

JOINT ALTERNATIVE REPORT

from the Sri Lankan NGO Collective to
the Committee Against Torture

14 October 2011

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ABBREVIATIONS

AG	-	Attorney General
CAT	-	Convention Against Torture
GOSL	-	Government of Sri Lanka
HC	-	High Court
ICRC	-	International Committee of the Red Cross
IDP	-	Internally Displaced Persons
IGP	-	Inspector General of Police
JMO	-	Judicial Medical Officer
JSC	-	Judicial Service Commission
LLRC	-	Lessons Learnt and Reconciliation Commission
MC	-	Magistrate Court
NHRC	-	National Human Rights Commission
NGO	-	Non Governmental Organization
OIC	-	Officer in Charge
PTA	-	Prevention of Terrorism Act
SC	-	Supreme Court
UN	-	United Nations

I. Introduction

1. This joint report is submitted to the Committee against Torture (“the Committee”) in response to the Committee’s list of issues to be considered during the examination of the combined third and fourth periodic reports of Sri Lanka (CAT/C/LKA/3-4).
2. This report is authored and compiled jointly by the Centre for Human Rights and Development (CHRD), Right to Life - Human Rights Centre, International Movement Against All Forms of Discrimination and Racism (IMADR), Centre for Policy Alternatives (CPA), National Fisheries Solidarity (NAFSO), Families of the Disappeared (FOD), Rights Now Collective for Democracy, Centre for Peoples Dialogue (CPD), and INFORM Documentation Centre. The authors are non-governmental organisations actively working to promote and protect human rights in all parts of Sri Lanka and some have been active for over three decades. Some of the organizations have been specifically involved in addressing issues of disappearances and impunity since 1989.
3. The **Center for Human Rights and Development (CHRD)** - The Centre for Human Rights and Development (CHRD) is a Non-Governmental Organization initiated in 1997 by a group of human rights lawyers and activists for the protection and promotion of human rights in Sri Lanka. The objective of CHRD primarily though not exclusively is to ensure protection of human rights of ethnic minorities. CHRD was established during the height of the ethnic war, which counted for enormous human rights violations and abuse against ethnic minorities under the draconian national security laws such as Prevention of Terrorism Act and Emergency Regulations. Besides, CHRD identified arrests, detentions, disappearances, torture and sexual violence which caused many political and socio economic problems in the country. CHRD has now branched out to Land and Migrant issues. Specific expertise of CHRD includes Legal Aid for Victims of Human Rights violations, Campaign & Advocacy and Capacity Building& Social Mobilization of Civil Society.
4. The **International Movement Against All Forms of Discrimination and Racism (IMADR)** is an INGO having special consultative Status with ECOSOC. The headquarters of the organization is based in Japan and through special programmes in Sri Lanka facilitates community training on human rights and women’s rights education. IMADR is committed to addressing issues of discrimination and human rights violations arising as a result of persisting racism, casteism and gender.

5. The **Centre for Policy Alternatives (CPA)** was formed in the firm belief that there is an urgent need to strengthen institution and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process. The primary role envisaged for the Centre in the field of public policy is a pro-active and interventionary one, aimed at the dissemination and advocacy of policy alternatives for non-violent conflict resolution and democratic governance.

6. The **National Fisheries Solidarity (NAFSO)** is a membership based fisher people's organization, working among small scale fisher people in coastal, deep sea and inland fishing areas in the country. At present, the membership of the movement is 12,000. NAFSO's main concerns are; protection of human rights and national resources, reconciliation, ethnic harmony and peace, gender sensitivity, environmental protection and small scale fisheries and sustainable development. NAFSO promotes people to people dialogue on peace and sustainable development among North, South, East and mid country communities. After the war, NAFSO engage on the rights of the communities who affected due to war and IDPs. Mainly, our focus on war affected families of women headed families and children. NAFSO promotes equality, social recognition and human dignity among the communities and this is the base of our work among the war affected communities.

7. **Right to Life (R2L)** is a human rights organisation focusing their interventions in the area of advocacy, providing legal aid and networking with similar organisations. Right to Life is committed to the promotion and protection of Human Rights Defenders facing risks and in threatened situations. Right to Life has been working since 2003 on torture, disappearances and Human Rights violations.

8. **Families of the Disappeared (FOD)** formed under the banner "Kalape API" in 1991 against the killing and disappearances of 12 FTZ workers and jointly worked with the present President of Sri Lanka against the disappearances during 1989 to 1992. FOD is the only organisation to conduct a commemoration for the disappeared annually on the 27th of October since 1991 mobilising the families of the disappeared during the 1989 period. FOD has built "The Monument for the Disappeared" with the photographs of the disappeared presently located in Seeduwa where a FTZ worker and his legal representative were shot dead on October 27th 1989.

9. **Centre for Peoples Dialogue (CPD)** mainly concentrate in the development of an alternative media culture promoting citizens journalism. CPD publishes a city based

newspaper titled Meepura and hosts a regional news website. CPD focuses on issues of peace, democracy and promoting south-south solidarity.

10. **Rights Now - Collective for Democracy** is a non-profit, non-partisan organization established in Sri Lanka. It was founded in November 2007 as a collective of Human Rights Defenders and lawyers. This group has been collectively engaged in the protection and promotion of Human Rights in Sri Lanka. Rights Now has actively taken part in training, capacity building, advocacy and lobbying activities conducted jointly with traditional and non-traditional human rights defenders in Sri Lanka. It has played pivotal roles in building networks with other civil society organizations, political parties, trade unions, student unions and the public. The Platform for Freedom, the Movement for Free and Fair Elections, Lawyers for Democracy, Concern Citizen's, CaFFE and the Peoples Movement Against Dictatorial Insanity are some of the networks that Rights Now has initiated.

11. **INFORM Documentation Centre** – is a human rights documentation and training centre established to monitor, document & report on the human rights situation in Sri Lanka & to produce research papers on the representation of sexuality & sexual rights in popular culture & on feminist connectivity.

II. Context

12. Decades of political violence and civil war have polarised Sri Lanka's ethnic communities and undermined institutions, particularly those involved in law and order. Each of the major ethnic groups – Sinhalese, Tamils and Muslims – has suffered immensely. Conflicts have not just left hundreds of thousands dead, injured or displaced but have also entrenched fears and misunderstandings in each community.

13. The President with the support of the ruling Party members in the Parliament as well as those who crossed over from the opposition to join' the ruling coalition brought in Constitutional reforms which were rushed through parliament removing the term limits on the presidency, thereby solidifying the president's power over the attorney- general, judiciary and various "independent" commissions. The introduction of the 18th amendment to the Constitution has effectively heralded the consolidation of dynastic power and authoritarianism through the Constitution

14. Does post-war Sri Lanka show any hope for peace and respect for rule of law? Northern areas once ruled by the LTTE are now dominated by the military, which has taken over

civil administration and controls all aspects of daily life – undermining what little remains of local capacity. Democratic political activities in the north and east have been suppressed through the use of violent and corrupt ethnic Tamil proxies and loyalists of the regime. Development of those areas has been conducted without local consultation; indeed many Tamil residents feel that it is more like the extraction of the spoils of war than a real effort to improve livelihoods and build trust.

15. To deflect criticism of its conduct in the final stages of the war the government established a Lessons Learnt and Reconciliation Commission (LLRC). Promoted as a mechanism for both accountability and reconciliation, it will produce neither. The LLRC lacks the independence, mandate and witness protection capacity to serve as an accountability process for the many credible allegations of war crimes and crimes against humanity committed by both sides and recommend an international investigation. Correcting the LLRC's flaws would require not only a new commission or other mechanism but also a reversal of core post war policies of the government.
16. The LLRC has served as a platform for airing some grievances, it has failed to win confidence domestically and can do little to address issues of justice and create an environment to install respect for rule of law.
17. We as members of civil society know that on the basis of past experience and historical record, commissions are powerless mechanisms and remain as 'window dressing tools' of government/s.
18. Militarisation continue to dominate life in the North as well as that in the South. Monitoring of NGO activities have been brought under Ministry of Defence since 2010. The Ministry issues circulars to NGOs requesting information of funds received and programmes conducted including that of resource personnel and experts. NGOs have to submit Annual Programme Plans to the District Administrator in the area. In the North NGOs have to obtain prior approval from the Presidential Task Force to implement Projects and Programmes and NGO's do not receive permission to conduct psycho social counselling.
19. In other more visible ways, life in the north is dominated by the military. Despite government claims that it is regularly dismantling "high-security zones" (HSZs), particularly in Jaffna, there has been no meaningful reduction in the military's overall presence. In the resettlement areas intelligence surveillance keep an ever watchful eye

on the day to day activities of the people which has caused insecurity. Even though there is a reduction in the High Security Zones residents have not been able to claim their property receive compensation for losses in livelihood experienced over an extended period of time.

20. Single women are facing issues of protection and security in the post-war context. Widowed mothers speak about their need for protection from sexual violation and harassment from men in the general public, in positions of authority, and from the armed forces. The fear is further exacerbated since most single women are viewed as a widow of a 'terrorist'.

