



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

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## Committee against Torture

### Forty-seventh session

31 October–25 November 2011

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

### Concluding observations of the Committee against Torture

#### Sri Lanka

1. The Committee considered the combined third and fourth periodic report of Sri Lanka (CAT/C/LKA/3-4) at its 1030th and 1033rd meetings, held on 8 and 9 November 2011 (CAT/C/SR.1030 and 1033). At its 1050th, 1051st and 1052nd meetings, held on 22 to 23 November 2011 (CAT/C/SR.1050, 1051 and 1052), it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the combined third and fourth periodic reports of Sri Lanka, which generally follows the Committee's guidelines for reporting. However, the Committee regrets that the report lacks statistical and practical information on the implementation of the provisions of the Convention and that it was submitted two years late. The Committee appreciates the dialogue with the delegation, the answers provided orally during the consideration of the report and the additional written submissions.

#### B. Positive aspects

3. The Committee welcomes that, in the period since the consideration of the second periodic report, the State party has ratified or acceded to the following international instruments:

- (a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in September 2006;
- (b) United Nations Convention against Transnational Organized Crime, in September 2006.

4. The Committee notes the efforts undertaken by the State party to reform its legislation, including:

(a) The adoption in 2005 of the Prevention of Domestic Violence Act No. 34, which provides for protection orders to safeguard both children and women;

(b) The adoption in 2006 of the Penal Code (Amendment) Act No. 16, which inter alia made it a penal offence to engage and recruit a child for use in armed conflict and in child labour, child trafficking and child pornography.

5. The Committee also welcomes the efforts made by the State party regarding ongoing policies and procedures, including:

(a) The adoption of a National Plan of Action for Children (2010-2015);

(b) The consultations with civil society organizations regarding the elements to be incorporated in the draft National Action Plan on Human Rights, which would include a focus area on the prevention of torture;

(c) The establishment of the Lessons Learnt and Reconciliation Commission in May 2010.

## **C. Principal subjects of concern and recommendations**

### **Allegations of widespread use of torture and ill-treatment**

6. Notwithstanding the new circumstances prevailing since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) and the end of the military conflict that had consumed the country for nearly 30 years, and the State party's public commitment to the Committee that it has a zero-tolerance policy on torture as a matter of State policy and practice, the Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. The Committee is further concerned at reports that suggest that torture and ill-treatment perpetrated by State actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011 (arts. 2, 4, 11 and 15).

**As a matter of urgency, the Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and prosecute and punish those responsible with penalties that are consistent with the gravity of their acts. It calls upon the State party to ensure that torture is not used by law enforcement personnel and members of the military. In addition to these measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.**

**The Committee recalls the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention, stating that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture", as well as the statement by the representative of the State party reaffirming this.**

### **Fundamental legal safeguards**

7. While noting the information provided by the State party on the content of the Presidential Directives of 7 July 2006 (reissued in 2007) and the Rules with regard to Persons in Custody of the Police (Code of Departmental Order No. A 20), the Committee expresses its serious concern at the State party's failure in practice to afford all detainees, including those detained under anti-terrorist laws, with all fundamental safeguards from the

very outset of their detention. The Committee is concerned that, despite the content of the 2006 Presidential Directives, criminal suspects held in custody still have no statutory right to inform a family member of the arrest or to have prompt access to a lawyer of their choice. The Code of Criminal Procedure also lacks other fundamental legal safeguards, such as the right to have a lawyer present during any interrogation and to be assisted by an interpreter and the right to confidential communication between lawyer and client. The Committee notes with concern that access to a doctor is left to the discretion of the police officer in charge of the police station. It also expresses concern about reports that police fail to bring suspects before a judge within the time prescribed by law and that accused persons are often not adequately informed about their rights. The Committee also expresses its concern at the absence of a State-sponsored legal aid programme; and, at the variety of institutional, technical and procedural obstacles rendering the writ of habeas corpus ineffective (art. 2).

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

**The State party should ensure that, when suspects are produced before the courts by the police, magistrates always inquire whether the suspect was tortured or mistreated by the police while in custody. The State party should ensure that public officials, in particular judicial medical officers (JMO), prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, record and report any such suspected or claimed act to the relevant authorities.**

#### **Secret detention centres**

8. Notwithstanding the statement of the Sri Lankan delegation categorically denying all allegations about the existence of unacknowledged detention facilities in its territory, the Committee is seriously concerned about reports received from non-governmental sources regarding secret detention centres run by the Sri Lankan military intelligence and paramilitary groups where enforced disappearances, torture and extrajudicial killings have allegedly been perpetrated (art. 2 and 11).

