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**CIVIL AND POLITICAL RIGHTS:
TORTURE AND DETENTION**

**Written statement* submitted by the South Asia Human Rights Documentation Centre
(SAHRDC), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Torture and the process of reconciliation in Sri Lanka

The recent political history of Sri Lanka is one dominated by violence, ethnic strife and political unrest. Torn by civil war, Sri Lanka has witnessed serious human rights abuses by both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government.

The current cease-fire agreement reached in February 2002 between the LTTE and the Sri Lankan government has eased tensions and opened the door to reconciliation, and the country is now attempting to come to terms with its past. In order to facilitate the process of reconciliation, it is of vital importance that victims of human rights violations see that the perpetrators are being brought to justice. Unfortunately, however, the road to justice and reconciliation for victims of torture is long and hard in Sri Lanka, and questions of accountability, justice and the need for legislative reform permeate the Sri Lankan political landscape¹.

The prevention of terrorism act

In Sri Lanka, torture is systemic and routine. This is partially due to the Prevention of Terrorism Act of 1979 (PTA), a piece of legislation which was introduced as a temporary provision to curb terrorism, but which is still in force today. The PTA has directly contributed to the routine use of torture by the authorities by giving them the freedom to arrest suspects almost at will, allowing for prolonged custody of political prisoners without trial or release and providing for the admissibility of confessions to police officers as evidence in court.²

Lack of accountability and culture of impunity

There have been persistent reports of torture, cruel and inhuman or degrading treatment of detainees by law enforcement officials and members of the armed services in Sri Lanka³. A lack of accountability and culture of impunity exists, driven by the internal corruption of the police forces, the lack of political will to criminally punish those responsible for state torture⁴, a lack of independence in the investigation of torture and inadequate access to efficient retribution.

¹ United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee: Sri Lanka", Human Rights Committee, Seventy-Ninth Session, available online at http://www.justiceministry.gov.lk/Human%20Rights/Human_Rights.htm, (last viewed on 28 January 2004); Nirmala David, "Citizens' Letter: Laying Down of Procedures under Article 155G(2) of the Constitution (by Virtue of the 17th Amendment to the Constitution)", Document: Asian Human Rights Commission, available online at http://srilanka.ahrchk.net/legal_reform/mainfile.php/0102/19, (last viewed on 28 January 2004)

² Centre for Human Rights and Development, "Twenty Years After", *Sentinel*, Sept to Dec 1999, p12.

³ United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee: Sri Lanka", Human Rights Committee, Seventy-Ninth Session, available online at http://www.justiceministry.gov.lk/Human%20Rights/Human_Rights.htm, (last viewed on 28 January 2004)

⁴ Ibid;

World Organisation Against Torture, "Sri Lanka: OMCT presents a report on state violence to the United Nations Human Rights Committee", OMCT Appeals, available online at

The two main agencies that have been set up to investigate torture are the Prosecution of Torture Perpetrators Unit (PTP) and the Criminal Investigation Division (CID), both of which are affiliated with the police through the Attorney General's Office. Two main concerns are raised with respect to the work of these agencies. The first is that those in the police establishment are investigating allegations of torture perpetrated by their fellow police officers, raising doubts as to the independence of investigations. In many cases investigated by the PTP there has been found to be insufficient evidence for prosecution.⁵ The second concern is the lack of judicial oversight and review of the Office of the Attorney General. This lack of review leaves the Office of the Attorney General to operate with relative impunity.

Unfortunately, the problem of lack of public accountability transcends the office of the Attorney General and those responsible for investigating allegations of torture. If an investigation makes it past the Attorney General's Office it risks being stalled at higher levels of government⁶. Victims with legitimate claims also face harassment, torture, inadequate representation, and lengthy and expensive trials⁷.

National human rights commission

Those victims of torture who cannot afford to file their case in the Supreme Court are forced to seek redress through the National Human Rights Commission of Sri Lanka (HRC). As set out in sections 10 and 11 of the Human Rights Commission of Sri Lanka Act 1996, the HRC has the power to inquire, investigate and make recommendations that ensure state compliance with fundamental rights⁸. Although it was engineered to be a tool of reform, the HRC has been surrounded by accusations of ineffectual operation and general incompetence⁹. The HRC has failed to play a significant role in the investigation and criminal prosecution of perpetrators of torture¹⁰. Some also allege that the HRC does not adequately explain or address the legal rights and options available to torture victims, and that unknowing victims of torture are pressured to seek settlement as their primary form of redress¹¹.

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=3772&Language=EN> ,
(last viewed on 28 January 2004).

⁵ Redress, "The Audit Project: Sri Lanka", available online at <

<http://www.redress.org/publications/Audit/srilanka.pdf>> (last viewed on 28 January 2004)

⁶ Wasana Punyasena, "The Façade of Accountability: Disappearances in Sri Lanka", 23 Boston College Third World Law Journal 115, Winter 2003.

⁷ Ibid.

⁸ British Council of the UK, "Human Rights Commission of Sri Lanka", available online at http://www.britishcouncil.org/governance/jusrig/sri_lanka.htm , (last viewed on 28 January 2004).

⁹ See South Asian Human Rights Documentation Centre, "National Human Rights Commission of Sri Lanka: Jettisoning an Unproductive Past", *National Human Rights Institutions in the Asia Pacific Region*, Nov 2002, p119.

