



Wijeya Newspapers Ltd
No. 8, Munupitiya Cross Road,
Colombo 07
Tel: 2314714
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18th December 2006

Mr. Basil Fernando
Executive Director
Asian Human Rights Commission
19th Floor
Go-Up Commercial Building
998 Canton Road
Kowloon
Hong Kong

Dear Mr. Fernando,

I am in receipt of your letter and enclosures of the 17th November 2006.

I am sorry if my reply dated 24th November 2006 appeared dismissive or inconsiderate. That was not my intention.

Newspaper Publishers and the Editors Guild, together with the Free Media Movement set up the Sri Lanka Press Complaints Commission as a self regulatory body to adjudicate on grievances that the public may have against newspapers.

The idea was to provide a swift hearing and an adjudication, by an autonomous body, which would be binding on those companies subscribing to the Sri Lanka Press Complaints Commission. Wijeya Newspapers is so bound. There is no expense involved and a complaint could be made via e-mail to kshama@pccsl.lk

The PCC is mandated to provide a quick resolution on matters placed before it. I hope you would consider making use of its services.

In the meantime may I say that your release dated 5 December contains inaccuracies. It incorrectly names Mr. Anthony David as the writer of what you refer to as a "false report" on a Supreme Court judgement. Mr. David is the Deputy Editor (News) and is not the author of the report you refer to.

Mr. David could perhaps complain that you have violated his professional integrity, as you have released this statement on your web site.

May I also say that in referring to my letter dated 24th November, you have omitted the second paragraph of my original letter.

Yours sincerely,

R.S. Wijewardene



ASIAN HUMAN RIGHTS COMMISSION

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Kowloon, Hong Kong . Tel: +(852) 2698-6339 . Fax: +(852) 2698-6367
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December 20, 2006

Mr. Ranjith Wijewardene
Chairman
Wijaya Newspapers Limited
8 Hamapitiya Cross Road
Colombo 2
Sri Lanka

Dear Mr. Wijewardene,

Thank you for your letter dated 18 December 2006. I wish to take this opportunity of clarifying some matters which arose therein.

With regard to Mr. Anthony David being the author of the relevant article, I wish to disclose to you my source of information as to his being the same. On 29 October, 2006, the very same day the relevant news article was published in the Sunday Times, I spoke to Mr. Anthony David over the telephone. I asked him why his report contained the following statement which was false. The statement read as follows: **“Earlier a fundamental rights case was filed against the police officer, but the petition was dismissed.”** In reply Mr. David asked me whether that was wrong. I informed him that I had the relevant case (SCFR 211/2004) before me as we spoke and I assured him that it was. When I told him that the Supreme Court had held that the officer concerned has violated article 11 of the Constitution by torturing the victim, Mr. David replied that this is was not true and that I must referring to a different case. Then, when I insisted on what the Supreme Court award was he asked me whether I could send him the Supreme Court document. Shortly afterwards I sent him the document in question by email to the personal address which he gave me.

During the conversation I also asked him whether, when he refers to a case whether he verifies the information beforehand. I also asked him whether he had read the Kalutara High Court judgement. The reason for me asking this was because there were several references to the High Court case, which were also incorrect. Mr. David then told me that he did not have time to do this. My reply to Mr. David was that if I, talking to him from Hong Kong was able to get the documents and check the facts, why was he not able to do so living in Sri Lanka where the trial and case took place. Mr. David did not have any reply to this question other than to ask me again to send him the case document.

I did send the case and also in a letter earlier written to the editor of the Sunday Times dated 29 October, 2006 the AHRC gave details of the inaccuracies in his article. However, in the following week, other than to publish a fresh article stating that the Supreme Court has earlier found the police officer to have violated the victims rights guaranteed under article 11, no apology was made for the incorrect report and nor were the other inaccuracies pointed out to him corrected in any way.

Apart from the above the very title of the news report was 'Police officer taking case

to HRC'. The AHRC pointed out that the United Nations Human Rights Commission is a body that has ceased to exist, and that any reference to it was giving misinformation to the public. However, this inaccuracy was not corrected.

Your reference that Mr. David could perhaps complain that we have violated his professional integrity is baseless because the statement was made only after talking to Mr. David himself and communicating with him through email. Publishing reports without verification of very important facts, and refusal to make corrections after having them pointed out are hardly characteristics of professional integrity.

As for your comment in your letter, "false report" on a supreme court judgement," kindly read SCFR 211/2004. In our previous correspondence with the editor of the Sunday Times and some further correspondence we gave detailed quotes from the judgement itself. You mentioning of "false report" shows that you still do not believe that a false report was in fact made in the first place. The matter can easily be checked by the simple means of examining the documents available to the public.

As for your reference to the Sri Lanka Press Complaint Commission, we are of the view that the first obligation to correct inaccuracies, mistakes deliberate or otherwise lies first with the management of the newspapers. Whether we avail ourselves of other remedies or not is our prerogative. Availability of these remedies does not take away from the newspaper management the duty to internally investigate and to take appropriate action.

We are sad to note that your letter reflects that, even to-date, you have not been provided with an accurate report on the matters we have raised.

Our interest in this matter is purely one of public interest. Biased reporting on torture and gross abuses of human rights still remains a major problem despite of the prevalence of endemic torture in the country. Ours is a concern beyond a mere legal issue. We too think it is an obligation of a human rights organisation to bring to the notice of the management of any newspaper when a matter of concern arises and then if we do not get a satisfactory answer to place the matter before the public. On all these matters when all the facts are placed before the public they could decide on the issue. It was for that purpose we made the full dossier available to the public.

You mention that the last paragraph of your letter dated 24 November is not accurate and if you refer to the full dossier which is available in the website you will find your full letter faithfully reproduced. There was hardly anything to gain by omitting the last paragraph of your letter.

