

~~~~~[EMBARGOED FOR: 1 June 1999]

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## SRI LANKA Torture in custody



June 1999  
AI Index: ASA 37/10/99  
Distr: SC/CO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

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# SRI LANKA

## Torture in custody

### 1. INTRODUCTION

For years, torture has been among the most common human rights violations reported in Sri Lanka. It continues to be reported almost (if not) daily in the context of the ongoing armed conflict between the security forces and the Liberation Tigers of Tamil Eelam (LTTE), fighting for an independent state, Eelam, in the north and east of the country. In addition, police officers regularly torture criminal suspects and people taken into custody in the context of local disputes over land or other private issues.

The scale of this problem is borne out by many testimonies obtained by Amnesty International from victims of torture, by medical certificates corroborating these testimonies, by judgments of the Supreme Court in fundamental rights cases, as well as by reports of commissions of inquiry set up by the government, the work of the Human Rights Commission of Sri Lanka (HRC), the Human Rights Task Force (HRTF) and the Committee to Inquire into Unlawful Arrests and Harassments (CIUAH) and other investigative bodies.<sup>1</sup>

The prevalence of torture is intrinsically linked with other human rights violations, particularly the long-term pattern of “disappearances” reported from the country. Many of the thousands of cases of “disappearances” reported in Sri Lanka since the early 1980s concern detainees alleged to have died under torture in police or army custody whose bodies were subsequently disposed of in secret.<sup>2</sup>

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<sup>1</sup> The Human Rights Task Force (HRTF), which had been established under Emergency Regulations in 1991, was dissolved at the end of June 1997. Its functions were transferred to the National Human Rights Commission (HRC), a permanent statutory body whose members had been appointed in March 1997. At the time of writing, the first annual report of the HRC had not been presented in Parliament. The Committee to Inquire into Unlawful Arrests and Harassments (CIUAH) was set up in mid-1998. It consists of five ministers and three members of parliament.

<sup>2</sup> According to the Report of the United Nations Working Group on Enforced or Involuntary Disappearances of 28 December 1998 (UN document E/CN.4/1999/62), more than 12,000 cases of “disappearances” have been reported from Sri Lanka. During 1997, the Working Group registered 77 cases, the highest number of “disappearances” reported to them from any country in that year. During 1998, a further 13 cases were recorded by the Group, four of which occurred in 1998. Three presidential commissions of inquiry into involuntary removal and disappearances of persons, set up by the government in late 1994 to investigate past human rights violations since 1 January 1988, found evidence of “disappearances” in 16,750 cases.



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In May 1998, Sri Lanka appeared for the first time before the Committee against Torture, the international body of experts monitoring the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, UN Convention against Torture).<sup>3</sup> The government's delegation acknowledged torture was a problem in the country and pledged that "every effort would be made" to put into effect the conclusions and recommendations of the Committee (see Appendix A for the full text of these conclusions and recommendations).

Amnesty International has welcomed several measures taken over the last few years which, if fully implemented, could go a long way towards assisting the eradication of torture in Sri Lanka. Among them are the ratification of the UN Convention against Torture in January 1994, the passing in November 1994 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act (hereafter Torture Act) which gave effect to Sri Lanka's obligations under the UN Convention against Torture, the establishment of the Human Rights Commission of Sri Lanka and the issuing of specific presidential directives aimed at safeguarding the welfare of political detainees.

Recent statistical information provided by the CIUAH proves, however, that torture remains a serious concern in the country: between July and December 1998, 47 of the 154 complaints received by the Committee related to torture.

This report describes the different facets of torture, including rape and death in custody in Sri Lanka. It seeks to identify the legal, institutional and political factors which allow these human rights violations to happen and impede victims and their relatives from obtaining redress. It concludes with a set of recommendations to the Sri Lankan authorities which complement those of the Committee against Torture, and, if implemented, would help to check these serious human rights violations.

Amnesty International acknowledges the difficult law and order situation prevailing in the country, both in terms of the ongoing armed conflict between the security forces and the LTTE and the apparent increase in common criminal activities over the last few years. Amnesty International stresses that abuses by opposition groups or rising crime can never provide a justification for governments to disregard their obligations to respect human rights, including the right not to be tortured from which no derogation is permitted under any circumstances, even "in time of public emergency which threatens the life of the nation" as set out in Article 4 of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka acceded in 1980.

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<sup>3</sup> During its May 1998 session, the Committee examined Sri Lanka's initial report under the UN Convention against Torture. The country's second report was due to be submitted by 1 February 1999. To Amnesty International's knowledge, it has not been submitted to date.

## 2. THE DEFINITION OF TORTURE AND ITS PROHIBITION IN LAW

Torture as a means of extracting information and as a means of punishment was officially made illegal in Sri Lanka in 1799.<sup>4</sup> The right not to be tortured was laid down as a non-derogable right in Article 11 of the 1978 Constitution of Sri Lanka (see below for more details).

Sri Lanka acceded to UN Convention against Torture in January 1994. Article 1 of the UN Convention against Torture defines torture as follows:

*“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.”*

The Torture Act passed by Sri Lanka’s parliament in November 1994 and certified on 20 December 1994 makes torture punishable by imprisonment for a term not less than seven years and not exceeding ten years and a fine. Regrettably, however, several provisions in the UN Convention against Torture were not fully implemented in the Torture Act which uses a more restrictive definition of “torture” than that contained in the UN Convention against Torture.

As stated above, the UN Convention against Torture defines “torture” as “any act by which severe pain *or suffering* ... is intentionally inflicted on a person *for such purposes as...*” (emphasis added). In subsection (1) of Article 2 of the Torture Act, however, the

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<sup>4</sup> A proclamation made by the British Government, the colonial ruler at the time, refers to the recognized form and legal method of investigating crimes by torturing the suspects, and to the punishment of convicted persons by “breaking on the wheel and other barbarous modes of execution”, and relates that it is His Majesty’s will and pleasure that “we should wholly abolish those forms of trial and punishment which humanity condemns and experience has shown to be less efficacious in the prevention of crimes than more lenient and equitable proceedings.” (From “The Kadugamar Committee Report”, Report of the Special Committee Appointed by the Bar Association of Sri Lanka to examine the implementation of the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 1978)

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causing of “suffering” is not explicitly made part of the definition of “torture”, and the purposes for which torture is inflicted are listed in an exclusive (rather than inclusive) way by use of the wording “for any of the following purpose[s]”. Thus, torture for other purposes, such as sadism alone, are not defined as a crime under this Act.

In addition, subsection (3) of Article 2 of the Torture Act stipulates that “the subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence” under the Act. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences (see also below).

Article 3 of the UN Convention against Torture, which provides that “[n]o State Party shall expel, return (“refoul”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, has not been given effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in another country cannot invoke this provision to contest their return to that country. The failure to include this prohibition in the Act is a matter of deep concern because Article 3 of the UN Convention against Torture, in contrast to the UN Convention relating to the Status of Refugees, applies to all persons and not only to asylum seekers.

The Committee against Torture in May 1998 recommended a review of the Torture Act in respect of each of the above three concerns. (See Appendix A, para 19)

Prior to the coming into force of the Torture Act, perpetrators of torture could be prosecuted under Sections 310 to 329 of the Penal Code which define the offence of causing hurt and an aggravated form of causing hurt, referred to as “grievous hurt” in order to try and extract information or a confession which may lead to the detection of an offence or to compel the restoration of property or satisfaction of a claim. Such an offence of grievous hurt is punishable by imprisonment for up to ten years and a fine (no minimum punishment is stipulated).

### 3. IMPUNITY SURROUNDING TORTURE

Despite the long-term existence of legislation to punish torture and the enactment of the Torture Act in 1994, this violation continues to be committed with impunity. In recent months, some members of the security forces have been sentenced to long-term imprisonment for their involvement in “disappearances” and extrajudicial

executions.<sup>5</sup> However, while a handful of cases are reportedly pending in the courts, so far no one has been convicted in relation to the crime of torture in Sri Lanka.

In May 1998, the Committee against Torture called upon the Government of Sri Lanka to take firmer action to bring to justice perpetrators of torture. The government delegation acknowledged that apart from one case where members of the police are facing charges of voluntarily causing hurt under section 314 of the Penal Code, no other cases in relation to torture were pending before the courts. The charges in that case relate to acts of torture inflicted upon Hewa Kottage Wimal Vidyamani in November 1990 at Embilipitiya police station and resulted from further investigations carried out by the police on direction of the Supreme Court in a fundamental rights petition filed by the victim. The charges were filed in August 1993. At the time of writing, the case remains pending before the Embilipitiya magistrate's court. The maximum penalty under section 314 of the Penal Code is one year's imprisonment and a fine.

In early 1999, there were reports in the Sri Lankan media that charges had been filed under the Torture Act against several police officers. According to the Attorney General's department, seven indictments are currently before the High Courts arising from eight judgments by the Supreme Court during 1997 and 1998 where the court had found police officers had been responsible for torture, had awarded compensation and had recommended further investigations.

Amnesty International is closely monitoring these cases and is appealing to relevant authorities to ensure that justice is not delayed. A similar recommendation was made by the Committee against Torture (see Appendix A, paragraph 23).

The Supreme Court of Sri Lanka which has granted compensation in scores of cases where people were found to have been tortured by agents of the state has repeatedly expressed its frustration at the lack of follow-up by the relevant authorities (the Inspector General of Police and Attorney General) to its recommendations for further investigations and "appropriate action (by way of criminal proceedings and/or disciplinary action)" against members of the security forces involved in acts of torture (see also below).

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<sup>5</sup> See Amnesty International statements issued after the judgment in the Krishanthy Kumarasamy case in August 1998 (News Service 129/98, AI Index: ASA 37/17/98) and the judgment in the Embilipitiya case of 10 February 1999 (News Service 031/99; AI Index: ASA 37/05/99) for details of convictions of security forces personnel in relation to "disappearances" and extrajudicial executions in Jaffna in 1996 and the south in 1989 respectively.

