REDRESS

Seeking Reparation for Torture Survivors

COMMENTS TO SRI LANKA'S SECOND PERIODIC REPORT TO THE COMMITTEE AGAINST TORTURE

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INDEX

1. Introduction

The Redress Trust (REDRESS) is an international non-governmental organisation with a mandate to assist torture survivors to seek justice and reparations. It fulfils this mandate through a variety of means, including casework, law reform, research and advocacy. Since its establishment in December 1992, it has accumulated a wide expertise on the rights of victims of torture. REDRESS regularly takes up cases on behalf of individual survivors and has wide experience with interventions before national and international tribunals. REDRESS' expertise on remedies has been internationally recognised and its recent comparative study on reparation for torture in 31 countries worldwide (that included Sri Lanka) was submitted by the United Nations Special Rapporteur on Torture to the United Nations General Assembly for its consideration.

Based on its experience, and its collaboration with Sri Lankan human rights organisations and lawyers, the present document analyses some of the issues referred to in the List of Issues to be considered by the Committee against Torture during the examination of the second periodic report of Sri Lanka, UN Doc. CAT/C/35/L/LKA, namely those relating to (a) complaints procedures, investigation, prosecution and punishment and (b) reparation for torture in Sri Lanka. We hope that this document will be useful to the Committee in its assessment of the report submitted by Sri Lanka.

2. Obligations to provide reparation

Sri Lanka is obliged, under the UN Convention against Torture and international customary law, to provide reparation for torture, including investigation, prosecution and adequate punishment

The violation of the obligation of states to respect and protect human rights, including freedom from torture, gives rise to an independent international obligation to provide reparation.[1] This is supported by both international human rights treaties and declarative instruments,[2] and has been recognised by international tribunals.[3] The UN Human Rights Commission recently adopted the Basic Principles on the Right to a Remedy and Reparation for serious violations of human rights and gross violations of international humanitarian law,[4] which, according to its preamble, "identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms." The Basic Principles reaffirm the scope of obligations and duty of states under international

[1] See on the responsibility of states to make reparation in case of a breach of international obligations, *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17 at 47 (September 13); *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), Merits 1986 ICJ Report, 14, 114 (June 27); *Corfu Channel Case* (UK v. Albania), ICJ Reports 23 (1949).

[2] See the Universal Declaration of Human Rights (Article 8); the International Covenant on Civil and Political Rights (Articles 2 (3), 9 (5) and 14 (6)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the Convention of the Rights of the Child (Article 39); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (Article 14) and the Rome Statute of the International Criminal Court (Article 75). See also relevant regional instruments, e.g. the European Convention on Human Rights (Articles 5 (5), 13 and 41), the Inter-American Convention on Human Rights (Articles 25, 68 and 63 (1)) and the African Charter on Human and Peoples' Rights (Article 21 (2)). It is also important to mention the following international standards: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by UN General Assembly Resolution 40/34 of 29 November 1985; Declaration on the Protection of all Persons from Enforced Disappearance (Article 19), UN General Assembly Resolution 47/133 of 18 December 1992; Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (Principle 20), recommended by UN Economic and Social Council Resolution 1989/65 of 24 May 1989 and Declaration on the Elimination of Violence against Women.

[3] See e.g. ruling of the Inter-American Court of Human Rights on the *Velásquez Rodríguez Case*. Serial C, No 4 (1989), para.174. See also *Papamichalopoulos vs. Greece* (Art.50) E.C.H.R. Serial A, No 330-B (1995), page 36.

[4] UN Doc. E/CN.4/RES/2005/35, Annex, 20 April 2005.

human rights law and international humanitarian law to: "(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice … irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation, as described below [i.e. restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition]." The UN Convention against Torture reflects these standards, imposing a duty on its parties to prevent, investigate, prosecute and punish as well as redress torture.

3. Sri Lanka's compliance with its obligations under the UN Convention against Torture

3.1. Incorporation of the UN Convention against Torture into Domestic Law

Sri Lanka has only partially incorporated the UN Convention against Torture into its domestic law and retains legislation that is incompatible with its obligations under the Convention

The Constitution of Sri Lanka is silent on the incorporation and status of international human rights treaties in the domestic legal order.[5] As Sri Lanka is a dualist country, human rights treaties to which it is a party cannot be directly invoked or enforced through the courts or by the administration but must be transformed into domestic law before they can be applied. Even so, the courts of Sri Lanka have referred to them in their judgments.[6]

Sri Lanka ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 3 January 1994.[7] In the same year, Sri Lanka enacted the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act* (hereinafter referred to as the CAT Act) No. 22 of 1994 to give effect to the UN Convention against Torture. The CAT Act has the same status as other statutory legislation under domestic law. Under the CAT Act, torture is a criminal offence, which is, in Section 12, defined as follows:

> "Torture, with its grammatical variations and cognate expressions, means any act which causes severe pain, whether physical or mental, to any other person, being an act which is-
>
> (a) done for any of the following purposes:
>
> (i) obtaining from such person or a third person any information or confession;

[5] Article 157 of the Constitution is the only provision that provides for the direct application and force of law of treaties. However, it concerns investment treaties only.

[6] *De Silva v. Fertilizer Corporation* (1989) 2 SLR 393, is an early example of this jurisprudence preceding the coming into force of the CAT Act in 1994.

[7] Sri Lanka is also state party to the UN Convention on the Prevention and Punishment of Genocide, 1948, the four Geneva Conventions, 1949, the International Covenant on Civil and Political Rights and its Optional Protocol, 1966, the International Covenant on Economic, Social and Cultural Rights, 1966, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the International Convention on the Elimination of All Forms of Racism, 1966 and the Convention on the Rights of the Child, 1989. Sri Lanka has neither accepted the individual complaints mechanism under Article 22 of the UN Convention against Torture nor ratified the Optional Protocol to the UN Convention against Torture. It has also not become state party to the Rome Statute of the International Criminal Court.

(ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or
(iii) intimidating or coercing such other person or a third person; or

(b) done for any reason based on discrimination,

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

This definition of torture is not fully consistent with the one found in Article 1 of the UN Convention against Torture. The CAT Act defines torture as "any act which causes severe pain" but fails to include "and suffering." Moreover, whereas the UN Convention against Torture gives examples of the various purposes for which torture is inflicted by way of illustration, the CAT Act is phrased so that the examples are treated as exhaustive. The Government of Sri Lanka has maintained that this provision is in substantial conformity with the UN Convention against Torture, and that "Sri Lanka's courts had increasingly maintained that, in the interpretation of any domestic law giving effect to the State's international obligations, they would necessarily give expression to the provisions of the relevant international legal instrument."[8] While such stance is welcome, it is problematic with regard to the definition of torture as a crime, as a liberal interpretation of the elements of a criminal offence may run counter to the principle of legality. Instead, it would be more appropriate for the Government of Sri Lanka to remove the existing discrepancy by amending the definition in the CAT Act so that it conforms to Article 1 of the UN Convention against Torture, as repeatedly recommended by the Committee against Torture and the Human Rights Committee.[9]

The CAT Act provides for the establishment of universal jurisdiction over acts of torture where the suspected perpetrator is present[10] and amends the Sri Lankan Extradition Law to enable the extradition of suspects of torture.[11] However, several rights and obligations are neither reflected in the CAT Act nor in Sri Lanka's other laws, in particular: cruel, inhuman and degrading treatment is not included in the definition of torture and is not made a separate offence; the prohibition of *refoulement* is not recognised in Sri Lankan law; and neither the CAT Act nor other statutory law contain provisions on reparation for victims of torture, a right that is also not expressly recognised in Sri Lankan law.[12]

Moreover, legislation that is incompatible with the prohibition against torture is still in place, such as the Prevention of Terrorism Act (PTA), Act No.48 of 1979, some provisions of which were recently held, by the UN Human Rights Committee in the Singarasa case, to violate Articles 7 (Prohibition of torture) and Article 14 (Right to a fair trial) of the UN Covenant on Civil and Political Rights, 1966.[13] Even though the Act is not being applied to any cases that have arisen after the Ceasefire Agreement between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) in 2002,[14] it remains in force and can be re-applied

[8] See Summary record of the 2156th meeting: Sri Lanka, UN CCPR/C/SR.2156, 24 November 2003, para.25.

[9] Concluding Observations of the UN Committee against Torture: Sri Lanka, UN Doc. A/53/44, 19 May 1998, paras.243-257, para.254 and Concluding Observations of the UN Human Rights Committee, UN Doc. CCPR/LO/79/LKA, 1 December 2003, UN Doc. CCPR/CO/79/LKA, para.9.

[10] Section 4 of the CAT Act.

[11] Sections 7 and 8 of the CAT Act.

[12] See on the right to reparation in Sri Lankan law and practice, infra, at 3, (4).

[13] *Nallaratnam Singarasa v. Sri Lanka,* Communication No. 1033/2001, UN Doc. CCPR/C/81/D/1033/2001.

[14] Article 2.12 of the Agreement on a Ceasefire Between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, 2002.

at any time. Furthermore, the PTA is still the legal basis for several cases that had been pending or had resulted in a conviction when the ceasefire came into force.

3.2. The Practice of Torture

Torture continues to be endemic, in particular in the course of criminal investigations

There is ample evidence, in national jurisprudence, reports by national and international human rights bodies and non-governmental organisations, that torture was practised on a widespread, if not systematic, basis throughout the 1980s and 1990s into the early 2000s, in particular in the course of the various phases of the armed conflict involving the Government, paramilitary forces, the LTTE, and Indian Peacekeeping Forces (IPKO) from 1987-1990, as well as during the 1971 and 1987-1991 Janatha Vimukthi Peranuma, People's Liberation Front (JVP) uprisings.[15]

Although the reported number of cases of torture, at least by Government forces, in the Northeast has apparently decreased since the Ceasefire Agreement,[16] numerous cases of torture continue to come before domestic bodies such as the National Human Rights Commission and the Supreme Court as well as international bodies, such as the Special Rapporteur on Torture and the UN Human Rights Committee.[17] The number of complaints about torture received by the National Human Rights Commission actually indicates a rise of torture in the South.[18] The cases of torture reported point to a widespread if not systematic practice of resort to torture.[19] The bulk of cases relate to police officials, often acting as groups. The main purpose of torture is to extract confessions or other information in the course of criminal proceedings. Reported cases show a disturbing pattern of a seemingly deeply ingrained practice in which suspects are taken into custody, often arbitrarily and at times held incommunicado, and are tortured into making a confession.[20] Several incidents have also been reported where torture was used as a means of punishment, and as means of extortion and sexual gratification.[21] This includes cases where victims seem to have been punished for not acting according to the wishes of the police, such as providing them with

[15] See for example Concluding Observations of the UN Committee against Torture: Sri Lanka, UN Doc. A/53/44, 19 May 1998, paras.243-257, at paras.249 et seq.; Concluding Observations of the UN Human Rights Committee, UN Doc. CCPR/LO/79/LKA, 1 December 2003, para.9; Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999), UN Doc. E/CN.4/2000/64/Add.1, 21 December 1999 and the numerous entries in the annual reports of the Special Rapporteur on Torture. See also Amnesty International, *Torture in the Eighties*, 1984, pp.200 et seq.; Sri *Lanka: Extra-judicial Executions, "Disappearances" & Torture*, *1987-1990*, London 1990 and *Sri Lanka: Torture in Custody*, June 1999, AI Index: ASA 37/10/99 and *Special Report: Torture committed by the Police in Sri Lanka*, Article 2, Vol.1, No.4, August 2002. In the period 1986-2002, the Supreme Court of Sri Lanka has found violations of the prohibition of torture as stipulated in Article 11 of Sri Lanka's Constitution in more than fifty cases, see Table compiled by Mr. Tiranagama, Lawyers for Human Rights and Development, in *Responses to Human Rights Violations, The Implementation of the Right to Reparation for Torture in India, Nepal and Sri Lanka*, Report issued by REDRESS in February 2003 in collaboration with the Commonwealth Human Rights Initiative, pp.77 and 78.

[16] There are allegations, which could not be verified, of systematic torture by the LTTE in torture cells located in the Vanni Region in the Northern Province and in the Trincomalee, Batticaloa and Amparai districts in the eastern province, areas under the control of the LTTE that are not subject to independent monitoring. See *Tamil dissidents held incommunicado in LTTE torture cells*, Asian Tribune, 9 September 2005.

[17] See e.g. the reports by the Special Rapporteur on Torture, UN Doc. E/CN.4/2004/56/Add.1, paras.1462-1577 and UN Doc. E/CN/2005/62/Add.1, paras.1483-1634 and the Singarasa case, supra, Fn.13.