**The State party should ensure that no one is detained in any secret detention centres, as these facilities are per se a breach of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under which any of them has been established. The State party should also ensure that the results of the investigation are made public. It should abolish any such facilities and any perpetrators found responsible should be held accountable.**

#### **Enforced disappearances**

9. While welcoming the State party's Supreme Court judgement in *Kanapathipillai Machchavallavan v Officer in Charge Army Camp Plaintain Point, Trincomalee and Three Others* (2005), according to which enforced disappearance could constitute a violation of article 13(4) of the Constitution, the Committee notes with concern that this reasoning has not been reflected in more recent decisions. It also notes that that enforced disappearance is not a separate offence under Sri Lankan criminal law and that such acts are charged under other crimes in the Penal Code, including kidnapping, abduction and wrongful

confinement. The Committee expresses its concern that 475 new cases of enforced disappearance were transmitted by the Working Group on Enforced or Involuntary Disappearances to the State party under its urgent procedure during the period 2006-2010, and the claims that military, police, the Criminal Investigation Department (CID) and paramilitary groups are the alleged perpetrators. It is also concerned at reports suggesting that the sweeping powers granted under anti-terrorist legislation contributed to the large number of new disappearances (arts. 2, 11, 12, 13 and 16).

**The State party should:**

**(a) Take all the necessary measures to ensure that enforced disappearance is established as an offence in its domestic law;**

**(b) Ensure that the cases of enforced disappearances are thoroughly and effectively investigated, that suspects are prosecuted and those found guilty punished with sanctions proportionate to the gravity of their crimes;**

**(c) Ensure that the any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person, as well as to fair and adequate compensation;**

**(d) Adopt measures to clarify the outstanding cases of enforced disappearances and comply with the request to visit by the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48, para. 450).**

**The Committee furthermore calls upon the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

**Anti-terrorism measures**

10. While noting the State party's decision to lift the long-standing state of emergency on 31 August 2011, the Committee expresses concern that 24 hours before it ended new regulations were decreed under the Prevention of Terrorism Act No. 48 of 1979 (PTA). The Committee is concerned about the sweeping nature of these PTA regulations, which unduly restrict legal safeguards for persons suspected or charged with a terrorist or related crime, as pointed out by the Human Rights Committee and the Special Rapporteur on the question of torture. The Committee notes that the President continued to invoke Section 12 of the Public Security Ordinance (Chapter 40) to allow the armed forces to retain policing powers in all 25 districts (Presidential Order of 6 August 2011).<sup>1</sup> In this connection, the Committee notes with concern that with the lapsing of the state of emergency, the limited safeguards contained in Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005, which applied when arrests were made by armed forces, apparently are no longer in effect under the new PTA regulations (e.g. a person arrested by a member of the armed forces had to be handed over to the police within 24 hours) (arts. 2 and 16).

**The State party should ensure the respect for fundamental legal safeguards and take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, especially with article 2, paragraph 2.**

**Coerced confessions**

11. While noting the clarification given by the State party in respect of the inadmissibility of evidence obtained through torture under the Evidence Ordinance Act 1985, the Committee remains concerned about the fact that the PTA allows all confessions obtained by police at or above the rank of Assistant Superintendent of Police (ASP) to be admissible (sect. 16) placing the burden of proof on the accused that a confession was obtained under duress (sect. 17(2)). The Committee is also concerned at reports that in most

cases filed under the PTA the sole evidence relied upon is confessions obtained by an ASP or an officer above that rank. The Committee further notes with concern reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges (art. 2, 11, 15 and 16).

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

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

#### **Registration of all detainees**

12. The Committee notes that according to the State party's core report, that over the period 2000-2005, more than 80,000 persons were imprisoned annually, of whom more than 60,000 were never convicted. Furthermore, according to the additional written information provided by the State party's delegation, 765 persons are detained in Sri Lanka under administrative detention orders as of 11 November 2011 but there is no central registry on detentions carried out under the PTA. The Committee recalls with concern that, in response to the Committee's confidential inquiry under article 20 of the Convention (A/57/44, paras. 123-195), the State party informed it that a computerized central police registry had been established, yet now reveals this has not happened (arts. 2, 11 and 16).

