



**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**

Second periodic reports of States parties due in 1999

Addendum

SRI LANKA*

[29 March 2004]

* The information submitted by Sri Lanka in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.48.

The initial report submitted by the Government of Sri Lanka is contained in document CAT/C/28/Add.3; for its consideration by the Committee, see documents CAT/C/SR.338, 339 and 341 and Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44), paras. 243-257.

The annexes to the present report submitted by the Government of Sri Lanka can be consulted at the Secretariat.

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Introduction

1. The policy of Sri Lanka on torture is derived from the fundamental consideration that the promotion, fostering and protection of human rights is an obligation devolving on the State by virtue of the fact that Sri Lanka is party to 16 major international human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. In keeping with its policy on human rights, Sri Lanka has made sustained and determined efforts on a broad front, encompassing national and international means, to promote and protect human rights.
3. The Government of Sri Lanka, having ratified the International Covenant on Civil and Political Rights (ICCPR) in 1980, also acceded in 1997 to the Optional Protocol to ICCPR providing for individual complaints. Sri Lanka is one of the few countries in Asia that has adhered to the Optional Protocol to the ICCPR.
4. The significance of the accession to ICCPR is that it was done when Sri Lanka was confronted with an extraordinary security situation emanating from terrorism, which threatened and undermined every aspect of the day-to-day life of its people. Indeed, this demonstrates the commitment of the Government of Sri Lanka to transparency and accountability in promoting and protecting human rights while upholding the rule of law.
5. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 3 January 1994. Enabling legislation under the Convention adopted by Parliament on 25 November 1994 (The Convention against Torture and Other Inhuman and Degrading Punishment Act No. 22 of 1994) strengthens considerably the existing legal framework in which torture is prohibited.
6. Act No. 22 of 1994 designates and defines torture as a specific crime. The High Court of Sri Lanka is vested with the jurisdiction for offences of torture committed by a Sri Lankan or a non-Sri Lankan in or outside the territory of the country. Criminal proceedings are instituted upon indictment being preferred against the accused by the Attorney-General. With the introduction of this Act the Extradition Law was also amended by designating the offence of torture as an extraditable offence under the Extradition Law in order to provide an “extradite or prosecute” regime, as envisaged in the Convention.
7. The Government of Sri Lanka, taking serious note of the recent allegations regarding torture as well as deaths while in police custody, has introduced short- and long-term preventive mechanisms to address this issue (see annex 1).
8. As a short-term preventive mechanism, the Ministry of Internal Security has enforced strict rules against police officers held responsible for torture. The Inspector General of Police has recently issued a warning to all officers-in-charge of police stations that they would be held responsible if any suspect dies while in custody and that they should be prepared to face the maximum punishment.

9. Long-term preventive mechanisms include training and awareness programmes on human rights issues for police officers.

10. An offence under Sri Lankan law is defined as “act or omission” made punishable by law. It was the general practice that prosecutions were based on acts which constituted offences and rarely on the basis of omissions. However, in the Bidunuwewa Rehabilitation Center case, several police officers were indicted by the Attorney-General for having failed to perform their official duties in a proper manner and thereby failing to prevent the deaths of several inmates at the Rehabilitation Center. The judgement delivered by the High Court of Sri Lanka found some of the accused guilty of offences based on omissions and thereby issued sentences, including capital punishment. This case marked a significant milestone in the legal history of Sri Lanka.

11. Since the initial report under the Convention was submitted to the Committee against Torture in October 1997, significant developments have taken place in Sri Lanka in the promotion and protection of human rights. These developments include a drastic drop in reported cases concerning torture, as a result of numerous human rights protection mechanisms that the Government has put in place even before the signing of the memorandum of understanding between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002.

Visit of two members of the Committee against Torture (CAT) to Sri Lanka in 2000, subsequent recommendations and their implementation

12. Following a decision in May 1999 by the Committee against Torture to undertake an inquiry as to whether torture was being systematically practised 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 Committee members took place from 19 August to 1 September 2000.

13. Following the recommendations* of the two-member committee:

(a) The Government of Sri Lanka appointed a Permanent Inter-Ministerial Standing Committee, entrusted with the task of implementing those recommendations;

(b) On 20 November 2000, the “Permanent Inter-Ministerial Standing Committee on Human Rights Issues” was established by the Government of Sri Lanka, under the chairmanship of the Minister of Foreign Affairs. The other members of the Committee are: Deputy Minister of Foreign Affairs, Attorney-General, Secretaries to the Ministries of Defence, Foreign Affairs and Justice, Solicitor-General, and senior officials of the Ministries

* Editor’s note: a summary account of the results of the proceedings concerning the inquiry on Sri Lanka, including the preliminary recommendations, appears in Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44 (A/57/44), paras. 123-197.

of Defence, Justice and Foreign Affairs, the Attorney-General's Department. The Permanent Inter-Ministerial Standing Committee at its first meeting established a subordinate committee entitled "Inter-Ministerial Working Group on Human Rights Issues" to monitor the implementation of decisions taken by the Permanent Inter-Ministerial Standing Committee and take action where necessary. The co-Chairs of the Working Group are the Secretaries to the Ministries of Defence and Foreign Affairs. Senior officials of the Ministries of Defence, Justice and Foreign Affairs and the Attorney-General's Department and three members of the security forces and police are members of the Working Group. One of the matters taken up by the Working Group was the consideration of the 16 recommendations contained in the communication dated 24 November 2000 presented to the Government of Sri Lanka by the Committee against Torture based on the recommendation made by the two-member committee (annex 2). In November 2000, the Attorney-General's Department established the "Prosecution of Torture Perpetrators Unit" with the responsibility of conducting prompt, impartial and comprehensive criminal investigations into allegations of torture and prosecuting the perpetrators;

(c) Based on a decision taken by the Inter-Ministerial Working Group on Human Rights Issues, the Inspector General of Police gave the Criminal Investigation Department (CID), the mandate to handle all criminal investigations into complaints of alleged torture, other than complaints relating to allegations against CID officers. However, as the number of cases other than human rights coming under CID was on the increase, the Special Investigation Unit (SIU) of the Sri Lanka Police, which is one of its specialized branches, was subsequently mandated to investigate allegations of torture. Accordingly, at present, SIU is handling allegations of torture referred to the Government by the special rapporteurs of the Commission on Human Rights.

