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SRI LANKA: BRIEFING TO COMMITTEE AGAINST TORTURE

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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1. INTRODUCTION

This briefing is submitted to the Committee against Torture (hereafter the Committee) prior to its consideration of Sri Lanka's combined third and fourth periodic reports on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention). It details Amnesty International's concern about a persistent pattern of torture and other ill - treatment of detainees, including individuals detained under the Emergency 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.

The briefing evaluates Sri Lanka's compliance with specific Convention articles as they relate to the ongoing situation in the country, including: (i) enforcement of laws that criminalize torture (articles 1 and 4); (ii) the impact of Sri Lanka's emergency and anti-terrorism legislation (articles 2, 4 and 5); (iii) the effectiveness of legal and procedural safeguards against torture (articles 11 and16); and (iv) impunity and redress for victims of torture (article 12 and 13).

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

People alleged to be involved with the LTTE are rarely brought to trial. Most of these detainees are eventually released for lack of evidence. Amnesty International is concerned at the routine use by Sri Lankan authorities of prolonged administrative detention to circumvent ordinary procedures.

According to international law administrative detention can be used only in the most exceptional cases, as a last resort for preventing danger that cannot be thwarted by less harmful means.

[1] 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), EMMPPR 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.

Some detainees report being tortured and beaten by military personnel and paramilitary cadres working with government forces, such as the army and navy; by police, by inmates and by prison guards.

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

Women's human rights defenders have repeatedly expressed concern to Amnesty International that gender based violence including violence amounting to torture is not taken seriously by Sri Lankan authorities; they note that sexual violence is highly underreported and where it is reported, poorly investigated.

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

This briefing covers the period since Sri Lanka's last report was considered by the Committee in November 2005, with an emphasis on the more recent period of 2010 - 2011. It evaluates laws and practices in Sri Lanka which lead to or amount to human rights violations and contravene Sri Lanka's obligations under the Convention. It provides case examples, which illustrate that the practice of torture, including torture of persons arrested on suspicion of their links to the LTTE, is ongoing.

2. LEGAL AND PROCEDURAL CONTEXT

ARTICLES 2 AND 4

Amnesty International has received consistent reports indicating that torture and other cruel, inhuman and degrading treatment or punishment (hereafter ill-treatment) of prisoners remain common and widespread in Sri Lanka despite laws that prohibit torture. Legal and procedural shortcomings contribute to this failure as does Sri Lanka's lack of political will to eradicate the use of torture and to bring those responsible to justice in fair trials.

Although torture is prohibited by Sri Lanka's Constitution and criminalised under Sri Lanka's Convention against Torture (CAT) Act, the laws have been poorly implemented.[2]

[2] As Sri Lankan lawyer Kishali Pinto-Jayawardena noted in 2009, "the deterrent effect of the criminalisation of torture in the CAT Act is minimal; there have only been three convictions since 1994 and more than seventeen acquittals. The majority of prosecutions are still pending in the High Courts."Kishali Pinto-Jayawardena, *The*

Legal guarantees meant to protect due process and ensure a speedy trial (discussed below) have been eroded by more than three decades of reliance on emergency regulations, and provisions of the Prevention of Terrorism Act (PTA). The Emergency (finally lifted on 30 August 2011), was accompanied by regulations that allowed the authorities to hold detainees without charge for up to 12 months, or, as noted above, for up to two years for "rehabilitation."

The PTA, which remains in effect, continues to allow detention for up to 18 months without charge; [3] and indefinite detention pending trial [4] -- frequently delayed for years.

The PTA also allows the authorities broad discretion to hold detainees where they choose and to move detainees from place to place while under investigation.[5]

Agents of Sri Lanka's security services routinely hold detainees in unofficial places of detention, including commandeered school buildings, private homes and factories. Secret detention is rife. This has fostered a culture where torture and other forms of ill-treatment are tolerated. [6]

Law enforcement officers routinely ignore regulations and procedures meant to protect the rights of individuals who have been arrested. These include the requirement that the arrested person be informed of the reasons for their arrest, that they have the opportunity to communicate with family members or friends, and that a judicial hearing after arrest takes place within a 24 hour time limit. Access to legal counsel is inconsistently permitted by arresting authorities (discussed below). This is a violation of international law, which enshrines the right to legal counsel of one's choice once detained. Suspects have been threatened with further violence and their lawyers and families (and other witnesses) with arrest or physical harm by police officers attempting to suppress information, including information about torture; some victims and witnesses have been killed. Potential threats from police can inhibit suspects and lawyers from notifying a magistrate about torture. Indictments and trials are subject to long delays – meaning that suspects can spend years in detention before

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Rule of Law in Decline; Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka, Published by The Rehabilitation and Research Centre for Torture Victims (RCT), May 2009

[3] Section 9.(1) Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

[4] Section 7 (2) Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

[5] Section 7 (3), Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 states that "A police officer conducting an investigation ... shall have the right of access to [persons arrested under the act] and to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation" Section 9.(1) states: " Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time: Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.... 10. An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise."

[6] In 2000, Sri Lanka rescinded an emergency regulation promulgated in 1994 (ER 19) that offered some protection against torture by requiring detainees to be held only in officially authorized and gazetted (government published) places of detention, where it was possible for independent institutions such as the ICRC and Sri Lanka's national Human Rights Commission to monitor their treatment . Since then, the Inspector General of Police occasionally released an incomplete list of places detention.

cases are heard. Some suspects are advised by lawyers to plead guilty simply to speed up the process.

Under Sri Lanka's Evidence Ordinance, confessions made to a police or other public officer and confessions made while in the custody of the police are not admissible – as dispositive evidence - in ordinary criminal cases unless they are made in the presence of a magistrate.[7] But such confessions are admissible under the Prevention of Terrorism Act (PTA). Confessions caused by an "inducement, threat or promise" are not admissible in any case, but the PTA reverses the burden of proof, putting the onus on victims to prove that their confessions were made under duress.

The 2010 conviction of journalist J.S. Tissainayagam under the PTA for criticizing the Sri Lankan military's treatment of civilians was based on a confession he told the court he made under duress. The court rejected his allegation and Tissainayagam was sentenced to 20 years in prison. In the wake of sustained international and domestic outcry he received a pardon and went into exile.

Confessions are routinely extracted under torture by the police in order to "solve" cases. The police often extract confessions and then use prolonged administrative detention to investigate individuals for whom they lack sufficient evidence to charge.

Failure to take action against errant law enforcement officers in Sri Lanka contributes to the ongoing problem of torture in Sri Lanka. Sri Lanka lacks an effective, independent system to investigate complaints of torture by law enforcement officers and punish wrongdoers. The problem was compounded by a decision in 2006 to place the police under the jurisdiction of the Ministry of Defence, which blurred the already shaky divide between civil policing and military operations, and increased the level of executive pressure on the police.

LTTE suspects continue to be subjected to prolonged incommunicado detention without charge or trial, which increases the risk of torture. Many LTTE suspects are held in a variety of irregular, unofficial or secret places of detention, and have been victims of enforced disappearance and extrajudicial killings.

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[7] Sri Lanka's *Evidence Ordinance*, Sections 25 and 26, state: 25. (1) No confession made to a police officer shall be proved as against a person accused of any offence. (2) No confession made to a forest officer with respect to an act made punishable under the Forest Ordinance, or to an excise officer with respect to an act made punishable under the Excise Ordinance, shall be proved as against any person making such confession.

