



**ALTERNATIVE REPORT  
TO THE COMMITTEE AGAINST TORTURE  
IN CONNECTION WITH THE THIRD PERIODIC REPORT  
OF SRI LANKA**

London / Hong Kong / Copenhagen / Paris

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## 1. Introduction

1. This joint report is submitted to the Committee against Torture (“the Committee”) with the intention to provide it with additional information in response to the Committee’s list of issues to be considered during the examination of the combined third and fourth periodic reports of Sri Lanka (“the List of Issues”).<sup>1</sup>
2. The co-signatories of this report, the Redress Trust (“REDRESS”), the Asian Legal Resource Centre (“ALRC”), the Rehabilitation and Research Centre for Torture Victims (“RCT”) and Action by Christians for the Abolition of Torture (“ACAT France”) are non-governmental organisations which are active in the field of international human rights protection in Sri Lanka, based in London, Hong Kong, Copenhagen and Paris, respectively.
3. REDRESS is a human rights organisation that helps torture survivors obtain justice and reparation. REDRESS works with survivors to help them restore their dignity and to make torturers accountable. REDRESS commented on Sri Lanka’s second periodic report submitted under article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”), which was considered by the Committee at its 35<sup>th</sup> session in November 2005.<sup>2</sup>
4. ALRC seeks to promote greater awareness and realisation of human rights in Asia and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations. Asian Human Rights Commission (AHRC, a sister organisation of ALRC) has made available to the Committee its comprehensive report on police torture cases in Sri Lanka in 1998-2011<sup>3</sup> which contains meticulously gathered data on hundreds of instances of torture and related human rights violations committed by the Sri-Lankan law-enforcement agencies in different contexts throughout those years. It has been reporting on the human rights situation in Sri Lanka since its foundation in 1986.
5. RCT is a health and human rights organisation that works for the rehabilitation of torture victims and the prevention of torture in the global South in partnership with local civil society organisations. Since the mid-1990s RCT has been working with partners in Sri Lanka to achieve these aims, in recent years with the specific objective of preventing torture within the police.
6. ACAT France is a human rights organisation fighting against torture since 1974 by documenting this practice throughout the world and raising awareness among the public opinion. It also assists victims of torture seeking asylum in France and lodges complaints and communications before the international courts and UN mechanisms.

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<sup>1</sup> UN Doc. CAT/C/LKA/Q/3-4 (generally distributed by the secretariat on 24 June 2011).

<sup>2</sup> <http://www.redress.org/downloads/publications/SubmissionSL31Oct2005.pdf>.

<sup>3</sup> <http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf> (hereinafter - “the AHRC 1998-2011 Report”).

7. REDRESS, ALRC, AHRC, RCT and ACAT France, jointly and separately, have assisted and are continuing to assist individual victims of torture in Sri Lanka in bringing their grievances to the attention of the Human Rights Committee by way of individual communications lodged under article 2 of the First Optional Protocol to the International Covenant on Civil and Political Rights, and in preventing torture.
8. This report seeks to identify the systemic problems in legislation and practice in Sri Lanka in response to the critical points highlighted and the questions posed by the Committee in the List of Issues and Conclusions and Recommendations on Sri Lanka's second (previous) periodic report.<sup>4</sup>

## **2. Definitional aspects (articles 1 and 4)**

9. In respect of the point raised by the Committee concerning definition of torture under the Convention against Torture Act No. 22 of 1994,<sup>5</sup> it is to be observed that three convictions delivered by the High Court so far<sup>6</sup> all concerned actual physical pain caused to the victims.
10. There is no separate criminal offence of enforced disappearance in Sri Lanka. It follows that enforced disappearance is prosecutable under the relevant descriptions of ordinary crimes leading to inadequacy of sentences in the case of conviction.

## **3. Inadequate legislative, administrative, judicial or other measures taken to prevent acts of torture in territory under Sri Lanka's jurisdiction (article 2)**

### **3.1. Custodial safeguards**

#### **(i) 2007 Presidential Directions and detention practice**

11. In its report Sri Lanka referred to the July 2007 Presidential Directions that purportedly detail steps that should be taken to guarantee rights of persons in police custody.<sup>7</sup> The Committee identified a number of questions in this respect,<sup>8</sup> in particular, whether various custodial safeguards (right to be informed of the reason for arrest, the access to a lawyer of their choice, the right to be assisted by

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<sup>4</sup> UN Doc. CAT/C/LKA/CO/2 (generally distributed by the secretariat on 15 December 2005) ("the 2005 Conclusions and Recommendations").

<sup>5</sup> List of Issues, at para. 1.

<sup>6</sup> *Republic of Sri Lanka v. Madiliyawatte Jayalathge Thilakarathna Jayalath*, HC 9775/99 Colombo, Judgment of 19 January 2004; *Republic of Sri Lanka v. Edirisinghe*, HC 1392/2003 Colombo, Judgment of 20 August 2004; *Republic of Sri Lanka v. Selvin Selle and Another*, HC 966/2002 Colombo, Judgment of 20 July 2007.

<sup>7</sup> List of Issues, at para. 2.

<sup>8</sup> *Ibid.*

an interpreter, right to access a doctor and to receive an independent medical examination, right to *habeas corpus*) are effectively guaranteed in practice.

12. The Presidential Directions are not legally binding and cannot replace the formal legislative pronouncements. Parliament is vested with the exclusive power to make laws in Sri Lanka.<sup>9</sup> The Presidential Directions are therefore of no relevance to the judiciary, which is supposed to act pursuant to the laws only and with no regard to any directions from any person except a superior court or tribunal or other person entitled under law to direct or supervise a judge or judicial officer.<sup>10</sup> As there is no provision in law entitling the President to issue directions of the nature in question, their legal basis and effect are unclear. In any event, the practical effect of the Presidential Directions is negligible. Reports testify to widespread and systematic non-compliance with the most fundamental legal safeguards meant to protect detainees.<sup>11</sup>
13. In response to the question raised by the Committee concerning the observance of the safeguards aimed at the prevention of torture in custody,<sup>12</sup> it should be observed that the individuals who are deprived of their liberty by police are arbitrarily denied information regarding the reasons for their arrest, access to a lawyer, and the possibility to inform a family member of their arrest. This widespread and systematic practice is illustrated, among many other reported examples, by the facts of the case of Mohammed Amir Sultan who was illegally arrested and subjected to torture by the police officers attached to the Katupotha Police Station in October 2010.<sup>13</sup>

**(ii) Effective access to a lawyer of one's choice**

14. In response to the question raised by the Committee concerning treatment of lawyers who represent individuals alleging human rights abuses,<sup>14</sup> it should be noted that there have been a number of incidents in which arrested or detained persons were denied effective access to lawyers of their choice, especially at the most crucial initial stages of their arrest and first interrogations by the police.<sup>15</sup> Intimidation of lawyers themselves who appear for clients in cases where police officers are involved is also evident. There are reported incidents of the assaults on lawyers who have visited police stations together with their clients; for example, it was reported that Mr D.W.C. Mohotti, attorney-at-law, while accompanying his client, was assaulted by police officers at the Bambalapitiya Police Station on 24 October 2008, and had his identity card taken away from

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<sup>9</sup> Constitution of Sri Lanka, section 75.

