



# Tamil Information Centre

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Committed to Human Rights and Community Development

## Tamil Information Centre's submission to the Committee Against Torture on Sri Lanka October 2011

The Tamil Information Centre (TIC) welcomes the opportunity to provide information to assist the Committee in its consideration of the Sri Lankan government's third and fourth periodic reports under article 19 of the Convention.

TIC is a non-profit organisation based in London, UK. TIC works to address the challenges that face the Tamil speaking community in Sri Lanka to ensure that their rights are protected and promoted and their freedoms are recognised and respected. TIC's mission is to empower people, particularly those suffering persecution and subjected to human rights abuses, by valuing the distinct identities and differences among them and improving the quality of life through access to knowledge.

TIC has grave concerns about institutionalised practice of torture and other cruel, inhuman and degrading treatment in Sri Lanka. Torture of people arrested and detained is a common occurrence in Sri Lanka. It is often carried out in the name of 'justice', 'finding out the truth' or 'maintaining peace and national security'. People suspected of supporting the cause of Tamils or the Liberation Tigers of Tamil Eelam (LTTE), as well as those opposed to the government's policies and actions, are subjected to torture and other cruel, inhuman and degrading treatment. Torture is also routinely carried out to procure confessions from innocent people in order to satisfy complaints regarding criminal behaviour and create the impression that the police are effectively pursuing justice. TIC notes that torture is used with the knowledge and support of higher officers.

This submission focuses on two key areas of great concern to TIC:

1. The torture and cruel, inhuman and degrading treatment of people arrested and detained under provisions of the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs); and
2. The Sri Lankan military's abuse of powers to punish and intimidate people exercising their right to assembly.

TIC has documented instances of torture of people arrested and detained by security forces in Sri Lanka. Sources include medico-legal reports following medical examinations procured and statements taken from victims of torture for the Medical Foundation for the Care of Victims of Torture in London, doctor's statements provided to the Tamil Welfare Centre on particular cases and psychiatric reports prepared for Immigration and Asylum Chamber cases. Patterns of abuse in these documents are largely reflected by the findings of a thorough report by the Asian Human Rights Commission (AHRC) documenting a sample of 323 cases of torture, from a collected report of 1500 cases from 1998-2011.<sup>1</sup> The evidence collected by TIC of torture in places of detention in Sri Lanka is also supported by reports published by other bodies, including the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment,<sup>2</sup> and the role of the PTA and ERs in encouraging and facilitating the practice of torture in detention has been drawn out by the International Crisis Group.<sup>3</sup>

<sup>1</sup> Asian Human Rights Commission, *Police Torture Cases: Sri Lanka 1998-2011*, 2011.

<sup>2</sup> *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Sri Lanka*, A/HRC/7/3/Add.6, 26 February 2008. Available at <http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm>.

<sup>3</sup> International Crisis Group, *Sri Lanka: A Bitter Peace, Crisis Group Asia Briefing N°99*, 11 January 2010.

## **1. Torture and cruel, inhuman and degrading treatment of people arrested and detained under the PTA and ERs**

The PTA and ERs foster a situation in which Sri Lankan police and military officials can practice torture and other cruel, inhuman and degrading treatment with impunity. The TIC welcomes the announcement by President Mahinda Rajapaksa on 25 August 2011 that the state of emergency would not be extended when it came up for renewal before the Sri Lankan Parliament in September 2011, resulting in the termination of the Emergency Regulations. However, provisions of the PTA, which remain in force, continue to support the institutionalised use of torture and other cruel, inhuman and degrading treatment against people arrested and detained under the PTA.

### **1.1 Torture in detention:**

In particular, provisions of the PTA that permit incommunicado detention for extended periods without charge<sup>1</sup> and remove judicial oversight of arrest and detention<sup>2</sup> create an environment in which detainees are placed at great risk of torture and other cruel, inhuman and degrading treatment in places of detention. Further, provisions of the PTA that allow confessions to be used as evidence against a person charged with a criminal offence<sup>3</sup> encourage the institutionalised use of torture to extract confessions.

