org
Global Logistics Cluster Support Cell, Bonn/Paris

Definitions

Torture and ill-treatment

Before analysing the phenomenon of torture itself, the definition of acts which can be classed as torture and those classed as cruel, inhuman or degrading treatment or punishment should be clearly set out. The distinction is not always easy in practice, such as for example in the case of police violence, beatings and blows received during arrest or detention. Depending on the circumstances surrounding a given act, it will be classed as torture or cruel, inhuman or degrading treatment or punishment.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

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

Using the dynamic interpretation of the act of torture retained both by international human rights organisations and the jurisprudence of the European Court of Human Rights², torture supposes the confluence of four constitutive elements.

The first rests on an act or omission causing severe physical or mental pain for the victim. The second element relates to the intentionality of the author. Mere negligence is therefore dismissed at this stage. The third element focuses on the aim of the person responsible who might act for different reasons: to obtain a confession or information, to punish, intimidate, pressurise or discriminate (this list from the Convention against Torture is only indicative). Finally, the last element supposes that the person responsible acted with public authority. However, the State can be also held responsible for acts of torture committed by individuals acting in a private capacity when it is seen to have failed in its obligations to investigate and sanction. The dividing line between torture and cruel, inhuman or degrading treatment or punishment rests both on the aim of the person responsible and the vulnerability of the victim. Further, the duration of the act, its physical and mental effect, the gender, age and state of health of the victim are also parameters to be taken into account.

In this report, use of the word torture for acts described by victims rests on a broad meaning of the word. *Torture* has been preferred to *ill-treatment* when victims' accounts refer to a struggle with law enforcement agencies when they had been arrested, handcuffed or injured and subject to beatings and insults, particularly to discriminate against them.

2. "Interpretation of torture in the light of the practice and jurisprudence of international bodies", UNVFVT, 2009. See also the International Committee of the Red Cross (ICRC) on torture and cruel, inhuman or degrading treatment or punishment inflicted on persons deprived of their liberty. Doctrine adopted by the ICRC Assembly Council on 9 June 2011, <http://www.icrc.org/fre/assets/files/review/2011/irrc-882-policy-torture-fre.pdf>

Similarly, the word *torture* has been retained for particularly serious cases – blows with sharp instruments, deprivation of medical treatment or food, repeated burns – where it was used to extort confessions from victims, punish them or humiliate them. In this report, use of the word *torture* is therefore in line with the dynamic interpretation made in international texts, in view of our increasingly low threshold of tolerance as regards certain acts which were previously classed as cruel, inhuman or degrading treatment or punishment but are now seen to be torture³.

In order to facilitate reading of the report, the term *ill-treatment* has been used as a substitute for *cruel, inhuman or degrading treatment or punishment*.

3. The *Selmouni vs. France* affaire, Application No. 25803/94, Judgment of 28 July 1999. "The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture (see the *Aksoy v. Turkey* judgment cited above, p. 2279, § 64, and the *Aydin v. Turkey* judgment cited above, pp. 1892-93, §§ 83-84 and 86). However, having regard to the fact that the Convention is a "living instrument which must be interpreted in the light of present-day conditions" (see, among other authorities, the following judgments: *Tyrer v. the United Kingdom*, 25 April 1978, Series A no. 26, p. 15, § 31; *Soering v. the United Kingdom*, cited above, p. 40, § 102; and *Loizidou v. Turkey*, 23 March 1995, Series A no. 310, p. 26, § 71), the Court considers that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."

Background

A SHATTERED RULE OF LAW

The three years since May 2009 and the end of hostilities which had lasted for nearly forty years between Governmental forces and the armed opposition group, the Liberation Tigers of Tamil Eelam (LTTE), have been marked by a weakening of the democratic institutions of the Rule of Law, attacks on civil society, incessant violations of human rights and impunity for those responsible.

Weakening of the Rule of Law and democratic institutions

In January 2010 the President of the Republic, Mahinda Rajapaksa, was re-elected for a new term. At the same time, the main opponent of the elections and former head of the army who had overseen the last military offensives against the LTTE, Sarath Fonseka, was arrested. The President immediately dissolved Parliament and the legislative elections in April 2010 saw the presidential party triumph, obtaining a two-thirds majority of Parliament.

The policy pursued by the Government has considerably weakened the separation of powers, democracy and fundamental freedoms. The running of the country is dominated by the family of the President of the Republic. Two of his brothers occupy the key posts of Defence Minister and Economic Development Minister while a third is Speaker of Parliament.

The 1978 Sri Lankan Constitution provides for the centralisation of powers within a very powerful Executive. The 18th amendment to the Constitution, adopted in September 2010 thanks to the domination of the presidential party in Parliament, further strengthened the Executive and further weakened democracy and freedoms. This constitutional change, which was heavily criticised by civil society, opened the door to President Rajapaksa to aspire to a third term in 2016 and increased his control over key institutions such as the police, the justice system, the Human Rights Commission and the Electoral Commission. The judiciary has lost all independence over the last decade and is today subject to constant political interference⁴.

End of the State of Emergency, impunity and persistent human rights violations

In August 2011 the State of Emergency was lifted after nearly forty years. It has had very little effect in practice as most of the Emergency Regulations remains in force through the provisions of the Prevention of Terrorism Act. Government officials responsible for serious human rights violations enjoy total impunity. This impunity reaches the highest level as the President himself benefits from absolute constitutional immunity⁵. This protects any measures or orders given by the Presidency from the possibility of legal proceedings, even if they constitute a violation of human rights. This constitutional provision therefore protects members of the armed forces and the police as their orders are given in the name of the Presidency⁶.

4. See Chapter 3 of the report.

5. Article 35 (1) of the Constitution sets out that : "While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

6. See Basil Fernando, Gyges' Ring the 1978 Constitution of Sri Lanka, Chapter 5 (August 2011).

Since 2009 no progress has been made in terms of justice for the crimes committed at the end of the conflict. Despite calls to set up an international investigatory commission, the Sri Lankan Government has constantly refused, denying that it committed acts of violence and claiming the success of its “humanitarian operation” within the framework of a *Zero Civilian Casualty policy*⁷. In March 2011 a report by UN experts concluded that the last phases of the conflict had caused “thousands of [civilian] deaths”, that accountability was imputable to both sides and that they might resemble “war crimes” and “crimes against humanity”⁸. Instead of examining the facts, the country’s authorities led a campaign to denigrate the report. A Sri Lankan Commission to “examine the causes of the conflict” and establish a “process of reconciliation” (the Lessons Learnt and Reconciliation Commission – LLRC) was set up by the Government to appease critics. It was immediately criticised for its lack of independence and restricted mandate.⁹ Its report, released in December 2011, was also criticised because of its conclusions which removed any responsibility from the armed forces. However, in its recommendations, the Commission proposed measures to guarantee a Rule of Law which, although elementary, are crucial in the current context. And yet members of the Government indicated in spring 2012 that only certain “achievable” recommendations would be implemented and that the Commission had exceeded its mandate. This reaction does not augur well for significant improvements towards a Rule of Law.

In this context, serious human rights violations continue in the country. Sri Lankan civil society regularly denounces extrajudicial executions, abductions, excessive use of force, arbitrary arrest and detentions, use of torture and numerous other attacks on fundamental freedoms such as the freedom of expression.

Civil society under threat

In its dealings with international institutions and NGOs, the Government consistently denies that it infringes human rights. It tirelessly upholds its view that the propaganda coming from Tamil Tigers based overseas is deliberately misinforming these organisations and seeking to manipulate them to divide the country.

Sri Lankan civil society is regularly subjected to threats and intimidation to keep it quiet. Activists who have denounced the crimes committed during the conflict and are seeking to obtain justice are particularly targeted. Although the number of cases of violence and the imprisonment of journalists has dropped in the last few years, the press is still muzzled. Journalists have left the country because of repeated death threats. Significant self-censorship reigns within the media on subjects considered to be sensitive. As regards NGOs, the official body charged with recording and monitoring them (the National Secretariat for NGOs) was placed under the supervision of the Ministry of the Defence in 2010¹⁰. All NGO activities are monitored by that unit. Details of any projects carried out or funding must be put before the Ministry.

The authorities regularly label human rights activists, independent journalists and political opponents “traitors”, “enemies of the State” and “terrorists affiliated to the LTTE”. The State’s highest representatives participate in such denigration. In January 2012 the President of the Republic declared that “though we have created a peaceful atmosphere, there are certain elements, trying to ruin this peaceful situation”.¹¹ Members of the Rajapaksa family have threatened civil society on several occasions. In July 2011 the editor of the *Sunday Leader* newspaper was threatened on the telephone by President Mahinda Rajapaksa in person following the publication of an article which set out cases of embezzlement involving the President and his son Namal Rajapakse, a Member of Parliament¹².

7. Sri Lanka Ministry of Defence, Humanitarian Operation Factual Analysis July 2006 – May 2009, July 2011. <http://slembassyusa.org/wp-content/uploads/2011/08/Sri-Lankan-Humanitarian-Operation-Factual-Analysis.pdf>

8. UN, Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka, March 2011: http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

9. For more information see under Chapter 3, II, B, 3 “The artifice of the Ad hoc Commissions of Inquiry”.

10. Website of the National Secretariat for Non-Governmental Organizations: http://www.ngosecretariat.gov.lk/web/index.php?option=com_content&view=article&id=46&Itemid=27&lang=en

11. Daily News, 20 January 2012: <http://www.dailynews.lk/2012/01/20/news20.asp>

12. Reporters sans Frontières, 2 August 2011, The President of Sri Lanka personally called the Sunday Leader to intimidate him: <http://fr.rsfo.org/sri-lanka-le-president-du-sri-lanka-02-08-2011,40731.html>

Civil society is regularly subjected to intimidation. In January 2012 a group of activists en route to Jaffna to demonstrate against the number of enforced disappearances in the north of the country were harassed and subjected to repeated intimidation by the police and the army before finally being prevented from reaching Jaffna¹³. The previous month 42 people (human rights activists and members of the opposition) were arrested and detained by the police while they were preparing to demonstrate on international Human Rights Day.

Members of civil society can also be victims of enforced disappearances or extrajudicial executions. Over the last few years, several journalists and activists have disappeared and been assassinated¹⁴. These threats continue. On 9 December 2011 two human rights activists who were preparing a press conference in Jaffna for international Human Rights Day were kidnapped¹⁵. In February 2012 a human rights activist, Herman Kumara, was followed by a group of men in a van. Fearing a kidnapping, he managed to hide and subsequently learnt that his neighbours had then been interrogated about him by the unidentified men who were looking for him. He had previously received death threats about which he had lodged a complaint. No investigation or protection measures had been implemented by the police¹⁶.

A virulent campaign to denigrate and threaten journalists and human rights activists was carried out during a session of the Human Rights Council in spring 2012 in Geneva – a session during which a resolution against Sri Lanka was adopted. Since the start of the year, various State media outlets (newspapers, websites, TV, radio) have led a campaign to slander Sri Lankan activists, naming them (sometimes using a photograph), accusing them of treachery, supporting terrorist groups and receiving money to work against the country's interests. People were encouraged to destroy their homes and barely disguised calls to murder were issued. During the UN session, the Minister of Public Relations and Public Affairs himself publicly threatened to “break the limbs” of activists in Geneva if they dared to return to Sri Lanka¹⁷.

Faced with this situation, the UN High Commissioner for Human Rights warned against any reprisals towards these individuals and denounced “an unprecedented and completely unacceptable profusion of threats, harassment and intimidation of Sri Lankan activists who went to Geneva to participate in the debate, including the 71 members of the official Sri Lankan Government delegation”¹⁸.

It is against this background that the practice of torture and abuse continues with impunity in the country.

13. Southern political activists en route to Jaffna for protest demonstration obstructed by Army and Police at Puliyankulam, 22 January 2012: <http://transcurrents.com/news-views/archives/7430>

14. The body of the human rights activist Pattani Razeek was exhumed in July 2011 nearly 18 months after his disappearance. The journalist Prageeth Eknaligoda disappeared in January 2012 during the presidential elections after publishing articles criticising the President's politics.

15. OMCT, Sri Lanka: Enforced disappearance of Messrs. Lalith Kumar Weeraraja and Kugan Muruganandan, 15 December 2011, <http://www.omct.org/human-rights-defenders/urgent-interventions/sri-lanka/2011/12/d21560>. A Minister declared in December 2011 that they had been detained, not kidnapped, without revealing their place of detention. In March 2012 the Government denied detaining them before a Court of Appeal. In April 2012 information revealed that they might have been detained in Colombo by the police.

16. ACAT-France, urgent appeal (5-11 March 2012) Sri Lanka, Death threats against a human rights activist http://www.acafrance.fr/appeL_urgent_detail.php?archive=ok&id=380

17. BBC, 23 March 2012, Sri Lanka minister Mervyn Silva threatens journalists <http://www.bbc.co.uk/news/world-asia-17491832>

18. See Office of the High Commissioner on Human Rights (OHCHR), Briefing note on Sri Lanka / human rights defenders, March 23, 2012 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12008&LangID=E>

CHAPTER 1.

A WIDESPREAD PRACTICE OF TORTURE

ACAT has observed that torture remains widespread in Sri Lanka. Three years after the hostilities ended, there has been no real decline. Use of torture and ill-treatment is routine, daily and endemic, and affects the entire country. The phenomenon of torture is ancient and commonplace within society and the country's institutions. It is particularly deeply-rooted for structural and institutional reasons.

Insurrections in the south, north and east of the country in the 1980s plunged the country into a long internal armed conflict. This led to significant militarisation, the restriction of fundamental freedoms and increased acts of violence. Torture and abuse was widespread.

However, the conflict is not the only or even the main cause of torture. The NGO Asian Human Rights Commission (AHRC) has documented more than 1,500 cases of torture in Sri Lanka since 1998¹⁹. These cases analyse the use of torture and abuse committed by the police, essentially in the south of Sri Lanka where most of the population is Sinhalese. AHRC deliberately limited its field of research in this way to demonstrate that the use of torture is generalised across the country and not restricted to a single region such as the north or the east; it is a result of the collapse of the institutions and the legal system and is in no way limited to the conflict.

The political and institutional context connected to the collapse of the Rule of Law (particularly the dissolution of an independent and efficient judicial system), the involvement, complicity or inaction of the authorities as regards human rights violations, and the impunity which prevails in the country all allow the phenomenon of torture to continue.

The Sri Lankan government's inconsistency relating to the policy and practices about the eradication of torture appears to be a result of structural contradictions. The 1978 constitution concentrates the power entirely in the hands of the Executive President and this has resulted in the weakening of all the public institutions in Sri Lanka. These institutions are subject to politicization, as they are directly under the political control of the government and deprived of their functional independence.. The parliament of Sri Lanka, having realized this structural contradiction, made an attempt to limit the impact of it by way of adopting the 17th Amendment to the Constitution. This amendment was meant to enable the possibility of recruitment, promotion disciplinary control and the dismissal of public servants only on the basis of considerations of merit. A consultative process was set up with a constitutional council, the members of which were to be selected in a manner to represent all political parties. Among the public institutions which were brought under the constitutional council's mandate were the police, the public service, the election commissioner's office, and the judiciary. In 2010 this Amendment was made in-operative by the 18th Amendment. Thus the absolute control of the Executive President over all appointments of public servants was reinforced. Due to this structural situation, the control over the public services on the basis of objective criteria has become unenforceable.

The Sri Lankan authorities deliberately close their eyes and refuse to recognise the extent of the phenomenon of torture. Declarations from officials regularly deny it. In June 2012, a police spokesman, questioned by a media about torture prevailing in police stations, denied any form of torture being used to gain confessions or information from suspects: "Generally as a practice torture never takes place in Lankan police stations [...] Torture is often misconstrued by the media and the public".²⁰

The government refuses to admit its responsibility or take steps to prevent and suppress such practices. And yet it continues to praise Sri Lanka policy on torture at the international level.

19. AHRC, Sri Lanka: A report on 323 cases of police torture, 24 June 2011 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-085-2011>

20. Daily Mirror, 4 June 2012, Police don't practice torture <http://www.dailymirror.lk/news/19132-police-dont-practice-torture-sp-rohana.html>

Thus, in November 2011 the Head of the Sri Lankan delegation assured the UN Committee Against Torture that “Sri Lanka has at no time sought to invoke any justification for torture nor has it resorted to or acquiesced in torture. As a matter of state policy and practice, the Government of Sri Lanka has been maintaining a policy of zero tolerance on torture, as is evidenced by the meaningful measures taken to curb acts of torture. Constitutional guarantee on torture elevate it as a fundamental non-derogable right not to be subjected to torture or inhuman and degrading treatment. It is an absolute right. The commitment to honor the obligations under the Convention Against Torture has continued in earnest, and the progress in many areas has been exemplary”.²¹

A number of Sri Lankan anti-torture NGOs continually denounce cases of torture. The Asia Human Rights Commission relays numerous cases. In 2011 it published a hundred or so. This was only the tip of the iceberg. Most victims remain silent because of fear, intimidation or the absence of an effective mechanism to obtain justice. Potential announcements by the authorities remain empty shells. Further, at the end of 2011 the Committee Against Torture was said to be “seriously concerned about the continued and consistent allegations of widespread use of torture [...] notwithstanding the new circumstances prevailing since the defeat of the Liberation Tigers of Tamil Eelam [...] and the State party’s public commitment to the Committee that it has a zero-tolerance policy on torture”.²²

1. Analysis of the practice of torture

Analysis of the practice of torture in Sri Lanka shows that most of the victims come from impoverished backgrounds, are often arrested at random by law enforcement agencies during investigations and are generally tortured or subjected to abuse to make them confess to a (sometimes minor) offence, to extort money from them, to make them assume responsibility for a criminal affair which has been entirely fabricated by the police or to make them admit to a supposed affiliation to the LTTE.

a. Victims

Torture can affect anyone, whatever their social standing, profession, ethnicity, age or religion. A business man, a lawyer or a soldier can find themselves victims of an act of torture. Nonetheless, the overwhelming majority of cases of torture affect people from impoverished backgrounds who are more vulnerable to the authority of an official because of their lack of political or economic influence and their inability to fight against injustice or an abuse of power.