<sup>10</sup> *Ibid.*, section 111C.

<sup>11</sup> See AHRC 1998-2011 Report, and Human Rights Watch (2008), *Recurring Nightmare*, available at: <http://www.hrw.org/reports/2008/08/27/recurring-nightmare>.

<sup>12</sup> List of Issues, at para. 2(a).

<sup>13</sup> AHRC 1998-2011 Report, at 390-391.

<sup>14</sup> List of Issues, at para. 3.

<sup>15</sup> AHRC 1998-2011 Report, at 263, 268 and 271, note also the case of Mr Jayaprakash Sittampalam Tissainayagam, a freelance columnist, who was detained by the Terrorism Investigation Department on 7 March 2008 and was denied access to a lawyer until 21 March 2008.

him.<sup>16</sup> This incident illustrates a widespread lack of respect of lawyers and their role in the criminal justice process and a failure to ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment and improper interference.<sup>17</sup> Conversely, reports point to a widespread practice of cultivating lawyers who are inclined to take the side of police.<sup>18</sup> Those incidents indirectly lead to the effective denial of a right to qualified legal assistance of those in police custody.

**(iii) Effective access to independent medical examination**

15. In response to the Committee's question on the medical examination of those in custody,<sup>19</sup> it should be observed that the judicial medical officers responsible for medical examinations are formally independent of police and report to the health care authorities. However, in practice they frequently find themselves subject to considerable police influence. This concerns, in particular, the police practices of refusing to leave a room or a place when judicial medical officers examine individuals who may have suffered from torture and ill-treatment, and write their reports. For example, a judicial medical officer was forced to examine Mr A.A. Priyantha Kumara, who was violently assaulted by police in Dodangoda on 12 February 2007, in a hospital in the presence of a police officer from the same police post to which the alleged perpetrators belonged.<sup>20</sup>
16. It is also common practice for judicial medical officers not to fill in the sections provided for their comments in the medico-legal reports. This section is intended to provide the judicial medical officer with the opportunity to give his or her expert opinion on the degree to which medical findings on the alleged victim correlate with his or her allegation of torture or ill-treatment. The judicial medical officers rarely do so in practice, although, it is their responsibility to state conclusively whether the injuries are consistent or inconsistent with the allegations of torture or ill-treatment. There are also reported cases of judicial medical officers' complicity in covering up evidence of torture.<sup>21</sup>
17. Judicial medical officers are reportedly reluctant to send police guards away, out of fear of a detainee escaping because there is an acute shortage of safe rooms available for medical examinations. Moreover, when a judicial medical officer reports on injuries, a copy of his or her report is mandatorily sent to the police. As most torture allegations are linked to police conduct, it effectively gives an early

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<sup>16</sup> See: Pinto-Jayawardena K. *The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka* (Copenhagen, 2009), at 124-125.

<sup>17</sup> Basic Principles on the Role of Lawyers, adopted by the 8<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August – 7 September 1990), at para. 16 (a).

<sup>18</sup> AHRC 1998-2011 Report, at 91.

<sup>19</sup> List of Issues, at para. 2 (b).

<sup>20</sup> AHRC 1998-2011 Report, at 197.

<sup>21</sup> It was reported that the disciplinary proceedings were brought by the Sri Lankan Medical Council against Dr Piyasoma, the then judicial medical officer in Kalutara, who was suspended for three years as a result of medical negligence regarding the cruel and inhuman treatment of a suspect by the Paiyagala Police.

warning to the culprits, allowing them to tamper with evidence and intimidate victims and witnesses, where applicable. It is advisable to change this practice so that the copy of the report of the judicial medical officer is sent to the magistrate in charge of the inquiry rather than to the police. While the introduction of judicial medical officers is a welcome step, more needs to be done in order to ensure their operational independence.

#### **(iv) Effective access to interpretation and translation**

18. In response to the point raised by the Committee concerning alleged shortages of Tamil-speaking court-appointed interpreters,<sup>22</sup> it is to be observed that there are shortcomings in access to Tamil-Sinhala judicial translators and interpreters at all stages of the criminal proceedings, from recording a complaint by the police to the prosecution in court. Apart from a separate violation of the defendants' fair trial rights, this situation contributes significantly to the vulnerability of the Tamil detainees.
19. There is a significant shortage of competent Tamil-speaking judicial translators and interpreters; for example, there are no Tamil-Sinhala judicial interpreters attached to the High Courts of Jaffna, Kegall and Kurunegala, and no Tamil-Sinhala interpreters and translators attached to the police stations.
20. There are few Tamil-speaking police officers, prosecutors and judges, which adds to the overall situation of heightened vulnerability of Tamil detainees.

### **3.2. The role of institutions in the prevention of torture**

#### **(i) Role and status of the National Human Rights Commission**

21. The Committee invited information on the role of various bodies including the National Human Rights Commission.<sup>23</sup> Although the National Human Rights Commission has statutory powers to monitor the welfare and respect for the rights of detainees, its powers of inspection are weak and its alarming unwillingness to do so is a cause of great disappointment and enormous concern.<sup>24</sup> For example, the National Human Rights Commission now routinely fails to provide the victim or his or her counsel with information concerning the nature of steps taken by the Commission in response to the respective complaint. Further, the National Human Rights Commission does not proceed if the victim has filed a fundamental rights' petition with the Supreme Court (the action he is obliged to take pursuant to the Supreme Court Rules within thirty days of the alleged violation). One of the

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<sup>22</sup> List of Issues, at para. 2(a).

<sup>23</sup> List of Issues, at paras. 2 and 6.

<sup>24</sup> See, for more details and empirical data: Skanthakumar B. "Window-Dressing"? The National Human Rights Commission of Sri Lanka (Colombo, 2009).

leading Sri Lankan legal commentators recently wrote of “[t]he severe decrease of constitutional and statutory legitimacy”<sup>25</sup> of the National Human Rights Commission witnessed now.

22. The Committee invited information on the National Human Rights Commission’s compliance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.<sup>26</sup> The National Human Rights Commission’s failure to comply with the Paris Principles was confirmed by the ICC Subcommittee on Accreditation which downgraded the Sri Lankan National Human Rights Commission from a status “A” to a status “B” national human rights institution.<sup>27</sup> In its report the Subcommittee expressed concern about the independence of the Commissioners and questioned whether the actual practice of the National Human Rights Commission remained balanced, objective and non-political particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006. The Subcommittee also noted that the National Human Rights Commission had failed to issue annual reports on human rights as required by the Paris Principles. The independence of the National Human Rights Commission suffered further setback in 2010 with the adoption of the 18<sup>th</sup> amendment to the 1978 Constitution of Sri Lanka. It should be noted, as a general remark, that the national human rights institutions are complementary mechanisms which are not substitute for the general criminal justice system.

