



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Fifth periodic reports of States parties due in 2012

Sri Lanka*

Addendum

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* The present document is being issued without formal editing.

Update to the Fifth Periodic Report submitted under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The Government of Sri Lanka (GoSL) wishes to submit the following update to the Committee against Torture on the implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Sri Lanka submitted its Fifth Periodic Report under Article 19 of the Convention in October 2015. The current update seeks to provide further information and developments that have taken place up to June 2016, which positively impacted on the implementation of the provisions of the CAT as well as address some of the concerns and recommendations of the Committee against Torture raised in its concluding observations of November 2011.
2. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) without reservations in 1994.
3. In addition to the CAT, Sri Lanka is also a signatory to many International conventions to strengthen its protection against torture such as the International Covenant on Civil and Political Rights (ICCPR) that specifically states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 7), which Sri Lanka has incorporated into domestic legislation through the International Covenant on Civil and Political Rights Act, No. 56 of 2007.
4. Meanwhile, Sri Lanka endorsed the Declaration against Sexual Violence in Conflict in January 2016 to reinforce its commitment to safeguarding human rights during conflict.
5. Moreover, Sri Lanka recently signed and ratified the International Convention for the Protection of all Persons from Enforced Disappearances on the 25th May 2016. In view of incorporating the provisions of the Convention into the domestic law and criminalising enforced disappearance, comprehensive enabling legislation has been drafted and is awaiting Cabinet approval. Once enacted, the new law on enforced disappearances will significantly strengthen Sri Lanka’s legal system in terms of prosecuting and punishing perpetrators and preventing enforced disappearances in the future.

Legal and Policy Safeguards

6. In May 2011, the Cabinet of Ministers adopted a National Action Plan for the Protection and Promotion of Human Rights (2011-2016) (NHRAP). The Plan identified eight priority areas and “prevention of torture” was one of the eight areas identified to fully implement, both international and domestic commitments of Sri Lanka, with a view to strengthening mechanisms to prevent, investigate and eliminate torture. The NHRAP will come to an end in 2016 and for the purpose of formulating the NHRAP for 2017 to 2021, the Cabinet of Ministers approved the establishment of an Inter-Ministerial Committee on Human Rights on 16th May 2016 (Cabinet Paper No. 16/0836/710/016), co-chaired by the Ministers of Foreign Affairs, Skills Development and Vocational Training, Justice and Development Strategies and International Trade. Cabinet approval was also granted to establish a Committee of Officials comprising senior officers from the relevant ministries and heads of institutions to assist the said ministers in formulating the Action Plan and carrying out its implementation. The Inter-Ministerial Committee, following an inclusive process is expected to submit the new NHRAP to the Cabinet for approval by end of October 2016.
7. Article 11 of the Constitution of Sri Lanka guarantees fundamental rights including the right that, no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The right recognised under Article 11 is absolute and is not subject to any restrictions under Article 15 of the Constitution or on any other grounds

whatsoever. Further in respect of an infringement or imminent infringement of Article 11 by executive or administrative action, any person is entitled under Articles 17 and 126 of the Constitution to apply to the Supreme Court for redress. Furthermore Article 11 is an entrenched provision in the Constitution and therefore by virtue of Article 83, a Bill for the amendment or the repeal and replacement of Article 11 or a Bill that is inconsistent with it requires a two thirds majority in parliament and approval by the people at a referendum before it becomes law.

8. The Nineteenth Amendment to the Constitution re-established the Constitutional Council on 15th May 2015 and therefore the appointment of the Inspector General of Police and appointment of members of the National Police Commission and the Human Rights Commission of Sri Lanka (HRCSL) are subject to constitutional safeguards.

9. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 incorporates the provisions of the CAT and gives jurisdiction to the High Court to try and to convict any person who commits or attempts to commit, aids and abets in committing or conspires to commit torture (Section 2). The Act further strengthens this right by eliminating acts of torture committed under the defence of public emergency or superior orders (Section 3). To date a number of public officers have been tried and convicted of the offence of torture. Such convictions have been secured recently as well. In Case No. 183 of 2007 decided in December 2015, the Kandy High Court convicted two police officers under this Act and sentenced them to seven years rigorous imprisonment.