#### **The State party should:**

- (a) Ensure that all suspects under criminal investigation are registered promptly from the moment of apprehension and not only upon formal arrest or charging;**
- (b) Establish immediately a central register for all persons in official custody, inter alia, persons in prisons, police stations and "rehabilitation centres", as well as those detained under the PTA.**
- (c) Publish a list of all detainees and places of detention;**

#### **Human rights defenders, defence lawyers, journalists and other civil society actors at risk**

13. The Committee expresses its concern at reports that human rights defenders, defence lawyers and other civil society actors, including political activists, trade unionists and independent media journalists have been singled out as targets of intimidation, harassment, including death threats and physical attacks and politically motivated charges. It regrets that, in many cases, those allegedly responsible for acts of intimidation and reprisal appear to enjoy impunity. The Committee notes with regret that the State party was unable to provide adequate information on the specific incidents about which the Committee had inquired, including the cases of journalists, such as Poddala Jayantha, Prageeth Eknaligoda and J. S. Tissainayagam, and lawyers, such as J.C. Welliamuna and Amitha Ariyaratne. This resulted in a number of submissions to the Committee by some of the individuals

concerned containing contradictory information. The Committee is also concerned about information received according to which the Ministry of Defence has published articles on its website implying that lawyers defending individuals are “traitors” to the nation. The Committee is concerned about the fact that one of these articles, entitled “Traitors in Black Cloaks Flocked Together”, included the names and photographs of five lawyers, putting them at risk of attacks (art. 2, 12, 13 and 16).

**The State party should:**

**(a) Ensure that all persons, including those monitoring human rights and combating torture and impunity are protected from intimidation or violence as a result of their activities;**

**(b) Take prompt and effective measures, including investigation and prosecution, to address concerns regarding the extremely hostile environment for human rights defenders, lawyers, journalists and other civil society actors in Sri Lanka.**

**Conditions of detention in police stations and prisons**

14. The Committee is concerned at the deplorable levels of overcrowding and poor conditions prevailing at police stations and prisons, especially the lack of hygiene, inadequate medical care, the non-separation of convicted and remand prisoners and the failure to keep adult detainees and juvenile offenders separate, as reported by the Special Rapporteur on the question of torture (A/HRC/7/3/Add.6 and A/HRC/13/39/Add.6). In this respect, the Committee regrets the absence of information provided by the State party on measures taken to improve conditions of detention for those held on remand and for convicted persons (arts. 11 and 16).

**The State party should:**

**(a) Ensure that conditions of detention in the country’s prisons are compatible with the Standard Minimum Rules for the Treatment of Prisoners and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

**(b) Increase its efforts to remedy prison overcrowding, in particular by instituting alternatives to custodial sentences;**

**(c) Continue to expand the prison infrastructure and the remand centres, including those for juvenile offenders;**

**(d) Take effective measures to improve the adequacy of health-care resources in penitentiary institutions, and ensure that the medical assistance given to detainees is of high quality.**

**Deaths in custody**

15. The Committee is concerned at reports from non-governmental organisations on deaths in custody, including police killings of criminal suspects in alleged staged “encounters” or “escape” attempts.<sup>2</sup> The Committee notes with concern that the State party only reported two cases of death in custody, where the cause of death was determined to be suicide, for the entire period 2006-2011, while for a similar period between 2000-2005 the State party had reported in its core document approximately 65 annual deaths in custody from all causes (HRI/CORE/LKA/2008, p. 87).

**The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees assessing any possible liability of law enforcement officers and prison personnel, and provide, where appropriate punishment of the perpetrators and compensation to the families of the victims.**

**The State party should provide comprehensive data regarding reported cases of deaths in custody, disaggregated by location of detention, sex, age, ethnicity of the deceased and cause of death.**

#### **Monitoring detention facilities**

16. While noting the Human Rights Commission of Sri Lanka's (HRCSL) broad inquiry powers to investigate human rights violations vested in Section 11 of the Human Rights Commission Act No 21 of 1996, the Committee is concerned about its reported inactivity, the lack of cooperation from the police and the Government and the limited resources and challenges to its independence and impartiality as a result of the 18th Amendment to the Sri Lankan Constitution, which places the appointment of its members solely in the hands of the Head of State. The Committee is also concerned that, contrary to the information provided by the State party, the International Committee of the Red Cross (ICRC) is not allowed to visit the "rehabilitation centres" or facilities holding LTTE suspects yet to be formally charged. The Committee notes with concern that during 2009 the military administration in closed internment camps for IDPs denied access to humanitarian organisations, including the United Nations and the ICRC (arts. 2, 11, 12, 13 and 16).