**(ii) Role and status of the judiciary**

23. The Committee invited information on the measures in place to fully ensure the independence of the Sri Lankan judiciary in conformity with the Basic Principles on the Independence of the Judiciary, in particular, in so far as the procedure for the appointment of judges, the duration of their mandate, the rules governing their removability and the ways in which they may be dismissed from office are concerned.<sup>28</sup> The lack of active judicial control over the lawfulness of detention and detainees’ well-being including their exposure to torture is partly explained by the lack of judges’ institutional independence from other branches of the Sri Lankan Government. In this regard, it has been recognised by the Supreme Court of Sri Lanka that “the process of impeachment of superior court Judges can be held like a sword of [D]emocles over incumbent Judges who would be placed in peril of an inquiry to be held within Parliament by a Panel consisting of Members of Parliament”.<sup>29</sup> With adoption of the 18<sup>th</sup> amendment to the Constitution, the

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<sup>25</sup> Pinto-Jayawardena K. *The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka* (Copenhagen, 2009), at 193.

<sup>26</sup> List of Issues, at para. 6.

<sup>27</sup> Asian NGO Network on National Human Rights Institutions. *Report on the Performance and Establishment of National Human Rights Institutions in Asia* (Bangkok, 2008), at 176.

<sup>28</sup> List of Issues, at para. 7.

<sup>29</sup> *In the matter of a Reference under Article 129(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka* (No. 01/08), Judgment of 17 March 2008 delivered by Chief Justice Silva and joined by Justices Amaratunga, Marsoof, Somawansa and Balapatabendi.

appointment of the Chief Justice and judges of the Supreme Court and the Court of Appeals no longer need to be approved by the Constitutional Council.

24. Magistrates rarely visit remand prisons, although they are duty bound to do so.<sup>30</sup> Each magistrate regularly submits statistical data about his or her activities, including the number of cases disposed of and hearings conducted. The relevant forms do not require magistrates to report on how many visits to the remand prisons within the respective judicial circuit he or she has conducted. As a result of this lack of transparency and control, independent judicial oversight of places of detention has become ineffective if not inoperative altogether.
25. The remedy of *habeas corpus* is equally ineffective. A recently conducted comprehensive study of 880 judgments of various courts in Sri Lanka on *habeas corpus* applications demonstrates that almost all of them have now been rejected.<sup>31</sup>
26. Another systemic problem capable of facilitating ill-treatment in the custodial context is excessive use of bail and keeping of suspects in pre-trial detention for prolonged periods of time, often under falsified charges.

### **3.3. Situation of individuals detained under the Emergency Regulations**

27. The Committee requested information on the State party's compliance with its obligations under article 2 of the Convention with specific emphasis on the information about the fate of persons detained under the Emergency Regulations and the Prevention of Terrorism Act.<sup>32</sup> The above-mentioned fundamental safeguards<sup>33</sup> are absent in respect of the persons arrested under the Emergency Regulations and the Prevention of Terrorism Act. Although the Emergency Regulations were allowed to lapse on 31 August 2011, there is no intention of the Government to repeal the Prevention of Terrorism Act. Instead, the Attorney General recently announced the Government's plans to introduce new regulations under the Prevention of Terrorism Act.<sup>34</sup> The situation of total arbitrariness in which those detainees find themselves is exacerbated by the fact that they are being held in undisclosed and remote locations in the Northern Province. In particular, such makeshift detention centres are frequently disguised as

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<sup>30</sup> Release of Remand Prisoners Act No. 8 of 1991, section 5.

<sup>31</sup> Pinto-Jayawardena K., Almeida Guneratne J. Liberty Rights at Stake: the Virtual Eclipse of the *Habeas Corpus* Remedy in Respect of Enforced Disappearances in Sri Lanka (Colombo, 2010).

<sup>32</sup> List of Issues, at para. 4.

<sup>33</sup> See para. 11 above, and List of Issues, at para. 2.

<sup>34</sup> See report "Three New Regulations under the Prevention of Terrorism Act – Attorney General" published on 31 August 2011 in *Sri Lanka Mirror*, available at: <http://www.srilankamirror.com/english/the-news/6769-3-new-regulations-to-pta-ag>.

orphanages, children's centres, welfare centres or medical institutions.<sup>35</sup> In this situation there is no realistic opportunity for independent monitoring of those places of detention, for example, by magistrates even if they were prepared, in the circumstances, to exercise their right to do so, as they will not be able to locate the relevant *de facto* detention centre.

28. One of the recent examples of mass detention under the Emergency Regulations took place in the village of Navanthurai, Jaffna District, Northern Province, on 23 August 2011.<sup>36</sup> In a late-night operation conducted by the Sri Lankan Army more than one hundred villagers were arrested and subsequently detained. They were severely beaten up with rifle butts and iron rods and dragged to the premises of the army detachment not far from their village. Women and children who tried to defend their husbands and fathers were also beaten. Those injured were initially not provided with medical treatment. The Assistant Superintendent of Police for the Jaffna District who appeared in person in the subsequent proceedings before the Magistrate accused the villagers of "unlawful gathering", thus suggesting that the latter had been detained by the Army on the basis of the provisions of the Emergency Regulations.

### **3.4. Prevention of violence against women including sexual violence**

29. The Committee specifically requested information on the prevention of violence against women including domestic and sexual violence.<sup>37</sup> The number of the reported cases of violence against women, including sexual violence, continues to grow while the response on the part of police and other State authorities to date remains unsatisfactory. AHRC received information on the rape of a 9-year old daughter of Mr Mohammad Mulafar and Ms Siththi Farina in October 2010.<sup>38</sup> The results of the examination of the victim by a judicial medical officer, as well as her testimony, initially prompted the police to act. However, because the suspect was an influential and wealthy businessman, the officers of the Peradeniya Police Station failed to take him in custody but instead pleaded with the victim's parents suggesting out-of-court settlement.<sup>39</sup> When the rape charges were finally brought against the man in question, the brother-in-law of the suspect threatened to kill the parents of the girl, and the police failed to act in order to protect them.<sup>40</sup> It is highly probable that the case will end in a withdrawal of charges against the

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<sup>35</sup> See, in particular, AHRC urgent appeal "Disabled man illegally and arbitrarily detained for over two years" of 16 August 2011, AHRC-UAC-143-2011, available at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-143-2011>.

<sup>36</sup> For details see AHRC urgent appeal "Innocent villagers illegally arrested, tortured and charged with fabricated charges" of 26 August 2011, AHRC-UAC-148-2011, available at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-148-2011>.

<sup>37</sup> List of Issues, at paras. 5 and 9.

<sup>38</sup> AHRC 1998-2011 Report, at 407.

<sup>39</sup> *Ibid.*, at 408.

<sup>40</sup> *Ibid.*

wealthy and influential accused and the discontinuation of the pertinent proceedings.