Victims’ accounts of torture mainly come from men. Women are also victims, although probably to a lesser extent, but it is difficult to gather their accounts. They are afraid to testify and lodge a complaint, particularly if they were subjected to sexual violence because they risk becoming a victim twice over if they are also rejected by their families and society. Torture does not spare juveniles either.

The phenomenon of torture also affects Sinhalese groups as much as Tamils. Further, despite the end of the conflict an indeterminate number of Tamils has spent years in secret detention with an increased risk of being subjected to torture.²³ They were arrested during and after the conflict, suspected of being affiliated to the LTTE and were kept in detention during the years which followed. Those who were freed have testified to acts of torture.²⁴ In 2011 and 2012 Tamil Sri Lankans who had returned to their country, sometimes after having their requests for asylum dismissed, indicated that they had been tortured and subjected to ill-treatments upon their return to Sri Lanka in order to confess to presumed links with the Tamil Tigers. A Tamil returned from the United Kingdom and arrested on 29 December 2011 alleged that he was beaten and burnt with cigarettes by soldiers during his interrogation. His

21. Mohan Peiris, President’s Counsel and former Attorney General, 47th session of the UN Committee Against Torture -Introductory statement by the leader of the delegation of Sri Lanka, 8 November 2011, p2 <http://www2.ohchr.org/english/bodies/cat/docs/statements/StatSriLanka47.pdf>.

22. UN CAT, Final Observations, November 2011, §6 http://www2.ohchr.org/english/bodies/cat/docs/CAT_C_LKA_CO.3-4_fr.pdf

23. The Sri Lankan authorities indicated in February 2012 that of the 4,000 people arrested on suspicion of participation in terrorist activities, only 225 were still being detained. (See the statement by the Sri Lankan delegation to the UN Human Rights Council in February 2012: <http://www.mea.gov.lk/index.php/media/3345-statement-by-the-hon-mahinda-samarasinghe-mpminister-of-plantation-industries-and-special-envoy-of-the-president-on-human-rights-leader-of-the-sri-lanka-delegation> However, the names have not been made public, preventing verification of this data. Similarly, the Government indicated that fewer than 900 LTTE leaders were still being detained without charge or access to a lawyer in the so-called “rehabilitation” centres controlled by the army, while refusing any access to those centres or to publish the list of detainees.

24. See the UN Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka (March 2011), §214-215, 220, 228, 233-234 ; See also the UN Committee against Torture, Final Observations- Sri Lanka, CAT/C/LKA/CO/3-4, §8 (November 2011) ; Amnesty International, Sri Lanka: Briefing to the UN Committee against torture (October 2011); Freedom from Torture, Out of the Silence: Ongoing torture in Sri Lanka 2009-2011 (November 2011); HRW, Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka (February 2010)

head was allegedly immersed in kerosene. He was also apparently hung by his feet and had his head immersed in a bucket of water; pepper was allegedly applied to his head and his chest. These methods allegedly aimed to make him confess to being a member of the LTTE.²⁵ A note from the Immigration and Refugee Board of Canada corroborates this kind of information and reports ill-treatments and torture for people detained at the airport and suspected of having links with the LTTE.²⁶

b. Aims of torture

Torture can have several aims. In terms of criminal investigations, Sri Lanka inherited a system from the colonial era based on obtaining a confession or oral statement from suspects. This mechanism has been perpetuated without investigation methods being modernised.

The failure to modernize criminal investigation system is due to several reasons. The 1978 constitution has pushed the system backwards. It allows a complete political control over the investigation and therefore an increasing abuse of this process for political purposes, such as arrest and imprisonment of political opponents on fabricated charges. The two famous instances of such politicization are the cases relating to Sarath Fonseka, the former Army Commander, and J.S. Tissainayagam, a well-known journalist. However, there are a large number of such cases relating to lesser known persons.

The abuse of the criminal investigation process for political purposes is also manifest through failures to effectively investigate certain crimes that are publically perceived as politically sensitive. The cases of the murder of Lasantha Wickrematunga, the well-known editor of the Sunday Leader, the case of the disappearance of Prageeth Ekenaligoda, the large number of cases relating to violent acts directed towards journalists, human rights activists and demonstrators, have not led to any kind of successful investigations or prosecutions.

Besides this, the department of the Attorney General has also come under severe criticism of being politicized. This general problem relating to the crisis of the criminal justice system as a whole is a major cause for the failure in the prevention of torture. Besides this, a further reason, which is common to many less developed countries, is inadequate resource allocation for ensuring an effective system of criminal justice. The agencies relating to criminal justice, such as the police and the Attorney General's department are underfunded and lack the personnel and other resources necessary for the performance of their duties. The failed system relies on the use of torture and ill-treatment on detainees as more or less the sole means of dealing with crimes.

The Emergency Regulations (in force from 1971 to 2011) and the current anti-terrorism laws have encouraged confession as a form of evidence within the criminal justice system and reinforced the use of torture for that purpose. Torture today aims to extract a confession. It can also serve to punish or humiliate and reflects the arbitrary nature of the security forces. The examples below, although not exhaustive, are recurrent themes in the accounts examined by ACAT.

To extract a confession or information

In many cases, it is a question of extracting a confession or information. The story of Pathma Kumara is an illustration of this. In January 2012 the family of the 22-year-old man learnt that he had been arrested by officers from the Boossa military base and tortured to admit that he held weapons. During a search of his home during which he was present, the family noted that his face was puffy and covered with black marks and that he found it difficult to sit down. Transferred to the Polhengoda military camp, Pathma Kumara received visits from his family who noticed that his face was swollen, that he had blood in his eye and that his fingernails were blue. He cried, saying that even after admitting to possessing a weapon he continued to be tortured to admit to the existence of other weapons.²⁷

25. This case and others were described in detail in a communiqué from Human Rights Watch on 25 February 2012 "UK : Halt Deportations of Tamils to Sri Lanka": <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>; Further, a group of British lawyers specialising in the rights of foreigners revealed that a Tamil whose request for asylum had been rejected by the United Kingdom and who was sent home on 21 February 2012 was allegedly tortured upon his arrival in Sri Lanka. During his interrogation, he was allegedly violently punched by officers, see Free Movement, Tamil returnee claims torture in Sri Lanka, 27 February 2012 <http://www.freemovement.org.uk/2012/02/27/tamil-returnee-claims-torture-in-sri-lanka/>.

26. The Immigration and Refugee Board of Canada, Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport, 22 August 2011 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e. Also of note, in a judgement made in September 2011 assessing the situation in Sri Lanka and the risks as regards return, the Federal Administrative Court of Switzerland considered that political opponents, journalists, human rights activists, victims or witnesses of serious human rights violations and people sent back from Switzerland supposed to have close contacts with the LTTE were "seriously threatened by persecution". Decision of the Federal Administrative Court E-6220/2006 of 27 October 2011 (in German) <http://www.bvger.ch/publiwts/download?decisionId=9e02a071-17a2-4683-a9db-07ee43fd0dad>; press release (in French): http://www.bvger.ch/medien/medienmitteilungen/00688/index.html?lang=fr&download=NHzLpZeg7t,lnp6lONTU042l2Z6ln1ae2lZn4Z2qZpn02YUq2Z6ggJCDdXl2g2ym162epYbg2c_JjKbNoKSn6A--

27. Janasansadaya, Torture Prevalence in Sri Lanka - 2012 (February 2012): <http://www.scribd.com/doc/80655124/Torture-Prevalence-in-Sri-Lanka-2012-Part-01-By-Janasansadaya>

In the accounts of Tamil victims, often the purpose of torture is to extract an admission of a terrorist offence or a supposed affiliation to the LTTE. A lawyer representing LTTE suspects told ACAT that he considered that the use of torture against them not only aimed to obtain a confession or information but was also used to punish them and break them because of an exacerbated racism against Tamils within the security forces.

To force a victim to assume responsibility for criminal cases

Victim accounts show that arrests are mostly carried out arbitrarily. Security forces do not necessarily have material elements or evidence against them but they need to solve a criminal case or need to justify the arrest subsequently. Torture or ill-treatment can then be used during questioning to fabricate false proof or force the victim to assume responsibility for one or several criminal cases.

Ranjit Sumangala was detained for nine days in various locations and tortured so that he would admit to 21 cases that the police had not managed to solve. Arrested in December 2010 by police officers wearing civilian clothes, he was initially taken to a cemetery where he was threatened with death and beaten up. Then, with his eyes covered, Ranjit was taken to several places of detention that he was unable to identify, except for a building located inside the Mirihana police station nicknamed the “torture chamber”. During his detention, he was subjected to various repeated forms of torture: blows with feet, fists and rubber pipes, beatings, suffocation with bags full of chilli, hanging by his wrists with his hands handcuffed behind his back, etc. Despite such torture, he continued to refuse to assume criminal responsibility for the 21 cases which had not been closed by the police. When he was released, he was immediately hospitalised and then discovered that the police had accused him in several cases.²⁸

Fabricating charges is quite a common practice in Sri Lanka and has come under criticism from human rights organisations frequently. The case of Sarath Kumara Nidos is an illustration. He was arrested mistakenly and tortured for several days by the police who demanded him to give back the gold they said he had stolen. He denied the charges despite of several days of severe torture.²⁹ Meanwhile, human rights organisations filed complaints with police authorities and the National Human Rights Commission. When the police could not bring any charges against him on robbery, instead of releasing him, the police filed fabricated charges accusing him of being in possession of heroin, which thus preventing him from getting bail, as that is a non-bailable offence. It was after many months of struggle by human rights organisations that Nidos was finally release. There are many other well-known cases where police have fabricated charges on victims who complained about torture.

A policy of results and promotion

The police often fabricate cases in their entirety because of pressure related to the quota of cases to be solved or with a view to obtaining a promotion. Within this framework, the police arrest someone at random and torture him until they confess to a fictitious offence.

On 30 December 2011, in the middle of the street, police officers attacked Sisil Weerasinghe, a security officer who was waiting for his bus to go home. They wanted him to admit to attempted burglary. Taken to the police station, Sisil was beaten at length with cricket bats and a plastic pipe filled with sand. To end the torment, he agreed to sign the documents which eventually accused him of drunkenness on a public highway. The next day, he was brought before a judge and forced to plead guilty under pressure from the torturers who accompanied him.³⁰

28. Janasansadaya, Mirihana Police brutally tortured and filed fabricated cases, 8 February 2011. <http://www.janasansadaya.org/page.php?id=358&lang=en>: see the victim's account (in Sinhalese): http://www.youtube.com/watch?v=650ZclwrGvE&feature=player_embedded

29. See Asian Human Rights Commission (AHRC), Police Torture Cases, Sri Lanka 1998 -2011, case n° 246, p 295, June 2011

30. AHRC, Sri Lanka: An innocent man is illegally arrested, tortured and laid with a false charge by the Wattala Police, 19 January 2012 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-003-2012>

Arbitrary

Several victim accounts show that police officers were drunk at the time; they arrest someone arbitrarily and subject them to acts of torture or ill-treatment without any apparent motive. They then force the individual to sign documents removing their responsibility. One victim told ACAT how he had been beaten and subjected to inhuman treatment by drunk police officers. One evening in May 2011, drunk officers went to a religious procession where an altercation broke out within a crowd of spectators. Just as Suppiah Sivukumar was going home with his wife and daughter, he passed by the police officers who started to beat him violently, deciding at random that he was responsible for the incident. After being subjected to blows, beatings and humiliation all night, particularly in public, the police officers asked him to sign documents in which he had to recognise that he had been attacked by an unidentified group of people and not by the police³¹.

Punishment and reprisals

Complaining about the actions of State officials or threatening to do so can lead to reprisals. In July 2011 Jayasinghe Arachchige Chathura Manohara called the police station on several occasions when an aggressive man was standing outside his home in the middle of the night. Three police officers arrived very belatedly and Manohara complained about their slowness and inefficiency, threatening to contact the district Senior Superintendent of Police (SSP). He was beaten several times and taken to the police station. The Officer in Charge (OIC), who was not on duty that evening, arrived drunk and in civilian clothes to participate in the acts of torture. After ordering that all the windows and doors be closed and that no one should come in, he picked up a metal chair and beat Manohara for twenty minutes. He then hit his head against the table until the protective glass broke and punched him in the stomach. He ordered his men to undress the victim and asked him how he thought he could go and complain to the SSP in that condition. Manohara was then hanged for an hour by his wrists and his ankles from two wooden bars placed between the tables. When he cried out in pain at the blows, a cloth was forced into his mouth, making him suffocate. The blows continued until the morning. He was then taken before a judge in the afternoon and accused of obstructing the work of the police.

Influence of a third party

Numerous cases also show that police officers can inflict abuse on someone at the instigation of an influential citizen who wants vengeance for a personal affair. ACAT met Suranji Sampath Kumara, arrested in February 2011 in the street by two police officers in civilian clothing and a third in uniform who hit him violently with truncheons, threw him to the ground, punched him in the head and eyes and threatened to blind him. He was then dragged to the police station and put in a cell without ever being told of the reason for this violence and his detention. The wife of someone in his village, with whom he allegedly had a dispute, came later to make a complaint and Sampath was forced, under pressure from the police officers, to sign a document that he had been unable to read. The officers then asked him to recognise responsibility for the private conflict³².

c. Methods

The methods described by victims almost always refer to blows with fists, feet or using blunt instruments such as batons, metal bars, canes, cables, bottles or tubes filled with sand, truncheons or any object found in the place of torture. Accounts also attest to suffocation and forced inhalation of petrol or chilli powder using a plastic bag placed over the head and filled with these substances. A chilli paste might also be applied to the eyes or the genitals. Accounts regularly refer to being stripped naked before being subjected to various kinds of abuse. Victims can be suspended in various positions, particularly with their wrists tied to their backs. One can note the use of the so-called Darma Chakka method (the “wheel of life” in Buddhism), also called the “roast chicken” in other countries: the person has his wrists and ankles tied and is suspended from a bar placed between his arms and his legs and placed between two tables. Victims tell of being immersed in a basin filled with leeches. Some have also been subjected to simulated executions, death threats or threats to their families.

31. Interview ACAT 7 July 2011

32. Interview ACAT 4 July 2011

The accounts gathered lead us to believe that the methods used can contain a more significant degree of violence when the victim is Tamil, for example burns, cuts with sharp instruments, sexual violence, etc. People arrested on suspicion of terrorist offences can be held for many months in secret which might explain the indifference of torturers about using methods which leave marks on their victims.

Enforced disappearance as a form of torture

Since autumn 2011 there has been a revival of abductions followed by disappearances in Sri Lanka. The victims are generally taken by force in a white van by armed men. At least 52 abductions, attempted abduction, disappearances have taken place between January and April 2012³³. Most of the cases have been reported in February and March 2012, that is during the UN Human Rights Council which took place in Geneva. According to eyewitnesses and at least seven victims released, some of the abductors were army soldiers and police officers, including Criminal Investigation Division (CID) officers. Victims are taken away for questioning and are subjected to an enforced disappearance. Some victims were killed and their corpse found. Most of the abducted victims remain missing.

At the beginning of 2012 the Supreme Court examined a complaint concerning the kidnapping of a man by a group of individuals in a white van in Colombo three years before. The case revealed that those responsible were police officers in the criminal investigation division who had kept the man in detention and tortured him in an unknown location for three years³⁴.

Individuals subjected to an enforced disappearance are denied all their fundamental rights, beginning with the rights to freedom, physical integrity, security, recognition of their legal status and life. They are removed from the protection of the law and are at the mercy of their abductors; they are often tortured. International jurisprudence considers that enforced disappearance is, in itself, a form of torture.

Enforced disappearances are, sadly, an old phenomenon in Sri Lanka.³⁵ The Government does not want to ratify the International Convention for the Protection of All Persons from Enforced Disappearances and has not included this offence in its legislation. The UN Working Group on Enforced Disappearances in particular has taken up nearly 5,700 cases for which the Government has never given an explanation.

The authorities remain silent or deny all responsibility, indicating that it concerns settling of scores or criminal kidnappings for a ransom, without investigating or taking steps to end this phenomenon. When those presumed responsible are arrested, there is no investigation either or legal proceedings. In March 2012 the Mayor of Kolonnawa escaped a kidnapping a few weeks after the disappearance of his brother. Those responsible, two of whom were soldiers, were quickly released and no investigation has been opened.

Not only is there a total absence of will by the Government to solve this kind of case and to end the violations committed; there is also some involvement by the Sri Lankan security forces that the authorities cannot deny.³⁶

33. Right To Life Sri Lanka, Disappearance in Sri Lanka between January and April 2012, June 2012

34. BBC, 13 January 2012, White Van abductee 'tortured in police': http://www.bbc.co.uk/sinhala/news/story/2012/01/120113_white_van_torture.shtml

35. ACAT led a campaign to raise awareness about enforced disappearances in Sri Lanka in 2010: http://www.acatfrance.fr/campagne_sensibilisation.php?id=24

36. AHRC, 12 April 2012, Sri Lanka: Absence of political will to stop abductions: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-088-2012>

2. The institutions responsible for torture and ill-treatment

In November 2011 the UN Committee Against Torture reported that it was “concerned at reports that suggest that torture and ill-treatment perpetrated by State actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011”³⁷.

