

JOINT ALTERNATIVE REPORT
From the Sri Lankan NGO Collective to the
Committee Against Torture

13th October 2016

ABBREVIATIONS

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

Table of Contents

ABBREVIATIONS	2
<u>1. INTRODUCTION</u>	<u>4</u>
<u>2. CONTEXT</u>	<u>4</u>
<u>3. DEFINITION OF TORTURE (ARTICLES 1 AND 4)</u>	<u>5</u>
<u>4. WIDESPREAD USE OF TORTURE AND ILL-TREATMENT</u>	<u>6</u>
DEPLOYMENT OF MILITARY AGAINST CIVILIANS	7
MASS GRAVE INVESTIGATIONS	8
<u>5. LACK OF LEGAL SAFEGUARDS, LEGISLATIVE, ADMINISTRATIVE, JUDICIAL OR OTHER MEASURES TO PREVENT ACTS OF TORTURE</u>	<u>9</u>
ANTI-TERRORISM LAWS	9
JURISDICTION OF THE SUPREME COURT	10
WITNESS AND VICTIM PROTECTION	10
JUDICIAL SUPERVISION OF DETAINEES AND VICTIMS	11
ROLE OF JUDICIAL MEDICAL OFFICERS	12
CONDITIONS IN PRISONS AND DETENTION	13
ACCESS TO LEGAL COUNSEL	15
THE OFFICE OF THE ATTORNEY GENERAL	16
INVESTIGATIONS OF DEATHS IN CUSTODY	17
<u>6. ENFORCED DISAPPEARANCES</u>	<u>17</u>
<u>7. VIOLENCE AGAINST WOMEN, INCLUDING SEXUAL VIOLENCE</u>	<u>18</u>
<u>8. EDUCATION AND INFORMATION REGARDING PROHIBITION OF TORTURE (ARTICLES 10)</u>	<u>19</u>
<u>9. COMPENSATION TO AND REHABILITATION FOR VICTIMS OF TORTURE (ARTICLE 14)</u>	<u>20</u>
<u>10. OVERALL OBSERVATIONS ON THE STATE PARTY REPORT</u>	<u>21</u>
<u>DESCRIPTION OF ORGANIZATIONS INVOLVED IN COMPILING THIS REPORT</u>	<u>23</u>
<u>LIST OF OF ANNEXURES</u>	<u>27</u>

1. Introduction

- 1.0 GoSL submitted its 5th periodic report, due in 2012, in October 2015 (CAT/C/LKA/5) to the Committee against Torture. The State report covers the period December 2011 to October 2015 and responds to the Concluding Observations made by the Committee (CAT/C/LKA/CO/3-4).
- 1.1 This alternative report is jointly submitted to the Committee against Torture (“the Committee”) by civil society organisations in Sri Lanka in response to the State Party Report (CAT/C/LKA/5). This report is authored and compiled jointly by several non-governmental organisations actively working to promote and protect human rights in all parts of Sri Lanka and some of these organisations have been active for over three decades. Some of these organizations have been specifically involved in addressing issues of disappearances and impunity since 1989. (See Annexure 1: Description of organizations)
- 1.2 The 5th periodic report of GoSL (CAT/C/LKA/5) was submitted in December 2015 under the new government elected in August 2015. It is significant to note that the new government elected under a mandate of good governance, anti-corruption and transparency in January 2015 had been in power for a short period of time at the time of the preparation of the 5th periodic report. A significant portion of the period under review (November 2011 – October 2015) reflects the activities, actions and policies of the previous regime led by former President Mahinda Rajapaksa.
- 1.3 This report aims to be constructive in that it focusses on the context in the period under review and reports against the commitments made by the new government in responding to this context. This report leaves a margin of appreciation for the fact that the new government has undertaken the mammoth task of addressing the human rights situation in Sri Lanka. This report nevertheless is firmly rooted in the fact that freedom from torture is a non derogable right, and any trespass of this right must be addressed by the government with immediacy and proportionate response so as to underscore their commitment to protecting one of the most basic human rights.
- 1.4 This report does not cover the aspects of the accountability and transitional justice process which address concerns relating to torture in the context of the war, international humanitarian law and special domestic mechanisms to address large scale violence. While this is a significant part of the human rights discourse in the country, this report focuses on the ordinary law and deep seated tolerance within particularly law enforcement of the practice of torture.

2. Context

- 2.1 A protracted civil war of 26 years between government forces and the LTTE inflicted devastating consequences at a human, social, and institutional level. In May 2009, a military victory declared by the Sri Lankan Government saw the end of the war.
- 2.2 In the wake of the military victory, the Government of Sri Lanka under the leadership of then President Mahinda Rajapaksha engaged in a consolidation of power.
- 2.3 In September 2010, constitutional reform was rushed through Parliament (18th Amendment to the Constitution), which among other things, effectively removed the two term limit on the Executive Presidency, thereby solidifying the president’s power over the Attorney-General, judiciary and various “independent” commissions. The president was conferred unfettered powers to make all key public service appointments. The diminished independency of almost all the constitutional commissions (including the Human Rights Commission and the National Police Commission) further contributed to weakening legal safeguards against any human rights

violations including torture. The 18th Amendment to the Constitution was heralded as consolidation of dynastic power and authoritarianism.

- 2.4 Between 2009 and 2014, the Government of Sri Lanka failed to address the need for accountability and reconciliation. It was seen to be hostile to freedom of expression and restricted the space for key domestic and international stakeholders to engage in human rights, peacebuilding and reconciliation. Strengthened military presence in the North and East of Sri Lanka continued to disrupt rebuilding of civilian life and posed a serious threat to security. Enforced disappearances and attacks against dissident voices continued.
- 2.5 In January 2015 a new president was elected to office. The election was won on a mandate for good governance and expectations for a change in the culture of governance ran high. To further consolidate the mandate of good governance, in August 2015, the people of Sri Lanka elected a new government. A minority party leader (TNA) was appointed Leader of the Opposition.
- 2.6 On 15th May 2015, the 19th Amendment to the Constitution was passed in Parliament. It restored the term limits of the presidency, reinstated the Constitutional Council which led to the appointment of independent constitutional commissions, including the Human Rights Commission and the National Police Commission.
- 2.7 Of the many programmes undertaken or launched by the new government, the Committee's attention is drawn to the following as having relevance to this report. (a) the enactment of the Assistance to and Protection of Victims of Crime and Witnesses in January 2015, (b) the enactment of the Right to Information Act in August 2016, (c) the enactment of the Office of Missing Persons Act in August 2016, (d) the commencement of a process to develop a National Action Plan on Human Rights 2017-2021.
- 2.8 Similarly some disturbing trends and continuing concerns relevant for this report are (a) the continued denial by the government that torture, particularly by the police, is prevalent, (b) the continued delay on the part of institutions to respond to complaints, investigate and punish torture, (c) the rise in number of instances of violence against women, (d) the continued operation of the Prevention of Terrorism Act of 1979 and, (e) the newly proposed amendment to the Criminal Procedure Code limiting the right to legal representation for a suspect to after a statement has been recorded.

3. Definition of Torture (Articles 1 and 4)

- 3.0 Sri Lanka follows a dualist tradition with respect to international law and as such requires domestic legislation to ratify any specific international legal instruments. The domestic legislation criminalizing torture and other cruel, inhuman or degrading treatment or punishment was passed in 1994.¹
- 3.1 This legislation defines torture to include both physical and mental torture; however, no Sri Lankan case has so far been instituted on grounds of mental torture. Civil society members compiling this report have not come across a single prosecution based on mental torture. It is noteworthy that the current format of the Medico-Legal Form which documents the medical situation of any given torture victim does not provide for an assessment of the psychological impact of torture.
- 3.2 In a case before the Court of Appeal of Sri Lanka², it was alarming to note that the Attorney General's Department made oral submissions to Court to the effect that criminal actions on

¹ *The Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994*

² CA Writ Application 375/2015

torture are instituted only in instances when torture was alleged to have been used to extract information. This is a very narrow interpretation and there is no means by which to verify that whether this is an interpretation adopted by the Department towards all torture cases received.

4. Widespread use of torture and ill-treatment

- 4.0 Despite the passing of domestic legislation in line with the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1994 incidents of torture are being reported from all over the country. The claim of the State Party that the reported number of incidents of torture have significantly decrease is vehemently rejected. In fact the number of reported incidents have increased.
- 4.1 Following his visit to Sri Lanka on 13th May 2016, the UN Special Rapporteur on Torture³ reports the existence of widespread use of torture in Sri Lanka, mainly as a part and parcel of police investigations. He further reports that the practice of interrogation under physical and mental coercion and severe forms of torture continue to be used. It was noted that apart from a circular to police officers, the GoSL has not taken any recent steps to prevent such practices, nor shown any interest to apprehend and prosecute those who are engaged in the practice. Also noted was the existing impunity for both old and new torture cases.
- 4.2 The report submitted by the GoSL, (CAT/C/LKA/5), states that there were only 3 reported cases of torture in 2014. Information made available by the Human Rights Commission of Sri Lanka (HRCSL) to the Right to Life Human Rights Centre (R2L), states that the Commission alone received 481 complaints regarding incidents of torture during the year of 2014 (see Annexure 2). The Right to Life Human Rights Centre has also recorded information of more than 200 incidents of torture since 2011, which clearly contradicts the statistics given in the report submitted by the GoSL. This clearly demonstrates that the GoSL has deliberately misled or has been severely remiss in ascertaining the number of reported cases of torture in Sri Lanka. The GoSL report specifically states that information relating to number of cases was ascertained from the Police Department. It is strikingly noticeable that the Police Department fails to receive complaints of torture, which means none of the complaints that are lodged with the HRCSL are subjected to a police investigation for the purpose of prosecuting the offence. This also highlights the serious gap of an effective public complaints mechanism when it comes to complaints relating to torture.
- 4.3 Similarly the Human Rights Watch report of October 2015, indicates widespread police torture and custodial abuse against criminal suspects, especially to obtain confessions or other information to facilitate convictions. The report further pointed out severe emotional and psychological distress to victims as a result of abuse. The report has observed existence of methods of torture including use of electric shock, suspension from ropes and rubbing chilli paste in the genitals and eyes.
- 4.4 In the years 2014 and 2015 the Supreme Court of Sri Lanka delivered two judgments in which a finding of torture was made. As of September 2016, the Supreme Court had delivered 7 judgments which found that a citizen's right to be free from torture had been violated by officers of the Sri Lanka Police.
- 4.5 The State report which states that only 3 cases of alleged torture were reported against the police in 2014, completely fails to account for 5 Fundamental rights applications which were lodged in the Supreme Court alleging torture. In 2015, 12 such cases had been instituted.

³ Preliminary Observations and Recommendations of the UN Special Rapporteur Juan E. Mendez dated 7th May 2016

- 4.6 The forms of torture alleged against the Sri Lankan Police range from verbal abuse and harassment⁴ to numerous forms of physical violence such as slapping and kicking⁵, assaulting with clubs and iron bars⁶, hitting the head on the floor or against the wall⁷, plunging the head into water and harassing⁸ etc. In addition, many incidents of extreme forms of torture, cruel, inhuman and degrading treatment inflicted by police whilst in custody have been reported in the recent past⁹. In a recently decided FR case¹⁰ the petitioner, whilst in the custody of Police, had sustained acid burns on his face which left one of his eyes permanently blind. Even after the acid attack, despite him shouting in pain, he had been kept in custody without being taken to a hospital. In another FR application¹¹ before the Supreme Court, it transpired that a 15 year old boy had been brutally ill-treated both mentally and physically including causing harm to his genital region. Moreover, he had not been provided with any meals whilst in the custody of the police.
- 4.7 Excessive torture inflicted during questioning has resulted in custodial deaths¹². In a recently instituted FR action¹³ it was revealed that the deceased had suffered chest pains after being brutally assaulted by the Police. However, he had not been taken to hospital which resulted in his death whilst in the custody.
- 4.8 There have been 28 deaths in custody documented by one non governmental organization for the period under review.

Deployment of military against civilians

- 4.9 On 01st August 2013, Army soldiers of the 58th Division and commando regiments launched an armed attack on unarmed civilians protesting against the pollution of drinking water by release of acid from a factory in Rathupaswala, a village in Weliveriya in the Western Province of Sri Lanka. The military first removed media personnel away from the area by force before shooting at civilians. Following the shooting, 3 civilians were killed and more than 30 were injured. K.A. Akila Dinesh Jayawardena, a 17-year-old boy, Sunanda Perera and D. D. Siriwardena were killed during the attack.¹⁴
- 4.10 On May 30th 2011 the employees of the Katunayake Free Trade Zone launched a protest against a proposal making it mandatory to contribute to a pension scheme targeting all employees in the private sector. A protestor named Roshen Chanaka was killed and 270 Free Trade Zone employees were hospitalised following indiscriminate shooting by the police.¹⁵ About 500 workers complained to the HRCSL regarding the assault by the police.
- 4.11 On 9th November 2012, the Army and Special Task Force (STF) were deployed to overpower a group of prisoners at the Welikada Prison. The government claimed that the prisoners were terrorist suspects. 27 prisoners were killed while 43 were injured during this attack. The incident was subject to investigation by the Committee of Inquiry into the Prison Incident 2012 (CIPI) which was appointed in early 2015 by the Minister of Justice, and it

⁴ SC(FR) 298/2015, SC(FR) 578/2011, SC(FR) 158/2008

⁵ SC(FR) 138/2008, SC(FR) 158/2008, SC(FR) 260/2011

⁶ SC(FR) 515/2009, SC(FR) 158/2006, SC(FR) 59/2014, SC(FR) 298/2015

⁷ SC(FR) 158/2008, SC(FR) 138/2008

⁸ SC(FR) 138/2008

⁹ SC(FR) 159/2014, SC(FR) 44/2015, SC(FR) 85/2015

¹⁰ SC(FR) 26/2009

¹¹ SC(FR) 578/2011

¹² SC(FR) 157/2014, SC(FR) 85/2015

¹³ SC(FR) 157/2014

¹⁴ <http://srilankabrief.org/2013/08/at-least-three-more-persons-dead-in-hospital-but-govt-not-releasing-full-details-of-casualties-in-weliveriya-army-attack/>

¹⁵ http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=55992

released its report in June 2015. The report recommends *fresh criminal investigations of matters that have not been taken into consideration with a special focus on alleged violations corresponding to torture and matters that constitute an offence under S. 162 of the Penal Code*. It was recommended that investigations be conducted by a special team under the supervision of the IGP.