¹⁰ Redress, "The Audit Project: Sri Lanka", available online at <

<http://www.redress.org/publications/Audit/srilanka.pdf>> (last viewed on 28 January 2004)

¹¹ Asian Human Rights Commission, "The National Human Rights Commission of Sri Lanka and its role in ensuring the enforcement of the Convention Against Torture under Act 22 of

Further, there has been an insufficient allocation of funds by the government to the HRC to enable it to fulfill its mandate.¹² It is essential that the government of Sri Lanka demonstrates its commitment to human rights by allocating adequate funds to the HRC to enable it to efficiently investigate all cases of torture.

Constitutional obstacles to receiving justice through the courts

Freedom from torture is a fundamental right recognised by Article 11 of the Constitution of Sri Lanka. In 1994, the Sri Lankan Government passed the Torture Act, ultimately enacting the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as domestic law¹³. Despite this, torture survivors face significant legal hurdles in their attempt to seek redress through the rights granted under the Sri Lankan Constitution.

The first obstacle faced by victims of torture is the one-month time limit placed on filing a fundamental rights claim.¹⁴ This hurdle poses difficulties to those who have been detained or hospitalised (due to the severity of torture) or cannot file a complete claim due to the inability to access medical reports and accurate projections of compensation within the time allotted frame¹⁵. Although the Supreme Court has heard cases outside of the time frame where “sufficiently compelling circumstances exist”, this time restriction is an additional obstacle that hurts those it is intended to help¹⁶.

The second obstacle is the restrictive wording of Article 126(2) of the Sri Lankan Constitution, which has previously only allowed the victim and/or a legal representative to initiate fundamental rights claims. Dependents have been denied access to adequate reparation, despite Article 14(1) of CAT enshrining the right of dependents of torture victims to seek

1994”, posted on 2 June 2002, available at <http://www.article2.org/mainfile.php/0103/36/>, (last viewed on 27 January 2004).

¹² Annual Report of the Human Rights Commission of Sri Lanka, 2000-2001; “Insufficient allocation of funds to support Human Rights Commission” ColomboPage News Desk, 1 December 2003, (available at <http://www.colombopage.com/archive/December150847RA.html>).

¹³ Redress, “The Audit Project: Sri Lanka”, available online at <<http://www.redress.org/publications/Audit/srilanka.pdf>> (last viewed on 28 January 2004)

¹⁴ Article 126(2) of the Constitution of Sri Lanka.

¹⁵ Redress, “The Audit Project: Sri Lanka”, available online at <<http://www.redress.org/publications/Audit/srilanka.pdf>> (last viewed on 28 January 2004).

¹⁶ Law and Society Trust, “Protecting the Rights of Life and Liberty of Sri Lankan Citizens”, Case of: Porage Lakshman v. Fernando, SC 24/90 SCM 29/09/95, pg. 9. Volume 14 Issue 190, August 2003;

United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: Sri Lanka”, Human Rights Committee, Seventy-Ninth Session, available online at <http://www.justiceministry.gov.lk/Human%20Rights/Human_Rights.htm>, (last viewed on 28 January 2004)

redress¹⁷. The end result of the restrictive wording of Article 126(2) is a lack of accountability when state torture results in a loss of life.

In this context, the recent decision of the Supreme Court of Sri Lanka in the case of *Kotabadu Durage Sriyani Silva v OIC, Payagala Police and Ors*¹⁸ is illustrative of attempts made by the Sri Lankan Courts at legal reform. In this case, the wife of the deceased filed a fundamental rights claim on behalf of her husband. By awarding the dependents in this case Rs. 800,000, the Supreme Court set a welcome precedent, bringing the protection awarded to dependents of torture victims in line with the rights recognised in CAT. Given Sri Lanka's obligations under CAT, constitutional reform should be initiated by the Government of Sri Lanka to clarify the protection granted by this decision.

Lack of criminal prosecutions

Those found aiding and abetting or those responsible for torture under the Torture Act should be given the mandatory minimum sentence of seven years¹⁹. Regrettably, no individual has yet been criminally punished under the Torture Act for an act of torture in Sri Lanka, though there have been a small number of criminal convictions for disappearances.²⁰ This lack of prosecution is despite cases being filed and repeated directions from the Supreme Court for further investigations into alleged cases of torture.²¹

The lack of criminal prosecutions for torture in Sri Lanka is of grave concern. In order to break the perpetual cycle of torture predicated on the culture of impunity, it is vital that those responsible are publicly prosecuted and that justice is visibly done.

Conclusion

The current cease-fire agreement offers an opportunity for reconciliation in Sri Lanka. However, it is of vital importance that victims of human rights abuses see that the perpetrators are being brought to justice for past violations.

Some positive steps have been taken by the government of Sri Lanka in recent years – for example, the ratification of the optional protocol to the ICCPR in 1997, which provides for individual complaints to be made to the Human Rights Committee. However, it is evident that much more needs to be done, as those responsible for acts of torture are escaping punishment and the existing institutional mechanisms have proven to be inadequate in providing justice to victims.

¹⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Document, available online at http://www.unhchr.ch/html/menu3/b/h_cat39.htm (last viewed on 27 January 2004).

¹⁸ S.C. (F.R) Application No 471/2000

¹⁹ Redress, "The Audit Project: Sri Lanka", available online at <http://www.redress.org/publications/Audit/srilanka.pdf> (last viewed on 28 January 2004).

²⁰ Ibid.

²¹ Amnesty International, Annual Report 2003.

It is time for the Sri Lankan government to show that it is serious about providing justice to victims of torture by repealing the Prevention of Terrorism Act 1979, legislating to ensure that allegations of torture committed by the state are adequately investigated by an independent body, legislating to bring the Constitution into conformity with Sri Lanka's international obligations, allocating sufficient funds to the HRC and strengthening the HRC's powers to investigate and prosecute those who commit acts of torture.
