



# **Torture in Sri Lanka, 2002-2011, with particular reference to individual complaints before the UN Human Rights Committee**

## **Submission to the OHCHR Investigation on Sri Lanka**

### **1. INTRODUCTION**

The prevalence of torture in Sri Lanka is of long-standing concern,<sup>1</sup> both predating and postdating the period under review by the inquiry. Torture has been an integral feature of counterinsurgency operations since the beginning of the conflict between successive governments and the Liberation Tigers of Tamil Eelam (LTTE) and has been widely documented in the context of law enforcement operations outside the conflict. Based on REDRESS' work on Sri Lanka,<sup>2</sup> this submission addresses developments relating to torture in the period 2002-2011 falling within the mandate of the Office of the High Commissioner's Investigation on Sri Lanka (OISL), with a focus on state responsibility.<sup>3</sup> In particular, it highlights cases of torture before the United Nations (UN) Human Rights Committee, including Sri Lanka's failure to engage with the Committee in response to individual complaints, and to implement the Committee's views. It demonstrates that the lack of response to complaints at the international level forms part of the broader problem of the systemic nature of torture and impunity in Sri Lanka. This includes the failure of Sri Lanka to undertake the legislative and institutional reforms needed to bring relevant law and practice in line with its international obligations.

### **2. TORTURE IN SRI LANKA FROM 2002-2011**

#### **2.1 Practice of torture in Sri Lanka**

In relation to the conflict between successive governments and the LTTE, torture was facilitated by the broad powers of arrest and detention under the Prevention of Terrorism Act (PTA)<sup>4</sup> and the Emergency

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<sup>1</sup> REDRESS and Asian Legal Resource Centre, 'Torture in Asia: The Law and Practice', *article 2*, Vol. 12, No. 3, October 2013, Chapter 9: Sri Lanka, pp.153 et seq. ('article 2, Torture in Asia').

<sup>2</sup> See in particular joint submission of REDRESS and the Asian Human Rights Commission, 'Comments and Recommendations to the Secretary General's Panel of Experts on the issue of accountability with regard to alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka,' 15 December 2010 (REDRESS and AHRC Comments to Panel of Experts on Sri Lanka); REDRESS, 'Comments on Sri Lanka's combined third and fourth periodic reports to the committee against torture: accountability and justice for torture and other ill-treatment committed during the final phase of the war in the north-east', September 2011 (REDRESS Comment on Sri Lanka's Periodic Reports); REDRESS and Asian Human Rights Commission, *Torture in Asia: The law and practice, Global Sharing of Expertise: Regional Report Series*, July 2013 (REDRESS and AHRC, Torture in Asia); and Article 2, Torture in Asia: The Law and Practice, Chapter 9. REDRESS submissions and reports are available at [www.redress.org/reports](http://www.redress.org/reports).

<sup>3</sup> Acts of torture are also credibly alleged to have been committed by the LTTE. See United Nations Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, available at: [www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) (Panel of Experts' Report), paras. 237-242.

<sup>4</sup> Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

Miscellaneous Provisions and Powers Regulations.<sup>5</sup> Under the PTA, a suspect can be held for up to 18 months in preventive detention, and confessions obtained by police above a certain rank are automatically admissible while the burden for proving duress falls on the accused.<sup>6</sup> The practice of arrest, detention and various forms of torture and ill-treatment under these laws has primarily targeted young Tamil males throughout the country.<sup>7</sup>

During the final phase of the armed conflict, the use of torture was particularly widespread. In the aftermath of the failed peace process in 2006, the Government reportedly devised a new military strategy, which included clandestine abductions of suspected LTTE members, removing them to separate camps.<sup>8</sup> The lack of outside scrutiny and custodial safeguards<sup>9</sup> rendered detainees particularly vulnerable to torture: allegations include 'beatings, forced nudity, suffocation with plastic bags, partial drowning, extraction of finger or toe nails, or administering electric shocks'.<sup>10</sup> In addition, the available evidence points to a series of violations carried out by members of Sri Lanka's armed forces during military operations, particularly during the final phase of the conflict in 2009, including rape and sexual violence and torture prior to extrajudicial executions.<sup>11</sup> With respect to internally displaced persons (IDPs) in internment camps, particularly near the very end of the conflict but also thereafter, there have been 'consistent allegations of torture and ill-treatment during questioning of camp residents by the Criminal Investigation Department and the Terrorist Investigation Department',<sup>12</sup> including sexual violence.<sup>13</sup>

Torture is pervasive in Sri Lanka's criminal justice system. Human rights organisations, including REDRESS, have documented hundreds of cases falling within the period of 2002-2011.<sup>14</sup> Torture is primarily used 'for the purposes of extracting information from suspects and as punishment. Sri Lankan police officers do not ... receive proper training on how to conduct criminal investigations and there is an overreliance on confession evidence. Consequently, obtaining confessions or other information through torture is a widespread practice.'<sup>15</sup> Further, '[t]orture has been found to be one of the two main causes of death in police custody (alongside summary executions) and an accepted practice of interrogation...'.<sup>16</sup>

Enforced disappearance, which is recognised as amounting to ill-treatment if not torture of both the forcibly disappeared person and (his or her close) relatives,<sup>17</sup> has been endemic in Sri Lanka.<sup>18</sup> Credible allegations

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<sup>5</sup> While the Emergency Regulations were allowed to lapse in August 2011, on 29 August 2011 the government adopted a set of new regulations purportedly under the Prevention of Terrorism Act with a view to keeping in detention those suspects who had been previously detained under the earlier regulations. See REDRESS and AHRC, *Torture in Asia*, p. 121.

