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Committee against Torture

Concluding observations on the fifth periodic report of Sri Lanka^{*}

ADVANCED UNEDITED VERSION

1. The Committee against Torture considered the fifth periodic report of Sri Lanka (CAT/C/LKA/5) at its 1472nd and 1475th meetings, held on 15 and 16 November 2016 (CAT/C/SR.1472 and 1475), and adopted the present concluding observations at its 1494th meeting, held on 30 November 2016.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Sri Lanka and the written replies to the list of issues (CAT/C/LKA/Q/5/Add.1).

3. The Committee appreciates the dialogue held with the State party's delegation during the consideration of the report and the written additional information provided afterwards.

B. Positive aspects

4. The Committee welcomes the declaration made on 16 August 2016 under article 22 of the Convention, recognizing the competence of the Committee to receive and consider individual communications. The Committee appreciates as well the State party's ratification of the following instruments:

(a) The Convention for the Protection of All Persons from Enforced Disappearance, in May 2016;

(b) The Convention on the Rights of Persons with Disabilities, in February 2016.

5. The Committee welcomes the following legislative and normative measures taken by the State party in areas related to the Convention:

(a) The enactment, on 25 August 2016, of Act No. 19 on the "Amendment to the Registration of Deaths (Temporary Provisions)", enabling the issuance of certificates of absence to those who claim that their family members are missing;

(b) The adoption, on 23 August 2016, of Act No. 14 on "The Office of Missing Persons";

(c) The adoption, on 15 May 2015, of the 19th amendment to the Constitution, which reinstituted the Constitutional Council that led to the appointment of several independent constitutional commissions;

(d) The promulgation, on 7 March 2015, of Act No. 4 on "Assistance to and Protection of Victims of Crime and Witnesses";

^{*} Adopted by the Committee at its fifty-ninth session (7 November – 7 December 2016).

(e) The adoption, in 2013, of Crimes Circular No. 2/2013, providing for disciplinary action against officers who fail to properly register detained persons.

6. The Committee takes note of the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular:

(a) The appointment, in January 2016, of a Task Force to conduct national consultations on transitional justice processes and mechanisms and the establishment, in November 2015, of the Secretariat for the Coordination of the Reconciliation Mechanisms;

(b) The establishment, in July 2016, of an inter-institutional Committee to take preventive measures against torture;

(c) The instructions issued in April 2016 by the Commanders of the Army, Navy and Air Force indicating that strict action will be taken against human rights violations;

(d) The Directives issued on 17 June 2016 by the President to the Armed Forces and the Police to ensure that the fundamental rights of persons arrested under the Prevention of Terrorism Act are respected and to assist the Human Rights Commission of Sri Lanka in the exercise of its duties;

(e) The adoption, in May 2011, of the National Action Plan for the Protection and Promotion of Human Rights (2011-2016), which identifies "prevention of torture" as one of the priority areas;

(f) The launch, on 16 November 2016, of the Policy Framework and National Action Plan to address sexual and gender-based violence (2016-2020).

7. The Committee appreciates the standing invitation extended by the State party to the United Nations (UN) special procedures of the Human Rights Council in December 2015. It also appreciates the completion of visits to the State party during the period under review by the Special Rapporteur on Torture, the Special Rapporteur on the Independence of Judges and Lawyers, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence; the Special Rapporteur on the Human Rights of Migrants; and the Special Rapporteur on the Human Rights of Internally Displaced Persons, as well as the UN High Commissioner for Human Rights.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. While noting with appreciation the State party's compliance with the follow-up procedure and the written information provided by the State party on 11 January 2013 (CAT/C/LKA/CO/3-4/Add.1), the Committee regrets that the recommendations identified for follow-up in the previous concluding observations have not been implemented, namely, the fundamental legal safeguards (paras. 27-28), forced confessions (paras. 31-32), investigation of torture allegations (paras. 19-20) and accountability for past violations (paras.15-16).

Allegations of routine torture during police detention

9. The Committee remains seriously concerned over consistent reports from national and UN sources, including the UN Special Rapporteur on torture, indicating that torture is "a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police," regardless of the nature of the suspected offence. The Committee is concerned that the broad police powers

to arrest suspects without a court warrant has led to the practice of detaining persons while conducting the investigations as a means to obtain information under duress. The Committee notes allegations that police investigators often fail to register detainees during the initial hours of deprivation of liberty or to bring them before a magistrate within the time-limit prescribed by law, during which time torture is particularly likely to occur. It also notes with concern that neither the Attorney General nor the judiciary exert sufficient supervision over the legality of the detention or the conduct of police investigations to prevent this practice. In this regard, the Committee shares the concern of the Special Rapporteur on torture that magistrates often do not inquire into potential ill-treatment during pre-trial hearings, and accept the requests of police officers to keep suspects in remand custody without further scrutiny (arts. 2, 12, 16).