Methods of torture and other cruel, inhuman and degrading treatment commonly used in police and military places of detention include: beatings with gun butts, iron rods, fresh wood and batons; kicking with boots; suffocation under water or in a plastic bag containing petrol; burning with cigarettes; inserting spikes into the body or pins under fingernails; cutting with knives or sharp objects; forcing water mixed with chillies into the victim's nostrils; applying chilli powder to sensitive parts of the body; keeping detainees nude; splashing water on detainees' bodies and exposing them to the cold; suspension in distorted positions, upside down or from the wrists; electric shocks to the most sensitive parts of the body; sexual assault; and making detainees place their private parts (penis or testicles) in a drawer before closing it.<sup>4</sup>

#### ***Case study: Torture by Members of the Sri Lankan Armed Forces Ms. T.***<sup>5</sup>

In 2000, Ms. T. was physically attacked in her home in the North of Sri Lanka by the security forces as they searched for her sister who had joined the LTTE. In 2006, she was arrested on suspicion of involvement with the LTTE and was taken to Urelu camp, where she was detained for 42 days in solitary confinement. For the first 8 days, Ms T. was kept in a small dark room in the basement. She was given nothing to eat or drink for 3 days and was forced to defecate on the floor as she was not allowed access to toilet facilities. On initial interrogation, her hair was held by her interrogator and her head was dashed against the door. She was also beaten on the shoulder with a rifle butt. On her third day of detention she asked for water. The soldiers tied her arms behind her back with a cable, made her lie on the floor and forced her to lap the water from a plastic vessel like a dog. Twice she fell unconscious after being forced

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<sup>1</sup> Section 7 of the PTA gives the police extensive powers of arrest and search and seizure without warrant and provides excessive powers of detention on arrest. Section 9 of the PTA permits the Minister of Defence to order the detention of any person suspected to be connected or concerned with any unlawful activity under the Act. A person may be detained anywhere in Sri Lanka and under any conditions deemed necessary for interrogation. Detention can be for up to three months at a time, extendable up to 18 months. Section 15 of the PTA requires that any person indicted for an offence under the PTA shall be remanded in custody until the conclusion of the trial; and section 19(a) requires a person who has appealed their conviction to also be remanded until the determination of the appeal. Section 15A gives power to the Minister of Defence to dictate the place and conditions of an individual remanded under sections 15 and 19(a).

<sup>2</sup> Section 10 of the PTA removes the possibility of judicial review of detention ordered by the Minister of Defence under section 9, meaning that a person cannot challenge the legality of detention or seek redress for arbitrary detention.

<sup>3</sup> Section 16 violates the fundamental right against self-incrimination by allowing confessions or statements made in police custody to be used as evidence against a defendant.

<sup>4</sup> Testimonies of victims provided for medico-legal reports and human rights reports collected by TIC. See Asian Human Rights Commission, *Police Torture Cases: Sri Lanka 1998-2011*, 2011 for great detail, and case studies provided herein.

<sup>5</sup> Medico-Legal Report provided by Dr. Jennifer Gibson to the Medical Foundation for the Care of Victims of Torture, May 2008.

to take two pills. When she came to on the first occasion, her clothes had been removed and she felt pain all over her body. She was bleeding from the vagina and had burn marks resembling cigarette burns on her back, chest and arms. The second time, she had no memory of what happened but had body pains and a bloated feeling in her chest afterwards. On another occasion she was raped vaginally by three men in soldier's uniforms while conscious. A group of soldiers stripped her, one soldier burned her breast with a cigarette, another bit her nipple and they proceeded to kick her on the chest and face and scratch her face with a pocket knife. Three soldiers raped her in turn.

On other occasions she was stabbed with a screwdriver on both forearms, burnt with a heated rod, beaten on the soles of her feet, punched on the right cheek, damaging two teeth, and beaten on her back and abdomen with an iron rod. She was also anally assaulted with a rod on one occasion. Small pins were forced under the skin surrounding the nails of both thumbs and she was subjected to electric shocks. She was beaten every two to three days, with a fresh green wooden stick and a rifle.

The examining doctor confirmed that Ms. T. had 116 scars on her body, consistent with her description of treatment in custody. She concluded that the scars, and Ms. T.'s noted symptoms of depression and post-traumatic stress disorder were due to severe torture.

### ***Case Study: Torture by Members of the Police Force Mr HMK<sup>1</sup>***

Mr HMK was arrested by the Criminal Investigation Department (CID), a branch of the police service, in Colombo on 20<sup>th</sup> April 2011. During his detention and interrogation, chains were placed around wrists and he was held upright suspended from the ceiling by his wrists. Cigarettes were singed on his right arm and hot iron rods were applied to his back and both legs. Mr HMK was cut with a knife on his left arm and slapped on a number of occasions. The examining doctor noted the appearance of circular marks around his wrists, scars consistent with cigarette burns, cuts and marks consistent with his account of being burned with an iron rod. The doctor concluded that there was no reason to doubt Mr HMK's testimony.

