

**Review of Medico-legal Examination &
Documentation of Torture in Sri Lanka**

**Proceedings of the workshop held
in 12 – 14 December 2008
Sri Lanka**

Conducted by
**Janasansadaya
and
Asian Human Rights Commission**

Executive Summary

This report covers the proceedings including findings and the proposals made at the three-day workshop on Medico-Legal Examination and Documentation of Torture in Sri Lanka which was held in Global Towers Colombo Sri Lanka from 12th to 14th of December 2008. The workshop was conducted by the Janasansadaya in collaboration with the Asian Human Rights Commission.

Janasansadaya, which is devoted to elimination of torture, carried out several fact finding missions on torture in Police custody, torture in judicial custody and torture inflicted by other institutions, both government and private sector. It gave special emphasis to torture in Police and Judicial custody. These studies show a considerable increase in torture as the perpetrators are safe guarded by various power groups, especially politicians. In addition to this impunity, there are direct and indirect benefits to the perpetrators from the vested interests.

Although Sri Lanka is a signatory to the CAT and adopted it locally through the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No 22 of 1994, which prescribes a mandatory seven-year sentence for committing torturous acts, there is undue hesitation about applying the law in criminal courts.

Ratification of the Convention against Torture, followed by an act in the parliament to bring the convention into operation, does not mean that the convention protects torture victims unless all institutions function properly to implement the contents of it. Janasnsadaya found instances where the victims have been tortured repeatedly even after producing to the courts and sent to remand prisons. As there is no witness protection law in practice most measures taken to uphold the ratified Convention against torture becomes useless.

In protecting the victims, the Judicial Medical Officers (JMOs) and lawyers play a major role. Having generated information through a series of village level to institutional level fact finding missions, Janasansadaya decided to hold a final information generation workshop inviting key players such as the JMOs, Lawyers and activists. Lack of facilities for proper investigations and inspections, poor attitude of some JMOs towards the victims, improper report writing, lack of understanding about the roles and responsibilities, delays in courts, lack of facilities in prisons for victims in judicial custody and problems encountered by medical doctors in treating torture victims are some issues those were discussed at this three day fact finding workshop.

Creation of public opinion by promoting a national dialogue on torture in Police custody and prison(judicial) custody, launching of a well planned advocacy programme to eliminate torture with the assistance and support of a wider group of organisations, institutions those fight against torture, exerting pressure on authorities concerned through advocacy and lobbying to improve the health services in prisons, taking efforts to ascertain prisoners right to information and their right to speak to their legal representatives at least for a limited time period,

Informing about the recommendations of this fact finding workshop to UN bodies and other international institutes such as, UNICEF, UNDP, ADB, WB etc., operating in Sri Lanka, Sending a delegation followed by the report to discuss matters pertaining to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and related problems, to the Council of Legal Education and the University Grants Commission etc. are some of the recommendations made in the workshop,

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Abbreviations

AJMO	:	Assistant Judicial Medical Officer
CAT	:	Convention Against Torture
CJMO	:	Consultant Judicial Medical Officer
DMO	:	District Medical Officer
ER	:	Emergency Regulations (Sri Lanka)
IR	:	Infra Red
JMO	:	Judicial Medical Officer
MBBS	:	Bachelor of Medicine Bachelor of Surgery
MLEF	:	Medico Legal Examination Form
MLR	:	Medico Legal Report
MO	:	Medical Officer
NGO	:	Non Governmental Organisation
OPD	:	Out Patient Department
PTA	:	Prevention of Terrorism Act (Sri Lanka)
PTSD	:	Post Traumatic Stress Disorder
UN	:	United Nations
UV	:	Ultra Violet

Draft

Report of the three-day workshop on Review of Medico-legal Examination & Documentation of Torture in Sri Lanka

1. Introduction

Janasansadaya (The People's Forum) was founded in 1992 to address Human Rights violations, especially to advocate and provide legal aid for torture victims throughout the legal process in Sri Lanka. While these programmes are being carried out it realised that there is a greater need to take up this issues with the Judicial Medical System in Sri Lanka since it plays a major role in the cases related to torture survivors/suspects.

In keeping with the Universal Declaration of Human Rights in 1948, later the Convention against Torture in June 1987, and domestic adoption of the Convention by Act 22 of 1994 by the Sri Lanka government, Janasansadaya initiated a series of discussions with the Judicial Medical Officers (JMOs) to discuss this issue at length. These discussions revealed that there are some critical issues and problems, which need immediate attention if at all to prevent torture inflicted upon the people arrested by police.

The discussions also led to understand that the issuance of inadequately prepared medical reports has caused injustices to the torture survivors/suspects in the recent past. Accordingly, with the overall purpose of thoroughly analyzing and seeking possible solutions to the prevailing problems, Janasansadaya organised a three-day workshop to review the existing system of medico-legal examination and documentation of torture in Sri Lanka, inviting Judicial Medical Officers and Lawyers. The specific objectives of the workshop were as follows;

1.1. Objectives of the workshop

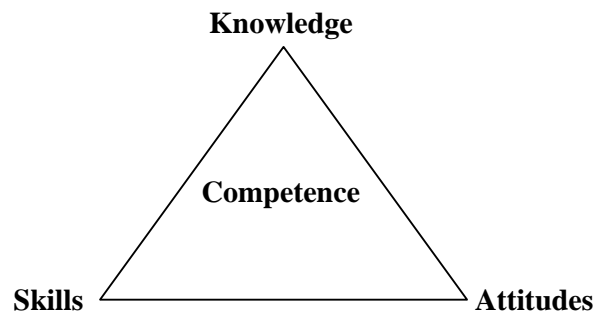
1. To enhance the capacity of the participants to take appropriate actions at least at individual level to ensure justice to the persons who have been tortured,
2. To prepare a report based on information generated through the workshop to be submitted to policy makers.

1.2. Methodology

The subject of the workshop by nature is not as simple as most of the subjects discussed in majority of the workshops. Therefore, the selection of participants for the workshop had to be done very carefully. Janasansadaya with its rich network in the field of health and especially the closer relationship that it maintained with the progressive personnel involved in the field of Forensic Medicine was able to select 15 out of 40 of the national cadre of consultant JMOs in the country to discuss this very important subject for three days. The significant fact was that many of the JMOs volunteered to take part in the workshop amidst their hectic work programme, considering this as an important national need. In addition three lawyers who involved in the field of human rights and work closely with Janasansadaya too were participated in the workshop throughout exploring the legal aspects of the subject concerned.