I. SPECIFIC RESPONSES ON THE IMPLEMENTATION OF THE RECOMMENDATIONS MADE TO THE COMMITTEE AGAINST TORTURE BY THE TWO-MEMBER COMMITTEE

Recommendation (i). Adopt precise instructions to be addressed to its agents to avoid the lack of practical effectiveness of legal, administrative and other measures adopted to combat torture.

The response

14. The Inspector General of Police (IGP) has reiterated that under no circumstances should any suspect be subjected to torture or other cruel, inhuman or degrading treatment while in police custody.

15. The Inspector General of Police has directed that all Deputy Inspectors General of Police should ensure that under no circumstances do they permit any act of torture to take place within their respective jurisdictions. Whenever a complaint or information is received alleging the perpetration of torture, the Deputy Inspector Generals of Police have been directed to take prompt and impartial action against the perpetrators.

16. By the end of February 2001, all police officers attached to the Sri Lanka Police Department had received orders on the need to desist totally from indulging in any form of torture.

17. This initiative taken by the Inspector General of Police is directed towards achieving positive results aimed at the prevention of torture.

18. The aforementioned administrative measures, coupled with the initiatives taken by the Attorney-General and the Inter-Ministerial Working Group on Human Rights Issues, demonstrate the clear policy and firm commitment of the Government to the prevention of torture.

Recommendation (ii). Reduce and eventually suppress the many overlapping jurisdictions between agencies investigating offences under the Prevention of Terrorism Act and the Emergency Regulations, and establish clear spheres of competence, conducive to enhancing efficiency in preventing torture in all its forms.

The response

19. The above recommendation of the Committee was based on the arrangements which prevailed in the country when the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ER) were in force. Under PTA and ER, the Criminal Investigation Department (CID) and Terrorism Investigation Unit (TIU) were investigating criminal offences. However, ER were allowed to lapse on 7 July 2001 and have not been renewed or reinforced. Consequent to the ceasefire agreement which came into force on 22 February 2002 (art. 2.12), no arrests or detentions are carried out under the provisions of PTA. Arrests are conducted under due process of law in accordance with the Criminal Procedure Code.

20. The Committee has noted that these arrangements would lead to overlapping jurisdictions between agencies which investigate offences.

21. Taking into account these recommendations and also considering the frequently occurring incidents of terrorism, TIU was set up to conduct criminal investigations under ER. TIU is a unit coming directly under IGP and is based at Police Headquarters.

22. Under the provisions of the Police Ordinance, Code of Criminal Procedure Act, Prevention of Terrorism Act and the Emergency Regulations, police officers are legally empowered to conduct criminal investigations. However, the provisions in PTA and ER provide only for investigations into offences which are recognized and listed therein.

23. The Government has recognized the possible abuse of authority which, among other things, may have led to situations of overlapping jurisdiction. Therefore, the Government has defined and entrusted specific functions for each separate law enforcement organ.

Recommendation (iii). Introduce under the Prevention of Terrorism Act and the Emergency Regulations a provision requiring suspects to be produced before a judge within a short time.

The response

24. The provisions of ER require the relevant law enforcement authorities to produce persons arrested before a magistrate prior to the expiry of 30 days from the date of arrest. The Inter-Ministerial Working Group on Human Rights Issues proposed to amend this Regulation. However, with the lapsing of ER, it was unnecessary to proceed with the proposals.

25. Under the provisions of PTA, if a suspect is detained under detention order section 9 (1), such person should be produced before a magistrate not later than 72 hours from the time of arrest. However, till the investigations relating to the suspect are concluded, such person can only be detained in remand custody for a maximum period of 18 months.

26. With the signing of the ceasefire agreement between the Government of Sri Lanka and LTTE on 22 February 2002, arrests under PTA ceased.

Recommendation (iv). Abolish the power of the Secretary of Defence to order preventive detention for a period of up to a year without judicial review.

The response

27. Owing to the extraordinary security situation that prevailed in the country, it was an essential security requirement to retain legal provision that authorizes the Secretary to the Ministry of Defence to empower law enforcement authorities to detain persons against whom there was material evidence that they would pose a threat to national security or the maintenance of public order or essential services if permitted to live in an open society. However, such detention should not exceed one year.

28. The Secretary to the Ministry of Defence can authorize the detention of a suspect under the foregoing regulation (Regulation 17 (1) of ER). Therefore, the power of the Secretary to the Ministry of Defence to authorize “preventive detention” is subject to judicial review during the entire period of detention.

Recommendation (v). Develop a central register for detainees in all parts of the country.

The response

29. The Inter-Ministerial Working Group on Human Rights Issues decided to establish a Central Police Registry, containing computerized current information relating to all arrests and detentions of suspects under the provisions of the Emergency Regulations.