26. (1) No confession made by any person whilst he is in custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against such person. (2) No confession made by any person in respect of an act made punishable under the Forest Ordinance or the Excise Ordinance, whilst such person is in the custody of forest officer or an excise officer, respectively, shall be proved as against such person, unless such confession is made in the immediate presence of a Magistrate.

3. TORTURE AND ILL-TREATMENT

ARTICLES 1 AND 16

Torture and other ill-treatment of criminal suspects by the police are also common. Over the years, Amnesty International has documented a wide variety of methods used by Sri Lankan security officials to torture and otherwise ill-treat detainees in their custody. Common methods include beatings with boots or blunt objects, electric shock, sexual assault (including rape) and sexual humiliation; suspension; and application or forced inhalation of irritating or volatile substances, such as chilli powder or petrol fumes.

In 2010 alone at least ten criminal suspects reportedly died in police custody in suspicious (and remarkably similar) circumstances. In several cases police claimed that the victim was taken from the police station to identify a weapons cache, attempted to escape, and was shot. [8] 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.[9]

Several Sri Lankan organizations monitor police torture, but their reporting has had little apparent impact in increasing accountability or reducing torture incidents. They have, however, been successful in bringing some cases before the Supreme Court arguing that the victim's fundamental rights under the Constitution had been violated. Some complainants have secured monetary compensation from the state; although the amounts are usually small.[10]

RISK OF TORTURE FOR PERCEIVED OPPONENTS OF THE GOVERNMENT

People abducted, arrested or detained for expressing dissent or criticizing the government or its policies and who are perceived by the authorities or their proxies as political opponents have also been subjected to torture. They include political activists, trade unionists, human rights defenders and independent journalists. The state often fails to properly investigate attacks, including acts of

[8] This was the explanation given by the police in the deaths in custody in September 2010 of Suresh Kumar of Matale, Ranmukage Ajith Prasanna of Embilipitiya and Dhammala Arachchige Lakshman of Hanwella were all reported by an NGO, the Asian Human Rights Commission (Sri Lanka, Amnesty International Annual Report 2011; The State of the World's Human Rights, http://www.amnesty.org/en/region/sri-lanka/report-2011#section-132-8)

[9] "Cop's alleged killer drowns in police custody, The Island, October 4, 2011, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=36130

[10] See, for example, Case of Chandresena SC (FR) Application No. 258/2007, which was decided in favor of the petitioner on 13 May 2009." The victim was confronted by four police officers attached to the Baduraliya Police Station on 27th June 2007 on his way to a funeral. Two of them assaulted him with elongated wooden sticks. He was threatened by the same policemen not to seek medical treatment after the incident. Later he had taken treatment from a general practitioner due to severe pain felt in limbs and the chest region." Medical records showed that he sustained multiple injuries. The court found that his right under Article 11 had been violated and the state was directed to pay a sum of Rs. 75,000 ($680) as compensation and costs.

torture perpetrated against journalists. [11]

In June 2009, Poddala Jayantha, an outspoken critic of the Sri Lankan government's treatment of journalists and Head of the Sri Lankan Working Journalists Association was abducted and tortured by a group of armed men, who broke his fingers, saying it was to keep him from writing. He described the attack when he spoke to journalism students in the US in April 2011:

"I was tortured and my left leg was broken…And today I'm walking with the assistance of steel rod that has been placed there. They poured acid on me. They also cut my beard and hair and put it in my mouth and forced me to inhale, which caused severe problems in my lungs subsequently. They threw my unconscious body in a ditch and left me to die."[12]

RISK OF TORTURE FOR FAILED ASYLUM SEEKERS

Sri Lankan nationals returning to the country after living abroad are at risk of being arbitrarily detained on arrival or shortly thereafter. Sri Lankan nationals who are failed asylum seekers are especially at risk and are likely to be interrogated on return.

Sumith Mendis and Indika Mendis were detained in 2009 at the Christmas Island detention centre after the boat in which they were crew members was stopped by Australian authorities and found to be carrying Sri Lankan asylum seekers. Their own requests for asylum were denied and they were deported to Sri Lanka and promptly arrested and handed over to the Central Investigative Department (CID). Sumith Mendis was released, but Indika Mendis said that he was tortured in CID custody, sustaining severe ear injuries before being transferred to the notorious Negombo prison where he was held for eight months. On 14 August 2010, the brothers were arrested again, apparently on suspicion that they were again planning to migrate to Australia. Sumith Mendis stated that he was tortured by the CID for six days, experiencing beatings and psychological abuse.

RISK OF TORTURE OF THOSE SUSPECTED OF BELONGING TO THE LTTE

Detainees suspected of belonging to the LTTE have faced heightened risks of torture and other forms of ill treatment. LTTE suspects have been held incommunicado at detention centres run by the army, and by police intelligence agencies such as the Terrorist Investigation Division and the Criminal Investigation Division. LTTE detainees have been interrogated for long periods during which they are routinely denied access to legal counsel, contact with their families or independent inspection of their conditions.

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[11] According to media freedom groups since 2004 some 16 journalists and as many as 19 other media workers have been killed in Sri Lanka, the vast majority of these cases have not been properly investigated.

[12]" Sri Lankan journalist speaks of attacks on media," Iowa State Daily.com, Posted: Monday, April 11, 2011 5:21 pm | *Updated: 12:03 pm, Fri Apr 15, 2011;* http://www.iowastatedaily.com/news/article_4e797578-648b-11e0-91ae-001cc4c002e0.html

Amnesty International's work on conflict-related violations and impunity in Sri Lanka has brought its researchers into contact with many victims and witnesses of human rights violations during Sri Lanka's protracted armed conflict as well as family members seeking assistance for detained or missing relatives. The following are some of their complaints:

CASE STUDY 1: TORTURE OF INDIVIDUAL SUSPECTED OF ASSISTING THE LTTE

Sri Lankan Tamil Roy Manojkumar Samathanam, age 40, told Amnesty International he was beaten and mistreated by officers of the Terrorist Investigation Division after his arrest in Sri Lanka in September 2007. Samanthanam, who told Amnesty International that he was detained for one year without access to a lawyer, said he was handcuffed to a table while he slept, was beaten while he was in handcuffs and that he suffered lasting damage to his shoulder when officers suspended him by one arm handcuffed above his head, and applied pressure to his arms. In Boosa prison he was kept in a cell with no toilet (officials provided him with a bottle and a bag) and that there were only 3 toilets for 160 people in that facility.

A Canadian newspaper quoted Samanthanan as saying that other detainees were hit with cricket wickets and pieces of hard rubber; subjected to electric shocks with wires attached to their fingers; and anally raped with iron rods.[13]

Samathanam was accused of importing electronic equipment to assist the LTTE – a charge he denies –and says he was forced to sign a confession. He said he was advised by his lawyer to plead guilty to illegally importing a GPS device; was fined about £3,000 and released after three years in detention.

The methods of torture described by Mr. Samanthanam and those described below are consistent with those documented by Amnesty International and others over the course of two decades.[14]

CASE STUDY 2: TORTURE AND PRISON BEATING OF SUSPECTED LTTE MEMBER

T. Ganesan[15] told Amnesty International he was arrested in 2008 on suspicion of links to the LTTE and tortured by the Harbor Police in Colombo. (He had been abducted by the LTTE in 2002, and forced to work on an LTTE farm for almost two years). While on remand in Magazine Prison in 2009, he was beaten by fellow inmates at behest of prison authorities.