Thank you

Yours sincerely,



Basil Fernando
Executive Director



ASIAN HUMAN RIGHTS COMMISSION

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News items appearing in the Wijaya Newspapers with reference to the Kalutara torture case; accused Kaluhandi Gervin Premalal Silva and complainant Palitha Thissa Kumara, and correspondence with the editors of The Lankadeepa, The Sunday Times and the Daily Mirror

Letter to the Chairman Wijaya Newspapers Ltd

November 17, 2006

Mr. Ranjith Wijewardene
Chairman
Wijaya Newspapers Ltd
8, Hamapitiya Cross Road
Colombo 2
Sri Lanka

Fax: 94 11 2448333

Dear Sir,

Re: Unfair and one-sided reporting on Kalutara High Court case No. 444/2005 (Appealed by the Attorney General via CA (PHC) APN 222/06) also appealed by the aggrieved party via CA (PHC) APN 214/06

This letter is written in support of a letter written to you and the editor of Lankadeepa regarding a full page report that appeared in Lankadeepa on 13.11.2006 (page 19). The report carried in full the verdict given by the Kalutara High Court judge on 19.10.2006 in which he acquitted a Police Sub Inspector who was charged on two counts of causing torture on a victim, by severely beating him with a cricket pole and causing a tuberculosis patient to spit into his mouth.

The letter written to you by Rasika Sanjeeva Weerawickrame, Attorney-at-Law, on behalf of the aggrieved party (the torture victim) was to request that similar publicity be given to the appeal made by the aggrieved party at the Court of Appeal. A translation of this appeal in Sinhala together with a copy of the appeal registered at the Court of Appeal has been sent to you and the editor of Lankadeepa by registered post.

The complaint of the aggrieved party is not about giving publicity to the High Court judgement but rather about not giving equal publicity to the appeal. As the Daily Mirror and Sunday Times have already published news items on the appeal filed by the aggrieved party, as well as the Attorney General, the editor of Lankadeepa and the

particular correspondent who was dealing with the matter could not have been unaware that an appeal had been lodged on the case.

Our support for this request by the aggrieved party through his lawyer is on the basis of the right of people to know the whole truth, particularly when it is available through official documents.

The reputation of news reporting is tarnished when a news editor deliberately suppresses part of the truth by not publishing material that is available giving the other side of the story to the one that is published in the paper.

Given the fact that Lankadeepa has consistently published reports giving only the side of the accused police officer, completely ignoring the side of the aggrieved party is itself reason to doubt the fairness of such reporting.

We have also had occasion to observe that in the Daily Mirror and The Sunday Times, partial and in fact factually incorrect information was published on the same case. The news item in the Sunday Times appeared on 29.10.2006 under the title 'Acquitted police officer taking case to Human Rights Commission'. On the same day a lawyer for the aggrieved party, the torture victim and the Asian Human Rights Commission pointed out the blatant factual errors in the news report and asked for corrections. No correction was made but instead a separate short report was published about the appeal. In the Daily Mirror a news item written by Susitha R. Fernando appeared on 8.11.2006 entitled 'Officers suffer from NGO-backed offenders' false accusations: SI'. This once again was a report with factually incorrect information and a partial reporting. A request was made for a correction of the report and also to give publicity to the appeal, details of which were provided to the editor of the paper. However, no correction was made nor was any publicity given to the appeal. The relevant documents regarding this matter were sent to you by separate post.

Our interest in this matter is the same as that of Emile Zola when he wrote the historic essay 'J' accuse', in the famous Dreyfus Affair where he declared what he thought was his duty to protect the citizens from powerful bullies. Torture is one of the worst forms of bullying another human being. Those who fight their cases in courts against such bullying deserve equal opportunity to have themselves heard as much as their powerful opponents who they accuse of committing torture.

We are writing this letter in the hope that you will uphold this great tradition by making the publication as requested by the lawyer for the torture victim and also inquiring as to why three newspapers within your group consistently refused to make the necessary corrections of factual errors and to give equal publicity to the version of the torture victim in this case.

Thank you

Yours faithfully,

Basil Fernando

Executive Director
Asian Human Rights Commission

Reply from Wijeya Newspapers dated 24th November 2006

Mr. Basil Fernando
Executive Director
Asian Human Rights Commission
19th Floor
Go-Up Commercial Building
998 Canton Road
Kowloon
Hong Kong

Unfair reporting – Kalutara HC 444/2005

Dear Sir,

This refers to your letter of Nov. 17th on the above subject.

With regard to the other issues mentioned in your letter, may I suggest that you avail yourself of the services of the Press Complaints Commission, pccsl@pccsl.lk, (www.pccsl.lk) by whose ruling newspapers of this institution are bound.

Thank you.

Yours faithfully,
WIJEYA NEWSPAPERS LTD

Signed

R.S. Wijewardene

The Sunday Times - October 29, 2006

Acquitted police officer taking case to HRC

A Police officer who was accused of forcing a suspected TB patient to spit into the mouth of a suspect in custody and violating the human rights of the suspect has decided to take his case to the UN Human Rights Commission after he was acquitted by the Kalutara High Court.

Former Crime OIC of the Welipenna police in Kalutara division Sherwin Premalal Silva told The Sunday Times that some of the international NGOs were responsible for bringing false allegations against him which led to his interdiction for two years until the case was concluded.

Inspector Silva was acquitted and discharged by Kalutara High Court Judge Jayantha Perera after the allegations against the officer could not be proved.
Inspector Silva

The officer was accused of assaulting a suspect and thereafter getting another suspect, believed to be a TB patient, who was in custody, to spit into the mouth of the suspect. Medical examinations on the two suspects revealed that neither of them was infected with TB. The suspect Palitha Tissa Kumara had subsequently made a complaint to the 'Janasansadaya' organization involved in human rights activities which eventually brought up the matter with the Human Rights Commission resulting in charges being filed against the police officer.