<sup>6</sup> See *ibid.*, p. 120 and Committee against Torture, Concluding Observations on Sri Lanka, UN Doc. CAT/C/LKA/CO/3-4, 8 December 2011, para. 11.

<sup>7</sup> See e.g. Freedom from Torture, 'Out of the silence: New evidence of ongoing torture in Sri Lanka 2009-2011', 2011, p.6, available at: <http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Freedom%20from%20Torture%20Final%20Nov%2007%202011.pdf>.

<sup>8</sup> Panel of Experts' Report, paras. 63 and 176(d); 2011 Concluding Observations of the Committee against Torture on Sri Lanka, para. 8; Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearance', UN Doc. A/HRC/19/58/Rev.1, 2 March 2012, paras. 495-497.

<sup>9</sup> REDRESS Comment on Sri Lanka's Periodic Reports, p.4.

<sup>10</sup> Panel of Experts' Report, para. 63.

<sup>11</sup> *Ibid.*, paras. 149-153.

<sup>12</sup> 2011 Concluding Observations of the Committee against Torture on Sri Lanka, para. 20.

<sup>13</sup> Panel of Experts' Report, paras. 161.

<sup>14</sup> See in addition to reports listed in note 2 above in particular Basil Fernando, *Narrative of Justice in Sri Lanka*, Asian Legal Resource Centre, 2013 (Fernando, *Narrative of Justice*), and Kishali Pinto-Jayawardena, *The Rule of Law in Decline*, The Rehabilitation and Research Centre for Torture Victims, May 2009 (Pinto-Jayawardena, *The Rule of Law in Decline*).

<sup>15</sup> article 2, 'Torture in Asia', p.153. See also, 2011 Concluding Observations of the Committee against Torture on Sri Lanka, para 11; Pinto-Jayawardena, *The Rule of Law in Decline*, pp. 128-130; UN Human Rights Council, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Phillip Alston – Mission to Sri Lanka', UN Doc. E/CN.4.2006/53/Add.5, 27 March 2006, para. 50.

<sup>16</sup> Panel of Experts' Report, para. 361. See for torture in prisons, Pinto-Jayawardena, *The Rule of Law in Decline*, p. 150.

<sup>17</sup> See article 1 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, UN Doc. A/Res/47/133; *Velazquez Rodriguez v Honduras*, Judgment of the Inter-American Court of Human Rights, 29 July 1988, Ser. C, No. 4, para. 187; Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, UN Doc. A/HRC/16/48, 26 January 2011, para. 4; *Valle Jaramillo et al. v Colombia*, Merits, reparations and costs, Inter-American Court Judgment of 27 November 2008, Ser. C, no. 192.

suggest ‘a widespread practice in Sri Lanka prior to, during and after the final stages of the war, of disappearances carried out by agents on behalf of the State...’.<sup>19</sup> Since its establishment in 1980, the Working Group on Enforced or Involuntary Disappearances has submitted a total of 12,460 cases to successive governments of Sri Lanka, of which 5,671 remained outstanding as at 2 March 2012.<sup>20</sup> In particular, during the period 2002-2011, 461 new cases were transmitted to the government of Sri Lanka.<sup>21</sup> The UN Human Rights Committee has noted its concerns about the ‘large number of enforced or involuntary disappearances of persons during the time of armed conflict’,<sup>22</sup> while the UN Committee Against Torture has expressed concerns about enforced disappearances committed by Sri Lanka’s police forces.<sup>23</sup>

## 2.2 Summary of shortcomings in Sri Lankan law and practice: Lack of accountability and reparation

Torture is criminalised under the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act (CAT Act),<sup>24</sup> which Sri Lanka enacted subsequent to its ratification of the UN Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR) in 1994. However, the CAT Act has not resulted in prosecutions proportionate to the large number of allegations, with only 34 indictments having been brought as at 2008, without any information on further progress provided by Sri Lanka in 2013.<sup>25</sup> This has been attributed to the failure to effectively investigate allegations of torture, with ‘no functioning independent system’ to deal with complaints.<sup>26</sup> Even after cases are indicted by the Attorney General, there are often severe delays, frequently lasting years.<sup>27</sup> The Lessons Learnt and Reconciliation Commission (LLRC) set up in May 2010 fails to meet international standards for an effective accountability mechanism<sup>28</sup> and the National Human Rights Commission (NHRC) can only undertake fact-finding and make recommendations, which have been largely ignored by the police and the Government.<sup>29</sup>

