

Issues Paper 3

Human Rights in the Sri Lankan Law Enforcement and Security Sector

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ISSUES PAPER 3: HUMAN RIGHTS IN THE SRI LANKAN LAW ENFORCEMENT & SECURITY SECTOR

INTRODUCTION

The earlier *Issues Papers* in this series have detailed the international research on human rights within the context of law enforcement and security agencies and on the root causes of torture. In all of this research the importance of context has been repeatedly asserted. Thus in this *Issues Paper* we move to exploring the specific location of the Sri Lankan personnel we have worked with. We provide an overview of existing human rights mechanisms as well as highlighting some of the inhibiting factors that may undermine these mechanisms and risk factors that may lead to the use of torture.

As explained in the *Introduction to the Issues Papers*, there were a number of reasons we chose to work in Sri Lanka. These included a pre-existing partnership between the University of Sydney and the Centre for the Study of Human Rights at Colombo University dedicated to developing best practice in human rights education. We were also supported by a willingness on the part of the Sri Lankan authorities to engage with us. Moreover, the fact that Sri Lanka was in a crucial period of transition from armed conflict to peace was timely for projects aimed at enhancing human rights protections. Allegations of past human rights violations, including the use of torture spurred us to think about how the protection of human rights may be better secured in the future. With this prospective rather than retrospective approach in mind, we set out to do research to understand the social, political, cultural and economic factors that impact upon the work of security and law enforcement personnel and that might help us design an effective strategy for enhancing human rights protections. This *Issues Paper* details some of our key findings.

We will start by outlining the main legal mechanisms Sri Lanka has developed to protect and promote human rights.

LEGAL FRAMEWORK

The Constitution of Sri Lanka (1978) includes a range of fundamental rights provisions including an absolute prohibition of torture (Article 11), right to equality (Article 12) and protection from arbitrary arrest (Article 13) and the criminal procedure laws also provide for basic fair trial rights. In terms of international obligations, Sri Lanka ratified the ICCPR in 1980, the Convention against Torture in 1994 and these Conventions were incorporated into domestic law through the passing of the *Convention against Torture (CAT) Act* in 1994 and the *ICCPR Act* in 2007. Section 3 of the *CAT Act* makes clear that the prohibition on torture is absolute, stating that none of the following conditions are defences: war, threat of war, internal political stability or public emergency, superior orders. Finally, the *Evidence Ordinance*, Section 24 deems confessions caused by inducement threat or promise inadmissible in criminal trials and Sections 25 and 26 exclude all confessions made either to police officers or in police custody: provisions intended to reduce the incentive for police to force suspects to confess.¹ Alongside this legislation, the regulations, departmental orders and codes of conduct of both the police and military provide clear guidelines - in line with international standards – setting out the importance of arrest being conducted with minimum force and military decisions being made in line with the principles of distinction (between civilians/civilian objects and combatants/military objects), proportionality and necessity. Finally, the courts have heard fundamental rights cases and issued a number of important judgments in which state actors have been held responsible for fundamental rights violations and ordered to pay compensation. The Supreme Court has also provided useful commentary on the appropriate limits of the use of force by police.²

¹ As the Supreme Court in *R v Rev. H. Gnanaseeha Thero et al.* noted: “In the Police station a prisoner is surrounded by known hostile forces... He is subject to coercing impingements, undermining even if not obvious pressures of every variety... this they may accomplish not only with ropes and a rubber hose, not only by relay questioning persistently, insistently subjugating a tired mind, but by subtler devices.” (1968) 73 N.L.R. 154 at 179-180.

² For example: *Ansalin Fernando v. Sarath Perera, Officer-In-Charge, Police Station, Chilaw and others* (1994) 1 S.L.R. 411; *Chaminda v. Gunawardena, OIC Police Station, Kataragama and others* (1994) 1 S.L.R. 80; *Jayasinghe v. Sub Inspector of Police, Jayakody and others* (1998) 2 S.L.R. 204; *Jayasinghe v. Sub Inspector of Police, Jayakody and others* (1998) 2 S.L.R. 204; *Kodituwakke Nihal v. Police Sergeant Kotalawala and others* (2000) 1 S.L.R. 217; *Sanjeewa, Attorney at Law (On Behalf of Gerald Mervin Perera) v. Suraweera, Officer In Charge, Police Station, Wattala and others* (2003) 1 S.L.R. 317. At the same time, it has been noted that since the enactment of the *CAT Act* in 1994, there have only been 4 convictions and more than 17 acquittals by the High Court: International Commission of Jurists (ICJ) “Authority without accountability: the crisis of impunity in Sri Lanka”, November 2012, 127, accessed 17 June 2014, <http://www.icj.org/sri-lanka-new-icj-report-documents-crisis-of-impunity/>. As High Court cases are unreported it is difficult to ascertain why the court acquitted but it is perhaps indicative of a general reluctance within the criminal justice system to punish police officers: a point we discuss further later in this paper.

Thus we can see that in line with the first school of prevention work described in *Issues Paper 1*, Sri Lanka has ratified and domestically implemented the relevant human rights instruments.

However, the effectiveness of these legal mechanisms in preventing the use of torture has been undermined by a number of parallel factors, which we will now explore in some detail. Not only do these factors demonstrate the limitations of a prevention approach focused solely on legal reform; they also highlight the potential negative consequences of such an approach. In saying this we do not wish to negate the efforts of the human rights community within Sri Lanka. Yet as the next section will show, many within this community are themselves acutely aware of the hostility that now exists among large parts of the Sri Lankan public towards human rights due to the perception that it is about selective and arbitrary accusation.