The Supreme Court has also commented on the prevailing climate of impunity in relation to torture. For instance, in a judgment of 24 February 1995 (SC Applications 396 and 397/93), it commented that "the incidence of unlawful arrest and detention and torture by police officers has not declined, which situation is attributable to the failure on the part of authorities to impose prompt, adequate and effective sanctions against offending officers. The Court views this situation with dismay and hopes that it will be remedied forthwith." In an earlier judgment of 31 August 1994 (SC Applications 433/93), the court had stated: "The fact that police officers continue to commit unlawful acts, including torture, despite regular judicial condemnation of such acts, shows that the authorities have permitted such acts by their failure to impose effective sanctions."

Beyond the failure to bring to justice the perpetrators of torture, there are many other underlying reasons for the continuing prevalence of torture in both political and non-political cases. In relation to political detainees, key factors include the wide powers given to the security forces in the Emergency Regulations (ERs) and the Prevention of Terrorism Act (PTA) which allow long-term detention in police and army custody without having to bring detainees before a judicial authority. The absence of standards laid down in law setting out minimum detention conditions is another major factor facilitating torture of detainees. The failure effectively to enforce safeguards currently laid down in law such as the requirement that people arrested under the ERs and PTA can only be held in authorized places of detention, is another contributing factor. Provisions in both the ERs and PTA that confessions to police officers

Under Emergency Regulations (ERs) and the Prevention of Terrorism Act (PTA) that contravene international standards. The PTA has been amended to reflect the recommendations of the UN Human Rights Committee. However, no amendments to the PTA have been made, despite continuous appeals by Amnesty International and others.

Under the PTA, people can be held in army or police custody for up to 18 months on administrative order, under three-monthly renewable detention orders.

Reviews of the ERs undertaken in the last few years seem to have largely been confined to the geographical application of the ERs rather than to addressing some of the fundamental aspects of their provisions for arrest and detention which have been identified as falling short of international standards by the UN Human Rights Committee (the international body of independent experts monitoring the implementation of the ICCPR) as well as

above a certain rank are admissible as evidence in court constitute an incentive to interrogating officers to obtain such confessions by any means, including torture. This is exacerbated by the fact that at the trial stage the burden of proving that such a confession was extracted under torture is placed upon the person making such an allegation.

having been the subject of criticism by the ~~Supreme Courts of the ERs~~ which were changed include the reduction of the maximum period of detention for investigative purposes in areas outside the north and east to 21 days, and to 60 days in the north and east. The provisions of preventive detention were changed to incorporate a judicial review after one year, but indefinite preventive detention remains possible.

During a visit to Sri Lanka in September 1998, Amnesty International delegates received mixed messages about any **review of security legislation**. The Attorney General on the one hand said he thought that it would be fair for the maximum period of detention in the north and east in the ERs to be reduced from 60 days to two weeks. He did not however commit to any changes in the PTA. His main argument was that the introduction of High Courts in Vavuniya and Jaffna would reduce the length of pre-trial detention for people held under the PTA. The Additional Secretary, Ministry of Defence categorically stated that it was necessary to keep 18 months' detention period. His argument was that if detention periods would be reduced, the risk of illegal detention would increase. "It is not the period that matters. Proper recording prevents torture."

In relation to the torture of common criminal suspects and people taken into custody in a non-political context, the main contributing factors are the nexus between local police and local politicians, widespread corruption within the police force and a general lack of independence on the part of the police.

The setting up of the Human Rights Commission of Sri Lanka (HRC), several Presidential commissions of inquiry, the issuing of presidential directives under the ERs to safeguard the welfare of detainees and other mechanisms go some way towards preventing and providing remedies for torture. However, **in order to eradicate torture of both political and other prisoners, there remains a need to establish a simple procedure which allows torture by the police or other law enforcement personnel to be investigated by an independent authority with the necessary powers and expertise required to ensure prosecutions for torture can be successfully brought.** As pointed out by former Chief Justice H H Basnayake in 1970 in the Final Report of the Police Commission, the current practice requiring that a complaint against a police officer be inquired into by another police officer is inadequate:

*"Courteous attention and civility must replace the rude and militaristic attitude that is characteristic of a Police Station. No laws can effect the change. Even after public attention has been focused on a number of incidents in which the Police have belaboured the public, reports of Police violence still continue to appear in the Press. We think that this attitude of mind of the Police is largely due to*

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*the fact that the machinery for investigating complaints by the public against the Police at present is unsatisfactory and does not command the confidence of the people".<sup>6</sup>*

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<sup>6</sup> Sessional Paper XXI, 1970, para 54.

As one mother giving evidence before the Presidential Commission of Inquiry into Involuntary Removal or Disappearance of persons in the Western, Southern and Sabaragamuwa Provinces stated when she was asked why she had not complained to another police authority about the abduction of her son: "No, it would have been like asking the thief's mother to catch the thief."<sup>7</sup>

#### 4. TORTURE, INCLUDING RAPE: PATTERNS AND VICTIMS

##### **4.1 Torture of political prisoners**

Each year, thousands of Tamil people, including scores of possible prisoners of conscience, have been arrested particularly in the north and east of the country and in the capital, Colombo, on suspicion of being members or sympathizers of the LTTE, the main armed opposition group fighting for an independent state in the north and east of Sri Lanka.

The arrests are carried out under the ERs or the PTA, and detention orders are supposed to be issued for those held beyond the initial period. Several safeguards have been introduced to guarantee the welfare of detainees, including, for instance, that a detention order can only be issued if the arrest has been notified to the officer in charge of the nearest police station forthwith, and in any event not later than 24 hours after the arrest. Breach of this provision has also been made an offence. Nevertheless, many of those arrested and detained are tortured in custody.

In the north and east, routine torture methods include "dry submarino", having a shopping bag containing chillies and/or petrol pulled over the head and tied to the base of the neck and "wet submarino", being lowered inside a water tub or well. Both forms of torture cause feelings of near-suffocation. Many detainees also complain of beatings with cricket bats, PVC pipes filled with sand or concrete, being burnt with lighted cigarettes and given electric shock treatment. Further extreme forms of torture include burning with melted polythene, drilling into feet, inserting nails into feet or other parts of the body and rape of female detainees.

In the north, most of the allegations of torture concern the army, in others the navy is implicated. In the east, members of the army, Special Task Force (STF), police and several armed Tamil groups fighting alongside the security forces against the LTTE have been responsible for torture. The latter have included members of the Tamil Eelam Liberation Organization (TELO) and Razeek group (a group affiliated to the Eelam People's Revolutionary Liberation Front (EPRLF), now incorporated into the regular army). In

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<sup>7</sup> Sessional Paper No. V, 1997, Government Publications Bureau, September 1997, page 155.

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Mannar, the army has been reported as mainly responsible. In Vavuniya, the army, police and members of PLOTE are reported to have inflicted torture on detainees. In Trincomalee, the army, police and navy have been held responsible for torture. In particular, the army intelligence unit based at Plantain Point army camp has routinely resorted to torture of detainees.

The pattern of arrest, detention and torture in Colombo is closely linked to the occurrence of LTTE attacks in the city, the discovery of materials for such attacks or any major public events in Colombo such as Independence Day. High numbers of arrests are reported after explosions, assassinations and arms-finds.

A large percentage (exact figure is impossible to establish but estimated at more than 80%) of those arrested in Colombo are released within 48 hours, after their identity has been checked. Until mid-1998, this involved the local police getting confirmation of the information provided by the detainees from three different sources: 1. National Intelligence Bureau (NIB); 2. The Criminal Investigation Department (CID); and 3. the Crime Detection Bureau (CDB). Around May 1998, a new unit, the Terrorism Investigation Department (TID) was reportedly entrusted with the investigation of politically motivated crimes in Colombo previously under the purview of the CDB.

There have been reports of ill-treatment during this initial period and of people being held in conditions which amount to cruel, inhuman or degrading treatment, but there have been few reports of torture of people held for checking their identity. However, people who are suspected of having links with the LTTE on the basis of the information provided by one or more of the three agencies or on information provided by them during their initial interrogation risk being subjected to torture. Tamil people originally from the north or east of the country are especially at risk of being held for longer periods as are upcountry Tamils (Tamils of Indian origin who live in central Sri Lanka and often work in the tea estates in the central part of the country.)<sup>8</sup>

Gopalaratnam Thananjeyan (30) originally from Nallur, Jaffna but living at Bloemendahl Flats, Colombo 13 since 1989 was arrested on 22 August 1998 around 5.30am. He was taken to the Peliyagoda police station. On arrival, police officers took him to a room on the first floor, where he was tortured for about 4 hours. He was made to lie on a table and beaten all over his body. The police officers tied his hands behind his legs and subsequently suspended

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<sup>8</sup> The reasons why upcountry Tamils are arrested include: 1) they do not possess all the necessary identification documents, partly due to the fact that the citizenship status of this ethnic group is problematic -- they are descendants of Indian nationals brought to Sri Lanka in the 19<sup>th</sup> century to work on the plantations; and 2) there have been several attacks on economic targets by the LTTE in the upcountry area. Tamils living in the area, who are mainly upcountry Tamils, are suspected of assisting the LTTE or, in some cases, direct involvement in the attacks.

him from a pipe passed under his knees. While hanging in this position, he was beaten on the soles of his feet and on his legs and back. He was also hung upside down by his toes. As a result of the torture, he vomited repeatedly. After this, he was put inside a cell. Around 7pm, he was taken before an assistant superintendent of police (ASP). In his presence, he vomited again. The ASP then ordered for him to be taken to the hospital. At Colombo General Hospital, he received treatment. He had visible scars of beatings all over his body (criss-cross lines). He also complained of pain in his hands and feet. He stayed in the hospital until the morning of 24 August, when he was taken back to the Peliyagoda police station. He was released on bail in early January 1999 and is currently awaiting charges.

Kumaru Selvaratnam, a 48-year-old tutor, was arrested in early March 1997 on suspicion of involvement with the LTTE. He was beaten with a broomstick at Slave Island police station in Colombo during the first eight days of his detention. His testicles became inflamed after he had been trampled and kicked, and needed to be surgically removed. In July 1998, the Supreme Court awarded him 100,000 Rupees compensation.

