



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

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Committee against Torture

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

**Combined third and fourth periodic reports of States parties due in
2007**

Sri Lanka*, **, ***

[17 August 2009]

* The second periodic report submitted by the Government of Sri Lanka is contained in document CAT/C/48/Add.2; it was considered by the Committee at its 671st and 674th meetings, held on 10 and 11 November 2005 (CAT/C/SR/671 and 674). For its consideration, see CAT/C/LKA/CO/2.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

*** Appendices to the present document are available for consultation with the secretariat of the Committee.

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Abbreviations

CBSM	Confidence Building and Stabilization Measures
CFA	The Ceasefire Agreement
CGR	Commissioner General of Rehabilitation
COI	Commissions of Inquiry
DPLF	Democratic People's Liberation Front
FBI	Federal Bureau of Investigation
ICRC	International Committee of the Red Cross
IGP	Inspector General of Police
ITAK	Illankai Tamil Arasu Kadchi
JVP	Janatha Vimukthi Peramuna
LTTE	Liberation Tigers of Tamil Eelam
NCPA	National Child Protection Authority
NHRC	National Human Rights Commission
NPC	National Police Commission
OHCHR	Office of the High Commissioner for Human Rights
PCID	Public Complaints Investigation Division
SCOPP	Secretariat for Coordinating the Peace Process
SLMC	Sri Lanka Muslim Congress
SOCO	Scene Of the Crime Officers
TMVP	Tamil Makkal Viduthalai Pulikal
TULF	Tamil United Liberation Front
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPFA	United People's Freedom Alliance

I. Introduction

1. Sri Lanka is pleased to submit its third and fourth periodic reports for the consideration of the Committee against Torture. The present report has been prepared following the guidelines sent by the United Nations on treaty specific guidelines and harmonized guidelines. Since Sri Lanka has submitted its common core document, in April 2008, to the Office of the High Commissioner of Human Rights, it is not intended to reproduce the contents contained therein. The present document will address the recommendations made by the Committee against Torture contained in document CAT/C/LKA/CO/2, paragraphs. 5–20.

2. The Government of Sri Lanka takes note of the appreciation expressed by the Committee against Torture during the consideration of Sri Lanka's second periodic report to the Committee. The Government also takes note of the appreciation of the Committee of the dialogue and the responses submitted by the Sri Lanka's delegation to the Committee. The Government will continue to engage in a constructive dialogue with the Committee in an open and transparent manner.

3. Sri Lanka is pleased to bring to the attention of the Committee recent developments in relation to its initiative to develop a National Action Plan for the Promotion and Protection of Human Rights, (NAPHR), which is expected to have a positive impact in the implementation of its obligations under the Convention against Torture and other Cruel, Inhuman and Degrading Treatment. The NAPHR was a voluntary commitment made by Sri Lanka in the Universal Periodic Review process, during May 2008 Session of the Human Rights Council in Geneva. The NHRAP is to be launched in 2009 and to be implemented over a period of five years. Sri Lanka has concluded the consultations stage of the NAPHR with relevant government and civil society stakeholders and has tasked eight Drafting Committees with the presentation of substantive draft proposals on eight thematic issues. For an overview of the objectives and procedure on the adoption of the NAPHR please see the supplement to the third and fourth combined reports of Sri Lanka to the Committee against Torture" attached to the present report.

4. Broad-based consultations took place in December 2008, including an Issues Paper which, inter alia, collated comments made by State Parties during the UPR Process, as well as observations of the Special Rapporteur on Torture, Mr. Manfred Nowak. The following proposals emerged from these consultations:

- The need to improve investigation procedures and techniques in conformity with the Istanbul Protocol
- The need to train Judicial/Medical Officers and in this regard the necessity to prepare a Judges' Hand Book
- The need to train relevant individuals in the preparation of medical reports, with an emphasis on the psychological effects on victims of torture
- The need to create greater judicial and public awareness
- The need to develop a curriculum to educate Police Officers
- The need to ensure that the public, particularly the vulnerable groups are fully educated and made more aware of their rights through mechanisms such as the incorporation of human rights education in the school curriculum
- The need for regular magisterial visits to places of detention

- The suggestion to conduct district level seminars with participation of representatives from the Faculties of Medicine and the Ministry of Health
- The need for adequate resources

5. These issues have been subject to further discussion and refinement in the drafting and consultation phases of the NAPHR and once they are incorporated in the Plan the need would arise to address the resource aspect. Several international donors have already indicated their willingness, in principle, to support the effective implementation of the Plan. This would provide a useful opportunity for such international donors to cooperate with Sri Lanka, in the development of this important initiative and to address any gaps relating to the enjoyment of human rights that may exist at present.

II. Positive aspects contained in the report of the Committee against Torture

6. The Government takes note of the satisfaction expressed by the Committee against Torture on the matters set out in paragraph 3 of the report of the Committee.

III. Factors and difficulties impeding the implementation of the Convention set out in the report of the Committee against Torture

7. The Government of Sri Lanka appreciates that the Committee acknowledges the difficult situation arising from the internal armed conflict in Sri Lanka.

8. The conflict in Sri Lanka was a result of a ruthless terrorist group, the Liberation Tigers of Tamil Eelam (LTTE), confronting the democratically elected Government. The LTTE has been banned as a terrorist organization in around 30 democratic countries in the world including the European Union (EU), India etc.

9. Significant developments have taken place in Sri Lanka this year, which will have an important bearing on the democratic political processes within the country as well as a beneficial impact on the rights and freedoms enjoyed by the people of Sri Lanka, particularly in the north and east of the country. In May 2009, Sri Lanka was successful in definitively defeating terrorism perpetrated by the Liberation Tigers of Tamil Eelam – LTTE, a terrorist organization proscribed in over 30 democratic countries worldwide. The LTTE had been waging a separatist conflict by the use of force in areas of the Northern and Eastern Provinces of Sri Lanka for almost 3 decades. During this time, the democratic rights and entitlements of the civilians in these areas had been suppressed by the LTTE, which did not allow the free expression or airing of alternate opinions, thus violently stifling any space for alternate democratic Tamil leadership in these areas. Furthermore, the terrorist activities of the LTTE indiscriminately destroyed civilian lives in all parts of the country, while impeding all aspects of progress and development, particularly in the areas which they claimed to control.

10. With the end of conflict in May 2009, Sri Lanka has now entered a post-conflict phase. The Government has been successful in liberating the civilians of the North and East of the country from LTTE control. The liberation of Eastern Province took place in 2008, and the Government was able to hold Municipal, Local Government and Provincial Elections in the Eastern Province in May 2008. A popularly elected Provincial Council with representation from Tamil, Sinhalese and Muslim communities and led by a former LTTE

child soldier, who has since renounced violence and joined the democratic mainstream is now functioning effectively.

11. In the Northern Province, the current efforts of the Government are focused on the long-term voluntary and sustainable rehabilitation of the large number of civilians who have been freed from the LTTE control. The Government is committed to achieve the target of early voluntary resettlement as soon as the areas mined by the LTTE have been cleared. The Government is working in close cooperation with United Nations agencies, international and local NGOs in this important task.

12. As with the Eastern Province, it is the objective of the Government that democratic institutions and electoral processes, which had been in place in these areas prior to their suppression by the LTTE, will soon be restored. Accordingly, Elections to the Uva Provincial Council, Jaffna Municipal Council and Vavuniya Urban Council were held on 8th August 2009. In the Jaffna Municipal Council elections, the governing United People's Freedom Alliance (UPFA) won 13 seats by gaining 10,602 votes (47.6 per cent) with Illankai Tamil Arasu Kadchi (ITAK) taking the second slot with eight seats. Independent group 1 and TULF won one seat each. In the polls to elect representatives to the Vavuniya Urban Council, the ITAK won five seats. The Democratic People's Liberation Front (DPLF) won three seats while the UPFA secured two with the Sri Lanka Muslim Congress (SLMC) winning one seat. In the Uva Province, the UPFA secured 25 seats out of 34 on offer gaining 418,906 of the votes cast (72.39 per cent). The UNP secured seven seats with 129,144 votes (22.32 per cent). The Janatha Vimukthi Peramuna (JVP) gained 2.53 per cent and the Up-Country People's Front gained 1.59 per cent securing one seat each. At the same time, the Government is also determined to accelerate the economic, social and infrastructure development in these areas. Even in the almost three decades of conflict, the administrative infrastructure in the so-called LTTE areas had been maintained at Government cost and manned by Government personnel. Therefore, the basic administrative infrastructure for accelerated development under the Northern Re-Awakening Programme and the "Nagenahira Navodaya" is already in place. The Government is pursuing a lasting political solution engaging all stakeholders.

13. Sri Lanka also notes the Committee's statement that no exceptional circumstances whatsoever may be invoked as a justification for torture. Despite the grave atrocities committed by the LTTE, the Government reiterates that it has at no time sought to invoke any justification for torture nor has it resorted to or acquiesced in acts of torture. As a matter of State policy and practice, the Government maintains a zero tolerance policy on torture, as is evidenced by the meaningful measures taken to curb acts of torture. Mr. Manfred Nowak, states in the "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, Mission to Sri Lanka", (A/HRC/7/3/Add.6), submitted at the seventh session of the Human Rights Council, on 26 February 2008, "The Special Rapporteur has full appreciation for the challenges the Government faces from the violent and long lasting conflict with the ... LTTE ... Notwithstanding the difficult security situation with which the Government is faced, Sri Lanka in principle is still able to uphold its democratic values, to ensure activities of civil society organizations and the media and to maintain an independent judiciary."¹ The report also stated that the Government "... has taken a number of important legal steps in order to prevent and combat torture as well as to hold perpetrators accountable. Most notably the enactment of the Torture Act No 22 of 1994 and the Corporal Punishment (Repeal) Act No

¹ "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, Mission to Sri Lanka", (A/HRC/7/3/Add.6), Manfred Novak, submitted at the seventh session of the Human Rights Council, on 26 February 2008, p. 2.

23 of 2005 as well as legal safeguards in the Code of Criminal Procedure constitute positive legal measures in the fight against torture.”²

14. The two members delegation of the Committee against Torture, at the completion of their inquires in 17 May 2002 has concluded that “... although a disturbing number of incidents of torture and ill treatment, as defined by articles 1 and 16 of the Convention had taken place under extraordinary circumstances, in a situation of internal armed conflict, they cannot be termed systematic torture and ill-treatment”.³

IV. Principal subjects of concern and recommendations contained in the report of the Committee against Torture

Definition

Recommendation: The State party should adopt a definition of torture that covers all the elements contained in article 1 of the Convention.

