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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka from 29 April to 7 May 2016, which he conducted jointly with the Special Rapporteur on the independence of judges and lawyers. In his report, the Special Rapporteur sets out his main findings and puts forward recommendations to strengthen legal safeguards against torture and ill-treatment and uphold them in practice, and to improve the conditions of those deprived of their liberty.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka*

Contents

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Sri Lanka from 29 April to 7 May 2016, at the invitation of the Government, jointly with the Special Rapporteur on the independence of judges and lawyers,[1] to assess recent developments and identify challenges faced in the eradication of torture and other cruel, inhuman or degrading treatment, while promoting accountability and fulfilling victims' right to reparations.

2. The Special Rapporteur expresses his appreciation to the Government for its willingness to undergo an independent and objective scrutiny of its human rights situation, in particular in relation to a number of critical issues pertaining to its counter-terrorism legislation and criminal justice system. He wishes to reiterate his appreciation to the Government for its full cooperation before and during the visit, in particular the efforts by the Ministry of Foreign Affairs to facilitate the programme. He would also like to thank the United Nations Resident Coordinator and the United Nations in Sri Lanka for supporting the visit, and all those who shared their expertise, opinions and experiences, despite concerns either for their own safety or for that of their families.

3. During his visit, the Special Rapporteur met with representatives of the Ministry of Foreign Affairs; the Ministry of Defence; the Ministry of Law and Order; the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs; the Ministry of Women and Child Affairs; the Ministry of Health; the Office of the Attorney-General; the National Police Commission; the National Human Rights Commission; the United Nations; the diplomatic community; international organizations; and civil society. He also met the Governor of Eastern Province, and torture survivors and their families.

4. The Special Rapporteur also conducted visits to numerous police stations, detention facilities and military camps throughout the country. In Southern Province, he visited Boossa prison, the Boossa Terrorism Investigation Division detention facility and Galle Fort military camp; in Western Province, the Kalutara South Senior Superintendent's Office and Panadura police station; in North Western Province, Puttalam and Kalpitiya police stations; in Northern Province, Joint Operational Security Force headquarters ("Joseph camp"), Vavuniya remand prison, Vavuniya police station, the Vavuniya Terrorism Investigation Division office and Poonthotam rehabilitation centre; and in Eastern Province, Trincomalee Naval Base. In Colombo, he visited the Criminal Investigation Department and Terrorism Investigation Division facilities (commonly known as the fourth and sixth floors), the Welikada prison complex and Borella police station.

5. Unrestricted access to these detention facilities was granted to the Special Rapporteur and his team, in accordance with the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45, appendix V). However, the Special Rapporteur notes with concern that a number of detainees reported that they had been warned not to speak to the delegation about their treatment in detention, and were reluctant to do so as a result.

6. The Special Rapporteur shared his preliminary findings with the Government of Sri Lanka at the conclusion of his visit, on 7 May 2016.[2]

[1] The mission report of the Special Rapporteur on the independence of judges and lawyers will be submitted to the Human Rights Council at its thirty-fifth session.

[2] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E.

II. Historical and political context

7. Sri Lanka has a long and complex history of ethnic tensions between the Sinhalese majority and Tamil minority that resulted in a prolonged armed conflict between the Liberation Tigers of Tamil Eelam (LTTE), which sought the establishment of an independent Tamil State in the northern part of the island, and government forces.[3] The remnants of this conflict, which ended in 2009, are still visible within Sri Lankan society, which remains deeply divided.

8. The issue of torture and other cruel, inhuman or degrading treatment or punishment is part of the legacy of the country's armed conflict, and one of the reasons why the citizens of Sri Lanka continue to live without minimal guarantees of protection against the power of the State, in particular its security forces. Further contributing to this continuing lack of balance of power between the citizens and the State is the real or perceived threat of international terrorism and organized crime, seen by officials as the main threat to the country. However, such circumstances do not justify the continuation of repressive practices or legislation that contributes to human rights violations.

9. Since the change in Government in 2015, Sri Lanka has been increasingly open to engagement with the international community and civil society in the advancement of human rights, including by supporting Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka. Together with the Government's "100-day programme" of constitutional reforms, this has resulted in some promising developments, such as the May 2016 report *Public Representations on Constitutional Reform*,[4] the reinstatement of the Constitutional Council and the publication of the bill establishing the Office of Missing Persons.[5]

10. The reform process is, however, still fragile, and the country stands at a crucial moment in its history in terms of setting up the necessary mechanisms to remedy its past large-scale human rights violations and prevent their recurrence. The momentum created by the 2015 elections must be used to create the democratic space and genuine political will needed for Sri Lanka to continue on its path of positive change, including the establishment of a comprehensive legal framework and sound democratic institutions that together will give effect to the human rights embodied in the Constitution and in international human rights law.

III. Legal framework

A. International level

11. Sri Lanka is a party to the main United Nations human rights treaties that prohibit torture and ill-treatment, including the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of

[3] For background information on the conflict in Sri Lanka, see the comprehensive investigation of the Office of the United Nations High Commissioner for Human Rights (OHCHR) (A/HRC/30/61).

[4] See http://bit.ly/1UC1kCb.

[5] In a communication dated 2 August 2016 sent by the Working Group on Enforced or Involuntary Disappearances to the Government of Sri Lanka, the Working Group, while welcoming the establishment of the Office of Missing Persons, also raised a number of concerns (see A/HRC/34/75, case LKA 2/2016).

All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; and, most recently, the International Convention for the Protection of all Persons from Enforced Disappearance (see also A/HRC/33/51/Add.2, para. 12).

12. Sri Lanka has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While the Special Rapporteur appreciates the declaration made by the Government on 16 August 2016 under article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider individual complaints, he encourages the Government to promptly ratify the Optional Protocol, thereby recognizing the competence of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and committing to the establishment of a "national preventive mechanism", as called for in article 3 of the Optional Protocol.

13. Sri Lanka is a party to the Geneva Conventions of 12 August 1949 but has not ratified the Additional Protocols thereto, nor signed the Rome Statute of the International Criminal Court.

B. National level

Prohibition of torture

14. Chapter III of the Constitution covers fundamental rights and freedoms. The prohibition of torture is contained in article 11, which provides that "no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This prohibition is made absolute by article 15, which prohibits any limitation on article 11 under any circumstance, even for reasons of national security and public order.

Criminalization of torture

15. To give effect to the country's obligations under CAT, due to its dualist legal system, the Government enacted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994. Under article 2, acts of torture, as well as participation, complicity, aiding and abetting, incitement and attempt to torture are criminal offences punishable with 7-10 years in prison and a fine of 10,000-50,000 rupees (approximately $70-$350). However, while the Act is generally in conformity with the definition of torture in the Convention, it does not include "suffering" but only "severe pain, whether physical or mental" (art. 12) (see also A/HRC/7/3/Add.6, para. 25).