10. The Committee calls on the State party to:

(a) Make the necessary legislative amendments requiring the police to obtain an arrest warrant issued by a judicial authority in order to conduct an arrest, except in cases of *flagrante delicto*;

(b) Ensure that detained persons are promptly brought before a judge within the time limit established by law, which should not go beyond 48 hours;

(c) Ensure that arresting officers register the exact date, time, ground for the detention and place of arrest of all detained persons. The State party should ensure that compliance with the detention registration system is closely monitored and penalize any officers who fail to adhere to it or to ensure that their subordinates do so;

(d) Establish effective prosecutorial oversight over the police' actions during investigation and improve criminal investigation methods to end practices whereby statements obtained during police interrogation are relied on as the central element of proof in criminal prosecutions;

(e) Remind judges of their duty, whenever they have a reason to believe that a person appearing before them may have been subjected to torture or duress, to actively ask the detainees about their treatment during detention and request a forensic examination. The competent authorities should hold responsible those persons whose duty is to apply the law, including judges who fail to respond appropriately to allegations of torture raised during judicial proceedings;

(f) Install video surveillance in all places of custody where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and lawyers;

(g) Encourage the application of non-custodial measures as an alternative to pre-trial detention.

Alleged "white van" abductions and torture in unacknowledged detention facilities

11. The Committee expresses concern at credible reports indicating that the practice of so-called "white van" abductions of Tamils has continued in the years following the end of the armed conflict. The Committee notes allegations of such practice documented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) during the period 2002-2011 as well as by non-governmental organisations, which have identified 48 sites where torture allegedly occurred or which were used as transit points to torture locations, between 2009 and 2015. The Committee notes the information received that numerous individuals suspected of having a link, even remote, with the Liberation Tigers of Tamil Eelam (LTTE) have been abducted

and then subjected to brutal torture, often including sexual violence and rape of men and women. According to the information received, such practices are carried out by both military and police in unacknowledged places of detention, which have included law enforcement headquarters, army and IDP camps, and "rehabilitation centres." While noting the State party's position that no secret torture camps or detention centres exist at present, the Committee regrets the failure of the State party to clarify whether it investigated these recent allegations of torture (arts. 2, 12, 13 and 16).

12. The Committee urges the State party to ensure that all allegations of unlawful detention, torture and sexual violence by security forces are promptly, impartially and effectively investigated by an independent body. The Committee urges the State party to publish a full list of all gazetted detention centres, close down any unofficial ones still in existence and ensure that no one is detained in unofficial detention facilities, as this practice is *per se* a breach of the Convention.

Institutional reform of the security sector

13. Bearing in mind the findings of the OISL that the Sri Lankan security forces committed widespread or systematic torture, enforced disappearances, and other serious human rights violations during and in the aftermath of the internal conflict, the Committee is seriously concerned at the failure of the State party to carry out an institutional reform of the security sector. In this regard, the Committee was alarmed by the presence of the Chief of National Intelligence, Sisira Mendis, as part of the Sri Lankan delegation, since he was the Deputy Inspector General of the Criminal Investigations Department (CID) from March 2008 to June 2009. The Committee observed that Mr. Mendis is named in the OISL Report, which notes that the CID's "4th Floor" facility at police headquarters in Colombo was known as a notorious site of torture. The OISL report also recounts allegations of widespread torture, including sexual violence, perpetrated against individuals detained at Manik Farm camp and elsewhere in the aftermath of the conflict by personnel of the CID and the Terrorism Investigation Department (TID) over which Mr. Mendis also allegedly exercised supervisory authority until June 2009. In this connection, the Committee deeply regrets that the neither Mr. Mendis nor any other member of the delegation provided information in response to the many specific questions raised by the Committee on this subject during the dialogue with the State party and in its written additional information provided to the Committee.

14. The State party should:

(a) Immediately embark upon an institutional reform of the security sector and develop a vetting process to remove from office military and security force personnel at the higher and lower ranks, as well as any other public official, where there are reasonable grounds to believe that they were involved in human rights violations, as recommended by the OISL Report;

(b) Provide detailed information on Mr. Mendis' role and responsibilities with regard to allegations of torture while he was Deputy Inspector General of the Criminal Investigation Department.