15. The Government of Sri Lanka is of the opinion that the definition of torture under its domestic law covers all the elements contained in article 1 of the Convention. Although the word suffering “is not specifically mentioned in the definition of torture in Act No. 22 of 1994”,⁴ the Government is of the view that the words “severe pain whether physical or mental” invariably encompasses “suffering” both in its physical and mental forms. Therefore Sri Lanka is of the view that its definition is consistent with the definition of torture contained in the Convention. It has to be noted that purely mental torture is also included within the definition, so that the threat of torture may itself amount to psychological torture. Further the Government notes that Manfred Nowak in his report of February 2008” observes that the definition in article 12 is in conformity with the definition of article 1 of the Convention: however, it does not expressly include suffering”.⁵ This is a clear indication that despite the lack of the term “suffering” the Convention against Torture Act No.22 of 1994 (CAT Act) is consistent with the definition of the Convention. Professor Novak also states:

“According to this Act, torture is defined under article 12, which in principle corresponds to article 1 of the Convention, as any act which causes severe pain, whether physical or mental, to any other person, being an act, which is

- (a) Done for any of the following purposes that is to say:
 - (i) Obtaining from such other person or a third person, any information or confession; or
 - (ii) Punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or
 - (iii) Intimidating or coercing such other person or a third person; or

² Ibid., p. 2.

³ Official Records of the General Assembly, Fifty-Seventh Session, Supplement No. 44 (A/57/44), para. 181 (<http://www.unhchr.ch/tbs/doc.nsf>).

⁴ Interpretation of ‘Torture’ in Section 12 of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No: 22 of 1994.

⁵ Supra note 1, p. 11.

(b) Done for any reason based on discrimination and being in every case, in an act which is done by, or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.”⁶

Human Rights Commission of Sri Lanka

Recommendation: The State party should strengthen the Human Rights Commission of Sri Lanka so as to allow it to function effectively and ensure that its recommendations are fully implemented. The Commission should be provided with adequate resources, notification of arrests, and full cooperation in implementing its 24-hour torture hotline and improving the system of inspection visits. Furthermore, the State party should ensure that new commissioners are appointed promptly when the three-year term of office of the present commissioners ends in March 2006.

16. The National Human Rights Commission of Sri Lanka, (NHRC), established in 1996, continues to play an active role in the area of promotion and protection of human rights. The NHRC was set up as a permanent national institution to investigate any infringement or imminent infringement of a fundamental right, declared and recognized by the Constitution, and to recommend appropriate relief. The jurisdiction of the Commission is wider than that of the Supreme Court and will complement the existing national framework for the promotion and protection of human rights. The role of the NHRC is strengthened in that there is no time limit for filing a complaint before the NHRC.

17. “Directions Issued by the President Commander-in-Chief of the Armed Forces and Minister of Defence” on 7 July 2006 states that “... any officer who makes an arrest or order of detention must, according to the above Directives, within 48 hours from the time of arrest or detention, inform the HRC of such arrest or detention and the place of custody or detention.” For further on these directives, please see the supplement to the present report, paragraphs 29–33.

18. The Government has issued circulars to the effect that whenever possible, except in exceptional circumstances, and where there is good reason, the State institutions should comply with the recommendations made by the NHRC. The aforementioned Directives state, “Every member of the Armed Forces and the Police Force shall assist and facilitate the HRC and any person authorized by the HRC in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.”⁷ The NHRC was duly reconstituted when the term of its members expired in March 2006.

National Police Commission

Recommendation: The State party should proceed urgently with the appointment of the commissioners of the National Police Commission. Furthermore, the State party should ensure that the public complaints procedure provided for in article 155G (2) of the Constitution is implemented and that the Commission is given adequate resources and full cooperation by the Sri Lanka police in its work.

19. The National Police Commission (NPC) was established under the 17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka with the objective of creating an independent, impartial and efficient Police Service which will respect and safeguard human rights.

⁶ Section 12, *ibid.*

⁷ See further “Supplement to the Report”.

20. The Commission consists of seven members including the Chairman. The NPC was reconstituted on 10 April 2006 after the expiry of the term of the previous Commission in November 2005.

21. The NPC has identified as its mission, to transform the Sri Lankan Police into a truly modern elite service with an emphasis on the respect for the rule of law, professionalism, transparency and responsiveness to public aspirations.

22. NPC established the Public Complaints Investigation Division (PCID) to give effect to article 155 G (2) of the Constitution. Article 155 G (2) states:

“The Commission shall establish procedures to entertain and investigate public complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance with the provisions of any law enacted by Parliament for such purpose.”

23. Members of the public are free to address their complaints direct to the Head Office or to the Provincial Offices of the NPC. The public has placed their trust in the PCID and responded very positively to the establishment of the PCID of the Commission.

24. In order to ensure an efficient and effective service to the members of the public, the NPC has already decentralized the Public Complaints Investigation Division responsibilities by establishing at regional level nine provincial offices by the end of year 2006. Nine Provincial Directors have already been appointed to be in charge of these offices.

25. NPC took the above important decision to expedite the investigation of public complaints received against Police Officers and the Police Service and to provide redress. The process is ultimately targeted to ensure an independent and impartial Police Service.

26. Procedures to be followed in investigating public complaints have been compiled as a set of Rules and published by the Extra Ordinary Gazette No. 1480/8 dated 17 January 2007.⁸

Fundamental safeguards

Recommendation: The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police are respected, including the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their own choice, and the right to receive information about their rights.

27. The supreme law of the land, the Constitution of the Democratic Socialist Republic of Sri Lanka recognizes the right not to be subjected to torture as a fundamental right.⁹ Please see also the supplement to the report.

28. The right of habeas corpus is a right guaranteed under article 141 of the Constitution and the Court of Appeal has been granted the power to issue orders in the nature of writs of habeas corpus.

29. Directives issued by the President in July 2007 ensure that, “... the person arrested should be afforded reasonable means of communicating with a relative or friend.” It requires the person making the arrest to identify himself to the person arrested or to a relative, inform the reason for the arrest, and to present a written documentation to the

⁸ See annex I.

⁹ Article 11 of the 1978 Constitution.

spouse, parent or relative acknowledging the fact of arrest (see further paragraph 33 of the supplement to the present report). Precautionary measures are also taken in the directives to protect women and children in custody (see further paragraph 33 of the supplement to the present report).

30. The directives mandate the Inspector General of Police (IGP) and the Tri Service Commanders of the Armed Forces to ensure strict compliance with the legal provisions pertaining to arrest and detention.

31. Training Programmes had been conducted to the Police as well as the Armed Forces with the assistance of the International Committee of the Red Cross (ICRC) and the Institute of Human Rights on the duties and obligations of Armed Forces personnel in relation to their accountability and responsibility to maintain transparency in the performance of their duties involving the arrest and detention of suspects. The positive measures taken by Sri Lanka were also underlined in the report of the Special Rapporteur.¹⁰

32. The Supreme Court on 22 September 2008 issued an order to the effect that when a person is taken into police custody their relatives should be informed promptly and a receipt of arrest issued.

Non-refoulement

Recommendation: The State party should adopt domestic legislation to implement the principle of non-refoulement contained in article 3 of the Convention.

33. Article 3 of Convention against Torture prohibits refoulement or extradition of a person where there are substantial grounds for believing that such person faces the threat of torture in the receiving State. Sri Lanka as a policy does not extradite persons where such threats exist and there have been no instances of persons in Sri Lanka seeking to refute an extradition order based on allegations of torture.

34. Additionally, no allegations have been levelled against the State for any action in breach of this principle. Any such concerns will be dealt with at the Executive level.

35. The Extradition Law No. 8 of 1977 of Sri Lanka incorporates restrictions on extradition which includes the possibility of punishment, detention or restriction by reasons of race, nationality or political opinion.¹¹ This provision covers the situations envisaged by Section 3 of CAT.¹² Further there are adequate provisions under the laws governing Immigration and Emigration, and Extradition to honour this principle.

Universal jurisdiction

Recommendation: The State party should ensure that Sri Lankan law permits the establishment of jurisdiction for acts of torture in accordance with article 5 of the Convention, including provisions to bring criminal proceedings under article 7 against non-Sri Lankan citizens who have committed torture outside Sri Lanka, who are present in the territory of Sri Lanka and who have not been extradited.

36. Sri Lanka Government is of the view that Section 4 of the Convention against Torture Act, conferring extra territorial jurisdiction on the High Court of Sri Lanka, read with Section 7 concerning the obligation to extradite or prosecute, gives full effect to articles 5 and 7 of the Convention.

¹⁰ Supplement to the Report.

¹¹ Section 7 (1) of the Extradition Law of Sri Lanka.

¹² Section 2 (5) of the CAT Act.

37. Article 5 of the Convention against Torture sets out the requisite jurisdiction of the Courts in respect of torture. Accordingly, the Convention against Torture Act grants the High Court jurisdiction to hear all cases where the alleged perpetrator or the victim is a Sri Lankan citizen¹³ and where the offence is committed outside the territory of Sri Lanka, the High Court has jurisdiction if the offender is in Sri Lanka, or on board an aircraft or ship registered in Sri Lanka.¹⁴ In cases where an act of torture is committed by a non Sri Lankan and outside Sri Lanka, the Act grants jurisdiction to the High Court holden in the judicial zone nominated by the Chief Justice.¹⁵ The High Court has continuously asserted its jurisdiction over alleged torture cases under the Convention against Torture Act.

38. Article 7 of the Convention against Torture states that if the authorities should decide not to extradite the accused then it should submit the case to its competent authorities for the purpose of prosecution. This provision is reflected in sections 7, 8, and 9 of the CAT Act.

Systematic review of all places of detention

Recommendation: The State party should allow independent human rights monitors, including the Human Rights Commission of Sri Lanka, full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review.

39. Under Section 28 (2) Human Rights Commission of Sri Lanka Act No. 21 of 1996, “Any person authorized by the Commission in writing may enter at any time, any place of detention, police station, prison or any other place in which any person is detained by a judicial order or otherwise, and make such examinations therein or make such inquiries from any person found therein, as may be necessary to ascertain the condition of detention of the persons detained therein”.

40. The IGP has issued a circular number 1796/2004 dated 27 September.2007 regarding entry into places of detention by Persons authorized by the HRC under section 28 (2) of HRC Act. In this circular instructions have been given to all ranks in the Department of Police by the IGP to allow officers from HRC to inspect any place where it is suspected that a person is detained.

41. One of the measures taken by Sri Lanka to prevent torture is to ensure unannounced visits to places of detention. As per existing Regulations, all Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates.

Prompt and impartial investigations

Recommendation: The State party should:

(a) Ensure prompt, impartial and exhaustive investigations into all allegations of torture and ill-treatment and disappearances committed by law enforcement officials. In particular, such violations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

¹³ Section 4 (1) (b) and (c) respectively, *ibid.*

¹⁴ Section 4 (1) (a), *ibid.*

¹⁵ Section 4 (2), *ibid.*

(b) Try the perpetrators and impose appropriate sentences on those convicted, thus eliminating any idea that might be entertained by perpetrators of torture that there is impunity for this crime.

