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特别报告员曼弗雷德·诺瓦克的报告

对斯里兰卡的访问 *

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内 容 提 要

特别报告员于 2007 年 10 月 1 日至 8 日访问了斯里兰卡。他对该国政府与他全面合作表示感谢。除了访问科伦坡和该国西南地区——包括加勒——的拘留设施之外，他还分别访问了该国东部和中部亭可马里和康提之间的警察局和监狱设施。

特别报告员完全了解该国政府因与泰米尔伊拉姆猛虎解放组织暴烈和持久的冲突而面临的各种挑战。尽管该国政府面对困难的安全局势，但斯里兰卡仍然能够坚持其民主价值观，保证民间社会组织和媒体的活动，并维持独立的司法部门。

斯里兰卡政府采取了许多重要的法律步骤，以防止和反对酷刑，并将肇事者绳之以法。最值得注意的是，关于酷刑的 1994 年第 22 号法和关于体罚的 2005 年第 23 号法的颁布、以及刑事诉讼法中的各种法律保障，都是反对酷刑方面积极的法律措施。特别报告员感到更为鼓舞的是，斯里兰卡已有 30 多年没有执行过死刑。该国有一个法医制度，这也是一个积极的征兆。然而，这些措施所建立的制度不能被视为十分有效。

斯里兰卡最高法院裁定胜诉的大量涉及基本权利的案件、以及国家人权委员会几乎每天都继续收到的数量更多的申诉案件表明，在斯里兰卡，酷刑仍然普遍实施。酷刑受害者获得法医方面的障碍导致重要医疗证据的损失，从而妨碍了对肇事者的刑事诉讼。执法官员或法官没有依照职权的义务调查酷刑案件进一步加剧了受害者的状况。一般而言，缺乏对证人和受害人的有效保护妨碍了现行法律的有效适用。

在访问警察局和监狱期间，特别报告员收到了被拘押者的许多一致和可信的指称，报告说他们在审问期间遭到警察虐待，以使其招供，或取得与其他刑事犯罪相关的信息。还收到了有关军方的类似指称，尤其是泰米尔猛虎解放组织成员嫌疑人。特别报告员对施于泰米尔猛虎解放组织成员嫌疑人的一些酷刑的残忍性感到震惊，如用烙铁烫和用拇指吊。关于监狱的情况，特别报告员赞赏最近斯里兰卡法律禁止体罚，但他对大量关于体罚的申诉表示关注，这些申诉在有些监狱得到医疗证据的确认。

在斯里兰卡的许多监狱中，过分拥挤和有些地方基础设施老化，对被拘押者的服务和资源造成了无法承受的压力。尤其是，缺少空间在某些监狱已达到了有辱人格待遇的程度。关于警察局的拘留条件，报告员看到，被拘押者被锁在光秃秃的牢房里，常常没有自然光和足够的通风，睡在水泥地上。尽管对于被警察拘押 24 小时以下的

犯罪嫌疑人而言，他并不担心这种条件，但对于那些根据《紧急条例》在这些牢房中被关押数月甚至一年的嫌疑人而言，这些条件就很不人道。

根据《紧急条例》，大多数针对酷刑的保障要么不适用，要么完全被忽视，从而导致在反恐行动方面酷刑成为例行做法的情况。在反恐措施方面重要的法律保障不适用以及警察拘留时间过长为虐待打开了大门。

报告员对报告的政府与“泰米尔猛虎人民解放”组织 Karuna 集团之间的联系表示关注，报告员在亭可马里会见的代表确认了这种联系。“泰米尔猛虎人民解放”组织 Karuna 集团被指控犯有特别残酷的侵犯人权事项。

因此，根据他的调查，特别报告员向该国政府建议了许多措施，以防止和反对酷刑和虐待。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT,
MANFRED NOWAK, ON HIS MISSION TO SRI LANKA
(1 to 8 October 2007)**

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Introduction

1. The Special Rapporteur was invited by the Government of Sri Lanka to undertake a visit to the country from 1 to 8 October 2007.
2. The purpose of the mission was to assess the situation of torture and ill-treatment in the country, and to strengthen a process of sustained cooperation with the Government to assist it in its efforts to improve the administration of justice. The Special Rapporteur expresses his appreciation to the Government for the full cooperation it extended to him.
3. The Special Rapporteur held meetings with government officials, including the Secretary of Foreign Affairs, the Minister of Disaster Management and Human Rights, the Minister of Justice, the Chief Justice, the Attorney General, the Inspector General of Police, the Commissioner General of Prisons, the National Human Rights Commission (NHRC), the army's legal adviser on human rights, and the Secretary-General for the Secretariat for Coordinating the Peace Process.
4. A primary focus of the visit was the inspection of detention facilities in the country, and in this regard, the Special Rapporteur expresses his appreciation to the Government for the respect of the terms of reference for the visit. In particular, he wishes to thank the Inspector General of Police and the Commissioner General of Prisons for opening up the prisons and police detention facilities without restrictions, including the carrying out of unannounced visits, and enabling him to conduct private interviews with detainees. In Colombo and vicinity, the Special Rapporteur visited Welikada Prison, Colombo Remand Prison, the New Magazine Prison (Female Ward), the Criminal Investigation Department (CID), the Terrorist Investigation Department (TID), Mount Lavinia Police Station, Ratmalana Police Post, Panadura South Police Station, and Payagala North Police Station. In Galle, he visited the TID detention facility at Boosa. In Trincomalee and vicinity, he visited Trincomalee Prison, Trincomalee Police Headquarters (including CID), China Bay Police Station, Kantale Police Station, Polonnaruwa Police Station, and Polonnaruwa Prison. In and around Kandy, the Special Rapporteur visited Bogambara Prison, Katugastota Police Station, and Wattegama Police Station. In Trincomalee, the Special Rapporteur also visited a representative of the Tamileela Makkal Viduthalai Pulikal (TMVP), the group which broke away from the Liberation Tigers of Tamil Eelam (LTTE) in 2004 under the leadership of Vinayagamoorthi Muralitharan, also known as Colonel Karuna Amman.
5. During the mission the Special Rapporteur met with a broad range of civil society organizations, lawyers, medical professionals, and representatives of international organizations (e.g. the United Nations country team, including the Office of the High Commissioner for Human Rights, the United Nations Development Programme, the United Nations Children's Fund, the United Nations Population Fund, the World Health Organization), the Sri Lankan Monitoring Mission (SLMM), the International Committee of the Red Cross (ICRC), and the diplomatic corps.

6. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission, to which the Government responded with constructive comments. He is pleased to report that the Government at that time already indicated that it will appoint a high-level task force to study his recommendations, consisting of public sector stakeholders and members representing judicial and civil society sectors. On 16 January 2008, a preliminary version of this report was sent to the Government. On 20 February, the Government provided comments.

7. The Special Rapporteur wishes to acknowledge with appreciation the excellent support provided by the United Nations Resident Coordinator, Neil Buhne, and his staff in the United Nations country team; the Office of the High Commissioner for Human Rights (OHCHR); Dr. Derrick Pounder, University of Dundee, United Kingdom; and Julia Kozma and Isabelle Tschan of the Ludwig Boltzmann Institute of Human Rights.

A. Particular circumstances of fact-finding in Sri Lanka

8. It was the intention of the Special Rapporteur to assess the situation of torture and ill-treatment in the entire territory of the country, and to examine not only torture and ill-treatment allegedly committed by the police and other security forces of the Government of Sri Lanka, but also those allegedly committed by or on behalf of other parties to the present conflict, including the LTTE. Indeed the most serious allegations of human rights violations that come to light, including those related to torture and ill-treatment, are in relation to the conflict and are alleged to be committed by both government and non-State forces, including the LTTE and the TMVP-Karuna group.

9. The Special Rapporteur established contact with the LTTE in preparation of the mission and was in fact provided with an invitation to all areas under LTTE control. From the very start of preparations, the Government was supportive of the Special Rapporteur's objective to probe allegations of torture and ill-treatment attributed to the LTTE. However, prior to the commencement of the visit, the Government denied him permission to travel to LTTE-controlled areas on the basis that the Special Rapporteur's visit there would be used by the LTTE for purposes of propaganda. Thus, the Special Rapporteur was not able to speak to detainees under the direct control of the LTTE and can therefore not draw any conclusions of the situation regarding torture and ill-treatment in these areas.

10. The Special Rapporteur also requested the Government to provide him with a letter of authorization for detention facilities of the Ministry of Defense. The Government, however, maintained the position before and throughout the mission that the Sri Lankan armed forces no longer had the authority to detain persons but were obliged to immediately hand over any arrested person to the police. As a consequence, the Special Rapporteur was not provided with a letter of authorization to visit any facilities of the armed forces. The primary focus of the findings of the Special Rapporteur therefore relate to torture, ill-treatment and conditions of detention in the ordinary context of the criminal justice system as well as to the treatment of suspected members of the LTTE held by the Sri Lankan civilian authorities (police and prison administration), including persons held under the Emergency Regulations.

11. The conditions for independent fact-finding were further impeded by certain instances, where detainees were hidden or brought away shortly before the Special Rapporteur arrived.¹ For example, 59 persons out of 110 had been transferred from the Boosa detention facilities on order of the director of the Terrorist Investigation Department in the days leading up to the Special Rapporteur's visit. The situation was aggravated by the fact that the Special Rapporteur received the information from the remaining detainees that the transferred persons were those who had been most seriously tortured before and still bore marks of the ill-treatment. After the Special Rapporteur protested against such obvious attempts to prevent him from talking to persons previously detained in Boosa, he was provided with a list of the detainees concerned with details of their whereabouts and, in fact, could trace many of these detainees later at TID headquarters and the Colombo Remand Prison. At the first visit in TID, the Special Rapporteur was informed by detainees that one male detainee had been brought away in order to hide him. At his second visit, the Special Rapporteur could meet this detainee, who told him that he was forced to lie under a bench in an office until the Special Rapporteur had left the facility.

¹ By letter dated 20 February 2008, the Government stated: [T]he allegations made are of a potentially serious nature and confirmation of the facts on which the allegations are based are yet to be conclusively clarified. The [Special Rapporteur] states that some detainees were "hidden" or "brought away" from Boosa detention facility to presumably avoid exposure to him and then, in the same paragraph, states that he "in fact, could trace many of these detainees later at TID headquarters and the Colombo Remand Prison". The fact that the [Special Rapporteur] could trace the whereabouts of these detainees (albeit at a later time - see paragraph 72) is sufficiently indicative that they were being processed by the criminal justice system and were not being deliberately prevented from meeting the [Special Rapporteur]. The [Special Rapporteur] goes on to cite only one case at the Terrorist Investigation Division where a detainee was supposedly concealed during an initial visit and, on the second visit of the [Special Rapporteur], met the [Special Rapporteur] and said that he was instructed to hide "under a bench" until the [Special Rapporteur]'s initial visit was concluded. Even this detainee therefore was not permanently "hidden" from the [Special Rapporteur]. The other comments of the [Special Rapporteur] relating to detainees in Mount Lavinia being kept in a bus until his visit was over is questionable, since the police officers of individual police stations were unaware of the [Special Rapporteur]'s movements and would be unable to predict with certainty when (or if) the [Special Rapporteur] would visit their stations. A comment is made to the effect that the detainees in question were taken to an "unknown place believed to be Ratmalana Police Post shortly upon arrival of the Special Rapporteur" and returned to the place of detention after the [Special Rapporteur]'s visit. No interview with these four detainees at any time is indicated and no source for the information is identified. No assertion is made as to these detainees showing any signs of ill-treatment or complaining of such treatment. The reported incidents at Bogambara Prison have resulted in a preliminary disciplinary inquiry being conducted against the officer concerned and formal charges are to be proffered against that officer by the Prisons Department. Further clarification is being sought from TID as to the reasons for the movement of detainees during the period of the [Special Rapporteur]'s visit.

Other detainees told him that they were kept in a bus outside the facilities during the first visit. Also, in Mount Lavinia Police Station four detainees were brought away on the morning of the visit of the Special Rapporteur and were later brought back when he had left. In Bogambara prison, detainees reported that two prisoners with serious injuries resulting from corporal punishment they had been subjected to had been transferred to other prisons. The Special Rapporteur was able to find one of these prisoners later in Welikada prison and could satisfy himself of the accuracy of the allegations.

12. After having received many allegations of serious human rights violations, among them torture and ill-treatment, by the TMVP-Karuna group, in particular in the East of the country, the Special Rapporteur visited an office of the TMVP in Trincomalee. There, a representative told him that until six months ago the group had indeed taken persons into custody for questioning for approximately two days. At the time of the visit of the Special Rapporteur the representative assured that the TMVP was only conducting political activities and did not detain persons anymore. The representative showed the Special Rapporteur an identity card issued by the TMVP, which was officially recognized by the police and armed forces. He explained that, in the case of any problem arising between the authorities and a member of the TMVP, the member concerned only had to show this identity card to solve the problem.² In particular, according to the representative, TMVP personnel were immune from arrest and searches.

B. Context and challenges in the promotion and protection of human rights: the conflict

13. At the outset, the Special Rapporteur states that he has full appreciation for the challenges that the Government faces from the violent and long-lasting conflict with the LTTE. Notwithstanding the difficult security situation the Government is faced with, Sri Lanka in principle is still able to uphold its democratic values, ensure activities of civil society organizations and media, and maintain an independent judiciary. At the same time, it remains true that humanitarian and human rights law absolutely prohibit the use of torture or other forms of ill-treatment.

14. The LTTE began fighting the Government of Sri Lanka with the aim of establishing an independent State of Tamil Eelam in the north and east of the country in the late 1970s. From 1983 on, an intense armed conflict between the separatist group and governmental forces has taken place. In February 2002, under Norwegian mediation, the Government entered into

² The Government reported that, in relation to the TMVP representative's alleged statements, the Government reiterates that it is not responsible for exaggerated claims by members of political groups relating to their supposed or assumed status and emphasizes that no persons carrying arms are accorded special privileges nor granted any special facilities by lawfully constituted authorities.

a ceasefire agreement (CFA) with the LTTE. Despite the CFA, fighting carried on, and after resuming control over the Jaffna Peninsula, government forces in 2007 also regained control over the eastern provinces, which had been under LTTE control. The Vanni area in the north of the country is, however, still under the overall control of the LTTE.

15. On 2 November 2007, S.P. Thamilselvan, the head of the LTTE's political wing and representative in negotiations for the LTTE, was killed in an air raid. A few weeks later, a bomb attack in Colombo attributed to the LTTE cost the lives of 21 civilians. In the aftermath of this attack, government forces arrested more than 2,200 Tamils, of which 2,000 were released in the following days. Another blast carried out in Colombo killed four members of the Sri Lankan army.

