



April 20, 2012

Universal Periodic Review - Sri Lanka 2012

This submission is made on behalf of Janasansadaya and Citizen' Committee of Gampaha, both of which are human rights organisation based in Sri Lanka

Janasansaya is devoted to the protection and promotion of human rights, democratic freedoms and sustainable development. It concentrates its work, mainly on the prevention of police torture in the country.

Its registered office is at: 81/2, Arthur V. Dias Mawatha, Panadura, Sri Lanka.

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The Citizens Committee of Gampaha District, is registered voluntary organization devoted to speard legal literacy, including improvement of education on human rights conventions. One of the specific tasks is to improve civil society capacity in implementioning prevention of torture act, known as CAT act, No.22 of 1994. It provides education and assist victims of tuture and other human rights abuses.

Its Registered address is ,no.47/b, Seond Lane, Visakawatte, Ekala, Sri Lanka.

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The Submission

Violations of Article 7 of the ICCPR and related violations relating to Article 9

The work of our organisation which has documented the cases relating to illegal arrest, detention, torture and custodial deaths, is the basis on which the following submissions are made. As an organisation we have assisted hundreds of victims of torture to make their complaints to the legal authorities such as the police, the Human Rights Commission of Sri Lanka and the National Police Commission. We have also assisted victims in trauma counseling and with medical treatment. In the course of our work we have also gathered considerable information from the reports of Judicial Medical Officers relating to torture and custodial deaths.

Some observations on illegal arrest, detention, torture and the fabrication of charges

1. Arrest

Sri Lankan Police openly refuse to follow the laws and regulations pertaining to arrest.

The police carry out most of the arrests in the night, dressed in civilian clothes, use abusive language, threatening and assaulting.

Police refrain from revealing their identity, even refraining from disclosing to which police station or police unit they belong.

They refuse to inform of the reason for arrest.

From the moment of arrest, the victims would be subjected to torture and ill-treatment.

2. Detention

Legally arrested persons could be detained in police station for a maximum period of 24 hours.

Keeping arrested persons beyond this time limit is a common practice in all police stations.

In order to circumvent this requirement of law, police refrain from registering the arrested persons and these persons would be kept in personal rooms or in the police barracks, which are out of bound even to the Human Rights Commission.

In these illegal detention centers, police do not allow the detainees to talk to or meet with their relatives. And lawyers do not have legal right to visit these detainees.

3. Torture

Torture, which is rampant and endemics in all police stations; takes place during the period of illegal detention.

Physical and mental torture is both commonly used by the Sri Lanka Police, which has now developed advanced methods, where torture is administered but no marks of injuries will be visible to the naked eye. Water boarding, applying chili powder and juice to eyes, genitals and anus, assaulting by sand filled rubber hoses and PVC pipes are some of these methods.

After torture is administered and before producing before the Magistrate, the police will mark time till marks or contusions; swollen limbs and red eyes disappear

4. Production before the Magistrate

The legal requirement of producing an arrested person for a medical examination is now practiced, before production in Courts. The police take the arrestees to the Government Medical Officers (GMO) with a 'Medico-Legal Examination Form' to be filled up by the Officers and returned to them.

However most GMOs oblige to provide a report not mentioning injuries, contusions, marks, normally without carrying out any bodily examination requested by law. The Medico-legal exam forms are filled in front of the police, which is also in violation of the law.

Further, most GMOs in peripheral hospitals and assistant JMO's in Base hospitals, have the habit of issuing the said form on request according to the wishes of the police, which is another violation of the laws and regulations.

Courts would remand most of the tortured-victims on the request of the police without examining the case but merely to oblige the police.

Even the lawyer for the victim does not reveal to the Magistrate that the victim was tortured, and the Magistrates do not look into the case further and do not record it. If torture is recorded, they instruct the prison to take care in providing medical assistance, which instruction is very seldom carried out in prisons.

All lawyers belong to local bar associations other than a very few exceptions, collaborate with the police. They hardly take trouble to record torture, the time of arrest, their visit or call to the police regarding the arrest, and they do not come forward to give an affidavit about what they saw or what the arrestees said.

5. Remanding and fabricating of charges.

After illegal arrest, detention and torture what the police do is to produce the victim in Court on a fabricated charge and request for the victim to be remanded.

Usually and as a practice, as mentioned earlier, Magistrates order to remand the suspects.

Remanding a person is depriving the liberty of a person, though it is a serious matter, at present it has become a convenient practice for the Magistrates to satisfy the police, which gives a good chance to cover up tortures, illegal arrests and detention.

At present the trend is even when a person is arrested for a petty criminal charge, the police fabricate a charge under the Excise Ordinance or Dangerous Drugs Act. If the amount of the illegally manufactured liquor, heroin or cannabis is very small, the police fabricate the said amount to exceed and thus demands to remand the person.

Because of remanding and fabricating charges, most victims are compelled to surrender to the wishes of police and if they challenge they would have to face further trouble.

Remanding and fabricating charges continues without any obstacle for it has become the policy of the police which is fully supported by Government and other judicial institutions.

6. Observations made by the Supreme Court in some judgements relating to torture

It is noted that although all relevant and adequate laws pertaining to eradicating tortures are available in Sri Lanka, and hundreds of Supreme Court judgments are delivered against police torture, torture still continues systematically.