42. The Attorney General speaking at the Universal Periodic Review on Sri Lanka in May 2008 stated, “all allegations of the violation of human rights are and will be fully and impartially investigated and where there exists reliable and sufficient material to launch prosecutions, all alleged perpetrators of human rights violations would be prosecuted. Measures necessary to expedite the process of investigation launch of prosecutions and conduct of trials would be adopted. It is indeed our intention to ensure that, notwithstanding the identity of the person, his designation and the role supposedly performed by such persons, all those who commit human rights violations which are also recognized as criminal offences are dealt with under the due process of law, prosecuted and appropriately punished”.¹⁶ A Special branch of the police, the Special Investigations Unit (SIU) and Disappearances Investigation Unit who have been especially trained to handle such situations is entrusted with this.

43. The Government reiterates its commitment to promptly and impartially investigate allegations of torture. The introduction of Scene Of the Crime Officers (SOCO) and educating the Police Officers on various other techniques has facilitated the prompt and impartial investigations conducted by Police Officers. All the investigations are conducted through court directions and supervision and the outcome of each and every investigation is subjected to judicial supervision.

Sexual violence and abuse

Recommendation: The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials and promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. Furthermore, the State party should take all necessary measures to prevent such acts, including by ensuring full implementation of the directive concerning the treatment of women in custody, and should consider setting up women and children’s desks at police stations in conflict areas.

44. The Government has taken necessary steps to minimize acts of sexual violence and abuse. The Government is committed to ensure prompt and impartial investigations to any such allegations when such allegations are directed against law enforcement officials.

45. The Presidential Directive of 7 July 2006, instructs the Heads of the Armed Forces and the IGP on measures necessary to enable the NHRC of Sri Lanka to exercise and perform its powers, functions and duties. It also provides for the protection of fundamental rights of persons arrested or detained and their humane treatment.

46. Paragraph 4 of the Presidential Directions of 7 July 2006 provides that, “When a child under 18 years or a woman is sought to be arrested or detained, a person of their choice should be allowed to accompany such child or woman to the place of questioning. As far as possible, any such child or woman so sought to be arrested or detained, should be placed in the custody of a Women’s Unit of the Armed Forces or the Police Force or in the custody of another woman military or police officer”.¹⁷

47. The physical search of any female is conducted only by Women Police Personnel and Women Armed Forces Personnel present at check points and in places of detention.

¹⁶ Universal Periodic Review – Sri Lanka, Presentation of the Attorney General, 13 May 2008.

¹⁷ Presidential Directions to the Commander in Chief of the Armed Forces and the Minister of Defence, 7 July 2006.

Delay of trials

Recommendation: The State party should take the necessary measures to ensure that justice is not delayed.

48. The delay of trials is a phenomenon not specific to Sri Lanka, but is a common problem that exists in most of the countries of the region. The heavy backlog of cases, particularly criminal cases, tends to delay trials. There is no specific delay in trials in torture cases in comparison to trials in other criminal cases. However, the Government of Sri Lanka acknowledges that there had been delays and it has taken various measures to redress the situation. These include measures to increase the number of courts and judges, as well as to bring in new legislation to provide that all criminal trials should be continued on a day to day basis whenever possible. However, the severe backlog that burdens courts has not been fully rectified. The Government will continue to address this issue to take further steps to bring down the backlog of cases.

Intimidation and threats

Recommendation: In accordance with article 13, the State party should take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals for making such reports. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection.

49. The Government after wide consultation with key government officials, as well as with the civil society, tabled in Parliament a proposed new law to provide assistance and protection to victims of crime and witnesses. An important feature of this proposed law is the wide definitions given to the terms “victim of crime” “witness” so as to include not only victims and witnesses of conventional crimes but also to include victims and witnesses of human and fundamental rights. Once the proposed law is enacted it will address problems relating to intimidation, threats, reprisals and other forms of harassment against all victims of crime and witnesses and would necessarily include victims of alleged torture and ill treatment. It is important to note that even as the law stands today, intimidation and reprisals taking the form of bodily harm constitute criminal offences and therefore, persons who allege such harassment have recourse to the criminal justice system. Furthermore, persons who complain of harassment of any form arising out of their having complained of the committing of any offence, (including the offence of torture), as well as having been an witness to such incident is provided with necessary security and protection within the framework of the existing policing system.

50. According to the Assistance and Protection to Victims of Crime and Witnesses Protection Act, the Police Department is required to establish a Victims of Crime and Witness Protection Division under the command of a senior deputy Inspector General of Police for the purpose of providing protection to victims of crime and witnesses. The Presidential Commission to investigate and inquire into allegations of serious violations of human rights had established a special unit under the command of a senior Retired DIG to provide necessary measures of protection to witnesses of serious violations of human rights who volunteered to testify or whose testimony was required by the Commission.

51. A fundamental drawback affecting the efficacy of the Sri Lankan criminal justice system is that it fails to recognize rights and entitlements of victims of crime and witnesses. Therefore, a need exists for the recognition of rights and entitlements of victims of crime and witnesses and to set in place legislative infrastructure leading towards judicial and law enforcement mechanisms so as to ensure appropriate assistance and protection to be provided to victims of crime and witnesses. It is this need that is sought to be fulfilled by the enactment of the Assistance and Protection to Victims of Crimes and Witnesses Act.

52. The Bill which was developed taking into consideration existing deficiencies on the Criminal Justice system in the areas of assistance and protection to victims of crime and witnesses, the views of multi sectoral stake holders of criminal justice and Sri Lanka's obligations under Article 24 of the Convention against Transnational Organized Crime, is now before Parliament having initially been drafted by the Attorney General. The constitutionality of the provisions of the Bill was endorsed by the Supreme Court and the Bill was presented in Parliament in June of 2008 and it has been since partly debated and is now before the multi-party parliamentary consultative Committee on Justice and Laws reform. It is likely that following consultations at this Committee Parliamentarians would resolve to pass the law without a division in the house.

53. The Bill seeks to create a new legal regime for the protection of both the victim of crime and the witnesses. The law stipulates the rights and entitlements of victims of crime and witnesses and provides for a mechanism for the promotion, protection, enforcement and enjoyment of such rights and entitlements.

54. According to the definition in the law, a victim of crimes is:

- (a) Any person who has suffered harm due to an offence being committed;
- (b) Any person who has suffered harm as a result of an infringement of a fundamental right or human right;
- (c) Any person who has suffered harm by intervening to assist a victim of crime, or to prevent the commission of an offence;
- (d) Any member of a family of such victim of crime the next of kin of a victim of crime;
- (e) Any other person of significant importance to a victim of crime.

55. The law provides for the following:

(a) The law set out the rights and entitlements of victims of crime and witnesses and provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements. The core rights of victims include:

- The right to be present and participate in criminal justice proceedings
- The right to apply and receive compensation for harm suffered a result of being a victim of crime
- The right to be informed by proceedings and events in the criminal justice process, of legal rights and remedies and of available services
- The right to protection from intimidation and harassment
- The right to restitution from the offender
- The right to be represented by counsel
- The right to be medically treated for any mental or physical injury suffered as a result of being a victim of crime

(b) The law provides for the establishment of:

- The National Authority for the Protection of Victims of Crimes and Witnesses, for the promotion and protection of the rights of victims of crime and witnesses. There shall also be an Advisory Commission chaired by the Chief Justice to advise the Board of Management of the Authority regarding the performance of its functions. The Authority is empowered to compensate victims of crime and provide immediate relief till the court orders the payment of comprehensive compensation.

- The “Victims of Crime and Witness Assistance and Protection Fund” for the payment of compensation to victims. The Authority is required to establish a fund primarily for the purpose of providing interim compensation to victims of crime and generally to provide financial resources necessary to give effect to the objective of the law.
- The “Victims of Crime and Witness Protection Division” in the Police Department to implement an effective witness assistance and protection programme.

(c) The law provides for the rendering of assistance and protection to victims of crime and witnesses. The assistance shall include security to the person and property, provision of temporary housing or accommodation, permanent relocation, including housing, provision of temporary or permanent employment, necessary finances, reidentification;

(d) The law stipulates the offences that may be committed against victims of crime and witnesses and the penal sanctions that may be imposed on persons who commit such offences;

(e) The court is empowered, upon conviction of an offender in addition to the penal sanctions imposed on such accused, to order the convict to pay an amount not exceeding one million rupees as compensation to a victim of crime;

(f) The law vests the Attorney General with the authority to suspend the institution of criminal proceedings against any person for the purpose of giving effect to or protecting the interest of the victim of crime. Following the suspension of the institution of the criminal proceedings the Attorney General may at any subsequent time upon a reconsideration of the interest of the victim of crime and justice, institute criminal proceeding against such person. The suspension of the institution of proceedings in respect of any person shall not have the effect of an acquittal;

(g) The law set out the duties and responsibilities of the judicial officers and the public officers towards the promotion and protection of the rights and entitlements of victims of crime and witnesses. The assistance and protection which may be provided to victims and witnesses by the Courts or Commission of Inquiry includes the adoption of special measures:

- To protect the best interest of the child victims and witness
- To conduct judicial proceedings in camera
- To prevent the victim of crime or witness unnecessarily harassed, intimidated or influenced by seeing the accused present at venue of the trial or inquiry
- To prevent the identity of the victim of crime or witness from being disclosed

56. A process has been commenced through the Ministry of Disaster Management and Human Rights to deal with the backlog of cases relating to Involuntary and Enforced Disappearances. The process is to be included in the proposed National Action Plan for Human Rights as a priority item. In addition a separate full time unit will be set up to deal with these cases while advice has been sought from the United Nations Working Group on how best to ensure clarification or closure of cases relating to the period before 1994. With regard to recent cases, a system to ensure prompt reporting has been put in place, and recently a report was sent confirming that all cases reported for 2008 have been put before the Courts by the Police. The Committee meets regularly, and has instituted a system of regular reports which has also led to more active police investigation of allegations. Recently arrests of two gangs involved in abduction for ransom in the Eastern Province contributed to a cessation of such incidents, though the need for constant vigilance continues in the context of terrorism and its aftermath.

Reparation and rehabilitation

Recommendation: The State party should establish a reparation programme, including treatment of trauma and other forms of rehabilitation, and provide adequate resources to ensure its effective functioning.

57. Under the laws of Sri Lanka, any person who has a cause of action against the State which would entitle him to compensation is able to file action against the State in the District Court and claim damages. This right extends to victims of torture as well who could receive reparation for injuries sustained as a result of State action. In addition to this general form of receiving reparation victims of violation of their fundamental rights also have the special mechanism laid down in the Constitution to have their allegations heard and determined by the Supreme Court. The Constitution gives jurisdiction to the Supreme Court to grant just and equitable relief including compensation for proved violations of fundamental rights, including torture. In the event the Supreme Court grants a declaration that a petitioner's fundamental rights have been violated and grants nominal compensation the petitioner (the victim) could ask for additional compensation through the district courts.

