



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

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Committee against Torture

Forty-seventh session

Summary record of the 1033rd meeting

Held at the Palais Wilson, Geneva, on Wednesday, 9 November 2011, at 3 p.m.

Chairperson: Mr. Wang Xuexian (Vice-Chairperson)

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The meeting was called to order at 3 p.m.

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

Third and fourth periodic reports of Sri Lanka (continued) (CAT/C/LKA/3-4; CAT/C/LKA/Q/3-4; CAT/C/LKA/Q/3-4/Add.1; HRI/CORE/LKA/2008)

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*
2. **Mr. Pieris** (Sri Lanka) said that, due to the sheer number and complexity of the issues raised by Committee members, it would be impossible to address them all at the current meeting. Nevertheless, he assured the Committee that the delegation had duly noted each of the points raised. In his book entitled, “The Law of Armed Conflict: International Humanitarian Law in War”, Gary D. Solis highlighted the problem of the difficulty in reconciling the absolute prohibition of torture established under international law with the tragic reality, which was that torture was not only practised, but might also be effective. Not that it limited the legal implications in any way, but it would be futile to deny the truth.
3. The Sri Lankan Constitution contained the necessary provisions to ensure compliance with the Convention against Torture. Article 27 (15) required the State to foster respect for international law and treaty obligations in dealings among nations. Article 11 guaranteed that no person would be subjected to torture or cruel, inhuman or degrading treatment or punishment and article 13 (4) provided that no person would be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The right not to be subjected to torture and the inviolability of that right had been an integral part of Sri Lankan law well before the Convention against Torture had entered into force. Any deliberate infliction of grievous harm on a person for the purpose of obtaining information or confessions was already punishable under the 1884 Criminal Code.
4. Although the right to life was not specifically protected under the Constitution, the Supreme Court of Sri Lanka had recognized that right as implicitly guaranteed under the Constitution. The *Silva v. Iddamalgod* case had been particularly notable in that regard. In a number of cases involving acts of torture resulting in the death of the victim, including the aforementioned case, the Supreme Court had recognized the right to reparation for the dependants of the victim and had granted them compensation, in full compliance with article 14 of the Convention against Torture. If the Committee so wished, further details about the cases could be provided in writing at a later date.
5. The basic legal guarantees (question No. 2 on the list of issues) were specifically addressed in the written replies. The right of all persons deprived of their liberty to be informed of the reason for their arrest was specifically guaranteed under article 13 (1) of the Constitution and article 23 (1) of the Code of Criminal Procedure. The right of all persons to have their case heard at a fair trial by a competent court was guaranteed under article 13 (3) of the Constitution. Having practised law for 35 years, he could state that those provisions had been complied with in the vast majority of cases.
6. A number of concerns had been expressed about the treatment of persons detained by the police, particularly relating to interrogations and the evidential value of confessions. It was worth noting that, in Sri Lankan law, statements or confessions obtained by the police could not be used as evidence against their author and were inadmissible in the courts. However, statements or confessions made by an individual to a judge or any other person in authority was admissible as evidence, providing they had not been obtained under duress or threat or in exchange for some kind of advantage.

7. Those rules also applied under the Prevention of Terrorism Act, except that the confessions obtained by the police were admissible and considered to have been freely made; the burden of proof that they had been obtained under duress was therefore placed on the accused. The latter did not, however, have to prove duress beyond all reasonable doubt; it sufficed to convince the court that some semblance of influence had been exerted for the confessions to be rendered inadmissible, which occurred in almost 75 per cent of cases involving offences under the Prevention of Terrorism Act, which clearly showed that the burden of proof placed on the accused was by no means overwhelming. It should, moreover, be noted that the reversal of the burden of proof was specifically provided for in article 13 (5) of the Constitution and acknowledged by the European Court of Human Rights in its case law and that, in any event, the court did not look at confessions from the viewpoint of admissibility alone, but must also determine their veracity.