30. In this regard, a circular dated 20 January 2001 was issued and distributed among all officers-in-charge of police divisions. The circular directs all police officers who arrest and detain suspects under the provisions of the Emergency Regulations and the Prevention of

Terrorism Act, to expeditiously forward the information relating to such arrests and detentions to divisional police headquarters (situated at the office of the officer-in-charge of the relevant police division). The divisional headquarters, in turn, shall transmit the information (perfected in a “Data Capture Form”), by facsimile, to the Central Registry, maintained at Police Headquarters in Colombo. The relevant information should reach the Central Registry not later than six hours from the time of each arrest.

31. Upon the establishment of the Central Registry, the public was notified of its existence. In addition, a 24-hour telephone hotline (011-2699439/011-2685930) has been made available to enable the public to make necessary inquiries from the authorities relating to the alleged arrest and detention of suspects.

Recommendation (vi). Establish an effective mechanism for the criminal prosecution of public officials who commit acts of torture.

The response

32. The Government of Sri Lanka is committed to conducting prompt, impartial and comprehensive criminal investigations and domestic inquiries into all complaints and information received relating to the alleged perpetration of torture by public officials. 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 the prevention of such incidents in the future.

33. Consequent to a decision taken by the Inter-Ministerial Working Group on Human Rights Issues, the conduct of criminal investigations into allegations of torture was assigned to the Criminal Investigation Department (CID). However, in the event of an allegation being made against an officer attached to CID, a team of police officers attached to Police Headquarters would be assigned to conduct such investigations. The conduct of all investigations is monitored by the Prosecution of Torture Perpetrators Unit (PTP Unit) of the Attorney-General’s Department. The progress of investigations is reported by CID to the Unit and information relating to the status of investigations is recorded periodically in the computerized database maintained by the Unit. The Unit also advises CID on the conduct of investigations.

34. Upon the completion of the criminal investigations, the corresponding notes are submitted by CID to the PTP Unit. The initial task of the Unit is to consider the institution of criminal proceedings against the alleged perpetrators of torture. In that regard, consideration is given to the availability of material demonstrating that the offence has been committed, the adequacy of such material, its reliability and admissibility. Upon a decision being taken to indict the alleged perpetrators of torture, CID 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 counsel representing the Attorney-General.

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

Recommendation (vii). Guarantee the access of counsel to detainees in police custody.

The response

36. The Police Department does not object to counsel/attorney-at-law representing the rights of suspects detained at police stations, interviewing/advising such suspects prior to their being produced before a magistrate. However, owing to the need to ensure that police investigators are able to conduct the initial investigation and interview suspects in an unhindered manner, such interview (by counsel representing suspects) shall not take place prior to the recording of the statement of the suspect.

37. This facility helps the suspect to divulge any assault or harassment at the time of initial production before the magistrate.

38. Under the prevailing practice, counsel/attorney-at-law representing arrested suspects has the right to interview the officer-in-charge of the relevant police station any time after the arrest (even prior to the recording of the first statement of the suspect). At this interview, the counsel/attorney-at-law would be able to ascertain the basis of allegations against his client (suspect) and the date, time and location relating to the production of the suspect before a magistrate.

Recommendation(viii). Establish a legal assistance scheme free of charge.

The response

39. There are two government-sponsored legal aid schemes implemented by the Prisoners Welfare Association and the Community-Based Legal Services Project, aimed at providing free legal aid to suspects. While the scheme implemented by the Prisoners Welfare Association provides legal aid to suspects in remand custody, the Community-Based Legal Service Project, which comes under the Ministry of Justice, provides legal aid to all persons including those in police detention, those on bail and those in remand custody.

40. In addition to the above two legal aid schemes of the Government, there are several other legal aid schemes implemented by non-governmental organizations. The Human Rights Commission of Sri Lanka has identified 34 NGOs that offer such legal aid to persons subject to judicial proceedings.

Recommendation (ix). Establish a mechanism for regular monitoring visits to detention places to be made by magistrates.

The response

41. Magistrates are legally empowered by the Criminal Procedure Code to visit and inspect remand prisons where suspects are held. Legislation to further strengthen this law to make it compulsory that magistrates inspect such places of detention is under consideration.

42. On a recommendation by the Inter-Ministerial Standing Committee, the existing provisions of the Emergency Regulations have been amended in order to empower magistrates to visit without prior notice and inspect all places where suspects are being detained under the provisions of the Emergency Regulations.

Recommendation (x). Put an end to the illegal detention of suspects by paramilitary groups assisting the Sri Lankan armed forces in the war against the LTTE and bring groups such as PLOTE or TELO under the strict control of the State, or disband them.

The response

43. All ex-militant groups that joined the democratic process have been strictly warned of the need to adhere to domestic laws and to desist from making any arrests and/or detentions of persons. In the event of members of an ex-militant group executing such arrests and/or detentions, such action will be deemed to be in violation of penal law. Appropriate action shall be taken against those executing such arrests in accordance with the existing law.

44. Since the signing of the ceasefire agreement on 22 February 2002, Tamil paramilitary groups have been disarmed.

Recommendation (xi). Initiate prompt and independent investigations of every instance of alleged torture.

45. Please see the response to recommendation (vi) above.

Recommendation (xii). Grant the Attorney-General authority to initiate investigations into such allegations.

46. Please see the response to recommendation (vi) above.

Recommendation (xiii). Establish an effective methodology for ensuring that directives relating to the prevention of torture are strictly complied with.

The response

47. The directives necessary for the prevention of torture are formulated by the Inter-Ministerial Standing Committee on Human Rights Issues. Such directives are issued by the

Secretary to the Ministry of Defence, the Inspector General of Police and the commanders of the security forces for implementation by the Inspector General of Police and the Working Group on Human Rights Issues.