58. The Supreme Court has on numerous occasions granted substantial compensation to victims of torture. Further, it is open to the Supreme Court to make directions to any relevant public authority with regard to rehabilitation of a victim that had been subject to torture. In certain instances the Supreme Court has made directions that medical bills for the future too should be borne by the State where it was proved that the victim had been tortured by officers of the State. In addition, it is noted that every person enjoys free medical treatment including hospitalization and medicine at State expense. It is noteworthy to highlight that in terms of section 17 (4) of the Code of Criminal Procedure Act No. 15 of 1979 a High Court is empowered to order the convict to pay compensation to any person affected by the offence of torture and this existing mechanism can also suitably be utilized by the judges to order reparation.

Child soldiers

Recommendations: The State party should take the necessary steps, in a comprehensive manner and to the extent possible in the circumstances, to prevent the abduction and military recruitment of children by the Liberation Tigers of Tamil Eelam and to facilitate the reintegration of former child soldiers into society.

Overview

59. Sri Lanka is committed towards creating a special protective environment for children, through the continuous improvement of the situation of children without distinction, as well as their development and education in conditions of peace and security. The country's underlying commitment to the improvement of lives of all children is reflected in the free and compulsory primary and secondary school education, free healthcare, and broad ranging nutritional programmes.

60. In this regard Sri Lanka notes with satisfaction the UNICEF report in 2008, "State of the World's Children" which complements Sri Lanka's achievements in child welfare and lists Sri Lanka as the "Best Achiever" in the subregion. This is in spite of the challenges faced by the Government due to the terror imposed on the country and its citizens by the LTTE.

61. Sri Lanka is, at present, successfully emerging from a protracted, 30 year armed conflict with the terrorist group, the LTTE. The LTTE was well known for their use of children in armed conflict, sometimes as young as 14 years, for active combat and for suicide missions. The Government of Sri Lanka has, throughout the conflict, maintained its

strong condemnation and unequivocal abhorrence in the recruitment and use of children in armed conflict.

62. Accordingly the Government of Sri Lanka has undertaken strong deterrent measures, and continues to undertake, progressive action towards addressing child recruitment and facilitating rehabilitation of former child combatants. The Government has consistently maintained a zero tolerance policy towards child recruitment, abduction and use of children in armed conflict and maintains an 18 year old lower limit in the recruitments to its armed forces.

63. Throughout the conflict Sri Lanka maintained this strong stance, despite the persistent disregard by the LTTE of its pledges to the United Nations Special Representatives on children and to the UNICEF, on the release of child combatants in its cadre.

64. Recently, Sri Lanka introduced new regulations under the Public Security Ordinance, which specifies procedures for the rehabilitation of children leaving armed groups. The legislation and institutional mechanisms established by the Government for the welfare of former child combatants will be addressed in detail below.

65. Sri Lanka respects its obligations in the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Sri Lanka's commitments to the international community.

66. Sri Lanka was among the first Member State to volunteer to set up a National Task Force in accordance with United Nations Security Council resolutions 1539 and 1612 to monitor and report on these activities.

67. The end of the conflict in Sri Lanka in May 2009, and the end of the terrorist activities of the LTTE, marks a significant starting point for the Government and for the children affected by the armed conflict. Today, with the end of LTTEE terrorism, most child combatants have been identified. As the LTTE no longer has a ruthless organizational structure to force innocent parents to part with their children, the abhorrent practice of force recruitment of child soldiers has ceased to exist.

68. With the demolition of the LTTE's ruthless organizational structure, parents are no longer forced to part with their children for purposes of combat.

69. The Government is now tasked with ensuring the protection and promotion of the rights of former "child soldiers" and their successful reintegration into society. The following sections details the process of rehabilitation and reintegration of the former child soldiers.

End of war and rehabilitation of former child soldiers

70. His Excellency the President, by Regulation dated 12 September 2006, appointed a Commissioner General of Rehabilitation (CGR) who is entrusted with specific responsibilities in relation to all "surrendees" of the ongoing conflict which include adults and children. The CGR now takes the lead in the rehabilitation of "Child Surrendees" and functions under the President's Office.

71. In terms of this Regulation, the CGR in consultation with the district secretary, Provincial Commissioner of Probation and Child Care and Services and the NCPA will identify protective accommodation and rehabilitation centres for the purpose of receiving Child surrendees. Policies on protective care, rehabilitation and reintegration of child combatants have been developed by a multisectoral committee headed by the NCPA.

72. The CGR is entrusted with the task of providing surrendees with protective care, psychosocial support and appropriate vocational, technical or other training. There are at

present three such centres. The centre in Ambepussa, is for children and women. Adults are accommodated in Thelippali and Welikanda. Facilities at the centres include the provision of food, clothing and basic necessities. An immediate step at the centre is to reunite such surrendees particularly the children with their parents.

73. The centre at Ambepussa receives surrendees under the age of eighteen years and women. This Centre has been set up by the Government exclusively to care for and reintegrate children leaving armed groups. This rehabilitation process involves psychosocial counseling, spiritual guidance and social rehabilitation, special school education classes and vocational training. In addition 239 child soldiers verified by UNICEF and currently in the IDP camps are due to be admitted to a new rehabilitation centre for former child soldiers being opened in Vavuniya in 2 weeks where they could be close to their families. UNICEF is working closely with the Govt. to support this new Centre as well.

74. The centres at Welikanda and Jaffna, accommodate surrendees over eighteen years. Arrangements have already been made to impart training in plumbing, tailoring and bread making. The officers manning the centres assist surrendees to obtain necessary documentation including passports, birth certificates and identity cards, if they do not possess such.

75. Surrendees have a choice of following vocational training courses that are provided at the centres, those who had dropped out of school or illiterate are provided with non-formal education. On the completion of such training surrendees are awarded certificates which would help them to obtain employment. Plans are also underway to impart language training (ie. English and Sinhala) and to open a Gym for their leisure. Religious and cultural activities in keeping with their own socio ethnic background take place and surrendees are allowed access to their families regularly during their period of stay at the centres.

76. Accordingly, "Child Surrendees" are provided with psychosocial support, including regular access to their parents, local NGO's and designated government authorities who are involved in monitoring such children. Efforts are being made to involve the staff of the Department of Probation and Child Care, as well as the NCPA coordinators in such monitoring. Action is also being taken to identify transit homes in each district, for such children to get protection, in case this is preferred over the main centre.

77. There are two other centres at Welikanda and Jaffna, to which former combatants (adults) are admitted. The Commissioner for Rehabilitation is engaged in an ongoing programme of providing training to such ex-combatants in partnership with the Ministries of Vocational Training, Education and also the Cadet Core. The Government plans to open another Centre at Vavuniya. Plans are also underway to set up transit centres in the Eastern Province. Depending on the need, the Government plans to open more centres.

Legal and institutional initiatives undertaken to facilitate rehabilitation and reintegration of former child soldiers

78. New regulations have been framed under section 5 of the Public Security Ordinance by the President in order to introduce "Child Friendly" procedures and processes related to the surrender and release of children recruited as combatants.

79. Under these regulations the Commissioner General of Rehabilitation in consultation with the District Secretary of any district, the relevant Provincial Commissioner of Probation of Child Care Services and the Chairman, National Child Protection Authority identifies suitable locations for the establishment of the following:

(a) Protective Child Accommodation Centres for the purpose of providing accommodation and support for person under 18 years of age who surrender or who are arrested in terms of the provisions of these regulations; and

(b) Protective Child Rehabilitation Centres for the purpose of providing care, psychosocial support and vocational and other training for the facilitation of the process of reintegration of such child into his family, community and into society.

80. It is to be noted that the centres are not only for children who surrender but also for those who are arrested. The person to whom the child surrenders or by whom the child is arrested shall produce a child within 24 hours of such surrender or arrest at the nearest police station. He has to record the statement of such child and the circumstances in which such child surrendered or was arrested and ensure the custody of such child in a place which is apart from adult surrendee or detainees if any.

81. Where such child is a female she has to be kept in a place which is separated from child or adult male surrendeers or detainees if any and in the charge care and custody of a female officer.

82. The officer in charge of the police station has to forthwith take all measures to inform the parents or guardians of such child the Probation Officer and the Co-ordinator of the National Child Protection Authority of such area and produce a child within 24 hours before the Magistrate.

83. Such Magistrate interviews the child in camera assisted by the Probation Officer, the police, the Child Rights Promotion Officer or the co-ordinator of the National Child Protection Authority and where possible the parents of the child surrendee. The Magistrate has to take all necessary measures to ensure that the mother tongue of the child is used for such interview and where that is not possible that an instantaneous translation of such interview is provided.

84. The Magistrate also orders a medical examination of such child and orders a social inquiry report wherein the immediate and long term needs of the child are clearly set out and either returns such child to his parent or guardian or makes order that such child be placed in a Protective Child Accommodation centre for a period of one month supported and monitored by the provincial commissioner of probation and child care services.

85. At the end of the period of one month the Magistrate having regard to the results of the medical examination and interview and social inquiry report, with the assistance of the police determines:

(a) Whether such child should be returned to the charge, care and custody of his parents or guardian;

(b) Whether such child should be accommodated for a period not exceeding one year in a protective child accommodation centre under the care and supervision of the Provincial Commissioner of Probation and Child Care Services; or

(c) Whether such child should be placed in a protective child rehabilitation centre for a period not exceeding one year.

86. In arriving at his determination the Magistrate has to have regard to:

(a) The necessity to ensure the protection and best interest of such child;

(b) The need to effect family re unification or placement within the extended family taking into consideration the necessity to ensure at all times the safety of such child and his family.

87. At all stages of the process, child friendly procedures have to be adopted and the child would be treated with courtesy, consideration and kindness.

88. The officer in charge of a Protective Child Accommodation Centre or protective child rehabilitation centre in which such child is placed shall:

(a) Cause such child to be examined by a medical Officer and give him the necessary health care;

(b) Provide him with psychosocial counselling;

(c) Facilitate and encourage visits by and contact with his family at least once a month;

(d) Provide the necessary sustenance and physical care for the child;

(e) Assist the child to obtain the necessary identification and other documents which he is lawfully entitled to obtain; and

(f) Provide the child with education or appropriate vocational, technical and other training with a view to equipping him to pursue a career of his choice.

89. The Magistrate receives reports on the progress of such child and shall review his decision to place such child at a Protective Child Accommodation Centre once a month and at a Protective Child Rehabilitation Centre once in three months.

90. The Regulation enables children to be reunited with their families, facilitates family reintegration and provides access to education and vocational training based on their individual needs and capacities. They also have access to health care and efforts are ongoing to respond to their psychosocial needs.

91. In addition to the above, the Penal Code (Amendment) Bill on the recruitment of children as combatants was passed on the 1 of February 2006. There under the “engaging and recruiting children for use in armed conflict” was considered an offence.