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[13] "Canadian detainee wants probe into detention and alleged torture in Sri Lanka," National Post, 21 July 2011 http://news.nationalpost.com/2011/07/01/canadian-detainee-wants-probe-into-detention-and-alleged-torture-in-sri-lanka/#more-74988

[14] See, for example, Sri Lanka: Torture in custody, 31 May 1999, ASA 37/010/1999 http://www.amnesty.org/en/library/asset/ASA37/010/1999/en/e0d58d47-e1d8-11dd-a03a-6b5b1e49bce3/asa370101999en.html

[15] A pseudonym

On 19 June 2008, Ganesan was abducted by a group of unidentified persons in a white van, blindfolded and taken to the Harbor Police Station in Colombo. He told Amnesty International he was detained at the Harbor Police for 28 days without being produced before a Magistrate. The police accused him of being a member of the LTTE and of having links with the LTTE military intelligence wing, charges he denied. He admitted to having been abducted by the LTTE in 2002, but denied that he had engaged in any subversive activity. He was severely tortured during interrogation; bags soaked in petrol were put over his head; he was beaten with blunt objects, including on the soles of his feet. He was tortured with electric shocks and his penis was burned with an electric heater. He suffered from acute spinal trauma, including a crushed tail bone, and severe pain in his feet and ankle. When his family was finally allowed to visit him on 27 June 2008, he was unable to walk as a result of the torture.

On 22 July 2008, Ganesan was finally produced before the Colombo Magistrate and remanded to the Colombo Remand Prison. On 18 November 2008, he was transferred to the Magazine Remand Prison in Colombo.

On 13 November 2009, he was among eight Tamil prisoners who said they were attacked and brutally beaten by a mob of Sinhalese prisoners. He told Amnesty International that the prison authorities were complicit in this attack; they had read out a list of eight names and handed the prisoners over to the Sinhalese prisoners to be beaten.

Ganesan filed a successful fundamental rights application to the Supreme Court challenging his detention and the attack inside the Magazine Prison despite pressure from prison authorities to withdraw the case, including by threatening his family. On 22 June 2010, he was released from the Magazine Remand Prison after over two years in detention. The victim and his family continued to face threats and harassment from the police and he eventually fled the country.

CASE STUDY 3: RAPE AND GENDER BASED VIOLENCE

A grandmother from Northern Sri Lanka described to Amnesty International how she and other displaced women attempting to flee the conflict in May 2009 were tortured by Sri Lankan army personnel, who she alleged forced them to parade naked, perform acts of a sexual nature and raped them in front of family members, including her grandchildren.[16]

CASE STUDY 4: TORTURE OF A FORCIBLE LTTE RECRUIT

In a letter to Amnesty International an aid worker described a married man in his late thirties, who had been forcibly recruited by the LTTE in 2007. He was detained by the army in May 2009 and tortured. Soldiers burst his ear drum, causing hearing loss, and trampled him with boots. He suffered chest injuries, a broken rib, difficulty walking and mental illness.[17]

[16] Interview, July 2011.

[17] Confidential correspondence with aid worker, March 2010; identifying details are on file with Amnesty International.

ILLUSTRATIVE CASE FROM ASIAN HUMAN RIGHTS COMMISSION REPORTS

Human rights NGOs monitoring torture in Sri Lanka have documented over a thousand cases of torture in the past thirteen years. The report of the Asian Human Rights Commission (AHRC) entitled *Police Torture Cases, Sri Lanka, 1998-2011*, and published in June 2011, provides summaries of 323 of the most serious of some 1,500 police torture cases reported to the organization during that period. Many involve cases of alleged petty theft or were motivated by personal disputes. AHRC concludes that:

The most notable finding of this report is that almost all of the victims whose cases were summarized were randomly selected by the police to be arrested and detained for a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges.[18]

The following is one such case:

> On 15 December 2010, Ranjith Sumangala was arrested by officers attached to the Mirihana Police station and detained and severely tortured over a period of several days. After his arrest, he was blindfolded and driven from place to place by assailants who never identified themselves (he recognized one as a neighbour and determined that others were police), who threatened him with death and tortured and beat him in a van; at an unknown location; at his own home; and in a building in the Mirihana police station compound, while they attempted to make him confess to a series of unsolved cases.
>
> In the van, a plastic shopping bag filled with chilli powder was placed over Ranjith's head, nearly suffocating him. While interrogating him about the theft of a weapon and jewellery, his torturer punched him the face repeatedly and brought him to the point of suffocation five times, removing the bag just before he passed out from lack of oxygen. He was also kicked and punched, and beaten with belts.
>
> Ranjith was taken to an unknown building and a plastic bag with chilli powder was again placed over his head. He was forced to lie on the ground while officers stomped on his thighs. Ranjith eventually confessed to possession of stolen property to stop the beatings and was taken to his home so the police could retrieve the goods, but they found that there was nothing they sought there. He was beaten with a thick wooden pole in front of his wife and young children so forcefully that the pole broke; the beating continued when his assailants found another pole.
>
> In an old building in the Mirihana police station compound referred to around the station as overheard by Ranjith as the 'torture chamber' police officers beat him with a rubber hose and a rubber belt; his hands were cuffed behind his back and he was suspended by his wrists for 30 minutes. As a result of the torture Ranjith suffered nerve damage.

[18] Asian Human Rights Commission, Police Torture Cases, 1998-2011, http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf

Eventually Ranjith was forced to confess to 21 unsolved cases.

Four days after his arrest on 19 December Ranjith was finally produced before a Magistrate in Avissavella, who issued a Detention Order stipulating that he should again be produced before the Magistrate on 21 December. But Ranjith was not brought to court on 21 December. Instead he was unlawfully ordered by the police to paint a building at the police station. On 23 December he was produced before a Magistrate, who ordered that he be released on bail. He was only freed on 24 December and hospitalized on 25 December. In January, 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. [19]

[19] See, Asian Human Rights Commission, Police Torture Cases, 1998-2011, http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf, and Janasansadaya http://www.janasansadaya.org/page.php?id=386&lang=en; See also, Mirihana Police -Torture Chamber Case, Sri Lanka Guardian, 31 May 2011.

4. THE IMPACT OF EMERGENCY AND ANTI-TERRORISM LEGISLATION

ARTICLES 2, 4 AND 5

Sri Lanka was under state of emergency almost continuously from 1971 until 30 August 2011.[20] The State of Emergency was extended monthly by Parliamentary vote. Accompanying emergency regulations enacted under the Public Security Ordinance along with the Prevention of Terrorism Act of 1979 – which remains in effect and is discussed below-- have enabled Sri Lankan authorities to circumvent guarantees provided for in the Constitution and other ordinary Sri Lankan laws.

Emergency and anti-terrorism laws have granted wide powers and authority to arrest and detain individuals for extended periods without charge or trial in violation of their right to freedom from arbitrary arrest and detention. These rights are enshrined in the International Covenant on Civil and Political Rights, which Sri Lanka has ratified and to which it is bound.