Suppu Udayakumar, an upcountry Tamil and member of the Socialist Equality Party, was arrested on 12 June 1998 by the Hatton police. He was taken to the Kandy police station. Three named officers, including a sergeant and two sub-inspectors, hung him upside down and beat him all over his body. He was also taken to the superintendent of police's office across the road, where the sergeant put his genitals inside a drawer of a table and closed the drawer causing acute pain and injury to his testicles. After his transfer to the Security Coordination Division (SCD) at 32, Malalasekera Mawatha in Colombo, he was taken to the Judicial Medical Officer's (JMO) office, where he was examined by an additional JMO. However, he continued to be tortured after his return to the SCD. On 9 July, he had to be admitted to hospital as he was unable to walk and had acute pain in his head. He claims that as a result of torture, he is impotent, has constant headache, numbness in the left arm, and constant pain in and around the waist. A petition seeking compensation for the violation of his fundamental right not to be tortured is currently before the Supreme Court of Sri Lanka.

### **Torture of women**

There have also been regular reports of ill-treatment and torture of women in detention on suspicion of being members or sympathizers of the LTTE. T Ranjani, was tortured by police at Cinnamon Gardens police station, Colombo after her arrest on 26 November 1997. In June 1998, the Supreme Court of Sri Lanka awarded her Rupees 10,000 compensation. According to the report of the JMO submitted to the court, she had seven injuries on her body which were consistent with her allegation that she was hit with a PVC pipe of approximately 2cm thick and with sticks. T Ranjani spent 22 days in detention at Cinnamon Gardens police station.

**Torture and ill-treatment by the LTTE**

Members of the LTTE have also been responsible for the torture and killing of persons deprived of their liberty. Torture methods used by members of the LTTE have included hanging prisoners upside down and beating them, making them inhale chilli fumes, inserting pins or nails under their fingernails and burning them with heated rods. Amnesty International has also received reports of ill-treatment of children as young as 14 who were apparently recruited by the armed group against their will.

Photographs recently obtained by Amnesty International of Kovinthan Mylvaganam, a prisoner released by the LTTE in April 1996 shows clear signs of burning with heated iron on his genitals, thigh, buttocks and back. Kovinthan Mylvaganam had been held in LTTE custody at Pallai and Kaithady between 1992 and 1995 and tortured regularly throughout this period.

**Amnesty International has repeatedly appealed to the leadership of the LTTE to bring an immediate halt to torture and other violations of international humanitarian law.**

Muthuthamby Vanitha, originally from Meesalai, Jaffna, was arrested by the Kotahena police, Colombo, on 19 November 1998 while she was staying in a lodge. The 20-year-old woman had been detained for a week after she was deported in early October from France where she had gone to seek asylum. She had subsequently rented a room in a lodge in Colombo, hoping to leave Sri Lanka again. When her mother visited her at Kotahena police station, the detainee complained that she had been hit in the stomach with iron pipes and had been refused access to the toilet, as a result of which she had swollen legs. The mother complained to a lawyer and when the lawyer visited the police station on 23 December, the police denied the allegation of torture but gave the lawyer permission to visit Muthuthamby Vanitha. The lawyer noted she had swollen legs. The

next day, on 24 December, when the mother visited Muthuthamby Vanitha, the detainee told her that after the lawyer left the police station, police slapped her severely in the face and hit her all over her body with rods. She had also been threatened that, if she made further complaints, she would be hung naked upside down and tortured. The lawyer complained to the CIUAH and Muthuthamby Vanitha was subsequently examined by a JMO, who reportedly found evidence of torture. At the time of writing, she was in custody at Welikade women's prison awaiting trial. She is receiving medical treatment but continues to suffer from the aftermath of torture.

### **Torture of children**

Although the arrest and torture of children is not a common practice, there have been several chilling reports of torture of young Tamil children taken into custody on suspicion of being members of the LTTE or in order to force a member of their family to hand him or herself over.

In October 1997, the JMO in Colombo who examined Sinnarasa Anthonymala, a girl from Jaffna who had been arrested by the navy in July 1995 when she was 15 years old, found evidence of 46 wounds on her body. When Amnesty International interviewed Anthonymala during a visit to Sri Lanka in 1996, she explained how she was held naked and taken for interrogation by the navy up to three times per day throughout the period of her stay at the Kankesanthurai navy camp. She was tortured by being hung upside down and beaten on her legs, burnt with cigarettes, given electric shocks and burnt with heated metal rods. After she was transferred to the custody of the CID in Colombo, she was further tortured including by being cut in the back of the neck, hit in the mouth and on the legs with a piece of wood. The JMO in his report of 20 November 1997 to the High Court found "all scars [to be] over 6 months old and consistent with those of healed injuries sustained in 1995". Amnesty International has received other reports of torture of children, including by members of the People's Liberation Organisation of Tamil Eelam (PLOTE), an armed group fighting alongside the security forces, in Vavuniya in May 1996 and by the police in Colombo in November 1997 (see Children in South Asia, Securing their Rights, AI Index: ASA 04/01/98 of April 1998).

In a judgment of 15 January 1998, the Supreme Court awarded maximum amount of compensation to a 15-year-old girl, Ehamparam Damayanthi, who was tortured and sexually assaulted by soldiers at Patpodi army camp, Batticaloa district in February 1997. The torture included being kicked, hit with clubs, having petrol poured on her face and being submerged in water. Soldiers had also pinched her buttocks, touched her breasts and asked indecent questions. The court noted that the soldiers did not deny the allegation of torture, and awarded the maximum amount of compensation requested by the lawyer appearing on behalf of the girl. Ehamparam Damayanthi was finally released in late November 1998 when the Batticaloa

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High Court found the confession extracted under torture by the police to be inadmissible as evidence.

#### **The use of unauthorized places of detention**

One particular factor facilitating torture is the continuing use of unauthorized places of detention, especially in the Jaffna peninsula and Vavuniya. This is despite the requirement under ER19(8) that detainees can only be held in officially gazetted places of detention. Detainees held at authorized places receive regular visits by delegates of the International Committee of the Red Cross (ICRC) and HRC, which reduce to some extent the risk of torture and "disappearances".

In Vavuniya, members of PLOTE run at least three illegal places of detention where torture is reportedly routinely practiced. One young man originally from Jaffna district who had been displaced following army operations there and settled in Vavuniya in early 1998, had been held at the Kovilkulam PLOTE camp for approximately three months in mid-1998. He told Amnesty International how one named member of PLOTE in charge of interrogation blindfolded him and put a cloth in his mouth, then forced him down on the floor and beat him on the soles of his feet. A nail was pushed into his heel, and then connected with an electric wire to administer electric shocks. Petrol was poured over his back and set alight. They also scratched him on his arms with a nail. At one point, a dog was brought into the room and made to bite the detainee on his private parts. This account is consistent with others provided by people held prisoner at Kovilkulam PLOTE camp, Vavuniya. In early 1999, there were also reports of at least 20 people held at an unauthorized place of detention run by PLOTE on Hospital Road in Jaffna town. There were also reports that a person by the name of Rajaratnam Rajeswaran was killed at a PLOTE camp in Nelliady, Jaffna district in mid-February 1999 and that he was subsequently beheaded; his head being found in Jaffna town and his body in a drain near the PLOTE camp in Nelliady.

The ex-prisoner held at Kovilkulam PLOTE camp, when interviewed by Amnesty International in September 1998, alleged that he could hear others being tortured from other parts of the camp. The torturers played loud music to deafen out their screams, which used to keep him awake all night. One morning shortly before his release, when he went to empty a bucket with waste, he claimed he saw human remains in a pit at the back of the camp, in the direction of the toilets. The previous night, there had been a smell of burning petrol and wood.

Members of the army and the police regularly visited the Kovilkulam PLOTE camp late in the night. The PLOTE leader in charge of interrogation allegedly received these visitors at the "summerhut" inside the camp. During the prisoner's time at the camp, the army or police officers never participated in the interrogations, but nor did they intervene to stop torture taking place.

There is also concern that elements within the security forces, possibly with the agreement of the political leadership, are helping these paramilitary groups to protect the secrecy of their camps and the torture taking place there. In late March 1999, army personnel raided several illegal camps run by PLOTE, EPRLF and TELO in Vavuniya but reportedly failed to find any prisoners. It cannot be excluded that the leaders of these groups were tipped off about the raids by sympathetic army personnel.

In Batticaloa district, members of the "Razeek Group" (see above) on 8 June 1997 took Periyathamby Subramaniam into custody at their camp. According to the JMO report of 29 September 1998 submitted to the Supreme Court, he showed injuries consistent with his allegations of being tortured at the camp run by the "Razeek group", at Patpodi army camp and at the Counter Subversive Unit (CSU) of the police in Batticaloa. The many scars noted by the JMO included burn scars, abrasions, lacerations and incised wounds. The allegations of torture at the "Razeek group" camp include beatings with wooden rod, burning of penis with a cigarette butt, near -suffocation with a shopping bag containing chilli powder and petrol, pricks with pins on his body and stabbing with knife on his shoulder. At Patpodi army camp, among other methods of torture, melted polythene wax was poured on his legs and one of the nails of his fingers was removed with a set of pliers. At the time of writing, the fundamental rights petition before the Supreme Court was pending and Periyathamby Subramaniam was facing trial before the Batticaloa High Court under the PTA.

One horrendous account of multiple torture at Thavady army camp, Kondavil, Jaffna in January 1997 further underlines the heightened risk of torture and killing in custody at unauthorized places of detention. Thirty five young men and women were taken into custody during a round-up by the army from Manipay camp around 5am on 2 January 1997. They were held at a small army camp at Thavady while being questioned about their identity. On the third day of their detention, the bodies of three soldiers killed in an ambush by the LTTE near Inuvil temple were brought to the camp. According to the testimony of one of the detainees, the other soldiers then suddenly started beating the detainees with poles, cricket bats and electric wire. The eight or nine women detainees were blindfolded and their hands were tied together. The soldiers then twisted the women's nipples with pliers, forcing the boys to watch. The same pliers were used to squeeze the genitals of the male detainees. Plastic bags filled with petrol and ants were pulled over the heads of the male detainees; the women were treated similarly although no ants were put in the plastic bags used on them.

On the fourth day of their detention, the detainees were transferred to Manipay army camp. One or two of them complained to the commanding officer about the torture. Later that night, the soldiers came and beat them again. At Manipay army camp, which is also an unauthorized place of detention, the 35 detainees were put with other detainees already in the camp; men and women were separated.