[18] In 2003, the National Human Rights Commission's head office and regional offices received a total of 471 complaints about torture, see Annual Report of the NHRC for 2003. See also *Sri Lanka: The National Human Rights Commission's Anti-Torture Policy*, Interview with Dr. Radhika Coomaraswamy, Chairperson of the Sri Lankan National Human Rights Commission, in REDRESS, 'Reparation Report', Issue 5, May 2005, p.10.

[19] Ibid., p.11: "We are not talking about isolated cases of rogue policemen: we are talking about the routine use of torture as a method of investigation."

[20] As evident from the fundamental rights cases before the Supreme Court and the criminal cases before the High Court. Several cases reported by the UN Special Rapporteur for Torture in his reports bear out this pattern, see for example UN Doc. E/CN.4/2004/56/Add.1, paras.1462 et seq. and UN Doc. E/CN./2005/62/Add.1, paras.1483 et seq.

[21] Ibid.

illicit liquor, or demands for money.[22] Several cases of rape, including gang rape, as well as other forms of sexual violence have also been reported.[23] This pattern of torture has been attributed to a breakdown of police discipline, insufficient training on relevant standards, the lack of an effective internal anti-torture policy, a failure by superiors to prevent torture, and inadequate investigation methods where the police resort frequently to torture in dealing with criminal cases.[24]

During the periods of armed conflict mentioned above victims were mostly political prisoners who were arrested and detained under broad powers contained in the Emergency Regulations and the Prevention of Terrorism Act. In the recent practice, victims have mainly been those suspected of having committed criminal offences, many of which have been petty crimes. Women have been tortured in several instances, often by the use of sexual violence. There are also a number of reported cases in which children have been subjected to torture, mainly in the course of criminal investigations.[25]

Some of the torture methods reported include beatings, often with blunt objects, and frequently on the soles; hanging from ceiling; tearing out nails; inserting objects into anus and chilli powder on genitals; tying up and suspending the victim from a wooden pool attached to the roof and then revolving him/her around the pole; tying the hands and legs and putting a pole through the legs in a way that a person can be rolled around, combined with beating on the head and the soles; suffocating; deprivation of food or water; denial of medical treatment and threatening to kill or harm the victim.[26] A number of cases have resulted in serious injuries, and there are several cases of suspicious deaths in custody, many of which appear to have been the result of torture.[27] There is also concern about a rise in extrajudicial killings, possibly in response to a more active anti-torture policy of such bodies as the National Human Rights Commission.[28]

3.3. Ensuring accountability for torture

Sri Lanka has largely failed to investigate, prosecute and punish those responsible for torture though recent developments look set to remedy some but by no means all systemic shortcomings contributing to impunity

- Complaints procedures (Article 13 of the UN Convention against Torture)

Obstacles to bringing complaints, in particular the lack of victims protection

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[22] Ibid.

[23] See report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/2002/83/Add.1, 28 January 2002, paras.117-139; Amnesty International, *Sri Lanka: Rape in custody*, January 2002, AI Index: ASA 37/001/2002. See also the case of Velu Arshadevi where the Supreme Court, on 25 January 2002, held for the first time that rape amounted to torture and awarded 150,000 compensation.

[24] See for example Interview with Dr. Coomaraswamy, supra, Fn.18, pp.10, 11 and Dwight Newman, *Patterns of Torture: Circumstances Facilitating Torture in Sri Lanka and Malaysia*, in Human Rights Solidarity, Volume 12, No.4, July 2002.

[25] *State Violence in Sri Lanka, An Alternative Report to the United Nations Human Rights Committee*, ALRC, Centre for Rule of Law, People against Torture, co-ordinated by OMCT, 2004, pp.55, 56.

[26] As evident from fundamental rights cases concerning torture before the Supreme Court and prosecutions under the CAT Act. See also reports by the Special Rapporteur on Torture E/CN.4/2004/56/Add.1, paras.1462 et seq. and UN Doc. E/CN./2005/62/Add.1, paras.1483 et seq. and *State Violence in Sri Lanka,* supra, Fn.25, pp.26, 27.

[27] See for example report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, UN Doc. E/CN.4/2005/7/Add.1, paras.641 et seq. See also Daya Somasundaram, *Torture in Sri Lanka- a method of physical, psychological and socio-political terror*, 2004 (unpublished, on file with REDRESS). In 2003, newspapers reported 10 cases of death in custody, 6 of which were reported to the National Human Rights Commission according to its report for the year 2003.

[28] See Interview with Dr. Coomaraswamy, supra, Fn.18 p.11.

Individuals alleging torture have a right to lodge a complaint by law. Available avenues include complaints to the police or the Attorney-General's Department,[29] filing a criminal action in a magistrate's court against an alleged torturer for "voluntarily causing hurt", provided the police has not filed an action itself,[30] and lodging complaints either to the National Human Rights Commission[31] or to the recently established National Police Commission.[32]

In practice, however, many torture survivors have apparently refrained from making complaints, particularly through the institution of criminal proceedings, because of a lack of access to the available mechanisms; out of fear of reprisals; or because of the stigma attached to rape in custody cases. The UN Human Rights Committee noted "with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (art. 2 of the Covenant)."[33] These concerns are borne out by the pattern apparent in a number of cases such as those reported by the Special Rapporteur on Torture in his annual reports.[34] Recent developments point to a growing number of serious threats not only against victims and witnesses but also lawyers and human rights defenders as well as the National Human Rights Commission, ostensibly in response to a rise in complaints and steps taken by the Attorney-General and others to combat torture more effectively and hold the perpetrators accountable.[35]

The case of Gerald Mervin Perera provides a stark illustration of the prevailing practice of deterring and "punishing" those who complain about torture. Gerald Marvin Perera had been awarded the highest amount of compensation, i.e. 800,000 rupees and full medical costs, in a fundamental rights application before the Supreme Court in April 2003 after having been severely tortured in a case of mistaken identity.[36] He was also the complainant in a criminal case brought against the responsible officers at the Negombo High Court in 2004 when he was reportedly harassed by a group of policemen and pressured to withdraw the case. A few days after refusing to do so, on 21 November 2004, he was shot while travelling to work, and later died from his injuries.[37]

The absence of a right of victims and witnesses to protection or any programme offering such protection is a serious shortcoming, both in law and practice, which is detrimental to the investigation of torture cases at all stages of proceedings.[38] In the light of prevailing harassment and intimidation by the police and others, many torture survivors have either refrained from bringing complaints or they and witnesses have been pressurised into not

[29] See Criminal Procedure Code, Chapter XI, Sections 109 (1), (2), (5) (a) and 125.

