UNITED NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.671
17 November 2005

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD OF THE 671st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Sri Lanka (CAT/C/48/Add.2; CAT/C/35/L/LKA)

1. At the invitation of the Chairperson, the members of the delegation of Sri Lanka took places at the Committee table.

2. Ms. FERNANDO (Sri Lanka), after thanking the Committee for changing the date for discussion of her country's report at the current session, apologized for its late submission. Although every effort was being made to respect the deadlines for the submission of periodic reports, such delays were sometimes unavoidable. Reporting to all seven treaty bodies was not an easy task for a developing country. In that regard, her delegation fully supported the recent proposal by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to introduce a harmonized system of reporting. The report before the Committee also comprised her country's third periodic report.

3. The Government condemned torture and had introduced a number of preventive mechanisms to combat the phenomenon. Every effort was being made to ensure that all allegations of torture were promptly and impartially investigated and perpetrators prosecuted. The Government had always cooperated actively with all human rights treaty bodies and the special procedures mechanisms of the Commission on Human Rights. Special Rapporteurs and working groups had been invited to visit the country on numerous occasions. The national human rights protection system was being strengthened, inter alia, by incorporating the provisions of international human rights instruments into domestic legislation.

4. Freedom from torture was a fundamental right which was enshrined in the Constitution, and it could not be subjected to any restrictions. Since the signing of the Ceasefire Agreement in February 2002, a number of steps had been taken to further promote and protect human rights. Of the indictments made under the Prevention of Terrorism Act, over a thousand had been withdrawn by the Attorney-General, and 300 individuals who had been held in preventive detention under that Act had been released. The Government expected the Act to gradually lose its applicability as the peace process moved forward. There had been no recent disappearances linked to torture or any related allegations against the security forces.

5. Following the tsunami which had devastated Sri Lanka in December 2004, the Emergency Regulations had been briefly reintroduced in order to make it possible to address such urgent human rights issues as trafficking in children and violence against women. The Regulations had been reintroduced again in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. The Regulations had to be reviewed by Parliament every month.

6. The Human Rights Commission of Sri Lanka was a fully independent statutory body, which enjoyed widespread support across the country. A special unit for combating torture had been established under the Commission and special teams had been designated to carry out visits

to places of detention. Posters in three languages had been put up in all police stations, informing people of their rights. Issues such as DNA-testing and human rights training were being addressed in cooperation with the police.

7. An independent national police commission handled all disciplinary inquiries into the activities of the police. Recently, 106 police officers against whom criminal charges of torture had been brought, had been dismissed. The Special Investigation Unit, the Criminal Investigation Department and the Attorney-General's Department reported to the Inter-Ministerial Working Group on Human Rights Issues, which met once a month to review the progress made in investigating alleged human rights violations.

8. With regard to human rights education, she said that numerous seminars and lectures on human rights and international humanitarian law had been held over the previous few years in cooperation with the International Committee of the Red Cross (ICRC) and other international partners.

9. Despite those various measures, extrajudicial killings and impunity remained a serious problem in areas under the control of the Liberation Tigers of Tamil Eelam (LTTE). Most of the violations of the Ceasefire Agreement recorded by the Sri Lanka Monitoring Mission concerned human rights, in particular, the practice of recruiting child combatants. The Government had invited the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Sri Lanka, including the LTTE-controlled areas, in late November 2005. In conclusion, she said that the Government had every intention of pursuing its constructive and transparent cooperation with the treaty bodies.

10. Mr. De SILVA (Sri Lanka) said that, after visiting Sri Lanka in 2000, the delegation of the Committee against Torture had concluded that, although there was a disturbing number of cases of torture and ill-treatment linked to the conflict, the phenomenon was not systematic. Since the signing of the Ceasefire Agreement in 2002, no one had been taken into custody under the Prevention of Terrorism Act and there had been no reports of disappearances linked to torture. In addition, the overall human rights situation had been improving. The Prevention of Terrorism Act and the Emergency Regulations were the only laws under which a person could be detained in a place other than an official prison. No individual could be detained without a court order to that effect.

