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“We Live in Constant Fear”

Lack of Accountability for Police Abuse in Sri Lanka



“We Live in Constant Fear”

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Map of Sri Lanka



Summary

On May 9, 2014, Gamini Priyantha received a phone call from a Sri Lankan government official who said that his 18-year-old son, PH Sandun Malinga, had died in police custody:

I got a call at around 7:30 in the morning from someone at the prison. The man said, “We have a big problem, Sandun [Malinga] is dead.” I was in shock, I couldn’t believe what I was hearing. We rushed to the [police] station, shouting, but no one was there. We went to the mortuary. I saw my son’s body had bruises and marks everywhere.... My wife fainted from the shock. I felt like my own limbs had been broken.

Priyantha, who lives in Badulla district, told Human Rights Watch that on the evening of May 7, Malinga and four relatives had gone to buy a second-hand motorized trishaw. When they failed to return or answer their phones, Priyantha started checking and eventually found them in the holding cell at the nearby Kandaketiye police station. The police initially alleged the five had been trespassing, though no charges were ever brought.

Malinga and the others told Priyantha that police officers had beaten all of them. Malinga was in the worst shape; the last time Priyantha saw him alive was on May 8, when he was lying on the floor in great pain, clutching his chest.

Priyantha filed complaints with various authorities, but no action was taken against any of the officers. Instead, police made threatening phone calls to Malinga’s family and visited their home unannounced. Priyantha says the police have told him that if the family proceeds with its complaints, the police will file cases against the family.

In this report, Human Rights Watch investigated allegations of police torture and other serious human rights violations in various parts of the country against criminal suspects.¹ We found that police frequently use torture to try to obtain confessions rather than

¹ We did not include cases related to the armed conflict with the separatist Liberation Tigers of Tamil Eelam (LTTE) that ended in 2009, or ostensible anti-LTTE operations since, as the causes and remedies for these are usually different.

undertaking the more difficult and time-consuming process of gathering evidence through investigations. Police also use beatings and other forms of torture to punish suspects they believe are guilty, instead of leaving the matter properly to the courts. Our findings corroborate those of domestic human rights defenders who report that the use of torture and other ill-treatment is common, even for minor offenses.

Too often, crime scenes are not properly investigated as police seek quick confessions through coercive means; detainees are not brought before a magistrate within 24 hours as required by law; and magistrates do not give serious consideration to allegations of mistreatment, including by ensuring that the detainee receives proper medical attention from a judicial medical officer (JMO).

“Due to lack of time in policing and investigation of crimes,” said J.C. Weliamuna, a prominent human rights lawyer, “[police] resort to shortcuts.”

Human Rights Watch documented an appalling variety of torture methods used by the police, including severe beatings; electric shocks; use of stress positions, including suspending detainees from ropes and iron bars in painful positions; the rubbing of chili paste over the body, including the genitals; and disorienting detainees by rotating them while they are suspended from a pole, a torture technique known as a *dharmachakra*.

The case of Presley Fernando provides an illustration. Fernando, who was detained by the police on May 10, 2014 on suspicion of being involved in a robbery, was beaten and had chili paste rubbed on his injuries until he confessed to a crime he says he did not commit. As he described his ordeal:

One of the policemen ordered me to remove my trousers and underwear. I didn't want to but was so scared by this time that I would have done anything. They then tied my hands behind my back and using a rope they raised me up from the ground so my tied hands were stretched up above my back towards the ceiling. I was raised about two-and-half feet off the floor. The beatings had hurt but this was an unbearable pain.

Human Rights Watch also examined recent cases of police misuse of force against individuals taking part in or watching demonstrations. In three of these cases and in

violation of international law, the police used unnecessary or excessive force, including firearms, when their lives were not at risk.

Domestic and international law prohibit police from excessive force; arbitrary arrests and detentions; and torture or other ill-treatment of suspects in custody. However, the police often bypass or ignore procedural safeguards that exist in Sri Lankan law and are required under international human rights law, including in the International Covenant on Civil and Political Rights, to which Sri Lanka is a party. These include the right to be informed of criminal charges, to have access to a lawyer of one's choosing, and to be promptly brought before a judge. Sri Lanka's Code of Criminal Procedure contains further safeguards, including registration of arrest and production of the accused before a magistrate within 24 hours of the arrest.

The cases documented in this report reflect a longstanding pattern of procedural violations that has persisted despite promises of reform by successive Sri Lankan governments. Suspects frequently are not informed about the reasons for their arrest. Police sometimes fabricate charges to justify the initial arrest and subsequent abusive interrogation methods. Suspects often are not produced before a magistrate within 24 hours as required by Sri Lankan law. Family members usually are not informed of an arrest or allowed access to their detained relatives. Suspects may have little or no access to legal representation, and protection mechanisms such as examination by medical officers are haphazardly or improperly implemented.

These measures, if implemented, could significantly reduce the use of torture. However, defense lawyers say that in practice, the police are allowed a wide discretionary berth by their superiors, the attorney general's department, and the courts.

Impunity and the Failure of Redress Mechanisms

The problem of torture is not new and has been well documented for decades. But the common excuse offered in Sri Lanka was the general collapse of law and order stemming from the armed conflicts that wracked the nation for nearly 30 years. With the end of the war, that excuse no longer explains this scourge.

In 2005, prominent human rights advocate Radhika Coomaraswamy, then chairperson of the National Human Rights Commission, reported that police torture was not an issue

stemming from a handful of rogue police officers but instead was rooted in “the routine use of torture as a method of investigation” and required “fundamental structural changes” to be eradicated. This led to little if any change. Since 2009, for example, the Asian Human Rights Commission, a Hong Kong-based nongovernmental organization, has filed 32 urgent appeal petitions regarding custodial deaths and 181 urgent appeals regarding torture.

The Sri Lankan legal system has several mechanisms available for victims of police abuse. Each routinely fails victims.

As an initial step, victims can file a First Information Report (FIR) with the police. These are almost always unsuccessful, as police either refuse to record the complaint or try to pressure victims not to file the FIR. The police not only reject allegations of torture and other abuse, but often respond to complaints brought by victims or their families with harassment and threats of arrest on trumped-up charges. In some cases they seek to buy off a victim with a quietly paid bribe.

Victims can file complaints against police abuse with the local courts, but lawyers and rights activists say that there are several barriers to securing justice through this process, particularly in rural areas where the police engage in intimidation and threats against victims. In addition to court fees, there are regular court appearances and attorney fees for each appearance, and it typically takes years before cases are heard properly, if at all.

In many cases Sri Lankan law allows for a direct appeal to the Supreme Court of Sri Lanka if a fundamental right enshrined in the constitution has been violated. However, these “fundamental rights” applications need to be filed within 30 days of the alleged abuse, a period during which victims are often still traumatized or attempting redress through the FIR system. Complicating matters, fundamental rights applications have to be filed in the Supreme Court in Colombo, which is not easily accessible to most Sri Lankans.

Victims can also file complaints with the governmental National Human Rights Commission (NHRC). However, the NHRC has largely been ineffective since it lacks political clout and does not have sufficient capacity for independent investigations. Lawyers usually advise victims to quickly file the NHRC case because it stops the 30-day clock

with the Supreme Court on fundamental rights applications; those who do not know the law lose out.

Each of these redress processes, moreover, typically takes years to complete. Lawyers say that many drop their claims due to the expense of legal fees and travel. Nonetheless, even families with the time and resources to pursue a case rarely achieve anything resembling a positive outcome.

Amita Priyantha (unrelated to Sandun Malinga) says that she and her family are still awaiting justice 15 years after the death of her brother Lasantha Jagathkumar due to police torture in 2000. The autopsy report noted his death was caused by 22 major internal and external injuries on his body. As Amita told us: “Even though the medical report was clear, I realized that the police commit crimes, and all other institutions collude to protect them.”

The family’s fundamental rights application resulted in a landmark Supreme Court decision in 2003 that established the right to life as a fundamental right and recognized the right of third parties to file on behalf of the deceased. Though the family received financial compensation, those responsible have never been punished. One of the accused officers received bail and fled. Complaints against the others have gotten nowhere, and all remain on active duty.

The NHRC and national courts suffered a loss of independence under the rule of President Mahinda Rajapaksa, who was in office from November 2005 until January 2015. Rajapaksa undercut accountability efforts by exerting executive control over previously independent government commissions, including the NHRC. Through the 18th Amendment to the constitution, Rajapaksa obtained the power to appoint commissioners to the NHRC and the National Police Commission, which is responsible for overseeing appointments, promotions, transfers, discipline and dismissal of police. He also took steps that undermined the independence of the judiciary, such as organizing the impeachment of the chief justice of the Supreme Court. As a result the commissions and courts became increasingly politicized.

Lawyers and rights activists also emphasized what they see as the longstanding bias of the criminal justice system and the NHRC in favor of the police, saying that the occasional small victories do not make up for the overwhelming majority of cases in which both the

attorney general's department and the courts block justice or simply drag their heels. They also reported a vicious cycle of corruption, as police pay off others to protect them against complaints. While the level of corruption is hard to determine, it certainly has an impact on those seeking to navigate the system.

The Way Forward

With a new government in place that has made strong pledges to reverse the abusive policies and practices of the Rajapaksa administration, Sri Lanka now has the opportunity to end the culture of police abuse. The government of President Maithripala Sirisena has already announced a series of reforms including the appointment of a civilian as head of the ministry that oversees the police. The government enacted the 19th amendment to replace the 18th, restoring the independence of public service commissions, although significant loopholes remain. Sirisena has also ordered investigations into emblematic cases of abuses by the security forces.

While these are good steps, there is much left to do to address impunity in the country. The Sirisena government has pledged to cooperate with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and to enact special procedures to address the serious human rights challenges confronting Sri Lanka. The president, prime minister and other senior government figures should start with a clear message that police abuse will not be tolerated and that violators will now be held to account for any past and ongoing human rights abuses.

Key Recommendations

- Establish an independent police oversight authority charged with investigating allegations of police abuse, the results of which would then be forwarded to the attorney general's department for prosecution as appropriate. This authority should be housed entirely outside the police department, report to the Ministry of Justice, have all relevant authority to conduct investigations, including on its own authority, and be empowered to subpoena police, other witnesses and police files.
- Establish an independent office in the attorney general's department tasked specifically with investigating and prosecuting cases of police abuse, including following up on referrals from the independent police oversight authority.
- Issue clear, public directives that police torture and other forms of abuse will not be tolerated.
- Amend police rules and manuals to be consistent with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; the UN Code of Conduct for Law Enforcement Officials; and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Ensure that magistrates fully comply with their obligations to ascertain whether a detainee produced in court has suffered torture or other ill-treatment, and to order legislatively mandated confidential medical examinations.

Methodology

Between June 2014 and May 2015, Human Rights Watch researchers interviewed more than 40 victims or witnesses of police violence in Sri Lanka. In addition, Human Rights Watch spoke with two dozen lawyers, civil society activists, and journalists who work on police torture and abuse, to understand the context and the obstacles to justice for victims of police abuse.

Human Rights Watch documented cases spanning a number of years. In addition to recent cases, the report contains older cases, including one from 2000, to highlight the long-term difficulties victims have faced in obtaining justice.

Human Rights Watch provided no remuneration or other inducement to the interviewees. In some cases, funds were provided to cover actual food and travel expenses incurred by the witnesses for the interviews. Interviews were conducted in Sinhala through an independent interpreter.

For cases in which complaints and legal procedures have been initiated, Human Rights Watch, with the consent of the victim or witness in question, received and has retained copies of relevant documents. In some cases, Human Rights Watch also obtained copies of the medical reports and contemporaneous newspaper accounts of the incidents.

The Sri Lankan government of President Mahinda Rajapaksa, in office until January 2015, was overtly hostile to human rights groups, including international organizations such as Human Rights Watch. For this reason, Human Rights Watch was unable to move freely through the country to document cases in all areas or to meet with Sri Lankan government officials. As a result, none of the cases in this report are from the war-torn and predominantly ethnic Tamil North and East regions of the country. Some cases we documented have not been included in the report because victims and witnesses fear retaliation by the police or other authorities.

Background

Sri Lanka has recently emerged from three decades of civil war that claimed hundreds of thousands of lives, left many forcibly disappeared, and displaced whole communities. From the late 1980s until 2009, Sri Lanka was beset by internal conflicts accompanied by massive human rights violations by all parties, including security forces.² Despite repeated government claims that it would address those abuses, impunity for security forces continues to be the norm.

An uprising by the Sinhalese left-wing Janatha Vimukthi Peramuna (JVP) between 1987 and 1989 in the South involved political assassinations, blockades, and mass strikes that crippled the economy. The government responded by first deploying the police and then the military in joint operations. The security forces were implicated in thousands of deaths of JVP suspects and tens of thousands of enforced disappearances, many of which have never been resolved. As an armed insurrection, the JVP was defeated in 1990 after security forces captured and killed its leader, Rohana Wijeweera, in November 1989.

