



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

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17 May 2013

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 third and fourth periodic reports of the Government of Sri Lanka at its 47th Session in November 2011 (CAT/C/LKA/3-4). The Committee adopted its Concluding Observations (CAT/C/LKA/CO/3-4), in which it requested the Government of Sri Lanka to provide further information on its response to the Committee's recommendations contained in paragraphs 7, 11, 18, and 21.

On behalf of the Committee, I thank you for your response of 25 November 2012. The additional information provided assists the Committee in its ongoing analysis of the issues identified for follow up. As Rapporteur on Follow Up, I would be grateful for clarification and further information on the following matters, where sufficient information is not yet provided to complete the analysis of the progress made regarding implementation of the recommendations.

Fundamental legal safeguards (paragraph 7)

In paragraph 7 of its concluding observations, the Committee recommended that the State party take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards against torture from the very outset of their detention. The Committee remains seriously concerned that such safeguards are indeed necessary, in light of additional reports it has received since November 2011 of denial of safeguards and torture during interrogation against persons in custody by police officials and the military.

The Committee appreciates the information provided regarding measures taken by the State party including the issuance by the Inspector General of Police on 29th December 2011 of Circular No. 2328/2011, "Safety of the persons in police custody." The Committee would appreciate additional information concerning the content of this circular. Please also indicate how its observance by police personnel is assured.

The Committee further appreciates information provided concerning proposed amendments to the Criminal Procedure Law [Special Provisions Act]. Please provide updated information about the status of the proposed amendments, and particularly whether they have been adopted, and whether detainees now have a statutory right to inform their next of kin or relatives immediately about their detention and whether the authorization of a magistrate is required in order for a person to be detained without charge for a period exceeding 24 but not exceeding 48 hours.

.../...

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The Committee appreciates the information provided concerning the issuance of the Gazette (Extraordinary) No. 1758/36 of 18/05/2012, "Police (Appearance of Attorneys-At-Law at Police Stations), and would appreciate additional information on how the enforcement of this Gazette is ensured. The Committee remains concerned that the measures taken by State party do not appear to have provided persons held in custody with a statutory right to have prompt access to a lawyer of their choice, the right to have a lawyer present during any interrogation, and the right to confidential communication with their lawyer. Please indicate if the State party has taken measures to ensure these safeguards in law as well as in practice. The Committee would also appreciate information on whether all persons in custody have a statutory right to legal assistance from the Legal Aid Commission. Please also provide data on the number of individuals in police custody who have received assistance from the Legal Aid Commission since November 2011.

The Committee would appreciate additional information from the State party on the provision to all persons in custody of the legal safeguard of prompt access to an independent medical examination, if possible by a doctor of the detainee's choice. Please indicate whether the State party has taken measures to address the Committee's concern that detainees' access to a doctor was left to the discretion of the police officer in charge of the police station.

The Committee appreciates the information provided regarding the practices governing official inquiry and reporting obligations to determine whether detainees were tortured or mistreated while in police custody. The Committee takes note of the State party's statement that "it is a well-established practice" that Magistrates regularly inquire whether suspects were tortured or mistreated while in police custody and refer detainees who make claims in response for a medical examination. Please indicate if the State party anticipates promulgating written regulations requiring magistrates to make such inquiries and to report to the authorities that they have requested such a medical examination. The Committee would also appreciate data on the number of instances since November 2011 in which magistrates have in fact referred detainees for medical inquiries on the basis of allegations of torture or ill-treatment, particularly in view of the documented allegations of torture, including sexual violence and branding received by this Committee. The Committee would also appreciate information regarding the number of cases since November 2011 in which Judicial Medical Officers have submitted reports to the relevant authorities on the basis of a suspicion that a suspect was tortured or ill-treated, and how many of these led to an investigation.

#### Coerced confessions (paragraph 11)

The Committee reiterates concern at the exceptional treatment of confessions obtained by police under the Prevention of Terrorism Act (PTA), given credible reports that individuals prosecuted pursuant to this law are frequently convicted solely on the basis of confessions, which in some cases were allegedly obtained through torture. The State party asserts that "the menace of terrorism can only be effectively dealt with by introducing measures that are extraordinary." However, in its General Comment No. 2 (CAT/C/GC/2), the Committee recalled "the non-derogable nature of the obligations undertaken by [States parties] in ratifying the Convention," and noted that "In the aftermath of the attacks of September 11, 2001, the Committee specified that the obligations in articles 2 (whereby 'no exceptional circumstances whatsoever...may be invoked as a justification of torture'), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that 'must be observed in all circumstances.'"

The Committee would appreciate updated information on any measures taken by the State party to ensure that all allegations that a confession to be introduced in court was obtained through torture are promptly, effectively, and thoroughly investigated, not only by medical officers, but by police or other relevant investigative authorities. With reference to the State



party's observation that "statistics would show that many confessions are rejected *in limine*" for not having been obtained voluntarily, the Committee would appreciate receiving data on the number of confessions that judges have rejected in PTA cases since November 2011.