- 4.12 De-mining agencies have found evidence of the use of cluster bombs during aerial attacks in parts of the country close to sites where fighting took place in late 2008 and early 2009. Halo Trust, a de-mining organization in the former war-zone has reported that it had found 42 cluster munitions in several sites around the Pachchilapalli area, in the Kilinochchi District, in 2011 and 2012. These findings lead to the presumption that the Sri Lankan Air Force used these cluster bombs in the civil war, which are prohibited under international law.¹⁶

Mass grave investigations

- 4.13 A number of mass graves have been discovered in Sri Lanka, the most recent and that being relevant to this report are the sites found in Matale, Mannar and Kalavanchikudy.
- 4.14 In Sri Lanka at present, Magistrates are not provided with any training or support, and have no recourse to expert advice on how exhumations of this nature, particularly mass graves with skeletal remains demonstrating signs of torture or murder must be conducted, how the remains must be preserved for purposes of identification and especially in a reconciliation context, to understand that identified human remains will be returned to families or relatives for cremation, burial or other rites.
- 4.15 In the Matale mass grave case, which commenced in November 2012, Prof. Raj Somadeva, a forensic archaeologist conducted the excavation and exhumed 155 skeletal remains found at the grave site. The detailed report of the forensic archaeologist was able to make observations such as signs of torture, probable cause of death and approximate time period within which the grave site was created. There was strong evidence that the grave was a result of state acts (mainly by the military) against political dissidents during the late 1980s. On 24th July 2015, the Magistrate decided to suspend the case with regard to the Matale mass grave until recommendations are submitted by the Attorney General or a senior police officer. The recommendations are to be based on a finding of whether a crime has been committed. The lawyers representing the aggrieved parties made submissions against the suspension of the inquiry¹⁷. This case has been suspended to date regardless of the serious nature of the offences – torture and extra-judicial killings – that have been uncovered.

¹⁶ http://www.lankanewspapers.com/news/2016/6/98398_space.html

¹⁷ Reported on 25th July 2015 by Lanka Truth Website found at http://www.lankatruth.com/home/index.php?option=com_content&view=article&id=8895:audio-case-on-matale-mass-grave-discontinued&catid=42:smartphones&Itemid=74 and Hiru news website found at <http://www.hirunews.lk/113756/hearing-matale-mass-grave-case-suspended>

5. Lack of legal safeguards, legislative, administrative, judicial or other measures to prevent acts of torture

Anti-Terrorism Laws

- 5.1. The Prevention of Terrorism Act No. 48 of 1979 continues to be in force despite the fact that the civil war and terrorism came to an end in 2009.
- 5.2. It is a generally accepted principle that a person, who is arrested and/or detained by the State, should have access to court and be able to challenge his or her arrest and/or detention. It is also an accepted norm that only a judicial officer should have the power and authority to deny freedom of movement of a person by ordering detention of an individual. However, the existence of certain provisions of the Prevention of Terrorism Act No. 48 of 1979 frequently deny this right of detainees in Sri Lanka.
- 5.3. As admitted in Paragraph 25 of the State party report, a person arrested on allegations under this Act could be detained for an extended period of up to 18 months on Detention Orders issued by the Minister of Defence (an executive office). It is noted that a Magistrate does not have the power to release such a detainee on bail (Section 19 of PTA). The Act further provides that such detention orders shall not be questioned in any court (section 10 of PTA)¹⁸. The Supreme Court has determined otherwise in a number of cases, stating that the Supreme Court can hear and determine lawfulness of such detentions. However in practice, there is much deference by Courts to the decisions of the Executive regarding detentions. There are no judgments of either the Supreme Court (considering fundamental rights applications) or any Magistrate Court (reviewing the extension of the period of detention of the detainee) which consider reasons given by the Executive on grounds for prolonged detention.
- 5.4. The fact that under the PTA, a person could be held in detention without being produced in court for up to 3 months after the arrest, creates an environment in which suspects could be subjected to torture, or degrading and inhuman treatment for the purpose of extracting information.
- 5.5. Detainees held under the PTA are prevented from challenging their detention by also limiting their access to lawyers most of the times. At times permission needs to be sought in advance before a lawyer is able to visit his client. Detainees must also be able to get word out to their families for them to secure the services of a lawyer. Most of the time legal representation is not made accessible to detainees as a matter of regular procedure.
- 5.6. The following statements in the GOSL report cannot be traced to any publicly available law, gazette notification or regulation. In any event it is noted that the following standards are not practiced as arresting officers fail to furnish a list of detainees to the Magistrate and Magistrates do not routinely visit remand prisons.
 - *The arresting officer must issue a document informing the spouse, father, mother or other close relative of the detainee of the arrest. The document must contain the name and the rank of the arresting officer, the time and date of arrest and the place at which the person will be detained or held in custody (Regulation 18(8)).*
 - *Every arresting officer must report an arrest made under Regulation 18 within 24 hours to a superior officer (Regulation 18(7)).*

¹⁸ “An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.”

- *Every officer in charge of a detention camp is obliged to furnish the magistrate every fortnight a list of detainees held by him. The Magistrate is obliged to post this list on the court notice board and to visit the camp every month (Regulation 19 (6)).*
- *As per existing legislation, all Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates.*

5.7. Although it is stated that officers in charge of detention camps should furnish a list of detainees held under the PTA to the relevant Magistrate every fortnight, and that Magistrates are obliged to post this list on the court notice board (Regulation 19 (6) - See Annexure 3) this is not practiced.

5.8. The ordinary law standards and procedure for trial are deviated under the PTA. Section 17 of the PTA removes general safeguards for suspects by specifically stating that sections 25, 26 and 30 of the Evidence Ordinance shall not be applicable to these suspects (Section 17 of the PTA).¹⁹ These provisions make any statement given to the police inadmissible as evidence. Hence the statement in the State report “....leading evidence, etc., is the normal procedure applicable in any criminal case” (Paragraph 26 of the GOSL report) is clearly false and misleading. This was also evident in the High Court trial of Nallarathnam Singarasa in 1994²⁰.

Jurisdiction of the Supreme Court

5.9. The Constitution of Sri Lanka by Article 126 (2) curtails the ability of the Court to entertain Fundamental Rights applications by prescribing a complaint after 30 days has lapsed from date of the violation.

5.10. A study of judgments delivered in Fundamental Rights cases in which torture was alleged, demonstrates that the majority of the applications are objected on the ground of the lapse of the 30 day time bar²¹. The Supreme Court, in most instances, have dismissed this objection provided a complaint has been made to the Human Rights Commission within one month of the alleged incident²². However this still means that the victim must lodge a complaint within the system within one month if the Supreme Court is to entertain the case. This highly prohibitive legal provision ensures that many complaints fail to be reported or recorded by the legal system. The legal system also fails to acknowledge the practical realities faced by victims who have to overcome threats, threat of reprisal and other difficulties before lodging complaints.

Witness and Victim Protection

5.11. Despite the introduction of the new legislation on witness and victim protection²³ in 2015, the situation of witnesses and victims has not changed significantly. The government is yet to allocate funds to establish the administrative framework necessary to implement the provisions of this Act.

5.12. The law on witness protection is envisaged to be carried out through the Police Department. As a large number of complaints of torture are against police themselves, the lack of measures or mechanisms to ensure impartiality of the witness and victim protection programme and its immunity from any kind of possible interference does not address the serious issue of the lack of confidence in the legal system.

¹⁹ “Notwithstanding anything to the contrary in any other law, the provisions of sections 25, 26 and 30 of the Evidence Ordinance shall have no application in any proceedings under this Act”

²⁰ H.C. Colombo Case No: 6825/94

²¹ SC(FR) 26/2009, SC(FR) 260/2011

²² SC(FR) 26/2009, SC(FR) 260/2011, and also SC(FR) 555/2009, SC(FR)138/2008, SC(FR) 158/2008

²³ *Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of. 2015*

Judicial supervision of detainees and victims

- 5.13. *Habeas corpus* applications in Sri Lanka continue to be prone to delays and have failed as an effective and immediate remedy. These applications are heard in the Court of Appeal and Provincial High Courts and these courts then refer the matter to the Magistrate's Court of the relevant area. It is the process of inquiry, in most cases, that drags on before the Magistrate's Court. The *Habeas corpus* application regarding the disappearance of Prageeth Ekneligoda, a journalist who disappeared in January 2010, was first taken up in the Magistrate's Court only on 10th June 2011. This case is still pending and information continues to be unearthed even as at 2015. The lack of effective and immediate orders has relegated this remedy to a futile mechanism for redress. It creates a pattern of ineffective inquiry and supervision over complaints of unlawful detention and disappearance, and thereby heightens the risk of torture to persons so detained.
- 5.14. Fundamental Rights applications before the Supreme Court of Sri Lanka is not accessible due to a variety of prohibitive factors: high cost of litigation, lack of effective legal aid and technical barriers to the Court entertaining complaints. Article 126 (2) of the Constitution of Sri Lanka states that any Fundamental Rights application (including cases of torture) should be filed within a period of one month (30 days) of the violation. Human rights defenders have continuously pointed out that this period is not sufficient to prepare an application for court. This is particularly relevant to torture cases where victims are under medical treatment, often going through post-incident trauma, and seek legal remedies after a reasonable delay. In cases of police torture, it has also been noticed that victims lay low without making any complaints so as not to attract reprisals against themselves or their families.
- 5.15. One remedy offered by the Human Rights Commission of Sri Lanka, Act No. 21 of 1996 to avoid prescription, is to file an application before the HRCSL. This allows the HRCSL to have an inquiry into the matter at the first instance and take appropriate remedies. However delays at the HRCSL, difficulties for the HRCSL to secure police witnesses or relevant information (police records etc.) have proved that this forum too has been ineffective in hearing out and helping victims.
- 5.16. More alarmingly in two recent cases, where applications were filed on allegations of torture, the present Chief Justice has indicated his unwillingness to follow this rule, emphasising the requirement of filing an action before the Supreme Court within 30 days, as prescribed by the Constitution.
- 5.17. As of practice it appears that Magistrates heed to requests of police officers to keep suspects in remand custody, without exercising their discretion to evaluate if there is a *prima facie* case against the suspect. The Supreme Court of Sri Lanka has once stated that Magistrates should not issue remand orders 'to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor.'²⁴ However, it is often found that Magistrates accept the version submitted by the police and remand suspects at the request of the police. This practice is abused by the police to persecute individuals on personal grudges or due to political or other influence. There are allegations that police arrest and produce innocent individuals in court when they simply fail to apprehend real culprits.
- 5.18. Magistrates fail to routinely observe basic internationally recognized standards of inquiring from suspects produced by the police, if they have been tortured.
- 5.19. The Human Rights Commission (HRCSL) needs to be informed about detainees who are detained according to the powers given to the police under the PTA, if these detainees are being transferred from one detention centre to another.

²⁴ *Mahanama Tillakaratne Vs. Bandula Wickramasinghe, 1999 1 Sri L.R 372 at pg.382*

Role of Judicial Medical Officers

- 5.20. Judicial Medical Officers (JMOs) are supposed to examine victims of torture and produce reports indicating if they have been tortured or not. The JMOs have not adopted or adapted any part of internationally binding standards of the Istanbul Protocol toward documenting complaints of torture. There have been few complaints of JMOs colluding with the local police. In any event, once a JMO documents a complaint of torture, the Medico Legal Form is returned to the police and the victim is usually believed not to have a right to request for a copy of the report. This practice is in contravention to the duty of care owed to victim. It also places the victim at further risk if the perpetrators are in fact the local police. Most significantly the fact that a complaint of torture has been received by a public officer appears to go no further than sharing a copy of the complaint with the respective local police. This complaint does not initiate disciplinary or criminal investigations against the alleged perpetrators.
- 5.21. As a result of JMO reports not being made available to the victim, the victim has to apply through Court to access such reports. It is noted that the victims should be able to subject themselves to a medical examination and get a report directly from the Medical Officer.
- 5.22. It is also noted that all the detainees are not examined by JMOs and it is recommended to make the JMO examinations a routine part of the procedure.
- 5.23. Reports issued by JMOs were questioned in the Magistrate's Court action on the death of Wasim Thajudeen, a rugby player, who was killed on 17th May 2012. Initial JMO reports indicated that the death was due to a motor accident, despite allegations that a son of a politician was considered a possible suspect. In August 2015, after the Rajapaksa regime was overthrown, the Magistrate ordered an exhumation of the body and a fresh JMO report. The new chief JMO who was asked to conduct a post mortem confirmed that death was due to murder and the possibility of a traffic accident causing death has been excluded. The Sri Lankan Medical Council is currently conducting a disciplinary inquiry against the JMOs who conducted the first autopsy.²⁵
- 5.24. On 4th January 2016 Suminth Prasanna Jayawardhana (29) died following an assault by a group of police officers, including the Assistant Superintendent of Police of the area. He was pushed off a two-storey building. His wife was present at the scene and witnessed the torture and killing. The initial JMO report indicated that the death of the deceased was due to multiple injuries and due to excessive bleeding. The report further indicated that the body of the deceased did not show any signs of a falling. These observations were contradictory to accounts given by eye-witnesses, including the wife of the deceased, who has clearly seen the suspect police officer torturing her husband, and pushing him off the building. The Magistrate, being unsatisfied with the first JMO report, ordered a second JMO report on the death. On 15th March 2016 the body of the deceased was exhumed for examination. The second report issued by the JMOs stated almost the same reasons for death, indicating that the reason for death was excessive bleeding, but failed to state any evidence of a fall from the top of the building. The JMO report further stated that the deceased might have landed with his legs, which indicated a voluntary jump from the building. Both JMO reports failed to state any evidence of torture and non-voluntary fall from the building. This incident highlights the question of impartiality and competence of medical reports in cases involving torture and extra judicial killings.
- 5.25. Although Paragraph 60 of the report of the GoSL states that all patients who have been subjected to medico legal examination have a right to get a Medico Legal Report, a patient does not receive a copy of the report of his own medico legal examination. In one Supreme

²⁵ <http://www.asianmirror.lk/news/item/16494-thajudeen-murder-ex-jmo-in-hot-water-over-first-autopsy>

Court case²⁶ leave to proceed was not granted against the JMO who had failed to give a copy of the medical report to the Petitioner who had made a written request for it through his lawyers.

- 5.26. Several organizations working with victims of torture report that it is common practice for the medical report to be refused and that victims are informed instead that the report could only be obtained by filing an action in courts and pleading as part of the case for a direction calling for a copy of the report. A victim may not know of the contents of the report of the JMO unless and until he/ she files an action in court. The uncertainty with which the victim is compelled to file action is another matter of concern as litigation costs are high and there is no means of evaluating the case at hand before litigating.
- 5.27. According to the 2005 health planning report there were 65 cadre position identified to be filled by consultant JMOs by 2015. However, only 32 positions were filled. Currently (in 2016) there are only 2 JMOs for the entire Northern Province and only 3 for the Eastern Province. Other base hospitals have a Medical Officer Medico Legal (MOML) who has received 1 months training to cover the work of a JMO. Sometimes they work under the direct supervision of a JMO. This is mainly because the field of Forensic Medicine is neither attractive nor lucrative in Sri Lanka and only few young medical graduates take up this as their career.
- 5.28. There is a serious lack of forensic psychologists in the country. There have been no forensic psychologists in the country so far and only this year (2016) two individuals have been recruited. Currently there is a forensic psychology clinic once a week at the Colombo JMO Office. Currently there is no practice of documenting the psychological impact of torture of victims/ complainants.
- 5.29. A new Medico Legal Report (MLR) developed by the College of Forensic Pathologists of Sri Lanka with the FRC and with funding from the European Union is used to refer when preparing MLR for torture survivors, and includes a psychological assessment. All JMOs and MoML of Western province were given a copy of the guideline by the College of Forensic Pathologists which is used to prepare a MLR for a torture survivor. (See Annexure 3). Currently FRC is carrying out a series of training programmes for lawyers and doctors on using of this Medico Legal Report.