16. It is widely reported that, during the battles over control of the east, government forces made tactical use of the TMVP-Karuna group. Consisting of approximately one quarter of the former LTTE cadres, the Karuna group has conducted many ambushes and killings of LTTE cadres, political representatives and supporters. It is also considered responsible for abductions, torture and killings of civilians and has established a reign of terror over a large part of the civilian population living in the eastern provinces. Reliable sources told the Special Rapporteur that no police action was taken against members of the TMVP-Karuna group, which was later confirmed by a TMVP representative. Meanwhile, Colonel Karuna was arrested in London and sentenced on 25 January 2008 to nine months' imprisonment for possession of a false passport. There are calls for his prosecution under universal jurisdiction for war crimes, including recruitment of child soldiers, summary executions, and torture.³

17. In January 2008, the Government formally withdrew from the CFA following a number of recent bomb attacks, part of a series of incidents causing numerous civilian and military casualties attributed to the LTTE. Even before this withdrawal, with the CFA still in force, the monitoring mechanism established under it, SLMM, reported numerous violations of the agreement on both sides.⁴ The SLMM subsequently terminated its monitoring operations on 16 January 2008.

³ The Government invited the Special Rapporteur to direct his attention to the conditions of detention in the British maximum-security facility in which Colonel Karuna is currently detained. It reported that the presence of several LTTE suspects in close proximity to this individual have, according to news reports, given rise to allegations of mistreatment and torture there. The Government invited the Special Rapporteur to consider inquiring into the circumstances of his detention in such a hazardous environment.

⁴ The Government reported that the SLMM (during its mandated term of office) reported a number of violations of the CFA by members of the LTTE which was several times the number of violations said to have been committed by the Government or its armed services.

I. LEGAL FRAMEWORK

A. International level

18. Sri Lanka is party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and the Convention on the Rights of the Child (CRC).

19. Sri Lanka has acceded to the first Optional Protocol to the International Covenant on Civil and Political Rights⁵ and it ratified the Optional Protocol on the involvement of children in armed conflict. However, Sri Lanka has not signed the Optional Protocol to the Convention against Torture, nor has it recognized the competence of the Committee against Torture to receive communications from other States parties as well as from or on behalf of individuals under the respective articles 21 and 22 of the Convention against Torture.

20. Sri Lanka is a party to the Geneva Conventions of 1949. It has, however, not ratified the Additional Protocols to the Conventions, nor has it signed the Rome Statute of the International Criminal Court.

21. Sri Lanka was the subject of a confidential inquiry by the Committee against Torture under article 20 of the Convention against Torture from April 1999 to May 2002. The Committee concluded on the basis of a visit of two Committee members to Sri Lanka in August 2000 that, although torture is frequently resorted to by the police, the army and paramilitaries, the practice of torture in Sri Lanka was not of a systematic nature. Following the recommendations, the Government of Sri Lanka appointed a permanent Inter-Ministerial Standing Committee and Inter-Ministerial Working Group on Human Rights Issues mandated to monitor action taken by government agencies relating to incidents/allegations of human rights violations.

B. National level

1. Constitutional protection of human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

22. Chapter III of the Constitution contains a set of fundamental rights and freedoms such as freedom of thought, conscience and religion, freedom from arbitrary arrest, detention, punishment, freedom of speech, assembly, association, movement as well as the right to equality.

⁵ However, in its judgement in *Nallaratnam Singarasa v. Attorney General* (SC (Spl) L.A. No. 182/99) of 15 September 2006, the Supreme Court ruled that accession to the ICCPR Optional Protocol was unconstitutional. This seems to have posed direct obstacles to the campaign for the ratification of OPCAT.

23. The prohibition of torture or cruel, inhuman or degrading treatment is provided in article 11: “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 15 prohibits any limitation of this right in times of public emergency.

2. Provisions in legislation criminalizing torture

24. Sri Lanka applies a dualist legal system and has implemented the criminal law provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Act No. 22 of 1994. Torture is defined under its article 12 as:

“any act which causes severe pain, whether physical or mental, to any other person, being an act, which is

(a) Done for any of the following purposes that is to say

- (i) Obtaining from such other person or a third person, any information or confession;
- (ii) Punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or
- (iii) Intimidating or coercing such other person or a third person;

or done for any reason based on discrimination,

and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity”.

25. The Special Rapporteur notes that the definition in article 12 is in conformity with definition of article 1 of CAT; however, it does not expressly include “suffering”. Acts of torture, as well as participation, complicity, aid and abetment, incitement and the attempt to torture are punishable under the Anti-Torture Act.⁶ Penalties range from mandatory 7 to 10 years’ imprisonment and a fine of 10,000 to 50,000 rupees (US\$ 100-500).⁷

26. Article 2, paragraph 5, states that any offence under the Act shall be a “cognizable and non-bailable offence”.

27. Article 3 of the Act specifically denies the defence of exceptional circumstances such as the state or threat of war, internal political instability, public emergency as well as the order of a superior officer or a public authority against charges of torture.

28. Articles 7 to 10 of the Act contain provisions regarding universal jurisdiction in conformity with the Convention against Torture.

⁶ Article 2 of Act No. 22.

⁷ Article 2 (4) of Act No. 22.

29. In addition, the Sri Lankan Penal Code, in articles 321 and 322, criminalizes acts which may fall within the scope of the Convention against Torture, such as intentionally causing harm or grievous harm with the aim to extort confessions or information leading to the detection of an offence or misconduct or to compel restoration of the property. These offences are punishable with a maximum of 10 years' imprisonment and a fine. Explanatory so-called "illustrations" to article 321 describe torture cases. For example: "(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section. (b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section".

30. Further, article 364 (2) of the Penal Code outlaws rape of a woman in custody (including in a remand home and a women's and children's institution) and foresees punishment of 10 to 20 years' imprisonment and a fine. In addition, the perpetrator shall be ordered to pay compensation to the victim for injuries caused.

3. Safeguards against torture and ill-treatment during arrest and detention

31. Article 13 of the Constitution foresees a number of fundamental safeguards, such as freedom from arbitrary arrest (art. 13 (1)) and the right to be informed of the reasons for arrest. Article 13 (2) stipulates that "every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to the procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with the procedure established by law".

32. Article 15 of the Constitution provides for the possibility of restriction of the safeguards and rights granted by the above-mentioned provisions in the interest of national security, public order and the protection of public health or morality.

33. There are a number of provisions in the Code of Criminal Procedure (CCP) which potentially safeguard the integrity of a person arrested or detained: the legal time limit of police custody of 24 hours, excluding the time necessary for the journey from the place of arrest to the Magistrate (article 37 of CCP and article 65 of the Police Ordinance); the requirement to maintain an "Information Book", including the file, by the Criminal Investigation Department and any bureau of investigation for the purpose of recording statements; the obligation of the officer in charge of the police station who is responsible for the Information Book to furnish three certified copies of all notes resulting from the investigation and of all statements recorded in the course of the investigation to the Magistrate (art. 147, CCP).

34. Other potential safeguards are: the notification of the Magistrate's Court of arrests of persons without warrant by any police officer (including information whether persons have been admitted bail or otherwise, art. 38, CCP); informing the arrested persons of the reason for arrest (with a right for the arrested person to see the arrest warrant if so requested, art. 53, CCP).

35. Where an officer in charge of a police station "considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation", he can order such examination by a governmental medical officer (art. 122 (1), CCP).

36. However, the Code lacks fundamental safeguards⁸ such as the right to inform a family member of the arrest or the access to a lawyer and/or a doctor of his or her choice for a person arrested and held in custody. The code does not specify the interrogation conditions and is silent about the possibility of the presence of a lawyer and an interpreter during the interrogation.

37. With respect to arrest and detention by the armed forces, the Special Rapporteur notes the six-clause Presidential Directive of 7 July 2006, on Protecting Fundamental Rights of Persons Arrested and/or Detained, which was re-circulated by the Secretary of Defence on 12 April 2007 to the commanders of the army, navy and air force as well as the Inspector General of Police. Among the provisions included are: no person shall be arrested or detained under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979, except in accordance with the law and proper procedure and by a person who is authorized by law to make such an arrest or order such detention; the person making the arrest or detention should identify himself by name and rank, to the person or relative or friend of the person to be arrested; the person to be arrested should be informed of the reason for the arrest; all details of the arrest should be documented in the manner specified by the Ministry of Defence; the person being arrested should be allowed to make contact with family or friends to inform them of his whereabouts; when a child under 18 years or a woman is being arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning; as far as possible, any such child or woman arrested or detained should be placed in the custody of a Women's Unit of the Armed Forces or Police or in the custody of another woman military or police officer; the person arrested or detained should be allowed to make a statement in the language of his choice and then asked to sign the statement; if he wishes to make a statement in his own handwriting it should be permitted; members of the NHRC or anyone authorized by it must be given access to the arrested or detained person and should be permitted to enter at any time, any place of detention, police station or any other place in which such a person is confined; and the NHRC must be informed within 48 hours of any arrest or detention and the place the person is being detained.

Forensic examination

38. The CCP provides for the possibility for a Magistrate or an investigator empowered by the Minister to order a post-mortem examination (also in the case the body is already buried, art. 373, CCP). Further, a person in police detention can complain to the Magistrate and ask for a medical examination by a Judicial Medical Officer (JMO), a specially trained medical doctor of the Department of Forensic Medicine. The Magistrate may subsequently order the police to take the victim to the JMO. However, the Special Rapporteur found a serious shortcoming in this procedure: since in most cases the victim is accompanied to the JMO by exactly the same police officer who is responsible for the alleged crime of torture or ill-treatment, the independence of

⁸ For a comprehensive outline of such safeguards against torture see the general recommendations of the Special Rapporteur on torture, E/CN.4/2003/68, para. 26.

the examination is jeopardized.⁹ Also, the access to a JMO is not guaranteed and in many instances the alleged victim is brought before an ordinary medical doctor not trained in forensic medicine.

39. The medical personnel in various prisons acknowledged that they received on a regular basis allegations of torture and other forms of ill-treatment by persons who are transferred from police stations to the prisons. In many cases, these complaints are corroborated by physical evidence, such as scars and haematomas. However, the medical personnel only feels responsible for treating obvious wounds and does not take any further action, like reporting the alleged abuse to the authorities or sending the victim to a JMO. The Special Rapporteur notes that the Government will take steps to initiate a process through the Secretary to the Ministry of Justice to inform medical officers to report to the special unit of police and the NHRC instances where probable cases of torture are discovered.

Confessions

40. Articles 24 to 27 of the Evidence Ordinance (EO) do not allow confessions in court that were extracted through torture. In addition, ordinary law provides that a confession made to a police officer or to another person while in police custody is inadmissible before the courts. This rule, however, is not applicable to persons detained under Emergency Regulations.

Emergency Regulations

41. Article 155 of the Constitution and the Public Security Ordinance (PSO No. 25 of 1947) allow the President to declare a state of emergency.

42. For three decades, emergency rule has continued between intervals in Sri Lanka. The Prevention of Terrorism Act (PTA) of 1979 was suspended in 2002 after the CFA was agreed upon. However, the law is still in force and its section 9 (1), allowing to detain a person under detention order (DO) for a period of “three months in the first instance, in such place and subject to such conditions as may be determined by the Minister”, renewable to a maximum of 18 months, still applies. Although the CFA provided for the temporary suspension of the PTA, throughout this time many provisions of the PTA were reintroduced under the Emergency Regulations and now that the CFA has been abrogated, the temporary suspension of the PTA has been repealed.

43. New Emergency Regulations (ER, or Emergency Miscellaneous Provisions and Powers Regulations, EMPPR) were imposed on 14 August 2005 by then President Kumaratunga after the assassination of Foreign Minister Kardirgamar.¹⁰ They are drawn from the PTA and allow detention without charge for 90 days. This term is renewable for up to one year. Suspects can

⁹ The Government reported that it is generally the practice of JMOs to request that accompanying police officers remain outside the examination area/room.

¹⁰ The ER must be approved by the parliament within 14 days and extension requires parliamentary clearance every month.

also be held by security forces for up to a year under “preventive detention” orders issued by the defence secretary (section 17). A suspect detained under the ER must not be produced before a magistrate for up to 30 days. Not only police officers and soldiers, but also so-called “public officers” and those specifically authorized by the President may make arrests under the ER. In addition, the ER allow joint operations of arrest between the army and the police without clarifying the respective responsibilities of these two forces (sect. 19).

44. Under the Regulations, the authorities may dispose of bodies without public notification (sect. 56). The deputy inspector-general of the police has the authority to cremate bodies and thereby destroy potential evidence of torture or CIDT.

45. Contrary to sections 24 to 26 of the Evidence Ordinance, under the ER, confessions to senior police officers may also be used as evidence in court.

46. On 6 December 2006, President Rajapaksa promulgated an additional set of ER,¹¹ reinstating certain provisions of the Prevention of Terrorism Act, which had been suspended as part of the 2002 ceasefire accord. Regulation 19 contains an immunity clause for any government official¹² for any action under the regulations, provided that such a person has acted in good faith and in the discharge of his official duties.

Safeguards under the Emergency Regulations

47. Persons arrested by the army must be turned over to the police within 24 hours (sect. 19) and their family must be provided with an arrest notification acknowledging custody. The NHRC must be informed of all detentions under the ER within 48 hours and has legal authority to visit detainees wherever they are held. This rule was confirmed by the Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained, issued in July 2006 and recirculated in April 2007, providing for access to the NHRC to arrested and detained persons and therefore to any place of detention (see also safeguards, paragraph 37 above).

48. During his mission the Special Rapporteur was informed that the NHRC is keeping a confidential database registering the arrests under the Emergency Regulations.

4. Complaints and investigations of acts of torture

(a) Complaints

49. There are several avenues to seek justice for victims of torture and ill-treatment.

50. Jurisdiction for offences under the Anti-Torture Act No. 22 lies with the High Court. In this regard complaints have to be addressed to the Attorney General’s (AG) Department. Upon instruction of the AG the Special Investigation Unit (SIU) under the supervision of the Inspector General of the Police (IGP) conducts the investigations. The Prosecution of Torture

¹¹ The Prevention and Prohibition of Terrorism and Specified Terrorism Activities, No. 7 of 2006.

¹² Public servant or any other person specifically authorized by the Government of Sri Lanka.

Perpetrators Unit (PTP), established pursuant to the recommendations of the United Nations Committee against Torture, monitors the work of the SIU and the Criminal Investigation Department (CID), and is also in charge of investigation of torture cases. The Attorney General's Department decides on the indictment of alleged offenders on the basis of files submitted by the SIU and PTP.