I must express my concern over magistrates issuing orders of remand, mechanically, simply because the police want such orders made. I cannot do better than to quote the words of my brother, Dheeraratne, J, said in connection with magistrates Issuing warrants of arrest (in the case of - Mahanama Tillakaratne Vs. Bandula Wickramasinghe, 1999 1 Sri L.R 372); Magistrates should not issue remand orders 'to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor' (at pg.382). Remanding person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty

SC Application No. 488/98”

The Court has in recent times entered judgments in several cases in which the fundamental rights guaranteed by the Constitution for the equal protection of the law (Article 12(1); freedom from arbitrary arrest and detention, (Article 13(1) and (2) and from torture (Article 11) have been infringed in instances of false and fabricated arrests by the Police. These cases are from different parts of the country. S.C. (FR) Application No. 298/2005 “

AS observed in Wimalawardena v. Nissanka Inspector of Police (Supra) - " If such acts were committed by ordinary members of the public they would surely be prosecuted and as public officers dealt with by way of disciplinary action. However, police officers appear to be immune". S.C. Application No. 433/93 “

“True, no doubt, the petitioner himself made no such complaint either to the Bandaragama M.O. or to the acting Magistrate. But his failure to do so must be viewed and judged against the backdrop of his being, at that time, held in police custody with no access to any form of legal representation. The report of the M.O. Bandaragama, is in my view, valueless and unworthy of acceptance. On his own showing it is evident that he has not carried out an independent examination of the petitioner to ascertain whether he had any injuries. It seems to me to be preposterous for any medical officer before whom a suspect is produced for a medical examination in the custody of a police officer to expect him to tell the officer in the very presence of that police officer that he bears injuries caused to him as a result of a police assault.

This seems particularly so when the suspect is produced at the instance of the police themselves and not upon an order of court. I therefore reject the report of the M.O. as being worthless and unacceptable. SC Application No. 186/86”

“I am in respectful agreement with these views, I wish to add that if the police continue with the practice of taking into custody suspects on speculation or merely on the ground that they are persons of bad repute, in the hope of getting a break in the investigations by interrogating them, it would end up in the use of third degree methods. This presumably is what happened in the case before uS.C. Application No. 24/89s.”

“ The fact that police officers continue to commit unlawful acts including torture despite regular judicial condemnation of such acts shows that the authorities have permitted such acts, by their failure to impose effective sanctions. S.C. Application No. 433/93”

At present murdering of arrested persons is increasing alarmingly as government sponsors disappearances.

The following are a list of cases our organization received in the year of 2012 up to March which show not only the numbers but the patterns and grievances.

1. Roshan Pradeep Weerasingha (26)

On 15.01.2012 this person was handed over to the Horana police because they came to know that he was a person wanted by the police regarding a complaint made by a Buddhist monk. It was done according to the instructions given to them by a lawyer. After handing him over to the police he underwent torture while being detained at the police station for three days. He was produced before the Magistrate's Court for allegedly assaulting a Buddhist monk and possession of 7000mg of ganja and selling 1800mg of ganja and remanded. This incident was complained to the Human Rights Commission, the National Police Commission and the Inspector General of Police but no action was taken. This matter was reported to the Horana Magistrate court but nothing happened. The lawyer who instructed them to hand him over to the police and the journalist who reported the incident to the newspapers gave false statements.

2. Thevara Thanthrige Dilinu Pathum Fernando (23)

On 04.01.2012 he was arrested and taken away by a group of people in civilian clothes while he was repairing a roof of a house. His parents came to Panadura police station and tried to make a complaint but instead of receiving the complaint the police informed them to go and see at Mirihana police station. Mirihana police informed such a person was not brought. Then they came to Panadura police and tried to make a complaint regarding the abduction, at that time the police informed Pathum Fernando was available under their custody. After torturing him he was produced before the court on fabrication of charges of possessing 20mg of heroine and selling 20 mg of heroine and remanded. The incident was informed to the Human Rights Commission, the National Police Commission and the Inspector General of Police but no action was taken.

3. Arumugam Selvadore (44)

On 04.01.2012 he was assaulted by the employer of Gunavardena rice shop called Gunawardena shop where he was working as a cook. He was treated in the hospital until 07.01.2012. He was going to Mt Lavinia police because he was told to come there to inquire into the complaint that he had made but two police men stopped him. These two police men took him to Gunavardena rice shop and accused him on a rape charged and threatened him to imprison him and took his signature to a statement, after which they released him. He was assaulted because he requested his salary. But police used their powers abusively and compelled him to withdraw the complaint. The complaints were made to the Human Rights Commission, and the Inspector General of Police.

4. Vidanelage Mallika Kusumawathi (Mother); Mirissage Surendra Silva (Son); Mirissage Sirisena (Father)

On 05.01.2012 a group of policemen attached to Wadduwa police came and inquired details of another person whom the police were unable to find. Then the police assaulted Surendra Silva and arrested him. At that moment his mother Kusumawathi and father Sirisena came forward questioning the action of the police, whereas the police then assaulted them too and arrested them. After that they were taken to the Wadduwa police station and a lawsuit filed against them for obstructing police duties, turning uniform and braking the spectacles of a police officer. This incident was complained to the Inspector General of Police and the Human Rights Commission but nothing useful happened.

5. Ranasinha Bethmage Gunawathi (40 years old); Arunachalam Hemalatha (42)

On 07.01.2012 at around 12 in the night a group of policemen attached to Puttalam police station entered her house forcibly and assaulted her and arrested her. In the same manner a neighbor called Hemalatha was arrested. They were put in the jeep and it was driven in various places until 6.30 in the morning. They were sexually abused. They were taken without the presence of a woman police officer. These two women were sexually harassed by the policemen attached to the Puttalam police. The police had produced them to Puttalam Magistrate court at 1.30pm on the next day and both of them were released on bail. Puttalam police acted this way due to a personal dispute and later her husband too was arrested and remanded. This incident of arrest on personal grievances torturing and fabrication of charges was complained to the Human Rights Commission and the Inspector General of Police.

6. Athukoralage Namal (38)

On 14.01.2012 at night a group of policemen attached to the Bulathsinhala police station entered his house searched everywhere but did not find anything. Then they poured water to an empty bottle and took it with him to the Bulathsinhala police. At night he was assaulted and they tried to take his signature to a statement. The following day his signature was taken to a statement and released after informing him to attend courts on 18.04.2012. The doctors said his ear drum was blasted due to the assault. A false allegation was also filed against him. This incident was complained to the Human Rights Commission, the National Police Commission and the Inspector General of Police. But no action was taken.