[30] See Section 136(1) (a) and Sections 122 (1), (2), 124 and 137 of the Criminal Procedure Code, respectively. These provisions are meant to assist the police in conducting investigations. There are no similar provisions supporting private complaints in the magistrate's courts.

[31] See Section 14 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996.

[32] See Article 155 G (2) of the 17th Amendment.

[33] UN Doc. CCPR/CO/79/LKA, para.9.

[34] See E/CN.4/2004/56/Add.1, paras.1462 et seq. and UN Doc. E/CN./2005/62/Add.1, paras.1483 et seq.

[35] See *Sri Lankan lawyer under grave threats amid growing efforts to intimidate human rights workers and institutions*, Statement by the Asian Human Rights Commission, 23 September 2005.

[36] Judgment by the Supreme Court of 4 April 2003.

[37] UN Doc. E/CN.4/2005/62/Add.1, para.1576. At the time of writing, a non-summary inquiry into Perera's murder was under way at the Wattala Magistrate's Court. On 18 October 2005, the trial against five police officers charged under the CAT Act for the torture of Gerald Marvin Perera opened at the Negombo High Court.

[38] Written Statement by the Asian Legal Resource Centre, *Threats to lives of torture victims in Sri Lanka and the lack of witness protection*, UN Doc. E/CN.4/2005/NGO/63.

making any incriminating statements. For example, lawyers have reported that where detainees are raped in custody, they are instructed by the prison authorities not to report the incident to the Judicial Medical Officer and face reprisals for not following instructions. This practice has been facilitated by the fact that officials accused of torture are in most cases neither suspended nor transferred following complaints;[39] are only rarely kept on remand; and no effective measures, such as strictly enforced disciplinary codes, have been taken to break up the widely acknowledged protective police culture.[40] No steps have been taken to date to introduce a victim and witness protection programme.

The difficulties for detainees to access a lawyer of their choice and to challenge the lawfulness of detention are further obstacles to bringing timely complaints of torture. A person detained in a police station has no access to a lawyer of his/her choice as of right in Sri Lankan law. There is a binding agreement between the Bar Association and the Head of the Police Department that a lawyer may meet with detainees (their clients) whilst in police custody. Despite this agreement, accessing a lawyer from police custody remains problematic in actual practice, especially in cases of arbitrary detentions, depriving detainees of vital protection against torture and ill-treatment in the initial stages of arrest.

Furthermore, *habeas corpus* rights and provisions protecting detainees against arbitrary arrest, and the risk of torture, are not fully effective in practice. By law, a person arrested has to be produced within 24 hours before a magistrate who will either release him/her on bail or remand into custody pursuant to Section 37 of the Criminal Procedure Code and Section 65 of the Police Ordinance.[41] In practice, the 24 hours period before being brought before a magistrate is sometimes illegally exceeded and the family of the person will be unaware that the person is in custody. During the consideration of Sri Lanka's state party report, a member of the Human Rights Committee raised concerns about reports that "basic safeguards against arbitrary detention, such as bringing suspects before a magistrate within 24 hours, were not being respected…While the delegation would not be expected to explain the circumstances of that particular case [of having allegedly spent seven days instead of 24 hours in detention], the fact that such illegal confinement could occur indicated that the necessary procedures to bring those responsible to justice were not in place. He wondered whether the problem lay with the Attorney-General or the courts, or whether there was just no system in place to deal with it."[42] Moreover, the *habeas corpus* remedy has at times been ineffective because of the difficulty of accessing courts and delays in hearing the petitions.

- Prompt, impartial and thorough investigations (Articles 12 and 13 of the UN Convention against Torture)

Impartiality of investigating bodies in light of recent institutional changes and systemic shortcomings in instituting prompt and effective investigations

Until recently, the institutional set up for the investigation of torture cases was the same as for other crimes, resulting in a system where the police investigated police torture and there was almost complete impunity.[43] Attempts to introduce an independent prosecution service

[39] *Sri Lanka: Officers charged with criminal offenses protected by the Inspector General of Police*, Statement by the Asian Human Rights Commission, 3 October 2005.

[40] *Special Report: Torture committed by the Police in Sri Lanka*, supra, Fn.15. See also second special report, Article 2 2004, Vol.3, No.1.

[41] Under the Prevention of Terrorism Act, a person can be detained by the police for up to 3 days before being produced before a magistrate.

[42] Summary record of the 2156th meeting: Sri Lanka, UN CCPR/C/SR.2156, 24 November 2003, para.62.

[43] See Concluding Observations of the UN Committee against Torture: Sri Lanka, UN Doc. A/53/44, 19 May 1998, paras.243-257, at paras.250 and 251.

and to overhaul the system of investigations have failed. However, recently institutional changes have been made so that torture allegations are now investigated by the Criminal Investigations Department (CID) on the directions of the Attorney-General, and, where there are allegations of torture against the officers of the CID, the investigation will be entrusted to a Special Investigation Unit at the Police Headquarters under a senior Deputy Inspector General of Police. [44] There is also a Prosecution of Torture Perpetrators Unit in the Attorney-General's Department that was set up in November 2000. The present system of investigating torture cases has only come into operation in late 2000 and constitutes an improvement over the previous one. However, serious institutional deficiencies remain, as the police are still largely in charge of investigations and the Prosecution of Torture Perpetrators Unit in the Attorney-General's Department is an informal arrangement with insufficient staff and resources to ensure effective investigations in all torture cases. While some indictments have been filed under the CAT Act, in many of the cases investigated, the Unit has found that there was insufficient evidence for prosecution.[45] This can be attributed, at least in part, to systemic shortcomings in the light of the continuing reports about widespread torture. Several factors contribute to the considerable number of cases where investigations have been closed without any charges being brought. These are in particular the lack of prompt investigations, as there are often inexplicable delays before the required steps are taken, and the failure to secure evidence, often due to the fact that victims withdraw from cases and that timely and objective medical reports are not available. The lack of investigative skills and resources has also been referred to as one of the reasons for the lack of effective investigations.[46]

Deficiencies in the medical documentation of torture

The practice of medical examinations and the production of medical reports are not consistent, often resulting in the unavailability of crucial evidence to prove torture.[47] In some cases, independent medical reports are produced accordingly and applied by the courts. However, in many cases a number of factors contribute to the lack of timely and objective medical examinations, in particular[48]:

(a) Delays in referral
(b) Lack of trained judicial medical officers and severe shortage of psychiatrists
(c) Lack of facilities and time to carry out full examination
(d) Lack of expertise on investigating torture cases
(e) Medical Legal Form not best suited for documentation

[44] In 1997, a Disappearance Investigations Unit was also established.