SOME HISTORICAL CONTEXT

Since the 1970s Sri Lanka has experienced repeated waves of political violence. First, in 1971 a Marxist-inspired movement of disaffected, unemployed (but educated) youth in the rural south calling themselves the Janatha Vimuthki Peramuna (JVP) began armed attacks and took control of large parts of the south and west of the country. They often specifically targeted police stations and utilised extremely brutal tactics. While the government succeeded in suppressing the JVP (also using extreme violence), the movement regrouped in the late 1980s and launched a second insurrection. This period, which lasted roughly between 1987 and 1991, has been widely claimed as the most violent in recent Sri Lankan history.³

Meanwhile the most infamous terrorist organisation the Sri Lankan government has faced is the Liberation Tigers of Tamil Ealam (LTTE). The LTTE proved itself to not only be a particularly well-organised and tenacious insurgent organisation but also committed to the use of brutal techniques aimed at ensuring the maximum damage and often targeted at civilians. While for many suicide terrorism is associated with Islamic fundamentalism (and has justified a raft of fairly draconian laws in many parts of the world), it is perhaps worth remembering that the LTTE was the most frequent user of suicide terrorism in the world until its defeat in 2009.⁴

In response to these events, as with many countries that have faced terrorism, Sri Lanka has over the course of the last 40 years implemented extensive counter-terrorism/counter-insurgency regulations. While perhaps unsurprising – indeed similar developments have been seen across the world as a result of the ‘War on Terror’ – this has unfortunately led to many of the legal safeguards that are enshrined in the Sri Lankan legal system being undermined.⁵ It has also led to violence becoming a regular feature of many peoples’ lives in Sri Lanka.

This normalisation of violence is significant. Going back to the ecological model discussed in Chapter Two of *Issues Paper 2*, we can see the ways in which violence has infiltrated multiple layers of society through from the highest levels of law and politics through to culture, community, organisations and the individual. It is also felt by many in Sri Lanka that as a result of the armed conflict, certain values have been eroded and human rights in particular have been a casualty.⁶ Again, this phenomenon has also been witnessed elsewhere in the world as a result of the so-called ‘War on Terror’. The Sri Lankan case provides us with a useful opportunity to explore how and why existing human rights approaches have not been able to better prevent this from occurring.

The end of the armed conflict with the LTTE in mid 2009 also marked a possible turning point for Sri Lanka. For the first time in 30 years the country is not at war and there is a great opportunity to take steps to make sure a sustainable peace is built. Some steps towards this have already been taken. In 2010 the President established the Lessons Learnt and Reconciliation Commission (LLRC) that was given the mandate of investigating the events leading up to the final stages of the war (starting with the reasons for the failure of the 2002 Ceasefire Agreement), allegations of human rights violations committed during the final stages of the war and making recommendations for future steps to be taken by the government.

³ Sasanka Perera, *Stories of Survivors, Socio-Political Contexts of Female Headed Households in Post – Terror Southern Sri Lanka*, (New Delhi: Vikas Publishing House, 1999); *Report of the Working Group on Enforced or Involuntary Disappearances: Addendum: Report on the visit to Sri Lanka of 3 members of the Working Group on Enforced or Involuntary Disappearances (7-18 October 1991)*, E/CN.4/1992/18/Add.1, 8 January 1992; Human Rights Watch 1992, “Human Rights Accountability in Sri Lanka”, <http://www.hrw.org/reports/1992/05/01/human-rights-accountability-sri-lanka>, accessed 17 June 2014.

⁴ Robert Pape, “The Strategic Logic of Suicide Terrorism” *American Political Science Review* 97, no. 3 (2003): 1-19. Indeed, of the 186 acts of suicide terrorism Pape studied between 1980 and 2000, 75 were committed by the LTTE.

⁵ Centre for Policy Alternatives, “The Need to Repeal and Replace the Prevention of Terrorism Act (PTA)”, 9 May 2013, <http://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/>, accessed 17 June 2014; ICJ, “Authority without accountability”.

⁶ *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*, November 2011 (LLRC Report), para. 5.11, http://www.llrcaction.gov.lk/assets/downloads/reports/en/Final_LLRC_Report_en.pdf, accessed 25 July 2014.

One of the conclusions the LLRC drew was the importance of 're-dedicating ourselves to the task of promoting and protecting human rights as a catalyst for bringing about reconciliation, lasting peace and security'.⁷ Among other measures, educating law enforcement and security personnel on human rights and building their capacity to comply with these standards has been repeatedly identified by the Government as a focus and it is in this context that our project was developed.⁸

At the same time, there is a feeling within Sri Lanka that there has been an unfair targeting of government forces by the international community, with insufficient attention paid to the atrocities committed by other actors, in particular the LTTE.⁹ This attention is also perceived as providing only a very partial view of the nature of human rights abuses and suffering experienced by the Sri Lankan community over the past 40 years. Without wishing to enter into this debate or adopt a position either way, we note this as an important contextual factor which has shaped both the responsiveness of many sectors of the society to the concept of human rights and the ability of the human rights community – both locally and internationally – to develop productive methods for enhancing human rights protection. This context has also informed our project's design and approach.

In particular, it was most important to us that the training/capacity building programme we designed be tailored to the specific needs and concerns of Sri Lankan state officials, law enforcement and military personnel and society. This required in-depth field research, which we conducted over the course of 2012-2014. In conducting this research we sought out the views not only of the authorities, representatives of different related professions and civil society but also those of military and police personnel themselves. This research was further enhanced by a thorough review of existing literature on the military and police in Sri Lanka and human rights.

SOCIAL AND POLITICAL FACTORS

As explained above, widespread political violence over the last 40 years has led to a normalisation of violence for many Sri Lankan citizens. This means that for many Sri Lankan citizens, such violence is a day-to-day experience, with the effect that violence committed by state or non-state actors ceases to stand out as 'aberrant'. This, combined with a number of other social factors (which we will discuss shortly) has had significant consequences in terms of the promotion and protection of human rights and in particular the use of torture. In a similar way to societies responding to the 'War on Terror', the widespread fear caused by the ever-present threat of random acts of terrorist violence has created both a political system and a general public that has been willing to sacrifice civil liberties in the name of security. This has had legal ramifications: namely it has allowed for the passing of laws such as the Emergency Regulations, which potentially undermine the constitutional rights safeguards in place.

At the same time the consistency of violence has also had socio-cultural consequences, and these cannot be addressed by law reform alone. First, the conflict between the government and the LTTE has divided the country along ethnic lines and established a sense of suspicion and distrust between communities. Since 1983 the Tamil and Sinhala populations have increasingly lived separately: the former predominantly in the North and East of the country and the latter in the South, Centre and West. Meanwhile ever more desperate governments have indiscriminately targeted Tamils for surveillance and intimidation in the hope of stemming the tide of LTTE terrorist attacks. Finally, the LTTE's effectiveness in wiping out opposition further facilitated the popular association of Tamils with LTTE (and therefore terrorist) within the minds of the general public. The lack of inter-communal interaction and the association of one group with terrorism have contributed to a process of dehumanisation, which as noted in Chapter One of *Issues Paper 2* has been identified as a key risk factor in promoting the use of torture. This is experienced most acutely in organisations like the armed forces: a point we will return to shortly.