The Committee appreciates the information provided on the procedure by which Magistrates proceed in cases in which they suspect that a detainee has been subjected to torture or ill-treatment. Please indicate whether the State party is considering giving detainees a right to a medical examination to assess allegations of torture, rather than allowing magistrates to order such medical examinations at their discretion. The Committee regrets that under the State party's current practice, reports by Judicial Medical Officers (JMO) on their investigations into detainee claims of torture remain confidential. Please indicate whether the State party is considering making it obligatory for detainees to receive a copy of such reports, as recommended by the Committee. Please also indicate if the State party is considering amending its laws to allow for independent physicians, rather than JMOs, to conduct such investigations.

#### Impunity for acts of torture and ill-treatment (paragraph 18)

The Committee regrets that the State party has not provided information on measures taken in response to the Committee's recommendations regarding the need for allegations of torture and ill-treatment by police officers to be directed to complaint-receiving bodies and investigated by personnel independent of the police hierarchy. The Committee notes that such independent bodies can ensure that complaints of torture and investigations into such complaints are handled impartially and effectively. The Committee would appreciate updated information on measures taken to ensure the independence of the Special Investigations Unit (SUP) of the police, as well to ensure that the SUP receives responsibility for investigating allegations of torture by the authorities. Please indicate the total number of cases of alleged torture investigated by police since November 2011 and the number of these investigated by the SUP.

The Committee would appreciate additional information regarding its recommendation that the State party launch prompt and impartial investigations whenever there are reasonable grounds to believe that an act of torture has been committed, to bring alleged perpetrators to trial, and to ensure sentences consistent with the gravity of torture. The Committee appreciates the information provided that as of 25 November 2012 there were "over 15 indictments on allegation of torture presently pending in the High Courts." Please provide additional detail and updated information, indicating the number of complaints of torture received by the authorities since November 2011 that resulted in an indictment, the number that resulted in conviction, and the charges on which the conviction was based and the judicial sentences in such cases.

The Committee welcomes the information that the State party is seeking adoption of a law on victim and witness protection. Please provide updated information on the status of this effort. Please also provide additional information on any measures taken to ensure that officials under investigation for torture are suspended from duty for the duration of the investigation. Please include data on any instances in which officials have been suspended since November 2011.

The Committee regrets that the State party has declined to indicate whether, as recommended by the Committee, it has taken legislative measures to guarantee the independence of the judiciary. The Committee recalls that its General Comment No. 2 stresses the need for allegations of torture "to be fully investigated through competent, independent and impartial prosecutorial and judicial authorities." The Committee thus reiterates its concerns regarding the independence of the judiciary and requests information on progress made since November 2011 in insuring such independence.



Accountability process and the Lessons Learnt and Reconciliation Commission (paragraph 21)

The Committee appreciates the information provided regarding the establishment of a Task Force to monitor the implementation of the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) and the Task Force's development of a National Plan of Action to implement the those recommendations.

The Committee would appreciate updated information on steps taken to implement the LLRC's recommendations that the State investigate allegations or torture and extrajudicial killing arising from video footage broadcast by Channel 4. The Committee understands that the Sri Lanka army has appointed a court of inquiry to investigate these issues and would appreciate an update on its progress and on measures taken to ensure the independence and impartiality of the investigation and to protect victims and witnesses. Please describe measures taken to implement the LLRC's recommendation that cases involving the alleged disappearance of individuals who had surrendered to or had been arrested by the security forces at the time of the end of the armed conflict be investigated. Please indicate measures taken to ensure the independence of these investigations and their progress, including whether prosecutions have resulted. Please also indicate whether investigations into allegations of rape in the last stages of the conflict and in the post-conflict phase have been launched, as previously recommended by the Committee, and whether any prosecutions have resulted.

The Committee would also appreciate information on steps taken to implement the LLRC's recommendation that the recommendations of the presidential commission of inquiry into serious violations of human rights in 2005 and 2006 be implemented. The Committee understands that the Inspector General of Police has been authorized to conduct investigations in this regard. Please indicate if any indictments have been filed in relation to these cases and if the State party has made public the report of the presidential commission in question.

Please also provide information on steps taken, to implement the LLRC's recommendation that a special commissioner of investigation be appointed and supported by experienced investigators to investigate alleged disappearances and to provide the Attorney General with material for further action. Please particularly indicate data on any investigations into disappearances and whether they have resulted in arrests or prosecutions. Please also provide information on progress made towards implementation of the LLRC's call for a comprehensive approach, as a matter of urgency, to address the issue of missing persons.

The Committee would also appreciate updated information and data on redress provided to victims of violations of the Convention perpetrated during this time period.

Accept, Excellency, the assurances of my highest consideration.

Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations  
Committee against Torture