These laws have granted state authorities sweeping powers of detention and permitted the authorities to hold people in unacknowledged or secret locations, a practice that facilitates human rights abuses such as enforced disappearances, torture and deaths in custody, which constitute crimes under international law.[21]

Article 155 of the Constitution authorizes the President to issue emergency regulations "amending or suspending the operation of the provisions of any law, except the provisions of the Constitution". Article 155 of the Constitution also makes the Public Security Order (PSO), introduced by the British colonial authorities in 1947, part of Sri Lankan law. Section 5 of the PSO empowers the Executive to, among other things, issue emergency regulations which may authorize detention without charge or trial; authorize entry, search and seizure of property; amend any law (other than the Constitution) or suspend its operation; create special courts to prosecute offenders, including under the emergency regulations themselves.[22]

In addition, the Executive may exempt officials acting under the act "in good faith" from criminal prosecution or civil suits.

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[20] Over the course of four decades Sri Lankans never experienced a period of normal rule that lasted for more than five years. Sri Lanka was under a state of emergency from March 1971 to February 1977; from August 1981 to January 1982; from 30 July 1982 to 30 August 1982; from 20 October 1982 to January 20 1983; and from 18 May 1983 to 11 January 1989; from 20 June 1989 to 4 September 1994; from 4 August 1998 to 4 July 2001; from 5 November 2003 to 6 November 2003 and from 12 August 2005 to 30 August 2011.

[21] Section 7 (3), Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

[22] Public Security Ordinance: No. 25 of 1947, Part II, Section 5

The armed conflict with the LTTE ended in May 2009, but Sri Lankan legislators continued to extend the state of emergency on a monthly basis for more than two years. In early May 2010, the government relaxed certain provisions of the emergency regulations relating to: (i) the holding of meetings and gatherings; (ii) the imposition of curfews; (iii) the printing of certain literature; (iv) the provision of householders' names to the police; and (v) the entry by security personnel into private properties without warrants for search operations.

The military retained emergency policing powers to deal with "ongoing investigations into terrorist activities." Other laws containing similar provisions, including the Prevention of Terrorism Act and the Police Ordinance remained in effect, and continue to be applied to arbitrarily arrest and detain individuals they suspected of links to the LTTE.

In July 2010 it was reported that Sri Lankan police had once again initiated a household registration drive of Tamils in Colombo, a common practice throughout the conflict that was discriminatorily applied against Tamils. Police registration led to arbitrary arrests and detentions of thousands of individuals on suspicion of LTTE links, many of whom reported being tortured or mistreated in custody. Since the emergency regulation providing for the registration of householders was lifted, in 2010 Tamils were reportedly registered under Section 76 of the Police Ordinance, which reads:

> Every householder within such town and limits shall furnish the officer of police of his division, when required so to do by such officer under the order received to that effect from any Magistrate having jurisdiction within such town and limits, or from the Inspector-General of Police, with a list of all the inmates of his house, distinguishing the members of his family from the servants or others resident therein; and he shall also, if it shall be so directed in the order of the Inspector-General of Police or Magistrate report any increase or diminution, or change in the same; and he shall not, having received such notice under such order, harbour a stranger without giving such notice thereof to the principal officer of police of his division ; and every person failing in any duty imposed upon him by this clause shall be guilty of an offence, and be liable to any fine not exceeding fifty rupees.[23]

At the end of August 2011, Sri Lanka finally lifted the State of Emergency but on 29 August (24 hours before the state of emergency lapsed), the President introduced new regulations under the Prevention of Terrorism Act (PTA), which extended the detention of persons detained under the emergency regulations for thirty days, pending issuance of detention orders under the PTA or remand by a magistrate.[24] The President also continued to invoke Section 12 of the Public Security

[23] Section 76, Police Ordinance, Sri Lanka

[24] "Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011,", The Prevention of Terrorism (Temporary provisions) Act No. 48 of 1979 Regulation, made by the President under section 27 of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 read with paragraph (2) of Article 44 of the Constitution, Mahinda Rajapksa, President, Colombo, 29th August, 2011.

2. (1) Any person who has been detained in terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation, shall forthwith on the coming into operation of these regulations, be produced before the relevant Magistrate, who shall take steps to detain such person in terms of the provisions of the Criminal Procedure Code Act, No. 15 of 1979.

(2) Any person who has — a) been remanded by a Magistrate in connection with the commission of an offence in

Ordinance to allow the armed forces (army, air force and navy) to retain policing powers, including search and arrest and proposed a new Bill to extend some of the powers provided by emergency regulations.

PREVENTION OF TERRORISM ACT

The Prevention of Terrorism Act (PTA) was introduced as a temporary law in 1979, and made permanent in 1981. The act allows the suspension of certain rights of criminal procedure, including the right of individuals to be presumed innocent, as a means to prevent terrorism and other unlawful activities. Under the act, people can be arrested without charge or trial and detained for up to 18 months while police investigate the possibility of their involvement in illegal activity.[25] The act also allows for indefinite detention on the order of a magistrate pending trial.[26] Sri Lanka's inefficient justice system functions extremely slowly and individuals charged under the act can remain in pre-trial detention for years.

A Sri Lankan human rights lawyer commented to Amnesty:

> We in the legal profession don't even know how many prisoners are on remand for crimes they didn't commit. Sometimes prisoners end up pleading guilty out of desperation just so they can put an end to the feeling of being in limbo. Sometimes people can wait for three or four years before they come to trial... we see lots of examples where cases are repeatedly postponed denying our clients a right to a speedy

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terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation; or (b) been connected with or concerned in, or who is reasonably suspected of being connected with or concerned in the commission of any unlawful activity within the meaning of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, shall with effect from the date of the coming into operation of these regulations, be deemed to have been remanded under the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979. The provisions of the said Act relating to custody of persons and the grant of bail shall thereupon be applicable in relation to such person.

3. Notwithstanding the fact that the state of emergency declared by Proclamation in terms of section 2 of the Public Security Ordinance (Chapter 40) has lapsed and any regulation made under section 5 of the Public Security Ordinance (Chapter 40) has with effect from August 30, 2011 ceased to be valid and effectual, no person detained in such custody other than judicial custody in terms of any such regulations, shall be released until the expiry of thirty days from August 30, 2011.

Provided however, if no Detention Order in terms of Part III of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 is issued prior to the expiration of the period of Thirty days in respect of such person, such person shall forthwith be released from custody by the person in whose custody he is held, unless such person has been produced before a Magistrate and remanded under the provisions of Part II of the said Act, or any other law for the time being in force.

[25] Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, Section 9 (1): "Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time: Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months....

Section 10. An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

[26] Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, Section 7(1)

trial.[27]

While in detention they can be moved from place to place or housed in an unofficial or secret place of detention while being interrogated; practices which increase the likelihood of torture.

Amnesty International has spoken to dozens of family members of detainees who say that the removal of suspects to non-official detention centres makes it very difficult for families to track the whereabouts of their loved ones. Sometimes suspects can simply get lost in the system with their family unable to find out where they are being held. This contradicts a July 2006 Presidential Directive which stipulates that families must be allowed to communicate with detainees and that the Sri Lankan Human Rights Commission (SLHRC) must be informed of an arrest and of the place of detention within 48 hours.