Alongside Sri Lanka's specific experience of political and inter-ethnic violence, our research suggests a number of other social factors that have increased the risk of the using torture by police or military personnel. Some of these may be attributable to, or at least have been exacerbated by, recent political events, but some stem back earlier, highlighting the importance of human rights interventions engaging deeply with local social and cultural norms.

⁷ LLRC Report, para 5.4

⁸ *Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2011-2016*, 10-11.

⁹ This is in part the result of the temporal mandate of the Panel of Experts (POE) established by the UN Secretary-General to investigate allegations of serious violations of international human rights and humanitarian law, which was confined to September 2008 to May 2009: *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, 5, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf, accessed 17 June 2014.

i. The Notion of Discipline

Aside from the normalisation of political violence described above, there is a fairly widespread acceptance within Sri Lankan society that violence is a necessary and acceptable means of maintaining discipline. This is not limited to the law enforcement or security sector. A fascinating study of teachers' attitudes to corporal punishment, found that although corporal punishment has been banned in Sri Lanka since 2005,¹⁰ it remains a common practice that is justified by both teachers and others in the community. The research quotes one teacher:

"[W]e are who we are today because our teachers disciplined us with the cane. Tell me miss (addressing the researcher), were you not hit as a child by your teachers? It's thanks to them that you are where you are today."¹¹

In a recent workshop that our project conducted with teachers, we heard similar views expressed. Teachers asserted that corporal punishment was necessary to make children confess to wrongdoing and to ensure respect and discipline.¹² So too, when the topic of corporal punishment came up in a workshop we conducted with police and military, virtually all personnel expressed the same view as the one quoted above – that corporal punishment had made them who they are today.

The presence of a general social acceptance of physical force as a form of discipline creates an apparent contradiction that undermines human rights trainings with military and police personnel. For example, in one training session that we observed with army personnel, having told participants that a slap by a police officer could constitute torture, the trainer asked: 'A teacher beat a student with a cane once: does this amount to torture?' When none of the participants responded, the trainer stated that to this day he worshipped his teachers who had hit him to make him a 'good person' even though he knew he should not say so. What this example highlights is that although there is extensive training done on the legal principles prohibiting the use of torture, far more work is required to first build a consensus within Sri Lankan society about whether and why physical force is inappropriate.¹³ This may indicate the importance of there being a preliminary discussion in Sri Lanka about what is understood as 'torture': an issue that links to another social factor identified through our research.

ii. Justice

Consistent with the previous point, it also appears that punitive notions of justice remain popular in Sri Lanka. Police officers we spoke with complained that they are often faced with a situation in which the general public demands violence be used against a suspected thief, otherwise the police will be assumed to be ineffective, 'soft' or corrupt. The demand for instant or rough justice by the community may in part be the result of the inaccessibility and inefficiency of the criminal justice system. However it may also be the result of particular conceptions of 'justice'.

In interviews with police officers in India, Rachel Wahl found that they did not so much reject the notion of human rights, nor did they see human rights as being in conflict with their own values and ideas about justice. Rather, they objected to the way in which activists promoted a universal approach to human rights. They perceived this approach as providing too much protection to 'criminals' and 'terrorists' at the expense of 'innocent people' and the greater good of society.¹⁴ Our research tends to support this finding, confirming that personnel in security forces in particular contexts see themselves as doing the work of 'justice' required by and appropriate to their context.

We heard similar views expressed repeatedly by police officers in both Sri Lanka and Nepal (discussed in the next *Issues Paper*), as well as among other members of the community.¹⁵

¹⁰ Circular No. 25/17 of 2005.

¹¹ Iresha M. Karunaratne and Krishan K.W. Chinthaka, "'Beating is for buffaloes' Vs 'School children's human rights...a Western madness': Teachers' attitudes towards and justifications for corporal punishment" in *New Horizons in Human Rights*, ed. Centre for the Study of Human Rights (CSHR) (Colombo: CSHR, 2012), 33-50 at 44.

¹² Workshop, Anuradhapura District, 3 June 2014.

¹³ This observation was also made to us by various human rights activists: interview with Sudarshana Gunawardana, Rights Now, 9 April 2014; Telephone interview with Basil Fernando, Asian Human Rights Commission, 28 February 2014.

¹⁴ Rachel Wahl, "Policing, Values and Violence: Human Rights Education with Law Enforcers in India" *Journal of Human Rights Practice*, Vol. 5 (2) (2013): 220-242.

¹⁵ In one particular community meeting in Anuradhapura district, local residents spoke angrily of the perceived unfair criticism Sri Lanka was receiving from the international community arguing that the true 'human rights violators' were those who had terrorised the community and placed bombs on buses.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions also provides an illustration of this perspective in his 2006 report on Sri Lanka:

“One high-ranking official acknowledged to me that torture was widespread and problematic but then proceeded to note that while he could understand why police tortured ‘in the line of duty’, he felt it was completely inexcusable for police to torture in pursuit of private ends.”¹⁶

This situation produces a tension between human rights standards, which seek to restrict the use of torture or force to a limited range of circumstances, and the societal view - that is also held by many police officers - that torture or force only becomes improper when used against ‘innocent’ people. In Chapter Three of *Issues Paper 2* we argued that formal laws only partially shape the behaviours of actors like police officers, pointing out the importance of informal factors such as social capital and local norms about ‘how we do things around here’. The social and cultural attitudes prevalent in general society and amongst security personnel in particular are thus important to bear in mind in the design of any project aimed at reducing torture in Sri Lanka.