21. With regard the prevailing issues concerning resettlement of internally displaced persons in the North and East of Sri Lanka, while the government has claimed to resettle those displaced, the process is clearly unstructured, politically motivated and lacking minimum standards. The government's recent circular stopping land grants have left those who are landless in the lurch and unable to resettle. Forms to be filled for resettlement are currently provided in English in many districts. While most are literate in Sri Lanka, the medium of education is the mother tongue which is Tamil in the case of those currently resettling. Initially when resettling there was an AID package given however that has now been stopped due to political interference.

22. Muslim IDP's returning to Jaffna and Mannar have a long drawn process and have to pay about Rs.1500 to register themselves with relevant authorities. They also need to cover their travel cost to and from Jaffna. They forgo the food rations and shelter in this inter mediate stage and are forced to shuttle between Puttalam and Jaffna. The Muslims were evicted from north in the year 1990 by LTTE and most of them have been living in Puttalam for the past 22 years. Those who have chosen to return to the North and resettle are families who are impoverished and without land. Once a family decides to move and registers in Jaffna, they are forced, immediately, to deal with uncertainty and frustration. Government officials on either side refuse to provide death certificates, birth certificates and other documentation until the registration is complete.¹ There are no basic facilities provided to facilitate the return and due to lack of a proper house or security, most women are left behind in Puttalam while the men return to Jaffna/ Mannar /Killinochchi and Mullaitivu to begin the resettlement process.

23. Organizations and personnel providing humanitarian assistance and human rights protection have to work in a hostile and intimidating environment—visas are denied,

¹ Interview with a woman IDP from Jaffna, IMADR, April 2011

they fear arrest, torture and extra-judicial killing. Consequently, many activists and organisations are reluctant to provide information and when they do they are reluctant to be named. Therefore many incidents in these reports do not have the victim's names or the activist/ organisations name. The inability for us to provide protection for these people is one obstacle to gathering information.

24. With regard to restoring rule of law and ending impunity - Sri Lanka's law enforcement and judicial systems are badly damaged after decades of civil war and emergency rule. Anti-subversive ideology has further contributed to the increase in incidents of torture, encounter killings and disappearances and abduction for both economic and political reasons. Police and relevant investigation authorities have not been able to investigate such crimes nor bring charges against perpetrators mostly due to political interference. We have often heard the phrase from police officers that orders for their actions have "come from the top", which remains elusive and thereby not held accountable.
25. The recent assassination of a politician supporting the government – an advisor to the President in broad daylight by another politician from his own coalition illustrates the total collapse of the rule of law and discipline in governance. The Police had taken no steps to stop the gangs moving around in this area with weapons as they were well protected by political authority.
26. Restoring their independence and ensuring their adherence to the law is necessary to rebuild Sri Lankans' confidence in these institutions. The government has shown no sign of reforming the law enforcement, judiciary and security sectors. There is the need to urge the GOSL to address the issue of compliance in a constructive manner, to address grave human rights violations resulting in the collapse of rule of law, increased militarization and war through investigation and thereby demonstrating its adherence to CAT and other international legal and humanitarian standards.

III. Definition of Torture (Articles 1 and 4)

27. Sri Lankan jurisprudence on torture consists of judgments by the Supreme Court in Fundamental Rights applications involving allegations of torture and the criminal prosecutions under the Torture Act² in the High Courts inquiring into charges against public officers alleged of committing torture. None of the High Court decisions make

² Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994

mention of mental torture. The concept of mental torture is also not addressed in any of the recent decisions of the Supreme Court.

28. Even though the national law³ criminalizes torture and those convicted of the offence face a prison sentence of seven years, this law has been applied with partiality and sparingly. The statistic of three persons being convicted under the Torture Act has continued static since Mr. Manfred Nowak's report in 2009.
29. In recent public instances of police and army action resulting in injuries and complaints of degrading treatment of civilians – no independent investigation has been launched by the State in recognition of the physical and mental impact of such incidents on affected civilians. The incidents include the treatment of Free Trade Zone protestors by the police in Katunayake in May 2011⁴ and the assault of civilians by the army personnel in Navanthurai (Jaffna District), Komarasankulam (Vavuniya District) and Thottaveli (Mannar District) in August 2011⁵.
30. In a recent case, a businessman in Colombo was arrested by CID and was subjected to extreme torture. Even though the magistrate visited the place of detention he had failed to order an examination by the JMO although a complaint was made by the suspect. It was only nearly a year later that the Supreme Court called for a medical report in respect of the suspect and the Supreme Court granted leave to proceed with a Fundamental Rights Application⁶ based on the strength of the medical report.
31. There is no legislation in Sri Lanka to specifically criminalize enforced disappearance. Sri Lanka has also not signed nor ratified the International Convention for the Protection of All Persons from Enforced Disappearance. While successive governments in Sri Lanka have set up Commissions to inquire into disappearances, neither compensation for the victims nor a mechanism to combat disappearances is yet in place. For example in 1997, the National Human Rights Commission of Sri Lanka (hereinafter referred to as the NHRC) inquired into disappearances that occurred between 1980 and 1991. The findings of this Commission have not been published to date.⁷

³ Convention against torture and other cruel or degrading treatment or punishment Act (CATA) No 22 of 1994

⁴ "Injured FTZ employee dies" Daily Mirror on 2nd June 2011 found at <http://print.dailymirror.lk/news/front-page-news/45773-injured-ftz-employee-dies.html> and "FTZ workers' FR Petition: Courts call for reports" Daily Mirror on 19th September 2011 found at <http://print.dailymirror.lk/news/news/56646.html>

⁵ "Jaffna court orders 95 to be remanded" Daily Mirror on 24th August 2011 found at <http://print.dailymirror.lk/news/front-page-news/54110.html> and "FR Petition filed in SC" Daily Mirror on 21st September 2011 found at <http://print.dailymirror.lk/news/front-page-news/56865.html>.

⁶ SCFR 963/2009

⁷ NHRC Annual report 2006-2007

32. The NHRC has not submitted its annual human rights report since 2009 and therefore information and data regarding incidents of torture are not available to the public or civil society organisations.

33. The authors of this report are aware that compensation was paid to some families of those disappeared during the period 1989 to 1991 in the South consequent to a Presidential Commission⁸. A full report of the Commission, especially the finding on the perpetrators is yet to be published from 2007. However authors of this report have come to know unofficially that a 'final report' was forwarded to the Presidential Secretariat in October 2007. It appears to be a comprehensive report which recommends compensation in a majority of the 2210 cases inquired into. Further that the Commission had issued the following recommendations, on 4th December 2007, in relation to a petition filed regarding alleged disappearances:

- The Government should do its utmost to ensure that no such incidents ever occur within areas falling under Governmental control, in which the Sri Lanka Police and Sri Lanka Army have effective authority.
- A Special Independent Investigation Unit should be constituted by the Inspector General of Police to conduct impartial and independent investigations into all such allegations.
- All dependants of persons who 'disappear' should be compensated for their entailing losses.
- The Government should formulate requisite Defense Regulations towards both inquiring into and penalizing these types of 'disappearances.'

The authors of this report state that none of the above recommendations have been complied with by the Government of Sri Lanka to date.

⁸ Presidential Directive 'No.SP/6/N/214/1947' dated 14th March 2005

IV. Lack of effective legislative, administrative, judicial or other measures to prevent acts of torture (Articles 2)

Presidential Directives

34. The Presidential Directives on Protecting Fundamental Rights of Persons Arrested and / or Detained were issued by President Mahinda Rajapaksa to the Heads of the Armed Forces and the Police on the 7th July 2006. On the 12th April 2007, the Secretary of the Ministry of Defence, Gotabaya Rajapaksa, re-circulated the directives to the Commanders of the Army, Navy and Air Force and as well as to the Inspector General of Police. These directives have no binding force in law and there is no means by which public officers can be held accountable for lack of adherence to these guidelines. The International Commission of Jurists in a publication has commented that the “Recently republished “directives” from the president to the police and security forces require that detentions under the Emergency Regulations follow certain safeguards and reaffirm the powers of the Human Rights Commission. These directives, however, have no independent legal force and carry no penalties for non-compliance, and there continue to be numerous reports of arrests and detentions that have not followed the stated procedures.”⁹

The right to be informed of the reason for arrest, the access to a lawyer of their choice, and the right to be assisted by an interpreter¹⁰

35. Although the Constitution of Sri Lanka guarantees the right to be informed of the reasons for arrest in practice almost all detainees have complained that either no specific reasons.

36. The 2008 Report by the NHRC on a visit to the Boosa Detention Centre reports that one third of detainees were unaware of the reasons of their arrest at the time of arrest.¹¹

37. There is no legal provision specifically protecting the right of a suspect to demand legal representation during interrogations in police stations and detention centres. Sixty four Fundamental Rights applications of detainees undertaken by CHRD in the years 2010/2011 report that no lawyer was present at the time of interrogation.