Like the emergency regulations, the PTA grants broad powers to the police to enter and search premises without a warrant, to seize property and arrest individuals "connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity". The PTA grants extraordinary power to the Minister of Defence to order the detention of an individual suspect for investigation or as a preventative measure. The Minister can determine the place and conditions of detention, and is not required to make that information publicly available.

An official statement in 2010 confirmed that over 1,900 people arrested and detained under the PTA would remain in custody pending investigations.[28]

Hundreds of Tamil political prisoners went on hunger strike in 2010 demanding that the government release them or, failing that, allow them to answer accusations against them in fair trials. Prisoners in Vavuniya launched another hunger strike in July 2011, which lasted eight days; three protestors were hospitalized. Prisoners' demands remain largely unmet.

Many arrests under the PTA constitute arbitrary arrests with no guarantees of a fair trial contravening international law.

A lawyer told Amnesty International:

> You have to remember that the long history of repressive emergency laws in Sri Lanka has allowed the security forces to operate beyond the bounds of the ordinary criminal justice system. We live in a society where the Defence Secretary can pick up the phone and order the arrest of someone with a critical voice. You can see the way in which

[27] "Sri Lanka: Forgotten prisoners: Sri Lanka uses anti-terrorism laws to detain thousands," Amnesty International, 8 March 2011, ASA 37/001/2011

[28] "PTA detainees to remain," *Daily Mirror*, Monday, 17 May 2010 08:14, http://www.dailymirror.lk/index.php/news/3772-pta-detainees-to-remain.html

> emergency laws undermine the rule of law by the fact that you have non uniformed people picking up 'suspects' and holding people without producing them before a magistrate... normally you would have to produce a warrant to arrest someone but emergency laws allow the security forces to hold people without charges... many prisoners are on remand in prisons for long periods of time with no prospect of a trial.[29]

There is a consistent lack of clarity over procedures for arrest and detention in Sri Lanka, and information about the whereabouts and wellbeing of prisoners is hard to come by. The Terrorist Investigation Division (TID) of the Sri Lankan police announced in June 2011 the opening of three information centres where families could seek information about TID detainees. But the centres would not provide data on persons detained by the military or other units of the police. There remains no central register of detainees. Over 1,200 people sought relatives in the first week of operation, but according to a police spokesperson only about seven percent got the information they were seeking.[30]

5. IMPUNITY

ARTICLE 12

Impunity remains the rule rather than the exception for violations of human rights in Sri Lanka. Although many law enforcement officers have been indicted for torture and ill-treatment of detainees, there have been few prosecutions. The Sri Lankan government should expedite prosecutions of security agents suspected of torture and ensure that sufficient resources are invested into the criminal justice system to ensure prosecutions of these cases in fair trials. It should also introduce a security services sector-wide anti-torture awareness campaign; and ensure that adequate measures and procedures are put in place to make accountable officers who commit, or permit, the commitment of acts of torture.

In March 2008, then Foreign Minister Rohitha Bogollagama issued the Sri Lankan Government's response to the US Department of State Country Reports on Human Rights Practices 2007. He noted that since 2004, 42 indictments against 90 persons had been forwarded to the High Court by the Attorney General's Department as a result of investigations into allegations of torture; an additional 31 cases were been sent to the police to initiate action in the Magistrate's Court"31

[29] Sri Lanka: Forgotten prisoners: Sri Lanka uses anti-terrorism laws to detain thousands," Amnesty International, 8 March 2011, ASA 37/001/2011

[30] "Missing persons: Only 7% Gets Info" Daily Mirror, 24 June 2011, http://www.dailymirror.lk/news/12099-only-seven-per-cent-get-information-on-detainees.html

[31] Response of the Government of Sri Lanka to the US State Department Country Reports on Human Rights Practices, 2007, 31 March 2008, www.lankamission.org/content/view/64/

where ill-treatment did not meet the threshold of severe pain, mental or physical, as set out in the 1994 Convention Against Torture (CAT) Act. But most of those cases never went to trial.

It is reported that only three prosecutions were made under the CAT Act during the first 14 years of its implementation (1994-2008).32 Investigation of torture cases reportedly slowed significantly thereafter when in 2008 the Attorney General's office reportedly stopped referring cases to a specially tasked Special Investigation Unit (SIU) of the police:

> The method of enforcing the Convention against Torture (CAT) Act was through investigation, which, between 2005 and 2008, was done through a special unit of enquiry of the criminal investigation division of Colombo. The special unit consists of a number of highly experienced police officers who work outside of the normal system and are under strict supervision by higher-ranked officers. A high level of investigation and discipline is expected from these officers. Cases would be referred to this unit by the Attorney General's department or the IGP, and then investigated. While the original system was in place, investigators had sufficient evidence to find that torture had taken place in over 60 cases, and indictments were filed against the suspects in question.
>
> However, since the appointment of CR De Silva and, thereafter, the appointment of Mohan Peiris as Attorneys General of Sri Lanka, reference[s] to the special unit have been halted. CR De Silva and later Mohan Peiris have stated that they do not want to bend to pressure from external agencies, namely the United Nations and other human rights organizations, which have called for credible investigations into crimes. CR De Silva made a policy to dismiss these complaints and employed a new system where complaints are received and investigated by the Attorney General's department, and if necessary, are then referred to this special unit.
>
> This system has also been dissolved. Today, there is no credible method of investigation into torture in Sri Lanka. Despite numerous recommendations by UN agencies and human rights organizations, the recommendations of the act have not been implemented, and the CAT Act is seen as little more than a piece of paper. So long as credible investigations into torture do not exist, there is no possibility for the elimination of torture at the hands of state officials.33

The lack of credible domestic mechanism to investigate torture carried out by security forces in the context of the end of the armed conflict has posed particular obstacles to accountability. Amnesty International has received credible reports, including eyewitness testimony of torture and extrajudicial killings in the last days of the armed conflict in Sri Lanka. Leaked video evidence released by UK television Channel 4 in its documentary "Sri Lanka's Killing Fields," appears to

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[32] Sri Lanka; The Right Not to Be Tortured: A critical analysis of judicial response by Kishali Pinto Jayawardene and Lisa Kois, Law & Society Trust, June 2008.

[33] Asian Human Rights Commission, Police Torture Cases, 1998-2011, http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf

support allegations of torture and extrajudicial executions of surrendering members of the Liberation Tigers of Tamil Eelam (LTTE).34 In some cases these charges have been corroborated by surviving family members.

LTTE leader Colonel Ramesh (Thurairajasingham) appears in the Channel 4 documentary being interrogated and threatened by Sri Lankan soldiers. According to his wife Vathsala Devi, a relative witnessed her husband's surrender to the army on 18 May 2009. Vathsala Devi is a plaintiff in a civil suit against Major General Shavendra Silva under the US Alien Torts Claims Act. She says she identified her husband's dead body from a leaked photograph that she says surfaced in April 2011; Vathsala Devi alleges that in the photograph Ramesh is wearing the same clothes as in the interrogation video.35 The death of Ramesh was reported in several broadcasts aired by Rupavahini, Sri Lanka's state-owned television network on 18 May 2009.

27-year-old Shoba (aka Isaipriya), an LTTE media worker reportedly last seen by a colleague on 15 May 2009, was reported by the Sri Lankan Defense Ministry to have been killed on 18 May 2009. She was identified by a friend and independently by family members from video footage aired by Channel 4 in November 2010.36 As with many of the women cadres featured in the leaked videos and photographs from the end of the conflict, her clothing had been pulled away to reveal her breasts and genitalia; there was a gash across her face.

