

Sri Lanka: 3rd and 4th Periodic Report on the Implementation of the
Convention Against Torture

Submission from Lawyers' Rights Watch Canada to the
Committee Against Torture
October 2011

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Executive Summary:

These submissions are made by Lawyers' Rights Watch Canada in aid of the Committee against Torture's (CAT) examination of the combined 3rd and 4th Periodic Report of Sri Lanka outlining its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture). LRWC's submissions outline the problems faced by Sri Lanka in implementing the Convention Against Torture. The definition of 'torture' in Sri Lanka's domestic legislation remains inadequate as per the CAT's recommendations. The absence of an effective investigation mechanism and the lack of prosecutions under Sri Lanka's *Convention against Torture Act* are just two of the inadequacies that Sri Lanka must overcome.

LRWC respectfully submits that the Government of Sri Lanka has yet to demonstrate that it is ready, willing or capable of implementing all aspects of the Convention against Torture into its domestic law in accordance with the international obligations imposed by the Convention against Torture.

Lawyers' Rights Watch Canada:

Founded in 2000, Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.¹

LRWC:

- Campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy;
- Produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and
- Works in co-operation with other human rights organizations

Most recently, a representative from LRWC made a statement at the 18th Session of the Human Rights Council calling for accountability and an international inquiry into alleged war crimes and crimes against humanity committed in Sri Lanka during the last stages of the war.

¹ For more information on Lawyers' Rights Watch Canada and the work that we are involved in, visit www.lrwc.org/

Sri Lanka and the Convention against Torture:

Sri Lanka deposited its instrument of accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment on January 3rd, 1994 and the Convention against Torture entered into force for Sri Lanka on February 2nd, 1994. Soon after Sri Lanka became a state party to the Convention against Torture in 1994, Sri Lanka incorporated the Convention into Sri Lankan law by enacting the 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994', more commonly referred to as the '*Convention against Torture Act*' or the '*CAT Act*'.

The Constitution of the Democratic Socialist Republic of Sri Lanka also provides domestic strength, albeit theoretically, to the Convention against Torture, specifically in Article 11 of Sri Lanka's Constitution, which states that "no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." While at first glance it may seem as if the Sri Lankan government has implemented the Convention against Torture into domestic law, an analysis of the cases of torture and actions of the Sri Lankan government, or lack thereof, indicates otherwise.

LRWC respectfully submits that in the past 17 years since Sri Lanka has become a state party to the Convention against Torture, the Government of Sri Lanka has failed to implement **all** aspects of the Convention into both its domestic law and practice. The reasons outlined below provide just a few examples of ways in which Sri Lanka fails to live up to its international obligations as a signatory to this very important Convention.

Sri Lanka's Definition of Torture is Inconsistent with the Convention against Torture:

Article 12 of Sri Lanka's CAT Act states the definition of torture as follows:

.... 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 done for any reason based on discrimination*

And being in every case, 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.

CAT, in its 2005 Conclusions and Recommendations on Sri Lanka², expresses its concern that the definition of 'torture' in Article 12 of the CAT Act was not consistent with the definitional elements of 'torture' in Article 1 of the Convention against Torture. Specifically, CAT concluded that the definition in Sri Lanka's CAT Act does not refer to the word "suffering". The Special Rapporteur on Torture and Other Cruel and Inhuman and Degrading Treatment or Punishment has also noted the absence of the word 'suffering' in his 2008 report to the General Assembly.³

Despite the recommendations by CAT, Sri Lanka takes the position that the words 'cause severe pain whether physical or mental' "invariably encompasses 'suffering' both in its physical and mental forms".⁴ Although Sri Lanka stated that it would recommend this issue to the Sri Lankan Law Commission in 2007, there is no evidence of amendments or efforts to effect amendments to remedy this inadequacy.⁵ Furthermore, according to General Comment No. 2, CAT has clearly stated that each State party should ensure that definitions within its respective domestic legislation should include *all* elements of the corresponding Convention definitions.⁶ To date, Sri Lanka has failed to address these concerns and there is no indication of plans to bring the Sri Lankan law into compliance with the expectations and recommendations of CAT. The absence of a comprehensive definition of torture in Sri Lankan legislation creates the risk that actions that cause 'suffering', will not fall within the present definition of torture, thereby diminishing accountability.