51. The Special Rapporteur is encouraged by the significant number of indictments, 34, made by the Attorney General. While appreciating that the conviction of offenders is entirely a matter for the courts, before which evidence must be led and prosecutions carried out according to law, he regrets that the indictments by the Attorney General have lead so far only to three convictions. He notes that eight cases were concluded with acquittals. Further, the Special Rapporteur is concerned about the long duration of investigation with regard to these cases of often more than two years and allegations of threats against complainants and torture victims.

52. The Attorney General's powers have so far not been used to prosecute any officer for torture above the rank of inspector of police and no indictment was filed on the basis of command responsibility.¹³

53. Victims of torture or ill-treatment may also file a criminal action before a Magistrate's Court against an alleged torturer for "voluntarily causing hurt" under article 136 (1) (a) of CCP, provided that the police have not filed an action under articles 122 (1), (2), 124, and 137 CCP.

54. Torture victims may also submit a complaint to the Supreme Court for a violation of article 11 of the Constitution within 30 days of the infringement in order to be awarded compensation.

55. In general, the Special Rapporteur notes with concern the absence of an effective ex officio investigation mechanism in accordance with article 12 of the Convention against Torture.

National Police Commission

56. The National Police Commission, created by the 17th amendment of the Constitution under article 155 (a) in 2001, then appointed in 2002, is in charge of disciplinary control over all officers except the Inspector General (art. 155, G (1) (a)) and has also the duty to establish a public complaints procedure (art. 155, G (2)¹⁴). However, this procedure has been established only in January 2007 and therefore no conclusions can be drawn yet with regard to its implementation in practice.¹⁵

¹³ The Government reported that Sri Lanka's case law clearly indicates that, for criminal liability to attach to someone, there must be criminal intent (*mens rea*) and a clear nexus with the criminal act.

¹⁴ It "shall establish procedures to entertain and investigate public complaints and complaints from any aggrieved person made against a police officer or the police service".

¹⁵ Before this date, the NPC, in practice, delegated the investigations leading to possible disciplinary action against any offending officer to the police.

57. The Special Rapporteur notes that the legitimacy and credibility of the NPC has been questioned because of the 2006 presidential appointments of the Commissioners, in a manner similar to the appointments to the NCHR (see below).

58. The Criminal Investigation Department (CID) was given the mandate by the Inspector General of the Police (IGP) to handle all criminal investigations into complaints of alleged torture, other than complaints relating to allegations against CID officers. However, complaints of torture recorded at police stations are first referred to the Assistant Superintendent of Police (ASP) or the Superintendent of Police (SP) of the relevant area. The legal division of the police refers them to the IGP who refers them to the Special Investigations Unit (SIU), under his command. The SIU is also handling allegations of torture referred to the Government by the NHRC, NGOs and the Special Rapporteur on Torture in his communications and regularly provides the Special Rapporteur with clarifications and updates. Apart from the SIU, senior police officers with regional command responsibilities also conduct inquiries into torture allegations.

National Human Rights Commission

59. The NHRC, created in 1997, is empowered to conduct investigations into complaints of violation of fundamental rights, such as violations of article 11 of the Constitution prohibiting torture (art. 14 of Establishment Act No. 21). Subsequently, the NHRC can refer the matter for reconciliation or mediation. In case this procedure fails, the NHRC may recommend initiating a prosecution of the perpetrator. However, lacking the capacity to conduct detailed criminal investigations into complaints of torture, the NHRC can only make recommendations and is not empowered to approach courts directly.

60. According to representatives of the NHRC, the Commission received a total of 405 complaints of torture in the first nine months of 2007.

61. The Special Rapporteur notes a regrettable development related to independent human rights monitoring in Sri Lanka with the downgrading in October 2007 of the NHRC by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). In its report,¹⁶ the ICC's Sub-Committee on Accreditation expressed concern about the independence of the Commissioners, in view of the 2006 presidential appointments, which were done without the recommendation of the Constitutional Council, as prescribed in Sri Lanka law. It further questioned whether the actual practice of the Commission remained balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2,000 cases of disappearances in July 2006. The Sub-Committee noted that the NHRC did not take measures to ensure its independent character and political objectivity, and it failed to issue annual reports on human rights, as required by the Paris Principles. The Sub-Committee, also noting the importance for national human rights

¹⁶ Report and recommendations of the Sub-Committee on Accreditation, December 2007.

institutions to maintain consistent relationships with civil society, stated that the appointment process caused civil society in Sri Lanka to question the constitutionality of the NHRC, thereby affecting its credibility.

62. The Government reported that the direct appointment by the President of the Commissioners was compelled by circumstances in which the Constitutional Council was not validly constituted and thus could not make any valid recommendations. The President also holds the residual power of appointment in the event of any such consultative forum not being in existence. The non-establishment of the Constitutional Council was not due to any fault on the part of the President or the Government but, rather, to a weakness in the legal provisions. The issue is now being addressed, reports the Government.

5. Compensation

63. Article 17 of the Constitution entitles every person to a remedy for the infringement of fundamental rights by State action. Furthermore, article 126 (2) states that “any person [who] alleges that any such fundamental right ... has been infringed ... may ... apply to the Supreme Court ... praying for relief or redress in respect of such infringement”. In granting relief, the Supreme Court has construed the relevant constitutional provisions as containing a right to compensation.¹⁷

64. The Supreme Court has in its jurisprudence interpreted torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by a public official acting in the discharge of his executive or administrative duties or under colour of office for such purposes as obtaining from the victim or a third person a confession or information, imposing a penalty on the victim ... or coercing the victim or third person to do or refrain doing something”.¹⁸

65. The Government reported that Sri Lankan jurisprudence provides that a torture victim may not only claim for the harm suffered but also, according to the Supreme Court, claim for future medical expenses. These expenditures may be charged to the State. In recent years, the

¹⁷ *Saman v. Leeladasa and Another*, S.C. Application No. 4/88, 6 and 7 October 1988: Per Fernando, J.: “An impairment of personality - the violation of those interests which every man has, as a matter of natural right, in the possession of an unimpaired person, dignity and reputation, and whether it be a public or private right - committed with wrongful intent established liability in the *actio injuriarum*; patrimonial loss, as well as damages for mental pain, suffering and distress can be recovered. When the Constitution recognized the right set out in article 11, even if it was a totally new right, these principles of the common law applied, and the wrongdoer who violated that right became liable, and his master too, if the wrong was committed in the course of employment. It was not necessary for a new delict to be created by statute or judicial decision.” Per Amerasinghe, J.: “Our Court has preferred to treat a violation of a Fundamental Right as something *sui generis* created by the Constitution and not as a delict.”

¹⁸ *De Silva v. Chairman Ceylon Fertilizer Corporation*, (1989) 2 S.L.R. 393.

Supreme Court has held that both the State and individual perpetrators may be liable to pay compensation to the victim. In awarding and calculating compensation, the Supreme Court has taken into consideration the gravity of the injuries, the methods of torture employed and the harm caused. The Special Rapporteur welcomes the far-reaching jurisprudence of the Supreme Court with regard to violations of article 11 of the Constitution. Given the high standards of proof applied by the Supreme Court in these torture-related cases it is highly regrettable that the facts established do not trigger more convictions by criminal courts.¹⁹

66. In Sri Lanka, compensation cannot be claimed as part of criminal proceedings. However, in cases related to article 321, PC (“intentionally causing harm”), Magistrate Courts may award compensation to be paid by the offender when the Court refrains from imposing a prison sentence or from a proceeding to conviction (art. 17 (4), CCP).

67. A rape victim may obtain compensation from the offender according to the provisions stipulated in the Penal Code Amendment Act No. 22 of 1995.

68. Under Civil Law (Civil Procedure Code) torture victims or relatives of torture victims can also bring a damages claim before the District Court for pecuniary and non-pecuniary losses incurred as a result of torture against an individual.

69. The NHRC may recommend a compensation for a victim of torture or, in case of death, his or her relative to be paid by the police or army officer (art. 15 (3) (c) of the Establishment Act).

II. THE SITUATION OF TORTURE AND ILL-TREATMENT

70. In the opinion of the Special Rapporteur, the high number of indictments for torture filed by the Attorney General’s Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the NHRC continues to receive on an almost daily basis are a clear indication that torture is widely practised in Sri Lanka.²⁰ During his visits to places of detention in various parts of the country,

¹⁹ The Government reported that there are two principal standards of proof that are operational in Sri Lanka: proof as to the balance/preponderance of probabilities (civil standard); and proof beyond a reasonable doubt (criminal standard). According to the Government, in the so-called “Fundamental Rights” cases, the Supreme Court decides on the basis of documentary evidence and oral pleadings and applies the civil standard. However, for a criminal conviction to be upheld, the court must be satisfied that the offence (including torture) is proved beyond a reasonable doubt - a much higher standard of proof. In fundamental rights cases the liability is primarily on the State whereas in criminal cases penal sanctions are imposed against the individual (most often involving deprivation of liberty).

²⁰ The Government notes the clarification made by the Special Rapporteur during the debriefing session with the Government on 8 October 2007, wherein he stated that what he meant by the term “widely practised” was that he encountered instances of probable torture in several diverse locations and not as a systematic practice.

the Special Rapporteur received only a comparatively low number of allegations of torture from detainees suspected of ordinary crimes. But, in the context of detention orders under the Emergency Regulations and in particular with respect to LTTE suspects, the clear majority of all detainees interviewed by the Special Rapporteur complained about a broad variety of methods of torture, some extremely brutal. In many cases, these allegations were corroborated by forensic evidence. The considerable number of clearly established cases of torture by TID and other security forces, together with various efforts by TID to hide evidence and to obstruct the investigations of the Special Rapporteur, leads him to the conclusion that torture has become a routine practice in the context of counter-terrorism operations, both by the police and the armed forces.

71. Methods of torture reported included beating with various weapons, beating on the soles of the feet (*falaqa*), blows to the ears (*telephono*), positional abuse when handcuffed or bound, suspension in various positions, including *strappado*, “butchery”, “reversed butchery” and “parrot’s perch” (or *dharma chakara*), burning with metal objects and cigarettes, asphyxiation with plastic bags with chilli pepper or gasoline, and various forms of genital torture.²¹ This array of torture finds its fullest manifestation at the TID detention facility in Boosa. The Special Rapporteur is also shocked by the brutality of some of the torture measures applied to persons suspected of being LTTE members, such as burnings with soldering irons and suspension by the thumbs. The latter method was allegedly applied by the army.

72. As reported above, the Special Rapporteur found out that more than half of the detainees of the Boosa detention facility had been either liberated or brought to other places of detention, such as TID in Colombo and the Colombo Remand Prison, in the days preceding his visit. In interviews with the remaining detainees, the Special Rapporteur learned that the transferred detainees were those who had been most seriously tortured previously and still bore marks of the ill-treatment. In an effort to trace the persons concerned, the Special Rapporteur received a list from the Director of TID in Colombo, indicating where the transferred detainees could be found. The Special Rapporteur later visited Colombo Remand Prison and TID in Colombo a second time and spoke with a number of the detainees concerned (see appendix).

73. Intimidation of victims by police officers to cause them to refrain from making complaints was commonly reported, as were allegations of threats of further violence, or threatening to fabricate criminal cases of possession of narcotics or dangerous weapons. Detainees regularly reported that habeas corpus hearings before a magistrate either involved no real opportunity to complain about police torture given that they were often escorted to courts by the very same perpetrators, or that the magistrate did not inquire into whether the suspect was mistreated in custody. Medical examinations were frequently alleged to take place in the presence of the perpetrators, or directed to junior doctors with little experience in the documentation of injuries.

²¹ See also de Zoysa, P., and Fernando, R. (2007), “Methods and sequelae of torture: A study in Sri Lanka”, *Torture*, 17, pp. 53-56.

Accountability and prevention

74. In general, the Special Rapporteur notes that Sri Lanka already has many of the elements in place necessary both to prevent torture and combat impunity, such as fundamental rights complaints before the Supreme Court in relation to article 11 of the Constitution, indictments and prosecutions based on the 1994 Convention against Torture Act, bringing suspects before magistrates within the statutory 24-hour period, formal legal medical examinations by trained forensic experts (Judicial Medical Officers), and investigations and visits by the NHRC.

75. The commitment of the Government to fight torture is also demonstrated by the establishment of mechanisms by the Inspector General of Police and the Attorney General's Office specifically to investigate allegations of torture (e.g. the Special Investigations Unit and the Prosecution of Torture Perpetrators Unit). Moreover, with respect to the Special Rapporteur's mandate, the Government regularly continues to provide clarifications and updates with regard to communications related to such violations.

76. However, a number of shortcomings remain and, most significantly, the absence of an independent and effective preventive mechanism mandated to make regular and unannounced visits to all places of detention throughout the country at any time, to conduct private interviews with detainees, and to subject them to thorough independent medical examinations. It is the Special Rapporteur's conviction that this is the most effective way of preventing torture. In the case of Sri Lanka, he is not satisfied that visits undertaken by existing mechanisms, such as the NHRC, are presently fulfilling this role, or carrying out this level of scrutiny. In this regard, the Special Rapporteur welcomes information from the Government that it intends to establish an inter-agency body to study possible modalities and mechanisms to undertake visits to places of detention and also to strengthen the capacities and efficacy of the NHRC in this connection.

77. The Special Rapporteur appreciates that, by enacting the 1994 Torture Act, the Government has implemented its obligation to criminalize torture and bring perpetrators to justice. He is also encouraged by the significant number of indictments, 34, filed by the Attorney General under this Act. However, he regrets that these indictments have led so far only to three convictions. One of the factors influencing this outcome is reportedly because of the Torture Act's high mandatory minimum sentence of seven years; it is effectively a disincentive to apply against perpetrators. Other factors are the absence of effective ex officio investigation mechanisms in accordance with article 12 of the Convention against Torture, as well as various obstacles detainees face in filing complaints and gaining access to independent medical examinations while still detained.

78. Furthermore, the Special Rapporteur notes with great concern that many of the legal safeguards contained in the CCP do not apply in cases of detention under the Emergency Regulations. The absence of such safeguards is a logical explanation for the considerably higher risk for suspected LTTE members to become victims of torture.

79. Although many victims of torture in Sri Lanka are provided with compensation in article 11 cases by the Supreme Court, these cases are not taken up for criminal procedure. According to the Attorney General, the reason for this discrepancy lies in the diversity of standards of proof before the Supreme Court and the criminal courts. However, the Special Rapporteur has found that the Supreme Court applies high standards of proof and he is convinced that many of the cases would have succeeded also in criminal procedures.

Corporal punishment in prisons

80. The Special Rapporteur appreciates the recent abolition of corporal punishment in Sri Lanka under the Corporal Punishment Act No. 23 of 2 August 2005. However, in the course of his visit, he received disturbing complaints of cases of corporal punishment corroborated by medical evidence. In particular, in Bogambara prison the Special Rapporteur heard of a number of instances of corporal punishment and was informed of the names of prison guards who regularly beat prisoners. In the office indicated by the informants, the Special Rapporteur found instruments that could have no other use than for beatings, such as plastic tubes bound together in a bundle.