The UN Secretary General's Panel of Experts on Accountability in Sri Lanka commenting on the images alleged to record events from the last days of the armed conflict stated:

> Many photos and video footage, in particular the footage provided by Channel 4, depict dead female cadre. In these, women are repeatedly shown naked or with underwear withdrawn to expose breasts and genitalia. The Channel 4 images with accompanying commentary in Sinhala by SLA soldiers raise a strong inference that rape or sexual violence may have occurred, either prior to or after execution.37

Some have argued that Sri Lanka's Lessons Learnt and Reconciliation Commission (established in May 2010 and recently extended to November 2011) could be a viable accountability mechanism for violations committed between the onset of the cease-fire agreement between the Sri Lankan government and the LTTE in February 2002 and the end of the armed conflict in May 2009. But as Amnesty International has documented, the LLRC is not independent or impartial in composition or performance, and is inadequate in mandate. 38

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[34] Sri Lanka's Killing Fields, first broadcast 14 June 2011, Channel 4, http://www.channel4.com/programmes/sri-lankas-killing-fields/4od

[35] Devi et al v. Silva , Case Number: 1:2011cv06675, Filed: September 23, 2011, Court: New York Southern District Court, Foley Square Office, Presiding Judge: Judge J. Paul Oetken, 28:1346 Tort Claim

[36] "Sri Lanka 'war crimes' video: woman's body identified," Channel 4, 8 December 2010, http://www.channel4.com/news/sri-lanka-war-crimes-video-womans-body-identified

[37] Report of the Panel of Experts on Accountability in Sri Lanka, 31 March 2011, p 44

[38] See, Amnesty International, *Sri Lanka: When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission,* ASA 37/008/2011, http://www.amnesty.org/en/library/info/ASA37/008/2011/en

The LLRC includes a former Attorney General and former Ambassador who defended Sri Lanka against allegations of war crimes internationally in 2009. The LLRC is not explicitly mandated to investigate violations of human rights and humanitarian law or to make recommendations aimed at bringing perpetrators to justice; and there is little evidence in the records of LLRC proceedings that the Commissioners pursued these questions with vigour.

Both Amnesty International and the UN Secretary General's Panel of Experts on Accountability in Sri Lanka have argued that the LLRC is seriously flawed and will not deliver justice to the victims.[39] Concern is heightened by Sri Lanka's poor record of accountability, as decades of impunity and numerous failed commissions of inquiry into human rights violations amply demonstrate[40]. On 31 March 2011, the Panel issued its report highlighting allegations that both sides in Sri Lanka's armed conflict violated international human rights and humanitarian law, possibly committing war crimes and crimes against humanity. It recommended that the Secretary-General establish an independent international mechanism to investigate the allegations.

The LLRC has sought to identify root causes of ethnic conflict in Sri Lanka and remedies for practical problems faced by survivors. But its transcripts are a frustrating record of missed opportunities. Commissioners' superficial responses to testimony lack rigour. Officials are not asked challenging questions. Commissioners fail to delve deeply into allegations of human rights violations, such as cases of enforced disappearances, and are perfunctory in dealing with witnesses, many of whom are reporting the loss of close family members and were suffering obvious distress.

These exchanges between Commissioners and witnesses indicate a lack of interest in establishing accountability and scant respect for victims or the seriousness of their allegations. Witness testimony from the very first northern field inquiries and from virtually every session thereafter implicated Government forces and the LTTE in human rights and humanitarian law violations. But the LLRC's interim report (forming the basis of all Government action on LLRC recommendations to date) made no reference to these allegations and no recommendations to pursue accountability; it restricted itself to practical fixes for long-acknowledged problems.

The UN Panel concluded that the LLRC is "deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process."[41] It found that the LLRC had not conducted "genuine truth-seeking"[42] about what happened in the final stages of the armed conflict or investigated systematically and impartially the allegations of serious violations on both sides of the war; that victims were treated with insufficient

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[39] See, Amnesty International, *Sri Lanka: When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission,* ASA 37/008/2011, http://www.amnesty.org/en/library/info/ASA37/008/2011/en; p.11; see also, Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, pp 95-96

[40] See, Amnesty International, *Sri Lanka: Twenty years of make-believe. Sri Lanka's Commissions of Inquiry*, ASA 37/005/2009, http://www.amnesty.org/en/library/info/ASA37/005/2009/en

[41] Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, p 96

[42] Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, pp 95 and 188

respect and denied witness protection43.

The passage of the 18th Amendment to the Sri Lankan Constitution in September 2010 did away with an important safeguard to ensuring the independence of key institutions with a role to play investigating allegations of torture and other human rights violations. The amendment changed the mechanism by which appointments were made to bodies such as the National Police Commission, the Public Service Commission and the Human Rights Commission, doing away with the Constitutional Council established by the 17th amendment, and ending parliament's role in approving appointments. The 18th amendment empowers the President to appoint Commission members directly, with the help of an advisory committee whose recommendations are nonbinding.

6. SAFEGUARDS AGAINST TORTURE

ARTICLES 11 AND 16

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[44] 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.[45] In reality, detainees are often held for much longer periods without being produced before a magistrate. In the case of people held under emergency regulations for so-

[43] Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, pp 95-96

[44]Long title: Code of Criminal Procedure (Special Provisions) Act, No. 42 of 2007 [certified on 09th October, 2007]L. D. -0. 16/2007; An act to provide for the extension of the period of detention of persons arrested without a warrant in order to facilitate the conduct of investigations; for dispensing with the conduct of the non-summary inquiry in certain cases; to provide for the taking of depositions of witnesses for the prosecution; and to make provision for matters connected therewith or incidental thereto.

[45] 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 term expired in 2009. Justice Minister Rauff Hakeem said the government had issued regulations extending the powers granted to the police under the Act. (" Police can still detain suspects for 48 hrs; Minister says it's allowed under present regulations, Daily Mirror, 19 September 2011. http://print.dailymirror.lk/news/front-page-news/56639.html)

called rehabilitation, the time period detainees are held without charge or judicial review can stretch into years, without access to counsel, and in some cases with no communication with family.

Presidential Directives issued in July 2006 and re-released in April 2007 aimed at protecting the rights of detainees are insufficient and have never been consistently implemented or enforced. These Directives were aimed at the military (Army, Navy and Air Force) and police and ordered them (i) to 'assist' the Sri Lankan Human Rights Commission and (ii) warned against improper or illegal arrest and detention under the emergency regulations or Prevention of Terrorism Act.

The directives reinforce an individual's right to contact friends or family upon arrest to inform them of their whereabouts, but do not guarantee access to legal counsel. The directives also provide that:

> 3. the person making the arrest or detention should identify himself by name and rank, to the person or relative or friend of the person to be arrested. The person to be arrested should be informed of the reason for the arrest. All details of the arrest should be documented in the manner specified by the Ministry of Defence. The person being arrested should be allowed to make contact with family or friends to inform them of his whereabouts.
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> 4. when a child under 18 years or a woman is being arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning. As far as possible, any such child or woman arrested or detained should be placed in the custody of a Women's Unit of the Armed Forces or Police or in the custody of another woman military or police officer.
>
> 5. the person arrested or detained should be allowed to make a statement in the language of his choice and then asked to sign the statement. If he wishes to make a statement in his own handwriting it should be permitted.
>
> 6. members of the HRC or anyone authorised by it must be given access to the arrested or detained person and should be permitted to enter at any time, any place of detention, police station or any other place in which such a person is confined. Further, the HRC must be informed within 48 hours of any arrest or detention and the place the person is being detained.