ACAT can confirm this observation. The information it has collected shows that the police, the army and the prison administration are responsible for torture and ill-treatment.

a. Police

Most of the testimonies analysed by ACAT come from people tortured by the police, demonstrating the institution’s endemic use of the practice.

a.1. An institution responsible for numerous violations

a.1.1. Police torture: commonplace and generalised across the country

During interviews with NGOs, some police officers have recognised that it is commonplace to use cruel and inhuman treatment, even acts of torture. They consider that these methods are necessary when dealing with criminals and delinquents, believing that they will not confess if they are not subjected to such treatment. Police officers do not always know where the limit lies between legitimate and proportionate use of force and cruel, inhuman or degrading treatment. A report published by Transparency International – Sri Lanka in 2006 shared this analysis. It revealed that at that time 67.5% of the police officers questioned considered that “it [was] permissible to violate human rights to some extent in order to prosecute a criminal who [was] a danger to society”³⁸. Among the factors contributing to the use of torture, the report pointed in particular to insufficient training in methods of investigation, questioning and maintaining order.

These criticisms about the gaps in police training are still relevant in 2012. To overcome such deficiencies, various independent institutions propose training in human rights and international humanitarian law for the police, the army and members of the prison administration³⁹. Sessions generally include courses on prohibiting and preventing torture. Police training can include a course on investigation and questioning techniques. ACAT has also become aware of a draft human rights manual prepared by senior police officers which would serve to raise awareness and train members of these institutions. When questioned about the impact of this kind of training and such a manual on preventing torture, several individuals in charge of these programmes told ACAT that the results were very mixed, mainly because of a lack of real political will at the highest level to end such practices.

The accounts of torture collected and analysed by ACAT show that the phenomenon is generalised in all districts and most police stations. Victims’ accounts show that rooms or sheds within police stations are sometimes reserved for torture sessions. For example, an old building at the Mirihana police station in the district of Colombo is considered to be a “torture chamber” by victims.

Accounts also underline the responsibility of several specialised police units such as the Criminal Investigation Division (CID), the Terrorist Investigation Division (TID) and the Special Task Force (STF), a paramilitary group of the Police Department which regularly carries out joint anti-terrorist operations with the army. The fourth floor of CID headquarters in Colombo in particular has the sad reputation as a place of torture. When recounting his interrogation, a person who had been detained there described how a sub-inspector in the division had struck him with his feet, punched him in the head, put a plank of wood on his head and knocked in nails, and threatened him with Dharma Chakra⁴⁰.

37. UN Committee Against Torture, Concluding Observations- Sri Lanka, CAT/C/LKA/CO/3-4, §6 (November 2011).

38. Transparency International-Sri Lanka, In pursuit of “absolute integrity”: identifying causes for police corruption, p 83 (2006)<http://www.tisrilanka.org/pub/pb/pdf/TISL%20Police%20Project%20-%20English.pdf>

39. See in particular the official list of human rights training received by the police and the army over the last few years as published by the Sri Lankan Government in its answers to the Committee Against Torture in 2011: Government of Sri Lanka, Responses to List of Issues to be considered during the examination of Sri Lanka’s 3rd and 4th combined periodic reports on the Convention against Torture, §73-77, p 26-30.

40. AHRC, Sri Lanka: Criminal Investigation Department officers torture a man then attempt to kill him, 17 September 2010 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-143-2010/>

a.1.2. Deaths in police custody

There are no official statistics available concerning deaths in police custody. The authorities allege that between 2006 and 2011 there were only two deaths and these were suicides⁴¹. However, according to information revealed by the media and NGOs, since 2010 several dozen people have died in suspicious circumstances. The official police version repeatedly includes the same elements: death is disguised as a suicide, an accident or an act of self-defence. ACAT has been made aware of several cases whose circumstances suggest extrajudicial execution.

For example, the police spoke of suicide following the death of a man arrested in good health who died after 24 hours in police custody in August 2010. The post mortem revealed numerous injuries related to blows⁴². A few weeks later another man was allegedly found in his cell with deep lacerations to his stomach after three days in police custody. After being transferred to hospital, he succumbed to his injuries. The police indicated that it was suicide. However, no information about a serious independent investigation into these cases and their conclusion was released⁴³.

Again according to the police's official version, Asaka Botheju, who died in August 2011, allegedly fell into the Kalaniya River and drowned when he took the police to the place where he had allegedly hidden a weapon. The police provided no explanation as to how this former navy sailor and member of the Special Boat Service could have drowned in front of the police officers' eyes or what attempts had been made to save him. The authorities released no information about the conclusions of a potential autopsy or the steps taken against the police officers in charge of his custody⁴⁴. Similarly, in November 2011 a young man was arrested by the Jaffna police and found dead a few hours later. The police indicated that he had tried to run away and had fallen into a canal where he drowned. An autopsy was carried out on his body at hospital which revealed forty marks from blows and injuries on his body. The family, which recovered the body for the funeral, thinks that he was tortured during police custody⁴⁵.

In July 2011 police officers attached to the Special Task Force in Monaragala announced that a man had been killed in legitimate self-defence. According to the official version, he allegedly agreed to take officers to a cache of weapons. Once there, an armed confrontation allegedly broke out and the Special Task Force officers were allegedly forced to kill the suspect.⁴⁶

The series of suspicious deaths at the hands of the police, the lack of investigations or public conclusions and the lack of any disciplinary sanctions or legal proceedings against the officers in charge of police custody for these cases all suggest that these people could have been tortured or extra judicially executed. The prevailing impunity means that these scenarios may be continually repeated.

a.1.3. Use of excessive force

Several peaceful demonstrations were repressed by the police using excessive force in 2011 and 2012. Live rounds against demonstrators have increased and caused death and serious injury.

In May 2011 approximately 600 people working in the Free Trade Zone (FTZ) were peacefully demonstrating in Katunayake against reform of their pension scheme. Hundreds of police officers were deployed in the Zone and tried to disperse the crowd by firing lacrymogenic gases without warning and striking the demonstrators. Police officers then opened fire using live bullets when the crowd had already dispersed. The police then entered the Free Trade Zone by force and opened fire on the workers who had not been part of the demonstration. Many people were arrested, placed in police custody and deprived of medical treatment despite sometimes severe injuries. One demonstrator died from his injuries from bullet wounds because he was deprived of urgent medical treatment. More than 200 workers were allegedly seriously injured during this event. Sri Lankan NGOs have denounced the excessive use of force, arbitrary detention and ill-treatment.

In February 2012 another demonstrator was killed by bullets from the Special Task Force when a large number of police officers, soldiers and Special Task Force officers were deployed to repress a demonstration of fishermen in Chilaw who were protesting against the increased price of petrol.

The use of live rounds by the police has been observed in other incidents where the use of force was disproportional.

41. Government of Sri Lanka, Responses to List of Issues to be considered during the examination of Sri Lanka's 3rd and 4th combined periodic reports on the Convention against Torture, §95, p 38

42. AHRC, Sri Lanka: A man is killed after being tortured by the Kiribathgoda police, 20 September 20, 2010. <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-144-2010>

43. Divaina and Lankadeepa (Sinhala Language Newspapers) – 27 September 2010

44. AHRC, Sri Lanka: Former Navy sailor was found drowned under police custody, 16 September 2011. <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-169-2011>

45. AHRC, Sri Lanka: Body of a custodial death victim was dumped in a river by Chunnakan police , 13 December 2011 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-246-2011>

46. Sri Lanka Guardian, 21 September 2011, Extrajudicial killing; impunity; rule of law. <http://www.srilankaguardian.org/2011/09/extrajudicial-killing-impunity-rule-of.html>

tionate. In February 2012, after the death of the fisherman in Chilaw, the Fisheries Minister, seeking to defend the police officers, told the BBC that shooting at demonstrators was common practice within the police force⁴⁷. This statement, and the repetition of such events, has raised questions, particularly about whether the right to kill had become an official instruction for police officers⁴⁸.

Following the media coverage of the repression committed in the Free Trade Zone, the Inspector General of Police resigned in June 2011 which was unprecedented⁴⁹. The action of the police officers involved in the operation was also criticised. And yet, his gesture and statement seem only to have served as a facade to appease tensions. No significant steps were taken subsequently. Accountability in the chain of command in these various police operations has not been established and no hierarchical superior has been troubled by the justice system or a disciplinary procedure.

a.2. Reasons for problems

a.2.1. Structural difficulties

A criminal investigation system under political control

A structural difficulty arises from the political control over the criminal investigation system due to constitutional reasons. As it is described in this report, the key investigation and prosecution mechanisms are placed under the direct control of the Executive President leading to hindrances or politicization of criminal cases.⁵⁰

Attachment to the Ministry of Defence

The Sri Lankan Police Department is a national, centralised institution managed by the Inspector General of Police. It employs approximately 89,000 officers in the country's nine provinces. The Police Department is attached to the Ministry of Defence. Since 2005 the Defence Minister has been none other than Gotabaya Rajapaksa, the President of the Republic's brother. Decades of conflict and the Government's political strategy have progressively militarised the police. The Emergency Regulations, which were in force until August 2011, gave the Police Department military prerogatives. The Lessons Learnt and Reconciliation Commission (LLRC), set up by the Government after the war ended in 2009 and which released its conclusions in December 2011, recommended placing the institution under the responsibility of a civil authority⁵¹.

Recruitment and resources

The criteria for recruitment for posts below the rank of Assistant Superintendent of Police, a senior rank, have been criticised on several occasions, judged to be insufficient and unsuitable for choosing the appropriate skills and profiles. Moreover, there is a lack of recruitment of Tamil or Tamil-speaking police officers, the police force being mainly composed of Sinhalese officers. There is also an insufficient number of interpreters even though documents are generally drawn up in Sinhalese by the police. Tamils who lodge a complaint or who are accused of an offence are often unable to understand and check the content of the document. The Government has organised the recruitment of Tamil police officers, mainly men, but they seem confined to junior tasks.

Further, police officers complain that they lack resources and do not have modern means to carry out criminal investigations (such as equipment for DNA testing, computers, computerised data and complaints, video equipment, vehicles, etc.). Moreover, they need to receive the appropriate technical training.

Corruption

There is very strong suspicion of the police because of daily abuse but also because of the institution's deep-rooted corruption. The police are exploited by the political and business worlds. Police officers are regularly called upon to resolve personal conflicts or stifle cases and they fear being transferred or having their careers blocked if they do not follow-up such requests. They also fear reprisals if they investigate or accuse a criminal suspect "protected" by influential individuals.

47. AHRC, Sri Lanka: Is shooting at peaceful demonstrators a government policy , 22 February 2012. <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-034-2012/>

48. Sunday Times, Focus on Rights by Kishali Pinto Jayawardene, 19 February 2012, A government not bound by the law, <http://www.sundaytimes.lk/120219/Columns/focus.html>

49. Sri Lanka TV, IGP Mahinda Balasuriya retires expressing resentment over the police action in the Katunayake clash, 1 June 2011 <http://www.youtube.com/watch?v=5EBIB1dqf4o>

50. See introduction of Chapter 1; see B Aims of torture (under Chapter 1 I.); see Chapter 3. See also Asian Human Rights Commission, Sri Lanka Chapter entitled "constitutional entrenched impunity" in The State of Human Rights in Eleven Asian Nations 2010, p. 359, <http://www.humanrights.asia/resources/books/AHRC-PUB-001-2011/2010TheStateOfHRInElevenAsianNations.pdf>

51. Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, §8.193 (p302) & 9.214 (p374) (November 2011). The Commission's report notes that "the Police Department is a civilian institution which is entrusted with the maintenance of law and order. Therefore, it is desirable that the Police Department be de-linked from the institutions dealing with the armed forces which are responsible for the security of the State".

The police are also responsible for numerous abuses of power and extortion of money. An individual can be arrested and accused of a real or fictional offence by a police officer, the aim being simply to extract a bribe. Citizens judge the institution to be inefficient as regards maintaining order and they prefer to resolve their disputes themselves rather than turning to police officers.

Ineffectiveness of the existing remedies relating to violations of torture

There are significant deficiencies in the law, the legal procedures as well as in the complaint, investigation and litigation process. They contribute to the ineffectiveness of prevention and repression of torture and explain how the torture practice by the police continues unpunished. These deficiencies are described in detail in Chapter 2 and Chapter 3, but the following matters can be mentioned here: absence of a credible and functional complaint and investigation mechanisms into torture; change of policy relating to torture and ill-treatment at the Attorney General's department; defects in judicial intervention for the protection of victims of torture; absence of a law relating to compensation and a law relating to rehabilitation.

a.2.1. The loss of command responsibility and the absence of an independent body to monitor the police

Absence of command responsibility and supervision

Command responsibility is seriously lacking. The notion has been lost and therefore has considerably affected the system of hierarchical supervision. It is the duty of commanders and superiors to take the necessary steps to prevent their subordinates from using torture or committing human rights violations. They also have the duty to punish those who do so. Although the Supreme Court developed jurisprudence in this direction about ten years ago, Sri Lankan law has never incorporated this important principle in terms of criminal responsibility. Current judicial practice shows that only junior police officers who are directly responsible for torture or extrajudicial execution can be prosecuted. Senior police officers are not troubled. Even when senior officers have given the orders or are present at torture sessions, investigations and legal proceedings never focus on them.

Such an absence of criminal responsibility has destroyed the meaning of hierarchical supervision, leading not only to a serious deterioration of police professionalism and efficiency but also to tolerance of, or even encouragement to use, illegal methods such as torture. Disciplinary procedures and sanctions exist but they are not implemented, except in rare cases when the case becomes a public scandal.

Lack of an independent body to monitor the police

In this context, an independent body to monitor the police is even more essential. A National Police Commission was set up in 2002 after the adoption of the 17th amendment to the Constitution. This Commission, charged particularly with transfers, promotions and disciplinary measures, was also responsible for inquiries into complaints against police officers. It had raised hopes but quickly fell victim to political restrictions and influence and was unable to function independently or efficiently. It became inactive in 2009 after its members' mandates were not renewed. In February 2012 the Government decided to reactivate the Commission following the recommendations of the Lessons Learnt and Reconciliation Commission. The President directly appointed its seven members⁵². One of the new commissioners quickly criticised the Commission's restricted mandate which no longer gave it the power to monitor appointments, promotions, transfers and disciplinary procedures⁵³. It has kept the power to investigate complaints made against police officers. However, its lack of independence is now prejudicial and risks damaging its work.

A Human Rights Division does exist within the Police Department. In particular, it aims to "to diminish human rights violations committed by Police officers" and "register information about the human rights cases filed against Police Officers and the Human right contraventions of Police officers"⁵⁴. However, not only does this unit have no independence, it seems ineffective.

52. In conformity with the 18th amendment to the Constitution, adopted in September 2010, which allows the President of the Republic to control several important institutions by directly and discretionally appointing the key posts.

53. Sri Lanka Mirror, 11 March 2012, National Police Commission, a big hoax, says its member: <http://english.srilankamirror.com/2012/03/national-police-commission-a-big-hoax-says-its-member/>

54. See the Police Department website: <http://www.police.lk/index.php/human-rights>

b. Armed Forces

Torture and human rights violations committed by the army

The overwhelming nature of the acts of violence attributed to the army during the war has certainly disappeared but human rights violations have continued for more than three years. The prevailing impunity for these crimes and past violence is causing ever greater tension to rise between the army and the local population in the north of the country. Victim accounts attribute responsibility for acts of torture to members of the armed forces. Some indicate in particular that they were interrogated in army camps and tortured to confess to supposed membership of the LTTE, sometimes jointly by soldiers and officers from the Terrorist Investigation Division or the Criminal Investigation Division.

International NGOs have reported secret detention centres run by military secret services and paramilitary groups used to torture and execute.⁵⁵

The army is also accused of being guilty of a number of violations, essentially in the north of the country, particularly enforced disappearances, rape and the sexual and physical assault of demonstrators.

In August 2011 a hundred people were arbitrarily arrested and violently beaten by soldiers in the Jaffna region. In early 2011 a series of unresolved assaults had been committed at night in the rural or residential areas which are barely monitored across the region. Fear had spread among the population. Against this background, in August 2011 five prowlers were observed in the village of Navanthurai near Jaffna and the locals sought to apprehend them. The five men hid in the Navanthurai military camp. The army refused to return them to the villagers who had gathered at the camp. The five men, dressed in military uniform, reappeared a little later in an army jeep which left the camp. The villagers then threw stones at the car, venting their anger at the protection the army had given the men. Shots were fired and the crowd dispersed into the night.

At about one o'clock in the morning, the army organised an operation of reprisals in the village. According to witnesses, twelve army officers entered each house, beat the residents and dragged the men outside. The latter were violently beaten with metal rods and rifles. Soldiers fired shots at several houses and destroyed doors, windows and furniture. They also allegedly beat the women and children during the operation and stole valuable items such as jewellery and telephones. A hundred men were arrested and taken to the military camp from where they were transferred to Jaffna police headquarters in the early hours of the morning.

Brought before the Court a few hours later, they were covered with bruises and injuries. The Magistrate ordered that they be admitted to hospital and that medical certificates be produced for the Court. 61 petitions were presented to the Supreme Court for violation of the fundamental rights guaranteed by the Constitution (Fundamental Rights petitions).

Reinforced militarisation

Decades of conflict have blurred the distinction between the respective functions and powers of the army and the police. The Emergency Regulations gave the army competences usually attributed to the police, particularly in terms of search warrants, seizure, arrest and detention. Although the conflict ended three years ago, the Government continues to reinforce the confusion and to militarise tasks normally attributed to a civilian force.

The Defence Minister, Gotabaya Rajapaksa, indicated early 2012 that "even when it comes to the upholding of law and order, the role of the military has been drastically curtailed with the lifting of the emergency regulations. Day to day law and order activities have been completely entrusted to the Police. The claim that the military is involved in every aspect of day-to-day life in the current context is a gross misrepresentation of reality"⁵⁶.

And yet, when the State of Emergency was lifted in August 2011, instead of reducing military staff numbers in the north and restoring civilian administration, a decree was adopted by the President to increase the army's powers, particularly in the administration of civilian areas. This has led to the attribution of various responsibilities in economic and land management of the province. It is progressively intervening in commercial and agricultural activities.