The armed conflict with the LTTE, which lasted from 1983 to 2009, included numerous violations of the laws of war and human rights abuses by both sides. The LTTE committed a range of atrocities including suicide attacks and other killings of civilians; torture; the use of child soldiers; forced evictions; and the use of human shields. Abuses by government forces for which no one has ever been held to account include arbitrary arrests and detention; extrajudicial killings; rape and other sexual violence; enforced disappearances; torture and other ill-treatment; and indiscriminate attacks on civilians. Thousands remain disappeared. The long and bloody conflict ended in May 2009 with the LTTE's total defeat and the death of its leader, Vellupillai Prabhakaran, along with many other senior officials.

At least nine commissions have been established by various Sri Lankan governments through the years to investigate human rights abuses linked to these conflicts. While some of these commissions appeared to have amassed considerable information, none led to serious government efforts to provide accountability. In most cases their findings and recommendations were never implemented or even made public.

² "Sri Lanka Profile: Timeline," *BBC News*, January 9, 2015, <http://www.bbc.com/news/world-south-asia-12004081> (accessed April 4, 2014).

Recent Political Developments

Mahinda Rajapaksa was first elected president in 2005 during an ongoing ceasefire with the LTTE. Military operations initiated by the LTTE led to a breakdown of the ceasefire by 2006. Renewed fighting resulted in a decisive government victory, declared on May 19, 2009.³

In the areas of the North and East that it controlled, the LTTE governed with extreme brutality, restricting movement, speech, and association; evicting Muslims and Sinhalese; and forcibly recruiting combatants, including children.⁴ The group made extensive use of suicide bombers for political assassinations, including those of President Ranasinghe Premadasa in 1993,⁵ former Indian Prime Minister Rajiv Gandhi in 1991,⁶ and prominent Tamil politician and human rights activist Neelan Tiruchelvam in 1999.⁷ Many other attacks were directed at ordinary Sinhalese, Tamil, and Muslim civilians, targeting villages, buses, and holy sites.

Major military operations begun in 2008 pushed LTTE forces from their main positions in the Vanni, including their unofficial capital of Kilinochchi.⁸ The government ordered out most humanitarian organizations and foreign journalists, making monitoring of the situation difficult. Remaining LTTE forces, along with several hundred thousand Tamil civilians, many of whom were effectively used as human shields, withdrew to the East Coast. From January 2009 until the conflict's end, the Sri Lankan Armed Forces pounded the LTTE primarily with artillery and airpower, with little regard for the safety of civilians caught in the fighting.⁹ Government-declared no fire zones and well-marked hospitals were not safe from government attack.¹⁰ By

³ Matthew Weaver and Gethin Chamberlin, "Sri Lanka Declares End to War with Tamil Tigers," *The Guardian*, May 19, 2009, <http://www.theguardian.com/world/2009/may/18/tamil-tigers-killed-sri-lanka> (accessed March 17, 2015).

⁴ Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, November 11, 2004, <http://www.hrw.org/reports/2004/11/10/living-fear>.

⁵ Edward Gargan, "Suicide Bomber Kills President of Sri Lanka," *The New York Times*, May 2, 1993, <http://www.nytimes.com/1993/05/02/world/suicide-bomber-kills-president-of-sri-lanka.html> (accessed March 23, 2015).

⁶ "1991: Bomb Kills India's Former Leader Rajiv Gandhi," *BBC News*, May 21, 2005, http://news.bbc.co.uk/onthisday/hi/dates/stories/may/21/newsid_2504000/2504739.stm (accessed August 12, 2015).

⁷ "Tamil Politician Assassinated," *BBC News*, July 29, 1999, http://news.bbc.co.uk/2/hi/south_asia/406644.stm (accessed March 23, 2015).

⁸ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, http://www.llrc.lk/assets/downloads/reports/en/Final_LLRC_Report_en.pdf (accessed April 5, 2015).

⁹ "Sri Lanka: Urgently Evacuate Civilians," Human Rights Watch news release, March 4, 2009, <https://www.hrw.org/news/2009/03/04/sri-lanka-urgently-evacuate-civilians>.

¹⁰ Somini Sengupta, "U.N. Staff and Hospital Come under Shelling as Sri Lanka Fights Cornered Rebels," *New York Times*, January 27, 2009, <http://www.nytimes.com/2009/01/28/world/asia/28lanka.html> (accessed March 23, 2015).

the time of the LTTE's defeat, up to 40,000 civilians had died in the final months of the fighting alone, according to a study by a UN panel of experts.¹¹

Even while the fighting raged, calls for accountability for war crimes by both sides to the armed conflict were dismissed by the Rajapaksa government, which insisted that no civilians had been killed. The end of the conflict did not ease the government's tightening grip on Sri Lankan society as arbitrary detentions, repression of the media and human rights organizations, as well as a free hand by the military to pursue lucrative projects in the North persisted.¹² Rajapaksa won a second term of office in 2010.¹³

In August 2013, Navi Pillay, then the UN's High Commissioner for Human Rights, visited Sri Lanka and expressed alarm at the harassment and intimidation of civil society groups, the media, and religious minorities, stating that the country seemed to be heading in an "increasingly authoritarian direction."¹⁴

The UN Human Rights Council (HRC), which on May 27, 2009 had passed a resolution welcoming the end of Sri Lanka's war without mention of government abuses, responded to government intransigence on accountability and rights violations by passing a resolution in March 2014 calling on the Office of the High Commissioner for Human Rights (OHCHR) to independently investigate allegations of wartime violations and ongoing human rights abuses.¹⁵ The Rajapaksa government refused any cooperation with the investigative team and tightened its oppressive rule.¹⁶

¹¹ United Nations, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," March 31, 2011, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (accessed April 5, 2015).

¹² "Sri Lanka: Stop Harassing Victims, Activists," Human Rights Watch news release, September 3, 2013, <http://www.hrw.org/news/2013/09/03/sri-lanka-stop-harassing-victims-activists>.

¹³ Department of Elections, Democratic Socialist Republic of Sri Lanka, 2010 Presidential Election, "*All Island Final Result*," 2010. <http://www.slelections.gov.lk/presidential2010/AIVOT.html> (accessed March 23, 2015).

¹⁴ United Nations Human Rights Council, "Opening Remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to Sri Lanka, Colombo, 31 August 2013," United Nations press release, August 13, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673> (accessed March 23, 2015).

¹⁵ UNHRC, "Promoting reconciliation, accountability and human rights in Sri Lanka," Resolution A/HRC/25/L.1/Rev.1. March 26, 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14447&LangID=E> (accessed April 20, 2015).

¹⁶ "Sri Lanka Rejects OHCHR Inquiry, Dismisses Call to Cooperate," *The Tamil Guardian*, September 25, 2014, <http://tamilguardian.com/article.asp?articleid=12352> (accessed March 24, 2015).

Rajapaksa called for presidential elections to be held two years ahead of schedule in January 2015. A broad-based opposition that included Sinhalese and Tamils chose Maithripala Sirisena, a defector from the Rajapaksa administration, as their candidate. Sirisena won a decisive victory in the polls and he smoothly assumed the office of the presidency, despite reports that Rajapaksa sought military assistance to stay in power.¹⁷

Almost immediately, the pall of repression that had forced many activists and journalists to keep a low profile or leave the country was lifted. Among Sirisena's first acts as president was to promise a 100-day program of reforms.¹⁸ He pledged a downgrade of the executive presidency and a return to a parliamentary government. Following the election, his administration restored parliamentary authority to choose independent government commissions and reopened investigations into several prominent human rights cases.¹⁹ Progress in other areas, however, such as releasing LTTE detainees, ending administrative detention, and enacting electoral reform, has been slower. The Sirisena government has also pledged increased cooperation with the international community, including with the Human Rights Council.²⁰

Parliamentary elections were held on August 17, 2015, in polls which were relatively free and fair according to most independent observers, although there were confirmed reports of some irregularities. The United National Party won, leaving it as the single largest party in parliament. Its leader, Ranil Wickremasinghe, was appointed prime minister.

¹⁷ "Sri Lanka to investigate 'Rajapaksa Coup Plot,'" *BBC News*, January 11, 2015, <http://www.bbc.com/news/world-asia-30769188> (accessed August 12, 2015); Sreenivasan Jain, "2000 Soldiers were moved to Colombo for coup," *NDTV*, January 17, 2015, <http://www.ndtv.com/world-news/2000-soldiers-were-moved-to-colombo-for-coup-says-former-sri-lankan-army-chief-728507> (accessed August 12, 2015).

¹⁸ Jason Burke, "Sri Lanka Election Result: Who is President Sirisena," *The Guardian*, January 9, 2015, <http://www.theguardian.com/world/2015/jan/09/sri-lanka-election-result-who-is-new-president-maithripala-sirisena> (accessed March 24, 2015).

¹⁹ One of the first steps taken by the new government was to lift restrictions on websites and assure freedom of the press to journalists. An interactive website, <http://www.manthri.lk/en/maithrimeter>, set up a freely accessible page which measures the progress on reforms made and promised by the new government. Although some of the promises have yet to be fulfilled, several of the main reforms promised have either already been implemented or are on their way to implementation, including electoral reform, and a freedom of information law.

²⁰ Letter from Sri Lanka Foreign Minister Mangala Samaraweera to UN Human Rights Commissioner Zeid Ra'ad Al Hussein, February 13, 2015 <http://srilankabrief.org/wp-content/uploads/2015/02/hclettertocouncilpres-13feb.pdf> (accessed April 16, 2015).

In September 2015, the report mandated by the 2014 HRC resolution on Sri Lanka was released by OHCHR High Commissioner Zeid Ra'ad al Hussein.²¹ The report detailed horrific wartime abuses committed by both sides to the conflict, including killing of civilians, rape and other sexual violence, enforced disappearances and the intentional denial of humanitarian assistance to civilians trapped behind LTTE lines. This report, known as the OISL report on Sri Lanka, corroborates previous independent accounts of wartime abuses, including the Secretary General's Panel of Experts report.²² Following the release of the report the Sri Lankan government, together with the governments of the UK, US, Montenegro, and Macedonia, co-sponsored a new HRC resolution on Sri Lanka which calls for the establishment of a justice and accountability mechanism with expert international assistance. The resolution also promises the establishment of a truth and reconciliation mechanism and a dedicated office on enforced disappearances.²³

Police in Sri Lanka

Sri Lanka was under Portuguese and Dutch colonial rule before the British took over the island, then called Ceylon, in the late 18th century. Law and order was initially maintained by the military, but after the reshuffling of government departments a police force was established in 1805 under the oversight of the magistrates and police judges. Initially the police force dealt primarily with matters in and around the colony's capital, Colombo, with only small stations in villages and towns. In 1866, following greater consolidation of British rule throughout the island, a national police force was established. In 1947, after Sri Lanka gained independence, the police force was brought under the purview of the defence ministry, where it remained until 2013.²⁴

²¹ UNHRC, Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, September 16, 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_CRP_2.docx (accessed September 17, 2015).

²² UNGA, Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (accessed April 5, 2015).

²³ UNHRC, "Promoting reconciliation, accountability and human rights in Sri Lanka," Resolution A/HRC/25/L.1/Rev.1. March 26, 2014. <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/25/1&Lang=E> (accessed April 20, 2015).

²⁴ Sri Lanka Police, Democratic Socialist Republic of Sri Lanka, "Police History," <http://www.police.lk/index.php/police-history>, (accessed April 16, 2015).

There are several branches of police, whose overall size is estimated at about 65,000 personnel, including reservists and regular staff.²⁵ The primary functional divisions of the police consist of the Criminal Investigation Department (CID), the Narcotics Bureau, the Women and Children's Bureau, and the Terrorist Investigation Division (TID). The CID is charged with investigating major crimes and security-related violations. The TID is charged with investigating cases under the Prevention of Terrorism Act (PTA), although these lines are often blurred.²⁶ There are also the Special Task Force (STF), an armed paramilitary force; intelligence units; and personal protection units.

The police responsible for most of the abuses examined in this report fall under the authority of the CID, which operates under the command of the director inspector general of police.²⁷

Sri Lanka has invested a great deal into its security forces, including the police, particularly since the outbreak of ethnic violence in the 1980s. Due in part to the LTTE insurgency, Sri Lankan security services grew substantially over the last few decades. Although the war ended in 2009, the number of security force personnel has not decreased and the annual defense budget has continued to grow each year since.²⁸ The Rajapaksa government deployed large numbers of security force personnel in administrative and other civil duties, such as building reconstruction and rehabilitation efforts, contributing to a pervasive military presence particularly in former LTTE-controlled areas in the North. This overt presence decreased somewhat under the Sirisena government.

The use of torture against persons in custody became widespread as a means to counter the separatist movement.²⁹ Human rights groups and lawyers suspect that today's general

²⁵ Kishali Pinto-Jayewardena, *The Rule of Law in Decline*, The Rehabilitation and Research Centre for Torture Victims, Denmark, May 2009, http://www.dignityinstitute.dk/media/627904/sri_lanka_study.pdf (accessed April 5, 2015). There are roughly 430 police per 100,000 people in Sri Lanka, a lower ratio than in most other countries in South Asia and roughly the same ratio as in some European countries.

²⁶ Ibid.

²⁷ Ibid.

²⁸ "Sri Lanka Army; Defenders of the Nation," Sri Lankan Armed Forces, Democratic Socialist Republic of Sri Lanka, <http://www.army.lk/index.php> (accessed April 5, 2015).

