

SRI LANKA

Rape in custody

TABLE OF CONTENTS

Introduction	1
Rape - a common human rights violation	3
The crime of rape and its prohibition in law	4
Preventive measures and remedies against rape: their strengths and weaknesses	6
Why criminal investigations into rape remain unsuccessful	7
Conclusions and recommendations	9
Appendix 1: Some recent reports of rape in custody	12
Appendix 2: Subjects of concern and recommendations of the Committee against Torture	16

SRI LANKA

Rape in custody

Introduction

Sinnathamby Sivamany (aged 24) and Ehamparam Wijikala (aged 22), two Tamil women internally displaced by the ongoing armed conflict in the north and east of Sri Lanka, were arrested by members of the navy in the coastal city of Mannar on 19 March 2001. They were subsequently raped by navy personnel and members of the Special Investigation Unit (SIU) of the police at the office of the Counter-Subversive Unit (CSU) of the police along Pallimunai Road, approximately 500 metres outside Mannar town.

Ehamparam Wijikala's partner and the 6-year-old son of Sinnathamby Sivamany were also taken into custody. They were all taken to the CSU office in a white van. Ehamparam Wijikala, in a petition to the Supreme Court, alleges that she and her partner were taken inside the CSU office. Her partner was locked in a cell, she was taken into a separate room. The Officer-in-Charge (OIC) was also there in the room. He asked her to sit on the floor and she complied. The OIC then asked a male police officer named Rajah to bring a piece of cloth. Rajah blindfolded her with the piece of cloth. She was told to remove her clothes. When she refused she was beaten and her clothes were forcibly removed by them. Then, while some of them held her hands and legs one person got on top of her, soon afterwards followed by another one. She said they both raped her.

Sinnathamby Sivamany has testified that soon after Ehamparam Wijikala and her partner had been taken into the CSU office, a navy personnel came to the van and took away her son. Another navy officer then climbed into the van and blindfolded her with a sock aided by the driver of the van. Then this officer forcibly removed her clothes and raped her. After about 15 minutes he left the van. Some time after that she was taken inside the CSU office to the room in which Ehamparam Wijikala was being held and the security forces personnel present there beat her demanding that she remove her clothes. When she refused, Rajah ordered Ehamparam Wijikala to remove Sinnathamby Sivamany's clothes. Both women were made to parade naked in front of the men. They were then made to sit in a crouched position; their hands and legs were tied and attached to a pole which was then placed between two tables so they were left hanging. They were in this position for about 90 minutes and were pinched and beaten with a thick wire during that time.

The victims were threatened with further torture unless they signed a statement admitting they were members of the Liberation Tigers of Tamil Eelam (LTTE), the armed political group which for nearly two decades has been fighting for autonomy for the Tamil community living in the north and east of Sri Lanka.

Both women signed such statements.

Sinnathamby Sivamany and Ehamparam Wijikala were taken to the District Medical Officer (DMO) of Mannar district on 22 March. It is not clear why the police did this but it may have been an attempt to pervert any future investigations. Apparently due to threats from the CSU officers taking them to hospital and the fact that the officers remained present throughout the time in the DMO's office, both women refused to be examined. In his medico-legal examination form of 22 March 2001, however, the DMO ticked the "no injuries" box instead of indicating that he in fact had not carried out any medical examination.

The two women were produced before the local magistrate at his bungalow on 27 March -- eight days after their arrest. They were produced around 6.30pm, i.e. after court hours. They were reportedly told by police officers accompanying them that they were being taken to a senior police officer and warned not to complain or otherwise they (i.e. the women) would be punished. As the magistrate was not wearing his official robe and was not at the court house, it was impossible for the women who were not from the area to be sure where they had been taken.

On the instructions of the magistrate and after the case had attracted a lot of publicity and non-governmental organizations and church leaders raised concern, the women were once again taken to the DMO for a medical examination on 30 March. This time, the DMO found marks on their bodies, including semi-circular abrasions consistent with nail marks on the elbows, forearms and wrists of Ehamparam Wijikala. He concluded that she had been tortured and raped and that Sinnathamby Sivamany was tortured and sexually assaulted. Rape could not be established. The magistrate later ordered an examination by a Judicial Medical Officer (JMO, senior to a DMO) in Colombo after the prison authorities informed him that the two women alleged they were raped. The JMO carried out his examination 18 days after the rape. He confirmed several injuries sustained due to the alleged torture inflicted on them and concluded that while "there were no positive findings to establish sexual intercourse", it "cannot be ruled out as the absence of positive findings may be due to the fact that [they were] married with children and [that there had been a] 18 day delay" from the time of the alleged rape to the time of the examinations.

