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To: Health professionals
From: Medical office / South Asia team
Date: 6 February 2002

MEDICAL LETTER WRITING ACTION

Effective medical reports needed to aid prosecution of rape of women in custody Sri Lanka

Key wordssexual assault in custody / doctors / medical confirmation

Summary

During 2001, Sri Lanka saw a marked increase in allegations of rape in custody by army, police and navy personnel. Most incidents have occurred in the context of the armed conflict between the security forces and the Liberation Tigers of Tamil Eelam (LTTE) fighting for an autonomous state in the north and east of the country. Among the victims are many internally displaced women. Not a single member of the security forces has ever been found guilty of rape in custody despite the gravity of the crime.

Under international law, rape committed by government officials or armed political groups during armed conflict constitutes torture. The UN Special Rapporteur on torture in 1992 stated that "[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture".

In this action, Amnesty International sets out the reasons why the role of doctors and police officers in the early stages of criminal investigations should be reviewed to ensure that more evidence is effectively gathered and safeguarded. This will increase chances for a successful prosecution.

The report *Sri Lanka. Rape in Custody*. January 2002 (AI index: ASA 37/001/2002) offers further background information. Amnesty International has submitted this report to the government and the Committee for the Elimination of All Forms of Discrimination against Women.

Recommended actions & addresses

Please write letters in English to the authorities below, using professionally-headed paper if you use this in your profession:

- introducing yourself in your professional capacity;
- expressing grave concern at the increase in allegations of rape in custody;
- urging the government to publicly condemn rape in custody and ensure that high priority is given to the prosecution of perpetrators by an independent body as rape has been included as a

constituent crime against humanity and a war crime under the Rome Statute of the International Criminal Court adopted in July 1998 (articles 7 and 8);

- calling on the authorities to ensure that all detainees including women have prompt access to a doctor after arrest and thereafter daily upon request in accordance with the *Standard Minimum Rules for the Treatment of Prisoners*, article 24;
- urging the authorities to allocate resources for the training of medical officers, in particular district medical officers, to ensure that a medical examination and the subsequent drafting of the medical report is carried out in accordance with the guidelines set forward in the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*;
- enclosing a copy of the Istanbul Protocol's *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment*;
- welcoming the recent Supreme Court decision which on 25 January 2002 granted 150,000 rupees compensation to Velu Arshadevi, but urging the authorities to ensure that the criminal prosecution of the three soldiers and three police officer allegedly responsible for raping Velu Arshadevi will proceed shortly.

Addresses

Prime Minister
The Hon Ranil Wickremasinghe
Prime Minister
Prime Minister's Office
58 Sir Ernest de Silva Mawatha
Colombo 7
Sri Lanka

The Hon W.J.M. Lokubandara
Minister of Justice
Ministry of Justice
37 Kirula Place
Colombo 5
Sri Lanka

The Hon P Dayaratne
Minister of Health, Nutrition and Welfare
Ministry of Health
385 "Suwasiripaya"
Wimalawansa Mawatha
Colombo 10

Copies to:

Sri Lanka Medical Association
No 6, Wijerama Mawatha
Colombo 7
Sri Lanka

National Committee on Women
Ministry of Women's Affairs
No 177 Nawala Road,
Narahenpita
Colombo 5
Sri Lanka

National Human Rights Commission
No 36 Kynsey Road
Colombo 8

Sri Lanka

and to diplomatic representatives of Sri Lanka accredited to your country.

If you receive no reply from the government or other recipients within two months of dispatch of your letter, please send a follow up letter seeking a response, referring to your previous letter(s). Please do not be discouraged by the possible lack of replies to your letters. They are noticed. Please check with the medical team if you are sending appeals after 7 April 2002, and send copies of any replies you do receive to the International Secretariat (att: medical team).

Monitoring of action

If you have access to e-mail you can help our attempt to monitor letter-writing actions. If you write one, two, three or more letters, please send us an e-mail and let us know. Please write in the subject line of your e-mail the index number of the action and the number of letters you write
e.g. ASA37/004/2002 - 2

Please send your message to medical@amnesty.org Thank you.