**The Committee calls upon the State party to establish an independent national system to effectively monitor and inspect all places of detention, including facilities holding LTTE suspects and closed IDP camps, and to follow-up on the outcome of its systematic monitoring.**

**The State party should take necessary measures to support work of HRCSL, ensuring that its recommendations are fully implemented. It should also provide detailed information on the action taken on the recommendations made by the Commission on its visit to Mount Lavinia police station on 15 August 2011.**

**The State party should strengthen the capacity of non-governmental organizations that undertake monitoring activities and adopt all appropriate measures to enable them to carry out periodic, independent and unannounced visits to places of detention.**

**The Committee strongly encourages the State party to consider the possibility of ratifying the Optional Protocol to the Convention against Torture, with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.**

#### **Human Rights Commission of Sri Lanka (HRCSL)**

17. The Committee is concerned that the new appointment process set out by the 18th Amendment to the Sri Lankan Constitution (September 2010), which ends Parliament's role in approving appointments, undermines the independence of the HRCSL. The Committee is also concerned about the difficulties the HRCSL has had in carrying out its function owing in part to the lack of cooperation from other State party institutions, limited human and financial resources, which has reduced its ability to investigate specific incidents and make recommendations for redress, and failure to publish the reports of its investigations (art. 2 and 12)

**The State party should ensure that the HRCSL effectively fulfils its mandate and receives the necessary resources for that purpose. It should also ensure that the Commission is able to initiate as well as carry out independent investigations into alleged and possible cases of torture and ill-treatment, including those concerning military premises, as well as "rehabilitation centres" and other government-controlled facilities such as "welfare centres", and to publish the results. The State party should establish a transparent and consultative selection process to guarantee its full independence in line with the Paris Principles.**

**Impunity for acts of torture and ill-treatment**

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

**The State party should:**

(a) **Ensure that a prompt and impartial investigation is made into all complaints of torture or ill-treatment. In particular, such investigation should be under the responsibility of an independent body, not under the authority of the police;**

(b) **Establish an independent complaints system for all persons deprived of their liberty;**

(c) **Launch prompt and impartial investigations spontaneously and wherever there is reasonable ground to believe that an act of torture has been committed;**

(d) **Ensure that the Attorney General's office fulfils its responsibilities to refer cases to the SUP;**

(e) **Ensure that, in cases of alleged torture, suspects are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to repeat the alleged act or to obstruct the investigation;**

(f) **Ensure that, in practice, complainants and witnesses are protected from any ill-treatment and acts of intimidation related to their complaint or testimony;**

(g) **Bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, ensure sentences with penalties that are consistent with the gravity of their acts. In this connection, legislative measures should be taken to guarantee the independence of the judiciary.**

**Witness and victim protection**

19. The Committee remains concerned at the absence of an effective mechanism to ensure the protection of and assistance to witnesses and victims of human rights violations and abuses, which has a negative impact on the willingness and ability of witnesses and victims to participate in investigations or to testify in proceedings. In this regard, the Committee is concerned about the impunity in the cases of attacks against witnesses and victims, as illustrated in the case of Gerald Perera and those allegedly involved in his murder following his allegation of torture against several police officers. The Committee notes with concern that a bill on witness and victim protection has been on the parliamentary agenda since 2008. The Committee regrets the scant substantive information provided by the State party regarding the case of Siyaguna Kosgodage Anton Sugath Nishantha Fernando, a complainant in a torture case before the Supreme Court, who was killed by unidentified gunmen on 20 September 2008. The victim had repeatedly requested protection measures for himself and his family against alleged perpetrators (arts. 2, 11, 12, 13 and 15).