[45]As explained by a member of Sri Lanka's delegation to the Human Rights Committee "A total of 110 cases had been referred to the Government by the United Nations Special Rapporteur on the question of torture. In 25 of those cases, investigations had been completed but criminal proceedings had not been instituted, on the advice of the Attorney-General; in 4 cases, disciplinary action had been instituted; and in 9 cases, proceedings had been instituted in the High Court. Seventeen cases were currently under investigation and five cases were pending, awaiting instructions from the Attorney-General's Department. In 33 cases, the complaint had been withdrawn, the victim was living abroad or unable to be traced, or there was insufficient information to proceed with an investigation". See Summary record of the 2156th meeting: Sri Lanka, UN CCPR/C/SR.2156, 24 November 2003, para.31.

[46] *Special Report: Torture committed by the Police in Sri Lanka*, Fn.15.

[47] Section 122 of the Criminal Procedure Code stipulates that "(1) Where any officer in charge of a police station considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation he may, with the consent of such person, cause such person to be examined by a Government medical officer. The Government medical officer shall report to the police officer setting out the result of the examination. (2) Where the person referred to in subsection (1) does not consent to being so examined, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing a Government medical officer named therein to examine such person and report thereon."

[48] Unless otherwise indicated, the factors mentioned are those identified by doctors and lawyers during a training seminar on the implementation of the Istanbul Protocol in Sri Lanka, held in Kandy from 2-6 December 2004.

(f) Presence of, and interference from perpetrators during or after medical examination and resulting inadequacies of medical reports finding no violations[49]
(g) Fabrication of medical reports.[50]

Further shortcomings limiting the effectiveness of investigations

The reasons given by authorities for discontinuing investigations and not filing charges, such as the inability to trace the victim, the unwillingness of the victim to pursue his/her complaint further, the failure of the victim to identify the perpetrator or the lack of custody records,[51] raise the question whether the investigating authorities have taken rigorous steps to overcome these obstacles, in particular exhausting all means of investigations and instituting the requisite measures to address underlying generic deficiencies resulting in the absence of adequate records etc. The delays in investigations and an apparent willingness to close investigations on the grounds just mentioned without taking further investigative steps indicate a lack of thoroughness.

Victims of torture have no effective avenues to challenge the closure of investigations. Where the police decide to discontinue an investigation,[52] the Attorney-General has the power to review the decision and give necessary directions to continue the investigations,[53] a power he has exercised in several instances though selectively. The courts may also review such a decision but there are no precedents to date. The National Human Rights Commission may inquire into a complaint of not proceeding with investigations but it has no power to give directions to reopen the investigations. However, complainants and their lawyers are often not fully informed about the status of investigations, making it difficult to assess which steps, if any, have been taken to secure evidence. The right of individuals to access information relating to criminal proceedings is not currently entrenched in Sri Lankan law.

The new Anti-Torture Policy of the National Human Rights Commission

The National Human Rights Commission (NHRC) has in the past been criticised for its weak record on investigating torture cases, in particular in relation to its practice of settling complaints by way of medication, whereby "compensation was paid in lieu of prosecution."[54] The Commission has responded to this criticism and the rising number of complaints of torture by adopting a "zero-policy" on torture on 19 April 2004. This Anti-Torture Policy includes, among other things, the following elements: "the setting up of a 24-hour special unit for torture and emergency cases; investigation into torture cases within 24 hours of the incident being reported; in the case of an adverse medical report, summoning before the Human Rights Commission the officer-in-charge of the police station where the death in custody took place; and discussion with the Police Commission to secure the interdiction of

[49] See judgment of the Supreme Court in *Vijitha v Wijesekara & Ors*, (2003) 4 CHRLD 142: "No reliance can be placed on the report of the Assistant Junior Medical Officer for Colombo [who had found that there was no evidence of the alleged injuries] given that V was in police custody at the time."

[50] See judgment of the Supreme Court in FR Application No.363/2000 and copy of a letter from the Attorney General's Department to the Director CID received by the Ampara Magistrate on 19 August 2002, which related to torture and murder in custody, in which the Attorney General stated the following: "Upon a consideration of investigative material and further investigative material submitted consequent to investigative guidelines provided by this department. It is my view that there exists a clear basis to determine that the versions of the police (depicted in the relevant notes) relating to both the arrest as well as the death of the aforementioned is false and fabricated", referred to in V.S. Ganesalingam, *Case study of Custodial Torture Survivors*, Paper delivered in the course of the Istanbul Protocol Implementation Project Seminar, December 2004.

[51] See for example report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2004/56/Add.1, paras.1518, 1529, 1537 and 1550.

[52] Section 109 (5) (b) Criminal Procedure Code.

[53] Sections 393 and 397 Criminal Procedure Code.

[54] Interview with Dr. Coomaraswamy, supra, Fn.18, p.11.

police officers found guilty by the Human Rights Commission or the Supreme Court."[55] These recent changes promise to contribute to enhanced accountability for the perpetrators of torture, as the NHRC provides an alternative complaints channel that is widely used by torture survivors and NGOs acting on their behalf. However, the investigating work of the NHRC is hampered by its lack of resources,[56] and there have been serious concerns about the lack of quality of staff and shortcomings in the nature of investigations carried out by the NHRC.[57] Moreover, the NHRC has encountered lack of cooperation in instances where the police questioned the right of NHRC officers to enter detention facilities, a conflict which has now apparently been resolved so that permission is no longer needed to visit such facilities. The NHRC has also been the subject of a recent attack by unknown perpetrators on its headquarters in Colombo, destroying case files and setting newspapers on fire, which may have been in response to the recent shift in policy of the NHRC to recommend prosecution in torture cases.[58] These developments illustrate the struggle of the NHRC to become a more effective institution coupled with the risk this carries in light of persisting institutional resistance by the police, or at least parts of it.