16. Articles 321 and 322 of the Penal Code (ordinance No. 11 of 1887 and subsequent amendments) also criminalize acts within the scope of the Convention, such as intentionally causing harm or grievous harm with the aim of extorting confessions or information leading to the detection of an offence or misconduct. The sentence for a person convicted of these offences is a maximum of 10 years' imprisonment and a fine.

17. Procedures relating to arrest, detention, investigation and prosecution of a suspect are addressed in the Code of Criminal Procedure Act No. 15 of 1979.

Prevention of Terrorism Act

18. The Public Security Ordinance of 1947 allows for the establishment of emergency regulations in the interest of, inter alia, public security and the preservation of public order. Article 155 (2) and (3) further provides that "the power to make emergency regulations … shall include the power to make regulations having the legal effect of overriding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution".

19. The Prevention of Terrorism Act, No. 48 of 1979, was enacted by Parliament under the Public Security Ordinance of 1947 to deal with "elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka" (preamble). While the Act was suspended in 2002 in relation to the ceasefire agreement between government forces and LTTE, its suspension was lifted in 2008 together with the abrogation of the agreement and it continues to apply to investigations into national security-related offences.

IV. Assessment of the situation

A. Torture and ill-treatment

20. During his visit, the Special Rapporteur conducted numerous interviews with both male and female torture survivors, including former and current detainees, from various periods during and after the conflict, as well as recent cases (2015-2016). The forensic expert accompanying the Special Rapporteur conducted medical examinations in a number of these cases, which confirmed physical injuries consistent with the testimonies received. He also spoke with relatives of torture survivors.

21. Following his visit, the Special Rapporteur analysed some 40 additional cases, most of them recent ones, that were extensively documented with testimonies, photographs and forensic medical evidence. The physical injuries documented in those cases were also consistent with the victims' testimonies.

22. While the practice of torture is less prevalent today than during the conflict and the methods used are at times less severe, the Special Rapporteur concludes that a "culture of torture" persists; physical and mental coercion is used against suspects being interviewed, by both the Criminal Investigations Department in regular criminal investigations and by the Terrorism Investigation Division in investigations under the Prevention of Terrorism Act. In the latter case, a causal link seems to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted by agents of the Division during detention and interrogation.

1. Torture and ill-treatment during arrest and detention

23. Authorities claimed that all arrests, without exception, are made by police officers in uniform using officially marked vehicles. However, the Special Rapporteur received credible reports of recent (up to April 2016) "white van abductions" by officers in plain clothes believed to belong to the Criminal Investigations Department or the Terrorism Investigation Division. While white van abductions (often leading to enforced disappearances) were more numerous during the conflict and post-conflict periods, recent cases have included incommunicado detention of the suspect with the purpose of obtaining a confession before transfer to official Department or Division facilities.

24. During his visit, the Special Rapporteur received credible reports that suspects, particularly detainees under the Prevention of Terrorism Act, are often first detained for interrogation without being registered during the initial hours, days or sometimes weeks of investigation and not brought before a judge. This practice facilitates the use of torture and other ill-treatment and can in itself constitute such treatment.

25. While severe physical torture seems to be inflicted on detainees mainly during interrogations for more serious crimes, lesser forms of physical force are also used for ordinary crimes in all parts of the country. The nature of the acts of torture consists mainly of transitory physical injuries caused by blunt force (punches, slaps and, occasionally,

blows with objects such as batons or cricket bats to the head, shoulders, back and legs), which heal without medical treatment and leave no physical scars. Insults and threats were also reported.

26. The Special Rapporteur interviewed current and former suspects detained under the Prevention of Terrorism Act and received well-documented accounts of extremely brutal methods of torture, including burns; beatings with sticks or wires on the soles of the feet (*falanga*); stress positions, including suspension for hours while handcuffed; asphyxiation using plastic bags drenched in kerosene and hanging of the person upside down; application of chili powder to the face and eyes; and sexual torture, including rape and sexual molestation, and mutilation of the genital area and rubbing of chili paste or onions on the genital area. In some cases, these practices occurred over a period of days or even weeks, starting upon arrest and continuing throughout the investigation.

27. Most torture survivors indicated that the acts of torture ceased after they confessed, which sometimes included signing blank papers or documents in a language they could not read. However, in the case of arrests made under the Prevention of Terrorism Act, torture and ill-treatment often continued after the confession, although they were often less severe and/or less frequent. In both cases, torture ceased with the transfer from Criminal Investigations Department or Terrorism Investigation Division detention to a remand prison.

2. Threats against national security and terrorism investigations

28. While the state of emergency was lifted in 2011, the Prevention of Terrorism Act, together with five regulations that were enacted under it, remains in force and constitutes a de facto state of emergency suspending fundamental rights and guarantees, including constitutional and international safeguards against acts of torture or ill-treatment.

29. A suspect arrested under the Act, with or without a warrant, may be kept in custody for a maximum of 72 hours before being brought before a magistrate, during which time the police may transfer the detainee for the purpose of the investigation without judicial authorization (sect. 7 (1) and (3)). However, if a detention order is issued by the Minister of Defence, a person may, be detained for up to 18 months with periodic judicial supervision, without the possibility of challenging its legality (sects. 9 (1) and 10). In such cases, detainees may "be kept in the custody of any authority, in such place and under such conditions" as determined by the Minister in the interest of national security or public order (sect. 15A (1)).

30. The Prevention of Terrorism Act further allows for any statement made by the suspect at any time in custody in the presence of a police officer or during an investigation to be admissible in court, whether or not it amounts to a confession. It places the burden of proof that such statement was extracted under duress, and therefore inadmissible, on the accused (sects. 16 and 17).

31. The Special Rapporteur received credible testimonies that torture and ill-treatment are inflicted on almost all suspects held under the Prevention of Terrorism Act during detention by the Criminal Investigations Department and the Terrorism Investigation Division, as well as sometimes by the armed forces. The Special Rapporteur also observed that officers of the Department and the Division and members of the armed forces acting as arresting officers were often in plain clothes and did not identify themselves. Furthermore, Division offices are sometimes located on military bases and several former detainees under the Act reported, even in recent cases, being taken to, or next to, a military facility for interrogation. Most of those detainees also confirmed that they had signed a confession under duress. This leads the Special Rapporteur to conclude that the use of torture and ill-

treatment to obtain a confession from detainees under the Prevention of Terrorism Act is a routine practice.

32. Moreover, the Special Rapporteur found that periodic hearings before a magistrate as per the Prevention of Terrorism Act do not amount to meaningful safeguards against either arbitrariness of detention or ill-treatment. Section 2 (1) of Prevention of Terrorism Act Regulation No. 4 of 2011 seems to eliminate entirely the judicial review of a detention order by providing that "Any person who has been detained in terms of the provisions of any emergency regulation … shall … be produced before the relevant Magistrate, who shall take steps to detain such person … ." Magistrates essentially rubber-stamp detention orders made by the executive branch and, as confirmed by many testimonies, do not inquire into conditions of detention or potential ill-treatment.