The main witness in the case Thummaya Hakuru Sarath alias Banja who has been sentenced to death and 67 years RI claimed in courts that he had been infected with TB and the police officer had forced him to spit into the mouth of the suspect Palitha so that he and his family would be infected with TB.

Hakuru Sarath had been taken into custody by Inspector Premalal Silva after he had escaped from the Welikada prison. The inspector told court that the suspect who was armed and in possession of a hand grenade was captured at great risk.

Earlier a fundamental rights case was also filed against the police officer, but the petition was dismissed.

Inspector Silva said he plans to protest to the Human Rights Commission against the NGOs which have taken up false allegations against him leading to his interdiction. He said he was forced to mortgage his house to spend for the case and eventually a garment factory owner who had read about his case in a newspaper had come forward to pay the mortgage and redeem the house. The officer is due to appeal for his reinstatement.

Attorney-at-law Rasika Balasuriya along with Shan S. Senanayake appeared for the police officer while the State was represented by State Counsel Dulinda Weerasuriya and Vajira Aserappuli.

Letter by lawyer to the Sunday Times

By registered post acknowledgment due

29 October 2006

The Chief Editor

The Sunday Times
No. 8, Hunupitiya Cross Road
Colombo 2. P.O. Colombo 2
Sri Lanka.

Dear Mr.

Under instructions from my client Mr. Korala Liyanage Palitha Thissa Kumara, residing at Halwala, Mathugama, this notice is issued to you under the following circumstances.

My client instructs me that he read a news article published in your daily titled 'Acquitted police officer taking case to HRC'. The article was published on 29 October 2006. I am instructed to inform you that this article is factually incorrect and is worded to give a wrong story regarding the entire case which my client has filed against Mr. Sherwin Premalal Silva, a former Reserve Police Sub-Inspector of the Sri Lanka police. I am instructed to bring to your immediate attention the following factual errors in the article.

Factual errors in the article:

1) *Earlier a fundamental rights case was also filed against the police officer, but the petition was dismissed.*

This is not true and factually incorrect. The Fundamental Rights case filed by the victim Mr. Koralaliyanage Palitha Thissa Kumara, of Halwala, Mathugama as SCFR 211/2004 was decided by the Supreme Court of Sri Lanka on 17 February 2006. The judgment was delivered by a three judge bench consisting of Justice Shirani A. Bandaranayake, T.B. Weerasuriya and N.K. Udagama JJ.

While dismissing the defense adopted by the respondent police officer Mr. Silva and allowing the petition and the relief sought for by the petitioner Mr. Palitha Tissa Kumara, the Supreme Court held that Mr. Silva as a police officer has violated the fundamental rights of the petitioner and thus engaged in torturing the victim thereby violating the victim's right guaranteed under Article 11 of the Constitution of Sri Lanka. To quote from the judgment, a copy of which is attached for your reference, the court decreed "... *I hold that the 1st respondent [Mr. Silva] had violated the petitioner's fundamental right guaranteed in terms of Article 11 of the Constitution. I direct the 1st respondent to pay the petitioner a sum of Rs. 5,000/- personally as compensation and costs and the State to pay a sum of Rs. 20,000/- in compensation and costs, accordingly the petitioner will be entitled to a total sum of Rs. 25,000/- as compensation and costs.*"

To arrive at this conclusion, in addition to the version filed by the petitioner the Supreme Court depended upon the medical certificates issued in the name of the petitioner Mr. Palitha Tissa Kumara and held that severe injuries were caused on the petitioner by the respondent Mr. Silva, and that the nature of

injuries are not compatible with the defense of 'self defense' taken by the respondent Mr. Silva.

The Medical Officer who had examined the complainant Mr. Palitha Tissa Kumara has mentioned different groups of injuries in which there were a total of 43 injuries on the body of the victim. These injuries, the doctor has stated as compatible with the case advanced by the victim, who stated that he was tortured by the police officer Mr. Silva while he was in custody and that they were caused by hitting him with a cricket pole.

2) *Inspector Silva was acquitted and discharged by Kalutara High Court Judge Jayantha Perera after the allegations against the officer could not be proved.*

This statement is also partially incorrect. Even though the accused Mr. Silva was acquitted, the acquittal was not based on a finding that the prosecution case was false. The court while holding that the case advanced by the prosecution is true, held that it will not amount to 'Torture' under the Convention against Torture Act [Act number 22 of 1994].

To quote from the judgment [translation] the High Court has held that: "*...the accused in this case through the statement made from the dock has created a doubt on the position taken by the prosecution in this case. The position of the defense in this case has been that when the accused went to surround [to arrest] for their own self defense and protection of life an assault was made. However, when looking at the number of wounds on the body of the accused a doubt arises as to whether the force used by the accused is justified or not. When considering injuries although it appears that the accused has used force beyond what was necessary that does not provide reason to establish the charge against this defendant*".

In other words the High Court though finds that the injuries as mentioned in the medical report are true held that such injuries are caused by using force beyond what was necessary to take the accused into custody. The acquittal was not based on a complete disbelief of the prosecution case, but rather on a technical ground, by a wrong application of the law of the land.

In this context you may also wish to know what these injuries were. The injuries as noted by the JMO and further proved through his report and statement in the court are as follows:

"2. Examination:

2.1 General examination:

He is conscious and rational, but looks anxious. He walked in to the examination room limping. His respiratory, cardiovascular and nervous systems are clinically normal.