The role of the newly established National Police Commission

The National Police Commission (NPC) was established through an amendment to the Constitution, to internally investigate allegations against police officers, including torture. Under Article 155G (1) of the 17th Amendment "the appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, shall be vested in the Commission. The Commission shall exercise its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police." Additionally under Article 155G(2) "the Commission shall establish procedures to entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance with the provisions of any law enacted by Parliament for such purpose". The NPC, whose members are independent and responsible to Parliament only, became functional in July 2003. It stated publicly that it would receive complaints from the public against the police and established a Complaints Investigation Unit in mid 2004 with six investigators. The NPC received 1200 complaints in the latter half of 2003 alone, about 15% of which concerned torture. The NPC pursues an anti-torture policy, and has already taken some action such as ordering disciplinary measures. However, its effectiveness is undermined by its shortage of trained investigators; its reliance, through the delegation of powers, on the police in carrying out investigations; and the lack of cooperation by the police, including the failure to comply with instructions by the NPC. It is in particular the lack of funds that is, according to its Chairman, severely constraining its work.[59]

- Prosecution and punishment of perpetrators of torture (Articles 4 and 5 of the UN Convention against Torture)

There has been a rise in the number of persons indicted for torture by the Attorney-General.[60] Yet, as of 1 October 2005, only two persons, M.J.T. Jayalath, a Sub Inspector

[55] According to a letter dated 19 May 2004 sent by the Government of Sri Lanka to the Special Rapporteur on Torture, UN Doc. E/CN.4/2005/62/Add.1, para.1632.

[56] See interview with Dr. Coomaraswamy, supra, Fn.18, p.10.

[57] See *Sri Lanka: A call to deal with delays in dealing with complaints through an Emergency Plan*, Statement by the Asian Human Rights Commission, 1 December 2003.

[58] *Sri Lanka: Launch Independent Inquiry into attack on National Human Rights Commission*, Joint Press Release by Amnesty International and Human Rights Watch, 13 October 2005.

[59] Lecture delivered by Ranjit Abeysuria, chairman of the NPC, at Kandy on 4 December 2004.

[60] See Report submitted by Sri Lanka under article 19 of the convention, UN Doc. CAT/C/48/ADD.2, 6 August 2004, para.59.

attached to the Wallawatta Police on 19 January 2004 and Inspector Krithi Bandara Hedirisingha, officer in charge of the Giribawa police station on 20 August 2004, have been convicted by the High Court and sentenced for the crime of torture, both to imprisonment of seven years rigorous imprisonment (the mandatory minimum punishment under the CAT Act) and payment of ten thousand rupees as a fine.

While this is a welcome development if contrasted with the almost complete impunity prevailing a few years ago, there is still a large number of cases where suspected perpetrators of torture are not charged on the grounds of insufficient evidence or are charged for lesser crimes. Those indicted are "mainly lower ranking officers", reflecting a reluctance to hold higher ranking police officials responsible, for example through employing the concept of command responsibility.[61] The willingness shown by the Attorney-General to file charges of torture as well as the anti-torture policies of both the NHRC and NPC send a signal that several institutions have now taken steps with the aim of combating torture more effectively. However, these policies are bound to remain of limited impact unless persistent systemic shortcomings, including resource constraints in particular, are addressed, and the police itself institutes an effective anti-torture policy, encompassing suspension of suspected perpetrators and disciplinary measures against those responsible.

3.4. Reparation for Torture

Sri Lanka has failed to provide reparation to a large number of torture victims and existing remedies are of limited effectiveness. This is notwithstanding the fact that the Supreme Court of Sri Lanka and the National Human Rights Commission have provided some reparation for torture and there has been a programme to compensate relatives of victims of enforced or involuntary disappearances

- Ensuring redress for torture (Article 14 of the UN Convention against Torture)

There is no express right to reparation for torture in Sri Lankan law. Torture survivors can, in principle, use various avenues to obtain reparation, namely constitutional remedies, civil remedies, the National Human Rights Commission and separate bodies tasked with providing reparation.

(a) Constitutional remedies

(i) Law and practice

The Supreme Court has awarded a range of reparation in numerous cases of torture under Article 11 of the Sri Lankan Constitution. Article 17 of the Constitution entitles every person to a remedy for the infringement of fundamental rights by State action.[62] The Supreme Court, in exercising its sole and exclusive jurisdiction to hear and determine cases relating to the infringement of fundamental rights, has used its wide discretionary power to grant relief in fundamental rights cases through awarding pecuniary and non-pecuniary damages.[63] It has noted that compensation has the function of acknowledging regret and providing relief for the hurt caused to the victim.[64] In awarding and calculating compensation, the Supreme Court

[61] See Interview with Dr. Coomaraswamy, supra, Fn.18, p.11 and, for critical comments on the exercise of the Ag's discretion in a recent case, *Sri Lanka's AG erred in excluding 2 police officers from torture charges*, Asian Human Rights Commission, 7 January 2005.

[62] Article 17 of the Constitution.

[63] Article 126 (4) of the Constitution.

[64] *Saman v. Leeladasa and Another* (op. Cit.), Per Amerasinghe, J. (Ranasinghe C.J. agreeing): "When in an appropriate case compensation is awarded for the violation of a Fundamental Right, it is, I think, by way of an acknowledgement of regret and a *solatium* for the hurt caused by the violation of a Fundamental Right and not as a punishment for duty disregarded or authority abused."

has taken into consideration the gravity of the injuries, the methods of torture employed and the harm caused. The amounts of compensation awarded vary from Rs. 5,000 to Rs. 800,000 (ca. $ 50 – 7,881).

The Supreme Court found that the state is liable for the infringement of fundamental rights by its officials[65] and has in recent years increasingly held perpetrators of torture personally liable to pay compensation to the victim.[66] In so doing and directing the higher authorities to take disciplinary and other action, the Court has taken into account the punitive aspect as well as the need of guaranteeing non-repetition of the violation.[67] It has also emphasised that holding perpetrators personally accountable involves an element of satisfaction.[68] Moreover, the Supreme Court judges have highlighted that "a meaningful course of action to minimize violations of Article 11 should include other measures (than enacting legislation) making torture an offence." Thus, it drew attention to the need for education and certain procedural steps that the State should adopt to guarantee non-repetition of torture, citing Articles 10 to 13 of the UN Convention against Torture.[69]

(ii) Shortcomings

While the Court has an impressive record of awarding compensation and other forms of reparation in individual cases, there are several shortcomings that limit the effectiveness of constitutional remedies.