33. Persons detained under the Prevention of Terrorism Act are prosecuted before the High Court for security-related offences. Lengthy court proceedings leave defendants in remand detention for years. The Special Rapporteur interviewed detainees who had spent 10 years in remand detention under the Act. The Legal Aid Commission informed the Special Rapporteur that one High Court judge had been appointed by the Vice-President to deal with the backlog of cases under the Act.

34. The Special Rapporteur was further informed by the Ministry of Law and Order at the time of his visit that, with respect to the 95 cases under the Prevention of Terrorism Act that were pending before the High Court, 43 suspects remained in custody; 16 had been released on bail, 8 of whom were undergoing rehabilitation while the other 8 were awaiting a decision, to be made in July 2016, on whether they would be sent for rehabilitation or prosecuted; and 9 cases were outstanding. In addition, at the time of the visit, a total of 25 suspects detained under the Act remained in the custody of the Terrorism Investigation Division and 21 were in a remand prison in connection with more recent cases.

35. The Ministry of Law and Order informed the Special Rapporteur that the Government had initiated the drafting of new security laws, consisting of a national security act, a State intelligence services act and a prevention of organized crimes act, to replace the Prevention of Terrorism Act and the Public Security Ordinance. Shortly after the visit, in June 2016, the President reportedly issued new directives to the police and armed forces on arrests and detentions under the Prevention of Terrorism Act, which included the prohibition of torture and respect for fundamental rights as enshrined in the Constitution, and reiterating the mandate of the National Human Rights Commission to be informed of all arrests made under the Prevention of Terrorism Act and that the Commission had unrestricted access to places of detention.

36. While the Special Rapporteur regards these steps as positive developments, he maintains that the Government should immediately repeal the Prevention of Terrorism Act. He notes that the Act violates article 155 (2) of the Constitution, which does not allow for derogation from constitutional rights, except for the restrictions foreseen in article 15. All counter-terrorism legislation needs to be in full compliance with the country's international human rights obligations.

37. Moreover, the Special Rapporteur was informed of a proposed amendment to the Code of Criminal Procedure Act, as published in the Sri Lanka Gazette of 12 August 2016, that would deprive a suspect of access to a lawyer until his or her initial statement had been recorded. Serious concerns have been expressed by the National Human Rights Commission and several civil society organizations, which are shared by the Special Rapporteur.

3. Rehabilitation of detainees under the Prevention of Terrorism Act

38. In lieu of prosecution, some detainees under the Prevention of Terrorism Act are sent for "rehabilitation", often after having spent several years in remand detention. Rehabilitation is supposedly voluntary, but there appears to be an arbitrary selection process for entering the programme. Only 1 out of 24 rehabilitation facilities established by the Government shortly after the end of the conflict remains in operation, namely Poonthotam rehabilitation centre in Vavuniya. The programme comprises six months of rehabilitation and six months of re-education, which can be extended to up to 15 months. Upon completion, the individual is deemed "rehabilitated" and released.

39. During his visit, the Special Rapporteur was informed that 12,146 persons had been released after completing rehabilitation since 2010. Forty persons (39 male, 1 female) were still held at Poonthotam, some of whom had been deprived of their liberty since 2009 and were due to be released.

40. The Special Rapporteur is concerned that rehabilitated persons continue to be kept under surveillance by government agents years after their release, and are frequently harassed and threatened. They are often still forced to report to a police station or military post at regular intervals, where they are frequently threatened and ill-treated and, in some instances, arbitrarily detained and subjected to torture, including sexual torture. Harassment sometimes extends to civil society organizations that provide counselling and other services to rehabilitated persons.

41. While rehabilitated persons should not be immune from investigation of possible new crimes, authorities must clearly disclose the grounds for renewed detention. Recent arrests of rehabilitated persons have raised fear and distrust between communities.

4. Surveillance and intimidation

42. Owing to the heavy militarization that still exists in the North and East of the country, surveillance continues to be used as a tool of control and intimidation. In addition to rehabilitated persons, many former detainees under the Prevention of Terrorism Act and their families, anyone deemed to have had any link to LTTE during the conflict and political and human rights activists remain subject to extensive surveillance and intimidation by the military, intelligence and police forces. While the extent and level of this practice have dropped compared to the early post-conflict period, systematic surveillance and intimidation continues, sometimes constituting ill-treatment.

5. Sexual and gender-based violence

43. The Special Rapporteur received credible testimonies from men, women and juveniles of torture of a sexual nature in custody, many of them supported by medical forensic evaluations. These abuses are not investigated or prosecuted, and may remain underreported owing to stigma. An example of a tragic testimony received by the Special Rapporteur was that of a young woman who spoke credibly of having spent 3 $^{1/2}$ years in sexual slavery at various military camps.

6. Violence against women

44. The Special Rapporteur was informed that women's and children's desks have been established in most police stations, staffed by female officers. This is a welcome initiative, but statistics on their impact are lacking.

45. The Ministry of Women and Child Affairs was at the time of the visit leading the process of developing a national action plan to address gender-based violence.

7. Juveniles

46. The Special Rapporteur is deeply concerned that the age of criminal responsibility remains very low, at 8 years (art. 175 of the Penal Code). While a draft law would raise the age to 10 years, this is still well below international standards.[6]

47. Corporal punishment is prohibited as a penal sentence by the Corporal Punishment (Repeal) Act No. 23 of 2005. However, it is reportedly still practised as a disciplinary measure in other settings, including juvenile centres, schools and the home.[7]

48. Because of time constraints the Special Rapporteur was unable to visit a juvenile facility. He was informed, however, that about 1,700 juveniles were being held in detention and expressed concern that youth offenders were not separated from children in need of care.

49. During his visits to some remand sections of adult facilities, he encountered juveniles being held together with adults and was concerned to learn that upon conviction children starting from the age of 17 are moved to regular detention facilities. The Special Rapporteur was informed that a new draft law would provide for the separation of children from adults.

8. Death penalty

50. The death penalty is embodied in article 53 of the Penal Code for the crime of murder. The Special Rapporteur welcomes the de facto moratorium, in effect since 1977, but regrets that Sri Lanka has not abolished the death penalty and continues to impose it.

51. At the time of the visit, 462 prisoners were reported to be on death row in Sri Lanka, held in Welikada and Bogambara prisons in separate wings. Their indefinite detention under strict conditions, uncertainty about possible execution and, in some cases, drastically reduced human contact or isolation render the punishment tantamount to ill-treatment or even torture.