²⁹ Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History of Contested Identities* (London: Hurst & Co., 2006; and Honolulu: University of Hawaii press, 2006); International Crisis Group, *Sri Lanka's Human Rights Crisis*, June 14, 2007, <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/135-sri-lankas-human-rights-crisis.aspx> (accessed April 5, 2015).

acceptance of police torture reflects this history. In 2005, Radhika Coomaraswamy, then chair of the NHRC, reported that police torture was not due to a handful of rogue police officers but instead was rooted in “the routine use of torture as a method of investigation,” and required “fundamental structural changes” to eradicate this abuse.³⁰

Until 2014, the Sri Lankan police force was under the effective control of the Ministry of Defence. In 2013, a new Ministry of Law and Order was established, but it was led by a former military general.³¹ Under the new government it has been renamed as the Ministry of Law and Order and Prison Reform and placed under civilian control.³² This creates a division between the armed forces and police, crucial for developing the police’s civilian identity.

The National Police Commission was created in 2002 to act as an independent vehicle for police appointments, transfers, and promotions, as well as to conduct inter-disciplinary proceedings against officers.³³ In 2010, the constitutional provision guaranteeing the independence of the commission was repealed and replaced with an amendment that effectively allowed the president control over appointments,³⁴ leading observers to conclude it had been rendered all but powerless.³⁵ The Sirisena government addressed this problem by supporting passage of the 19th Amendment to the constitution, designed partly to restore the independence of the National Police Commission and other public service commissions. However, many observers assert that the amendment does not go nearly far enough to address the concerns.³⁶

³⁰ Radhika Coomaraswamy, “Sri Lanka: The National Human Rights Commission’s Anti-Torture Policy,” The Reparations Report, REDRESS, May 2005, <http://www.redress.org/downloads/publications/May2005.pdf> (accessed April 5, 2015).

³¹ “Ministry of Law and Order Established,” Ministry of Defence, Democratic Socialist Republic of Sri Lanka, August 27, 2013, http://www.defence.lk/new.asp?fname=Ministry_of_Law_and_Order_established_20130824_05 (accessed March 23, 2015).

³² An English language version of the ministry website is available at: <http://translate.google.com/translate?hl=en&sl=si&u=http://www.lawandorder.lk/&prev=search> (accessed April 5, 2014).

³³ National Police Commission, Democratic Socialist Republic of Sri Lanka, <http://www.npc.gov.lk/npc/> (accessed April 4, 2015).

³⁴ The 17th Amendment to the constitution created an all-party constitutional council which was responsible for nominations of commissioners to the various public service institutions such as the National Police Commission and the National Human Rights Commission. “Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka,” <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html> (accessed April 4, 2014).

³⁵ Gulbin Sulatana, “18th Amendment: Making a Mockery of Democracy in Sri Lanka,” Institute for Defence Studies and Analysis, October 7, 2010, http://idsa.in/idsacomments/18thAmendmentMakingaMockeryofDemocracyinSriLanka_gsultana_071010.html (accessed March 23, 2015).

³⁶ “Nineteenth Amendment Passed with a Vast Majority,” *Adedara News*, April 28, 2015, <http://www.adaderana.lk/news/30672/19th-amendment-passed-with-a-vast-majority&> (accessed June 19, 2015).

History of Impunity

Government security forces, including the police, have a long history in Sri Lanka of committing serious abuses with impunity. Soldiers and police have rarely been held to account for arbitrary arrest, torture, enforced disappearances, and custodial killings.³⁷ Successive Sri Lankan administrations ignored the findings of various government-appointed commissions of inquiry, and this sense of impunity became an entrenched part of police culture. The Colombo-based Law and Society Trust noted in 2010:

The purpose of most commissions – the creation of a fact-finding or truth seeking body that will promote justice for a past injustice or past injustices – has rarely, if ever, been fulfilled. The commissions, in some cases, have facilitated the granting of compensation. They have rarely led to prosecutions and have failed to counter impunity. They have failed to deter further grave violations of human rights.³⁸

A 2010 report by the Geneva-based International Commission of Jurists (ICJ) found resistance to accountability entrenched not only in the police and army, but also in the prosecutors and judges who acted to protect members of the security forces. Referring to a notable exception in the successful prosecution of officers for the 1996 rape and murder of Krishanthi Kumaraswamy by members of the security forces, the ICJ emphasized that, even in that case, only junior officers were prosecuted: “[R]ather than being emblematic of judicial integrity, this rare instance of a high-profile successful prosecution appears to have been the exception that proved the rule of impunity.”³⁹

³⁷ International Commission of Jurists, “Authority without Accountability: The Crisis of Impunity in Sri Lanka,” November 2012, p. 1, <http://www.refworld.org/pdfid/50ae365b2.pdf> (accessed April 5, 2015). The report notes that in Sri Lanka, “impunity has over the years become institutionalized and systematized: mechanisms to hold state actors to account for their actions have been eroded; checks on the arbitrary use of power have been diluted, if not dissolved; institutions to protect the independence of the judiciary have been eviscerated; the Attorney-General has become politicized; and political forces have continually sought to influence and interfere with the judiciary. Blatant disregard for the rule of law and the independence of the judiciary has crippled the justice system, leaving victims with little or no prospect of remedies or reparations for serious human rights violations.”

³⁸ Law & Society Trust, “A Legacy to Remember: Sri Lanka’s Commissions of Inquiry, 1963 – 2002,” September 2010, Colombo, <http://www.lawandsocietytrust.org/PDF/a%20legacy%20to%20remember%3B%20sri%20lanka's%20commissions%20of%20inquiry.pdf> (accessed April 5, 2015).

³⁹ Kishali Pinto-Jayewardena, “Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry,” International Commission of Jurists, January 2010, http://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full_Report.pdf (accessed April 5, 2010).

International attention and criticism of Sri Lanka's abusive policing system has had little impact. A report by the UN special rapporteur on extrajudicial, summary or arbitrary executions, presented at the Human Rights Council's May 2008 session, stated that none of his prior recommendations from a 2006 report were implemented. The rapporteur specifically noted that the government had not implemented any of his recommendations regarding "improving police respect for human rights, police effectiveness in preventing killings, and police accountability."⁴⁰ He went on to express concern at what he described as a "backward movement" particularly through the subordination of the police to the anti-insurgency movement.⁴¹

An equally scathing 2008 report by the UN special rapporteur on torture and other cruel, inhuman and degrading treatment received scant attention from the government, although many of its findings, which concluded that torture in police custody was widespread in Sri Lanka, remain true today.⁴² As prominent lawyer Kishali Pinto-Jaywardena noted: "The special rapporteur's findings underscore a commonly accepted reality, namely that the freedoms of life and liberty of the Sri Lankan people are...at risk from the very guardians entrusted with its care."⁴³

Police use of torture against criminal suspects cannot be dismissed as a wartime phenomenon. Human Rights Watch found that even after the decisive defeat of the LTTE, certain branches of the police continued to routinely engage in torture, including sexual abuse, to extract confessions or information from suspected LTTE members or supporters.⁴⁴ In addition, police have been implicated in enforced disappearances, extrajudicial executions, and abductions of those suspected, however loosely, of ties to the LTTE.

⁴⁰ OHCHR, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Follow-Up Recommendations)," U.N. Doc. A/HRC/8/3 Add. 3, May 14, 2008, http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_8th.htm (accessed April 5, 2015).

⁴¹ Ibid.

⁴² UNHRC, Mission to Sri Lanka, "Report of the Special Rapporteur on Torture and other Cruel, Inhumane and Degrading Treatment, Manfred Nowak," U.N. Doc. A/HRC/7/3/Add.6, February 26, 2008, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/111/35/PDF/Go811135.pdf?OpenElement> (accessed April 5, 2015).

⁴³ Kishali Pinto-Jaywardena, "The Rule of Law in Decline; Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka," The Rehabilitation and Research Centre for Torture Victims, May 2009, http://www.dignityinstitute.dk/media/627904/sri_lanka_study.pdf (accessed April 5, 2015).

⁴⁴ Human Rights Watch, *We Will Teach You a Lesson: Sexual Violence Against Tamils by Sri Lankan Security Forces* (New York: Human Rights Watch, 2013). <http://www.hrw.org/reports/2013/02/26/we-will-teach-you-lesson>.

During the war, the fear of registering complaints against the police was heightened, in part due to the overreach of the Prevention of Terrorism Act (PTA) and other emergency regulations.⁴⁵ The PTA remains in place although the government claims that the terrorist threat has been decisively eliminated. Extraordinary powers extended through the PTA continue to allow police to bypass regular procedures with complete immunity, including for acts of torture. Persons detained under the PTA do not need to be produced before a court for 18 months, and do not need to be charged at all. The PTA, with the immunity it grants security service personnel, remains the most problematic aspect of Sri Lanka's policing system.

The near-total impunity allowed the police and other security forces during the decades of conflict cannot be overstated. One commission, looking into allegations of violations, reported hearing that people were "chased away like dogs" by the police if they attempted to file any complaints.⁴⁶

These problems have existed for decades. The 1994 Disappearances Commission, referring specifically to police obstruction of justice, noted:

A feature that struck us most forcefully in our inquiries was the utmost care that had been taken not only by individual perpetrators but also by the system itself to prevent these occurrences from being reflected in the official records of the country... [T]here is clear evidence of a systematic attempt to keep these deaths/disappearances from being recorded.⁴⁷

⁴⁵ Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm (accessed April 5, 2015); "Proclamation by President on the State of the Emergency," *Gazette of the Democratic Socialist Republic of Sri Lanka*, March 13, 2006.

⁴⁶ Final Report of the 1994 Western, Southern and Sabaragamuwa Disappearances Commission, Sessional Paper No.V 1997. On December 9, 1994, then President Chandrika Bandaranaike Kumaratunga issued three presidential proclamations, appointing three different Commissions of Inquiry to look into the "involuntary removal or disappearance of persons" from 1988 to 1994. The three Zonal Commissions were responsible for the following provinces: i) the Central, North West, North Central and Uva Provinces; ii) the Northern and the Eastern Provinces; iii) the Western, Southern, and Sabaragamuwa Provinces. The three commissions together investigated over 27,000 complaints and established more than 15,000 cases of disappearances. In 1998, the work of these three commissions was complemented by an "All Island" Commission, which was tasked to investigate 10,136 complaints not pursued by the Zonal Commissions. It established evidence of 4,473 disappearances in addition to the cases documented by the other commissions.

⁴⁷ Ibid.

The 1994 commission also found that police investigations were distorted to “conceal more than to reveal” in the few instances in which authorities had to go through the motions of an investigation. It determined that there was consistent failure to prosecute or take disciplinary action against offending officers, and that some had even received medals or been promoted.⁴⁸

This and other commissions, however, had little impact and no authority to enforce their findings.⁴⁹

However, since the end of the war, Sri Lanka has seen increasing pushback against the wide discretion routinely given to state forces in combating the LTTE.⁵⁰ While impunity is still the norm and arrests, detentions, and abuses under the PTA are largely hidden from view, abuses committed during regular policing are being reported in both the Sinhala and English language papers more frequently and with more detail than before.

⁴⁸ Ibid.

⁴⁹ Amnesty International, “Sri Lanka: Twenty years of make-believe - Sri Lanka’s Commissions of Inquiry,” June 11, 2009, <https://www.amnesty.org/en/documents/ASA37/005/2009/en/> (accessed April 5, 2015).

⁵⁰ Although the Rajapaksa government used heavy-handed tactics against its critics, Sri Lanka’s media culture rapidly began changing and the nation has been able to gain back, albeit tenuously, considerable lost ground in returning to its traditionally democratic roots. Rights groups and the media have increasingly been able to publish critical content both via mainstream and social media outlets. These include, for example, Groundviews (www.groundviews.org), Centre for Policy Alternatives (www.cpalanka.org), *Financial Times* (www.ft.lk), and Republic Square (www.therepublicsquare.org).

Police Torture and Other Abuse

Police abuses against criminal suspects in Sri Lanka, including arbitrary arrests, due process violations, and torture, are common and widespread. In many cases, the police use torture and other forms of coercion as a shortcut to obtain confessions or other information to facilitate convictions. Some of the cases reported to Human Rights Watch involved very minor alleged offenses, such as petty theft or vandalism, and the reasons for the custodial abuse were often unclear.

The abuses documented by Human Rights Watch often occurred in police custody, and appeared to end when the victim was finally produced before a magistrate and remanded to jail pending trial. In all cases, victims reported severe ongoing emotional and psychological distress as a result of the abuse. We report on recent cases as well as a handful of older cases to highlight the obstacles the victims have faced in seeking justice for their mistreatment.⁵¹

Deaths in Police Custody and Excessive Use of Force

Human Rights Watch documented five cases of apparently unlawful deaths of criminal suspects in police custody, and one case in which an individual not in custody died due to excessive use of force by police.⁵² Some of the cases appear to have involved people apprehended for minor non-violent offenses who then, often on their first night of custody, suffered injuries resulting in their deaths. In each case, family members have been unable to obtain redress, and those responsible were not held to account. In some cases, the involvement of human rights lawyers and the media helped families attain some measure of justice.

Death of LA Samantha

LA Samantha from Sooriyawera, a rural town in Hambanthota district in Southern province, had gone to a neighboring town to buy some fertilizer for his farm on the afternoon of February 19, 2015. His wife, KK Sriyalatha, said that at about 5:30 that evening, she saw six

⁵¹ See “Failure of Justice Mechanisms” (Ch. III below) for a detailed discussion on procedural delays and failures.