Soldiers have also kept the mission to maintain public order. The September 2011 decree even extended this power to the 22 districts in the country. The Government justifies this military presence as a security necessity.

55. Amnesty International, Sri Lanka: Briefing to the UN Committee against torture (October 2011), p 24-25

56. Speech by the Minister of Defence at a public conference, 11 January 2012, Future challenges of national security in Sri Lanka http://www.defence.lk/new.asp?fname=20120111_01

In the north, fear and anger are spreading among the local population. The perception of this military presence is progressively seen as a military occupation whose priorities in terms of reconstruction and strategy post-conflict do not reflect the needs and concerns of the Tamil majority.

c. Prisons

ACAT was unable to visit places of detention during its mission but it gathered accounts from recently released detainees, a former member of the prison administration, lawyers and members of human rights organisations who have access to prisons.

It appears that ill-treatment remains frequent in prison and that conditions of detention are worrying. Sri Lanka was criticised in 2011 by the UN Committee Against Torture particularly as regards the “deplorable levels of overcrowding and the poor conditions”⁵⁷. According to a former prison Commissioner “violations and degrading treatment are committed daily in every prison. Physical assaults and forms of intimidation are the methods used to run Sri Lankan prisons”⁵⁸. For example, in August 2011 seven Tamil detainees, who had been on remand for several years, were violently beaten at Bogambora Prison and threatened with death. They had to be admitted to the prison hospital to be treated because of their injuries⁵⁹.

Conditions of detention

Prison overcrowding is a persistent problem. The prison population allegedly numbers 31,000 with an official capacity of 11,000 places⁶⁰. Welikada Prison in Colombo, the largest in the country, allegedly houses 4,500 detainees although its official capacity is 2,000 places.⁶¹ Accounts gathered from the Prison’s Female Ward show that detainees even sleep on the floor, sometimes with their legs up against the wall because of a lack of space in the cell. One detainee, who was released in 2011, indicated that she sometimes had to sleep with 16 other women in a surface area of 9m². Not all detainees have something to lie on. They can be kept in their cells in an extremely small space for 12 to 14 consecutive hours during the night.

There are important sanitation gaps. Confinement means that illness spreads very rapidly. Several prisons do not have a doctor among their staff and medical inspections are sporadic or inexistent. The medicines available are often insufficient and medical treatment is not necessarily appropriate.

An insufficient amount of water means that detainees cannot wash every day. The bathrooms are generally outside the cells, are insufficient in number (for example, 4 toilets for 250 detainees on the Female Ward of Welikada Prison) and in a state of significant disrepair. Detainees sometimes have to use buckets instead of toilets during the night. The 19th century buildings are unsuitable and in a poor state of repair. There are no renovation or extension projects planned. The ceilings of cells are sometimes screened with wire and do not protect detainees in the event of heavy rain. The cells are regularly infested with rats and cockroaches. Further, poisonous snakes sometimes enter the cells and detainees are bitten.

According to official statistics, 75% of the prison population are detainees on remand⁶². Most of them are awaiting trial and could benefit from a release on bail. However, as they are destitute they are unable to fund the bail required. The slow speed of legal procedures and the failure to implement the basic principles of the Bail Act explain why people can still be kept in pre-trial detention for many years. They are sometimes detained for minor offences whose sentence proves to be far less than the number of years spent on remand. Convicted and remand prisoners are not always separated because of a lack of space in the prisons.

57. Committee Against Torture, Concluding Observations- Sri Lanka, CAT/C/LKA/CO/3-4, §14 (November 2011)

58. H. Perera, Study on women pre-trial detainees in Sri Lanka, August 2011, p 47. <http://www.scribd.com/doc/66525603/JusticeMaker-2010-Study-on-Women-Pre-trial-Detainees-in-Sri-Lanka>

59. Sri Lanka Guardian, 6 August 2011, seven Tamil detainees hospitalized after severe torture by the prison officials inside Bogambora remand Prison <http://www.srilankaguardian.org/2011/08/seven-tamil-detainees-hospitalised.html>

60. Source: IPS, 20 July 2011 <http://ipsnews.net/news.asp?idnews=56551>. It is difficult to find reliable figures. Official statistics and statements from representatives at the Ministry of Prisons do not necessarily present the same figures.

61. Source : statement from a representative from the Ministry of Prisons to the Daily Mirror, Excess inmates at Welikada prison, 4 July 2011

62. Prison Department, annual admissions of convicted and remand prisoners, 2002-2010. <http://www.prisons.gov.lk/Statistics/Statics/Title3/313.pdf> See also Chapter 2, B, Guarantees against arbitrary detention

Riots in prisons

A number of riots have broken out in prisons to protest against the conditions of detention and inhuman treatment. According to the press, in January 2011 about fifty detainees at Anuradhapura Prison went on hunger strike, accusing the prison authorities of ill-treatment. In reprisals, the latter shot at the prisoners, injuring at least twenty people and killing up to four detainees according to witness statements⁶³. In January 2012 another riot in a prison in Colombo was also repressed by force, causing injuries to thirty or so detainees. The detainees were protesting about overcrowding and the conditions of their detention. Following that event, the Head of the Prison Department publically declared that the treatment of prisoners were unacceptable⁶⁴. Nevertheless, no real steps were taken by the Sri Lankan authorities to improve the situation subsequently. Political leaders regularly recognise the problem of material conditions in prisons but, despite sporadic announcements, no reforms have been implemented.

Absence of effective bodies to monitor conditions of detention

A number of bodies can access prisons to inspect conditions of detention and monitor respect for detainees' rights but none are effective and independent in terms of preventing torture.

In the past, the Board of Prison Visitors was appointed by the Justice Minister and could visit any prison at any time. It inspected material conditions and submitted reports to the competent authorities. It could also gather detainees' complaints. It has not existed in practice for a decade. Its members have not been appointed since 2003. Magistrates and MPs can also make monthly visits to prisons for an inspection⁶⁵. However, it is very rare to see them exercise this power in practice. A magistrate has the duty to regularly submit statistical data on his activities, without having to indicate the number of visits carried out in places of detention in his jurisdiction.

Finally, the mandate of the National Human Rights Commission authorises it to make periodic visits to police stations, centres of detention and prisons in order to inspect conditions of detention and make recommendations to remedy problems. However, the Commission is not able to carry out independent and effective monitoring. Practice shows that it is regularly required to have prior authorisation which removes any element of surprise and the purpose of an unscheduled visit. It does not always have free and total access inside a place of detention during the periodic visits⁶⁶, a restriction which is, in theory, an offence punishable by a year in prison⁶⁷ but for which no legal proceedings have ever been opened.

It cannot visit unofficial places of detention or those placed under military jurisdiction, *de facto* depriving it over the last years from accessing the thousands of people detained in connection with the conflict. In theory, under the Prevention of Terrorism Law, any arrest, detention or transfer of a detainee must be notified to the Human Rights Commission within 48 hours, setting out the place of detention for that person. However, this provision is not applied. The Commission's powers and capabilities of inspection are weak. During public consultations with civil society, its members regularly complained that they lacked the human and financial resources to carry out their work properly. The law defining the Commission's mandate sets out that "any person authorized by the Commission in writing may enter at any time, any place of detention, police station, prison or any other place in which any person is detained by a judicial order or otherwise, and make such examinations therein or make such inquiries from any person found therein, as may be necessary to ascertain the condition of detention of the persons detained therein."⁶⁸ Sri Lankan NGOs claim that they could carry out such monitoring but the Commission has never delegated this visiting power.

According to the Sri Lankan Government, the International Committee of the Red Cross also carries out visits to places of detention. The UN Committee Against Torture, however, has claimed that the ICRC does not have access to some places, particularly those where detainees are suspected of belonging to the LTTE.⁶⁹

63. BBC, 24 January 2011, 'Inmates killed' in Sri Lanka prison shooting, <http://www.bbc.co.uk/news/world-south-asia-12268829>

64. BBC 24 January 2012, Sri Lanka jail riot 'injures 31' in Colombo, <http://www.bbc.co.uk/news/world-south-asia-16699119>

65. In accordance with the **Release of Remand Prisoners Act No 8 of 1991 and Article 39 of the Prisons Ordinance**

66. Human Rights Council, follow-up to the recommendations made by the special rapporteur (A/HRC/7/3/Add.6) 26 February 2010, p 208-209; See also Kishali Pinto-Jayawardena, *The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka*. (Rehabilitation and Research Centre for Torture Victims, April 2009), p 196

67. Article 28(3) of the Human Rights Commission of Sri Lanka Act No 21, 1996

68. Article 28 (2) of the Human Rights Commission of Sri Lanka Act No 21, 1996. <http://hrcs.lk/PFF/HRC%20Act.pdf>

69. UN Committee Against Torture, Concluding Observations- Sri Lanka, CAT/C/LKA/CO/3-4 (November 2011) §16

CHAPTER 2.

LEGAL PROTECTION AGAINST TORTURE: WHEN ARBITRARY AND EXCEPTION PREVAIL

The Sri Lankan authorities regularly highlight the legal provisions of Sri Lankan law to show the international community that torture is prohibited. However, they respond with silence to the lack of application of these provisions and the existence of Emergency Regulations and the anti-terrorism law which encourage the use of torture and suspend most of the fundamental guarantees against torture.

1. Virtual anti-torture law

In 1994 Sri Lanka ratified the UN Convention Against Torture and implemented it in its internal legislation through Act No. 22 on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT Act). Sri Lankan law expressly prohibits torture. It defines the crime of torture and contains numerous provisions to protect an individual from torture and ill-treatment. However, the legal guarantees against torture are violated on a daily basis.

a. Definition of crimes

The prohibition of torture is a non-derogable constitutional law. The 1978 Constitution expressly prohibits torture in Article 11 (“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”). The CAT Act defines torture as a specific crime in Article 12: any act which causes severe physical or mental pain to a person. The act must be committed to obtain information or a confession, to punish a person for an act that he or a third party has committed or is suspected of having committed, to intimidate him or put pressure on a third party, or for any other reason based on a form of discrimination. The act must be inflicted by a public official or any other person acting in an official capacity or at the instigation or express or tacit consent of a public official.

The definition of the International Convention is reflected therein, with the exception of the notion of “severe suffering” which is omitted⁷⁰. Sri Lankan NGOs assert that recent jurisprudence from the Supreme Court and judgements made by the High Court do not refer to psychological torture. Sri Lanka was criticised by the United Nations on several occasions on this point.⁷¹

Legislation provides for a sentence of seven to ten years in prison and a fine of 10,000 to 50,000 rupees (approximately €60 to €300) for the crime of torture.

Cruel, inhuman and degrading treatment is not mentioned in the CAT Act. One must refer to the Criminal Code which prohibits certain acts which could constitute ill-treatment.

Extracting a confession by force is prohibited. Articles 321 and 322 provide for a sentence of up to ten years in prison for a deliberate attack on a person’s integrity in order to extract a confession or information leading to the discovery of an offence. It is interesting to note that Article 321 is illustrated by examples describing cases of torture by the police: “(a) A, a police officer, tortures Z in order to encourage him to confess that he has com-

70. Sri Lanka, Combined third and fourth periodic reports of States parties due in 2007 Sri Lanka”, (CAT/C/LKA/3-4), submitted to the Committee Against Torture, on 17 August 2009, para. 15, p. 7;

71. The UN Committee Against Torture recommended amending the definition of the crime of torture to include the notion of severe suffering (UN Committee Against Torture, Concluding Observations, Sri Lanka (2011), CAT/C/LKA/CO/3-4, §25). The Special Rapporteur for torture indicated that the definition of Article 12 conformed with the Convention, except for the omission of the word “suffering” (Report of the Special Rapporteur for torture, Manfred Nowak, Mission to Sri Lanka, 1-8 October 2007, A/HRC/7/3/Add.6, 26 February 2008, §25). The UN Human Rights Committee considered that “the restrictive definition of torture [...] continues to raise problems in the light of article 7 of the Covenant.” (UN Human Rights Committee, Conclusions on Sri Lanka (2003), CCPR/CO/79/LKA, §9).

mitted a crime. A is guilty of an offence in accordance with this provision". Rape in detention and gang rape are aggravated forms of rape and are punishable by ten to twenty years in prison and a fine (Article 364). Homicide is punishable by death (Article 293-297)⁷².

The crime of enforced disappearance, considered to be a form of torture, is not provided for in Sri Lankan legislation. Sri Lanka has not signed the International Convention for the Protection of All Persons from Enforced Disappearance.

b. Protection against torture

Guarantees against arbitrary detention

The Constitution and ordinary law provide for several guarantees upon arrest, questioning and detention which can prevent potential use of torture. The Constitution and the Code of Criminal Procedure provide that any person must be informed of the reason for his/her arrest. According to a Presidential Directive from 2006, the person responsible for an arrest must present a written document to a relative of the person arrested which includes the date and place of the arrest, the name and rank of the person responsible for the arrest and the place of detention. The person arrested must be able to communicate with his family. If it involves a woman or a child, the arrest must be carried out by the Children and Women Bureau of the army or the police or at least in the presence of a female officer. The woman or child arrested can be accompanied by a person of their choice during questioning. However, this Directive does not carry the force of law and is not binding⁷³.

Unfortunately, all these rights are constantly flouted. The reason for an arrest is rarely given. Police officers in charge of an arrest do not provide their identity and, in many cases, are dressed in civilian clothing at the time of questioning. They do not necessarily inform the family.

Mr Sampath Kumara told ACAT about his arrest on 1 February 2011, explaining that two police officers in civilian clothing and an unidentified man wearing police uniform had attacked him in the street, beaten him up and dragged him to the police station where he had been shut in a cell without knowing why. The police officers did not inform him of the reason for his arrest and gave him no written documents in which it was notified. The following day, Mr Sampath Kumara was forced to sign a document whose content he had not seen and he was released without understanding what he had done wrong.

The Officers in Charge are obliged to inform the court of any arrest made without an arrest warrant⁷⁴. Custody may not exceed 24 hours if the suspect is arrested without an arrest warrant⁷⁵ and all detained persons must be brought before a magistrate without delay⁷⁶. At the time of the publication of this report, a new bill was to be introduced to parliament to allow the police to detain a suspect until 48 hours, regarding some offences including murder, robbery or rape, prior to producing suspects before a magistrate.⁷⁷ Given the frequency of the use of torture at police stations and the frequency of custodial deaths, this increase of custodial period is likely to increase the incidents of torture.

A judge can order that a person remain in detention for two weeks for the requirements of the police investigation, providing a reason for his decision. He can then extend detention by blocks of three months, without exceeding two years, for the most serious cases.

72. The death penalty is still in force in Sri Lanka. No executions have taken place since 1976.

73. Presidential Directives of 7 July 2006 (re-published in 2007).

74. Article 38 of the Code of Criminal Procedure and Article 65 of the Police Ordinance

75. Articles 36 and 37 Code of Criminal Procedure and Article 2 of Decree No. A.20 of the Police Department

76. Article 13(2) of the Constitution.

77. See Daily Mirror, 2 June 2012, Police to get 48hours <http://www.dailymirror.lk/news/19119-police-to-get-more-time.html>. Note that the extension of the detention period to 48 hours for suspects was first enacted in 2007 by way of a special provisions act (CCP (Special Provisions) Act, No 42 of 2007). The special provisions act was limited for a period of two years and expired in May 2009. However, the Minister of Justice stated in September 2011 that the police had the power to keep a person in custody for 48 hours instead of 24 hours because of an alleged rule passed by the Government. Subsequently the Ministry of Justice took steps to re introduce the act as an amendment to the Criminal Procedure Code.

According to organisations working on the question of detention, many people are held on remand awaiting indictment for three to four years. ACAT met a woman, U.A. Somawathi, 45, who spent nine years in detention without ever being indicted. Arrested in February 2003 by the police for possession of heroin, she was placed on remand for two weeks. She was never brought before the court subsequently and was forgotten by the legal system. In 2010 a human rights activist discovered this woman's situation in Welikada Prison. Legal proceedings were then opened to obtain her release, including before the Supreme Court in February 2011 which ordered the release of the petitioner a few days later. On 22 February 2011, nine years after being incarcerated, Somawathi was released.

This story is just one example of many which illustrate the serious problems within the judicial system, connected in particular to excessive use of release only on bail, the lack of legal aid, the inaction of the Attorney General's office, the congestion of the courts which generates extremely long procedural delays and a lack of respect for the basic legal guarantees of people deprived of their liberty.

The right to contest the legality of detention

Article 141 of the Constitution provides that anyone has the right to contest the legality of detention before a court (writ of habeas corpus). This is important for the families of those who have disappeared as it theoretically obliges the authorities to bring that person before a judge. However, it is ineffective in practice.

It is up to the claimant to prove that the victim has been arrested and held by the State. Given the systematic denial by the authorities of cases of enforced disappearance, it is very difficult, even impossible, to provide such evidence. Families often look for their relative through informal channels. It is only after exhausting all these methods that they turn to the justice system. No limitation period is provided to register a writ of habeas corpus and yet judges have rejected them discretionally, considering that too much time has passed⁷⁸. Rejection can also be based on the position presented by the State counsel, indicating for example that the person has been charged without any proof being provided⁷⁹.

The State's lack of desire to investigate enforced disappearances prevents the legal authorities from continuing the process. One emblematic example is the enforced disappearance of the journalist and cartoonist Prageeth Ekneligoda in January 2010. The authorities denied any involvement in his abduction and claimed that they were investigating the case. The journalist's wife submitted a writ of habeas corpus in August 2010. After six hearings where no progress was observed in the investigation, in August 2011 the Court ordered that the investigation be rapidly brought to a close⁸⁰. No conclusion to the investigation has been submitted to the Court.