**The Committee reiterates its earlier recommendation (CAT/C/LKA/CO/2, para. 15) that the State party should ensure that witnesses and victims of human rights violations are effectively protected and assisted, in particular by ensuring that**



**perpetrators do not influence protection mechanisms and that they are held accountable.**

#### **Internally displaced persons**

20. The Committee notes that near the end of the armed conflict in 2009 over 280,000 people fled from the northern LTTE-controlled areas to government-controlled territory in Vavuniya, Mannar, Jaffna and Trincomalee districts, where the vast majority of them entered closed military-run internment camps. While noting the information provided by the State party regarding the substantial efforts undertaken to respond to the influx of displaced persons, the Committee remains concerned at the situation of IDPs in the country, especially those who remain in “welfare centres”. According to the State party, IDPs were initially provided with “a secure environment and cared for while they were screened to identify terrorist cadre[s] who had infiltrated the civilian population that was rescued at the conclusion of the armed conflict”. The Committee, however, remains concerned about consistent allegations of torture and ill-treatment during questioning of camp residents by the Criminal Investigation Department (CID) and the Terrorist Investigation Department (TID). The Committee is concerned that these allegations have not been investigated outside the context of the Lessons Learnt and Reconciliation Commission (LLRC) process and that no judicial action has been taken. The Committee is also concerned at reports of massive overcrowding, poor hygienic and sanitary conditions, malnutrition, inadequate medical and psychological assistance and lack of freedom of movement for camp residents during and after the final stages of the war (art. 2, 11 and 16).

#### **The State party should:**

**(a) Adopt the necessary measures to guarantee the physical integrity and address the specific needs of internally displaced persons, in accordance with the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), including the medical care and psychological attention they require;**

**(b) Ensure that investigations are carried out into the alleged cases of torture, including sexual violence, against camp residents and that perpetrators of such acts are brought before the courts;**

**(c) Provide mandatory in-service training programmes on human rights, internal displacement and gender-based violence for members of the military and law-enforcement officials serving in the camps;**

#### **Accountability process and the Lessons Learnt Reconciliation Commission (LLRC)**

21. The Committee notes that there have been a number of ad hoc commissions of inquiry looking into past human rights violations, including the Presidential Commission of Inquiry to investigate serious cases of human rights violations that occurred since 1 August 2005, which according to the International Independent Group of Eminent Persons (IIGEP) did not meet international standards of independence, witness and victim protection and transparency. The Committee notes the information on the mandate, composition and working methods of the Lessons Learnt Reconciliation Commission (LLRC) and the Inter-Agency Advisory Committee (IAAC), established in May and September 2010, respectively. The Committee notes the assurances by the delegation of the State party that the LLRC has the faculty to channel the complaints received “with a possibility of immediate investigation and remedial action”, and that the Attorney General is “empowered to institute criminal proceedings based on the material collected during the course of the recommendations made by the LLRC”. The Committee, nevertheless, regrets the apparent limited mandate of the LLRC and its alleged lack of independence. In addition, it regrets the lack of information provided by the State party on the investigations undertaken into allegations of serious violations of international human rights law, such as

torture, including rape and enforced disappearances, and other forms of ill-treatment that allegedly occurred during the last stages of the conflict and in the post-conflict phase, as reported by numerous sources, including the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The Committee notes that the State party asserts that the LLRC "has taken cognizance of all the allegations", but regrets that it has not received any such information. The Committee notes that the State party "(...) will await LLRC's report before considering further action" and that a "comprehensive answer will be submitted" to this Committee on the establishment of programmes to assist victims of torture and ill-treatment that occurred during the course of the armed conflict "once the LLRC's report is finalized and made public" (arts. 2, 12, 13, 14 and 16).

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

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

#### **Violence against women, including sexual violence**

22. The Committee notes with concern reports about a growing number of cases of violence against women, including sexual and domestic violence, as well as the insufficient information provided by the State party in this regard. It also notes with concern that domestic violence and marital rape are recognized only following a judge's legal recognition of the separation of spouses. The Committee is also concerned about reported cases of war-time rape and other acts of sexual violence that occurred following the end of the conflict, in particular in military-controlled camps. (arts. 2, 12, 13 and 16).

**The State party should ensure prompt, impartial and effective investigations of all allegations of sexual violence and should prosecute suspects and punish perpetrators.**

**The Committee reiterates the recommendation made by the Committee on the Elimination of Discrimination against Women (CEDAW/C/LKA/CO/7) that the State party should extend criminalization of marital rape regardless of judicial acknowledgement of separation.**

**The State party should provide the Committee with information on the investigations of cases of war-time rape and other acts of sexual violence that occurred during the last stages of the conflict and in the post-conflict phase, and the outcome of such trials, including information on the punishments meted out and the redress and compensation offered to the victims.**

#### **Sexual exploitation and abuse of children by peacekeepers**

23. The Committee expresses its grave concern over the alleged sexual exploitation and abuse of minors by military members of the Sri Lankan contingent of the United Nations Stabilization Mission in Haiti (MINUSTAH) that occurred in 2007. While noting the information provided by the State party's delegation that the troops in question were repatriated and dealt with under military law, the Committee regrets the lack of information available regarding any specific charges or punishments faced by the 114 members of the Sri Lankan contingent who were repatriated on disciplinary grounds (arts. 2, 5, 12 and 16).