Although the magistrate had ordered the police to investigate the allegations of rape and arrest the suspects, local police had not acted on his instructions. After widespread protests, and after the then Minister of Justice and Chairman of the Committee to Inquire into Undue Arrest and Harassment ordered the police to investigate and arrest the suspects, police finally took action.¹ Twelve police officers and two navy officers were arrested. They were identified by the women during an identification parade. At the time of writing, no charges had been filed and

¹ The Committee to Inquire into Undue Arrest and Harassment, comprising five ministers and three members of parliament, was set up in July 1998 by the President of Sri Lanka.

the preliminary trial proceedings had not started. All alleged perpetrators had been released on bail. It is feared that in this case, like many other similar ones, those allegedly responsible for rape in custody will never be brought to justice.

Rape - a common human rights violation

In Sri Lanka, like in many other countries, incidents of rape in the context of armed conflict such as the above examples are reported on a regular basis.² During 2001, Amnesty International has noted a marked rise in allegations of rape by police, army and navy personnel. (See Appendix for details of some cases reported recently.)

Among the victims of rape by the security forces are many internally displaced women, women who admit being or having been members of the LTTE and female relatives of members or suspected male members of the LTTE. Some reports of rape in custody concern children as young as 14 (See Case No. 5, Thangiah Vijayalalitha, Appendix 1).

Complaints of rape, like other complaints of torture, are often not effectively dealt with by police, magistrates or doctors. Deficiencies in the early stages of the criminal investigation process have repeatedly contributed to the ultimate collapse of the investigation of the alleged rape and the prosecution of the alleged perpetrators.

Alarmed at the apparent rise in reports of rape, Amnesty International on 4 April 2001 wrote to the President of Sri Lanka urging her to take action to stop rape by security forces and bring perpetrators to justice. The appeal followed reports of rape by security forces in Mannar, Batticaloa, Negombo and Jaffna, including the rape of Sinnathamby Sivamany and Ehamparam Wijikala described above. To date, no response has been received to the appeal.

In March 2000, the United Nations Special Rapporteur on violence against women (hereafter the Special Rapporteur), who herself is a Sri Lankan national, expressed grave concern over the lack of serious investigation into allegations of gang rape and murder of women and girls. The Special Rapporteur expressed the hope that every effort would be made to prevent further violations through the investigation of alleged incidents and the prosecution of alleged perpetrators in a manner consistent with international human rights standards. In its response, the government provided details regarding the progress of investigations into two of

² See Amnesty International report, Sri Lanka: Torture in custody (AI Index: ASA 37/10/99) of June 1999 for more details on key aspects of torture, including rape and deaths in custody. The paper comments on the legal, institutional and political factors which allow these human rights violations to happen and impede victims and their relatives from obtaining redress. It also includes a set of recommendations to the Sri Lankan authorities to protect people in custody from torture. The current report should be read in conjunction with the above-mentioned report.

four individual cases raised by the Special Rapporteur. It also stated that “every case of alleged criminal conduct committed by the armed forces and police has been investigated and the perpetrators prosecuted, although there may have been unavoidable legal delays”.³ Contrary to the government’s assertion, to Amnesty International’s knowledge, not a single member of the security forces has been brought to trial in connection to incidents of rape in custody although one successful prosecution has been brought in a case where the victim of rape was also murdered. An analysis of the cases in which investigations were conducted and trial proceedings initiated suggests that the authorities are far more inclined to take action if there is a considerable amount of public pressure.

The crime of rape and its prohibition in law

Under international law, rape committed by government officials or armed political groups during armed conflict constitutes torture. Although there was no definition of rape included in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984, over the years it has become accepted that rape is a form of torture. The UN Special Rapporteur on torture in 1992 stated that “[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture.”⁴ Rape and other serious sexual assault have also long been recognized as breaches of international humanitarian law. They are now recognized as a war crime and, when committed on a systematic basis or large scale, a crime against humanity. As such, it is subject to universal jurisdiction.⁵

Amnesty International also notes that the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), the treaty body monitoring the implementation of the UN Convention of the same name, has identified “gender-based violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men...”. The Committee has added that: “The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict **physical, mental,**

³ See UN Document E/CN.4/2001/73/Add.1, paragraphs 51 to 57.