48. A senior Deputy Inspector General of Police has been entrusted with the responsibility for coordinating all efforts relating to the promotion and protection of human rights and the enforcement of domestic laws relating to alleged violations of human rights in full compliance with the directives relating to the prevention of torture.

49. Similarly, the Commander of the Sri Lanka Army and Navy has appointed a brigadier and a commodore respectively to coordinate all matters relating to human rights. The Sri Lanka air force has given due regard and consideration to the recommendation of the Committee against Torture on the subject of detention (A/53/44, para. 255 (a)).

Recommendation (xiv). Establish a roster of or select officers qualified to act as officer-in-charge of all police stations and/or prison facilities and conduct regular on-the-job awareness courses.

The response

50. The officers-in-charge of police stations and remand prison facilities are selected respectively by the Inspector General of Police and the Commissioner General of Prisons. All such officers receive training at the point of selection and periodically thereafter.

51. The Police Higher Training Institute recently undertook a study of the training modules relating to courses aimed at awareness-raising on human rights and also of changing attitudes of concerned officers. These courses are designed by the Secretary to the Ministry of Defence in consultation with the Sri Lanka Foundation Institute (SLFI), which was established in 1974 as the community education project of the Sri Lanka Foundation (SLF) and the Friedrich-Ebert-Stiftung (FES) under the terms of the Sri Lanka Foundation Law No. 31 of 1973. SLF currently functions under the Presidential Secretariat and is managed by a governing board appointed by Her Excellency the President of Sri Lanka.

Recommendation (xv). Improve detention conditions in keeping with the United Nations Standard Minimum Rules and the Basic Principles for the Treatment of Prisoners.

The response

52. The Ministry of Justice, along with the Prisons Department, has been taking steps to improve conditions in detention centres in accordance with United Nations standards for the treatment of prisoners. The process requires considerable resources and infrastructure improvement.

53. The Prisons Department, which was formally under the Ministry of Justice, is now under the Ministry of Internal Security.

Recommendation (xvi). Conduct the evaluations and studies referred to in the Government's note of 6 November 2000 in a timely manner and report to the Committee on the results.

The response

54. The Permanent Inter-Ministerial Standing Committee and the Inter-Ministerial Working Group on Human Rights Issues will continue to monitor the situation relating to torture in Sri Lanka. The Working Group, fortnightly, takes all steps necessary for the prevention of torture and the enforcement of domestic law where necessary. Progress achieved in this regard is reported on a regular basis to the Committee against Torture.

Conclusion

55. The two-member delegation of the Committee against Torture, at the completion of their inquiries, had concluded that, although a disturbing number of torture and ill-treatment (defined by articles 1 and 16 of the Convention) were actually taking place, it was under extraordinary circumstances as a result of internal armed conflict. Therefore, they could not be termed systematic torture and ill-treatment. The delegation 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 also stated that it found that the Government did not condone torture and was employing various measures to prevent torture and ill-treatment.

56. The Government of Sri Lanka continues to take every possible step to implement all the recommendations made by the two-member delegation of the Committee, taking note of the shortcomings pointed out during the inquiry.

**II. CONCLUSIONS AND OBSERVATIONS OF THE COMMITTEE
AGAINST TORTURE ON THE INITIAL REPORT OF SRI LANKA**

The Committee takes note of:

(a) The serious internal situation faced by the State party, which, however, in no way justifies any violation of the Convention (A/53/44, para. 248);

The response

57. Consistent with the commitment to promote and protect human rights, Sri Lanka has taken all possible measures to give effect to the recommendations made by the Committee against Torture, including national remedies to strengthen the rule of law even under difficult and extraordinary security situations during the last two decades.

(b) A very low per capita income;**The response**

58. As a result of the protracted conflict the economy of Sri Lanka experienced low growth, which contributed to low per capita income. However, since the signing of the memorandum of understanding between the Government of Sri Lanka and LTTE on 22 February 2002, the economy has shown positive growth. The following statistics of the Central Bank of Sri Lanka show that (nominal) per capita income has continued to increase, in rupee terms, from 1997 to 2002.

Year	Per capita income (in rupees)
1990-1997	32 103 (average)
1998	56 760
1999	60 741
2000	68 102
2001	75 133
2002	83 382

(c) The fact that for years in the past police officers appeared to be immune from prosecution.**The response**

59. The Government of Sri Lanka has taken all possible measures to prosecute those who violate the human rights of its citizens, including State agents. In this connection, the Supreme Court exercises the fundamental rights jurisdiction and convicts those State agents who are found guilty of violating human rights and provides relief to the victims. The Attorney-General, who usually represents the State and its officers in proceedings relating to fundamental rights applications, does not, as a matter of policy, appear to defend a State officer against whom there are personal allegations of torture. The Attorney-General has forwarded indictments in 40 cases against 50 police officers under the CAT Act. In addition, over 300 police officers have been charged for offences of abduction and wrongful confinement. Of those, 12 police officers have been convicted and sentenced. Since August 2002, 68 police officers have been prosecuted in 38 cases of torture (see annex 1).

60. In regard to the recent allegations of torture and deaths in police custody, the Ministry of Internal Security has enforced strict rules against those police officers who are held responsible for torture. The Inspector General of Police has recently issued a warning to all officers-in-charge of police stations that they would be held responsible if any suspect dies while in custody and that they should be prepared to face the maximum punishment.

61. Training and awareness-raising programmes on human rights issues for police officers are some of the long-term preventive mechanisms carried out by the Government. A large number of such training programmes have been conducted by the relevant directorates of the three armed forces and the police.

The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances (ibid., para. 249).