Inadmissibility of confessions obtained in detention

Ordinary law provides that a confession made to a police officer or a confession made by someone in custody cannot be used as proof in criminal cases unless it is made before a judge⁸¹. All confessions obtained using threats or in exchange for benefits are prohibited.

However, the cases of torture examined by ACAT show that confessions are constantly being extracted by the police and judges are repeatedly passing sentence on the basis of this fact alone. Judges are not obliged to ask the defendant if he was tortured or ill-treated in detention during his first hearing or the trial. Most victims do not spontaneously mention what they have been subjected to, either through ignorance or through fear of reprisals once they leave the court. Judges deliberately close their eyes, even if the defendant is covered in bruises and alleges that his confession was obtained under torture.

Sisil Weerasinghe, tortured by police officers on the night of 30 December 2011, was brought the next day for an immediate appearance before the Court of Wattala. Despite his bruises, the judge did not question him about his treatment in custody. He was sentenced for drunkenness on a public highway by the judge who based his judgement entirely on the statement drawn up by the police that Sisil Weerasinghe was forced to sign under torture.

78. Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne, *Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times*, p xxxiii (Law and Society Trust, January 2011).

79. International Commission of Jurists, submission to the Committee against Torture on the examination of the combined third and fourth periodic reports of Sri Lanka under the Convention against torture and other cruel, inhuman or degrading treatment or punishment (2011), p11

80. *ibid*

81. Articles 24, 25 and 26 of the Evidence Ordinance

Access to a lawyer

Until now no provision in the law has guaranteed the right for an arrested person to receive the assistance of a lawyer. This possibility was left to the discretion of the police officers, just as is the question of the confidentiality of their interview and the intervention of a lawyer during questioning. At the time of the release of this report, a new notification to be gazetted allows lawyers to visit police stations as a matter of right. However, in practice, many of the poorer victims are unlikely to have the benefit of this lawyer's intervention as they are unable to hire the lawyers and pay their fees. Special arrangements should be made for the utilization of this gazette notification to ensure the availability and the representation by lawyers of suspects from poorer circumstances.

Gaps in the law

Some significant provisions are missing from Sri Lankan law. An arrested person does not legally have the right to receive an independent medical examination. Only the OIC can order this if he "considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation"⁸².

There is no law relating to compensation for victims of torture and ill-treatment. No legislative initiative has ever been brought to provide this right to victims. There is no law regarding rehabilitation. The obligation to provide medical assistance or trauma counselling for acute stress disorder or post traumatic stress disorder and other psychological problems is not provided by the law or by any State policy. No legislative provision was brought to parliament to remedy this deficiency.

Although the law provides for some legal guarantees against torture, the arbitrary action of the law enforcement agencies shows that ordinary law has become virtual. Moreover, the Emergency Regulations in force for decades and anti-terrorism law suspended several of these legal and constitutional protections, the Constitution giving them precedence over common law.

2. When the exception becomes the rule: the impact of the Emergency Regulations and the Prevention of Terrorism Act

"The appalling numbers of extrajudicial killings, disappearances, unlawful arrests and detentions and the widespread practice of torture in recent years are attributable to the high level of impunity prevalent in the country and are the direct consequences of the PTA [Prevention of Terrorism Act] and the Emergency Regulations"⁸³.

a. Fundamental rights eroded by forty years of a State of Emergency

According to both international law⁸⁴ and Sri Lankan law⁸⁵, no exceptional circumstances (armed conflict, political instability, state of emergency, order of a superior officer) can restrict the prohibition of torture. Nevertheless, the State of Emergency in place almost continually since 1971⁸⁶ led to the establishment of Emergency Regulations which replaced ordinary law and encouraged the use of torture.

In the event of a state of emergency, the President of the Republic has the constitutional power to decree an emergency regulation "amending or suspending the operation of the provisions of any law, except the provisions of the Constitution"⁸⁷. This regulation, supposed to be temporary, has become permanent⁸⁸. The Executive published Emergency Regulations giving very wide-ranging powers of arrest, search and seizure to law enforcement agencies and making it possible to detain people without charge or trial.

82. Article 122(1) of the Code of Criminal Procedure

83. Mr Ratnavale, lawyer and Director of the Center for Human Rights and Development, Colombo (Prevention of Terrorism Act (PTA), A critical analysis, January 2010)

84. Article 2(2) of the UN Convention Against Torture

85. Article 15 of the 1978 Constitution and Article 3 of the 1994 Law on Torture

86. Since March 1971 Sri Lanka has experienced brief periods without a state of emergency which lasted from two months to four years.

87. Article 155 of the Constitution

88. See the Public Security Order

Fundamental rights sacrificed under cover of national security

For more than forty years successive governments have justified the State of Emergency and the repressive legislation introduced as a necessity to ensure national security and prevent attacks on the State.

Human rights activists have constantly denounced the abuses committed under cover of these Emergency Regulations and the sacrifice of civil and political freedoms. Numerous restrictions were made to fundamental freedoms and constitutional rights such as freedom of expression or the right not to be subjected to arbitrary arrest or detention. These provisions, which should have been exceptional, have progressively replaced ordinary law. Drafted vaguely and used abusively and arbitrarily, they have considerably damaged legal protection against torture and the fundamental rights of those deprived of their liberty.

Lifting of the State of Emergency in 2011 but survival of the provisions through the anti-terrorism law

More than two years after the end of the conflict, the State of Emergency, renewed month after month for forty years by a vote in Parliament, was finally lifted on 31 August 2011. But the content of the Emergency Regulations has largely survived because a large number of its provisions are covered by the Prevention of Terrorism Act (PTA). 24 hours before the State of Emergency expired, this law was quickly amended to add articles from the Emergency Regulations which were going to disappear⁸⁹. The PTA, adopted for a temporary period in 1979, has become permanent. The following section concentrates on its content, this law being a legal arsenal in force which legitimises and institutionalises torture.

89. See Prevention of Terrorism (Extension of Application) Regulations No.3 of 2011. Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka No. 1721/3 of 29 August 2011; See also Prevention of Terrorism (Detainees and Remandees) Regulation No.4 of 2011

b. Provisions of the Prevention of Terrorism Act (PTA)

18-month detention

The PTA confers broad powers on soldiers and the police. They can search for and seize any goods, arrest and detain anyone without a warrant, even if they have not committed an offence, from the time they think they could have a connection with an illegal activity, a very vague notion⁹⁰. Practice shows that such power of arrest based on simple suspicion is used abusively and arbitrarily.

The PTA suspends the right of a person to be informed of the reason for their arrest. The law also suspends the right to be brought before a judge promptly. It allows a detention for up to 18 months without requiring the suspect to be brought before a judge or indicted. Its justification for this delay is to allow the police to investigate possible participation in an illegal activity⁹¹. Detention can be a preventive measure.

Impossibility of challenging detention

A person deprived of his liberty cannot challenge his detention before a judge. The decision to be placed in detention (a detention order) and its extension is made by the Defence Minister, conferring very important prerogatives on the Executive to the detriment of the judiciary. The law provides that the Minister's decision is definitive and cannot be contested before a court or any authority.⁹² No provisions provide for a reason to extend detention. Further, the already very long 18 month-period is regularly exceeded. Detainees are therefore being held illegally in detention. No limits are defined for detention after indictment and while awaiting trial.

Two examples illustrate such unlimited detention. Ms Anthony Chandra was arrested on 10 August 2008 by the Kandy Terrorist Investigation Division (TID). She was detained for eight months at Kandy police station without being informed of the official reason for her arrest. She said she was tortured and interrogated every night by the TID. She was also allegedly subjected to death and rape threats if she refused to provide the information the TID officers were looking for. After nine months in detention, she was brought before the Matale Magistrate Court on 13 May 2009. The Court ordered that she be kept on remand. She was not informed of the possible accusations against her until the end of 2011 when she learnt that she had been investigated on 12 counts under the PTA. In December 2011 she had been detained for 41 months for accusations which she contests⁹³.

During questioning by the TID at the start of her detention, Ms Anthony Chandra was questioned about her neighbours and mentioned the name of Mr Kalappam Monoharan. The latter was asked to come to the TID branch Kandy of Kandy Headquarters Police Station in August 2008. **When he arrived he was arrested. The police informed him that he was suspected of having assisted the LTTE. He denied the accusations and was tortured by the Kandy TID officers. He was asked to sign documents in Sinhalese. He could not read them as he did not speak the language but he said he had to agree to sign them to end the torture. He was then transferred to another police station where he was detained for six months before being brought before the Kandy Court which kept him in detention in Bogambora. He was still being detained in August 2011, three years after his arrest. Three cases had been assembled against him. He thinks that the documents he signed were statements written by the police attributing terrorist offences to him⁹⁴.**

Some detainees, deprived of their liberty for more than 18 months without charge, have had access to legal assistance and have lodged a complaint for violation of their fundamental rights before the Supreme Court to contest their detention. In this case, the Attorney General's office must then inform the Court of its decision to indict or release the detainee. However, most of the time it indicates that investigations are in progress and that it needs more time, thus prolonging a *de facto* illegal detention.

90. Article 6 (1) of the PTA: "connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity"

91. Article 9 of the PTA

92. Article 10 of the PTA

93. AHRC, Sri Lanka: A woman is arbitrarily detained for more than forty months without access to fair trial, 14 December 2011, : <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-247-2011/?searchterm=PTA>

94. AHRC, Sri Lanka : an innocent man remains in detention since August 2008 after being tortured into a confession by the TID, 9 August 2011: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-136-2011>

Detention in secret locations and free transfer to any other place

The PTA allows for a person to be detained in any location, official or secret, and freely transferred from one location to another for the needs of an investigation. Practice shows that these provisions lead to secret detentions, enforced disappearances and the use of torture.

In theory, all arrests and detentions in accordance with this law must be notified to the Sri Lanka Human Rights Commission within 48 hours, setting out the place of detention of the person. Any transfer to another place of detention must also be notified. This provision is systematically violated in practice.

Confessions admissible in court

Contrary to the guarantees provided for in ordinary law, the PTA authorises that confessions obtained in detention are admissible in court if they have been made before an officer whose rank above an Assistant Superintendent (ASP) and outside the presence of a judge⁹⁵.

Lawyers representing people arrested under the PTA consider that 99% of charges rest exclusively on the so-called confessions made to an ASP or a superior. In most cases, the accused is a Tamil who cannot read or understand Sinhalese. And yet the only document presented to the court to judge this person is a statement written in Sinhalese by a Sinhalese police officer who does not speak Tamil and who has not necessarily been assisted by an interpreter.

Confessions obtained by force or using threats remain prohibited in all circumstances. However, according to the PTA the burden of proof lies with the victim⁹⁶. It is therefore up to the latter to prove that the confession was extracted under duress. If the victim cannot prove it, the confession is considered to be admissible in court and *de facto* its content is judged to be reliable. The PTA blithely tramples on the fundamental principle of the presumption of innocence and the right to a fair trial.

It appears that Tamil judges working in courts in the north and east provinces have refused to use confessions as elements of proof when they suspect that they have been obtained under duress. However, courts in Sinhalese regions, particularly Colombo, continue to use such confessions as a basis for sentencing. Thus, in a case concerning three people charged for violating the PTA, the High Court of Jaffna refused to use a confession made under torture as a basis for its judgement. Due to the absence of other elements of proof for the prosecution, it acquitted the three defendants⁹⁷. The three individuals were prosecuted for another, similar, case before the High Court of Colombo. Their lawyer indicated to the magistrates that the elements of proof had been obtained under torture and referred to the judgement made in Jaffna to support his case. Instead of proceeding as the Jaffna High Court had done, the court in Colombo decided that the trial would be delayed until October 2011, on which date the lawyer was informed that the Attorney General was going to ask the Court of Appeal to revise the Jaffna judgement.

Immunity

The PTA provides for immunity against any civil or criminal proceedings for anyone acting “in good faith” within the framework of this law. It therefore gives the law enforcement agencies acting under cover of this law and committing serious human rights violations total impunity⁹⁸.

This legislation has considerably encouraged the use of torture. A campaign led by academics, lawyers and human rights activists has been asking for the PTA to be repealed for several years⁹⁹. In a post-conflict context, a government should re-establish fundamental freedoms and constitutional rights, restore civil administration and repeal the Emergency Regulations. The announcement of the lifting of the State of Emergency was simply a smokescreen for the international community. On 25 August 2011, in his speech announcing the end of the State of Emergency, the President, Mahinda Rajapaksa, said that “from the time when terrorist activities ended in May 2009 until today there have been no reports of any terrorist activities” and suggested ending the Emergency Regulations in order “to function democratically under the ordinary law”¹⁰⁰. And yet the PTA remains in force and legal protection against torture continues to be suspended.

95. Article 16 (1) of the PTA

96. Article 16(2) of the PTA

97. HC Jaffna case No. 1244/2009

98. Article 26 of the PTA

99. See for example Asian Human Rights Commission, Repeal the Prevention of Terrorism Act (PTA) and end gross violations of rights: <http://campaigns.ahrchk.net/repealpta/>

100. Verbatim of the speech of President Mahinda Rajapaksa to the National Assembly taken from: “Crucial weeks ahead for Sri Lanka internationally”, Political Column of the Sunday Times (28 August 2011) available on: <http://sundaytimes.lk/110828/Columns/political.html>

CHAPTER 3.

SYSTEMIC DENIAL OF JUSTICE

In Sri Lanka a victim of torture has no effective legal remedy. This is the view of several lawyers who defend victims of torture in Sri Lanka.

Although torture is prohibited in Sri Lankan law and mechanisms to obtain justice exist in theory, the judiciary no longer protects its citizens. Its silence and inaction in the face of torture make it complicit in this practice. Most observers consider that the judicial system, placed under the influence of the Executive, has lost all independence and has been in a state of collapse since the beginning of the 21st century¹⁰¹. Political power deliberately impedes the slightest effort to combat impunity for human rights violations and blocks any possibility for most victims to obtain justice.

International law provides that victims of torture have the right to an independent inquiry, effective remedy and compensation. In Sri Lanka victims who lodge a complaint come up against innumerable obstacles, risk their lives and only have a minute chance of obtaining justice and compensation. In 18 years of the CAT Act, only four sentences have been passed, a figure which, given the endemic use of torture in the country, illustrates the impunity which prevails.

1. The judiciary under the control of the Executive

There is deep mistrust of the judiciary within Sri Lankan society. It is judged to be politicised and controlled by the Executive. Political interference has considerably damaged the institution.

The system for appointing the highest posts ignores the principle of the separation of executive and judicial powers. The President of the Republic discretionarily appoints the Chief Justice and judges of the Supreme Court, the judges of the Appeal Court and the Attorney General. It is a direct appointment system without consultation or transparent processes¹⁰². In 2011 the appointment of women as Chief Justice (Ms Shirani Bandaranayake¹⁰³) and as Attorney General (Ms Shanthi Eva Wanasundara) for the first time were highlighted as progress by the Government. The arrival of these figures who were loyal to the President of the Republic has, nonetheless, had no impact on restoring the independence of the justice system or a change in judicial practice.

Judges of the High Court, the competent jurisdiction for offences in the CAT Act, are also appointed by the President of the Republic after recommendation by the Judicial Services Commission. This Commission, led by the Chief Justice and two judges at the Supreme Court, aims to promote, dismiss and exercise disciplinary control over the magistrates and to appoint lower court judges. It is strongly criticised for its lack of transparency and the absence of objective criteria for appointments.

Sarath Silva, Chief Justice from 1999 to 2009, is considered to have played a central role in the politicisation of the judiciary, exercising a damaging influence through arbitrary appointments and promotions or the forced

101. See in particular the International Bar Association Human Rights Institute Report, Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka (May 2009). <http://www.ibanet.org/Document/Default.aspx?DocumentId=C7793247-1498-409F-83D0-75B3DFD107C7>; International Crisis Group, Sri Lanka's judiciary: Politicised courts, compromised rights (June 2009) http://www.crisisgroup.org/-/media/Files/asia/south-asia/sri-lanka/172_sri_lankas_judiciary___politicised_courts___compromised_rights.ashx; Kishali Pinto-Jayawardena, The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka (Rehabilitation and Research Centre for Torture Victims, April 2009); Basil Fernando, Recovering the authority of public institutions (2009).

102. In 2001 a 17th amendment to the Constitution was adopted to reduce political influence over the judiciary in particular. It created a Constitutional Council whose mandate was to appoint or review the appointments proposed by the President for important positions in public administration. This Council was composed of eminent figures and functioned until 2005 before the President of the Republic resumed the system of direct appointment. The adoption of the 18th amendment in September 2010 formally removed the approval of appointments by the Constitutional Council.

103. In a diplomatic cable dated 24 February 2010, the American Ambassador in Colombo considered Shirani Bandaranayake to be loyal to Rajapaksa <http://wikileaks.org/cable/2010/02/10COLOMBO132.html>. Her appointment was also criticised because of her lack of experience and a conflict of interests as regards her husband: <http://colombotelegraph.com/2011/09/14/chief-justice-or-her-husband-must-resign/>

removal of magistrates. He also weakened jurisprudence through judicial decisions motivated by political considerations. "The notion of human rights has significantly deteriorated within the judiciary itself. The provisions protecting citizens are today interpreted by a judiciary which supports the administration, not citizens" one lawyer told ACAT. "The courts have lost judicial power but the judges barely see it. They must support the Government's policies and instructions to ensure their careers. Judges who don't toe the Government line see their appointment blocked or are transferred". The appointment of several judges to diplomatic posts or retired magistrates to senior posts within the State (particularly the Government) has been criticised, as has the appointment of Asoka de Silva who was Chief Justice until May 2011. He became a Presidential Advisor a few days after he left the Court.

2. Inefficiency of complaint and inquiry bodies

a. The danger of complaining

Sri Lankan legislation includes a complaint and inquiry mechanism following allegations of torture and ill-treatment. But, as with many other mechanisms in Sri Lanka, it is neither independent nor impartial nor effective. The perception of many victims is that there is no point in complaining about State officials and it could even be dangerous.