⁹ 'Sri Lanka's Human Rights Crisis', by the International Commission of Jurists, 2007)

¹⁰ List of Issues Article 2 paragraph 2 (a)

¹¹ Annual Report 2008 Human Rights Commission of Sri Lanka Pg 12 at 1.2.2.1

No right to demand an independent medical examination, see reports and a requirement that allegations of torture be brought to the attention of the relevant prosecutor ¹²

38. For a case of torture to be established a medical report must be submitted by the Judicial Medical Officer (JMO) to the Court. While requests for medical investigation are often refused even in the few cases where the magistrate orders a medical examination to be conducted, several hurdles prevent a true account of the torture being reflected in the medical report.
- a) Many medical officers are not well trained and therefore are incapable of providing an in depth report or in understanding the complexities of torture including the concept of mental torture. There is no provision for or assessment of mental torture of victims of torture by JMOs. There is also a lack of qualified JMO's in the cadre.
 - b) Medical officers themselves are unwilling in many cases to disclose the fact of torture in front of the police officers in a Court of law.
 - c) In some instances tortured victims have been refused medical treatment by both government and private medical doctors. A young Tamil male who was tortured and was suffering from a crushed spine and injured feet sought medical treatment. The doctor presumed he was a terrorist and threatened to call the police if he did not leave the hospital. Many torture victims are afraid to go to government hospital for treatment for the fear of being reported and arrested.
39. Medical officers in several cases have acted on the pressure or in connivance with the police to hide the incidents of torture. Organisations who conduct legal aid have documented several such instances. In a recent incident of torture which took place in August 2011, the medical report by the JMO stated that the victims injuries was due to assault by unknown persons despite his clear statement to the JMO that his injuries were sustained due to torture at the Vavuniya Police Station. The victim overheard the JMO consult with an officer of the police who the victim believed was the OIC of the Vavuniya police, in which the JMO asked the OIC for advice on what she should record in the medical report. In the same case, the JMO initially ruled that the victim did not require treatment or hospitalization since he did not show any visible injuries.¹³

¹² List of issues 2 (b)

¹³ <http://groundviews.org/2011/10/02/grease-devils-and-police-and-army-attacks-on-civilians-in-mannar-and-vavuniya/>

40. Lack of disciplinary action against medical officers in cases of negligence. In most cases the medical officers are let off with a warning or removed from service for a few years even though the allegations of torture have been proven. In 2007 a JMO was charged and removed from service.¹⁴ There have been no further cases against JMO's even though there have been instances of negligence by the JMO in ascertaining torture and providing an impartial medical report. The assistant JMO of Negombo Base hospital was charged with providing contradictory information to the Supreme Court and the NHRC. The NHRC recommended that the Medical Council take suitable action against the assistant JMO.¹⁵

Right to challenge lawfulness of detention through habeas corpus¹⁶

41. Habeas corpus applications in Sri Lanka are generally prone to delays and have failed as an effective and immediate remedy. These applications are heard in the Court of Appeal based in Colombo and the jurisdiction to hear such applications has also been extended to the Civil Appellate Courts in the provinces. The applications typically appear to be entertained by either the Court of Appeal or Civil Appellate Court and orders are made to the relevant Magistrate Court (MC) to conduct an inquiry into the complaint. It is the process of inquiry in most cases that drags on before the MC. An example of such an application is the case of Prageeth Ekneligoda, a journalist who was disappeared in January 2010. A habeas corpus application was filed on 19th February 2010. The case was referred by the Court of Appeal to the Magistrate Court and was taken up in the Magistrate Court only on 10th June 2011. The lack of effective and immediate orders has relegated this remedy to a futile mechanism for redress. It creates a pattern of ineffective inquiry and supervision over complaints of unlawful detention and disappearance, and thereby heightens the risk of torture to persons so detained.

42. The following incidents occurred during the period 2009-2010 in relation to Habeas Corpus Applications. One of the submitting organisations filed forty five Habeas Corpus applications in 2008-2009 in Jaffna, in respect of persons who were disappeared during the period 2001 to 2007. The applications disclosed names of officers allegedly responsible for the disappearances. The Jaffna High Court referred the cases to the respective Magistrate Courts, witnesses gave evidence and a State Counsel was designated to represent the Sri Lanka Army (SLA). The findings at the Magistrate Courts were communicated to the High Court of Jaffna. Immediately prior to the Jaffna High

¹⁴ Mullankandage Amitha Priyanthi v Dr. W.R. Piyasoma, 2007 found at http://www.alrc.net/doc/mainfile.php/cl_srilanka/224/

¹⁵ Hrc-6732-07. On 2010.6.29

¹⁶ List of Issues, Article 2 para 2(c)

Court pronouncing a judgment over the cases, the cases were transferred to Anuradhapura High Court (North Central Province). The Anuradhapura High Court Judge ordered the families of the victims to attend Court. On 4th May 2010 when the Counsel for the Petitioners was unable to attend Court the Attorney General made an application that the habeas corpus applications be dismissed for want of appearance accordingly the High Court Judge dismissed all the cases bearing numbers Habeas Corpus 1/2008 up to 45/2008.

Persons held in administrative detention

43. Those under administrative detention do not enjoy the same rights as those awaiting trials. At the Boosa Detention Centre a lawyer cannot meet those detained without police presence. Lawyers can only meet clients after applying for permission from TID and if the and when the TID grants permission at their discretion. Administrative detentions can only be extended for 18 months¹⁷, however many detainees have been held in administrative detention for several years.¹⁸ In many cases family members are not informed and do not know the place where the detainee is being held. There are also credible allegations of undisclosed detention centres which have not been gazetted by the Government. Such practices lead to increased vulnerability of detainees to illegal detention and torture.
44. Mr. Ragupathy Sharma and his wife Vasanthi Ragupathy Sharma were arrested by the officials of the terrorist investigation division on February 9, 2000 at his temple residence. The alleged reason for the arrests was providing accommodation to a suspect who was involved in the Colombo Town Hall bomb blast. Later he was implicated in the Town hall bomb blast case. Currently, Ms. Ragupathy Sharma is detained at the Welikade Female Prison; where as Mr. Ragupathy Sharma is detained at the Kalutara Prison. Their children are looked after by an Orphanage. Currently she is being treated for mental illness as a result of her prolonged detention. accused

¹⁷ Section 9 of the Prevention Terrorism Act 1979

¹⁸ The Supreme Court case of Suleiman Lebbe Nijam reported on page 2 of the Daily Mirror Newspaper on 12th October 2011

Lawyers facing threat and intimidation¹⁹

45. Lawyers undertaking cases defending human rights violations and arbitrary acts of the State have been facing harassment and threats to their lives.²⁰ These lawyers have been called 'traitors in black cloaks'.²¹
46. In particular Human rights lawyer, Amitha Ariyaratne²² filed a fundamental Rights case regarding the threat and intimidation faced by him in January 2009 as a result of the human rights cases he had undertaken. His office was set on fire and a Magistrates Court case is pending on the matter. A forensic report on the arson attack was called for in 2009 is still pending.
47. The residence of Mr. Welliamuna²³, human rights lawyer and then (Executive Director of Transparency International Sri Lanka) was attacked in 2008. The attack is believed to be directly linked to his human rights and accountability related work he was involved in. The attack took place next day after Mr. Weliamuna appeared for a torture victim in a fundamental rights application before the Supreme Court and had made lengthy oral submissions against eight police officers alleged of torture.
48. Miss Chamari Mahanama an attorney at law who represented the family of a torture victim, Sugath Nishantha, at the post mortem was threatened by a telephone call on 21 September 2008. The threat included the words "We will see if you come to the courts tomorrow" and a complaint was lodged directly to the IGP by the President of Right to Life, Mr. Brito Fernando. Two official letters were received by Right to Life from the DIG of the Western Province - North Division bearing reference number WPN 5/466/ 2008 stating that the complaint had been referred to the Superintendent of Police, Criminal Division of Western Province North. The OIC, Criminal Division of the Western Province North by letter bearing reference number CD/OIC/1060/2008 informed Right to Life that an inquiry had commenced into the complaint. Inquiries appear to be ongoing with no progress towards identifying the perpetrators having been made to date.

¹⁹ List of Issues, Article 2 para 3

²⁰ <http://www.thesundayleader.lk/20090719/spotlight.htm>

²¹ Traitors in black cloaks flocked; 7 July 2009; at <http://www.defence.lk/english.asp>

²² SCFR 123/2009

²³ On the grenade attack on J.C. Weliamuna's residence; by Free Media Movement; on 28 September 2008; found at <http://freemediasrilanka.wordpress.com/2008/09/28/on-the-grenade-attack-on-jc-weliamuna%E2%80%99s-residence/>

Emergency regulations and Prevention of Terrorism Act²⁴

49. The Committee has requested for information on the State party's compliance with its obligations under Article 2 of the Convention with a special focus on information about the fate of persons detained under the Emergency Regulations and the Prevention of Terrorism Act.
50. The Emergency Regulations lapsed on 31st August 2011 the Government has however expressed that it has no intention of repealing the Prevention of Terrorism Act²⁵. As a result of the PTA being in operation conditions for arrests, detention and trial remain unchanged.²⁶
51. The provisions of the PTA overlaps extensively with the provisions of the lapsed emergency regulations in the areas of, creation of offences²⁷ and penalties, treatment of confessions²⁸, powers of search and arrest²⁹ and detention and restriction orders³⁰ and prohibition of publications³¹. The PTA is overly invasive of personal liberty especially in the context of maximum period of detention which is 18 months as opposed to 3 months under the Emergency Regulations. In practice, the overly restrictive provision of the PTA of a maximum detention period of 18 months is regularly abused. This means a large number of detainees are in detention for over 18 months.
52. Magistrates overseeing these detentions, until a decision is made to indict or release such detainees, do not apply the 18 month provision strictly. This has created a situation where a majority of the detentions are in fact illegal detentions.

