



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

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Committee against Torture

**Concluding observations on the combined third and fourth
periodic reports of Sri Lanka***

Addendum

**Information received from Sri Lanka on follow-up to the
concluding observations****

[11 January 2013]

**Response to the concluding observations issued by the Committee
against Torture, 25 November 2012**

1. The Government of Sri Lanka (GoSL) is pleased to respond to matters highlighted in paragraph 38 of the document CAT/C/LKA/CO/3-4 following the review of the third and fourth combined report of Sri Lanka submitted in accordance with the commitments undertaken as a State party to the Convention against Torture (CAT).

2. The GoSL wishes to refer to the response made on behalf of Sri Lanka to CAT, in a document titled "GoSL responses to list of issues to be considered during the examination of Sri Lanka's third and fourth combined periodic report on the CAT" and it is not intended to repeat facts contained therein as there is striking similarity between the issues raised in these questions and questionnaire of 24 June 2011 for which the GoSL submitted a comprehensive response on 13 October 2011 (document No: CAT/C/LKA/Q/3/4/Add.1). Furthermore, extensive and substantial representations were made by the Government delegation in Geneva in November 2011 during the consideration of Sri Lanka's reports. Subsequent to this meeting, the Government has also furnished and clarified in writing issues that were raised during that meeting. While following the policy of zero tolerance of torture, the GoSL notes the suggestions made by the Committee, which may improve the domestic standards in consonance with the universally acceptable best practices to deal with the issue of torture.

* Adopted by the Committee at its forty-seventh session (31 October-25 November 2011).

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

3. This report presents the new measures that the GoSL has introduced within the period of the last 12 months to enhance the policy framework on torture. Already, article 11 of the Fundamental Rights Chapter III of the Constitution of the Democratic Socialist Republic of Sri Lanka provides that “no person shall be subjected to torture or to cruel inhuman or degrading treatment or punishment”. This rule cannot be derogated from and therefore the Supreme Court has entertained a large number of petitions based on the alleged violation of this right. These have resulted in the petitioners being successful in securing orders in their favour. Further, the victims received redress. A new area of jurisprudence has emerged, providing guidance to law enforcement agencies to follow best practices in conducting investigations. Also while the policy of the State is that whenever a government officer is involved in a lawsuit which is non criminal in nature, the interest of the officer is looked after by the Attorney General. However, whenever the allegation against the State officer is one of torture, the Attorney General shall refrain from providing legal assistance to the officer, compelling the officer to retain his own legal assistance. No funding or any other assistance shall be provided by the State. The errant officer faces the predicament of being interdicted from the service. These are entrenched measures adopted over the years, not only to foster and protect policy of the zero tolerance of torture, but also to disseminate the message of deterrence amongst prospective perpetrators.

4. Furthermore, the GoSL, has over the years introduced several laws to effectively combat torture. This includes “the Law of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994”. GoSL notes that the efficacy of this law is evident through the conduct of prosecutions against the perpetrators of torture. Over the years, several of these cases ended in successful prosecutions. Available statistics show that there are over 15 indictments on allegation of torture presently pending in the High Courts.

Response to the issues raised in paragraph 7 of the concluding observations:

5. With reference to the comments of the Committee, the GoSL states that no citizen can be taken into custody or detained except in the manner prescribed by the existing domestic legal framework, and in particular the provisions of the Code of Criminal Procedure Act No. 15 of 1979 and the Prevention of Terrorism Act. All arrests and detentions are based on a well-founded suspicion formed by the investigating offices of a crime. These grounds need to be justified in a court of law. The courts examine whether there have been objective grounds to justify the detention/arrests. These are mandatory legal requirements being followed. The manner in which arrests or detentions are carried out is described by a large number of judgements pronounced by the Supreme Court of Sri Lanka and all investigating police officers and other agencies are sensitized in this regard to ensure the discharge of duties in accordance with the law. Any violation of the legal principles contained in these pronouncements is liable to be dealt with under law, especially for infringing the fundamental rights of a citizen and in such instances the court punishes the perpetrator, and compensates the victim.