7. Arumadura Padmasiri Silva (63 years old); Arumadura Aruna Shantha (32)

On 16.01.2012 he was taken to the Beruwela police station regarding a fire that was ignited in a neighboring house and remand him on a false allegation. These two were remanded on 06.02. 2012 for 21 days without reasonable basis but only for the request made by the police. It is very common procedure for the police to arrest somebody when a crime occurred and produce him before court and remanded. The Magistrate will remand according to the police request. This type of torture is common. This incident was complained to the Human Rights Commission, and the Inspector General of Police.

8. Levutanduva Vithanage Samira Sampath (24)

On 27.01.2012 while he was on his way to his job the Payagala police arrested him and tortured him. The first day his relatives were not allowed to see him. The whole night he was inhumanly tortured. He was released on the following day 28th without any charge. On 27.01.2012 his mother complained to the Human Rights Commission and the Inspector General of Police. He had taken steps to file a fundamental rights case bearing number SCFR 127/2012 before the Supreme Court. After that he was

subjected to various influences and pressures by the police officers attached to the Special Unit which is run under the Payagala and Kalutara office of the Superintendent of Police. Now he has abandoned his village where he lived. The incident was complained to the Human Rights Commission, the Inspector General of Police but no action was taken against the police officers attached to the Payagala police and the Special run by the Superintendent of Police office in Kalutara who tortured him.

9. Lokuvalpolage Chandra Nanda Ranaweera (51)

On 27.01.2012 the Chairman of Matale Pradeshiya Saba entered his Medical Clinic and assaulted him. He is a medical doctor attached to Matale District General hospital. He was admitted to hospital where he was treated. Matale police filed a case against chairman of the Pradeshiya Saba. Simultaneously Matale police filed a fabricated charge against the Doctor Ranaweera saying he assaulted the Chairman. The police filed a fabrication of charge against Ranaweera because of the request of the president of the Local Council and to put pressure on the doctor to compel him withdraw the case against the president. Doctor Ranaweera had made complaints to the Human Rights Commission and the Inspector General of Police.

10. Kaludeva Padmakumara De Soysa (22)

On 28.01.2012 he was arrested by the Bussa Army Camp and detained there and tortured. Time to time he was brought to the army camps in Narahenpita and Polhengoda. He is an army deserter and is to date being detained under the custody of army. His mother Vijitha Weerakkody complained of the incident to the Human Rights Commission and then the Human Rights Commission called a report from the army. After that pressure was exerted to withdraw the complaint. The officers attached to the Human Rights Commission did not visit Narahenpita and Polhengoda army camps and make any investigation.

11. Ranaweera Arachchige Usitha Virajith (10)

On 01.02.2012 Usitha Virajith was inhumanly assaulted and tortured by the principal of the school where he studied called Vaduraba Madya Maha Vidyalaya. As a result of the assault he was admitted to the hospital and underwent treatment. The incident was complained to the Human Rights Commission, the Inspector General of Police and the child Rights Authority but no legal action was taken against the said principal and it lost the child the opportunity to study in the same school.

12. Maliduwa Liyanage Chathuranga Sanjeewa (23)

On 09.02.2012 he was assaulted by the police officers attached to Wadduwa police station while he was parked in a tipper vehicle on the road side. The vehicle contained sand which and he worked as a helper to the driver. The reason for the assault was that he refused to take the tipper vehicle to the police station as ordered by the police because he was not the driver. He complained of this incident to the Human Rights Commission and the Inspector General of Police.

13. Aluth Baduge Amal Nishantha (27); Manewage Danushka Sanjeewa (21) Dampiya (20)

On 16.02.2012 at night the Payagala police had arrested the above three persons and detained them until 18.12.2012 and tortured them. On that day around 4 in the evening they were produced before the court and remanded. Because of the severe pressure exerted by the police these persons were

reluctant to seek justice. This incident was complained to the Human Rights Commission but no investigation was held.

14. Ranepura Hewage Sampath Deshapriya (24)

On or about the 24.12.2012 he was arrested by the Thiniyavala police. After that he was inhumanly tortured with the support of the Special Unit run by the Kalutara Police Superintendent office. He was time to time detained in the Thiniyavala police, the torture chamber run by the Kalutara Police Superintendent's office and the Idangoda police. His mother called Agnas Gunawardena filed a fundamental rights case bearing number SCFR 89/2012 before the Supreme Court. When his case was called on 16.03.2012 he was produced before the Mathugama Magistrate court on 17.03.2012 and remanded.

This incident of inhuman torture, illegal detention for three months was complained to the Human Rights Commission, the National Police Commission, and the Inspector General of Police but no action was taken. In the same way like this incident Thiniyavala police and the Special Unit of the Kalutara Superintendent of Police office arrested two persons called Niringolla Vithanalage Lakshitha Hemantha and Lalith on 31 January 2012 and illegally detained until 10th March 2012.

15. Purne Mayura Kankanige – (21).

On 26.02.2012, around 10.00pm a group of policemen attached to Cinnamon Garden Police Station arrested Purne Mayura, brutally assaulted and threatened to shoot him.

After assaulting, he was taken to the residence of an Assistant Judicial Medical Officer to obtain a certificate to say that he was under the influence of liquor.

His father intervened and told the Doctor that his son was beaten by Police and he is in critical position.

Without examining, the Doctor told the police to take him to Colombo National Hospital where he was warded and treated for almost six days.

Later, he was charged for assaulting a police officer and obstructing his duties. No action has been taken against the Police Officers who tortured him. Even though Mayura complained to HRC and IGP no action was taken.

16. Sarilath Kamkananlage Saman Kumara --(25).

On 02.03.2012 Saman Kumara with a group of his friends went for fishing in a nearby canal. While they were fishing, a group of persons in civilian clothes came to them and asked for the name of the owner of equipments used for manufacturing illegal liquor.

When they replied negatively, they assaulted them. A group of village women including the mother of Saman, came to the scene and started to argue with the persons regarding the assault. At that moment, they came to know that they are Policemen attached to Special Task Force.