8. The presence of a lawyer during police interrogations was unnecessary, as the statements obtained could not be used to bring charges. An interministerial committee was currently considering a proposal to establish a duty lawyer scheme along the lines of the system in place in Great Britain under the Police and Criminal Evidence Act, which required the police to contact the duty lawyers to have a legal representative sent immediately to the station to advise the suspect. At present, lawyers were not automatically allowed into police stations, which could leave suspects vulnerable. That situation was unsatisfactory and measures had been adopted to remedy it. In June 2009, the Inspector General of Police had issued a circular setting out police officers' obligations regarding lawyers, based on Supreme Court case law. A committee composed of a representative of the Attorney General's Office, the President of the Bar Association of Sri Lanka and the Chief of Police had been established to oversee implementation of the circular. It had already made a quantum leap in relations between police officers and lawyers.

9. Admittedly, there was a paucity of interpreters, but no trial had ever commenced without the presence of an interpreter when one of the parties needed such assistance. Quite the contrary; in such cases the hearing was postponed. The right to a fair trial was therefore not in doubt. Nonetheless, the Government was making every effort to address the problem of a shortage of interpreters. To respond to needs in the short term, retired trilingual interpreters had been re-hired. A policy to make fluency in Sinhalese and Tamil compulsory in the civil service, particularly for teachers and interpreters, had been put in place. In the north and east of the country, where most of the population was Tamil, judicial proceedings were conducted in that language.

10. The agreement with the International Committee of the Red Cross (ICRC) had been extended and its representatives continued to inspect detention centres. Furthermore, the National Human Rights Commission, whose mandate enabled it to make recommendations on improving detention conditions, was making more frequent inspections.

11. Information about persons in custody at the Mount Lavinia police station with no statement taken highlighted abuses, but confirmed that the National Human Rights Commission was discharging its duties. Specific figures were provided in table form on allegations of torture and ill-treatment by police officers and on complaints made against police officers regarding alleged violations of fundamental rights.

12. During the medical examination carried out by the judicial medical officer, the section of the form devoted to previous medical history was completed by the suspect, who thus had the opportunity to explain how any injuries had been sustained. As the medical forms were submitted to the courts and contained important evidence, police officers were not allowed to be present during medical examinations. Suspects were sent to hospital by the court. They were examined by a doctor, who wrote a report. That document was not made public in order to prevent any falsification. It was sent to the court in a sealed envelope, and a copy was forwarded to the Attorney General. The judicial medical officer

never made the results of the medical examination available to the suspect, but kept the medical report confidential in a safe place until it was submitted to the court.

13. In the Vavuniya district, habeas corpus applications had been filed by family members in about 150 cases. Ex-combatants could choose between restorative and repressive justice. It would have been easier for the Government to opt for repressive justice, but that had not been considered the best option, as it would fail to promote true reconciliation. After 30 years of bloodshed, and anxious to move forward, the Government had opted for restorative justice. Combatants could either choose to take part in the rehabilitation programme or be prosecuted in a court of law. A mere 689 of over 11,000 persons were in rehabilitation programmes.

14. Regarding the report of the Working Group on Enforced or Involuntary Disappearances on the high number of enforced disappearances, the figures dated back to the 1980s and the period of the insurrection of Janatha Vimukthi Peramuna (Popular Liberation Front). Persons of whom there had been no news since that time were included in the alarming figure of 5,000 disappearances. Steps taken by the Government included the adoption in 2010 of legislation amending the Commissions of Inquiry Act, which permitted anyone to file a request with the Lessons Learnt and Reconciliation Commission to obtain a death certificate for a missing person. The Registration of Deaths (Temporary Provisions) Act No. 19 of 2010 authorized family members or loved ones to report, under oath, the death of a person so that a death certificate could be issued. As the fate of the missing was unknown in most cases, legal provision was made for the annulment of the death certificate if it turned out that the person was still alive.

15. Under the Prevention of Terrorism Act, the President could issue a detention order for a maximum period of 3 months, extendable for up to 18 months. The order could be subject to judicial review, but the courts circumvented the provision with a writ of *certiorari*, even though the law provided that orders handed down were final and could not be appealed.

16. With regard to the case of Mr. Tissainayagam, the judge had used his judicial discretion to impose the maximum sentence. Furthermore, Mr. Tissainayagam had sent a letter, through his lawyer, to the President of the Republic, seeking a pardon, expressing remorse for his acts and acknowledging his error, thereby admitting his complicity in the case.

17. Concerning access to private legal counsel, nothing prevented detainees' access to lawyers in prisons during visiting hours. Police officers were posted in the interview room only for security reasons.