Conditions in Prisons and Detention

- 5.30. Prison overcrowding is a major issue of concern in Sri Lankan prisons and the GoSL has failed to mention this in their report to the Committee. There is a lack of places to sleep and not enough infrastructures to support the overwhelming number of prisoners. In the prison of Vavuniya, the UN Special Rapporteur on Torture noted that there is only 0.6 square meters of space per prisoner available. Therefore, the government is requested to take action regarding these appalling conditions and address the issue.
- 5.31. There is information suggesting that torture is rampant inside prisons, carried out both by prison officers and the inmates. The government is responsible for prisoners in their custody and should take steps to stop inmates from harassing other inmates. Under these circumstances a simple imprisonment can be regarded as cruel, inhuman and degrading treatment.
- 5.32. Prison doctors are graduate doctors coming under the supervision of the Ministry of Health (MoH). There is also a Director, Prison Health that functions within the same Ministry. Prison doctors have not received any specialized training in the management of torture survivors. These doctors continue to be neglected for training and capacity building. It is

²⁶ SC FR 194/2012

only recently that a training was conducted for prison doctors for the first time by the College of Forensic Pathologists of Sri Lanka working with the ICRC.

- 5.33. In cases of torture within prisons the prison doctor cannot send a victim of torture to a JMO directly for examination. The doctor has to obtain permission from the prison management, after which the respective case will be called up before the Magistrate and the Magistrate will be requested to make an order to the respective prison to present the prisoner to the JMO. In most instances, when the prison doctor recommends referring a victim to a JMO the prison does not give permission. The prison hospital too is reluctant to send its inmates to a JMO for examination when recommended by the prison doctor. According to the Prison's Ordinance, prison officials are not bound to carry out doctor's instructions. Hence there is a great delay in referring suspected victims of torture to a JMO for a medico legal examination. Sometimes these cases do not get referred at all. In addition, a JMO cannot visit a prison to check on the wellbeing of its inmates as there is no such system.
- 5.34. In November 2012, 27 inmates of the Welikada Prison in Colombo were killed and 43 persons have also been reported as injured following a shooting by the army and the Special Task Force (STF) allegedly in an attempt to overpower a riot. According to accounts of eye-witnesses, the Commissioner General of Prisons was seen inside the prison immediately after the incident, and therefore, it is believed that he is aware of army officers being present inside the prison during the massacre.
- 5.34.1. According to two available Certificates of Deaths, cause of death is due to shooting. However, one indicated that shooting was from afar, while eyewitnesses affirmed that all victims were shot at close range. No person has so far been arrested or charged before courts.
- 5.34.2. After the new government came into power on 8th January 2015, families of those killed, witnesses and other interested parties have urged the government to take steps against those who were involved in this incident. However no action has so far been initiated.
- 5.34.3. Sudesh Nandimal Silva, an inmate at the time of the incident, who had witnessed the above incident, is facing threats by various groups. He had reported that he was being followed by unknown persons. One such vehicle -a black coloured jeep (model Pajero with number 62-0761) was found to belong to the Police Narcotics Bureau. He lodged a complaint on 17th March 2015 with the Maligawatta Police station (under CIB I 148/146).²⁷ No action has been taken so far.
- 5.35. Prison conditions need immediate attention to ensure that prisoners are not treated in a cruel, degrading or inhuman manner.
- 5.35.1. The meals given to prisoners lack nutrition. In addition, there are health issues faced by detainees in remand prisons and prisoners when consuming food brought by family members and relatives, which are contaminated during the inspection of food. Jailors and other officials do not follow a proper methodology for such inspections.
- 5.35.2. Monthly visiting hours at the female wards, especially the Welikada Prison, are a traumatic experience for inmates as well as family and friends due to the lack of space as well as less than conducive environment for meaningful interaction.

²⁷ <https://www.colombotelegraph.com/index.php/committee-for-protecting-rights-of-prisoners-accuses-yahapalanaya-of-granting-impunity-for-welikada-shooting-culprits/>

- 5.35.3. There is also a lack of medical facilities and there are no recreational activities available for the prisoners. The detention center of the TID has no proper ventilation for the detainees. Low standard in prison hospitals and severe shortage of medicinal drugs in prison hospitals, insufficient hospital staff necessary for diagnosing and treating prisoners, lack of medical attention and treatment for HIV patients are also issues that need to be addressed. Furthermore, the lack of training to identify and report on sexual violence is a serious point to be taken into consideration.
- 5.36. Transport of children by prison officers to court or the JMO should change and this duty should be taken up by the probation office. Minors can be accommodated in their mothers' prison cells. There is no effective system whereby children can be produced before a psychiatrist within 24 hours of detention.
- 5.37. A majority of police officers are unaware of the provisions of the Police Department Order E7 regarding the treatment of a mentally disabled person inside the prison cell or police department. This has often led to the mistreatment of these individuals.
- 5.38. Overcrowding of prisons due to long sentences and long periods of detention (sometimes lasting as long as 15 years) before a case is resolved.
- 5.39. Sri Lanka Prison's Ordinance is not implemented as it does provide for the movement of prisoners to temporary shelters in certain conditions, including if "the number of prisoners in any prison is greater that can conveniently or safely be kept therein".
- 5.40. Prisoners lack opportunities of holidays at home. Release of prisoners for work purposes lawfully afforded to long term prisoners by Section 40 of the Prisons Ordinance is not being carried out. The Supreme Court and the Court of Appeal has affirmed this by its judgments but they are not properly enforced by the Prisons Department.
- 5.41. Though the HRCSL is authorized to visit detention centres, they often cite the lack of resources as a reason for its failure to conduct visits to detention centres to address issues of torture and to respond effectively to emergency situations. However it must be noted that the HRCSL, although empowered to do so, has also failed to authorize any other persons or groups who are available to conduct such visits.
- 5.42. There is no established mechanism for registration of all detainees. Although there are regulations to publish a list of detainees under the PTA, this is also not practiced as mentioned above.

Access to legal counsel

- 5.43. There is no effective legal aid system to assist victims. Legal Aid Commission provides legal assistance to persons whose income level may not exceed Rs. 8,000/= per month. This income limit incapacitates many of the population to access legal aid.
- 5.44. Lawyers who attempt to visit detainees held under the PTA are frequently denied meeting them, preventing the right of legal counsel. Lawyers have limitations in meeting suspects held by the CID and the TID, and if they are permitted, such permission is not granted immediately after the arrest.
- 5.45. The government has proposed an amendment to Section 37 of the Criminal Procedure Code (Bill proposing the amendment was issued on 15th of August 2016 as a supplement to the Gazette of 12th August 2016), which explicitly states that a suspect will only be able to access a lawyer after his or her statement is recorded by the police. This amendment regresses the current situation in which suspects are able to access lawyers at any stage. This measure also runs completely contrary to the need for positive legislation to enshrine a right to legal representation and moreover legal aid.

- 5.46. The Bill has been criticized by the Human Rights Commission of Sri Lanka (HRCSL), the BAR Association of Sri Lanka (BASL) and several civil society organisations.

The Office of the Attorney General

- 5.47. Under local legislation on torture (Act No. 22 of 1994), the main legal actor in charge of prosecution in cases of torture, is the Attorney General's Department. After the 18th Amendment to the Constitution in 2010, the Department was taken under the control of the President, weakening its independency, undermining any possibility of impartial process of decision making in criminal allegations including torture. This was reversed only in 2015, by the 19th Amendment to the Constitution.
- 5.48. The Attorney General's Department, is responsible for criminal prosecution on behalf of the State in cases of torture under local legislation. It appears from the cases cited in the GoSL report to the Committee that the Department fails to consider if prosecution can also be pursued under Act No. 22 of 1994, for torture. Instead, only ordinary criminal law sanctions are pursued in terms of the penal code. In fact, an action was filed in the Court of Appeal of Sri Lanka (CA Writ No. 375/2015) against the Attorney General for not taking action under this law where there is clear evidence of allegations of torture. The local legislation against torture has thus become almost an inactive law, as State authorities have failed and continuously neglected to enforce the said legislation.
- 5.49. In the aforesaid petition (CA Writ No. 375/2015) filed by one Kanda Udage Mallika against the Attorney General to compel him to take action under the Act No. 22 of 1994, the Court of Appeal, among other things, observed that the decision to pursue ordinary criminal sanctions was properly and completely within the discretion of the Attorney General. The case was dismissed. (See Annexure 4). It is alarming that the zero-tolerance policy asserted by the GoSL at international fora has no significance whatsoever to administrative, executive or judicial mechanisms in country.
- 5.50. Another concern is the conflict of interest that lies in the office of the AG. The office is vested with powers of prosecution (which includes cases under the CAT Act of 1994) and is also noticed and expected to defend officers of State in Fundamental Rights applications. A practice that appears to have been adopted by the office is to refrain from providing legal representation to officers against whom torture has been alleged. However during the hearing of Fundamental Rights applications before the Supreme Court, it has been observed that the involvement of the officer representing the office of Attorney General has been to either make submissions protecting the officers against whom torture has been alleged, to draw the Court's attention to high burden that the Petitioner (complainant/ victims) must discharge in the case or to refrain from participating in a material manner in the case. All the positions taken benefit the Respondents (the persons against whom torture has been alleged). Senior officers are defended on the basis that they were not directly involved in acts of torture. This also means that there is no incentive for senior officers to actively take preventive or remedial measures against torture.
- 5.51. The conflict of interest of being the legal representative of the State and also prosecuting cases of torture, has diminished the effectiveness of the AG's office in addressing the issues of torture.
- 5.52. It is also known that a special unit within the AG's department that was created immediately after the Torture Act of 1994 came into effect, for processing complaints or cases involving torture, is no longer functional.

Investigations of deaths in custody

- 5.53. The response to cases of death in custody has been extremely slow. In the case of Nimal Chandrasiri Dasanayake²⁸, death occurred on 15th April 2012, and one of the complaints was made to the National Police Commission in July 2012 and to date there has been no information provided to the victim's family as to what steps are being taken against the alleged perpetrators. This has compelled the family of the victim to pursue a writ action in 2015 against the National Police Commission asking simply that the complaint be investigated. The delay of over 3 years to commence an investigation is unacceptable.
- 5.54. Death in custody is investigated under chapter 33 of the Code of Criminal Procedure Code (CrPC) Act. Certain elements of this chapter in the CPC on investigations into sudden deaths lack a proper system to investigate deaths in custody. Presently discussions are on-going between the Ministry of Justice, JMOs and the AGs Department to change the investigation system of death in custody. The guidelines to investigate death in custody have not yet been amended so that death in custody can be investigated according to International standards namely the Minnesota Protocol and on the ICRC documents on investigating death in custody.
- 5.55. Police still continue to enjoy impunity in the reported 5 cases of custodial death due to excessive use of force by police which occurred between 2011 and 2015. (See Annexure 1)

Investigation and Disciplinary Action

- 5.56. The several non governmental organizations compiling this report state that there is no transparency in respect of the policy relating disciplinary action that will be meted out to state officials found guilty of torture.
- 5.57. While temporarily police officers are transferred out of the police station to which they were attached at the time the incident of torture is alleged to have taken place, there is no information provided to the complainant about the outcome of any internal disciplinary inquiry or the disciplinary action that has been taken against officers who are found to have in fact engaged in acts of torture.
- 5.58. It is noteworthy that the culture of impunity is very strong and there is little interest in pursuing strict disciplinary action even when there is a finding of torture. For example in SCFR 521/2012, Objections dated February 2014 filed by the Deputy Inspector of Police for Anuradhapura and Pollonnaruwa plainly states that it was decided not to pursue on 'humanitarian grounds' any investigation and disciplinary action against a police constable who was alleged to have committed torture. (See Annexure 5)

6. Enforced Disappearances

- 6.0 GoSL has signed the International Convention for the Protection of All Persons from Enforced Disappearance. However, no domestic legislation to enforce the convention has been passed by the Sri Lankan legislature thus far.
- 6.1 Enforced disappearances were very common during the previous regime, however *"Alarming, cases of abductions continue to be reported, with at least 10 cases reported between 30th March and 30th June this year. At least two of those who disappeared have not*

²⁸ CA Writ 473/2015

returned, despite complaints to the Police and Human Rights Commission. Some have been reported to have been found in Police or remand custody after being abducted".²⁹

7. Violence against women, including sexual violence

- 7.1 Violence against women is a serious concern in Sri Lanka. In response to this concern the current Prime Minister, while holding the office of Leader of the Opposition appointed a high level Committee to study the situation and make recommendations to address the situation.
- 7.2 The key issues are the lack of law enforcement, effective prosecution and punishment of offenders and the resultant impunity.
- 7.3 It is noteworthy that marital rape continues not to be recognized as an offence under Sri Lankan law.
- 7.4 Further, the Supreme Court decision in S. C. Reference 03/2008 held that the minimum sentence of 10 years imprisonment for the offence of statutory rape could be waived and if the High Court deemed it was appropriate even a suspended sentence could be imposed. The Supreme Court held *"as far as Section 364(2)(e) of the Penal Code is concerned, the High Court has been prevented from imposing a sentence that it feels is appropriate in the exercise of its judicial discretion due to the minimum mandatory punishment prescribed in Section 364(2)(e). Having regard to the nature of the offence and the severity of the minimum mandatory sentence in Section 364(2)(e) is in conflict with Articles 4(c), 11 and 12(1) of the Constitution."*
- 7.5 In C.A. Appeal No. 87/2008 (High Court case number HC Kandy Case No. 193/2003)³⁰ the Court held *"In the present case, we must look at the big picture with the victim of rape the Appellant, the father of the child born, and the 10 year- old girl child who was born into this world as a result of the victim having been raped. The victim of rape never complained to the Police until after a pregnancy of 5 months when Police on its own came to the victim in search of her when an outsider informed the Police of her missing from home. There was no chance for the victim to give evidence as the Appellant pleaded guilty to the charge of statutory rape of the victim. There is a bar for the victim and the Appellant to enter into a marriage as the Appellant is already legally married to the victim's sister who is living abroad. The child is being looked after by the Appellant father in the eyes of the society, and the child is dependent on the income earned by the Appellant. In these circumstances I hold that the Learned High Court Judge had correctly imposed a suspended sentence of "2 years RI. suspended for 10 years". I agree with the decision of the Supreme Court in S.C. Reference 03/2008 and uphold the conclusion of that case that the minimum mandatory sentence in Section 364(2)(e) is in conflict with Page 10 Articles 4(c), 11 and 12(1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence."*
- 7.6 The above judgments demonstrate a judicial thinking that fails to be victim centered, and exposes a deep reluctance to punish persons convicted of rape. This reluctance must be

²⁹ Human Rights Situation in Sri Lanka, August 2016 by Inform – Human Rights Documentation Center. Accessed at <https://ihrc.files.wordpress.com/2016/08/human-rights-in-sl-one-year-after-parliamentary-elections-inform-18aug2016.pdf>

³⁰ Accessed at http://www.courtsofappeal.lk/index.php?option=com_phocadownload&view=category&download=3153:ca-hc-872008-y-odhasinghegedara-chandrasoma-vs-hon-attorney-general-hon-vijith-k-malalgoda-pc-pca&id=55:july&Itemid=126&start=20

seen as contributing to the overall environment of impunity. This trend is seen in cases of rape and grave sexual abuse³¹.

7.7 The issue of laws delays is particularly detrimental to cases inquiring into complaints of rape and grave sexual abuse. A decision by the High Court of Kandy on 28th December 2015 was given after fourteen years of trial. The case was called before nine High Court Judges and the prosecution attended to by no less than 16 State Counsels.