The State party should conduct investigations into the allegations of incidents of sexual exploitation and abuse by military members of the MINUSTAH's Sri Lankan contingent and report their findings and measures taken in response, including the resulting number of indictments, prosecutions and convictions, and measures taken to prevent further occurrences. The Committee encourages the State party to pursue its cooperation with the relevant United Nations departments to ensure progress in this matter.

#### **Human trafficking and violence against Sri Lankan migrant workers**

24. While noting the adoption in 2006 of the Penal Code (Amendment) Act No. 16, the Committee is concerned about persistent reports of trafficking of women and children within the State party for the purposes of forced labour and sexual exploitation, the low numbers of convictions related to human trafficking and the detention of trafficking victims. The Committee is similarly concerned at the reported abuses of many Sri Lankan migrant workers, especially women, who travel abroad and subsequently face conditions of forced labour or other abuse in the host country, as alleged by the representative of the State party. In this regard, the Committee notes with interest the statement of the representative of the State party that the draft National Action Plan on Human Rights contains a section devoted to the protection of Sri Lankan migrant workers (arts. 2, 12 and 16).

#### **The State party should:**

(a) **Increase its efforts to combat trafficking in human beings by taking effective measures to investigate, prosecute and punish those responsible and by further strengthening international cooperation with countries of origin, transit and destination;**

(b) **Review legislation and practices to prevent victims of trafficking from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as victims of trafficking;**

(c) **Instruct consular or diplomatic authorities to provide protection and assistance to Sri Lankan migrant workers to protect their rights to be free from violence, confinement and abuse in violation of the Convention;**

(d) **Consider the possibility of ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime**

#### **Definition of torture**

25. The Committee reiterates its view that the definition of torture included in Section 12 of the 1994 Convention against Torture Act (hereinafter, CAT Act) does not entirely reflect the internationally agreed definition set out in the Convention. It restricts acts of torture to "any act which causes severe pain, whether physical or mental", while the Convention definition refers to "severe pain or suffering". It thus does not cover acts that are not violent per se, but nevertheless inflict suffering (arts. 1 and 4).

**The Committee reiterates the recommendation made in its previous concluding observations (CAT/C/LKA/CO/2, para. 5), that the State party should amend the definition of torture included in Section 12 of the CAT Act in order to expand the definition of torture to all acts of torture, including those causing severe suffering, in accordance with article 1 of the Convention. In this regard, the Committee draws attention to its general comment No. 2 (2007), which states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (CAT/C/GC/2, para. 9).**

**Jurisdiction over acts of torture**

26. While noting the information provided by the State party on the implementation of articles 5 to 8 of the Convention, the Committee regrets the lack of clarity on the existence of the necessary measures establishing the State party's jurisdiction over acts of torture. While the 1994 CAT Act provides for jurisdiction over alleged perpetrators of torture present in the territory of the State party, whether or not citizens, it is unclear whether the law provides for the establishment of universal jurisdiction or whether this remains at the discretion of the High Court, as implied in Section 4(2) CAT Act. Furthermore, Section 7 CAT Act appears to require the rejection of an extradition request before the requirement that the case be submitted to the relevant authorities. The Committee recalls its jurisprudence on the content of the obligation to extradite or prosecute (*aut dedere, aut judicare*), that the State party's obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for extradition (arts. 5, 6, 7 and 8).

**The Committee reiterates its previous recommendation (CAT/C/LKA/CO/2, para. 10) that the State party should ensure that its domestic legislation 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 acts of torture outside the territory of the State party, who are present in the territory and who have not been extradited.**

**Refugees, non-refoulement**

27. The Committee notes with concern the absence of domestic legislation or national policy that guarantees the protection of refugees and asylum-seekers in the State party and persons who require international protection. The Committee regrets the lack of information provided by the State party on the number of cases of refoulement, extradition and expulsion carried out during the reporting period and on the number of instances in which it has offered diplomatic assurances or guarantees (art. 3).<sup>3</sup>

**The State party should adopt a national policy, as well as the necessary legislative and administrative measures, to guarantee protection for refugees, asylum-seekers and stateless persons.**

**The Committee encourages the State party to consider the possibility of ratifying the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

**Training**

28. The Committee notes the information on human rights training for members of the police and the army contained in the State party's report and the responses to the list of issues. It, however, regrets the lack of information on the evaluation of those programmes and in reducing the incidence of torture and ill-treatment, as well as the lack of specific training of medical personnel in detention facilities to detect signs of torture and ill-treatment (art. 10 and 11).