B. Conditions of detention

52. The Prisons Department, under the Ministry of Prison, Rehabilitation, Resettlement and Hindu Religious Affairs, reported that Sri Lanka has a prison population of approximately 16,990 (7,496 convicted prisoners, 8,351 prisoners on remand and 1,143 prisoners whose cases were under appeal). Unfortunately, figures for the actual capacity of detention facilities have not been provided to the Special Rapporteur, despite requests. Prisons and detention centres are visited on an ad hoc basis by the International Committee of the Red Cross, a visiting committee, the National Human Rights Commission and non-governmental organizations; however, no robust monitoring system is in place.

53. Although the Special Rapporteur did not receive any reports of ill-treatment by corrections staff, he found prison conditions to be inhumane, characterized by very deficient infrastructure and pronounced overcrowding. There was an acute lack of adequate sleeping accommodation, extreme heat and insufficient ventilation. Overpopulation also results in limited access to medical treatment, recreational activities and educational

[6] Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice.

[7] Global Initiative to End All Corporal Punishment of Children, submission to the review by the Committee against Torture of the report of Sri Lanka in November 2016.

opportunities. These conditions combined constitute in themselves a form of cruel, inhuman and degrading treatment.

54. Terrorism Investigation Division detainees also suffer from inhumane detention conditions, including excessive heat, lack of ventilation, limited access to daylight and exercise, prolonged or indefinite isolation and lack of electricity, so that some of them spend about 12 hours a day in the dark.

55. The Special Rapporteur visited underground detention cells in the Trincomalee Naval Base, which were discovered in 2015. These cells would have held detainees (who are now counted among the disappeared) in horrific conditions (see A/HRC/33/51/Add.2, paras. 17 and 49). The Special Rapporteur looks forward to receiving the results of the Criminal Investigations Department investigation on the fate of these individuals.

1. Inhumane detention conditions

56. The Special Rapporteur observed extreme levels of overcrowding, with populations exceeding capacity by 200 or 300 per cent, such as in Vavuniya remand prison. Detainees are forced to sleep back-to-back on concrete floors and staircases for lack of space.

57. The crumbling infrastructure of the larger prisons in Colombo, built in the nineteenth century, results in conditions that amount to cruel, inhuman and degrading treatment or punishment. The Government reported that Welikada prison, one of the worst, will be closed and a new prison, in Tangalle, is planned to be operational by the end of 2016.

58. Congestion is largely the result of lengthy sentences for non-violent and drug-related offences and lengthy remand periods, sometimes up to 15 years. The average delay for State counsel to bring criminal cases before the High Court after remand ranges from 5 to 7 years. This is a serious violation of due process and presumption of innocence, and violates the principle of provisional detention as the exception and not the rule.

59. In some detention centres, yards are accessible to inmates throughout the day. In others, detainees have or insufficient or no access to open areas or sunlight (i.e., 15 minutes per day).

60. The Special Rapporteur observed unsanitary and unhygienic conditions in cells, lavatories and yards; at several smaller detention centres there was a total lack of toilet or shower facilities or makeshift lavatories (bottles in the cells).

61. Nutrition in all detention centres visited appeared sufficient, both in terms of quantity and quality. However, in police stations detainees rely on their families to supplement the meagre diet.

62. In comparison to the conditions of detention for men, conditions at the female wards of Welikada and Vavuniya remand prisons were more humane.

63. In the Poonthotam rehabilitation centre, living conditions and other benefits, such as vocational training and home leave, were adequate.

2. Lack of adequate medical care

64. In principle, medical care is provided free of charge to all inmates. Some larger or newer facilities have infirmaries, with medical staff on duty or visiting regularly. Other detention centres do not have infirmaries, but doctors or nurses pay weekly visits or can be called in. If needed, inmates can be transported to hospital for care. In reality, however, all penitentiaries visited lacked adequate health care, with no dental or psychiatric support. The Special Rapporteur saw detainees with suspected infectious and contagious diseases who

did not receive medical attention and continued to live among the general prison population despite the risk of contagion.

65. Where they are present, doctors lack specialized training in penitentiary care or medical forensic expertise. Infirmaries, where they exist, are primitive and lack basic medical equipment and sufficient medicines, so detainees rely on their families for the provision of drugs. Transport to a hospital is at the discretion of guards, who are not trained to assess the need for medical care.

66. The Special Rapporteur observed that no medical examinations were conducted upon admission or transfer to a detention centre, nor is there regular screening of all detainees.

3. Inadequate family visits

67. Family visits take place once a month for convicted prisoners and once a week for remand detainees, but many relatives live far away and visit infrequently. In practice, especially in cases prosecuted under the Prevention of Terrorism Act, visiting time is severely restricted to a few minutes because the processing of visitors (including invasive body searches, security screening, documentation and registry) count as part of the allocated time.

68. The Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs informed the Special Rapporteur that it would purchase body and parcel scanners to avoid invasive body searches.

C. Safeguards and prevention

1. Right not to be arbitrarily detained and to be free from torture

69. Article 13 (1) and (2) of the Constitution guarantees freedom from arbitrary arrest, detention and punishment. The article includes the right of every person held in custody, detained or otherwise deprived of personal liberty to be brought before the judge of the nearest competent court in accordance with the procedure established by law and to not be further held in custody, detained or deprived of liberty except upon, and in terms of, the order of a judge made in accordance with the procedure established by law.

70. The Code of Criminal Procedure Act contains procedural safeguards to protect the integrity of a person arrested or detained, including the right to be informed of the nature of the charge or allegation upon which he or she is arrested (art. 23) and to be presented to a magistrate without undue delay and within 24 hours (arts. 36 and 37 and art. 65 of Police Ordinance No. 16 of 1865). Officers in charge of police stations are further required to report to the relevant magistrates all cases of persons arrested without a warrant (art. 38). If an investigation cannot be completed within 24 hours, only the magistrate may decide to detain a suspect in custody pending investigation and for a maximum of 15 days (art. 115 (1) and (2)).

71. The Special Rapporteur notes with concern, however, that neither the Penal Code nor the Code of Criminal Procedure Act specifies that an arrest warrant must be authorized by a judge, giving the police extraordinary powers of arrest and increasing the risk of arbitrary detention and of torture and ill-treatment. Moreover, the Special Rapporteur received credible testimonies that suspects are often first detained for interrogation at official or unofficial places of detention without being registered during the initial hours or days and not brought before a judge, especially detainees under the Prevention of Terrorism Act who are held incommunicado. This facilitates the perpetration of torture and other ill-treatment and can in itself constitute such treatment.

72. Custody hearings provide a safeguard against arbitrary detention and mistreatment. In practice, however, judicial oversight in Sri Lanka remains superficial: judges do not take an active role in determining conditions of detention and, according to testimonies, do not ask detainees about their treatment during arrest and detention.