81. Again, prisoners reported that two detainees recently punished in this manner had been transferred shortly before the Special Rapporteur's visit. Nevertheless, the Special Rapporteur was able to speak to one of the detainees concerned later in Welikada Prison, Colombo. The detainee confirmed that he had been corporally punished by one of the guards at Bogambara Prison. He bore visible marks on his back of recent abuse which medically corroborated his allegations (see appendix, paragraph 92).

82. In the debriefing of the assistant superintendent of police at Bogambara Prison, the chief jailer admitted the use of corporal punishment in cases of detainees who "do something wrong". He also confirmed that they had received many complaints of ill-treatment against the guards mentioned by the Special Rapporteur. The Special Rapporteur is pleased to report that the Government has initiated an inquiry to look into this matter.

III. CONDITIONS OF DETENTION

83. As far as conditions of detention are concerned, the Government provided the Special Rapporteur with statistics indicating severe overcrowding of prisons. While the total capacity of all prisons amounts to 8,200, the actual prison population has reached 28,000. Poor conditions of detention can amount to inhuman and degrading treatment, which is well established in the jurisprudence of several international and regional human rights mechanisms. In Sri Lanka, the combination of severe overcrowding with the antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, where the lack of space was most obvious, amounts to degrading treatment. The lack of adequate facilities also leads to a situation where convicted prisoners are held together with pretrial detainees in violation of Sri Lanka's obligation under article 10 of the International Covenant on Civil and Political Rights. Although the conditions are definitely better in prisons with more modern facilities, such as Polonnaruwa and the Female Ward of the New Magazine Prison, the prison system as a whole is in need of structural reform.

84. During the Special Rapporteur's visit to various police stations, he observed that detainees are locked up in basic cells, sleep on the concrete floor and are often without natural light and sufficient ventilation. While he is not concerned about such conditions for criminal suspects held in police custody for up to 24 hours, these conditions become inhuman for suspects held in these cells under detention orders pursuant to the Emergency Regulations for periods of several months up to one year. This applies both for smaller police stations, such as at Mount Lavinia, and especially for the headquarters of CID and TID in Colombo, where detainees are kept in rooms used as offices during the daytime, and forced to sleep on desks in some cases.

85. The Special Rapporteur welcomes recent information from the Government that TID has secured a new detention facility, which it will occupy in the second quarter of 2008, and has canvassed the assistance of the ICRC with regard to specifying minimum standards relating to space, ventilation and light for detainees in the new facility.

Women in detention

86. The Special Rapporteur found the detention facilities in the Female Ward of the New Magazine Prison in general to be more adequate than the male detention facilities in Colombo. However, the female detainees are also living in overcrowded conditions and some of the women reported fights between the prisoners without proper intervention by the prison guards. The Special Rapporteur is pleased that the strict division of male and female detainees in prisons is in general observed and that female prisoners are guarded by female prison personnel.

Children in detention

87. In the TID facilities in Colombo the Special Rapporteur met eight children (four girls and four boys) who were being held on account of being child soldiers for the LTTE. He strongly condemns the recruitment of children in the conflict, be it for fighting or other forms of servicing the armed groups. On the other hand, he also deems prolonged detention of minors in counter-terrorism detention facilities deeply worrying.

The death penalty

88. The death penalty is foreseen by article 52 of the Penal Code. Murder is punishable by death (art. 296). No death sentence has been carried out in Sri Lanka since 1977. However, the High Court has, for example, sentenced five police officers guilty of raping and murdering a Tamil schoolgirl, to death sentences in 1998.

89. While the Special Rapporteur is encouraged by the policy of Sri Lanka not to carry out death sentences over the last 30 years, he observes that courts continue to sentence persons to death. This leads to a considerable number of condemned prisoners living for many years under the strict conditions of death row.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

90. The Special Rapporteur concludes that the Government of Sri Lanka has set a number of important legal steps in order to prevent and combat torture as well as to hold perpetrators accountable. Most notably, the enactment of the Torture Act No. 22 of 1994 and the Corporal Punishment Act No. 23 of 2005 as well as legal safeguards in the Code of Criminal Procedure constitute positive legal measures in the fight against torture. The Special Rapporteur is further encouraged by the fact that capital punishment has not been executed in Sri Lanka for more than three decades. The fact that a system of JMOs is in place in the country is also a positive sign.

91. However, the system set up by these positive measures cannot be regarded as fully effective. The high number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the even higher number of complaints that the NHRC continues to receive on an almost daily basis indicates that torture is still widely practised in Sri Lanka. Obstacles for victims of torture to access the JMOs result in loss of important medical evidence which in turn impedes criminal proceedings against perpetrators. The absence of an obligation on law enforcement officials or judges to investigate cases of torture *ex officio* further aggravates the situation for victims. In general, the lack of effective witness and victim protection prevents the effective application of the laws in place.

92. Under the Emergency Regulations, most of the safeguards against torture mentioned above either do not apply or are simply disregarded, which leads to a situation in which torture becomes a routine practice in the context of counter-terrorism operations. The non-applicability of important legal safeguards in the context of counter-terrorism measures, as well as excessively prolonged police detention, opens the door for abuse. The Special Rapporteur is also shocked by the brutality of some of the torture measures applied to persons suspected of being LTTE members, such as burnings with soldering irons and suspension by the thumbs.

93. The Special Rapporteur is also concerned about the reported links between the Government and the TMVP-Karuna group, which were confirmed by the representative the Special Rapporteur met in Trincomalee. The TMVP-Karuna group has been accused of particularly brutal human rights abuses.

B. Recommendations

94. **The Special Rapporteur recommends that the Government:**

- (a) End impunity for members of the TMVP-Karuna group;**
- (b) Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations;**
- (c) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;**

(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

(e) Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;

(f) Ensure all public officials, in particular prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, to report ex officio to the relevant authorities for proper investigation in accordance with article 12 of the Convention against Torture;

(g) Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession;

(h) The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress;

(i) Expedite criminal procedures relating to torture cases by, e.g., establishing special courts dealing with torture and ill-treatment by public officials;

(j) Allow judges to be able to exercise more discretion in sentencing perpetrators of torture under the 1994 Torture Act;

(k) Drastically reduce the period of police custody under the Emergency Regulations and repeal other restrictions of human rights under them;

(l) Develop proper mechanisms for the protection of torture victims and witnesses;

(m) Ensure that the constitution and activities of the NHRC comply with the Paris Principles, including with respect to annual reporting on the human rights situation and follow-up on past cases of violations;

(n) Establish appropriate detention facilities for persons kept in prolonged custody under the Emergency Regulations;

(o) Establish an effective and independent complaints system in prisons for torture and abuse leading to criminal investigations;

(p) Investigate corporal punishment cases at Bogambara Prison as well as torture allegations against TID, mainly in Boosa, aimed at bringing the perpetrators and their commanders to justice;

(q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities;

(r) Remove non-violent offenders from confinement in pretrial detention facilities, and subject them to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement);

(s) Ensure separation of remand and convicted prisoners;

(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute minimum as required by article 37 (b) of the Convention on the Rights of the Child;

(u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences;

(v) Establish centres for the rehabilitation of torture victims;

(w) Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews;

(x) Ensure that security personnel undergo extensive and thorough training, using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education; and

(y) Establish a field presence of the Office of the United Nations High Commissioner for Human Rights with a mandate for both monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention, and providing technical assistance particularly in the field of judicial, police and prison reform.

95. The Special Rapporteur encourages the international community to assist the Government of Sri Lanka in the follow-up to these recommendations.

Appendix

PLACES OF DETENTION - INDIVIDUAL CASES

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Introduction

1. The following accounts are based on allegations by detainees while being interviewed by the Special Rapporteur. Detainees who requested anonymity are indicated below as **Detainee (in bold)**. Many detainees requested absolute confidentiality due to fears of reprisals and their allegations are not contained in the present appendix (names known to the Special Rapporteur). The Special Rapporteur conducted visits to detention facilities unannounced and was able to hold private interviews with detainees, in general.

I. TERRORIST INVESTIGATION DEPARTMENT (TID), COLOMBO

(Visited on 2 and 7 October 2007)

2. The Terrorist Investigation Department (TID) is located in the High Security Zone in Colombo, and is one of the two facilities in the capital (the other being the Criminal Investigation Department) where alleged terrorist suspects are transferred to for questioning following arrest. On the day of the Special Rapporteur's first visit, there were 57 male detainees and 9 females. The detention facilities are comprised of two wings, one for male detainees, and one for females and children. The male wing holds a cell block with eight tiled cells each approximately 1.5 x 2.5 metres. During the day, the detainees can leave their cells to stand or walk in the narrow corridor. During night time, they are locked in the cells, with up to four persons per cell. Some sleep in the corridor. The entire facility lacks natural light and ventilation is very poor; made worse in hot weather. Two washing facilities serve the 57 male detainees. The female wing is comprised of two small cells and a short corridor. The ICRC comes every month. On Saturdays, the detainees can receive short family visits. The Special Rapporteur was received by the Director of TID, Senior Superintendent of Police, Nandana Munasinghe.

3. Most of the detainees who alleged torture requested absolute confidentiality and their testimonies are not included in this report. Detainees were afraid of both the officers and alleged spies among the detainees. Those who had been talking to the Special Rapporteur during his first visit were taken out of their cells and subjected to reprisals, including threats and ill-treatment by Inspector of Police Saman and Police Constable Perera shortly after the delegation departed. The Special Rapporteur was also informed about several attempts by TID officers to obstruct his investigations during his first visit. Detainees, including children, had been taken out of their cells for the purpose of hiding them from the Special Rapporteur. A group of 12 detainees was held for a prolonged period of time in a bus outside TID during the Special Rapporteur's visit.

4. **K.J.**, aged 16. Four months ago, he was arrested by the police in Batticaloa (Kalawanchidud), and brought to TID. He was a member of the Karuna group and sought to leave it by shooting himself in the foot. He reported that he has no problems with the TID officers. His parents cannot afford to come and visit him.

5. **Detainee**. He was never tortured but knows of others who were beaten and suspended. In recent days, just prior to the Special Rapporteur's visit, a relatively high number of detainees, around 17 or 18, had been either released from TID or remanded into custody in other facilities. On the morning of the visit, TID tried to hide eight children (four boys and four girls aged around 15 years from Batticaloa) by moving them to the first floor. The TID officers regularly

torture persons on the first floor in the branch offices. In addition, the detainees are often insulted by the officers, who ask them, for example, “How many fathers do you have?” He was brought before a judge once, but could not speak to him.

6. **Detainee.** For the first four days after he had been brought to TID, he was severely ill-treated by three officers named Abdeen, Suber and Kankha. After he was forced to completely undress, two of the officers placed a stick under his knees and handcuffed him in front of his shackled legs (“parrot’s perch” or “dharma chakara”). In this position, he was hung upside-down between two tables in the office of Branch No. 3 on the first floor of the TID premises. For 10 minutes, the officers beat him with an iron bar on the soles of his feet and on his back. They also kicked him in the face. This treatment continued for four days in which the officers tried without success to get him to confess his involvement with the LTTE. About one month ago, the same officers tortured him again by the same method. It was common that detainees were held overnight in the interrogation rooms on the first floor. After the ill-treatment his feet were swollen and numb, as was one of his fingers to which he received a blow. He reported that another detainee named Stephen had been taken out of the cells and brought to an unknown location earlier the same day. Stephen had been massively tortured, including beatings on his testicles.

7. The Special Rapporteur made a return visit to TID on 7 October 2007.

8. **Supaiya Jayasangar**, aged 30. Three months ago he was arrested by the police and taken to Murunkan (Mannar) Police Station. At the police station he was beaten with a wooden stick on his legs. After one day, he was transferred to TID.

9. **Four boys between 14 and 15 years of age.** On 8 August 2007, the LTTE camp Kanchikudiaru (near Ampara) was attacked by the Special Task Force (STF), and upon surrender the boys were arrested as suspected LTTE members. They reported that they had joined the LTTE in May 2007 motivated by the physical training, food, as well as the money they would receive. Upon arrest, the boys were taken to Thandirady STF camp where they were held for one day. On 9 August, they were brought to a police station in Colombo and then transferred to TID. They made no allegations regarding ill-treatment but complained about the restricted movement in their small and crowded cell, and the lack of natural light and fresh air. Their families were informed about their detention.

10. **Nicholas Stephen**, aged 27. On 4 July 2007, he was travelling on a bus to Mannar and was arrested at a checkpoint in Colombo by army personnel. He was immediately blindfolded and brought to a location which he believed to be CID. Somebody told him, “This is the fourth floor and you will never return alive.” He was put alone in a small room without furniture. His blindfold was never removed and he was occasionally brought to the toilet by an officer. He was handcuffed most of the time. Only when he was eating were the handcuffs removed. One time he tried to remove the blindfold but was immediately beaten on the back of his head. Over a three-day period he was repeatedly tortured. Completely naked, a chain was put under his knees to which his wrists were bound, and he was lifted above the ground. A bag with petrol was put over his head. He was beaten on his abdomen and his arms with a plastic pipe, and on his feet and legs with a metal pipe. He was cut on the inner side of his left knee with a blade. A hard object, such as a stone, was put under his testicles, which were then beaten with a metal pipe that was brandished to him. He was also suspended by his feet and handcuffed behind his back.

In this position he was raised and lowered so that his head hit the floor several times. From the ill-treatment his testicles were swollen to the size of a grapefruit and he had to walk with his legs apart. On the first day after the beating, they were bright red and on the second day they turned to a blackish red. The swelling lasted for one and a half months and for 25 days he had blood in his urine. He still feels a burning sensation when he tries to urinate. On the top of his head the hair did not grow back after the ill-treatment and he showed a bald patch of about four centimetres in diameter. When he was tortured he heard that somebody raised the volume on a TV in order to drown out his screaming. He also heard cell doors opening and closing. The officer who was with him in the room spoke Tamil. After three days he was brought to Grand Pass Police Station and his blindfold was removed. After two days there he was transferred to TID. When the TID officers took down his details they asked him whether he had been beaten. He answered, "Yes", and they said, "We will also beat you." From 15 to 22 September, he had to stay in an office on the first floor. He was beaten on his feet with a plastic pipe filled with sand while an officer grabbed him by the throat, pulled him back and lifted him. He reported that on the day of the first visit of the Special Rapporteur, he was brought up to the office of Branch No. 1 because the officers wanted to prevent him speaking out. He had to lie under a bench. When he heard the Special Rapporteur speaking he wanted to shout but an officer kept his mouth shut with his hand. Examination by a forensic doctor disclosed no specific injuries to corroborate the account but this was not unexpected given the nature of the injuries alleged and the time interval since infliction. However, the account of the physical effects of the ill-treatment was so precise and detailed as to be compelling from a medical perspective.