⁴ See UN Doc. E/CN.4/1992/SR.21, para. 35.

⁵ Rape has been included as a constituent crime against humanity and a war crime (Articles 7, 8) under the Rome Statute of the International Criminal Court adopted in July 1998.

or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."⁶ CEDAW has also expressed concern about acts of custodial rape on many occasions.⁷

In Sri Lanka, in 1995 and 1998, through the Penal Code (Amendment) Act Nos. 22 of 1995 and 29 of 1998, the Code of Criminal Procedure (Amendment) Act, No. 28 of 1998; the Judicature (Amendment) Act, No. 27 of 1998 and the Evidence (Special Provision) Act of 1999, the government has put in place a legal framework which in principle should allow a more effective prosecution of alleged rapists.

Among the changes to the Penal Code was the inclusion of a new provision (Section 364(2)) recognizing the phenomena of rape in custody and gang rape as acts constituting grave crimes. The minimum and maximum punishment for rape in custody as a form of aggravated rape is 10 years' and 20 years' imprisonment respectively.

In addition, Sri Lanka is a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It acceded to the Convention in 1994 and an Act was passed in parliament in November 1994 giving effect to Sri Lanka's obligations under the Convention. The Act made torture punishable by imprisonment for a term not less than seven years and not exceeding ten years, and a fine.

As stated above, despite these welcome changes to the legal framework, no perpetrators of *rape in custody* have so far been brought to justice. In relation to both torture and rape, Amnesty International is concerned about the failure of the authorities to bring to justice those members of the security forces suspected of being responsible for torture, including rape, in custody. In relation to torture, for instance, the government in mid-June 2001 announced that seven indictments had been presented to the High Courts with regard to the alleged perpetration of torture and that the "Prosecution of Torture Perpetrators Unit" in the Attorney General's department had in addition processed investigative material in another six cases. However, despite these initiatives, the fact remains that to date no one has been found guilty by a court of law in relation to charges of torture or rape in custody in Sri Lanka.

The new government of Prime Minister Ranil Wickremasinghe which came to power after winning parliamentary elections in early December 2001 has not so far made any policy announcements affecting the issues described in this document. However, the election manifesto

⁶ CEDAW General Recommendation No 19, Eleventh Session, 1992.

⁷ See Concluding Observations of the CEDAW: Peru. 31/05/95. A/50/38, paras. 398-451 (Concluding Observations/Comments) and Concluding Observations of the CEDAW: Bangladesh. 24/07/97. A/52/38/Rev.1, Part II, paras. 409-464. (Concluding Observations/Comments).

of the main political party in power, the United National Party, contains commitments to “enact laws relating to the Women’s Charter to safeguard women’s rights” and to “ensure that women’s particular requirements and gender-specific concerns are recognized and prioritized in the formulation of state policies.”

Preventive measures and remedies against rape: their strengths and weaknesses

In addition to the introduction of legal provisions making rape in custody an offence punishable by between ten and 20 years’ imprisonment, several other measures have been taken which aim to strengthen the legal and institutional framework for the protection of women.

In 1993, a Women’s Charter was adopted and a National Committee on Women was established. In September 1993, special units in major police divisions’ head offices were created for the prevention and detection of violence against women and children. However, most of these additional measures have been primarily focussed at the prevention and investigation of rape in society at large, not in relation to rape in custody.

There are some preventive measures and remedies in place which in principle should assist in the effective prevention, investigation and ultimately prosecution of the alleged perpetrators of rape in custody.