²⁴ List of Issues, Article 2 para. 4

²⁵ Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 ('the PTA')

²⁶ The ICJ report of 2009 describing the substantive implication of the PTA states as follows: "*It provides for the detention for up to 18 months, without trial and without access to lawyers or relatives, of any person suspected of a wide range of offences including murder, kidnapping, criminal intimidation, robbery of state property, possession of unlicensed weapons, incitement to communal disharmony, mutilation of street signs, etc. In a significant departure from ordinary criminal law, the Act allows confessions made to the police admissible in evidence and shifts the burden of proof in certain cases to the defendant*". See also *Lifting the Emergency: Exposing the sham* by J.C. Weliamuna at <http://groundviews.org/2011/09/16/lifting-of-emergency-exposing-the-sham-exercise/>

²⁷ Part I of the PTA and Part 5 of the Emergency Regulations of 2005

²⁸ Section 16 of the PTA and Regulation 63 of the Emergency Regulations of 2005

²⁹ Part II of the PTA and Regulation 20 of the Emergency Regulations of 2005

³⁰ Section 9 of the PTA and Regulation 18 and 19 of the Emergency Regulations of 2005

³¹ Part VI of the PTA and Regulation 15 of the Emergency Regulations of 2005

53. For those detainees who are able secure legal representation the fundamental rights application will be filed in the Supreme Court challenging the detention. Once an application is filed Attorney Generals' Department informs Court as to whether the suspect will be indicted or released. Most often investigations are said to be pending and further time is requested which in effect is an extension of the illegal detention. For example one of the organisations submitting this report is currently providing legal representation for 90 detainees at the level of the Magistrate Court.
54. The monthly report of CHRD indicated that a majority of these cases involve complaints of confessions obtained under torture. Therefore in practice it is extremely difficult for detainees under the PTA to secure even the minimal safeguards under the law and lack of access to such safeguards increases the risk of torture.
55. The PTA also fails to provide the following safeguards to persons investigated and detained under its provisions; investigation of offences to be conducted after obtaining a warrant, judicial scrutiny of detention and inadmissibility of confessions taken while in detention. The lack of these safeguards supports an environment in which torture in fact does go unreported and unchecked. It is also an environment in which impunity thrives.
56. Moreover with the lapsing of emergency, the Attorney General announced the Government's plans to introduce new regulations under the Prevention of Terrorism Act.³² A Regulation was published dated 29th August 2011 under the hand of the President of Sri Lanka in terms of Section 27 of the Public Security Ordinance cited as the Prevention of Terrorism (Extension of Application) Regulations No. 3 of 2011.³³ By this regulation, more significantly, the emergency regulations on the appointment of a Commissioner-General of Rehabilitation were re-enacted as PTA regulations. Another regulation was enacted cited as the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011 which made provision for the continued detention of those arrested and detained under the emergency regulations. These regulations in effect continue the exercise of emergency power even though formal recognition of a situation of emergency has been retracted. The recent events described above demonstrate that without express provisions to facilitate normalcy the Government of Sri Lanka is *de facto* holding on to emergency power. This in fact allows for emergency powers to pervade

³² Homeland Act to replace PTA By Christy Mahesh de Silva
http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=2956:homeland-act-to-replace-pta&catid=40:news&Itemid=64

³³ Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka No. 1721/3 dated 29th August 2011.

normal law and it is likely that this absorption is permanent. The sanction of broad and unsupervised police powers does nothing to arrest police brutality and impede impunity.

57. It is also notable that in terms of Section 12 [Part 3] of the Public Security Ordinance by way of Extraordinary Gazette the President of Sri Lanka routinely calls out all of the armed forces for the purpose of maintaining public order in almost all parts of Sri Lanka. The most recent Order was made on the 6th of September 2011 effective in all twenty five Administrative Districts in Sri Lanka.³⁴ The ease with which the military is deployed to engage with civilians has created increased opportunity for incidents of torture and degrading treatment which in fact have been demonstrated in recent incidents in the Jaffna (Navanthurai)³⁵ Vavuniya (Komarasankulam) and Mannar (Thottuveli) Districts³⁶.

National Human Rights Commission

58. As noted in this submission, as per the 17th amendment to the Constitution of Sri Lanka the NHRC was able to function as an independent body. However after the introduction of the 18th Amendment to the Constitution, the Commissioners are appointed by the H.E. the President with no effective mechanism for opposition and minority parties to engage in the decision. This is a violation of the Paris Principles. Sans any transparent and consultative process the appointments lacks the independence and confidence required to function effectively. The organizations who work on human rights and torture issues are of the strong opinion that their work is being severely hampered by the lack of independence of the NHRC.

59. In public consultations with civil society organizations the NHRC often cites the lack of resources as a reason for its failure to conduct visits to detention centres and to address issues of torture and to respond effectively to emergency situations. However it must be noted that the NHRC, although empowered to do so, has also failed to authorize any other persons or groups who are available to conduct such visits. We see a lack of political will of the NHRC over the period of time since 2006.³⁷

³⁴ Extraordinary Gazette No. 1722 /17 dated 6th September 2011.

³⁵ Reported on Groundviews website at <http://groundviews.org/2011/08/25/jaffna-brutal-assault-of-civilians-in-navanthurai/>

³⁶ Reported on groundviews- grease devils and attacks on civilians; by Watchdog <http://groundviews.org/2011/10/02/grease-devils-and-police-and-army-attacks-on-civilians-in-mannar-and-vavuniya/>

³⁷ ALRC shadow report to the CAT for 2011.

60. Although the NHRC claims that they are informed about the number of detention orders issued by the Defence Ministry and that they maintain a register with all such details, there is no mechanism to verify the accuracy of this information. The NHRC 2008 Annual Report highlights the issue of “pending detention orders” at the Boossa detention centre, which confirms the existence of persons detained without valid detention orders.
61. In addition to the routine functions of the NHRC, as per the Act, they are also empowered to engage in many other tasks, inter alia research, make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms, make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights, conducting special inquiries, etc. However, the NHRC has rarely engaged in these due to lack of interest on their part. Further, there is an inordinate delay even in publicizing the very few investigative reports that have been done by the NHRC.
62. The NHRC has also been silent and inactive on various fundamental areas, including the Witness Protection Bill, the Optional Protocol of the Convention against torture, Convention on Protection of Persons Against Enforced Disappearances, the UN Secretary General’s panel report on accountability, occurrence of extra judicial killings and the Right to Information Bill.
63. State and government officials and authorities have blatantly failed to implement recommendations made by the NHRC in respect of inquiries, flouting the Public Administration Circulars. It is also evident that there is a deterioration of respect shown by the police officers to the NHRC and particularly by non-participation in inquiries.
64. The inordinate delay in conducting and completing inquiries by the NHRC is drastically impacting on victims who seek justice via this avenue. One of the primary reasons for the delays is due to the non-appearance of police officers at the inquiries. And though the Act has provided for the Commission to treat the non-participation as contempt, and report to the Supreme Court which could then take action against such officers, the NHRC thus far has not invoked these provisions.
65. The State party report at page 27 paragraph 28 states that the NHRC is empowered to visit detention centres. The NHRC Act states that the NHRC or authorized persons can carry out visits to detention centres. However there are instances where NHRC officials

have been denied access to detention centres by the military. In one case, the military has continued to deny access to a detention centre to a NHRC coordinator of a Regional Office for several years. HRC officials have also stated that they are compelled to rely on official Government reports with respect to 'official' detention centres and that they are helpless to inquire into any other detention facilities that may exist in Sri Lanka.