7.8 On reason for the delay is the mandatory ‘non summary procedure’ which creates almost two trials – one a preliminary inquiry by the Magistrate to determine if there is a case to be transmitted to the Attorney General for indictment and secondly the trial once indictment is filed against the accused by the Attorney General. This also means that the victim is subject to relating her experience several times over without any mechanism in place for video evidence or measure to limit the emotional and psychological impact of the inquiry or trial process. The requirement of corroborative evidence also contributes to delay in cases of rape and grave sexual abuse.

7.9 There have been several calls from civil society for reform with no response from the GoSL.³²

7.10 In 2015, the Minister in charge of Women’s affairs made a statement to the media that special courts are under consideration for the hearing of rape cases.³³ This is clearly in response to the rising numbers of instances of violence against women. However no measures have been forthcoming since the statement was made.

7.11 Organizations working with the Women and Children’s desk of the Police Department note that the Women and Children’s Desk at Police stations are severely understaffed, under resourced and do not have separate premises. Staff also lack training.

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

8.0 Lack of knowledge, especially among police officers, on prohibition of torture contribute to the continuation of the culture of torture in criminal investigations.

8.1 A series of training programmes for police and prison officers were initiated by the Family Rehabilitation Centre (FRC) in collaboration with Sri Lanka Foundation with funding from the European Union. A training manual was developed and validated by the Prisons Training School and Police Training School. As a first step a Training of Trainers (ToT) programme was carried out for 35 prison and police officers and they have told FRC that despite trainings on laws such as the Act against Torture and Fundamental Rights provisions in the Constitution, that they do not know how to apply these theoretical knowledge in their daily work. Therefore these trainings focussed on imparting non-coercive questioning techniques such as statement analysis, Identification of suspects, interrogation, counselling skills, communication skills and interviewing skills. Further the police and prison officers reported that “It was the first time that police and prison officials were receiving a training together.” They were able to identify each other’s work roles. Most of the participants stated that the skills and knowledge they received were very useful and also stated that if they had these

³¹ HC Ratnapura 139/2013 (in this case compensation was ordered to be given not to the victim but a place of worship) as Court was of the opinion that victim did not deserve it), HC 27/2005 (Convict was a 71 year old man, victim was 8 year old girl. The convict was give a 10 year suspended sentence among other reasons because he was elderly and so that he could live the rest of his life in peace.)

³² <https://thinkworth.wordpress.com/2015/05/28/sri-lankas-rape-culture-justice-must-not-be-delayed/>, <https://www.colombotelegraph.com/index.php/open-letter-to-igp-on-delay-to-act-in-the-case-of-rape/>, http://www.lankapage.com/NewsFiles16/Apr22_1461306759.php,

³³ <http://www.thesundayleader.lk/2015/05/31/special-courts-to-handle-rape-cases-chandrani-bandara/>

skills previously it would have made their work very easy. Consequently approximately 523 junior and senior prison officers and 188 junior police officers were trained by the recipients of the ToT training programme in Anuradhapura, Ampara and Colombo. To ensure sustainability of the training programme, the Prison Training School makes use of a police trainer for their training programmes. The Police Department along with SLF has initiated a training course on Forensic and criminal psychology. The police have also initiated to commence a new degree programme at the University of Kelaniya on Forensic Psychology.

- 8.2 The Prison training school has adopted the training manual for the orientation program – so its sustainable and institutionally mainstreamed and they have trained trainers who have been the recipients of the ToT participants of the ToT training programme. Counselling skills and conflict management skills were added to their training programme as it helps to carry out their duties i.e. talking to a detainee. The Prison Training School requested the psychology and counselling unit of the Sri Lanka Foundation to provide a diploma in counselling.
- 8.3 The Sri Lankan police often resort to torture for extracting information in criminal investigations. This is primarily because of a lack of knowledge and training in modern technologies and investigation methods. It appears that the police considers confessions by way torture as an easy technique for collecting information, rather than seeking assistance of technology. Though a confession made to the police is not *per se* be admissible as evidence in general law, a mere confession is sufficient as evidence against an accused under the PTA. The Attorney General uses such confessions obtained by police as evidence in almost all cases coming under PTA.
- 8.4 Practice of torture by the police cannot be prevented merely by short term trainings on human rights while a culture of torture is rooted in the policing system. The GoSL must make a serious effort to change the existing thinking pattern of police officers by continuous trainings on advanced methods of investigations, while newly recruited police personnel should be prevented from getting accustomed to the existing culture of torture in the Police.
- 8.5 A large number of police personnel were recruited during the war period, especially to assist the previous regime to support military operations. Many did not have the relevant basic qualifications needed to join the police force. These police personnel, who were not properly trained for their civic duties but trained in armed combat, continue to work in police stations around the country without proper training in police duties. With a lack of training in public duties, and having worked in combat zones for military purposes, these police personnel have continued to be deployed without any rehabilitation process.
- E.g. The ASP charged in the Embilipitiya incident (reported in 5.23) was a former STF officer who worked for prolonged periods in the North*
- 8.6 There is a lack of counselling/ psychotherapy services for police officers leading to high levels of frustration. It is also observed that many Police officers are incompetent and lack educational, professional qualifications necessary to engage in criminal investigations in a responsible manner.

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

- 9.0 In many instances the Supreme Court has allowed for settlements of cases involving torture. The award of compensation by the Supreme Court has been insufficient and inconsistent. A study of the judgments delivered by the Supreme Court within the period 2011 – 2016 in cases in which the Petitioner's right to be free from torture was found to be violated demonstrate that Respondents were ordered to pay sums ranging from Rs.

10,000.00³⁴ (USD 69.00) – Rs. 200,000.00(USD 1,373.00) (for being blinded in one eye as a result of the torture)³⁵. The State was ordered to pay in a maximum of Rs. 500,000.00³⁶ (USD 3,430.00) and in the least sum of Rs. 20,000.00³⁷ (USD 137.00).

- 9.1 Another concern is the delay in hearing and disposing of Fundamental Rights applications involving torture. Fundamental Rights applications are filed before the Supreme Court seeking a determination on a balance of probabilities as to whether the rights of the Petitioner guaranteed by the Constitution have been violated. These cases are determined not by the leading of oral evidence subject to cross examination but by evaluating contesting affidavits. Therefore the Constitution directs that such applications be disposed with by the Supreme Court within 2 months. However in a previous judgment by the Supreme Court, it has been determined that the 2 month timeline is not mandatory. For the period under review, a study of judgments by the Supreme Court reveal it takes more than 5 years before a judgment is delivered³⁸.
- 9.2 The Supreme Court also does not compensate illegal arrest, detention and loss of livelihood, especially for political detainees. In Fundamental Rights applications, when the case is taken up for support, the practice is that the AG's Department generally informs the Court that a decision is to be taken soon as to whether indictment will be served or whether the Petitioner can be released. In such situations, the Supreme Court acts as a mediator to settle the issue rather than addressing the violation of Fundamental Rights of the Petitioner.
- 9.3 Political prisoners who are also torture victims, including pregnant mothers, disabled persons and the elderly, are inflicted with diseases due to lack of proper and adequate medical attention, including psychosocial treatment while in detention.
- 9.4 There is no known State sponsored or State initiated programme to assist in the recovery or rehabilitation from torture for victims of torture.

10. Overall observations on the State Party Report

- 10.0 The Report submitted by the GoSL (CAT/C/LKA/5), contains a number of misrepresentations, misleading information and factually incorrect data as demonstrated below.
- 10.1 The examples of prosecutions in cases of torture, as indicated in Paragraph [9] of the State report, do not support the claim of the GoSL that steps have been taken to prosecute law enforcement personnel and members of the military, on torture. It appears that all of these cases were prosecutions under provisions of the penal code and **NOT under the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994**. This only strengthens the claim that Sri Lankan law enforcement and legal machinery fails to recognize blatant cases of torture.
- A Sub Inspector of Police, who was the Officer in Charge of a crimes division of a police station, was indicted under Section 296 of the Penal Code (crime of murder) for the killing of a witness in a pending case (HC Negombo case No. 445/2005 – AG's Ref CR1/96/2005).

³⁴ SC/FR/ 260/2011

³⁵ SC/FR/ 689/2012

³⁶ SC/FR/1006/2009

³⁷ SC/FR/ 260/2011

³⁸ For example- SC(FR)26/2009, SC(FR)138/2008, SC(FR)158/2008, SC(FR)1006/2009, SC(FR)368/2012

- The conviction of four police officers including an Inspector in August 2011 for conspiracy, abduction and murder of two individuals, was also issued under the Penal Code which is the ordinary penal legislation of Sri Lanka.
- The Indictment against a Deputy Inspector General of Police for conspiracy, abduction and murder before the High Court of Colombo is also under the Penal Code of Sri Lanka.
- The Indictment and death penalty by the High Court of Colombo in the case - Attorney General v. Sunil Rathnayake, where an Army Staff Sergeant was found guilty of murdering eight internally displaced persons in Mirusuvil, in December 2000, is also a case that came under the same ordinary penal legislation, and not under the said specific Act against Torture.

10.2 The State report has failed to state whether there have been any prosecutions, or any successful convictions for torture by the police or military personnel in Sri Lanka, under Act No. 22 of 1994.

10.3 It is noted with regret that, though domestic legislation has been passed by the Sri Lankan legislature in 1994 with severe punishments for those who engage in practices of torture, other cruel, inhuman or degrading treatment or punishment, only a handful of cases had been filed under this law during the past 22 years. This report notes that the last known instance of a case being filed under this Act was in 2007.

10.4 It is noted that paragraph 10 and 11 of the State report indicates the existence of a widespread phenomena of torture practiced by the police force in Sri Lanka. Such incidents are so frequent to the extent that, as the State claims, the Inspector General of Police (IGP) was compelled to issue a warning to all officers-in-charge of police stations and give directions that police personnel should not engage in practices of torture or other cruel, inhuman or degrading treatment on suspects while in police custody.

10.5 Recent news reports also demonstrate that the State is now having to acknowledge the mounting numbers of cases of death and torture while in custody of the police. *“As reports of deaths and torture in police custody mounts, Sri Lanka’s Minister of Law and Order has ordered the Police Chief to install CCTV cameras in police detention cells across the country to monitor their activities.”*³⁹

10.6 The information provided by the State Party in Paragraph 12 and in the attached Table I to prove that reported cases of alleged torture attributed to the Sri Lanka Police have declined over the last 4 years, is false and misleading. While indicating a decrease of incidents of torture, the said table (Table I in the State party report) indicates that reported incidents of Torture have decreased down to 3 cases in 2014. The words “reported cases” in the said paragraph carries an ambiguous meaning, while the source of information is the Department of Police. It is unclear if this means cases of torture by police or complaints of which are received by the police itself. In fact, incidents of torture reported by media and reported to human rights organizations including Right to Life (R2L) are over 200 in number, during the 2011 to 2015 period, as elaborated in Annexure 1. This which clearly contradicts the statistics given in the report submitted by the GoSL. The Human Rights Commission (HRCSL) states that they have received 413 complaints on incidents torture within the year of 2015 alone. The HRCSL further states in this report that they have received 53 complaints regarding torture incidents during the first 3 months of 2016, which clearly dismiss the claim of GoSL that incidents of torture have declined.

³⁹ <http://www.ceylonews.com/2016/09/sri-lanka-to-fix-police-with-cctv-cameras-video/> reported on 19th September 2016.

10.7 Incidents referred to in Paragraphs 64 and 65 of the report of the GoSL, are the killings of prisoners inside the two prisons in Welikada and Vavuniya. The state report fails to give any information relating to disciplinary inquiry or prosecutions that resulted from the same.

Description of organizations involved in compiling this report

1. **Right to Life (R2L)** is a human rights organisation established in 2003 focusing their interventions in the area of advocacy, provision of legal aid and networking with similar organisations. The founding members of R2L have a long history of empowering individuals who were deprived of their rights beginning in the 1980s and have continued their work today with the promotion and protection of human rights defenders facing risk in threatened situations, by addressing torture, disappearances and human rights violations. R2L provides legal and counselling services for victims of torture and other human rights violations through the establishment of several Human Rights First Aid Centres in the country.
2. **Center for Human Rights and Development (CHRD)** is a NGO initiated in 1997 by a group of human rights lawyers and activists for the protection and promotion of human rights in Sri Lanka. The objective of CHRD primarily though not exclusively is to ensure protection of human rights of ethnic minorities. CHRD was established during the height of the ethnic war, which counted for enormous human rights violations and abuse against ethnic minorities under the draconian national security laws such as Prevention of Terrorism Act and Emergency Regulations. Specific expertise of CHRD includes legal aid for victims of human rights violations, campaign & advocacy and capacity building & social mobilization of civil society.
3. **International Movement Against All Forms of Discrimination and Racism (IMADR)** is an INGO having special consultative Status with ECOSOC. The headquarters of the organization is based in Japan and through special programmes in Sri Lanka facilitates community training on human rights and women's rights education. IMADR is committed to addressing issues of discrimination and human rights violations arising as a result of persisting racism, casteism and gender.
4. **Centre for Policy Alternatives (CPA)** was formed in the firm belief that there is an urgent need to strengthen institution and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process. The primary role envisaged for the Centre in the field of public policy is a pro-active and interventionary one, aimed at the dissemination and advocacy of policy alternatives for non-violent conflict resolution and democratic governance.
5. **National Fisheries Solidarity (NAFSO)** is a membership based fisher people's organization, working among small scale fisher people in the country, with a membership of 12,000. NAFSO promotes equality, social recognition and human dignity among communities they work in. Their main concerns are; protecting human rights and national resources, reconciliation, ethnic harmony and peace, gender sensitivity, environmental protection, small scale fisheries and sustainable development. The work include people to people dialogue on peace and sustainable development, protecting the rights of communities affected by war including IDPs, women headed families and children.