**Case Studies:** These case studies illustrate the nature and system of torture in Sri Lanka by both the police and the armed forces. Those suspected of any involvement with the LTTE (which is problematic in itself given the organisation's history of forced conscription) are arrested, detained in inhuman and degrading conditions, and exposed to horrendous ill-treatment and violence amounting to torture under international and Sri Lankan law.<sup>2</sup> This treatment is often practiced for the purpose of attaining confessions and information from the victims, contrary to all principles of due process.

### **1.2 Conditions in detention:**

Conditions in some military and police places of detention in which people detained under the PTA are held are so appalling as to amount to cruel, inhuman and degrading treatment. People providing testimony on their detention by both the military and the police describe being kept for long periods of time in bare rooms with minimal or no furniture, often without toilet facilities, meaning that detainees must defecate and urinate on the floor, in shared cells as well as individual.<sup>3</sup> Food is often insufficient or not provided for days at a time, and water given to detainees has been reported to be dirty, or withheld until they comply with interrogation. This treatment is often in parallel to the physical methods of torture described.

Following the end of the fighting in June 2009, thousands of displaced Tamils were held in detention camps, termed "welfare centres" by the Sri Lankan government. The living conditions in the camps were considered highly inadequate. Many were hugely overcrowded, with several families crammed into one tent and insufficient water and food available. The UN reported a shortage of latrines causing hygiene

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<sup>1</sup> Medical Report prepared by Dr. S. E. Josse at the request of the Tamil Welfare Centre, 27 June 2011.

<sup>2</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 recognises the accession of the Democratic Socialist Republic of Sri Lanka to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

<sup>3</sup> See Medico-Legal Report on "Ms. S" prepared by Dr. Carol Cheal for the Medical Foundation for the Care of Victims of Torture, 12 January 2011, for example.

problems and in June 2009 alone, more than 8,000 cases of diarrhoea, as well as hundreds of cases of hepatitis, dysentery, and chickenpox were recorded.<sup>1</sup>

Further, there is discrimination against Tamil people and people accused of being ‘tigers’ or supporting the LTTE. In the detention camps, people were encouraged to report any connections with the LTTE to the army, both their own connections and those of others. On the basis of information provided to the military in the camps interrogations were carried out, deploying tactics of intimidation and violence amounting to torture.

According to eye-witness reports received by TIC from spouses and friends, a large number of LTTE members and supporters surrendered to the army on 18 May 2009. Most of them were held incommunicado detention. Repeated calls made by the TIC and other local and international agencies to reveal the names of those surrendered were not made available by the government. Questions have been raised as to what protections were afforded to those who surrendered under international law, but the government did not respond. The Tamil Information Centre’s investigations following the release of some of these detainees concluded that some LTTE leaders have been tortured to death in army custody.

### ***Case Study: Torture in the ‘Welfare Villages’***

#### ***Mr. R<sup>2</sup>***

Mr. R. was farmer in LTTE-controlled areas. His youngest son joined the LTTE in 1992 and his whereabouts are unknown. He and his wife first supported the LTTE but came to hate them, and when given an LTTE card in 1999, he limited the number of times he assumed a border guard role, but did odd jobs for them. In early 2009 he and the occupants of his village were rounded up by soldiers, one of whom slapped him so hard around the eyes that he has since developed blurred vision.

Mr. R. was detained with his wife in Arunaselem Camp for 13 months, where they were kept in small tent with 8-10 people in terrible and unhygienic conditions. Several people informed the army that his son was in the LTTE and he and his wife were repeatedly interrogated. He was tortured once, and his examining doctor noted that systematic cutting had left a regular arrangement of scars diagnostic of deliberately inflicted lacerations. He was slapped on two occasions, once leading to unconsciousness and deafness in his right ear. Beaten unconscious and cut with a sharp object on the shoulder, soldiers dragged him by the legs to hospital once he regained consciousness.

### ***Case Study: Death in Custody:***

#### ***Mr. Sinnaiah Devendran***

Mrs Devendran Saro, the wife of Sinnaiah Devendran, complained that she was denied permission to collect her 30-year old husband’s body who died in questionable circumstances inside the maximum security prison in Boralle on 24 August 2011. The deceased, Sinnaiah Devendran is a native of Maskeliya in Up-country, was arrested after a bus bomb blast in Piliyandala. He was a garment factory worker. Enquiry was made but the cause of his death was not announced. Mrs Devendran is a resident of Vaddukkottai in the northern Sri Lanka. She was informed by Jaffna police on 28 October that her husband had died while he was undergoing treatment at prison hospital. But, this was denied by his relatives. According to relatives there was an injury in his head. His funeral took place on 4 September at the Colombo Cemetery.