The response

62. The Government of Sri Lanka has taken the strongest possible measures to conform with the provisions of the Convention. Steps have been taken to investigate disappearances by the Disappearances Investigations Unit based on the recommendations of the reports of the following commissions:

(a) The commission headed by Manori Kokila Muttettuwagama, concerning the Southern, Western and Sabaragamuwa Provinces;

(b) The commission headed by T. Sundaralingam, concerning the Central, North Central and Uva Provinces;

(c) The second report of the commission headed by Manori Kokila Muttettuwagama concerning the whole island; and

(d) The report of the commission headed by Bandula Kulatunga concerning the North Province.

63. DIU has carried out investigations in 3,615 cases. Of these, 2,462 cases have been completed and the relevant files of 2,095 cases have been forwarded to the Attorney-General. On the advice of the Attorney-General, 1,033 cases have been closed. Investigations with regard to 256 cases could not be continued owing to insufficient evidence.

64. The following statistics relate to the details of the criminal proceedings resulting from the investigations conducted by the Disappearance Investigations Unit.

	High Court	Magistrate's Court	Total
Cases filed	376	56	432
Cases concluded	135	43	178
Pending cases	241	6	247
Accused discharged	123	7	130
Accused convicted	12	-	12

Nearly 300 cases have been filed in the High Court for abduction and unlawful confinement.

The Committee regrets that there were few, if any, prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims (ibid., para. 250).

The response

65. The Prosecution of Torture Perpetrators Unit of the Attorney-General's Department has up to now filed indictments with the High Court regarding 40 cases under Torture Act 22 of 1994 against police officers who perpetrated torture. In several other cases, the Attorney-General has recommended prosecution in Magistrate's Courts under the Penal Code.

66. In cases where there is sufficient evidence to establish torture but no evidence to press criminal charges against the suspect, the Attorney-General had directed the Inspector General of Police to take disciplinary action against the police officers concerned.

67. In terms of section 17 (4) of the Criminal Procedure Code, “the Court may order the person convicted or against whom the Court holds the charges to be proved to pay within such time or in such instalments as the Court may direct, such sum by way of compensation to any person affected by the offence as the Court shall seem fit”. This basically covers, inter alia, compensation for the injury caused by the offence committed. Clearly, “torture cases” instituted for having committed an offence under the CAT Act will be covered by this provision and in such instances, the court can, in addition to the imposition of a term of imprisonment and fine, grant compensation to the victims of torture.

68. Article 126 (4) provides, inter alia, that the Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any fundamental rights petition. The Supreme Court has granted relief of a wide-ranging nature to compensate victims by issuing appropriate directions.

69. Interim relief is often granted and directions are issued in torture cases pending the hearing and determination of the case. In most cases of torture, expert medical evidence plays a vital role in the establishment of the perpetration of torture. In the circumstances, on the motion of the petitioner (alleged victim of torture) the Supreme Court issues Court commissions to judicial medical officers to examine and report to the Court on the condition of the alleged victim of torture.

70. Under the rules of the Supreme Court, the petitioner invoking the fundamental rights jurisdiction is given the opportunity to specify in his petition the relief or redress that is sought.

The Committee notes the absence, until recently, of independent and effective investigation of scores of allegations of disappearances linked with torture (ibid., para. 251).

The response

71. On a directive issued by the President in October 1996, the Secretary to the Ministry of Defence appointed a Board of Investigation (BOI) on 5 November 1996 to inquire into complaints of disappearances in the Jaffna Peninsula. This Board was meant to maintain the impartiality of the investigations as the complaints were made against the military and the police. BOI is meant to act as a deterrent to prevent the escalation of unlawful arrests, which could lead to disappearances.

72. BOI functioned under the chairmanship of an Additional Secretary to the Ministry of Defence. Officers from the three armed forces and the police functioned as members representing the security forces and the police.

73. Thirteen meetings of the Board were convened. As an initial step, the Board decided to collect statistics with respect to persons arrested and detained on detention orders given by respective area commanders and the Deputy Inspector General (DIG) of Police (Northern Range) and who were transferred from Jaffna to remand prisons outside Jaffna, and those who were released after initial investigations.

74. Responding in particular to press/media publicity, the total number of complaints received by the Board was 2,621. Of these, 539 complaints were from aggrieved parties. Upon examination of the complaints, it became evident that there were repetitions of names. After a proper scrutiny the Board arrived at a figure of 765, which is considered to be the actual number of alleged disappearances. After having established the above figure of alleged disappearances, the Board directed that the investigations be continued by the Disappearances Investigation Unit (DIU), a unit established to investigate disappearance cases. The statistics with respect to the current position of investigations are given below:

Total number of complaints	380
Bandula Kulatunga Commission	373
Assistant Superintendent of Police Clement de Silva inquired	4
DIG/CID	1
UNHR	2
Complainants could not be traced	7
Inquiries pending	25
Files forwarded to the Attorney-General	355

According to the DIU, the Attorney-General has advised the DIU to close 208 cases out of the 380 as there was insufficient evidence.

Second stage of the Bandula Kulatunge Commission

Total number of complaints	392
Persons traced	93
Investigations commenced	158
Complainants could not be traced	32
Inquiries pending	110
Files sent to Attorney-General	48
Attorney-General's advice received (to close the files)	18
Pending cases with Attorney-General	30

75. The Ministry of Foreign Affairs forwarded 651 fact sheets prepared by the United Nations Working Group on Enforced or Involuntary Disappearances, through Sri Lanka's Permanent Mission in Geneva, to the Board in October 1997. After due scrutiny, it was revealed that 301 cases had been already investigated by the Board.

76. The Attorney-General's Department has indicted 27 accused in disappearance cases during the period 2001-2003 after the completion of investigations.