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One male detainee told Amnesty International how he was hung upside down by his toes and made to inhale chilli fumes that were being burned under the ropes. He claimed that sixteen detainees were being hung at the same time by nylon ropes suspended from a girder in the room. They were all beaten with S-lon (PVC) pipes and wire. Electric shocks were being administered from a car or motorcycle dynamo in the room. He thought their ordeal lasted for more than an hour, but because he had fainted, he said he could not be sure. Later that day, he was taken to a well in the camp and lowered into it by a rope which had been attached to his big toe by a hook normally used to perform Hindu rituals. He fainted again. To check he was conscious, soldiers cut his arm with a razor blade.

In the morning of the next day, he could not get up due to pain all over his body and injuries to his feet. One soldier then came with a plank with a nail sticking out of it and knocked the nail into his foot. He removed the detainee's handcuffs and told him to put his hands on the floor. A second soldier held his hands while the first soldier hit the plank with the nail into his right hand with a pestle. The nail broke and remained lodged in his hand throughout his detention. The detainee maintained that at least three other detainees were treated in the same way. He also claimed he saw at least ten detainees who had signs of having been burnt with a heated rod on their back.

At the time of his interview with Amnesty International in September 1998, this young man continues to suffer from headaches, back ache, recurring nightmares, pain in his heel, non-use of two fingers in his right hand and bad eyesight. He had the nail removed from his hand in August 1998, approximately one year after he was released. Out of fear, he told the doctor it had been caused in an industrial accident but Amnesty International strongly believes that the detailed account of his ordeal and clear marks on his body indicate that he was tortured as described.

In Colombo, a tower behind the Indian High Commission and the American Information Center along Galle Road in the heart of the city was known for years to be a “safe house” used by members of the army. This place had been identified as a secret place of detention by Amnesty International as far back as early 1994.<sup>9</sup> The Supreme Court in its judgment of 20 December 1996 found credible evidence that Vijayam Wimalendran was held at this place in October 1993. However, no action was apparently taken to bring an end to the use of this place as a place of detention. Amnesty International found that in April 1997 at least three people were held there for several days and tortured before being handed over to the CDB.

One of them, Kanapathipillai Sasikumar from Valaichenai, Batticaloa district stated in a fundamental rights petition to the Supreme Court that he was taken there on 3 April 1997 and held till 5 April, when he was handed over to the CDB. At the tower, he alleges he was stripped naked, had a shopping bag containing petrol and chilli powder pulled over his head and tied to his neck, was beaten with PVC pipes filled with concrete and with broken legs of tables and chairs. He also claims that when he refused to confess to being a member of the LTTE, his hands were tied behind his back and he was hung from the hook of a fan on the ceiling by a nylon thread tied to his thumbs. Thereafter he was blindfolded, electricity was passed through his body and a drill was used on one of his heels. He was also burnt with lighted cigarettes and cut with a knife on his buttocks. On another occasion, he was dashed against a wall and as a result lost one of his teeth in the upper jaw. He was also beaten on his ears and on his penis. A doctor at Nagoda government hospital has reportedly recommended surgery to his penis, but at the time of filing the petition in October 1998, the authorities at Kalutara prison where Kanapathipillai Sasikumar was held had not acted on this recommendation.

Keeping a detainee in a place not authorized as a place of detention was first made a specific offence under the ERs of June 1993. To date, to the best of Amnesty International’s knowledge, no member of the security forces has been charged under these provisions.

The requirement that detainees can only be held in specifically authorized places of detention is a welcome one. If strictly implemented, it would reduce the risk of torture. However, because many of the authorized places are under the control of the security forces, Amnesty International remains concerned that the government has not yet fully separated responsibility for custody from responsibility for investigation, one of the fundamental safeguards against torture and “Disappearances”.

### **Confessions extracted under torture used as evidence**

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<sup>9</sup> See Amnesty International report: *Sri Lanka: Secret detention in Colombo: the case of Arulappu Jude Arulrajah* (AI Index: ASA 37/13/94) of February 1994.

Normal Sri Lankan law, in particular the Evidence Ordinance, contains strong provisions to prevent the extraction of confessions under torture. Section 24 of the Evidence Ordinance makes inadmissible a confession made by an accused person which is caused by an inducement, threat or promise. Section 25 and 26 go further and impose a blanket prohibition on any confession made in custody being admitted as evidence. This means that confessions made to another detainee, a doctor or a visitor would also be inadmissible. The only exception made by the Ordinance is where the confession is made in the immediate presence of a magistrate.

In a major departure from these salutary provisions, both the ERs and the PTA stipulate that confessions made to a police officer above a certain rank are admissible as evidence. Amnesty International considers these provisions to constitute a direct incentive to interrogating officers to obtain "confessions" by torture, particularly because the burden of proving that a confession was extracted under torture is upon the person making such an allegation.

On occasions when Amnesty International has discussed the organization's concern about these particular provisions with Sri Lankan officials, it has been repeatedly told that a number of legal remedies are available to detainees, including fundamental rights petitions to the Supreme Court, *habeas corpus* petitions to the Court of Appeal and *voire dire* inquiries by the High Court during trials for those accused claiming that confessions were extracted under duress. These remedies, while important, serve merely to close the door after the horse has bolted. By ratifying the UN Convention against Torture, the Government of Sri Lanka has undertaken to take all necessary measures to *prevent* acts of torture as well as investigate them, provide compensation and bring to justice those responsible.

In scores of trials under the PTA, the accused have been acquitted once the court found that the confession was extracted under torture. As confessions are often the sole evidence produced by the police against the accused, the court acquits due to lack of evidence. Amnesty International has noted that in at least 46 trials before the High Courts between the beginning of 1996 and the end of 1998, accused were acquitted on this basis. However, the harm done to these persons in terms of the torture inflicted and their prolonged detention is not necessarily compensated as a result of these court rulings. Compensation would have to come about by petitioning the Supreme Court, but, due to restrictions in filing petitions, this is not always possible (see also below).

#### **4.2 Torture of criminal suspects**

In addition to its generalized use in the context of the ongoing armed conflict, torture is also regularly reported to have been used to extract confessions from suspects in theft and other criminal cases.

In a judgment of 31 October 1997, the Supreme Court awarded compensation to Kammella Weerage Buddhika Weerasinghe who had been arrested on suspicion in a robbery case in May 1996 and tortured at Pannala police station by being suspended over a rice pounder and hit repeatedly with a hosepipe while being forced to confess. The police in their statements to the court had denied that K W B Weerasinghe had been tortured and had emphasised that he “was not of good character but had been dismissed from service for theft previously”. The Supreme Court in its judgment stated: “It has been emphasized time and time again by this court that, not only those whose records are particularly meritorious but even hard core criminals are entitled to enjoy the constitutional guarantee of their fundamental rights.”

Each year, the Supreme Court has awarded compensation to people arrested on suspicion of petty crimes who were subsequently tortured by the police. The largest sum of compensation was awarded to Bathatha Jayatunga Gamage Malsha Kumari, a 14-year-old girl, who was tortured by police at Hungama, Hambantota district, in September 1995 including by being hung by her wrists from a tree, apparently in order to make her confess to having stolen a piece of jewelry from a neighbour. While in that position, four police officers hit her repeatedly with rubber hoses and sticks on her heels and all over her body.

After a lawyer filed a petition to the Supreme Court on her behalf in November 1995, the police went to extraordinary lengths to try and persuade her family to withdraw the case. They allegedly offered to pay Rupees 20,000 and to file a case against the neighbour who made the complaint of the theft. They also tried to get her to sign a document without allowing her mother to read it. They obtained a statement from her father stating he had not requested the lawyer to file a case in the Supreme Court. At a later stage, police even filed a case against the girl on a charge of threatening her neighbours. The Supreme Court however pursued the case, ultimately resulting in record compensation being awarded to her.

#### **4.3 Torture by police conniving in personal disputes**

Members of the public often approach local police officers to intervene in their disputes with neighbours, business rivals, family members or tenants. This longstanding practice was institutionalized in the period 1987 - 1990 at the time of the insurgency by the *Janatha Vimukthi Peramuna* (JVP, People's Liberation Front). During that time, politicians belonging to the ruling United National Party treated the police as an extension of their power and regularly provided them lists of “JVP suspects” to be taken into custody. However, these lists included many people who were not members or sympathizers of the JVP but had been put on the list for other, personal or political, motives. This was commented on in the Final Report of the Presidential Commission of Inquiry into Involuntary Removal or Disappearance of Persons:

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*“Personal jealousies, animosities, family disputes due to property-related issues, and even controversies surrounding love affairs, caused untold misery to people during this period. Caste rivalry also featured in a few cases of disappearances.”<sup>10</sup>*

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<sup>10</sup> Sessional Paper No. V, 1997, *ibidem*, page 154.

*"There was an administrative direction that the Deputy Inspector General (DIG) should be subjected to the control of the political authority usually the Chief Minister, notwithstanding the fact that Police powers had not been devolved to the Provincial level... This confirms the practice of 'Lists', whose source was the local politician. It also clarifies the path by which the Security Forces came to be used in the narrow interests of particular politicians."*<sup>11</sup>

Rohan Daluwatta, a former Commander of the army gave evidence before the Commission about how this practice worked when he was Coordinating Officer, Ratnapura during that period:

*"I was given a list of names with the direction to take them into custody, that they were JVPers. I received the list from a former Minister... When I checked the list with the Police, I came to know that they were SLFPers<sup>12</sup>."*<sup>13</sup>

Similarly, two former Inspectors General of Police, when appearing before the Commission, confirmed such alternative chains of command being in existence at a time as well as a system of promotions to support it.