In order to generate rich information from the participants, who used to grappling with completing a cumbersome day to day duty, which is not always pleasant to involve in, the resource persons adopted a different approach which gave them impetus to participate in the workshop lively. Accordingly, the methodology adopted included start up activities such as analyzing self and reflecting on their responsibilities and tasks as country persons. Further the activities involved the participants to reflect and understand on their own competence to perform duties effectively. In this process, before discussing the matters related to the torture, the ground situation was prepared by providing the participants to reflect on developing competency. The three basic essentials Knowledge, Skills and Attitudes were discussed at length and their relationship with each other and specially to the duty they perform. As these three essentials form a triangular linkage as shown below to effect competency, lack of one requisite would cause very poor end results. As such to provide just and competent decisions or end results, it was agreed that these requisites should be cultivated with meticulous practice. The three areas related to the competency are given in the figure 1 below.

Figure 1: Three factors influence competency



It was further discussed how these requisites enhance the out put, especially in the case of providing a medical examination report of a torture survivor/suspect of Police to the courts. Even if a JMO is knowledgeable and possess highly developed skills, without proper attitude to serve a suffering citizen may not issue a proper report that bring justice to the sufferer. Inadequacies in providing information due to low interest based on the attitude of the person will hinder in bringing the perpetrators to justice.

Donaldson's Matrix for Systematic Approach to a Planned Learning Event clarifies what role the consciousness plays in developing one's competence. The participants were exposed to this theorem and a live dialogue was developed bringing personal experiences to understand the relationship between consciousness and competence, which highly contribute to persons to perform their duties efficiently and effectively to achieve the set objectives of the professions they involved in. The four quadrants discussed are shown in the figure 2.

Figure 2: Donaldson's Matrix for Systematic Approach to Planned Learning Event

Consciousness	Conscious Incompetent	Unconscious Incompetent
	Conscious Competent	Unconscious Competent

Self-consciousness is an essential element in changing attitudinal behaviour, which contributes to enhancing competency. In this process one should be able to reflect, who am I, what my role and to whom I am accountable? When one realizes that the services are rendered to the most impoverished helpless groups in the society, one will be able to change one's attitude towards the duties.

Discussion further extended to explain "Terminal Change" and "Behavioral Change". When "Change" is occurred, "Resistance" automatically develops obstructing the anticipated change. Strong resistance to change is often rooted in deeply conditioned or historically reinforced feelings. Patience and tolerance is required to help people in these situations to see things differently. There are examples of this sort of gradual staged change everywhere in the living world. Also, certain types of people - the reliable/dependable/steady/habitual/process-oriented types - often find change very unsettling.

People who welcome change are not generally the best at being able to work reliably, dependably and follow processes. The reliability/dependability capabilities are directly opposite character traits to mobility/adaptability capabilities. It is important to be mindful of people's strengths and weaknesses. Not everyone welcomes change. Therefore it is of utmost importance to take the time to understand the people one deals with, and how and why they feel like they do, before any action is taken.

Participant centered Participatory Interactive Methodology was employed through out the workshop, enabling the participants to freely present their views and ideas on the subject matters, moderated by a moderator/facilitator. The workshop provided an opportunity for the Judicial Medical Officers, Lawyers and the NGO participants to acquire new skills, share lessons learned and build consensus on moving forward the workshop objectives and agenda. The workshop also gave an opportunity for open discussion relating to improved relationships between members, norms and codes for working together and sharing of resources. The sessions were organized into thematic presentations, capacity building sessions and technical updates. In order for the workshop to be fruitful and efficient, importance was given to the two steps, logical agenda of subjects, and the efficient group interactions.

In using step by step analytic progression, the discussions were conducted within a pre-determined general framework that, facilitated an analytical progression of the arguments, uses of a simple and well defined terminology, broke the discussion up into manageable separate segments, and encouraged the thinking about "reasons why".

In applying the second step, efficient group interactions, methods were used to the optimal exploitation of all resources available within the group as different people have different skills, and it is important to allow them all to contribute accordingly. In this process, group discussions, presentation of propositions by one group-member to the entire group, group work presentations to plenary sessions and discussions or problem analysis were encouraged.

Through this process it was also anticipated to equip the participants with new skills in advocacy, social mobilisation, resource mobilisation, communication and harness individual and collective commitment in achieving and performing their duties effectively and efficiently. For this purpose change should take place within every individual. It was also emphasised that the "creative person" who lives in oneself is suppressed by one's position, social relationship etc. The effort is also to reawaken the "creative person" with vigor and strength, so that he could look at the world positively.

Since all sessions were participatory in nature and included time for extensive discussion and group work, the structure of the workshop resulted in an engaging, dynamic dialogue with scope for further work being defined and mapped. The workshop was well received by participants and all felt these workshops and the open dialogue should continue in the future. In the words of one participant, it was "... well-organised, participatory, interactive, [there was] new learning, exchanging ideas, hospitality, friendliness, making new friends.

2. Issues discussed

In order to achieve the specific objectives, Janasansadaya with its work experience involving the torture victims has identified some critical areas to be discussed in the workshop after consulting a group of JMOs who were keen on addressing the related medico-legal issues. The issues identified and discussed in the workshop are described in detail below.

2.1. Issues identified for discussion

1. Medico-Legal examination of torture victims
2. Referral practices
3. Improving medico-legal report writing
4. Issues related to Court Proceedings & Attitude of courts towards torture
5. Protection of evidence through active participation
6. Custody of torture victims; Prison medical aspects, Prison custody and Non-prison custody
7. Psychological aspects of torture
8. Why perpetrators tend to torture?

After preparing the ground situation and stimulating the participants on the theme, they explored the above issues and the results of the discussions held groups and plenary on issues identified are described below.

It is essential to clarify the usage of abbreviated term “JMO” in current Sri Lankan medico-legal practice. The term “JMO” is used in this text to mean a consultant JMO who is a full time and qualified medico-legal specialist or other medical officers performing full time medico-legal duties. However the grade medical officers who cover up the medico-legal duties in peripheral hospitals situated island wide are also casually referred as JMOs by the police and public in many instances. The full time postgraduate trainees in forensic medicine are usually referred as assistant JMOs (AJMOs) during their training period. The DMOs are senior grade medical officers who perform administrative duties in peripheral hospitals. They often perform medico-legal duties in their respective hospitals and hence also called as JMOs in some instances. The junior grade medical officers who are recently appointed to peripheral hospitals for the post of Medical Officer–medico-legal [MO medico-legal] are also referred as JMOs in some instances.