30. In addition to a failure to adequately investigate and prosecute cases of sexual violence, police personnel are reportedly frequently themselves involved in the crimes in question. This is illustrated by the case of Ms Padmini Sriyalatha. On 7 October 2006, the victim was attacked in a public toilet by a drunken police constable attached to the Ratnapura Police Station, whom she was able to identify. The police constable attempted to sexually assault her and inflicted several bodily injuries. When confronted by the victim's husband, the police constable threatened him with reprisals. In spite of numerous complaints, the identification of the assailant by her victim, and medically confirmed injuries, no criminal or disciplinary action has yet been taken against the alleged perpetrator.<sup>41</sup>

### **3.5. Absence of the legal concept of command responsibility**

31. In response to the question raised by the Committee,<sup>42</sup> it should be noted that the concept of command responsibility is not incorporated into Sri Lankan law, including the Penal Code and the CAT Act.

## **4. Lack of sensitisation and human rights education among public officials (article 10)**

32. The Committee requested information on the human rights training provided for law-enforcement and other public officials.<sup>43</sup> The co-signatories are not aware of any verifiable information concerning the implementation of the so-called National Action Plan for the Promotion and Protection of Human Rights in Sri Lanka. It is evident, however, that the Government of Sri Lanka fails to promote human rights education and awareness. One of the leading domestic legal commentators noted that “the lack of skilled and trained regular police personnel remains a fundamental problem”.<sup>44</sup>
33. Moreover, the Government attempts to discredit the very idea of human rights. The authorities frequently refer to human rights as a “western concept” that is detrimental to national integrity and sovereignty. In an interview given recently to a French journalist, Mr Mahinda Rajapakse, President of Sri Lanka, was reported as referring to the “so-called activists and defenders of human rights” as “getting benefits thanks to that”.<sup>45</sup>

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<sup>41</sup> AHRC 1998-2011 Report, at 183-184.

<sup>42</sup> List of Issues, at para. 8.

<sup>43</sup> List of Issues, at para. 14.

<sup>44</sup> Pinto-Jayawardena K. *The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka* (Copenhagen, 2009), at 175.

<sup>45</sup> Quoted in “MR Says Western Missions Have Rejected Visas to Ministers”, published in *The Sunday Leader* on 13 March 2011, <http://www.thesundayleader.lk/2011/03/13/mr-says-western-missions-have-rejected-visas-to-ministers/>.

34. The Government characterised the report of the UN Panel of Experts on the Accountability in Sri Lanka, referred to on several occasions throughout the List of Issues, as “illegal”, “biased”, “baseless” and “unilateral”.<sup>46</sup>
35. The totality of the Government’s comments on human rights and the individuals and bodies seeking to promote and protect human rights results in the cultivation of a negative perception of human rights and reinforce a climate of impunity.
36. Such an attitude openly expressed at the highest levels of administration seemingly contributes to an indifferent attitude towards human rights education, especially among law-enforcement personnel, in violation of article 10 of the Convention.

## **5. Failure to promptly and impartially examine and investigate credible torture complaints and ensure protection of victims and witnesses (articles 12 and 13)**

37. One of the most crucial issues severely undermining Sri Lanka’s compliance with its obligations under the Convention is its systemic failure to promptly and impartially examine credible allegations of torture and other forms of cruel, inhuman or degrading treatment or punishment. It concerns, in particular, the failure to conduct Convention-compliant criminal investigations into such allegations in respect of torture and ill-treatment, particularly enforced disappearances, committed during the final phase of the internal armed conflict in 2009 and in respect of torture and ill-treatment committed outside of that context, that it so-called “routine police torture”.

### **5.1. Torture as a criminal offence and its interpretation by Sri Lanka’s judiciary**

38. The statutory minimal sentence of seven years’ imprisonment for torture is no longer applicable following a judgment handed down by the Supreme Court in 2008.<sup>47</sup> The Supreme Court found that the statutory minimal mandatory sentence was unconstitutional and that, therefore, “the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence”.<sup>48</sup> This *dictum* is now used in other cases, including cases where allegations linked with torture are levelled against the accused. This case-law development has led to the possibility

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<sup>46</sup> See motion for the resolution of the European Parliament on Sri Lanka in follow-up to the UN Report submitted in 10 May 2011, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0326&language=ES>, at preambular para. “I”.

<sup>47</sup> *In the matter of a Reference in terms of Article 125(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka* (No. 03/08), Judgment of 15 October 2008 delivered by Justice Ratnayake and joined by Chief Justice Silva and Justice Amaratunga.

<sup>48</sup> *Ibid.*, at 8 (emphasis is added).

of imposing minimal or even conditional custodial sentences for the torture-related offences. This is not in line with the Committee's understanding that by defining the offence of torture under article 1 of the Convention as distinct from common assault or other crimes States Parties should also ensure "appropriate punishment that takes into account the gravity of the offence".<sup>49</sup> It seems, on the basis of available information, that the courts in Sri Lanka more frequently give suspended sentences for crimes,<sup>50</sup> including such crimes as murder and rape. It seems that this policy is motivated by the desire to get the accused to agree to a guilty plea and not to contest charges and therefore to avoid trials, as the criminal justice system is generally overburdened. To take one example, one magistrate has recently disposed of 206 cases in a single day.<sup>51</sup>

## **5.2. Investigation of allegations of torture and ill-treatment**

### **(i) Independence**

39. The lack of independence and impartiality of investigations into allegations of torture and ill-treatment, particularly by the police, is a central factor that perpetuates the climate of impunity. The practice of investigations conducted by the special investigation units, which allowed for some degree of impartiality, has in practice been largely discontinued. The Police Complaints Commission delegated its statutory authority to hold inquiries into allegations of police misconduct back to the police. It follows that the allegations of torture committed by police are investigated by the police themselves, often by the very police officers implicated or their colleagues. It goes without saying that such investigations are defective from the very outset. For example, it was the officers of the Moragahahena Police Station who were dispatched to inquire into the allegations of ill-treatment of Mr T. Sunil Hemachandra, including taking testimonies of the victim, his co-detainee and his relatives, although the alleged ill-treatment had taken place at the premises of the same police station and in the police vehicle driven by the officers of the same police station.<sup>52</sup>
40. As the bulk of torture allegations are linked with routine police activities, it is indispensable to follow-up on the Committee's recommendation on the creation of an independent body with a view to ensuring prompt, impartial and exhaustive investigations into all allegations of torture, ill-treatment and enforced

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<sup>49</sup> Committee against Torture, General Comment No. 2: *Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2 (24 January 2008), at para. 11.

<sup>50</sup> Sri Lanka Code of Criminal Procedure, as amended by the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999, section 303.

<sup>51</sup> As reported in "Judges Trying to Become Joker Superstars: Sri Lanka will soon become Kolamka?" published in *LankaNewspapers* on 8 August 2011, [http://www.lankanewspapers.com/news/2011/8/69633\\_space.html](http://www.lankanewspapers.com/news/2011/8/69633_space.html).