2.2 Injuries:

2.2.1 Head and neck:

1. Healing laceration, linear, 2cm long, is situated in left ear lobe in its upper 1/3, involving the margin.
2. Resolving contusion, dark bluish purple in colour, 4x5.5cm, is situated in left side of the scalp, just behind the posterior attachment of ear lobe.
3. Tram line contusion, dark bluish purple in colour, 6x2cm size, is situated in the right side of the neck, in its lower 1/3 posterolaterally and obliquely.
4. Two healing split lacerations, each 2cm long, linear, are situated in right side of the jaw over its bony edge, in its front 1/3.

2.2.2 Chest and abdomen:

5. Resolving contusion, irregular shaped, 15x10cm, is situated in left side of the shoulder.
6. Resolving contusion, irregular shaped, 12x10cm, is situated in right side of the shoulder.
7. Tram line contusion, dark bluish purple in colour, 10x2cm size, is situated in the left side of the back, over the shoulder in its upper ? obliquely.
8. Tram line contusion, dark bluish purple in colour, 8x2cm size, is situated in the left side of the back, over the shoulder blade in its lower ? obliquely.
9. Tram line contusion, dark bluish purple in colour, 22x2.5cm size, is situated in the left side of the back, over the shoulder blade extending up to the midline obliquely.
10. Tram line contusion, dark bluish purple in colour, 15x2.5cm size, is situated in the left side of the back, over the shoulder blade extending up to the midline above the injury No. 09 obliquely.
11. Tram line contusion, dark bluish purple in colour, 15x2.5cm size is situated in the left side of the back, lateral to the shoulder blade extending downwards obliquely.
12. Tram line contusion, dark bluish purple in colour, 8x2.5cm size, is situated in the right side of the back, above the shoulder blade extending up to the midline, obliquely.
13. Two tram line contusions, dark bluish purple in colour, 10x2.5cm size, are situated in the right side of the back, on the shoulder blade extending parallel to each other, obliquely.
14. Two tramline contusions, dark bluish purple in colour, 8x2.5cm size, are situated in the right side of the~ back, on the shoulder blade crossing injuries No. 1 3, obliquely.
15. Tram line contusion, dark bluish purple in colour, 18x2cm size, is situated in the right side of the back, below the shoulder blade extending downwards from the lower ends of injuries No, 13, obliquely.
16. Tram line contusion, dark bluish purple in colour, 9x2.5cm size, is situated in the right side of the back, extending from the midline, obliquely. Its upper end is abraded and shows healing with pale scar.
17. Three healing abrasions, with dark scab formation and peripheral white margins, measuring 2x~.5cm, 2x1cm and 1x1.5cm are situated in left side of the shoulder in its back.
18. Tram line contusion, dark bluish purple in colour, 5x2.5cm size, is situated

in the left side of the chest, over the lower margin of rib cage, extending obliquely.

2.2.3 Upper limbs:

- 19. Resolving contusion, dark bluish purple in colour, 8x6cm, is situated in right forearm laterally in its upper 1/3.*
- 20. Tram line contusion, dark bluish purple in colour, 4x2cm size, is situated in the right forearm, in its upper 1/3 posteromedially and obliquely.*
- 21. Seven tram line contusions, dark bluish purple in colour, each measuring 6x2.5cm size, are situated in left upper arm laterally, some of them are directed obliquely and some are horizontal.*
- 22. Resolving contusion, dark bluish purple in colour, 18x6cm, is situated in right forearm laterally in its upper 1/3.*
- 23. Resolving contusion, dark bluish purple in colour, 10x5cm is situated in right upper arm medially in its upper 1/3.*
- 24. Tram line contusion, dark bluish purple in colour, 4x2cm size, is situated in the right upper arm, in its lower 1/3 medially and obliquely.*
- 25. Resolving contusion, dark bluish purple in colour, 15x7cm, is situated in left forearm posteriorly in its lower 1/3.*
- 26. Tram line contusion, dark bluish purple in colour, 1.5x2cm size, is situated in the right hand, in its back, obliquely.*
- 27. Abraded contusion, 2x1cm, irregular shaped, is situated in right forearm, posteriorly, just above the wrist joint.*

2.2.4 Lower limbs:

- 28. Tram line contusions, dark bluish purple in colour, 7x2.5cm size, is situated in the right thigh, laterally, in its middle 1/3, obliquely.*
- 29. Tram line contusion, dark bluish purple in colour, 6.5x2.5cm size, is situated in the left thigh, laterally, in its middle 1/3, obliquely.*
- 30. Tram line contusion, dark bluish purple in colour, 7.5x2.5cm size, is situated in the left leg, laterally, in its upper 1/3, obliquely.*
- 31. Tram line contusion, dark bluish purple in colour, 8x2.5cm size, is situated in the left leg, laterally, in its middle 1/3, obliquely.*
- 32. Split laceration, 1.5x0.5cm, irregular shaped, is situated in left ankle joint laterally, just above the outermost bony prominence. Underlying bone is fractured.*

3. Investigations and referrals:

- 1. X-ray of the skull, chest and left ankle joint were taken and were referred to the Consultant Radiologist, National Hospital, Sri Lanka, Colombo (No. 4892).
Report revealed fracture in the lower end of the fibula bone. (Leg bone).*
- 2. He was referred to the Consultant ENT Surgeon, National Hospital, Colombo to get his opinion regarding the tinnitus of his left ear.
Report revealed normal ear drum in left ear.*
- 3. Further, he was referred to the Consultant Psychiatrist, National Hospital, Colombo, to get his opinion regarding his mental state subsequent to the assault. Reports revealed that his mental state at the time of examination was normal.*

4. *Conclusions and opinions:*

1. *Injuries No. 01-31 are non grievous.*
2. *Injury No. 32 is grievous under limb g of Section 311 of the Penal Code.*
3. *All injuries have been caused by a blunt weapon/weapons.*
4. *They could have been sustained in the manner as described by the examinee in the history.*
5. *Since I have to review this patient to examine whether he has been infected with tuberculosis, due to the forceful ingestion of sputum of a person believed to be infected with tuberculosis, please send this victim to the Office of the J:M.A, Colombo."*

3) *The main witness in the case Thummaya Hakuru Sarath alias Banja who has been...*

The main witness in the High Court case is NOT Mr. Thummaya Hakuru Sarath alias Banja. The testimony of this witness is only of that nature to corroborate the prosecution case. The main witnesses in this case were (1) the victim of assault Mr. Palitha Tissa Kumara and (2) the Assistant Judicial Medical Officer of the General Hospital of Colombo who gave evidence in court confirming the prosecution case regarding the nature of injuries and the probable manner it was caused. While giving evidence in court the Medical Officer has categorically stated that the injuries were likely to be caused by an assault with a cricket pole.

