



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Your Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the combined third and fourth periodic reports of Sri Lanka (CAT/C/LKA/3-4) by this Committee, at its 47th session, held from 31 October to 25 November 2011. At the end of that session, the Committee's Concluding Observations (CAT/C/LKA/CO/3-4) were transmitted to your Permanent Mission. In paragraph 38 of those Concluding Observations, the Committee requested, pursuant to its rules of procedure, that the State party provide, within one year (by 25 November 2012) further information regarding areas of particular concern identified by the Committee in paragraphs 7, 11, 18 and 21 (see extracts annexed).

The Committee has adopted a follow-up procedure to pursue issues that are serious, that can be accomplished by the State party in a one year period, and that are protective.

At its 49th session, held in November 2012 in Geneva, the Committee noted information communicated from the State party in which it alerted the follow-up rapporteur to the fact that it would not be in a position to provide a follow-up response until after the deadline.

Therefore, I write in response to request that the above-mentioned additional information be submitted by Your Government promptly. A Word electronic version of the reply should be sent to the Secretariat of the Committee against Torture (cat@ohchr.org). Upon receipt of this information, the Committee will be able to assess whether further action is needed.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Sri Lanka on the implementation of the Convention. In this context, the Committee seeks to receive your response to this enquiry.

Accept, Your Excellency, the assurances of my highest consideration.

Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/LKA/CO/3-4)

SRI LANKA

(...)

C. Principal subjects of concern and recommendations

(...)

Fundamental legal safeguards

7. While noting the information provided by the State party on the content of the Presidential Directives of 7 July 2006 (reissued in 2007) and the Rules with regard to Persons in Custody of the Police (Code of Departmental Order No. A 20), the Committee expresses its serious concern at the State party's failure in practice to afford all detainees, including those detained under anti-terrorist laws, with all fundamental safeguards from the very outset of their detention. The Committee is concerned that, despite the content of the 2006 Presidential Directives, criminal suspects held in custody still have no statutory right to inform a family member of the arrest or to have prompt access to a lawyer of their choice. The Code of Criminal Procedure also lacks other fundamental legal safeguards, such as the right to have a lawyer present during any interrogation and to be assisted by an interpreter and the right to confidential communication between lawyer and client. The Committee notes with concern that access to a doctor is left to the discretion of the police officer in charge of the police station. It also expresses concern about reports that police fail to bring suspects before a judge within the time prescribed by law and that accused persons are often not adequately informed about their rights. The Committee also expresses its concern at the absence of a State-sponsored legal aid programme; and, at the variety of institutional, technical and procedural obstacles rendering the writ of habeas corpus ineffective (art. 2).

The State party should take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their detention. These include, in particular, the rights of each detainee to be informed of the reasons for his/her arrest, including of any charges against him/her; to have prompt access to a lawyer and to consult privately with him/her and, when needed, legal aid, as well as an independent medical examination, if possible by a doctor of his/her choice; to notify a relative and to be informed of his/her rights; to have a lawyer present during any interrogation by the police and to be assisted by an interpreter; to be brought promptly before a judge and to

have the lawfulness of his/her detention reviewed by a court, in accordance with international instruments.

The State party should ensure that, when suspects are produced before the courts by the police, magistrates always inquire whether the suspect was tortured or mistreated by the police while in custody. The State party should ensure that public officials, in particular judicial medical officers (JMO), 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.

(...)

Coerced confessions

11. While noting the clarification given by the State party in respect of the inadmissibility of evidence obtained through torture under the Evidence Ordinance Act 1985, the Committee remains concerned about the fact that the PTA allows all confessions obtained by police at or above the rank of Assistant Superintendent of Police (ASP) to be admissible (sect. 16) placing the burden of proof on the accused that a confession was obtained under duress (sect. 17(2)). The Committee is also concerned at reports that in most cases filed under the PTA the sole evidence relied upon is confessions obtained by an ASP or an officer above that rank. The Committee further notes with concern reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges (art. 2, 11, 15 and 16)

The State party should explicitly exclude any evidence obtained as a result of torture and ensure that legislation, including anti-terrorism legislation, concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention.

The State party should also ensure that all detainees are asked by the judge whether or not they were ill-treated or tortured in custody. The State party should ensure that judges order independent medical examinations whenever a suspect requires one in court and that prompt and impartial investigations are conducted whenever there is a reason to believe that an act of torture occurred, especially in cases where the sole evidence presented is a confession. The judge should exclude such statements if the suspect so requests in court and the medical examination sustains the claim. Detainees should receive a copy confirming their request for a medical report and a copy of the report itself.