2.1.1. Medico-Legal examination of torture victims

For the purpose of conducting a medico-legal examination of torture survivors/suspects, it is important to assess the facilities currently available and manpower within the judicial medical system. The group discussed in detail and examined the present situation, conditions and requirements for a fair examination. The data generated revealed some disturbing facts. Lack of minimum equipment and instruments needed, limited number of qualified medical personnel

overseeing vast areas, lack of examination conditions and requirements for forensic examinations were surfaced.

Although the Office of the JMO is a separate unit attached to the hospital, it was revealed in some places only a table and a chair is available to the Consultant JMO, hindering him/her conducting the examinations properly. The injuries caused by perpetrator/s on a victim such as abrasions, lacerations and superficial bruises could be easily identified during external examination while injuries such as deep bruises, fractures and internal haemorrhages cannot be determined without the use of proper tools and equipment such as X-ray machines, US & CT scanners, UV and IR lamps. Since these facilities are not available in medico-legal units the JMOs have to refer victims to other units of the hospital for such investigations. The availability and accessibility to these investigations in state hospital sector is a relative factor and hence the victims are sometimes denied of their right to proper investigations.

Although the police influences on routine medico-legal examination are low, the presence of police official/s during the examination hampers the impartiality of it. When the police are present in the examination room, the victims always hesitate to tell exactly what happened. It should also be taken into consideration that the possibility of victim escaping when left alone with the JMO. It was revealed that examination rooms in many medico-legal units where the torture victims are examined are not protected properly, installing window security meshes or window security bars preventing the escape of victims when brought to the JMO for examination. This situation has been used by the police officers to stay beside the victim during examination and thus preventing him/her giving a proper statement to the medical examiner. As such the victim is placed in a very unfair position preventing him/her openly speaking to the JMO/medical officer and giving a detailed description of the incident which is the foundation for evaluating injuries for medico-legal opinion in the final report.

In several occasions the Judicial Medical Officers have complained about the inadequate resources and insecure situation in their examination rooms to relevant authorities, but those requests have received minimal attention.

In other instances where the police admit a torture victim through the Out Patient Department (OPD) usually the victim's statement is not recorded by the medical personnel who are in duty. S/He may be admitted to a ward and later produced to the JMO. In cases of this nature as victims report is not available; the injuries caused may not be properly assessed. It should also be noteworthy that only a few victims are admitted to a hospital through the OPD by police. The OPD medical personnel lack the knowledge in asking the relevant questions and gathering information like the JMOs who are trained and possess expertise of the subject. When a victim's history is not recorded properly at the OPD, it creates obstructions to investigations conducted by a JMO at a later stage.

When police officials want to produce a victim for medico-legal examination, some times, they wait until an Assistant Judicial Medical Officer or a JMO who is favourable to them is available at the hospital. Although this practice is conducted in a very subtle way, it is noted in many instances that such arrangements are made delaying in producing the victim to some JMOs.

In the cases of post-mortem examinations, police purposely delays the investigations showing various reasons. One excuse they give is the unavailability of a JMO in the hospital. In some hospitals there are no JMOs and as such the police personnel take this opportunity to avoid queries raised by their superiors and the law authorities for not producing the victim to a JMO.

Usually the JMOs are available in hospitals from 8.30 a.m. to 4.00 pm and afterwards they are on call for urgent medico-legal cases brought/referred to the respective hospital premises.

It was also stated that there are no proper instructions given to police as to what action they should take in a situation when a JMO is not available in a hospital to whom they should produce the victim. Therefore, sometimes victims are taken to private hospitals or private clinics for treatment, to bypass the routine medico-legal procedures which are not strictly followed in such places. When a trauma/torture victim is produced before an OPD medical officer, s/he may not ask and record the patient's history in detail. In some cases s/he may treat the patient and discharge. Admittance to a hospital or discharging a torture victim after treatment should be determined ideally by a JMO but it is not the current practice. If a victim is admitted to a hospital without the knowledge of a JMO, a follow-up examination could be conducted to determine the causes and effects of the injuries. Injuries could be re-assessed and the causes for such injuries are determined using forensic expertise and subsequently reported in the MLEF.

2.1.2. Referral practices

Referrals are highly important in the process of medico-legal examinations. Many JMOs conduct referrals as and when necessary. As there are no specialists abundantly available and those who are available are of high demand, the referral process naturally gets delayed. There are other impediments such as shortage of specialists in some hospitals and lack of equipment or tools necessary to conduct tests properly and on time. Further the reports of the specialists also depend on their attitudes. However, as and when necessary the essential tests and second opinion is sought by the JMOs from different specialists to determine the causes of the illness or injury.

The JMOs usually consult their colleagues as and when they need an alternative opinion. In remote areas, it becomes difficult and as such the JMO alone has to conduct the examination. In some cases the required tests are not performed as there are no facilities for such. They include x-rays, biopsies and pathological evaluations.

The government has not taken adequate effort to promote psycho-social support to torture victims. There have been attempts to provide counseling services and social support for those needing it. The major part of psychosocial support comes from the NGO sector. Mental health resources, limited as they are, concentrated in Colombo, the Western province, in Kandy, the Central province and in Galle, the Southern province. Most practicing psychiatrists, clinical psychiatrists, psychiatric social workers, mental health nurses and occupational therapists are concentrated in these areas.

Most of the torture victims are not subjected to psychological examination in the current context to assess whether they have experienced psychological torture. If psychological examination findings are reported by a JMO, usually it is challenged by the lawyers as it is a specific task which should be undertaken by a psychiatrist/psychologist. As such in most cases if the victim is found in unsound mentality he/she will be referred to a psychiatrist/psychologist asking for his/her opinion and reporting. The most unfortunate situation is that the lack of hospitals or specialists to whom the psychological referrals could be submitted. Forensic psychiatry is not a well recognised specialty in Sri Lanka and the only psychiatrist performing forensic examinations is based in the Mental Hospital Angoda. The other major factor is the lack of adequate JMOs deployed in hospitals. The table 1 shows the availability of the consultant JMOs in Sri Lanka.