4) *Inspector Silva was acquitted and discharged by Kalutara High Court Judge...*

The police officer in this case, Mr. Silva, was a reserve Sub-Inspector and not an Inspector of police.

5) *[T]he State was represented by State Counsel Dulinda Weerasuriya and...*

Lawyer Mr. Dulinda Weerasuriya was on records as a private lawyer watching the interest of the victim in the case Mr. Palitha Tissa Kumara. Mr. Weerasuriya is not a State Counsel working under the Attorney General's Department.

In addition to the above I also wish to bring to your attention a few other relevant facts regarding this case. In the article it is mentioned that "...has decided to take his case to the UN Human Rights Commission after...". You may wish to know that the United Nations Human Rights Commission has ceased to function since early 2006. No such Commission exists now at the United Nations.

The news article published in your newspaper contrary to the above facts is of such nature that it has defamed my client in public. My client has informed me that several persons who have read the article after taking the article on its face value has approached him asking why he has filed a false complaint against the police officer. Embarrassed and shocked, my client had to explain

the above facts to those who approached him to clarify his position and thus to explain the facts, for which my client is entitled to claim compensation and damages against you and the publication Sunday Times.

My client Mr. Palitha Tissa Kumara has publicly announced that he is appealing against the finding of the High Court. The findings of the High Court that 'unnecessary force was used by the police officer' upon my client causing injuries as mentioned in the medical report disqualifies the said police officer from being working as a law enforcement officer in the police service.

I hope that the above facts would help you to acknowledge the factual errors in your article. I am instructed to call upon you to publish a correction in line with the above explanation in your newspaper along with an open apology to my client failing which I am instructed to take appropriate legal actions against you and against the Publication Sunday Times and you may be held liable for the costs and consequences thereof.

Thanking you

.....
Attorney at Law

Letter from AHRC to the Sunday Times

**The Chief Editor
The Sunday Times
No. 8, Hunupitiya Cross Road
Colombo 2. P.O. Box: 1136, Colombo 2
Sri Lanka.**

Dear Sir

I am writing in response to the news article entitled Acquitted police officer taking case to HRC, that appeared in the Sunday Times today (29 October 2006). The article contains factual errors which I wish to bring to your notice.

Your report states "earlier a fundamental rights case was filed against the police officer and this was dismissed." The Fundamental Rights case filed by the victim Mr. Korala Liyanage Palitha Thissa Kumara, of Halwala, Mathugama as SCFR 211/2004 was decided by the Supreme Court of Sri Lanka on 17 February 2006. The judgment was delivered by a three judge bench consisting of Justice Shirani A. Bandaranayake, T.B.

Weerasuriya and N.K. Udagama JJ which held that this police officer has in fact tortured the victim.

While dismissing the defense adopted by the respondent police officer, Mr. Silva, and allowing the petition and the relief sought by the applicant Mr. Korala Liyanage Palitha Tissa Kumara, the Supreme Court held that Sub Inspector (SI) Silva as a police officer violated the fundamental rights of the petitioner and thus engaged in torturing the victim thereby violating the victim's right guaranteed under Article 11 of the Constitution of Sri Lanka. To quote from the judgment, a copy of which is attached for your reference, the court decreed "*... I hold that the 1st respondent [Mr. Silva] had violated the petitioner's fundamental right guaranteed in terms of Article 11 of the Constitution. I direct the 1st respondent to pay the petitioner a sum of Rs. 5,000/- personally as compensation and costs and the State to pay a sum of Rs. 20,000/- in compensation and costs, accordingly the petitioner will be entitled to a total sum of Rs. 25,000/- as compensation and costs.*"

To arrive at this conclusion, in addition to the version filed by the victim the Supreme Court depended upon the medical certificates issued in the name of the victim and held that severe injuries were caused on him by the respondent Mr. Silva. The nature of the injuries were not held to be compatible with the defense offered by S.I. Silva.

The Medical Officer who had examined the complainant mentioned different groups of injuries in which there were a total of 43 counted on the body of the victim. These injuries, the doctor has stated were compatible with the version of the events given by the victim. (The list of injuries given in the J.M.O. report is mentioned below).

The article in your paper also gives wrong information about the decision at the Kalutara High Court. The court, while acquitting the accused of the charge of torture held that the accused police officer used unnecessary force causing severe injuries that have been mentioned in the J.M.O.s report. To quote from the judgment [translation] the High Court has held that: "*However, when looking at the number of wounds on the body of the accused a doubt arises as to whether the force used by the accused is justified or not. When considering injuries although it appears that the accused has used force beyond what was necessary that does not provide reason to establish the charge against this accused*". Thus, the High Court did not exonerate the police officer but only held that his conduct does not amount to torture but to use of force beyond what was necessary. As for the distinction between torture and the use of force beyond what was necessary this will be a matter to be contested in the appeal.

Your article mentions the main witness in the High Court case as Mr. Thummaya Hakuru Sarath alias Banja. However, this is also not correct. The main witnesses in this case were the victim of assault Mr. Palitha Tissa Kumara and the Assistant Judicial Medical Officer of the General Hospital of Colombo, Dr. Ajith Samantha Jayasekara who confirmed the nature of the

injuries and stated that these could have been caused by hitting with a cricket pole as stated by the victim.