11. **Detainee, female.** She reported that her husband was tortured before her eyes.
12. **Detainees, children.** They reported that they were not beaten but that the officers often used foul language to insult them.
13. The Special Rapporteur recommends that prompt and independent investigations of all allegations of torture and ill-treatment be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators, Inspector of Police Saman, Police Constable Perera, and the management of TID, including the Director of TID, Senior Superintendent of Police, Nandana Munasinghe, as well as the CID officers allegedly responsible for the ill-treatment of Nicholas Stephen).

II. MOUNT LAVINIA POLICE STATION, COLOMBO

(Visited on 3 October 2007)

14. Mount Lavinia Police Station is a two-storey building, staffed by about 326 officers. The cell block contains three cells, each approximately about 3 by 2 metres and a corridor. According to the detainees, the inner cell doors are always open and prisoners can move about freely inside. Detainees have to sleep on the floor in the cells and inner corridor. Detained women stay in one of the offices and sit on a bench or sleep on the floor. Visitors can come to the police station and bring food and water. At the time of the visit, 19 men were detained. According to the information from the prisoners, four detainees were taken out of the cell and hidden in an unknown place believed to be Ratmalana Police Post shortly upon arrival of the Special Rapporteur. No entry in the custody registers indicated prisoner transfers. The Special Rapporteur was later informed that two hours after his departure from the station, the four hidden

detainees were brought back to the cell. The Special Rapporteur was received by the Officer in Charge, Inspector of Police, K.A.P. Indnegalle, and Acting Headquarter Inspector Manjulo Fernando. The detainees were afraid of reprisals and requested the Special Rapporteur either to keep the information confidential or to keep the identity anonymous.

15. **Detainee.** He was arrested in a police raid on weapons offences, and brought to Mount Lavinia Police Station's Crime Branch, where two officers and eight constables questioned him for three hours. The constables threatened to arrest his family if he was lying. Since his arrest he has not been able to go outside and there is no possibility for exercise. The ICRC visited the station the day before. Before their visit there were 42 prisoners, but shortly before their arrival about 15-16 prisoners were taken away, most of whom were LTTE suspects. On these occasions, prisoners are believed to be taken to Ratmalana Police Post. About five persons sleep in his 3 by 2 metres cell. He reported that there are generally no problems among the prisoners. Some prisoners receive food from their families. They receive books and playing cards from the Red Cross. He complains that the toilet facility is filthy.

16. **Detainee.** He was brought in on suspicion of a theft of a mobile phone. For the first few days he was kept handcuffed crosswise behind his back and beaten with cricket stumps on his toes, particularly on his toe nails, and the top of his feet. An IP, sergeant and a constable participated in the beatings.

17. **Detainee.** He was arrested in connection with a search for a weapons cache. He complained that the group of arrested persons did not receive any food for three days. When they were taken to the magistrate the police officers remained in the same room and they did not give them a chance to speak to him. He reported that many of the detainees had been tortured until they could not walk anymore. Many were too scared to speak about the ill-treatment out of fear of reprisals.

18. The Special Rapporteur recommends that allegations of torture be thoroughly investigated and the perpetrators be brought to justice.

III. RATMALANA POLICE POST, COLOMBO

(Visited on 3 October 2007)

19. The Special Rapporteur visited the police post immediately following the visit to Mount Lavinia Police Station, and the sole cell there was found to be empty.

IV. PANADURA SOUTH POLICE STATION, COLOMBO

(Visited on 3 October 2007)

20. Panadura South Police Station has three detention cells, two of which are used for prisoners, and the third for storing stolen property. At the time of the visit, the Special Rapporteur found in the first cell four persons who were detained the night before and had yet to be questioned or make statements. Two persons were detained in the second cell.

V. PAYAGALA NORTH POLICE STATION, COLOMBO

(Visited on 3 October 2007)

21. Payagala North Police Station has one small cell where at the time of the visit six male detainees were held. One female detainee sat on a bench in front of the cell. All had been arrested the day before and interrogated. Three persons had been held for over 24 hours. The Special Rapporteur was received by the Officer in Charge, Inspector of Police, Mr. C. Ayjitukumara.
22. **G.S.**, age 15. On 2 October 2007 at 12 a.m., he was arrested on suspicion of having stolen cattle and was brought to the police station. He reported that he was taken by three police officers behind the station and was beaten by one police officer (Sunit Saand) with a wooden stick on his back in order to extort a confession.
23. **Detainee, child.** His hands were bound with a rope in front. He reported the officers used foul language. When he was brought to the police station, a constable questioned him about a theft. During the hour long interrogation, he was struck twice on his buttocks with a wooden stick, and slapped in the face. However, he did not confess. When sitting, he reported that he still feels pain in his back side. His family had been informed of his arrest and had contacted a lawyer.

VI. TID DETENTION FACILITY AT BOOSA

(Visited on 3 October 2007)

24. Located in the vicinity of Galle in the south of the country, the TID Detention Facility at Boosa primarily holds prisoners suspected of involvement with the LTTE. At the time of the visit, 54 male detainees were held, all LTTE suspects. Most of them have been detained there for more than three months, and 22 of whom had been produced before a court. The detainees were held in three different wings: 19 persons in the first wing, 14 persons in the second wing and 21 persons in the third wing. The detainees in the first wing sleep on the floor in several small cells, whereas in the second and third wings the detainees are held in large halls. The wings were fairly clean and were not crowded, though the detainees complained of rats. They were allowed to be outside the cell during day time. No women were detained at the time of the Special Rapporteur's visit. The Special Rapporteur was received by OIC H.G. Srisena. He reported that Boosa was solely a detention facility and that no interrogations took place there.
25. The detainees who were interviewed reported that some detainees were recently transferred out before the Special Rapporteur's visit and were the ones that were most heavily subjected to torture and ill-treatment, and would still have visible injuries. Upon enquiry, the OIC confirmed to the Special Rapporteur that in the last few days (beginning on 28 September 2007) 59 detainees were transferred to TID, Colombo, on instructions of TID Director Nandana Munasinghe. They were reportedly transferred for court appearances.

The Special Rapporteur spoke on the phone to the TID Director, requested and later received a full list of all 59 detainees, some of whom were released and some of whom were brought to Colombo Remand Prison. Some of these detainees he could speak to during his second visit to the TID Headquarters, the Colombo Remand Prison and the New Magazine Prison (Female Ward) in Colombo.

First wing

26. According to the information from the 19 detainees in the first wing, several of them reported having been subject to torture and ill-treatment by various methods at Boosa Camp or at an earlier stage in police custody or army camps. Eleven detainees reported that a plastic bag filled with petrol was pulled over their head; eight were reportedly beaten with sticks; six detainees say that they were handcuffed and then suspended and five were suspended in the “parrot’s perch” position (also known as dharama chakara) - the detainee is handcuffed in front of his knees, his legs are shackled, a stick is passed through his arms and behind his knees, and the person is suspended upside-down. Several detainees were subjected to ill-treatment on their private parts; three detainees reported that petrol was poured over their penis; and five explained that a rope or string was tied around their penis and then pulled.

27. The detainees alleged that the toilets were freshly painted the day before the visit of the Special Rapporteur, and the TV was installed on the morning of the visit.

Third wing

28. **Detainee.** He was arrested on suspicion of membership in the LTTE. He was initially brought to the TID premises in Colombo, and taken to the first floor where three or four different units had their offices. There he was handcuffed to a table in a large office, to which a smaller office was attached. He was tortured for three days in order to obtain a confession and information on his friend, who was also suspected to be a member of the LTTE. During this time, he was beaten by three officers, one of them named Kankha. The officers used two wooden sticks to beat him on the back, buttocks and legs. He was handcuffed crosswise behind his back and beaten. The beatings usually lasted for one hour before he was handcuffed to the table again and given a rest. For about one week after the ill-treatment he had problems sitting and walking. After about one month, he was produced before a medical officer who gave him a medical certificate. He complained about the torture before court but nothing happened. He stayed at TID for about two months. During the first 15 days, his family was not informed of his arrest. The ICRC came to see the detainees. Later, he was transferred to Boosa.

29. **Detainee.** He was arrested on suspicion of providing support to the LTTE. He was brought to Boosa, where four officers beat him in an office used for interrogations. One of them used a plastic pipe of four centimetres in diameter, which was filled with sand. The others beat and kicked him with their hands and feet. He was mainly beaten on his legs and on the soles of his feet but also kicked on the right lower part of his abdomen. During the beatings he was always

completely naked and he was handcuffed crosswise behind his back. After the beatings in the office he was brought back to the cell for a while but was threatened that he should not tell anybody of the torture. After the ill-treatment he had blood in his urine for one week and he lost some feeling in his feet. One of the officers who tortured him was called Nishantha, and he and the other officers involved were still working at TID in Boosa. He reported that he is too afraid of reprisals to file an official complaint.

30. **Detainee.** He was arrested in Colombo on suspicion of membership in the LTTE. Four men in civilian clothes dragged him into a white van and did not tell him who they were. During the arrest he was beaten by them. Three of the men held him while the fourth one punched him in the face and on his chest and kicked him against his knees. He was brought to TID where he was interrogated but not beaten. During his second interrogation the next day, the officer in charge made him kneel down and beat him twice with his flat hand and his fist on his cheeks. His family was informed the day after his arrest. The TID officers wanted him to confess to membership of the LTTE. Eventually, he signed a statement in Sinhalese which he could not understand. He saw a magistrate but did not speak to him. He reported that he was previously arrested in 2001, and on that occasion, during interrogation, a plastic bag filled with petrol was put over his head for three minutes.

31. **Detainee.** He was arrested by the police on suspicion of being a member of the LTTE. He was brought to Seruwalla Police Station where he was neither interrogated nor abused. After one day, he was transferred to Kantale Police Station where he stayed for one and a half months. For the first three days, he was interrogated by two police officers. He was brought out of the police station and forced to stand under a tree for two hours while he was questioned. The investigating officer wanted to know where he had hidden weapons and when he did not say anything, the officer became angry and took him to another building where he began to beat him. Another officer, who served as a Tamil interpreter, did not take part in the beatings. He was handcuffed and had to sit on the floor while the officer beat him with a squared wooden stick on the soles of his feet and with a smaller stick on his head. He was also beaten on his abdomen. This treatment continued in sessions over a period of three days, and he was returned to his cell in between sessions. In June, he was transferred to Boosa, whereupon his arrival fresh interrogations into his suspected hiding of weapons began. After he was taken to a medical officer who certified he was in good health, TID officers began to interrogate and torture him on a regular basis. For two to three times per week he was interrogated by two officers until September 2007. His hands were handcuffed behind his back crosswise, he was punched in his abdomen, and his nipples were squeezed. One of the officers stepped with his shoes on his feet, his hair was pulled and he was slapped in the face. He was also forced to sit cross-legged while one officer stepped on his knees and forced them to the ground. During this ordeal he was always naked. He recalls that one of the TID officers was called Sumith. He was last abused at the end of August.

32. The Special Rapporteur recommends that prompt and independent investigations of all allegations of torture and ill-treatment be carried out in order to bring those responsible to justice (including the management of the institution).

VII. TRINCOMALEE PRISON, TRINCOMALEE

(Visited on 4 October 2007)

33. The detention facilities of Trincomalee Prison are comprised of an old wing, where six cells each hold five detainees, and a more modern wing with three buildings. Generally, the remand prisoners are held on the first floor and the convicted prisoners on the ground floor. However, due to place constraints, remand detainees are also held on the ground floor. Women are separated from men. The prison does not have a punishment cell but prisoners are reportedly sent to another prison for punishment. Some of the convicted prisoners are working in Trincomalee and Jaffna harbour, loading cargo onto the ships. The cell doors are open from 6 a.m. to 6 p.m. and the detainees can move about freely within their wings. On the day of the Special Rapporteur's visit a total of 251 prisoners were detained in the prison, which has an official capacity of 200. Fifty-one were reported to be held there temporarily. There were 130 men in pretrial detention, 117 convicted men and 4 convicted women. No minors were detained. No one was detained under detention orders. Anuradhapura Prison, according to the Chief Jailer, Gamini Silva, is the facility which can accommodate "high security" prisoners. No firearms are stored at Trincomalee Prison and security is provided by the Harbour Police. The prison staff comprises 40 persons, including 5 women. According to the Chief Jailer, there is neither a doctor nor a nurse resident at the premises and they do not have a dispensary. However, once a week on Thursdays at 2 p.m. a doctor visits the prison. The prisoners spend most of the day outside their cells. There is no sports field, however they are allowed to play carambole or chess and practise yoga. Three times a week there is the possibility to take Tamil, Sinhalese or English language classes. All Muslim detainees are held in the same cell during Ramadan and are allowed to observe their religious practices. The detainees reported to the Special Rapporteur that the treatment in the prison is generally friendly. As a form of disciplinary punishment, the detainees reported that they are ordered to do knee bends for five minutes, and in some cases they are beaten with a rubber stick. A number of Tamil detainees complain of harassment by Sinhalese detainees.

34. **S.T. Nejam**, aged 23, a member of the Home Guard, Mutur. On 27 October 2006, he was arrested on suspicion of selling official weapons and taken to Mutur Police Station. He was taken to the OIC's office, where he was handcuffed and ordered to sit on a chair. Ten persons were present in the office: two superintendents, a sergeant, an IP and six police constables. He was asked by the OIC to bend his upper body and then was kicked in the teeth by the OIC. He was beaten with a chair in his face for 10 minutes resulting in bleeding. When he was brought back to his cell, he was verbally threatened that he should tell the truth. After two days' detention at the police station he was produced before a magistrate and then transferred to the prison. He reported the ill-treatment to the magistrate, who did not listen to him and did not react to his allegations.

35. **K.M. Jahankeer**, 26, a member of the Home Guard, Mutur. On 8 May 2007, he was arrested on suspicion of illegal possession of a weapon. At Mutur Police Station he was brought to a room on the first floor for interrogation. Standing naked, his thumbs as well as his feet were tied with rope. He was ordered to stand on a chair and was then suspended by his thumbs and feet from an iron bar fixed across the room. Four persons - the OIC (an inspector of police), a superintendent, a sergeant and a constable - were present in the room. He was punched in his face by the OIC and then beaten on the soles of his feet with a cricket stump. Further, the officers

drove three nails into each of the soles of his feet. As a consequence of this ill-treatment he was screaming and was bleeding from his feet and mouth. He was subjected to similar ill-treatment on the second and third day of his arrest. He was held for three days in the police cell without receiving any food. On the third day he was forced to touch the weapon he was suspected of possessing illegally and to sign a statement. Upon his request, he was taken in a police jeep to Mutur Hospital, where he received some basic treatment but was not allowed to speak to the doctor in private. In addition, the OIC told the doctor not to report the detainee's injuries. He was taken to a magistrate's house on the Sunday, but did not have a chance to see him personally (i.e. he remained in the vehicle). His parents came to visit him at the police station, but they were only allowed to see him from a certain distance and were not allowed to give him food. In any case, he was not able to speak to them because of his injuries and consequently his parents did not report the ill-treatment. He was transferred to the prison soon after.