Somehow, Saman Kumara escaped and got himself admitted to Colombo National Hospital and received treatment for 10 days including a surgery.

Members of STF came to the hospital and threatened him saying that if he fail to withdraw the complaint against them, he would face bitter circumstances.

He complained to HRC and IGP without any redress.

17. Bora Andage Dayarathna --- (61).

On 07.03.2012 at about 7.00 pm four police officers including OIC, Crime Division of Kalutara South Police Station, entered his house.

They told him that they had an arrest warrant issued by Kalutara Magistrate against him. He replied to the police officers that it could not be and there must be some misinterpretation.

The OIC refused to accept his explanations and forced him to accompany them to the police station. He obliged and when he went with them to Kalutara South Police Station, they locked him in the police cell until 3.00 pm next day.

After that he was taken to Kalutara Magistrate Court, where he was released under Rs. 5,000/- cash bail and the Court ordered him to appear on 12.06.2012.

After the scenario, he came to know that:-

- a) He was arrested and produced in Courts for another man who too has the same name.
- b) The man wanted by the Court was a police accomplice.
- c) Summons issued to that person were never delivered by police but to misguide the Court they informed that they were delivered.
- d) When warrant was issued, police thought to produce someone else who bears the same name.

This is a common practice of police and Court accepted the police versions without any hesitation quite knowingly that the police is lying.

18. Mr. Dayananda, (61) An old man with reputation, was illegally arrested, detained and subjected to severe mental agony by police misguidance of Court. He complained to HRC, Attorney General, IGP, but yet no response. They all are aware as to what the police up to and give their blessings to the police.

19. Hettiarachchige Saman Pushpakumarasiri -- (31).

On 19.01.2012, at about 8.00 pm when Saman was waiting to meet his employer at the roadside, two police constables attached to Panadura South Police Station came to him and asked as to what he was doing. When he explained the reason for his waiting, without considering his sayings, they abused him in filth and arrested.

They took him to Panadura South Police Station and locked him up in the cell. Next day around 10.15 am he was asked to sign a statement which he was not allowed to read or was not explained to him and then he was allowed to go. When he questioned for the reason of arrest and detention for over 12 hours, the answer was that on suspicion.

About this illegal arrest and detention, he complained to NHRC and IGP but yet no result.

20. Urugoda Appuhamilage Tharanga Premkumara -- (25).

On 16.02.2012 at around 11.00 pm a group of policemen attached to Aluthgama Police entered his house and arrested him without giving any reason.

He was kept in police cell until 20.02.2012, for four days illegally. During those 4 days, he was taken out many times and intimidated. They repeatedly asked for a confession regarding some stolen hens, which he categorically denied.

On 20.02.2012 morning, he was forced to sign a statement, which was not read or explained to him. At noon, he was taken to Kalutara Magistrate Court and charged on theft of hens where the Court released him on bail.

He complained to HRC, IGP but no action was taken yet.

21. Hidamhewage Rumesh Tharanga de Silva --- (17).

On 06.02.2012 while he was in the classroom the principal called him and told him to go to Ambalangoda Police Station with a teacher of the school.

At the Police Station he was questioned about a digital camera belonged to a teacher. The police blamed him that he was the one who steal it and asked for the whereabouts of it.

Rumesh denied the allegation and said that he did not know anything about it. Police disbelieved his version and started to torture him. They hanged him and assaulted using rubber hose.

After assault and torture, he was released without any charge or recording of even a statement.

Later he came to know that the principal and teachers suspected him on a missing camera belonged to a teacher and requested the Police of Ambalangoda to get a confession from him about the missing camera.

Rumesh complained to HRC, Child Rights Authority, IGP and the Regional Director of Education, which have not responded yet.

22. Ranamukege Ranjith -- (45)

On 19.02.2012 at about 8.00 pm Ranjith was invited for a drink by one Sub Inspector Ranji who was serving at the Empilipitiya Police Station.

He went to “Sarath Chandra” Restaurant where he met the Sub Inspector Ranji and started to drink with him. In the meantime, Police Sergeant Lalith joined them with some others. According to Ranamukege Ranjith he bought a bottle of brandy for Rs. 1,350/-.

After sometime Sub Inspector Ranji got excuse from them and left the place. After his leaving, as Sergeant Lalith started to abuse in filth, Ranamukege Ranjith told him not to use bad language. Immediately Sergeant Lalith began to assault Ranamukege Ranjith and later others also joined him in it.

Ranamukege Ranjith was admitted to Embilipitiya Government Hospital where he was treated for injuries. According to Ranamukege Rangith the assault was a pre-planned one by them using their position as police officers.

He made complaints to Embilipitiya Police, HRC and IGP but has not yet received a response.

23. A. Karuna Pathiranalage Upali Amarasena --- (28).

On 15.05.2011 afternoon, on his way home, Amarasena was stopped by Megallawa Police and taken into custody.

At the time of arrest, they removed his shirt and tied blindfolding his eyes. Then his hands were twisted back and cuffed. From that moment, he was insulted and assaulted without giving any reason for doing these to him.

After torturing, on 16th at around 01.00 am they took him to police station. Later he was taken to Millawa Govt. Hospital. Although he complained to the Doctor that he was tortured, without listening to or examining him, as requested by the police, the Doctor filled up the Medico Legal Form.

On the same day around 12.30 pm he was produced before Magistrate Court and was released on bail.

As he was not in the position of paying the bail money, again he was detained at Wariyapola Prison. He complained to the prison officers that he was assaulted by police, but they refused to record it. Only after 4 days he was able to get release.

At Courts, the case was called on seven occasions. On 22.11.2011 the police told the Court that they cannot filled charges against him due to lack of evidence. He was released temporarily.

Later it was revealed that the police implicated him in order to cover up an 'Un-happened Robbery' to find compensations from Insurance Company by a businessman of the area with the help of police.