Among the measures introduced to prevent torture, “disappearances” and other human rights violations were directions to the heads of the security forces first issued by the President of Sri Lanka of 18 July 1995 with the aim of safeguarding the welfare of detainees.⁸ One of these presidential directions apparently also specifically aimed to prevent rape. It provided that when a child under 12 or a woman was sought to be arrested or detained, a person of her choice should be allowed to accompany her to the place of questioning and as far as possible a woman detainee should be placed in the custody of a women’s unit of the relevant security forces or in the custody of a woman military or police officer. Under the emergency regulations in force at the time (Emergency (Miscellaneous Provisions and Powers) Regulations No. 4 of 1994), any contravention of, or failure to comply with, the requirement of an emergency regulation was an offence. In July 1997, after the National Human Rights Commission (NHRC) was established, the President re-issued these directions to the armed forces and police. However, while the original presidential directions of 1995 had been, at least on paper, enforceable by virtue of the fact that they had been issued under emergency regulations, there are no means by which the 1997 directions can be enforced.

⁸ These directions were issued under regulation 8 of the Establishment of the Human Rights Task Force Regulations, No. 1 of 1995.

Some of the safeguards in the 1997 presidential directions, such as one requiring that the NHRC is informed of all arrests, detentions, transfers and releases of people held under the Prevention of Terrorism Act or emergency regulations, have been introduced into law and made enforceable under the Human Rights Commission of Sri Lanka Act, 1996. However, the safeguards relevant for the treatment of women and children have not so far been set out in law.

Under Article 126 of the Constitution of Sri Lanka, victims of torture can file fundamental rights petitions in the Supreme Court of Sri Lanka. Over the last few years, the court has regularly awarded compensation to the victims and has directed the Inspector General of Police and Attorney General to “take such action as deemed appropriate” against the perpetrators and to report on the action taken.⁹ To date, very few victims of rape have filed fundamental rights petitions.¹⁰ It also has to be pointed out that such action by the court does not automatically result in prosecution of the alleged perpetrators, but solely in the awarding of monetary compensation.

Why criminal investigations into rape remain unsuccessful

The most important reason for the lack of successful prosecutions of those allegedly responsible for rape in custody is that those responsible for the investigation (i.e. the police) are colleagues of the alleged perpetrators. As stated in the Amnesty International report *Sri Lanka: Torture in custody* (AI Index: ASA 37/10/99) of June 1999, “in order to eradicate torture ... there remains a need to establish a simple procedure which allows torture by the police or other law enforcement personnel to be investigated by an independent authority with the necessary powers and expertise required to ensure prosecutions for torture can be successfully brought”. This is equally valid in relation to rape in custody.

There are many additional reasons why criminal investigations into complaints of rape are generally unsuccessful. Among them are:

- threats by the perpetrators against the victim and/or the witnesses;
- inadequate medical evidence due to poor quality of initial medical examination (in itself sometimes caused by threats to the doctor) or due to delay in taking the victim to a doctor;
- lack of independence of the investigating authority: police investigating police or members of the security forces;
- slow action by the local authority (normally the police) to investigate;

⁹ See AI report: *Sri Lanka: Torture in custody*, pages 26 - 29, for more information on the fundamental rights remedy.

¹⁰ In one case filed in 2000, judgement by the Supreme Court is pending. (See Appendix, Case No. 8 - Yogalingam Vijitha.

- political or other pressure brought to bear on the investigators;
- the victim withdraws the complaint or stops her cooperation with the investigations, under pressure from her family or community in the context of a traditional stigma associated with rape;
- transfer of the case to a court a long distance away from the victim's home;
- the police fears to act against alleged perpetrators belonging to the security forces.

Below are some examples of how these issues have arisen over the last few years.

Ida Carmelita was a former member of the LTTE who had surrendered to the police about a month before she was gang raped and killed by five soldiers at Pallimunai, Mannar district on 12 July 1999. She had been shot through her vagina. In his report, the DMO in Mannar documented evidence of rape and sexual violence, including bites on her breasts and lips. Two of the suspects had been recognized by a neighbour and another by the brother of the victim. A corporal and a soldier were identified at an identification parade by witnesses and taken into custody. However, after two key witnesses were threatened and subsequently fled to India, the case is no longer proceeding. The suspects have been released on bail.