18. The National Human Rights Commission was responsible for authorizing NGOs to inspect detention centres. The country had no secret detention centres. Each place of detention appeared in the Official Gazette, and Puntotam was one of the country's main rehabilitation centres. The publicly accessible documents relating to the issue could be consulted on the Internet (www.documents.gov.lk) and information on detention centres appeared in two editions of the Official Gazette (1195/7 of 30 July 2001 and 1662/18 of 14 July 2010).

19. Databases on the detainees had been set up in Vavuniya, Colombo and Boosa, and in all branches of the security forces. They were freely accessible to the family members of detainees, who were able to find out in which detention centre their loved ones were being held and the charges against them. As many of the detainees had indicated that they did not wish to have information about them publicized, especially to the media, the data were only passed on to the family or legal representative. The National Human Rights Commission had also created a database, which was accessible to any authorized persons.

20. Regarding Mr. Amitha Ariyaratne, a lawyer who had reportedly received death threats from police officers, all the members of the police unit with whom he had dealt had been transferred and disciplinary action was being taken against them, even though he had never filed a complaint at a police station.

21. With regard to article 12 of the Convention and the excess of zeal with which police officers implemented it, those concerned had been prosecuted and punished in accordance with the law. As for enforced disappearances, the number of complaints was almost negligible. The accusations posted on websites claiming lawyers were traitors to the nation could hardly be described as acts of torture; rather they should be seen as professional deformation. The incident of the 7-year-old boy shot dead was not a case of torture, but an unfortunate accident, the victim sadly having been in the wrong place when police officers opened fire on the criminals they were pursuing.

22. The National Action Plan for the Promotion and Protection of Human Rights, which devoted a large chapter to torture, had been subject to broad consultations during which the parties concerned had insisted on the need to improve investigation procedures and techniques, strengthen prevention, create institutional monitoring mechanisms and set up a database on cases of torture and ill-treatment. During those consultations, the issues of impunity, special protection for women and children, or the rehabilitation of victims of acts of torture had been considered in depth. The issue of Sri Lankan victims of acts of torture committed abroad had also been discussed. Those concerned had defined the various objectives of the plan and identified the main public bodies that would be responsible for implementing it; they had also drawn up an implementation timetable. The national action plan, which was currently being drafted, would be submitted to Parliament for adoption at the end of December 2010. Once adopted, it would be passed into law.

23. **The Chairperson** thanked the Sri Lankan delegation for its replies and invited members of the Committee to make comments if they so wished.

24. **Ms. Gaer** (Country Rapporteur) thanking the Sri Lankan delegation for its replies, said that, due to time constraints, she would limit herself to a few comments and questions. She welcomed the drafting of a national action plan, especially as civil society appeared to have been widely involved. The plan covered a vast range of issues, including torture prevention, implementation of a follow-up system for torture cases, the fight against impunity, special protection for women and children against torture and ill-treatment, compensation for torture victims, ratification of the Optional Protocol to the Convention against Torture and recognition of the Committee's competence to consider communications from individuals. The ambitious action plan was to be commended and, if effectively implemented, would certainly contribute to a significant improvement in the country's situation.

25. The National Action Plan also focused on training and provided for the creation of a database on acts of torture and ill-treatment, building special interrogation rooms, strengthening the mandate of the National Human Rights Commission and establishing consultative committees composed of representatives of civil society responsible for helping the Commission to carry out unannounced inspections of places of detention. All those measures should be welcomed and would significantly contribute to protecting victims and preventing torture. However, essential issues surrounding the Convention, especially regarding investigations and prosecutions in alleged cases of torture or ill-treatment, had not been addressed at all. Under article 12 of the Convention, all States parties were to ensure that the competent authorities promptly launched an impartial investigation whenever there were reasonable grounds for believing that an act of torture had been committed in any territory within its jurisdiction. It was a core obligation of States parties to the Convention and it was somewhat disturbing that the action plan contained no provisions in that regard. She sought the delegation's views on the subject.

26. In the written replies to the list of issues, Sri Lanka referred to the inspections of prisons and detention centres carried out by members of the International Committee of the Red Cross (ICRC). She wished to know which prisons, and especially whether, ICRC members had been able to inspect Boosa prison. She regretted the Sri Lankan delegation's statement that to safeguard the privacy of those concerned it could not provide the list of all detainees in the country. That argument was difficult to accept.