The Committee noted that, while the Convention against Torture Act 22 of 1994 covers most of the provisions of the Convention, there were certain significant omissions (ibid., para. 252).

The response

77. The Convention against Torture and Other Cruel, Inhuman and Degrading Punishment Act No. 22 of 1994 is in substantial conformity with the Convention against Torture. The Act defines torture as follows:

“‘Torture’ with its grammatical variations and cognate expressions, means any act which causes severe pain, whether physical or mental, to any other person, being an act which is 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 party; or
- “(iv) Done for any reason based on discrimination, and being in every case, an act which is done by, or other person acting in an official capacity.”

78. Sri Lanka has taken note of the point made that the word “suffering” does not appear in the definition of the term “torture” in section 12 of the Act. It 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. It is also submitted that the judicial interpretation of the term “torture” would take into account any suffering, physical or mental, that any person would be subjected to. Furthermore, the Sri Lanka courts have always maintained that in the interpretation of any 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.

The question of the admissibility under the emergency regulations of confessions is also a matter of concern, as well as the absence of strict legislation governing detention consistent with international norms (ibid., para. 253).

The response

79. A statement given to a police officer by an accused is inadmissible under the normal law of Sri Lanka. Therefore, the question of admissibility of confessions made to the police by an accused person in a criminal trial under the normal law would not arise. However, the Emergency Regulations made under the Public Security Ordinance and the Prevention of Terrorism Act did permit such confessions made to a police officer holding the rank of Assistant Superintendent of Police and above.

80. An accused in such a situation can challenge the voluntary confessions introduced in evidence, and the High Court would make a determination thereon. A court would permit the admission of such confession only when the court was satisfied that such confession or admission was made voluntarily without any inducement, threat or promise. It is further submitted that the emergency was allowed to lapse in July 2001 and has not been reimposed.

81. Following the signing of a ceasefire agreement between the Government of Sri Lanka and the LTTE on 22 February 2002, the Government agreed not to make any arrests and detentions under the Prevention of Terrorism Act. As a result, there were no such arrests for nearly two years. Therefore, the concerns expressed over this matter are no longer valid.

The Committee urges the State party to review Convention against Torture Act 22/94 and other relevant laws in order to ensure complete compliance with the Convention, in particular in respect of: (a) the definition of torture; (b) acts that amount to torture; and (c) extradition, return and expulsion (ibid., para. 254).

The response

82. The Convention against Torture and Other Cruel, Inhuman and Degrading Punishment Act No. 22 of 1994 is in substantial conformity with the Convention against Torture. Sri Lanka has taken note of the point made that the word “suffering” does not appear in the definition of the term “torture” in section 12 of the Act. It 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. It is also submitted that the judicial interpretation of the term “torture” would take into account any suffering, physical or mental, that any person would be subject to. Furthermore, the Sri Lanka courts have increasingly maintained that in the interpretation of any domestic law giving effect to Sri Lanka’s international obligations, the court would necessarily give expression to the provisions of the relevant international legal instrument.

83. Some of the other provisions in the Convention against Torture Act, such as article 3 of the Convention, i.e. not to expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture, could be given effect to under other laws such as the extradition law. Extradition law contains well-recognized restrictions on extradition. Such obligation will also be given effect under the immigration law, as well as through administrative measures.

The Committee furthermore recommends that the State party:

(a) Review the emergency regulations and the Prevention of Terrorism Act as well as rules of practice pertaining to detention to ensure that they conform with the provisions of the Convention (ibid., para. 255);

The response

84. In keeping with the powers vested with the President of Sri Lanka under section 5 of the Public Security Ordinance, Emergency Regulations were proclaimed and published in the *Government Gazette* No. 1130/8 of 3 May 2000 in order to facilitate certain situations confronted by the Government of Sri Lanka at that time.

85. The Emergency Regulations, which continued for several years, lapsed on 4 July 2001 and have had no force in law since then.
86. While these regulations were in force they extended to various areas such as acquisition and reacquisition of property and personal services, control of meetings, processions, publications, firearms, investigations, trials, supervision, search, arrest and detention. As far as the subject “detention” is concerned, subsequent amendments were introduced to regulate the area of detention in the years 2000 and 2001 by declaring identified places as “detention centres”.
87. These amendments also facilitated the use of places other than those declared as “detention centres”, thereby confining detainees only to identified places of detention. This guaranteed not only the protection of detainees but also offered satisfaction and relief to their next of kin.
88. The Prevention of Terrorism Act No. 48 of 1979 was introduced as temporary legislation to prevent acts of terrorism and other unlawful activities owing to the extraordinary security circumstances that prevailed in the country.
89. Consequent to the ceasefire agreement which came into force on 22 February 2002, no arrests or detentions are carried out under the provisions of the Prevention of Terrorism Act (PTA). Arrests are made under due process of law in accordance with the Criminal Procedure Code.
90. One of the principal regulations published in *Gazette* No. 1195/7 of 30 July 2001 is on “places of detention”. These identified places of detention to facilitate the safe detention of detainees and assure their next of kin, as well as the monitoring of such places by the authorities.
91. Furthermore, consequent to the ceasefire agreement between the Government of Sri Lanka and the LTTE, all criminal investigations or arrests are carried out under the normal law of the land, namely the Criminal Procedure Code. Since the signing of the agreement, approximately 1,000 indictments against PTA detainees have been withdrawn. In addition, 338 persons who were in detention pending charges were discharged at the end of 2003. It must be noted that there is no single person detained pending charges. With regard to pending PTA cases, i.e. those filed before the agreement and not withdrawn by the Attorney-General in view of the seriousness of the offence, a special High Court has been established with a view to expediting those trials. There are 62 cases pending in the said High Court as at January 2004.