<sup>52</sup> See the communication lodged on behalf of the victim's next-of-kin with the Human Rights Committee in July 2011, <http://www.redress.org/downloads/HRCCommComplaintGuneththige.pdf>.

disappearances committed by law-enforcement officials.<sup>53</sup> So far, no steps have been taken by the authorities to establish such a body.

41. The courts fail to exercise independent judicial control by ordering investigations into credible allegations of torture. By way of an illustration, the Supreme Court of Sri Lanka, when seized of the fundamental rights' petition lodged by the relatives of Mr T. Sunil Hemachandra,<sup>54</sup> did not order an independent investigation into the circumstances of the facts complained of, but instead entirely relied on the account provided by police rejecting the petitioners' version of events as not "supported by contemporaneous evidence".<sup>55</sup> This approach, which can only be described as abdication by the judiciary of its constitutional responsibilities, is entirely at odds with the applicable international standards which do not permit the transfer of the burden of proof in its entirety onto the torture survivor and his or her next-of-kin, but require that the necessary steps be taken by the authorities which were given notice of the credible torture allegations, including the judicial authorities. As it has recently been emphasised by the Human Rights Committee, it is up to the State to demonstrate that its authorities did address the torture allegations advanced by the torture survivors and/or their next-of-kin expeditiously and adequately, including in the context of the relevant judicial proceedings.<sup>56</sup>
42. The role of the Attorney General has also fundamentally changed. Having previously been an independent legal officer, the Attorney General now defends the Government and State agents, even those who are accused of torture, in particular, in fundamental rights' proceedings before the Supreme Court. Defending them in the fundamental rights' proceedings, the Attorney General is then responsible for prosecuting them in criminal proceedings. This creates an obvious conflict of interests. When, against all odds, a criminal case with torture charges makes its way to court, the Attorney General can withdraw it at his own discretion. Although under domestic law the Attorney General's decision to withdraw a case in such circumstances is not binding upon the court and is ultimately within the judge's discretion, in practice the judicial proceedings are almost invariably discontinued following such a withdrawal. The change in the Attorney General's role appears to those observing the situation to be associated with the wish of the Government of Sri Lanka to have as few indictments in respect of such crimes as torture as possible as the number of such indictments is used as an indicator of overall human rights situation. The Attorney General is therefore expected to play a role in giving "a good image" to the nation.
43. In those isolated cases where judges embark on an independent examination of torture allegations brought before them, they are almost immediately rebuked by

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<sup>53</sup> 2005 Conclusions and Recommendations, at para. 12 (a), and List of Issues, at para. 28.

<sup>54</sup> *Guneththige Misilin Nona and Jayalatha v. Muthubanda, Maheepala, Wijemanna, Inspector General of Police and the Attorney General* (No. 429/2003), Judgment of 6 August 2010 delivered by Justice Shiranee Tilakawardane and joined by Justices Sripavan and Imam.

<sup>55</sup> *Ibid.*, at 16.

<sup>56</sup> *Akhadov v. Kyrgyzstan*, Human Rights Committee, Communication No. 1503/2006, UN Doc. CCPR/C/101/D/1503/2006 (25 March 2011), at para. 7.3.

the higher courts. The Court of Appeal, presided over by the President of that Court, recently held that the decision of a magistrate to proceed with a non-summary inquiry into ill-treatment allegedly committed by police officers leading to the victim's death was taken in contravention of the Criminal Procedure Code and halted the inquiry.<sup>57</sup> The Court of Appeal also ordered the unconditional release of the police officers allegedly involved,<sup>58</sup> whose arrest had been ordered by the magistrate. This decision proves the trend of the further weakening of the role of the judiciary which is *de facto* deprived of its independent role in verification and investigation of credible allegations of torture, cruel, inhuman and degrading treatment or punishment. Taking into account the above-mentioned loss of legitimacy and ineffectiveness displayed by the National Human Rights Commission, the police have effectively become the only governmental agency in charge of investigating torture allegations. However, it is most frequently the police officers who are reportedly involved in torturing the detainees. The alleged perpetrators are not reassigned or suspended from service pending investigation. These factors, in combination, have resulted in a cycle of impunity evidenced by a negligible number of successful investigations and prosecutions. In fact, not more than a half-dozen of such prosecutions took place under the CAT Act since its entry into force. Basil Fernando, of AHRC, notes the following: "These days, anything and everything is possible within that system, however illegal. Whether police officers engage in drug dealing and protecting the drug dealers; whether they use their powers of arrest and detention to obtain bribes for themselves; whether they help politicians by putting their opponents behind bars under false charges, using anti-terrorism laws and anti-drug laws; or engage in any other type of illegality, there is hardly anything the system can do to stop it. Cosmetic measures such as arresting a few low-ranking officers do not make any difference".<sup>59</sup>

44. One of the measures which is critically required to address this systemic problem is the full implementation of the earlier recommendation of the Committee to set up an independent agency charged with investigating credible allegations of torture and ill-treatment committed by the members of the law-enforcement personnel in Sri Lanka, primarily by police officers. So far, no steps have been taken by the authorities in order to have such agency established.
45. In order to implement this Committee's recommendation, one possible institutional solution towards ensuring the independence of investigations is to enhance the role of magistrates in supervising police investigations. The Supreme Court of India opined the following in 2007: "In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done

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<sup>57</sup> *Wickremasinghage Francis Kulasooriya and Devamuni Lakshman De Silva v. OIC Kirindiwela Police Station, the Attorney General, Magistrate of Pugoda and Amarasinghe Arachchige Simon Amarasinghe* (Writ No. 338/2011), Judgment of 3 June 2011 delivered by Presiding Justice Sathya Hettige, President of the Court of Appeal, and joined by Justice Upaly Abeyrathne, Judge at the Court of Appeal.

<sup>58</sup> *Ibid.*, at 8.

<sup>59</sup> Fernando B. Sri Lanka: Impunity, Criminal Justice and Human Rights (Hong Kong, 2010), at 51-52.

it satisfactorily, he [or she] can issue a direction to the police to do the investigation properly, and can monitor the same... The power in the Magistrate to order further investigation... is an independent power, and does not affect the power of the investigating officer to further investigate the case... Hence the Magistrate can order re-opening of the investigation even after the police submits the final report”.<sup>60</sup> This pronouncement led to a new practice in some Indian States, including Kerala, in recent years. According to this new practice which was affirmed by the High Court of Kerala, the investigation into the most sensitive cases is conducted under close supervision of the judicial magistrate akin to an “inquisitorial judge” or “*juge d’instruction*” in some Romano-German legal systems, such as France. Such judicial control – if it is exercised thoroughly and independently – is capable of ensuring an effective investigation in compliance with the strict standards set by the Convention.