It is up to the police to register the statement of a victim who alleges that he has been tortured and those of possible witnesses. This system discourages someone who has suffered abuse at the hands of police officers from lodging a complaint with his torturers or their colleagues. In many cases, police officers deliberately refuse to take the statement and register the complaint. A victim ACAT met in Kandy told his story: "I was brutally attacked and beaten, arrested arbitrarily, humiliated and detained by officers from the Teldeniya police station. The Teldeniya police officers then refused to register my complaint. On 16 May 2011 my wife Sanjeewani and her brother went to the central province's office of the Deputy Inspector General (DIG) while I was being arbitrarily detained. The DIG listened to their account and then told them that he would not register their complaint. All these refusals prevented any inquiry and allowed my torturers to remain unpunished."

A Tamil victim faces a linguistic obstacle as the police department is mainly made up of Sinhalese officers. If a Tamil victim wants to register a complaint, the document will generally be drawn up in Sinhalese by the police. The complainant will be forced to sign a document he does not understand and cannot verify. Further, he risks facing even greater reluctance from the police to register his complaint against a State official than if he were Sinhalese.

Police officers frequently threaten victims who want to make a complaint or their families. Sampath Deshapriya, 24, was arrested by the Kinyavala police at the end of December 2011. His mother managed to see him at the police station. She saw that Sampath was finding it very difficult to speak and that his body was covered in marks from blows, as were the soles of his feet which were very badly injured. She was threatened by the police officers: if she complained, she could no longer see her son in detention. Nonetheless, she was brave enough to lodge a complaint on 2 February 2012, demanding an inquiry into what her son had been subjected to, medical treatment and respect for his physical and psychological integrity¹⁰⁴.

For individuals serving their sentences in prison, it is impossible to have their rights heard and complain: risk of reprisals, impossibility of requesting an independent medical examination, refusal of potential witnesses to testify through fear of violence from the prison administration. In theory, an internal complaints procedure does exist but a former member of the Prison Administration told ACAT that "prisoners cannot use it in practice. They can try to complain but it is pointless and exposes them to risks". Most people detained through the PTA are even more helpless as they generally do not have access to a lawyer or their families.

104. Janasansadaya, Torture Prevalence in Sri Lanka – 2012 (February 2012):<http://www.scribd.com/doc/80655124/Torture-Prevalence-in-Sri-Lanka-2012-Part-01-By-Janasansadaya>

b. Ineffectiveness of inquiries and proceedings

In theory, Sri Lankan law offers different inquiry mechanisms. If a complaint is lodged correctly with the police, the latter must normally investigate, prepare a charge and send it to the Attorney General's office for possible proceedings. The National Human Rights Commission can also investigate on allegations of torture and then recommend a criminal investigation and legal proceedings. Further, Sri Lanka has a long history of Special Inquiry Commissions set up following serious acts of violence.

Despite all these mechanisms, the collapse of the rule of law and the judicial system has deprived Sri Lankan society of any independent and effective inquiry bodies for allegations of torture and ill-treatment¹⁰⁵.

b.1. Hindrance by the police and the Attorney General Office

The Police Department lacks the desire to investigate torture cases involving its colleagues, a fortiori if they work at the same police station. Often, after a complaint has been lodged nothing happens. The Police Department regularly claims that it does not have the information it needs to identify those responsible without actually bothering to investigate. Even when it announces that it is opening an investigation, results are rare.

Further, it can seek to stifle or conceal a case. In many of the cases examined by ACAT, the police have fabricated a case against a torture victim to dissuade him from complaining. This strategy is also used before the courts to overturn a case and protect themselves: the police claim that the victim is making untrue and improper allegations of torture to avoid justice.

Special Investigation Unit

From 2005 investigations into torture or ill-treatment were attached to a Special Investigations Unit (SIU) operating from the Criminal Investigation Division (CID) of the Police Department in Colombo. In principle this unit, composed of highly qualified police officers, referred cases to the office of the Attorney General or the Inspector General of Police (IGP). Criticised because of the risk of bias and lack of independence as police officers were investigating acts committed by other police officers, it nonetheless gathered evidence of sixty cases of torture between 2005 and 2008, leading to the officials involved in those cases being questioned. In July 2003 a child aged 7, suspected of having stolen from a shop, had been arrested and tortured in custody by the Officer in Charge. The Special Investigations Unit dealt with the complaint. The investigation ended with the indictment of the police officer in 2008 and his sentencing in 2012, nearly nine years after the event¹⁰⁶. This case was one of the last where the Unit submitted an indictment for torture.

Torture cases blocked by the Attorney General department

The appointment of Chitta Ranjan De Silva in 2007 to the post of Attorney General led to a complete change in policy as regards criminal proceedings. No more cases of torture were submitted to the Special Investigations Unit. Mr De Silva, and his successor Mohan Peiris (Attorney General from 2009 to 2011), justified this change by saying that they did not want to submit to outside pressure from the UN and human rights organisations which were calling for the establishment of inquiries into serious human rights violations. Mr De Silva decided that all complaints of torture should be examined by the Attorney General's office which would decide if an inquiry should be carried out or not. Over the last five years the reality has shown that the Attorney General's office blocks investigations and proceedings which involve the responsibility of State officials in acts of torture. On several occasions the UN and NGOs have called for inquiries into numerous cases but these recommendations remain unheeded.

Since the end of the 1990s the Attorney General used to follow a specific policy to prevent any conflict of interest during legal proceedings. As it is generally charged with representing the State and its civil servants in cases before the Supreme Court, the Attorney General's office did not represent them if they were accused of infringing fundamental rights such as through acts of torture. The view was that the Attorney General could not be officially in charge of legal proceedings against those responsible for torture before a criminal jurisdiction and, in parallel, represent them before the Supreme Court. However, in 2009 the reverse was true when a representative from the Attorney General's department announced that the Attorney General would represent the interests of police officers involved in a case of torture¹⁰⁷.

105. See in particular the UN Committee Against Torture, Concluding Observations- Sri Lanka, CAT/C/LKA/CO/3-4 (November 2011) §18

106. Janasansadaya, Conviction under torture Act, 27 January 2012 <http://www.janasansadaya.org/page.php?id=460&lang=en&type=ar>

107. AHRC, Sri Lanka: Attorney General's decision to represent alleged torture perpetrators undermines the rule of law, June 2009, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-138-2009>

The Attorney General, who is appointed directly by the President of the Republic, executes the Government's instructions. Experience over the last few years shows that the holder of the post has no independence vis-à-vis the Executive. He no longer has an impartial role in terms of protecting victims of torture. In November 2011 the Sri Lankan delegation attending the UN Committee Against Torture's Periodic Review was led by Mohan Peiris who had left his role as Attorney General a few weeks earlier. He fiercely denied and played down violations of the Convention Against Torture and strongly defended the Government's current policy on the issue¹⁰⁸.

b.2. The inefficiency of the Human Rights Commission of Sri Lanka

The Human Rights Commission of Sri Lanka has the power to investigate allegations of torture. It can submit recommendations as regards opening inquiries and prosecutions against perpetrators or compensation for victims of torture. However, it is regularly criticised because of its lack of independence and its inaction¹⁰⁹.

The 18th amendment to the Constitution adopted in 2010 formally deprived it of its independence, allowing the President of the Republic to directly and discretionally appoint its members without a consultative or transparent process. Further, the problem began several years ago. In 2007 the international body charged with coordinating national human rights institutions officially downgraded the Sri Lankan Commission, considering that its independence was no longer guaranteed: in 2006 President Mahinda Rajapaksa had personally appointed five commissioners, bypassing the consultative process provided for by the Constitution¹¹⁰.

In 2011, following the appointment of five new members by the President, civil society questioned their aptitude and their experience in terms of protecting human rights and considered that their appointment was worrying¹¹¹. In particular, one of the new members was a former Inspector General of Police. The appointment of former members of the Police Department or the armed forces creates concern as to the impartiality of the Commission which receives many complaints about abuse committed by the police and the army. Victims can only become more reticent about lodging complaints.

Members of the Commission have regularly pointed out the lack of capabilities and resources available to perform their role properly. Civil society also denounces its inaction, considering that there is a deliberate lack of desire on the part of the members of the Commission¹¹². In particular, it was criticised for refusing to accept complaints from victims and their families in 2010 and 2011 in sensitive cases¹¹³. The Commission is also criticised because it does not inform victims and their lawyers of steps taken following a complaint about torture and it does not always investigate. Further, the Commission abstains from any action at all if the victim has brought a Fundamental Rights Petition before the Supreme Court. Its credibility and its efficiency are seriously questioned.

b.3. The artifice of the Ad hoc Commissions of Inquiry

There have been a number of special commissions in Sri Lanka charged with investigating serious human rights violation. When the governmental authorities do not have the capability or the will to investigate, or when public opinion does not have confidence in the judicial system, an independent commission of inquiry can reveal the crimes committed and establish accountability through a report which is made public. It can recommend or itself open criminal proceedings against those responsible and promote political or institutional reforms to prevent a repetition of the same events. However, no Commission of Inquiry in Sri Lanka has managed to fulfil this role¹¹⁴.

The Commissions have generally served either to repress political opposition or as an artifice, not only to calm national and international pressure but also to distract attention when the Government's responsibility was called into question in cases of serious violations. In the 1980s Sri Lanka was ravaged both by the armed conflict between the Government

108. Read Mohan Peiris' speech to the 47th session of the Committee Against Torture: <http://www2.ohchr.org/english/bodies/cat/docs/statements/StatSriLanka47.pdf>

109. See in particular the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Follow-up to the recommendations made by the Special Rapporteur (Manfred Novak) in the report of his visit to Sri Lanka from 1 to 8 October 2007, §83-87 (A/HRC/13/39/Add6, 26 February 2010); See also the Committee against Torture, Concluding Observations on Sri Lanka, November 2011, §16-17; Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against torture, 14 October 2011, p16-18.

110. In the past the appointments procedure included a consultation process led by the Constitutional Council, a multipartite body which submitted its recommendations as to the appointment of candidates.

111. Sri Lanka Brief, 29 March 2011, Friday Forum deeply concerned about recent appointments to Human Rights Commission, <http://www.srilankabrief.org/2011/03/friday-forum-deeply-concerned-about.html#more>

112. Joint alternative report from the Sri Lankan NGO Collective to the Committee Against Torture, 14 October 2011, §59-65; Sri Lanka Campaign for Peace and Justice, Toothlessness, 18 February 2012, <http://blog.srilankacampaign.org/2012/02/toothlessness.html>

113. Law and Society Trust, Letter to the National Human Rights Commission, 2 August 2011, <http://www.lawandsocietytrust.org/PDF/ruki%20letter%20to%20hrc%20chair-02august2011-follow%20up%20to%20civil%20society%20forum.pdf>

114. Kishali Pinto-Jayawardena, Still seeking justice in Sri Lanka, Rule of Law, the Criminal justice system and commissions of inquiry since 1977, January 2010

and the LTTE in the north and east of the country and by the violent confrontation of Governmental forces against Janatha Vimukthi Peramuna (JVP, the People's Liberation Front), a Sinhalese party from the south which sought to overturn the Government. Enforced disappearances and extrajudicial executions reached considerable heights. Several successive commissions of inquiry were set up in the 1990s to end criticism from the international community. However, the Commissions were never able to work credibly because of their mandate and the way in which they were run: limited timeframe to prevent investigation into a large number of crimes, closed sessions, confidentiality of the final report, etc. Some commissions tried to work effectively but did not have any impact because of the total lack of political will to combat impunity. The work of several Commissions of Inquiry set up in 1994 and 1998 highlighted the existence of torture centres operated by the police and the army across the country and the existence of dozens of mass graves. Accounts of escapees identified those responsible. The Commissions submitted a confidential report to the President of the Republic containing a list of names of those presumed to be responsible, firmly asking for prosecutions. Part of the report was leaked to the press and public opinion seized on it. However, no significant steps were taken following these Commissions' recommendations. To date, a number of mass graves have never been inspected or unearthed. Those designated responsible are still working or have been promoted. Others have retired without ever being worried by justice.

In May 2011 demonstrations broke out in the Free Trade Zone (FTZ) in Katunayake. Law enforcement agencies repressed this movement using excessive force and firing live rounds at the demonstrators and killing one. Confronted by media coverage of this event, the President of the Republic set up a Commission composed of only one man to investigate. At the beginning of August 2011 the report was submitted to the President of the Republic. Despite demands, the report has still not been released and no prosecution has been initiated.

2009-2011: the Lessons Learnt and Reconciliation Commission (LLRC): a biased and unsuitable commission for delivering justice to victims

Since 2009 international attention has focused on the need to investigate crimes committed during the final phase of the conflict. The international community called for an independent international inquiry into allegations of war crimes and crimes against humanity.

Refusing to set up such an inquiry, the Sri Lankan President of the Republic appointed his own commission in May 2010: the Lessons Learnt and Reconciliation Commission (LLRC). "If elements indicating that war crimes were committed surface, we will examine them [...]. We should recommend to the competent authorities in penal matters to investigate", the Chairman of the Commission declared in 2010¹¹⁵. Very quickly, this promise was revealed to be an empty shell. From its creation, the Commission was strongly criticised. Observers considered that it was just about gaining time to reduce international pressure about war crimes without intending to establish the accountability of the armed forces.

Its mandate, composition and methodology were unsuitable for delivering justice to victims. The Commission was mandated to identify the causes of the conflict and suggest ways to encourage reconciliation. It did not have the power to investigate the violations committed or recommend criminal prosecutions for those responsible in the justice system. Under pressure, the Government did extend its mandate to abuses committed during the war.

Its composition and its lack of independence were criticised because of the particular presence of a former Attorney General and a former ambassador who had fiercely defended the Sri Lankan Government against any allegations of war crimes.

During its first session on the ground, the Chairman made no reference to human rights violations. He asked witnesses to "forget the past" and to raise any problems about access to education, medical treatment and housing¹¹⁶. Members' questions and remarks showed bias by removing the responsibility of Governmental forces when witnesses raised allegations related to illegal executions, enforced disappearances, the bombing of civilian targets such as hospitals and the use of civilians as a human shield. The Commission concentrated on violations committed by the LTTE. Witnesses were not encouraged to come forward and give their accounts or provide details about the violations they were subjected to during sessions. The absence of witness protection was criticised.

115. L'Express.fr, 11 August 2010, Sri Lanka launches its Commission to investigate the civil war. http://www.lexpress.fr/actualites/2/le-sri-lanka-lance-sa-commission-d-enquete-sur-la-guerre-civile_911827.html

116. See the transcript of the session on 14 August 2010: http://www.llrc.lk/images/stories/docs/August2010/District_Secys_Office-Vavuniya-14.08.2010.pdf

Numerous international NGOs considered that the Commission was not a credible body for establishing accountability and delivering justice to victims¹¹⁷. In March 2011 the UN Panel of Experts charged with investigating war crimes during the conflict also recommended that the UN Secretary General set up an independent international inquiry body, considering that the Commission was “deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process”¹¹⁸.

The Commission’s final report was released in December 2011. Unsurprisingly, it cleared the army of war crimes and crimes against humanity committed at the end of the conflict, particularly targeting civilians and not supplying them with food and medicines. It did not recommend establishing accountability as regards the Government or the military¹¹⁹.

In February 2012, ten days before the opening of a session of the UN Human Rights Council, Sri Lanka announced the creation of a military tribunal composed of five people which would investigate allegations of war crimes committed by the armed forces¹²⁰. This appeared to be a new tactic to gain more time faced with international pressure¹²¹. However, in March 2012 the UN Human Rights Council adopted a resolution exhorting Sri Lanka to prosecute the presumed authors of the war crimes committed during the conflict, judging that the conclusions of the Commission were not sufficient.

3. The difficulty of gathering medical proof in cases of torture

A forensic report is very important if a court is to recognise the facts of torture. Several cases show that judges do not necessarily request a medical examination when the victim is brought before the court, even if his physical state suggests that he has been subjected to acts of torture or ill-treatment. Further, victims who request one are often refused.

ACAT met Judicial Medical Officers (JMO) who expressed some concern about doctors’ lack of resources, gaps in training and pressure from law enforcement agencies towards some doctors.

A JMO is charged with performing a medical examination and questioning a patient when admitted to hospital following suspicious injuries. The JMO fills out a Medico-Legal Examination Form which notes injuries, provides details of the patient’s allegations as to their cause, assesses the circumstances in which they took place and provides his conclusions. A copy of this document is then given to the police. It is sent to the court if the medical examination takes place during legal proceedings. The JMO can subsequently be called to testify as an expert before the court. The JMO also acts as a medical examiner in the case of a suspicious death. He carries out an autopsy and provides a post-mortem report.

Lack of human and material resources

There is a lack of specialists with 50 JMOs in 2012 serving a population of more than 20 million. 7 of the 25 districts do not have a forensic department.