Ensuring accountability for past cases of torture and disappearance

15. While welcoming the State party's commitment to address the widespread violations that occurred during and immediately after the internal conflict by co-sponsoring the Human Rights Council Resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, the Committee notes that the State party has only just completed a process of national consultations and has not yet established institutions called for in that resolution, particularly a Judicial Mechanism with a Special Counsel, as well as a

Commission for Truth, Justice, Reconciliation and Non-recurrence and an Office for Reparations. The Committee also notes with regret that the State party has not yet concluded its ongoing investigations into certain emblematic cases of violations from the conflict period, including the killings of the “Trincomalee Five” students and the killing of 17 aid workers of *Action Contra la Faim*, both of which occurred in 2006. Additionally, while noting that severe punishments have been imposed in the Vishwamadu case concluded in October 2015, the Committee regrets the failure of the State party to provide the requested information on the progress of the 39 investigations it has reportedly initiated with regard to the acts of rape and sexual violence allegedly committed by security forces in the aftermath of the conflict. In this regard, the Committee shares the view expressed by the UN High Commissioner for Human Rights during his February 2016 visit to the State party that relevant criminal investigations currently pending before the courts should not be put on hold while the transitional justice mechanisms are developed (arts. 2, 12, 13).

16. The State party should expedite the establishment of the mechanisms called for in the Human Rights Council Resolution 30/1 and, in particular, a Judicial Mechanism with a Special Counsel to investigate allegations of torture, enforced disappearances and other serious human rights violations that includes independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality at national and international level. The State party should also map all pending criminal investigations related to serious human rights violations perpetrated during the course of the conflict and its aftermath, as well as the findings of all presidential commissions where such cases are documented, and ensure that prompt, thorough and independent investigations are conducted to establish the truth and to ensure that those responsible, directly or as commanders or superiors, are held to account. In this regard, the Committee recalls that, as stated in its General Comment No. 3, amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention. The State party should ensure that its ongoing investigations into emblematic cases of violations in the conflict and post-conflict eras are concluded as expeditiously as possible and result in prosecutions of the perpetrators.

Reprisals against victims and witnesses in cases of torture

17. The Committee is concerned about information indicating that victims are reluctant to bring allegations of torture to the police because of fear of retaliation. In this regard, the Committee regrets the lack of statistical data on the number of complaints received by the State party pertaining to reprisals against victims or witnesses of torture and the outcome of investigations into those complaints. While appreciating the adoption of the Victim and Witness Protection Act No. 4 of 2015, the Committee is concerned at the information provided by the delegation that the Victim and Witness Protection Division foreseen by the law is to be located within the institutional hierarchy of the police, despite the fact that the police has been identified as responsible in the majority of alleged cases of torture (arts. 13 and 14).

18. The State party should establish an independent, effective, confidential and accessible complaints mechanism for victims of torture, including for persons deprived of their liberty, and ensure that complainants may file their complaints safely without risk of reprisals. It should also revise the Assistance to and Protection of Victims of Crimes and Witnesses Act to ensure that witnesses and victims of human rights violations, including of torture, sexual violence or trafficking, are effectively protected and assisted, in particular by ensuring that the Protection Division is an autonomous entity independent of the police hierarchy and that its members are fully vetted. The State party should also take prompt criminal and disciplinary action

against police officers responsible of threats or reprisals against victims and witnesses of torture.

Inadequate investigations into allegations of torture and ill-treatment

19. The Committee remains deeply concerned that, according to numerous reports from UN and non-governmental sources, impunity prevails in most cases of torture in the State party. The Committee notes with concern that only 17 cases of torture were filed under the Convention against Torture Act since 2012, and only two resulted in convictions, suggesting that a small number of allegations of torture have been actually investigated. The Committee notes with concern the considerable discrepancy between the low number of complaints of torture reportedly received by the police since 2012 (150 cases), and the high number of allegations of torture received by the Human Rights Commission of Sri Lanka during the same period (2,259 cases). The Committee did not receive the information it requested on the number of prosecutions of torture cases that have been initiated on the basis of allegations forwarded to law enforcement officers by the Human Rights Commission of Sri Lanka. It also notes with concern the information shared by the delegation that although the Human Rights Commission of Sri Lanka forwards all allegations of torture to the Attorney General's office for prosecution, the Attorney General's office does not open *ex officio* investigations into those complaints but rather refers them to the police for further investigation. Similarly, the Committee notes the State party's confirmation that prosecutors generally do not launch investigations into torture *ex officio*, but rather only act in cases where a complaint of torture is first submitted to the police and investigated by them. The Committee is seriously concerned that this institutional arrangement has impeded the carrying out of impartial, effective investigations into allegations of torture, since responsibility for launching such investigations rests solely with the Special Investigative Unit of the police, which remains within the police hierarchy (arts. 2, 4, 12 and 13 and 16).