11. A public official who confessed to the commission of an act of torture, or who had consented or acquiesced in torture or ill-treatment, could be suspended from public office under internal disciplinary procedures, even if there was no admissible evidence to initiate criminal proceedings. Disciplinary inquiries were conducted by an independent National Police Commission; efforts were made to prevent undue delay. Sentences or fines could only be imposed by a court of law. Public officials under investigation were suspended from office when a prima facie case of torture was established; once the Attorney-General had laid criminal charges, the National Police Commission took the necessary steps.

12. Pursuant to the Convention against Torture and Other Inhuman and Degrading Punishment Act No. 22 of 1994, the High Court of Sri Lanka had jurisdiction over offences of torture committed in any place under Sri Lankan jurisdiction; over acts of torture committed by a Sri Lankan national; and in cases where the alleged victim was a national of Sri Lanka.

13. The police in-service training division held lectures and seminars to raise awareness of human rights among law enforcement officials, especially when conducting investigations. Between 2001 and 2005, lectures and other training activities on humanitarian law and human rights had also been provided for army personnel and Navy and Air Force instructors. ICRC carried out training in international humanitarian law for military and police personnel.

14. The Centre for the Study of Human Rights had organized a series of human rights seminars for medical professionals, which had addressed, among other issues, the importance of identifying and documenting cases of torture.

15. Sri Lanka had 16 consultant judicial medical officers, 5 assistant judicial medical officers, 219 medical officers trained to perform forensic examinations and several experts in forensic pathology. All medical faculties in the country had a department of forensic medicine, which handled many of the cases requiring forensic examinations.

16. In 2002, over 82,000 prisoners had been held on remand. In 2003 and 2004, their number had increased to 88,535 and 87,456 respectively. The number of convicted prisoners during the same period had oscillated around 26,000. Mechanisms to supervise detention facilities included prison visitors boards at the national and local levels comprised of representatives of civil society; the Prisoners Welfare Association headed by the Ombudsman; and a prison welfare service comprised of non-uniformed staff. All prisoners were examined to detect injuries upon arrival to prison and informed of their rights and duties. Representatives of the Human Rights Commission of Sri Lanka; ICRC; members of Parliament; chaplains and NGO representatives were entitled to visit prisons.

17. Details on the Central Police Registry hotline set up in October 2003 were provided in the written replies.

18. Criminal investigations into cases of torture or cruel, inhuman or degrading treatment or punishment could be initiated by a police officer; the Special Investigations Unit; or the Office of the Attorney-General. No formal complaint by the victim was required.

19. Ninety police officers were attached to the Special Investigations Unit. The special unit dealing with torture cases in the Attorney-General's Department comprised 15 State counsel and 2 Deputy Attorney-Generals. Resources available for those two units were considered adequate.

20. The National Police Commission was in the process of establishing a comprehensive complaints procedure. However, the existing public complaints investigation unit established in October 2004 functioned satisfactorily. The unit was responsible for considering complaints by members of the public against law enforcement officials or the Police Department and for taking appropriate action.

21. The Law Commission of Sri Lanka had been entrusted with drafting legislation to facilitate the establishment of victim and witness protection authorities; extensive research had been carried out to that end.

22. All persons who had suffered injury at the hands of public officials could seek compensation through the civil courts or the Supreme Court. Where the identity of the perpetrator was unknown, the victim could pursue action against the State for damages and compensation. In the absence of a guilty verdict in a criminal suit, the victim was free to pursue civil action.

23. The payment of compensation was determined by the courts. Harassment or intimidation of complainants was punished under contempt of court provisions and could lead to the imposition of a prison sentence. Compensation ordered by the courts was payable either by the offender or by the State.

24. Victims had the right to legal representation in court. In many cases, they received support from NGOs in obtaining legal counsel. The defence counsel could put questions to witnesses either through the presiding judge or through the prosecuting counsel.