K A Sisira Kumara, a mechanic from Makola, Gampaha district, was tortured on 7 December 1998 by four officers of the Sapugaskanda police station after he was arrested on suspicion of having stolen a car radio. In his fundamental rights petition to the Supreme Court, he stated:

*"[They] took me upstairs..." "In that room, they first kicked and hit me all over the body. Thereafter they tied both my hands behind [me] and tied my two fingers with a thread and tied a rope to the fingers and told me to stand on a chair. [One of the officers] took a rope, and tied it to my hand and put it on to the hook, then tied the end of one rope on to something. Then all of a sudden [he] pushed the chair aside and I was hanging and suffered immense bodily and mental pain."*

He further described how they swung him around by pulling his hair, then suddenly let go, so he was going around in circles. They hit him with a 2 inch thick and 3 feet long white-coloured pole and kicked him. At one point, the rope snapped and he fell to the ground, but was tied up again in a similar way.

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<sup>11</sup> Sessional Paper No. V, 1997, *ibidem*, page 35.

<sup>12</sup> The Sri Lanka Freedom Party (SLFP) was the main opposition party at the time and is currently member of the People's Alliance, the ruling party.

<sup>13</sup> Sessional Paper No. V, 1997, *ibidem*, page 35.

The same treatment was meted out to him later that night for about another hour. He describes what happened subsequently as follows:

*"I could not even bend my hands. [One of the policemen] brought the white pole and had it aligned to my hands and straightened my hands forcibly. It caused me great pain."*

The following day, the Private Secretary to a member of the Provincial Council (who was allegedly trying to dispossess Sisira Kumara of a garage) visited the police station and asked the officer-in-charge about K A Sisira Kumara. The officer-in-charge then ordered a police constable and traffic sergeant to hit the detainee in front of the visitor.

After his release, K A Sisira Kumara was admitted to Colombo General Hospital and received treatment for 14 days.

The use of the police for the settling of personal differences is closely linked with widespread corruption reported in the force.

Pradeep Kumar Dharmaratne, a provincial reporter for the *Dinamina* newspaper, was arrested and ill-treated by police at Aranayake, Kegalle district in February 1998 for exposing trade in illicit liquor in the area and commenting on the inaction of the police in apprehending and preventing offenders. The Supreme Court awarded Rupees 60,000 compensation, finding the allegations that the journalist had been beaten by the Officer-in-Charge of Aranayake police station credible. The latter had allegedly threatened to break the reporter's hand and assaulted him on the face and abdomen. Police had also threatened him not to file any action.

Velusamy Baskaran, Neelian Yugesan, Vadivel Kanagaratnam and Somasundaram Shanmugarajah, four members of the Tamil Traders Association at Nuwara Eliya were taken into custody by the Nuwara Eliya police in mid-November 1998. They were taken daily from the police station to the CSU office where they were severely beaten. According to a fundamental rights petition filed by Velusamy Baskaran, he was beaten almost every day between 10 and 21 November, including while being hung by his thumbs. It is suspected that the police arrested the four traders on the instigation of members of the Sinhalese Traders' Association with whom the Tamil traders had a dispute.

Until recently, politicians had largely escaped being held unaccountable for their involvement in human rights violations. In a judgment of 17 December 1998, the Supreme Court held that a current Deputy Minister had violated the right not to be tortured of a television journalist who had been beaten up by police at Miriswatte on 5 January 1997 after he refused to hand over a camera and tape to the politician who had been unhappy with his vehicle being filmed. The court found credible evidence that the journalist had been arrested

and beaten by the local police at the behest of the Deputy Minister. At the police station, the police had also allowed the Deputy Minister to question the journalist while seated in the chair of the Officer-in-Charge of the station. The Supreme Court commented: “What would otherwise have been a purely private action of [the Deputy Minister and other local politicians present], was “transformed into executive action by reason of approval, connivance, acquiescence, participation and the inaction” of the police.

#### **4.4 Rape in armed conflict**

Rape in a context of armed conflict is an act of torture, and clearly prohibited by the rules of war and by international human rights law. Sri Lanka’s presidential directives for the welfare of detainees include special provisions to protect women, including the provision that women taken into custody should be allowed to be accompanied to the place of questioning by a person of their choice and “as far as possible” should be placed in the custody of a women’s unit of the relevant arm of the security forces.

Nevertheless, each year a number of cases of rape by members of the security forces are reported, particularly from the north and east of the country. Given the cultural and religious context, it cannot be excluded that other cases go unreported.

One case reported from Jaffna in April 1998 concerns a 24-year-old student who was taken into custody by the army at Uduvil. Soldiers apparently arrested her in the belief that she was her sister who was a member of the LTTE. During the first few days in detention she was kept handcuffed but not interrogated or tortured. After seven days in custody, a group of women soldiers came into the cell and hung her upside down from a crossbar. They told her that the punishment was going to get worse day by day if she did not tell the truth. The next day, two soldiers burned her right arm with cigarettes. On the next day, they came and sexually assaulted her by pinching her breasts, thighs and putting their hands inside her underwear. Two days later, a soldier came in and told her and another woman detainee that he would help them to escape. He took them late at night through the back of the camp to a remote place where another soldier was waiting.

In a sworn statement obtained by Amnesty International, the student described what happened subsequently as follows:

*“The one who had brought us there came up to me and the other soldier went up to the other girl.... Then we realized that we might be in danger from them. We started screaming. The one with me stuffed a handkerchief into my mouth and began fondling and cuddling me. He touched and squeezed my breasts. He sucked my cheek. ... We were behind a bush. I tried to push him away but he pulled and tore my blouse. Then he pulled my bra off. He removed his trousers. He took off my nickers.*

*Then he was naked and he did everything he had to do to me. It was too painful to me. He raped me. The whole ordeal lasted about 1/2 hour."*

Amnesty International has further received reports of rape by the army in Vavuniya in January 1997 and in Jaffna in 1996 and 1997. In Batticaloa, police, army and STF have been held responsible for rape.

In several of these cases of rape, investigations are proceeding slowly. Other cases have collapsed because the victims or the witnesses feared reprisals. One case reported from Jaffna in July 1997 collapsed when the victim withdrew her statement to the police after receiving a large sum of money from the soldiers allegedly responsible for raping her.

#### **4.5 Cruel, inhuman or degrading punishments**

Cruel, inhuman or degrading punishments continue to be imposed by the courts in Sri Lanka, including on juveniles. This is in violation of Article 16 of the UN Convention against Torture, Articles 37 and 40 of the Convention on the Rights of the Child and Article 7 of the ICCPR, all of which Sri Lanka is a party to.

Section 52 of the Penal Code lists whipping as a punishment to which offenders are liable under the Code. It is explicitly provided for as an additional punishment for theft of, among other things, vegetables and fruit.

Section 29.1 of the Children and Young Persons Ordinance 1939 allows for whipping as a form of punishment to be imposed by magistrate's courts on male children, as an additional punishment for certain offences.

Although government delegations appearing before the Committee against Torture in 1998 and the Human Rights Committee in 1995 have stated that these punishments are no longer carried out, there have been several reports in Sri Lanka's newspapers confirming whipping as punishment being carried out. For instance, in 1995, there were two cases of caning of minors imposed as a sentence by local magistrate's courts reported in the local press. In May 1996 one case and in February 1998 four further cases were reported. In October 1998, two 15-year-old boys were whipped six times on the order of the Homagama magistrate who had found them guilty of stealing a bicycle.

*The Committee against Torture recommended that the government reviews the Torture Act and other relevant laws in order to ensure complete compliance with the Convention, including in respect of "acts that amount to torture".*

Amnesty International is recommending a review of provisions in the Penal Code and Children and Young Persons Ordinance to ensure full compliance with the Convention's prohibition of cruel, inhuman or degrading punishments.

## 5. DEATHS IN CUSTODY

### 5.1 In army custody

The killing in custody of political prisoners has been a longstanding concern of Amnesty International related to the high incidence of “Disappearances” over many years. Under the current ERs, the police has to inform a magistrate if a body is found. The magistrate however can only record as evidence the post-mortem report and other evidence provided by the police. There are no provisions for any other person to give evidence nor for relatives of the deceased or other concerned individuals to be informed that an inquiry is taking place. The magistrate also has to order for a body of a person who died as a result of actions of the security forces to be returned to the police after post-mortem examinations. These procedures can be invoked by the police on the basis of a belief by any security forces officer that a death resulted from armed confrontation. There is strong evidence that they have repeatedly been used to cover up the torture to death or killing by shooting of detainees.<sup>14</sup>

In one case, Michaelpillai Robert Wellington, a fisherman from Polikandy, Jaffna district is suspected to have died as a result of torture at Point Pedro army camp after he was arrested on 20 July 1998. Many eye-witnesses saw him being beaten on arrest. Later, he was dragged to the nearby army camp by four or five soldiers. Next morning, the police went to his parents' house at Polikandy and asked them to identify their son's body. When his relatives identified his body in the hospital, it was naked. They noted that his hands were broken and that he had been cut with a knife all over his body. The body also had five or six gunshot injuries, which the relatives suspect to have been inflicted after he died due to torture. The army reportedly maintained that he was killed while he was trying to escape. The police handed the body over to the family on condition that they held the funeral on the same day, which they did.

In an apparent attempt to increase the transparency of this process and make the security forces more accountable, the magistrate of Mannar in a recent inquest procedure following the discovery of four dead bodies found in the Uitharasankulam area observed that between 3 August and 13 November 1998 14 dead bodies had been found in the same area and that, according to the police reports, the army each time had stated that these people were smugglers who had been killed in a confrontation between the army and the LTTE. However, on each occasion, only grenades had been produced as evidence, no guns. The magistrate questioned why these persons had not been arrested and ordered the record of the verdict to be sent to the brigadier for further investigation, including in relation to the type of measures taken other than to “trap the smugglers” and kill them. At the time of writing, to Amnesty International’s knowledge, there had not been any further report submitted to the court.

<sup>14</sup> For further details about post-mortem and inquest procedures under the current ERs, see Amnesty International report: *Sri Lanka: Security measures violate human rights* (AI Index: ASA 37/12/95) of July 1995.

In many cases, magistrates and families are not informed and bodies of dead prisoners (both combatants and non-combatants) are disposed off by burning or clandestine burial.

One of the 35 detainees arrested in January 1997 (see page 14-15) claimed that on the fifth day of their detention at Manipay army camp, he saw how soldiers brought three dead bodies, lifted a concrete slab covering a lavatory pit and threw the bodies in the pit. He also recounted how the body of a woman was brought into the room where he and others were being tortured while hung upside down. The soldiers untied the prisoners and asked them to identify the woman. No one could. Around the same time, four bearded men travelling on motorbikes came into the room. They had big knives and started to cut up the body of the woman. They then forced the prisoners to put the parts of the body in plastic bags. A lot of them fainted.