## (ii) Promptness

46. A further systemic factor of long-standing concern is the exorbitant delays in the investigation and judicial proceedings concerning torture and other forms of ill-treatment. This critical issue is well illustrated by the case of Mr Lalith Rajapakse.<sup>61</sup> In that case, the Human Rights Committee identified the following instances of impermissible delays: the Attorney General did not initiate a criminal investigation into credible allegation of ill-treatment until more than three months after the incident,<sup>62</sup> indictments were served only four years after the alleged incident,<sup>63</sup> and the courts took an extremely prolonged period of time to examine the case.<sup>64</sup> The Human Rights Committee emphasised that the expeditiousness and effectiveness required of the domestic remedies are particularly important in the adjudication of cases involving torture and that the prolonged remedies are ineffective.<sup>65</sup> The general situation with the delays has not changed since the time of the facts of the Lalith Rajapakse’s case and, as it has been highlighted in the special report produced by REDRESS,<sup>66</sup> lengthy delays continue to frustrate any legal remedies for torture victims.

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<sup>60</sup> *Sakiri Vasu v. State of Uttar Pradesh and Others*, Supreme Court of India, Case No. 1685/2007, Judgment of 7 December 2007, at paras. 15-16.

<sup>61</sup> *Sundara Arachchige Lalith Rajapakse v. Sri Lanka*, Human Rights Committee, Communication No. 1250/2004, UN Doc. CCPR/C/87/D/1250/2004 (5 September 2006).

<sup>62</sup> *Ibid.*, at para. 9.4.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*, at para. 9.5.

<sup>66</sup> REDRESS, *Waiting for Justice. The Politics of Delay in the Administration of Justice in Torture Cases: Practice, Standards and Responses* (May 2008), available at: [http://www.redress.org/downloads/publications/WAITING\\_FOR\\_JUSTICE\\_Mar%2008%20Fin%202\\_.pdf](http://www.redress.org/downloads/publications/WAITING_FOR_JUSTICE_Mar%2008%20Fin%202_.pdf), especially at 8-10.

### 5.3. Protection of victims and witnesses

47. The failure to protect witnesses from threats and intimidation constitutes a crucial impediment to effective investigation into instances of torture and ill-treatment in light of a practice of threats and harassments, including killing, of victims and witnesses.<sup>67</sup> The Committee requested the updated information on the status of the draft bill on Witness and Victims of Crime Protection which was presented to the Sri Lankan Parliament back in 2008.<sup>68</sup> This draft bill has not been adopted by the Sri Lankan Parliament and is still pending before the Parliament. There is no verifiable information at the time of writing of this submission as to the tangible prospective of this bill to be adopted and become law. Absence of legislation on protection of victims and witnesses significantly facilitates impunity.<sup>69</sup>

### 5.4. Information on specific cases referred to by the Committee

48. The Committee requested comments on the status of efforts to prosecute the perpetrators of the 2002 murder of Mr Gerald Perera.<sup>70</sup> Six police officers who were charged with torturing Mr Gerald Perera were acquitted by the High Court. The appeal against that acquittal is currently pending before the Court of Appeal. The case relating to the murder of Mr Gerald Perera is still pending before the High Court of Negombo. This case of torture and subsequent murder of an innocent man, allegedly by a group of police officers, in broad daylight clearly demonstrates the incapacity of the Sri Lankan criminal justice system to respond effectively and in compliance with the Convention to the grave human rights violations alleged to have been committed by its own law-enforcement personnel. The story of Mr Gerald Perera was told in a movie specially screened by AHRC to commemorate the sixth anniversary of his assassination.<sup>71</sup>
49. The Committee requested information on investigations and disciplinary/criminal proceedings concerning a range of individual cases of assassinations, abductions, enforced disappearances and severe beatings.<sup>72</sup> In response to this request, the following information is produced.

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<sup>67</sup> See the 2005 Conclusions and Recommendations, at para. 15, and Report of the UN High Commissioner for Human Rights on the Right to the Truth, UN Doc. A/HRC/15/33 (28 July 2010), at para. 66.

<sup>68</sup> List of Issues, at para. 29.

<sup>69</sup> There are multiple reported cases of police reprisals against victims. For example, Mr Theveratnam Yogendra filed a complaint against the police officers to the Bribery Commission in 2009. Despite the repeated threats, he refused to withdraw the complaint. As a result, on 20 March 2009 he was detained on fabricated charges of attempted murder and robbery by the Hatton Police and severely ill-treated while in police detention. The police reprisals are not infrequently targeted against the victim's next-of-kin. For example, wife and minor children of Mr Suriarachchige Lakshman de Silva were arrested and abused by the Kiribathgoda Police following his repeated complaints about unlawful detention and torture by the same police unit.

<sup>70</sup> List of Issues, at para. 26.

<sup>71</sup> <http://blip.tv/asian-human-rights-commission/sri-lanka-the-sixth-anniversary-of-the-assassination-of-gerald-perera-4461390>.

<sup>72</sup> List of Issues, at para. 27.

50. The killing of journalist Lasantha Wickremetunga has been referred to as an example of what is “now a common occurrence” in Sri Lanka by Ms Margaret Sekaggya, UN Special Rapporteur on the Situation of Human Rights Defenders, in her remarks made in Geneva in February 2009.<sup>73</sup> There is no evidence of any meaningful investigation, disciplinary or criminal proceedings in this case.
51. Likewise, there has not been an impartial and effective inquiry into the circumstances of the abduction and brutal beating of Poddala Jayantha, secretary-general of the Sri Lanka Journalist Association, in June 2009. In view of the remarks made by President Rajapakse when he was informed by one of his ministers about Poddala Jayantha’s misfortunes, and the vilification campaign conducted against him by a state-controlled television channel,<sup>74</sup> there are justified concerns that this prominent media specialist has been singled out by the authorities as another victim of the state-sponsored attacks on the media.
52. No effective measures were taken to establish the whereabouts of Mr Sinnavan Stephen Sunthararaj, a human rights defender who was based in Jaffna. He was abducted in May 2009. The AHRC subsequently received information that his life was in immediate danger.<sup>75</sup> No information about his fate is available.
53. The case involving the death of two young men, Dinesh Tharanga Fernando and Danushka Udaya, in police custody in Angulana is pending before the High Court in Colombo.
54. The murder of Siyaguna Kosgodage Anton Sugath Nishantha Fernando, a human rights defender and himself torture survivor, in September 2008 stands out. Following his death, Sugath’s wife and children were pursuing a fundamental rights’ petition before the Supreme Court of Sri Lanka and requested that their family be afforded protection against police. Sugath was assassinated, and his murder has not been investigated.<sup>76</sup> His family had to flee abroad because of fear for their own safety. ALRC and REDRESS assisted Sugath’s widow and children in taking their case to the Human Rights Committee. It was registered in February 2009 and is now pending before the Human Rights Committee.<sup>77</sup> The Human Rights Committee also requested the Sri Lankan authorities, under rule 92 of its rules of procedure, to take measures “to ensure protection” of Ms Peiris, Sugath’s widow, and their children.<sup>78</sup> No steps have been taken, however, by the Sri Lankan authorities to comply with that explicit interim measures’ request of the Human Rights Committee. Following their return to Sri Lanka, Ms Peiris received

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<sup>73</sup> Sri Lanka: UN Experts deeply concerned at suppression of criticism and unabated impunity (9 February 2009), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8323&LangID=E>, available at:

<sup>74</sup> For details and references see: [http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-005-2009/?searchterm=Poddala Jayantha](http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-005-2009/?searchterm=Poddala%20Jayantha).