Independence of the judiciary³⁸

66. The introduction of the 18th amendment to the Constitution of Sri Lanka in September 2010, resulted in a serious encroachment by the executive on the independence of the judiciary in Sri Lanka. It has strengthened the executive by replacing the Constitutional Council with the Parliamentary Council. Appointments are made, without effective consultation, by the President. The Parliamentary Council is composed of members some who are ex-officio and others who are appointed by Leader of Opposition and party leaders. The Presidential Council is only a consultative body. The abolishment of the Constitutional Council is considered a threat to the independence of the judiciary as well as the public service in general. It provides another inroad for politicization and reinforcing impunity³⁹.
67. The President is empowered to appoint the Chief Justice, Judges of the Supreme Court and the Court of Appeal. Moreover, the President is also empowered to appoint members of the Judicial Services Commission (JSC) except the Chairman of the Commission who is appointed after seeking the 'observations' of several persons⁴⁰. The JSC has responsibility for the promotion, discipline, transfer and dismissal of all High Court and lower court judges as well as the appointment of the lower court judges⁴¹. Thus, the composition and appointment process of the JSC brings into focus the lack of transparency and the lack of objective factors i.e. ability, integrity and experience of judges being taken into consideration.
68. In 2007 the Magistrate of Jaffna was transferred to the Juvenile Court. There were many complaints of harassment by military and police in Jaffna which was disapproved by the said Magistrate and she had taken action against the same. One day when her son was going for classes in a car army personal fired at the car thinking that the magistrate was in the car. So there was a threat to her life. Interested parties prevailed upon and

³⁸ List of Issues, at para. 7

³⁹ 18th Amendment to the Constitution of Sri Lanka

⁴⁰ Article 41 A (1) of the 1978 Constitution

⁴¹ Article 114 (5), *ibid*

requested for her transfer as she was seen to be taking action against the military and the police. Subsequently she was transferred to the juvenile court in Colombo which only dealt with cases of children. Abuses occurring in juvenile homes, orphanages run by religious organisations and State run homes were brought to the notice of the juvenile court judge. She dealt with the same in the manner that was called for and once again faced threats by various members of clergy and once again before the cases were to be concluded she was transferred back to a court in Jaffna.

69. In 2010 the Magistrate in Chavakachcheri was transferred following threats to his life. The Magistrate refused to grant bail to those arrested with respect to the abduction and killing of a businessman's son in Jaffna. Several of those arrested were members of the Eelam People's Democratic Party (EPDP) which is headed by a minister in the current Government. Soon after the decision not to grant bail, the Magistrates' house was attacked and he was forced to go into hiding. The Magistrate was transferred to another court following which the suspects were enlarged on bail.

70. The Chief Magistrate of Colombo also faced the possibility of being transferred in year 2010 for giving orders adverse to government interests. Furthermore, the lack of publicly-available documentation regarding discipline, transfer and dismissal of High Court and lower court judges further erodes the independence of the judiciary. This was highlighted by the International Bar Association in its report released in May 2009:

*"The IBAHRI again notes that there does not appear to be any publicly-available records of the criteria for or procedure regarding the discipline, transfer and dismissal of High Court and lower court judges by the JSC. This lack of transparency and accountability in the workings of the JSC reduces public confidence in it and is detrimental on the morale of individual judges and the independence of the judiciary as a whole"*⁴²

71. Even though there are IGP Circulars, Presidential Directives, Constitutional provisions requiring reasons for arrest in practice this requirement is rarely fulfilled. There is also a lack of transparency and the State is yet to disclose all places that hold detainees. The Defence Secretary has the power to declare any place of detention. Therefore undisclosed camps prevent independent monitoring of such places of detention. While Non-governmental organizations are not permitted to visit detention centres the ICRC has the mandate to do so. However their monitoring activities are stifled by hostile

⁴² Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka, as International Bar Association Human Rights Institute Report, May 2009, at para. 3.28

measures by the government. The NHRC Annual Report 2008⁴³ states that even the Boosa Detention Centre's legality cannot be ascertained.

72. Even though the Government has not published a list of detainees it has held that there is such a list. However even though the LLRC recommended that such a list should be released and the TNA have requested for the same this list has not been provided. There have also been allegations that several detainees have been registered under false names so as to ensure that family members will not be able to locate them.⁴⁴

Attorney General's Department

73. The Attorney General's Department being responsible to appear on behalf of public officials in cases alleging fundamental rights violations, have taken a policy decision not to appear for such. At paragraph 64 of the State Report it is stated that "the Attorney General, who usually represents the State and its officers in the proceedings relating to fundamental rights applications, does not appear for any public officer against whom there are allegations of torture". This statement is incorrect as there are several cases in which the Attorney General has decided to represent officers alleged of torture, especially for superior officers and officers in charge of police stations. This practice further represents the lack of recognition of the principle of command responsibility. The case of Amarakoon Dissanayake Sarath Kumara⁴⁵ is an example of the Attorney General appearing for all officers alleged of torture.

⁴³ HRC Annual Report 2008 at pg.1.2.2.1

⁴⁴ Legal Aid Clinics, CHRD, May 2011

⁴⁵ http://srilankawatch.com/index.php?option=com_content&task=view&id=42&Itemid=1

V. Legal framework for combating violence against women⁴⁶ -

- a. Long years of the ethnic conflict has had its toll on women and children which remains unaddressed. Very few cases have come to be reported publicly and prosecuted. There have been a number of reports of sexual violence against women where the alleged perpetrators have been armed forces personnel, the police, army deserters and militant groups. Not all cases have been reported since few women are willing to lodge official complaints due to fear hence there is no systematic documentation available on these cases. There have been few convictions in cases of custodial rape where security forces personnel have been implicated or charged, the exceptions being the Krishanthi Kumaraswamy judgment (1998) and the Vijitha Yogalingam decision (2000).⁴⁷
- b. In the post war situation in Sri Lanka issue of security and protection for women in the resettlement areas remains a major issue. Single women lack support to rebuild their lives as well as the presence of armed men and armed forces in these areas have added to increase gender based violence.
- c. An instance of grave sexual violence in the post war resettlement areas has been reported in 2010 from the Vishvamadu area in Killinochchi. One woman was raped and another was molested and abused in the Vishvamadu area. This is an area under the post war resettlement land. The victim of rape was aged 22 and a mother of two. The incident occurred on 6th June 2010 when a group of army personnel in uniform broke into the makeshift hut committed the offence of rape. The accused were produced in Killinochchi MC⁴⁸ on 14th June 2011 and were identified at an identification parade held on 14th June 2011. After hearing evidence the case has now been committed to trial at the High Court.
- d. There have been very few cases in regards to sexual violence, degrading treatment and torture while in custody. The fear of repercussions in complaining against the State, the vulnerable position women are in and the stigma surrounding sexual violence can be cited as reasons for this. In a case where a woman was tortured in a degrading manner in Kochchikade, Gampaha District, by the police in 2009, a

⁴⁶ List of issues, paragraph 9

⁴⁷ Sri Lanka Shadow Report to the CEDAW, 2010.

⁴⁸ MC Killinochchi Case No 67/2010

Fundamental Rights application was lodged and compensation granted subsequently as a settlement by the Human Rights Commission.⁴⁹

- e. In the case of women ex-detainees, many women are unwilling to speak openly on incidents of sexual harassment and violence. The detention centres where women detainees were held were out of bounds to NGOs, legal practitioners including ICRC.

- f. **Trafficking** -Since the end of the war there are increased reports of women and girls being trafficked. Recently a statement was made by the head of the National Child Protection Authority⁵⁰ warning parents of the North to be vigilant and protect their girl children as many were found as victims of trafficking. There have been several cases where disabled women have also been trafficked. Given the current military presence and surveillance, it is indeed a matter of concern how traffickers are able to bypass several check points and take young girls and women across to other parts of the country. Sri Lanka has Law on trafficking however it not invoked due to the lack of understanding of the authorizes of the concept of trafficking. Often cases of trafficking are filed under abductions. While very few cases are filed they are often withdrawn due to political influence. In another incident young women were promised work and were being taken to Colombo by the military. Due to the fear that these women will be trafficked several activist protested. In response the military took the women in to the Thallady Camp and transported them from there.⁵¹

- g. **Migrant Workers** - Sri Lanka's highest earnings are received due to female migrant workers however the treatment that Migrant workers of Sri Lankan origin receive in Middle Eastern countries often amounts to torture. Two women migrant workers arrived in the country with nails and other sharp metal objects pierced into various parts of their bodies. Reports of the Foreign Employment Bureau have not been made public with regard to the investigations conducted in Kuwait and Saudi Arabia where these incidents occurred.⁵²

⁴⁹ HRC 34/92/2009

⁵⁰ http://www.bbc.co.uk/sinhala/news/story/2011/06/110625_sexual_abuse.shtml

⁵¹ Activist eye witness account in May 2010.

⁵² Reported by Reuters on 26th August 2010, found at <http://www.reuters.com/article/2010/08/26/us-srilanka-maid-idUSTRE67P17420100826> and Article reported in Arab Times on 13th November 2010 found at <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/161960/refTab/73/t/Sri-Lankan-maid-alleges-nail-torture-in-Kuwait/Default.aspx>

- h. **Domestic Violence** - The Sri Lankan State has legislated and passed the Domestic Violence Act in 2005 which makes violence against women by the family actionable. However it is not a criminal offence under the act but can be taken as a separate case under the Penal Code as an offence against the Body. While the GoSL has set up women's desks in the police Stations, in many instances there are no women at the women's desk. And in the North the women's desks are often manned by Sinhala speakers while the complainants are predominantly Tamil speakers.
- i. The lack of gender desegregated data requires to be addressed in order to effectively plan policies for rehabilitation, rebuilding and resettlement. Since there is an absence of comprehensive disaggregated statistics on incidents of violent crime it is not possible to assess the true extent of crimes against women. The Police Bureau for the Protection of Women and Children however recorded the following figures of violence against women in 2006 and 2008.