92. Subsequently His Excellency the President by regulation dated 2008 has established procedures in relation to child surrendees which take into account the special vulnerability of children identified as all those under the age of 18 years.

Other steps taken to rehabilitate and reintegrate former child soldiers

93. Apart from these recent milestones which are designed to ensure the effective implementation of laws incorporating the obligations under the Convention on the Rights of the Child, Sri Lanka has continued to focus on public awareness campaigns regarding children’s rights. This includes a campaign launched at the highest executive level to combat child recruitment by the President of Sri Lanka on 26 February 2009 jointly with UNICEF.

94. Several other measures taken by the Government in association with UNICEF and the NGO Community concerning inter alia, psychosocial support and assistance for children affected by armed conflict and towards ensuring their right to education is set out below.

95. Attention was given to psychosocial support and assistance for children affected by the armed conflict by both the Government and NGOs at community level. Such programmes cover child combatants released to homes as well as other children affected by the conflict living in communities.

96. According to UNICEF and NGOs, a needs assessment is conducted for each child immediately on release, looking into needs such as counselling, shelter, income generation and vocational training. According to these sources, such needs generally cover the wider

community, and cover unaccompanied children, internally displaced persons and refugees, returnees and landmine survivors. Among initiatives to identify problems requiring a psychosocial intervention include Village Protection Committees and Children's Clubs. More generalized training appears to be given on methods to cope with the conflict situation and its consequences.

97. The Psychosocial Coordination Forum operating at district level in the conflict-affected areas is one mechanism to cater to the psychosocial needs of all children. This mechanism evolved over 2003–2004 but became functional from 2005 with the input of new funds from tsunami aid. The Psychosocial Forum is linked to the mental health units of government hospitals in the relevant areas. The NCPA has appointed Psychosocial Coordinators who act as focal points within DCDCs, thereby allowing for coordination and linkages among government, NGOs and the community in providing psychosocial assistance and support to children. In addition to these measures which are designed to pick up on the variety of psychosocial issues in the community and provide appropriate referral, there are also other initiatives to address specific issues, such as the Mine Action offices of the United Nations Development Fund (UNDP) which provide survivor assistance to landmine victims, and the offices of United Nations High Commissioner for Refugees (UNHCR) which support internally displaced persons, refugees and returnees.

98. As a reflection of the government's commitment at the highest executive level to combat child recruitment, His Excellency President Mahinda Rajapaksa launched on 26th February 2009 the joint Government of Sri Lanka and UNICEF Public Awareness Campaign on Child Recruitment in the presence of senior Cabinet Ministers and Service Commanders as well as senior Government officials and Heads of United Nations agencies. A campaign targets armed groups, vulnerable communities and children affected by the armed conflict; and communicates the government's commitment to responding to child recruitment. The message of the campaign is three fold:

- (a) The Government of Sri Lanka has a zero tolerance policy for child recruitment which is a crime under national and international law;
- (b) Armed groups are to immediately release all children in their ranks;
- (c) Children leaving armed groups will receive rehabilitation and reintegration support from the Government.

99. "Bring back the Child" is a multimedia campaign that calls on those who recruit children to stop, and for those children currently in their ranks to be released, so that they can return to their families and have access to services, including healthcare, psychosocial support, education and vocational training. Concurrently, the campaign aims to strengthen the capacity of communities to protect children against the threats of recruitment. The campaign has been airing for a period of two months on television, radio and through newspapers, billboards and posters across the country, with a focus on the north east, and in the country's three languages – Sinhalese, Tamil and English.

Further recommendations by the Committee

The Committee has made the following further recommendations to the Government of Sri Lanka:

- (a) Making a declaration under articles 21 and 22 of the Convention;**
- (b) Becoming a party to the Optional Protocol to the Convention;**
- (c) Becoming a party to the Rome Statute of International Criminal Court.**

100. With regard to the above recommendations made by the Committee to the State party, the Government submits that the said matters are receiving its earnest consideration. It will inform the Committee of any new developments in the said areas.

The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims. The Committee recommends that the State party welcome participation from non-governmental organizations in the preparation of its next periodic report (art. 19).

101. The Government of Sri Lanka is in the process of collecting the requisite data and will provide the same to the Committee at a future date.

Annex

Supplement to the combined third and fourth periodic reports

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I. Introduction

1. Sri Lanka deposited its instrument of accession to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, on 3 January 1994 and the Convention entered into force for Sri Lanka on 2 February 1994. The present report is submitted in accordance with article 19 of the Convention as the combined third and fourth periodic reports of Sri Lanka to the Committee against Torture.

2. The Government of Sri Lanka signed and ratified the Convention, recognizing the importance of the Convention within the sphere of the United Nations, in that the equal and inalienable rights of all members of the human family is the foundation of justice, freedom, and peace in the world. In becoming a State party to the Convention and in implementing obligations arising out of the Convention, Sri Lanka affirms its commitment to Article 55 of the United Nations Charter to ensure respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

3. Sri Lanka recognizes and respects the absolute prohibition of torture and other cruel, inhuman and degrading treatment contained in article 7 of the International Covenant on Civil and Political Rights and article 5 of the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948. Sri Lanka has also deposited its Declaration on the Protection of All Persons from being subject to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment in terms of the General Assembly Resolution 3452 (XXX) of 9 December 1975.

4. Sri Lanka follows a dualist system in implementing its obligations under international law. Therefore the enactment or the existence of corresponding domestic legislation is an essential prerequisite for the implementation of an international Convention in the domestic forum. Domestic legislation to give effect to international Conventions subscribed to by Sri Lanka takes the form of rights guaranteed under the Constitution, enactment of comprehensive legislation by way of an enabling Act, and enactment of subsidiary legislation and regulations under a principal Statute. The Directive Principles of State Policy, the Constitution of Sri Lanka of 1978 provides that the “State shall... endeavour to foster respect for international law and treaty obligations in dealings among nations.”¹⁸

5. The Constitution of the Democratic Socialist Republic of Sri Lanka, (“Constitution”), gave domestic expression to Sri Lanka’s commitment to eliminate torture and all forms of cruel inhuman and degrading treatment or punishment, even before the entry into force of the Convention against Torture. Article 11 specifically prohibits torture, or cruel, inhuman and degrading treatment or punishment and the Constitution considers the right not to be tortured a non-derogable, absolute and salient right under the Fundamental Rights Chapter of the 1978 Constitution. A remedy by way of an application to the Supreme Court of Sri Lanka for the infringement is provided for in article 17 of the Constitution.

6. Immediately upon Sri Lanka becoming a State party to the Convention against Torture in 1994, the Parliament enacted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994. (“CAT Act”) This prompt legislative action signified the commitment of the Government for the promotion and protection of human rights of Sri Lanka.

¹⁸ Article 27 (15) of the 1978 Constitution of Sri Lanka.

7. The following sections of this supplementary note to the combined third and fourth periodic reports to the Committee against Torture, provide an article by article analysis of the Convention against Torture and the Convention against Torture Act, underscoring the significant legislative, judicial and other measures taken by Sri Lanka to ensure the full realization of the Convention, in keeping with the spirit and the objectives of the Convention.

II. Article by article analysis of the Convention against Torture and the Convention against Torture Act

Article 1

8. Article 1, paragraph 1 of the Convention defines the term torture. The definition of torture, under article 12 of the CAT Act "... is in conformity with article 1 of the Convention..."¹⁹ and is in fact wider than that of the Convention. Under the CAT Act of Sri Lanka, for an act to be torture, it need not be intentionally inflicted as required under the Convention. Thus, the CAT Act contains "provisions of wider application" with regard to torture, than those stipulated in the Convention. (See Section 1(2) of the CAT).

9. Concerns were raised in the past by the Committee against Torture that the definition of torture in the CAT Act does not refer to the word "suffering", unlike in article 1, paragraph 1 of the Convention. Sri Lanka has taken note of this observation and is of the view however that the expression "cause severe pain whether physical or mental" would necessarily include any suffering that is caused to any person.

10. The judicial interpretation of the term "torture" would take into account any suffering, physical or mental, that any person would be subject to. It is increasingly evident that in the interpretation of domestic law giving effect to Sri Lanka's international obligations, the Court would necessarily give expression to the provisions of the relevant international legal instruments.

11. Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated in paragraphs 24 and 25 of his report (A/HRC/7/3/Add.6) that:

"Sri Lanka applies a dualist legal system and has implemented the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Act No. 22 of 1994 ... The Special Rapporteur notes that the definition of article 12 is in conformity with the definition of article 1 of the Convention ..."²⁰

12. Professor Manfred further notes "that the definition in article 12 is in conformity with the definition of article 1 of the Convention: however, it does not expressly include suffering".²¹ This is a clear indication that despite the lack of the term "suffering" the Convention against Torture Act No.22 of 1994 (CAT Act) is consistent with the definition of the Convention. See further paragraph 23 of the combined third and fourth periodic reports of Sri Lanka.

¹⁹ Report of the Special Rapporteur for Torture and Other Cruel, Inhuman, or degrading treatment and or Punishment, Manfred Novak, Mission to Sri Lanka" presented to the Human Rights Council, Seventh Session, A/HRC/7/3/Add. 6, 26 February 2008, paragraph 24.

²⁰ Ibid.

²¹ Supra note 1, p. 11.

Article 2

13. Article 2, paragraph 1, of the Convention requires all State parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture within its jurisdiction. Sri Lanka has accordingly undertaken various measures to comply with this obligation.

14. The Constitution of Sri Lanka recognizes the right not to be subject to torture as a non-derogable and absolute right. Certain fundamental rights under the Constitution may be "... subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society."²² However, no such restriction is permissible for the right against torture under the Sri Lankan Constitution. This protects the sanctity of the prohibition and serves as a deterrent even in times of war and public emergency.

15. Further, under article 126 of the Constitution the Supreme Court of Sri Lanka has sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right recognized by Chapter III of the Constitution. Thus, Sri Lankan law is progressive to the extent that it recognises not only violations of fundamental rights, but also grants jurisdiction to the Supreme Court of the country to consider any issue relating to the imminent infringement of fundamental rights. This is an important safeguard in the prevention of the occurrence of torture.

16. Strict judicial supervision of allegations on torture is another measure taken by the State to ensure prevention of occurrence of torture. Professor Nowak, in his report to the Human Right Council, in February 2008, stated that he was encouraged by 34 indictments filed by the Attorney General under the Torture Act.²³

17. Further the Constitution also guarantees the equality of all persons before the law and ensures that everyone, regardless of their status as citizens, are entitled to the equal protection of the law. This includes the legislative, judicial and the investigative processes. Thus, any person who is alleged to have been tortured or is fearful of torture, irrespective of his race, gender or religion, has a constitutional right to equal protection before the law. The commission of torture is an offence, if convicted after trial, is punishable under the CAT Act, in the High Court of Sri Lanka, and the infringement of the fundamental right not to be subject to torture is subjected to the jurisdiction of the highest court of the land, the Supreme Court of Sri Lanka (see further in this regard the combined third and fourth periodic reports of Sri Lanka to the Committee against Torture).