RECOMMENDATIONS

Human Rights Commission may recommend to Sri Lanka,

1. To implement the recommendations of the United Nations' Committee Against Torture (CAT), made at its last session in 2011.
2. The Parliament should pass legislation creating a competent and impartial body, for the purpose of conducting credible investigation into complaints of Torture, under the CAT act No.22 of 1994.
3. The officers of the Attorney General's Department and Judges including Judges of the Supreme Court should be provided opportunities to be educated on the international norms relating to prevention of torture.
4. Government must remove the obstacles for implementation of the recommendation of Human Rights Committee, relating to individual communications by the citizens.
5. The Government need to improve the quality of police officers, in particular officers above the rank of Assistant Superintendents' of police (ASP's), to enable them to uphold discipline within the police force.
6. Government must speedily enact the law relating to witness protection
7. The Fundamental rights cases under Article 126 of the Constitution must be dealt with speedily, the declarations of the Supreme courts on violation of human rights need to lead to legal and professional consequences and the compensation for the victims should be reflect the recognition of gravity of torture.
8. The Government Action Plan on Human Rights need to include all the issues raised above and set a timeline for elimination of torture.
9. The achievement of any of the above mentioned recommendations will depend on the allocation of adequate financial and other resources to improve the administration of justice, in particular to enable the reform of the police

Chitral Perera
Secretary
Janasansadaya



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They refuse to inform of the reason for arrest.

From the moment of arrest, the victims would be subjected to torture and ill-treatment.

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In order to circumvent this requirement of law, police refrain from registering the arrested persons and these persons would be kept in personal rooms or in the police barracks, which are out of bound even to the Human Rights Commission.

In these illegal detention centers, police do not allow the detainees to talk to or meet with their relatives. And lawyers do not have legal right to visit these detainees.

3. Torture

Torture, which is rampant and endemics in all police stations; takes place during the period of illegal detention.

Physical and mental torture is both commonly used by the Sri Lanka Police, which has now developed advanced methods, where torture is administered but no marks of injuries will be visible to the naked eye. Water boarding, applying chili powder and juice to eyes, genitals and anus, assaulting by sand filled rubber hoses and PVC pipes are some of these methods.

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Further, most GMOs in peripheral hospitals and assistant JMO's in Base hospitals, have the habit of issuing the said form on request according to the wishes of the police, which is another violation of the laws and regulations.

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Even the lawyer for the victim does not reveal to the Magistrate that the victim was tortured, and the Magistrates do not look into the case further and do not record it. If torture is recorded, they instruct the prison to take care in providing medical assistance, which instruction is very seldom carried out in prisons.

All lawyers belong to local bar associations other than a very few exceptions, collaborate with the police. They hardly take trouble to record torture, the time of arrest, their visit or call to the police regarding the arrest, and they do not come forward to give an affidavit about what they saw or what the arrestees said.

5. Remanding and fabricating of charges.

After illegal arrest, detention and torture what the police do is to produce the victim in Court on a fabricated charge and request for the victim to be remanded.

Usually and as a practice, as mentioned earlier, Magistrates order to remand the suspects.

Remanding a person is depriving the liberty of a person, though it is a serious matter, at present it has become a convenient practice for the Magistrates to satisfy the police, which gives a good chance to cover up tortures, illegal arrests and detention.

At present the trend is even when a person is arrested for a petty criminal charge, the police fabricate a charge under the Excise Ordinance or Dangerous Drugs Act. If the amount of the illegally manufactured liquor, heroin or cannabis is very small, the police fabricate the said amount to exceed and thus demands to remand the person.

Because of remanding and fabricating charges, most victims are compelled to surrender to the wishes of police and if they challenge they would have to face further trouble.

Remanding and fabricating charges continues without any obstacle for it has become the policy of the police which is fully supported by Government and other judicial institutions.

6. Observations made by the Supreme Court in some judgements relating to torture

It is noted that although all relevant and adequate laws pertaining to eradicating tortures are available in Sri Lanka, and hundreds of Supreme Court judgments are delivered against police torture, torture still continues systematically.

I must express my concern over magistrates issuing orders of remand, mechanically, simply because the police want such orders made. I cannot do better than to quote the words of my brother, Dheeraratne, J, said in connection with magistrates Issuing warrants of arrest (in the case of - Mahanama Tillakaratne Vs. Bandula Wickramasinghe, 1999 1 Sri L.R 372); Magistrates should not issue remand orders 'to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor' (at pg.382). Remanding person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty

SC Application No. 488/98”

The Court has in recent times entered judgments in several cases in which the fundamental rights guaranteed by the Constitution for the equal protection of the law (Article 12(1); freedom from arbitrary arrest and detention, (Article 13(1) and (2) and from torture (Article 11) have been infringed in instances of false and fabricated arrests by the Police. These cases are from different parts of the country. S.C. (FR) Application No. 298/2005 “

AS observed in Wimalawardena v. Nissanka Inspector of Police (Supra) - " If such acts were committed by ordinary members of the public they would surely be prosecuted and as public officers dealt with by way of disciplinary action. However, police officers appear to be immune". S.C. Application No. 433/93 “

“True, no doubt, the petitioner himself made no such complaint either to the Bandaragama M.O. or to the acting Magistrate. But his failure to do so must be viewed and judged against the backdrop of his being, at that time, held in police custody with no access to any form of legal representation. The report of the M.O. Bandaragama, is in my view, valueless and unworthy of acceptance. On his own showing it is evident that he has not carried out an independent examination of the petitioner to ascertain whether he had any injuries. It seems to me to be preposterous for any medical officer before whom a suspect is produced for a medical examination in the custody of a police officer to expect him to tell the officer in the very presence of that police officer that he bears injuries caused to him as a result of a police assault.

This seems particularly so when the suspect is produced at the instance of the police themselves and not upon an order of court. I therefore reject the report of the M.O. as being worthless and unacceptable. SC Application No. 186/86”

“I am in respectful agreement with these views, I wish to add that if the police continue with the practice of taking into custody suspects on speculation or merely on the ground that they are persons of bad repute, in the hope of getting a break in the investigations by interrogating them, it would end up in the use of third degree methods. This presumably is what happened in the case before uS.C. Application No. 24/89s.”