Sri Lanka’s failure to provide adequate victim and witness protection is of major concern.<sup>30</sup> This has a chilling effect on potential witness evidence<sup>31</sup> and ‘paralyse[s] the legal process.’<sup>32</sup> For example, Gerard Perera, a torture survivor who had obtained a favourable ruling before the Supreme Court was murdered prior to testifying in court against his torturers.<sup>33</sup> In the *Peiris* case before the Human Rights Committee (set out in more detail below), the complainant’s husband Nishanta Fernando was killed after having lodged complaints

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<sup>18</sup> See prior to 2002, Final Report of the Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons (All Island), 2001; Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamwa Provinces, 1997; Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces, 1997; and Interim report of the Commission of Disappearances in Western Zone.

<sup>19</sup> Panel of Experts’ Report, para.234. See also paras. 63, 147, 151, 215.

<sup>20</sup> Human Rights Council, ‘Report of Working Group on Enforced or Involuntary Disappearances’, UN Doc. A/HRC/19/58/Rev.1, 2 March 2012, para. 505.

<sup>21</sup> Figures taken from the Annual Reports of the Working Group on Enforced or Involuntary Disappearances, available at: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx>.

<sup>22</sup> Human Rights Committee, Concluding Observations on Sri Lanka, UN Doc. CCPR/CO/79/LKA, 6 November 2003, para.10.

<sup>23</sup> Committee Against Torture, Concluding Observations on Sri Lanka, UN Doc. CAT/C/LKA/CO/2, 15 December 2005, para.12.

<sup>24</sup> Act No.22 of 1994, 20 December 1994.

<sup>25</sup> ‘Fifth periodic reports of States parties due in November 2007: Sri Lanka’, UN Doc. CCPR/C/LKA/5, 31 January 2013, paras.200-222.

<sup>26</sup> Pinto-Jayawardena, *The Rule of Law in Decline*, p.10.

<sup>27</sup> *Ibid.*, p.178-179. See also ‘Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Sri Lanka, 1-8<sup>th</sup> October 2007’, UN Doc. A/HRC/7/3/Add.6, 26 February 2008, paras 51 and 52; also ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston; Mission to Sri Lanka’, 28 November – 6 December 2005’, UN Doc. E/CN.4/2006/53/Add.5, 27 March 2006, para. 58.

<sup>28</sup> Panel of Experts’ Report, para 344.

<sup>29</sup> *Ibid.*, para 384; and REDRESS Comment on Sri Lanka’s Periodic Reports, p. 15.

<sup>30</sup> *Ibid.*, p.11.

<sup>31</sup> Panel of Experts’ Report, paras. 333-334.

<sup>32</sup> Fernando, Narrative of Justice, p. 13.

<sup>33</sup> Basil Fernando, *Sri Lanka: Impunity, criminal justice & human rights*, Asian Human Rights Commission, 2010, pp.100-103.

relating to corruption and to torture by police officers.<sup>34</sup> In July 2014, after substantial delays, the Sri Lankan cabinet approved a bill on witness protection but no further action has been taken to date.<sup>35</sup>

The result of these failures is effectively a breakdown in the rule of law with respect to torture, where perpetrators benefit from impunity and remain at large, in addition to being in a position to intimidate victims, adding further to their insecurity and suffering.

The lack of effective investigations also undermines victims' rights to an effective remedy, as such investigations are both an integral part of the right and frequently a precondition to obtain the evidence to pursue claims for redress. There is no distinct right to reparation for victims of torture in Sri Lankan law.<sup>36</sup> A right to compensation has been recognised by Sri Lanka's Supreme Court but in order to claim this right, victims must apply within a month of the alleged infringement of their fundamental right not to be tortured.<sup>37</sup> Although this time period may be extended if the victim has registered a complaint with the NHRC,<sup>38</sup> the time-limit disadvantages poor petitioners who live far from the capital as it is sometimes many months before they are made aware of a rights remedy.<sup>39</sup> In addition, although courts may order an accused, if convicted, to pay compensation to victims of torture,<sup>40</sup> the amount provided for is nominal (500 Rupees, equivalent to \$4).<sup>41</sup> Victims can bring a civil claim for damages before the District Court but this system is subject to delay<sup>42</sup> and has not proved to be an effective remedy in practice. There are no reparation schemes for victims: serious doubts have been noted as to the LLRC's intention to address the issue of reparation.<sup>43</sup> In addition, contrary to States' obligations under the Convention against Torture,<sup>44</sup> Sri Lanka does not provide adequate rehabilitation services for victims of torture.<sup>45</sup>

Notwithstanding the well documented concerns about the prevalence of torture and impunity, Sri Lanka has therefore not undertaken the substantive legislative and institutional reforms needed to provide adequate safeguards against torture and to make remedies effective in case of a breach.