(b) Ensure that all allegations of torture - past, present and future - are promptly, independently and effectively investigated and the recommendations implemented without any delay;

The response

92. There is already a number of national organs/mechanisms in place to investigate allegations of violations of human rights, including torture.

93. The Human Rights Commission of Sri Lanka functions as a national body with a multifunctional role combined with an investigative, advisory and awareness promotion task. The Inter-Ministerial Working Group on Human Rights Issues, established in 2000, is mandated to monitor action taken by government agencies relating to incidents/allegations of human rights violations. The process of investigations into the allegations of torture was considerably accelerated through these mechanisms. For example, the working group was able to expedite the investigations into 52 cases referred to by the United Nations Special Rapporteur on torture in the year 1999. Investigations into these cases have been completed. With regard to nine of these cases, criminal proceedings are under way.

94. The details of the investigations into torture referred to the Criminal Investigations Department in 1999 are as follows:

Total number of cases referred for investigation	52
Total number of cases where instructions are awaited from the Attorney-General's Department	5
Investigations completed and criminal proceedings not instituted on the Attorney-General's advice	25
Proceedings instituted	9
Police conducting investigations	1
Victims living abroad	2
Victims unable to be traced	7
Disciplinary action instituted	4

95. Moreover, a Special Investigating Unit (SIU) has been established by the Sri Lanka Police to investigate allegations of torture. This Unit is in the process of investigating cases referred to by the Special Rapporteur on torture in the year 2002. The current status of the progress on these cases is as follows.

Number of cases where victims live in the North and East	28
Number of cases under investigation	6
Victims unable to be traced	10
Complaints withdrawn by the victim	3
Victims gone abroad	3
Investigations completed	5
Unable to proceed	1

Number of cases where victims live outside the North/East	30
Investigations completed	12
Victims gone abroad	2
Complaints withdrawn by the victim	3
Victims unable to be traced	1
Number of cases which CID is investigating	10
Number of cases in which information is not sufficient to proceed	2

96. In the event of any problems being encountered during the course of the investigations, the assistance of the Attorney-General's Department is solicited by the Inter-Ministerial Working Group on Human Rights Issues. In such instances, an official from the Attorney-General's Department is assigned to review the action taken and to give his opinion on any additional steps that need to be taken to ensure the successful prosecution of offenders. Furthermore, the Committee closely monitors cases where the police forward notes on investigation (IBE) to the Attorney-General's Department, in order to bring about an expeditious conclusion of the cases.

97. In addition, the National Human Rights Commission, as part of its Strategic Plan for 2003-2006, would give priority to dealing with cases of torture. The Strategic Plan envisages the development of specific programmes in consultation with the relevant governmental authorities as well as NGOs to combat torture through effective monitoring and follow-up action.

98. The following steps have also been taken by the police for capacity-building and creating awareness among police officers in order to prevent instances of torture and developing investigative techniques which are in conformity with international norms:

(a) Human rights is now included as a compulsory subject in the training curricula for recruits to all ranks at the Police College and for aspirants for promotion to higher ranks as most cases of torture are perpetrated in the course of initial questioning of suspects by police officers. Education on respecting, protecting, safeguarding and promoting human rights is given prominence at "In Service" lectures and seminars for all ranks, including human rights awareness lectures coupled with investigational skills-development programmes. The resource personnel who conduct these courses include experienced criminal investigators, commissioners of the National Human Rights Commission, officers of the Attorney-General's Department and foreign experts. Diploma courses on human rights are also conducted and the successful completion of those courses is given due weight at interviews conducted for promotions. This arrangement is to motivate participants to be knowledgeable about higher standards of human rights;

(b) Posters in the Sinhala, Tamil and English languages are exhibited in all police stations setting out the rights of detainees. Lawyers are granted access to suspects for the purpose of safeguarding the human rights of detainees as well as ensuring transparency;

(c) The Police Headquarters has circulated instructions to all police stations which set forth the Principle of Command Responsibility, under which the supervisory officers such as the officers-in-charge of police stations, the assistant superintendents, superintendents and the deputy inspector generals will be held responsible for torture by their subordinates if it had been facilitated owing to lack of supervision or negligence on the part of such superior officer;

(d) The Deputy Inspector General in charge of the Police Range is charged with the responsibility of taking cognizance of complaints of torture made by individuals or reported in the media. He should take relevant action to have those complaints investigated while maintaining the investigation process until such investigations are concluded. The Deputy Inspector General of the Legal Range is responsible for instituting departmental disciplinary proceedings and coordinating with the Attorney-General's Department for prosecution under the Torture Act;

(e) Officers against whom indictments are served under the Torture Act or where a prima facie case is made out are interdicted forthwith;

(f) So far, 43 police officers and armed forces personnel have been indicted in the High Court on charges of torture. Internal disciplinary proceedings have been instituted against 12 officers on their failure to take proper steps to prevent instances of torture.

(c) While continuing to remedy, through compensation, the consequences of torture, give due importance to prompt criminal prosecutions and disciplinary proceedings against culprits;

The response

99. The Government of Sri Lanka is committed to conducting prompt, impartial and comprehensive criminal investigations and domestic inquiries into all complaints and information received relating to alleged perpetration of torture by public officials. The objective of conducting criminal investigations is to consider whether to institute criminal proceedings. The objective of the conduct of domestic inquiries is to consider whether to impose disciplinary action and to identify suitable action for future prevention of such incidents.