Table 1: Availability of Consultant Judicial Medical Officers (CJMOs) in Sri Lanka (by December 2008)

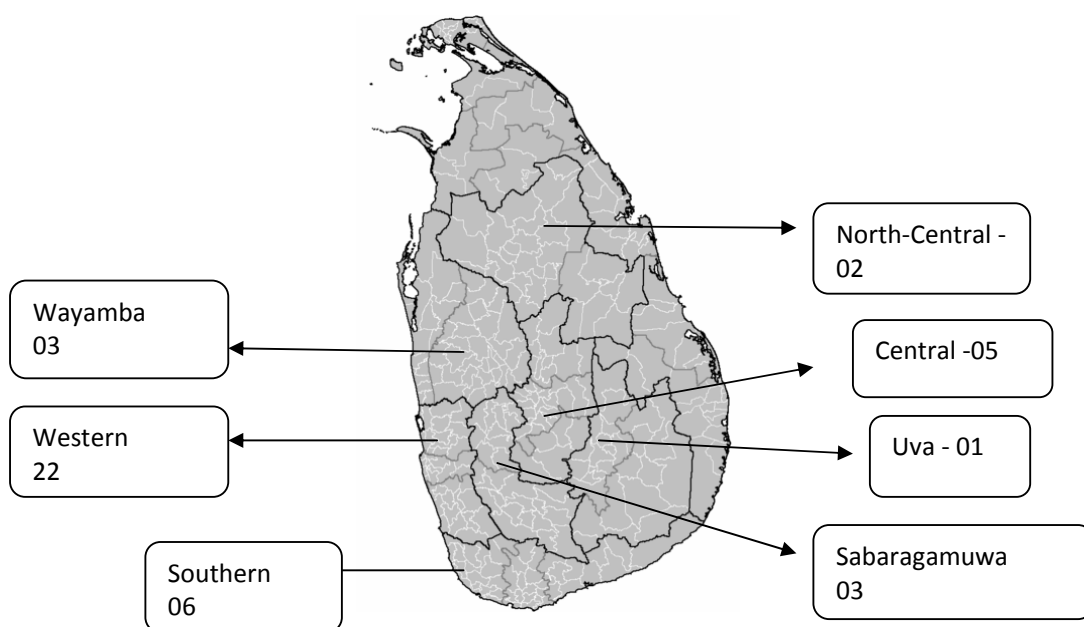
1. Western province				
Location		No of CJMOs	Total in the province	Percentage of the total availability
Universities	1. Colombo Medical Faculty 2. SriJayawardhanapura Medical Faculty 3. Kelaniya Medical Faculty	05 03 04	12	28.57%
Hospitals	1. Colombo 2. Ragama 3. Kalubowila 4. Gampaha 5. Negombo 6. Avissawella 7. Panadura 8. Kalutara	03 01 01 01 01 01 01 01	10	23.81%
2. Southern Province				
Location		No of CJMOs	Total	Percentage
Universities	1. Ruhuna Medical Faculty	02	02	4.76%
Hospitals	1. Karapitiya 2. Matara 3. Hambantota	02 01 01	04	9.52%
3. Uva province				
Location		No of CJMOs	Total	Percentage
Hospitals	1. Badulla 2. Monaragala	01 Nil	01	2.38%
4. Sabaragamuwa province				
Location		No of CJMOs	Total	Percentage
Hospitals	1. Ratnapura 2. Kegalle 3. Embilipitiya	01 01 01	03	7.14%
5. Central province				
Location		No of CJMOs	Total	Percentage
Universities	1. Peradeniya Medical Faculty	02	02	4.76%
Hospitals	1. Kandy 2. Matale 3. Nuwara Eliya	01 01 01	03	7.14%
6. Wayamba province				
Location		No of CJMOs	Total	Percentage
Hospitals	1. Kurunegala	01	03	7.14%

	2. Chilaw	01		
	3. Kuliyaipitiya	01		
7. North-Central province				
Location		No of CJMOs	Total	Percentage
Hospitals	1. Anuradhapura	01	02	4.76%
	2. Polonnaruwa	01		

NB: It is to be noted that the above figures could have been changed slightly due to leave and other urgent changes done to the work rosters.

According to the official figures, the total number of Consultant JMOs presently available for the entire country is forty two. Out of the forty two JMOs, twenty two (52.38%) are stationed in Colombo while the balance nineteen is spread over six other provinces. Out of 22 JMOs in the Western province, 12 (54.5%) are employed in the universities and medical colleges. This is 28.5% from the total strength of JMOs in Sri Lanka. The significant factor is that there are no Judicial Medical Officers for Eastern and Northern provinces. In the Eastern province, for the last two decades, there was heavy fighting going on until beginning of the last year between the Tamil militants and the government armed forces while in the Northern province, the same is still going on between the said two parties. The figure 3 shows the distribution of JMOs in Province wise.

Figure 3: Distribution of Consultant JMOs in province wise



Discussing this situation in detail the participating JMOs revealed that medical examinations are usually conducted by the JMOs when torture survivors/suspects are produced by the Police. In case if there is no JMO affiliated to a hospital, the examination is conducted by the MO medico-legal or a grade medical officer.

2.1.3. Improving medico-legal report writing

Documentation of the history and the injuries of the torture victims for medico-legal purposes are performed by Consultant Judicial Medical Officers of the Ministry of Health, academics of the

Departments of Forensic Medicine in university medical faculties and medical officers of the Ministry of Health with or without postgraduate training in forensic medicine. The Consultant Judicial Medical Officers are employed under the Ministry of Health or Departments of Forensic Medicine in the university medical faculties and are independent from the police and security forces.

Medico-Legal Report (MLR) is of paramount importance when it comes to take legal action against perpetrator/s who has tortured the victim/s. In preparation of these reports highest attention should be given as it gives a complete description of the victim's situation.

The Medico-Legal Examinations of torture victims in Sri Lanka are performed by four different categories of medical personnel. They are;

- Consultant JMOs, (Specialists in forensic medicine) in major hospitals and university forensic medicine departments,
- Post graduate trainees in forensic medicine(AJMOs),
- MO Medico-Legal (who have undergone limited training in forensic work) and
- Grade medical officers who do not have special training in forensic medicine

When an examination is completed, the Medical Officers submit their report to relevant authorities such as the Police or Courts to facilitate them to continue proceedings. In Sri Lanka, as discussed above, there are 42 Consultant JMOs (specialists in Forensic Medicine) and many of them are based in major cities and university departments of Forensic Medicine. The facilities provided to medical officers who work in the medico-legal (forensic) field are very poor and inadequate, except in the university forensic medicine departments and major hospital medico-legal units.

Although many government medical doctors especially working in peripheral hospitals examine torture victims, they do not possess special training in forensic medical examinations. Other than the professionals who have been trained, all other physicians have a poor knowledge in forensic medicine and this situation badly affects the torture victims.