6. **Families of the Disappeared (FOD)** was formed under the banner “*Kalape Api*” in 1991 to address the killing and disappearance of 12 FTZ workers and to address disappearances that took place during the 1989-1992 period. FOD built “The Monument for the Disappeared” in Seeduwa at the location where a FTZ worker and his legal representative were shot dead on October 27th 1989. FOD continues to be the only organisation conducting a commemoration for disappeared persons annually on this day by mobilising the families of those who disappeared during the 1989-1992 period.
7. **Centre for Peoples Dialogue (CPD)** mainly concentrates on the development of an alternative media culture promoting citizens journalism. CPD publishes a city based newspaper titled Meepura and hosts a regional news website. CPD focuses on issues of peace, democracy and promoting south-south solidarity.
8. **Rights Now-Collective for Democracy** is a non-profit, non-partisan organization established in November 2007 as a collective of human rights defenders and lawyers to promote and protect human rights in Sri Lanka. Rights Now has actively taken part in training, capacity building, advocacy and lobbying activities conducted jointly with traditional and non-traditional human rights defenders in Sri Lanka.
9. **INFORM Documentation Centre** is a human rights documentation and training centre established to monitor, document and report on the human rights situation in Sri Lanka and to produce research papers on the representation of sexuality and sexual rights in popular culture and on feminist connectivity.
10. **National Peace Council of Sri Lanka (NPC)** was established as an independent and impartial national non-government organization in 1995. The formation of the NPC was the culmination of a process that began with a campaign against election violence in July 1994, launched by an inter-religious group of individuals and organizations. In a concerted effort to strengthen public support for a negotiated political settlement, NPC has formulated its mandate to support its activities of advocacy, research, training, mobilization and dialogue, which are aimed at mobilizing the people towards peace and conflict transformation.
11. **Law and Society Trust (LST)** is a legal research and advocacy organisation founded in 1982 by the late Dr. Neelan Tiruchelvam. Its goals are the promotion of legal reforms for access to justice, justiciability of rights, and public accountability. They aim to use rights based strategies in research, documentation and advocacy in order to promote and protect human rights, enhance public accountability and respect for the rule of law. The main activities include legal education and skills training, publications, rights awareness raising, dissemination of information, networking and coalition building at a national and international level.
12. **Family Rehabilitation Centre (FRC)** is a humanitarian, non-governmental, non-profit organisation established in August 1992. FRC works to prevent trauma and carry out rehabilitation of trauma survivors. They works with national and international organizations to advocate issues of national significance and conducts training programmes for police and prison officers on alternative interrogation techniques, forensic psychology, torture etc. They have periodic publications and training programmes on the aspects of effective investigation and documentation of torture using the Istanbul Protocol for medical and legal officers.
13. **Human Rights Office Kandy (HRO)** was incorporated in 1983 as part of the Kandy Diocese and functions under the jurisdictions of the Bishop of Kandy. The HRO provides services for

victims of rape, torture and other serious human rights violations by helping them break the silence. They provide legal assistance, health and trauma counseling etc. In addition, the HRO provides rehabilitation for prisoners and their families and the families of missing persons. HRO carries out periodic educational campaigns for the public on defending the rights of victims and seeking redress for their suffering.

14. **Citizens Committee Gampaha District (CCGD)** works to improve engagement and participation of civil society in activities that encourage people friendly government services and to establish a human friendly Police service. They provide support for victims and their families to speak up and address issues of police torture. CCGD coordinates efforts with other civil society organisation to support victims of police torture and works towards improving a citizen's network that provides support for and speaks up against police torture.
15. **Justice for All (JFA)** is a non-profit organization formed by a group of lawyers and law students, to promote legal literacy among Sri Lankan citizens. They extend legal support in issues relating to human rights violations and public interest. JFA is working closely with the legal community in Sri Lanka to empower people with legal knowledge and awareness through various training programmes. JFA also extends technical assistance and consultancy services on issues relating to the field of human rights at the local and international level.
16. **Rule of Law Forum (RLF)** is a right based, non-profit organization (affiliated to the Asian Human Rights Commission, Hong Kong) established in February 2006. RLF promotes the rule of law in Sri Lanka, carries out information dissemination for the legal community, government and intellectuals and continues to monitor and report on the rule of law situation in Sri Lanka. In addition, RLF intercedes to prevent anticipated or continuing violations of the rule of law in the country. RLF continues to collaborate with national and international organizations to exert pressure on the government to establish the rule of law within the country without any discrimination.
17. **Uva Wellassa Women's Organisation (UWWO)** was established as a not for profit NGO in 1984 by a concerned group of individuals and was registered in 2010 as a legal entity under the Social Service Act at the Wellassa Divisional Secretariat. UWWO began as a group that organised and mobilised the people, including landless peasants, women and agricultural labourers of Wellassa to protest against the allocation of land to multinational corporations to cultivate sugar cane. UWWO functions as a facilitating body that raises consciousness among women on their rights and helps them function as independent community based women's organisations to address their needs.
18. **Uva Shakthi Foundation (USF)** was formed in 1996, as a voluntary organization, initially to address the occasional needs and relief work. USF is dedicated towards social development among rural and plantation sector covering multi-ethnic townships in the Uva region. The organization works to protect rights of Tamil plantation community workers of Indian origin. USF looks at issues concerning neighbouring Sinhala and Muslim communities who reside in rural villages and residential settlements. It also aims to form a comprehensive community network among civil society organisations and public service providers.
19. **Rural Women's Front (RWF)** was established at a symposium of women leaders held in 1988 in Kandy to create a society based on equality and justice through rural women's leadership. They continue to facilitate and contribute to the efforts of rural women to address their social, economic, political, environmental and cultural issues through empowerment in an organized and sustainable manner. It is registered as a voluntary organization under the

Department of Social Services and functions in Walapane, Hanguranketha, Mahiyangana, Galle, Nuwara Eliya, Gampaha and Kurunegala.

20. **Dabindu Collective** is a women's organization established in 1984 in the Free Trade Zone. Their programmes include awareness of women's rights, providing legal aid and counseling for women FTZ workers on labour rights, reproductive health, and reproductive rights. The Collective also supports women workers to work together to form trade unions. They have been working to end the exploitation of labour, especially that of young women workers in FTZs and provide knowledge and education about their human rights etc.

List of Annexures

- I. **Annexure 1** – List of reported cases of torture and deaths in custody as documented by Right to Life, Negombo.
- II. **Annexure 2** - Information made available to the organization Right to Life from the HRCSL, states that the Commission alone received 481 complaints regarding incidents of torture during the year of 2014.
- III. **Annexure 3** – Medico-Legal Report for Alleged Victims of Torture and Torture Survivors.
- IV. **Annexure 4** - Petition and Order dismissing in CA Writ No. 375/2015.
- V. **Annexure 5** – Objections dated February 2014 filed by the Deputy Inspector of Police for Anuradhapura and Polonnaruwa in Case SCFR 521/2012.

Annexure 1

List of reported cases of torture and deaths in custody as documented by Right to Life, Negombo.

No.	Name of victim	Date of incident	Institutions & Officers responsible	Details of torture	Source
1	Madurapulli Arachchige Ruckshan Dhanushka	25/01/20 12	Police officers attached to Hasalaka Police station	Beaten and later wounded with a knife. Victim died after admission to the hospital	Sinhala Language Newspaper Lankadeepa 28/01/2012
2	Sulaiman Nawfer	03/02/20 12	Police officers attached to Akkaraipaththu Police Station	Beaten to death by police.	Sinhala Language Newspaper Divaina 04/02/2012
3	Nimal Chandrasiri Dasanayaka	15/04/20 12	Police officers attached to Wadduwa Police station	Police officers had arrested the person and beaten him resulting in chest injury. Pronounced dead on admission to hospital.	Sinhala Language Newspaper Divaina 17/04/2012
4	S.M. Bodibanda	09/06/20 12	Police officers attached to Ridigama Police station	Victim was arrested regarding a complaint of domestic violence. Police allege to have found the victim dead in the cell by hanging using victim's own trouser. It is alleged that the victim was killed by the police.	Sinhala Language Newspaper Mawbima 11/06/2012
5	Ganeshan Nimalaruban (28 years)		Prison officers attached to Vavuniya Prison	During a prison riot allegedly initiated by the police, victim was severely beaten. Reported to have died of a heart attack. Post-mortem report acknowledged physical trauma as one cause of death.	Sinhala Language Newspaper Mawbima 05/07/2012
6	Kugan		Prison officers attached to Vavuniya Prison	During a prison riot allegedly initiated by the police, victim was severely beaten.	Sinhala Language Newspaper Mawbima 05/07/2012
7	Kocgala Marakkalage Thushara Samanthilaka	16/08/20 12	Police officers attached to Hungama Police station	Victim while in Police custody is alleged to have jumped out of a moving Police jeep. He succumbed to injuries sustained. It has been alleged that he was pushed out of the moving vehicle.	Sinhala Language Newspaper Divaina 21/08/2012

8	Mr. Narahenpita Gamage Weerasinghe (Chilaw)	30/12/2011	Police officers attached to Wattala Police Station.	Arrested under allegedly false charges of 'indecent behaviour' the victim was detained and severely tortured.	Urgent Appeal Case : AHRC-UAC-003-2012
9	Master Mohamad Rasul (Kochchikade)	19/01/2012	Principal of Palagathura Al-Fala School and two other unidentified teachers of Palagathura Al-Fala School	Victim was severely tortured by the principal of AL-Fala School. Victim is missing. Kochchikade Police have refused and/or failed to accept a complaint and investigate this crime.	Urgent Appeal Case : AHRC-UAC-015-2012
10	Mr. Kanahipadi Kankanamge Nalin (29) Dodamgo Kaluthara	20/11/2011	Police officer, Civil Defence Force Officer, Sub-Inspector, Police Officers, Ishantha and Officer-in-Charge of the Dadangoda Police Station	Illegally arrested and tortured.	Urgent Appeal Case : AHRC-UAC-016-2012
11	Mr. Santhan Stanys Ramesh (33) (Mannar)	28/10/2012	Officers attached to the TID Branch of the Kandy Police Headquarters	Tortured by the police.	Urgent Appeal Case : AHRC-UAC-027-2012
12	M. D. Kelum Priyanath	20/05/2012	Police officers attached to the Welikanda police station.	Victim, a disabled laborer, was arrested later found dead in his jail cell as a result of head injury. According to the report of the Judicial Medical Officer the victim's body sustained bruises, swelling and severely bleeding to the back of his head.	- We received the information about the incident through an activist and we went to the victim's place to collect the information. Urgent Appeal Case: AHRC-UAC-109-2012
13	N. A. Aruna Roshantha (Chilaw)	24/03/2012	Officer-in-Charge (OIC) of Chilaw Police Station	Victim was illegally arrested, detained, brutally tortured. On 27th of March he was admitted in Chilaw base hospital for treatment.	AHRC -UAC-076-2012
14	Chaminda Priyashantha (Wanathavilluwa)	17/03/2012	The OIC Manohara of Wanathavilluwa police station	Beaten by the OIC of police station. Victim complained of pains in his head, ears and legs, he found it difficult to conduct daily work.	Urgent Appeal Case AHRC-UAC-122-2012

15	Lakshman Priyantha Fernando No. 76, Bambukuliya, Kochchikade	16/07/2012	A Police officer attached to the Kochchikade police station	Victim was accused of careless driving and beaten by the police officer.	The victim has got to know about our organization and came to us.
16	Punchibandage Indrani	07/11/2012	Police Officers attached to Rajanganaya police station	Victim and her daughter were assaulted using a horse pipe. Victim is unable to raise her hands as a result of the injuries sustained.	We received the information about the incident through an activist and we went to the victim's place to collect the information.
17	Nalin Kumara	18/07/2012	Police officers attached to Padukka Police station.	Severely assaulted by Police officers. Victim is alleged to have committed theft. Victim was hospitalized due to seriousness of injuries sustained.	Sinhala Language Newspaper Lankadeepa on 19-07-2012
18	Krishantha Edirisinghe	18/07/2012	Police officers attached to Padukka Police station.	Severely assaulted by Police officers. Victim is alleged to have committed theft. Victim was hospitalized due to seriousness of injuries sustained.	Sinhala Language Newspaper Lankadeepa on 19-07-2012
19	Kapila Ravindra Saparamadu	25/07/2012	Police officers attached to Meerigama police station	Brutally assaulted by the police. He was admitted to Kurunegala hospital for treatment. .	Sinhala Language Newspaper Diwayina on 25-07-2012
20	Asela Sampath	25/07/2012	Police officers attached to Meerigama police station	Brutally assaulted by the police. He was admitted to Kurunegala hospital for treatment.	Sinhala Language Newspaper Diwayina on 25-07-2012
21	Woman victim (name was not reported)	29/07/2012	Police officers attached to Meerigama police station	Assaulted by the police. She was admitted to the hospital.	Sinhala Language Newspaper Mawubima on 01-08-2012
22	Five individuals (names not reported)	05/08/2012	Police officers of Thambuththegama police station	During a riot they had been subjected to beatings by police officers. All five individuals were later admitted to hospital as their condition required medical treatment.	Sinhala Language Newspaper Mawbima on 06-08-2012

23	N. M. Junaidin	15/08/2012	OIC of Hindogama police station.	Police OIC has assaulted him after arresting for allegedly stealing cattle.	Sinhala Language Newspaper Mawubima on 17-08-2012
24	Several individuals.	16/08/2012	Police Special Task Force	Farmers assaulted by police officers during a public protest.	Sinhala Language Newspaper Lankadeepa on 18-08-2012
25	Thushara Sampath	23/10/2012	Prison officers	He was assaulted while in remand custody.	Sinhala Language Newspaper Mawubima on 24-10-2012
26	An individual (name not reported) – Manager of an estate in Matugama.	--	Police Officers attached to Matugama Police	Assaulted by police. Admitted to Nagoda hospital.	Sinhala Language Newspaper Mawubima on 11-02-2012
27	A security guard in an estate in Matugama		Police Officers attached to Matugama Police	Assaulted by police. Sustained severe injuries to the head and his arm.	Sinhala Language Newspaper Mawubima on 11-02-2012
28	Samson Kulatunga	09/02/2012	Officers attached to the Marawila Police station	Victim was admitted to Marawila hospital as result of injuries resulting from assault by police.	Sinhala Language Newspaper Diwaina on 13-02-2012
29	70 years old man. (Name not reported)		OIC of the Middeniya Police station	The victim had come to the police station to make a complaint over a land dispute and the OIC had slapped him. Victim was hospitalized.	English Language Newspaper Daily Mirror 2012-02-24
30	A woman. (name not reported) Balagolla, Kundasale		Officers attached to the Alawatugoda Police station	Assaulted.	Sinhala Language Newspaper Mawbima 2012-04-11
31	Chandrasiri Dasanayake	15/04/2012	Officers attached to the Wadduwa Police station	Tortured by the police.	Sinhala Language Newspaper Lankadeepa 2012-04-18

32	A youth		A soldier of the SL Army	While herding cattle a decorative lantern put up by army soldiers was damaged. A soldier on duty opened fire at the youth. The injured youth was taken to Anuradhapura hospital after considerable delay.	English Language Newspaper Daily Mirror May 2012
33	Nilantha Deshapriya		Sub-Inspector of the Uragasmanhandiya Police station	Victim was accused of drunkenness and was assaulted. Admitted to a hospital.	Sinhala Language Newspaper Diwaina 2012-05-16
34	Thusitha Ratnayake	28/05/2012	Officers of the Thambuttegama Police station	Suspected of theft the Police had beaten him and held him by his wrists. He sustained rope burns, felt loss of feeling, and was unable to walk without pain for several weeks after.	Sinhala Language Newspaper Mawbima 2012-06-01
35	Suresh Kumar	18/06/2012	Officers of the Rakwana Police station and Police officers dressed in civil attire.		Sinhala Language Newspaper Lankadeepa 2012-06-22
36	Shaminda Sandamal (9 years old)	21/06/2012	Officers of the Wadinagala police post attached to the Inginiyagala Police station	Assaulted by the police. The victim is unable to hear after injuries sustained to the ear.	Sinhala Language Newspaper Lankadeepa 2012-06-22
37	Name not reported	27/05/2012		Regarding dispute relating to water bill, the person was hit with a pole. His leg was badly injured and admitted to the Anuradhapura hospital.	Sinhala Language Newspaper Lankadeepa 2012-06-27
38	Names not reported	24/06/2012	Officers attached to the Wanduramba Police station	At a public protest held by Buddhist monks the police assaulted several individuals.	Sinhala Language Newspaper Lankadeepa 2012-06-27
39	Ukwattage Padmasiri	25/05/2012	Officers of the Panadura Police station (Officer Matararachchi and others)	He was hung and beaten. Chilli powder was put into his eyes. He was admitted to Nagoda hospital.	Sinhala Language Newspaper Mawbima 2012-06-18
40	Name was not reported	17/06/2012	Officers of the Borella Police station		Sinhala Language Newspaper Divaina 2012-06-17