### ***Case Study: Death in Custody***

#### ***Dhanushka Aponso and Dinesh Fernando***

Two Sinhala youth, namely Dhanushka Aponso and Dinesh Fernando were abducted, assaulted and killed in police custody in Angulana on 12 August 2009. The Colombo High Court sentenced four policemen to death over the murder of these two young boys. However, the death penalty is not implemented in Sri Lanka, so the sentence will see the policemen serving life in prison.

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<sup>1</sup> Human Rights Watch, *Sri Lanka: Free Civilians from Detention Camps*, 28 July 2009.

<sup>2</sup> Medico-Legal Report provided by Dr. Jennifer Gibson to the Medical Foundation for the Care of Victims of Torture, January 2011.

The two youth had been arrested by the police, allegedly committing mischief while under the influence of liquor. When their relatives visited the police station they were told that the two boys had not been arrested. Hours later and some distance from the police station, the bodies of the two boys were found, with bullet wounds. Investigations later revealed that the two boys were assaulted and killed by the police officers while they were in custody.<sup>1</sup>

### **1.3 Impunity for perpetrators:**

Article 11 of the Sri Lankan Constitution specifically prohibits torture and cruel, inhuman and degrading treatment or punishment and torture is also prohibited by the domestic *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* Act No. 22 of 1994. However, these laws are not effectively applied in Sri Lanka because the authorities have failed to investigate and prosecute allegations of torture and mistreatment of persons held in detention and the lack of protection for witnesses and victims makes it difficult for victims and witnesses to give evidence.<sup>2</sup> Further, section 26 of the PTA grants immunity from prosecution to any figure of authority acting “in good faith” under the provisions. The absence of accountability is a clear encouragement of impunity and allows the state forces to commit human rights abuses without fear of repercussions. The Sri Lankan government consistently denies that torture in detention is a problem.

The lack of witness protection or victim programmes in the Sri Lankan justice system is also a cause of concern and a reason for entrenched impunity.<sup>3</sup> People are afraid to report crimes to police, testify in court, assist in investigations or give evidence in public arenas for fear of harassment and repercussions as a justice system without these measures cannot guarantee the safety and anonymity of witnesses where necessary. This problem relates both to the justice system and the hearings of the Lessons Learnt and Reconciliation Commission (LLRC), where members of the military attended the open sessions, recorded the names and statements of witnesses and took photographs.<sup>4</sup>

## **2. The Sri Lankan military’s abuse of powers to punish and intimidate people exercising their right to assembly**

TIC also wishes to draw the Committee’s attention to recent actions of the Sri Lankan military, in which the military has used physical violence against civilians in order to punish and intimidate the civilian community in violation of the Convention against Torture. Systematic use of violence by the military against citizens in reprisal for the exercise of their basic rights is a breach of individual human rights and also stifles democracy and freedom of expression.

### ***Case study: Navanthurai***

In August 2011, Sri Lankan military forces used violence against over 100 civilian villagers in Navanthurai after they exercised their right to assembly and peaceful protest. Several media reports<sup>5</sup>

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<sup>1</sup> See The Daily Mirror, *Death sentence imposed*, 26 August 2011, <http://www.dailymirror.lk/news/13196-death-sentence-imposed.html>, The Daily FT, *Angulana OIC, 3 others sentenced to death*, 26 August 2011, <http://www.ft.lk/2011/08/26/angulana-oic-3-others-sentenced-to-death>.

<sup>2</sup> *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Sri Lanka, A/HRC/7/3/Add.6*, 26 February 2008, <http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm>, para 91.

<sup>3</sup> Human Rights Asia, *SRI LANKA: Without Witness and Victim Protection Legislation, No Hope for Restoration of Justice in Sri Lanka*, 21 January 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-006-2011>.

<sup>4</sup> United Nations, *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011.

