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SRI LANKA

BULLETIN: RECENT REPORTS ON TORTURE AND ILL-TREATMENT

Country of Origin Information Service

Date: 30 November 2011

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Preface

- i This Country of Origin Information (COI) Bulletin has been produced by the COI Service, United Kingdom Border Agency (UKBA), for use by officials involved in the asylum/human rights determination process.
- ii The Bulletin brings to the attention of decision makers a number of reports released between September and November 2011 which document torture and other forms of ill-treatment in Sri Lanka. It provides a selection of extracts from the sources as a guide to the general content of the reports, with a focus on events in 2011. However the Bulletin is not intended to be comprehensive or detailed in its coverage and officials are advised to read all the reports in full. Additionally, the Bulletin makes no attempt to interpret or analyse the information contained within the reports referred.
- iii The Bulletin should be read in conjunction with the COI Report Sri Lanka, July 2011 for an understanding of the general human rights situation and specifically ill-treatment and torture in Sri Lanka. If decision-makers require further information, they should submit an information request to COI Service.
- iv The Bulletin is compiled wholly from sourced material, as listed in Annex A. It includes information up to, and including, 28 November 2011.
- v The Bulletin does not contain any UKBA opinion or policy.
- vi Any comments regarding this Bulletin or suggestions for additional source material are very welcome, and should be submitted to UKBA as below.

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- xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of the UK Border Agency to make recommendations to him about the content of the UKBA's COI material. The IAGCI welcomes feedback on UKBA's COI Reports and other COI material. Information about the IAGCI's work can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>
- xii In the course of its work the IAGCI reviews the content of selected UKBA COI documents and makes recommendations specific to those documents and of a more general nature. A list of the Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UKBA's COI material from September 2003 to October 2008) is available at <http://icinspector.independent.gov.uk/country-information-reviews/>

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1. SUBMISSIONS TO UN COMMITTEE AGAINST TORTURE (UNCAT)

1.01 This section provides information from reports submitted by 12 local and international Non Government Organisations (NGOs) to the United Nations Committee Against Torture (UNCAT)¹. The reports were considered in the UNCAT's 47th session in Geneva in November 2011 during which there was an open session on the prevalence of torture and ill treatment in Sri Lanka.²

1.02 *The reports submitted to the UNCAT are:*

- Amnesty International, Sri Lanka: *Briefing to the UN Committee against Torture 2011*, October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf
- Asian Human Rights Commission, *A submission for the 47th Session of the Committee Against Torture on Sri Lanka*, July 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/AHRC_SriLanka47.pdf
- Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka*, November 2011
http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf
- Global Initiative to End All Corporal Punishment of Children, *Briefing on Sri Lanka for the Committee Against Torture State Examination*, October/November 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/GlobalInitiative_SriLanka47.pdf
- International Commission of Jurists, *Submission to the Committee Against Torture on the Examination of the combined third and fourth periodic reports of Sri Lanka under The Convention Against Torture and other cruel, inhuman or degrading treatment or punishment*, October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ_SriLanka47.pdf
- International Disability Alliance, *Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee against Torture 47th Session (31 October - 25 November 2011)*, undated
http://www2.ohchr.org/english/bodies/cat/docs/ngos/IDA_SriLanka47.pdf

¹ "The Committee Against Torture (CAT) is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented... The Committee examines each report and addresses its concerns and recommendations to the State party in the form of 'concluding observations'".

Committee against Torture, *Monitoring the prevention of torture and other cruel, inhuman or degrading treatment or punishment*, undated

<http://www2.ohchr.org/english/bodies/cat/index.htm> Date accessed 9 November 2011

² UN Committee against Torture 47th session (31 October - 25 November 2011), undated

<http://www2.ohchr.org/english/bodies/cat/cats47.htm> Date accessed 9 November 2011

- Lawyers' Rights Watch Canada, *Sri Lanka, 3rd and 4th Periodic Report on the Implementation of the Convention Against Torture, Submission from Lawyers' Rights Watch Canada to the Committee Against Torture*, October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_SriLanka47.pdf
- REDRESS, Comments on Sri Lanka's Combined Third and Fourth Periodic Reports to the Committee Against Torture: Accountability and Justice for Torture and other ill-treatment committed during the final phase of the war in the North-East, September 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/REDRESS_SriLanka47.pdf
- REDRESS, Asian Legal Resource Centre & ACAT-France, *Alternative report to the Committee Against Torture*, September 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/REDRESS_ALRC_RCT_ACAT_SriLanka47.pdf
- Sri Lankan NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture*, 14 October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf
- Tamil Information Centre, Tamil Information Centre's submission to the Committee Against Torture on Sri Lanka, October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf
- TRIAL, *Combined 3rd and 4th periodic report on the implementation of the Convention Against Torture. Submission from TRIAL (Swiss Association against Impunity) to the Committee Against Torture*, September 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/TRIAL_SriLanka47.pdf

1.03 The following subsections consist of a selection of extracts from some of the reports listed above as a guide to their general content. Users should read the reports in full to gain a more detailed understanding of the contents of the reports. The information referred to below focuses on acts of torture and ill-treatment documented or reported in 2011. Information about preceding years may also be documented in the various reports listed but has not, generally, been quoted or referred to below.

Please refer to [Section 3](#) to see for reports of the session and the Committee's concluding observations. For more general information about the human rights situation in Sri Lanka up to June 2011, see [COI Report Sri Lanka, July 2011](#).

Amnesty International's submission

1.04 The Amnesty International, *Sri Lanka: Briefing to the UN Committee against Torture 2011*³, October 2011 (AI briefing), observed in its introduction that the briefing:

"... details Amnesty International's concern about a persistent pattern of torture and other ill-treatment of detainees, including individuals detained under the Emergency

³ Amnesty International, *Sri Lanka: Briefing to the UN Committee against Torture 2011*, October 2011
http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, Introduction, date accessed 11 November 2011

Regulations or the Prevention of Terrorism Act on suspicion of links to the Liberation Tigers of Tamil Eelam (LTTE), as well as individuals arrested in the course of civil policing -- criminal suspects as well as those wrongfully arrested at the behest of third parties engaged in personal disputes.

“Detainees are often held arbitrarily for prolonged periods (sometimes years) without charge. Many are arrested and detained on suspicion of links to the LTTE pending investigation and interrogation by Sri Lanka’s intelligence and security forces, or for what the Sri Lankan authorities have termed rehabilitation.”

1.05 The AI briefing⁴ added:

“Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations 2005 (EMPPR 2005), as amended by Emergency Regulation 1462/8, 2006, provided for administrative detention of up to two years without charge or trial for purposes of the rehabilitation of ‘surrendees.’ According to official statistics of the 11,600 people the Sri Lankan government alleged had links to the LTTE and who either surrendered to the army or who were arrested by the authorities out of displaced persons camps following the armed conflict in 2009 were subjected to mass detention in facilities the Sri Lankan government called rehabilitation centres. Many detainees allege that they were forcibly recruited by the LTTE. Around 2,700 individuals remained in these facilities when the state of emergency lapsed in August 2011; on 30 September about 1,000 were thought to remain in detention (‘Sri Lanka releases 1,800 former Tamil rebels,’ Associated Press, 30 September 2011.)

“According to Regulation 22 (4), EMPPR 2005, as amended, the Commissioner General of Rehabilitation shall “endeavour to provide the surrendee with appropriate vocational, technical or other training”. Training reportedly provided in rehabilitation camps, even where potentially beneficial, has been imposed on people who are arbitrarily detained without access to judicial review and thus cannot be considered voluntary; it has reportedly included political indoctrination. Article 9(1) of the ICCPR prohibits arbitrary detention. UN Human Rights Committee, General Comment 8, para. 1. considers that this applies to all deprivations of liberty, including where detention is for “educational purposes. In addition to detainees held in rehabilitation facilities, some 1,900 others suspected of being what the Sri Lankan authorities have referred to as hard core LTTE suspects have been administratively detained under the Prevention of Terrorism Act since the end of the conflict in 2009. Most have still not been charged with any offense.”

1.06 The AI Briefing⁵ further observed that:

“Enforced disappearances continue to be reported and bodies of victims of extrajudicial killings often show evidence of torture.”

“Most perpetrators of human rights violations, including of torture, enjoy impunity. There has been a consistent failure of the authorities to ensure that allegations of

⁴ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, Introduction (footnote 1), date accessed 11 November 2011

⁵ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, Introduction, date accessed 11 November 2011

torture and other serious violations of human rights are investigated and that those responsible are brought to justice.”

1.07 The AI briefing⁶ also noted that “Torture and other ill-treatment of criminal suspects by the police are... common” and added that: “On 3 October 2011, Lalith Susantha, a suspect arrested in connection with the death of a policeman in Moratuwa drowned in Bolgoda Lake after police officers allegedly took him by boat to an island in the lake to reveal the location of weapons used in the murder.”

1.08 The AI briefing⁷, referring to the report of the Asian Human Rights Commission (AHRC) entitled *Police Torture Cases, Sri Lanka, 1998-2011*, published in June 2011, mentioned the case of Ranjith Sumangala who in December 2010 was allegedly detained, tortured and “forced to confess to 21 unsolved cases” before being released on bail, and noted that:

“In January [2011], Ranjith discovered that the police had filed other cases against him.