(...)

Impunity for acts of torture and ill-treatment

18. The Committee remains concerned about the prevailing climate of impunity in the State party and the apparent failure to investigate promptly and impartially

wherever there is reasonable ground to believe that an act of torture has been committed. It also notes the absence of an effective independent monitoring mechanism to investigate complaints of torture. The Committee expresses concern over reports that the Attorney General's office has stopped referring cases to the Special Investigations Unit (SUP) of the police and the large proportion of pending cases still outstanding. The Committee is also concerned at numerous reports concerning the lack of independence of the judiciary (arts. 11, 12 and 13).

The State party should:

- (a) Ensure that a prompt and impartial investigation is made into all complaints of torture or ill-treatment. In particular, such investigation should be under the responsibility of an independent body, not under the authority of the police;**
- (b) Establish an independent complaints system for all persons deprived of their liberty;**
- (c) Launch prompt and impartial investigations spontaneously and wherever there is reasonable ground to believe that an act of torture has been committed;**
- (d) Ensure that the Attorney General's office fulfils its responsibilities to refer cases to the SUP;**
- (e) Ensure that, in cases of alleged torture, suspects are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to repeat the alleged act or to obstruct the investigation;**
- (f) Ensure that, in practice, complainants and witnesses are protected from any ill-treatment and acts of intimidation related to their complaint or testimony;**
- (g) Bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, ensure sentences with penalties that are consistent with the gravity of their acts. In this connection, legislative measures should be taken to guarantee the independence of the judiciary.**

(...)

Accountability process and the Lessons Learnt Reconciliation Commission (LLRC)

21. The Committee notes that there have been a number of ad hoc commissions of inquiry looking into past human rights violations, including the Presidential Commission of Inquiry to investigate serious cases of human rights violations that occurred since 1 August 2005, which according to the International Independent Group of Eminent Persons (IIGEP) did not meet international standards of independence, witness and victim protection and transparency. The Committee notes the information on the mandate, composition and working methods of the Lessons

Learnt Reconciliation Commission (LLRC) and the Inter-Agency Advisory Committee (IAAC), established in May and September 2010, respectively. The Committee notes the assurances by the delegation of the State party that the LLRC has the faculty to channel the complaints received “with a possibility of immediate investigation and remedial action”, and that the Attorney General is “empowered to institute criminal proceedings based on the material collected during the course of the recommendations made by the LLRC”. The Committee, nevertheless, regrets the apparent limited mandate of the LLRC and its alleged lack of independence. In addition, it regrets the lack of information provided by the State party on the investigations undertaken into allegations of serious violations of international human rights law, such as torture, including rape and enforced disappearances, and other forms of ill-treatment that allegedly occurred during the last stages of the conflict and in the post-conflict phase, as reported by numerous sources, including the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Secretary-General’s Panel of Experts on Accountability in Sri Lanka. The Committee notes that the State party asserts that the LLRC “has taken cognizance of all the allegations”, but regrets that it has not received any such information. The Committee notes that the State party “(...) will await LLRC’s report before considering further action” and that a “comprehensive answer will be submitted” to this Committee on the establishment of programmes to assist victims of torture and ill-treatment that occurred during the course of the armed conflict “once the LLRC’s report is finalized and made public” (arts. 2, 12, 13, 14 and 16).

Following the LLRC initiative, the State party should promptly launch impartial and effective investigations into all allegations of violations of the Convention, including torture, rape, enforced disappearances and other forms of ill-treatment, occurred during the last stages of the conflict and in the post-conflict phase, with a view to holding accountable those responsible and providing effective redress for victims of such violations.

The State party should consider also the possibility of accepting an international investigatory body, which would address past concerns over the lack of credibility of previous investigations and any outstanding concern about the LLRC.

(...)

38. The Committee requests the State party to provide, by 25 November 2012, follow-up information in response to the Committee’s recommendations related to (1) ensuring or strengthening legal safeguards for persons detained, (2) conducting, prompt, impartial and effective investigations, and (3) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 7, 11, 18 and 21 of the present document. In addition, the Committee requests follow-up information on remedies and redress to the victims addressed in those paragraphs.

(...)