⁵² These cases had also been reported by the media. The case descriptions here draw on those accounts but are based largely on HRW’s more in-depth interviews with families, rights activists, and lawyers.

police officers bring him to their house. He had no shirt on and his hands were cuffed behind his back. The police officers were in civilian clothes but Sriyalatha says she knew they were police because they had come by before several times on patrol and identified themselves as such.⁵³

Sriyalatha saw the police hitting her husband, shouting at him that they knew he was making illegal alcohol, and demanding to know where it was kept. She said they beat him with poles for about 20 minutes. She tried to help but the police had blocked access to the house with their motorbikes and would not let her through. After 20 minutes, two officers approached her and told her that they were taking her husband to the police station. They put her husband on one of the motorbikes and all of them drove off.⁵⁴

At about 6:30 that evening, Sriyalatha received a phone call from Samantha, who asked her to come to the police station to post bail for him. Sriyalatha says that since she had young daughters alone at home, she was unable to go that evening to post bail. The next morning, as she was getting ready to go to the police station, her uncle phoned to tell her that he had heard that Samantha was in the intensive care unit of the Sooriyaweera hospital. She rushed to the hospital only to find that because his situation was so critical, Samantha had been moved to the larger Hambanthota hospital. She told Human Rights Watch what she saw at Hambanthota hospital:

Samantha was barely conscious. At one point, he turned and blood started pouring out of his mouth. There were two police officers in the room with him: one was in a regular police uniform, the other was in the uniform of the civil defense. The doctor said he would examine him but did not know that Samantha had been assaulted by the police.⁵⁵

Samantha's health deteriorated over the next few days. On February 21, the magistrate came to the hospital. When the magistrate asked Samantha about his injuries, he said that he had fallen down while in the police cell. Sriyalatha says she yelled at him to tell the truth about being beaten, but she said Samantha later explained to her that he was afraid

⁵³ Human Rights Watch interview with KK Sriyalatha, Sooriyaweera, Hambanthota District, May 30, 2015.

⁵⁴ Ibid.

⁵⁵ Ibid.

of making the police angry. The magistrate did not question him any further about his injuries and granted bail. Sriyalatha says she decided against posting bail because she could see Samantha's condition was deteriorating and she wanted him in the hospital until he got better.⁵⁶

Samantha died the next day, on February 22. The cause of death is listed on the post-mortem report as trauma from a blunt instrument and consequent internal bleeding. His relatives have filed a fundamental rights application before the Supreme Court, as well as a petition before the NHRC. They have also lodged a complaint with the police, and as a result the CID has initiated an investigation into Samantha's death. Six police officers have been suspended from duty pending investigation, in part due to intense media attention and public outcry over the killing of a minor.

Samantha's brother said the death had impacted not just his family but the entire community:

We are absolutely disgusted by the police. The entire village is disgusted. He was beaten in public, with the entire village looking on, in broad daylight, for everyone to see. This was not torture done in hiding, for fear of reprisal. They left the poles with which they beat Samantha in front of the house – they didn't care if they were seen or not. What does that tell you about police power and abuse? These are the people who are meant to protect us?⁵⁷

Death of PH Sandun Malinga

Gamini Priyantha from Badulla district in Uva province, the father of PH Sandun Malinga, told Human Rights Watch that he had saved 75,000 Sri Lankan rupees (US\$650) to buy a second-hand trishaw, a motorized three-wheel vehicle. On May 7, 2014, he sent his 16-year-old Malinga and an older son, together with three other relatives, to the village of Katwatte to buy the trishaw. When he didn't hear back from them by that evening, he phoned to find out what had happened, but none of them were answering their phones. Later that evening, he heard from a friend that there were rumors that the five had been

⁵⁶ Ibid.

⁵⁷ Human Rights Watch interview with LA Wimal, Badulla District, May 30, 2015.

arrested and were in police custody in Kandaketiya. The police alleged that the five were trespassing on an archeological site, a charge that was subsequently dropped.

At 2 a.m. Priyantha went to the Kandaketiya police station and found all five of them in police holding cells. He told Human Rights Watch:

My youngest son, Sandun [Malinga], said that he had been beaten. He said he had been kicked on the chest and stomach. He was crying, and said he was in a lot of pain. He kept asking me to save him. [From the others] I learned that they had been assaulted by a group of police officers while on their way to buy the *tuk tuk* [trishaw] ... I remember my younger son could hardly walk; he was on the floor, clutching his chest, in great pain. I remember seeing that the skin on his back had split, you could see the raw flesh underneath.⁵⁸

None of the five had ever been arrested or in any kind of trouble with the law. According to Priyantha, the police refused to provide an explanation for the detention or abuse, instructing the relatives to go to the courts in the morning when the five were presented before a magistrate.

The next day, the police asked the magistrate for a further 14 days to conduct their investigations, without making any arguments as to what the nature of the investigation might be. Priyantha said the magistrate refused to hear arguments from the lawyers for the five detainees, and remanded all five to further custody. The magistrate did not look into possible torture in custody in spite of Malinga's injured state.⁵⁹

Malinga died in the early hours of May 9 as a result of the injuries he sustained from the beatings. According to his father:

My older son later told me [about Malinga's last hours]; they were both in the same prison cell. The night before, they had all been given dinner at 7:30 at night. Malinga couldn't eat, so he just lay down. Sometime in the

⁵⁸ Ibid.

⁵⁹ Ibid.

early morning, around 5:30, Malinga asked for some water. My older son cradled Malinga in his arms to comfort him, but suddenly he said Malinga's eyes just rolled up into his head, he sputtered saliva and died.⁶⁰

There was widespread outrage after Malinga's death in police custody.⁶¹ The family has filed a petition before the NHRC and a fundamental rights application before the Supreme Court. The Supreme Court granted leave to proceed with the fundamental rights application, and the hearing was set for September 16, 2015.

The police have not acknowledged any wrongdoing on their part. According to Malinga's father Priyantha, they regularly threaten his family with phone calls and unannounced visits.⁶²

Priyantha also says that despite the shock and threats from the police, he is very determined to fight for justice for his son. It is an overnight bus journey for him into Colombo, but he says he makes the trip to consult with lawyers and to sign petitions and complaints. In June 2014, eight police officers from the local station were remanded into custody by the Badulla magistrate although the senior officer remains shielded from accountability. A year later, there has been no further action taken against the police and no charges have been filed. The family does not hold out much hope. They said that witnesses who can identify the perpetrators are not coming forward, and they suspect it is because of police intimidation.

Death of Gayan Rasanga

The failure of the authorities to hold to account those responsible for the death of Gayan Rasanga in police custody in 2011 exemplifies the impunity of the security forces for serious human rights violations.

On September 29, 2011, Rasanga, a trishaw driver, was at his wife's parents' home in Pattiwila, just east of Colombo near Kelaniya in Western province. He was having a nap at around 3:30 in the afternoon when five people in civilian clothes came and surrounded the

⁶⁰ Ibid.

⁶¹ David Rush, "7 Police Officers Arrested After Teenager Dies in Custody," *The Colombo Telegraph*, May 13, 2014.

⁶² Human Rights Watch interview with PH Gamini Priyantha, June 14, 2014

house, asking for him by name. When he went to open the door, they grabbed him and bundled him away in a van. They told his wife that Rasanga was suspected of stealing a water pump, and asked her to come to the Dompe police station.⁶³

When his wife and other family got to the police station, they could not find Rasanga. The police kept providing contradictory information about his whereabouts. Finally, the officer-in-charge (OIC) shouted at the family, telling them to leave the station and come to court the following morning.

Early the next morning, one of Rasanga's relatives learned that Rasanga had died overnight in police custody. Family members rushed to the police station, where according to Rasanga's wife, the OIC said, "I'm so sorry but it's not me who did it."⁶⁴

The OIC instructed the family to go to the morgue. Rasanga's mother described her son's body to Human Rights Watch:

Gayan's shirt was open, and his pants were down by his knees. There were dark marks on his ankles. The soles of his feet looked like they had been burned. There were bruises on his hips, his nose was broken and bloody. His body was still warm to the touch, as was his blood.⁶⁵

Police initially claimed that Rasanga had died while attempting to escape custody, although this was later withdrawn. The autopsy report, which Human Rights Watch reviewed, indicates that Rasanga died from internal bleeding caused by injuries sustained from blunt instruments.⁶⁶ Although the magistrate court referred the case to the attorney general's department, three years later, the case is still unresolved in spite of a strong and conclusive post-mortem report. No action has yet been taken against the five police officers who took Rasanga into custody although the police commission claimed to have

⁶³ Human Rights Watch interview with Rasika Lakmini, Greater Colombo, June 17, 2015. See also: "Dompe's Victims's Parents Seek Justice," *BBC News*, October 3, 2011, http://www.bbc.co.uk/sinhala/news/story/2011/10/111003_dompe_police.shtml (accessed March 23, 2015).

⁶⁴ Human Rights Watch interviews with Rasika Lakmini, wife of Gayan Rasanga, and Lalani Raiantha, mother of Gayan Rasanga, Greater Colombo, June 17, 2015.

⁶⁵ Ibid.

⁶⁶ Files shared by family members and human rights defenders with Human Rights Watch.

launched an inquiry into their conduct.⁶⁷ A fundamental rights petition before the Supreme Court is still pending as is a complaint before the NHRC.⁶⁸

The family told Human Rights Watch they have exhausted all resources and feel completely let down by the system. They do not know where else to turn for relief and justice. The family lives in the same village as the police officers, and they fear reprisals if they go further.

According to Rasanga's wife, it was only after Rasanga's death that his father mentioned having seen him at the police station the previous day. He had been so shocked by what he saw that he did not mention it to the family at the time for fear of alarming them further. He said he had heard his son screaming for help and that he had seen Rasanga hanging upside down, tied from his feet to the ceilings, wearing only his underwear. He said that he saw this in a hut behind the police station, which was within the police compound but not in the station itself.⁶⁹ Human Rights Watch could not corroborate this account.

Death of Indika Jayesinha

On June 11, 2014, Indika Jayesinha was riding his motorcycle at about 11:30 at night in Pasiyala, on the Colombo-Kandy Road in central Sri Lanka, with a colleague riding pillion with him. According to the colleague, who later spoke to Jayesinha's father, the police stopped them as part of what seemed like a routine check for driver's licenses and registration. Jayesinha had just stopped the motorbike when one of the policemen pulled out a pistol and fired a shot that struck Jayesinha in the armpit.⁷⁰ Jayesinha fell off the motorbike, at which point the police drove him to the Wattupitivela hospital in their jeep. By the time Jayesinha's family were contacted and able to get to the hospital, he had been pronounced dead.⁷¹

A police officer admitted responsibility for the shooting. The court released him on bail for 5,000 Sri Lankan rupees (US\$37) and more than a year later he remains at his post at the

⁶⁷ Human Rights Watch interview with Lalani Rajantha and Rasika Lakmini, June 17, 2014.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ The witness declined to be interviewed by Human Rights Watch. He relayed his responses to our questions through the victim's father.

⁷¹ Damith Wickremasekara, "Long Arm of the Law Strikes Down Another Innocent Life," *The Sunday Times*, June 15, 2014. <http://www.sundaytimes.lk/140615/news/long-arm-of-the-lawless-strikes-down-another-innocent-life-103732.html> (accessed March 19, 2015).

police station. Jayesinha's father said that the director inspector general of police told the family that the police had done nothing wrong.⁷²

The family was not fully aware of their legal options but said that they were receiving assistance from the Sri Lankan Bar Association. In September 2014, the media reported that the bar association had appealed against a magistrate's order granting bail to the police official responsible for the shooting.⁷³

Jayesinha's father said that family had been receiving anonymous threats meant to stop their pursuit of justice. He told Human Rights Watch:

We live in constant fear. Sometimes, we see white vans outside our house. We get phone calls with death threats, we don't know who it's from but the message is the same: don't make the wrong decision or the same thing will happen to you....But even if I am given half this country I will not stop. No other mother, father, wife or child should have to go through this.⁷⁴

Death of MD Chaminda Pushpakumara

On March 4, 2015, Chaminda Pushpakumara was summoned to the Doomalasooriya police station because his ex-wife had filed a complaint against him, claiming that he had stolen a necklace from her.⁷⁵ Before he left for the station, he stopped by his sister Rupavati's house and told his nephew that if he didn't return soon, they should phone him or come looking for him. At about 7:30 that evening, when he had failed to come back, some family members went to the police station and found Pushpakumara in a cell, together with another detainee. The cell was about three to five meters directly in front of the main police desk, situated in such a way that the officer at the desk could see all detainees in the cells at all times. According to his family, Pushpakumara looked all right physically, though he was worried about the case against him.⁷⁶

⁷² Human Rights Watch interview with Sunjl Jayesinha, Pasiyala, September 10, 2014.

⁷³ "Bar Association Challenges Magistrate Order On Controversial Pasyala Killing," *Asian Mirror*, September 4, 2014, <http://asianmirror.lk/news/item/3217-bar-association-challenges-magistrate-order-on-controversial-pasyala-killing> (accessed March 19, 2015).