Having evaluated the present situation of the investigating system, the participants were divided to two groups and provided with two MLRs prepared by two medical personnel to study critically and present their views separately to the plenary. The group exercise was conducted to;

- Assess the existing format of MLR and the quality of report writing and
- Make Suggestions to improve the quality of the report

The findings and the suggestions made to improve the medical examination reports by the participants were amalgamated and are shown in the table 2.

Table 2: Findings and suggestions to improve the quality of the reports

MLR Report No 1.	
Weakness	Suggested improvements
1. Date of issue of MLR is not given	The date of issue of the report should be given. The JMO should clearly give the date of issue of the report as it is highly important when the victim is inspected.
2. Person who produced the victim is not stated	The person who produced the victim should be given. This should be considered as important evidence.

3. History produced by the victim is not sufficient	Under short history given by patient, sufficient information should be furnished. This information is highly important as it gives the background and details of the nature of the torture and how it was inflicted upon the victim. Also it gives a clear picture of the incident took place allowing the Medical Officer to probe more intensely in conducting the investigation.
4. Lack of information in General examination	Sufficient information should be provided under general information. It is necessary to give information on blood pressure etc under this.

Weakness	Suggested improvements
5. Injuries	If possible photographs should be furnished. If not, simple diagrams showing the position of the injury should be given.
6. Details of tests conducted	Details of the tests conducted are important and should be furnished. If any tests such as ENT, Blood tests or urine tests are conducted, the results should be furnished.
7. In the form under "Further Notices" no sufficient space to give information.	Sufficient space should be given in the form to provide information about the compatibility of the information gathered with the history given by the victim.
8. Lack of information. Age and name is not given properly. The short history given by patient is not adequate at all. Hand writing is illegible and very poor presentation. Language used in the report is not proper, only short sentences written. As a whole the medical report is not properly prepared. It is completed without any commitment and interest	Age of the victim should be given with the full name and not only initials. The report should be written properly with full sentences giving details. More commitment and care is needed when preparing a MLR as it is the most important document that takes up at the courts. The information should be given from the victim's language, as he/she stated. All efforts should be taken to create awareness among the patient about the importance of giving details.

MLR Report No 2.	
1. History produced by the victim is not sufficient	Under Short history given by patient, sufficient information should be furnished using victims own language.
2. No mention about the torturer	The details of perpetrator should be mentioned in the report.
3. No pictures or diagrams, (injuries, descriptions)	Pictures or diagrams of the injuries should be furnished wherever possible
4. No mention about the tests conducted	Details and the results of the tests conducted should be given in the report.
5. Psychological information of the victim not adequate	Information on the psychological sequelae associated with exposure to potentially traumatizing events such as significant signs and symptoms of illness, Include stressors, precipitating factors, mood, lethality, any psychological symptoms, nutritional status, changes in appetite, sleep and activity disturbance, ability to care for basic personal needs, should be provided.

6. Exact Police presentation to: Hospital - information not sufficiently provided.	Information should be given on the presentation. They include: patients demographic information, day and date of presentation, arrival time to department, departure time, time in department, diagnosis, psychiatric history, who presents the patient, Police or by who should be recorded.
7. Ex: stage of healing not sufficiently explained	If any injuries are found to be healed the report should give the stage of healing. Simple statements such as “No injuries” are not sufficient.
8. No mention about the torturer, no pictures or diagrams, no mention about any tests conducted in the report. No mention about the torturer, no pictures or diagrams, no mention about any tests conducted in the report.	Every effort should be put into furnish high-quality medical reports. In case if there is no sufficient space for description of history or/and examination findings, extra pages should be added/annexed to the original report. The usage of “free style” reports should be promoted. This is approved and accepted by the courts.

Discussing at length about the issue of improving medico-legal report writing, at the plenary session all participants came to a common conclusion that the studied cases have not been adequately prepared by the respective DMOs who issued the report. This could be due to lack of training in the field or inexperience in the work.

Careful and consistent documentation by JMOs of cases of torture and of those responsible contributes to the protection of the physical and mental integrity of victims. In a general way to the struggle against torture, and the JMOs, by ascertaining the sequelae and treating the victims of torture, either early or late after the event, are privileged witnesses of this violation of human rights.

It was revealed that some JMOs do not use body diagrams to record the location and nature of all injuries. Some forms of torture may initially not be detectable. They may be manifested and detected on follow-up examinations. Whenever and wherever possible, the injuries such as cuts, bruises etc need to be photographically recorded, but the barrier for this is that unavailability of a camera. If a camera is not available, the JMO can use body diagrams at least to illustrate the injuries.

As the victims, because of the psychological sequelae from, which they suffer or the pressures brought on them, are often unable to formulate by themselves complaints against those responsible for the ill-treatment they have undergone and the absence of documenting and denouncing acts of torture may be considered as a form of tolerance and non-assistance to the victims.

Absence of physical evidence does not mean that torture did not occur. Especially when it comes to psychological torture, it leaves no marks or scars. In case, if there is no enough space, “free style” reports are encouraged and should be furnished as they are legally valid and accepted by the courts.

Trust is an essential component of eliciting an accurate account of abuse. Earning the trust of the victim who has experienced torture and other forms of abuse requires active listening, meticulous communication, courteousness and genuine empathy and honesty. Therefore, it is suggested that JMOs need to improve these qualities considering them as work ethics.

When conducting a medical investigation of a victim for legal purposes, objectivity and impartiality should be maintained. Objectivity, accuracy and impartiality should be considered as the key components to maintain professional credibility and every effort should be taken to have empathy towards victims when carrying out the examination.