In your report there is a photograph with the caption 'Inspector Silva' which is inaccurate as the police officer in this case, Mr. Silva, was a reserve Sub-Inspector and not an Inspector of police and he remains under interdiction.

Your article is also incorrect in mentioning the name of Mr. Dulinda Weerasuriya as a defense lawyer when in fact he represented the aggrieved party in this case.

Furthermore, the article mentions that the police officer "...has decided to take his case to the UN Human Rights Commission...". You may wish to know that the United Nations Human Rights Commission ceased to function in early 2006.

For your information the victim in this case Mr. Palitha Tissa Kumara has publicly announced that he is appealing against the findings of the High Court. The Asian Human Rights Commission (AHRC) has also stated that even based on the findings of the High Court that 'unnecessary force was used by the police officer' causing injuries as mentioned in the medical report disqualifies SI Silva from working as a law enforcement officer.

The AHRC which has throughout supported this case will continue to support the victim and similar victims of police brutality in order that the despicable practice of custodial torture and unnecessary use of force upon suspects is brought to an end.

Both the Supreme Court and the High Court have come to the finding that the following injuries were caused by SI Silva on the torture victim.

From the J.M.O.'s report:

"2. Examination:

2.1 General examination:

He is conscious and rational, but looks anxious. He walked in to the examination room limping. His respiratory, cardiovascular and nervous systems are clinically normal.

2.2 Injuries:

2.2.1 Head and neck:

- 1. Healing laceration, linear, 2cm long, is situated in left ear lobe in its upper 1/3, involving the margin.*
- 2. Resolving contusion, dark bluish purple in colour, 4x5.5cm, is situated in left side of the scalp, just behind the posterior attachment of ear lobe.*
- 3. Tram line contusion, dark bluish purple in colour, 6x2cm size, is situated in*

the right side of the neck, in its lower 1/3 posterolaterally and obliquely.

4. Two healing split lacerations, each 2cm long, linear, are situated in right side of the jaw over its bony edge, in its front 1/3.

2.2.2 Chest and abdomen:

5. Resolving contusion, irregular shaped, 15x10cm, is situated in left side of the shoulder.

6. Resolving contusion, irregular shaped, 12x10cm, is situated in right side of the shoulder.

7. Tram line contusion, dark bluish purple in colour, 10x2cm size, is situated in the left side of the back, over the shoulder in its upper ? obliquely.

8. Tram line contusion, dark bluish purple in colour, 8x2cm size, is situated in the left side of the back, over the shoulder blade in its lower ? obliquely.

9. Tram line contusion, dark bluish purple in colour, 22x2.5cm size, is situated in the left side of the back, over the shoulder blade extending up to the midline obliquely.

10. Tram line contusion, dark bluish purple in colour, 15x2.5cm size, is situated in the left side of the back, over the shoulder blade extending up to the midline above the injury No. 09 obliquely.

11. Tram line contusion, dark bluish purple in colour, 15x2.5cm size is situated in the left side of the back, lateral to the shoulder blade extending downwards obliquely.

12. Tram line contusion, dark bluish purple in colour, 8x2.5cm size, is situated in the right side of the back, above the shoulder blade extending up to the midline, obliquely.

13. Two tram line contusions, dark bluish purple in colour, 10x2.5cm size, are situated in the right side of the back, on the shoulder blade extending parallel to each other, obliquely.

14. Two tramline contusions, dark bluish purple in colour, 8x2.5cm size, are situated in the right side of the~ back, on the shoulder blade crossing injuries No. 1 3, obliquely.

15. Tram line contusion, dark bluish purple in colour, i8x2cm size, i8 situated in the right side of the back, below the shoulder blade extending downwards from the lower ends of injuries No, 13, obliquely.

16. Tram line contusion, dark bluish purple in colour, 9x2.5cm size, is situated in the right side of the back, extending from the midline, obliquely. Its upper end is abraded and shows healing with pale scar.

17. Three healing abrasions, with dark scab formation and peripheral white margins, measuring 2x~.5cm, 2x1cm and 1x1.5cm are situated in left side of the shoulder in its back.

18. Tram line contusion, dark bluish purple in colour, 5x2.5cm size, is situated in the left side of the chest, over the lower margin of rib cage, extending obliquely.

2.2.3 Upper limbs:

19. Resolving contusion, dark bluish purple in colour, i8x6cm, is situated in right forearm laterally in its upper 1/3.

20. Tram line contusion, dark bluish purple in colour, 4x2cm size, is situated in the right forearm, in its upper 1/3 posteromedialy and obliquely.

21. Seven tram line contusions, dark bluish purple in colour, each measuring

6x2.5cm size, are situated in left upper arm laterally, some of them are directed obliquely and some are horizontal.

22. Resolving contusion, dark bluish purple in colour, 18x6cm, is situated in right forearm laterally in its upper 1/3.

23. Resolving contusion, dark bluish purple in colour, 10x5cm is situated in right upper arm medially in its upper 1/3.

24. Tram line contusion, dark bluish purple in colour, 4x2cm size, is situated in the right upper arm, in its lower 1/3 medially and obliquely.

25. Resolving contusion, dark bluish purple in colour, 15x7cm, is situated in left forearm posteriorly in its lower 1/3.

26. Tram line contusion, dark bluish purple in colour, 1.5x2cm size, is situated in the right hand, in its back, obliquely.

27. Abraded contusion, 2x1cm, irregular shaped, is situated in right forearm, posteriorly, just above the wrist joint.

2.2.4 Lower limbs:

28. Tram line contusions, dark bluish purple in colour, 7x2.5cm size, is situated in the right thigh, laterally, in its middle 1/3, obliquely.