⁷⁴ Human Rights Watch interview with Sunjl Jayesinha, Pasiyala, September 10, 2014.

⁷⁵ Human Rights Watch interview with MD Rupavati, May 31, 2015. There were no allegations of domestic violence in this case, which was corroborated by family members interviewed.

⁷⁶ Ibid.

Just before midnight, however, Rupavati said a neighbor told her that Pushpakumara had died and that she should go to the Galmuruwa hospital immediately. Rupavati said she first went to the police station, where she was told to go straight to the hospital. She tried to find out what had happened but the police would not say anything.

Rupavati saw her brother's body in the hospital morgue. She said there was a long, fresh scar on his hip and neck. There was blood coming out of both his ears, and she saw some wounds on his back, as if made with a sharp instrument. There was blood all over his back. She said the police told her he had hanged himself. Her son and nephew, who examined the body more closely, and corroborated what appeared to be injuries from torture, did not see any bruises around his neck suggesting strangulation from hanging.⁷⁷

Rupavati said Pushpakumara had never been depressed or worried, and there was no indication that he was in any way suicidal. He was a single parent who was devoted to taking care of his young daughter and elderly mother. He had no prior history of ill health.

The family has filed complaints with the police commission and the NHRC. A hearing date was initially set with the NHRC for June 28, 2015, but the hearing has now been postponed multiple times. The local police have said that they will investigate how it was possible for Pushpakumara to hang himself in plain view of the police and another cellmate, but several months later the family have not heard the results of this inquiry.⁷⁸

Shooting of RPA Roshan Shanaka

Shanaka was not killed in custody but died as a result of excessive use of force by the police. Friends of RPA Roshan Shanaka told his family that on May 30, 2011, Shanaka, who worked as a welder in the Free Trade Zone in Negombo, a city north of Colombo, was a bystander at a demonstration for workers' pensions.⁷⁹ In the afternoon police stormed the demonstration, injuring an estimated 200 protesters.⁸⁰ Shanaka was hit by two bullets,

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ "The Limits of Mahinda Chintanaya: FTZ workers and Buddhist Monks Rise up Against Government," *Groundviews*. May 6, 2011. <http://groundviews.org/2011/06/05/the-limits-of-the-mahinda-chintanaya-ftz-workers-and-buddhist-monks-rise-up-against-government/> (accessed March 2014).

⁸⁰ Ibid.

one penetrating his kidney and the other his leg. His friends told his parents that when they tried to put him in a car to take him to the hospital, the police smashed the car windows, chased them down, and proceeded to beat them all.⁸¹ He eventually reached Ragama hospital.

On May 31, the doctors amputated Shanaka's leg but he died from his wounds three days later. His mother said that there was a huge security cordon around the hospital the entire time Shanaka was there for fear of further protests in response to the police brutality.

The government asked the police to conduct an inquiry into the matter but so far no action has been taken against the police for unnecessary or excessive use of force. The case was well-covered in the media, and over the following months his family received substantial compensation from various branches of the government. Crucially, however, no action has been taken against the police responsible for Shanaka's death. The family is not pursuing any further action because they said they are exhausted.

Shooting of Mangala Sampath

Mangala Sampath also took part in the aforementioned 2011 Free Trade Zone protest in the RPA Roshan Shanaka case. Sampath said that about 3,000 people joined the protest and from his vantage point at the back of the rally, everything seemed peaceful. There were speeches being broadcast to the crowd via loudspeakers.

Sampath said that around 500 police officers were standing about 100 meters away, when for reasons unknown to him, they suddenly started attacking the protesters. When the police advanced to disperse the protest, he and many others started running away. He said there was panic everywhere.⁸²

According to Sampath, the police first used teargas before opening fire with live ammunition. Sampath said he was confused because the teargas made it hard to see anything. He noticed blood on his hands and felt something hit him around the groin. He said he did not immediately feel pain, and merely had a sense that something was happening before losing all sensation in his leg and hip area.

⁸¹ Human Rights Watch interview with WD Kahanthi, September 15, 2014.

⁸² Human Rights Watch interview with Mangala Sampath, September 9, 2014

Some friends found him with bullet injuries and rushed him to Negombo hospital where the doctors operated on him immediately. The doctors had to remove a testicle and parts of his small intestine. It took him three months in the hospital to recover.

Sampath has taken no action against the police. He said he had hoped that the government will investigate the incident. He gave a statement to the Central Intelligence Division but has heard nothing further.⁸³

Torture and Ill-Treatment in Custody

Human Rights Watch investigated 15 cases in which the police tortured or otherwise ill-treated criminal suspects in their custody. In most cases, the police were attempting to coerce confessions or other evidence. In some cases, the police sought to punish the suspects unilaterally—and unlawfully—without waiting for the courts to determine innocence or guilt. Beyond the mistreatment, the suspects in these cases were usually deprived of other rights, such as not being brought promptly before a judge or even informed of the charges against them.

One lawyer described to Human Rights Watch the similarities he saw in cases of custodial abuse:

There is a predictable pattern in these cases. First, they don't care about producing those arrested within 24 hours as required. Second, there is no investigation of the actual crime scene, in fact no investigation at all. Then they tend to arrest them outside of regular court times – at night, weekends – so that even if they do produce them, they do so before an “acting magistrate” rather than a regular one, who tends to be of lower rank and experience. Most of the time, there is collusion between the magistrate, the police, and often the JMO [judicial medical officer] as well. The odds are stacked against these victims.⁸⁴

⁸³ Ibid.

⁸⁴ Human Rights Watch interview with Pulasthi Hewamunna, Colombo. June 13, 2014.

Torture of WT Presley Fernando

Presley Fernando was at home sleeping during the early morning of May 10, 2014, in Madampe outside Ja-Ela, when police officers in civilian clothes came to his house, forced their way in, and started punching him. He told Human Rights Watch that as best as he can recall, there were two police officers who came inside, and there were at least two outside. He says the police handcuffed and dragged him outside. One of the police officers outside showed Fernando his police identification from the Puttalam District Criminal Division, and told him that they were going to take him to the Chilaw police station for questioning regarding a robbery.⁸⁵

The police put Fernando inside his own trishaw and drove him to the station. He says they kept beating and shouting at him along the way. When they got to the station, the police officers took him to the police quarters on the side of the main station. Once inside, Fernando saw that there were three other men there, all in shorts and without any shirts on. From their appearances, Fernando guessed that they had been beaten, but he didn't have time to have a proper look. The police asked Fernando if he knew the men: he did know one of them and said so. As soon as he said this, he told Human Rights Watch, the officers starting hitting him, shouting for information about a robbery.

Fernando said that when he insisted that he knew nothing about any robbery the police told him to take off his shirt, after which the beatings continued. Fernando counted at least eight police in the room at that time, all of whom took turns beating him. He eventually lost consciousness. When he woke up, he found himself on the floor of a bathroom surrounded by the same police officers:

One of the policemen ordered me to remove my trousers and underwear. I didn't want to but was so scared by this time that I would have done anything. They then tied my hand behind my back, and then using a rope they raised me up from the ground so my tied hands were stretched up above my back towards the ceiling. I could feel my hands getting fractured, could feel my arms getting disjointed. I was raised about two-and-half feet off the floor. The beatings had hurt but this was an unbearable pain. In

⁸⁵ Human Rights Watch interview with WT Presley Fernando, May 26, 2015.

addition to the hanging, the police were beating me on the soles of my feet with a bundle of twigs from the Girisiriya tree.⁸⁶

Fernando said that after what felt like 10 minutes, he agreed to tell the police about the robberies. He was finally lowered, but raised up and hung again when they realized he knew nothing about the crimes. This was repeated three times. On the third hanging, the senior police officer present ordered that chili paste be applied to Fernando's penis and face. Unable to bear the burning from the chili paste, Fernando shouted that he was willing to confess and the police officers finally left. Another police officer came in after a few minutes and lowered him to the ground.

Fernando was then taken back to the room where the other three men were. There a police officer started recording a statement from one of the men. Fernando said he was just pretending to agree with the statement of the other man.

Fernando and the others were kept at the police quarters for several days. He later discovered that when his wife asked for a meeting the police denied having him in their custody. On May 15, all four were finally produced before the Chilaw magistrate court, and Fernando found out that he had been charged with two counts of robbery. He was granted bail on May 22, but is still facing the charges more than a year later.

Fernando has filed a complaint with the NHRC over his abuse, as well as a complaint before the Supreme Court. An NHRC officer made an attempt to get him to settle the matter privately, offering to help mediate without going through a formal process, but Fernando refused. Fernando also filed a complaint against the police, and has given a statement to the Chilaw assistant superintendent of police (ASP). The ASP also summonsed the eight police officers. Fernando alleged that two police officers came to his house to offer some money to settle the matter, but he refused:

I could have settled but I don't want to. I want to prove that I am not guilty.
The message has to go out to the police that they cannot get away with this.

⁸⁶ Ibid. The Girisiriya tree, native to Sri Lanka, has thin, flexible branches, and is used to make poles which are used for a variety of purposes.

I want to free myself from this fear and I can only do that by fighting against them for what they did to me.⁸⁷

Torture of Prasad Manjula

Prasad Manjula traveled by trishaw to the town of Bopittiya, just north of Colombo, on December 18, 2005, to buy a SIM card for his mobile phone when three policemen arrested him for the theft of copper bundles from a nearby construction site.

According to Manjula, the three police officers took him in the trishaw to the police station. He said he was questioned using abusive and offensive language. But when he denied any knowledge of the theft, they became angrier:

There they removed my shirt and tied my hands under my knees. I remember they tied my hands so tightly my palms were blue at the end. They forced me to sit on the floor. They made me crouch with my knees bent and my hands tied together under my knees. They then took an iron bar and put it between the gap under my knees and between my bound hands. Each officer then took hold of one side of the iron bar each, and lifted each end onto these hooks dug into a chair handle on one side and the window ledge on the other, until I was dangling about five feet off the ground, upside down. Then they started beating me on the soles of my feet, on my back and thighs. In between, they somersaulted me around and around, dangling up in the air with all the pressure coming into my head. This continued for about two hours. I was in such pain and agony that I finally said I would tell them, even though I had nothing to confess to.⁸⁸

Manjula said that after he agreed to confess, they lowered him down off the bar. He could not walk or even stand, but they kept hitting him on the head to force him to move. He was kept overnight in a police cell without any medical treatment.

Manjula had a brother in the army who intervened to get him some medical attention the next day. After that, he was sent to the Mahara prison for a week. Another medical check-

⁸⁷ Ibid.

⁸⁸ Ibid.

up was ordered at Ragam hospital. During this check-up, the doctor promised to hand the medical report directly to the magistrate rather than to the police. As a result, the magistrate received the medical report directly from the doctor.

Manjula was eventually granted bail, presumably because of the medical report, and subsequently acquitted of all charges. He has chronic medical injuries as a result of his torture. He has received psychological counselling through a local group, and says that he is now able to talk about what happened to him instead of feeling wracked by humiliation and depression.⁸⁹

Ten years later, however, no action has been taken against the police officers responsible for his torture. Although Manjula filed a fundamental rights application before the Supreme Court, he says he has stopped pursuing his case because it is too expensive. He said the constant travel to lawyers and to the courts for hearings that do not move forward has dissuaded him from pursuing the case, and that he is no longer aware of the status of his case. He cannot afford a lawyer and has no other way of finding out what, if anything, is happening on his case. He has also filed a complaint before the NHRC but hasn't heard of any action being taken.⁹⁰

Assault on Hewabatagudage Sarath

Sarath was returning from a relative's funeral in Getamaneldiliya village, about half an hour away from his home in Ambalanthota, at around 3 p.m. on April 1, 2015, when three uniformed police officers carrying military assault rifles approached him. He said he didn't think much of it until the friends he was with became afraid and ran away. By that time the police officers were upon him and suddenly started assaulting him with their rifles. He was hit in the neck and shoulders repeatedly.⁹¹

Sarath said he had no idea what was happening or why. The police were shouting at him, saying he was the "ringleader." One of the police was holding him by the collar while the others were beating him. Then they dragged him to a side street and continued beating

⁸⁹ Ibid.

⁹⁰ Human Rights Watch interview with Navinna Arachigaye Prasad Manjula, Greater Colombo, June 15, 2014.

⁹¹ Human Rights Watch interview with Hewabatagudage Sarath, May 30, 2015. Sarath said he recognized the weapons as T-56 assault rifles, the Chinese version of an AK-47 used by the Sri Lankan security forces.

him, dragging him around the ground. Sarath said he started bleeding from his head and neck, and felt tremendous pain all over. He fell down several times, but the police kept dragging him up and beating him while shouting abusive language.

One of Sarath's brothers was nearby and intervened, demanding that the police stop the attacks. The police shouted at the brother as well but eventually left.