Date: 6 February 2002

MEDICAL CONCERN

**Effective medical reports needed to aid prosecution of rape of women in custody
Sri Lanka**

Introduction

During 2001, Sri Lanka saw a marked increase in allegations of rape in custody by army, police and navy personnel. Most incidents have occurred in the context of the armed conflict between the security forces and the Liberation Tigers of Tamil Eelam (LTTE), fighting for an autonomous state in the north and east of the country. Among the victims of rape by the security forces are many internally displaced women, women suspected of being members of the LTTE and female relatives of suspected male members of the LTTE.

Complaints of rape, like other complaints of torture, are often not effectively dealt with by police and sometimes doctors. Not a single member of the security forces has ever been found guilty of rape in custody. Deficiencies in the early stages of the criminal investigation process have repeatedly contributed to the collapse of the investigation of the alleged rape and the prosecution of the alleged perpetrators.

Doctors play an important role in the documentation of torture including rape in custody which may help improve the current lack of successful prosecutions. Doctors are often the first to see victims after the alleged crime and medico-legal reports could provide valuable evidence to aid prosecutions.

Recent reports of rape of women in custody

Amnesty International has documented numerous cases of rape in custody of which three cases are featured below.

Sinnathamby Sivamany and Ehamparam Wijikala

Sinnathamby Sivamany (aged 24) and Ehamparam Wijikala (aged 22), two Tamil women internally displaced by the ongoing armed conflict in the north and east of Sri Lanka, were arrested by members of the navy in the coastal city of Mannar on 19 March 2001. They were subsequently raped by navy personnel and members of the Special Investigation Unit (SIU) of the police at the office of the Counter-Subversive Unit (CSU) of the police outside Mannar town.

At the CSU office Ehamparam Wijikala's partner was locked in a cell, while she was taken to a room where the Officer-in-Charge was present. The officer asked a male police officer named Rajah to bring a piece of cloth. Rajah blindfolded her with the piece of cloth. She was beaten and her clothes were forcibly removed. Then her hands and legs were held and one person got on top of her, soon afterwards followed by another one. She said they both raped her.

Sinnathamby Sivamany has testified that soon after Ehamparam Wijikala and her partner had been taken into the CSU office, a navy officer came to the van and took away Sinnathamby's son. Another navy officer then climbed into the van and blindfolded her with a sock aided by the driver of the van.

Then this officer forcibly removed her clothes and raped her. Some time after that she was taken inside the CSU office to the room in which Ehamparam Wijikala was being held. The security forces personnel present beat her, demanding that she remove her clothes. When she refused, Rajah ordered Ehamparam Wijikala to remove Sinnathamby Sivamany's clothes. Both women were made to parade naked in front of the men. They were then made to sit in a crouched position; their hands and legs were tied and attached to a pole which was then placed between two tables so they were left hanging. They were in this position for about 90 minutes and were pinched and beaten with a thick wire during that time.

Three days later, on 22 March, the two women were taken to the District Medical Officer of Mannar District. Officers reportedly threatened the women when taking them to hospital and remained present throughout their visit to the medical officer. The two women refused to have a medical examination under these conditions. In his medico-legal examination form of 22 March 2001, however, the medical officer ticked the "no injuries" box instead of indicating that he in fact had not carried out any medical examination.

Non-governmental organisations and church leaders raised concern about the two women's cases, which attracted a lot of publicity. On instructions of the magistrate the women were once again taken to the Mannar district medical officer on 30 March. During this second examination, the medical officer found marks on their bodies, including semi-circular abrasions consistent with nail marks on the elbows, forearms and wrists of Ehamparam Wijikala. He concluded that she had been tortured and raped and that Sinnathamby Sivamany was tortured and sexually assaulted. Rape could not be established. The magistrate later ordered an examination by a Judicial Medical Officer, senior to a district medical officer, in Colombo after the prison authorities informed him that the two women alleged that they had been raped. The judicial medical officer carried out his examination 18 days after the rape. He confirmed that several injuries sustained were consistent with the alleged torture inflicted on them. He concluded that while "there were no positive findings to establish sexual intercourse", it "cannot be ruled out as the absence of positive findings may be due to the fact that [they were] married with children and [that there had been a] 18 day delay" from the time of the alleged rape to the time of the examinations.

The magistrate ordered the police to investigate the allegations of rape and arrest the suspects, but local police did not act on his instructions. After widespread protests and following an order by the then Minister of Justice the police launched an investigation and arrested the suspects. Twelve police officers and two navy officers were arrested. They were identified by the women during an identification parade. At the time of writing, all alleged perpetrators had been released on bail. It is feared that in this case, like many other similar ones, those allegedly responsible for rape in custody will never be brought to justice.