“ The fact that police officers continue to commit unlawful acts including torture despite regular judicial condemnation of such acts shows that the authorities have permitted such acts, by their failure to impose effective sanctions. S.C. Application No. 433/93”

At present murdering of arrested persons is increasing alarmingly as government sponsors disappearances.

The following are a list of cases our organization received in the year of 2012 up to March which show not only the numbers but the patterns and grievances.

1. Roshan Pradeep Weerasingha (26)

On 15.01.2012 this person was handed over to the Horana police because they came to know that he was a person wanted by the police regarding a complaint made by a Buddhist monk. It was done according to the instructions given to them by a lawyer. After handing him over to the police he underwent torture while being detained at the police station for three days. He was produced before the Magistrate's Court for allegedly assaulting a Buddhist monk and possession of 7000mg of ganja and selling 1800mg of ganja and remanded. This incident was complained to the Human Rights Commission, the National Police Commission and the Inspector General of Police but no action was taken. This matter was reported to the Horana Magistrate court but nothing happened. The lawyer who instructed them to hand him over to the police and the journalist who reported the incident to the newspapers gave false statements.

2. Thevara Thantrige Dilinu Pathum Fernando (23)

On 04.01.2012 he was arrested and taken away by a group of people in civilian clothes while he was repairing a roof of a house. His parents came to Panadura police station and tried to make a complaint but instead of receiving the complaint the police informed them to go and see at Mirihana police station. Mirihana police informed such a person was not brought. Then they came to Panadura police and tried to make a complaint regarding the abduction, at that time the police informed Pathum Fernando was available under their custody. After torturing him he was produced before the court on fabrication of charges of possessing 20mg of heroine and selling 20 mg of heroine and remanded. The incident was informed to the Human Rights Commission, the National Police Commission and the Inspector General of Police but no action was taken.

3. Arumugam Selvadore (44)

On 04.01.2012 he was assaulted by the employer of Gunavardena rice shop called Gunawardena shop where he was working as a cook. He was treated in the hospital until 07.01.2012. He was going to Mt Lavinia police because he was told to come there to inquire into the complaint that he had made but two police men stopped him. These two police men took him to Gunavardena rice shop and accused him on a rape charged and threatened him to imprison him and took his signature to a statement, after which they released him. He was assaulted because he requested his salary. But police used their powers abusively and compelled him to withdraw the complaint. The complaints were made to the Human Rights Commission, and the Inspector General of Police.

4. Vidanelage Mallika Kusumawathi (Mother); Mirissage Surendra Silva (Son); Mirissage Sirisena (Father)

On 05.01.2012 a group of policemen attached to Wadduwa police came and inquired details of another person whom the police were unable to find. Then the police assaulted Surendra Silva and arrested him. At that moment his mother Kusumawathi and father Sirisena came forward questioning the action of the police, whereas the police then assaulted them too and arrested them. After that they were taken to the Wadduwa police station and a lawsuit filed against them for obstructing police duties, turning uniform and braking the spectacles of a police officer. This incident was complained to the Inspector General of Police and the Human Rights Commission but nothing useful happened.

5. Ranasinha Bethmage Gunawathi (40 years old); Arunachalam Hemalatha (42)

On 07.01.2012 at around 12 in the night a group of policemen attached to Puttalam police station entered her house forcibly and assaulted her and arrested her. In the same manner a neighbor called Hemalatha was arrested. They were put in the jeep and it was driven in various places until 6.30 in the morning. They were sexually abused. They were taken without the presence of a woman police officer. These two women were sexually harassed by the policemen attached to the Puttalam police. The police had produced them to Puttalam Magistrate court at 1.30pm on the next day and both of them were released on bail. Puttalam police acted this way due to a personal dispute and later her husband too was arrested and remanded. This incident of arrest on personal grievances torturing and fabrication of charges was complained to the Human Rights Commission and the Inspector General of Police.

6. Athukoralage Namal (38)

On 14.01.2012 at night a group of policemen attached to the Bulathsinhala police station entered his house searched everywhere but did not find anything. Then they poured water to an empty bottle and took it with him to the Bulathsinhala police. At night he was assaulted and they tried to take his signature to a statement. The following day his signature was taken to a statement and released after informing him to attend courts on 18.04.2012. The doctors said his ear drum was blasted due to the assault. A false allegation was also filed against him. This incident was complained to the Human Rights Commission, the National Police Commission and the Inspector General of Police. But no action was taken.

7. Arumadura Padmasiri Silva (63 years old); Arumadura Aruna Shantha (32)

On 16.01.2012 he was taken to the Beruwela police station regarding a fire that was ignited in a neighboring house and remand him on a false allegation. These two were remanded on 06.02. 2012 for 21 days without reasonable basis but only for the request made by the police. It is very common procedure for the police to arrest somebody when a crime occurred and produce him before court and remanded. The Magistrate will remand according to the police request. This type of torture is common. This incident was complained to the Human Rights Commission, and the Inspector General of Police.

8. Levutanduva Vithanage Samira Sampath (24)

On 27.01.2012 while he was on his way to his job the Payagala police arrested him and tortured him. The first day his relatives were not allowed to see him. The whole night he was inhumanly tortured. He was released on the following day 28th without any charge. On 27.01.2012 his mother complained to the Human Rights Commission and the Inspector General of Police. He had taken steps to file a fundamental rights case bearing number SCFR 127/2012 before the Supreme Court. After that he was

subjected to various influences and pressures by the police officers attached to the Special Unit which is run under the Payagala and Kalutara office of the Superintendent of Police. Now he has abandoned his village where he lived. The incident was complained to the Human Rights Commission, the Inspector General of Police but no action was taken against the police officers attached to the Payagala police and the Special run by the Superintendent of Police office in Kalutara who tortured him.