18. It is recalled that the obligation of States under the Convention is to take effective measures to prevent torture. The fact that torture is committed by a few overzealous individuals should not undermine the State's commitment to prevent torture. Indeed, Sri Lanka has accepted that sporadic and isolated incidents of torture has occurred within its territory in the past, however, the State has not made excuses nor acted with impunity to perpetrators. Instead the State has bolstered the measures taken to prevent the occurrence of torture at the judicial level and at the practical level.²⁴

²² Article 15 of the 1978 Constitution of Sri Lanka.

²³ Paragraph 51 of *supra* note 2.

²⁴ See further paragraphs under articles 9–13 of this section.

19. One of the measures taken by Sri Lanka to prevent torture is to ensure unannounced visits to places of detention. As per existing Regulations, all Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates. The Sri Lanka Police has also taken several measures to prevent the torture of persons in detention.
20. Under section 37 of the Criminal Procedure Act No. 15 of 1979 of Sri Lanka, a person arrested under the normal circumstances would be detained in the police custody for maximum of 24 hrs.
21. Persons arrested under Emergency Regulations and Prevention of Terrorism Act, for certain offences could be detained up to maximum of one year, for investigation and interrogation purposes. Even the persons arrested under these special provisions should be produced before the relevant Magistrate's Court within a certain period and periodically according to the relevant law.
22. However, the court closely monitors the investigation and other activities of the police in connection with persons arrested under any law. The suspects are given the opportunities to complain to the judges or any other party, if they were tortured by the police. Opportunities are also given to them to meet independent monitoring bodies such as ICRC to whom they could make their complaints, if any.
23. The Supreme Court had given an order stating that persons arrested under section 19(1) of the Emergency Regulations could be kept in Police custody only for ninety days. During the course of the detention the said detainee should be transferred to the fiscal custody upon the expiration of 90 days from the date of arrest. These suspects could be kept for another period of nine months in the fiscal custody.
24. The President had issued directions to the Armed Forces and Police as the Minister of Defence, in connection with persons arrested and detained. The President. has directed these institutions to respect the fundamental rights of the persons arrested and to treat such persons humanely and has given these directions, regarding the rules and regulations concerning Arrest, Detention and Interrogation on 7 July 2006.
25. In connection with Supreme Court Fundamental Rights Application No. 297/2007, the Supreme Court gave an order to Police and the Security Forces not to conduct house searches in the night between 9.00 pm and 6.00 am. Security Forces and the Police could do so for a specific purpose regarding Terrorist activities.
26. In the Supreme Court Fundamental Rights Applications 73, 74, 75, 76 of 2002, the Supreme Court directed the Police to be vigilant when they detain suspects in the Police custody and to provide them with the human conditions and treatment in place of detention. It is a requirement that these persons should also be give sufficient water, enough space to sleep and sufficient ventilation, while in custody. In certain cases the Supreme Court has directed the authorities not to keep suspects in congestion when interrogating suspects.
27. Presently, the Police follow the above the rules and regulations according to the Presidential Directives and the Supreme Court directions whenever suspects are arrested and detained.
28. In addition, the Human Rights Commission (HRC) of Sri Lanka Act No. 21 of 1996 provides for any person authorized by the Commission to enter at any time any place of detention, police station, prison, or any other place in which any person is detained. This provision of the law has been used by the HRC to make unannounced visits to places of detention.
29. In addition, under "Directions Issued by the President Commander-in-Chief of the Armed Forces and Minister of Defence" on 7 July 2006, it is provided that "Every member

of the Armed Forces and the Police Force shall assist and facilitate the HRC and any person authorized by the HRC in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.”²⁵

30. As such any officer who makes an arrest or order of detention must, according to the above Directives, within 48 hours from the time of arrest or detention, inform the HRC of such arrest or detention and the place of custody or detention.²⁶

31. Special mention is made on the ability of the members of the HRC or any person authorized there under, to have access to persons arrested or detained under the Prevention of Terrorism Act or under a Regulation made under the Public Security Ordinance and their place of detention.²⁷

32. The Sri Lanka Police have in place the necessary arrangements for the HRC Officers to visit the places of detention to look into the welfare of the suspects. The names and details of suspects arrested under the Emergency Regulations are provided regularly to the HRC. Accordingly the Police Legal Division coordinates and inform all the details to the HRC.

33. The Directives also takes measures to regulate arrests:

(a) It requires the person making the arrest to identify himself to the person arrested or to a relative, inform the reason for the arrest, and to present a written documentation to the spouse, parent or relative acknowledging the fact of arrest;

(b) The name and rank of the arresting officer, the name and date of arrest and the place at which the person will be detained should be specified in this document;

(c) If such written documentation cannot be made, a note should be made in the Information Book of the relevant Police Station indicating why it was not possible to issue such documentation;

(d) The Directives also specify that the person arrested should be afforded reasonable means of communicating with a relative or friend;

(e) Special provisions are also in place that operates to prevent torture and ill treatment of women and children. When such person is sought to be arrested or detained, a person of that women or child’s choice is allowed to accompany them to the place of questioning;

(f) As far as possible such child or women should be placed in the custody or a Women’s Unit of the Armed Forces or the Police Force or in the custody of another women military or police officer, as per the above Directives.²⁸

34. The Special Rapporteur on the question of torture, Manfred Novak, was invited to visit Sri Lanka from 1–8 October 2007 to assess the situation relating to allegations of torture. During his visit he noted “Sri Lanka already has many of the elements in place necessary to both prevent torture and combat impunity, such as fundamental rights complaints before the Supreme Court in relation to article 11 of the Constitution, indictments and prosecutions based on the 1994 Convention against Torture Act, bringing suspects before magistrates within the statutory 24-hour period, formal legal medical examinations by trained forensic experts (Judicial Medical Officers), and investigations and

²⁵ See further Attachment 1.

²⁶ Paragraph 6 (ii) of Attachment 1.

²⁷ Paragraph 6 (i) of Attachment 1.

²⁸ Paragraph 4 of Attachment 1.

visits by the NHRC.”²⁹ His positive assessment of the several measures already taken by the Government to combat torture, particularly as legislative and administrative measures, are reflected in the report of the Special Rapporteur.³⁰ He noted the commitment of the Government to prevent torture by the establishment of mechanisms by the Inspector General of Police and the Attorney General’s Office specifically to investigate allegations of torture. (See further below).

35. The Government of Sri Lanka, through the Ministry of Disaster Management and Human Rights (MDMHR) as a focal agency for action, with financial support from the United Nations Development Programme (UNDP), is in the process of developing a National Action Plan for the Promotion and Protection of Human Rights. The Government has embarked on this important endeavour in a bid to ensure the protection and promotion of human rights. While the fundamental purpose of an action plan is to improve the promotion and protection of human rights, it achieves this by placing human rights improvements in the context of public policy, so that human rights improvements can be endorsed as practical goals, programmes can be devised to ensure the achievement of these goals, all relevant stakeholders can be involved and sufficient resources allocated. The promotion and protection of human rights involves more than identifying, prosecuting and punishing alleged wrongdoers, but also requires resources and long-term effort in the areas of education, institutional strengthening and institution building.

36. The three broad objectives of the Action Plan being developed are:

- (a) Achievement of genuine and substantive improvements in the observance of human rights;
- (b) Promotion of greater awareness of human rights, both in the general public and in specific sectors; and
- (c) Promotion of coordination of human rights activity among diverse government agencies and non-governmental organizations.

37. The procedures undertaken in implementing the National Action Plan are as follows:

Preparatory phase:

- (1) Coordinating Committee – The Coordinating Committee tasked with guiding the development, implementation and monitoring of the Action Plan was established by the MDMHR in November 2008.
- (2) Baseline Study – to ascertain the real situation with regards to human rights protection and promotion a baseline study was conducted. This study was drawn from the findings, observations, conclusions and recommendations of the Treaty Bodies, Special Procedures and those made during the Universal Periodic Review Process (2008). It also included civil society submissions made to these various international bodies.

Development phase:

- (1) Issue papers – Eight thematic issue papers were developed to highlight the salient issues of human rights protection and promotion which were presented at 8 consultations, described below. These issue papers were designed to foster and focus discussion and to compile a list of prioritized issues and challenges to human rights protection and promotion.

²⁹ Paragraph 74 of *supra* note 2.

³⁰ Paragraph 75 of *supra* note 2.

(2) Consultations – The MDMHR organized 8 thematic consultations to discuss human rights protection and promotion issues around 8 priority areas. These areas were civil and political rights, torture, IDPS, migrants, labour, women, children, and economic, social and cultural rights. The consultations provided a space for the preliminary discussion of the issue papers, at which participants prioritized issues, flagged issues that were not included in the issue paper and suggested actions to respond to the issues and also proactive measures to prevent potential problems. In addition to the 8 consultations, the MDMHR is organized a civil society consultation in late February 2009. The purpose of each consultation was to prioritize issues, identify activities, modes of implementation and indicators to evaluate implementation.

(3) Drafting Committees – Eight Drafting Committees are being tasked with presenting draft proposals that would contribute to the substantive content of the NHRAP. The Drafting Committees are comprised of members of relevant government agencies and civil society organizations. The Drafting Committees will present Draft proposals for inclusion in the Action Plan by the end of August 2009.

(4) First draft – the output of the above will provide the basis for the formulation of the first draft of the Action Plan.

(5) Public Dissemination – the first draft of the Action Plan will be disseminated widely with a view to creating public awareness. The draft will be circulated to all sectors throughout the country in order to ensure a participatory process in the development of the Action Plan.

Implementation and monitoring phase:

(1) The Action Plan will clearly identify the institution(s) responsible for implementing the various activities/actions included in the Action Plan. In addition, timeframes will be clearly stipulated along with measurable indicators which will allow success/failure of the plan to be monitored.

Evaluation phase:

(1) An evaluation phase, in which achievement of the stated goals will be systematically assessed with a view to laying the foundation for a successor plan will be clearly stipulated in the Action Plan.

38. Section 2 (2) of CAT states that no exceptional circumstance or order from a superior officer may be invoked as a justification for torture. The Convention against Torture Act removes any doubt on the availability of a justification, or an excuse for torture when it stipulates that, “any act constituting an offence under this Act was committed (a) at the time when there was a State of war, internal political instability or any public emergency; (b) on an order of a superior officer or a public authority, shall not be a defence to such offence.”³¹ (Emphasis added). Thus Sri Lanka offers a dual protection against torture in that (a) a person’s right not to be subject to torture is non derogable and (b) the offence, once committed, remains an offence and cannot be justified or excused regardless of the circumstances of commission of torture.