2.1.4. Issues related to Court Proceedings & Attitude of courts towards torture

- Most judges take it to account the notes on the marks, blemishes or bruises of a victim. But in the report when the JMO states that the victim is in “severe pain” it is not taken into consideration seriously. Some victims complain that they have been assaulted with a blunt instrument/weapon and as such have pain inside their body surface. Sometimes when the muscles are mashed it cannot be noticed from outside. Some methods of torture inflict internal injuries without leaving external marks. Only when the damaged part is touched the pains come. As such the reports have to be prepared explaining the situation of the victim.
- The judges depend heavily on the information provided by the Police officials. The Attorney General is also usually dependent on police investigators. The role of the Attorney General must be enhanced in order to counteract the negative effect on investigations.
- Some people have been waiting for three, four, or five years for their cases to be decided. Then the years go by as the victim seeks redress. It becomes, in the end, another form of victimization, another form of injustice, not unrelated to the matter of official impunity. One is made a victim of abuse, and then one is made a victim again in the course of seeking to rectify the wrong.
- One of the most disturbing factors is that delaying of court cases after the submission of the MLEF to the police. In some cases, the court case starts several years after the submission of the MLEF and the JMO was summoned to the courts to give evidence. In one instance, it took nearly eleven years. When the directive is sent to the JMO to attend the court, he is transferred from the station he worked to a new location. In such situations, JMOs face serious problems as a result of these delays. They have to search for the old documents, prepare and attend courts on a short notice.
- JMOs are supposed to keep the medical officers copy of the MLEF in their custody. Even if they are transferred from one place to another they have to carry all these documents with them until they retire. No special provisions such as record keeping facilities are provided for this purpose. Only a meager transport fee is given when the JMOs have to take these documents to their new destination.
- At times, the court sends orders asking for details of victims of the delayed cases giving wrong and insufficient information. In one case a vehicle number was given and asked the JMO to furnish information about the victim who travelled and had with the accident. This type of irresponsible attitude of the court record keepers always put the JMOs in a very uncomfortable position and makes their work more difficult.
- In some cases, the court subpoenas are incorrectly dated and sent with inadequate information. If the JMOs do not respond as a result of the inadequate information, the court may issue a legal warrant asking the JMO to appear before the judge. This is an extremely embarrassing situation and also it goes as a black mark to his/her profession.

Although the difficulties encountered by the JMOs as a result of the delays in delivering summons with inadequate information have been notified to authorities concerned, there is no adequate action taken to rectify them.

- Sometimes the court summons is sent with short notice making preparations difficult. Sometimes the cases are postponed without hearing for many months putting the victims in an unfortunate position. They are kept in prison for a longer period. Because of all these things, the victims suffer mostly. The judicial system does not consider the cases empathetically. Most of these delays are due to communication problems. The communication system is not developed well enough to cater to the needs of the beneficiaries.

2.1.5. Protection of evidence through active participation

The findings of the group work and proposed solutions to overcome the issues are given below

1. First and foremost importance the protection of the torture survivor. For this purpose it is important to provide proper medical care and give medical attention to save his/her life. Medical examinations should be carried out promptly and all necessary medications and care should be administered without any delay.
2. It is highly important to identify the torture survivor correctly. For this purpose, at least the finger prints should be taken on the document. If available, a photograph should be taken and attached.
3. Obtaining samples, such as blood, urine etc from the person and directing for tests without any delays to gather information on physical condition of the victim. If necessary to obtain court orders to conduct such tests,
4. Submission and direction to specialists and obtain their opinion whenever necessary, Follow-up once submitted or directed to specialists,
5. Protection of all records and reports, especially X-ray reports as they could get distorted if exposed to heat or light,
6. Preparation of the medical reports properly, e.g. MLEFs and MLRs and attest them properly by placing JMO's signature,
7. The victim and the accused should be examined by two different JMOs at all times if possible,
8. Should never be under obligation or yield to any outside influences or forces,
9. Should protect and uphold the respect and independence of the profession.
10. A system should be developed to make copies of the medico-legal reports (copied and scanned) and kept in a safe place in the institution – Initially this should be started from the Western Province and scale-up to other provinces,
11. Improvement of infrastructure, especially the technology – All necessary equipment and tools should be secured and kept within the office of the JMO enabling the JMOs to conduct examinations accurately and properly, The equipment & tools are:
 - i. Proper (adjustable) Examination bed and chairs,
 - ii. Table, secure cupboards,
 - iii. Stethoscope,
 - iv. Blood Pressure apparatus,
 - v. Measuring Scales & charts,
 - vi. Digital camera,
 - vii. Spot lamp,
 - viii. UV lamp,

- ix. Computer with all accessories eg. printer & scanner,
 - x. Safer room secured with window bars or wire mesh
12. A proper IT network should be established to gather data and information,
 13. Trained supportive staff should be provided to the Office of the JMO who could assist JMOs in medico-legal examinations,
 14. An active Witness/Victim protection system should be initiated in Sri Lanka. An effective victim and witness protection system is essential for the proper functioning of any justice system, as it protects victims and witnesses from threats and attacks, and thereby encourages the reporting of crimes and for witnesses to come forward. It allows witnesses to present their evidence in a full and impartial manner, and prevents or mitigates the re-victimization of victims and the victimization of witnesses.
 15. Provisions on Video recording: The provisions on video recording are seriously flawed as they undermine one of the key rationales for the legislation i.e. the need to protect witnesses who feel threatened by hostile and violent state and non-state actors.

2.1.6. Custody of torture victims (Prison medical aspects, Prison custody and Non-prison custody)

An important aspect that requires highest consideration is the need for an efficient witness/evidence protection scheme. Such a system would ensure that witnesses are not intimidated and threatened during and after the court proceedings. The absence of a witness/evidence protection scheme seriously affects criminal justice. There were and are many complaints about witness elimination and evidence destruction. When victims are frequently and seriously threatened, many fear to pursue their complaints. The most vulnerable are those who have made complaints against the state authorities, and particularly against police officers accusing them for committing torture.

Lack of a proper protection scheme for victims of police abuses and torture is seen as a major problem. When a police officer is accused of torture he is not often arrested and continues to operate in the same police station. In such situations he could be a threat to the complainants. He is also in a position to destroy evidence. It is a known fact that police commonly fabricate evidence and alters documents to satisfy third parties.

It should be noted that there is no routine examination of prisoners by medical officers on their admission or discharge from prison. They will be examined by a prison medical officer only if they complain that they are not well due to illness or injuries. There is no standard protocol for this purpose.

The victims are produced for medico-legal examinations by the police (with or without a court order) or prison officials. Sometimes, the victims have to be examined at the request of their lawyers.

The situation of the prisoner patients in prisons is worse. The following facts revealed by prison medical officers in a previous fact finding mission were deeply discussed by the participants.