100. Based on a decision taken by the Inter-Ministerial Working Group on Human Rights Issues, the Inspector General of Police mandated the CID to handle all criminal investigations into complaints of alleged torture, other than complaints related to allegations against officers of the Department. In addition, investigations into allegations of torture while in police custody have been entrusted to the Special Investigation Unit, which is a specialized branch of the police. These investigations are given priority and handled by a team of police officers adequately trained in conducting such investigations.

101. So far, 43 police officers and armed forces personnel have been indicted in the High Court on charges of torture. Internal disciplinary proceedings have been instituted against 12 officers for their failure to take proper steps to prevent instances of torture.

102. In terms of section 17 (4) of the Criminal Procedure Code, “the Court may order the person convicted or against whom the Court holds the charges to be proved to pay within such time or in such instalments as the Court may direct, such sum by way of compensation to any person affected by the offence as the Court shall seem fit”. This basically covers, inter alia, compensation for the injury caused by the offence committed. Torture cases which have been instituted for an offence under the CAT Act are covered by this provision. In an instance where a suspect is convicted for the perpetration of torture, the court can, in addition to the imposition of a term of imprisonment and fine, grant compensation to the victim of torture.

(d) Take the necessary measures to ensure that justice is not delayed, especially in the cases of trials of people accused of torture;

The response

103. Following the establishment of the Prosecution of Torture Perpetrators Unit in the Attorney-General’s Department and the Torture Investigations Unit in the Criminal

Investigations Department, all allegations of torture are impartially, promptly and comprehensively investigated and, where available material warrants, perpetrators are prosecuted. Action has been taken by the relevant competent authorities in Sri Lanka as regards 110 cases of alleged torture brought to the attention of the Government of Sri Lanka by the United Nations Special Rapporteur on torture. The investigations into those 110 cases have been completed and the Prosecution of Torture Perpetrators Unit has instituted criminal proceedings by, inter alia, forwarding indictments and advising of the need to conduct disciplinary inquiries.

104. Criminal proceedings have been instituted with regard to 21 cases and disciplinary action has been taken with regard to 4 cases. Investigations relating to 27 cases have been concluded and the Attorney-General has decided not to prosecute the accused owing to the absence of material that would warrant the institution of criminal proceedings.

105. Investigating authorities have made every possible endeavour to trace alleged victims, interview them, record their statements and thereafter proceed with the investigations. Investigators have found that seven victims have left the country and are presently residing abroad. On the basis of information received from their next of kin regarding their present whereabouts, the Government has already sought assistance from the respective Sri Lankan missions abroad to contact the victims concerned. It has also been found that 10 victims are reported to be living in areas under LTTE control in the North and East.

106. The issue of contacting alleged victims reported to be living in such areas was discussed at the Inter-Ministerial Working Group on Human Rights Issues. The Working Group decided to seek the assistance of the ICRC to trace the victims concerned. The ICRC has responded by stating that such assistance cannot be provided as it comes outside the ICRC mandate and that it will affect negatively the principle of neutrality in its functions. Under the circumstances, the Working Group has decided to request the relevant government officials in those areas to undertake the task of tracing the victims.

107. In addition, 8 victims of the 110 reported to be living outside those areas have not been traced. In respect of these victims, media advertisements were published seeking information. To this date no information has been received as to their whereabouts.

(e) Strengthen the Human Rights Commission and other mechanisms dealing with torture prevention and investigation and provide them with all the means that are necessary to ensure their impartiality and effectiveness.

The response

108. The Human Rights Commission of Sri Lanka was established under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, and became operational in September 1997. The Commission has a mandate to deal with illegal detention, torture, disappearances and murder and is responsible for educating the public and the armed forces on administrative matters that may

be necessary to prevent violations of human rights and fundamental freedoms. The mandate and powers of the Commission are outlined in sections 10 and 11 of the Act. The functions of the Commission are as follows:

- (a) To inquire into and investigate complaints regarding procedures with a view to ensuring compliance with the provisions of the Constitution relating to fundamental rights and to promote respect for, and observance of, fundamental rights;
- (b) To inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights, and to provide for resolution thereof by conciliation and mediation;
- (c) To advise and assist the Government in formulating legislation and administrative directives and procedures in furtherance of the promotion and protection of fundamental rights;
- (d) To make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
- (e) To make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights; and
- (f) To promote awareness of and provide education in relation to human rights.

109. During the time that the Prevention of Terrorism Act and Emergency Regulations were in operation (before March 2002), the Human Rights Commission of Sri Lanka had been specifically vested with the power to monitor the welfare of detained persons by regular inspection of their places of detention. In order to facilitate this function, all arrests and detentions under the Emergency Regulations and the Prevention of Terrorism Act had to be reported to the Commission within 48 hours. Any wilful failure to report an arrest and detention, if found, will be subjected to punishment under the Act. This makes the monitoring of the welfare of detainees a part of the law of the land.

110. According to the National Strategic Plan of Action (2003-2006) of the Commission, one of the major activities envisaged for the next three years is the development of a specific programme to combat torture through effective monitoring and follow-up. This will be done through a special programme which will be formulated in consultation with relevant governmental authorities and NGOs. The Strategic Plan of Action (2003-2006) is now being implemented (annex 3).

The Committee urges the State party to declare in favour of articles 21 and 22 of the Convention (ibid., para. 256).

The response

111. The Government of Sri Lanka, has no objection in principle to making a declaration in terms of articles 21 and 22 of the Convention. This is under active consideration. The Government of Sri Lanka has already accepted similar obligations under the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

List of annexes

1. Cases of Torture referred to SIU from August 2002.
2. Sixteen recommendations contained in communication dated 24 November 2000, presented to the Government of Sri Lanka by the Committee against Torture.
3. National Strategic Plan of Action 2003-2006 of National Human Rights Commission of Sri Lanka.