“In March 2011 Ranjith Sumangala filed a fundamental rights case against the Mirihana Police. On 30 May, the, Supreme Court granted him leave to proceed with his fundamental rights petition and warned the alleged perpetrators that they would be arrested if there were further threats against Ranjith, but the court permitted the police officers accused in the case to remain at large.”

1.09 The AI briefing⁸ observed:

“Sri Lanka’s own laws should, but fail to, provide protection from the torture and ill-treatment which is so often a consequence of arbitrary and incommunicado detention. Enforcement of laws and directives aimed at preventing torture require a clear implementation plan to ensure that all forces responsible for arrests and detentions are aware of and understand these laws and procedures, and that those who breach them are disciplined, including through criminal prosecution in fair trials of those who commit crimes.

“Chapter 4 Section 37 of the Code of Criminal Procedure dictates that a person arrested without a warrant must not be detained for more than 24 hours (exclusive of travel) before being produced before a Magistrate. The Code of Criminal Procedure (Special Provisions) Act. No 42 of 2007 extended the maximum allowable period of detention to 48 hours in certain cases. This law expired in 2009, but the government instituted a regulation that allowed police to continue to hold detainees for 48 hours.”

1.10 The AI briefing added that: “In September 2011 the Sri Lankan Justice Ministry announced that the police were still vested with powers to detain suspects in custody for 48 hours instead of 24 hours, although the Criminal Code Procedure (Special Provisions) Amendment Bill was not approved by Parliament when its first two-year

⁶ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p8, date accessed 11 November 2011

⁷ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p13, date accessed 11 November 2011

⁸ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p22, date accessed 11 November 2011

term expired in 2009.”⁹ AI also noted that “Torture and other ill-treatment are most prevalent during pre-trial detention and especially in incommunicado detention.”¹⁰

1.11 The AI briefing¹¹ further observed that:

“Sri Lanka has no policy of providing rehabilitation for victims of torture. Medical and psychosocial assistance (including some legal assistance) is available to a limited number of victims through nongovernmental organizations. General medical care, including very rudimentary mental health services are available free of charge from government hospitals, but most caregivers lack training in addressing the needs of torture survivors; and most torture survivors require assistance to access services due to fear, poverty and disability.

“The CAT Act does not provide for compensation. Monetary compensation for torture as a violation of fundamental rights has been secured by some victims by petitioning Sri Lanka’s Supreme Court under Article 126 of the Sri Lankan Constitution – an arduous process that can take years and is often a significant financial burden on petitioners. The Sri Lankan government has been ordered to pay compensation if the perpetrator has not been identified.”

1.12 The AI report¹² covered inter alia the following issues:

- Legal and Procedural Context;
- Torture and Ill-Treatment;
- Impact of Emergency and Anti-Terrorism Legislation;
- Impunity; Safeguards against Torture;
- Redress and Compensation for Victims of Torture.

Freedom from Torture submission

1.13 The *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka*¹³, November 2011 (FFT submission) observed that the rate of referrals for medico-legal reports (MLR) for Sri Lankans in 2011 had been similar to that of 2010 when they received 199 referrals. The information presented in the submission was based on the following data:

⁹ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p22, footnote 25, date accessed 11 November 2011

¹⁰ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p24, date accessed 11 November 2011

¹¹ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p27, date accessed 11 November 2011

¹² Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, date accessed 11 November 2011

¹³ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p1, date accessed 11 November 2011

“Freedom from Torture received approximately 170 referrals for MLRs for Sri Lankans during 2010 and the period January-September of 2011. From these referrals, 65 MLRs have been produced to date and a number are still in production. MLRs were not produced in other cases for a variety of reasons including the limitations of our remit... or because asylum was granted without the need for an MLR.

“Of the 65 MLRs produced to date for Sri Lankan clients referred to us during this period, 35 document evidence of torture perpetrated from May 2009 onwards.” (p2)

1.14 The submission¹⁴ also stated that:

“There is considerable evidence in the public domain of torture practiced in Sri Lanka, and of torture that occurred during the final stages of Sri Lanka’s civil war in particular... There is much less evidence in the public domain of torture documented since the conflict ended in May 2009... which can be attributed to a number of well-known reasons including disappearances... lack of access for humanitarian agencies to camps and ‘rehabilitation’ facilities... lack of witness protection for those testifying to the Lesson Learnt and Reconciliation Commission, as well as intimidation of journalists... civil society organisations and doctors...”

“It is because we are concerned that the flow of information about torture in Sri Lanka is being impeded in various ways that Freedom from Torture has chosen to focus this submission exclusively on our forensic documentation of evidence of torture which took place in Sri Lanka after the conclusion of the civil war in May 2009. This evidence, drawn from MLRs we have prepared, demonstrates that torture is still ongoing in Sri Lanka.”

“Specifically, our evidence demonstrates that:

- “Torture perpetrated by state actors within both the military and police has continued in Sri Lanka after the conflict ended in May 2009 and is still occurring in 2011;
- “Those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE);
- “A variety of different types of torture have been perpetrated in a significant number of locations around Sri Lanka during the post-conflict period; and
- “Many Sri Lankan torture victims are left with visible, heavy scarring attributable to both blunt force trauma and burns which suggests impunity for perpetrators of torture in Sri Lanka.”

1.15 FFT submission¹⁵ stated the 35 MLRs “... document evidence of torture perpetrated from May 2009... ” and February 2011, and dealt with the following issues:

¹⁴ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p1, date accessed 11 November 2011, p1-2

¹⁵ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p7-9, date accessed 11 November 2011

- “Profile of cases (Age, sex & occupation;
- Ethnicity and place of origin and residence;
- Associations; Return to Sri Lanka from abroad);
- Patterns of detention (‘Surrendees’; ‘Other’ detainees; Length of detention;
- Due process in detention);
- Forensic evidence of torture (Torture disclosures and our documentation of the forensic evidence; Psychological findings).”

1.16 The FFT submission¹⁶ noted that “[t]he most recent torture which we have finished documenting took place in February 2011.” No further information was provided on the case. However, later in the report, FFT referred to two cases “detained during 2011” out of the “35 medico-legal reports (MLRs) examined [for the period May 2009 to September 2011]” adding that “The 2 cases detained in 2011 report being taken from checkpoints... Both individuals were resident in the UK”. With regards to the “detention facility”, the FFT briefing recorded that “2011: Verpankulam; Joseph camp” as facilities “named and recorded in the MLRs”.

1.17 The submission¹⁷ further noted, on the subject of returns to Sri Lanka (the only submission to cover this as a theme), that:

“Fourteen of the 35 cases report periods of residence or travel abroad preceding detention and torture: 5 travelled for educational purposes, 3 for family reasons and 4 for the purpose of seeking refuge outside of Sri Lanka. In the remaining 2 cases, the purpose of travel was not stated.

“Of the 4 who sought refuge abroad, 3 were forcibly returned to Sri Lanka. In one case the individual had claimed asylum unsuccessfully in the UK a number of years earlier but was returned to Sri Lanka from another European state whilst en route to a non-European state where a new asylum claim was to be lodged. The second case involves a similar scenario – an individual who had claimed asylum unsuccessfully in a European state was returned by a second European state whilst en route to a non-European state where a new asylum claim was to be lodged. The third was returned from another European state after two years of residence, having been refused asylum there. In each of these cases, the person was tortured on return.

“Of those 10 cases involving individuals who travelled abroad for non-asylum purposes, 9 returned voluntarily to Sri Lanka (all from the UK). Five returned voluntarily for temporary visits for a variety of family reasons including family sickness, child custody issues, to visit family and attend family celebrations. Two individuals returned due to the disappearance of their fathers and 2 others returned

¹⁶ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p7-9, date accessed 11 November 2011

¹⁷ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p4-5, 9, date accessed 11 November 2011

voluntarily. The remaining individual was en route to a non-European state for family reasons, but was returned en route due to the use of false documents.

“All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka through a legal route or otherwise, were subsequently detained and tortured. In 5 of the 14 cases, the episode of detention and torture documented in the MLR occurred over a year and up to 7 years after return. However in 9 cases the individual was detained within days, weeks or a month of their return. Of these 9 cases, 6 were detained in Colombo, either from their home (n=3) or at checkpoints (n=2) or from a lodging house. Two were detained at checkpoints elsewhere in the country and 1 was detained directly from the airport on arrival... (removed to Sri Lanka following a refused asylum claim”.

Please refer to the latest [COI Report Sri Lanka, July 2011](#) for additional information on torture and other related issues. See also [Section 2](#) of this bulletin for further reference to the Freedom from Torture report, *Out of the Silence: New Evidence of Ongoing torture in Sri Lanka*, released on 7 November 2011¹⁸

International Commission of Jurists submission

1.18 The International Commission of Jurists (ICJ) , *Submission to the Committee Against Torture on the Examination of the combined third and fourth periodic reports of Sri Lanka under The Convention Against Torture and other cruel, inhuman or degrading treatment or punishment*¹⁹, October 2011 (ICJ submission) “...addresses the issues concerning: the definition of torture; the crime of enforced disappearances; rights on arrest or detention; habeas corpus²⁰; contemporary issues at the provincial level; non-refoulement; witness protection legislation; reparation mechanisms for victims; and the prohibition on the admission as evidence of information obtained by torture.” However, the submission does not refer to any examples of ill-treatment or torture in 2011.