1. Lack of tools and equipment and also non availability of proper examination rooms, examination beds and other needed facilities in prisons, e.g. patients have to be examined in front of other patients, no partitions or screens, inadequate security, no examination beds or chairs.
2. Patients cannot be referred to JMOs for examination whenever necessary, e.g. the prison patients are produced after 10.00 am in the morning and examinations have to be completed by 12.00 noon. If there are a large number of patients, no proper attention could be paid to each one.
3. In side the prison hospital, it is prisoners who are engaged to function as attendants, and assist medical officers. Their knowledge, education levels etc. hamper treating patients properly without delays.
4. As the Prison officials who are in the administration do not cooperate with medical personnel, many administrative problems occur. They disregard advises given by the doctors in discharging their duties to patients. Prison officials in some occasions abuse doctors in foul language and do not maintain records properly.
5. There are no nurses to assist prison doctors when they are managing patients. Since the prison medical doctors come under the Ministry of Health and all other personnel who work in the prison hospital come under the Department of Prisons, many administrative problems arise.
6. The prison officers ignore instructions given to transfer patients to other hospitals for treatment and recommendations made to produce patients before medical specialists for examinations and treatments,
7. Sometimes the abusive behaviours of prisoners, their uncleanliness, and malnourished conditions create problems to medical officials.
8. As the prisoners come from different social stratum, problems arise when all cannot be treated in the same manner.
9. There are no proper record rooms or space to keep the medical records of the patients safely.
10. As the medical records and reports are not securely kept, if gets damaged or destroyed, the patients as well as doctors face problems when required for judicial matters. Moreover, it is prisoners who are engaged to search these documents and records when needed.
11. Problems created due to lack of medicine and also ambulances, even if ambulances are provided to prison hospitals, it is found that they are used by prison officials for other purposes.
12. At present, there is no provision in the law that allows the JMOs to visit prisons and examine the victims. Hence JMOs are not usually brought to prisons to examine trauma/torture victims and such victims may or may not be produced before the JMO either. This has to be changed completely to protect the rights of the victim,
13. As there are no MLEFs for jailed victims the JMOs have problems in recording the history and examination findings of them.
14. Even if the patient states that the prison officers assaulted him/her the prison medical officials are reluctant to record that in the reports.
15. Even when the prison doctors have made complaints about these situations to higher officials of the prisons, no action is taken to remedy them. The complaints were made also to the officials of the Ministry of Health but no efficient action have been taken so far and no justice done to patients and doctors.
16. The trade unions in the medical service also have not taken adequate action on these issues.
17. At present all the prison medical officers affiliated to the prisons are employed under the health department. They are frustrated due to lack of facilities and inability to perform their duties properly. If they refuse to work under these conditions it will be a blessing in disguise to the prison department which will employ their own medical personnel. If this

happens, the presently available minimum check and balance situation will disappear and the victims will be subjected to more cruel torture

18. From Judicial custody to Police custody - The victims who are sent to remand prison after producing to courts are transferred to police custody when a request is made by the Police to the courts. Although all evidence and information necessary should be collected from a victim before sending to the remand prison (judicial custody), the practice of getting them to interrogate further by taking them back to police custody occurs. There is a strong possibility of torturing the victim during this period. No medico-legal examination takes place afterwards.
19. At present mobile phones are illegally used inside the prisons. A prisoner can contact any one outside by paying a fee. These calls are not monitored and many prisoners use this facility even to organize dangerous and criminal activities while staying in the prison. Some prison officers are also involved in this business and as a result telephone calls are not monitored.

Several cases related to torture victims in prisons were taken up for debate and the participants were divided into two groups and asked to discuss and present their findings and conclusions to the plenary. The findings of the two groups on the themes, Protection of evidence through active participation and Custody of torture victims, Prison medical aspects, Prison custody and Non-prison custody are given in the Annexure 1.

2.1.7. Psychological aspects of torture

The use of physical and psychological methods of torture is now endemic in Sri Lanka. Many victims who underwent torture have not survived. Those who survived have developed various physical and psychological sequelae. Of these psychological sequelae, depression, post-traumatic stress disorder (PTSD) and anxiety are common. It is not only the victims that suffer, but also their families. Sometimes a father is assaulted or tortured in front of his own children. This has created severe mental complications in the minds of the children.

In governance mechanisms and various other social and political structures lawlessness and torture, either physical or psychological, is institutionalized.

The Prevention of Terrorism Act (PTA) and Emergency Regulations (ER) are facilitating Police and other security forces to prolong detention without charges or trial, in remote locations with harsh conditions. The PTA and ER have led to the establishment of a culture of violence, intimidation and terror in our society by creating a state of impunity for perpetrators.

Once taken into custody, the victims are tortured both physically and mentally under very harsh conditions. The physical terror and torture is so widely practiced by Police that majority of the Police personnel believe the persons accused of an offense will tell the truth if only tortured.

Psychological torture is used to cause psychological suffering. Its effects are not immediately apparent unless they alter the behavior of the victim. Since there is no international political consensus on what constitutes psychological torture, it is often overlooked, denied, and referred to in different names.

Psychological torture is less well known than physical torture and tends to be subtle and much easier to conceal. In practice the distinctions between physical and psychological torture are often blurred. Physical torture is the inflicting of severe pain or suffering on a person. In contrast, psychological torture is directed at the psyche with calculated violations of psychological needs,

along with deep damage to psychological structures and the breakage of beliefs underpinning normal sanity. Torturers often inflict both types of torture in combination to compound the associated effects.

Psychological torture also includes deliberate use of extreme stressors and situations such as mock execution, shunning, violation of deep-seated social or sexual norms and taboos, or extended solitary confinement. Because psychological torture needs no physical violence to be effective, it is possible to induce severe psychological pain, suffering, and trauma with no externally visible effects. Rape and other forms of sexual abuse are often used as methods of torture for interrogative or punitive purposes.

Psychological torture methods

- Blackmail is an offence of threatening to reveal substantially true information about a person to the public, a family member, or associates unless a demand made upon the victim is met. This information is usually of an embarrassing and/or socially damaging nature. As the information is substantially true, the act of revealing the information may not be criminal in its own right nor amount to a civil law defamation; the crime is making demands to withhold it. Blackmail is similar to extortion. The difference is that extortion involves an underlying, independent criminal act, while blackmail does not,
- Shaming and public humiliation, being stripped or displayed naked, public condemnation,
- Shunning is the act of deliberately avoiding association with, and habitually keeping away from an individual or group. It is a sanction against association often associated with religious groups and other tightly-knit organizations and communities,
- Exploitation of phobias; e.g., mock execution, leaving arachnophobes in a room full of spiders,
- A mock execution is a method of psychological torture, whereby the subject is made to believe that he is being led to his execution. This usually involves blindfolding the subject, making him recount last wishes, or making him dig his own grave, and sometimes it can go as far as forcing the victim to watch a single or multiple real executions taking place under the same circumstances to make the victim believe he or she is next. Discharging a firearm near (but not at) the victim, or firing blanks, might end the mock execution,
- Sleep deprivation is used as an interrogation technique. Interrogation victims are kept awake for several days; when they are finally allowed to fall asleep; they are suddenly awakened and questioned,
- Sensory deprivation is the deliberate reduction or removal of stimuli from one or more of the senses. Simple devices such as blindfolds or hoods and earmuffs can cut off sight and hearing respectively, while more complex devices can also cut off the sense of smell, touch, taste, thermoception (heat-sense), and 'gravity'.
- Extended solitary confinement,

While the group discussed from the victims side about torture the question also asked “why people tend to torture?” There could be several reasons for this. Some of the reasons presented were as follows.