Sarath has scars from the assault. He said that due to his indigence, he couldn't afford to go the doctor for treatment. He was too scared to file a complaint against the police immediately, but after a few days he decided to seek some help to file a complaint with the NHRC. However, he holds out little hope of any justice:

It was the police who beat me, nothing is going to happen. Financially this is all very difficult, all these complaints and filings. I cannot afford to take any time off of work to attend any hearings, so I am not sure any good will come of all this work. The police have a lot of power, and people with that much power are not good. I am afraid to go back to that village again, ever. I think the same police are still on duty there.⁹²

Torture of AJ⁹³

AJ and some friends had gone to see a musical concert near Delgoda and were on their way back home around 2 a.m. on March 28, 2015, when one of their motorbikes broke down. AJ, a high school student, was particularly good at fixing machines, so he started to work on the motorbike by the side of the road. While he was fixing the vehicle, some police officers on patrol stopped to see what they were doing and frisked them, a common police practice at that hour. The officers were acting in a well-behaved manner.⁹⁴

Suddenly, according to AJ, one police officer dropped some keys on the ground beside him and shouted, "Sir, this one dropped the key!" Immediately, the police officers handcuffed AJ and took him directly in their jeep to the police station. He was not registered on arrival, and was simply put into a cell with his hands cuffed to the railings. He was left that way

⁹² Ibid.

⁹³ Pseudonym. Victim's name and identification details are on file with Human Rights Watch.

⁹⁴ Human Rights Watch interview with AJ, May 26, 2015.

until 11 a.m. the next morning, when he was taken to a room and questioned by a police officer about a stolen trishaw. AJ said he denied any knowledge of the theft, and refused to sign a statement that the police officer was drafting.

Following this refusal, AJ was taken to another room by the same police officer and made to lie face down on a wooden plank. The police officer then started hitting him; AJ could not see the instrument but he described it as feeling like a long thin cane:

Within a minute I could feel my skin peeling, breaking. I was screaming very loudly from the pain. He kept saying that he knew that this was the way to get me to tell the truth. At some point, some senior officer came in and ordered this police officer to stop beating me, but he didn't care.⁹⁵

After some time, AJ was taken back to the cell and kept there for several days. His parents visited and he was allowed some clean clothes but no food. On March 30, he was taken to yet another office where he was questioned at length and beaten for nearly three hours. The police officer was using iron rods, poles, and a broomstick to beat him; AJ said that the broomstick broke from the force of the beatings. Finally, after all the beatings, the police officer told AJ to admit to the theft of the trishaw; AJ finally agreed to get the abuse to stop.

On March 31, AJ was produced before the police officer-in-charge (OIC) who recorded a statement from him. AJ said he asked to read the statement before signing it, but was forced to sign it anyway. On April 1, the police took him to the nearest government hospital where he told the doctors about his injuries, but the police were present and the doctor did not examine him physically.

AJ still faces charges for alleged theft of a trishaw. He says he never leaves the house now because he feels constantly afraid.⁹⁶

Torture of HM Ajith and HM Akila

Ajith and Akila are brothers in Matara district in Southern province. On September 9, 2013, Ajith drunkenly threw a bottle that broke the glass pane of a shop window after the owner

⁹⁵ Ibid.

⁹⁶ Ibid.

refused to sell him cigarettes. Instead of paying for the damage, Ajith went home and slept off his inebriation.

The next morning, the police came looking for Ajith. They found his brother Akila instead, who went to the shop on behalf of his brother to apologize. The police officer-in-charge approached him, slapped and punched him very hard about 25 times, and handcuffed him, according to Akila.⁹⁷ This all happened in public, by the shop that Ajith had damaged, in front of a large crowd that had gathered.

The officer then forced Akila inside his jeep, and after driving around fruitlessly looking for Ajith, he took Akila to the police station and locked him in a cell.

Meanwhile, the assistant superintendent of police (ASP) located Ajith, and beat him severely, breaking his hand. Ajith told Human Rights Watch:

The ASP pushed my face into the broken glass in the kiosk, and rubbed my face along the broken glass. I was bleeding profusely from my mouth. I was questioned at the station by the OIC and the ASP separately, several times. They both said they would hang me upside down if I didn't confess.⁹⁸

Meanwhile, their family members filed an emergency petition before the NHRC. When the police found out, they threatened Ajith, saying that they would implicate him in a serious drug offense if he did not withdraw the petition.

By nighttime, a large crowd had gathered at the police station, with even the kiosk owner asking that both brothers be released. As a result, the police agreed to take Ajith for a medical exam. Although the first doctor did nothing, Ajith found a judicial medical officer who took him to a private room and examined him without the police present. He received proper treatment there. He was released soon after without any charges being brought.

⁹⁷ Human Rights Watch interview with HM Akila, June 14, 2014.

⁹⁸ Human Rights Watch interview with HM Ajith, June 14, 2014.

The brothers have filed an NHRC complaint and fundamental rights application before the Supreme Court, which is still pending.⁹⁹ The brothers live far from Colombo so it is difficult and expensive for them to travel to the Supreme Court or the NHRC for hearings.

Assault on Poorna Kankanige

On February 26, 2012, Poorna Kankanige, an architectural student in Colombo, was clearing out his stall following an architectural exposition when a policeman rushed at him and threw him on the ground; several police then started kicking him with their boots and hitting him with their batons. The assault took place in a large conference room, in front of several other police and witnesses, including some of Kankanige's friends who were subsequently slapped and threatened not to tell anyone what they had seen.

Kankanige said he was then taken to the police station, where his mistreatment continued. The policemen guarding him kept stomping on his hands, saying that they should have killed him already. The abuse stopped when he was taken to the judicial medical officer (JMO) in the Wellawatte neighborhood of Colombo after Kankanige's family intervened.¹⁰⁰ The police filed charges against him for attacking them. He said he continues to have to make regular appearances in court to defend himself against the charges.

Kankanige lodged a complaint against the police with the NHRC. The case took over two years to come to completion. He was awarded a nominal award of 25,000 Sri Lankan rupees (US\$190) as compensation. He says he plans on filing a fundamental rights case with the Supreme Court.

Torture of D. Prasanna and Others

In early 2012 a man who suspected that D. Prasanna was romantically involved with his wife filed a complaint against him for abduction. On August 6, Prasanna received a summons to submit to police questioning. He was afraid of going to the police, so his mother hired a lawyer, and both of them went to the police station at Panunagama in western Sri Lanka. At the police station, she saw the acting officer-in-charge punch and slap Prasanna and abuse him verbally. Prasanna's mother told Human Rights Watch:

⁹⁹ Ibid.

¹⁰⁰ Human Rights Watch interview with Poorna, June 11, 2014. Poorna's medical reports are on file with Human Rights Watch.

The force of his blows was so hard, my son was knocked to the ground. The acting OIC then asked for the woman to be brought forward. The OIC called her a harlot and a whore, demanding to know if Prasanna was responsible for her abduction. Then the woman's mother came forward with a cane and gave it to the OIC who proceeded to cane her severely on her back, her arms, and her thighs. He kept asking her to confess that she'd had an affair with Prasanna, and threatened that she would never see her child again unless she confessed. My son finally confessed to the affair at which point the OIC started kicking him on his testicles many times, and caning him on his back.¹⁰¹

Prasanna's mother said she screamed at the acting OIC to stop, but the other police officers stood around, not doing anything.

She said she is particularly distressed because she is on the civil committee of the police, and well-known to the local police force. But she said the acting OIC turned on her, called her a slut, and struck her in the head with the cane. Then he turned to his junior officers and said they should plant some heroin on her as a pretext for criminal charges.

Prasanna was placed in a holding cell, and eventually released that evening through the intervention of the lawyer. He was hospitalized for four days; while in the hospital, the police came by and told him not to file a complaint. The acting OIC phoned Prasanna's mother and repeated his threat about planting heroin.

Prasanna filed complaints with the NHRC and the police commission, and submitted a fundamental rights application to the Supreme Court. Although there were witnesses to the beatings, the NHRC found no police wrongdoing without giving any reasons for its findings. The complaint before the police commission similarly cleared the police of wrongdoing. The fundamental rights petition is still pending, two years after the incident.¹⁰²

¹⁰¹ Human Rights Watch interview with K Presida Nirmala Perrera, Negombo, June 15, 2014.

¹⁰² Ibid.

Torture of Thammitagaye Sampath Perrera

On the night of July 29, 2009 Sampath Perrera went to the grounds of the Catholic church in Rukathana, near Negombo, a city north of Colombo. He said he had gone to pray and to place a garland over the statue of St. Anthony.

He said that while he was praying, he heard someone call out: “What are you doing here? Why are you here?” He saw a man he did not know walking towards him. He started to explain, but the man immediately struck him on the calves with an iron bar.¹⁰³

Perrera later learned that the police were looking for a thief who had robbed the church’s collection box, but at the time of the assault he had no idea about the robbery. The man who hit him started shouting at him, telling him to confess. Finally the priest arrived and told the police that they should deal with this at the police station, not on church grounds.

The police took Perrera to the Negombo police station, where several police officers in the station beat him, including with blows to the leg that had already been injured when he was hit with the iron bar. When he screamed that his leg was broken, the OIC came and kicked the broken leg very hard. The OIC then started shouting at Perrera to confess, and kicked him in the abdomen. Perrera said:

I was then ordered to stand up, which I couldn’t do. The OIC then bent down and removed all my clothes, and told me to “admit it.” He put a put the barrel of his pistol my mouth as he was ordering this.

There were at least seven or eight other cops in uniform around. After a while, another suspect who had been rounded up on suspicion of the same offense shouted out that he was the guilty one. In spite of this, the OIC threatened to hang me, and I was put in a police cell overnight.¹⁰⁴

When his parents came to the station in the morning, Perrera says he could not recognize them because his eyesight was so impaired. He recognized his mother’s voice, pleading

¹⁰³ Human Rights Watch interview with Thammitagaye Sampath Perrera, Negombo, June 16, 2014.

¹⁰⁴ Ibid.

with the police to get Perrera some medical attention. He was eventually taken later that day to the Negombo hospital, where he received treatment for his broken leg.

Perrera says he was lucky that his parents knew a doctor at the hospital, who pretended that Perrera needed immediate surgery. Using that as an excuse, Perrera was taken to a private area, where a court-certified stenographer came and recorded his statement. The doctor also organized a safe house for Perrera to be taken to after being released from the hospital.

Perrera filed a petition before the NHRC and a fundamental rights case before the Supreme Court. Despite the medical evidence, the NHRC cleared the police of any wrongdoing. Six years later, the Supreme Court case is still pending.¹⁰⁵

Torture of W.A.A Sunamalinda Alexowe and His Brothers

Sunamalinda Alexowe was at home on the night of April 13, 2005, when he was awakened by six police officers he recognized from the police station at Koswatte Junction in the town of Battaramulla near Colombo. They demanded that he and his two brothers, W.A.A Sandamalinda and W.A.A Sunimala, come with them to the police station for questioning in connection with the theft of some plants. They were put into a police van and taken to the station, where the three brothers were separated.

Alexowe said he was taken to a room in a barracks behind the main police station. The police threatened to hang him upside down if he did not confess to stealing the plants. They then forced him to remove all his clothes, and once he was completely naked, started hitting him with rods. Then they tied his two thumbs together down between his knees. He told Human Rights Watch:

There was a hard rubber bar which they then put between my hands down between my knees. There were two tables there in that room. They lifted me from either end of the bar and place the bar on the two tables so that I was then dangling upside down in the middle. They beat me heavily on the soles of my feet, all the while demanding that I tell them the truth, tell the

¹⁰⁵ Ibid.

full story. Two policemen were taking turns hitting me. One would beat me and shout for 10 minutes, then the next.¹⁰⁶

After some time, maybe an hour or more, Alexowe started having trouble breathing. He said he had never suffered asthma, but was suddenly gasping for air, sweaty and red from the effort to get some air into his lungs.

At that point, he said the police seemed to get worried. They put him down, and started trampling with their boots on his chest, perhaps thinking that might alleviate his difficulty breathing.

Alexowe is not clear what happened next as he was close to losing consciousness. He awoke in the morning in another room, and has no recollection of how he got there. He also realized that he now had a sarong on. He was dizzy and unable to walk. After some time, he was carried to the cell where he found his two brothers. Both his brothers told him they had been beaten severely. He says he saw from their physical appearance that they were in great pain.

His two brothers were kept at the station the entire day, and then taken by the same police who had beaten Alexowe to the Marawila hospital for medical treatment. He said the police went into speak with the medical officer first, after warning the brothers not to tell the medical officer what had happened. The brothers tried, but there was a police officer present with them during the entire exam.

They were produced before the magistrate only on April 15, a day and a half after they had been detained, but they were afraid to complain about the torture. The police said they had no evidence against the brothers, and they were released on bail.

All three brothers were hospitalized in Negombo for several days. All three continue to have medical problems and deep fear as a result of what happened to them.

Alexowe and his brothers filed a complaint with the NHRC but after 10 years there has still been no resolution. They say they cannot afford to take any further action. The

¹⁰⁶ Human Rights Watch interview with Sunamalinda Alexowe, Negombo, June 16, 2014.

lawyer helping with the NHRC case charged them for each appearance, and the brothers can no longer afford the fees. Meanwhile, the police officers who abused them remain in service.¹⁰⁷

Assault on GMC Tilakaratne

On the night of October 17, 2011, GMC Tilakaratne was on his way home near Negombo when he stopped his motorbike to take a call on his mobile cell. Just as he stopped his bike, two policemen with rifles came over, shouting at him. He felt a sudden blow to the back of his head and fell forward. Although they were not in uniform, the men identified themselves as police, and pointed their rifles at him. They then handcuffed him, put him on the back of one of their motorbikes, and took him to the nearby police station at Maravela, where he was detained in a cell for several hours.