25. The Law Commission of Sri Lanka was currently preparing legislation to establish a victims' compensation fund. In that context, the possibility of setting up a legal regime governing the rehabilitation of torture victims was also being explored.

26. The use of physical punishment in schools had been abolished. Legal proceedings had been instituted against schoolteachers accused of inflicting corporal punishment on pupils; in one case, the offender had been sentenced to two years' imprisonment. Act No. 23 of 2005 abolished all forms of corporal punishment.

27. Sri Lankan legislation prohibited the recruitment of minors into the armed forces. However, according to reports by the United Nations Children's Fund (UNICEF), the LTTE had recruited some 1,700 children, most of them between 13 and 17 years of age, since the signing of the Ceasefire Agreement in 2002. The recruitment of child combatants by the LTTE accounted for over 50 per cent of all violations of the Ceasefire Agreement. In spite of formal commitments made to end that practice and to develop a relevant action plan in cooperation with UNICEF, the LTTE continued to recruit children as combatants.

28. The question of Sri Lanka's ratification of the Optional Protocol to the Convention against Torture was currently under consideration. The possibility of making a declaration under articles 21 and 22 of the Convention was also being discussed. At present, individual complaints of torture could be submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights when all domestic remedies had been exhausted. A high-level committee had been appointed to make recommendations in respect of Sri Lanka's possible ratification of the Rome Statute of the International Criminal Court.

29. In Sri Lanka, there were no reports of the use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment; the need for legislation prohibiting the use of such equipment did thus not arise.

30. Sri Lanka fully supported international efforts to fight terrorism and had played an important role in the work on a comprehensive legal framework on counter-terrorism within the

United Nations. The Government had taken immediate action to give effect to the provisions of United Nations Security Council resolution 1373 (2001) by criminalizing fundraising for terrorist purposes.

31. The Committee's concluding observations were disseminated among the relevant government agencies, and it was intended to introduce a system whereby all concluding observations of treaty bodies would be published in the Government Gazette. The concluding observations were also published and discussed in Sri Lanka's leading newspapers.

32. Mr. MAVROMMATIS (Country Rapporteur) said that the Committee would welcome greater involvement of NGOs in the reporting process. He firmly condemned the assassination of Sri Lanka's Foreign Minister, other targeted killings carried out by the LTTE and the recruitment of child soldiers.

33. The State party authorities had made commendable efforts to facilitate his recent visit and he had been granted unimpeded access without prior notice to all places of detention. Local NGOs had also provided valuable support. He praised the Government for its effort to implement the recommendations made following that visit. He welcomed the appointment of Ms. Radhika Coomaraswamy as chairperson of the Human Rights Commission of Sri Lanka.

34. The State party's reply to the Committee's question under article 3 was incomplete. Even if the situation had not arisen to date, the delegation should indicate what safeguards were in place against the non-refoulement of persons who risked being subjected to torture in the country of destination.

35. He asked the delegation to confirm that LTTE leaders were now allowed to use Colombo airport for their arrival and departure.

36. He requested clarification on legal proceedings in cases where non-citizens of Sri Lanka were accused of having committed an act of torture outside the State party's territory.

37. In spite of measures taken to eliminate torture, both the Supreme Court and the chairperson of the National Human Rights Commission had reportedly stated that torture continued to be routine practice. He asked the delegation to comment. Among the reasons identified by the Commission were the lack of training in investigation techniques and problems in the command chain.

38. A case in point was that of Mr. G.M. Perera, who had spent two weeks in intensive care after being tortured by nine persons, including a senior official. The victim had subsequently been murdered and three of the persons involved had admitted complicity before a magistrate, saying that they had feared a minimum seven-year prison sentence if Mr. Perera had given evidence. There was something very wrong when murder was preferable to indictment, which implied the perpetrators were confident of their immunity from prosecution in any event. Moreover, the fact that charges had been withdrawn and no conviction had been made meant that justice had not been done.