### 3. CASES BEFORE UN HUMAN RIGHTS COMMITTEE RELATING TO TORTURE

#### 3.1 Overview

During the period 2002 to 2011, the UN Human Rights Committee (HRC) has adopted fourteen views in which it upheld complaints brought against Sri Lanka under the Optional Protocol (no views have been adopted since 2011). In six of these cases, the Committee found breaches of article 7 ICCPR (prohibition of torture), either separately<sup>46</sup> and/or when read together with article 2(3),<sup>47</sup> and in one case read together with article 14 (fair trial rights).<sup>48</sup> In one case,<sup>49</sup> a breach of article 7 was alleged, but the Committee found breaches of articles 6 (for mandatory imposition of the death penalty) and 10(1) (for inhumane conditions of detention), although

<sup>34</sup> *Peiris v Sri Lanka*, (1862/2009)(26 November 2011). See also REDRESS, 'A Call to Action', December 2009, p.10, available at <http://www.redress.org/downloads/publications/Victim%20Protection%20Report%20Final%2010%20Dec%2009.pdf>.

<sup>35</sup> The Official Website of the Data and Information Unit of the Presidential Secretariat, Sri Lanka, available at: [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201407/20140709cabinet\\_approves\\_witness\\_protection\\_bill.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201407/20140709cabinet_approves_witness_protection_bill.htm).

<sup>36</sup> REDRESS and AHRC, *Torture in Asia*, p.124.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 125.

<sup>39</sup> Pinto-Jayawardena, *The Rule of Law in Decline*, p.166.

<sup>40</sup> Section 17(4) of the Code of Criminal Procedure as cited in REDRESS and AHRC, *Torture in Asia*, p. 125.

<sup>41</sup> Section 17(7) Code of Criminal Procedure.

<sup>42</sup> See for example the Human Rights Committee case of *Banda v Sri Lanka* (1426/2005)(26 October 2007).

<sup>43</sup> Panel of Experts' Report, para. 332.

<sup>44</sup> General Comment No. 3 of the Committee Against Torture, 'Implementation of article 14 by States parties', UN Doc. CAT/C/GC/3, 19 November 2012, paras. 11-15.

<sup>45</sup> REDRESS and Asian Human Rights Commission, *Torture in Asia*, p. 125.

<sup>46</sup> *Sarma v Sri Lanka*, (950/2000)(16 July 2003); *Sathasivam and Saraswathi v Sri Lanka*(1436/2005)(8 July 2008) and *Peiris v Sri Lanka*.

<sup>47</sup> *Rajapakse v Sri Lanka*, (1250/2004)(14 July 2006); *Banda v Sri Lanka*; *Gunaratna v Sri Lanka* (1432/2005)(17 March 2009); *Sathasivam and Saraswathi v Sri Lanka* and *Peiris v Sri Lanka*.

<sup>48</sup> *Singarasa v Sri Lanka* (1033/2001)(21 July 2004).

<sup>49</sup> *Weerawansa v Sri Lanka* (1406/2005)(17 March 2009).

the dissenting opinion argues that a breach of article 7 should have been found.<sup>50</sup> In the cases which do not relate to torture, the Committee mainly found breaches of articles 9(1), 14, 18, 19(1), 25 and 26 as well as article 2(3).<sup>51</sup>

The cases where a breach of article 7 was found primarily concern allegations of torture perpetrated by police officers (five cases) or members of the military (two cases). Five of these cases relate to acts committed before 2002 where investigations or prosecutions had still not been satisfactorily completed in 2002;<sup>52</sup> three cases relate to acts occurring in 2002 or later.<sup>53</sup> In all cases, breaches of article 7 were found by the Committee to have occurred alongside at least one other breach of the ICCPR, primarily breaches relating to the right to a fair trial (article 14), liberty and security of person (article 9), treatment and conditions in detention (article 10), appropriate remedies (article 2 (3)) and also article 6 (right to life).

There have only been a limited number of cases before the Committee compared to the high levels of torture practised in Sri Lanka during the relevant period. The number of cases is therefore not representative of the prevalence of torture in Sri Lanka; however, the cases provide an illustration of at least some of the contexts in which torture takes place, the methods commonly used, and the impunity it entails. Sri Lanka's response to these cases and its failure to implement the Views adopted by the Committee gives an important indication of Sri Lanka's failure to provide accountability and justice even following a finding by an international human rights treaty body.

In addition to the cases where the Committee has already handed down its Views, there are currently a number of cases pending before the Committee. REDRESS is involved in four of these cases; in these cases, the breaches variously alleged are: breaches of articles 6 (right to life), 7 (prohibition of torture), 9 and 10 both separately and read together with article 2(3), as well as a breach of article 26 in one case.<sup>54</sup>

The following analysis will focus on cases (including those currently pending before the Committee) where the acts of torture were committed after 2002 or there have been significant developments with respect to investigations and/or prosecution.<sup>55</sup>

### 3.2 Patterns of torture evident in cases before the UN Human Rights Committee<sup>56</sup>

The majority of cases involving torture before the Committee during the relevant period concerned allegations of torture committed by the police.<sup>57</sup> The victims are all civilians and mainly men, who are often from the poorer strata of society and/or Tamils; one case involves a female and child victims.<sup>58</sup>

Torture in detention is often used following arrest or abduction, for the purposes of intimidation and/or to force a confession. Several methods of torture are common to these cases: blindfolding/hooding the victim and/or forcing him/her to lie face down; holding his or her head under water; suspending him or her with the hands tied; and beatings all over the body with poles and/or blunt instruments.