9. Lokuvalpolage Chandra Nanda Ranaweera (51)

On 27.01.2012 the Chairman of Matale Pradeshiya Saba entered his Medical Clinic and assaulted him. He is a medical doctor attached to Matale District General hospital. He was admitted to hospital where he was treated. Matale police filed a case against chairman of the Pradeshiya Saba. Simultaneously Matale police filed a fabricated charge against the Doctor Ranaweera saying he assaulted the Chairman. The police filed a fabrication of charge against Ranaweera because of the request of the president of the Local Council and to put pressure on the doctor to compel him withdraw the case against the president. Doctor Ranaweera had made complaints to the Human Rights Commission and the Inspector General of Police.

10. Kaludeva Padmakumara De Soysa (22)

On 28.01.2012 he was arrested by the Bussa Army Camp and detained there and tortured. Time to time he was brought to the army camps in Narahenpita and Polhengoda. He is an army deserter and is to date being detained under the custody of army. His mother Vijitha Weerakkody complained of the incident to the Human Rights Commission and then the Human Rights Commission called a report from the army. After that pressure was exerted to withdraw the complaint. The officers attached to the Human Rights Commission did not visit Narahenpita and Polhengoda army camps and make any investigation.

11. Ranaweera Arachchige Usitha Virajith (10)

On 01.02.2012 Usitha Virajith was inhumanly assaulted and tortured by the principal of the school where he studied called Vaduraba Madya Maha Vidyalaya. As a result of the assault he was admitted to the hospital and underwent treatment. The incident was complained to the Human Rights Commission, the Inspector General of Police and the child Rights Authority but no legal action was taken against the said principal and it lost the child the opportunity to study in the same school.

12. Maliduwa Liyanage Chathuranga Sanjeewa (23)

On 09.02.2012 he was assaulted by the police officers attached to Wadduwa police station while he was parked in a tipper vehicle on the road side. The vehicle contained sand which and he worked as a helper to the driver. The reason for the assault was that he refused to take the tipper vehicle to the police station as ordered by the police because he was not the driver. He complained of this incident to the Human Rights Commission and the Inspector General of Police.

13. Aluth Baduge Amal Nishantha (27); Manewage Danushka Sanjeewa (21) Dampiya (20)

On 16.02.2012 at night the Payagala police had arrested the above three persons and detained them until 18.12.2012 and tortured them. On that day around 4 in the evening they were produced before the court and remanded. Because of the severe pressure exerted by the police these persons were

reluctant to seek justice. This incident was complained to the Human Rights Commission but no investigation was held.

14. Ranepura Hewage Sampath Deshapriya (24)

On or about the 24.12.2012 he was arrested by the Thiniyavala police. After that he was inhumanly tortured with the support of the Special Unit run by the Kalutara Police Superintendent office. He was time to time detained in the Thiniyavala police, the torture chamber run by the Kalutara Police Superintendent's office and the Idangoda police. His mother called Agnas Gunawardena filed a fundamental rights case bearing number SCFR 89/2012 before the Supreme Court. When his case was called on 16.03.2012 he was produced before the Mathugama Magistrate court on 17.03.2012 and remanded.

This incident of inhuman torture, illegal detention for three months was complained to the Human Rights Commission, the National Police Commission, and the Inspector General of Police but no action was taken. In the same way like this incident Thiniyavala police and the Special Unit of the Kalutara Superintendent of Police office arrested two persons called Niringolla Vithanalage Lakshitha Hemantha and Lalith on 31 January 2012 and illegally detained until 10th March 2012.

15. Purne Mayura Kankanige – (21).

On 26.02.2012, around 10.00pm a group of policemen attached to Cinnamon Garden Police Station arrested Purne Mayura, brutally assaulted and threatened to shoot him.

After assaulting, he was taken to the residence of an Assistant Judicial Medical Officer to obtain a certificate to say that he was under the influence of liquor.

His father intervened and told the Doctor that his son was beaten by Police and he is in critical position.

Without examining, the Doctor told the police to take him to Colombo National Hospital where he was warded and treated for almost six days.

Later, he was charged for assaulting a police officer and obstructing his duties. No action has been taken against the Police Officers who tortured him. Even though Mayura complained to HRC and IGP no action was taken.

16. Sarilath Kamkananlage Saman Kumara --(25).

On 02.03.2012 Saman Kumara with a group of his friends went for fishing in a nearby canal. While they were fishing, a group of persons in civilian clothes came to them and asked for the name of the owner of equipments used for manufacturing illegal liquor.

When they replied negatively, they assaulted them. A group of village women including the mother of Saman, came to the scene and started to argue with the persons regarding the assault. At that moment, they came to know that they are Policemen attached to Special Task Force.

Somehow, Saman Kumara escaped and got himself admitted to Colombo National Hospital and received treatment for 10 days including a surgery.

Members of STF came to the hospital and threatened him saying that if he fail to withdraw the complaint against them, he would face bitter circumstances.

He complained to HRC and IGP without any redress.

17. Bora Andage Dayarathna --- (61).

On 07.03.2012 at about 7.00 pm four police officers including OIC, Crime Division of Kalutara South Police Station, entered his house.

They told him that they had an arrest warrant issued by Kalutara Magistrate against him. He replied to the police officers that it could not be and there must be some misinterpretation.

The OIC refused to accept his explanations and forced him to accompany them to the police station. He obliged and when he went with them to Kalutara South Police Station, they locked him in the police cell until 3.00 pm next day.

After that he was taken to Kalutara Magistrate Court, where he was released under Rs. 5,000/- cash bail and the Court ordered him to appear on 12.06.2012.

After the scenario, he came to know that:-

- a) He was arrested and produced in Courts for another man who too has the same name.
- b) The man wanted by the Court was a police accomplice.
- c) Summons issued to that person were never delivered by police but to misguide the Court they informed that they were delivered.
- d) When warrant was issued, police thought to produce someone else who bears the same name.