Grave Offences	2006	2008
Murder	144	128
Trafficking		4
Unnatural offences		2
Abduction		73
Rape	353	303
Incest	4	
Grave Sexual abuse		15
Grave injury		449

Source: Police Bureau for the Protection of Women and Children, 2006 & 2008

Minor Offences	2006	2008
Sexual harassment	963	841
Assault		1,111
Verbal abuse		45
Abortion		36
Domestic Violence		89
Other crimes		177

Beatings and injuries		1,144
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Source: Police Bureau for the Protection of Women and Children, 2006 & 2008

It must be noted here that though all the above cases require prosecution, neither the police nor the Attorney General's Department is able to furnish any information on the progress of these prosecutions. The Attorney General's Department does not have the mechanism to monitor proceedings at the High Court so they are unable to maintain records of rape convictions.

VI. Education and Information regarding prohibition of torture (Articles 10)

Training of law enforcement and public officials

74. Based on publically available information such as the website of HRC, training related information is available only up till 2008. Manfred Nowak, UN Special Rapporteur on Torture on his visit in 2007 recommended that a report be submitted once in 3 months however this has not been adhered to.⁵³ It is important that such trainings are provided to ensure that the police, security personnel and magistrates are made aware of the law against torture. Civil society and organisations working against torture are interested to receive information regarding the same and wish to contribute to these trainings and efforts to create awareness in a constructive manner.

Training programmes for judges, prosecutors, forensic doctors, medical personnel and NHRC staff members dealing with detained persons

75. Even though civil society organizations have invited judicial officers and prosecutors for discussion and orientation programmes of issues pertaining to torture, however there has been little or no response. There have however been a few training programmes conducted for JMOs.

⁵³ A/HRC/7/3/ADD.6 submitted on 23rd October 2009

VII. Lack of systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons (Article 11)

76. There is no independent monitoring of places of detention.
77. Families members have access to detainees. However at each visit they are required to provide an authentication letter from the Grama Nildari (Village Officer) confirming the relationship to the detainee in Boosa. Visits have also been restricted to 20 minutes each once every week. This is a harassment and places a heavy burden for family members who are living in the North and East undergoing problems related to livelihood and resettlement. In the Boosa Detention Centre, lawyers require prior approval from the Terrorist Investigation Department (TID) before any visit can be made.
78. No systematic disaggregated data was available regarding internally displaced persons within the 'welfare camps'. Civil society organizations have complained of being denied access to welfare centers and villages till very recently and thereby are not in a position to secure data independently. Even though the UN Rapporteur on IDPs has made several recommendations regarding the status of IDP's in Sri Lanka these recommendations have not been implemented.
79. There has been no consultation with the IDPs regarding resettlement and rehabilitation. Many areas remain inaccessible due to being designated as high security zones.

VIII. No prompt and impartial inquiry into complaints of torture and no fair and adequate compensation for victims of torture (Article 12 and 13)

Lessons Learnt and Reconciliation Commission

80. Several Commissions, Commission of Inquiry (COI) and the Mahanama Thillkeratne Commission were appointed to investigate into allegations of disappearances and human rights violations. None of the reports produced by these Commissions were made public nor have been given effect to improve the human rights situation in the country. The LLRC mandate is restrictive despite the claims made by the Government. Its appointments lack transparency and credibility. Furthermore the Panel of Experts on Accountability Issues in Sri Lanka appointed by the Secretary General of UN and several

international rights groups and local human rights groups have critiqued the formation and the mandate of the LLRC.⁵⁴

81. According to our sources the LLRC made no effort to protect witnesses from threats and retaliation, failed to probe government or pro government witnesses regarding allegations of violations, committed by Government forces including their allied para militaries.
82. The GOSL appointed a one man Commission to inquire into the brutal killing of a FTZ worker, Mr. Roshen and police torture and beating of number of workers. Furthermore the NHRC too conducted its own investigation. However none of these reports have been made public and no inquiry conducted.

Prosecution and Convictions of perpetrators

83. In Gerald Perera's case as the Court acquitted the six police officers due to lack of evidence that the same six officers were the perpetrators who tortured Gerald.⁵⁵ This decision of the Court has been appealed against.
84. In several cases the victims such as Lasantha Wickremetunga, Poddala Jayantha, Upali Tennakoon and Stephen Suntharaj, have been media personal or HRD's who were working on human rights including exposing police brutality. The attacks on these individual is a suppression of frontline human rights defenders and reflects the continuing culture of impunity. No effective investigation or findings have been made in relation to all of the above cases. Some of these individuals have been forced to leave the country to ensure their and their family's safety.
85. With regard the case of Mr. Nishantha Fernando, the Fundamental Rights application filed is continuing to be heard before the Supreme Court. The family has apparently left Sri Lanka for reasons of safety. The police officer whose names have been disclosed during the post mortem by the victim's wife, were never taken into custody for inquiry.

⁵⁴ "When will they get justice; Failures of Sri Lanka's LLRC" by Amnesty International published in 2011.

⁵⁵ <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-084-2008>

Witness and Victim Protection ⁵⁶

86. The State report in paragraph 49 states that “a proposed new law to provide assistance and protection to victims of crime and witnesses has been tabled in Parliament”. However the only draft Bill titled “Protection of Victims of Crime and Witnesses” was tabled in Parliament in 2007 and later in 2008 and yet no steps have been taken to have the said Bill passed. This places a burden on the Government of Sri Lanka to explain the lack of interest in ensuring that such essential mechanisms are instituted especially in a post war context.
87. The State report in paragraph 50 refers to an “Assistance and Protection to Victims of Crime and Witnesses Protection Act”. There is no such Act in the Sri Lankan legislation as at date.
88. There are reports of threat and intimidation of victims, especially those who pursue legal action against torture.⁵⁷
89. The National Action Plan for 2010-2015 which was presented recently to the media by the Government refers to the importance of the need for legislation.
90. During the hearing of the Commission of Inquiry established by the Sri Lankan Government in 2007 and during the LLRC hearings witnesses and victims have been reportedly threatened.⁵⁸

IX. Compensation to and rehabilitation for victims of torture (Article 14)

91. In many instances the Supreme Court has allowed for settlements outside the Court even though the offence of torture is criminal in nature. The award of compensation by the Supreme Court has been inconsistent.
92. The Court also does not compensate illegal arrest, detention and loss of livelihood, especially for political detainees. When a Fundamental Rights application is supported, the AG’s department generally informs the Court that a decision is to be taken soon

⁵⁶ List of issues para 29

⁵⁷ Article titled “SC grants leave to proceed in alleged torture case” reported in the Daily Mirror on 31 May 2011 found at <http://print.dailymirror.lk/news/news/45550.html>

⁵⁸ Discussions during legal aid clinic by CHRD and IMDAR

either to indict or release the Petitioner. In such situation the Supreme Court acts as a mediator to settle the issue rather than addressing the violation of fundamental rights of the petitioner.

93. Political prisoners who are also torture victims, including pregnant mothers, disable persons and the elderly are inflicted with diseases lack proper and adequate medical attention, including psychosocial treatment.
94. To our knowledge, other than through a Supreme Court order victims of torture does not receive any other assistance from the State nor is there any program for rehabilitation of such victims.

X. Confessions under torture (Article 15)

95. From a number of cases (188 High Court cases) for which legal assistance was provided by CHRD from 2010 to 2011, twenty four(24) persons were released and suspended sentences were granted in five (05) cases. These detainees were arrested on minor charges under PTA and ER undergoing the usual process of lengthy detention without trial and excessive use of torture. As a result these detainees agreed to their charges and were granted suspended imprisonment. In 3 cases where appeals were filed in the Court of Appeal one person convicted came from the “un-cleared area” during the final stages of the war he was unaware of case pending against him. His trial took place *in absentia* and as soon as he was taken into custody he was granted 200 years life imprisonment and the death penalty. However, confessions obtained in this case from the remaining convicts were through excessive use torture.⁵⁹
96. There were three persons indicted for alleged involvement under PTA. One case was instituted in Colombo while three separate cases were instituted against them in the High Court of Jaffna⁶⁰. The High Court of Jaffna rejected the confessions under torture alleged to have been made by each accused and discharged the accused. However in the case pending before the Colombo High Court⁶¹ their Counsel made submissions notifying Court of the judgment in the Jaffna High Court and sought to have similar orders be made. After postponing the case for three occasions to consider the submission of the Counsel for the accused, the State Counsel informed Court on 13th October 2011 that the Attorney General would be moving the Court of Appeal to revise

⁵⁹ CHRD report on torture 2011

⁶⁰ HC Jaffna Case No 1244/2009

⁶¹ HC Colombo Case No 4693/2009

the Orders of the High Court of Jaffna which had rejected the confessions made under torture.

Custodial deaths

97. According to media reports there have been nine deaths in custody in the year 2011 and 96 cases of torture.⁶² No legal and administrative action regarding the same has been undertaken.