**The State party should:**

**(a) Continue to provide mandatory training programmes so as to ensure that all public officials, in particular members of the police forces and army personnel, are fully aware of the provisions of the Convention, that breaches are not tolerated but investigated, and that the perpetrators are brought to trial;**

**(b) Assess the effectiveness and impact of training programmes and education on reducing the incidence of torture and ill-treatment;**

(c) **Support training on the use of the manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.**

**Redress, including compensation and rehabilitation**

29. The Committee notes the State party's explanation that, under the fundamental rights jurisdiction, the Sri Lankan courts may grant compensation (529 cases have been filed against police officers since 2006), that there have been a number of instances in which the Supreme Court has awarded pecuniary compensation for torture and that compensation can also be obtained through a damages suit in the District Court. However, the Committee notes reports that compensation amounts are inconsistent. In this regard, the Committee regrets the lack of information contained in the State party's report on Supreme Court and District Court decisions awarding compensation to victims of torture and ill-treatment, or their families, and the amounts awarded on those cases. The Committee also notes with concern that there is no provision in the 1994 CAT Act, or the penal law, for compensation or other forms of reparation for torture victims. Finally, the Committee regrets the insufficient information provided on the treatment and social rehabilitation services, including medical and psychosocial rehabilitation, provided for all victims of torture (art. 14)

**The State party should strengthen its efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible.**

**The Committee reiterates its previous recommendation (CAT/C/LKA/CO/2, para. 16) that the State party should ensure that appropriate rehabilitation programmes are provided to all victims of torture and ill-treatment, including medical and psychological assistance.**

**Corporal punishment**

30. The Committee notes that, while corporal punishment is prohibited as a penal sentence under the Corporal Punishment (Repeal) Act No. 23 of 2005, it is not prohibited as a disciplinary measure in penal institutions for juvenile offenders, in the home or alternative care settings, under article 82 of the Penal Code. The Committee also notes with concern that, despite the issuance of Circular No. 2005/17, by the Ministry of Education in 2005, stating that corporal punishment should not be used in schools, there is no prohibition in law and its use is still widespread. (arts. 10 and 16)

**The State party should consider amending its Penal Code, with a view to prohibiting corporal punishment in all settings and raising public awareness.**

**Required documentation on compliance**

31. Despite its previous recommendation that the State party provide the Committee with detailed statistical information on a variety of basic criminal issues and other statistical matters (CAT/C/LKA/CO/2, para. 19), the Committee is concerned that this was not provided either in the State party's periodic report, its reply to the list of issues or written supplementary materials. The absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement officials, military and prison personnel, including enforced disappearances, rape and violence against women, and other forms of torture and ill-treatment, hampers the identification of abuse requiring attention and the effective implementation of the Convention (arts. 2 and 19).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national and local levels, disaggregated by**

**gender, ethnicity, age, geographical region and type and location of place of deprivation of liberty, including data on complaints, investigations and prosecutions of cases of torture and ill-treatment by law enforcement officials, military and prison personnel, and on enforced disappearances, rape and violence against women.**

32. Noting the voluntary commitments made by the State party in the context of the universal periodic review of the Human Rights Council in May 2008 (A/HRC/8/46, paras. 90 and 108-110) the Committee recommends that the State party consider adopting the draft bill on witness and victim protection and the draft bill on the rights of internally displaced persons; improve and upgrade detention facilities; and, improve the capacity of police in carrying out investigations, with additional training in interrogation and prosecution.

33. The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention.

34. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

35. The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet a party.

36. The State party is encouraged to disseminate widely the reports submitted by Sri Lanka to the Committee and these concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

37. The State party is invited to update its common core document (HRI/CORE/LKA/2008), in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

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

39. The State party is invited to submit its next report, which will be the fifth periodic report, by 25 November 2015. To that purpose, the Committee invites the State party to accept, by 25 November 2012, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.