1.19 The ICJ submission²¹, observed in its conclusions:

¹⁸ Freedom from Torture, *Out of the Silence: New Evidence of Ongoing torture in Sri Lanka*, 7 November 2011 http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, date accessed 16 November 2011

¹⁹ International Commission of Jurists, *Submission to the Committee Against Torture on the Examination of the combined third and fourth periodic reports of Sri Lanka under The Convention Against Torture and other cruel, inhuman or degrading treatment or punishment*, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ_SriLanka47.pdf, Executive Summary, date accessed 11 November 2011

²⁰ International Commission of Jurists, *Submission to the Committee Against Torture on the Examination of the combined third and fourth periodic reports of Sri Lanka under The Convention Against Torture and other cruel, inhuman or degrading treatment or punishment*, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ_SriLanka47.pdf, Executive Summary, date accessed 11 November 2011, p10

²¹ Pursuant to Article 141 of the Constitution, all persons are guaranteed the right to challenge the lawfulness of their detention through the writ of habeas corpus. Detainees may file a petition with the Court of Appeal for a writ of habeas corpus to bring before the court ‘the body of any person to be dealt with according to law’ or ‘the body of any person illegally or improperly detained in public or private custody’”

²¹ International Commission of Jurists, *Submission to the Committee Against Torture on the Examination of the combined third and fourth periodic reports of Sri Lanka under The Convention Against Torture and other cruel, inhuman or degrading treatment or punishment*, October 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ_SriLanka47.pdf, p17, date accessed 11 November 2011

“The ICJ is concerned with a range of issues resulting from problematic provisions of the PTA, the ER and the Convention against Torture Act. It also is concerned with a lack of legislation securing key fair trial rights, applying the principle of non-refoulement to all individuals within the State’s jurisdiction, and recognising enforced disappearances as a discrete crime. The non-functional nature of the writ of habeas corpus, a key safeguard against abuses like torture and ill-treatment, is also particularly disturbing. The lack of a general right to compensation for victims of torture demonstrates a lack of will on the part of the Government to ensure justice for victims.”

Lawyers’ Rights Watch Canada submission

1.20 The Lawyers’ Rights Watch Canada, *Sri Lanka, 3rd and 4th Periodic Report on the Implementation of the Convention Against Torture, Submission from Lawyers’ Rights Watch Canada to the Committee Against Torture*²², October 2011, noted in its executive summary that “The definition of ‘torture’ in Sri Lanka’s domestic legislation remains inadequate as per the CAT’s recommendations. The absence of an effective investigation mechanism and the lack of prosecutions under Sri Lanka’s Convention against Torture Act are just two of the inadequacies that Sri Lanka must overcome.”

1.21 The same report²³, observed in its conclusions:

“The Government of Sri Lanka is clearly not ready, willing nor capable of fully implementing the Convention against Torture into its domestic law. In the past few months, Sri Lanka has come under increasing pressure to investigate credible allegations of torture, war crimes and crimes against humanity. However, the Government of Sri Lanka has refused and ignored the repeated calls made by the international community for an investigation into these allegations. To date, Sri Lanka has failed to address these concerns and shows no plans of doing so in the near future. At the core of the persistence of the problem of torture in Sri Lanka is the prevailing culture of impunity.”

REDRESS submission

1.22 The REDRESS *Comments on Sri Lanka’s Combined Third and Fourth Periodic Reports to the Committee Against Torture: Accountability and Justice for Torture and other ill-treatment committed during the final phase of the war in the North-East*²⁴, September 2011 noted in its introduction that: “The submission focuses on violations

²² Lawyers’ Rights Watch Canada, *Sri Lanka, 3rd and 4th Periodic Report on the Implementation of the Convention Against Torture, Submission from Lawyers’ Rights Watch Canada to the Committee Against Torture*, October 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_SriLanka47.pdf, Executive Summary, date accessed 14 November 2011

²³ Lawyers’ Rights Watch Canada, *Sri Lanka, 3rd and 4th Periodic Report on the Implementation of the Convention Against Torture, Submission from Lawyers’ Rights Watch Canada to the Committee Against Torture*, October 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_SriLanka47.pdf, Conclusions, date accessed 14 November 2011

²⁴ REDRESS, *Comments on Sri Lanka’s Combined Third and Fourth Periodic Reports to the Committee Against Torture: Accountability and Justice for Torture and other ill-treatment committed during the final phase of the war in the North-East*, September 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/REDRESS_SriLanka47.pdf, Introduction, date accessed 14 November 2011

alleged to have been committed, and responses thereto, during the final phase of the conflict in Sri Lanka [which ended in May 2009].” The report, therefore, dealt with the findings of the UN Panel of Experts²⁵ - to which it referred extensively - and Sri Lanka’s obligations under the Convention but does not contain information on the incidence of torture in 2011.

- 1.23 The REDRESS, Asian Legal Resource Centre & ACAT-France, *Alternative report to the Committee against torture*²⁶, September 2011 provided comprehensive information on the legal framework (and its implementation) regarding torture and referred to an incident of August 2011 mentioned by the Asian Human Rights Foundation (AHRC) in an Urgent Appeal dated 26 August 2011²⁷. The AHRC had reported that on:

“...23 August [2011], the army entered Navanthurai in the district of Jaffna and arrested and detained between 100 – 120 young men from the village. According to eye witnesses, around 12 Army officers entered each house in the village and dragged out men who were sleeping with their families and children. The men were brutally and indiscriminately beaten with rifle butts and iron rods and dragged along the road towards the Army detachment located around 300 meters from the village. Women and children were also beaten in the attack.

“Later the same day around 100 men were produced before the Magistrate of Jaffna by the police officers attached to the Jaffna Headquarters Police Station...According to those present, the men had visible injuries and showed signs of having been severely beaten.

“The Magistrate ordered 18 of the more seriously injured to be admitted to hospital and for the medical certificates to be submitted to the court.”

“The Assistant Superintendent of Police (ASP) Jaffna appeared in person before the Magistrate and made a submission to court, accusing the villagers of unlawful gathering. But he did not mention about the complaints of the victims and the relatives regarding the severe tortured perpetrated upon them by the Army officers.”

- 1.24 The REDRESS, Asian Legal Resource Centre & ACAT-France, alternative report of September 2011²⁸, also observed that: “Torture, in particular by the police, remains endemic in Sri Lanka. In spite of the large number of credible allegations of torture and other forms of ill-treatment, there have been few prosecutions and even fewer convictions of the torturers. This lamentable situation reflects serious shortcomings in

²⁵ United Nations 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

²⁶ REDRESS, Asian Legal Resource Centre & ACAT-France, *Alternative report to the Committee Against Torture*, September 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/REDRESS_ALRC_RCT_ACAT_SriLanka47.pdf, paragraph 28, date accessed 14 November

²⁷ Asian Human Rights Foundation, Sri Lanka: Innocent villagers illegally arrested, tortured and charged with fabricated charges, Urgent Appeal Case: AHRC-UAC-148-2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-148-2011/?searchterm=>, date accessed 15 November 2011

²⁸ REDRESS, Asian Legal Resource Centre & ACAT-France, *Alternative report to the Committee Against Torture*, September 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/REDRESS_ALRC_RCT_ACAT_SriLanka47.pdf, paragraph 66, date accessed 14 November

investigation methods and accountability mechanisms that result in an overall climate of impunity.”

NGO Collective submission

- 1.25 The Sri Lankan NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture*²⁹, 14 October 2011, noted:

“Sri Lankan jurisprudence on torture consists of judgments by the Supreme Court in Fundamental Rights applications involving allegations of torture and the criminal prosecutions under the Torture Act² in the High Courts inquiring into charges against public officers alleged of committing torture. None of the High Court decisions make mention of mental torture. The concept of mental torture is also not addressed in any of the recent decisions of the Supreme Court.”

- 1.26 The same report³⁰ added that:

“In recent public instances of police and army action resulting in injuries and complaints of degrading treatment of civilians – no independent investigation has been launched by the State in recognition of the physical and mental impact of such incidents on affected civilians. The incidents include the treatment of Free Trade Zone protestors by the police in Katunayake in May 2011 and the assault of civilians by the army personnel in Navanthurai (Jaffna District), Komarasankulam (Vavuniya District) and Thottaveli (Mannar District) in August 2011.”

“Medical officers in several cases have acted on the pressure or in connivance with the police to hide the incidents of torture. Organisations who conduct legal aid have documented several such instances. In a recent incident of torture which took place in August 2011, the medical report by the JMO [Judicial Medical Officer] stated that the victims injuries was due to assault by unknown persons despite his clear statement to the JMO that his injuries were sustained due to torture at the Vavuniya Police Station. The victim overheard the JMO consult with an officer of the police who the victim believed was the OIC [Officer in charge] of the Vavuniya police, in which the JMO asked the OIC for advice on what she should record in the medical report.