98. A table of above instances of custodial deaths is annexed.

XI. Threat to freedom of expression and human rights defenders (Article 16)

99. During the period under review, media freedom has been attacked through legal and extra legal methods. Leading investigative journalists and media personnel have fled the country after receiving death threats.⁶³ As a result there is self censorship in the media.⁶⁴

100. A senior journalist of the Uthayan Newspaper in Jaffna was attacked near his news paper office in close proximity to an army check point, in July 2011.

101. All NGO activities are monitored by a special unit established under the Ministry of Defence. NGOs are requested to submit details of projects and finances to the Ministry. The Ministry has taken over this function earlier designated under the Ministry of Social Services. The state media and political leaders continues to abuse and threaten human rights defenders and those participating transparently in human rights council activities and similar such bodies as unpatriotic and traitors.

102. National Police Commission Under the 17th amendment to the Constitution a National Police Commission was established in 2001 in keeping with the need to respect . After the first phase of appointments the President did not renew the term of office of members to this Commission. Presently there is no functioning commission.

⁶² http://sundaytimes.lk/111009/News/nws_015.html

⁶³ CCPR/CO/79/LKA, para 17

⁶⁴ Journalist Escapes Abduction, Lanka-e-News Faces Closure in Sri Lanka; International Federation of Journalists; June 16th 2010; <http://asiapacific.ifj.org/assets/docs/049/203/3c21631-4fa32cb.pdf>

Responsibilities of the Commission has been delegated respectively to the Inspector General of Police and the Public Services Commission. Sri Lanka Police is found to be a highly politicised institution where appointments and transfer of officers are done with the influence of political patronage of the ruling party.

XII. Recommendations

1. State of Sri Lanka to extend an invitation for follow up visit to the UN Special Rapporteur for Torture and respond positively to all other pending requests for country visits by UN Special Rapporteurs
2. State of Sri Lanka must sign the optional protocol to Convention Against Torture and must take steps to remove reservations to Articles 21 and 22
3. State of Sri Lanka must ratify the UN Convention against Enforced Disappearances
4. Credible national mechanisms adhering to international standards with international independent experts to be appointed to investigate the FTZ incident, Navanthurai and Puttalam incidents of brutality by police and army.
5. The Government of Sri Lanka to be invited to give reasons for the failure to implement recommendations made in the Report submitted to the HRC in 2009 on Sri Lanka by Mr. Manfred Nowak, UN Special Rapporteur on Torture and further give time framework for its implementation.
6. State of Sri Lanka should respond positively to the request for an invitation for a country visit by the UN Working Group on Enforced and Involuntary Disappearances by June 2012
7. An action plan and budgetary allocation for prevention torture and providing adequate redress to torture victims to be made public.
8. NHRC should use its powers to set up Provincial committees to visit detention centres and prisons. Such committees should include lawyers, religious leaders and HRDs with a track record of assisting victims of torture victims and families of those disappeared.
9. No judge should be given any state assignment, contract or commission for 5 years immediately after retirement in order to prevent any expectations from the government sector and to maintain an independence of their tenure of office.
10. All judges should be instructed to inquire from the suspects whether they were tortured while in custody when produced by the police in courts.
11. State of Sri Lanka must publish and make available online information a list of all detention centres and detainees.

12. A direction to be issued to all JMOs to clearly indicate comprehensive details of torture in the medico-legal reports.
13. The National Human Rights Commission must call for reports from JMOs regularly related to torture cases and proactively be involved in combating torture.
14. Supreme Court of Sri Lanka to publish an annual report and put online all fundamental rights cases disposed, including judgments and statistical data, for that year as a best practice action.
15. The Ministry of Justice should create a trust fund for payment of compensation to victims of torture and appoint a committee in collaboration with members of the legal profession and other stakeholders to determine guidelines for appropriate compensation and reparation in cases of torture and enforced disappearances.
16. The Sri Lanka Police force should come under an independent national commission to improve its esteem and service conditions and de-link from its present state of servitude to the political establishment.
17. The 18th Amendment to the Constitution be abolished and the 17th Amendment reintroduced to ensure the independence of the National Police Commission and Human Rights Commission, and other such Commissions necessary for the promotion of human rights and enhancing of democracy and respect for the rule of law.
18. The National Human Rights Commission should undertake a special study in relation to women in detention during the period 2007 to 2010 provide gender disaggregated data within a period of one year.
19. The Sri Lanka Government be invited to share details regarding the mechanisms to be established for effective implementation of the Human Rights Action plan 2010-2015 including at the CAT session and the UPR second cycle in June 2012.
20. The Human Rights Action Plan 2010-2015 should receive earmarked funds in the Annual Budget allocation presented to the Parliament and the progress of the implementation to be reviewed annually during budget debate.

21. The National Human Rights Commission together with the Police Department should launch a mass campaign to combat torture and thereby raising social awareness of the issue.

22. The State of Sri Lanka must take immediate steps to repeal the PTA and new regulations gazetted under the PTA and resist any further enactment of similar repressive legislation.

ANNEXURE

Table on 2009 - 2011 Examples of Custodial Deaths

Name & Details	Date	Police Station / Officers	Manner of Death	Comments
Ukuwela Illagalgedara Jayaratne	2009/01/10	Mr. Jayaratne died while in police custody in the Ukuwela Police station	Unknown	He was taken into police custody for unruly behaviour at the Ukuwela town. Sources: Sinhala Language Daily Newspapers Lakbima - 2009/01/12 & 13, Divaina - 2009/01/13 & Lankadeepa - 2009/01/14
Ulluwaduge Sampath	2009/01/30	Police officers unknown. Death occurred after victim was taken into custody by police officers in Weraduwa, Matara	Unknown	He was taken into custody by police officers at his wife's house at Weraduwa, Matara on suspicions into his involvement with murders, robberies and drug trafficking. Source: Sinhala language daily newspaper Lankadeepa - 2009/02/02
Sinnathambi Palawagan	2009/02/08	Police Officers Unknown - He was taken into police custody in Dam Street, Colombo and died while in custody.	Unknown	He was taken into custody as a suspected LTTE cadre. Sources: Sinhala language daily newspapers Lakbima - 2009/02/09 & Lankadeepa - 2009/02/09
Marappulige Hemachandra	2009/02/11	Died while in police custody at the Hakmana Police station	Unknown	He was taken into police custody for as a suspect in relation to robberies and other criminal offences. Source: Sinhala Language Daily Newspaper Lankadeepa - 2009/02/12 & 16
Saminda Samarasinghe	2009/02/19	Died while in the custody of prison authorities in the Negombo prison.	Unknown	Was imprisoned for 'alleged' criminal offences. Source: Sinhala language Daily Newspapers Lankadeepa - 2009/05/02, 18 & 21

Obrian Marvin Rinawusan	2009/03/14	Died while in custody at the Trincomalee police station	Unknown	Taken into police custody for the abduction and killing of a six year old school student for a ransom Sources: Sinhala Language Daily Newspapers Lankadeepa - 2009/03/16 & Divaina - 2009/03/17
P.A. Roli Grashan	2009/03/30	Death occurred while in police custody at the Gampaha police station	Unknown	
Suresh Anton Nimal Kumar Eric Susantha Suresh Dakshina Wiranjith Soiza Windika Pushpakumara Ajith Kumara	2009/04/15	Deaths occurred within Kalutara prison premises	Unknown	Killed while attempting to escape from prison. Sources: Sinhala Language Daily Newspapers Lankadeepa - 2009/05/01, 06, 07 & Divaina - 2009/04/30
Rankirige Indrani Lahiru Danushka	2009/04/16	Death occurred while in police custody at Wahalkada D-5 hotuse, Kebethigollewa	Unknown	Sources: Sinhala Language Daily Newspapers Lankadeepa - 2009/04/18 & Divaina - 2009/04/18
K.T. Manjula	2009/04/20	Died while in police custody in the Nugekanda area	Unknown	He was charged for the killing of two children aged three and ten. Sources: Sinhala Language Newspapers Divaina - 2009/04/21/26 & Lankadeepa - 2009/04/04
I.J.Tharanga Sanjeewa Senadeera	2009/05/01	Died in the Custody of Mawanella police	Unknown	He was charged with having an affair with an under aged girl. Source: Sinhala Language Newspaper Lankadeepa - 2009/05/01
Ayyathurei Gneshamurthi		Ayyankarathi cemetery, Eravur	Unknown	Source: Sinhala Language Newspaper Lankadeepa - 2009/05/25
Kalamulla Waduge Sisira Kumara	2009/06/01	Died while in police custody in front of the Colombo Magistrates	Unknown	Police allege that he attempted to escape from custody at the Colombo Magistrates Courts. Sources: Sinhala Language Daily Newspapers Divaina - 2009/06/02 & Lankadeepa - 2009/06/02

