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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

The Hon. Attorney-General
Attorney General's Department,
Colombo 12

Hon. Attorney-General,

The Occurrence of Torture, and Custodial and Encounter Deaths in Sri Lanka

The Human Rights Commission of Sri Lanka was designated the National Preventive Mechanism on Torture (NPM) by the Government of Sri Lanka via a decision of the Cabinet of Ministers in 2017 following Sri Lanka's ratification of the Optional Protocol to the Convention Against Torture. The Commission formally established the NPM in February 2022. Since then, it has undertaken visits to places of detention, including police stations, with the aim of identifying challenges and making suitable recommendations on preventing torture.

The Commission notes that prosecution of persons suspected of having committed torture is an indispensable element of promoting accountability, combatting a culture of impunity, and preventing the recurrence of torture in the future. We note that, despite Article 11 of the Sri Lankan Constitution guaranteeing the fundamental right to the freedom from torture, and the clear prohibition of torture under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (Torture Act), torture continues to be a recurrent phenomenon in Sri Lanka. In fact, the Commission's head office in Colombo received over 200 complaints with respect to torture in 2023.

The Commission also notes the prevalence of custodial and encounter deaths involving Sri Lanka Police. The Commission received a total of twenty-four cases of custodial deaths and thirteen cases of encounter deaths involving Sri Lanka Police during the period between January 2020 and August 2023. Six custodial deaths and two encounter deaths took place during the first six months of 2023. It is also observed that all reported deaths were caused during the process of locating weapons or narcotics, due to cruel, inhuman, or degrading treatment, or due to the negligence or omission of the officers on duty.

Additionally, we note that the Supreme Court of Sri Lanka has recently delivered two landmark judgments on torture and custodial death respectively. In *Weheragedara Ranjith Sumangala v Bandara, Police Officer, Police Station, Mirihana and Others*, SC (F.R.) Application No. 107/2011, the Supreme Court found that several police officers attached to the Mirihana Police Station had committed torture and ordered that the said police officers pay the victim compensation. Moreover, in *Fathima Sharmila v Officer in Charge, Police Station, Slave Island & Others*, SC (F.R.) Application No. 398/2008, the Supreme Court found that several police officers attached to the Slave Island Police Station were responsible for the death of the petitioner's spouse and ordered these officers to pay compensation to the petitioner. The Court in fact observed that 'it is not rare to hear instances of suspects dying in the hands of the police...[and that] it appears that the hierarchy of the administration had paid scant attention to arrest this trend which does not augur well for the law enforcement and the rule of law.'

In this overarching context, we enclose herewith the Commission's **Draft General Guidelines and Recommendations to Sri Lanka Police on Preventing Custodial and Encounter Deaths**, launched on 11 December 2023. We would greatly appreciate any feedback your Department can offer on the

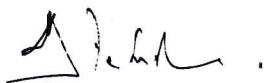
said Draft General Guidelines and Recommendations. In particular, we bring to your attention Draft Guideline No. 3 on 'safeguards during investigations'.

We also respectfully encourage you to consider the prosecution of police officers, found by the Supreme Court to be responsible for acts of torture, under the provisions of the Torture Act. We reiterate that such prosecution is crucial to combatting a culture of impunity and preventing the recurrence of torture in the future. Where investigations under the Torture Act are deemed appropriate, it is crucial that suspects who are serving police officers are interdicted to ensure that they are prevented from interfering with witnesses or otherwise thwarting the gathering of evidence. We recall the unfortunate incident concerning one Gerald Perera, whom the Supreme Court recognised as a victim of torture by certain police officers, and who was later assassinated in November 2004 while the High Court trial under the Torture Act was pending against those accused of torturing him. We accordingly recommend that appropriate measures be taken under the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 to protect victims and witnesses from acts of reprisal.

Additionally, we respectfully encourage you to consider the prosecution of police officers found by the Supreme Court to be directly responsible for the deaths of persons held in police custody, particularly where there is evidence that the deaths of such persons were caused by acts of torture. The prosecution of alleged perpetrators of custodial and encounter deaths remains crucial to combatting a culture of impunity and preventing the recurrence of such deaths in the future.

We thank you for your Department's continued cooperation and engagement.

Sincerely,



Justice L T B Dehideniya
Chairman

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

Human Rights Commission of Sri Lanka

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