These norms and attitudes also help to explain why, despite the emphasis that human rights actors place on the role of the criminal justice system in preventing and punishing violations, other actors within the criminal justice system have tended not to take such a strong stand against torture. For a start, others within the criminal justice system may support the notion that justice may entail the use of physical force or violence, and this will make them somewhat ambivalent to the use of torture by police. For example, in a focus group discussion we held with Judicial Medical Officers (JMOs), a few expressed real surprise that violent treatment by police did not have to be severe and systematic in order to qualify as torture but could also be a few blows. Meanwhile, in acquitting an accused officer of torture, one High Court judge stated: ‘Even though it appears that when considering the number of injuries, the accused has used some force beyond that which was necessary, that does not prove the charge against the accused in the case.’¹⁷ This statement suggests that his Honour had a certain expectation that the police officer would use such a level of force.

We have also been told that one reason courts may be reluctant to impose the punishments available within the CAT Act is that this may have negative repercussions on the police officer’s career. This is exemplified in the case of Anura de Silva, a Criminal Investigation Department (CID) officer whose prosecution for torture was withdrawn in 2010 by the Attorney-General (and allowed by the High Court) because he had been selected for a UN Peacekeeping mission and the prosecution would have disqualified him.¹⁸ This suggests there exists an attitude among judicial officers that allegations of the use of torture by a police officer are not so serious that he or she should not still be considered competent to do his or her job. Other observers have also expressed the belief that many judges do not in fact reject what within international human rights law would amount to torture.¹⁹ This type of evidence seems to indicate that both outside and within the criminal justice system violence has been normalised and thus does not register as a human rights violation that must be prevented and/or punished. It also further demonstrates why legal regulation alone will not prevent the use of torture.

This preference for instant ‘rough’ justice is further compounded by the fact that few have faith in the institutional justice system in Sri Lanka. In the words of one expert commentator: “For most Sri Lankans, the legal ins-and-outs of any particular case are, understandably, less notable than the broader patterns of justice they perceive.”²⁰ Many feel that the system continues to favour the rich and powerful and fails to provide fast, effective responses to the injustices experienced by many ordinary people. This is the case even among those working within the system. For example, the International Commission of Jurists cite a retired High Court judge commenting on how defendants with political influence or politicians themselves often intervene in cases either to have the case transferred (presumably to a more sympathetic judge’s list) or to replace the judge.²¹ Meanwhile cases often take many years to complete and court proceedings can prove extremely costly, making the judicial route an unviable option for those without financial means. As a result individual police officers and members of the general public often see the police as being the primary providers of justice for the community. This is not unique to Sri Lanka: as the next *Issues Paper* on Nepal demonstrates, a similar view is held in Nepali society.

¹⁶ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to Sri Lanka, 2006 - E/CN.4/2006/53/Add.5, para. 54.

¹⁷ Republic of Sri Lanka v. Havahandi Garwin Premalal Silva, cited in Kishali Pinto-Jayawardena, “The Rule of Law in Decline: A Study of the Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka”, 2009, 93, <http://material.ahrchk.net/srilanka/AHRC-FST-024-2009-CIDTP.pdf>, accessed 25 July 2014.

¹⁸ ICJ, “Authority without accountability”, 83-84.

¹⁹ Telephone interview with Basil Fernando, Asian Human Rights Commission, 28 February 2014.

²⁰ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to Sri Lanka, 2006 - E/CN.4/2006/53/Add.5, at 31, fn.44.

²¹ ICJ, “Authority without accountability”, 143.

Moreover researchers on Indian police have found similar trends in India.²² As with the previous section, the distinction between appropriate and inappropriate use of force is therefore based more on whether the use of violence was for the 'right' reasons than a blanket commitment to refrain from violence. Unfortunately, these problems with the criminal justice system are both the result of social inequality and further exacerbate it as a risk factor. We turn to this factor now.

iii. Social Inequality

Finally, while the principle of equality is enshrined in the Sri Lankan Constitution, the structure of Sri Lankan society tends to undermine its effective realisation. This is not only an issue of financial inequality, which as discussed above impacts on the ability of individuals to access justice. As with Nepal (discussed in the next *Issues Paper*) and other South Asian nations, there seems to be general tendency within Sri Lankan society to dehumanise the rural population, the very poor and the uneducated. While in Nepal and India caste is influential, in Sri Lanka class and education play an important role as does whether someone is a rural resident. In a striking example, in a workshop for members of the Armed Forces we observed there was a discussion about whether someone being slapped by the police constituted torture or cruel, inhuman or degrading treatment or punishment (CIDTP). The first example given was of a rural village woman. One officer stated that this would constitute torture because, 'she would have come to the police for justice. And given her upbringing she wouldn't be used to such treatment. She came to the police to solve her problems'. The trainer then asked if the situation would be different if one of our research team were to be slapped. The response was '[this would be] even worse! It would definitely be torture or CIDTP.' In justifying this response, one participant asserted it was because 'they know the law'. Another suggested that, due to their 'higher social status' [as lawyers and university researchers], the insult to their dignity was even greater.

Thus while lack of access to the formal justice system means those of lower socio-economic status are more reliant on the police, they are also paradoxically more likely to be victims of torture. Such unequal treatment is supported by an idea of the differential worth of individuals, which in turn facilitates the belief that differential treatment of members of society is acceptable.²³ Even in the Commission for Inquiry into Disappearances, the amount of compensation was awarded on a scale with the families of disappeared students entitled to 15,000 LKR and families of politicians entitled to up to 500,000 LKR.²⁴ This hierarchy of worth is also reflected in the compensation amounts awarded by the Supreme Court in torture cases, with lawyers receiving up to 250,000 LKR, military and police around 76,666 LKR and semi-skilled labourers and skilled employees receiving between 29,375 LKR and 16,500 LKR.²⁵

Given that the majority of those subjected to violence fall into the latter categories, these differential compensation amounts may convey the wrong message. They also highlight that human rights campaigns, which focus on the inherent dignity and equality of individuals will fail to prevent violations committed against those deemed 'less worthy' within society unless they simultaneously address deeply entrenched social and cultural hierarchies. This requires intervention not only at the level of police and military personnel but more generally in society and at the level of broad cultural values.