41	Editor, Business Page of the Mawbima Newspaper		2 Traffic unit Police officers attached to the Kiribathgoda police station		Sinhala Language Newspaper Mawbima 2012-06-25
42	Name not reported		Police Constable attached to the Special Task Force and police officers of the Tissamaharama police station	Person was stripped naked and forced to stay kneeling.	English Language Newspaper Daily Mirror 2012-06-25
43	Grama Niladari (Village Administrative Officer) of Mampuriya in Puttalam		Officers of the Kalpitiya Police station	When the officers were beating a youth at a festival he had intervened to prevent it and they had assaulted him. Treated at Puttalam Hospital.	English Language Newspaper Daily Mirror 2012-06-23
44	3 detainees at Welikada prison	19/07/20 12	The female officers at Welikada Prison	3 detainees at Welikada prison were handcuffed and beaten as they climbed the prison roof.	Sinhala Language Newspaper Divaina 2012-07-20
45	A retired army soldier		Officers attached to the Angunakolapelassa police station		Sinhala Language Newspaper Divaina 2012-07-14
46	Liyanage Ajit Shantha	17/06/20 12	Officers of the Talangama Police station	He was beaten by the Police. Hospitalized for treatment.	Sinhala Language Newspaper Divaina 2012-07-02
47	Premal Sivakumar	28/08/20 11	Police Officers Unknown	He was beaten to death.	Sinhala Language Newspaper Irirasa - 2011.08.28
48	Mr. Ganearachchi Appuhamilage Gayan Saranga Katulanda, Dekatana, Dompe, Gampaha District	29/09/20 11	Police Officers from the Dompe Police Station	The police claims that he fell out of a moving police jeep. He succumbed to his injuries. It is alleged that he was hung in the Police station and beaten. Later the Inspector General of Police officially announced by special communiqué that there is no evidence to prove the version of the police.	Website : http://www.humanrights.asia/news/urgent-Urgent Appeals Case appeals/AH RC- UAC-187-2011
49	Mr. Kamaranga Hannadige Lalith Susantha Peiris	03/10/20 11	Police officers attached to the Moratuwa Police Headquarters.	A police team headed by the Officer-in-Charge (OIC) of the Headquarters Police Station of Moratuwa arrested Lalith and his brothers along with other persons. According to the official	:Website http://www.humanrights.asia/news/urgent-Urgent Appeals

				police version he drowned while attempting to escape. He was accused of causing the death of a Police officer.	case appeals/AH RC-UAC-193-2011
50	S.P.A. Samantha Dasanayaka (Negombo)	30/07/2013	Police officers attached to Seeduwa police station	He was illegally arrested and detained by the officers of the Seeduwa Police Station who allowed a ward member of Negombo Municipal Council and his son-in-law to torture him. Samantha had gone to the police station to assist a friend whose vehicle had been erroneously impounded by the officers. Samantha was illegally detained and laid with false charges of involvement in the theft of a vehicle.	Victim informed Right to Life. Website http://www.humanrights.asia/news/urgent- Urgent Appeals Case appeals/AH RC-UAC-032-2014/?searchterm=AHR C-UAC-032-2014
51	Amarasinhage Priyantha Samanthilake (Kochchikade)	27/04/2013	Police officer attached to Negombo police station	When he was returning to his home Police constable and two other unknown people in civilian dress arrived on two motor bikes and beat him without any explanation. He was admitted to the Negombo hospital as a result of his injuries. He has sustained damage to his teeth and left shoulder.	Complained made to Right to Life. Website http://www.humanrights.asia/news/urgent- Urgent appeals case appeals/AH RC-UAC-073-2013/?searchterm=AHR C-UAC-073-2013
52	Dewasundaralage Thushara No 67, Amakuliya, Madurankuliya	20/03/2013	Officer attached to the Excise Department in Puttalam	While the victim was fishing three excise officers came and asked help for identifying some suspects. When the victim had said that he doesn't know them he was handcuffed assaulted by the officers. Then he was taken to the Excise Department in Puttalam interrogated and beaten. He	One of our activists told us about this incident and we went to his place to take the details.

				was hospitalized as a result of the injuries sustained.	
53	Widana Mahadurayalage Somarathna (Polpithigama)	20/03/2012	Police officers attached to Polpithigama police station	Somarathna was arrested and brutally tortured him. Following day he was died.	One of our activists found the incident.
54	Asitha Sri Dewananda (Inginiyagala)	28/04/2013	Police officers attached to Inginiyagala police station	Victim is a mentally disabled person. He was brutally assaulted while on the road and money he was carrying was taken from him by the police. He was admitted to the hospital as result of injuries sustained.	Our organization got to know about this incident and went to the place to take the details
55	G. N Chithrananda, Pradeep Kelum Kumara, ,	--	Officers of the Police station Ambilipitya	The police officers of Ambilipitiya police station severely beat him.	Sinhala language newspaper Lankadeepa, 19/05/2014
56	Witharanage Milan Isuru		Officers of the Police station Ambilipitya	The police officers of Ambilipitiya police station severely beat him.	Sinhala language newspaper Lankadeepa, 19/05/2014
57	Ranasinghe Gamage		Officers of the Police station Ambilipitya	The police officers of Ambilipitiya police station severely beat him.	Sinhala language newspaper Lankadeepa, 19/05/2014
58	Kelum Suranga		Officers of the Police station Ambilipitya	The police officers of Ambilipitiya police station severely beat him.	Sinhala language newspaper Lankadeepa, 19/05/2014
59	Peruma Hewa Sandun Malinga (17 years old)	Date of arrest - 07/05/2014 Date of death - 09/05/2014	Sub Inspector, 4 Police Constabl, a Police Assistant, Civil Defence force officers attached to the Kandeketiya Police Station Officials of the Badulla Prison, and the Badulla Magistrate are also implicated in not permitting the victim to receive medical treatment.	Sandun Malinga and five others were arrested by the Kandeketiya police officers. He was assaulted by the police and died whilst in remand prison. Neither th police, Magistrate or Prison officials to whom complaints had been made and from whom medical treatment was requested permitted the victim to receive medical treatment.	Sinhala language newspaper Lankadeepa (17/05/2014), Mawbima (12/05/2014), Lankadeepa (12/05/2014), Diwaina (12/05/2014)
60	Duminda Hapuarachchi	22/04/2014	Police Officers	During a public protest, the victim was severely beaten by the police officers.	Sinhala Language Newspaper Diwaina (24/04/2014)

61	Two young people	05/04/2014	Officers of the Police Station, Moratuwa	Arrested and was severely beaten	Sinhala language newspaper Lankadeepa (08/04/2014)
62	Ramal Pradeep	18/02/2014	Police Officers, Minuwangoda Police Station	The police has forcibly entered the home of the victim and assaulted the person. The mother of the victim having witnessed contracted chest pains died shortly after having been admitted to the Minuwangoda Hospital.	Sinhala language newspapers Divaina, Mawbima, Lankadeepa, (21-02-2014)
63	A. A. Aberathna	07/02/2014	Police Inspector, a Sub Inspector of police and 3 Police Constables attached to the Giriulla Police Station	He was arrested by the police, detained for 38 days Whilst in custody he was severely beaten.	Sinhala language newspapers Mawbima, Divaina (24/03/2014)
64	Buddika Prasad (12 years old)	06/02/2014	Police Inspector of police station, Kosgoda	The police officers who came to settle a dispute on the roadside assaulted the victim. The victim was admitted to the Balapitiya General Hospital.	Sinhala language newspaper Mawbima (08-02-2014)
65	A.M. Nilantha Bandara	--	Officers attached to the Laggala Police Station	He was stripped naked and severely tortured by the police officers. Admitted in the Hanthota Amuna hospital.	Sinhala language newspaper Lankadeepa (12-08-2013)
66	Minor (16 years) Name not reported	13/10/2013	An officer attached to the Panadura Police station	Victim visited the police station to make a complaint. He was subjected to torture by a police officer. Admitted to the Panadura hospital.	Sinhala Language Newspaper Mawbima (22-10-2013)
67	Aruna Liyanage	29/10/2013	Officers of the Police station Kahakaduwa	He was tortured by the Police. Admitted into the Kalubowila hospital.	Sinhala language newspaper Divaina (03-10-2013)
68	Two passengers in a bus, Names not reported	11/09/2013	Police Officers of the Welimada Police Station	Two passengers were assaulted while travelling in a public bus by five police officers of Welimada police station.	Sinhala language newspaper Divaina (12-09-2013)
69	Villagers of Sivalapitiya	02/05/2012	Police Special Force Unit	During a dispute between villagers of Sivalapitiya and Police Special Force Unit,	Sinhala language newspaper

				officers assaulted several villagers including one woman.	Lankadeepa (03-05-2012)
70	Balachandran Shashikumar	16/09/2013	A jailer and another two prison officers of Colombo prison.	A detainee was severely assaulted.	Sinhala language newspaper Divaina (17-09-2013)
71	Palitha Chaminda Kumara	24/06/2014	Police Officers of Minuwangoda police station	A fisherman was assaulted by two police officers. Hospitalized as a result of the injuries sustained.	Sinhala language newspaper Lankadeepa (25-06-2014)
72	Weerasighe Arachchige Saman Weerasinghe	16/06/2013	Officers of the Police Station, Wadduwa	Died after being arrested. Assaulted by the Police	Sinhala language newspaper Mawbima (18-02-2014)
73	Tharuka Dilan	18/05/2014	Criminal Investigation Department	The suspect was shot dead by the police officers.	Sinhala language newspaper Mawbima (18-02-2014)
74	Sugath Chaminda	13/02/2014	Police Officers, Ratnapura police Station	The suspect was shot dead by the police officers.	Sinhala language newspaper Diwaina (12-03-2014)
75	Mohammad Siyam		Police officers including a Deputy Inspector General of D.I.G.	The person was abducted and killed by police officers.	Sinhala Language News Paper Lankadeepa (10/02/2015)
76	Palitha Kumara	25/12/2013	Deputy Inspector General	A picket was held in order to request to open the Baduraliya hospital and during that picket the victim was severely assaulted.	
77	A.P. Samantha	22/10/2013	Police Officer attached to the Colombo Criminal Division	Victim was threatened with death with his life by the police officer.	
78	H. M.S.P. Herath	23/01/2014	Officers of the Police Station, Raddolugama	Victim was arrested on false charges and was tortured during investigation	Reported to Right to Life Human Rights Center

79	H. P. Manjula Krishanthi	09/02/2014	Police Inspector, Nipula Dehideniya	Manjula was slapped by police inspector and she was threatened.	
80	A.G. S. Priyadarshana	05/02/2014	A police officer of motor traffic unit, Ambalanthota	Victim verbally abused by the police officer at a public place.	
81	S.A. Linton	09/02/2014	Officers of the Police Station, Hungama	Victim verbally abused by the police officer at a public place.	
82	A.G. Manathunga	15/02/2014	Police officers of mobile police service, Hungama	He was arrested in his paddy field and he was severely tortured.	
83	T. G. Samee	07/04/2014	Police officers of Hungama police station	Arrested, threatened and severely tortured and	
84	Name not reported	07/04/2014	Police officers of Hungama police station	Beaten by the police.	
85	K. G. Gunapala	07/04/2014	Police officers of Hungama police station	Arrested, threatened and severely tortured.	
86	Janith Lakmal	07/04/2014	Police officers of Hungama police station	Arrested, threatened and severely tortured.	
87	P. H. Sandun Malinga	07/05/2014	Police officers of Kandeketiya police station.	Arrested and severely tortured, assaulted and killed	
88	Kelum Subhasinghe	23/06/2014	A police officer of traffic unit, Diwulapitiya police station	Victim was shot Police officer tried arrest him.	
89	Madushka Harish De Silva	02/09/2013	Police officers attached to Anuradhapura Police Station.	Taken by the Police. Has been missing since. Allegations of torture while in police custody.	
90	Palitha Chaminda Perera	23/06/2014	Officers of the Police Station, Minuwangoda	Slapped by police officers in a public area. Was admitted to hospital as he was bleeding.	
91	W. Sumith Ruwan	05/07/2014	Officers of the Police Station, Padukka	It is suspected that the Police threw him into a river.	
92	Names not reported	--	Officers of the Police Station of Nittabuwa	Police has beaten the persons.	Sinhala Language News Paper Divaina, (04/02/2015)
93	T. Janaka Prasad	--	Prison Officers of Mahara	Mahara Prison officers have beaten and tortured him.	Source- Sinhala Language News Paper Lankadeepa (05/02/2015)
94	Marimuththu Manoj	01/02/2015	Police offices of Talawakele Police Station	After arrest by police officers victim had been found drowned in a river.	Sinhala Newspaper Diwaina (2015/02/08)

95	Liyana Arachchige Samantha	22/02/2015	Police Officers of Sooriyawewa Police Station Priyantha, Chandana, Shaminda, Sunil, Sampath, Sisira.	Beaten and succumbed to his injuries.	Sinhala Language News Paper Divaina (08/03/2015)
96	M.D.C. Pushpakumara	04/03/2015	Officers of the Police Station of Dummalasooriya	Found dead by hanging in the police cell. It is suspected that the victim was killed by the police.	Sinhala Language News Paper Divaina (06/03/2015)
97	A young girl (Name not reported)	05/05/2015	A female police officer of the Anamaduwa Police Station	Two female Police officers have visited the victim to record her complaint regarding an incident of molestation. The police officers beat the young girl.	Sinhala Language News Paper Mawbima(09/03/2015)
98	Sameera Dananjaya	18/03/2015	Police officers of the Ja-ela Police Station	Found dead by hanging in the police cell. It is suspected that the victim was killed by the police.	Sinhala Language News Paper Lankadeepa & Divaina (19/03/2015)
99	H.B. Sarath	01/04/2015	Police Officers attached to Beliyyatte Police Station	Police officers have brutally beaten the person.	An activist reported to the organization
100	G.A.G.Pubudu Kumara	04/04/2015	Officers of the Police Station of Pasyala	He was arrested by the Police and in an attempt to escape has fallen off a 3 story building and died.	Sinhala Language News Paper Divaina ' (04/04/2015)
101	Students of an Ayurveda institution in Yakkala	--	Officers of the Gampaha Police Station	Some of Yakkala Ayurvedic students were beaten by police officers. Hospitalized due to injuries sustained.	Sinhala Language News Paper Mawbima(20/04/2015)
102	Five people	--	Officers of the Weligama Police Station	They were beaten inside the prison cell.	Sinhala Language News Paper Lankadeepa (20/04/2015)
103	W.A.D.P. kumara	27/06/2015	Police Officers of Welipenna Police stations	Beaten by Police officers and admitted to Hospital.	Sinhala Language News Paper Divaina ' 30/06/2015
104	G.S.K. Pathiraja	29/06/2015	Police Officers of Athurugriya Police stations	Brutally beaten by the police officers.	An activist reported to

					the Right to Life.
105	D.G. Premasiri	09/08/2015	Police Officers	After a dispute with the police, victim had succumbed to injuries.	Sinhala Language News Paper Lankadeepa (10/08/2015)
106	Sadun Malinga	--	Officers of the Police Station of Kandeketiya	The youth died while he was in Police custody.	Sinhala Language News Paper Divaina (05/03/2015)
107	Hapuarachchige Duminda Hapuarachchi.	--	Police Officers of Riot control Unit	Police officers of Riot Control Unit have severely beaten the Colombo Fort Railway workers who have staged a protest in Fort.	Sinhala Language News Paper Lankadeepa (2015/05/14)
108	2 Health sector workers. Names not reported	--	Officers of the Nittambuwa Police Station	2 workers of Aththanagalla Divisional Secretariat Health Sector were brutally beaten.	Sinhala Language Newspaper Divaina (2015/02/04)
109	K. K. Isuru Madumal No. 165/C 4, Oluwila, Ambalanthota	13/09/2015	Police officers attached to Hungama police station. P.C. 44931, P.C. 47950, P.C. 45080	Arrested, taken to an abandoned building and brutally tortured. Victims hands were severely wounded as a result of torture and was admitted to hospital.	Reported directly to Right to Life.
110	Susila Liyanage 85/1, Kajjuwaththa, Bolana, Ruhunu Ridiyagama	01/10/2015	Police officers attached to Ambalanthota police station.	Police beat the victim at the home. Susila's son was bleeding his head. Then he was admitted in the hospital.	Reported directly to Right to Life.
111	Not reported	--	Police officers attached to Thiripanne Police Station	Found dead inside the police cell.	Hiru TV News
112	Names not reported	--	The Police officers attached to Siripura Police Station	Two people in the same family were assaulted by the police.	Hiru TV News
113	Names not reported	--	Police officers attached to Grandpass Police station	A person was assaulted by the police and succumbed to his injuries.	Hiru TV News
114	Satheeshwaran 14 years old	23/06/2015	Police officers attached to Killinochchi police station	He was severely beaten, tied and threatened to confess to a murder.	Reported directly to Right to Life.