20. The Committee reiterates its previous recommendation (CAT/C/LKA/CO/3-4, para. 18) that the State party establish an independent body tasked with investigating complaints against law enforcement officers that is independent of the police hierarchy. The Committee also urges the State party to strengthen the independence of the prosecutorial authority responsible for acting on cases of torture and consider vesting prosecutors with the ability to mandate *ex officio* investigations into torture. The State party should also ensure that persons under investigation in cases of torture are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation; and that those responsible for committing, ordering, consenting to or acquiescing in the commission of torture are duly prosecuted, tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts.

Prolonged administrative detention under the Prevention of Terrorism Act

21. Although the state of emergency was lifted in 2011, the Committee remains deeply concerned that the administrative detention regime established in the Prevention of Terrorism Act (PTA) No.48 of 1979 remains in force. Under this law, before bringing the suspect to a magistrate, security officers may detain persons for 72 hours, and thereafter, up to 18 months, in such a place and conditions as determined in a detention order issued by the Minister of Defence, which cannot be challenged in court. The Committee notes with concern that, in practice, PTA suspects have been held for as long as 15 years without having been indicted, and even those who have been charged, have remained in detention without a verdict for as long as 14 years. The Committee is also concerned over the large number of documented allegations of torture of former and current PTA detainees, who

also allege violations of their due process rights during detention, in particular restrictions to access their lawyers. While noting that a draft policy and legal framework has been proposed by the Government to replace the PTA, the Committee regrets that lack of specific information provided by the delegation on the scope of the terrorism-related offences, the safeguards against arbitrary arrest and the judicial oversight of detention. In the absence of these clarifications, the Committee wishes to stress that any regime that would place suspects under the custody of the investigating authorities for prolonged detention and continuous questioning, without access to appropriate safeguards and immediate judicial oversight, would give rise to a real risk of torture and would therefore be contrary to the Convention (arts. 2, 11, 12 and 16).

22. The State party should take prompt legislative measures to repeal the PTA and abolish the regime of administrative detention, which confines individuals outside the criminal justice system and makes them vulnerable to abuse. In the meantime, the State party should guarantee that magistrates promptly review all detention orders under the PTA, and that detainees who are designated for potential prosecution are charged and tried as soon as possible and that those who are not charged or tried are immediately released. In case legislation on national security is considered to be necessary, the State party should abide by internationally recognized standards by adopting a precise definition of terrorist acts, ensuring the right of detainees to be brought promptly before a judge and to access a lawyer from the outset of the detention, guaranteeing the requirements of strict necessity and proportionality of the detention, and the periodic review of the detention by a court that can order the immediate release of the detainee or alternative measures.

Enforced disappearances

23. While welcoming the State party's increased engagement to clarify the fate of thousands of missing persons, including its efforts to adopt legislation that will incorporate the recently ratified Convention on Enforced Disappearance into domestic law, the Committee regrets the lack of clarification on the plans to equip the Office of Missing Persons with the necessary technical capacity and forensic expertise to conduct exhumations. The Committee expresses concern, furthermore, about the alarming assessment provided by the UN Working Group on Disappearances following its visit to the State party on the lack of progress, impartiality and effectiveness of the ongoing investigation at the secret detention place in Navy Camp in Trimcomalee, where many disappearances and torture-related offences allegedly occurred (arts. 2, 12, 14 and 16).

24. The State party should take all the necessary measures to combat impunity for the crime of enforced disappearance, in particular by:

(a) Accelerating the process of adoption of legislation that will criminalize enforced disappearances and ensuring that such crime will be punished with penalties that take into account its grave nature;

(b) Ensuring that all cases of enforced disappearance and torture, including those that took place in Navy Camp in Trimcomalee, are thoroughly, promptly and effectively investigated by an independent mechanism, suspects are prosecuted and those found guilty are punished with sanctions proportionate to the gravity of their crimes, even when no human remains are found;

(c) Ensuring that the Office of Missing Persons is equipped with the technical capacity required to conduct exhumations, including forensic expertise;

(d) Ensuring that any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the

disappeared person as well as to fair and adequate compensation, including any necessary psychological, social and financial support.