27. She commended the Special Investigations Unit and Disappearances Investigation Unit for solving some 12,000 cases of enforced disappearances, but drew the delegation's attention to the fact that 5,000 others were still pending. Moreover, the Committee had been informed by Amnesty International of the existence of secret detention centres in Sri Lanka. Did the Sri Lankan authorities intend to carry out an independent and impartial investigation into the matter? The Committee also wished to know how many cases of enforced disappearance had been reported during the period covered by the report. Were investigations systematically initiated when there were substantial grounds for believing that a person had disappeared? Could the delegation also indicate whether the preliminary reports of the Lessons Learnt and Reconciliation Commission, which was responsible for investigating the conduct of the war against the Liberation Tigers of Tamil Eelam, would be published? The Committee also wished to know whether the acts of sexual violence reportedly committed against Sri Lankan women at the end of the conflict had been investigated. Acts of torture and ill-treatment were also reported to have taken place during that period, and she enquired about any relevant investigations.

28. On 3 November 2007, the United Nations had decided to repatriate 108 Sri Lankan blue helmets found guilty of sexually abusing Haitian minors. It would appear that they had merely been reprimanded. What exactly did "reprimand" mean? In its replies to question No. 9 on the list of issues, Sri Lanka described the legal framework for combating violence against women, but made no mention of the specific measures adopted to investigate and bring the perpetrators to justice. Could the delegation provide more information in that regard? The Committee had also asked the State party to comment on the information given in the report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) concerning photos and video footage taken during the last few months of the conflict, showing the bodies of the female leaders of the Liberation Tigers, which contained commentaries from soldiers implying that they had undoubtedly been subjected to sexual violence before or after their execution. In its replies, Sri Lanka simply denounced the methods used by the Secretary-General's Panel of Experts on Accountability in Sri Lanka. In fact, it was not the mandate of the Panel of Experts that was at issue, but the measures adopted to investigate the facts and bring the perpetrators to justice. She would like the State party to say how many soldiers or individuals of the paramilitary forces involved in the events had been arrested, suspended or prosecuted. The State party's replies to question No. 7 on the list of issues were extremely brief. The Committee would welcome more information from the delegation on measures adopted to investigate the killings of journalists and human rights defenders. More information on the follow-up to the case of Gerald Perera, murdered after accusing several police officers of the Negombo police station of committing acts of torture, would be particularly welcome. Was it true that the six police officers accused of torturing him had been acquitted in 2008, even though the court had found that he had suffered serious injuries in police custody in 2002? The Committee also wished to know whether the abduction and disappearance in May 2009 of Steven Suntharaj, a member of the Centre for Human Rights and Development, had been investigated. More generally, she wished to know whether the authorities supported the activities of human rights defenders to discover the truth about the cases of enforced disappearance. The Committee had learned that no charges had been made under legislation on torture since 2009. Could the delegation confirm that information? Had cases of acts of torture or ill-treatment reported to the

National Human Rights Commission led to investigations, prosecutions and, where appropriate, convictions? Lastly, she would like to know how many victims of acts of torture or ill-treatment had received compensation.

29. **Mr. Bruni** (Country Rapporteur) asked whether the Sri Lankan Government intended to make the declarations under articles 21 and 22 of the Convention and to ratify the Optional Protocol to the Convention against Torture. In its written and oral replies, the State party had made special mention of the legislative and administrative measures that had been, or would be, adopted to give effect to the Convention, but had not really given any specific details on their implementation. It was all the more vital for the Committee to understand Sri Lankan anti-torture legislation and its enforcement if it was to determine the extent of its compliance with the Convention. He therefore wished to know the amount allocated in the budget to the National Commission on Human Rights. He also enquired whether its members had access to army detention centres. Paragraph 78 of the report stated that under the Evidence Ordinance, any statement or confession made to a police officer was inadmissible in criminal proceedings in a court of law, which was somewhat surprising. He sought clarification on that issue.

30. Lastly, he asked for recent examples of cases in which the Supreme Court had granted reparation, including compensation, to victims of acts of torture and ill-treatment.