Finally, some feel that this social inequality has also contributed to public apathy towards the use of torture in Sri Lanka. Most middle class Sri Lankans have traditionally been unaffected by police brutality and therefore have been largely indifferent to it.²⁶ Furthermore, in insisting on expedited results by police, the middle classes may also be contributing to the demand for use of torture by police.²⁷

²² Wahl, "Policing, Values and Violence"; Beatrice Jauregui, "Law and Order: Encounter Killings and Routinized Political Violence" in *A Companion to the Anthropology of India*, ed. Isabelle Clark-Decès (Oxford: Blackwell Publishing, 2011), 371-388.

²³ This interaction between cultural frameworks and the material conditions is typical of entrenched systems of inequality and injustice. For example, theorists such as Iris Marion Young have pointed out that women or carers are seen in many societies as doing work that is less inherently valuable, leading to their being paid less. From the other side, unequal pay for the type of work that women do transmits the belief that women's work is worth less.

²⁴ MCM. Iqbal, "Still waiting for Justice in Sri Lanka", *Groundviews*, 23 March 2010, <http://groundviews.org/2010/03/23/still-waiting-for-justice-in-sri-lanka/>, accessed 17 June 2014.

²⁵ Pinto-Jayawardena, "Rule of Law in Decline", 201.

²⁶ Patrick Lawrence "Conversations in a Failing State", 2008, Asian Human Rights Commission, <http://www.humanrights.asia/resources/books/ahrc-pub-003-2008/Chapter-Eight-Useless-Suffering>, accessed 10 May 2013.

²⁷ This could be seen as an example of what Darius Rejali has called the 'Civic Discipline' model of torture: "What drives torture in these cases is neither war nor a permissive legal environment, but informal arrangements among police, residents, and business to shape the urban landscape." *Torture and Democracy* (New Jersey: Princeton University Press, 2007), 60.

Aside from these political, social and cultural factors, our research suggests that certain organisational factors may also contribute to increasing the risk of torture. In our research on security organisations, we were mindful of the importance of examining actual practices, understandings and dynamics so that we could build up an accurate understanding of the way in which such organisations actually operate. Too often human rights programs assume that all organisations are the same, that violations occur for the same types of reasons and, as such, that prevention strategies can be fairly uniform. In the next section we will explore some of the factors relevant to the police in Sri Lanka. This will be followed by a discussion of the risk factors identified in the military.

SRI LANKA POLICE

When asked why the police may resort to torture, the dominant explanations provided by both police personnel themselves and external commentators are:

- As a means of extracting information and confessions (as the only criminal investigation tool),²⁸
- To force confessions for unsolved crimes (in order to meet community/superiors/political expectations of solving crime);²⁹
- To fulfil obligations to other actors, in particular powerful people.³⁰

Each of these explanations can be linked to a broader organisational issue, which we will now discuss in detail.

i. Work Environment

Both police personnel and external observers point to the poor work environment of the police as a major concern. Police are often poorly equipped and often – due to a lack of adequate basic resources – find themselves reliant on the patronage of local businessmen or on complaining parties to allow them to do the most basic tasks. This leads to the risk of corruption.

Sri Lanka is not alone in facing this issue: a number of studies done in different contexts have found a clear relationship between the poor salaries of police, corruption and violence.³¹ In the case of Sri Lanka we were given the following illustration of how the relationship between a lack of resources and social pressure on police to solve crimes may lead to the use of torture:

- They [the complainant] take an influential person (for example a priest), they contact a policeman they know. Police is then obliged to them. And they give incentives to the police.
- The first question the police will ask is, 'do you know the robber? Do you have any suspects? Then they will say, 'do you have a vehicle we can use? We have no diesel...'
- Then the police have to show they are doing an investigation. They don't investigate – they just hammer a person. The statement can't be produced in the courts so then they plant cannabis.
- If you complain about stolen jewellery, the police will go to people they know and say, 'say this is the person who had the jewellery'. Then the police will take the person [into custody] and say, 'the amount is 4, give us 2 and we will let you go'. If not, they will give 'proper treatment' [beating]. They just want the person to admit to show the other party.³²

Fernando also gives the example of a case where a husband and wife were beaten by the police at the instigation of someone with whom they were involved in a land dispute.³³ According to this view, the low pay rates of the police result in an accepted wisdom that a certain level of corruption is inevitable. This then leads to the police being hired to settle private disputes.

²⁸ For example in the Gerard/Gerald Perera case it was found that the only basis on which the victim had been arrested by the police was that they had heard the crime had been committed by someone called 'Gerard/Gerald' and the victim was the first 'Gerard/Gerald' they came across: *Sanjeewa, Attorney-At-Law (on behalf of Gerald Mervin Perera) v. Suraweera, OIC Wattala Police Station* [2003] 1 Sri.L.R. 317.

²⁹ Basil Fernando and Shyamali Puvimanasinghe eds. *An X-ray of the Sri Lanka Policing System and Torture of the Poor*, September 2005, Asian Human Rights Commission, 7, http://www.ahrchk.net/pub/pdf/xray_slpolicing.pdf, accessed 25 July 2014. Pinto-Jayawardena, "Rule of Law in Decline", 12.

³⁰ Pinto-Jayawardena, "Rule of Law in Decline", 12.

³¹ Jacqueline Baker, "The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia" (Ph.D. diss., London School of Economics and Political Science. 2012), 298-313. Basil Fernando of the Asian Human Rights Commission made a similar observation in relation to the Hong Kong experience: Telephone interview with Basil Fernando, Asian Human Rights Commission, 28 February 2014.

³² Interview with Chitral Perera, Janasansadaya, 11 March 2014.

³³ Fernando and Puvimanasinghe, *X-ray*, 109.