In practice, arresting security force personnel often fail to comply with these directives. Many family members who testified before the LLRC did not know the name and rank of soldiers who arrested relatives at the end of Sri Lanka's armed conflict in 2009, and some had no idea where individuals had been taken after their arrest.

Compliance was also weak in regard to civil policing.

> Generally, the right to be informed of the reasons of arrest is not adhered to by law enforcement officials. Suspects are detained without being informed of their rights and in many cases, the police fabricate charges after the arrest in order to be able to defend the initial arrest. The 24-hour time-limit within which a suspect must be brought before a Magistrate is not enforced, and suspects or uninjured decoys (imposters) are often

> produced at the home of the Magistrate, rather than in court so as to hide any signs of torture or ill-treatment. Family members are not informed of an arrest and are often denied access to the detained person. Suspects have little or no access to legal representation and when they do, lawyers have little possibility of conferring with their clients in private. Detainees have little access to independent medical examinations; in many instances victims of torture are accompanied to the examination by the same police officer responsible for the alleged crime of torture. Often doctors fail to record evidence of torture or provide false reports, and some doctors indirectly participate in torture by providing treatment to victims without disclosing evidence of torture in official records. These failures are more aggravated where arrests and detentions under emergency law are concerned.[46]

Torture and other ill-treatment are most prevalent during pre-trial detention and especially in incommunicado detention. Sri Lanka's track record is particularly bad in this regard; arbitrary detention has been practiced on a widespread and systematic basis. At the end of the armed conflict Sri Lanka detained some 12,000 Tamils without charge or judicial review for "rehabilitation." According to the authorities 2,700 people remained in rehabilitation camps at the end of August 2011.[47]. The detentions led to substantial numbers of complaints from family members who could not locate missing relatives. Once found, access to detained relatives remained difficult for many, particularly when transfers occurred; torture and ill-treatment of individuals detained for "rehabilitation" has been reported.

CASE STUDY: "REHABILITATION" OF DETAINEE

A young woman detained as a former LTTE member for "rehabilitation" in 2010 was hospitalized after a suicide attempt. She was treated and then discharged back to the rehabilitation camp. When she sought permission from the military authorities to return to the clinic for outpatient care, she was accused of lying about the appointment and was bound with ropes, trampled with boots, and beaten for 4 hours by anyone who passed by. After 4 hours she was released. She was returned to the hospital three days later vomiting blood.[48]

Amnesty International has received uncorroborated reports that the Sri Lankan army and affiliated paramilitary groups have operated secret facilities in which torture and extrajudicial killings have been perpetrated. A copy of a letter smuggled out of a detention camp which came into Amnesty International's possession, dated 1 February 2010 indicated that the writer was being held incommunicado and that detainees were beaten for attempting to communicate with the outside world. The letter, which was addressed to the detainee's family, urged them not to try to locate him as he and fellow detainees were being kept hidden. The lack of access to detention facilities by organizations with protection mandates (including human rights NGOs, international organizations and the Sri Lankan Human Rights Commission) makes it difficult or impossible to independently verify the reports, but the gravity of the allegations demands urgent and independent

[46] Kishali Pinto-Jayawardena, *Rule of Law in Decline*, p 12

[47] Mahinda Samarasinghe address to 18th Session of the Human Rights Council, Geneva, 12 September, 2011

[48] Confidential communication with aid worker, March 2010

investigation.

In August 2009, a confidential source with links to Sri Lankan military intelligence provided Amnesty International with details of several places where enforced disappearances, torture, and extrajudicial killings were alleged. These included camps where the Sri Lankan authorities acknowledged holding alleged LTTE detainees, and facilities used principally for interrogation including the 211 Brigade Headquarters in Vavuniya, and the paramilitary organization PLOTE's detention centre in Vavuniya, which the source said contained a small torture chamber.[49]

Amnesty International recommends that the Sri Lankan government undertakes a public and impartial investigation into the existence and use of secret detention sites and acts of torture and other ill treatment that may have taken place with a view to holding state actors accountable for actions and providing effective redress for victims of such violations.

6.1 ACCESS TO LEGAL COUNSEL

Sri Lanka's combined third and fourth periodic report to the Committee against Torture does not elaborate on the right of detainees to access legal counsel, which appears to be left mainly to the discretion of the police. In 2004 Sri Lankan authorities told the Committee that the Police Department did not "object" to lawyers representing the rights of suspects detained at police stations prior to their being produced before a magistrate. But they noted that "owing to the need to ensure that police investigators are able to conduct the initial investigation and interview suspects in an unhindered manner," they do not allow access to counsel before the police have recorded the suspect's statement. "Prevailing practice,"[50] (as this is not regulated) is that the police will permit legal counsel representing arrested suspects to interview the officer-in-charge of the relevant police station to determine the basis of allegations against the suspect and the date, time and location of the magisterial hearing.[51] Preventing an arrested person from having a lawyer present during questioning and forcing legal counsel to rely on the police for information regarding the arrest and detention of a client skews the proceedings against the accused and leaves the way open for abuse, including torture to occur in the initial period after arrest – when most forced "confessions" are extracted.

Section 257 of Sri Lanka's Code of Criminal Procedure Act (No. 15 of 1979) recognizes the right of accused to be defended in court and to be represented in court by a lawyer, but does not address the right of pre trial detainees to legal counsel or access to counsel during questioning by the police. The Presidential Directives of 2006 say nothing about

[49] Allegations of torture at this facility, a camp referred to as *Mallar Maligai,* and other camps in Vavuniya run by paramilitary organizations, date back more than a decade and have been documented previously by Amnesty International, see in particular, Sri Lanka: Possible "Disappearance"/Fear Of Torture, 3 July 2001, ASA 37/009/2001; Sri Lanka: Torture in Custody, 31 May 1999, ASA 37/010/1999; Sri Lanka: Amnesty International Appeals for an Immediate Halt to Use of Unauthorized Places of Detention; News Service 171/98, 3 September 1998, ASA 37/23/98.

[50] "Consideration of reports submitted by States parties under article 19 of the Convention Second periodic report of States parties due in 1999, addendum Sri Lanka, 29 March 2004, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 6 August 2004, CAT/C/48/Add.2 , p.9

[51] "Consideration of reports submitted by States parties under article 19 of the Convention Second periodic report of States parties due in 1999, addendum Sri Lanka, 29 March 2004, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 6 August 2004, CAT/C/48/Add.2

access to counsel.