The UN Special Rapporteur in March 2000 highlighted the case of Sarathambal Saravanbavananthakurukal, a 29-year-old Tamil woman who had been reportedly gang raped and then killed by navy soldiers on 28 December 1999 in Pungudutivu, near Jaffna. She observed that despite an order by the President of Sri Lanka to immediately investigate the events, it was reported that "very little [was] being done to pursue the matter". Sarathambal Saravanbavananthakurukal had been abducted from her home, situated at about 500m from a navy camp. Her father and brother were tied up by four security officers dressed in black. Her dead body was found on barren land about 100m away from their home the next day. After public protest, her body was sent to Colombo for post-mortem by a senior JMO who indicated that the cause of death was "asphyxia due to gagging"; that her underpants had been stuffed inside her mouth; and that "forcible sexual intercourse" had taken place. The father and brother were allegedly threatened not to reveal the identity of the four men who came to the house. According to the Director of the Criminal Investigation Department, who had been instructed by the President of Sri Lanka to investigate the rape and murder, the brother had "not been able to identify any of the four persons who came to the house".

The criminal investigations into the rape and murder of both Ida Carmelita and Sarathambal Saravanbavananthakurukal have not proceeded beyond the initial inquiry stage. No charges have been filed against the alleged perpetrators and it is unlikely that those responsible for the rape and murder of the two women will ever be brought to justice.

Seventy-year-old Poomani Saravanai, an internally displaced widow, was raped by two soldiers at Neervely, Jaffna district in front of her son on 31 May 2000. The next day, she

courageously made a complaint at the Atchelu army camp. She was able to identify the two soldiers on that day. It is reported that they were sacked from the army. However, nothing further was done at this crucial initial stage. It was not until 5 and 6 June that Poomani Saravanai was taken to a DMO. By then no evidence of rape could be found. To Amnesty International's knowledge, the police did not initiate any action against the two soldiers.

Conclusions and recommendations

Amnesty International welcomes Sri Lanka's ratification of the UN Convention against Torture and its incorporation into national law, the amendments to the relevant provisions of the Penal Code and other laws relating to rape and rape in custody and various other measures introduced to prevent rape and hold those responsible accountable. However, further steps are needed to ensure a change on the ground.

First and foremost, the government should put in place an investigative body fully independent of the police with the necessary powers and expertise required to open criminal investigations whenever there is reasonable ground to believe that an act of torture, including rape, has been committed.

In addition to the recommendations made by the Committee against Torture, the treaty body set up under the UN Convention against Torture, after it examined Sri Lanka's initial report in May 1998 (see Appendix 2) and those set out in the Amnesty International report: *Sri Lanka: Torture in custody* which set out a program of action for the prevention of torture in general and its effective investigation, prosecution and reparation, Amnesty International is making the following recommendations specifically intended to prevent rape in custody and increase accountability for it:

1. Official condemnation

The government should send a clear, public message to all security forces personnel emphasizing that rape and other serious sexual violence in custody always constitutes torture and that perpetrators of such offences will be brought to justice and face appropriate penalties.

2. Ratification

The government should ratify the Optional Protocol to the UN Convention for the Elimination of Discrimination Against Women to offer women a direct means to seek redress at the international level for violations of their rights under the Convention. This includes their right not to suffer discrimination through the use of gender-based violence, including torture and cruel, inhuman or degrading treatment or punishment.

3. Introduce effective measures to prevent rape

The government should introduce effective measures to prevent rape and make them legally enforceable, with adequate punishment for non-adherence. These safeguards could include those set out in the Presidential directions issued in July 1995. They should ensure that the arrest of a woman is carried out by a female officers (whenever practicable), that women detainees are kept in the custody of female officers, that female guards should be present during the interrogation of female detainees and should be made solely responsible for carrying out body searches.

4. Strengthen the institutional framework to protect women's rights

The government should consider setting up a Women's Commission with powers similar to other constitutional or statutory bodies, such as the NHRC. Pending its establishment, another body such as the NHRC or the Women's Committee should assess current practice regarding the confinement of women in police stations and other places of detention and make recommendations for measures to be taken to prevent gender-based violence against women, including torture and cruel, inhuman or degrading treatment or punishment.

5. Review the role of the medical profession in relation to rape in custody

The government should review the role of the medical profession and consider all necessary measures to improve the training of JMOs and particularly DMOs. It should ensure that their examination of victims of rape and the medico-legal documentation used conforms to the Istanbul Protocol's Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Review the role of magistrates

The government should review the role of magistrates and consider all necessary measures to ensure their role in relation to the prevention and investigation of torture, including rape is made effective, in accordance with international obligations such as Articles 2, 11 and 16 of the UN Convention against Torture.