Police officers we spoke with also complained that the lack of resources available mean they often feel unable to conduct adequate investigations and therefore have to rely on confessions obtained by any means. In an effort to address this lack of investigative capacity, the Sri Lanka Police (in collaboration with the Swedish National Police Board) established 37 Scene of Crime Officers (SOCOs) labs across the country and then trained 271 SOCOs in the early 2000s. These are active but have not been able to operate as efficiently as they could due to limitations in resources such as chemicals and laboratory equipment and vehicles to get to crime scenes.³⁴

At the same time, evaluators of the above mentioned project also noted that SOCOs have been less effective in part due to the failure of OICs to utilise them. They identified some possible explanations, including a possible desire to retain control of investigations.³⁵ However they also noted that as at 2007 no SOCO reports had been used as evidence in court proceedings in either of the two locations they studied (Anuradhapura and Batticaloa). This seems to demonstrate a lack of knowledge and understanding of SOCO work by OICs and other actors in the criminal justice system.³⁶

ii. Inadequate Civilian Skills Training

A major issue facing the police is its transformation back from performing as a paramilitary force, assisting the military with security, to being a civilian service. Many of the senior police personnel we spoke with saw the armed conflict as having led to a degradation in the training and 'soft skills' of police, leaving them ill-equipped to handle civilian criminal investigation. Again, this can be understood through returning to the recent socio-political history. As noted above, starting with the first JVP insurrection, police have often been targeted in the course of political violence. In the early 1980s a series of terrorist attacks resulted in the deaths of many police personnel, attacks on police stations as well as killings of VIPs. This led to the establishment of a paramilitary unit that came to be called the Special Task Force (STF). This unit was then deployed in the North to provide security to police stations and assist the police in counter-terrorism. Aside from the STF, commentators have observed that the political violence from the early 1970s, "transformed the Sri Lankan police force from a crime detection and law enforcement agency to an insurgency suppression mechanism."³⁷

While one can understand why this measure was taken given the circumstances, the establishment of the STF and the increased attention paid to equipping the police with combat skills have come at a price. First, police and police stations are perceived by many within the community as frightening.³⁸ This creates difficulties in police-community cooperation, which may serve to exacerbate the police's inability to conduct effective investigations. Members of the community are reluctant to speak to police and representations of the police in Sri Lankan popular culture and discourse tend to be quite derogatory. Not only can this be experienced by police officers as antagonistic and disrespectful (making them resentful and aggressive in response), it may also contribute to their belief that the only way to make people cooperate is through the use of intimidation or violence. Of course, this simply perpetuates the cycle. It is in response to this issue that one of our HRPFs is seeking to implement a project in Anuradhapura district aimed at improving the capacity of OICs, Sergeants and Constables to mediate disputes and engage with the general public (see *Issues Paper 6 Chapter Three* for more details).

Meanwhile many police officers have told us that they feel the majority of them are lacking the requisite skills to conduct effective, professional investigations. This is due to much greater institutional focus on developing their military skills than their 'soft skills' such as investigation techniques and community relations.³⁹ Again, when understood in the context of Sri Lanka's recent history this is comprehensible. Yet, as one commentator has pointed out: "To be an investigator of crimes involves different skills than to be a soldier".⁴⁰ On the positive side, this has been recognised by senior police and government officials and it seems that there is a commitment to redress this deficit as part of police training.

³⁴ Knud Olander, Camilla Orjeulla and Rohan Edrisinha, "Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board", Sida Evaluation Report No. 07/43 18, 2007, <http://www.sida.se/publications>, accessed 17 June 2014. We found a similar situation in Nepal where an international grant was used to establish forensic procedures, but at the end of the funding, the required equipment ran out and the original resources went to waste.

³⁵ Olander et al. "Review", 18.

³⁶ Olander et al. "Review", 18.

³⁷ Asian Legal Resource Centre and World Organisation against Torture, "State Sponsored Violence in Sri Lanka" *Article 2*, Vol. 3(1) (2004): 5-26, 8.

³⁸ Olander et al. "Review", 10; Laksiri Fernando, *Police-Civil Relations for Good Governance* (Colombo: Social Scientists' Association, 2005).

³⁹ Interviews with retired senior police officers. We observed that within basic training there remains an emphasis on military-type exercises such as weapons training and drills. The 1997 Commission of Inquiry into Involuntary Removal or Disappearances of Persons also noted that the use of police as support for military in border areas had resulted in them failing to develop more appropriate investigation skills: *Final Report of the Commission of Inquiry into Involuntary Removal or Disappearances of Persons*, Sessional Paper No. V-1997, chapter 8.

⁴⁰ Dwight Newman, "Appendix: Preventing torture, in principle and in Sri Lanka" *Article 2*, *Asian Legal Resource Centre*, 1997, <http://www.article2.org/mainfile.php/0104/44/#17>.

One particularly promising example is a new project that has been initiated by the Family Rehabilitation Centre, which plans to provide training to police on forensic psychology, investigative techniques and criminal profiling. One of our HRPFs from the police has also designed and implemented a project aimed at enhancing police skills in the areas of mediation and dispute resolution.

iii. Politicisation

Perhaps the most serious problem that both police and observers asserted is the politicisation of the police. An illustrative example of how the torture can occur in this setting can be found in the *Faiz* case. In this case the victim was a forestry commissioner officer who had tried to arrest some illegal loggers and as a result become involved in an altercation with a local politician and provincial counsellor. When he went to the police he was detained and while in police custody assaulted by the politician and his supporters. The Supreme Court in this case found the police officers had violated the victim's fundamental rights, including Article 11.⁴¹

When we have discussed this case with police officers they often express a sense of helplessness, stating that if the police officers had tried to stop the local politician in this case, they would themselves have faced severe repercussions. It is partly for this reason that we are critical of the approach taken by most existing human rights training approaches that do not consider the situation that trainees actually face. In ideal terms, their analysis of violations is correct, but when placed in context, matters are not so black and white. As this case illustrates, asking police to observe human rights in certain circumstances may involve levels of risk to themselves that are not easily taken and certainly cannot be expected. It is our observation that this case is frequently used in human rights training on torture prevention in Sri Lanka. Yet by presenting this case to police officers as an example of why they should protect human rights (otherwise they will be punished), without providing any practical suggestions for what they should do in such a situation, trainers do little to build the capacity of police. At the same time they run the risk of simply further alienating police officers from the idea that respect human rights could be part of their approach.

iv. Internal Incentive/Disincentive Structures

Aside from the external pressures placed on the organisation, the internal reward and punishment structures may also produce incentives that do not support respect for human rights. For example, a number of our interviewees felt that currently too great an emphasis was being placed on the numbers of people the police are able to bring before the courts. Moreover the redirection of some of the fine revenue to the police station creates a further incentive to solve cases at all cost. A recent example given to us helps to illustrate:

Recently an 18-year old boy was arrested in Colombo. The police gave him a choice: accept a charge for illicit alcohol, ganja or heroin possession. The boy said he would take the alcohol charge. He was produced before Magistrates Court Number 4. The lawyer said, "He is not guilty but he is very poor so he will plead guilty. He got a 2,000LKR fine. If he had pleaded not guilty the case would last three years and every two weeks he would have to pay the lawyer. So the police says [to him], "it is better just to pay the fine". The police, not the Court is setting the fine. In another few months he will get a summons on the same charge. Half the money will go to the police. PCs are rewarded for this – they have target of numbers to produce to the courts.⁴²

A number of personnel from both the police and armed forces felt that the problem with abiding by human rights standards was not simply that there was no reward associated with this behaviour but that in fact it may be detrimental to their careers. Indeed, they expressed the view that the rewards system encouraged them to behave in ways that sometimes went against their personal consciences. For example, a former Sri Lankan DIG reports that when he has asked police officers why they resort to excessive force, one reason they give is pressure from superiors to solve cases and negative impact on career progression if they do not do so in a timely manner. They also reported a sense of shame and loss of face if they did not solve the case.⁴³ As we discuss in *Issues Paper 5*, such organisational structures can have a significant impact on whether or not individual personnel respect human rights or not. As such, one way to improve respect for human rights would be to shift the rewards structure towards incorporating recognition of a range of skills and not simply on resolving cases.

⁴¹ *Faiz v. Attorney-General and Others* (1995) 1 Sri.L.R 372.

⁴² Interview with Chitral Perera, Janasansadaya, 11 March 2014.

⁴³ Fernando and Puvimanasinghe, *X-Ray*, 52.

For example, SOCOs whose specialist training and skills might be practically utilised as an alternative to the use of torture in investigations are currently devalued within the system. They are apparently not eligible for the same rewards and promotion points as officers performing other duties and report low job satisfaction due to the lack of resources and other obstacles they face in doing their work.⁴⁴ We met one police officer who had received the specialist SOCO training but has subsequently been sent to conduct training on general police regulations and other unrelated issues at one of the in-service training centres.⁴⁵ This suggests that greater attention could be paid to ensuring that those with specialist skills are deployed to investigative positions. The external evaluators of the introduction of SOCOs also identified the need to create incentives for local OICs to properly use SOCOs as a key priority.⁴⁶

Finally, previous studies have pointed to a failure to hold senior officers responsible for 'departmental lapses' or to prosecute them for violations, with only low-ranking officers being interdicted.⁴⁷ Moreover studies have found that promotions are not tied to respect for human rights. To the extent that the link between respect for human rights and rewards on the one hand and between violations and punishment on the other are broken, the institutional structures will incentivise such violations or at least not create disincentives that will impede them.

SRI LANKA ARMY

The Sri Lanka Army has comprehensive human rights and IHL training programme as well as a Directorate specifically dedicated to training and monitoring human rights and humanitarian law.⁴⁸ A specialist training school on IHL and HR has been set up at Kukelaganga and non-commissioned officers have been trained and deployed to train soldiers in the field through seminars and training courses. These programmes have also been extended to the Sri Lanka Navy and Sri Lanka Air Force (and indeed the CSHR has been actively involved in the preparation and delivery of many of these programs, in collaboration with the Forces). There is also a network of Human Right Cells across the Army that operate at the Security HQ, Divisional HQ, Task Forces, Battalion HQ and field levels and meet fortnightly. These cells support the human rights monitoring and investigation process of the Army. They are also required to educate troops on human rights and should they hear of any human rights violations, report to these to the immediate officer in charge.⁴⁹

At the same time, as we have explained elsewhere, often human rights training and awareness is insufficient to ensure adherence to human rights standards.⁵⁰ Certain situational factors may impede the ability or willingness of personnel to uphold human rights principles, even where they express a commitment to these principles. In our discussions with various actors both within and outside of the forces a number of factors were identified which would enhance the protection and promotion of human rights and particularly assist with the prevention of the use of torture.

i. Re-establishing Civilian Life

The military has played - and continues to play - an important role in law enforcement and security in Sri Lankan society. While it has undoubtedly been responsible for many of the impressive social infrastructure projects successfully undertaken in recent years, there is still a feeling among many members of civil society that there is a need to demilitarise Sri Lankan society. For example, as one person testified about the situation in the north of the country, before the LLRC:

For everything and anything the people have to go to the Army camp. Even the GA has to listen to the Army...even the Police officers have to listen to the Army. So civilian rule must be brought back. I accept the Army's conduct is good. This is not the 80's Army. This is a professional Army but it is bad because we feel that civilian administration must be brought back.⁵¹

This led the LLRC to recommend the withdrawal of the Armed Forces from civilian administration as quickly as possible.⁵²

⁴⁴ Olander et al. "Review", 18.

⁴⁵ Mirihana.

⁴⁶ Olander et al. "Review", 19.

⁴⁷ *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to Sri Lanka*, 2006, E/CN.4/2006/53/Add.5.

⁴⁸ Sri Lanka Army website, www.defence.lk, accessed 17 June 2014.

⁴⁹ Sri Lanka Army website: www.defence.lk, accessed 17 June 2014.

⁵⁰ See *International Review: Current Approaches to Human Rights Training In The Law Enforcement And Security Sectors*, 2015.

⁵¹ LLRC Report, para. 8.100.

⁵² LLRC Report, paras. 9.134 and 9.227.

Steps have been taken to return control to civilian authorities but the army presence remains strong. On the one hand this can be understood in the context of the Government being eager to ensure that peace is maintained in an area wracked by armed conflict for many decades. On the other, this has the potential to create certain problems as soldiers have traditionally not been trained to deal with civilian issues and may experience difficulty in adjusting to these new tasks. A number of military personnel we spoke with complained about the lack of respect they now felt they received from the community. We were also told that many have found it difficult to adjust to normal civilian life after so many years in combat, leading to tensions within the home, stress-related anger and conflict with civilian authorities such as the police. One of our HRPFs has sought to address this issue within his own project and in particular we have been looking to the extensive rehabilitation programme designed and implemented by the Sri Lankan government for ex-LTTE combatants for examples, which might also be useful for government forces.

ii. Training

Due to the protracted and extremely destructive nature of the armed conflict, recruitment became an issue in the late 1990s and early 2000s. As a result some of the more rigorous recruitment and training requirements were relaxed due to a pragmatic need to supply soldiers to fight. While understandable when we consider the context, this has had consequences that a number of military personnel themselves pointed out to us. Some older forces personnel expressed concerns about some of those recruited in the later stages of the war. They stated that recruitment and training was now rigorous again but that there is a generation who, due to the exigencies of the war, were deprived of some of the more professional and in-depth training.