2.1.8. Why perpetrators tend to torture?

1. Lack of training in cross-examination methods: Police officials are not properly trained in systematic interrogation methods to extract information without inflicting any kind of torture on the victim,

2. Pressure brought upon the junior Police officers by the seniors to solve the crime without delay, so that the seniors could gain recognition,
3. Only 4% of accused are found guilty finally in Sri Lankan criminal courts. Such a low conviction rate is a direct result of the inability to corroborate evidence effectively during court proceedings. This is largely due to inefficiency of the police in preliminary investigations including improper collection and documentation of evidence and ineffective handling of witnesses,
4. Police officials are not adequately trained in crime solving methods. It is clearly evident that the Police officers torture detainees not to find the stolen items or to record confessions, but to demonstrate their power and authority to others,
5. The motive for torture can also be for the sadistic gratification of the torturer,
6. Torture is committed also to exert absolute and all-pervasive domination on the victim and by doing so to re-establish their mastery and superiority. By subjugating the tortured - they regain their self-confidence and regulate their wrong sense of self-worth,
7. Torture rarely occurs where it does not have the sanction and blessing of the authorities, whether local or national. In Sri Lanka, today not only the torturers are blessed, but also protected by the politicians. This impunity has encouraged torturous practices and caused it to take place in many institutions including in schools today,
8. Under the Prevention of Terrorism Act (PTA), any Higher Police Officer (Assistant Superintendent of Police and above) has the power to detain a suspect and interrogate him/her to extract information. Even a victim under custody could be brought to conduct this interrogation and at such times the victim is not shown to the Judicial Medical Officers. There is a strong possibility of committing torture during these interrogations.

3. Recommendations and Suggestions

1. A separate format of MLEF and MLR for documentation of findings of torture victims should be prepared. Although the UN endorsed Istanbul protocol is available as a possible alternative, Sri Lanka needs a comprehensive format which can be adopted locally.
2. All medico-legal units in major hospitals should be provided with adequate resources to perform medico-legal examination work effectively. The advanced technological methods of detecting torture should be provided at least to major medico-legal units. Eg. light sources required to detect hidden surface injuries on torture victims with delayed presentation.
3. A proper referral system should be introduced enabling the Judicial Medical officers to examine detainees without delay. Accordingly, the issuing of MLEFs for detainees and preserving relevant medico-legal reports should be regularized.
4. Pressure should be exerted on authorities concerned to improve the health care services in prisons.
5. Efforts should be taken to ascertain prisoner's right to information and their right to speak to their legal representatives at least for a limited time period; communication facilities should be established with a secure monitoring mechanism so prisoners could contact outsiders for essential purposes.
6. A well planned awareness programme should be launched to eliminate torture with the assistance and support of a wider group of organisations, institutions those fight against torture.
7. A Public opinion should be created by promoting a national dialogue on prevention of torture in Police custody and judicial custody.
8. Government hierarchy should be pressurized to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Torture should be included as a subject in the relevant streams of legal education in Sri Lanka. It is proposed to send a delegation followed by this report to discuss matters pertaining to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and related issues, to the Council of Legal Education and the University Grants Commission.
10. A dialogue should be held with prison officials and Judicial Medical Officers and also with police officials and Judicial Medical Officers on the prevailing issues, especially on torture and make critical awareness among them on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and related issues. As a follow-up measure a similar workshop should be held in 2009 inviting a wider group to discuss the recommendations and suggestions of this workshop in detail and to outline the implementation of them.
11. The recommendations of this fact finding workshop should be informed to relevant UN and other international human right organizations operating in Sri Lanka.

Annexure 1: Recommendations of participants for preventing torture in victims under Judicial custody

1. Medical personnel should take all efforts to document and present their findings accurately objectively and in detail in the medico-legal reports submitted to courts.
2. More opportunities to perform regular medico-legal examinations and review prisoners/ victims who are in custody should be created by referring them to JMOs as and when necessary.
3. The JMO should take prompt action to examine a victim and if necessary should admit him/her to the appropriate government hospital for further management.
4. If the victim is from the Remand prison, he/she should be admitted to the hospital in the remand prison or to the relevant government hospital and ensure supervision.
5. Clear instructions should be given to Police officers as to how they should treat a victim awaiting detention. These instructions should be stated in the police copy of the MLEF. In addition instructions for treatment should be issued to the medical officers in the remand prison hospital by the relevant hospital consultant/clinic.
6. All necessary laboratory investigations should be performed and recorded properly.
7. If a victim who is taken to custody by Police after intoxication and produced before a MO/JMO, if not admitted to the hospital, clear instructions should be issued to Police officers as to how he/she should be looked after and it should be recorded accordingly.
8. The Lawyer/s representing the accused detainee should make necessary request/s to produce him/her to the JMO to perform the medico-legal examination and should inform the real condition of the victim to the courts. If the perpetrators are prison officers and allegations are against the prison, request the court to transfer the detainee to another prison.
9. Medical officers with MBBS qualifications should be appointed as prison medical officers to all prisons and new cadre provisions for prison medical services should be prepared. Appointment of medical officers for prison medical services should continue as a responsibility of the Ministry of Health.
10. Minimum standards of prison medical services should be determined in consultation with the relevant authorities and should take steps to provide the agreed requirements.
11. Prison hospital in the Welikada prison Colombo should be upgraded as a referral hospital for all prisons.

12. Amend the Prisons Ordinance by incorporating wider provisions for an effective prison medical service.
13. The Lawyers and Judicial Medical Officers should inform the courts about the condition of the prisoners if they see any maltreatment taking place.
14. Effective witness protection scheme should be developed with the participation of the Attorney General Department and other govt. agencies and non government organizations; the public should feel that they could give evidence in courts without fear and their lives or next of kin are not affected merely because of issues related to giving evidence in courts.

Annexure 2: Definitions of torture

International Definition

UN Convention Against Torture

Article 1 of the Convention defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

– *Convention Against Torture, Article 1.1*

Local Definition

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994

12. In this Act, unless the context otherwise requires –

"Convention" means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment signed in New York on December 10, 1984;

"public officer" means a person who holds any paid office under the Republic;

"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 that is to say -(i) obtaining from such other person or a third person, any information or confession; or (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 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.

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