- Procedural limitations

Limited standing

Only direct victims of violations are explicitly granted standing to bring cases before the Supreme Court. Relatives of a torture victim have no express standing, to invoke the fundamental rights provisions according to the wording of Articles 17 and 126 of the Constitution and earlier jurisprudence. However, the Supreme Court held in a recent judgment, in the case of *Kotabadu Durage Sriyani Silva, Pettawatta, Gomarankada, Payagala v Chanaka Iddamalgoa*, that persons other than the victim can have standing under Article 126 (2) of the Constitution, at least in cases where the infringement resulted in the death of the victim.[70]

While this is a welcome development, it is not clear whether this reasoning applies to all cases of enforced or involuntary disappearances, which are recognised as torture both of the direct victim and his/her relatives, and other instances where the direct victim is unable to bring proceedings. The rules on standing for constitutional remedies therefore potentially

[65] *A.K. Velmurugu v. The Attorney-General and Another*, S.C. Application No.74/81, October 19, 20, 21, 30, 1981, Per Wanasundera.

[66] See e.g. SCA 623/2000; SCA 290/98; SCA 66/97; SCA 98/97; SCA 477/96; SCA 615/95.

[67] See e.g. SC No.4/91.

[68] *Abasin Banda v. S.I. Gunaratne and Others*, S.C. Application No. 109/95, October 6, 1995, Amerasinghe, J.: "The award of compensation is useful because it provides an opportunity to demonstrate society's abhorrence of such conduct… The fact that a transgressor is personally required to pay a part of the compensation assessed by the court as being just and equitable is useful to the extent that tit will to some extent assuage the wounded feelings of the victim."

[69] Per Amerasinghe, J. in: *Abasin Banda v. S.I. Gunaratne & Others*, S.C. Application No.109/95 [1995] 1 Sri L.R., p.256.

[70] "It could never be contended that the Fundamental Rights ceased and would become ineffective due to the intervention of a death of a person, especially in circumstances where death in itself is the consequence of injuries that constitutes the infringement. […] Hence, when there is a causal link between the death of a person and the process which constitutes the infringement of such person's fundamental rights any one having a legitimate interest could prosecute that right in a proceeding instituted in terms of Article 126 (2) of the Constitution." S.C. (F.R.) Application No. 471/2000- *Case of Kotabadu Durage Sriyani Silva, Pettawatta, Gomarankada, Payagala v Chanaka Iddamalgoa*, Officer-in Charge, Police Station, Payagala, Inspector & others, decided on 10 November 2002.

exclude victims of torture who should have an enforceable right to reparation under Article 14 of the UN Convention against Torture.

Time limits

One of the key limitations to the effectiveness of this constitutional remedy is the short time limit of one month after the violation within which a fundamental rights application has to be filed with the Supreme Court pursuant to Article 126 (2) of the Constitution. Such short statutes of limitation severely undermine the effectiveness of constitutional remedies, as torture survivors, especially those from the North and the East have often not been in a position to file an application within time. This is not only for technical reasons, such as access to a lawyer, accessibility of the court and the difficulty of preparing a case, but also because torture survivors have refrained from filing applications because of security issues, in particular intimidation, harassment and lack of protection, and are often too traumatised to bring a case shortly after the violation.[71] In practice, one of the consequences of this short time limit is the fact that medical reports are usually not available to the victims at the time of filing the application. This means that they are not in a position to make a proper assessment of the amount of compensation to be claimed supported by available evidence.

The Supreme Court has shown some flexibility in admitting cases where the applicants could not adhere to the time limit. However, this practice still leaves the onus on the victim to show that he/she was unable to file an application in time. In order to make constitutional remedies more effective, the time limit for filing applications should be considerably lengthened, going beyond the three months period that had been envisioned in the 2000 Draft Constitution (which has not been adopted).[72]

- Shortcomings in the jurisprudence of the Supreme Court

While the Supreme Court has ordered compensation in numerous cases, its jurisprudence has at times failed to reflect relevant international standards. Where it has awarded compensation, the amount awarded has often been low (at times only around $50). The Court has to date also not recognised psychological evidence of mental harm suffered as a result of torture when computing compensation. Moreover, the decisions of the Supreme Court have not been consistent in terms of quantum and the victims of 'higher social standing' have apparently been awarded higher amounts of compensation than other victims for similar violations.[73] Furthermore, according to NGOs, at the end of trials representatives of the Attorney-General's Department have reportedly urged the Court to reduce the amount of compensation to be awarded.[74]

(b) Civil remedies

Although victims may claim compensation through a civil action for damages in the District Court under the common law or pursuant to the Crown (Liability in Delict) Act 1969 for unlawful injury caused by law enforcement personnel,[75] there is hardly any practice of claims

[71] See on the psychological consequences of torture in Sri Lanka, Daya Somasundaram, Torture in Sri Lanka, supra, Fn.27.

[72] See Article 177 (2) of The Constitution of the Republic of Sri Lanka, A Bill to repeal and replace the Constitution of the Democratic Socialist Republic of Sri Lanka, presented on 3r August 2000.

[73] See REDRESS, *Reparation for Torture in India, Nepal and Sri Lanka,* report issued in February 2003 in collaboration with Commonwealth Human Rights Initiative, p.91.

[74] See State Violence in Sri Lanka, supra, Fn.25.

[75] Civil suits must be brought within two years from the time when the cause of action has arisen (Prescription Ordinance, Section 9). In cases against the State, which are brought against the Attorney General, there is a notice period of one month before a suit can be instituted (Sections 456 and 461 Civil Procedure Code). The burden of proof lies on the plaintiff who has to prove the case by a balance of probability or preponderance of the evidence (Sections 101 and 102 of the Evidence Ac No.3 of 1961. The Court will consider such factors as the cost of rehabilitation and measures of satisfaction when awarding damages.

relating to reparation for torture before the civil courts.[76] Most torture survivors refrain from taking legal action before civil courts due to a combination of factors, namely relatively high costs of civil litigation, short time limits, evidentiary difficulties and drawn out proceedings that limit the effectiveness of this remedy.

(c) Criminal proceedings

Victims of torture cannot claim compensation in the course of criminal proceedings. However, a criminal court may award compensation pursuant to section 17 (4) of the Criminal Procedure Code. These procedures have to our knowledge not been used in practice, at least not in the two cases where the High Court has convicted perpetrators of torture under the Torture Act. Furthermore, compensation awarded under this procedure is inadequate to compensate for any harm suffered and does not represent an effective remedy.