6. The Presidential Directives of 7 July 2006 (reissued in 2007) and the Code of Departmental Orders of Police No. A 20 are the other salutary administrative instruments which are still in existence guaranteeing the safety and protection of all detainees and suspects in custody. Investigators and law enforcement agencies strictly adhere to these administrative directives in conducting investigations. In order to educate the officials on these matters, regular workshops and seminars are organized by different agencies including the Police Training Academy.

7. Further, the following steps taken by the GoSL demonstrate its commitment to ensure that the rights of citizens are protected within the legal and judicial system.

- The Circular No. 2328/2011 of 29 December 2011 issued by Inspector General of Police titled, “Safety of the persons in police custody” should also be referred to herein; this is a clear improvement to the Code of Departmental Order No. A 20 referred to above. All officers need to strictly comply with these guidelines. Awareness programmes are periodically conducted through the Police Training Institute, as well as provincial institutes to raise the level of awareness of the investigating officers on the regulations and the manner of implementing them in the conduct of police investigations etc.
- The availability of legal aid is another important matter that needs to be highlighted. This is available to those in detention or in custody on judicial orders, especially when they come from the low-income segment of the society. Such persons or their next of kin can seek legal assistance through the Legal Aid Commission, an independent organization funded by different benefactors including the GoSL, which is the main financial sponsor of the organization. Through this organization, low-income generating groups can find free legal aid. The annual budgetary allocation of funds by the GoSL to maintain this organization is significant and many are the beneficiaries of this organization since 1948
- The proposed amendments to the Criminal Procedure law [Special Provisions Act]; this proposed law will be presented to Parliament shortly. One salient feature of the proposed law is that in instances where crime under investigation is complex in nature and it is perceived to be impossible to conclude the investigation within 24 hours, only with the permission of the magistrate having jurisdiction to deal with the case, the investigating officers can obtain further time to conclude the investigation. This period shall not exceed 48 hours. As stated, the most significant feature is that the extension of the period of detention can only be authorized by a magistrate. The extension would be granted only on justifiable, objective grounds. Should there be any order for the extension of detention, the investigators shall promptly provide the detainee with the opportunity to contact a lawyer of his own choice
- Further, the law proposes for the detainee to be facilitated with the opportunity to inform his next of kin or relatives immediately about his detention
- Under the already existing practices in courts, if there is any allegation of torture or degrading treatment, the suspect or detainee can complain about the matter to the magistrate before whom he is produced. In such instances the magistrate dealing with the case shall refer the detainee for a medical examination. The medical examinations are usually carried out by Judicial Medical Officers (JMO), who are well versed in the field of forensic medicine [there are altogether about 40 medical practitioners qualified in this field, serving around the country]. All examinations are documented and will be submitted to the magistrate hearing the case under confidential cover
- Another development is the issuance of the Gazette (Extraordinary) No. 1758/36 of 18/05/2012 titled, *Police (Appearance of Attorneys-at-Law at Police Stations) Rules, 2012*, which requires the officers in charge of police stations to provide all facilities to lawyers to ensure that the detainee’s legal rights are secured. The GoSL recognizes that this administrative measure be further broadened in due course
- New measures have been introduced recently by amending the relevant laws to empower the provincial courts as well in granting bail in relation to certain cases of serious nature. As a result, applications for bail in relation to almost all cases can now be presented to any court of criminal jurisdiction of first instance. In the past, certain bail applications could only be made to the Court of Appeal in Colombo (ex. Offence under Offensive Explosives Act). Now this procedure has been de-

centralized and applications for release on bail can be made to the provincial High Courts as well, expediting the process of obtaining bail