29. Tram line contusion, dark bluish purple in colour, 6.5x2.5cm size, is situated in the left thigh, laterally, in its middle 1/3, obliquely.

30. Tram line contusion, dark bluish purple in colour, 7.5x2.5cm size, is situated in the left leg, laterally, in its upper 1/3, obliquely.

31. Tram line contusion, dark bluish purple in colour, 8x2.5cm size, is situated in the left leg, laterally, in its middle 1/3, obliquely.

32. Split laceration, 1.5x0.5cm, irregular shaped, is situated in left ankle joint laterally, just above the outermost bony prominence. Underlying bone is fractured.

3. Investigations and referrals:

1. X-ray of the skull, chest and left ankle joint were taken and were referred to the Consultant Radiologist, National Hospital, Sri Lanka, Colombo (No. 4892).

Report revealed fracture in the lower end of the fibula bone. (Leg bone).

2. He was referred to the Consultant ENT Surgeon, National Hospital, Colombo to get his opinion regarding the tinnitus of his left ear.

Report revealed normal ear drum in left ear.

3. Further, he was referred to the Consultant Psychiatrist, National Hospital, Colombo, to get his opinion regarding his mental state subsequent to the assault. Reports revealed that his mental state at the time of examination was normal.

4. Conclusions and opinions:

1. Injuries No. 01-31 are non grievous.

2. Injury No. 32 is grievous under limb g of Section 311 of the Penal Code.

3. All injuries have been caused by a blunt weapon/weapons.

4. They could have been sustained in the manner as described by the examinee in the history.

5. Since I have to review this patient to examine whether he has been infected

with tuberculosis, due to the forceful ingestion of sputum of a person believed to be infected with tuberculosis, please send this victim to the Office of the J:M.A, Colombo."

I am requesting that you publish this letter as a correction and suggest that your paper owes an apology for making an incorrect report on many matters including a Supreme Court judgment.

Yours sincerely,

Bijo Francis
South Asia Desk
The Asian Human Rights Commission

** Attachments: Copy of the Judgment of the Supreme Court in SCFR 211/2004

The Sunday Times - November 5, 2006

Victim appeals against police officer's acquittal

The victim in the case in which Sub-Inspector Premalal Silva was acquitted and discharged after being accused of torture and forcing a TB patient to spit into the mouth of the victim, is to appeal against the judgment.

The victim in the case was Palitha Tissa Kumara. He had earlier filed a fundamental rights petition against the police officer.

The police officer was directed to pay the petitioner Tissa Kumara Rs. 5,000 personally with the State paying Rs. 20,000 as compensation and costs, after the officer was found guilty of violating the fundamental rights of the victim by torturing and subjecting him to inhuman and degrading treatment.

He was discharged of the allegation of illegal detention.

Kalutara High Court judge H.D.J. Perera acquitted and discharged the police officer as the two allegations against him could not be proved beyond reasonable doubt.

Attorney-at-law Dulinda Weerasuriya and Vajira Asarappuli were appointed on behalf of the victim to watch his interests.

The Daily Mirror – November 8, 2006

Officers suffer from NGO-backed offenders' false accusations: SI

By Susitha R. Fernando

Former OIC Crimes Welipenna, acquitted of the charge of inhuman torture of a suspect in a robbery case, said that Police officers undergo severe hardships, when offenders, supported by human rights organizations, make false allegations against them.

SI Kaluhandi Gervin Premalal Silva was charged with a rare offence of exposing a suspect to tuberculosis (TB) during an alleged torture. The charge was proved false and the High Court Kalutara held that the said suspect had lied to Court.

“I have suffered financially, maintaining a family with two children, without a job, fighting law suits alone by mortgaging property and worst of all, being subject to severe humiliation for the false charges framed against me,” Mr. Silva said.

He was interdicted for the alleged torture of the suspect, Palitha Tissa Kumara who was arrested along with four others, on charges of a robbery and in possession of a hand grenade between February 3 and 6, 2004. The SI was also charged with having forced another suspect, said to be a TB patient, to infect the suspect Kumara, by coughing into his mouth. Following this, a Fundamental Rights (FR) petition was filed in the Supreme Court in March, outlining the torture, including exposure to TB. The Superior Court, which heard the application had granted bail to the suspect Kumara.

The suspect, Kumara, had also complained that the police officer hit him on his chin to bleed, kicked him and attacked him with a pole. He also complained of being tortured in a degrading manner by infecting him with TB. At the end of the hearing, the Supreme Court had held that the Police officer was responsible for the injuries and was ordered to pay Rs 5,000 personally.

Later, on a complaint by suspect Kumara, an indictment on charges of criminal offences, was served on Sub Inspector Silva before the Kalutara High Court. At the end of the trial, High Court Judge H.D.J. Perera held that the charges against the accused was not proved beyond reasonable doubt and acquitted him.

The High Court, in its judgment, held that some of the Prosecution witnesses had given false evidence and that the witness T.H. Sarath alias ‘Banja’ said to have been used to infect the victim with TB, was not a TB patient and that suspect Kumara was never infected with the disease. Court also found that the suspect and his wife, who filed the FR application, had lied to the Supreme Court. In the FR application, the suspect Kumara, was named as one without previous conviction, which the High Court revealed to be false.

The High Court Judge ruled that the police officers investigating against SI Silva, had not done a proper job and exercised more care in ascertaining the accuracy of the evidence.

The acquitted Police officer told the 'Daily Mirror' that the Police Department was unable to apprehend criminals, as investigators were confronted with false allegations propped up by 'NGO's.

Letter to the Editor of the Daily Mirror

November 8, 2006

Dear Sir,

I am writing to protest about an unfair article published in today's Daily Mirror (November 8) written by Susitha R. Fernando who, in reporting of the acquittal of a case knowingly omitted the fact that it has in fact been appealed.