<sup>75</sup> [http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-007-2009/?searchterm=Stephen Suntharaj](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-007-2009/?searchterm=Stephen%20Suntharaj).

<sup>76</sup> See written statement submitted by ALRC to the 12<sup>th</sup> session of the UN Human Rights Council, ALRC-CWS-12-01-2009 (28 August 2009), [http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc12/ALRC-CWS-12-01-2009/?searchterm=Siyaguna Kosgodage Anton Sugath Nishantha Fernando](http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc12/ALRC-CWS-12-01-2009/?searchterm=Siyaguna%20Kosgodage%20Anton%20Sugath%20Nishantha%20Fernando).

<sup>77</sup> No. 1862/2009.

<sup>78</sup> Letter of the Chief of the OHCHR Human Rights Treaties Branch to the authors’ counsel before the Human Rights Committee dated 12 February 2009.

a number of threats. In particular, her car was chased and she received a number of anonymous phone calls with death threats to herself and her children. In September 2009, the counsel for the family wrote to the Human Rights Committee drawing their attention to Sri Lanka's failure to comply with the order made under rule 92 of the rules of procedure of the Human Rights Committee and inviting the Human Rights Committee to draw the attention of the Sri Lankan Government to the interim measures ordered under rule 92 and request them to take appropriate actions to ensure the necessary protection of Ms Peiris and her children. No measures were taken by the Sri Lankan authorities to that effect. This case illustrates the persistent refusal of the Government of Sri Lanka to meaningfully co-operate with the international human rights treaty bodies.

## **6. Failure to provide redress to torture survivors including compensation and as full rehabilitation as possible (article 14)**

55. The Committee requested information concerning the efforts of Sri Lanka to make physical, psychological, and social, rehabilitation services available to all victims of torture.<sup>79</sup>
56. Sri Lanka does not have a specific policy on the provision of redress to torture survivors. A right to compensation is only available to victims in the context of the fundamental rights' petition before the Supreme Court but not in the context of the criminal proceedings into credible allegations of torture, cruel, inhuman and degrading treatment or punishment.
57. The amount of compensation granted has been inconsistent<sup>80</sup> and is often very small. In some cases even the compensation ordered by courts is not paid in full.<sup>81</sup>
58. Though the Sri Lankan National Human Rights Commission may recommend awards of compensation to torture survivors, such recommendations lack binding force and are not enforced.
59. As at the time of the Committee's last consideration of Sri Lanka's report,<sup>82</sup> there are still no rehabilitation services provided by the State that are available throughout Sri Lanka to all torture survivors, such as physical, psychological, and social rehabilitation services. The psychological scars of the torture survivors are not properly healed.
60. Some rehabilitation services which are available to torture survivors and members of their families in Sri Lanka are provided by civil society actors such as locally active non-governmental organisations. Human Rights Office in Kandy, for example, regularly organises series of workshops and training activities for torture survivors, their next-of-kin and the wider communities affected.

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<sup>79</sup> List of Issues, at para. 33.

<sup>80</sup> See *supra* note 16, at 201-202.

<sup>81</sup> As in the case of Gerald Perera who have not received the medical reimbursements ordered by the Supreme Court in full at the moment of his death.

<sup>82</sup> See the 2005 Conclusions and Recommendations, at para. 16.

## 7. The conflict in the North-East and the findings of the UN Panel of Experts

61. The current submission takes note of the prominence given to the Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka published in April 2011<sup>83</sup> by the Committee in its List of Issues, particularly in the context of articles 2, 11, 12 and 13. Notably, the Committee is the first treaty body that has the opportunity to consider Sri Lanka's treaty obligations in light of the Panel's findings.
62. The Panel found credible allegations, based on a large number of submissions and its own inquiries, of "potential serious violations committed by the Government of Sri Lanka"<sup>84</sup> (this submission does not consider allegations of violations committed by the Liberation Tigers of Tamil Eelam (LTTE) as they do not directly fall within the purview of this Committee). The Panel of Experts' Report provides evidence that suggest violations both of Sri Lanka's negative obligation to refrain from committing torture and ill-treatment and its positive obligation to prevent and respond to such violations. Implementation of these positive duties flowing in particular from articles 2, 12, 13, 14 and 16 are still outstanding, namely (i) holding those responsible to account; (ii) providing reparation to victims; and (iii) putting in place effective guarantees of non-repetition, which requires undertaking the necessary legislative and institutional reforms.
63. Sri Lanka's response, both domestically since the end of the conflict and internationally following the publication of the Panel's Report and broadcasting of related documentation, is characterised by a denial of any responsibility and a refusal to undertake a prompt, impartial and effective investigation into allegations of torture and ill-treatment, or other violations for that matter.<sup>85</sup> Immediate political responses to the Report were disparaging with senior government officials calling the report 'divisive,' 'biased,' and 'unbalanced'<sup>86</sup> as well as 'illegal', 'baseless' and 'unilateral'.<sup>87</sup> The President called for protests and joined rallies over the 2011 May Day holiday.<sup>88</sup> In July 2011, the Ministry of Defence released a detailed report entitled Humanitarian Operation: Factual

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<sup>83</sup> United Nations *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011. Available at: [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) (hereafter referred to as Panel of Experts' Report).

<sup>84</sup> Ibid. at. Iii.

<sup>85</sup> See for example, Full text of the speech delivered by Secretary Defence Mr. Gotabaya Rajapaksa at the release of the report, "*Humanitarian Operation: Factual Analysis*" on 1st August 2011 at Hilton- Colombo. Available at: [http://www.defence.lk/new.asp?fname=20110801\\_04](http://www.defence.lk/new.asp?fname=20110801_04).

<sup>86</sup> "Darusman Report: Public release of the report disrupts efforts to reinforce peace and security – Govt", News Line, priu.gov.lk, 28 April 2011.; [http://www.colombopage.com/archive\\_11/Apr16\\_1302968323CH.php](http://www.colombopage.com/archive_11/Apr16_1302968323CH.php).

<sup>87</sup> See motion for the resolution of the European Parliament on Sri Lanka in follow-up to the UN Report submitted in 10 May 2011, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0326&language=ES>, at preambular para. "I".

<sup>88</sup> "Sri Lanka President Rajapaksa calls for UN report rally," *BBC News*, 17 April 2011. Available at: <http://www.bbc.co.uk/news/world-south-asia-13108054>.

Analysis-July 2006-May 2009<sup>89</sup> relating to the conduct of the conflict, which fails to acknowledge the UN Panel of Experts findings, and instead depicts the last phase of the war as a campaign that sought to minimise civilian casualties while restoring ‘normalcy’ in the North-East.