39. Another particularly disturbing case had been that of Koralaliyanage Palitha Tissa Kumara: he had been brutally assaulted by a police officer who had then obliged a person infected with tuberculosis to spit on his face so that he would contract the disease too. Such a revolting act was indicative of the culture of impunity that prevailed.

40. He would welcome information on the case of Landini Harod which had been pending since 2002.

41. During his mission to the State party he had found that the National Human Rights Commission lacked enthusiasm and awareness of the importance of the tasks entrusted to it. NGOs hoped that, under the guidance of Ms. Coomaraswany, former Special Rapporteur on violence against women, its causes and consequences, the situation would improve. However, it was the duty of the Government to ensure that decisions were implemented, particularly with regard to the awarding of compensation. He welcomed the fact that the Commission was allowed to visit detention centres unannounced, but stressed that it should be permitted to inspect any part of those centres. Its overall efficiency could be increased through the recruitment of more competent staff.

42. The Supreme Court had an unusual jurisdiction but had done much to be commended. Nonetheless its rulings on compensation should be fair and reasonable; the sums awarded thus far had been derisory.

43. He voiced concern about the prospect of the imminent disbandment of the National Police Commission in view of its successful results, and sought clarification in that regard. He recommended that an inquiry should be held into police structures so as to ensure that procedures were carried out properly and government directives went right down the chain of command. Investigation procedures should be speeded up and statements from persons involved should be taken in the language that they normally used.

44. Mr. RASMUSSEN said it was regrettable that the written replies to the list of issues had been submitted to the Committee only the previous day, which had given members little time to prepare further questions. He understood, however, that the State party had to comply with its reporting obligations for other treaty bodies too. He appreciated the way the State party had drafted the report by focusing on the Committee's recommendations following its mission to Sri Lanka in 2000 and those made in connection with the initial report (CAT/C/28/Add.3).

45. Referring to the written replies concerning article 10 of the Convention, he said it was not clear whether the human rights cells empowered to investigate human rights violations had been set up in the Police Force as well as in the Army, Navy and Air Force. Were the human rights cells functioning properly? Did the training provided to members of the military and police forces include information on article 2, paragraph 3, of the Convention to the effect that an order from a superior could not be invoked as a justification of torture? One activity undertaken by the State party not mentioned in the written replies was the training of doctors in the effective investigation and documentation of torture in accordance with the Istanbul Protocol.

46. Turning to article 11, he welcomed the fact that several different bodies were allowed access to detention centres but stressed the importance of unannounced visits as part of the State party's obligation for systematic review. He was not greatly impressed by the figures provided

for inspections carried out at police stations, prisons and other detention centres; they were comparatively low given the high number of detainees in the State party. The fact that the findings of those inspections were not necessarily made public was also a cause for concern. He questioned how improvements could be made if the findings were not brought to the attention of the competent authority: the Ministry of Justice in the case of prisons; the Ministry of the Interior in the case of police stations.

47. The delegation had circulated a poster allegedly displayed in police stations with information in three languages on the fundamental safeguards for the prevention of torture. Yet the NGO Redress reported that such safeguards were not being observed in practice: people were held for up to seven days in detention without being able to communicate with their families; detainees were not always allowed access to the lawyer of their choice despite the existence of an agreement between the Bar Association and the Police Department. He sought clarification on those matters.

48. With regard to articles 12 and 13, he asked whether the State party had followed up the recommendations issued by the Human Rights Committee in 2003 (CCPR/CO/79/LKA) in connection with its fourth and fifth periodic reports, inter alia, to implement the National Police Commission's complaints procedures, to establish a witness protection programme and to strengthen the investigative capacity of the National Human Rights Commission. There were numerous allegations of the harassment of torture victims and their lawyers and witnesses that had resulted in complaints of torture being withdrawn. Perhaps that occurred because police officers who were accused of torture were not even suspended while their cases were under examination and could still intimidate their victims. That was in sharp contrast to the very heavy penalties imposed for petty offences, including on minors.