Velu Arshadevi

Velu Arshadevi, a Tamil woman of Indian origin, who was living in a boarding house in Colombo, was allegedly raped by three policemen on 24 June 2001.

On 24 June 2001 police officers interrogated all persons staying at the boarding house and told Velu Arshadevi that "since she was a Tamil, she was not allowed to stay" there. She was told she had to go with them to the Maradana police station. The friend who had also been staying in the same place accompanied her for safety reasons. While *en route* to the police station, they stopped at the Maradana - Borella Road checkpoint. Her friend was told to purchase some tea for the security forces and sent away. After he had gone, two police personnel took her to a staircase situated next to a bunker below road level and raped her there.

Later that day, she made a complaint to the Maradana police station. The Officer-in-Charge produced her before the judicial medical officer on the same day. In his medical report, the medical officer confirmed that rape had taken place. After an identification parade was held by police, three police officers and three soldiers were arrested in connection with this crime. They have since been released on bail. In a landmark judgment on 25 January 2002 Velu Arshadevi was granted 150,000 Sri Lankan rupees (approximately US\$ 1600) in compensation by the Supreme Court of Sri Lanka.

Amnesty International welcomed this decision and is urging the Sri Lankan authorities to ensure that the criminal prosecution will proceed shortly.

Further cases of rape in custody have been documented by Amnesty International in the report *Sri Lanka. Rape in Custody* (January 2002, AI index: ASA 37/001/2002).

Legal standards

The Sri Lanka Penal Code was amended in 1995 and 1998 recognizing rape in custody and gang rape as acts constituting grave crimes. Torture and rape in custody are crimes punishable by ten to and 20 years' imprisonment in Sri Lanka.

Under international law, rape committed by government officials or armed political groups during armed conflict constitutes torture. The UN Special Rapporteur on torture in 1992 stated that "[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture".

Sri Lanka has been a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1994. Sri Lanka has also ratified the Convention on the Elimination of All Forms of Discrimination against women.

Role of doctors in providing evidence of rape

The most important reason for the lack of successful prosecutions of alleged perpetrators of rape in custody is that those responsible for the investigation (i.e. the police) are colleagues of the accused. Investigating officers may either not want colleagues to be prosecuted or may experience pressure from the accused during their investigation. Rape by the police or other law enforcement personnel needs to be investigated by an independent authority. Further reasons for lack of successful prosecutions include:

- threats by perpetrators against victims and/or witnesses;
- withdrawal of the complaint by the victim under pressure from her family or community in the context of the traditional stigma associated with rape;
- inadequate or delayed medical examination.

As illustrated by the case of Sinnathamby Sivamany and Ehamparam Wijikala detailed above, a number of factors may hamper a medical examination following rape. First of all, victims may not be allowed to visit a doctor when being detained. This delay may seriously affect subsequent findings of torture including rape. More than one week after rape physical evidence is not often found. Secondly, doctors may be pressurized by police officers not to report any findings of torture. Police officers may refuse to leave the examination room, making a private and confidential examination in accordance with medical ethics impossible. Thirdly, medical examinations may be inadequate. Resources need to be made available to provide medical officers with training on reporting of torture including rape. District medical officers in particular should have further training because they often are the first doctors to meet women who have been raped in custody.

The central focus of the training should be the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*. The Istanbul Protocol describes in detail how to obtain and report on both physical and psychological evidence of torture. The Istanbul Protocol has a specific section on sexual torture including rape. The principles underlying the application of the Istanbul Protocol are the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment*. These principles include guidelines for medical experts on the minimum requirements for an accurate report (see appendix). (The *Istanbul Protocol* is available in PDF format at the web-site of the UN High Commissioner for Human Rights: <http://www.unhchr.ch/pdf/8istprot.pdf>)

Appendix I

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1]

The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation. [1]

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

The investigative authority shall have the power and obligation to obtainable the information necessary to the inquiry.[2] Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure.

Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. [3]

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

- (a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;
- (b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;
- (e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

[1] The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

[2] Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

[3] See footnote above.

[Note: The footnotes above are numbered 132-134 in the published version of the Istanbul Protocol.]