## **5.2 In police custody**

The death in custody of Sathasivam Sanjeevan, an 18-year-old student, is an example of how police have tried to cover-up torture in custody even if the inquest procedure is held under normal law. Sathasivam Sanjeevan had been arrested by police at Paandiruppu, Amparai district on 13 October 1998. When his relatives visited him at the Kalmunai police station on 14 and 15 October, they noted that he could not lift his arms and that he had difficulty swallowing. He made them understand that he had been badly tortured under interrogation. On 16 October, police informed his relatives that he had been killed in an armed confrontation with the LTTE while being taken to Amparai by the police. An initial post-mortem failed to identify signs of torture and confirmed the police version that he had died after shooting. However, a second post-mortem carried out five weeks later after the local magistrate ordered the body to be exhumed, confirmed signs of "injuries by blunt weapon" inflicted before the shooting. At the time of writing, the second magisterial inquiry is continuing. To Amnesty International's knowledge, the police officers believed to be responsible for torturing Sathasivam Sanjeevan have not been suspended from duty pending the outcome of the inquiry.

Deaths in custody due to torture are also reported in the south of the country; often they concern people arrested on suspicion of criminal activities. Anura Sampath was taken to Moratuwa police station on 30 December 1998 by police officers who said they wanted to take a statement from him. He was taken from his sister's house where he was helping with some construction work. As he did not return, his brother visited him at the police station that night. Anura Sampath told his brother that he was severely beaten by some police officers and that he feared he might be killed. On the next day when the family members visited the police station, Anura Sampath was no longer there. A police officer told them that he had been taken away to give a statement. The family was later told by the Officer-In-Charge of the police station that Anura Sampath was dead. The police provided misleading information about the whereabouts of his body. Later, the family found the body of Anura Sampath at Kalubovila

Hospital. After the family protested, the body was produced before a JMO at the Colombo General Hospital. The post-mortem report reportedly found that the death was due to assault and listed 24 injuries. The police reportedly maintained that Anura Sampath's death was caused when he attempted to escape by jumping out of the police jeep. To Amnesty International's knowledge, no action has been taken to date against the police officers believed responsible for the killing of Anura Sampath.

There have also been reports of persons deprived of their liberty by the LTTE being summarily executed. A student at the Eastern University, was killed by members of the LTTE in February 1998 after being held for about four months in a LTTE camp in the Kokkadichcholai area of Batticaloa district. He had been taken away by members of the LTTE in October 1997 apparently after he refused to cooperate with them by providing information about members of Tamil armed groups working with the security forces. Another person held by the LTTE at the time, and later released, claims he saw how Pathirathan Thamotharan had severely infected wounds on his knees possibly caused by having to sit or crawl on his knees for extended periods of time. Throughout the period of his captivity, local LTTE members said Pathirathan Thamotharan would be released if the members of his family cooperated with the LTTE. On 21 February 1998, he was brought to his village and executed by shooting. His executioners publicly announced he was an army informant.

### **5.3 In prison**

There have been several instances of killing of prisoners in prison in Sri Lanka over the last few years. In December 1997, one Muslim and two Tamil detainees were killed at Kalutara prison by a group of Sinhalese prisoners in an apparently premeditated attack. Reports indicated that prison staff and army personnel present failed to protect the detainees and that some law enforcement personnel were actively involved in the attack. A presidential commission of inquiry was appointed to investigate these killings but to date its findings have not been made public.

Connivance between Sinhalese common criminal suspects or convicts and prison guards on 25 and 27 July 1983 led to the killing of 53 Tamil political prisoners in

Welikade prison, Colombo. (See also below, civil remedies) To date, the full truth of who was responsible for these killings has not been made public.

## **6. PREVENTIVE MEASURES AND REMEDIES AGAINST TORTURE: THEIR STRENGTHS AND WEAKNESSES**

Below are set out a number of preventive measures and remedies against torture currently available at the national and international level. Some of them, in particular the work of the Supreme Court of Sri Lanka in fundamental rights cases, have gone some way in providing redress to victims of torture. The main hiatus in the system remains the absence of an

investigative body fully independent of the police with the necessary powers and expertise required to open criminal investigations wherever there is reasonable ground to believe that an act of torture has been committed.

### **6.1     Fundamental rights petitions: how far do they work?**

The filing of fundamental rights petitions in the Supreme Court of Sri Lanka is one of the few legal remedies available to victims of torture although the procedure itself limits its use. Article 11 of the 1978 Constitution of Sri Lanka recognizes an individual's right not to be tortured and provides for recourse to the Supreme Court when this right is violated. The right not to be tortured is recognized as a non-derogable right.

Under Article 126 of the Constitution, a fundamental rights petition must be filed by the victim, or by a lawyer acting on his or her behalf, within one month of the alleged infringement. This rule has prevented many victims of torture, particularly in remote parts of the country, from utilizing this legal remedy. It also precludes dependents from seeking redress in cases where the victim is unable effectively to access the court.

Under current legislation, once an individual files a petition before the Supreme Court alleging his or her fundamental rights have been violated, the court has several options:

- to order the release of the petitioner if he or she is unlawfully detained;
- to order compensation to be paid;
- to refer the case to the Inspector General of Police (IGP) and/or the Attorney General for "appropriate action" (by way of criminal proceedings and/or disciplinary action) and to report to the court on the action taken.

It is important to note that in a fundamental rights case the Supreme Court is required only to establish whether or not it believes an individual's rights have been violated, and to make "an appropriate order". The Supreme Court does not have to establish which individual officers were responsible for committing the violation, and its findings do not automatically lead to a criminal investigation and, where there is sufficient admissible evidence, prosecution of perpetrators. However, by ordering that the IGP be provided with a copy of the judgment, the Supreme Court has repeatedly directed the police authorities to "take such action as deemed appropriate" and to report to the court on the action taken.

The court itself has on several occasions commented on the lack of follow-up to its directions to the authorities to take appropriate action. In one judgment given after examining six fundamental rights petitions, the Supreme Court declared: "It was not once or twice that we ordered the IGP to take action against errant police officers, but the IGP has not acted on court orders excepting in one case where a Sub Inspector was dismissed from service. To give

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him another order would be to make the judiciary a mockery.” (As quoted in Sunday Times, Colombo of 22 June 1997)

There is currently a debate in Sri Lanka about whether or not the state or individual officers have to pay the amount of compensation awarded by the Supreme Court in fundamental rights judgments. Until approximately 1990, there had been a practice for the court to order that the state pays the compensation. Since then, the court has started to explicitly order that individual officers should pay the compensation.

One member of the UN Human Rights Committee during the examination of Sri Lanka’s third report in 1995 questioned the practice of making individual officers held responsible by the Supreme Court pay compensation to the victims -- as opposed to the state paying the compensation -- as well as making officers retain their own lawyers -- as opposed to the Attorney General appearing on their behalf. He referred to article 2 of the ICCPR which puts the obligation on the state to pay compensation. He also stated that the granting of compensation should not be made dependent on the capacity of the perpetrator to pay the money.<sup>15</sup> The representatives of the government did not respond to these questions.

Article 14 of the UN Convention against Torture states that in the event of the death of a victim as a result of torture, the defendants should be provided compensation. But under the current Constitution of Sri Lanka, the right to life is not guaranteed. Therefore, if a person dies under torture, his or her relatives cannot invoke the jurisdiction of the Supreme Court as the death of a person caused by torture would not be a violation of a fundamental right. In any event, current constitutional provisions preclude defendants seeking redress; only the person whose fundamental right has been infringed or a lawyer on his or her behalf may apply to the court.

Given the generalized use of torture in Sri Lanka, the number of fundamental rights petitions alleging violations of the right not to be tortured is very small. According to statistics provided by the registrar of the court, 58 such petitions were filed in 1994; 70 in 1995; and 64 in 1996. Further examinations of these statistics show that in 1994, 35 of the 58 cases were dismissed; in 1995, 16 of the 70 cases were dismissed; and in 1996, 35 of the 64 cases were dismissed. In 16 cases, compensation was granted during 1994. In 1995, 12 victims were awarded compensation; a further 32 cases filed during that year remained pending as of mid-1998. Only one case filed in 1996 had resulted in compensation being granted although 23 cases remained pending at the time the statistics were compiled in mid-1998. It should be noted that these figures do not include the “special cases” which are cases heard by the court on the basis of letters received from the victims. The total numbers of such “special cases” filed were 501 in 1994, 54 in 1995, 249 in 1996, 257 in 1997 and 222 in the first six months

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<sup>15</sup> See CCPR/C/SR. 1437, para. 72.

of 1998. Amnesty International was unable to obtain the specific number of special cases concerning allegations of torture by the security forces.

The large majority of fundamental rights petitions are filed against police officers. In 1994, there was only one case against army personnel which remained pending as of mid-1998. During 1995, two of the 68 cases filed concerned army personnel. In both cases, the state was ordered to pay compensation. Of the 64 cases filed in 1996, 29 concerned army personnel; as of mid-1998, 23 of them had been dismissed, three were pending and in the remaining three cases the authorities had informed the court that the detainees would be released.

The clear under-representation of cases against the army can be explained by various factors: 1. Difficulties encountered by victims of torture in the north and some parts of the east of the country in finding a lawyer prepared to appear in the Supreme Court (most lawyers who do Supreme Court work are based in Colombo); 2. Financial constraints; and 3. Fear of reprisals against the victim or his or her relatives.

In the case of the Tamil traders from Nuwara Eliya (see above), the Officer-in-Charge of the CSU, Nuwara Eliya reportedly beat Neelian Yogesan after he received notice from the Supreme Court that a fundamental rights petition had been filed by the detainee.

The Committee against Torture expressed regret "that there were few if any prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims" (see Appendix A, para 15).

## **6.2      The fundamental rights remedy under review**

In recent years, Amnesty International and other human rights organizations have repeatedly recommended that the judicial remedy of fundamental rights petitions to the Supreme Court be reviewed to make it more effective.