National Human Rights Commission

73. The National Human Rights Commission Act No. 21 of 1996 provides safeguards against arbitrary detention and torture or ill-treatment of detainees under the Prevention of Terrorism Act. Under section 28 of the Act, detention authorities must inform the Commission within 48 hours of any arrest made under the Prevention of Terrorism Act and the location of the detainee, as well as of any transfer or change of the prisoner's location. It further provides that all officials authorized by the Commission should have access to all places of detention at any time and be able to make inquiries of detainees.

74. While most arrests and detentions under the Prevention of Terrorism Act are communicated to the National Human Rights Commission once they are registered, the Special Rapporteur concludes from testimonies and reports that this is not the case with respect to transfers and changes of location.

2. Access to legal counsel

75. Access to counsel at all stages of the investigation is a fundamental safeguard against torture and ill-treatment. However, most interviewed detainees did not have access to a lawyer at any stage of their detention, either owing to a lack of financial means or insufficient information on legal aid. While the Government-funded Legal Aid Commission takes pro bono cases, it is in critical need of resources for taking additional cases and increasing awareness on its services.

76. Another factor contributing to the lack of access to counsel is normative gaps in the rights of criminal defendants, as the Code of Criminal Procedure Act, worryingly, does not stipulate the right of a defendant to legal representation. However, in 2012, the Police Appearances of Attorneys-at-Law at Police Stations Rules came into effect, which recognize the right of a suspect to legal representation at a police station starting immediately after arrest and during detention. The Special Rapporteur regards this as a positive development that should be implemented more widely in practice.

77. The Special Rapporteur shares the concern of the National Human Rights Commission over the recently proposed amendment to the Code of Criminal Procedure Act, which, contrary to international human rights standards, denies a suspect access to a lawyer until his or her statement has been recorded, thereby eliminating any safeguard against torture and ill-treatment and defeating the Code's very purpose, and also impinging on the fundamental right to a fair trial as guaranteed in article 13 (3) of the Constitution. The Special Rapporteur joins the Commission and civil society in calling on the Government to withdraw the proposed amendment.[8]

3. Role of the judiciary and prosecutors

78. An independent and impartial judiciary is essential for the fulfilment of international law obligations regarding torture and cruel, inhuman or degrading treatment or punishment, including to order ex officio inquiries into allegations of torture or coercion and to ensure that all safeguards are upheld. Both the judiciary and the Office of the Attorney-General

[8] The letter dated 21 September 2016 from the National Human Rights Commission addressed to the Prime Minister is available from http://hrcsl.lk/english/.

have a dual obligation of prevention and accountability. In practice, in Sri Lanka, judges are overly passive and do not seek exculpatory evidence. In criminal cases, that means they rule almost exclusively on the basis of evidence gathered by police.

79. A modern system begins with affording more guarantees for the defendant. The public prosecutors are first and foremost the guardians of legality, which gives them a heightened responsibility. They must enforce the law against criminals but also actively prevent miscarriages of justice by way of torture and manipulation of evidence.

4. Forced confessions: evidence obtained under torture

80. Statements made by any person to a police officer in the course of any investigation may not be used as evidence in the case but only to aid the court in its inquiry or trial (art. 110 (3) and (4) of the Code of Criminal Procedure Act). More importantly, articles 24-27 of the Evidence Ordinance No. 14 of 1895 (and subsequent amendments) provide that confessions extracted through torture are inadmissible in court. However, suspects are at high risk of ill-treatment or torture when they are held incommunicado with the purpose of obtaining a confession. The heavy reliance of the criminal justice system on confession as the primary tool of investigation is a major incentive for torture. On the basis of detainee interviews, the Special Rapporteur is concerned that it is routine practice for the police to extract confessions under duress.

81. The Special Rapporteur is moreover very concerned at judges' willingness to admit confessions in criminal proceedings without corroboration by other evidence, creating conditions that further encourage torture and ill-treatment.

82. Another important incentive to ill-treatment is the practice of conducting the investigation while the suspect is in custody, rather than determining the need for detention based on preliminary investigations. Authorities have on a regular basis justified prolonged detention by citing the complexity of the investigation, ignoring the stipulation that, with the exception of detentions in cases of flagrante delicto, evidence should be procured before the arrest.

83. The Attorney-General advised the Special Rapporteur that, in line with the Code of Criminal Procedure Act, statements made to the police do not form part of the criminal record in ordinary criminal cases, although he acknowledged that, under the Prevention of Terrorism Act, statements made to a senior police officer are fully admissible in court. However, police routinely forcefully extract self-incriminatory statements in both cases, which seems to negate the preventive impact of their non-admissibility. In addition, this provision of the Act is in direct contradiction to the obligation under the Convention against Torture to exclude all statements made under torture.

Voir dire *procedure*

84. In principle, a confession that is recanted as having been coerced gives rise to a procedure called *voir dire*, which is best described as a "trial within a trial" to determine whether coercion was used. This procedure correctly places the burden on the State to prove that the statement was not coerced. However, the *voir dire* procedure is cumbersome and rarely used. In practice, therefore, it does not guarantee the application of the exclusionary rule, and therefore does not reduce the likelihood of torture being used as a means to obtain confessions.

85. Judicial discretion to admit evidence tainted by torture is a violation of the exclusionary rule in international law, including the Convention against Torture. International standards require completely banning the admission of self-incriminating statements not made before a judge following advice of counsel and a warning regarding the right to remain silent without adverse consequences to the defendant or, at the very

least, excluding extrajudicial statements that are recanted by the defendant when he or she appears before a magistrate.

86. While the Special Rapporteur was assured by the authorities that confessions alone are not sufficient for a conviction, various sources reported that, in practice, most convictions are based on a confession alone or as the main evidence.

5. Complaints procedure

87. The Supreme Court has sole jurisdiction over complaints relating to the infringement of fundamental rights (arts. 17 and 126 of the Constitution). Such "fundamental rights applications" must be filed in writing directly to the Court within one month from the occurrence of the violation and, if successful, the only remedy available is the awarding of compensation to the complainant (art. 126 (2)). As the Supreme Court is the highest and final court of Sri Lanka (art. 118), there is no possibility to appeal its decisions. Fundamental rights complaints may also be addressed to the National Human Rights Commission, whose function is to investigate and provide for resolution by conciliation and mediation (sect. 10 of the Human Rights Commission of Sri Lanka Act).

88. Jurisdiction over cases filed under the Convention against Torture Act lies with the High Court (arts. 2 (4) and 4). Complaints must be addressed to the Attorney-General, who instructs the Special Investigation Unit, under the supervision of the Inspector General of Police, to investigate the alleged use of torture. The Attorney-General has discretionary power and decides whether to indict. Negative decisions may be challenged by written application to the Appeals Court. This discretionary power represents a significant weakness of the system: while a number of indictments have been filed by the Attorney-General under the Act, there have been few convictions.