7. Ensure the safety of victims and witnesses

All necessary measures should be taken to protect the victims and witnesses of rape. This should include the suspension of any security officers suspected of rape or of encouraging or condoning it, from duties where they are responsible for the custody of detainees, especially female detainees.

8. Prosecute and punish

The government should undertake a comprehensive review of the current legal and institutional framework relating to rape in custody to ensure a more effective investigation and prosecution of alleged offenders.

Appendix 1: Some recent reports of rape in custody**1. Thambipillai Thanalakshmi (f)**

Thambipillai Thanalakshmi, 42-year-old Tamil woman from Meesalai, Jaffna district was reportedly dragged from her home at around 8.30pm on 7 July 2001 by soldiers allegedly attached to the Kachchai army camp. They took her to a nearby rice field where she was raped by at least three of them.

Thambipillai Thanalakshmi's mother tried to intervene after hearing her daughter screaming, but was assaulted and hit with rifles by the soldiers. Thambipillai Thanalakshmi and her mother had been displaced from their home and had returned to resettle, only two months before the incident. On the next morning, they lodged a complaint at Kachchai army camp and at Kodikamam police station.

Police from Kodikamam visited the scene and reportedly recovered parts of Thambipillai Thanalakshmi's clothing from the rice field. Even though they had gone to the army camp early in the morning, it was not until around 6.30pm on 8 July that Thambipillai Thanalakshmi was taken by police to the Mantikai hospital for medical examination. Medical personnel there reportedly confirmed evidence of rape.

After an intervention by senior police in Colombo, three soldiers were arrested and produced before the magistrate on 13 July. At the time of writing, to Amnesty International's knowledge, no charges had been filed against them.

2. Velu Arshadevi (f)

Velu Arshadevi, a Tamil woman of Indian origin, who was living in a boarding house in Colombo, was allegedly raped by three policemen on 24 June 2001.

She had been stopped at a checkpoint on the Maradana - Borella Road, Colombo on 23 June 2001 while she was returning from work with a friend. Her identity was checked by the security forces personnel on duty at the checkpoint. The next day, at around 3am, two police personnel without weapons and an armed soldier attached to that checkpoint came to the lodgings where the victim was staying. They said they had come for a "routine checking". After interrogating all the persons staying at that place, they returned to her room and told her that "since was a Tamil, she was not allowed to stay" there. She was told she had to go with them to the Maradana police station. The friend who had also been staying in the same place accompanied her for safety reasons.

While *en route* to the police station, they stopped at the Maradana - Borella Road

checkpoint. Her friend was told to purchase some tea for the security forces and sent away. After he had gone, two police personnel took her to a staircase situated next to a bunker below road level. She was taken down there and made to lean against the wall and then raped.

Later that day, she made a complaint to the Maradana police station. The Officer-in-Charge produced her before the JMO on the same day. In his medical report, the JMO confirmed that rape had taken place.

After an identification parade was held by police, three police officers and three soldiers were arrested in connection with this crime. They have since been released on bail. To Amnesty International's knowledge, no charges have been filed against the alleged perpetrators.

3. **Mahendiran Nageswari (f)**

Mahendiran Nageswari, 37-year-old female from Kaluthawalai, was sexually abused by personnel of the Special Task Force (STF, paramilitary police unit) attached to the STF camp at Kaluthawalai, and admitted to the Batticaloa teaching hospital.

According to the police post at the hospital, this matter was reported to the Kaluwanchikudy police station for further inquiries. It is alleged that the STF personnel went to her house and harassed her with the intention of molesting her.

4. **Vijayaratnam Subashini (f)**

Vijayaratnam Subashini, an 19-year-old Tamil woman, was reportedly sexually assaulted by more than ten navy personnel, on 20 April 2001.

According to the reports received by Amnesty International, Vijayaratnam Subashini was on an LTTE boat returning from the open sea when several Sri Lanka navy gunboats surrounded them. There was fierce fighting for several hours. Vijayaratnam Subashini and many others jumped in the sea, after their boats were damaged, and then she was taken into one of the navy gunboats. Immediately after she got in the gunboat, all her clothes were removed, she was blindfolded and her hands were tied behind her back. More the ten navy personnel touched and squeezed her breasts, and her genital area. They allegedly also one by one put their fingers inside her vagina, while she was screaming. The whole ordeal lasted about two hours. When the boat reached Trincomalee her clothes were given to her. She is currently held without charge or trial at Welikade women's prison, Colombo.