The Supreme Court itself has in recent years taken a number of initiatives which have resulted in a higher number of victims receiving redress through the court. For instance, in 1990 the court introduced new procedures in relation to letters received from detainees claiming their constitutional rights had been violated. Whereas under normal procedures, the Supreme Court only acts on the basis of sworn statements, under the new procedure letters received directly from detainees are forwarded to the Bar Association, HRTF or HRC, for follow-up by interviewing the individual detainees and filing petitions on their behalf.

In relation to Article 126 (2) of the Constitution, which stipulates that a fundamental rights petition must be filed within one month of the alleged infringement, an extension of this period has been recommended by legal experts. For instance, in its 1994 Annual Report, the Chairman of the HRTF, who is a former Supreme Court judge, made a number of

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recommendations for the prevention of torture. These recommendations included the extension of the time limit for filing petitions to six months; the empowering of provincial High Courts to hear fundamental rights cases and permitting access to the courts not only to the victim but also to a duly authorized member of the family.

Proposals for reform of the fundamental rights chapter in the Constitution provide for a new procedure for petitioning the Supreme Court with regard to the infringement of fundamental rights.<sup>16</sup> As explained by the head of the Sri Lankan delegation at the start of the Human Rights Committee hearing of Sri Lanka's third periodic report in July 1995, these would include the provision that "a relative or friend would be able to make representations on behalf of a person unable or incapable of doing so; any person or body of persons would have access to the Court if the application was in the public interest, thereby opening the way to public-interest litigation."<sup>17</sup> In addition, the current proposals provide that the current maximum period of one month for petitions to be filed be extended to three months.

### **6.3 Habeas corpus remedy**

Whereas the remedy of *habeas corpus* is in the first place a remedy against "disappearances", it follows that it can also act as a preventative measure against torture.

However, major problems remain in the current law and practice of *habeas corpus*.<sup>18</sup>

### **6.4 Presidential directives and other safeguards laid down by ERs**

Presidential directives to the security forces aimed at introducing procedural safeguards to protect detainees held under the ERs and PTA were issued for the first time in 1995 (these are not published in the Gazette; Amnesty International obtained a copy from the Sri Lankan authorities). Among other things, security forces were directed to report all arrests to the HRTF forthwith and in any case not later than 48 hours from the time of arrest or detention. In addition, "arrest receipts" had to be issued to relatives of detainees and the latter had to be informed of arrests and detentions, HRTF officers had to be given access to places of detention at any time, statements of detainees had to be recorded in a language of their choice,

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<sup>16</sup> These proposals are part of a wide process of constitutional reform. At the time of writing, the government has put before Parliament a draft text for a new Constitution. Changing the constitution requires a two thirds majority in Parliament and a subsequent endorsement by a majority of valid votes in a national referendum.

<sup>17</sup> See CCPR/C/SR. 1436, para. 9.

<sup>18</sup> See Amnesty International report: *Sri Lanka: Implementation of the Recommendations of the UN Working Group on Enforced or Involuntary Disappearances following their visits to Sri Lanka in 1991 and 1992* (AI Index: ASA 37/04/98) of February 1998.

and specific protective measures had to be taken when arresting children and women. In July 1997, the security forces were instructed to provide the same cooperation to the HRC, after the functions of the HRTF were transferred to it.

As shown by the continuing reports of "disappearances" and torture being reported from Sri Lanka, there are still major problems in implementing these safeguards. Although failure to implement them is an offence under the ERs, to date no member of the security forces is known to have been charged under these provisions.

## **6.5 Human Rights Commission of Sri Lanka**

The HRC, set up by Act of Parliament in August 1996, has, most observers agree, been slow to make a significant impact on the human rights situation in the country.

In terms of the prevention of torture, its regional officers have through their regular visits to places of detention, had some measure of success. However, in relation to remedying incidents of torture, to Amnesty International's knowledge, the HRC has not made any recommendation for compensation to be paid to the victims or action to be initiated against the perpetrators. Amnesty International does know of several cases where the HRC has requested human rights lawyers to file fundamental rights petitions on behalf of victims of torture who had complained to the HRC.

According to information provided by the government, the HRC undertook 1240 visits to police stations and 291 to detention camps in 1998. There are currently 386 places of detention. A significant number of them (about 200) are police stations situated in the southern part of the country where few detainees would be held and therefore would not require frequent visits by HRC officials. Taking this into account, the above figures indicate that the frequency of visits to places of detention by HRC during 1998 was on average around eight times in the year. It has to be questioned whether such infrequent visits can act as an effective deterrent against torture.

The powers of the HRC to receive and investigate reports of torture have been rarely used so far. The ex-detainee who had been severely tortured at Thavady and Manipay army camp in January 1997 reportedly complained to the HRC in late 1998. Mohammed Anwer Mohammed Akram, a jeweller from Kurunegala, who was allegedly tortured at Kurunegala police station on 13 May 1998 complained to the HRC on 6 June 1998 and sent reminders on 25 June and 20 July 1998. Neither have been informed of the outcome or progress of their complaint in apparent violation of procedures laid down in the HRC Act. (According to Section 15 (1) of the HRC Act, complainants have to be informed within 30 days if their complaint is considered not to be an infringement or imminent infringement of their fundamental rights. Under Section 15 (6), complainants have to be sent a copy of any recommendation made by the HRC in follow-up to their complaint.)

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When Amnesty International delegates met with members of the HRC in September 1998, they requested information about the standards used by the investigating officers of the HRC to ascertain the welfare of detainees when making visits to authorized places of detention and ensure detainees are not subjected to torture or ill-treatment. After prolonged discussion, the members acknowledged that, beyond the requirements laid down in the presidential directives and other safeguards for the welfare of detainees laid down in the ERs and the Human Rights Commission Act, the constitutional and other legal provisions prohibiting torture, there was a need to lay down specific standards setting out minimum detention conditions similar to those laid down in the Prison Ordinance and Prison Rules in relation to persons held in prisons.

Members of the Commission informed Amnesty International that the IGP had designated "human rights officers" at the level of police stations and human rights coordinators at the district or division level, that the personal assistant to the Deputy Inspector General will perform this role at DIG level and the Director (Crimes) at police headquarters. The HRC members also stated that a similar system of liaison officers with the security forces would be established.

The government in its statement to the UN Commission on Human Rights of 6 April 1999 announced an increase in resource allocation for the HRC from Rupees 14.235 million (approximately US\$ 200,000) to Rupees 25.1 million (approximately US\$ 350,000) "to support the planned expansion of scope, intensity and the focus of the Commission's activities".

The Committee against Torture in May 1998 recommended that the Human Rights Commission and other mechanisms dealing with torture prevention and investigation be strengthened and provided with all the means that are necessary to ensure their impartiality and effectiveness.

## **6.6 The Committee to Inquire into Unlawful Arrests and Harassments (CIUAH)**

In mid-1998, amid persistent protests by Tamil members of parliament that members of their community were being harassed by repeated arrests and detention in Colombo, President Chandrika Bandaranaike Kumaratunga set up the CIUAH.

The CIUAH, partly due to the inclusion of senior ministers among its members, appears to be effective in investigating complaints and bringing an end to specific human rights violations, including torture, brought to its attention.

Its mandate, however, overlaps largely with the mandate of the HRC. The establishment of the CIUAH would seem in itself an acknowledgement, on the part of the government, of the lack of effectiveness to date of the HRC to ensure full implementation of

the presidential directives and other safeguards for the welfare of detainees as laid down in the ERs and the Human Rights Commission Act.

### **6.7      Judiciary's role**

The judiciary plays a key role in relation to torture. The Supreme Court has sole jurisdiction to hear petitions alleging torture as a violations of fundamental rights guaranteed in the Constitution; the High Courts have the power to try members of the security forces on charges under the Torture Act; and the magistrates' courts can hear cases filed under the Penal Code. In addition, magistrates have been assigned key roles in relation to the prevention and investigation of torture which unfortunately they not always fully perform.

For instance, the ERs of November 1994 currently in force provide that officers in charge of any authorized place of detention must provide to the local magistrate every 14 days a list of all persons detained at such places, and that the magistrate has to display these lists on the court's notice board. In addition, the ERs require the magistrates to visit such places of detention at least once a month, and that during the visit all detainees shall be produced before the magistrate by the officer in charge. To Amnesty International's knowledge, these safeguards have never been fully implemented.

Under the Code of Criminal Procedure, magistrates also have a duty to examine detainees brought before them. However, there are regular reports that magistrates do not carry out this duty rigorously. Some detainees have reported that the police took them to the court or the residence of the magistrate but never took them out of the vehicle, nor did the magistrate come to see the detainee in the vehicle. The failure of magistrates to perform this duty erodes the chances of tortured detainees receiving justice at a later stage, when for instance the notes taken by the magistrate could be later submitted to the Supreme Court as evidence in a petition filed under Article 11.

In its judgment of December 1998 in the case of the provincial reporter, Pradeep Kumar Dharmaratne (see above), the Supreme Court judge reportedly commented: "In my opinion it is indeed a matter of concern and trepidation that Magistrates in spite of repeated reminders by this court do not exercise what is their duty, namely to question and probe from a person procedured before them from police custody and to so record his observations."

### **6.8      Medical profession's role**

Medical doctors can play a crucial role in the prevention and remedy of torture and ill-treatment. One of the major problems under the current system is that whether or not a detainee held under the PTA or ERs is examined by a doctor is entirely at the discretion of the detaining authorities.

Unfortunately, on occasions doctors do not record evidence of torture or sometimes provide false reports supporting the police or security forces' version of how injuries were inflicted acting perhaps in an *esprit de corps* among servants of the State. In the case of Suppu Udayakumar (see above), the detainee had described the torture inflicted to the additional JMO before whom he was taken on 16 June 1998 and she had made some notes and directed him to be X-rayed. However, at the end of the examination, after they returned to the jeep, the police reportedly triumphantly stated "none of your complaints will be officially recorded".

The Supreme Court has ruled in favour of the victims in several cases where medical officers have submitted such false medical certificates. In one case, it found a doctor guilty of "falsehoods, half truths and suppression of facts" and punished him for contempt of court. In at least one other case, the court reported the fact that a doctor at a government hospital had issued a false report and referred the matter to the Attorney General for "appropriate action".