Rehabilitation under the anti-terrorism framework

25. The Committee is concerned at the continued use of the “rehabilitation” programme, foreseen under the Emergency Regulations for persons connected with the LTTE who surrendered to the army at the end of the conflict in 2009. While noting the information provided by the delegation that this option is voluntary and offered only to persons who are indicted and remanded in custody, the Committee is concerned at the lack of transparency regarding the criteria for selection, the conditions of detention and the judicial oversight with regard to the necessity and lawfulness of the confinement. While noting that there are only 19 persons currently under rehabilitation according to official sources, and that 12,169 persons have already been rehabilitated, the Committee is concerned about recent allegations from credible sources of cases of torture of persons who were under rehabilitation, in addition to the allegations of torture in rehabilitation centres during the period covered by the OISL report. The Committee regrets the failure of the State party to clarify if these current and old allegations have been investigated (arts. 2, 11, 12 and 16).

26. The State party should abolish the current system of “rehabilitation” under anti-terrorism regulations, which allows persons to be confined in centres without due process safeguards. In the meantime, the State party should ensure that magistrates promptly review all the pending decisions on rehabilitation in order to guarantee that: (i) detainees who are designated for potential prosecution are charged and tried as soon as possible; and (ii) those who are not to be charged or tried are immediately released. The State party should also account for the 12,169 persons that have been “rehabilitated” and ensure that they are not subjected to arbitrary detention. The Committee urges the State party to ensure that allegations of torture and sexual violence in rehabilitation centres are promptly, impartially and effectively investigated by an independent mechanism.

Fundamental legal safeguards

27. Recalling its previous recommendation (CAT/C/LKA/CO/3-4, para. 7), the Committee remains concerned that several due process rights of detained persons are still not enshrined in national legislation, such as the right to inform the next of kin of the arrest. While noting that the 2012 Police rules recognise the right of a lawyer to represent his/her client at a police station at any time, the Committee regrets that neither the current legislation nor the rules guarantee the right of the detained person to meet with a lawyer from the outset of the detention. In this regard, the Committee notes with concern that the 2016 proposed amendments to the Code of Criminal Procedure Act guarantee the right to meet with a lawyer only after the detainee’s statement is taken by the police. While noting that the Government is reconsidering this proposal, the Committee stresses that such rule would not eliminate the risk of detainees being tortured during police interrogations. It is also concerned about information that *habeas corpus* applications are still an ineffective remedy to challenge the lawfulness of the detention because of the excessive delays in the process of inquiry before the Magistrate’s courts (art. 2).

28. The State party should make the necessary legislative amendments to the draft Code of Criminal Procedure Act in order to ensure, in law and in practice, that all detainees are afforded all fundamental legal safeguards from the outset of the deprivation of liberty, including the safeguards mentioned in paragraphs 13 and 14 of the Committee’s General Comment No. 2. In particular, the State party should guarantee to the persons arrested and detained:

(a) The right to have prompt access to a lawyer, especially during police interrogations, including unrestricted access to an *ex officio* lawyer;

(b) The right to notify a relative or other person of the detainee's choice of the reasons and the place of detention;

(c) The right to challenge, any time during the detention, the legality or necessity of the detention before a magistrate who can order the detainee's immediate release, and to receive a decision without delay. The State party should increase its efforts to ensure that the adjudication of habeas corpus proceedings is as expeditious as possible. The State party should regularly verify that law enforcement officials respect legal safeguards and it should apply the Crimes Circular No. 02/2013 and penalize any failure on the officials' part to do so.

Medical examinations

29. While noting the information provided in the State report that arrested persons are routinely brought for a medico-legal examination before being produced before a magistrate and prior to their release, the Committee regrets the lack of information provided on the number of investigations initiated on the basis of medico-legal reports that showed evidence of ill-treatment. The Committee is also concerned that the person examined can only obtain a copy of the medico-legal report once it is sent to the court and becomes a public document, which threatens the confidentiality of the medical information and exposes victims to reprisals. As regards requests for medico-legal examinations in prisons, the Committee expresses concern at information that prison doctors need to request permission from the prison management, which may create a conflict of duties for prison doctors and expose them to pressure to suppress evidence (art. 2).

30. The Committee calls on the State party to ensure that:

(a) A medical examination is performed promptly at the beginning of the deprivation of liberty by independent doctors, including of the detainees' own choosing, and who have been trained in the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(b) The medico-legal report is made directly available to the detainee or the detainee's counsel on request;

(c) All examinations are performed out of earshot and sight of police officers and prison staff;

(d) Doctors are able to report any signs of torture or ill-treatment to an independent investigative authority in confidence and without risk of reprisals.