10. In March 2015, the GoSL passed the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 to give effect to its international obligations, to set out rights and entitlements of victims of crime and witnesses, to further protect and promote their rights and to provide for the payment of compensation to victims of crimes. The National Authority for the Protection of Victims of Crimes and Witnesses (a statutory body created by the Act), which is entrusted with the task of giving effect to the relevant provisions of the Act, was established and inaugurated by the President on 8th January 2016. The Board of Management of the Authority has commenced developing a Programme of Action. A decision has been taken by the Authority to seek technical and capacity building support from the bi-lateral and multilateral partners.

Arrests and Detention

11. The law including the Code of Criminal Procedure Act, No. 15 of 1979 (CCPA) and the Police Ordinance No. 16 of 1865 and regulations issued thereunder, clearly lays down the procedure to follow in terms of an arrest and detention of a person. The current legal framework, which included the Prevention of Terrorism Act No. 48 of 1979 (PTA), currently requires that:

(a) The arresting officer issues a receipt of arrest to the next of kin of the person arrested or detained. The document must contain the name and the rank of the arresting officer, the time and date of arrest and the place at which the person will be detained or held in custody;

(b) Every arresting officer must report an arrest forthwith and no later than within 24 hours of the arrest to a superior officer;

(c) All places of detention must be gazetted under the law. No person may be held in a secret place of detention or held incommunicado; and

(d) All Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates.

12. As per section 28 (1) of the Human Rights Sri Lanka Act No. 21 of 1996 when a person is arrested or detained under the PTA it shall be the duty of the person making the arrest or order of detention, forthwith or not later than 48 hours from the time of the arrest or detention, to inform the HRCSL of such arrest or detention and the place at which the person is being held in custody or detention. Where a person so held in custody is transferred to another place of detention or released, as per section 28 (1) of the HRCSL Act it shall be the duty of the person making the order for such release or transfer to inform the Commission of such release or transfer and the location of the new place of detention within 48 hours.

13. It must be observed that on the 19th November 2015, the GoSL notified the United Nations Secretary-General of the termination of all derogations previously notified under the ICCPR, which included derogations from rights recognised under the ICCPR in relation to arrests and detention. Sri Lanka therefore has no derogations currently in operation under Article 4 of the ICCPR.

14. The GoSL made a commitment in 2015 to review, and if necessary, repeal and replace the PTA. It accordingly undertook a comprehensive review of the PTA with a view to assess its compatibility with international human rights standards. Following this review, the Sri Lanka Law Commission, an independent statutory body, was invited to assess the existing PTA and recommend a new law on national security to bring it in line with international human rights standards.

15. Following the communication of the Law Commission's assessment of the PTA, the government decided to appoint a Committee to develop the policy and the legal framework of a new law on national security for Sri Lanka. The Committee has identified the following objectives to be achieved by the new law:

- To ensure that the proposed law will conform with Sri Lanka's obligations in terms of international law relating to counter terrorism and other related international norms and standards
- To ensuring that the proposed law is compliant with International Human Rights Law and other applicable human rights norms and standards
- To ensure that the proposed law is consistent with principles of democracy, good governance and the rule of law
- To provide a comprehensive legislative framework to efficaciously and comprehensively respond to contemporary manifestations and threats of terrorism and other attacks on national security and public order, and maintenance of essential services and supplies
- To develop a legislative structure, which will enable effective action to be expeditiously taken in instances of emergencies (both natural and man-made), and serious threats to: (i) national and public security, (ii) public order and (iii) maintenance of essential services and supplies
- To create a legislative framework that could be effectively used to prevent the use of Sri Lankan territory and Sri Lankan nationals to launch acts of terrorism and commit terrorist acts in foreign countries

16. The proposed law aims to replace the PTA, complying with international standards pertaining to counter terrorism and human rights.