²⁹ The Sri Lankan NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture*, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, paragraph 27, date accessed 15 November 2011

“This report is authored and compiled jointly by the Centre for Human Rights and Development (CHRD), Right to Life - Human Rights Centre, International Movement Against All Forms of Discrimination and Racism (IMADR), Centre for Policy Alternatives (CPA), National Fisheries Solidarity (NAFSO), Families of the Disappeared (FOD), Rights Now Collective for Democracy, Centre for Peoples Dialogue (CPD), and INFORM Documentation Centre.” (p1)

³⁰ The Sri Lankan NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture*, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, paragraph 29 & 39, date accessed 15 November 2011

In the same case, the JMO initially ruled that the victim did not require treatment or hospitalization since he did not show any visible injuries.”

- 1.27 The NGO Collective report³¹ also mentioned that: “According to media reports there have been nine deaths in custody in the year 2011 and 96 cases of torture. No legal and administrative action regarding the same has been undertaken.” A *Table on 2009 - 2011 Examples of Custodial Deaths* is contained within the report, and six cases of deaths in custody – with the related details - are recorded.³²
- 1.28 The NGO Collective report contained inter alia information under the following headings: “Definition of Torture”; “Lack of effective legislative, administrative, judicial or other measures to prevent acts of torture”; “Legal framework for combating violence against women”; “Education and Information regarding prohibition of torture”; “Lack of systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons”; “No prompt and impartial inquiry into complaints of torture and no fair and adequate compensation for victims of torture”; “Compensation to and rehabilitation for victims of torture”; “Confessions under torture” and “Threat to freedom of expression and human rights defenders”.
- 1.29 The article in the *Sunday Times* (Sri Lanka)³³ dated 8 October 2011 mentioned by the NGO collective report observed:

“According to human rights activist and Transparency International Sri Lanka executive director J. C. Weliamuna, there has been a significant increase in the number of cases of ‘cell deaths’ in recent years. ‘The fabrication of charges has become a practice with certain police officers. This makes a suspect a criminal even before he is proven guilty. This is not the police system of a democratic country,’ Mr. Weliamuna told the *Sunday Times*. ‘These killings raise questions about the role of the judiciary. The police are guilty of systematic abuses.’”
- 1.30 The *Sunday Times* mentioned three recent cases of death in custody. “...on September 29 [2011], the corpse of a 29-year-old family man, Gayan Rasanga, was handed over by police officers to the Dompe Hospital mortuary. Residents say that earlier that day they had heard a man screaming in agony and pleading for his life. The screams had come from the premises of the Dompe police station.”

“Another death in police custody occurred on Monday, October 3 [2011], when a suspect in the killing of a police officer drowned in Bolgoda Lake when leading police officers to the spot where the murder weapon had been hidden, on a small island on the lake.” [See also AI briefing³⁴ above].

³¹ The Sri Lankan NGO Collective, Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, paragraph 97, date accessed 15 November 2011

³² The Sri Lankan NGO Collective, Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, Annexure - Table on 2009 - 2011 Examples of Custodial Deaths, date accessed 15 November 2011

³³ *Sunday Times* (Sri Lanka), Investigating police brutality, 9 October 2011 http://sundaytimes.lk/111009/News/nws_015.html, date accessed 15 November 2011

³⁴ Amnesty International, Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011

“In a separate incident, in Athurugiriya, a former sailor, Asanka Botheju, who had spent 19 days in police custody, was reported to have ‘drowned in the Kelani River’ while leading police officers to a cache of hidden firearms.”

See also [Section 2](#)

- 1.31 The same newspaper³⁵ further reported that “Sanjeewa Weerawickrema, legal advisor to the Hong Kong-based Asian Human Rights Commission (AHRC), told the *Sunday Times* that the commission has received “reports of 50 cases of police torture in Sri Lanka in 2010, and 102 cases for 2011, so far” and that:

“Between 1998 and 2011 the Asian Human Rights Commission received some 1,500 reports of police torture in Sri Lanka.

“The Sri Lanka Human Rights Commission (HRC) says that all complaints relating to torture are related to police torture. The Commission’s Director of Investigations, Samanthi Jayamanne, said the complaints tended to come from the rural areas, rather than from Colombo.”

Tamil Information Centre’s submission

- 1.32 The *Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka*³⁶, October 2011 reported on the following cases of torture, death in custody and “The Sri Lankan military’s abuse of powers to punish and intimidate people exercising their right to assembly”:

“Mr HMK was arrested by the Criminal Investigation Department (CID), a branch of the police service, in Colombo on 20th April 2011. During his detention and interrogation, chains were placed around wrists and he was held upright suspended from the ceiling by his wrists. Cigarettes were singed on his right arm and hot iron rods were applied to his back and both legs. Mr HMK was cut with a knife on his left arm and slapped on a number of occasions. The examining doctor noted the appearance of circular marks around his wrists, scars consistent with cigarette burns, cuts and marks consistent with his account of being burned with an iron rod. The doctor concluded that there was no reason to doubt Mr HMK’s testimony.”

“Mrs Devendran Saro, the wife of Sinnaiah Devendran, complained that she was denied permission to collect her 30-year old husband’s body who died in questionable circumstances inside the maximum security prison in Boralle on 24 August 2011. The deceased, Sinnaiah Devendran is a native of Maskeliya in Up-country, was arrested after a bus bomb blast in Piliyandala. He was a garment factory worker. Enquiry was made but the cause of his death was not announced. Mrs Devendran is a resident of Vaddukkottai in the northern Sri Lanka. She was informed by Jaffna police on 28 October that her husband had died while he was

http://www2.ohchr.org/english/bodies/cat/docs/ngos/Al_SriLanka47.pdf, p13, date accessed 11 November 2011

³⁵ *Sunday Times* (Sri Lanka), Investigating police brutality, 9 October 2011

http://sundaytimes.lk/111009/News/nws_015.html, date accessed 15 November 2011

³⁶ Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka, http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf, Case Study: Torture by Members of the Police Force Mr HMK, date accessed 15 November 2011

undergoing treatment at prison hospital. But, this was denied by his relatives. According to relatives there was an injury in his head.”³⁷ [See also [Section 2](#)]

“In August 2011, Sri Lankan military forces used violence against over 100 civilian villagers in Navanthurai after they exercised their right to assembly and peaceful protest. Several media reports describe a situation on 23 August 2011 in which over 100 men in Navanthurai were dragged from their homes in the early morning and severely beaten by the Sri Lankan army before being detained and handed over to the police. Women and children were also beaten, and private property was both damaged and stolen. The men were held without medical treatment for over eight hours, and it took 20 hours before the most severely injured men were taken to hospital on a judge’s order.”³⁸

- 1.33 As far as the “Torture and cruel, inhuman and degrading treatment of people arrested and detained under the PTA and ERs” is concerned, the Tamil Information Centre’s submission³⁹ noted that:

“The PTA [Prevention of Terrorism Act] and ERs [Emergency Regulations] foster a situation in which Sri Lankan police and military officials can practice torture and other cruel, inhuman and degrading treatment with impunity. The TIC welcomes the announcement by President Mahinda Rajapaksa on 25 August 2011 that the state of emergency would not be extended when it came up for renewal before the Sri Lankan Parliament in September 2011, resulting in the termination of the Emergency Regulations. However, provisions of the PTA, which remain in force, continue to support the institutionalised use of torture and other cruel, inhuman and degrading treatment against people arrested and detained under the PTA.”

“In particular, provisions of the PTA that permit incommunicado detention for extended periods without charge and remove judicial oversight of arrest and detention² create an environment in which detainees are placed at great risk of torture and other cruel, inhuman and degrading treatment in places of detention. Further, provisions of the PTA that allow confessions to be used as evidence against a person charged with a criminal offence³ encourage the institutionalised use of torture to extract confessions.

“Methods of torture and other cruel, inhuman and degrading treatment commonly used in police and military places of detention include: beatings with gun butts, iron rods, fresh wood and batons; kicking with boots; suffocation under water or in a plastic bag containing petrol; burning with cigarettes; inserting spikes into the body or pins under fingernails; cutting with knives or sharp objects; forcing water mixed with chillies into the victim’s nostrils; applying chilli powder to sensitive parts of the body; keeping detainees nude; splashing water on detainees’ bodies and exposing them to the cold; suspension in distorted positions, upside down or from the wrists; electric

³⁷ Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka, http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf, Case Study: Death in Custody: Mr. Sinnaiah Devendran, date accessed 15 November 2011

³⁸ Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka, http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf, Case study: Navanthurai, date accessed 15 November 2011

³⁹ Tamil Information Centre’s submission to the Committee Against Torture on Sri Lanka, http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf, Torture and cruel, inhuman and degrading treatment of people arrested and detained under the PTA and ERs, date accessed 15 November 2011

shocks to the most sensitive parts of the body; sexual assault; and making detainees place their private parts (penis or testicles) in a drawer before closing it.”

1.34 With regards to conditions in detention, the same report⁴⁰ observed:

“Conditions in some military and police places of detention in which people detained under the PTA are held are so appalling as to amount to cruel, inhuman and degrading treatment. People providing testimony on their detention by both the military and the police describe being kept for long periods of time in bare rooms with minimal or no furniture, often without toilet facilities, meaning that detainees must defecate and urinate on the floor, in shared cells as well as individual. Food is often insufficient or not provided for days at a time, and water given to detainees has been reported to be dirty, or withheld until they comply with interrogation. This treatment is often in parallel to the physical methods of torture described.”