Tilakaratne said that when he was being released, the police officer-in-charge admitted police fault but also advised him against taking any action: “This was a mistake, but just because a dog bites you, you shouldn’t bite back.”¹⁰⁸

Tilakaratne lost hearing in his ears for several months as a result of his injuries. He has chosen not to take any further action against what happened to him for fear of harassment and reprisals.¹⁰⁹

Assault on Govinda Sami Rajanikanth and Family Members

On August 8, 2014, Govinda Sami Rajanikanth had taken his family to visit his mother in the village of Passara in Badulla district, Uva province. While they were watching a religious procession (called a *kovi*) going through the village, his sister-in-law complained that one of the men in the crowd had touched her inappropriately on her hips. Rajanikanth, who was carrying his small child in his arms, went up to the man and scolded him. The man just stared back silently, then walked away.¹¹⁰

¹⁰⁷ Ibid.

¹⁰⁸ Human Rights Watch interview with GMC Tillakaratne, Negombo, June 16, 2014.

¹⁰⁹ Ibid.

¹¹⁰ Human Rights Watch interview with Govinda Sami Rajanikanth, Negombo, September 15, 2014

Five minutes later, the man and two others, all in civilian clothes, came running directly towards Rajanikanth. The man grabbed Rajanikanth by the collar, pulled a handgun and pointed it at his neck. Rajanikanth tried to calm him down as he saw the other two men striking his family members with sticks.

Rajanikanth's wife then came and took the baby from him. He said that as soon as the baby was taken away, he realized he was bleeding. He started to feel very dizzy. Others around him were saying he had been shot, but he did not hear or feel anything. The three assailants then ran away.

His family took him to the Badulla hospital where they treated him for a gunshot wound to his shoulder, and he was kept in the hospital for a week. He says he knows the men who assaulted him were police officers because after a few days in the hospital, he noticed that the man who had shot him was in the same ward in a police uniform. Rajanikanth's brother apparently also recognized them as policemen from the Passara local police station.¹¹¹

The authorities placed Rajanikanth under arrest while he was in the hospital. After he was discharged on August 15, he was taken to the Badulla prison hospital. He was eventually produced before the magistrate on August 21, and released on bail. In addition to ongoing medical issues stemming from the gunshot wound, Rajanikanth said that the police have since made his life difficult:

I still don't know what the charges against me are. I have to report to the Passara police station regularly, which is a great expense and hardship. I have been unable to work due to my injury since then. Eight other members of my family have been charged with attacking the police, with the police claiming that they fired in the air to stop us from attacking them. This is complete nonsense. We did nothing to them.¹¹²

The police officer allegedly responsible is still on active duty at the Passara police station. At the time we spoke with him, Rajanikanth was still trying to decide what action to take. The financial consequences for his family as a result of his injury have been tremendous.

¹¹¹ Ibid.

¹¹² Ibid.

He has been unable to work and has sustained his family so far by pawning off his wife's gold jewelry. His regular mandatory appearances before the Passara police court are a further financial hardship. He was unsure whether it was worth the expense of filing complaints for results that were uncertain and might expose him and his family to further abuse or harassment.¹¹³

Assault of RP Susil Priyanka Senivaratne

Susil Priyanka Senivaratne, from the village of Tamutegama near Anuradhapura in North Central province, was at a protest in his village on August 3, 2012. The protest concerned an accident a few days earlier in which a drunk driver had killed a 23-year-old woman. Senivaratne said that he was there as a bystander, not as a protester.

Senivaratne said that while he was watching the protest, a group of men in civilian clothes—whom he knew to be local policemen—grabbed him, started hitting him, and tied his hands behind his back. They shouted at him, accusing him of attacking the police during the protests.¹¹⁴

They dragged him into a police jeep, where uniformed police drove him towards the Nocchiagama police station. These police officers also hit him and threatened to kill him. The jeep stopped at other villages along the way to pick up other men who, like Senivaratne, appeared to have been beaten by the police. Senivaratne saw the police hit one of the men and repeatedly dunk the head of another in a nearby river. Altogether, four men were rounded up.

Once at the Nocchiagama police station, the four were put in a cell with other men. Senivaratne said all of them were questioned separately and asked to give statements. They were also warned against reporting the beatings. He and the others were eventually granted bail, but they still face charges. Senivaratne was not aware of the specifics of the charges against him.

¹¹³ Ibid.

¹¹⁴ Human Rights Watch interview with RP Susil Priyanka Senivaratne, June 16, 2014.

With the assistance of a local NGO, Senivaratne filed a fundamental rights case before the Supreme Court and an NHRC petition. Both are still pending nearly three years later. He said the others who were detained with him are too scared to file anything: “We live in these villages, with the same policemen, and the police threaten us regularly against complaining. One policeman came to my door and handed me a funeral bouquet.”¹¹⁵

He said he lives in a state of fear and often thinks about dropping his case. As a result of the beatings Senivaratne has suffered permanent harm: he regularly has severe pain in the areas where he was injured, and has extreme difficulties with manual labour.

¹¹⁵ Ibid.

Failure of Justice Mechanisms

Over the years the Sri Lankan government has put several mechanisms in place to provide redress for victims of police abuse. In addition to criminal proceedings in the courts, victims can also bring fundamental rights applications to the Supreme Court and file complaints before the National Human Rights Commission.

Human Rights Watch has found that despite the existence of these mechanisms, most victims face serious hurdles that prevent them from obtaining justice even in egregious cases. These include difficulties in filing complaints because of police intransigence or genuine fear of reprisal; retaliatory threats and harassment by the police; and cases that sit moribund for years without any apparent action whatsoever. Successful efforts at redress are rare, and more often than not depend on the level of publicity a particular case has received, rather than the severity of the crime or the culpability of those responsible.

Human Rights Watch spoke with several lawyers and human rights activists who reported great difficulty in filing complaints of torture or abuse against police. Rights groups working on police abuse cases said that the police routinely refuse to accept complaints or first information reports (FIR), and that the attorney general's department is loath to take up cases against police officers.¹¹⁶ One lawyer told Human Rights Watch that increasingly, lawyers do not want to take on torture cases: "What's the point? The time and effort for no outcome is not worth it and the law is not enforced."

Even when cases proceed, there is often tremendous pressure on victims and the complainants to drop the case, the judicial process is slow, and the conviction rate for police abuse is negligible.¹¹⁷ Victims and their families are also deterred by the costs of both legal fees and repeated travel for court hearings.

Lawyers and activists described their experience trying to get justice for victims of police torture. Fees can be steep: a fundamental rights application before the Supreme Court can cost anywhere from 1 lakh rupees to 2.5 lakh rupees (US\$750-1880). The total costs for

¹¹⁶ Human Rights Watch interview with Brito Fernando, Colombo, June 17, 2014; Human Rights Watch interview with Lakshan Dais, June 17, 2015. Fernando stated that the attorney general had not acted on a single torture complaint he had filed on behalf of victims.

¹¹⁷ Ibid.

cases filed before the magistrate or high courts tend to be even more expensive as they require regular appearances and attorney fees for all appearances, and it takes years before cases are heard properly, if at all.

Lawyers and activists expressed frustration about a clear bias in the judiciary and NHRC towards the police, a finding consistent with the 2010 ICJ report on justice mechanisms.¹¹⁸ For example, Human Rights Watch found that although magistrates are expected to examine detainees for evidence of torture or abuse, they routinely fail to do so, even in cases where physical injury is visible and evident.¹¹⁹ Magistrates also tend to accept police requests for extension of pre-trial detention to conduct investigations without requiring the police to provide any arguments or evidence.

Lawyers representing victims also often say they are not given time to make arguments in court during hearings. They also complain of corruption in the system, with police paying off others along the line for protecting them against complaints. It is difficult to measure the extent of corruption, but the simple fact that so many lawyers, victims, and court observers mention corruption is indicative of how little faith people have in the police.

¹¹⁸ International Commission of Jurists, “Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry,” January 2010, http://reliefweb.int/sites/reliefweb.int/files/resources/o4234216454178AFC12576B20038FF61-Full_Report.pdf (accessed April 5, 2010).

¹¹⁹ Human Rights Watch interview with Amita Priyantha, Panadura, June 13, 2014.

A 15-Year Wait for Justice

Amita Priyantha told Human Rights Watch that she and her family are still seeking answers and justice nearly 15 years after the death of her brother Lasantha Jagathkumar in Payagala. Jagathkumar was arrested on June 12, 2000, presumably on charges of deserting the army. After being notified of his arrest, Priyantha and other family members approached the police, the military, the magistrates, and hospital authorities in unsuccessful attempts to find him. When he was eventually produced before a magistrate, his legs were swollen and he was unable to walk due to his injuries. To Priyantha's shock, the magistrate did not ask a single question about Jagathkumar's medical condition despite his inability to walk and obvious injuries. A few days later, on June 20, he was dead.

The medical report noted 22 major internal and external injuries on his body as the cause of death. Despite the strong evidence of the medical report, however, it did nothing to help advance their case. As Priyantha said, "even though the medical report was clear, I realized that the police commit crimes, and all other institutions collude to protect them."

The family has since sought remedy through the usual avenues and institutions: a complaint to the inspector general of police, a fundamental rights application to the Supreme Court, and a petition to the NHRC. As a result, the officer-in-charge of the police station where Jagathkumar was tortured was charged, but he fell ill and was taken to the hospital immediately afterwards. He received bail and has since jumped parole. Complaints against the other police officers involved got nowhere; all the others are still in active duty. The NHRC case is still pending.

Only the fundamental rights case has been successful so far. The Supreme Court ruled that because Jagathkumar died before he could issue instructions to file a case on his behalf, his widow had the right to file a fundamental rights case for him. The case, by establishing the right to life as a constitutional right, and by recognizing the right of third parties to file on behalf of the deceased, has become a landmark ruling. The family has received monetary compensation but is still seeking the prosecution of those responsible for Jagathkumar's torture and death.

Delays and Failures in Prosecution

A longstanding and pervasive culture of impunity in Sri Lanka makes it possible and relatively easy for security forces generally, and the police in particular, to evade accountability for serious violations of human rights. In short, the authorities are not serious about prosecuting police officers responsible for abuses. As UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Manfred Nowak reported in February 2008, “The attorney general’s powers have so far not been used to prosecute any officer for torture above the rank of inspector of police and no indictment has been filed on the basis of command responsibility.”¹²⁰

Many lawyers and activists contend that the culture of impunity worsened under the Rajapaksa government as the attorney general’s department was increasingly vulnerable to political influence, reducing its ability to independently and impartially prosecute public officials for human rights violations.¹²¹ Instead of ensuring accountability, there was a failure to investigate and prosecute violations by state actors; worse, the authority of the attorney general’s department was deliberately used to stymie such investigations and prosecutions.¹²²

For instance, the government pledged to conduct an inquiry into excessive use of force by police in dispersing the May 30, 2011, workers protest in the Free Trade Zone in Negombo. Over 200 workers and bystanders were injured, some from police gunfire. Mangala Sampath, who was wounded that day, said he had hoped that the government would investigate the incident after he gave a statement to the Central Intelligence Division, but has heard nothing further.¹²³ Thus far no action has been taken against any members of the police.

The parents of Roshan Shanaka, who was killed by police gunfire, found the government response to their loss to be more about money than justice:

¹²⁰ UN CAT, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, U.N. Doc. A/HRC/7/3/Add.6, February 26, 2008. Lawyers interviewed by Human Rights Watch said that the Sri Lankan authorities remain reluctant to prosecute police abuses.

¹²¹ See “Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka,” March 31 2011, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

¹²² International Commission of Jurists, “Authority without Accountability: The Crisis of Impunity in Sri Lanka,” November 2012, p. 5, <http://www.refworld.org/pdfid/50ae365b2.pdf>, p. 5.

¹²³ Human Rights Watch interview with Mangala Sampath, September 9, 2014

When we went to the funeral home, they said the government had already paid for the funeral, which I guess is their way of saying sorry. Some politicians came by but no one expressed any regret at police behavior or promised to help us find justice. After the funeral, the chief minister of Western province came to us and asked us if we wanted money. We were shocked; we'd just lost our son and all they wanted was for us to shut up and take some money.¹²⁴

Fundamental Rights Applications

The 1978 constitution includes a provision (Chapter III) on fundamental rights, which allows every person to apply to the Supreme Court for a remedy regarding the infringement or imminent infringement of a fundamental right as a result of executive or administrative action.¹²⁵ Rights protected under Chapter III include freedom from arbitrary arrest and detention, freedom from torture and other cruel, inhuman or degrading treatment or punishment, and the right to be brought before the judge of the nearest competent court.¹²⁶ Fundamental rights applications must be filed within 30 days of the offense.¹²⁷

Although the attorney general is a mandatory respondent in all fundamental rights applications including in cases of torture or arbitrary arrests, the rule does not require the attorney general's department to represent the respondents. However, the attorney general routinely provides counsel on behalf of state officials, typically to seek an extension of proceedings or to get the cases dismissed.¹²⁸

These delays place an added burden on victims seeking remedy. Fundamental rights cases must be filed at the Supreme Court in Colombo. Although victims or their families do not have to physically be present during the filing of the application, they do have to travel to

¹²⁴ Human Rights Watch interview with WD Kahanthi, September 15, 2014

¹²⁵ Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, ch. III, http://www.priu.gov.lk/Cons/1978Constitution/Chapter_03_Amd.htm (accessed August 17, 2015).