To Amnesty International's knowledge, no investigation has been held into this allegation.

5. **Thangiah Vijayalalitha (f)**

Thangiah Vijayalalitha, a 14-year-old Tamil girl, was sexually assaulted by more than ten navy personnel on 20 April 2001 when she was taken into custody during an LTTE operation in the open sea (see also the above case, no. 4, Vijayaratnam Subashini).

Thangiah Vijayalalitha was reportedly taken into a navy gunboat and her skirt and bra were removed. When the boat reached Trincomalee her clothes were returned to her. She is currently held without charge or trial at Welikade women's prison, Colombo.

6. and 7. **Sinnathamby Sivamany (f) and Ehamparam Wijikala (f)**

Sinnathamby Sivamany (aged 24) and Ehamparam Wijikala (aged 22) were arrested by members of the navy on 19 March 2001. They allege they were subsequently raped by navy and SIU personnel at the office of the CSU outside Mannar town.

For more details, see page 1 above.

8. **Yogalingam Vijitha (f)**

Yogalingam Vijitha is a 27-year-old Tamil woman from Kayts, Jaffna district. She was allegedly tortured, including raped with a plantain tree flower (hard cone-like, approximately 8-inch long) while in detention in the Negombo police station, between 21 and 27 June 2000.

According to the reports, she was beaten with poles on her knees, back, chest and the lower abdomen. She was trampled with boots on. She was forced to lie on a table and pins were inserted under the nails of her fingers and toes. She was slapped on her ears. On another occasion all her clothing, except her underwear, was removed and her face was covered with a polythene bag filled with chilli powder and petrol. Then she was asked to sign a statement written in Sinhalese, but when she refused, a plantain tree flower sprinkled with chilli powder was inserted into her vagina. After about 15 minutes, she fainted.

The victim claims she can identify at least one of the policemen who tortured her in the Negombo police station. She was produced in the Colombo Chief Magistrate Court, on 21 July 2000, and the magistrate ordered that she be examined by the JMO, Colombo North. The medical report confirmed that there had been vaginal penetration, that there "many scars on her limbs and torso" and that she was suffering from post traumatic stress disorder and depression, all of which could have resulted from the torture inflicted on her as alleged.

A fundamental rights petition was filed in March 2001 and is awaiting judgement at the time of writing. In the meantime, Yogalingam Vijitha was unconditionally released on 26 April 2001.

Appendix 2: Subjects of concern and recommendations of the Committee against Torture (extract from UN Document: CAT/C/SR.341 of 26 May 1998)

D. Subjects of concern

14. The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances.
15. The Committee regrets that there were few if any prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims.
16. The Committee notes the absence, until recently, of independent and effective investigation of scores of allegations of disappearances linked with torture.
17. The Committee noted that, while the CAT Act 24/94 covers most of the provisions of the Convention, there were certain significant omissions.
18. The question of the admissibility under the emergency regulations of confessions is also a matter of concern as well as the absence of strict legislation governing detention consistent with international norms.

E. Recommendations

19. The Committee urges the State party to review the CAT Act 22/94 and other relevant laws in order to ensure complete compliance with the Convention, in particular in respect of: (a) the definition of torture; (b) acts that amount to torture and (c) extradition, return and expulsion.
20. Review the emergency regulations and the Prevention of Terrorism Act as well as rules of practice pertaining to detention to ensure that they conform with the provisions of the Convention.
21. Ensure that all allegations of torture, past, present and future, are promptly, independently and effectively investigated and the recommendations implemented without any delay.
22. While continuing to remedy, through compensation, the consequences of torture, due importance should be given to prompt criminal prosecutions and disciplinary proceedings against culprits.
23. Take the necessary measures to ensure that justice is not delayed especially in the cases of trials of people accused of torture.
24. Strengthen the Human Rights Commission and other mechanisms for dealing with torture prevention and investigation, and provide them with all the means that are necessary to ensure their impartiality and effectiveness.
25. Urges the State party to declare in favour of articles 21 and 22 of the Convention.
26. The Committee would be remiss if it did not acknowledge that the Sri Lankan delegation made every effort to make the dialogue with the Committee fruitful, so that thereby the State party would be helped to put an end to violations of this Convention.