This is a common practice of police and Court accepted the police versions without any hesitation quite knowingly that the police is lying.

18. Mr. Dayananda, (61) An old man with reputation, was illegally arrested, detained and subjected to severe mental agony by police misguidance of Court. He complained to HRC, Attorney General, IGP, but yet no response. They all are aware as to what the police up to and give their blessings to the police.

19. Hettiarachchige Saman Pushpakumarasiri -- (31).

On 19.01.2012, at about 8.00 pm when Saman was waiting to meet his employer at the roadside, two police constables attached to Panadura South Police Station came to him and asked as to what he was doing. When he explained the reason for his waiting, without considering his sayings, they abused him in filth and arrested.

They took him to Panadura South Police Station and locked him up in the cell. Next day around 10.15 am he was asked to sign a statement which he was not allowed to read or was not explained to him and then he was allowed to go. When he questioned for the reason of arrest and detention for over 12 hours, the answer was that on suspicion.

About this illegal arrest and detention, he complained to NHRC and IGP but yet no result.

20. Urugoda Appuhamilage Tharanga Premkumara -- (25).

On 16.02.2012 at around 11.00 pm a group of policemen attached to Aluthgama Police entered his house and arrested him without giving any reason.

He was kept in police cell until 20.02.2012, for four days illegally. During those 4 days, he was taken out many times and intimidated. They repeatedly asked for a confession regarding some stolen hens, which he categorically denied.

On 20.02.2012 morning, he was forced to sign a statement, which was not read or explained to him. At noon, he was taken to Kalutara Magistrate Court and charged on theft of hens where the Court released him on bail.

He complained to HRC, IGP but no action was taken yet.

21. Hidamhewage Rumesh Tharanga de Silva --- (17).

On 06.02.2012 while he was in the classroom the principal called him and told him to go to Ambalangoda Police Station with a teacher of the school.

At the Police Station he was questioned about a digital camera belonged to a teacher. The police blamed him that he was the one who steal it and asked for the whereabouts of it.

Rumesh denied the allegation and said that he did not know anything about it. Police disbelieved his version and started to torture him. They hanged him and assaulted using rubber hose.

After assault and torture, he was released without any charge or recording of even a statement.

Later he came to know that the principal and teachers suspected him on a missing camera belonged to a teacher and requested the Police of Ambalangoda to get a confession from him about the missing camera.

Rumesh complained to HRC, Child Rights Authority, IGP and the Regional Director of Education, which have not responded yet.

22. Ranamukege Ranjith -- (45)

On 19.02.2012 at about 8.00 pm Ranjith was invited for a drink by one Sub Inspector Ranji who was serving at the Empilipitiya Police Station.

He went to “Sarath Chandra” Restaurant where he met the Sub Inspector Ranji and started to drink with him. In the meantime, Police Sergeant Lalith joined them with some others. According to Ranamukege Ranjith he bought a bottle of brandy for Rs. 1,350/-.

After sometime Sub Inspector Ranji got excuse from them and left the place. After his leaving, as Sergeant Lalith started to abuse in filth, Ranamukege Ranjith told him not to use bad language. Immediately Sergeant Lalith began to assault Ranamukege Ranjith and later others also joined him in it.

Ranamukege Ranjith was admitted to Embilipitiya Government Hospital where he was treated for injuries. According to Ranamukege Rangith the assault was a pre-planned one by them using their position as police officers.

He made complaints to Embilipitiya Police, HRC and IGP but has not yet received a response.

23. A. Karuna Pathiranalage Upali Amarasena --- (28).

On 15.05.2011 afternoon, on his way home, Amarasena was stopped by Megallawa Police and taken into custody.

At the time of arrest, they removed his shirt and tied blindfolding his eyes. Then his hands were twisted back and cuffed. From that moment, he was insulted and assaulted without giving any reason for doing these to him.

After torturing, on 16th at around 01.00 am they took him to police station. Later he was taken to Millawa Govt. Hospital. Although he complained to the Doctor that he was tortured, without listening to or examining him, as requested by the police, the Doctor filled up the Medico Legal Form.

On the same day around 12.30 pm he was produced before Magistrate Court and was released on bail.

As he was not in the position of paying the bail money, again he was detained at Wariyapola Prison. He complained to the prison officers that he was assaulted by police, but they refused to record it. Only after 4 days he was able to get release.

At Courts, the case was called on seven occasions. On 22.11.2011 the police told the Court that they cannot filled charges against him due to lack of evidence. He was released temporarily.

Later it was revealed that the police implicated him in order to cover up an 'Un-happened Robbery' to find compensations from Insurance Company by a businessman of the area with the help of police.

RECOMMENDATIONS

Human Rights Commission may recommend to Sri Lanka,

1. To implement the recommendations of the United Nations' Committee Against Torture (CAT), made at its last session in 2011.
2. The Parliament should pass legislation creating a competent and impartial body, for the purpose of conducting credible investigation into complaints of Torture, under the CAT act No.22 of 1994.
3. The officers of the Attorney General's Department and Judges including Judges of the Supreme Court should be provided opportunities to be educated on the international norms relating to prevention of torture.
4. Government must remove the obstacles for implementation of the recommendation of Human Rights Committee, relating to individual communications by the citizens.
5. The Government need to improve the quality of police officers, in particular officers above the rank of Assistant Superintendents' of police (ASP's), to enable them to uphold discipline within the police force.
6. Government must speedily enact the law relating to witness protection
7. The Fundamental rights cases under Article 126 of the Constitution must be dealt with speedily, the declarations of the Supreme courts on violation of human rights need to lead to legal and professional consequences and the compensation for the victims should be reflect the recognition of gravity of torture.
8. The Government Action Plan on Human Rights need to include all the issues raised above and set a timeline for elimination of torture.
9. The achievement of any of the above mentioned recommendations will depend on the allocation of adequate financial and other resources to improve the administration of justice, in particular to enable the reform of the police

Chitral Perera
Secretary
Janasansadaya