TRIAL submission

1.35 The TRIAL *Combined 3rd and 4th periodic report on the implementation of the Convention Against Torture. Submission from TRIAL (Swiss Association against Impunity) to the Committee Against Torture*⁴¹, September 2011 observed:

“A detailed review of Sri Lankan criminal legislation leads TRIAL to highlight that the legal framework of the State party is not consistent with the Convention Against Torture. Whilst Sri Lanka has enacted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act 1994¹ in order to incorporate the Convention Against Torture into domestic law, this Act does not contain a definition of torture which is consistent with Article 1 of the Convention.”

“Furthermore, despite allegations of widespread torture in Sri Lanka, the low number of convictions under this Act is a cause for concern.”

1.36 With regards to the issue of prosecutions under the Torture Act, the TRIAL submission⁴² noted that:

“The Torture Act has rarely been used to prosecute acts of torture, despite reports of widespread torture in Sri Lanka. To date, there have only been three convictions under the Torture Act in Sri Lanka. According to the Asian Human Rights Commission, the government has stopped investigating cases of torture as a matter of policy, and since 2009 no cases have been investigated or prosecuted. Part of the problem is the lack of an effective investigation mechanism, in violation of Article 12 of the Convention Against Torture. Complaints under the Torture Act must be submitted to the Attorney General's Department. The former practice was for the

⁴⁰ Tamil Information Centre's submission to the Committee Against Torture on Sri Lanka, http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIC_SriLanka47.pdf, Conditions in detention, date accessed 15 November 2011

⁴¹ TRIAL Combined 3rd and 4th periodic report on the implementation of the Convention Against Torture. Submission from TRIAL (Swiss Association against Impunity) to the Committee Against Torture, September 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/TRIAL_SriLanka47.pdf, Executive Summary, date accessed 16 November 2011

⁴² TRIAL Combined 3rd and 4th periodic report on the implementation of the Convention Against Torture. Submission from TRIAL (Swiss Association against Impunity) to the Committee Against Torture, September 2011 http://www2.ohchr.org/english/bodies/cat/docs/ngos/TRIAL_SriLanka47.pdf, p10-11, date accessed 16 November 2011

Department to refer cases to the Special Investigations Unit of the Criminal Investigation Division, which reported back to the Attorney General's Department for consideration of filing indictments. In 2009 these referrals were discontinued as a matter of policy and no new mechanism has been established. Further problems include insufficient evidence, due to intimidation of victims and witnesses, a lack of thorough investigation by the police⁴¹ as well as delays in prosecution."

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2. OTHER RECENT REPORTS

- 2.01 The Freedom from Torture, *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka*⁴³, released on 7 November 2011 (FFT Report), is mainly based on the same study quoted in the *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka*⁴⁴, November 2011, (FFT Submission) (see [Section 1](#)), namely on information gathered "Through the detailed examination of evidence of torture which took place between May 2009 and early 2011, as documented in the case sample of 35 completed medico-legal reports." However in the FFT Report's introduction, not provided in the FFT submission, it quoted the account of a Sri Lankan man who had returned to the country from the UK and was reportedly subject to ill-treatment:

"After I arrived in Sri Lanka I tried to leave the airport, two men stopped me, asked for my passport and asked me to come with them. They showed me their IDs – two people from CID [Criminal Investigation Department]. They took me out of a different entrance and pulled me inside a van. They started to ask questions about why I had come back to Sri Lanka – saying that I had escaped the first time but not this time. They tied my hands and legs and kicked me very badly.

"I was taken to a building. They asked questions like 'why have you come back again?', 'what did you do in the UK?', 'where is your brother?' [an LTTE member]. I said I had no contact with him. They tortured me inside the room by removing my clothes and hitting me with burning irons. I was feeling a burning sensation all over my body. They kept me for two days and I found my body was all swollen. On the third day they put me inside the van. I thought they were going to shoot me. Later I realised that my family had given them some money and because of that I was released."

"Rohan was tortured on his return to Sri Lanka from the UK in early 2011. He was referred to Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) several months ago when he escaped – on payment of a bribe by his family – and flew back to the UK." (p1)

⁴³ Freedom from Torture, *Out of the Silence: New Evidence of Ongoing torture in Sri Lanka*, 7 November 2011 http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, date accessed 16 November 2011

⁴⁴ Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, p1, date accessed 11 November 2011

2.02 The FFT Report ⁴⁵ further noted that 14 cases (out of the 35 individuals whose medico-legal reports were reviewed) “... reported being detained and tortured after periods of time abroad. In every single case assessed in this report, a bribe was paid to the authorities to allow the individual to escape detention, often by family members who had eventually tracked down their whereabouts.” These included four asylum seekers and 10 non-asylum cases. Of the 10 non-asylum cases, nine returned voluntarily after periods in the UK. The FFT report added that torture “is still occurring in 2011... The most recent torture where documentation has been fully completed took place in February 2011... The two cases of individuals detained in 2011, report being taken from checkpoints. Both had been previously resident in the UK and returned for family reasons.” No further information was provided on these cases. The information in the FFT Report is provided at aggregated level, without a specific breakdown by year and it is therefore not possible – with the exception of the specific incidents clearly related in 2011 - to determine when the incidents referred in the report occurred.

2.03 With regards to the ‘Physical findings’ from the 35 medico-legal reports reviewed, the FFT report⁴⁶ noted:

“Forms of blunt force trauma which were reported include:

- forceful slapping and punching to bring about unconsciousness in some cases and sustained damage to sight and hearing
- sustained kicking all over the body including the genitalia, head, face and back with metal capped and studded military boots
- stamping on limbs and feet, hands and stomach with hard boots
- sustained beating all over the body with implements such as wooden sticks and poles, gun butts, bamboo sticks, plastic pipes filled with sand or cement, metal tipped objects, whips and wires
- throwing victims against a wall; banging of head against a wall
- forceful twisting of the limbs and joints
- beating on the soles of feet (falaka)”

“The following methods of burning are reported:

- burning repeatedly on the back, thighs, soles of feet with a heated metal object (long, thin and hard rod or pipe) or a metal rod with a bulbous end
- burning on various parts of the body and limbs with glowing cigarettes
- burning with molten material”

“Suspension – a form of torture which rarely leaves visible marks – is often reported to have been used concurrently with other abuse, such as beating, burning and asphyxiation.

“Reported methods of suspension include:

⁴⁵ Freedom from Torture, Out of the Silence: New Evidence of Ongoing torture in Sri Lanka, 7 November 2011 http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, p2-3, 7 & 10, date accessed 16 November 2011

⁴⁶ Freedom from Torture, Out of the Silence: New Evidence of Ongoing torture in Sri Lanka, 7 November 2011 http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, p13-16, date accessed 16 November 2011

- from a metal bar with both hands tied at the wrists
- upside down with the head lowered periodically into a barrel or tub of water
- upside down by a pole tied to the legs on a pulley and rope system
- ankles and hands tied and suspended upside down from the ceiling

2.04 The FFT Report⁴⁷ added that “[a]sphyxiation was reported to have been used”. The main technique for asphyxiation being “a plastic bag filled with petrol, tied tightly around the neck in order to induce difficulty in breathing, a burning sensation and near suffocation.” Other methods included “[i]mmersion of the head in water is also reported to have been used” and exposure of the skin or eyes “to chemical and caustic substances causing a burning sensation, including through the:

- “spraying of unknown chemical substance into the eyes;
- rubbing of chilli in the eyes;
- burning with unknown caustic substances (possibly chilli) on the penis, testicular and anal areas, causing blood in the stool and a burning sensation on passing urine;
- pouring of acid substances on abraded skin causing the skin to slough off the affected sites

“Cuts and penetrating injuries” were also reported:

- “... sharply barbed wire tied to the leg and pulled
- cuts with sharp metal instruments including knives, a carpentry file, secateurs and the tip of a bayonet;
- traumatic partial amputation of digits
- cuts with finger nails and toe nails pulled out with pliers
- abrasion of bare skin against concrete floor (during rape)”

Together with “specific methods of sexual violence” including:

- “kicking in the genital area
- testicles repeatedly manually and forcefully squeezed
- penis slammed in a door, hit with objects or pierced with a sharp pointed instrument
- ‘burning’ of genitals with caustic substances
- molestation of genitals and enforced masturbation of interrogators (female and male)
- sexual assault, including forced penetration of anus and vagina with fingers (female) and forced insertion of objects including ice cubes and unknown instruments into the anus (male)
- oral, anal and vaginal rape (repeated many times in some cases, in one case twice weekly during a seven-month detention) (female and male)”

2.05 The FFT Report⁴⁸ also observed that “Most of the cases examined report that they were subjected to repeated threats of further torture or of execution. Many also report

⁴⁷ Freedom from Torture, Out of the Silence: New Evidence of Ongoing torture in Sri Lanka, 7 November 2011 http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, p16-18, date accessed 16 November 2011

⁴⁸ Freedom from Torture, Out of the Silence: New Evidence of Ongoing torture in Sri Lanka, 7 November 2011

that they heard the screams of others being tortured during their incarceration and heard people being executed by gunshot. Some witnessed others being tortured and executed in front of them, particularly those who were detained in military detention camps.”