<sup>50</sup> Ibid., Partially Dissenting Opinion of Mr. Fabian Omar Salvioli, para. 14.

<sup>51</sup> See *Jayawardena v Sri Lanka* (916/2000)(22 July 2002); *Kankanamge v Sri Lanka* (909/2000)(27 July 2004); *Fernando v Sri Lanka* (1189/2003)(31 March 2005); *Sister Immaculate Joseph et al. v Sri Lanka* (1249/2004)(21 October 2005); *Dissanayake and Banda v Sri Lanka* (1373/2005)(22 July 2008); *Bandaranayake v Sri Lanka* (1376/2005)(24 July 2008).

<sup>52</sup> *Sarma v Sri Lanka*, *Singarasa v Sri Lanka*, *Banda v Sri Lanka*, *Gunaratna v Sri Lanka* and *Sathasivam and Saraswathi*.

<sup>53</sup> *Rajapakse v Sri Lanka*, *Weerawansa v Sri Lanka*, *Peiris v Sri Lanka*.

<sup>54</sup> See for individual communications pending before the Human Rights Committee, *Guneththige v Sri Lanka* (2087/2011), *Amarasinghe v Sri Lanka* (2209/2012), *R. Jasudasan v Sri Lanka* (2256/2013) and *Aravinda v Sri Lanka* (G/SO 215/LKA(GEN)).

<sup>55</sup> *Rajapakse v Sri Lanka*, *Banda v Sri Lanka*, *Weerawansa v Sri Lanka*, *Gunaratne v Sri Lanka*; *Peiris v Sri Lanka*.

<sup>56</sup> As described in the complainant's submissions, and as summarised in the Committee's Views where adopted.

<sup>57</sup> *Rajapakse v Sri Lanka*, *Peiris v Sri Lanka*, *Gunaratna v Sri Lanka*, *Sathasivam and Saraswathi*, *Guneththige v Sri Lanka*, *Amarasinghe v Sri Lanka*, *Aravinda v Sri Lanka*. The seniority of the police officers alleged to have committed acts of torture ranges from police constables (in *Guneththige v Sri Lanka*, *Amarasinghe v Sri Lanka* and *Aravinda v Sri Lanka*) to Assistant Superintendent of Police (in *Gunaratna v Sri Lanka*) right up to Headquarter Inspector (in *Peiris v Sri Lanka*).

<sup>58</sup> *Peiris v Sri Lanka*.

In *Rajapakse v Sri Lanka*, the victim, a nineteen year old man, was arrested in April 2002 and taken to Kandana police station, falsely charged with robbery and tortured for the purposes of obtaining a confession. After having been beaten on arrest, once in detention, the victim was forced to lie on a bench and beaten with a pole; held under water for prolonged periods; beaten on the soles of his feet with blunt instruments; books were placed on his head which were then hit with blunt instruments.<sup>59</sup>

In *Peiris*, the victims (a husband and wife and their children) were at no point in detention. Torture in this case was used in an apparent attempt to stop Mr Fernando (the author's husband) from pursuing complaints he had first filed against the police in Kochikade station in 2003. In this case, the victims called the Bribery Commission to seek help when police officers came to their house in November 2007, threatening to kill Mr Fernando, slapping his wife and knocking her daughter down with a motorcycle. The Bribery Commission alerted the Headquarter Inspector who arrived at the house with 20 officers who, instead of providing protection, proceeded to: assault the husband by hitting and kicking him, continuing to do so after he lost consciousness; assault Mrs. Fernando by hitting her on her face with a pistol; punched and hit the face of her 10 year old son against the wall and tried to undress her daughter.<sup>60</sup> Mrs. Fernando and her daughter were hospitalised as a result of the assault. In September 2008, Mr. Fernando was assassinated by two masked individuals.

In *Weerawansa*, the victim was arrested in March 2002. He was subsequently tried and convicted for conspiracy to commit murder, as a result of which he was sentenced to death by hanging. The victim was held in inhumane conditions; he was incarcerated in a filthy cell, measuring 8 by 6 foot, where he was kept for 23.5 hours a day with inadequate food.<sup>61</sup> The Committee held that the automatic and mandatory imposition of the death sentence was a violation of article 6 (1);<sup>62</sup> the dissenting opinion considered that this should also constitute a violation of article 7, given the suffering experienced by an individual brought to trial knowing that, if found guilty, the only outcome is a death sentence.<sup>63</sup>