<sup>5</sup> Sri Lanka Brief, *Jaffna: Brutal Assault of Civilians in Navanthurai, 26 August 2011*, <http://www.srilankabrief.org/2011/08/jaffna-brutal-assault-of-civilians-in.html>; Exile Network for Media and Human Rights in Sri Lanka, *Sri Lanka: NfR condemns Assault on Navanthurai civilians by security forces*, press release 26 August 2011, <http://nfrsrilanka.wordpress.com>; ColomboPage News Desk Sri Lanka, *Hundreds arrested in Sri Lanka’s Jaffna city for attacking police post, residents protest*, 23 August 2011, [http://www.colombopage.com/archive\\_11A/Aug23\\_1314105588KA.php](http://www.colombopage.com/archive_11A/Aug23_1314105588KA.php); Ilankai Tamil Sangam Association of Tamils of Sri Lanka in the USA, *Greasifying State Terror*, Journalists for Democracy in Sri Lanka, 1 September 2011,

describe a situation on 23 August 2011 in which over 100 men in Navanthurai were dragged from their homes in the early morning and severely beaten by the Sri Lankan army before being detained and handed over to the police. Women and children were also beaten, and private property was both damaged and stolen. The men were held without medical treatment for over eight hours, and it took 20 hours before the most severely injured men were taken to hospital on a judge's order.

The army's operation followed attempts by the villagers to capture five 'grease-men' – men who use grease to disguise their identity and attack (mainly) women in North and East Sri Lanka – on the evening of 22 August 2011. The grease-men escaped into the Navanthurai Army Detachment. The villagers' demands that the army produce the grease men were refused and the villagers later saw the men, in military uniform, being driven from the army camp.

The Sri Lankan Minister for Defence, Mr. Gotabhaya Rajapakse, denied the existence of grease men, claiming that they were constructed to discredit the government. He justified the military's actions in Navanthurai as necessary in order to keep the peace.

### ***Case study: Disrupted Tamil National Alliance (TNA) meeting***

The TNA is an opposition political party representing Tamils in the North and Eastern Provinces and has won support in national and local elections. On 16 June 2011, a TNA party meeting attended by TNA parliamentarians in Jaffna was attacked by an armed group in uniforms. People attending the meeting were beaten and assaulted.<sup>1</sup> Attacks on meetings of opposition parties and their members are not isolated incidents, but part of systematic harassment and suppression of those who oppose the government.

### **Recommendations**

In order to end the institutionalised use of torture and violence in Sri Lanka, the Sri Lankan government should:

- Release those who have been arrested under anti-terrorism laws or charge them with recognisable criminal offences and have custody determined by an ordinary court.
- Amend or repeal provisions of the Prevention of Terrorism Act so that it complies with international law and standards.
- Guarantee the right to legal representation and access to a lawyer of the detainee's choice at all stages, guarantee family and medical visits to detainees and ensure full access by the International Committee of the Red Cross to all places of detention, including where LTTE suspects or the surrendered are held.
- Eliminate the practice of preventative detention and introduce statutory, regulatory and administrative reform to ensure that powers of arrest and detention are exercised lawfully.
- Extend invitations to the following UN representatives who have requested visits to Sri Lanka: The UN Working Group on Enforced Disappearances; the UN Special Rapporteur on Torture; the UN Special Rapporteur on Freedom of Expression; and the UN Special Rapporteur on the Independence of Judges and Lawyers.
- Publish or make available to concerned parties a complete list of the former LTTE cadres being held by the state for "rehabilitation" purposes and all other persons detained under the PTA. The state must take concrete steps towards trial or release of these individuals.
- Put effective witness protection schemes in place to protect individuals who wish to speak up in Court or public spheres. This may involve the enactment of witness and victim protection legislation.

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[http://www.sangam.org/2011/09/Greasifying\\_Terror.php?uid=4449](http://www.sangam.org/2011/09/Greasifying_Terror.php?uid=4449); Global Tamil Net 'Navanthurai Mystery Men Issue' 26 August 2011, <http://www.globaltamilnews.net/GTMNEditorial/tabid/71/articleType/ArticleView/articleId/66215/language/en-US/Navanthurai-Mystery-Men-Issue.aspx>.

<sup>1</sup> Chris Kamalendran, The Sunday Times, 'Military Police to probe attack on TNA meeting' 19 June 2011, [http://sundaytimes.lk/110619/News/nws\\_13.html](http://sundaytimes.lk/110619/News/nws_13.html); BBC Sinhala, 'Military 'apologies' for attack on Tamil MPs' 19 June 2011, [http://www.bbc.co.uk/sinhala/news/story/2011/06/110619\\_jaffna\\_tna\\_attack.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/06/110619_jaffna_tna_attack.shtml).