In addition to providing false evidence, some doctors have also indirectly participated in torture by providing treatment to victims, thereby perpetuating the practice. For instance, a doctor was reported to visit the Kovilkulam PLOTE camp once per week in mid-1998 to treat the injuries of those who had been tortured.

There is also a need for doctors living in remote parts of the country and in parts affected by the armed conflict to be provided more active support by the Medical Association of Sri Lanka to ensure they feel protected when their work in treating torture victims or documenting their injuries could potentially put them in trouble with the police or the security forces.

## **6.9 Civil remedies**

In addition to the remedy of fundamental rights petitions to the Supreme Court, a victim of torture or cruel, inhuman or degrading treatment or punishment has the right to pursue a claim for damages in a civil court. Under the Crown (Liability in Delict) Act of 1969, a civil action for damages against the state can be filed if law enforcement personnel wrongfully cause injury to someone. This law can be used to recover damages from the state in cases where it has been proved that someone met with violent injuries after being taken into custody. Under the Act, action needs to be filed within two years of the alleged incident.

Contrary to the restrictions currently in force in the filing of fundamental rights petitions, a case for damages against the state can be filed by a dependent, for instance if a person has died as a result of torture or cruel, inhuman or degrading treatment or punishment. In one rare case filed against the state in 1985, relatives of 30 of 53 Tamil political prisoners killed in July 1983 by Sinhalese prisoners at Welikada prison, Colombo, filed for compensation claiming failure by the state to provide adequate protection to the prisoners. In

April 1994, the cases were settled by agreement between both sides, the state undertaking to make certain *ex gratia* payments to the relatives without admitting liability.

This remedy is very rarely used in Sri Lanka by victims of torture. This may be partly due to the cost involved in filing civil action and the fact that this remedy is not very well known among lawyers and members of the public.

#### **6.10 ICRC**

Many observers agree that one of the most effective factors in preventing or remedying torture is the regular visits by officers of the ICRC to places of detention undertaken since 1989.

Although Amnesty International has several testimonies of former detainees who claim they were not shown to the ICRC in the early period of their detention, it has other testimonies which confirm that an intervention by the ICRC resulted in detainees being provided medical treatment or being transferred out of the custody of the law enforcement officers responsible for torture.

#### **6.11 International remedies**

Following the ratification in October 1997 of the (first) Optional Protocol to the ICCPR, victims of torture in Sri Lanka can also complain to the Human Rights Committee, the body monitoring the implementation of the provisions of the Covenant and its Optional Protocol. For such a complaint to be admissible, the Human Rights Committee has laid down various criteria, including that all available domestic remedies (remedies at the local and national level) must have been exhausted, unless the complainant can show that in practice such remedies are ineffective or that the procedures for securing such remedies are unduly prolonged. To Amnesty International's knowledge, no person from Sri Lanka has to date filed such a complaint with the Human Rights Committee.

To date, Sri Lanka has not made declarations under Article 21 and 22 of the UN Convention against Torture to recognize the competence of the Committee against Torture to receive communications from another state party (Article 21) or from individuals under their jurisdiction (Article 22) who wish to complain about alleged violations of the provisions of the Convention, in a similar way as under the provisions of the (first) Optional Protocol to the ICCPR.

The Committee against Torture in May 1998 urged Sri Lanka to make declarations under Article 21 and 22.

### **7. CONCLUSIONS**

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The ratification of the UN Convention against Torture, the passing of the Torture Act, however welcome, are not enough. Immediate steps are needed to strengthen safeguards against torture and other cruel, inhuman or degrading treatment or punishment and punish those responsible whenever these human rights violations occur.

Amnesty International calls on the government of Sri Lanka to implement the recommendations of the Committee against Torture as listed in the Appendix as well as the program of action for the prevention of torture listed below. It also invites individuals and organizations, including legal and medical professionals, to join in promoting the program.

#### **1. Official condemnation**

The government should publicly declare its opposition to torture. A clear and unequivocal message should be given to members of the security forces and police that torture will not be tolerated under any circumstances.

#### **2. Amendments to the Torture Act and other relevant laws**

The government should amend the Torture Act, the Penal Code and Children and Young Persons Ordinance to ensure complete compliance with the UN Convention against Torture, as recommended by the Committee against Torture.

#### **3. Review of ERs and PTA**

The government should undertake at the earliest opportunity a thorough review of the ERs and PTA which would take into account the comments of the UN Human Rights Committee, the Committee against Torture and the Supreme Court of Sri Lanka.

Provisions in the ERs and PTA that allow confessions extracted under torture as evidence in court and put the burden of proof on the accused should be repealed.

#### **4. Set out in law minimum detention conditions**

The government should lay down in law the rights of detainees. These should include the right to be brought before a judicial authority promptly after being taken into custody, the right to have access to a lawyer, doctor and relatives as well as the safeguards currently laid down in the presidential directives for the welfare of detainees issued under the ERs.

#### **5. Ensure strict adherence to current safeguards**

The government should take all necessary measures to ensure strict compliance with current presidential directives and other safeguards laid down under the ERs to ensure the welfare of

detainees, including by taking action against members of the security forces not adhering to the safeguards.

**6. Ensure independent investigation of reports of torture**

The government should put in place an investigative body fully independent of the police with the necessary powers and expertise required to open criminal investigations wherever there is reasonable ground to believe that an act of torture has been committed. Complainants and witnesses should be protected from intimidation. Alleged perpetrators should be suspended pending the outcome of the investigation.

**7. Prosecution**

The authorities should bring to justice anyone involved in acts of torture. The definition of those responsible should include those who may have given orders as well as those who carried out the actions.

**8. Chain-of-command control**

Senior officers of the security forces and the police should maintain strict control to ensure that officers under their command do not commit torture. Officials who are found to have ordered or tolerated torture by those under their command should be held criminally responsible for their acts.

**9. Individual responsibility**

The prohibition of torture should be reflected in the training and all orders given to officials involved in the arrest and custody. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in torture. An order from a superior officer or a public authority must never be invoked as a justification for taking part in torture. All officials must be made aware that they will face criminal prosecution for such acts.

**10. Victims of torture and their dependants should be provided with adequate compensation and appropriate medical care or rehabilitation**

Notwithstanding the recourse to the Supreme Court under the remedy of fundamental rights, the government should provide compensation and rehabilitation to all victims of torture, including those who could not avail themselves of this judicial remedy.

**11. Strengthening existing remedies, including the HRC**

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As recommended by the Committee against Torture, the government should strengthen the HRC and other mechanisms involved in the prevention and investigation of torture, and provide them with all the means necessary to ensure their impartiality and effectiveness.

The government should also consider removing the time limits and other restrictions on filing fundamental rights petitions.

**Appendix A: Subjects of concern and recommendations of the Committee against Torture** (extract from CAT/C/SR.341 of 26 May 1998)

**D. Subjects of concern**

14. The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances.
15. The Committee regrets that there were few if any prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims.
16. The Committee notes the absence, until recently, of independent and effective investigation of scores of allegations of disappearances linked with torture.
17. The Committee noted that, while the CAT Act 24/94 covers most of the provisions of the Convention, there were certain significant omissions.
18. The question of the admissibility under the emergency regulations of confessions is also a matter of concern as well as the absence of strict legislation governing detention consistent with international norms.

**E. Recommendations**

19. The Committee urges the State party to review the CAT Act 22/94 and other relevant laws in order to ensure complete compliance with the Convention, in particular in respect of: (a) the definition of torture; (b) acts that amount to torture and (c) extradition, return and expulsion.
20. Review the emergency regulations and the Prevention of Terrorism Act as well as rules of practice pertaining to detention to ensure that they conform with the provisions of the Convention.
21. Ensure that all allegations of torture, past, present and future, are promptly, independently and effectively investigated and the recommendations implemented without any delay.
22. While continuing to remedy, through compensation, the consequences of torture, due importance should be given to prompt criminal prosecutions and disciplinary proceedings against culprits.
23. Take the necessary measures to ensure that justice is not delayed especially in the cases of trials of people accused of torture.
24. Strengthen the Human Rights Commission and other mechanisms for dealing with torture prevention and investigation, and provide them with all the means that are necessary to ensure their impartiality and effectiveness.
25. Urges the State party to declare in favour of articles 21 and 22 of the Convention.

26. The Committee would be remiss if it did not acknowledge that the Sri Lankan delegation made every effort to make the dialogue with the Committee fruitful, so that thereby the State party would be helped to put an end to violations of this Convention."

#### LIST OF ABBREVIATIONS

|       |                                                                |
|-------|----------------------------------------------------------------|
| ASP   | : Assistant Superintendent of Police                           |
| CDB   | : Crime Detection Bureau                                       |
| CID   | : Criminal Investigation Department                            |
| CIUAH | : Committee to Inquire into Unlawful Arrests and Harassments   |
| CSU   | : Counter Subversive Unit                                      |
| DIG   | : Deputy Inspector General                                     |
| EPRLF | : Eelam People's Revolutionary Liberation Front                |
| ERs   | : Emergency Regulations                                        |
| HRC   | : Human Rights Commission of Sri Lanka                         |
| HRTF  | : Human Rights Task Force                                      |
| ICCPR | : International Covenant on Civil and Political Rights         |
| ICRC  | : International Committee of the Red Cross                     |
| IGP   | : Inspector General of Police                                  |
| JMO   | : Judicial Medical Officer                                     |
| JVP   | : <i>Janatha Vimukthi Peramuna</i> , People's Liberation Front |
| LTTE  | : Liberation Tigers of Tamil Eelam                             |
| NIB   | : National Intelligence Bureau                                 |
| PLOTE | : People's Liberation Organisation of Tamil Eelam              |
| PTA   | : Prevention of Terrorism Act                                  |
| SCU   | : Security Coordinating Unit                                   |
| STF   | : Special Task Force (police commando unit)                    |
| TELO  | : Tamil Eelam Liberation Organisation                          |
| TID   | : Terrorism Investigation Department                           |
| UN    | : United Nations                                               |