(d) National Human Rights Commission

The NHRC has recommended compensation pursuant to its powers under the Human Rights Commission Act.[77] In so doing, it has in a limited way functioned as a supplementary mechanism for torture victims who could not apply to the Supreme Court due to the time bar or lack of supporting medical evidence. However, when asked about how the new anti-torture policy works in respect of compensation for torture victims and the prosecution of offenders, its Chairperson Dr. Coomaraswamy voiced concern about the potential repercussions of the recent shift in policy of demanding not only compensation but also prosecution of the perpetrators of torture, in particular with regard to the willingness of state officials and authorities to comply with its recommendations.[78]

(e) Reparation for acts of torture committed in the past, in particular in the course of the armed conflict and JVP uprisings

Sri Lanka has to date not set up any comprehensive or effective programmes to provide reparation, including compensation and rehabilitation, to the numerous victims of torture committed in the course of the armed conflict and in other contexts, such as the JVP uprisings in 1971 and from 1987 to 1991. It has also not established any bodies tasked with providing broader forms of reparation, such as a Truth and Reconciliation Commission or similar mechanisms.[79]

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[76] For example, according to Amnesty International, *Torture in custody*, supra, Fn.15, pp.34, 35: "In one rare case filed against the state in 1985, relatives of 30 of 53 Tamil political prisoners killed in July 1983 by Sinhalese prisoners at Welikada prison, Colombo, filed for compensation claiming failure by the state to provide adequate protection to the prisoners. In April 1994, the cases were settled by agreement between both sides, the state undertaking to make certain *ex gratia* payments to the relatives without admitting liability." In another case, Abeyratne, alias Taxi Abey, filed a suit for damages for torture against officers of the DID, IGP and AG before the District Court Colombo in 2000, the first of its kind. According to the last information received, the parties were intending to settle the case.

[77] See Sections 14 and 15 (3) (c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996.

[78] "Under previous human rights commissions, complaints were dealt with by way of mediation, and compensation was paid in lieu of prosecution. We stopped that practice. Now we still recommend compensation but we also send all the materials and facts that we have gathered to the Attorney General for prosecution. In terms of compensation, we recommend that both the police and the individuals concerned pay compensation and we try to make the compensation substantial- given the realities of Sri Lanka, of course. The problem is that previously there was a willingness to pay the compensation because of the guarantees of non-prosecution. For the last three months we have begun recommending compensation *and* prosecution, so we don't yet know whether people will actually pay. For survivors of torture, our regional officers claim that many are less concerned about prosecution and more concerned about compensation. Many are perturbed by this shift in policy because they need to pay for their health needs. They are worried that they won't get anything, whereas under the old system they could be more or less guaranteed some measure of compensation. They favour compensation because of their belief that prosecution will not occur." Interview with Dr. Coomaraswamy, supra, Fn.18, p.11.

[79] In 2001, a Presidential commission was set up to inquire into acts of ethnic violence between 1981 and 1984. According to a Press Release by the Government of Sri Lanka (Sri Lankan Government's Secretariat for Coordinating the Peace Process

Sri Lanka has provided some limited compensation for disappearances.[80] However, many victims of disappearances in Sri Lanka have not received any reparations recommended by the Presidential Commissions of Inquiry into Involuntary Removals and Disappearances. Although a number of victims have received compensation, payments made have only been small sums of money and varied considerably according to the status of the victim.[81] Several thousands of complaints of disappearances have still to be inquired into. Persons who had been involuntarily removed, tortured, detained and released or escaped from custody have not received any form of reparations.

4. Concluding Comments

There have been a number of promising developments in Sri Lanka in the course of the last two years, such as a rise in prosecutions brought under the CAT Act, the first two convictions under the Act, the adoption of an anti-torture policy by the National Human Rights Commission and the setting up of the National Police Commission. The Supreme Court has also continued awarding compensation to victims of torture, including the recognition of rape as torture, as well as calling for broader measures to combat torture effectively, in particular accountability and training.

Yet, torture, in particular by the police, remains endemic, reflecting serious shortcomings in investigation methods and internal accountability mechanisms. In spite of the developments mentioned in the preceding paragraph, there have been comparatively few prosecutions in the light of the large number of reported torture cases, indicating persisting deficiencies in the investigation and prosecution of torture. Although current efforts address some of these deficiencies, it is doubtful whether they are sufficient to overcome systemic obstacles to full accountability. This applies in particular to the glaring lack of effective victims and witness protection, and the lack of resources, investigative skills and deficiencies in the practice of the medical documentation of torture. Furthermore, while torture survivors have received some form of reparation through the Supreme Court, many victims have not been able to avail themselves of this or other remedies because of problems of access, in particular caused by procedural constraints, such as limited standing and short time limits. The absence of a reparation programme, including rehabilitation, for the many victims of torture committed in the course of the armed conflict and during the JVP uprisings is perhaps the most serious failure of the state of Sri Lanka to provide adequate reparation.

(SCOPP), 20 July 2004, a sum of Rs. 72.3 million [US$ 723,000] was allocated by the treasury to compensate the 937 victims identified by the Commission. It is not known whether the compensation has actually been paid out to the victims.

[80] In 1994, the Government appointed three Presidential Commissions of Inquiry into Involuntary Removals and Disappearances which received a total of about 30,000 complaints (including multiple complaints in respect of many of the disappeared persons). The fourth Presidential Commission of Inquiry set up in 1998 to inquire into remaining complaints published its final report in 2002. The Commissions have made comprehensive recommendations for reparations providing a wide range of relief, redress and restitution of losses sustained by the families of those who disappeared. Of these, only the recommendations regarding the payments for the relatives of disappeared have been partially implemented. As stated by a representative of Sri Lanka's Government "According to the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), as of August 2003 more than 610 million rupees in compensation had been paid to dependants of missing persons in districts within its jurisdiction. Nearly 40 million rupees were required for compensation for 960 outstanding cases." Summary record of the 2156th meeting: Sri Lanka, UN CCPR/C/SR.2156, 24 November 2003, para.23. According to the former Secretary to the Disappearances Commissions, Mr. M.C.M. Iqbal, the payments have now been stopped with many of the cases still outstanding.

[81] The amount payable if the victim was a student is Rs.15,000 (US$ 150); a youth is Rs.25,000; a married man is Rs.50,000; a state officer, Rs.150,000 plus his monthly salary and if the victim was a politician the amount is Rs.500,000. See for further information M.C.M. Iqbal, *The Phenomenon of Disappearances in Sri Lanka*, in: Law & Society Trust, The State of Human Rights in Sri Lanka, 2001.