89. In practice, the only effective avenues for complaints are filing a "fundamental rights" case before the Supreme Court or submitting the case to the National Human Rights Commission. However, fundamental rights applications involve costly, complex litigation and are therefore not accessible to all victims. In addition, the application is not available to vacate a court order that has been based on a forced confession, as it does not lie against judicial decisions. Moreover, according to the Chief Justice, there is a worrying backlog of approximately 3,000 fundamental rights cases before the Supreme Court.

90. The National Human Rights Commission was resurrected with a credible composition of members in 2015, but needs to be further strengthened and funded. Proceedings before the Commission hold some promise for the victims, but it does not seem capable of remedying impunity for past and present serious human rights violations, which require effective prosecution. In addition, at least one victim has received threats of retaliation for filing a complaint with the Commission.

91. No formal complaint mechanism is available to detainees in the prison system.

National Police Commission

92. Having been dissolved in 2006, the National Police Commission was re-established in October 2015 by constitutional amendment (art. 115). It is mandated to investigate complaints of police misconduct, and has the power to suspend and dismiss police officers.

93. The Commission advised the Special Rapporteur that it had received 455 complaints in the first quarter of 2016 concerning allegations of police inaction, partiality, abuse of power, unlawful arrest, false charges, assault, torture or ill-treatment and violence against women; 400 of those complaints were still pending investigation, and the Commission reported resource constraints. The Special Rapporteur is concerned that the Commission

relies on investigations conducted by police officers, which does not guarantee independence.

6. Lack of effective investigations of torture allegations

94. The Special Rapporteur is extremely alarmed that investigations into allegations of torture and ill-treatment are not investigated. He discerned a worrying lack of will within the Office of the Attorney-General and the judiciary to investigate and prosecute allegations. He was informed repeatedly by various interlocutors that there had been no complaints of torture or ill-treatment and, consequently, no investigations.

95. There are a vast number of documented cases, and the failure to prosecute them clearly indicates a lack of will on the part of the judiciary. Impunity is directly attributable to the entire criminal justice system, and particularly to the judiciary.

96. Under the State's international obligation to prevent torture, it is the responsibility of prosecutors and judges to establish whether anyone has been mistreated, even in the absence of a complaint. The State must actively prosecute officials who, in abuse of their authority, order, condone or cover up torture, including in situations where they knew or ought to have known that torture was about to be, was being, or had been committed.

7. Forensic and medical examinations

97. The Code of Criminal Procedure Act provides that, if an officer in charge of a police station deems it necessary for an investigation, police may order a medical examination of a detainee by a government medical officer (art. 122). In addition, detainees can complain directly to the magistrate about their treatment and request such an examination (art. 137).

98. The Special Rapporteur was informed by the Ministry of Health that the Police Ordinance requires all persons in police detention to be examined by a judicial medical officer, a specially trained medical doctor belonging to the Department of Forensic Medicine, before they are brought before a magistrate and prior to their release. However, this only occurs in about 20 per cent of cases.

99. Forensic procedures and forensic medical expertise seem adequate regarding deaths in custody and autopsies, but clinical forensic examination of victims of torture are seriously lacking. A specific medical report model for the forensic examination of survivors of torture and ill-treatment has been put in place by the forensic services, but still leaves a large margin for improvement. Specific training in forensic medical investigation and documentation of torture and ill-treatment is needed, as well as training for judges, prosecutors, lawyers and the police on how to interpret reports.

100. Medical examinations need to be done in a timely manner to be meaningful; the current practice results in the loss of important evidence of physical and psychological trauma.

101. The Special Rapporteur is concerned about the procedure followed for the medical examinations of detainees. It is worrying that the detainee is often accompanied to the judicial medical officer by the same police officer accused of abuse and that the judicial medical officer reports the results to the same officer. There is therefore a need to reform the legal framework to guarantee the independence of judicial medical officers.

102. Legal professionals and detainees who were interviewed indicated that it is very difficult for a victim to obtain a copy of the judicial medical officer's report, as it must be requested through the courts, in violation of the Istanbul Protocol. Reports should be directly and unconditionally available to the accused.

103. Authorities informed the Special Rapporteur that the situation would be solved by the Protection of Victims and Witnesses Act No. 4 of 2015. However, while the Act includes the right of a victim to obtain copies of medico-legal reports, this right is neither absolute nor exercised directly: the victim needs to apply to the magistrate, who can refuse the application if it might prejudice the ongoing investigation (sect. 3 (i)).

104. Stakeholders further indicated a great need for more female judicial medical officers.

8. Lack of monitoring of places of detention by a national preventive mechanism

105. The International Committee of the Red Cross, a visiting committee and the National Human Rights Commission, as well as some non-governmental organizations, monitor places of detention. Monitoring by the Commission is severely limited owing to insufficient resources.

106. There is an urgent need for robust, independent and regular monitoring of places of detention by a national preventive mechanism, which should be given unrestricted, unannounced access to all places of detention and the right to conduct confidential interviews with any detainee.

9. Transitional justice

107. By supporting the adoption of Human Rights Council resolution 30/1, the Government of Sri Lanka committed itself to address the legacy of serious and widespread human rights violations that occurred during and immediately after the lengthy armed conflict. If implemented in good faith, a transitional justice mechanism can fulfil the country's obligations under the Convention against Torture, specifically those relating to investigation, prosecution and punishment of torture, to provide reparations and to prevent torture in the future.

108. However, progress has been slow and differing opinions on the type of mechanism and the extent of its powers seemingly have paralyzed the process. Impunity for past crimes continues to be an obstacle to reconciliation and sustains mistrust between the communities, especially in the North and East, breeding impunity for present instances of abuse. It is therefore essential that any transitional justice mechanism provide for effective remedies to victims of torture and other serious violations that occurred during or in connection with the armed conflict.

V. Conclusions and recommendations

A. Conclusions

109. **The issue of torture and other cruel, inhuman or degrading treatment or punishment is part of the legacy of the country's armed conflict, and one of the reasons why the citizens of Sri Lanka continue to live without minimal guarantees of protection against the power of the State, in particular its security forces.**

110. **Torture and ill-treatment, including of a sexual nature, still occur, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases for those who are perceived to be involved in terrorism or offences against national security. The police resort to forceful extraction of information or coerced confessions rather than carrying out thorough investigations using scientific methods.**

111. **Procedural norms that entrust the police with full investigative powers over all criminal cases and, in the case of the Prevention of Terrorism Act, allow for prolonged arbitrary detention without trial are firmly in place. This enables an "open door policy" for police investigators to use torture and ill-treatment as a routine method of work. The result is that cases, old and new, continue to be surrounded by total impunity.**

112. **Conditions of detention amount to cruel, inhuman or degrading treatment owing to severe overcrowding, insufficient ventilation, excessive heat and humidity, and the denial of adequate access to health care, education, vocational training and recreational activities.**