Sri Lanka's Code of Criminal Procedure (Special Provisions) Act. No 42 of 2007[52] specified that any person arrested and detained for an extended period beyond the 24 hours mandated by ordinary law shall be afforded an opportunity to consult an Attorney-at-Law of his choice and to communicate with any relative or friend of his choice during the period of such detention. As noted above, this law expired in 2009, but elements were reportedly still being applied in 2011. The Sri Lankan government issued regulations permitting police to continue to hold detainees for 48 hours before bringing them before a magistrate. It is unclear whether a detainee's right to access a lawyer was also extended.[53]

6.2 ACCESS TO FAMILY

As noted above and also in Sri Lanka's combined third and fourth report, in July 2007 President Rajapaksa issued a directive ordering that individuals arrested "should be afforded reasonable means of communicating with a relative or friend."[54] It also requires an officer making an arrest to: (i) identify himself to the person being arrested or to a relative; (ii) inform the person being arrested of the reason for the arrest; and (iii) to present written documentation to the spouse, parent or relative acknowledging the fact of arrest. Like previous directives issued by the Inspector General of Police requiring the issuance of arrest receipts to relatives and other protective devices, compliance was weak, particularly in cases where the suspect was arrested on suspicion of links to the LTTE. The Supreme Court on 22 September 2008 issued an order to the effect that when a person is taken into police custody their relatives should be informed promptly and a receipt of arrest issued.

This was not implemented in 2009 when many thousands of Tamils fleeing the conflict were arrested and detained by the authorities, as has been amply demonstrated by the family members who approached the LLRC for help finding missing relatives.

The need for a central registry of detainees has been a long standing demand voiced by human rights organizations. In 2004, in its second periodic report to the Committee against Torture, the government of Sri Lanka claimed that a central registry of detainees had been established and that the public had been notified of its existence.[55] To Amnesty International's knowledge there is still

[52]Long title: Code of Criminal Procedure (Special Provisions) Act, No. 42 of 2007 [certified on 09th October, 2007] L. D. -0. 16/2007; An act to provide for the extension of the period of detention of persons arrested without a warrant in order to facilitate the conduct of investigations; for dispensing with the conduct of the non-summary inquiry in certain cases; to provide for the taking of depositions of witnesses for the prosecution; and to make provision for matters connected therewith or incidental thereto.

[53] "Police can still detain suspects for 48 hrs; Minister says it's allowed under present regulations" *Daily Mirror*, 19 September 2011. http://print.dailymirror.lk/news/front-page-news/56639.html

[54] "Consideration of reports submitted by States parties under article 19 of the Convention Combined third and fourth periodic reports of States parties due in 2007, Sri Lanka, 17 August 2009, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 September 2010, CAT/C/LKA/3-4

[55] "30 ... a circular dated 20 January 2001 was issued and distributed among all officers-in-charge of police divisions. The circular directs all police officers who arrest and detain suspects under the provisions of the Emergency Regulations and the Prevention of Terrorism Act, to expeditiously forward the information relating

no such registry, and no functioning hotline. In May 2011, The Terrorist Investigation Division (TID) – responding to a recommendation made by Sri Lanka's Lessons Learnt and Reconciliation Commission calling for a central registry – established three centres where immediate family members could seek information about missing loved ones, but the agency made clear that it could only provide information on individuals under TID detention. Of the hundreds of people who sought information from the Vavuniya centre in the first days of operation only a small percentage successfully located a missing relative.[56]

7. REDRESS AND COMPENSATION FOR VICTIMS OF TORTURE

ARTICLES 13 AND 14

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.[57]

> ...when a case is brought to the Supreme Court, the case is often referred to the Attorney General's department without issuing notice. The Attorney General's department then contacts the police for their opinion on the matter. This opinion is often given without

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to such arrests and detentions to divisional police headquarters (situated at the office of the officer-in-charge of the relevant police division). The divisional headquarters, in turn, shall transmit the information (perfected in a "Data Capture Form"), by facsimile, to the Central Registry, maintained at Police Headquarters in Colombo. The relevant information should reach the Central Registry not later than six hours from the time of each arrest.

31. Upon the establishment of the Central Registry, the public was notified of its existence. In addition, a 24-hour telephone hotline (011-2699439/011-2685930) has been made available to enable the public to make necessary inquiries from the authorities relating to the alleged arrest and detention of suspects."

[56] "Missing persons: Only 7% Gets Info" Daily Mirror, 24 June 2011, http://www.dailymirror.lk/news/12099-only-seven-per-cent-get-information-on-detainees.html

[57] See, Kishali Pinto-Jayawardena, The Rule of Law in Decline, Page 74

> investigation, and the Attorney General's office will then state these objections to the petition in court.
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> Since objections are made at this stage rather than when the notice is initially issued, the trial is delayed, sometimes for many years, and justice for the torture victim becomes a distant dream. Since the victims of torture generally come from a lower socio-economic background, a drawn out legal process is particularly difficult because Sri Lanka does not have a state-sponsored legal aid scheme.[58]

Section 17 (4) of the Criminal Procedure Code states that "the court may order the person convicted or against whom the court holds the charge to be proved to pay within such time or in such instalments as the court may direct, such sum by way of compensation to any person affected by the offence as to the court shall deem fit." But, according to lawyer Kishali Pinto-Jayawardana, none of the convictions delivered by Sri Lanka's High Courts under the CAT Act so far have indicated a direction to pay compensation.

Compensation for injuries as a result of violations of the Penal Code can be ordered by a Magistrate's court, but the amounts are very small. The Sri Lankan Human Rights Commission can also recommend compensation to torture victims, but the HRC's findings are not binding on violators.

8. RECOMMENDATIONS

Amnesty International recommends that the Sri Lankan government:

- undertake a comprehensive reform of its criminal justice system.

- amend substantially the Prevention of Terrorism Act to bring it in line with international standards.

- amend its criminal laws to ensure that in all cases where an accused person makes a complaint that they have been tortured or exhibits signs indicating that they may have been ill-treated, the judicial officer(s) presiding over the criminal case must make an order directing the prosecution to investigate the allegation and/or suspicion and inform the court of their findings.

- amend its criminal laws to ensure that once an allegation has been made that a person was ill-treated during or after arrest and/or detention, the prosecution bears the onus of establishing that the allegations made have no merit.

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[58] Asian Human Rights Commission, "SRI LANKA: A report on 323 cases of police torture; a Statement by the Asian Human Rights Commission on the Occasion of the International Day in Support of Victims of Torture, June 26, 2011," Press Release, June 24, 2011, AHRC-STM-085-2011.

- ensure the prompt and fair investigation of allegations of torture; and the enforcement of administrative and penal sanctions against agents of the government that engage in, or otherwise sanction, torture or other forms of ill-treatment against detainees.

- undertake immediately a nation-wide and public anti-torture awareness raising programme targeting both security agents and the public at large confirming its zero-tolerance to torture and other forms of ill-treatment of detainees.

- enforce all laws, regulations and directives aimed at preventing torture and abuse of detainees.

- implement a clear plan to ensure that all officers are aware of and understand anti-torture laws, regulations and directives, that those individuals who breach them are appropriately disciplined, and that those who have committed crimes are brought to justice in fair trials.

- ensure that all detainees are guaranteed prompt and unimpeded access to legal counsel in pre-trial detention and while on trial, including having a lawyer present during interrogation by police.

- ensure that victims of torture and other forms of ill-treatment have full access to redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- issue a public notice in which it provides full information about all places of detention, including their location; and it must cease and outlaw immediately the detention of persons in any place that has not been declared in an official notice as a place of detention.

- undertake a public and impartial investigation into the existence and use of secret detention sites and acts of torture and other ill treatment that may have taken place with a view to holding state actors accountable for actions and providing effective redress for victims of such violations.

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