Forced confessions

31. Recalling its previous recommendation (CAT/C/LKA/CO/3-4, para. 11), the Committee remains concerned that, under the PTA, confessions obtained at or above the rank of Assistant Superintendent of Police are still admissible as sole evidence in court, even if they were taken without the presence of a lawyer and are later retracted by the accused on the grounds of coercion. The Committee is concerned that, even after the so-called *voire dire* or admissibility inquiries take place, the judge enjoys final discretion to admit evidence or not and, for persons detained under the PTA, the burden of proof remains on those persons to prove that their confessions were made under duress. The Committee is alarmed by information that the same rule has been carried over in the proposed draft Framework which will replace the PTA. It is also seriously concerned at information that 90 percent of convictions are based on a confession alone or as the main evidence and that,

in numerous documented cases of torture, the accused persons alleged that they were forced to sign self-incriminatory statements in blank sheets of paper or in a language they did not understand (arts. 2, 12 and 15).

32. The State party should make the necessary legislative amendments to ensure that national legislation, and any legislative proposals to replace the security legal framework, strictly guarantees that coerced confessions are inadmissible in practice as evidence in court, including in cases concerning State security. In this respect, the Committee calls on the State party to:

(a) Ensure that, where there is an allegation that a statement was made under torture, the burden of proof effectively remains on the prosecuting authority without exception. A forensic medical examination should be immediately ordered and the necessary steps should be taken to ensure that the allegations are promptly and properly investigated;

(b) Enforce the Evidence Ordinance of Sri Lanka in all criminal cases, including in terrorism-related offences, and ensure that extrajudicial confessions that are recanted by defendants when they appear before a magistrate on the ground of being coerced are effectively excluded from the proceedings, especially when the medical examination sustains the claim;

(c) Enshrine in national legislation the right of the accused to have access to an interpreter from the outset of the deprivation of liberty and throughout the proceedings;

(d) Adopt the measures required to permit proceedings to be reopened on the grounds that they have been held on the basis of confessions extracted under torture.

Human Rights Commission of Sri Lanka

33. While appreciating the appointment of the new commissioners in October 2015 by the Constitutional Council, following the 19th constitutional amendment (see above, para. 5 (c)), the Committee is concerned that the Commission has not always been able to visit the police stations or prisons immediately after receiving an allegation of violation of the detainees' rights, due to various administrative and logistic factors. While appreciating the confidential complaint mechanism set up by the Commission, the Committee regrets that those complaints do not necessarily result in a criminal investigation, as indicated above. It also regrets that the Commission's recommendations, particularly those related to the compliance of new laws with the obligations emanating from the Convention, have not been consistently implemented by the State party (art. 2).

34. The State party should provide sufficient resources to the Human Rights Commission of Sri Lanka so that it effectively fulfils its broad mandate, with a dedicated structure and well-trained staff. The State party should abide by the legal obligation to provide swift information to the Commission on all arrests and transfers as well as on any violations in detention facilities. The State authorities should also take prompt action upon the Commission's recommendations and upon the complaints of torture documented and referred for criminal investigation. The State party should consider reinforcing the mandate of the Human Rights Commission by legislating on its powers to refer cases directly to the courts, as recommended in the OISL report (A/HRC/30/CRP2, para. 1271).

Conditions of detention

35. The Committee is alarmed by the assessment of the Special Rapporteur on Torture in his preliminary observations after his visit to Sri Lanka, indicating that the conditions of detention in prisons and detention facilities, in particular those of the Terrorist Investigation Department, could amount to cruel, inhuman and degrading treatment. According to the Special Rapporteur, overcrowding goes beyond 200 per cent in certain locations, particularly in Vavuniya Remand prison, and there is deficient infrastructure, poor sanitary conditions, insufficient light and ventilation and inadequate access to health-care services and to recreational or educational activities. While noting the three visiting committees foreseen in the new Prisons Administration Act, the Committee regrets the lack of information on the mechanisms to ensure the independence of these bodies. The Committee also takes into account the mandate of the Human Rights Commission of Sri Lanka to conduct unannounced visits to detention facilities, but is concerned about the capacity of the Commission to effectively fulfil such a broad mandate (arts. 2, 11 and 16).