- 2.06 In October and November 2001, the [website of the Asian Human Rights Commission](#) reported on some incidents of torture:

“[28 September 2011] Innocent man was severely tortured by Dompe Police.”⁴⁹ (AHRC, 21 October 2011).

“[On 30 October 2011] A young man was illegally arrested and severely tortured by the Wattegama Police.”⁵⁰ (AHRC, 11 November 2011).

“[On 15 October 2011] An innocent man was illegally arrested, tortured and laid with fabricated charges by the Ranagala Police.”⁵¹ (AHRC, 11 November 2011).

“[17 October 2011] Drunken police officers attempted to steal a motorbike and tortured the bike-owner after arbitrary detention”⁵² (AHRC 22 November 2011)

Please access the web-links provided in the footnotes for the full narratives related to these cases. Further information on cases of torture reported by the AHRC in 2011 is also available from the AHRC report [Police torture case, Sri Lanka, 1998 -2011](#), released in July 2011 (please see in particular pages 26; 385; 405-407; 411; 416; 425). This should be read in conjunction with the latest [COI Report Sri Lanka, July 2011](#)

- 2.07 On 14 November 2011 the *Daily Mirror* (Sri Lanka)⁵³ reported on a case of death in custody:

“A Colombo Court today ordered the Fort police to arrest all suspects involved in a 30-year-old man's death when he went to the Police Narcotics Bureau (PNB) to sign the case book on October 30. Delivering the verdict of the inquest into the death of Mohammed Sathak Mohammed Fahim of Maligawatta, Colombo Fort Magistrate Ms. Lanka Jayaratne ruled that there was reasonable suspicion that a crime had been

http://www.freedomfromtorture.org/sites/default/files/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, p17, date accessed 16 November 2011

⁴⁹ Asian Human Right Commission, SRI LANKA: Innocent man was severely tortured by Dompe Police, 21 October 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-215-2011/?searchterm>, date accessed 17 November 2011

⁵⁰ Asian Human Right Commission, SRI LANKA: A young man was illegally arrested and severely tortured by the Wattegama Police, 11 November 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-233-2011>, date accessed 17 November 2011

⁵¹ Asian Human Right Commission, SRI LANKA: An innocent man was illegally arrested, tortured and laid with fabricated charges by the Ranagala Police, 11 November 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-231-2011>, date accessed 17 November 2011

⁵² SRI LANKA: Drunken police officers attempted to steal a motorbike and tortured the bike-owner after arbitrary detention, 22 November 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-239-2011> date accessed 24 November 2011

⁵³ Daily Mirror (Sri Lanka), Suspicious death of man while in the hands of PNB

<http://www.dailymirror.lk/news/14751-suspicious-death-of-man-while-in-the-hands-of-pnb-.html>, date accessed 17 November 2011

committed and the police was ordered to conduct further investigations and arrest all those involved in the incident.

“Filing a B report in court, the Fort police had informed of a statement given by a PNB officer stating that the man died due to suffocation by drinking water at the PNB. Perusing the Colombo Judicial Medical Officer’s (JMO) report over the death, the Magistrate observed that the stomach and the gullet of the deceased did not contain a significant amount of food or water and thereby the statement was contrary to the JMO report.

“The Colombo Judicial Medical Officer Dr. Ananda Samarasekara maintained that the death was due to asphyxia following the abnormal posture of the body and compression of the upper trunk. “There were fresh injuries and marks in and around the mouth and nose consistent with pressurisation. There were minor and fresh injuries in the head and limbs; they are consistent with blunt force trauma,” the JMO report stated.

“The JMO report further stated that all the internal organs of the deceased did not show significant pre-existing natural diseases.

“The Magistrate finally observed that the statements given by PNB officers regarding the injuries in the body of the deceased were contrary to the JMO report.”

2.08 On 27 November 2011 *The Island*⁵⁴ reported:

“The police are investigating the death of a suspect taken in for questioning in connection with his alleged involvement in a series of robberies in the Jaffna peninsula.

“Responding to a query by The Island, sources said that they were inquiring into the circumstances, under which the suspect, Skandarajah alias Sumanan had died in police custody. Sources said that Chunnakam police had detained the suspect over his alleged involvement in robbing gold jewellery worth about Rs. 3.3 mn. The police claimed that the suspect had escaped, while being taken to a spot in Kilinochchi, where he had hidden the loot. The police claimed that the suspect had drowned in a tank.”

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3. UNCAT’S EXAMINATION AND CONCLUDING OBSERVATIONS

3.01 On 8 November 2011 United Nations Office at Geneva⁵⁵ (UNOG) reported that the Committee against Torture (CAT) had begun the examination of the report of Sri Lanka.

⁵⁴ The Island, Another death in police custody, 27 November 2011
http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=39987 date accessed, 28 November 2011

⁵⁵ UNOG (United Nations Office at Geneva), Committee against Torture begins Examination Of Report Of Sri Lanka, 8 November 2011
[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/6D77535F4AD41350C125794200442940?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/6D77535F4AD41350C125794200442940?OpenDocument), introduction, date accessed 16 November 2011

“The Committee against Torture this morning began its consideration of the combined third and fourth periodic reports submitted by Sri Lanka on how it implements the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

“Introducing the report, Mohan Pieris, [Sri Lankan] President’s Counsel and Senior Legal Advisor to the Cabinet on Legal Affairs, said that ...The State had a policy of zero tolerance to torture. A Thematic Action Plan on Torture had been prepared along with other initiatives, including programmes to ensure a respect for human rights within the armed forces, a Directorate on Human Rights and Humanitarian Law within the Sri Lanka Army, and a Human Rights Division within the Police Department. A nation-wide initiative to care for and return internally displaced persons and ex-combatants, called the Way Forward on Rehabilitation, Reinsertion and Reintegration, included rehabilitation for under-age boys and girls who were forcibly recruited into the armed forces.

“Legislation to reform the Criminal Code in order to eliminate the opportunity of torture was being considered, as was the proposed introduction of a duty attorney in every police division, said Mr. Pieris. The state of emergency was now a thing of the past, since its total abolition on 30 August 2011, in fulfilment of the pledge the Government of Sri Lanka took before the Human Rights Council. Sri Lanka remained committed to upholding its obligations assumed under the Convention, and giving life to the goal of a Sri Lanka boasting the golden ideals of no torture, no ill treatment and no exceptions.”

“Felice Gaer, the Committee Expert who served as Rapporteur for the report of Sri Lanka, said that despite the report claiming ‘at no time has the Government resorted to or acquiesced to acts of torture’, the Committee had received extensive allegations of torture and ill-treatment by the State party, ranging from ordinary corners of the country to the centre of the conflict zone. The allegations included cases of disappeared persons, acts of cruelty and ill treatment by the police, harassment of humanitarian workers, human rights lawyers, journalists and ordinary persons, of secret detention centres and of deaths in custody. There was a huge lack of data and statistics, of independent investigations into cases of alleged torture and of prosecutions. Sri Lanka’s Convention Against Torture Act of 1994 seemed to be effectively dormant. Ms. Gaer asked questions about the rights of detainees, over 5,000 enforced disappearances, persons held without trial and incommunicado under the Prevention of Terrorism Act and alleged secret detention facilities.”

“Other Committee Experts raised questions about specific cases of alleged torture, forced disappearance and particularly harassment of human rights lawyers and activists. Detention facilities, prison overcrowding and specific allegations of torture in prisons were also raised, as were the supposed ‘rehabilitation camps’ which some Experts said were alleged to be actually mass detention centres under military rule. Experts also asked about impunity, deaths in custody, fair trials, especially juvenile justice and detention facilities for children, and also the rights of domestic workers, and gender violence towards women and children.”

- 3.02 UNOG⁵⁶ further reported on comments made by Alessio Bruni, the Committee Expert who served as Co-Rapporteur for the report of Sri Lanka who observed inter alia that:

“There were 1,500 documented cases of torture reported between 1998 and 2011, according to a non-governmental organization, which had been allegedly disregarded for political reasons. Another non-governmental organization report referred to around 1,500 Sri Lankans who had sought medical reports detailing their torture to assist their asylum claims. The list of reports and allegations of cases of torture submitted to the Committee was impressive. The point was that so long as those allegations continued to be submitted to various United Nations organizations, zero tolerance was not being achieved and more measures had to be taken.”

“The law was very often violated in police stations. Had the State party received reports from the National Human Rights Commission and what recommendations had been implemented? A specific example was on 15 August 2011, officers of the Commission paid a sudden visit to Mount Laviniya Police Station. Although the Criminal Code provided that detention in police custody should not exceed 24 hours, the Commission found persons who had been detained for over seven days, and some of them appeared to have been tortured. The Commission prepared a report on the visit and summoned all police officers concerned. Had those police officers been prosecuted, and what sentence had they received?”