In *Guneththige*, the complaint alleges that the victim, T. Sunil Hemachandra, who was male and 43 year old at the time, was arrested by the police in July 2003 without apparent cause, apparently in connection with an attempt of extortion after he had won the lottery. The victim was severely beaten in the head and abdominal area. He died shortly thereafter from his injuries. The medical certificate stated that the cause of death was: 'acute sub-dural haemorrhage following head injury caused by blunt trauma' and also documents a large number of serious pre-mortal injuries.<sup>64</sup>

In *Amarasinghe*, the complaint alleges that the victim, his brother, a 47 year old male, was arrested in August 2010 by two police officers of the Kirindiwela police (purportedly for being drunk and obstructing traffic although a post-mortem medical report was negative for alcohol). The victim was hit with a rod and held by the chin and the neck and his head was stuck twice against the door of the police vehicle. He was then put into a police jeep and further ill-treated. In particular, he was severely beaten, with blows by feet and iron sticks to his head. The victim died in hospital of his injuries and the medical report revealed numerous injuries to the victim's head, brain and skull.<sup>65</sup>

In *Aravinda*, the complaint alleges that he, a 22 year old male at the time, was arrested by the police in February 2008 in the Pitabaddara area, Matara District on fabricated charges. The police officers subjected him to severe beatings, both at the time of arrest and in custody. One police officer threw acid in the victim's face, which resulted in the loss of his sight in one eye.

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<sup>59</sup> *Rajapakse v Sri Lanka*, para. 2.1.

<sup>60</sup> *Peiris v Sri Lanka*, para 2.8.

<sup>61</sup> *Weerawansa v Sri Lanka*, para 2.5.

<sup>62</sup> *Ibid.*, para 7.2.

<sup>63</sup> *Ibid.*, Partially Dissenting Opinion of Mr. Fabian Omar Salvioli, para 14.

<sup>64</sup> *Guneththige v Sri Lanka*, para. 39.

<sup>65</sup> *Amarasinghe v Sri Lanka*, paras. 8-13.

### 3.3 Impunity for torture evident in cases before the Human Rights Committee

A common feature of the cases involving torture is Sri Lanka's failure at multiple levels to investigate, prosecute and punish the perpetrators of acts of torture, and to offer redress for victims. In four cases, the Committee found violations of article 2 (3) read together with article 7, that is a violation of Sri Lanka's duty to provide a remedy for acts of torture.<sup>66</sup> Further, the State's failure to offer protection to victims and witnesses who are intimidated, to the extent that some fear for their life when they try to seek justice, was found to constitute a violation of article 9 (1) (right to security) in three cases.<sup>67</sup> In each of the four cases pending before the Committee in which REDRESS is involved, the authors allege a violation of Sri Lanka's duty to provide a remedy for acts of torture.

The cases demonstrate a significant failure at the level of criminal investigations and prosecutions: either criminal proceedings are not instituted,<sup>68</sup> are not instituted in a timely fashion,<sup>69</sup> or - where there are criminal proceedings, and a conviction is secured – the perpetrators are not subject to appropriate punishment.<sup>70</sup> In one case, criminal proceedings were instituted but are alleged to have been obstructed by a direct intervention of the Attorney General.<sup>71</sup> At the Supreme Court level, victims have filed petitions for violations of fundamental rights but these cases suffer frequent postponements and lengthy delays, thereby frustrating the right to an effective remedy.<sup>72</sup>

- Relevant views of the Committee:

- (i) In *Rajapakse*, the victim was subjected to torture by the police in April 2002. The criminal investigation was not initiated by the Attorney General until over three months later and there had been no significant progress at the date of the Committee's decision in September 2006.<sup>73</sup> The victim also filed a petition for a violation of his fundamental rights in the Supreme Court of Sri Lanka in May 2002. This case was postponed numerous times and was then adjourned pending determination of the High Court proceedings.<sup>74</sup> The Committee found this to be a violation of article 2 (3).<sup>75</sup> Further, the victim was 'harassed and pressurised to withdraw his complaint to such an extent that he has gone into hiding' and the Committee noted that 'the State party ... has not indicated whether there is any investigation underway with respect to the complaints of harassment nor has it described in any detail how it protected and continues to protect the author from such threats'.<sup>76</sup> In light of these failings, the Committee found a violation of the author's right to security of person under article 9 (1).<sup>77</sup>
- (ii) In *Peiris*, the author and her family were tortured by the police in November 2007. Thereafter, she filed a complaint before the Supreme Court of Sri Lanka for acts of torture; at the time of the Committee's decision in April 2012, the case was still pending.<sup>78</sup> The author continued to suffer threats from the police and in September 2008 her husband was killed by two masked individuals. In November 2008, she filed an affidavit at Negombo Magistrate's Court concerning

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<sup>66</sup> *Gunaratna v Sri Lanka, Peiris v Sri Lanka, Banda v Sri Lanka and Rajapakse v Sri Lanka*.

<sup>67</sup> *Gunaratna v Sri Lanka*, para. 8.4, *Peiris v Sri Lanka*, para 7.5 and *Rajapakse v Sri Lanka*, para. 9.7.