Documented Cases of Torture in Sri Lanka:

The Asian Human Rights Commission (AHRC) has compiled a report of 1,500 cases of police torture in Sri Lanka between 1998 and 2011.⁷ A detailed review of the 323 serious cases of torture outlined in the AHRC report reveals an abhorrent system of injustice and impunity. Among a list of reasons leading to an environment prone to the systemic use of torture is the failure of a complaints system, the absence of command responsibility, the control of the policing system by politicians and the delays and absence of witness protection.⁸

² Conclusions and Recommendations of the Committee Against Torture: Sri Lanka, CAT/C/LKA/CO/5, 15 December 2005, Para. 5

³ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to Sri Lanka", (A/HRC/7/3Add.6), 26 February 2008, para. 25

⁴ Combined third and fourth periodic reports of States parties due in 2007 Sri Lanka", (CAT/C/LKA/3-4), submitted to the Committee Against Torture, on 17 August 2009, para. 15, p. 7;

⁵ "Comments by the Government of Sri Lanka to the Conclusions and Recommendations of the Committee Against Torture", (CAT/C/LKA/CO/2?Add.1), 20 February 2007, para. 10.

⁶ "General Comment No 2: implementation of Article 2 by State Parties", Committee Against Torture, (CAT/C/GC/2, 24 January 2008, para.9

⁷ Asian Human Rights Commission, "A review of Sri Lanka's compliance with the obligations under the Convention Against Torture and Ill-Treatment", Edited by Basil Fernando, 8 July 2011

⁸ *Ibid.*

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, in his report to the General Assembly, concluded that there was a clear indication that torture is widely practiced in Sri Lanka given the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka and the number of complaints that the National Human Rights Commission receives on a daily basis.⁹ The report further went on to say:

*"...in the context of detention orders under the Emergency Regulations and in particular with respect to LTTE suspects, the clear majority of all detainees interviewed by the Special Rapporteur complained about a **broad variety of methods of torture, some extremely brutal**. In many cases, these allegations were corroborated by forensic evidence. The considerable number of **clearly established cases of torture** by TID and other security forces, together with various efforts by TID to **hide evidence and to obstruct the investigations** of the Special Rapporteur, leads him to the conclusion that **torture has become a routine practice** in the context of counter-terrorism operations, both by the police and the armed forces."¹⁰ [Emphasis added]*

It is not disputed by the United Nations that cases of torture have taken place in Sri Lanka in 2008. With the culmination of the war in 2009, it is more than probable that the use of torture persists and has perhaps increased. In fact, the February 2010 follow-up report of the Special Rapporteur reports that, although the war had ended, the

"Government reportedly continues to use sweeping emergency regulations that promote or allow arbitrary arrest and detention, prolonged and incommunicado detention, and torture."¹¹

Of critical importance is the lack of fundamental safeguards embedded within Sri Lanka's Code of Criminal Procedure to ensure an individual's access to a lawyer upon his or her arrest. The Sri Lankan Code of Criminal Procedure does not include the right to inform a family member of an arrest or the right to access a doctor of the detainee's choice. It also does not provide for the presence of a lawyer during interrogations. One of the principal causes of torture, according to the report, has been the 'absence of legal representation during a suspect's first appearance before a Magistrate.¹² The situation is worse in cases where emergency laws such as the *Prevention of Terrorism Act* and *Emergency (Miscellaneous Provisions and*

⁹ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to Sri Lanka", (A/HRC/7/3/Add.6), 26 February 2008, para. 70

¹⁰ *Ibid.*

¹¹ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Follow-Up to the Recommendations made by the Special Rapporteur", (A/HRC/13/39/Add.6) Manfred Nowak, 26 February 2010, para. 84

¹² *Ibid.* p. 203

Powers) Regulations continue to apply. "Since lawyers did not visit army camps or STF camps, persons detained under emergency regulations did not receive legal assistance."¹³

For several years and particularly the last few years, human rights organizations from all over the world have kept a close eye on the deteriorating situation in Sri Lanka. As a result, cases of torture in Sri Lanka have been documented by various human rights organizations. Freedom From Torture, a UK-based human rights organization and torture treatment center, has reported that torture is still taking place in Sri Lanka and that Tamils suspected of association with the LTTE are at particular risk.¹⁴ Freedom From Torture analyzed 15 specific cases of torture in Sri Lanka. The methods of torture documented by the clinicians involved infliction of blunt trauma, beatings, asphyxiation, and burns with various substances and heated instruments. Threats of death, forced betrayals and confessions were among the psychological methods of torture that were used.¹⁵ In all of the cases that were analyzed, the victims were able to escape after the payment of bribes, a finding that gives rise to concerns as to the fate of victims unable to pay bribes to escape torture.

Absence of An Effective Investigation Mechanism:

Effective investigations into allegations of human rights violations, including torture and other cruel, inhuman or degrading treatment are hindered by the lack of an effective investigation mechanism. In 2008, the Special Rapporteur noted with concern, the absence of an effective ex officio investigation mechanism in Sri Lanka.¹⁶ This contravenes Article 12 of the Convention against Torture, which states that each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is a reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Detainees who appear in front of the Magistrate during their first hearing fail to mention torture due to the fear of reprisals. Sri Lanka has failed to establish an effective investigation mechanism, specifically a mechanism whereby individuals can report ex officio to the relevant authorities, calling for a proper investigation in line with Article 12 of the Convention against Torture.