49. According to the NGO Redress, one of the limitations on the effectiveness of constitutional remedies for the victims of torture was the 30-day time limit within which an application had to be filed with the Supreme Court. His view was that there should be no time limit; there could be no doubt that the 30-day time limit was impossible for many victims to observe, some of whom might well be held in detention at the time.

50. Reports had been received recently of attacks against the National Human Rights Commission, during which files had been destroyed. Did the State party have any idea who might have carried out such attacks? Had a police investigation or independent inquiry been conducted? It had also been reported that the mandate of the Commission would expire in March 2006; would it be renewed?

51. It would be interesting to hear the Government's reaction to the many cases of ill-treatment and torture, including torture of young children, mentioned in the alternative report published by the Asian Legal Resource Centre.

52. The reporting State should clarify whether the practice of paying compensation to victims of torture while not prosecuting the perpetrators was still prevalent. If so, immediate action should be taken to rectify that situation, as it amounted to bribery.

53. It would be useful to know how many criminal cases were tried on evidence based solely on confessions, given that proceedings should be based on investigation.

54. He requested additional information on the type of punishment used in penal institutions, including institutions for juvenile delinquents. The delegation should clarify whether minors were detained separately from adults in such institutions. It was difficult to understand why the proportion of remand prisoners in the prison population was so much greater than that of convicted criminals. The reporting State should indicate how long it took on average to convict a person. It was unclear whether prison overcrowding was a problem.

55. Mr. GROSSMAN asked how the term "custodial rape" was defined in the reporting State. The State party should indicate whether the proceedings and results of inquiries by the National Police Commission were made public, and how long those inquiries took on average. When would the comprehensive complaints procedure under development by the National Police Commission begin functioning? Would decisions under the procedure be made public? It would be interesting to learn whether the convictions of the two State officers found guilty of torture, listed in the reply to question 26 on the list of issues, had been handed down at the highest level of the judicial system or whether those convictions could be appealed. The reporting State should indicate how many complaints of such treatment had been brought before the Attorney-General.

56. Was the high proportion of remand prisoners in relation to convicted criminals in prison perceived as a problem in the State party? Were any measures contemplated to address that disproportion?

57. The Committee would appreciate further data on the number of cases in which compensation had been provided to victims of torture. The State party should indicate when the victims' compensation fund would start to operate.

58. Details of any cases brought pursuant to Ministry of Education Circular No. 2001/11 would be welcome. It would be useful to learn when the system for publishing the concluding observations of United Nations treaty bodies in the Government Gazette would be ready, and what progress had been made to that end.

59. Ms. GAER asked what measures had been introduced to monitor sexual violence and abuse in temporary and long-term detention facilities, and how the State party facilitated reporting of such incidents. It would be interesting to learn whether the 1995 Presidential instruction introducing safeguards for women in detention had been implemented. The State party should provide additional information on other safeguards that had been introduced to eliminate custodial rape and violence. Data on the number of cases brought against those suspected of custodial rape would be useful.

60. She requested updated information on the investigation into the attack on the premises of the National Human Rights Commission. Details of the current mandate and functioning of that Commission would also be useful. In particular, she wished to know how the smooth running of the Commission was ensured when the commissioners' terms of office ended. Details of the resources available to the Commission should be provided. Were there plans to increase those resources?

61. It would be useful to know whether any mechanisms had been created within the LTTE to address human rights violations in that movement.

62. The CHAIRPERSON requested additional data on the number of complaints by alleged victims of torture that had been withdrawn. The State party should clarify whether a decision by the Attorney-General not to initiate proceedings in a torture case was final, or whether that decision could be appealed. It would be interesting to learn whether compensation awarded to victims of torture was paid immediately.

63. Ms. FERNANDO (Sri Lanka) pointed out that there had been no attack on the premises of the National Human Rights Commission. A fire had been caused by vandalism on the part of Commission employees, who had since been dismissed. No sensitive documents had been lost in the fire.

The meeting rose at 12.55 p.m.