36. The State party should:

(a) Significantly reduce overcrowding in prisons by making more use of alternatives to incarceration, such as suspended sentences for first offenders or for certain minor offences;

(b) Continue its efforts to improve prison facilities and to remodel those facilities that do not meet international standards, such as Welikada prison, and allocate the resources required to improve conditions of detention and strengthen reintegration and rehabilitation activities;

(c) Improve the prison medical facilities and ensure the swift transfer of patients to the National Hospital in cases of emergencies and serious illnesses;

(d) Consider ratifying the Optional Protocol to the Convention, with a view to establish an independent mechanism in charge of the regular monitoring of all places of detention.

Deaths in custody

37. The Committee remains concerned over several instances of deaths in police custody in suspicious circumstances which have not yet been elucidated by the judicial authorities, such as the cases of Chandrasiri Dasanayaka, P.H. Sandun Malinga, and the death of four suspects who were arrested in connection with the killing of a police officer and his wife in Kamburupitiya. While noting the ongoing discussions to strengthen the investigation system of deaths in custody, the Committee remains concerned that, at present, investigations are often conducted by the same police in whose custody the person died (arts. 2, 11, 12 and 16).

38. The State party should take the necessary measures to ensure that:

(a) All instances of death in custody, including the deaths of Chandrasiri Dasanayaka, P.H. Sandun Malinga, and of the four suspects who were arrested in connection with the killing of a police officer and his wife in Kamburupitiya, are promptly and impartially investigated by an independent investigation unit with no institutional or hierarchical link with the custodial body;

(b) The post-mortem examinations are conducted outside the area in which the death occurred, in order to avoid collusion;

(c) Those found responsible for deaths in custody are brought to justice and, on conviction, adequately punished.

Harassment of human rights defenders and journalists

39. The Committee remains concerned about consistent reports of harassment and arbitrary detention against journalists and human rights defenders, which impede the effective reporting of torture and disappearance claims. The Committee regrets the slow progress of the investigations into past violations previously raised by the Committee, such as the disappearance of journalist Prageeth Eknaligoda, who was declared to be travelling abroad by the former Attorney-General, who was the chief of the delegation of Sri Lanka during the consideration of its previous report by the Committee in 2011, and subsequently, after thorough national investigation, was declared victim of an abduction by members of the national armed forces by a national court. The Committee also notes with concern reports that 9 out of 13 army personnel detained in connection with this case have reportedly been released on bail, disregarding the fears expressed by the victim's family. It also regrets the lack of information on the investigations into recent cases of harassment, such as the alleged arbitrary detention of Ruki Fernando, the reported retaliatory police investigation of Mauri Inoka or the alleged intimidation of persons who engaged, or were suspected of engaging, with the UN Working Group on Enforced Disappearances during its 2015 visit to the country (art. 16).

40. The Committee requests the State party to:

(a) Publicly condemn threats and attacks against human rights defenders and journalists and ensuring their effective protection;

(b) Promptly investigate the cases brought to the Committee's attention, including those mentioned in the Committee's list of issues (CAT/C/LKA/Q/5, para. 36). The State party should ensure that suitable action is taken against those responsible and remedies granted to the victims;

(c) Promptly inform the Committee on the developments in and the outcome of the judicial proceeding instituted against the alleged perpetrators of the abduction of Mr Prageeth Eknaligoda, and ensure that Mr Eknaligoda's family members are provided with effective protection from all forms of harassment or reprisal;

(d) Put an end to the practice of detaining or prosecuting journalists and human rights defenders as a means of intimidating them or discouraging them from freely reporting on human rights issues.

Sexual abuse of children by Sri Lankan peacekeepers

41. Recalling its previous recommendation (CAT/C/LKA/CO/3-4, para. 23) with regard to the alleged sexual exploitation and abuse of minors by military members of the Sri Lankan contingents deployed in the United Nations Stabilization Mission in Haiti (MINUSTAH), the Committee remains concerned that only 23 out of more than a hundred members accused were convicted. While noting that the disciplinary punishments were imposed by an Army Court of Inquiry which, according to the State party, acted according to due process, the Committee regrets the failure of the State party to clarify the type of disciplinary punishments meted out and the penalties which were imposed for these serious crimes. The Committee takes note of the information that a stringent vetting process applies to the selection of officers for peace-keeping missions, but regrets the lack of clarification as to whether any of the soldiers accused of child abuse in Haiti would be deployed to the upcoming peace-keeping mission in Mali (arts. 2, 5, 12, 14 and 16).