³¹ Section 3 of CAT Act.

Article 3

39. Article 3 of the Convention prohibits refoulement or extradition of a person where there are substantial grounds for believing that such person faces the threat of torture in the receiving State. Sri Lanka as a policy does not extradite persons where such threats exist and there have been no incidents of persons in Sri Lanka seeking to refute an extradition order based on allegations of torture.

40. The Extradition Law No. 8 of 1977 of Sri Lanka incorporates restrictions on extradition which includes the possibility of punishment, detention or restriction by reasons of race, nationality or political opinion.³² This provision covers the situations envisaged by Section 3 of CAT.³³

Article 4

41. Article 4 of the Convention requires an act of torture to be offence under criminal law and to be punishable by appropriate penalties. The commission of torture, attempt to commit, aids, abets and conspires in the commission of torture are offences under the CAT Act.³⁴ Under the CAT Act such an offence is a cognizable and non-bailable offence within the meaning of the Code of Criminal Procedure Act No. 1 of 1979.

42. A person found guilty under the CAT Act, on conviction, is punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees.

43. It is the Government's view that torture is a serious offence which warrants a heavy penalty. This position led to the imposition of a seven year mandatory minimum and ten year maximum term of imprisonment for the offence. The argument has been made, by Professor Nowak that the mandatory minimum sentence has acted as a disincentive for the conviction of offenders and imposition of punishments.³⁵

44. The Government wishes to draw the attention of the Committee to a recent judgement by the Supreme Court (SC No.3 of 2008) delivered on 15/10/2008. The Court held that "In the circumstances we hold that the minimum mandatory sentence in S. 364 (2) (e) is in conflict with articles 4(c), 11 and 12 of the Constitution and that the High Court Judge is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding minimum mandatory sentence."

45. This recent judgement is binding on the lower courts including the High Courts which has jurisdiction to try cases of torture. As such applying the principle in this case, the High Court Judge can deviate from the minimum mandatory sentence required. This would redress the issue raised by Professor Novak until such time the relevant legislation is enacted.

³² Section 7 (1) of the Extradition Law of Sri Lanka.

³³ Section 2 (5) of the CAT Act.

³⁴ Section 2 (1) of the CAT Act.

³⁵ Paragraph 77 of *supra note 2*.

Article 5

46. Article 5 of the Convention sets out the requisite jurisdiction of the Courts in respect of torture. Accordingly, the Convention against Torture Act grants the High Court jurisdiction to hear all cases where the alleged perpetrator or the victim is a Sri Lankan citizen³⁶ and where the offence is committed outside the territory of Sri Lanka, the High Court has jurisdiction if the offender is in Sri Lanka, or on board an aircraft or ship registered in Sri Lanka.³⁷ In cases where an act of torture is committed by a non Sri Lankan and outside Sri Lanka, the Act grants jurisdiction to the High Court holden in the judicial zone nominated by the Chief Justice.³⁸ The High Court has continuously asserted its jurisdiction over alleged torture cases under the Convention against Torture Act.

Article 6

47. Article 6 of the Convention outlines the procedure to be adopted when an allegation is made against a person for having committed torture. The procedure to be followed in Sri Lanka is in accordance with the Criminal Procedure Code of Sri Lanka and such procedure is comparable to other crimes of that nature. When the accused person is a non-Sri Lanka, he is entitled under the Act to communicate without delay to a representative of the State of which he is a national, or if such person is a stateless person, then to a representative of the State where he habitually resides.³⁹ In addition, Sri Lanka has also undertaken to inform any other State having jurisdiction of the offence, or any other State that requests the extradition of the accused, the measures that have been or will be taken to extradite or prosecute such person for that offence.⁴⁰

Article 7

48. Article 7 of Convention states that if the authorities should decide not to extradite the accused then it should submit the case to its competent authorities for the purpose of prosecution. This provision is reflected in Sections 7, 8, and 9 of the CAT Act.

49. Article 7 further states that the standard of evidence required for the prosecution and conviction should be non discriminative and each person should be guaranteed of fair treatment at all stages of the proceedings. In Sri Lanka the standard of evidence required for the prosecution is governed by the Evidence Ordinance No. 14 of 1895 and the procedure to be followed in prosecution is laid out in the Code of Criminal Procedure No. 15 of 1979 of Sri Lanka. This legislation applied across the board for all persons, regardless of their nationality, race, religion or gender. This right to equality and equal protection before the law is guaranteed under article 12(1) of the Constitution. Further, the right to a fair trial is also guaranteed under article 13(3) of the Constitution.

Article 8

50. In accordance with Sections 8 of the CAT Act, Sri Lanka has amended its extradition law to provide for torture as an extraditable offence. Although as per the

³⁶ Section 4 (1) (b) and (c) respectively, *ibid.*

³⁷ Section 4 (1) (a), *ibid.*

³⁸ Section 4 (2), *ibid.*

³⁹ Section 6, *ibid.*

⁴⁰ Section 7 (1) and (2), *ibid.*

Extradition Law of 1977, extradition is conditional on the existence of an extradition treaty, unless the request is made by a commonwealth country, Section 9(2) of the CAT Act provides that the Minister may, in the absence of such an extradition agreement, by order published in the gazette, treat the Convention as an extradition agreement for extradition in respect of the offence for torture. Extradition is also possible against those who aid and abet acts of torture.

Article 9

51. Article 9 of the Convention provides for mutual assistance in criminal proceedings for torture between State parties and this commitment is reflected in Section 10 of the CAT Act.

52. The South Asian Association for Regional Cooperation, in which Sri Lanka is a member State, concluded the SAARC Convention on Mutual Legal Assistance in Criminal Matters. The finalized text was signed by the Foreign Ministers of the eight SAARC countries in Colombo, on 3 August 2008. The Convention would operate to formalize regional ties and cooperation customarily accorded to each other on a bilateral Ad Hoc, case by case basis. It provides a solid basis for enhancing cooperation and assistance between SAARC countries in criminal matters, including allegations on torture.

53. In addition, Sri Lanka has several bilateral treaties of mutual cooperation with other States. As a matter of comity, Sri Lanka also extends cooperation in criminal matters with other States on a case by case basis and on reciprocity.

Article 10

54. Article 10 of the Convention requires education and information regarding the prohibition of torture to be disseminated amongst public officials.

55. The Police and the Army has Human Rights Directorates whose main function is to disseminate information to all its personnel with regard to carrying out their duties in accordance with human rights and humanitarian law. The Navy and the Air Force also has sub-directorates which performs a similar task.

56. Training Programmes had been conducted to the Police as well as the Armed Forces with the assistance of the ICRC and the Institute of Human Rights on the duties and obligations of Armed Forces personnel in relation to their accountability and responsibility to maintain transparency in the performance of their duties involving the arrest and detention of suspects.

Article 11

57. Article 11 of the Convention provides for systemic review of interrogation rules and other methods of conduct. In this regard, please see information presented under article 3 above.

Article 12

58. Article 12 of the Convention requires prompt and impartial investigations, whenever there is reasonable ground to believe that an act of torture has occurred within its territory.

59. The Government is committed to conduct prompt, impartial and comprehensive criminal investigations and domestic inquiries into all complaints and information received, relating to alleged perpetration of torture by public officials and members. The objective of conducting criminal investigations is to consider the institution of criminal proceedings. The objective of the conduct of domestic inquiries is to consider the adoption of necessary disciplinary action and the identification of suitable action for prevention of torture.

60. Consequent to a decision taken by the Inter-Ministerial Working Group on Human Rights Issues, conducting of criminal investigations into allegations of torture was assigned to the Criminal Investigation Department (CID). In the event of an allegation being made against an officer attached to the CID, a team of police officers attached to Police Headquarters would be assigned to conduct such investigations. However, as the number of cases other than human rights coming under the CID was on the increase, a Special Investigation Unit (SIU) of Sri Lanka Police, which is one of its specialized branches, was mandated to investigate into allegations of torture. Accordingly, at present, the SIU is handling allegations of torture referred to by the Special Rapporteur. These investigations are monitored by the Prosecution of Torture Perpetrators Unit (PTP Unit) of the Attorney General's Department. The progress of investigations is reported by the SIU to this Unit. The Unit also advises the SIU on the conduct of investigations.

61. Upon completion of criminal investigations, the corresponding notes of investigations are submitted by the SIU to the PTP Unit to consider the institution of criminal proceedings.

62. Upon a decision taken to indict the alleged perpetrators of torture, the SIU is advised to arrest the suspect(s) and produce the suspect(s) before a Magistrate. Thereafter, the indictment is prepared and forwarded to the relevant High Court. The conduct of the prosecution in the relevant High Court is handled by State Counsels representing the Attorney General.

63. The aforementioned mechanism serves to facilitate the conducting of prompt, impartial and comprehensive investigations into all complaints relating to alleged perpetration of torture. It also serves as an efficient process to facilitate the prosecution of perpetrators of torture.

64. The Attorney General, who usually represents the State and its officers in the proceedings relating to fundamental rights applications, does not appear for any public officer against whom there are allegations of torture.

65. Taking serious note of allegations of torture, as well as deaths while in police custody, the Government enforces strict rules against police officers held responsible for any act of torture. The Inspector-General of Police recently issued a warning to all officers-in-charge of police stations that they would be held responsible if any suspect dies while in their custody and that they should be prepared to face the maximum punishment. The Inspector General of Police has reiterated his orders that under no circumstances should any suspect be subjected to torture or to other cruel, inhuman or degrading treatment while in police custody.

66. The Inspector General of Police has given directions to all Deputy Inspector General of Police that under no circumstances should any act of torture be permitted to take place within their respective ranges. Whenever a complaint or information is received alleging the perpetration of torture the Deputy-Inspectors-General of Police are directed to take prompt and impartial action against the alleged perpetrators. Directives by the President has been given to the armed forces and Police regarding the procedure to be adopted in relation to an arrest and detention under the Emergency Regulations. Long term preventive mechanisms include training and awareness programmes on all aspects of human rights issues for law enforcement officers.

Article 13

67. Article 13 of the Convention discusses the right of an individual to complain and have his case promptly and impartially investigated by competent authorities. Any formal information which contains an allegation of torture, reported to any police Station is directed to the SIU for investigation. In addition, any such information received by the Attorney General or the National Police Commission could also be directed for investigation to the SIU. This issue is addressed in detail above.

68. Article 13 of the Convention also requires a State party to take measures to ensure that witnesses and complainants are protected against all ill-treatment or intimidation which may occur as a consequence of his complaint.

69 Sri Lanka is in the process of enacting legislation to protect all witnesses and victims. Please see the combined third and fourth reports in this regard.

Article 14

70. Article 14 of the Convention requires the State party to ensure in its legal system that the victims of torture obtain redress and has an enforceable right to fair and adequate compensation. In the event of a death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

71. Under article 126 of the Constitution the Supreme Court of Sri Lanka has sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right recognized by Chapter III of the Constitution.