<sup>68</sup> *Gunaratna v Sri Lanka, Peiris v Sri Lanka, Guneththige v Sri Lanka, Aravinda v Sri Lanka*. In *Gunaratna v Sri Lanka* – despite a Supreme Court ruling in the complainant's favour, criminal proceedings had still not been instituted as at the time of the State party's submissions in 2007.

<sup>69</sup> *Rajapakse v Sri Lanka, R. Jasudasan v Sri Lanka*.

<sup>70</sup> *Banda v Sri Lanka*.

<sup>71</sup> *Amarasinghe v Sri Lanka*.

<sup>72</sup> *Rajapakse v Sri Lanka, Banda v Sri Lanka, Gunaratna v Sri Lanka, Peiris v Sri Lanka, Guneththige v Sri Lanka, Aravinda v Sri Lanka*.

<sup>73</sup> *Rajapakse*, para. 9.4.

<sup>74</sup> *Ibid.*, para. 9.3.

<sup>75</sup> *Ibid.*, para. 9.5.

<sup>76</sup> *Ibid.*, para. 9.7.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Peiris v Sri Lanka*, para 2.9.

the threats against her and her family and in December 2008, she filed another affidavit at the Paliyagoda Police Station, stating that the family were struggling to live in hiding because her husband's murderers were looking for them to assassinate them.<sup>79</sup> In January 2009, the Right to Life NGO that had been supporting the author filed a complaint to the Inspector General of Police regarding a threat they had received; equally, her lawyer filed a complaint before various authorities including the Bar Association regarding a death threat made against him by police.<sup>80</sup> The Committee found that there has been no arrest or prosecution of any of the perpetrators. As Sri Lanka did not provide any explanation for this, the Committee found a breach of article 2 (3) read together with articles 6 and 7, and also article 9 (1).<sup>81</sup>

- (iii) In *Gunaratna*, the victim was severely tortured by the police in June 2000. He made a detailed statement to the Sri Lankan NHRC in July 2000 and then submitted a fundamental rights case to the Supreme Court in September 2000. Subsequent to his filing the case, the victim alleged that he received multiple threats to his life, warning him to withdraw his complaints.<sup>82</sup> Judgment in the Supreme Court case was handed down (finding in the victim's favour) in November 2006. The Committee found that this was too long a delay and also noted that despite eight years having passed since the acts of torture, information provided by Sri Lanka with respect to the prosecution of the perpetrators was minimal. It had not indicated whether indictments had actually been issued or when the case would be heard. Accordingly, the Committee found a breach of article 2 (3), read together with articles 7 and 9. With respect to the threats against the victim, Sri Lanka failed to address this allegation and so the Committee found a breach of article 9 (1).<sup>83</sup>

- Cases pending before the Committee (facts as alleged in complaints):

- (iv) In *Guneththige v Sri Lanka*, the victim was arrested, tortured and killed by police in June 2003. The victim's aunt and mother filed a complaint with the NHRC in July 2003, but no action was taken. A Magistrates' inquiry was held but the Attorney General decided in April 2004 that no charges would be filed. In August 2003, the victim's aunt and mother submitted a fundamental rights case to the Supreme Court, but after almost seven years of proceedings, the case was dismissed in August 2010. The NHRC wrote to the victim's aunt in August 2008 to say they could not inquire into the matter because the same matter was pending before the Supreme Court.<sup>84</sup>
- (v) In *Aravinda v Sri Lanka*, the victim was arrested and tortured by police in February 2008. In August 2008, the Deputy Inspector General of the Police of the police of the Southern Province recommended that the police officers concerned should be charged under the Penal Code and the CAT Act. However, subsequently no action was taken. A fundamental rights petition before the Supreme Court and a civil case in the in the District Court of Morawaka were pending at the time of the communication in October 2011. Equally, NHRC recommendations to compensate the victim had not been implemented.
- (vi) In *Amarasinghe v Sri Lanka*, the victim was arrested, tortured and killed by police in August 2010. Charges were filed against the police officers in question and proceedings begun in the Magistrates' Court. However, the Attorney-General (AG) wrote to the Magistrate, informing him of the AC's intention not to proceed with the prosecution. The Magistrate refused to discharge the case, and the police officers appealed to the Court of Appeal. The Court of Appeal then ordered an interim stay of proceedings before the Magistrate and the unconditional release of

<sup>79</sup> Ibid., para 2.13.

<sup>80</sup> Ibid., paras. 2.14 and 2.15.

<sup>81</sup> Ibid., paras. 7.4 and 7.5.

<sup>82</sup> *Gunaratna v Sri Lanka*, paras 2.4 and 2.5.

<sup>83</sup> Ibid, paras. 8.3-8.4.