113. **The current legal framework and the lack of reform within the structures of the armed forces, the police, the Office of the Attorney-General and the judiciary perpetuate the risk of torture. Sri Lanka needs urgent and comprehensive measures to ensure structural reform in these institutions to eliminate torture and ensure that all authorities comply with international standards. A piecemeal approach is incompatible with the soon-to-be-launched transitional justice process and could undermine it before it really begins.**

114. **The establishment of a transitional justice mechanism is an important aspect of the reform process in Sri Lanka and may contribute to the elimination of torture and provide for reparations. To be effective, it must be implemented in good faith and trusted by victims and other stakeholders. Without this, there will be lack of confidence in the transitional justice system.**

B. Recommendations

115. **In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with appropriate assistance from the international community, take decisive steps to implement the recommendations outlined below.**

116. **Regarding the legal framework, the Special Rapporteur recommends that the Government:**

(a) **Immediately repeal the Prevention of Terrorism Act;**

(b) **Review any draft legislation to replace the Prevention of Terrorism Act (national security act, state intelligence services act and prevention of organized crimes act) to ensure safeguards against arbitrary arrest and torture or cruel, inhuman or degrading treatment; provisions for access to legal counsel from the moment of deprivation of liberty, strong judicial overview of law enforcement and security agencies and protections for the privacy rights of citizens; and that there is a timely, robust and transparent national debate on the bills that is inclusive of all civil society;**

(c) **Study and incorporate the recommendations made by the National Human Rights Commission in relation to the drafting of new national security legislation,[9] which are based on recommendations outlined by the Special Rapporteur on the promotion and protection of human rights while countering terrorism in his**

[9] See the public statement made by the Human Rights Committee of Sri Lanka on 22 June 2016, available from http://hrcsl.lk/english/2016/06/23/public-statement-by-the-human-rights-commission-of-sri-lanka/.

various reports (for example, A/HRC/16/51 and A/HRC/22/52 and Corr.1) regarding procedural safeguards when adopting or amending legislation on national security;[10]

(d) **Enact new legislation to provide for command or superior responsibility as a basis for criminal liability;**[11]

(e) **Urgently ratify and implement the Optional Protocol to the Convention against Torture, thereby recognizing the competence of the Subcommittee on Prevention of Torture and enable it and other international and national monitoring mechanisms to conduct regular unannounced inspections of all places of detention;**

(f) **Immediately withdraw the proposed amendment to the Code of Criminal Procedure Act that would deprive a suspect of access to a lawyer until his or her statement has been recorded, and enact legislation that strengthens the right of suspects to prompt and regular access to lawyers from the moment of arrest;**

(g) **Abolish capital punishment or, as a minimum, commute all death sentences to prison sentences;**

(h) **Review and amend the Assistance to and Protection of Victims of Crime and Witnesses Act (No. 4 of 2015) to make the National Authority set up under the Act more independent and more accountable and subject to judicial oversight and to ensure that its jurisdiction extends to the protection of all victims, including those who are trafficked (see CRC/C/SLK/5, para. 116) or subjected to torture or sexual violence, owing to the real risk of reprisals;**

(i) **Amend the Police Act to make the police more accountable, effective and trustworthy;**

(j) **Implement the National Plan of Action to Address Gender-based Violence in line with its international obligations and with the international protocol on the documentation and investigation of sexual violence in conflict, to tackle impunity for sexual torture and to ensure redress to survivors;**

(k) **Repeal all relevant legislation so that corporal punishment is explicitly prohibited in all settings;**

(l) **Ratify the Protocols Additional to the Geneva Conventions of 12 August 1949 and sign, and ratify, the Rome Statute of the International Criminal Court;**

(m) **Enact implementing legislation for all international treaties Sri Lanka has ratified, including the International Covenant on Civil and Political Rights.**

117. **Regarding conditions of detention, the Special Rapporteur recommends that the Government:**

(a) **Urgently repair and upgrade or close old prisons to address the unsafe and inhumane conditions of detention;**

(b) **Ensure minimum standards of conditions of detention in accordance with the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), and ensure that current practices and conditions do not give rise to cruel, inhuman or degrading treatment or punishment, or torture;**

[10] See also Counter-Terrorism Implementation Task Force, *Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law* (New York, United Nations, 2014).

[11] See Freedom from Torture, "What does success look like? Why Sri Lankan torture survivors want an internationalised justice process", February 2016.

(c) **Adopt and implement measures to significantly reduce overcrowding, including:**

(i) **Overhauling the prison system to reduce the number of detainees and increasing prison capacities in more modern prison facilities;**

(ii) **Accelerating the judicial process and reviewing sentencing policies by introducing alternatives to incarceration (bail and electronic surveillance for pretrial defendants; non-custodial sentences for non-violent offenders and juveniles; parole and early release for the convicted);**

(d) **Design a criminal justice system that aims at rehabilitating and reintegrating offenders, including by creating work and education opportunities;**

(e) **Allocate sufficient budgetary resources to provide adequate health care by employing a sufficient number of qualified professionals and providing infirmaries in detention centres with adequate equipment and medicines;**

(f) **Ensure the daily presence of truly independent and qualified medical health staff, including psychiatric and dental specialists, in all places of deprivation of liberty, in cooperation with the public health services, to perform a medical entrance examination for all detainees, conduct regular check-ups and provide medical assistance as necessary;**

(g) **Monitor the quantity and quality of food and water and ensure adequate sanitary and hygienic conditions, satisfactory ventilation and adequate access to exercise, sunlight and recreational activities;**

(h) **Authorize more frequent family visits and facilitate them by providing transportation and other support for indigent families;**

(i) **Purchase and use body and parcel scanners, as promised by the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, to address the indignity of invasive body searches of family members visiting detainees;**

(j) **Install telephones or computers for inmates so that they are able to communicate with their families.**

118. **Regarding safeguards and prevention, the Special Rapporteur recommends that the Government:**

(a) **Immediately shut down any unofficial detention facilities that may still be in existence;**

(b) **Ensure prompt and official registration of all persons deprived of their liberty and periodically inspect records at police and prison facilities to ensure that they are maintained in accordance with the established procedures; failure to do so would entail investigating senior officers and holding them accountable;**

(c) **Digitize all registrations and records of all persons deprived of their liberty and make them accessible to the National Human Rights Commission;**

(d) **Guarantee that access to lawyers through the Legal Aid Commission or bar association or other service is granted, in law and in practice, from the moment of deprivation of liberty and throughout all stages of criminal proceedings;**

(e) **End the practice of incommunicado detention during the initial hours at unofficial detention locations;**

(f) **Ensure that statements or confessions made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of legal counsel have no probative value in proceedings against that person;**

(g) **Ensure that all arrests are transparent, with the arresting officer showing proper identification, and based on objective evidence;**

(h) **Ensure that all detainees can challenge the lawfulness of detention before an independent court, i.e., through habeas corpus proceedings;**

(i) **Ensure that security sector officials (military, intelligence and police) undergo a rigorous reform programme that includes human rights education and training in effective interrogation techniques and proper use of force;**