- Further, it is a well-established practice that any magistrate having jurisdiction over any detainee shall inquire from him whether that person has any complaint against anyone for torturing or meting out any degrading treatment. In the case of receiving a complaint, the magistrate shall take immediate steps to refer a detainee to a medical officer for examination. Even otherwise, magistrates may, using their discretion, refer a detainee to be examined by a medical practitioner, preferably by a JMO and a report shall be called upon within a specified period
- In the recent past, the Sri Lanka Police and the Human Rights Council of Sri Lanka in conjunction with the United Nations Development Programme (UNDP) have launched an effective awareness programme throughout the country to educate the public about their fundamental rights including anti-torture policy. As a specific measure meant for giving effect to this process, posters and billboards carrying the messages are being displayed at every police station throughout the country, and are in all three languages. In addition Asia Foundation in collaboration with the Police Training School is conducting well-structured awareness programmes on preventing torture and related issues. GoSL wishes to expand this process in due course
- As stated above, the Ministry of Justice is now taking steps to introduce amendments to the Criminal Procedure Code to strengthen the rights of suspects and detainees. This will be presented to the Parliament for legislative adoption in due course

8. In its recommendations, the CAT says the State party should ensure that public officials, in particular judicial medical officers, prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, record and report any such suspected or claimed act to the relevant authorities.

9. The current practice provides for medical examination of an arrested person by a JMO who is an independent medical practitioner specialized in the field of forensic medicine. He is duty-bound to submit medico-legal reports (MLRs) to Courts, to the Attorney General's Department for the purpose of assessing the health condition of a detainee.

10. A detainee could be referred to a JMO by any of the following agencies;

(a) Police; in this instance any investigator may, before a statement is recorded from a suspect, refer him for a medical examination. In the same manner any investigating police officer intending to shift the custody of a suspect for investigating purposes from one area of the country to another shall refer a suspect for medical examination. All findings of these examinations shall be documented and preserved for future purposes;

(b) Courts;

(c) The Human Rights Commission;

(d) A medical practitioner; if a medical practitioner entertains suspicion that a suspect brought before him for medical treatment had been subject to torture, he may refer the suspect for further examination by a JMO. Same will be applicable in situations where a detainee has been brought to a hospital for treatment for any ailment or any other health problem;

(e) JMOs; whenever any medical officer entertains suspicion that a suspect produced before him has been a target of torture or ill-treatment, he shall initiate medical examination and preferably refer the matter for further examination by a JMO. Any report

based on the findings shall be submitted to the Courts/Law enforcement authorities/Human Rights Commission, for further legal action.

11. In case of a request being made by the suspect or detainee to that effect, the JMO may refer the person for further examination by another medical practitioner of the person's own choice. This will be done as far as practically possible. In situations where the JMO is of the view that further medical examination is required by another medical practitioner, the JMO would act accordingly. All measures taken with regard to such examinations are documented by the JMO for the purpose of judicial proceedings.

Response to the issues raised in paragraph 11 of the concluding observations

12. The GoSL is constrained to state that the observations contained in paragraph 11 are based on misconception and miscomprehension of the existing Sri Lankan laws. The rules relating to the law of evidence in Sri Lanka are governed by the Law of Evidence Act that has been in existence since 1848. In relation to the exclusion of evidence in court proceedings, Sri Lanka follows the basic jurisprudence followed by common law tradition. Any departure from this standpoint should be after a careful study of the entire gamut and in due course these issues shall be referred for a study and report by the Law Commission of GoSL.

13. However, the following should also be stated;

- Under the Sri Lankan law of evidence, no confession made to a police officer is admissible in evidence against the maker. This means that the confession of an accused is not considered as admissible evidence by any court of law. The whole issue of the validity that can be attached to a confessionary statement has to be viewed within these basic premises of law. In this background, the need for the investigating officers to venture into obtaining the confession of an accused will not arise
- Further, section 5 of “the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994”, provides for “a confession otherwise inadmissible in any criminal proceedings to be made admissible in any proceedings instituted under the Act for the purpose only of proving the fact that such confession was made”. What this means in effect is that, although according to the acceptable law of evidence of GoSL a confession of an accused is inadmissible, in situations where there is evidence of torture in obtaining a confession of a suspect, the very confession can be used against the investigating officer/perpetrator to prove that in extracting confession, the investigator used coercive measures such as torture