31. **Mr. Mariño Menéndez** asked whether the State party had adopted specific legislation on stateless persons and whether it had ratified the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. He enquired about measures adopted to guarantee the protection of Sri Lankan workers abroad, particularly women working as domestic servants, who were often exploited in the Gulf States. He would like detailed information on how the functioning of the Police Department's computerized central registry, which contained data on the arrest and detention of suspects under the Prevention of Terrorism Act, and wished to know whether there were plans to use the registry for arrests and detentions carried out under other anti-torture legislation. He would like the Sri Lankan delegation to comment on allegations that hearing and interrogation records were sometimes signed by persons not present during the proceedings. Lastly, he wished to know the duration of secret detention and who monitored its implementation.

32. **Ms. Kleopas** said that she understood from information provided by the Sri Lankan delegation that there was no need for persons detained in police stations to have access to a lawyer because there was no risk of torture, as their confessions had no evidential value. She emphasized that persons detained in police stations could be victims of other forms of torture, including psychological torture, and that all persons deprived of their liberty must have access to a lawyer from the very outset of their detention.

33. **Ms. Belmir** urged the State party to strengthen the independence of the judiciary, which was reportedly too often subject to pressure from the President and from Parliament. She requested information on the practice of the Sri Lankan authorities of expediting the issuance of death certificates to enable a file to be closed. She underlined the need to be transparent at all times, particularly in cases of prima facie acts of torture or extrajudicial executions.

34. **Ms. Sveaass** requested information on Prageeth Eknaligoda, a Sri Lankan journalist who had been reportedly abducted in January 2010 and about whom no news had been received since that date. She welcomed the fact that over 10,000 persons had left the rehabilitation camps and had been reintegrated into their communities, but wished to know whether they had been able to file complaints for the ill-treatment to which they had allegedly been subjected in the camps and, if so, whether they had received any compensation. She commended the drawing up of the National Action Plan for the

Promotion and Protection of Human Rights and wondered whether there were plans to include a specific programme for women and child victims of sexual violence, especially when committed by the armed forces.

35. **Mr. Pieris** (Sri Lanka) said that an investigation was under way on the disappearance of Prageeth Eknaligoda but that, according to information available, the journalist had found refuge abroad. Persons deprived of their liberty could have access to a lawyer from the very outset of their detention, and Sri Lanka provided them with the services of a court-appointed lawyer until they had found a lawyer of their choice. Expediting the issuance of death certificates was part and parcel of the promotion of restorative justice and was not intended to prevent an autopsy or post-mortem investigation from being carried out. Sri Lanka was seriously concerned about the plight of Sri Lankan domestic workers in certain Arab countries and had set up an overseas migrant workers bureau to better monitor their situation. The Government was even considering officially discouraging women from accepting work abroad as domestic workers. In any event, the National Action Plan for the Promotion and Protection of Human Rights would include a separate section on protecting the rights of migrant workers. The emergence of terrorism in 1983 had forced the Sri Lankan authorities to accept as evidence confessions made to the police under the Prevention of Terrorism Act. The implementation of a policy of zero tolerance towards acts of torture was a high priority under the National Action Plan for the Promotion and Protection of Human Rights. The situation had improved considerably, but Sri Lanka was aware that much remained to be done to eradicate torture. He also contended that the complaints of acts of torture and ill-treatment received were insignificant compared to the number of persons arrested and detained each year.

36. The Sri Lankan delegation had the overall impression that most of the questions raised by members of the Committee were directly linked to the report submitted by the Secretary-General's Panel of Experts on Accountability in Sri Lanka. However, it should be pointed out that the Panel of Experts had never been empowered to conduct official investigations and simply held private interviews with certain interested parties in Sri Lanka. The information and other sources on which it had based its conclusions had never been verified.

37. He also drew Committee members' attention to the fact that many ex-combatants claimed to have been victims of acts of torture and ill-treatment in Sri Lanka so as to obtain asylum in Europe, while their exile was actually for economic reasons. That was an abuse of the Convention against Torture for purely personal motives.

38. **The Chairperson** assured the Sri Lankan delegation that the members of the Committee would never allow use of the Convention against Torture for purely personal interests.

The meeting rose at 6.05 p.m.