115	2 persons (Names not reported)	--	Police officers attached to Kotadeniya Police station	Police officers have beaten and tortured the father of a child rape victim and a 17 year old boy.	Hiru TV News
116	Name not reported	--	Police officers attached to the Negombo police station	The victim was taken into custody by the police and beaten severely. Admitted to hospital.	Reported by Right to Life by a concerned citizen.

Annexure 2

Information made available to the organization Right to Life from the HRCSL, states that the Commission alone received 481 complaints regarding incidents of torture during the year of 2014.



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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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 My No. }

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 Your No. }

දිනය } 22.08.2016
 திகதி }
 Date }

Mr. Prasanga Fernando,
 Programme & Network Coordinator,
 "Right to Life" Human Rights Center,
 No.555,
 Negombo Road,
 Kuruna,
 Katunayake.

Request for the Information for the UNCAT Alternative Report of the Civil Society

With reference to your letter dated 18th August 2016, I am forwarding herewith the information (statistics) of the Human Rights Commission of Sri Lanka regarding the recorded torture complaints received by the Commission in the year 2014.

Total Number of torture cases received by the Human Rights Commission's Head Office and Regional Offices is - 481.

Number of Torture Cases Received by the Human Rights Commission in the year 2014	
Head Office	322
Regional Offices	159
Total	481

Udagama
Dr. Deepika Udagama
Chairperson
Human Rights Commission of Sri Lanka

Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka

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 Telephone }

165, පී.සී. පාර, කොළඹ - 08.
 165, கி.சி வீதி, கொழும்பு - 08.
 165, Kynsey Road, Colombo - 08.

94 - 11 - 2694925, 2685980, 2685981

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 தலைவர் }
 Chairman }
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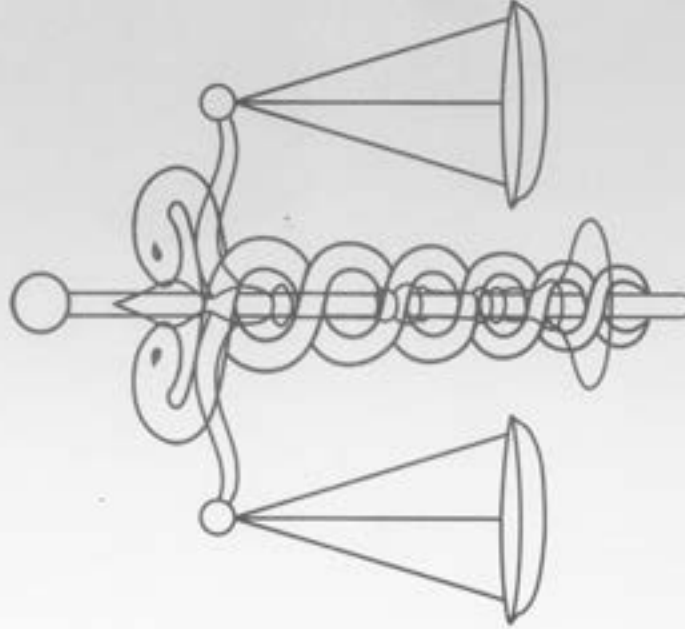
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Annexure 3

Medico-Legal Report for Alleged Victims of Torture and Torture Survivors.

MEDICO LEGAL REPORT FOR ALLEGED VICTIMS OF TORTURE AND TORTURE SURVIVORS



Funded by the European Union

The College of Forensic Pathologists of Sri Lanka (CFPSL) is the only organized body of specialists practicing Forensic Medicine in Sri Lanka, the membership of which includes all Consultant Judicial Medical Officers attached to the Ministry of Health and Academics (Professors and Senior Lecturers) working in Departments of Forensic Medicine of the Medical Faculties of five leading Universities in the country. The CFPSL was inaugurated in the year 2000 with the then Chief Judicial Medical Officer of Colombo, Dr. L. B. L. De Alwis as its Founding President. Its main objectives are to promote and facilitate further education towards maintaining the highest standards in Medico Legal Services provided in Sri Lanka, to train its members in conducting research on Forensic Medicine, and to conduct further research in this area. The College also aims at addressing problems pertinent to Medico Legal matters in the country and promoting co-operation, co-ordination, and fellowship among those disciplines associated with these matters.

Marking its 15th anniversary this year (2015), the CFPSL has, since its inception, held regular scientific meetings, discussions, seminars, symposia, workshops, and scientific congresses. Additionally, the College has published numerous journals, booklets, and other publications, and has developed a set of national guidelines on medico legal practices, based on international documents, protocols, and guidelines, suitable for the Sri Lankan context.

Presently the Chief Judicial Medical Officer, Colombo, Dr. Ajith Tennakoon holds the post of president of the college.



ISBN 978-955-8287-18-3

**Medico Legal Report for Alleged Victims of
Torture and Torture Survivors**

Published by the

College of Forensic Pathologists of Sri Lanka



This document has been produced with the financial assistance of the European Union and supported by the Family Rehabilitation Centre. The contents of this document are the sole responsibility of the College of Forensic Pathologists of Sri Lanka and can under no circumstances be regarded as reflecting the position of the European Union.



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Preface

The Family Rehabilitation Centre (FRC) is pleased to present this publication which is a proposed amendment to the existing common Medico Legal Report (MLR). It is to be used exclusively for the reporting and documentation of alleged cases of torture.

Currently alleged victims of torture and survivors of torture are examined using the standard common MLR, which does not adequately address or specify the documentation of physical or psychological aspects of torture. The new MLR proposed in this publication developed by the College of Forensic Pathologists of Sri Lanka improves on the existing common format.

This publication has been funded by the European Union. FRC offers its gratitude to them. FRC also wishes to thank its partner organization, Sri Lanka Foundation. In addition, FRC extends its gratitude to the Ministry of Health for the support and guidance provided in organizing and implementing of the guidelines on examinations of torture survivors and this MLR.

FRC also wishes to thank all the doctors who contributed their valuable time and knowledge in developing this publication, and Dr. Ajith Tennakoon, Dr. Kumara Senanayake and Dr. L.B.L. De Alwis from the College of Forensic

Pathologists of Sri Lanka for the valuable assistance given to us in the writing and editing of this publication.

Lahiru Perera
Executive Director
Family Rehabilitation Centre
August 2015

Foreword

This book is a comprehensive guide to medico-legal report writing for claims by alleged victims of torture and torture survivors. It focuses on addressing the shortcomings in the existing Medico Legal Report (MLR) proposing possible improvements that could be made to make it better able to capture the complete details and intricacies of alleged cases of torture.

This publication is intended as a guide for medical and legal practitioners. While stressing the importance of the MLR, it provides comprehensive guidelines for medical and legal practitioners as well as clarifications on a wide range of medico-legal issues and key points that would prove useful in processing cases of torture. The publication also aims at bridging the gap between medical experts and lawyers, facilitating communication and mutual understanding between both professions. A parallel publication is also being developed aimed at lawyers investigating cases of alleged torture. The authors of these manuals hope that they would, in the future, become standard references and compulsory readings for all medical and legal practitioners working on cases of alleged torture and that it would be an invaluable resource for all who are concerned with medico-legal work, creating synergy between the medical and legal professions.

In keeping with the vision and mission of our organisation which includes the rehabilitation of trauma survivors and the prevention of trauma, we at the Family Rehabilitation Centre aim at supporting the activities of institutions and organisations with similar interests. As an organization working towards protecting human rights and preserving the dignity and wellbeing of all people, we are proud to support this venture by the College of Forensic Pathologists of Sri Lanka.

Mizly Nizar

Project Coordinator

Family Rehabilitation Centre

Contents

Chapter 1	1
Introduction	1
Chapter 2	4
The Medico-Legal Report (MLR)	4
Chapter 3	7
The current MLR	7
Chapter 4	12
The Newly developed MLR form by the College of Forensic Pathologists	12
Chapter 5	18
Preparation of a Medico Legal Report	18
Chapter 6	20
How to send a MLR	20

Chapter 1

Introduction

As defined by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, "Torture means any act by which severe pain or suffering (physical and/or mental) is intentionally inflicted upon a person for such purposes as obtaining from him or a third party, information or confession, punishing him for an act he or a third party has committed or is suspected to have committed or intimidating or coercing him or a third party or for any reason based on discrimination of any nature; when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity." Though this definition makes it evident that pain or suffering arising from lawful sanctions is not considered as torture, it is considered an act that directly violates basic human rights, and causes immense, often irreversible, physical and psychological damage to individuals destroying their dignity and willpower.

A major concern in the world today, torture of any form, under any circumstances, is prohibited by international human rights and humanitarian laws. Yet, the torture and ill-treatment of detainees are practiced in more than half of the world's countries including in Sri Lanka. Perusal of electronic and print

media will provide substantial evidence for this. This signifies the importance of this issue in the local setup. The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for states to identify and implement effective measures to protect individuals from torture and ill-treatment.

The first set of international guidelines for documentation of torture and its consequences is the Istanbul Protocol, or the 'Manual on effective investigation and documentation of torture and other cruel inhuman or degrading treatment or punishment' which became an official United Nations document in 1999. It was intended as a worldwide standard to be adhered to in the assessment of persons who allege torture and ill treatment, in the investigation of cases of alleged torture, and in the reporting of such findings to the judiciary and any other investigative body. As medico legal professionals in Sri Lanka are often faced with issues pertaining to torture, it is of vital importance that they are aware of international standards in dealing with such cases.

Since its establishment in the year 2000, The College of Forensic Pathologists of Sri Lanka has undertaken many important tasks on various medico-legal issues. The most recent task completed by the College was the development of a manual, based on the Istanbul Protocol for medico legal practitioners in Sri Lanka, on the medico legal management of torture survivors.

The main objective of preparing this manual was to provide medical professionals with information that is brief but detailed enough to take the necessary steps in the proper management of alleged and suspected cases of torture and detainees of law enforcement.

During the process of developing this manual, it was understood that the currently existing common format for the Medico Legal Report (Health 1135) is not suited for reporting complicated cases of torture. Though many Judicial Medical Officers at present use a free style format, as there is no proper systematic form for reporting information on torture survivors, several difficulties emerge when reporting such cases and presenting them in courts. To counteract these difficulties, the College of Forensic Pathologists of Sri Lanka decided to prepare this handbook as an easy and a quick reference guide for the doctors engaged in Medico-legal work in the country. It is expected that this handbook would provide brief but adequate information which will be useful in examination, recording and reporting of suspected and alleged cases of torture and that the investigation and management of such cases would be standardized. The College also hopes that this information guide would help to facilitate the proper medico-legal management of suspected and alleged torture victims and maintain international standards in dealing with such victims in Sri Lanka.

Chapter 2

The Medico-Legal Report (MLR)

The Medico Legal Report is the most important medical document concerning living victims or suspects on a trial in a court of law especially in the lower courts (magistrate courts) where oral testimony from the doctor is not considered. A medical officer is occasionally summoned to clarify some issues raised in the reports. In High Court trials a doctor is summoned to give oral evidence based on the report he had submitted to the Magistrate Courts. In this trial the doctor's evidence will be subjected to a cross examination by the defense lawyer and the judge. Therefore the Medico Legal Report should be very comprehensive, detailed, and complete. The use of medical terms should be minimized. Medical terms should be explained within brackets using simple terms wherever possible.

In Sri Lankan practice, a MLR is usually prepared based on the notes a Medical Officer makes on the back of his copy of his Medico Legal Examination Form (MLEF). Usually summons is served to send a MLR some time after the actual medico legal examination has taken place. Therefore it is important to protect and store the doctor's copy of the MLEF in an appropriate manner in order to trace it when summons is issued. The responsibility of keeping the doctor's copy of the MLEF safe for a long period (usually 25 years) is **the sole**

responsibility of the doctor. When a MLR is submitted to the court, a copy should be kept with the doctor. When he appears in a High Court trial he should take with him this copy as well as notes on the MLEF, diagrams or photos and other relevant documents used to prepare the MLR.

A MLR is issued in the following circumstances:

1. On receiving summons from courts
2. On receiving a request from the Human Rights Commission
3. At the written request of the Attorney General (sometimes this request comes via the Police)
4. At the request of the examinee at any time after examination (a reasonable professional fee stipulated by the government can be charged after issuing a receipt)
5. At the request of the lawyer representing the examinee. (a reasonable professional fee stipulated by the government can be charged after issuing a receipt)

No other party is entitled to have a copy of the MLR from the doctor without written approval from the examinee.

The MLR can be prepared in two ways:

1. Using the Health 1135 form
2. Using a free format style

When the printed format (Health 1135) is used, additional papers can be attached if the space provided is insufficient. In

addition, printed or hand-drawn diagrams, Health 1135A, or photographs could be attached to the report as supportive materials. Photographs can either be printed in colour on A4 papers or printed photographs could be pasted on additional papers and attached to the report. It is better to make a note in the comments on who took the photographs, if printed photographs are used and where they were printed. For E.g. The two attached photographs depicting the injuries described in the text of the MLR were taken during the examination by me/an assistant/ the official photographer/another doctor, under my supervision. They were developed and printed at Miller's Laboratory, No 112, Maradana Road, Borella. When pasting a printed photograph on to a sheet of paper, make sure that it is securely pasted within the margins using transparent adhesive tape. The doctor's signature should be placed over the edge of the photograph, extending to the paper.

Chapter 3

The Current MLR

The Medico Legal Report is the end product of the process of medico legal examination. It is sent to courts or relevant authority when the doctor is requested to do so in a form of summons or official letter. A MLR should be very professional, detailed and comprehensive yet easy to understand. Every single word in the MLR would be subjected to a detailed cross examination by the attorney of the relevant party. Hence the doctor should be able to substantiate his facts and opinion in a report based on science. Once the report has been sent to courts it will become a public document and any interested party can get a copy from the courts.