64. The Government continues to portray the LTTE as the only party responsible for violations and refers to the Lessons Learnt and Reconciliation Commission (LLRC) as the sole and sufficient response mechanism.<sup>90</sup> However, as found by the Panel and others, such as Amnesty International, the LLRC has no mandate to conduct the requisite investigations; nor can it provide adequate reparation to victims of violations.<sup>91</sup> In fact, victims of torture have only received limited and inadequate reparation, if any, to date. The findings of the Panel therefore remain fully relevant in light of Sri Lanka’s failure to comply with its obligations under international human rights law, including CAT.
65. The Panel made detailed recommendations. It is the primary responsibility of Sri Lanka to comply with its obligations under the CAT and other international treaties. However, should Sri Lanka continue to fail to take the requisite measures despite the availability of credible evidence of torture and ill-treatment, it is the responsibility of the United Nations and its organs, as well as the treaty bodies, to do their utmost to ensure accountability and justice for the victims of these violations. Indeed, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights already urged Sri Lanka to co-operate with the UN Panel of Experts<sup>92</sup> and the Committee on the Elimination of Discrimination against Women urged Sri Lanka to ‘consider having an independent international accountability mechanism’;<sup>93</sup> it is now the next logical step to call for a full implementation of the Panel’s recommendations. This could build on previous precedents where UN bodies have urged the Secretary-General to call for the establishment of an international accountability mechanism, namely the International Criminal Tribunal for the former Yugoslavia.<sup>94</sup> Conversely, a failure to take action would compound the climate of impunity in Sri Lanka and would constitute a betrayal of the Convention against Torture, which was adopted ‘to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world’.

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<sup>89</sup> Sri Lankan Ministry of Defence *Humanitarian Operation: Factual Analysis - July 2006-May 2009*, July 2011. Available at: [http://www.defence.lk/news/20110801\\_Conf.pdf](http://www.defence.lk/news/20110801_Conf.pdf). (Hereinafter, Ministry of Defence Report).

<sup>90</sup> Ministry of Defence Report, above.

<sup>91</sup> Panel of Expert’s Report, para.344; Amnesty International, *When will they get justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission*, 7 September 2011.

<sup>92</sup> Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict UN Doc. CRC/C/OPAC/LKA/CO/1, para.13 and Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sri Lanka, UN Doc. E/C.12/LKA/CO/2-4, para.28.

<sup>93</sup> Concluding Observation of the Committee on the Elimination of Discrimination against Women: Sri Lanka, UN Doc. CEDAW/C/LKA/CO/7, para.41(g).

<sup>94</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 18, The establishment of an international tribunal to prosecute crimes against humanity (Forty-fourth session, 1994), U.N. Doc. A/49/18 at 19 (1995).

## 8. Conclusions and recommendations

66. Torture, in particular by the police, remains endemic in Sri Lanka. In spite of the large number of credible allegations of torture and other forms of ill-treatment, there have been few prosecutions and even fewer convictions of the torturers. This lamentable situation reflects serious shortcomings in investigation methods and accountability mechanisms that result in an overall climate of impunity.
67. The Sri Lankan authorities must, among other measures to be taken, urgently address the following issues as crucial steps towards the fulfilment of their obligations under the Convention:
- ensuring effective access to a lawyer of one's choice, independent medical examination, next-of-kin and, where necessary, translators to all arrested and detained persons;
  - ensuring effective independent oversight of places of detention;
  - establishing an independent body to investigate all allegations of torture, cruel, inhuman and degrading treatment committed by representatives of the law enforcement agencies, including police officers;
  - ensuring effective independence of judicial medical officers;
  - adopting the requisite legislation and putting in place the institutional mechanisms for the effective protection of victims and witnesses;
  - ensuring that amounts of compensation ordered are consistent and fully paid;
  - ensuring that rehabilitation services are made available to torture survivors and members of their families.
68. In relation to the findings of the Panel of Experts' Report the Committee is requested to urge the Government of Sri Lanka to:
- acknowledge that there are credible allegations of torture, ill-treatment and other violations, to promptly commence genuine investigations into these allegations in compliance with articles 12 and 13 of the Convention, and to report back to the Committee within six months on what steps it has taken in this regard;
  - specifically criminalize enforced disappearances;
  - consent to the establishment of an independent international mechanism having the mandate proposed by the Panel of Experts, and to report back to the Committee within six months on what steps it has taken in this regard. The Committee should also urge the UN Secretary-General to proceed without further delay with the establishment of such an independent international mechanism;
  - take effective measures aimed at ending the practice of torture and ill-treatment in custodial situations, including the repeal of the Prevention of Terrorism Act and putting in place effective custodial safeguards by means of legislative and institutional changes. The Government of Sri Lanka should provide for effective monitoring of all detention facilities through national

bodies, such as an impartial and credible national human rights commission. In addition, it should disclose the location of camps and other detention facilities set up in the context of the conflict, and permit immediate access to any remaining facilities; it should also give an undertaking not to hinder access by monitoring bodies such as the ICRC to any detention facilities in future;

- undertake a thorough investigation into allegations of torture in custody, as well as torture and ill-treatment prior to executions and enforced disappearances, in line with its obligations under articles 12 and 13 of the Convention. This should include considering the recommendations by the Committee on the Elimination of Discrimination against Women<sup>95</sup> and the Committee on the Rights of the Child<sup>96</sup> allegations of specific incidents of rape and sexual violence, as well as the killing of children, respectively. It should also comprise various forms of ill-treatment arising out of the conduct of warfare and the denial of humanitarian assistance. The Government of Sri Lanka should provide the families of victims with all of the relevant factual information that it holds about the violations, including the location of bodies where applicable, acknowledge its responsibility and provide reparation in conformity with its obligations under article 14 of the Convention;
- ensure that any ‘transitional justice’ measures taken following the conflict are in full conformity with Sri Lanka’s obligations under the Convention and do not detract from the rights of victims. This comprises the right to an effective remedy and adequate reparation, including, in particular, acknowledgment and truth, in addition to restitution, compensation and rehabilitation;
- include consideration of discrimination as a reason for torture and ill-treatment as part of any investigation and review undertaken, and to put in place guarantees of non-repetition. This includes a wholesale review of measures taken by the Government of Sri Lanka in the North-East during and following the conflict that may have a discriminatory impact on Tamils and may have lowered the threshold for violations (known as ‘dehumanisation’).<sup>97</sup>
- ratify or otherwise become a party to international treaties that enhance protection and accountability for serious human rights violations and international crimes, including in particular the Optional Protocol to the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court, as well as the Additional Protocols to the 1949 Geneva Conventions.

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<sup>95</sup> UN Doc. CEDAW/C/LKA/CO/7 (4 February 2011), paras. 40, 41, as well as paras. 24, 25.

<sup>96</sup> UN Doc. CRC/C/OPAC/LKA/CO/1 (1 October 2010), paras.12, 13.

<sup>97</sup> See in this context Panel of Expert’s Report, paras. 400-407.