36. **Mohammed Hussain Zilmi**, aged 31, Maligawatte, Colombo. On 18 April 2002, he was arrested by the police at Checkpoint No. 84 in Kantale. He was taken to Kantale Police Station where he was kept in custody for three days. At the police station he was forced to kneel down, his hands were tied behind his back and he was beaten with a belt, a bar, hands, and kicked with boots on his back by police officers. Later he was remanded in custody. On 13 May 2005, he was released on bail, but did not show up before court, and consequently, the police issued a warrant for his arrest. He was rearrested some days later and taken to Vavuniya Police Station. From there he was transferred to Anuradhapura Police Station where he was kept in custody for four days and then taken to Trincomalee Prison. He made no allegations of ill-treatment in Trincomalee Prison.

37. **L.G. Manjula Rangakumara**, aged 26. On 31 August 2007, he was arrested in Kantale, near the lake, on suspicion of going to dig up ancient treasures. Upon arrest, he was slapped twice in the face by a police officer. He was then brought to Ulpotha Police Post, where he was kept overnight and was neither interrogated nor ill-treated. He has been to court and was sentenced to imprisonment. He reported that within the prison no torture takes place but guards sometimes slap detainees. On the occasion of his first arrest 10 months previously, he was beaten severely by the police and had to be hospitalized for two days.

38. **Detainee**. He surrendered to an army post after having been abducted by the LTTE and forced to undergo 40 days' training. He was blindfolded by soldiers with his own sarong and thrown to the floor where he was beaten for about one hour. Four other persons were arrested together with him but he does not know if these persons were also beaten. He was later brought to a police station where the soldiers claimed that they had captured him though he had surrendered voluntarily. He was kept for three months at the police station and brought to the court every fortnight. Since March, he has been detained in Trincomalee Prison. He reported no allegations of ill-treatment in the police station, nor in the prison.

39. **Detainee**. Following an explosion, he was pulled out of his shop by members of the navy and dragged to the spot where the blast had taken place. He was severely beaten and kicked by around 30 to 40 persons, both civilians and members of the navy. He was later brought to the police headquarters in Trincomalee and then to the prison but was not beaten again.

40. **Detainee.** In November 2006, he was arrested at home by Trincomalee CID officers. He was beaten by the officers in front of his mother and his uncle. Then the officers took him to another house and asked him whether he knew the person living there. He was later brought to the police headquarters in Trincomalee, where he was beaten again. As a suspected member of the LTTE, he stayed in the police station for three months. For 17 days, he was repeatedly interrogated and on four or five occasions he was beaten for about one hour. The beatings took place in the inquiry/crimes branch office amidst police officers who were going about their paper work. His hands were tied with his own shirt and he was pushed under a table, where he was beaten and kicked all over his body. He was asked for information on another person who had been shot. The police brought him to his community where he was forced to identify LTTE members. Initially, he had a bag over his head with holes for his eyes, but when he did not point out anybody the police removed the bag and branded him as a traitor in front of his home community. In February 2007, he was brought to court and then to the prison. He reported that he is afraid of the Sinhalese prison guards.

VIII. TRINCOMALEE POLICE HEADQUARTERS (INCLUDING CID), TRINCOMALEE

(Visited on 4 and 5 October 2007)

41. Trincomalee Police Headquarters contains a row of six cells about 3.5 x 2 metres each. At the time of the visit the cells were dirty and dark, with poor sanitary facilities, and four male detainees were held. The Officer-in-Charge, Chief Inspector M.M.C. Bandara, reported that he has been in charge for seven months and has not received any complaints of torture or ill-treatment.

42. **M.J. Javed**, aged 34, a police officer. On 9 September 2007, he was arrested for dynamite fishing, and detained under the Emergency Regulations. He has been interrogated but not beaten. He can leave his cell for two and a half hours per day and receives food from the police. His family can visit him every day.

43. **Detainee.** He was arrested on suspicion of burglary of a shop. The police officer who took his statement threatened him with a beating at night if he did not confess. He reported that he was very afraid that he was going to be ill-treated later.

44. On the second visit of the Special Rapporteur the detainee said that he had not been beaten after the Special Rapporteur's departure.

45. **Subramaniam Navaneedarasa**, aged 26. On 4 October 2007 at 8.30 a.m., he was summoned to the police station for being involved in a fight in an IDP camp. He had not been interrogated and did not have any complaints regarding his treatment.

IX. CHINA BAY POLICE STATION, TRINCOMALEE

(Visited on 4 October 2007)

46. At the time of the visit, there was one detainee held in one of the two cells of the police station. The detainee requested absolute confidentiality about his interview.

X. KANTALE POLICE STATION, KANTALE

(Visited on 5 October 2007)

47. Kantale Police Station has three cells where at the time of the visit two male detainees were held. According to the police officers, a third detainee was taken out to an office in order to record his statement. Kantale Police Station was often cited as a place where torture and ill-treatment occurs (e.g. Mr. Zilmi, para. 36 above).

48. **Yogaswaran Lakmanan**, aged 27 years, Trincomalee. On 3 October 2007, he was arrested on suspicion of LTTE membership (which often occurs when identity cannot be readily established) on the Kantale Road. It is his first arrest, and he made no allegations of ill-treatment or any kind of pressure. He reported that his father was aware that he has been arrested.

49. **Mohamed Palel Riyal**, aged 22. On 4 October 2007, he was arrested by the police on suspicion of supporting the LTTE. He reported that he was involved in a fight and sustained injuries, and was later arrested as he was seeking treatment at the hospital. He reported that he was questioned by the arresting officer, and made no allegations of ill-treatment. His parents have visited him, and he was provided food, water, and access to a toilet.

50. **Detainee**. In September 2007, he was arrested by the army at his home on suspicion of membership in the LTTE. He was brought to the police headquarters, sent home the same day, and told not to tell anybody that he had been arrested by the army. He was ordered to report to the police station the next morning, and he has been detained there since. He was not given any reasons for his arrest but thought that it was suspected that he had rejoined the LTTE. He is questioned periodically by CID officers whether he had weapons or if he knew of anybody else who had weapons. The police have threatened him that he would “not get out alive” if he did not answer their questions, but he did not tell them anything. Sometimes, officers came to his cell at night to question him through the bars. He reported that he is afraid to be killed by the army or the police after being released. The army had killed twelve people in the course of one year and had alleged that members of the Karuna group were the culprits. The ICRC has visited him but not the NHRC. He reported that in general, Tamil detainees were not treated well. In 2002, he was abducted by the LTTE and was forced to stay with them for 10 days. When he managed to escape he reported the incident to the police, who ordered him to report to the police station every week until the end of 2003.

XI. POLONNARUWA POLICE STATION, POLONNARUWA

(Visited on 5 October 2007)

51. Polonnaruwa Police Station has six detention cells, three of which are not in use (i.e. are being used for weapons storage), and at the time of the visit of the Special Rapporteur, there were no detainees. The Special Rapporteur is informed that 14 detainees had been brought to Court the same morning. Generally, it was reported, no one is detained under the Emergency Rules at this police station. Police Constable R.M.K. Rasnayake, reported that the toilets in

the cells have been blocked for at least as long as he has been serving at this station, which is eight years. He further reported that in the cells used for detainees, an average of 6 persons are held, 10 being the maximum. Chief Inspector H.M. Herath denied this, informing the Special Rapporteur that PC Rasnayake is unreliable due to a head injury he had suffered. The three cells have been used for storage only for a few months, problems with the toilets have persisted only for 1.5 months, and only five detainees at most are held per cell, according to the chief inspector. The Special Rapporteur noted an abandoned female child around 5 or 6 years old from Batticaloa in the police station, for whom social services were called to collect her.

XII. POLONNARUWA PRISON, POLONNARUWA

(Visited on 5 October 2007)

52. Polonnaruwa Prison, with an official capacity of 200 inmates, held 253 persons at the time of the Special Rapporteur's visit. Of 249 male detainees, 109 were convicted, 124 were on remand, 15 on appeal, and one was in the hospital. Of the female detainees, one was convicted and three were on remand. One child was also detained. Fifty-six staff are employed at the prison. The Special Rapporteur was received by Assistant Superintendent of Prisons Lal A. Wickramasinghe, who has been at the prison since August 2007. The ASP reported that punishment of detainees, such as cancellation of visits for one week, is implemented in accordance with the prison ordinance. There are no punishment cells in the prison and problematic detainees have to be sent to the punishment cells of Ratnapura Prison. Members of rival groups, former police officers or escapees are held separately from the other detainees. He pointed out that one mentally ill boy, detained in a separate cell, would be brought to the hospital the next day. The former head of the prison was known for beating detainees, and was subject to a magisterial inquiry and was subsequently transferred to another post. The ASP reported that he has not received any complaints of ill-treatment by prison guards. When questioned about a number of allegations of ill-treatment received relating to one of his staff named Indika, the ASP described him as a well-meaning eager new recruit, but would nevertheless look into the allegations.

53. **Kasun Madusanka**, aged 19 years, Polonnaruwa. On 16 June 2007, upon arrest on suspicion of weapons possession, he was struck by rifles and punched by a constable and five Home Guards. He was taken to Pulasthigama Police Station, where he reported that he was questioned without ill-treatment by police about a hand grenade. The next day, around 1 p.m., which was a Sunday, he was taken to the magistrate's residence, and later remanded to prison. He reported that he has been well-treated at the prison. His mother knows he is here. He reported that if there are fights amongst prisoners, officers will intervene and sometimes beat prisoners to break up fights. He has never been hit and young prisoners are treated well.

54. **K.A.P.P.**, aged 17, Medirigiriya. On 21 September 2007, he was arrested on suspicion of the theft of his uncle's motorcycle. He was taken to Atambawa Police Station where he was beaten by approximately 20 Home Guards and police officers with rifles (Type 56, or T-56) on his head and back. Consequently, he was bleeding from his mouth, but did not receive medical

treatment for his injuries. The second day he was interrogated by a drunken policemen who used vulgar language but who did not use any force apart from grabbing his shirt. On 25 September, he was produced before a magistrate and later transferred to the prison. There was no medical examination upon arrival at the prison. The detainee's family was informed of his detention only after his transfer to the prison. He reported regular visits by his parents, and he is represented by a lawyer. He made no allegation of ill-treatment in prison. He is expected to appear in court on 9 October. He can play sports. He reported that it is generally fine in the boys' cell (i.e. ages 17 to 19). He did fight on the day of the visit and received a warning from the ASP.

55. **M.G.C.B.**, aged 15, Onagama, Polonnaruwa. On 3 October 2007, he was arrested at home, accused of having stolen three bicycles. He alleges that one constable slapped his face and threatened him with a knife during the arrest. He was taken to Kaduruvala Police Station, where he was kept in custody for 24 hours. The following day, he was produced before a magistrate and subsequently transferred to the prison on 4 October where he spent his first night in the female wing. He made no allegations of ill-treatment in prison. At the time of the visit, he was detained alone, away from the other prisoners, in a cell on the second floor, above the ASP's office, which also contained empty offices. Shortly after the interview, officers informed the Special Rapporteur that the boy would be transferred to a children's house for under-16s later that day.

56. **Detainee.** Upon arrest he was beaten by the officers all over his body with wooden batons. Other people on the street witnessed the beating. He was brought to Polonnaruwa Police Station where he was detained for three days. At night he was taken out of his cell, brought to the interrogation room and beaten and kicked. He was not handcuffed and was clothed. He was beaten continuously for 10 minutes while standing. Sometimes he fell down and then the officers started kicking him on the ground. He was beaten all over his body with a large heavy plastic pipe of seven centimetres in diameter filled with dirt with which he was struck mainly on the back and arms. He reported that his arms and thighs were swollen after the beatings. He did not launch an official complaint, nor tell the magistrate of the ill-treatment. After one month in the remand prison he was brought to a doctor but he did not tell him of the beatings. He complained of the quality of the food in the prison and reported that the guards regularly beat the inmates in front of other detainees with belts and sticks for punishment. On the day of the visit, he reported that a mentally ill boy was being beaten by the guards because he had attacked another detainee with a razor blade.

57. **Hitihamique Muthubanda**, aged 52. He reported that after he had a quarrel with other detainees one and a half months ago, the Assistant Superintendent of Police (ASP) ordered a guard to beat him in front of the others. The guard bent him over and beat him on the back with a broom stick. When he tried to get up he was beaten on his buttocks and finally all over his body apart from the head. He reached back to protect his buttocks and was struck on the hands. He showed dark bruises under the nails of his left index and middle fingers. The beating lasted for about five to six minutes. The guard's name is Indika and he is still on duty in the prison. He reported that the mentally ill boy was beaten in the morning by several guards and was locked in the punishment cell where persons are sometimes detained for up to one month.

Female wing

58. The female wing is large, clean, but dark. Female prisoners are allowed to stay in the outer court, or parking area of the prison during the day.

59. **Ms. E. A. B. Kumari Hame**, aged 45. On 6 September 2006, she was arrested at her house by about seven police officers, including one female officer. She was taken to Medirigiriya Police Station where she was beaten with a wooden stick on her legs and back by one female police officer during an interrogation which lasted for one hour. On 7 September 2006, she was remanded to the prison. Although she had injuries from the beatings she did not receive a medical examination or treatment upon arrival at the prison. Later, she was convicted and currently is detained together with women on remand in the female wing. She made no allegations of ill-treatment in the prison.

XIII. KATUGASTOTA POLICE STATION, KATUGASTOTA

(Visited on 6 October 2007)

60. Katugastota Police Station contained four cells, and at the time of the visit, there were two detainees. The Special Rapporteur was received by OIC Nilantha Bandara.

61. **R.M. Samantha Bandara**, aged 33. On 5 October 2007, he was arrested on the street on suspicion of drug possession. He was brought directly to the police station and his statement was taken upstairs in the vice branch. He had confessed to the accusations. He was neither beaten nor threatened and could sleep the whole night without interruption. His family knew of his arrest and had brought him food.

XIV. WATTEGAMA POLICE STATION, WATTEGAMA

(Visited on 6 October 2007)

62. Wattegama Police Station contained two detention cells, and there were two male detainees at the time of the Special Rapporteur's visit.