Meanwhile, although human rights training has been incorporated in most of the forces, there are still concerns that such training is not sufficiently practically focused. In particular, some of the military personnel we spoke with suggested more of attention be paid to:

- Providing soldiers with the skills to identify options and alternatives available to them in real life situations, with a recognition of their different levels of responsibility and authority;
- Demonstrating how the rather abstract principles contained within International Human Rights and International Humanitarian Law can be operationalised in the specific contexts soldiers face;
- Developing the values and ethical commitment of soldiers to human rights.

Another common view we found amongst military personnel was that military objectives do not always sit very well with human rights:

“When you militarise a person, you can’t give them both [military and human rights training] – you have to give them a focus on military objectives first. Then later introduce human rights – that comes with experience. Recruits are 18 or 19!”⁵³

Resolving this perceived tension between human rights and military objectives is an area that also requires attention. We have been working with our HRPFs from the three armed forces to address some of these issues in their projects and some examples are provided in *Issues Paper 6 Chapter Three*.

iii. Dehumanisation

In Chapter One of *Issues Paper 2* we noted that a key factor identified within international research on the use of excessive violence is the dehumanisation of the victim. Our field research supports this assertion. As detailed earlier in this paper, we have found that certain groups have been dehumanised in Sri Lanka – not only by members of the security sector but also by the society more generally – and this has in turn rendered these groups more vulnerable to violence at the hands of security personnel. Groups of people who are frequently demonised and dehumanised are those identified as ‘terrorists’. This is not a phenomenon limited to Sri Lanka, but given the lengthy period of armed conflict and the various non-state actors who have been actively involved in acts of violence during this time, some high-ranking officers believe this has had a significant impact on the attitudes of security personnel.

⁵³ Interview with military officer, 12 March 2014.

In the words of one senior retired army officer:

"If the world tells people that a terrorist is an inhuman bad guy who has done all this terrible stuff, this is drummed into their heads, when they catch a terrorist they can't see this person as human, as fit to live. How can we then say he should be treated ok?...The minute a man is not [seen as] honourable, the minute a man has different values; you are dealing with a different situation... [The] Geneva [Conventions] came about in conventional war. Today is a very different situation of war."⁵⁴

According to him this process of dehumanisation has led to problems, including security personnel becoming excessively violent and abusive. This has been a particular problem for Tamil Sri Lankans, due to the automatic association in the minds of many military and Sinhalese Sri Lankan civilians of Tamils with the LTTE. One of our HRPFs has been seeking to address this issue through his project, focusing on developing the cultural awareness and sensitivity skills of members of the Armed Forces (discussed in Chapter Three of *Issues Paper 6*).

iv. Professional Incentives/Disincentives

As with the police, the principle of command responsibility (through which commanders are held accountable for the actions of their juniors) remains inactive in the armed forces. This is unfortunate given the emphasis placed on absolute obedience of junior officers as it means they are vulnerable to being required to carry out unlawful orders of their superiors while also being the primary targets of subsequent disciplinary action. A particularly striking example of this is the 1999 *Embiliptiya Case*,⁵⁵ in which a senior army officer was the officer in charge of the camp, where more than fifty school children had been held and tortured. Despite this fact, he was acquitted of all charges by the High Court on the basis that there was no direct evidence linking him to the crimes even though he had direct knowledge of the children's detention and a number of his junior officers were successfully prosecuted. Furthermore, he later filed a fundamental rights petition in the SC claiming he had been deprived of a promotion that he deserved and was successful.⁵⁶ There are also currently no protections for whistleblowers.⁵⁷

CONCLUSION

It is clear that the risk of using torture emerges as the result of a complex array of factors in Sri Lanka. It is for this reason that the legal framework alone has been insufficient to ensure that human rights are adequately protected and promoted. At the same time, understanding these factors and the perspective of Sri Lankan military and police personnel assists with designing appropriate, targeted projects that may help with the practical implementation of human rights. While we have certainly drawn on this research to inform our own project design, it is also clear that we are unable to address all of these factors. By setting out some of our key research findings in this *Issues Paper* we hope to provoke further discussion amongst the relevant actors working in Sri Lanka about future strategies for enhancing human rights protections within the context of law enforcement and security.

⁵⁴ Interview with retired senior Sri Lanka Army officer, May 2013.

⁵⁵ Ratnapura High Court, Case No 121/94. Judgment delivered on 23.02.1999.

⁵⁶ *de Silva v. Liyanage*[2000] 1 Sri. L.R. 21. Although it is noteworthy that the President at the time still refused to promote him, despite the Supreme Court's finding.

⁵⁷ This was highlighted in the Krishanti Kumaraswamy case where, following allegations made by one of the accused, Corporal Rajapakse, regarding high level authorisation for the murder of 300-400 Tamil civilians, he and his family received repeated death threats: University Teachers for Human Rights (Jaffna) "Gaps in the Krishanthi Kumaraswamy Case: Disappearances and Accountability", *Special Report*, (Colombo: Wasala Publications, 1999). The Sri Lankan Human Rights Commission, in calling for greater protection of whistle-blowers, also noted the case of Alexis Leo de Silva, Superintendent in Charge of Welikada Prison who was prevented from blowing the whistle on the prison massacres in July 1983 and was later denied increments and promotions: *Report of the Committee on Disappearances in the Jaffna Region of the Human Rights Commission of Sri Lanka*, October 2003, Human Rights Commission of Sri Lanka, 32. The Asian Human Rights Commission also reports that a police officer in the *Gerard/Gerald Perera* claims he changed his evidence following threats: Asian Human Rights Commission "Sri Lanka: The Murder trial of Gerald Perera – threat to life of an important witness", 20 May 2008, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2008>, accessed 17 June 2014.