Doctors complain of a glaring lack of resources to perform medical examinations and autopsies, hindering the gathering of medical proof in the cases of torture victims. Numerous elementary tools and equipment are missing¹²². They can be forced to buy them with their own personal resources. For example, doctors told ACAT that they had to use their own cameras, when they have one, for their forensic examinations. They say that they lack computers, UV lamps to identify bruises on dark skin, beds, etc. In terms of post-mortem examination, doctors note that in several district general hospitals there are not even any refrigerated units to conserve bodies or they

117. See in particular Amnesty International, *When will they get justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission*, September 2011, <http://www.amnesty.org/en/library/asset/ASA37/008/2011/en/76ea6500-a9f5-4946-bf2b-7fc08bc5e37a/asa370082011en.pdf>; International Crisis group, *Reconciliation in Sri Lanka: Harder than Ever* (July 2011), <http://www.crisisgroup.org/-/media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf>; Human Rights Watch, *Sri Lanka: Report Fails to Advance Accountability*, 16 December 2011, <http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability>

118. UN Secretary General’s Panel of Experts on Accountability in Sri Lanka, March 2011, p 96

119. Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011: http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf; see also press releases from Amnesty International “Sri Lanka report falls short”, 16 December 2011 <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-report-falls-short-2011-12-16> and Human Rights Watch, *Sri Lanka: Report Fails to Advance Accountability*, 16 December 2011 <http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability>

120. BBC, 15 February 2012, *Sri Lankan army to investigate civilian war casualties*: <http://www.bbc.co.uk/news/world-asia-17049760>

121. Human Rights Watch, 15 February 2012, *Sri Lanka: Army Inquiry a Delaying Tactic*. <http://www.hrw.org/news/2012/02/15/sri-lanka-army-inquiry-delaying-tactic>

122. See the suggestions made by the JMOs in 2011 and circulated by the AHRC in its annual report, see the article “Development Proposal of the Medico-legal Service in Sri Lanka” http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-011-2011/at_download/file

do not work, there is no water or electricity and doctors do not have gowns to carry out autopsies. They consider that the budget allocated by the State is more than insufficient and that the Government does not consider this field to be a priority.

Failures in procedure

Further, doctors raise several gaps in forensic procedure. On the one hand, the police often torture a suspect and present another person to the doctor using the identity of the first. Doctors recognise that they note the name and address of the patient without always checking his ID card or making the patient sign or taking fingerprints. The real victim therefore has no way of contesting before a court the identity of the patient who was examined. On the other hand, doctors indicate that the psychological dimension of torture is not taken into account during the examination of the victim. Their examination is limited to observing physical injuries. Further, they consider that, despite some progress, forensic documents are not suitable for cases of torture. The examination forms and forensic reports are used as much for victims of road accidents and assaults or people who have taken drugs as torture victims. Their format means that it is not possible to re-transcribe the examination of a torture patient appropriately. Finally, even if legally nothing seems to prevent it, practice shows that most victims cannot obtain a copy of the Medico-Legal Examination Form directly from the doctor. JMOs indicate that they send a Medico-Legal Report to the court and it is then up to the victim's lawyer to access a copy.

Doctors say that torture victims do not always know where to go and can be afraid of going to hospital, fearing that they will be arrested again. Medical examinations can be performed long after the event, complicating identification of bruises or physical injuries which might have disappeared.

They note that forensic work in districts where they are not established is done by unspecialised doctors. Their lack of training and qualifications prevents a victim from receiving a proper examination and medical report. They note, for example, that there have been no JMOs in the north and east provinces for more than ten years.

Pressure on doctors from law enforcement agencies

Doctors also point to connivance and pressure from law enforcement agencies, often in rural areas, in order to falsify medical documents and conceal acts of torture. Accounts from victims confirm the complicity of some doctors. Sisil Weerasinghe, tortured in December 2011 at a police station, was taken by his torturers to be examined because of a fracture to his hands and significant pain related to the blows received in custody. In the presence of his torturers, he explained what he had been subjected to and the pain he was suffering. He says that the doctor ignored his account and refused to provide him with medicines or medical treatment¹²³.

One victim ACAT met said that he had been admitted to Kandy hospital in May 2011 to be treated because of his state of health after being tortured by the police: "When the JMO questioned me I told him exactly what had happened, that I had been tortured by the Teldeniya police officers. I gave the names of the officers. But I noticed that he had noted that I was attacked by unidentified people. I think that he deliberately wanted to protect these police officers and acted in violation of his professional duty"¹²⁴.

Despite many similar cases, the Sri Lanka Medical Council closes its eyes to these problems. There has only been one case of a disciplinary sanction against a JMO who colluded with the police in a case of torture. Dr W.R. Piyasoma had examined a man brought in by the police who had died shortly afterwards due to the acts of torture inflicted in custody. The Medical Council considered that he had contributed indirectly to his death and that he had failed in his duty by examining the suspect in the presence of the police officers, including neither the patient's detailed account or the names of the suspected torturers, not diagnosing the serious injuries and only noting minor lesions, and finally by not recommending that he be admitted to hospital. In its decision, the Medical Council said that it was "convinced that it should take steps [...] to erase the name of Dr W.R. Piyasoma from the register permanently"¹²⁵. Yet surprisingly, the Council decided to suspend the doctor for three years only, taking into account his age and "that this is the first occasion a complaint of this nature has come before this committee"¹²⁶.

123. AHRC, Sri Lanka: An innocent man is illegally arrested, tortured and laid with a false charge by the Wattala Police, 19 January 2012 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-003-2012>

124. Interview with ACAT, 7 July 2011 in Kandy

125. Read the decision of the Sri Lanka Medical Council's Professional Conduct Committee, Mullakandage Amitha Priyanthi VS. Dr. W.R. Piyasoma, 26 July 2007 on the NGO Janasansadaya's website :<http://www.janasansadaya.org/page.php?id=119&lang=en>

126. *Ibid*

4. Threats and assassinations of plaintiffs

Currently, there is no legal mechanism to ensure protection for victims and witnesses who take part in the justice process in Sri Lanka. A draft law was introduced in Parliament in 2009 but has never been discussed in session thus far, despite the repeated recommendations of the UN and NGOs.

In the absence of a protection programme, the judicial process can become paralysed. Torture victims are often reticent about complaining, fearing for their safety or that of their families. Trials for acts of torture often last many years, allowing the pressure put on victims and witnesses to grow. Many victims withdraw their complaints during the process. They can be subjected to all kinds of pressure if their case manages to progress and their torturers feel threatened. They can suggest an out-of-court settlement, offering money in exchange for withdrawing the complaint. Victims are inclined to give in because of the very long and difficult legal system. In some cases, which have received media coverage, authorities at the highest level can intervene to offer compensation. This kind of approach can serve to encourage victims and their families not to continue the legal process. Following confrontations between the police and demonstrators in the Free Trade Zone in May 2011, the family of Roshan Chanaka Rathnasekara, who was killed during the events, was offered a million rupees (more than £6,000) compensation by the Presidential Secretariat. However, the family said that such compensation should not prevent proceedings against the State officials responsible for the violence committed.

Over and beyond financial propositions, harassment, threats and intimidation are common. The wife of a torture victim told ACAT that she had gone to the police station where her husband was detained in Kandy in May 2011 to enquire about his situation. Seeing her husband and the bruises and lesions caused by the blows he had received, she wanted to lodge a complaint but one of the police officers threatened her, saying that not only could he hit her husband with impunity; he could also kill him if he so wanted.

Several cases show that torturers might go so far as to assassinate plaintiffs. On 11 February 2012 Ramasamy Prabakaran was kidnapped in the middle of the street two days before a hearing before the Supreme Court which was going to examine his complaint about torture. As the Tamil businessman was going home with his wife and his daughter, seven men armed with assault rifles and pistols appeared and took him away by force in the middle of the day in a white van. No witnesses intervened. Prabakaran had been arrested in May 2009 and detained for 28 months on suspicion of belonging to the LTTE. During questioning, he had been severely tortured by senior police officers. He was released in September 2011 because of insufficient proof against him and all the charges had been dropped. Prabakaran had then lodged a complaint for violation of his fundamental rights (a Fundamental Rights Petition). The hearing of the Supreme Court was scheduled for 13 February 2012. He is still missing.

Two other similar but older cases remain emblematic in Sri Lanka: Gerald Perera and Sugath Nishantha Fernando were killed for complaining about their torturers. Tortured by the police in Colombo in June 2002, Gerald Perera was killed in the street in broad daylight a week before the trial began in November 2004. The process for acts of torture was still in progress ten years after the facts, as was the trial for his murder, eight years later, another illustration of the inability of the Sri Lankan legal system to respond to serious violations. Sugath Nishantha Fernando had lodged a Fundamental Rights Application before the Supreme Court after being tortured by eleven police officers from Negombo in 2007. He was threatened with death by the police officers if he did not withdraw his complaint and was finally killed in the middle of the street in September 2008. No serious investigation was ever conducted to identify those responsible for his murder.

The current context shows that fear seems to get the upper hand and that people who agree to testify in sensitive cases are increasingly rare. NGOs have told ACAT of the creation of informal *security groups within communities*. They represent a network of solidarity between members of the family, neighbours and the victim to protect a torture victim in the absence of formal protection. If law enforcement officers go to the victim's home, the network is charged with inquiring the situation, identifying the officers and warning local human rights organisations so that they can take over in the event of threats¹²⁷.

The absence of legal protection for witnesses and victims illustrates a serious problem in the Sri Lankan legal system. Criminal justice cannot operate if witnesses do not want to testify before a court.

127. Interview with ACAT, 4 July 2011

5. No effective justice before the High Court and the Supreme Court

The legal procedure for torture cases comes under the High Court or the Supreme Court.

a. The High Court

According to the CAT Act, the High Court is the competent jurisdiction in terms of torture. The torture victim appears at the request of the Attorney general's office to testify against the police.

Despite the considerable number of complaints about torture, and at least sixty indictments, in the 18 years since the CAT Act came into force the High Court has only passed four convictions¹²⁸. The factors set out earlier partly explain the problem for victims in reaching the sentencing stage. The High Court's practice highlights other problems in the justice system.

Sri Lankan courts are overloaded with a large number of cases which impacts on how judges handle their caseloads. In 2011 press articles reported that one magistrate had delivered 206 verdicts in criminal cases, mostly convictions, in one day. In another jurisdiction, 80 verdicts were ruled by a in one day¹²⁹. Although these examples may appear anecdotal, they betray rushed justice.

Trials for torture can last years. They are constantly interrupted and hearings are delayed to a later date. A trial before the High Court can last from four to ten years. Because of this delay, no fewer than six or seven different judges can lead hearings before the trial reaches a conclusion. The magistrate in charge of sentencing will not necessarily have attended the entire trial or have been able to hear witnesses. He must content himself with the minutes of the hearings and the written documents enclosed with the files. Some decisions suggest that the judge has read neither the file nor the transcript of hearings. In one emblematic case, that of Lalith Rajapakse, detailed medical proof and a medical report had been examined by Negombo High Court. It observed that the victim had suffered numerous physical consequences including injuries to his foot. The victim had also testified during the hearing. However, the judge bizarrely decided that there was no proof supporting the allegation of blows to the foot.

The justice system is unfavourable for most plaintiffs as they come from lower socio-economic backgrounds. They cannot pay their lawyers for each appearance. Sri Lanka's legal aid mechanism does not work efficiently and does not necessarily waive fees and the costs of justice for the destitute. The money paid by the legal aid to lawyers can be derisory. The length of the trial and the repeated number of appearances lead the plaintiffs to abandon the legal procedure in progress.

Jurisprudence as regards torture from the High Court shows real discrepancy concerning the interpretation of the definition of torture. This can differ widely from one judge to another. Magistrates have judged that injuries inflicted by police officers to those in custody did not constitute torture when the purpose of those acts was not to obtain a confession. Given the difficulties in achieving a trial before the High Court, torture victims have tended to turn towards the Supreme Court.

128. Madiliyawatte Jayalathge Thilakarathna Jayalath (HC case No 9775/1999, Colombo High Court, HCM 19.01.2004); Government of the Democratic Socialist Republic of Sri Lanka v. Edirisinghe (HC case no 1392/2003, Colombo High Court, HCM 20.08.2004); Government of the Democratic Socialist Republic of Sri Lanka v. Selvin Selle and another (HC no 966/2002, Colombo High Court, HCM 20.07.2007); See also judgment of the High Court of Kurunegala in Wijeratne case on 26.01.2012

129. Lankaneewspapers, 8 August 2011, Judges Trying to Become Joker Superstars: Sri Lanka will soon become Kolamka?" http://www.lankaneewspapers.com/news/2011/8/69633_space.html.

b. The Supreme Court and Fundamental Rights cases

The Supreme Court can be used if a fundamental right provided for in the Constitution has been violated, such as the right not to be tortured (Article 11). The victim only has thirty days following the alleged violation to exercise this constitutional right. The Supreme Court does not have the power to criminally judge the author. However, it can rule that a fundamental right violation has occurred and order compensation.

Ranjit Sumangala, tortured for several days by the Mirihana police in December 2010, turned to the Supreme Court. Although he was constantly threatened by his torturers to withdraw his complaint, on 30 May 2011 the Supreme Court considered that the complaint was admissible and ordered the arrest and detention of the police officers accused if they continued to put pressure on the victim¹³⁰.

However, such decisions have become rare. "Cases of fundamental rights violations developed considerably in the past but ten years ago the situation changed", says one lawyer appearing at the Supreme Court and questioned by ACAT. "The number of cases has dropped considerably. It is a consequence of the policy introduced by Sarath Silva (former Chief Justice from 1999 to 2009) which marked a backward step. There is strong political interference in the work of the Supreme Court which is clearly manipulated by the Government"¹³¹.

According to Sri Lankan lawyers representing victims before the Supreme Court, it has become difficult to obtain a notice to proceed in a petition for torture. A study of the jurisprudence of the Court noted a marked decline from 2005 in both the number of complaints of torture which were granted a leave to proceed and those who were ruled in favour of the victim by the Supreme Court¹³². Plaintiffs indicate that most petitions are not granted a leave to proceed without any reason provided. Practice tends to show that the Court, before even examining the leave to proceed, presents the case to the Attorney general office and makes a decision based uniquely on the opinion of the latter.

In August 2010 the Supreme Court rejected the complaint of the family of Sunil Hemachandra who died in police custody in 2003. The family had noted numerous bruises on his body, as had a doctor who had corroborated the allegations of torture. A preliminary investigation conducted by a magistrate also supported this theory. However, the Attorney general decided that there was insufficient proof and the case was withdrawn. At the Supreme Court, judges concluded that death was very certainly the consequence of a fall due to alcohol withdrawal, using only the remarks made by the Attorney General without any other proof or additional investigation¹³³.

In this case the Court gave its decision in August 2010, nearly seven years after the process began. As in other petitions, a torture case can last for many years which discourages victims from beginning proceedings and allows torturers to pressure the victim, often successfully, to compromise and withdraw the case, particularly if the victim is still in detention.

Decisions of the Supreme Court recognising a violation of Article 11 of the Constitution do not have an impact and are not implemented. The Court has recognised the responsibility of State officials in acts of torture but no criminal proceedings have then been opened or disciplinary sanctions taken. These torturers are still working or have even been promoted¹³⁴. The Supreme Court no longer offers effective justice for torture victims.

130. Janasansadaya, Mirihana Police -Torture Chamber Case: Court grants leave to proceed, 30 May 2011

<http://www.janasansadaya.org/page.php?id=400&lang=en>

131. Interview with ACAT, 4 July 2011 in Colombo

132. Kishali Pinto Jayawardena and Lisa Kois, Sri Lanka, the Right not to be tortured, a critical analysis of the Judicial Response, Law and Society Trust, p9 (2008)

133. Judgment of 5 August 2010, S.C. (F/R) No. 429/2003, Guneththige Misilin Nona & another Vs Muthubanda, Police Constable- Moragahahena & 4 others.; <http://www.supremecourt.lk/images/documents/SCFRNo.429-2003.06.08.2010.pdf>

134. Kishali Pinto Jayawardena, The rule of law in decline, study on prevalence, determinants and causes of torture and other forms of cruel, inhuman or degrading treatment or punishment in Sri Lanka, 2009, p 167

6. Compensation and rehabilitation

Sri Lankan legislation does not provide for compensation for torture victims within the framework of the criminal process. Only the Supreme Court can grant it for cases where fundamental rights have been violated. No legal provisions define a scale of compensation. The amount depends on the discretionary power of the judge and, over the last few years, it has tended to be increasingly low. The amount of compensation granted by the Court has varied considerably from one case to another, ranging from 5,000 to 100,000 Sri Lankan rupees (approximately €30 to €600) in very rare cases.

Further, compensation is not always paid to the victims, even when the Supreme Court expressly orders the defendant to pay it. The Police Department has set up a compensation fund that torturer police officers can use, limiting the dissuasive effect of a court decision.

The law is equally silent on rehabilitation. Currently, there is no specific governmental programme to pay for medical treatment, psychotherapy and social rehabilitation for victims of torture. NGOs alone have taken the initiative to develop this kind of assistance.

7. Alternative remedies: international bodies

Sri Lanka has recognised the competence of the UN Human Rights Committee to examine individual complaints since 1998 but it refuses to recognise the Committee Against Torture. Many plaintiffs turn to Geneva to submit their complaint because of problems in the Sri Lankan justice system. The Human Rights Committee has declared a violation of the International Covenant on Civil and Political Rights in more than a dozen cases, including several concerning acts of torture¹³⁵. In October 2011 the Committee gave its decision concerning the torture and murder of Sugath Nishantha Fernando. It considered that Sri Lanka had violated the right of the victim and his family to obtain compensation.¹³⁶

However, none of these decisions has been implemented by the Sri Lankan authorities. In 2005 the Government indicated that it could not implement the recommendations of the Committee in one case, considering that it interfered with the Sri Lankan judiciary. This reaction was followed by jurisprudence from the Supreme Court in Singarasa case¹³⁷ which considered that signature of the Optional Protocol to the International Covenant on Civil and Political Rights, through which Sri Lanka recognises the competence of the Human Rights Committee, was unconstitutional. Subsequently Sri Lanka has no longer cooperated with the Human Rights Committee to implement its recommendations. Submission to the jurisdiction of this Committee is now only theoretical without national impact.

The collapse of the rule of law system and the denial of justice have placed victims in a critical situation. Impunity prevails in Sri Lanka and can only encourage the torture practice and unlawful action by law enforcement agencies. Facing this wall of injustice, the civil society has tried to develop initiatives to prevent torture and obtain justice.

135. See the views expressed by the Human Rights Committee on communications from Sri Lanka compiled on the Asian Legal Resource Centre website (www.alrc.net).