63. **Thayagaraja**, aged 49, Gampala. On 5 October 2007 around 3 p.m., when he came to a shop to beg for some money, the shop owner kicked him and turned him over to the police station at the gate. He was provided food but he could not eat because of the pain from his injuries. He asked to see a doctor. He was only asked his name and age by the police. According to the medical examination, he was kicked in the base of the penis, resulting in bruising and blood in the urine. It was recommended that he receive plenty of water and receive medical attention if he had trouble passing urine.

64. **Tharanga Piyadasa Premahandra**, aged 21. On 4 October 2007 at 1.30 p.m., he was arrested at a friend's place and brought directly to the police station. No force was used but he was also not told the reasons for his arrest. He was questioned in an office on the ground floor about a theft of a three-wheeler. During the interrogation he was threatened but not physically ill-treated. At the time of the visit, he had not yet seen a magistrate. He reported that his aunt brought him food.

XV. BOGAMBARA PRISON, KANDY

(Visited on 6 October 2007)

65. Built in 1876, Bogambara Prison has an official capacity of 800 inmates. On the day of the Special Rapporteur's visit, the total population was 1,998 inmates, including 53 prisoners on death row, 1,408 convicted prisoners, 358 on remand, and 178 prisoners sentenced to death or life imprisonment and awaiting appeal. The Special Rapporteur was received by Superintendent of Prisons Nelson Abeydheera, ASP of Prison C.M.N. Chandrasekera, and Chief Jailer T.I. Uduwara.

66. On the day of the Special Rapporteur's visit the high-security wing was temporarily occupied by 83 Muslim detainees in order to allow them to observe Ramadan. According to the prisoners they are fully allowed to practise their religious beliefs, participate in sports activities which take place on Sundays for two to three hours, and receive visitors once a month. Twice a week there is the possibility to take English, Sinhalese and Tamil language lessons. Many detainees described that they were generally well-treated within the prison and reserved their allegations of torture and ill-treatment to circumstances surrounding their arrest and interrogation by the police. Methods of torture described by the detainees included: plastic bags placed over their heads containing chilli powder or petrol; being suspended from bound hands; subjected to the "parrot's perch"; struck with a baton against a book placed on the head; and being exposed to electric shock. Many other detainees reported about routine corporal punishment in the prison, usually at the Location Branch. The officers accused of beating detainees were Mr. Rohetha, Nihal, Palita, Mutubanda and Kalugampitiya. Mr. Nihal was reported to be the most brutal one. During an inspection of the Location Branch, the Special Rapporteur found most of the tools allegedly used for corporal punishment; a plastic pipe; wooden sticks and cricket bats. When the latter confronted the Chief Jailer and the ASP with these serious allegations, both admitted that corporal punishment takes place. Two of the most severely punished prisoners, Mr. Vanni and Pradeep Nishanta, had recently been transferred to Welikada and Mahara Prison, respectively. The Special Rapporteur later visited Mr. Jayantha Kulasinghe (also known as Vanni Sutha) at Welikada Prison in Colombo and could corroborate the allegations with medical evidence. He was informed by the Government that use of corporal punishment at Bogambara Prison will be subjected to a special investigation.

67. **M.M. Pashme**, aged 22, Jaella, Colombo area. On 6 March 2005, around 5 p.m., he was arrested on suspicion of possession of heroin. He was forced into a police jeep, kicked in the chest by a constable, and driven to Kandana Police Station. Around 8.30 p.m., during interrogation by the OIC (Inspector of Police) and two constables in the Crime Branch Office, he was handcuffed and ordered to stand against a wall. He was questioned about the heroin with vulgar language, threatened that he should tell the truth, beaten all over his body with a T-56 rifle and a wooden baton, and slapped by the OIC over the course of two hours. He was struck with a baton at his knee, and later had difficulty walking as a result. He was forced to lie face down on a bench and two wooden batons were pressed behind his knees and on his neck. He was then brought back to his cell for a short while, but taken out again after midnight to the interrogation room where he was forced by three constables to sign a typewritten statement with his fingerprints. The following day he was produced before a magistrate, but could not report the ill-treatment as he was escorted by the police. He was subsequently transferred to Bogambara Prison where he stayed for 28 days. After that he spent 30 months in Welikada Prison in

Colombo and following a dispute with a prison guard he was transferred back to Bogambara Prison on 14 September 2007. He alleges that Mr. Bandara, a prison guard in Bogambara Prison, slaps and sometimes beats prisoners with a stick. He himself was beaten by him because he was wearing a Muslim cap. He expressed his wish to go back to Welikada Prison in order to be able to see his family more often, since they cannot afford the travel expenses to come to see him in Kandy.

68. **S. Laffer**, aged 21, Kinniya, Trincomalee. On 26 April 2007, he was arrested in Trincomalee on suspicion of theft of a gold chain and taken to China Bay Police Station, where he was interrogated by an inspector of police, a superintendent and a constable in the Crime Branch Office. Stripped to his underwear, he was forced to lie face down on the floor, and was handcuffed with his arms behind his back. He was beaten with a rubber stick of 50 cm in length on his head and on the soles of his feet in order to extract a confession. He was questioned where he obtained the chain, and threatened that he should tell the truth. Sitting on the floor and handcuffed under his knees, he was beaten on his back as well as kicked in the legs. The beatings continued for over a period of two hours. The following day, he was produced before a magistrate who upon seeing his injuries and being told of the treatment by the detainee, told the police to bring him to a hospital. At the hospital the detainee, who was handcuffed throughout the examination, received medical treatment in the presence of the police officer. The police kept the medical report. After the examination the detainee was brought to Trincomalee Prison where he stayed for one month. No allegation was made regarding ill-treatment in the prison. He later spent two weeks in Anuradhapura Prison before he was transferred to Bogambara Prison at the beginning of August 2007. He reported that in Bogambara Prison, the prison guard Mr. Rohetha (B-wing) is known for beating Tamil and Muslim prisoners with an iron bar. He himself was beaten by the officer on 5 August 2007. The beatings by Mr. Rohetha take place in the open space close to the laundry, behind the showers. Mr. Rohetha tells the prisoner to kneel down with his hands behind his back and then beats them. He has not reported the ill-treatment to the Chief Jailer because he is afraid of reprisals.

69. **Mohammed Nisar**, aged 26, Trincomalee. On 3 August 2007, he was arrested on Jawalay Road on suspicion of heroin possession. He was taken to Trincomalee Police Station and interrogated in the Crime Branch Office by four constables and one sergeant around 5 p.m. He was threatened that he should tell the truth about the heroin. During the questioning he struck a constable, and the police beat him. He reported that they forced him to sit with his legs outstretched on the floor, one constable held his arms, while another used a razor to cut him on his left arm and chest. He was later handcuffed behind his back and his head was forced under a table and he was beaten for 30 minutes until he fell unconscious. The next morning he was woken and forced to sign a prepared statement, and taken to the hospital for treatment. The police kept the medical report. On 7 August, he was taken to a magistrate and not given a chance to speak except to plead guilty or not guilty. The judge saw his injuries but did not say anything. Initially taken to Trincomalee Prison, where he stayed for 20 days, he was then transferred to Anuradhapura Prison, where he remained for 10 days, and then came to Bogambara Prison. He reported that he has been well-treated in the prison. On examination by the accompanying forensic doctor multiple thin linear scars, both old and healing, were present over the left arm and chest most prominently to the anterior aspect of the left forearm. The scars were mostly parallel and of generally uniform width suggesting that they had been inflicted by repeatedly running a sharp edge over the skin surface to produce shallow cut wounds. The overall pattern of injuries was strongly suggestive of self-infliction and on direct questioning the detainee stated

that he was right handed. When asked to reconstruct the position in which he claimed to be at the time the injuries were inflicted by a police officer standing in front of him with himself seated on the ground it was apparent that the backs but not the fronts of the forearms would have been exposed to any potential assault. For these reasons it was concluded that the injuries were self inflicted and that this allegation was false.

70. **Detainee.** Recently, he had to spend three days in the punishment cell. Before he was brought to the cell he was beaten with knotted electric cables by two prison guards. He received six strokes on his back by one of the guards in the prison kitchen and five strokes by the other guard in the office. The beatings were witnessed by other detainees. Afterwards he could not sit down or go to the toilet because of the pain. He reported that corporal punishment happened on a regular basis. One detainee named Vanni Sutha had recently been beaten severely and the marks on his back would still be clearly visible. He reported that sometimes the guards punish detainees for no reason and sometimes people get locked into the punishment cells for weeks. All detainees have to work in the mornings and evenings, regardless of whether they are physically fit. Inter-prisoner violence was common but the guards never intervened.

71. **Detainee.** During his time in the punishment cell he was only given mouldy smelling rice and vegetables. About three months ago, he was beaten by two guards in the office where a sign says "Location Branch". The officers beat him with a cricket bat and a fan-belt on the soles of his feet, his calves and on his head. They wanted him to tell them that another officer smuggled tobacco into the prison but he did not say anything. He was beaten for approximately 20 minutes. Later he was locked into the "measurement" cell, where normally Muslim detainees conduct their fasting. After one month in the measurement cell he was released and after an inquiry, he was sent to the punishment cell. He reported that sometimes detainees get beaten heavily and are severely injured. They are either released or sent to another prison. Five days ago, a detainee named Vanni Sutha had been beaten heavily with a fan belt.

72. **Detainee.** Across the right and left upper back, right flank and back of the right shoulder were multiple linear hyper-pigmented scars each 10 cm or more long and with occasional scars showing a "rail track" appearance indicative of a blow from a linear object with a circular cross sectional shape such as a stick or cabling. The appearance of the injuries was consistent with alleged beating or beatings some months or more previously. He reported that another detainee had been badly beaten recently and was sent to the hospital. One detainee had been beaten for one hour and his leg was severely injured. He had been transferred to Mahara Prison. Another detainee named Jayantha Kulasinghe (Vanni Sutha) had been beaten on 28 or 29 September because he had called the prison guard "Sir" in addition to his rank (detainees are not allowed to call guards by their ranks). Vanni Sutha was transferred to Welikada Prison. The names of the guards who were punishing detainees were Nimal, Palitha, Mutubanda and Kalugamitiya. He reported that these officers were specifically brought to the prison in order to beat detainees.

73. **Detainee.** He was beaten in December 2006, and on this occasion, while other prisoners were holding him down a guard beat him with a black wire of a thickness of one's thumb. Another guard beat him with a baton and when he raised his handcuffed arms in order to protect himself the guard broke his arm with the baton.

74. On the day of the visit, one mentally ill man was held in a cell without any natural or artificial light. He has been on death row for 11 years.

75. Of the full complement of seven prison doctors, two, who had worked at the prison for three and four years respectively, were available for interview. Both doctors reported that they were required to ask all new detainee arrivals whether they had been assaulted by the police and they complied with this instruction. The detainees were able to reply freely and if there was an allegation then they were examined and injuries were documented. The majority of allegations were of beatings with batons and cables, suspension from the ceiling sometimes with suspension upside down (reverse butchery) and beatings to the soles of the feet (*falaqa*), and crushing of the fingers with blows. There were on average about 20 detainee admissions per day and it was their impression that a detainee with visible injuries was seen every two to three days. There had been no noticeable change in the number or pattern of injuries seen over the past three to four years. The problem appeared to be a general one with the police and there were no specific geographic areas or sections of the police force responsible. Neither did the physical abuse appear to be related to specific crimes except that persons accused of rape were invariably assaulted by the police. Review of prisoner admission forms between 12 August 2007 and 19 September 2007 identified six cases of new detainees with injuries attributable to assaults with three of the cases specifically alleging assault by the police. For example, File No. 1264/07 recorded an assault by Kandy police on the night of 1 September 2007, using a cane pole and there was physical evidence of bruising over the left shoulder. File No. 1244/07 recorded an assault by the police three days previously with evidence of bruises over the back, the right leg, the right heel and the sole of the right foot. File No. 1145/07 recorded an assault by police at Wattegama Police Station on 10 August 2007 at 10 a.m. using a pole to beat the head. On examination there were abrasions to the left side of the face, swelling of the left cheek and a small laceration.

76. At the debriefing prison officials indicated that no complaints of ill-treatment were received from courts, or human rights organizations, or the Red Cross. However, it was pointed out by the Special Rapporteur that a high number of different prisoners indicated with consistent accounts identities of perpetrators, locations, and how and with what instruments the beatings were carried out. There was much evidence provided which could not be merely dismissed with denials. Chief Jailer T.I. Uduwara told the Special Rapporteur that sometimes the guards beat detainees if they have done something wrong. He admitted that he had received many complaints against the guards mentioned by the Special Rapporteur. However, he insisted that there was a likelihood that “the prisoners have done something wrong if we beat them”. ASP Chandrasekera confirmed the statements of the Chief Jailer. The ASP undertook to take appropriate action.

77. The Special Rapporteur recommends that prompt and independent investigations of all allegations of the beatings and other ill-treatment be carried out. Those responsible including the named alleged perpetrators Mr. Rohetha, Nihal, Palita, Mutubanda and Kalugampitiya as well as the Chief Jailer and the Prison Management should be suspended and brought to justice.

XVI. CRIMINAL INVESTIGATION DEPARTMENT (CID), COLOMBO

(Visited on 6 October 2007)

78. The Special Rapporteur was received by the CID Director, Senior Superintendent of Police, Nimal Kulatunga, Inspector Senartne, and Sub-Inspector Jayawardene. He and his delegation had to wait for almost an hour to get access to the fourth and sixth floors. During this

period, much activity was going on but the Special Rapporteur has no evidence that detainees were being hidden from him. In any case, it was obvious that the detainees were being informed about the visit and possibly received instructions about how to behave.

79. The day of the visit, there were a total of 21 detainees; 11 persons were detained on the fourth floor and there were 10 detainees on the sixth floor. The conditions of detention were appalling. On the fourth floor, some prisoners were detained in cells and others were, due to the lack of sufficient space, kept in normal offices where they had to sleep on desks. During the day these detainees had to sit in a waiting room under the surveillance of an officer. The detention area on the sixth floor consists of one large room with several small cage-like cells lining the wall. The 10 detainees are able to remain outside the cells. Washing facilities are accessible from the room. There is no natural light or fresh air in the room.

80. Many of the detainees did not wish to speak to the Special Rapporteur out of fear of possible reprisals. Some other detainees requested absolute confidentiality. In general, the Special Rapporteur received many allegations of torture and ill-treatment of detainees by CID officers before and during his visit, primarily of persons suspected of terrorist activities (e.g. the case of Nicholas Stephen at the TID, whose torture at the CID was corroborated by medical evidence; see paragraph 10 above).