17. In the meantime, in May 2016 the HRCSL issued Directives to be followed by officers arresting persons under the PTA to ensure the fundamental rights of persons arrested or detained and to ensure such persons are treated humanely. The Directives clearly state that torture, cruel and inhuman and degrading treatment or punishment is an

offence and prohibited at all times. The Directives are based on the Directives on Arrest and Detention issued by previous Heads of State and binding human rights law standards. According to the Directives a person arrested or detained under the PTA is afforded safeguards, relating to the process with regard to the arrest, the process following the arrests and special measures for the arrests of women and persons under 18 years of age.

18. The Inspector General of Police has issued clear instructions to all police stations on the conduct of police officers and the procedure to be followed when taking persons into custody (Circulars No. 2104/2008 and No. 2328/2011, and Police Departmental Order No. A20). Such instructions also specify the rights of those arrested. The instructions also specify that a person taken into custody will have the right to be examined by a JMO, and to communicate with his or her family. The instructions state that facilities for such examination and communication should be made available by the police officer on duty.

19. Furthermore, to strengthen the rights of persons in custody, regulations published in Gazette No. 1758/36 dated 18th May 2012 issued by the Inspector General of Police under section 55 of the Police Ordinance provide that a lawyer representing the interest of a suspect held in police custody has the professional entitlement to meet with the Officer in Charge of the police station in which the suspect is being held, to ascertain the reasons for the arrest, and to make representation to the police officer on behalf of the suspect. Hence the right of a suspect to see a lawyer immediately after an arrest is effectively safeguarded through these regulations.

20. Moreover, a Cabinet Paper prepared by the Ministry of Justice to amend the CCPA was approved by the Cabinet of Ministers on 20th January 2016. The approved draft law guarantees the right to consult an attorney-at-law immediately following the recording of the first statement by the police and before he is produced before a Magistrate. Furthermore, the draft law guarantees access to legal aid where the arrested person is unable to afford legal counsel. The government believes that Parliament will debate and enact the amendment during the latter part of 2016.

21. Similarly, action was initiated by the Ministry of Defence to issue instructions to all branches of the security forces that violations of human rights including torture by military personnel will be punished. By a letter dated 18 March 2016, Commanders of all branches of the security forces have been directed by the Ministry of Defence to issue instructions to all Armed Forces personnel that strict action will be taken against human rights violations. The instructions have been issued by the Commanders of the Army on 30th March 2016, Air Force on 31st March 2016 and the Navy on the 16th of April 2016 consecutively.

22. Moreover, any person including alleged torture victims, before being released from police custody or before being produced before a Magistrate should be produced before the Judicial Medical Officer (JMO) for a medico-legal examination. The examination is performed by experienced medico-legal practitioners. Additionally, any victim alleging torture who is admitted to a government or private hospital once reported should be referred to the JMO for a medico-legal examination. The JMO's report is important for the purpose of gathering evidence for the prosecution of perpetrators.

23. The Criminal Records Division of the Sri Lanka Police maintains a comprehensive and up-to-date database of all suspects arrested for terrorism and ordinary criminal offences. This database is regularly scrutinised by senior officers.

24. Based on the recommendation of the Working Group on Enforced and Involuntary Disappearances (WGEID), which visited Sri Lanka in 2015, the GoSL has sought assistance from the WGEID through the UN Mission in Sri Lanka to understand the nature of the guidelines that are needed to be issued to security forces with respect to protection and promotion of human rights including the prohibition of torture.

25. No secret detention centres remain in Sri Lanka at present. Full access to the alleged secret detention centre at the Navy Camp in Trincomalee was provided to the UN Working Group on Enforced Disappearances (WGEID). Further investigations are being conducted into this alleged secret detention centre. Subsequent to the visit of the WGEID from 9th to 18th November 2015, the Working Group in its Preliminary Observations commended the substantive information and access provided by the GoSL.