136. Communication 1862/2009. Human Rights Committee decision 17 October 2011-Ref. CCPR/3/103/D1862/2009

137. See the Human Rights Committee View, the Supreme court judgment and academic articles on the Singarasa case on http://www.ruleoflawsrilanka.org/resources/Document%20relating%20to%20the%20Singarasa%20Case.doc/at_download/file

Civil society activism

Sri Lankan civil society is active in many areas. In terms of promoting human rights, NGOs are actively involved in fighting the prevailing impunity as regards torture. ACAT met several NGOs to study their work and their activism against torture. It can be broken down into the following categories:

Support for victims

Legal assistance

A number of NGOs help victims lodge a complaint. They gather accounts and help them to file a complaint to the police and the National Human Rights Commission. They can also present their case to the Inspector General of Police or the National Police Commission. Because of the failure of the legal aid system provided by the State, some NGOs try, within their means, to provide financial aid to the indigent individuals who manage to appeal. Others work with independent lawyers who will represent victims in court. They support victims in their fundamental rights petition before the Supreme Court in order to try to obtain compensation for the victim.

Most victims remain silent though and do not take assistance from the Sri Lankan organisations through fear or because they consider that there is no point complaining. Despite their intervention, NGOs also face a wall of impunity and a lack of political willing to prosecute and judge the presumed authors of torture. They can then help victims submit their case to international bodies such as the UN Human Rights Committee.

Security

Because of the threats which hang over victims or their families who are seeking to obtain justice and the lack of a State protection programme, some NGOs try to protect plaintiffs during the trial.

As discussed in the report (see Chapter 3/IV Threats and Assassinations of Plaintiffs), NGOs have told ACAT of the establishment of informal security groups within communities: a network of solidarity between members of the family, neighbours and the victim to ensure informal protection for the victim. If law enforcement members come to the victim's home, the network is charged with inquiring the situation, identifying the officials and warning local human rights organisations so that they can take over in the event of threats.

Other NGOs try to protect victims who are seriously threatened by offering temporary shelters where their safety will be ensured.

Medical and psychological assistance

Due to the absence of a public rehabilitation policy for torture victims, several NGOs have developed programmes to provide medical and psychological assistance. Several organisations introduced a psychotherapy project, the testimony therapy, in 2008. It is a process through which victims relives their traumatic experiences during sessions led by a therapist who will record their accounts in writing. It will generally be followed by a testimonial ceremony which should allow victims to renew ties with their community and society which had been broken by the trauma of torture. The victim's account is read publicly during a ceremony mixing traditional and religious rites.¹³⁸

138. For more information about testimony therapy: IRCT, Torture Journal, Volume 19, No. 3, 2009, Testimonial therapy: A Pilot Project to improve Psychological Wellbeing among Survivors of Torture in India by Inger Agger, Lenin Raghuvanshi, Shirin Shabana Khan, Peter Polatin, Laila K. Laurssen; See also Chitral Perera and Shyamali Puvimanasinghe & Inger Agger, Giving Voice to the Voiceless : Using Testimony as a Brief Therapy Intervention in Psychosocial Community Work for Survivors of Torture and Organised Violence, A Manual for Community Workers and Human Rights Activists in Sri Lanka, by (2009)

Research and awareness raising among the public

This support to victims enables NGOs to collect information and analyse the practice of torture, as well as the political and legal obstacles faced by victims. This research is published in order to raise awareness among the public about this phenomenon. Training sessions can be organised for lawyers, doctors and human rights activists. Workshops are held by a few NGOs with representatives from the institutions concerned in order to encourage them to reform or change their practices. Education programmes are held in some schools to raise awareness among children about human rights. Street demonstrations can be organised to denounce the use of torture, particularly around 26th June, the International Day Against Torture.

Advocacy

The NGOs involved in promoting human rights try to promote the prevention and repression of torture by the authorities. Some dare to use the international sphere to advocate about these issues, despite attacks or threats from the Government against civil society. Nine Sri Lankan NGOs submitted a joint report to the Committee Against Torture in 2011 and the UN Human Rights Committee has received more than a dozen complaints.

CHAPITRE 4. RECOMMENDATIONS TO THE SRI LANKAN AUTHORITIES

JUDICIAL GUARANTEES FOR DETAINED PERSONS

- Ensure that all persons placed in detention are incarcerated in an official location and that their families and lawyers are immediately notified of the reason for their arrest and the place of their detention.
- Ensure that all persons placed in detention can immediately and regularly contact their families and a lawyer of their choice, request an independent medical examination and benefit the assistance of an interpreter if necessary during detention.
- Ensure that all persons placed in detention are informed of their rights upon their arrest.
- Ensure legal representation for arrested persons through the implementation of the new gazette notification allowing the lawyers to represent detainees at police stations as a matter of right. Proper implementation would necessitate a free legal service providing such representation to the indigent people.
- Ensure that all persons placed in detention are brought promptly before a judge to review the legal basis for the arrest and whether remand is indeed necessary and to prevent the violation of their fundamental rights.
- Exclude from all judicial procedures statements obtained under torture so that they can in no case be used as evidence.

FORENSIC SERVICES

- Ensure the effective independence of the Judicial Medical Officers (JMO).
- Set up a procedure obliging the doctor performing the forensic examination to check the victim's identity.
- Provide members of the forensic services with the training, equipment and material needed to carry out effective examinations in cases of torture.
- Ensure the confidentiality of the meeting when a suspect is accompanied by police officers.
- Guarantee that JMOs submit their reports within an appropriate allotted time.
- Sanction JMOs who are complicit in concealing acts of torture or ill-treatment.

PROSECUTIONS AND REFORM OF THE JUSTICE SYSTEM

- Guarantee official practice reflecting the political willing to prosecute and punish State officials who are responsible for acts of torture or abuse with due process.
- Reform the justice system to guarantee the independence of justice.
- Reduce trials delay and end the present practice of recurrent postponement of trials, with intervals of many months in between, by re-introducing the practice of hearing a trial from the beginning to the end once a trial starts.
- Ensure effective implementation of visits of magistrates to police stations by a system of periodic visits to monitor the legality of detention and the questioning of the persons detained.

- Ensure that magistrates question persons brought from a place of detention about their condition, in the absence of police officers, so as to guarantee the physical and psychological integrity of the detainee. Ensure that magistrates require an independent medical examination even if the person does not request it and order such an examination if a person or his lawyer alleges acts of torture or abuse.
- Require an independent investigation if the judge has reasons to think that acts of torture have been committed.
- Put an end to the current practice of political interference with the Attorney General's department and ensure the Attorney General's accountability to act independently.
- Prosecute authors of torture within a reasonable time, as well as their accomplices or instigators by taking into account the chain of command and possible hierarchical responsibilities.
- Set up a specialised unit for inquiries and prosecution including staff with training in torture cases and allocated with sufficient resources.
- Bring to justice all those presumed responsible for these acts in compliance with international standards regarding fair trials.

POLICE, ARMY AND PRISON ADMINISTRATION

- Prevent any politicisation of these administrations and provide them with adequate personnel and material resources.
- Remove from their positions any officers suspected of torture and ill-treatment until the allegations concerning them can be subject to an independent and impartial investigation.
- Set up an independent and effective body to investigate allegations of torture and abuse committed by the police, the army or the prison administration.
- Promote the recruitment of Tamil or Tamil-speaking officers, particularly within the Police Department and in areas where the majority population is Tamil.
- Set up comprehensive training sessions on the prevention of torture, ill-treatment and human rights for members of the Police Department, the army and the prison administration.
- Place the police department under a civilian authority instead of the Ministry of Defence and promote an efficient and modernized criminal investigation system.
- Demilitarise law and order maintaining missions.
- Guarantee conditions of detention in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners.
- Set up a renovation project for prison infrastructure and give the prison administration sufficient resources.
- Encourage release on bail and alternative sentences to imprisonment.
- Ratify the Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment of Punishment and guarantee an independent monitoring body for places of detention allocated with the necessary resources to organise scheduled and surprise visits and inspections with free, unhindered access to all places of detention, including those under the army jurisdiction.
- Allow human rights organisations to access places of detention.

REHABILITATION OF VICTIMS

- Ensure that all victims of torture and ill-treatment can receive compensation, ensuring in particular that any compensation announced is consistent and actually paid to victims.
- Set up rehabilitation services for victims of torture and members of their families.

LEGAL REFORMS

- Ensure constitutional and other legal reforms to end the politicization of public institutions and to make the administration of justice independent.
- Introduce into Sri Lankan law the crime of enforced disappearance.
- Adopt the victims and witnesses protection law and set up an effective protection mechanism.
- Substantially amend or repeal the Prevention of Terrorism Act to bring Sri Lankan law into compliance with its international obligations.
- Protect human rights defenders
- End all forms of harassment, intimidation and threats towards human rights defenders.
- Ensure their protection in order for them to carry out their human rights activities freely and without hindrance.
- Respect the provisions of the Declaration on Human Rights Defenders adopted by the UN General Assembly on 9 December 1998.

INTERNATIONAL COOPERATION

- Promptly implement all the recommendations of the UN Committee Against Torture submitted in November 2011 as well as those of the Special Rapporteurs, particularly the Special Rapporteur on torture.
- Recognize the competence of the UN Committee Against Torture to receive and consider communications from or on behalf of individuals alleging a violation of the Convention.
- Implement the decisions delivered by the UN Human Rights Committee following the communications submitted by Sri Lankan citizens concerning the violation of their rights.
- Cooperate with the UN Committees and remove any obstacle created by the Singarasa case judgment of the Supreme Court of Sri Lanka.
- Implement the recommendations made during the Universal Periodic Review in 2008.

Bibliography

SRI LANKAN INSTITUTIONS AND AUTHORITIES

- Commission of Inquiry on Lessons Learnt and Reconciliation, report, November 2011
- Mohan Peiris, President's Counsel, Former Attorney General, 47th session of the UN Committee Against Torture, Introductory statement by the leader of the delegation of Sri Lanka, 8 November 2011
- Sri Lanka Ministry of Defence, Humanitarian Operation Factual Analysis July 2006 – May 2009, July 2011
- Government of Sri Lanka, Responses to List of Issues to be considered during the examination of Sri Lanka's 3rd and 4th combined periodic reports on the Convention against Torture, 2011
- Sri Lanka, Combined third and fourth periodic reports of States parties due in 2007 Sri Lanka, (CAT/C/LKA/3-4), submitted to the Committee Against Torture, 17 August 2009

INTERNATIONAL ORGANISATIONS

- United Nations (UN), Committee Against Torture, Concluding Observations - Sri Lanka, CAT/C/LKA/CO/3-4, November 2011
- United Nations (UN), Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, March 2011
- United Nations (UN), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Follow-up to the recommendations made by the Special Rapporteur (Manfred Novak) in the report of his visit to Sri Lanka from 1 to 8 October 2007 (A/HRC/13/39/Add6), February 2010
- Commission of the European Communities, Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka, October 2009

NON-GOVERNMENTAL SOURCES

- Right To Life Sri Lanka, Disappearances in Sri Lanka between January and April 2012, June 2012
- Asian Legal resource Centre (ALRC), the Rehabilitation and Research Centre for Torture Victims (RCT) and ACAT-France, Joint Stakeholders submission for the Universal Periodic Review of Sri Lanka, 23 April 2012
- Janasansadaya & Citizens Committee for Gampaha, Joint Alternative report to the Universal Periodic review on Sri Lanka 2012, April 2012
- International Crisis Group, Sri Lanka's North II: Rebuilding under the Military, March 2012
- International Crisis Group, Sri Lanka: Government promises, ground realities, March 2012
- Janasansadaya, Torture Prevalence in Sri Lanka – 2012, February 2012
- International Crisis Group, Sri Lanka: Women's insecurity in the North and East, December 2011
- Freedom from Torture, Out of the Silence: Ongoing torture in Sri Lanka 2009-2011, November 2011
- Amnesty International, Sri Lanka: Briefing to the UN Committee against torture, October 2011
- Centre for Human Rights and development & 8 NGOs, Joint Alternative Report to the Committee Against Torture, October 2011
- Amnesty International, When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission, September 2011
- Redress, Asian Legal Resource Centre, RCT, ACAT, Alternative Report to the Committee Against Torture in connection with the third periodic report of Sri Lanka, September 2011
- Basil Fernando, Gyges' Ring the 1978 Constitution of Sri Lanka, August 2011
- Harshi Perera, Study on women pre-trial detainees in Sri Lanka, August 2011
- Asian Human Rights Commission (AHRC), a submission for the 47th Session of the Committee Against Torture on Sri Lanka, July 2011
- International Crisis group, Reconciliation in Sri Lanka: Harder than Ever, July 2011
- Asian Human Rights Commission (AHRC), Police Torture Cases, Sri Lanka 1998 -2011, June 2011
- Madhushika Jayachandra and Dinesha Samararatne, Judicial Response to the Right to Liberty in terms of the Fundamental Rights Jurisdiction of the Supreme Court (2000-2007), in Law and Society Trust Review Volume 21 Issue 281&282, March-April 2011
- Kishali Pinto-Jayawardena et Jayantha de Almeida Guneratne, Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times, January 2011

- International Commission of Jurists, submission to the Committee against Torture on the examination of the combined third and fourth periodic reports of Sri Lanka under the Convention against torture and other cruel, inhuman or degrading treatment or punishment, 2011
- Asian Human Rights Commission (AHRC), Sri Lanka in The State of Human Rights in Eleven Asian Nations, 2011
- Ethics in Action, Women Speak out, Asian women speak out on torture, ill-treatment, domestic violence and policing system, Vol. 4 No.5, October 2010
- Basil Fernando, The politics of Habeas Corpus and the marginal role of the Sri Lanka courts under the 1978 Constitution, in Law and Society Trust review, September- October 2010
- International Commission of Jurists, Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects, September 2010
- Article 2, Non rule of law in Asia, Vol 9, No2, June 2010
- Ethics in Action, Sri Lanka's Judicial medical Officers, their concerns and the torture shortcut, Vol. 4 No. 2, April 2010
- Human Rights Watch, Legal Limbo : The Uncertain Fate of Detained LTTE Suspects in Sri Lanka, February 2010
- Centre for Human Rights and development, Prevention of Terrorism Act (PTA), A critical analysis, January 2010
- Kishali Pinto-Jayawardena, Still seeking justice in Sri Lanka, Rule of Law, the Criminal justice system and commissions of inquiry since 1977, January 2010
- AHRC, Sri Lanka in The State of Human Rights in Eleven Asian Nations, 2010
- Article 2, Abysmal lawlessness and the zero status of Sri Lankans, Vol 8, No 4, December 2009
- Françoise Hampson, Leif Sevón, Roman Wieruszewski, The Implementation of certain Human Rights Conventions in Sri Lanka, September 2009
- International Crisis Group, Sri Lanka's judiciary: Politicised courts, compromised rights, June 2009
- International Bar Association Human Rights Institute (IBAHRI) Report, Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka, May 2009
- Kishali Pinto-Jayawardena, The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka. (Rehabilitation and Research Centre for Torture Victims, April 2009
- Basil Fernando, Recovering the authority of public institutions, 2009
- Asian Human Rights Commission (AHRC), a Baseline Study on Torture in Sri Lanka, 2009
- Asian Human Rights Commission (AHRC) & the Rehabilitation and Research Center for Torture Victims (RCT), The Phantom Limb, Failing judicial systems, Torture and Human rights work in Sri Lanka, a study of police torture in Sri Lanka, 2009
- Kishali Pinto Jayawardena et Lisa Kois, Sri Lanka, the Right not to be tortured, a critical analysis of the Judicial Response, Law and Society Trust, 2008
- Piyanjali de Zoysa & Ravindra Fernando, Methods and sequelae of torture: a study in Sri Lanka, in Torture Journal, Volume 17, No. 1, 2007
- Transparency International-Sri Lanka, In pursuit of "absolute integrity": identifying causes for police corruption, 2006

About ACAT-France and ALRC

ACAT-France

The Action by Christians for the Abolition of Torture (ACAT-France) is a human rights organisation, based in Paris, founded in 1974 and a recognized public-interest foundation. Basing its action on international law, ACAT-France fights against torture, capital punishment and for the protection of all victims through a network of 35,000 members. Its actions in France focus on the conditions of detention as well as the protection of refugee rights. 30 ACATs in the world are affiliated to the International Federation of the Action by Christians for the Abolition of Torture (FIACAT)

Asian Legal Resource Centre (ALRC)

The Asian Legal Resource Centre (ALRC) is a regional human rights NGO based in Hong Kong. ALRC is a sister organization of Asian Human Rights Commission (AHRC). They were founded in 1986 by a prominent group of jurists and human rights activists in Asia, and are committed to the development of legal self-reliance and empowerment of people. They conduct research concerning human rights from the perspective of the functioning of states' institutions of the rule of law and justice delivery mechanisms, issue reports and conduct local and international advocacy with the aim of protecting human rights and combating impunity across Asia.

Acknowledgments

ACAT-France thanks every organization and individuals who accepted to be interviewed during its mission in Sri Lanka in June and July 2011. Its acknowledgments include in particular the organisations Right to Life, Janasansadaya, Home of Torture Victims, Gampaha District Citizen Committee for Human Rights, SETIK, Rule of Law Forum.

Three years after the end of the conflict between governmental forces and the Liberation Tigers of Tamil Eelam, *when arbitrariness prevails* provides an overview of the phenomenon of torture in Sri Lanka using the testimony of the victims and the actors involved. The use of torture and ill-treatment remains routine, and daily, the impunity of authors of torture is generalised.

ACAT-France is a human rights organization founded in 1974 to fight against torture anywhere around the world. It raises awareness in the public opinion and calls on to act for all victims, regardless their ethnicity, ideology and religion. ACAT-France also works to abolish capital punishment and protect victims, particularly by defending the right to seek asylum.