¹³ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Follow-Up to the Recommendations made by the Special Rapporteur", (A/HRC/13/39/Add.6) Manfred Nowak, 26 February 2010, p. 203

¹⁴ "Briefing – Torture in Sri Lanka 'After the Killing Fields'", Freedom from Torture, Medical Foundation for the Care of Victims of Torture, September 25th, 2011, p. 1 <http://www.freedomfromtorture.org/sites/default/files/Briefing.pdf>

¹⁵ *Ibid.*

¹⁶ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Follow-Up to the Recommendations made by the Special Rapporteur", (A/HRC/13/39/Add.6) Manfred Nowak, 26 February 2010, p. 205

Lack of Prosecutions under Sri Lanka's *Convention against Torture Act*:

Sri Lanka's *Convention against Torture Act* is not an effective tool to prevent and punish instances of torture. To date, there have been only three convictions under this Act.¹⁷ In its combined 3rd and 4th periodic report, the Government of Sri Lanka refers to a statement made by a delegation of CAT in May 17th, 2002 wherein it 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 systemic torture and ill-treatment”.¹⁸

Furthermore, Sri Lanka refers to the February 2008 report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment wherein he stated that the Government “has taken a number of important legal steps in order to prevent and combat torture as well as hold perpetrators accountable.”¹⁹ However, various reports since the culmination of the war have reported otherwise.

The Special Rapporteur, in his August 2010 report, identifies various factors that contribute to impunity and thereby promote continued use of torture, namely:

“the lack of proper criminalization of torture; the absence of impartial investigations into allegations; and the lack of prosecution of perpetrators.”²⁰

The Special Rapporteur went on further to express disappointment with the lack of prosecutions under Sri Lanka's CAT Act.

¹⁷ “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, para. 51

¹⁸ “Combined third and fourth periodic reports of States parties due in 2007 Sri Lanka”, (CAT/C/LKA/3-4), submitted to the Committee Against Torture, on 17 August 2009, para. 14, p. 7; Official Records of the General Assembly, Fifty-Seventh Session, Supplement No. 44 (A/57/44), para. 181 (<http://www.uhchr.ch/tbs/doc.nsf>)

¹⁹ “Combined third and fourth periodic reports of States parties due in 2007 Sri Lanka”, (CAT/C/LKA/3-4), submitted to the Committee Against Torture, on 17 August 2009, para 13, p. 6; “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

²⁰ “Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, (A/65/273), Manfred Nowak, submitted in accordance with General Assembly resolution 64/153, 10 August 2010, Para 41, p. 10

Conclusions:

The Government of Sri Lanka is clearly not ready, willing nor capable of fully implementing the Convention against Torture into its domestic law. In the past few months, Sri Lanka has come under increasing pressure to investigate credible allegations of torture, war crimes and crimes against humanity. However, the Government of Sri Lanka has refused and ignored the repeated calls made by the international community for an investigation into these allegations. To date, Sri Lanka has failed to address these concerns and shows no plans of doing so in the near future. At the core of the persistence of the problem of torture in Sri Lanka is the prevailing culture of impunity. While LRWC acknowledges the difficult situation arising from the internal armed conflict in Sri Lanka, it strongly echoes the Committee Against Torture's sentiment that "no exceptional circumstances whatsoever may be invoked as a justification of torture."²¹

Recommendations:

LRWC respectfully submits that the Committee against Torture recommends Sri Lanka to do the following:

- Become a party to the Optional Protocol to the Torture Convention²² so Sri Lanka will take part in a system of regular visits by international and national bodies to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment;
- Release the names of prisoners currently in custody at detention centers in Sri Lanka to independent, international agencies so the treatment of prisoners may be monitored to ensure compliance with the Convention against Torture;
- Ensure that an effective, transparent, independent investigative mechanism which adheres to international standards is developed and put into force so as to ensure compliance with Article 12 of the Convention against Torture;
- Address the continued failure to conduct prompt, impartial and effective investigations into alleged human rights violations by law enforcement officials; and
- Submit to an independent investigation into credible allegations of torture, war crimes and crimes against humanity committed during the final stages of the war.

²¹ Conclusions and Recommendations of the Committee Against Torture: Sri Lanka, CAT/C/LKA/CO/5, 15 December 2005, Para. 4

²² "Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", New York, 18 December 2002, General Assembly Resolution 57/199