“Since August 2011 the state of emergency regulations were no longer in force. However the Prevention of Terrorism Act was still in force, under which persons could be detained for investigation for years. That did not seem admissible or even lawful. Since May 2010, approximately 1,900 persons were detained under the Prevention of Terrorism Act pending investigation, and by February 2011 there were around 1,300.”

“There were allegations of torture from former detainees held at Boosa Prison in Galle.”

“Concerning deaths in custody, Amnesty International said that in 2010, ten persons died in police custody under suspicious circumstances. Furthermore an October 2011 report by nine non-governmental organizations fully documented 54 cases of death in custody. What prosecutions had been brought on perpetrators of those deaths?”

- 3.03 The UNOG⁵⁷ report on the CAT examination of Sri Lanka continued with questions from other Committee experts:

“The numbers of persons detained in military ‘rehabilitation centres’ had hugely decreased this year, from 11,000 to around 1,500. There were allegations of brutal treatment in the centres. Would there be any investigation into what went on there?”

⁵⁶ UNOG (United Nations Office at Geneva), Committee against Torture begins Examination Of Report Of Sri Lanka, 8 November 2011

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/6D77535F4AD41350C125794200442940?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/6D77535F4AD41350C125794200442940?OpenDocument), Questions by rapporteurs, date accessed 16 November 2011

⁵⁷ UNOG (United Nations Office at Geneva), Committee against Torture begins Examination Of Report Of Sri Lanka, 8 November 2011

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/6D77535F4AD41350C125794200442940?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/6D77535F4AD41350C125794200442940?OpenDocument), Questions by rapporteurs, date accessed 16 November 2011

Would those 11,000 people receive any redress or compensation for what they had suffered there, including both mental – psychological – and physical torture?

“Impunity remained the rule rather than the exception for violations of human rights in Sri Lanka.”

“There was no legislation that made evidence obtained under torture inadmissible in court, which directly contravened the Convention.”

“It was said that 860 persons were held under state of emergency legislation, which had not been in effect since August [2011]. What legal grounds were they now being held under, and could the delegation confirm the numbers? How many persons had been prosecuted under the Prevention of Terrorism Act? According to reports by non-governmental organizations, the Sri Lankan constitution provided the executive branch with immunity from prosecution. Did the delegation agree with that?”

3.04 On the following day UNOG⁵⁸ reported on the response of Sri Lanka to questions raised by Committee Experts:

“Members of the delegation of Sri Lanka noted that there was a lot of suspicion over the treatment of detainees in police stations. Sri Lankan law provided that any statement or confession made to a police officer was inadmissible in law, unlike in English legal systems. Any statement or confession obtained under duress, threat or promise was also inadmissible.

“An Expert had been correct in observing that confessions made under the Prevention of Terrorism Act were admissible, but 75 per cent of those confessions were rejected, one of the reasons that many cases against terrorists did not succeed. When a court received statements or confessions there was a presumption of voluntariness, and it was true that the burden was on the accused to show that the statement was obtained involuntarily or under coercion. However the burden was a low one; it did not require proof beyond reasonable doubt or even on a balance of probability... the delegation confirmed that, as of today, only 765 persons were under administrative detention orders, and were held at Bossa Detention centre.”

“The delegation noted the Committee’s healthy interest in the ongoing of Sri Lankan police stations, and the Committee’s question about the Mount Lavinia Police Station where detainees had been held and allegedly tortured. A delegate said that he noted criticism, he had not known about it, but would follow-up the issue, which was a police irregularity.

“In 2006 there were 60 complaints of ill treatment by police officers, in 2007 there were 48, in 2008 there were 102, in 2009 there were 67, in 2010 there were 103, and in 2011 there were 109. Of those cases, the numbers of cases still pending were 6 from 2006, 14 from 2007, 22 from 2008, 26 from 2009, 46 from 2010, and from 2011 there were 96; there were 50 cases of alleged torture pending from this year.

⁵⁸ UNOG (United Nations Office at Geneva), Committee against Torture hears response of Sri Lanka, 9 November 2011

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/1F966E56167CB176C1257943004E8147?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/1F966E56167CB176C1257943004E8147?OpenDocument), Response from the delegation, date accessed 16 November 2011

“No police officer was allowed to be present when a suspect was examined by the Judicial Medical Officers. That was a carefully respected practice, guarded jealously by doctors. Judicial Medical Officers kept medical reports securely until they took them to a court to be considered for the trial.”

“There were no unauthorized or secret detention centres in Sri Lanka... There were databases of detainees in every detention centre which were freely accessible by family members. However many detainees had said they did not want their information distributed to the media or to busybodies at any cost. The National Human Rights Commission also had a database, and anyone entitled to access it could make a request.”

“Police officers had been indicted for over-zealous behaviour; 44 police officers were indicted between 2006 and 2011, and 20 were charged in magistrates courts, with a further three cases still under investigation. Complaints of enforced disappearances were trickling down to very small numbers, and numbers of complaints of torture were also going down; there were now complaints from 152 men and 26 women.”

3.05 UNOG⁵⁹ also reported on follow-up questions by Committee Experts:

“FELICE GAER, the Committee Expert who served as Rapporteur for the report of Sri Lanka, said that the delegation’s responses just hit the tip of the iceberg, and she was left with as many questions, if not more, than before...”

“Ms. Gaer said she looked closely at the discussion but did not find a single reference to prosecution. The verbs used were ‘to train, strengthen, establish, create, assist’ etcetera. There were enough studies running to keep every lawyer in Sri Lanka busy. But there was no reference to investigating and prosecuting persons responsible for torture. States parties to the Convention were obliged to maintain prompt and impartial investigations whenever there were reasonable grounds to believe an act of torture had taken place – not just when a complaint had been made.”

“Would the State party publish a list of all persons in Government custody or detained? That included the 5,000 persons still missing, whose families had no idea where they were. The delegation may claim that publishing such a list was a privacy issue, but Ms. Gaer said it would clarify the whereabouts of those 5,000 persons. The delegation said that the secret detention facilities cited by Amnesty International did not exist. Would they undertake an impartial and independent investigation into allegations that secret detention facilities did exist?”

“ALESSIO BRUNI, Committee Expert who served as Co-Rapporteur for the report of Sri Lanka, said a large amount of information received concerned legal provisions, and only a small amount was about what happened in practice in the country. There was no doubt that legal and administrative measures existed to combat torture, but the reality seemed to be very different. The amount of allegations, coming from the most reliable sources, including United Nations sources, was impossible to ignore

⁵⁹ UNOG (United Nations Office at Geneva), Committee against Torture hears response of Sri Lanka, 9 November 2011

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/1F966E56167CB176C1257943004E8147?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/1F966E56167CB176C1257943004E8147?OpenDocument), Follow-Up Questions by Committee Experts, date accessed 16 November 2011

and meant that one could not say there was a real ‘zero tolerance policy’ in Sri Lanka.”

- 3.06 UNOG⁶⁰ further reported on responses by the Sri Lankan delegation. “Around 600,000 persons were arrested every year, and there were around 400 allegations of torture annually. The Government was trying to make the Convention against Torture effective, but conceded that as it was dealing with human beings, and torture was something that was done clandestinely, behind closed doors, the reality may be different.”

Concluding observations on Consideration of reports submitted by States parties under article 19 of the Convention

- 3.07 On 25 November 2011, UNCAT released an ‘Advance Unedited Version’, of their *Concluding observations on Consideration of reports submitted by States parties under article 19 of the Convention* (UNCAT concluding observations 2011) for the Forty-seventh session, 31 October – 25 November 2011⁶¹, which considered the situation in Sri Lanka:

“6. Notwithstanding the new circumstances prevailing since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) and the end of the military conflict that has consumed the country for nearly 30 years, and the State party’s public commitment to the Committee that it has a zero-tolerance policy on torture as a matter of State policy and practice, the Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. The Committee is further concerned at reports that suggest that torture and ill-treatment perpetrated by state actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011 (arts. 2, 4, 11 and 15).

“As a matter of urgency, the Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and prosecute and punish those responsible with penalties that are consistent with the gravity of their acts. It calls upon the State party to ensure that torture is not used by law enforcement personnel and members of the military. In addition to these measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will

⁶⁰ UNOG (United Nations Office at Geneva), Committee against Torture hears response of Sri Lanka, 9 November 2011

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/1F966E56167CB176C1257943004E8147?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/1F966E56167CB176C1257943004E8147?OpenDocument), Response by the Delegation, date accessed 16 November 2011

⁶¹ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.doc

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be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.

“The Committee recalls the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention, stating that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”, as well as the statement by the representative of the State party reaffirming this.”

3.08 The UNCAT concluding observations 2011⁶² further noted:

“7... The State party should ensure that, when suspects are produced before the courts by the police, magistrates always inquire whether the suspect was tortured or mistreated by the police while in custody. The State party should ensure that public officials, in particular judicial medical officers (JMO), prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, record and report any such suspected or claimed act to the relevant authorities.”

3.09 With regards to secret detention centres, the same document⁶³ observed:

“8. Notwithstanding the statement of the Sri Lankan delegation categorically denying all allegations about the existence of unacknowledged detention facilities in its territory, the Committee is seriously concerned about reports received from non-governmental sources regarding secret detention centres run by the Sri Lankan military intelligence and paramilitary groups where enforced disappearances, torture and extrajudicial killings have allegedly been perpetrated (art. 2 and 11).