72. Where any person makes such an allegation, he may himself or by an attorney-at-law on his behalf, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. This application may be preceded with leave to proceed obtained from the Supreme Court. The leave is granted by a bench comprising of not less than two Judges. Leave to proceed is granted when the Court is satisfied that there is a prima facie case against the respondents. In practice in all fundamental rights cases, the Court adopts a low threshold to determine if there is a prima facie case and as such grants a greater leverage to the alleged victim to have his case heard.

73. In addition if the Court of Appeal, when examining a writ application, deems that there is prima facie evidence of an infringement or imminent infringement of the provisions of Chapter III by a party to such application, the Court can refer such matter for determination by the Supreme Court.

74. The Supreme Court in the exercise of its power can “grant such relief or make such direction as it may deem just and equitable in the circumstances”. In the past the Supreme Court has ordered varying amounts of compensation to victims of torture. In the event any order for rehabilitation is made by the Supreme Court, the State is obliged to carry out such an order.

75. Although the CAT Act does not specifically address the question of payment of adequate compensation, the High Court may, in terms of Section 17 (4) of the Code of Criminal Procedure, upon the conviction of the public official or where it holds the charge proved but proceeds to deal with the offender without convicting him, order the person convicted or against who the charge is held to be proved, to pay compensation. This compensation will be determined by the High Court and can be made to any persona affected by the offence. A victim may also file a case in the District Court (exercising civil

jurisdiction) for an order for compensation against the State and / or the perpetrator of the act of torture.

76. There are a number of non-governmental organizations which provide integrated medical, psychological and counselling services for victims of torture. In the recently held civil society – government consultations on the proposed National Action Plan for Human Rights, this area was discussed extensively, with the participation of several non-governmental organizations involved in the process. Suggestions made by these non-governmental organizations on victim protection, treatment and rehabilitation were taken on board and will be discussed extensively at the upcoming public consultations of the National Action Plan.

Article 15

77. Article 15 of the Convention provides that the State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. This provision is reiterated in Section 5 of the CAT Act.

78. Under the Evidence Ordinance of Sri Lanka, any statement or confession made to a police officer is inadmissible in criminal proceedings in a Court of law. Further a confession obtained by a person in authority under any inducement, threat or promise is also inadmissible before a court of law.

79. Under the Prevention of Terrorism Act No. 48 of 1979, a confession may be used as evidence against the person making such Statement. However, even in the cases of concerning national security, a confession that was obtained by any inducement, threat or promise is inadmissible in any subsequent criminal proceedings. It is also noted that “inducement, threat or promise” has a wider application than “torture” and can cover other forms of cruel, inhuman or degrading treatment.

80. An additional safeguard in preventing torture under the PTA is provided by the Directions issued by H.E. the President in 2 June 2006, where it states that no person shall be arrested or detained under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law and proper procedure and by a person who is authorized by law to make such arrest or order such detention.

Article 16

81. Article 16 of the Convention governs the State party’s obligations with regard to act of cruel, inhuman, or degrading treatment other than torture.

82. Article 11 of the Sri Lankan Constitution provides that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This gives the right not to be subject to cruel, inhuman or degrading treatment the same sanctity as the right not to be tortured, under the supreme law of the land.

83. Subjecting a person to cruel, inhuman or degrading treatment is punishable under the Penal Code of Sri Lanka as, inter alia, voluntary causing of hurt (Sect. 314), voluntarily causing grievous hurt (Sect. 366), voluntarily causing hurt to extort a confession or compel restoration of property (Sect. 321), voluntarily causing grievous hurt to extort a confession or compel restoration of property, (Sect. 322), wrongful restraint (section 330), wrongful confinement (sect. 331), assault or use of criminal force (Section 343, and criminal intimidation (Sect. 483).

III. Part II of the Convention against Torture

A. Visit of Manfred Novak (Oct. 2007)

84. The Special Rapporteur on the question of torture, Manfred Novak, was invited to visit Sri Lanka from 1–8 October 2007 to assess the situation relating to allegations of torture, and to strengthen a process of sustained cooperation with the Government to assist in its efforts to improve the administration of justice.

85. The Special Rapporteur on the question of torture, in his report states his “full appreciation for the challenges the Government faces from the violent and long-lasting conflict with the Liberation Tigers of Tamil Eelam (LTTE). Notwithstanding the difficult security situation with which the Government is faced, Sri Lanka in principle is still able to uphold its democratic values, to ensure activities of civil society organizations and the media, and to maintain an independent judiciary.”⁴¹ These sentiments are echoed in his Statement issued on 29 October 2007.

86. He also expressed appreciation that the Government facilitated his visit and enabled him to fulfil his mandate through the authorization of his visits and non-interference or presence during his field visits, during the entirety of his visit.⁴² Despite the grave security situation in the country, the Sri Lanka government complied with the requests of Mr. Novak to make unannounced visits to detention centers, not only in Colombo, but also in other parts of the country.

87. However, it is noted that in his report Mr. Novak makes allegations that “torture is widely practiced in Sri Lanka”. At a briefing in October 2007, the Special Rapporteur clarified this comment and stated that what he meant by “widely practiced” was that instances of torture could be seen at diverse locations and was not systemic in the criminal justice or law enforcement systems. This confirms the findings of the confidential inquiry by the Committee against Torture, under article No. 9 of the Convention that there is no systematic torture in Sri Lanka. In fact the Sri Lankan Government’s assessment of the situation is that the problem of torture is not found in a widespread manner and is occasionally resorted to by over-zealous investigative personnel in pursuance of ascertaining the truth behind crime and in the collection of evidential material to launch prosecutions against perpetrators of crime.

88. With regard to two specific cases raised by the Special Rapporteur, relating to the Prison at Bogambara and the Terrorist Investigation Division, the Special Rapporteur was informed that disciplinary action was being taken in the first case and that, in relation to conditions of detention in the second, that the Division was being moved to a new location. The ICRC has been consulted as to international standards relating to space, ventilation and light available to detainees.

89. The Government has submitted to the Special Rapporteur an analytical report by the Police Department detailing complaints of torture received in relation to the number of arrests made countrywide. The resulting statistical analysis has established that over a period of five years from 2002 to 2006 the percentage of torture allegations received are consistently less than 0.02 per cent of the arrests made.

90. Further, Sri Lanka has differed with Special Rapporteur’s statement that the conditions experienced by detainees in certain prisons such as the Colombo Remand Prison.

⁴¹ Paragraph 13 of *supra* note 2.

⁴² Page 2 of *supra* note 2.

The Special Rapporteur has been explained, that the overcrowding due to inadequate physical facilities is a result of resource constraints evidenced over a period of time. The Government has taken steps to construct new facilities, and has welcomed the proposal of the Special Rapporteur in relation to obtaining funds which may be utilized for the purpose of improving facilities.

91. Having taken into account the recommendations made by the Special Rapporteur, the Government decided to appoint a high-level task force consisting of public sector stakeholders and appropriate members representing judicial and civil society sectors to study the recommendations.

92. Further, the Government has accepted the initiative taken by the Special Rapporteur to recommend to donors and international agencies to provide technical assistance and support to the Government to facilitate the study of policy formulation and legislation and implementations in this respect.

B. Visit of two members of the Committee against Torture to Sri Lanka in 2000

Subsequent recommendations and their implementation

93. Following a decision made in May 1999 by the Committee against Torture, at its twenty-second session, to undertake an inquiry as to whether torture was being systematically practiced in Sri Lanka, two of its members (Mr. Andreas Mavrommatis and Mr. Yu Mengjia) were designated to undertake this task. The visit of the two members took place from 19 August to 1 September 2000.

94. Paragraphs 129 and 130 of Sri Lanka's report presented to the fifty-seventh session of the General Assembly (A/57/44) refer to the work undertaken by this two member team and the cooperation of the Government, as follows:

Paragraph 129

“The visit finally took place from 19 August to 1 September 2000. The members of the Committee concentrated their activities in Colombo, but also traveled to Kandy, Matale, Dambulla, Panadura and Kalutara in order to visit detention places. However, for security reasons they were not able to visit the northern and eastern parts of Sri Lanka from where many allegations of torture had been reported. During the visit, Mr. Mavrommatis and Mr. Yu Mengjia held 12 meetings with government officials and visited 16 places of detention. The Government gave full support to the visit and was cooperative at all times.”

Paragraph 130

“Very useful meetings were held with locally based senior officials of the United Nations system who assisted the Committee in understanding the context and background within which allegations of torture could be examined. The two Committee members also held numerous meetings with non-governmental organizations, lawyers and medical doctors dealing with cases of torture. Interviews with alleged torture victims were also conducted.”

95. The two-member delegation of the Committee Against Torture, at the completion of their inquiries, has concluded that although a disturbing number of incidents of torture and ill-treatment, as defined by article 1 and 16 of the Convention, had taken place, under extraordinary circumstances in a situation of internal armed conflict, they cannot be termed as systematic torture and ill-treatment.

96. The delegation has further noted that even though the number of instances of torture was rather high, the majority of suspects were not tortured but roughly handled. The delegation has also stated that they found the Government in fact did not condone torture and was employing various measures to prevent torture and ill-treatment.

97. Following the recommendations made by the two members of the Committee against Torture at the conclusion of the visit, immediate measures were taken by the Government to implement the recommendations. They include:

(a) On 14 January 2001, the IGP issued an official circular to all Officers in Charge (OICs) of Police Divisions and Specialized Divisions, reiterating his orders that under no circumstances should torture be perpetrated or permitted;

(b) A Central Police Registry was established at the Police Department, containing accurate and updated information relating to the arrest and detention of persons under the PTA and ER. Police Officers arresting suspects under the PTA and ER are required to inform the Registry within six hours of the arrest. The Registry became operational on 01 November 2001. Details of all the suspects arrested under the provisions of Emergency Regulation are informed to this registry by local police stations and other special units. Central Police Registry functions at the Criminal Records Divisions of the Police Headquarters;

(c) A senior DIG of Police was assigned the task of coordinating all efforts relating to the Promotion and Protection of Human Rights and the enforcement of the domestic laws relating to the alleged violations of Human Rights;

(d) Directorates of Human Rights were established in the Sri Lanka Navy and the Sri Lanka Air Force;

(e) The Senior DIG of the Police who is in charge of Human Rights was also authorized to undertake unannounced visits to Police Stations to inspect the suspects arrested and detained in Police custody;

(f) The Secretary, Ministry of Defence, invited the Sri Lanka Foundation Institute, an independent body founded by the Friedrich Nauman Stiftung of the FRG, to undertake a comprehensive study on the existing training syllabus of the Police and Security Forces relating to human rights with a view to redesign them, so that they could be more focused on areas such as change in behaviour of the officers towards the detainees.