<sup>84</sup> *Guneththige v Sri Lanka*, paras. 36-45.



the two police officers. No further steps had been taken, at the time of the Communication to the Committee (September 2012), since 27 June 2011.<sup>85</sup>

#### **4. LACK OF COOPERATION WITH THE UN HUMAN RIGHTS COMMITTEE, AND LACK OF IMPLEMENTATION OF ITS VIEWS**

During the period 2002-2011 (and indeed to date) there has been a distinct failure by Sri Lanka to cooperate with the Committee in the procedure established by the Covenant's First Optional Protocol, including a failure to implement the Views of the Committee decided under this procedure.<sup>86</sup> Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider individual communications lodged with the Committee under the Protocol.<sup>87</sup>

Out of the seven cases concerning allegations of torture in the period 2002-2011, in one of these cases Sri Lanka has not provided any response at all<sup>88</sup> and in another it did not address the facts or substance of the claim.<sup>89</sup> This appears to be part of a recent pattern that REDRESS has first-hand experience of, as representatives of individuals who have submitted communications to the Committee concerning Sri Lanka: in the four registered cases in which REDRESS has been involved, Sri Lanka has provided no responses at all.<sup>90</sup> Further, in *Peiris*, Sri Lanka failed to implement interim protective measures ordered by the Committee, a failure that was noted 'with regret' by the Committee in the Views adopted in that case.<sup>91</sup>

Since 2002, the Committee has adopted fourteen views in which it upheld complaints brought against Sri Lanka under the Optional Protocol. The Committee's follow up reports show that Sri Lanka has implemented very few, if any, of those Views to date.<sup>92</sup> There is no evidence that any victim has been provided with compensation or that Sri Lanka has instigated an effective investigation into the violations capable of leading to successful prosecution. Indeed, since 2006, Sri Lanka has failed to respond at all to any of the Committee's recommendations.<sup>93</sup> In 2006, Sri Lanka's Supreme Court held that the Committee's Views are not binding in Sri Lanka due to a lack of implementing legislation.<sup>94</sup> Following this finding, Sri Lanka enacted the ICCPR Act in 2007 (Act No. 56 of 2007); however, the coming into force of this act has not resulted in increased implementation of the Committee's Views. Rather, there has been a sharp decrease in the level of cooperation provided to the Committee.<sup>95</sup>

The pattern, if not policy, of non-compliance on the part of the State party has resulted in a complete frustration of the right to an effective remedy for violations of the rights guaranteed under the Covenant.

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<sup>85</sup> *Amarasinghe v Sri Lanka*, paras. 16-45.

<sup>86</sup> REDRESS made a submission on this point to the Human Rights Committee on 19 December 2013, which we summarise here (REDRESS HRC submission). The submission is available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT\\_CCPR\\_ICO\\_LKA\\_15985\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15985_E.pdf)

<sup>87</sup> See, eg. the Committee's views of 29 October 2012 concerning Communication No. 2120/2011, UN Doc. CCPR/C/106/D/2120/2011, para. 9.2

<sup>88</sup> *Peiris v Sri Lanka*.

<sup>89</sup> *Gunaratna v Sri Lanka*, para. 8.2

<sup>90</sup> *Aravavinda v Sri Lanka*, *Amarasinghe v Sri Lanka*, *Guneththige v Sri Lanka* and *Jasudasan v Sri Lanka*.

<sup>91</sup> *Peiris v Sri Lanka*, paras. 5.1 and 5.2.

<sup>92</sup> REDRESS HRC submission, p.3.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Singarasa v. Attorney General*, S.C. SpL (LA) No. 182/99 (Supreme Court of Sri Lanka, 15 September 2006), available at: <http://www.ruleoflawsrilanka.org/cases/un-cases-for-sri-lanka/special-case-supreme-court-on-nallaratanam>.

<sup>95</sup> REDRESS HRC submission, p.3.

## 5. FINDINGS

The body of cases documented for the period 2002-2011 evidences a systematic practice of torture and ill-treatment in Sri Lanka. Legal safeguards, in so far as they exist, have proved inadequate to protect victims who are frequently targeted either because they are Tamils or from a marginalised background in the routine law enforcement context. Several cases of torture have been characterised by extreme brutality, which has resulted in serious injuries if not death. Perpetrators of torture enjoy de facto impunity. While there were a limited number of prosecutions for torture in the mid-2000s, the subsequent lack of effective investigations and prosecutions reinforces widespread perceptions of the general deterioration of the rule of law in Sri Lanka.

The lack of respect for the rule of law, including ensuring accountability of the perpetrators and justice for victims of torture, extends to Sri Lanka's lack of cooperation with the UN Human Rights Committee and compliance with its obligations under the ICCPR and the Optional Protocol to the ICCPR. Sri Lanka has not used the time since end of the conflict in 2009 as an opportunity to take stock and to address the various shortcomings that have been repeatedly highlighted by UN human rights treaty bodies, the UN Human Rights Council as well as national and international NGOs and observers. What the concerns expressed by these entities for the period 2002-2011 and the cases before the UN Human Rights Committee have in common is evidence of a distinctive rightlessness on the parts of victims, i.e. Sri Lankan citizens, who are faced with an increasingly arbitrary system and an unresponsive state.