“The State party should ensure that no one is detained in any secret detention centres, as these facilities are per se a breach of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under any of them has been established. The State party should also ensure that the results of the investigation are made public. It should abolish any such facilities and any perpetrators found responsible should be held accountable.”

3.10 As far as the Prevention of Terrorism Act (PTA) and coerced confessions, the report noted:

“10. While noting the State party’s decision to lift the long-standing state of emergency on 31 August 2011, the Committee expresses concern that 24 hours before it ended new regulations were decreed under the Prevention of Terrorism Act No. 48 of 1979 (PTA). The Committee is concerned about the sweeping nature of these PTA regulations, which unduly restrict legal safeguards for persons suspected

⁶² UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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⁶³ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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or charged with a terrorist or related crime, as pointed out by the Human Rights Committee and the Special Rapporteur on Torture.”

“11. While noting the clarification given by the State party in respect of the inadmissibility of evidence obtained through torture under the Evidence Ordinance Act 1985, the Committee remains concerned by the fact that the PTA allows all confessions obtained by police at or above the rank of Assistant Superintendent of Police (ASP) to be admissible (sect. 16) placing the burden of proof on the accused that a confession was obtained under duress (sect. 17(2)). The Committee is also concerned at reports that in most cases filed under the PTA the sole evidence relied upon is confessions obtained by an ASP or an officer above that rank. The Committee further notes with concern reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges (art. 2, 11, 15 and 16)

“The State party should explicitly exclude any evidence obtained as a result of torture and ensure that legislation, including anti-terrorism legislation, concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention.

“The State party should also ensure that all detainees are asked by the judge whether or not they were ill-treated or tortured in custody. The State party should ensure that judges order independent medical examinations whenever a suspect requires one in court and that prompt and impartial investigations are conducted whenever there is a reason to believe that an act of torture occurred, especially in cases where the sole evidence presented is a confession. The judge should exclude such statements if the suspect so requests in court and the medical examination sustains the claim. Detainees should receive a copy confirming their request for a medical report and a copy of the report itself.”⁶⁴

3.11 With regards to deaths in custody the Committee expressed its concern:

“15...at reports from non-governmental organisations on deaths in custody, including police killings of criminal suspects in alleged staged ‘encounters’ or ‘escape’ attempts. The Committee notes with concern that the State party only reported two cases of death in custody, where the cause of death was determined to be suicide, for the entire period 2006-2011, while for a similar period between 2000-2005 the State party had reported in its core document approximately 65 annual deaths in custody from all causes (HRI/CORE/LKA/2008, p. 87).

“The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees assessing any possible liability of law enforcement officers and prison personnel, and provide, where appropriate punishment of the perpetrators and compensation to the families of the victims.

⁶⁴ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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“The State party should provide comprehensive data regarding reported cases of deaths in custody, disaggregated by location of detention, sex, age, ethnicity of the deceased and cause of death.”⁶⁵

3.12 The UNCAT concluding observations 2011⁶⁶ went on to add that:

“16. While noting the Human Rights Commission of Sri Lanka’s (HRCSL) broad inquiry powers to investigate human rights violations vested in Section 11 of the Human Rights Commission Act No 21 of 1996, the Committee is concerned about its reported inactivity, the lack of cooperation from the police and the government and the limited resources and challenges to its independence and impartiality as a result of the 18th Amendment to the Sri Lankan Constitution, which places the appointment of its members solely in the hands of the Head of State. The Committee is also concerned that, contrary to the information provided by the State party, the International Committee of the Red Cross (ICRC) is not allowed to visit the “rehabilitation centres” or facilities holding LTTE suspects yet to be formally charged. The Committee notes with concern that during 2009 the military administration in closed internment camps for IDPs denied access to humanitarian organisations, including the United Nations and the ICRC (arts. 2, 11, 12, 13 and 16).

“The Committee calls upon the State party to establish an independent national system to effectively monitor and inspect all places of detention, including facilities holding LTTE suspects and closed IDP camps, and to follow-up on the outcome of its systematic monitoring.

“The State party should take necessary measures to support work of HRCSL, ensuring its recommendations are fully implemented. It should also provide detailed information on the action taken on the recommendations made by the Commission on its visit to Mount Lavinia police station on 15 August 2011.

“The State party should strengthen the capacity of non-governmental organizations that undertake monitoring activities and adopt all appropriate measures to enable them to carry out periodic, independent and unannounced visits to places of detention.

The Committee strongly encourages the State party to consider the possibility of ratifying the Optional Protocol to the Convention against Torture, with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

3.13 The UNCAT concluding observations 2011⁶⁷ further observed:

⁶⁵ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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⁶⁶ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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“18. The Committee remains concerned about the prevailing climate of impunity in the State party and the apparent failure to investigate promptly and impartially wherever there is reasonable ground to believe that an act of torture has been committed. It also notes the absence of an effective independent monitoring mechanism to investigate complaints of torture. The Committee expresses concern over reports that the Attorney General’s office has stopped referring cases to the Special Investigations Unit (SUP) of the police and the large proportion of pending cases still outstanding. The Committee is also concerned at numerous reports concerning the lack of independence of the judiciary (arts. 11, 12, 13).

“The State party should:

“(a) Ensure that a prompt and impartial investigation is made into all complaints of torture or ill-treatment. In particular, such investigation should be under the responsibility of an independent body, not under the authority of the police;

“(b) Establish an independent complaints system for all persons deprived of their liberty;

“(c) Launch prompt and impartial investigations spontaneously and wherever there is reasonable ground to believe that an act of torture has been committed;

“(d) Ensure that the Attorney General’s office fulfils its responsibilities to refer cases to the SUP;

“(e) Ensure that, in cases of alleged torture, suspects are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to repeat the alleged act or to obstruct the investigation;

“(f) Ensure that, in practice, complainants and witnesses are protected from any ill-treatment and acts of intimidation related to their complaint or testimony;

“(g) Bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, ensure sentences with penalties that are consistent with the gravity of their acts. In this connection, legislative measures should be taken to guarantee the independence of the judiciary.”

- 3.14 The Committee also expressed its concern “...at the absence of an effective mechanism to ensure the protection of and assistance to witnesses and victims of human rights violations and abuses, which has a negative impact on the willingness and ability of witnesses and victims to participate in investigations or to testify in proceedings...” and added that: “...the State party should ensure that witnesses and victims of human rights violations are effectively protected and assisted, in particular

⁶⁷ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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by ensuring that perpetrators do not influence protection mechanisms and that they are held accountable.”⁶⁸

3.15 The UNCAT Concluding Observations⁶⁹ also observed:

“28. The Committee notes the information on human rights training for members of the police and the army contained in the State party’s report and the responses to the list of issues. It, however, regrets the lack of information on the evaluation of those programmes and in reducing the incidence of torture and ill-treatment, as well as the lack of specific training of medical personnel in detention facilities to detect signs of torture and ill-treatment (art. 10 and 11).

“The State party should:

“(a) Continue to provide mandatory training programmes so as to ensure that all public officials, in particular members of the police forces and army personnel, are fully aware of the provisions of the Convention, that breaches are not tolerated but investigated, and that the perpetrators are brought to trial;

“(b) Assess the effectiveness and impact of training programmes and education on reducing the incidence of torture and ill-treatment;

“(c) Support training on the use of the manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.”

3.16 With regards to “Redress, including compensation and rehabilitation”, the same report⁷⁰ went on to add that:

“The State party should strengthen its efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible.

“The Committee reiterates its previous recommendation (CAT/C/LKA/CO/2, para. 16) that the State party should ensure that appropriate rehabilitation programmes are provided to all victims of torture and ill-treatment, including medical and psychological assistance.”

⁶⁸ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.doc

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⁶⁹ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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⁷⁰ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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- 3.17 As far as the required documentation on compliance is concerned the UNCAT Concluding Observations⁷¹ noted:

“31... The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national and local levels, disaggregated by gender, ethnicity, age, geographical region and type and location of place of deprivation of liberty, including data on complaints, investigations and prosecutions of cases of torture and ill-treatment by law enforcement officials, military and prison personnel, and on enforced disappearances, rape and violence against women.”

“38...The Committee requests the State party to provide, by 25 November 2012, follow-up information in response to the Committee’s recommendations related to (1) ensuring or strengthening legal safeguards for persons detained, (2) conducting, prompt, impartial and effective investigations, and (3) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 7, 11, 18 and 21 of the present document. In addition, the Committee requests follow-up information on remedies and redress to the victims addressed in those paragraphs.”

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⁷¹ UNCAT, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Advance Unedited Version, Concluding observations of the Committee against Torture, 25 November 2011

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Annex A

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Amnesty International

Sri Lanka: Briefing to the UN Committee against Torture 2011, October 2011

http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf

Date accessed 11 November 2011

Asian Human Rights Commission

Sri Lanka: A young man was illegally arrested and severely tortured by the Wattagama Police, 11 November 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-233-2011>

Date accessed 17 November 2011

Sri Lanka: An innocent man was illegally arrested, tortured and laid with fabricated charges by the Ranagala Police, 11 November 2011

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-231-2011>

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