		Court		
Siriya Wardanage Don Priyantha Ajith Mahinda Godage	2009/06/16	Died while in Police Custody in Embuldeniya, Nugegoda	Unknown	Taken into custody for being members of the underworld. Source: Sinhala Language Daily Newspaper Divaina - 2009/06/17
Name of 3 Individuals Unknown	2009/06/18	Deaths occurred in Security or Law and Order Forces custody at the Nelukkulama cemetery, Vavuniya	Unknown	Taken into custody for allegedly being LTTE cadres. Source: ----- 2009/06/19
Suranga Sanjeewa	2009/07/25	Died while in police custody at Elhena road, Maharagama	Unknown	Taken into police custody for allegedly being a member of the underworld. Source: Sinhala Language Newspaper Lankadeepa - 2009/08/02
Real Name Unknown – Alias Army Chappa	2009/07/29	Died while in Police custody at the Vijaya Kumaratunga playground, Peliyagoda	Unknown	Police stated that the individual attempted to attack them with a hand grenade while trying to escape. Source: Sinhala Language Newspaper Divaina - 2009/07/30
Roshan Deeptha Kumara	2009/08/04	Died while in police custody in Welsiripura, Madiwela	Unknown	Police allege that he was taken into custody for being a member of the underworld. Sources: Sinhala Language Newspapers Lankadeepa - 2009/08/06 & Divaina - 2009/08/06
Mohamed Silwan	2009/08/04	Died while in police custody at Rahula road, Mount Lavana	Unknown	Police took him into custody on allegations that he was a member of the underworld and possessed fire arms. Sources: Sinhala Language Newspapers Divaina - 2009/08/06 & Lankadeepa - 2009/08/06
Dinesh Tharanga	2009/08/13	Died while in police custody at the Ratmalana police station.	Unknown	He was taken into police custody for allegedly harassing a young woman. Source: Sinhala Language Newspaper Divaina - 2009/08/15
Danushka Aponso	2009/08/13	Police Officers Unknown Incident took place in Lunawa	Unknown	Taken into custody for alleged harassment of a young woman. Source: Sinhala Daily Newspaper Lankadeepa -

		bridge		2009/08/14
Samsudeen Badurdeen	2009/08/27	Police Officers Unknown – Incident took place at a slaughter house in Kolibandawewa, Anuradhapura	Unknown	
Shekfreed Mohamed Fazil Mohamed Thoji Mohamed Sadik	2009/08/28	Police Officers Unknown Deaths occurred while in police custody at a four storied building behind the Jumma mosque at Maligawatte	Unknown	Source: Sinhala Language Daily Newspapers - Lankadeepa & Divaina - 2009/08/29
Wanninayake Yapa Manoj Sameera Thorapavita Ranga	2009/08/20	Death occurred while in police custody at misty house at Andapana estate.	Unknown	Source: Sinhala Language Daily Newspaper - Lankadeepa - 2009/09/21
Saman Thialakasiri	2010/02/21	Died in Police Custody – Location Unknown	Unknown	He reported cases of illegal logging in his neighbourhood with suspected connections to local police in 2008. Ever since he was threatened, harassed and even arrested by police officers. The 21 February 2010 at night two police officers picked up Saman. His body was found near a lake the next morning. Source: AHRC http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html
Mr. Pattiyage Komako Lalan Peiris (34)	2010/05/23	Death occurred in police custody in a Police Cell.	Tortured to Death	Arrested by the police officers on 23 May 2010. His arrest was allegedly a case of mistaken identity. He was found dead the following morning while handcuffed to a table in a police cell. The police explain the death as a heart attack but an autopsy carried out later at the insistence of the family reveals signs of torture. Source: AHRC http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html

David Amarasinghe	2010/08/13	Police Officers Attached to the Kirindiwela Police Station,	Unknown	Police allege that the individual jumped out of the police jeep whilst being taken to the police station and succumbed to his injuries. He was arrested on 13 August 2010 by police officers. On the way to the station the police stopped to search some villagers. David left the car to watch whereupon the police officer beat him up severely. The incident was witnessed by a large group of people. He later succumbed to his injuries at the hospital. Source – Sinhala Language Daily Newspaper <i>Lankadeepa</i> - 2010.08. 17 – AHRC http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html
Jayasekara Arachchige Roshan Jayasekara (35)	2010/08/25	Taken into custody by police and died in hospital.	Tortured to death	Arrested by police officers on 25 August 2010. On 26 August an officer brought Jayasekara's body to the hospital. The post mortem examination revealed marks of numerous blunt force trauma injuries. Source: AHRCh http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html
Jayakodyarachchige Ruwan Perera Alias Olcott	2010/08/31	Died in the Custody of the Special Task Force (STF) in the Minuwangoda Area	Death caused by gunshot wounds	Taken into custody on allegations of possessing and selling drugs on the 31st August 2010 by police officers attached to the Special Task Force (STF) and taken by jeep to Colombo. During the journey one of the officers shot Jayakody because of an allegedly attempted escape. He died in hospital the same day Sources: Sinhala Language Newspapers Divaina and Lankadeepa – 2010/09/01
Mr. Suresh Kumar (24)	2010/09/04	Died in Police custody. Location Unknown	Unknown	Arrested by police officers on 4 September 2010 and taken to uncover an alleged weapon shelter. According to the police he attempted to throw a hand grenade in direction of the police officers during the journey. Later he was found dead on the roadside. Source: AHRC http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html
Ranmukage Ajith Prassanna Alias	2010/09/20	Died in the custody of the	Death caused by	Arrested by police officers on 17 September 2010 on allegations of murder and robbery. While in police

Kinchigunei Heena		Embilipitiya police	gunshot wounds	<p>custody he was according to the police taken to uncover a weapons shelter. The police claim that on the way Ajith tried to snatch a weapon from an officer whereupon the officer shot him. Soon after he succumbed to his injuries in hospital.</p> <p>Source: Sinhala Language Newspaper Divaina – 2010/09/20</p> <p>http://blog.srilankacampaign.org/2010/10/stop-custodial-deaths-in-sri-lanka.html</p>
Kamal Thambalarachchi Alias Dematagoda Kamal	2010/09/22	Died in the custody of officers from the Hanwella Police station in the Hanwella Karadeniya area.	Shot Dead	<p>Arrested by a Special Unit of the Hanwella Police Station on 20 September 2010 on allegations of murder, extortion and large scale drug distribution.. On the 22 September 2010 he was taken to uncover an alleged weapon shelter. He was shot on the way and died before admission to the hospital. According to the police officers, they shot him when he tried to escape by throwing a bomb. Source: Sinhala Language Newspapers Divaina and Lankadeepa – 2010/09/23</p>
Mr. Appuhandhi Kotahewage Nayanajith Prasanna	2010/09/27	Arrested without charges on 22 September 2010 and died in the custody of Police officers from the Moratuwa Police Division in the Moratuwa Police Station.	Bled to death after cuts to abdomen.	<p>Arrested without charges on 22 September 2010. The 25 September he was found in his cell with severe cuts to the abdomen. He succumbed to his injuries in hospital on 26 September. The police claim he committed suicide while in custody by slashing his stomach with a shard of glass</p> <p>Sources: Sinhala Language Newspapers Divaina and Lankadeepa – 2010/09/27,</p>
Mr. Narangodagei Samarasiri	2011/03/01	Died in the custody of Police Officers attached to the Galle Police Division in the Galle Police Station	Unknown	<p>Taken into custody for stealing a protection charm from a small child. Source: Sinhala Language Newspaper Divaina – 2011/03/01</p>
Mr. Garusinbage Priyantha (45) of Nelu-Yaya Kithulkote at	2011/07/03	Police officers attached to the STF Station near the 'Morning	Shot dead	<p>Police announced that in police custody, Priyantha had divulged that he had a cache of arms hidden inside a house at a chena cultivation in the Deiyandara area in Sooriyewewa. While showing the weapons he was killed during a confrontation with the STF when</p>

Thanamalvila in Monaragala District		Side Estate' in Sooriyawewa.		they entered the house. Source - http://www.srilankaguardian.org/2011/09/extrajudicial-killing-impunity-rule-of.html
Premal Sivakumar	2011/08/28	Police Officers Unknown Location of Incident Kalpitiya	Beaten to death	Source: Sinhala Language Daily Newspaper Irurasa - 2011.08.28
Mr. Ganearachchi Appuhamilage Gayan Saranga (29) of Katulanda, Dekatana, Dompe, Gampaha District	2011/09/29	Police Officers from the Dompe Police Station	Tortured to death: hung and beaten	The police stated that while Saranga was being taken to the place where he had hidden the stolen goods when he fell out of a travelling police jeep and later succumbed to his injuries. Later the Inspector General of Police officially announced by special communiqué that there is no evidence to prove the version of the police. Source: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-187-2011
Mr. Kamaranga Hannadige Lalith Susantha Peiris (32), No: 80, Tsunami Housing Scheme, Modara, Moratuwa in the Colombo District	2011/10/03	Police officers attached to the Moratuwa Headquarters Police Station	By drowning, allegedly attempting to escape	Several hours before the killing a police constable attached to the Police Guard Point, Modara in Moratuwa Police Division was injured while trying to settle a dispute between two parties. He later succumbed to his injuries. Following this a police team headed by the Officer-in-Charge (OIC) of the Headquarters Police Station of Moratuwa arrested Lalith and his brothers along with other persons. Later Lalith was brought to the Bolgoda River by a group of police officers, allegedly to show them where he had concealed a knife. According to the official police version he drowned while attempting to escape Source: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-193-2011