26. Moreover, the UN Special Rapporteur on Torture and the UN Special Rapporteur on the Independence of Judges and Lawyers recently concluded successful visits to Sri Lanka in May 2016. At the conclusion of the visits, both special procedure mandate holders noted that the GoSL extended its full cooperation during their visits. The Special Rapporteur on Torture in particular mentioned that he and his team were given “unrestricted access to all places of detention and unimpeded access to interview detainees in private.”

27. Additionally, the HRCSL which is an independent national human rights institution, is authorised under section 11(d) of the Human Rights Commission of Sri Lanka Act, No 21 of 1996 to “monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention.” The Human Rights Commission has accordingly undertaken visits to detention centres to ascertain the welfare of detainees. Further officials of the HRCSL or any person authorized by it should be permitted access to the person arrested or detained under the PTA and should be permitted to enter at any time any place of detention, police station or any other place at which such person is detained in custody or confined as per section 28 (2) of the Human Rights Commission of Sri Lanka Act no 21 of 1996. Furthermore the ICRC is currently granted access to all places of detention, and such access is facilitated by the Ministry of Law and Order with the cooperation of the Department of Prisons.

28. The GoSL considers it a major priority to prevent the long-term detention of any person without charges being preferred against them. In view of this priority, the GoSL has brought the number of suspects held in custody without charges for a period of more than eighteen months to zero. It is noted that the maximum period a person can be held in detention under the PTA is eighteen months, after which the suspect shall be placed in remand custody until charges are preferred against him or her. The GoSL has taken a policy decision to ensure that charges are brought expeditiously against such suspects and to ensure that no person is held in long-term detention without charges.

29. Meanwhile, the GoSL has taken steps to expedite the disposal of cases under the PTA and the previous Emergency Regulations. A special High Court in Colombo has been assigned to dispose of cases filed in terms of the PTA and the Emergency Regulations. Another special High Court in Anuradhapura also deals with cases under the PTA with a view to expedite the disposal of those cases.

30. Moreover the Cabinet of Ministers also approved proposals to introduce a new Prisons Administration Act, which aims to contribute towards the better administration of prisons and address, to some extent, the problem of prison overcrowding. The new law includes provisions for the detention of prisoners, on the custody, care and rehabilitation of the prisoners and on the promotion of universally accepted principles and practices in the treatment and management of prisoners. The new law will also establish three independent visiting committees: the Board of Prison Visitors, the Local Prison Visiting Committee and the Special Visiting Committee.

31. As manual searching can raise problems concerning the human dignity of inmates, a policy decision was taken to introduce equipment to search prisoners and their belongings. The Department of Prisons has decided to purchase Body Scanners and Parcel Scanners for this purpose and have installed machines in three major prisons in Sri Lanka.

32. Meanwhile, the Ministry of Justice, with the technical assistance of the ICRC, has taken the initiative to establish a Special Task Force to identify the legal and judicial causes of prison overcrowding with the participation of several vital stakeholders who are responsible for the smooth functioning of the judicial system and prison administration.

33. The GoSL has also taken steps to investigate all past attacks on journalists, and where appropriate, institute criminal proceedings against any persons accused of attacking journalists and other media personnel. Steady progress is being made with regard to the investigations into the disappearance of journalist Prageeth Eknaligoda, who went missing in January 2010. The inquiry conducted in the Homagama Magistrate's Court has led to the arrest of certain suspects.

Deaths in Custody

34. The GoSL takes very seriously all cases involving the death of inmates and detainees in official custody. The importance of a transparent and independent mechanism for criminal and forensic investigation into such incidents is recognised. On 27th April 2015, the Inspector General of Police issued clear instructions (Circular No. 2539/15) to all senior police officers to improve the security of persons held in custody. Moreover, instructions were given to ensure the dignity of all suspects during the time they are held in custody. The instructions also emphasise that disciplinary action should be taken against officers violating procedure.

35. Chapter 13 of the CCPA provides for an inquest into sudden and unnatural deaths that occur in official custody. Moreover, the Ministry of Justice in partnership with the ICRC has begun a process to further strengthen the existing law by providing for an in-depth judicial investigation in addition to the usual inquest.