(j) **Ensure that national security and policing procedures are compliant with international standards and that the Tamil population is adequately represented in the police corps at all ranks in the North and East so that law enforcement forces are able to communicate with and serve the population residing there (see CERD/C/LKA/10-17, para. 24);**

(k) **Introduce independent, effective and accessible complaint mechanisms at all places of deprivation of liberty by installing emergency telephone hotlines or confidential complaint boxes that are operational, and ensure that complainants are not subject to reprisals;**

(l) **Provide more specialized training in forensic medical investigation and documentation of torture and ill-treatment in accordance with the Istanbul and Minnesota Protocols;**

(m) **Authorize and facilitate regular, effective and independent monitoring of places of deprivation of liberty by international and national bodies, including the National Human Rights Commission and civil society organizations;**

(n) **Raise the age for criminal responsibility of juveniles to one that is internationally acceptable;**

(o) **Ensure the separation of juvenile and adult detainees and that children are held in detention only as a last resort and for as short a time as possible.**

119. **Regarding institutional reform, the Special Rapporteur recommends that the Government:**

(a) **Establish an effective torture prevention programme by undertaking comprehensive institutional reforms and a vetting process at the higher and lower ranks in the security sector — the army, the intelligence agency and the police — to overhaul these institutions, which continue to function with impunity;**

(b) **Rebuild the national institutions of the security sector so they are trustworthy and effective in protecting citizens without violating human rights, and establish independent oversight authorities to monitor the national security agencies;**

(c) **Provide directives to the security sector to ensure that all officers are informed and given clear and unequivocal instructions that all acts of torture, including rape and other forms of sexual violence, and ill-treatment are prohibited and that those responsible, either directly or as commander or superior, will be investigated, prosecuted and punished (see CAT/C/LKA/5, paras. 10-11);**

(d) **Support the National Human Rights Commission so that it complies with the principles on the status of national institutions for the promotion and protection of human rights (the Paris Principles) and can be designated as the national preventive**

mechanism, as contemplated by the Optional Protocol to the Convention against Torture, to undertake scheduled and unannounced prison visits to effectively monitor the legal status of detainees and conditions of detention of all detainees at all locations where persons are deprived of their liberty;

(e) **Strengthen the powers of the National Human Rights Commission to ensure its independence and impartiality, and provide it with a robust mandate and sufficient financial resources to serve as an additional channel for complaints of torture and ill-treatment (while not replacing the responsibilities of prosecutors and judges);**

(f) **Implement the detailed recommendations of the Working Group on Enforced or Involuntary Disappearances regarding the functioning of the Office on Missing Persons (see A/HRC/33/51/Add.2, paras. 79-80);**

(g) **Shut down the Poonthotam rehabilitation centre programme and release unconditionally those who remain in the centre or any other rehabilitation centre;**

(h) **Charge detainees whose cases remain pending under the Prevention of Terrorism Act or, in the absence of sufficient evidence, release them immediately;**

(i) **Prioritize demilitarization and dismantle the structures that are still in place to conduct surveillance, and build up trust in the community as a step towards reconciliation;**

(j) **Strengthen the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 to make the National Authority set up under the Act an independent and accountable agency not managed only by the police but subject to judicial oversight, and ensure that its jurisdiction extends to the protection of victims of trafficking who, like victims of torture and sexual violence, also have a real fear of reprisals.**

120. **Regarding the judiciary, the Special Rapporteur recommends that the Government:**

(a) **Reform the judiciary by referring to the mission report of the Special Rapporteur on the independence of judges and lawyers** [12] **to address deficient procedures that continue to undermine any effective monitoring and documentation of and accountability for torture and ill-treatment through prompt, thorough and impartial investigations;**

(b) **Uphold its obligation to genuinely investigate, prosecute and punish the numerous acts of torture that occurred in the past that are well documented, as there is no statute of limitations for such crimes under international law;**

(c) **Ensure that investigations into recent cases are launched ex officio without any need for formal complaints by prosecutors whenever there are reasonable grounds to suspect torture or ill-treatment;**

(d) **Ensure that allegations of torture and ill-treatment are admitted at all stages of judicial proceedings;**

(e) **Hold perpetrators, including superiors who may have tolerated or condoned the act, criminally responsible for torture or other ill-treatment and impose adequate disciplinary measures;**

[12] See footnote 1.

(f) **Ensure that the exclusionary rule with regard to evidence obtained under torture is fully implemented by the courts and that confessions in criminal proceedings are not admitted in the absence of any corroborating evidence;**

(g) **Ensure that victims of torture and ill-treatment receive adequate compensation, including their full rehabilitation, and that they are not subject to reprisals;**

(h) **Order independent medical examinations by forensic doctors properly trained on the Istanbul Protocol as soon as any suspicion of mistreatment arises;**

(i) **Ensure that all aspects of the chain of criminal justice (investigation, detention, interrogation, arrest and conditions of incarceration) comply with the rule of law.**

121. **Regarding accountability and transitional justice, the Special Rapporteur recommends that the Government:**

(a) **Implement Human Rights Council resolution 30/1 and build a consensus to regain the confidence of all citizens and, in particular, torture survivors;**

(b) **Refer to international standards that require that societies approach national reconciliation by conducting truth-seeking and disclosure, justice through criminal prosecutions of perpetrators of serious crimes, reparation to victims and meaningful reform of institutions. The mechanisms by which these four steps are accomplished should be decided following extensive consultations with all stakeholders in a transparent and broadly participatory exercise that is just and earns the trust of all Sri Lankans, including those who live outside the country;**

(c) **Implement the recommendations made by OHCHR following its comprehensive investigation on Sri Lanka (A/HRC/30/61), in particular those related to torture and accountability;**

(d) **Establish an office to investigate and prosecute allegations of torture independent of the Office of the Attorney-General to ensure a break from the past culture of impunity, and make operational an effective and safe witness protection programme that excludes authorities who were part of the national security forces;**

(e) **Refer to the work of the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence, who has stressed the need for a comprehensive transitional justice strategy that takes into account the links between these different mechanisms;**[13]

(f) **Implement the recommendations contained in the report of the Working Group on Enforced or Involuntary Disappearances;**

(g) **Implement the recommendations of the mission report of the Special Rapporteur on the independence of judges and lawyers.**

122. **The Special Rapporteur recommends that the international community:**

(a) **Support the timely implementation of the various recommendations made by United Nations mechanisms;**

[13] See "Observations by the Special Rapporteur on the conclusion of his second advisory visit to Sri Lanka (26 January to 1 February 2016)", available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17029&LangID=E.

(b) **Ensure that the principle of non-refoulement is upheld by not returning to Sri Lanka persons, in particular Tamils, who may be at risk of torture or ill-treatment, in accordance with article 3 of the Convention against Torture.**