¹²⁶ Ibid.

¹²⁷ Nitya Ramakrishnan, *In Custody: Law, Impunity and Prisoner Abuse in South Asia* (New York: Sage Publications Ltd., 2013), p. 253, <https://=-GXJAKHHBn&sig=js7q74UcakVGsavrCTTAH2efjdl&hl=en&sa=X&ved=oCDwQ6AEwBWwVChMI1Jbh9YqwxwIVioYsCho--gB8#v=onepage&q=sri%20lanka%20supreme%20court%20of%20fundamental%20rights%20petition%20jurisdiction&f=false>.

¹²⁸ Ibid.

Colombo in order to sign documents and perform other administrative functions with their lawyers. Most say that they cannot afford the travel costs and many delays.

The failure of the authorities to hold to account those responsible for the death of Gayan Rasanga in police custody in Kelaniya in 2011, a case discussed in this report, exemplifies the practical burdens victims and families face. Rasanga was arrested and detained in September 2011, and he died in custody shortly afterwards. His mother described seeing bruises and marks on his dead body when the family went to the morgue.¹²⁹

Police initially claimed that Rasanga had died while attempting to escape custody, although this was later withdrawn. The autopsy report, which Human Rights Watch reviewed, indicates that Rasanga died due to internal bleeding from injuries sustained from blunt instruments.¹³⁰ Although the magistrate court referred the case to the attorney general's department in 2012, the case remains unresolved three years later in spite of a strong and conclusive post-mortem report. No action has yet been taken against the five police officers and the fundamental rights petition before the Supreme Court is still pending, as is a complaint before the NHRC.¹³¹

National Human Rights Commission

Victims of police abuse can also file complaints before the NHRC. The NHRC, particularly under the Rajapaksa government, has been generally ineffective in addressing human rights violations by the police. At best it awards nominal compensation to the complainant. From a lawyer's perspective, NHRC filings are strategically advantageous because they stop the 30-day clock on the filing of fundamental rights petitions.¹³² As one lawyer said to Human Rights Watch: "The NHRC applications don't tend to amount to much, but because it stops the 30-day clock, the NHRC is a lawyer's friend in these cases."

Many lawyers and rights activists contend that the NHRC should be strengthened so that the body can conduct independent investigations into alleged abuse. As the UN special

¹²⁹ Human Rights Watch interview with Lalani Rajantha, June 17, 2014.

¹³⁰ Files shared by family members and human rights defenders with Human Rights Watch.

¹³¹ Human Rights Watch interviews with Lalani Rajantha and Rasika Lakmini, June 17, 2014.

¹³² There are other NHRC field offices which have authority to receive complaints, but in practice only the NHRC office in Colombo accepts them.

rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted in his 2008 report, “the functioning of important monitors of human rights violations” such as the NHRC “has been compromised due to the 2006 presidential appointments of the Commissioners.”¹³³

One witness who tried to file a complaint before the NHRC said that she was told by the NHRC reporting officer not to file a report because the NHRC was afraid to accept cases against the police.¹³⁴

A 2010 report by the ICJ found that the NHRC lacked the political will to deliver justice.¹³⁵ Lawyers say that NHRC has tended to be biased in favor of the police, particularly after passage of the 18th Amendment, which they said undercut the independence of the NHRC and other public service commissions. For instance, although there were witnesses to the police beatings endured by D. Prasanna (whose case was detailed earlier in the report), the NHRC said it found no police wrongdoing without providing any reasons for its findings.¹³⁶

Obligations under International and Domestic Law

Sri Lanka is a party to core international conventions that prohibit torture and other ill-treatment in custody and ensure due process rights of criminal suspects. These include the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the “Convention against Torture” or CAT for short).¹³⁷ Sri Lanka is not a party to the Optional

¹³³ OHCHR, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, U.N. Doc. A/HRC/7/3/Add.6, February 26, 2008.

¹³⁴ Human Rights Watch interview with witness, name withheld, Colombo, June 16, 2014.

¹³⁵ International Commission of Jurists, “Still Seeking Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry Since 1977,” January 2010.

¹³⁶ See case description in ch. II above for further details.

¹³⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, March 23, 1976, G.A. Resolution 2200A (XXI), entered into force March 23, 1976;

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

Protocol to the Convention against Torture, which permits prison visits by the UN Subcommittee on Prevention.¹³⁸

Many rights, if upheld by Sri Lankan authorities, would prevent and deter violations against persons in custody. These include the right to legal representation, to have access to family members, to be informed of any criminal charges, and to be promptly produced before a court of law.¹³⁹

Sri Lankan police and other law enforcement officials should also abide by various UN standards on policing. These include the UN Code of Conduct for Law Enforcement Officials,¹⁴⁰ and the UN Basic Principles on the Use of Force, and Firearms by Law Enforcement Officials.¹⁴¹

International human rights law also protects the right to an effective remedy, which obligates the state to prevent, investigate, and punish serious human rights violations. States are also obligated to provide reparations to victims of human rights violations, such as compensation for damages.¹⁴²

The Constitution of Sri Lanka protects many of these rights, such as freedom from torture and from arbitrary arrest and punishment.¹⁴³ The Code of Criminal Procedure contains further safeguards, such as registration of arrest and production of the accused within 24 hours of the arrest before a magistrate.¹⁴⁴ Some of these protections have at least formally been incorporated into Sri Lankan legislation, if not police policy and practice.

¹³⁸ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted December 18, 2002, G.A. res. A/RES/57/199, [reprinted in 42 I.L.M. 26 (2003)], entered into force June 22, 2006.

¹³⁹ ICCPR, arts. 9 and 14.

¹⁴⁰ Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), entered into force December 17, 1979. <http://www1.umn.edu/humanrts/instree/i1ccleo.htm>

¹⁴¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), entered into force September 7, 1990. <http://www1.umn.edu/humanrts/instree/i2bpuff.htm>

¹⁴² See United Nations Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

¹⁴³ Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, ch. III, secs. 11 and 13.

¹⁴⁴ Sri Lankan Code of Criminal Procedure Act, No. 15 of 1979, chs. 36-39.

Soon after becoming a state party to the Convention Against Torture in 1994, Sri Lanka incorporated the convention into domestic law by enacting the Convention Against Torture and Other Inhuman or Degrading Punishment or Treatment Act, commonly known as the Convention Against Torture Act.¹⁴⁵ Although commentators point out that the Convention Against Torture Act as adopted is not completely in line with the international treaty, it does set out some degree of recourse for victims of torture and other ill-treatment.¹⁴⁶

However, as discussed above, serious shortcomings in the enforcement of the law have meant that few of the victims harmed by police have received justice or meaningful redress. As of 2007, the UN special rapporteur on torture found only four convictions since the passage of the act. In roughly the same period there had been more than 17 acquittals.¹⁴⁷

¹⁴⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, Human Rights Commission of Sri Lanka, http://hrctl.lk/PFF/Library_Domestic_Laws/Legislations_related_to_Torture/Convention%20against%20Torture%201994%20of%2022.pdf (accessed March 23, 2015).

¹⁴⁶ Lawyers Rights' Watch Canada to U.N. Committee Against Torture, "Sri Lanka: 3rd and 4th Periodic Report on the Implementation of the Convention Against Torture," October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_SriLanka47.pdf (accessed April 16, 2015).

¹⁴⁷ International Commission of Jurists, "Authority without Accountability: The crisis of impunity in Sri Lanka," November 2012, ch. 4(4). See also UN Committee against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding Observations on Sri Lanka," CAT/C/LKA/CO/3-4, November 25, 2011, para. 18.

Recommendations

To the Government of Sri Lanka

- Establish an independent oversight authority charged with investigating allegations of police abuse, the results of which would then be forwarded to the attorney general's department for prosecution as appropriate. This authority should be housed entirely outside the police department, report to the Ministry of Justice, have all relevant authority to conduct investigations, including on its own authority, and be empowered to subpoena police, other witnesses, and police files.
- Ensure that commissioners appointed to the National Police Commission and the National Human Rights Commission are truly independent and appointed through high-level and transparent mechanisms.
- Restore the authority of the National Human Rights Commission to make unannounced inspections at all places of detention and submit regular public reports.
- Ensure that the National Human Rights Commission has sufficient staffing and resources to carry out its mandate.
- Establish provincial offices of the National Human Rights Commission to allow victims to bring complaints locally.
- Establish an independent office in the attorney general's department tasked specifically with investigating and prosecuting cases of police abuse, including following up on referrals from the independent oversight authority.
- Instruct the attorney general's department to provide an annual report to Parliament on investigations of police abuse and the status of those cases.
- Establish safeguards to ensure the effective implementation of laws and regulations, including rigorous enforcement of due process guarantees.
- Amend the Convention Against Torture Act to bring it fully into compliance with Sri Lanka's international obligations under the Convention Against Torture.
- Amend criminal procedure laws to ensure that all criminal suspects and all detainees have immediate access to the legal counsel of their choice.

To the Ministry of Law and Order and Prison Reform

- Issue clear, public directives that police torture and other forms of abuse will not be tolerated.
- Amend police rules and manuals to be consistent with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; the UN Code of Conduct for Law Enforcement Officials; and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Ensure that disciplinary proceedings taken against officers for abuse result in appropriate and proportionate sanctions.
- Ensure that police officers who are being investigated on allegations of torture, assault or ill-treatment, or responsibility for custodial deaths, are strictly confined to desk duty or placed on paid leave pending the outcome of the investigations.
- Discipline or prosecute superior officers who knew or should have known about serious acts of abuse and yet failed to prevent such crimes or punish the offending officers.
- Create a public listing of police officers who are facing complaints of abuse or those being investigated or prosecuted for abuses, along with their current postings.
- Remove the 30-day limit to the filing of fundamental rights applications before the Supreme Court.
- Instruct the police to register First Information Reports (FIR) in every case in which they receive information that could suggest a possible criminal offense.
- Take all necessary measures to remove barriers and threats to individuals who file FIR complaints against police officers.
- Ensure that all disciplinary measures taken against police officers for abusive practices are appropriate and proportionate to the offense.
- Ensure effective implementation of internal investigative and disciplinary proceedings, and issue regular public reports on such proceedings.
- Ensure that appropriate training in human rights, including on the proper treatment of persons in custody and the proper use of force and firearms, is provided to all police officers of all ranks.

To the Judiciary

- Ensure that magistrates fully comply with their obligations to ascertain whether a detainee produced in court has suffered torture or other ill-treatment, and to order legislatively mandated confidential medical examinations.
- Ensure that magistrates provide appropriate justifications when remanding a detainee in police custody rather than granting bail.
- Ensure that magistrates verify that detainees produced before the first instance court have had recourse to their rights, including the right to an attorney.
- Direct magistrates to order independent and prompt post-mortem examinations in all cases where a detainee has died in custody, and ensure the victim's family and lawyers have access to the results.

To the United Nations, the US, China, India, Japan and Other Members of the International Community

- Support training and capacity-building programs for the attorney general's department whilst ensuring that support is provided only where there is demonstrated political will to appropriately discipline or prosecute police officers implicated in cases of abuse.
- Continue to support unfettered access to all detention facilities by independent humanitarian agencies.
- Support appropriate human rights training programs for police, but only when there is demonstrated political will by the government to implement human rights practices.
- Encourage the government to fully implement the Convention Against Torture, and to ratify the Optional Protocol to the Convention Against Torture.
- Encourage the government to allow UN Special Mandate holders unfettered access to the country.
- Urge the government to fully implement the recommendations of the special rapporteur on torture and the special rapporteur on extrajudicial, summary or arbitrary executions.
- Support outreach programs designed to educate the citizenry about options for pursuing justice for police abuse.

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“We Live in Constant Fear”

Lack of Accountability for Police Abuse in Sri Lanka

Back Blurb: Police in Sri Lanka regularly use torture and other ill-treatment, including severe beatings, electric shock, and painful stress positions, in violation of domestic and international law. This misuse of force has been applied not only in counter-insurgency cases, but to criminal suspects in custody and to peaceful protesters demonstrating on city streets. Police abuses during routine law enforcement point to an endemic culture of abuse – one not solely linked to the country’s civil war that ended in 2009.

“We Live in Constant Fear” — Lack of Accountability for Police Abuse in Sri Lanka documents efforts over many years by families to obtain justice for their loved ones who died in police custody as well as very recent cases. The report demonstrates how a pervasive lack of accountability has allowed torture to go unchecked. Procedural safeguards to protect detainees against mistreatment are simply ignored or bypassed. Even when victims later report their cases, the legal system is slow to respond, and tends to show deference to the police.

A new government elected in January 2015 has promised major reforms, and there is now an opportunity to rein in police abuse. The government needs to send the message that deviation from legal safeguards will not be tolerated. Human Rights Watch calls on Sri Lanka’s government to create an independent oversight authority over the police and adopt other concrete steps to reduce rights violations. The government should also amend police rules and manuals to be consistent with international law.



A Sri Lankan policeman keeps watch at a demonstration in the capital, Colombo, on August 14, 2014.

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