Fourth floor

81. **E.S. Dharmappriya**, a soldier. On 2 June 2007, he was arrested and held under a detention order for suspected kidnappings of wealthy individuals. He spent one and a half months on the sixth floor of CID. Then he was brought to the fourth floor. During the daytime when the office where he sleeps is used by CID officials, he remains in a rest room. At night he is brought to the office and has to sleep on the desk. He is questioned at least twice a week and sometimes every day. He reported that he had not been beaten or threatened. Families of detainees can visit every Thursday and Saturday.

82. **Nishantha Gajanapake**, aged 40. On 20 June 2007, he was called on his mobile and summoned to come to a bus stop in Gampa where CID officers picked him up and brought him directly to CID in Colombo. He was suspected of being responsible for a number of abductions. He had served in the Sri Lankan Air Force and was later suspected to be a member of the Karuna group. One of his comrades is now a State witness against him. He is held on a three-month detention order. After he was brought to Colombo he was questioned almost every day for one month but now the inquiries appear to be over. The interrogations were conducted in a friendly manner. He complained that the food the detainees received was of poor quality. He is afraid of getting out of detention because he feels he is a target for different groups. He reported that CID agents expected the visit of the Special Rapporteur. They had even painted the walls for the visit.

83. **Chammeera Daladawatta**, aged 35. On 26 June 2007, he was arrested. Previously, he was working as personal security officer of TID and was ordered by his superiors to collaborate with the Karuna group in 2005 and 2006. He reported that this is now being held against him. At the beginning of his detention, he was questioned every third day but he did not confess to anything.

For one and a half months he has not been questioned further. He felt that because he was a police officer he was treated well by the CID officers. In general, he thought that people were treated better in CID than in other places, such as TID or police stations. He is afraid of getting out of detention because he feels he is a target for different groups.

84. **H.M. Anura Bandarai**, aged 35, a lorry driver, Colombo. On 12 May 2007, he was stopped in Vavuniya and found to be transporting TV sets in which the LTTE had hidden explosives. He was arrested and taken to the police station where he spent two days before he was brought to CID. He does not have complaints against the officers.

85. **Wijewickrama Manamperige Sampath Prethi Viraj**, aged 30. He is a soldier of the Sri Lankan Army. On 2 July 2007 he was summoned to CID where he was arrested. First, he was detained on the sixth floor, where he was bitten by a rat. He was also slapped in the face by a police officer on the sixth floor. The CID officers told him that he was going to be detained for one year. On 8 August, he was moved to the fourth floor. He is not allowed to leave his cell and can only talk to the detainee next to him. He wept often as he was distressed and wanted to get out.

86. **Rasaiya Devarasa**, aged 33. He has been detained in CID since 1 June 2007. He comes from the Vanni area and his family visited him three times so far. In June, he was beaten with a wooden baton on his soles as well as on his stomach, and was handcuffed in a very uncomfortable position. This ill-treatment went on three times per day for 15 to 20 minutes.

87. **Nimantha Anura Bandara Ekanayake**, aged 26. He was arrested in the north of the country on 12 May 2007 and had to stay in the police station until 14 May 2007, before he was transferred to CID. So far, he has only been interrogated once. He has not been beaten. He was brought before court three times but no one spoke to him there.

88. **Vairamuththu Jayachandran**, aged 56. He has been detained in CID since 22 June 2007. He was first arrested in Hong Kong in 2002. So far, he had been visited by the ICRC three times.

89. **Liyanaarachchige Abeyratne**, aged 37. On 17 September 2007 he was summoned to CID, where he was arrested. He is held under a detention order for 90 days. He had no complaints regarding his treatment.

Sixth floor

90. **Jayasuriga**, aged 36. On 11 November 2006, he was arrested in Badulla because he had rented out his house to a Tamil who had apparently used his motor bike for the assassination of a minister. He was brought from his house directly to CID, where he was interrogated before being put in a cell. He is under a detention order and has spent almost one year in CID. He initially stayed on the fourth floor and then was moved to the sixth floor. He has not been interrogated for nine months but then the questioning started again. He reported that he had no complaints regarding his treatment.

91. The Special Rapporteur recommends that allegations of torture at CID be thoroughly investigated and that detainees of CID be relocated to proper detention facilities.

XVII. WELIKADA PRISON, COLOMBO

(Visited on 2 and 7 October 2007)

92. The Welikada Prison, although the biggest prison in Sri Lanka, is in principle well kept. In 2006, the institution counted a total of 16,487 prisoners out of which 3,600 were in pretrial detention and 12,887 were convicted. In the wing where persons condemned to death are detained the Special Rapporteur found poor hygienic conditions and rat infestation. The Prison Director showed a very cooperative attitude to the Special Rapporteur.

93. During his first visit, the Special Rapporteur spoke to a few persons who were on death row. The prisoners made no allegation of ill-treatment. On 7 October 2007, the Special Rapporteur interviewed only one person.

94. **R.K.G. Jayantha Kulasinghe** (also known as Vanni Sutha), aged 45. On 27 September 2007, he was asking officer Nimal in Bogambara Prison for soap. Because he had called him "Sir, officer", Nimal took him to the "location" branch and beat him. Detainees are expected to address the guards as, among other things, "reverend priest". He reported that the family of the person he had killed in Kandy a number of years ago bribed Nimal to beat him every now and then for no reason. First, Nimal slapped him on the right ear with his flat hand so that his hearing is still impaired. He did not bleed from the ear but felt dizzy. Then he was brought to the corner of the office which is called "location". Nimal has his desk there. It was 11 a.m. and many officers were sitting and working in the office, among them also senior officers. Nimal said, "You must learn how to speak to officers. We are the bosses and we can do what we want." Other detainees were ordered to hold him down while Nimal was beating him on the knees with a baton. He then had to stand spread-eagled against the wall while Nimal was beating him with a thumb-thick knotted electric cable on his back. After each blow Nimal straightened the cable again. After 10 blows he could not stand the pain anymore and sat down. He begged Nimal not to beat him anymore but he continued. In order to protect his face he raised his arms. More than 100 detainees were watching the scene through the office window. Nimal shouted dirty words about his mother at him, ordered him to kneel, apologize to the officers, and demanded that he worship him. When he did as he was ordered Nimal stopped the beating. He told him to go to the prison doctor. His shirt was soaked with blood and torn from the ill-treatment. Already on 30 August he had been ill-treated by the same guard. Normally he is detained in Colombo but because he has also a case in Kandy he was brought to Bogambara Prison for 14 days. After he had complained of the beatings he was transferred back to Colombo. He had shown the marks of the beatings to a judge who had told him to complain to Bogambara's Chief Jailer. He complained four times but nothing happened. The Chief Jailer told him that he had nothing to do with this. He was not brought to the doctor, and treated the wounds by himself with tea.

In Colombo he had not shown the torture marks to anyone because he was afraid of being brought back to Bogambara. He has to present himself to the court in Kandy on 5 February 2008 and is frightened of being detained in Bogambara Prison again. He made no complaints regarding his treatment in Welikada Prison. On examination by the forensic doctor there were five fresh linear healing injuries to the back all aligned horizontally. The largest lesion was a 30 by 1 cm “rail track” lesion. Below this was a 10 by 0.5 cm linear area of freshly developing scarring with puckering of the margins. Over the lumbar area of the lower back were three horizontal parallel broader areas of scabbing and developing scarring two of which were 15 by 1.5 cm and one of which was 8 by 2 cm. There were corresponding freshly repaired tears approximately 3 and 8 cm in length to the shirt. Over the back of the right forearm just below the elbow was a horizontal linear healing lightly scabbed injury. The pattern of injuries was indicative of a beating to the back using a linear object with a circular cross sectional shape while the victim was relatively immobile but at one point sustaining a defensive type injury when raising the right arm for protection. The age of the injuries as assessed from the degree of healing was consistent with the time frame alleged and the pattern of injuries was very strongly corroborative of the circumstances of infliction alleged.

95. The Prison Director promised that Mr. R.K.G. Jayantha Kulasinghe would get medical treatment and not be transferred back to Bogambara Prison. In addition, he explained that he will initiate an investigation regarding the case.

XVIII. NEW MAGAZINE PRISON (FEMALE WARD), COLOMBO

(Visited on 7 October 2007)

96. On the day of the visit, the New Magazine Prison had an inmate population of 626 prisoners, of which 189 were convicted prisoners, 408 were on remand, 25 were on appeal for life and death sentences, and four were being held as LTTE suspects. Thirty-three children were also held together with their mothers in the prison, including 17 boys and 16 girls. The female ward is very well kept and clean. There is a very well equipped “day care” for the children of the prisoners. However, the pretrial detention wing is heavily overcrowded. The Special Rapporteur’s delegation was received by Chief Jailer Kumari Rathnaweera.

97. **Detainees, female.** In May 2007, the two sisters were arrested on suspicion of membership in the LTTE. Both women were questioned in a police station by male officers and asked to sign a statement in Sinhalese. Though no violence was used they were subjected to vulgar language. They were transferred to Boosa the next day where they remained for four months. At Boosa, they were again interrogated. They signed statements out of fear without knowing what they were signing because it was in Sinhalese. They were later transferred with all the women to TID in Colombo, where they stayed for two days, and then to Magazine Prison in Colombo on 1 October 2007. Neither woman made allegations regarding ill-treatment in detention.

98. **M.W.R.**, aged 20. She was transferred from Boosa TID Detention Centre together with the sisters, above. She was arrested (together with her mother) at her house near Batticaloa and taken to Kalmunai Police Station on 9 September 2007. While her mother was released she was kept in custody at the police station until 19 September 2007 and then transferred to Boosa TID Detention Centre. She made no allegations, but was very scared.

XIX. COLOMBO REMAND PRISON

(Visited on 7 October 2007)

99. The Colombo Remand Prison is a very old institution and the conditions of detention are appalling: the institution is extremely overcrowded and prisoners are detained in poor hygienic conditions. On the day of the visit there were a total of 1,552 detainees. Ninety persons were convicted, 1,332 persons were in pretrial detention and 130 persons were detained under the Emergency Regulations. Eighty-five of them were detained in the G Ward, which is a special ward for LTTE suspects. Due to a lack of space 45 other suspects were detained in the I Ward.

100. The Special Rapporteur interviewed detainees that were transferred from Boosa Camp shortly before his visit. Most of them requested their names not to be cited in the report.

101. Twenty-one detainees (17 Tamils and 4 Sinhalese) were questioned on what forms of torture and ill-treatment they had to endure. Seventeen were beaten with batons or sticks; 13 were handcuffed in an uncomfortable position; 10 were subjected to the “parrot’s perch” and were lifted in this position; 2 were suspended by their thumbs for 15 and 30 minutes respectively (in Trincomalee and Jaffna army camps); 6 were hung upside-down with their legs bound together; 10 had a plastic bag with petrol put over their head; 3 had a stick inserted into their penis; 3 had gasoline poured over their penis; 1 had his penis tied and pulled; 4 were held in a “strappado” position on the ground; 11 were subjected to “*falaqa*”; 4 had their penis squeezed in a drawer; 10 were beaten on their joints (knees, elbows and shoulders); 1 was burned with a soldering iron; 12 were beaten on their ears, of which 8 still had problems hearing; 7 were beaten on the top of their heads; 1 was beaten with a gun on his stomach; 8 were threatened with a gun; 1 was fired at with a gun; 2 had blood in their urine; and 13 were kneed in their sides (kidneys).

102. **Thavaraja Kokilakrihnan.** On 30 March 2007, he was summoned to Therekivil Police Station and arrested. He was held there for three days. The first day, he was taken into a small room and beaten by eight police officers with cricket stumps and cricket batons. Then he was handcuffed behind his back and his feet were tied together. A bag filled with petrol was pulled over his head for about six minutes and he was beaten on his ears. Later he was suspended naked with a nylon rope around the handcuffs and hands to a fan on the ceiling and beaten for 20 minutes. During this time, he was raised and lowered to the ceiling several times. The second day he was beaten. On the third day, he was ordered by a policeman to run away and told that he would be shot in the back as he ran away. The detainee was forced to sign a statement in Sinhalese which he did not understand. Superintendent Karunathilake and Sergeant Peremunage were involved in the torture and ill-treatment. After three days he was transferred to Ampara Police Station/Crime Branch where he stayed for one month. Three constables from the Crime Branch used to get drunk during the night-time, and regularly took him out of his cell and beat him with a police baton and cricket stumps on his back. He was usually handcuffed during the beatings. On 1 May 2007, he was transferred to Boosa TID Detention Centre where he stayed until early October before being transferred to Colombo Remand Prison, shortly before the Special Rapporteur’s visit.

103. **Kendemarakilega Anura Silva**, aged 23. He was arrested by the police on 28 March 2007 at 4 p.m. in Ampara and was brought to Ampara Police Station where he was detained for one month and five days. Then he was transferred to Thirukovil Police Station. The police officers brought him to the kitchen in order to hide him from his relatives. He was blindfolded, handcuffed behind his back and shackled. A rope was bound around his body on which he was suspended. He was beaten with cricket batons all over his body. After the beatings he was seated and tied to the window. Two police officers, SI Karunatileka and Kaluarachchi, said that they were going to prove that he was a member of the LTTE. They heated a flat metal bar, which was approximately as long as an arm and thick as a finger, with which he was burned on his legs. His wife later informed the ICRC. A representative came five days later and spoke to him in private. He told her of the torture and she promised to come back after three days. In the meantime, officer Karunatileka threatened him not to complain to her again. In May he was brought to Boosa. Officer Nishanta at Boosa claimed that the burning marks were in fact bullet wounds and accused him of being a member of the LTTE. In the following three months he was tortured and beaten in regular intervals. One night in July, three drunken policemen tortured him with a soldering iron. He still has two dozen burning marks on his chest. One of the policemen was Nishanta, the others were called Nanyakkara and Silva. Forensic evidence corroborated his allegations.

104. The Special Rapporteur recommends that Mr. Kendemarakilega Anura Silva, who was extremely depressive and suicidal during the interview, receive proper medical and psychiatric rehabilitation and be released.

105. **Detainees, male.** The two detainees reported to the Special Rapporteur that they were suspended by their thumbs in the respective army camps where they were held. After their description of the ill-treatment, the forensic doctor examined their thumbs, which in one case showed thin linear scarring consistent with suspension by wire as alleged. Both described very severe pain on suspension and loss of consciousness from pain, with apparent dislocation of the thumb joints. Both gave similar accounts of the physical effects of the alleged ill-treatment on their ability to use their thumbs for such day-to-day activities as eating and holding drink containers. On examination six and three months, respectively, after the events, both displayed weakness of the thumbs in pinching and gripping movements but no weakness of the other digits, and both complained of the continuing practical effects of this on day-to-day life.