42. The Committee calls upon the State party to share with the Committee information regarding the investigation of military staff deployed in MINUSTAH on charges of child abuse, including the report of the UN Office of Internal Oversight Services, as well as the number of indictments, prosecutions, if any, and penalties imposed. The State party should also ensure that those responsible for such acts are

criminally punished in accordance with the seriousness of their acts and that victims receive redress, including just and adequate compensation, and as complete rehabilitation as possible. The State party should take effective steps to prevent this type of abuse in peacekeeping operations, including the provision of specific training on the prevention of sexual abuse. For this purpose, the State party should take effective measures to vet any individual, including commanders, who have been involved in child abuse in Haiti as well as other human rights violations in Sri Lanka in order to ensure that they are not deployed to UN peacekeeping operations.

Non-refoulement

43. Bearing in mind its previous recommendation (CAT/C/LKACO/3-4, para. 27), the Committee remains concerned that the State party has not yet adopted a national legal and policy framework on asylum, in order to guarantee the non-refoulement principle enshrined in article 3 of the Convention. The Committee notes with concern that asylum seekers are therefore treated as irregular immigrants and are often subjected to arrest and detention before being deported (art. 3).

44. The State party should:

(a) Adopt the necessary legislative measures to fully incorporate into domestic legislation the principle of non-refoulement set out in article 3 of the Convention;

(b) Promptly establish a national asylum determination procedure that carries out a thorough assessment of whether or not there is a substantial risk that the applicant would be subjected to torture in the country of destination and a medical and psychological examination when signs of torture or traumatization have been detected among applicants;

(c) Ensure that persons in need of international protection are not detained or, if at all, only as a measure of last resort, after alternatives to detention have been duly examined and exhausted and for as short a period as possible, in detention centres that are suitable for their purpose and that differ from the regime of penal institutions;

(d) Consider ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Redress for victims of torture

45. The Committee is concerned at the insufficient amount of compensation awarded by the Supreme Court to victims of torture since 2011, and regrets the lack of information with regard to the number of cases to which the total amount corresponded. The Committee further notes with concern that there is a large backlog of fundamental rights applications pending before the Supreme Court and this remedy, which cannot be appealed, is not accessible to all victims because of the financial implications. Furthermore, decisions of the Supreme Court in favour of a victim of torture do not guarantee that effective investigations or prosecution will follow. The Committee further regrets the lack of information on the number of applications for compensation lodged before the District Courts and the number that were effectively granted to victims of torture. It also regrets the absence of a rehabilitation programme aimed at torture victims.

46. The Committee, recalling its general comment No. 3 (2013), urges the State party to:

(a) Take the necessary legislative and administrative measures to guarantee that victims of torture and ill-treatment benefit from effective remedies to obtain all

forms of redress, including restitution, adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition;

(b) Fully assess the needs of torture victims and ensure that specialized, holistic rehabilitation services are available and promptly accessible without discrimination, through the direct provision of rehabilitative services by the State, or through the funding of other facilities, including those administered by non-governmental organizations.

Training

47. While appreciating that the provisions of the Convention are being taught in military and police training programmes, the Committee regrets that trainings on non-coercive investigatory techniques and advanced methods of investigation are provided only on an *ad hoc* basis. It is also concerned at the assessment of the Special Rapporteur on Torture, indicating that specific training in the forensic medical investigation and documentation of torture and ill-treatment is still needed (art. 10).

48. The State party should provide periodic and compulsory training of its public officials on the provisions of the Convention, the Istanbul Protocol and on non-coercive interrogation techniques to all officials involved in the treatment and custody of persons deprived of their liberty. The State party should also develop and apply a methodology for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.

Follow-up procedure

49. The Committee requests the State party to provide, by 7 December 2017, information on follow-up to the Committee's recommendations relating to paragraphs 14(b), 16 and 18 of its concluding observations dealing with, respectively: the role and responsibilities of Mr. Mendis when he was Deputy Inspector General of the Criminal Investigations Department from March 2008 to June 2009 with regard to torture which allegedly occurred during his mandate; the establishment of a judicial mechanism with a special counsel to investigate allegations of torture, enforced disappearances and other serious human rights violations; the establishment of an independent, effective, confidential and accessible complaints mechanism for victims of torture and the revision of the Assistance to and Protection of Victims of Crimes and Witnesses Act. In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

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

51. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, including Sinhalese and Tamil, through official websites, the media and non-governmental organizations.

52. The Committee invites the State party to submit its sixth periodic report by 7 December 2020. To this end, the Committee invites the State party to accept, by 7 December 2017, to prepare its report under the optional reporting procedure whereby the Committee will transmit to the State party a list of issues prior to reporting. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.