36. The GOSL currently cooperates with the UN Working Group on Enforced Disappearances and has engaged the Working Group on 12,341 cases relating to Sri Lanka. 6,591 of these cases have been clarified by the GOSL to date. Out of the remaining 5,750 cases, the GOSL provided clarifications and information on a further 1,997 cases, which includes clarifications on 309 cases submitted by the GOSL in April 2016. The GOSL now awaits the Working Group's consideration of these cases.

37. A draft law establishing a new permanent Office on Missing Persons has received the approval of the Cabinet of Ministers and will be tabled in Parliament later in 2016. The GOSL will endeavour to clarify the remaining 3,753 cases through the new Office. The new Office will be empowered to provide appropriate mechanisms for searching and tracing of missing persons. Thus the work of the Office will advance the right to the truth and will provide a mechanism through which families could obtain information about their missing relatives.

38. Meanwhile, the draft law criminalising enforced disappearance will strengthen Sri Lanka's legal system in terms of prosecuting and punishing perpetrators and preventing enforced disappearances in the future.

Training and Capacity Building

39. The GoSL is currently taking steps to build capacity and raise awareness among police officers on fundamental rights and international human rights standards. As mentioned previously, the GoSL is collaborating with academic institutions such as the University of Colombo to develop training programmes on human rights and torture prevention. For example, the GoSL cooperated and collaborated with the University of Colombo and the University of Sydney with the support of the EU under the European Instrument for Democracy and Human Rights to provide training to law enforcement officers and security forces on the prevention of torture and the protection of other human

rights. The initiative aimed to build the capacity of personnel within security organisations to effectively prevent and resist human rights violations including torture. The initiative trained “human rights protection facilitators” from within law enforcement agencies and the military, which then mainstreamed best practices within their respective institutions. For instance, with the aid of international experts, the facilitators were supported in mainstreaming methods of interrogation that precluded the use of force and torture, but were effective in obtaining information from suspects.

40. Meanwhile, all security forces have directorates of human rights (HR) and international humanitarian law (IHL) established internally for in-depth training on HR and IHL. Assistance for training programmes within the directorates was obtained from international non-governmental organisations such as the ICRC. The purpose of providing IHL and HR education to the armed forces is to transform them into a force that voluntarily observes the principles of HR and IHL through training, awareness, and knowledge in the field, thereby minimising rights violations.

Remedies

41. The Police Headquarters conducts a Public Day on every Friday where the public is encouraged to complain against the acts and omissions of the Police. Allegations of torture if they are brought to the attention of the GoSL are taken very seriously.

42. A Special Investigation Unit (SIU) of the Police is mandated to launch prompt investigations into complaints of torture. These investigations are monitored by the Prosecution of Torture Perpetrators (PTP) Unit of the Attorney General’s Department. The progress of investigations is then reported by the SIU to the PTP Unit. The PTP Unit also advises the SIU on the conduct of investigations. Upon completion of criminal investigations, the corresponding notes of investigations are submitted by the SIU to the PTP Unit to consider the institution of criminal proceedings. Upon a decision taken to indict the alleged perpetrators of torture, the SIU is advised to arrest the suspects and produce the suspects before a Magistrate. Thereafter, the indictment is prepared and forwarded to the relevant High Court. The Attorney General’s Department handles the prosecution in the relevant High Court.

43. Apart from criminal prosecution, a person has a remedy to obtain compensation and other just and equitable relief for torture by filing a fundamental rights application before the Supreme Court for an infringement or imminent infringement of Article 11 by executive or administrative action (Articles 17 and 126 of the Constitution). Individuals can also make a formal complain to the HRCSL, which is empowered to investigate the complaint and recommend a suitable remedy including compensation.

44. Apart from criminal law and fundamental rights jurisdiction, victims of torture may pursue action under the civil law in Sri Lanka to claim for loss and damage caused to them against the individual(s) directly responsible for the acts.