The news item is entitled 'Officers suffer from NGO-backed offenders' false accusations.' The appeal regarding the case mentioned in this matter appeared in the Sunday Times under the title 'Victim appeals against police officer's acquittal.' The Daily Mirror reporter has not got his facts correct even with such a report is published in a sister paper. The reporter has given parts of the judgment at the Kalutara court and omitted that fact that High Court judge held that the accused police officer, Kaluhandi Gervin Premalal Silva had used unnecessary force on the complainant, Palitha Thissa Kumara and has caused serious injuries as mentioned in the medical report. The medical report contained 32 items of injuries consisting of 43 tramline injuries. The words in the verdict of the court are as follows:

The position of the defence in this case is that the accused when he went to arrest the complainant for the self defence and the life protection of themselves have assaulted the complainant. However, when examining the number of injuries that is in the body of this accused [should have been the complainant] a big doubt arises as to the justifiability of the force the accused has used. Even though it appears that when considering the number of injuries the accused has used some force beyond that which was necessary
(Translation from Sinhala)

Since the reporter has given some details of the judgment is also only fair that your paper publishes the grounds of appeal of the complainant torture victim. These are as follows:

The said acquittal was grossly against the facts of the case and the weight of evidence; The learned judge has failed to assess the credibility of the prosecution witnesses on the basis of merits and demerits of individual witnesses; The learned judge has rejected the evidence of witnesses on a comparison of evidence of two or more witnesses; The learned judge has failed to assess the evidence of the Prosecution in

terms of the ingredients of the two charges of the Indictment against the Accused-Respondent under Act No. 22 of 1994. The ingredients of the charges being (a) the causing of severe physical and/or mental pain (b) for the purpose of obtaining information or confession or causing intimidation or punishment, by a public officer; The learned judge has erred in law in not considering the evidence on each of the charges of the indictment separately and arriving at conclusions on each charge separately; The learned judge who did not have an occasion to hear or to watch the demeanor and the deportment of witnesses has based his judgment entirely on the recorded evidence sans any observation on the demeanor of the witnesses for the prosecution; The learned judge has failed to logically explain any grounds for any reasonable doubt relating to the Prosecution's case; The learned judge who made the order had not had the opportunity to hear the evidence lead in this case and misdirected himself regarding facts and law on issues vital to this trial; it is submitted with respect that the Learned appears to have acted on a preconceived notion; The learned judge has erred in law in failing to give weight to the corroboration between the witnesses for the Prosecution, particularly of witnesses PW1, PW2, PW5 and PW11 and PW12; The learned judge has erred in law by not giving adequate weight to the medical evidence placed and has not evaluated the fact that the medical evidence was completely compatible with the version given by the Prosecution. The learned Judge has not considered the failure of the Defence to in any way cast doubts on the veracity of the facts and conclusions of the expert evidence. This is all the more relevant and important when the Accused had taken up a Defence of Self Defence; The learned judge has not assessed the evidence given by the medical expert PW11 excluding the possibility of the injuries on the Complainant/Appellant being caused by a fall or any other manner suggested by the Defence; The learned judge has failed to address the issue of the physical impossibility of the Complainant/Appellant and the witness, PW5 meeting at any time during the trial as the Complainant/Appellant was in remand prison and PW5 was a convicted prisoner living in prison; The learned judge has given undue weight to an affidavit filed by PW2 while the Complainant/Appellant was in remand prison; The learned judge erred in law in giving undue evidentiary value to the dock statement of the Accused-Respondent. The learned judge has further erred in law in failing to consider that the Accused-Respondent, even in his dock statement failed to explain many of the matters lead by the prosecution. The learned Judge has further erred in fact and law by failing to consider the incompatibility of the version of the Accused-Respondent with the medical evidence lead in court about the manner in which the Complainant/Appellant came about the injuries he suffered. The learned judge has not addressed his mind to the matters that the defense should have put to the prosecution witnesses if they were to rely on the version that the accused/respondent tried to make out through his dock statement; The learned judge has erred in law and misdirected himself regarding the burden of proof on the part of the accused-respondent if he relied on self defense as the justification for the assault which caused the injuries on the Complainant/Appellant; The learned judge erred in law and fact in attaching evidentiary value to questions posed to the prosecution witnesses by the defense which were denied by the witnesses, and through which no matters of any evidentiary value to the defense was elicited; The learned judge has not evaluated the evidence for the Prosecution in a logical manner but has based the judgment on bits and pieces of evidence selected from out of the entire body of evidence placed before him; The learned judge has erred in law in considering that persons with criminal records are completely unworthy of credit and that their evidence should be excluded purely on

that basis; The learned judge has placed undue evidentiary value to the record of service of the Accused-Respondent which is not a relevant consideration in the assessment of guilt relating to the charges before the court; The learned judge has given undue evidentiary value to the record of service of the Accused-Respondent given through his dock statement which could not have been subjected to cross examination; The learned judge erred in law in giving importance to the possible punishment in the case as an element in judging the guilt or innocence of the Accused-Respondent.

The title of this news item blames NGOs for supporting torture victims. It tries to portray the accused police officers as heroes whose investigations are obstructed by such complaints of torture and by human rights organisations supporting the victims. Torture is a heinous and uncivilized practice which is forbidden by the Sri Lankan Constitution. Sri Lankan law makes torture a crime punishable with seven years imprisonment. The Asian Human Rights Commission has openly supported this case and will continue to do so in courts as well as in public.

The proceedings of this case as well as the Supreme Court case in the same matter where the Supreme Court held that the police officer had violated article 11 of the Constitution which forbids torture will be made available to the public. What harms society is not the attempt to make civil servants liable for the wrongs they do but the failure of courageous civil society organisations and the media to fight these issues.

Basil Fernando
Executive Director