14. However, the provisions of the Prevention of Terrorism Act (PTA), the special law which was enacted to deal with the situation of terrorism, contains exceptions to this general principle of law. There can be no doubt that the menace of terrorism can only be effectively dealt with by introducing measures that are extraordinary. Further, these measures should be viewed against the backdrop of what is happening around the world. Every country that is faced with terrorism has adopted stringent, special legal procedures to deal with it. Special situations undoubtedly need to be dealt with by adopting special measures. In that context, the PTA contains provisions which are exceptions to the general exclusionary rule of confessions. However, for the confessions to be admissible in a court of law it has to be recorded by an officer who is either or above the rank of an Assistant Superintendent of Police. The confession has to be tested for its admissibility by a judicial forum. They come under severe judicial scrutiny at the trial stage where the prosecution is bound by law to prove that the confession was obtained voluntarily. There are *voir dire* inquiries conducted by trial judges to determine whether this threshold requirement can be

satisfied and the statistics would show that many confessions are rejected *in limine* for not being able to pass muster in accordance with the law.

15. As per the Sri Lankan practice, if a magistrate suspects that any detainee has been subject to torture or inhuman treatment he shall hold an inquiry in camera to verify the truth or otherwise of that fact. Whenever appropriate, magistrates will issue directives to produce the victim before a medical officer (JMO). Documentary records of all these proceedings are maintained for inspection. A confidential report is submitted by the JMO to the courts. Once these documents are filed as records of the respective courts they become public documents of which copies can be obtained by interested parties.

16. In the backdrop of this situation, it is an unfounded allegation that in a general manner of conducting investigations, the police officers resort to torture and other sort of degrading and inhuman actions to extract confessions of suspects and detainees. As demonstrated above, GoSL wishes to reiterate once again that under the existing general law, there is no legal validity that can be attached to a confession of an accused person.

Response to the issues raised in paragraph 18 of the concluding observations

17. The GoSL categorically rejects as baseless the statement made by the Committee to the effect that “a climate of impunity” exists in Sri Lanka.

18. The GoSL also notes with dismay that the Committee has overstepped its mandate by making assertions about the independence of the judiciary in Sri Lanka.

19. Based on the availability of evidence, all cases of torture shall be referred to High Courts or magistrate courts for adjudication. This is a complete transparent procedure. Like in any other criminal case the trial proceedings are held in public. The Attorney General’s Department, having examined the available material, decides on forwarding charges against perpetrators to the respective courts. The trials in courts are conducted in the usual manner, ensuring that the due process of law takes place. This is an entrenched, independent, transparent process and there is absolutely no basis for any bias or partiality towards any party. Parties which are dissatisfied can appeal against the orders to higher courts of appeal.

Response to issues raised in paragraph 18 (a) and (c)

20. GoSL wishes to state that there is no delay in carrying out impartial inquiry into any complaint of ill-treatment or torture.

21. Under the provisions of the Code of Criminal Procedure Act No. 15 of 1979, all investigations are conducted by the officers attached to the police. Sri Lankan law does not provide for investigations to be carried out by other institutions, except in special situations as provided by law. GoSL believes it is the best that these decisions on policy matters are left to be handled by each State party. Since the time of the introduction of the Convention against Torture Act, the police have successfully conducted a considerable number of investigations into allegations of torture. A considerable number of them have ended in reaching verdicts of conviction in courts. This adds to credence that the police are sufficiently well equipped to conduct proper investigations into allegations of torture, despite the fact that these allegations are mainly directed against officers coming from their own ranks.