In Sri Lanka at present, the MLR is prepared in the printed format given by the Ministry of Health (Health form 1135) or in a free style format. Either way it is accepted by the courts. It is very important to keep a copy of every dispatched medico legal report with the doctor.

Though this available format is suitable for simple medico legal cases it is difficult to use for complicated cases such as torture survivors.

Following is the format of the current MLR;

4. Injuries caused by –

- a Blunt Weapon – Nos.}
- Cut – Nos.}
- b Sharp cutting instrument}
- Stab – Nos.}
- c Firearms – Nos.}
- d Burns – Nos.}
- e Bite marks – Nos.}

Further Notices. – (Consider self-inflictions, cause by friendly hand suggestive of fall and whether injuries are compatible with history given by the injured.)

5. Patient smelling of liquor}

Under influence of liquor }

Name of Medical Officer and Qualifications }

Designation }Station}

Date of the dispatch of Report }

.....
Signature of Medical Officer

The deficiencies noted in the current MLR are:

- a. The occupation of the victim is not included
- b. The name of the officer who produced the examinee is not included
- c. The translator's name is not included
- d. The date of review is not included
- e. The history to be submitted by the producing officer is not included
- f. The spaces provided are not sufficient for complicated cases in relation to history – details of arrest, transport, ill treatments if any, detention conditions
- g. The spaces provided are not sufficient for complicated cases in relation to examination- general, systemic, mental, injuries, scars, genitalia and anus
- h. There is no space for filling in the examinee's present disability
- i. There is no space for filling in referrals to other specialists and their opinions
- j. There is no space for the JMO's opinion
- k. No space has been provided for photographs

To overcome these issues we recommend using a newly developed MLR for reporting of suspected cases of torture. This MLR has been developed by the College of Forensic Pathologists of Sri Lanka and is based on the Istanbul Protocol.

Chapter 4

The Newly developed MLR form by the College of Forensic Pathologists

1. Serial number (reference number in your register)
2. Court
3. Case No.
4. Date of trial
5. Reference details
 - a. MLEF no
 - b. Date of issue
 - c. Police station
 - d. Court
 - e. Any other references – HRC etc.
6. Identification
 - a. Full name
 - b. Age
 - c. Sex
 - d. Address
 - e. Occupation
 - f. NIC number or any other identification document
7. Preliminary details-
 - a. Place of examination
 - b. Date and time of examination
 - c. Examination was performed by

- d. The examinee was produced by
 - e. Translator's name (If assisted)
 - f. People present during the examination
 - g. Language used in interview
 - h. Hospital
 - i. Date and time of admission
 - j. Bed Head Ticket No
 - k. Ward No
 - l. Date of review (if reviewed)
8. History by the producing officer (date of arrest, reason for the arrest, details of the force used, any explanation for the clinical condition of the patient/examinee)
 9. Detailed history given by the examinee
 - a. History of transportation to detained place (how)
 - b. History of arrest (date, time, place, person/s, reason)
 - c. History of detention (place/s, period, basic need like water, food, sanitation, light, ventilation, sleep, number of detainees in one place, freedom to meet family members/lawyers)
 - d. Detailed history of alleged ill treatment (torture) Physical/sexual/psychological/pharmacological or any other method should be described in detail at the time of arrest, transport, and during the detention. Weapon/s, method/s, date and time of every incident, site of body injured, and identification of perpetrator/s should be written in chronological order

- e. Details of treatment given to the victim of torture by the torturers at the torture centres, hospitals (government or private) or by a G.P. and the outcome of such treatment
- f. History of release
- g. History of present health condition
- h. Past medical and social history (medical and surgical conditions, alcohol and drug abuse)

10. Examination

- a. General
- b. Systemic
- c. Wounds (Nature (type), size, site, shape, disposition, stage of healing of each wound)
- d. Scars (shape, colour, contour, etc.)
- e. Mental state, evidence of psychological disturbances supported by the psychiatrist assessment and report supported by the psychiatrist's report
- f. Genitalia
- g. Anus

11. Investigations and results

12. Referrals and their opinions

13. Recommendations

14. Opinion:

Opinions should be expressed on all relevant medico legal issues pertaining to the case. Vague and controversial

opinions should be avoided as much as possible. The doctor may address them when he gets an opportunity to give oral evidence. He should avoid the use of the word "torture" as much as possible as it has a legal definition. If the absence of medical findings cannot exclude the alleged torture it should be indicated.

Opinion may be given on:

- a. Type of injury
- b. Category of hurt, if it is grievous and the relevant limb of section 311 of the Penal Code
- c. Type of weapon(s) used

Injury Number	(category of hurt)	Relevant limb under section 311 of penal code	Weapon/s used (blunt, sharp, burn, chemical, bite, fall, firearm, etc.)

- d. Compatibility of the history of injury with the weapon used (consider each injury separately or injuries taken collectively or injury pattern or consequences of injury (scars) with the history of the weapon/s used, methods of torture and time of infliction for compatibility)
- e. Percentage of disability or impairment of function

15. Recommendations

- a. If the patient needs any special recommendations in condition of detention, specific type of food, reviews and follow ups for treatment in clinics etc.

16. Name of the Medical Officer, qualifications and designation

17. Official stamp

18. Date of sending the report

The following were added to the new MLR:

- a. Occupation of the victim
- b. Officer who produced the examinee
- c. Translator's name
- d. Date of review
- e. History by the producing officer
- f. Space for history expanded to include – details of arrest, transport, ill treatment if any, detention conditions
- g. Past medical and psychiatric history included as a separate section due to the contributory effects
- h. Space for injuries expanded to include important subsections- general, systemic, mental, injuries, scars, genitalia and anus
- i. Psychological examination is recognized as an important aspect in dealing with torture victims due to the long lasting nature and severe effects that torture

has on their lives. A section for filling in the present mental condition, symptoms and signs of mental illnesses, precipitating factors, mood, appetite, sleep, libido was therefore included

- j. A section for filling in present disability conditions was included
- k. A separate section was added for referrals and opinions of other disciplinary officers
- l. More space was provided for investigations and their numbers
- m. One chart has been included for giving opinions on type of Injury, category of hurt, relevant limb of section 311 of the penal code, causative weapon and mechanism of causation e.g. fall, defense, self-inflicted
- n. Separate spaces were provided for opinions and recommendations

A MLR can be prepared in free format but should contain all the given components addressed where necessary.

Chapter 5

Preparation of a Medico Legal Report

When the doctor performs a medico legal examination on a patient he/she should bear in mind that he/she would have to prepare a Medico Legal Report for this patient on a future date. He/she must therefore collect all the necessary information during the examination so that he/she could prepare a comprehensive MLR in the future. This is because most of the time, it is very difficult and not practical to get the patient back for re-examination prior to the preparation of the MLR.

It is advisable to follow the guidelines in the publication “Hand book on medico legal management of torture survivors and detainees produced by law enforcement officers, based on the Istanbul protocol for Sri Lankan medico-legal practitioners” prepared by the college of Forensic Pathologists at the time of the medico legal examination in order not to miss anything needed for the preparation of the MLR in the future.

The MLR should contain the following information:

1. Details of the court case (case number, courts, place, date of trial etc.), MLEF (Number, date of issue and issuing police station)
2. Details of the patient/examinee
3. History

4. Examination findings
 - a. Complaints
 - b. General examination findings
 - c. Injuries
5. Investigations
6. Referrals to other specialists
7. Category of hurt and other legal opinions
8. Opinion and recommendation addressing the medico legal issues pertaining to the case

Doctors are expected to express a final opinion at the end of the MLR about the compatibility of the clinical history and examination findings.

The final opinion in any MLR could be:

- a. Medical findings are compatible with the history
- b. Medical findings are not compatible with the history
- c. By available medical evidence given history cannot be excluded.

As “torture” is a legally defined term, it is advisable to avoid using it when giving an opinion. However, because of the complex nature and the length of the clinical history in some cases, a detailed opinion also may be required. If the findings are compatible with only the part of the history given to the doctor, this should be indicated.

Chapter 6

How to Send a MLR

A completed MLR should be sent to the courts by Registered Post and a copy of it must be retained by the doctor. The report could be hand-delivered if the courts are located close by. A dispatch register with details of sending the MLR should be maintained by every doctor who does medico legal work. A certificate of receipt of the medical report (Health 42a) should be sent along with the MLR to courts. This form would be signed by the registrar of the court and returned to the doctor. It would serve as evidence that the report was sent to courts. A copy of the report should be kept for future use in event of repeated summons for it in case the report is unavailable in court records for any reason. An original certificate can be used to claim any professional fee involved, from the Ministry of Justice.

Sample of the dispatch register:

No	Patient's name	MLEF No.	Date of Issue	Police station issued	Courts	Case No.	Date of sending the report	Registered post No.	Signature of the registrar if hand delivered

Annexure 4

Petition and Order dismissing in CA Writ No. 375/2015.

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

In the matter of an application in
the nature of writs certiorari and
mandamus under article 140 of the
constitution of the Democratic
Socialist Republic of Sri Lanka.

Kanda Udage Mallika

Cosmo Farm,

Akurukaduwa

Meegahakiwula.

PETITIONER

Vs.

C.A.Writ Application No. 375/2015

Mr. Yuwanjan Wijethilaka

Hon. Attorney-General

Attorney General's Department

Hulftsdorp, Colombo 12.

RESPONDENT

C.A.Writ Application No. 375/2015

BEFORE

VIJITH K. MALALGODA, PCJ (P/CA) &

P.PADMAN SURASENA, J.



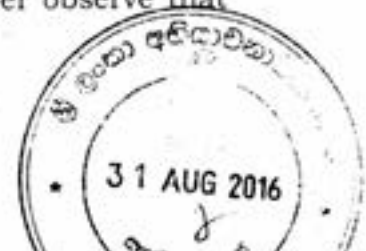
COUNSEL

Lakshan Dias for the petitioner.

Priyantha Navana SDSG with A. Navavi S.S.C.
for the respondent.SUPPORTED ON : 31st May, 2016.VIJITH K. MALALGODA, PCJ (P/CA)

Heard Counsel for the petitioner and the learned State Counsel representing the respondents in this matter.

The petitioner has come before this Court seeking a Writ of Mandamus directing the Attorney-General to forward indictment under the Torcher Act. We observe the document which is produced by the petitioner marked as P1 where the Attorney General has already forwarded indictment under the Penal Code provision for murder as well as under Section 314 of the Penal Code. When looking at the petition filed by the petitioner we observe that the petitioner is only seeking a Writ of Mandamus directing the Attorney-General to forward indictment under the Torture Act but he has not sought a Writ of Certiorari to quash the decision of the Attorney General already taken, since the Attorney General has already decided to forward an indictment under the Penal Code. Without quashing the said decision we are not in a position to issue a writ of mandamus directing the Attorney General to forward the indictment under the Torcher Act. We further observe that



the Act performed by the Attorney General in this instance is a discretion vested with him and the Attorney General has used the said discretion after going through the proceedings of a non-summary inquiry. We further observe that the High Court trial which is pending before the High Court is in its final stages and the prosecution case is concluded and the defence had been call from the accused. It is further observed by this Court that there is another application filed by the petitioner's children to the Supreme Court which is also pending for its decision. When considering all these issues, we are not inclined to issue notices in this matter and therefore, we refuse notices and dismiss this application.

Sgd.

PRESIDENT OF THE COURT OF APPEAL

P. PADMAN SURASENA, J.

I agree.


Sgd.


JUDGE OF THE COURT OF APPEAL

Kwk/-



I do hereby certify that the foregoing is a true certified copy of the Court of Appeal judgment dated 31.05.2016 filed of record in C.A. No. 375/2015 filed of record in C.A. Writ application No. 375/2015.

Typed by : 

Compared with 


Chief Clerk Court of Appeal
Chief Clerk of the Court of Appeal

R/22 642811

2011/08/25



Annexure 5

Objections dated February 2014 filed by the Deputy Inspector of Police for Anuradhapura and Polonnaruwa in Case SCFR 521/2012.

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application under and in terms of Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Thusitha Ratnayake
4th Yaya, In front of School
Rajanganaya.

PETITIONER

Vs.

Application No.521/2012

1. Sergeant Ranbanda
Thambutthegama Police Station,
Thambutthegama.
2. Police Constable Gunawardana,
Thambutthegama Police Station,
Thambutthegama.
3. Upul Seneviratne,
Officer-in-Charge,
Thambutthegama Police Station,
Thambutthegama.
4. ASP Ratnayake,
Office of the Assistant Superintendent of
Police,
Anuradhapura.
5. Deputy Inspector General of Police,
North Central Province,
Anuradhapura.

6. N.K. Ilangakoon,
Inspector General of Police,
Police Headquarters,
Colombo 1.

7. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

**TO: HIS LORDSHIP CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER
HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.**

1 Kapuru Hitihamilage Jayaweera, Deputy Inspector of Police Anuradhapura and
Polonnaruwa, being a Buddhist to hereby solemnly sincerely and truly declare and affirm
as follows :

1. I am the affirmant above named and the 5th Respondent to this application.
2. I have perused the petition and the affidavit filed by the Petitioner and deny all
singular the several averments contained therein save and except those that are
hereinafter
3. I state that my every response to the averments contained in the said petition shall
mean and include a reference to the corresponding averments contained in the said
affidavit.
4. Answering the averments in paragraph 1 of the petition I only admit that the
petitioner is a citizen of the Democratic Socialist Republic of Sri Lanka.
5. I am unaware of the averments contained in paragraphs 2, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 16, 20, 22, 23, 24, 25 and 26 of the Petition.

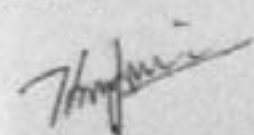
ANSWERING paragraph 3 of the petition I only admit the said respondents held the said offices at the time material to this application.

7. Answering paragraph 9 of the petition I deny that the sister of the Petitioner made a complaint to me and I am unaware of the rest of the averments contained therein.
8. I admit the averments contained in paragraph 15 of the Petition.
9. Whilst denying the averments contained in paragraphs 17, 18, 9 and 21 of the petition, I state that I conducted an inquiry in to the allegations of the petitioner through Assistant Superintendent of Police of Thambuttegama and upon the findings of the said inquiry and disciplinary action in terms of the code were recommended against the 1st and 2nd respondents.
10. Answering further I annex herewith a letter marked as 5R(1) sent by the Deputy Inspector General of Central Province to the Director of Police legal division, which reveals that the 1st Respondent and another were charged sheeted whilst the 2nd Respondent was released on humanitarian grounds as he was retired. The said letter is pleaded part and parcel hereof.
11. Answering further I state that I have not violated the fundamental rights of the petitioner and that at all times relevant I have discharged my duties lawfully and impartially.
12. In view of the aforesaid, I urge that your Lordships' Court be pleased to dismiss the petitioners application.

The affirmant having read over and understood the contents hereof, has affirmed to and placed his signature in my presence at Colombo on this day of February 2014.


BEFORE ME

Stamp




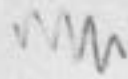
Justice of the Peace. / Commissioner for Oath

SCR 521-12-Feb-12/16

TRUE COPY

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.....
Attorney-at-Law
For the Respondents



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