Response to issues raised in paragraph 18 (b)

22. This suggestion certainly lacks clarity. GoSL wishes to examine the availability of such mechanisms in other countries and to refer the matter to the Law Commission for further guidance, which is the proper agency through which the way forward can be obtained to bring in the necessary structural amendments to the existing laws and procedures.

Response to issues raised in paragraph 18 (d)

23. The Sri Lankan legal and judicial system operates in a reverse process, so that all law enforcement agencies and investigators have to report facts relating to crimes etc. to the Attorney General, who is the ultimate decision maker on all prosecutions. It is the well-accepted tradition that the Attorney General, acting as “a minister of justice”, exercising quasi-judicial powers, shall independently look into all investigations and decide on the future of any case. The Attorney General is the head of all prosecutions and this is a constitutional appointment which retains within itself the necessary safeguards to perform duties independently. In this backdrop, we are constrained to state that it is a misconceived position taken by the Committee that the Attorney General’s office follows a practice of referring cases to “a special investigations unit” coming under the police. Since this stated concern of the Committee lacks clarity, GoSL is unable to provide an accurate response to this issue.

Response to issues raised in paragraph 18 (e) and (g)

24. The GoSL states that for an offence committed under section 2(4) of the Law of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994, there is a prescribed mandatory minimum sentence of imprisonment of seven years and maximum sentence of 10 years. In addition, a fine of SL Rs 10,000 not exceeding SL Rs 50,000 could also be ordered. Further, section 2(5) of the Act recognizes these offences as cognizable offences.

Response to issues raised in paragraph 18 (f)

25. Under normal circumstances witnesses are protected by the orders of court or if there are any specific complaints referred to any other authority, the police shall take necessary steps to grant them protection. In addition, the draft law of “Victim and Witness Protection” is presently being looked into by the Cabinet. The proposed law is meant for creating a safe environment for witnesses and victims and drafted to be compatible with many of the best practices in existence, internationally.

Response to issues raised in paragraph 21 of the concluding observations:

26. The GoSL regrets the groundless comment made by the CAT to the effect that the “apparent limited mandate of the LLRC and its alleged lack of independence”, and wishes to state that the LLRC has fulfilled its mandate by submitting its report with 285 total recommendations and observations.

27. As the next step, the Cabinet of Ministers in May 2012 decided that a Task Force headed by the Secretary to the President would monitor the implementation of the recommendations of the LLRC.¹ In July a matrix containing the National Plan of Action to implement the LLRC recommendations was developed by the Task Force and presented to Cabinet for approval. The approval was granted identifying the main focus areas for

¹ The LLRC has made several core recommendations amongst a larger number of 285 “Observations and Recommendations”, which have been broadly classified into four main groups, namely, (a) recommendations relating to National Policy; (b) final phase of the conflict; (c) recommendations related to Human Rights and National Security concerns; (d) recommendations related to resettlement and development. The recommendations relating to resettlement and development have been broken up into issues pertaining to Reconciliation; Language policy; Education; Religion; Arts and culture; People to people contact; Vulnerable groups; Assistance to resettled families; Land issues; Refugees from India; Muslim IDPs; Sinhala IDPs; Long-term IDPs; Compensation and monetary relief ; Resettlement assistance; and Tamils of recent Indian origin.

implementation.² The identified main focus areas, inter alia, are the IHL Issues, Human Rights, Land Return and Resettlement, Restitution/Compensatory Relief and Reconciliation. The Task Force has identified a corresponding activity, an implementing agency, a key performance indicator and a time frame in respect of each recommendation. SL Rs 763 million has been allocated for the implementation of reconciliation initiatives identified by the Presidential Task Force based on the LLRC Report from the budget 2013.

28. The GoSL wishes to inform the Committee against Torture that Sri Lanka is capable of handling its domestic issues through the LLRC process and does not see any necessity to accept any kind of international investigatory body.

29. Finally, GoSL wishes to work in full spirit of cooperation and shall take every endeavour to combat the scourge of torture relentlessly.

² The action plan matrix is now available at www.priu.gov.lk.