



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Fifty-ninth session**

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Item 4 of the provisional agenda

**Consideration of reports submitted by States parties  
under article 19 of the Convention**

**List of issues in relation to the fifth periodic report of Sri  
Lanka**

**Addendum**

**Replies of Sri Lanka to the list of issues\*, \*\***

[Date received: 7 November 2016]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report are on file with the Secretariat and are available, in the language of submission only, for consultation. They may also be accessed from the Committee's web page.

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## **Replies to the list of issues in relation to the fifth periodic report of Sri Lanka on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1. This Response seeks to provide information in respect of matters raised by the UN Committee Against Torture in the List of Issues pertaining to the Fifth Periodic Report of Sri Lanka under the UN Convention Against Torture.

2. The Government of Sri Lanka (GoSL) wishes to draw the kind attention of the Committee Members to the following factors in its assessment of the information provided in this Response, and positions taken in its Fifth Periodic Report submitted in October 2015 as well as the Update to the said report submitted in June 2016.

3. Following the Presidential election held on 8 January 2015, the Government launched a 'Hundred Day Programme' which was presented as the Presidential manifesto, to address pending urgent issues including issues relating to reconciliation and development. Several steps to advance good governance, strengthen rule of law and democracy, promote and protect human rights, ensure media freedom, enhance the independence of the judiciary, strengthen civilian administration in the former conflict affected areas etc., were taken during the first hundred days. Thereafter, following the Parliamentary Election in August 2015, the present National Unity Government was formed, uniting the two main rival political parties in Sri Lanka — the Sri Lanka Freedom Party and the United National Party — under the leadership of President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe with the intention of taking steps to provide the necessary political stability required to usher in essential reform for economic development, strengthening democracy, rule of law and good governance; combating corruption; advancing reconciliation and promoting, protecting and upholding human rights of all the people in the country.

4. Following the Presidential and Parliamentary Elections in January and August 2015 respectively, greater democratic space was created through a series of constitutional and administrative measures. These included strengthening the independence of the judiciary (appointing the senior-most Judge in the Supreme Court as Chief Justice), restoring media freedom, and enacting the Nineteenth Amendment to the Constitution which restored the independence of key public institutions. Following the parliamentary election held on 17 August 2015, the present government made a commitment to finding solutions to national issues through consensus. In addressing the complex post-conflict political challenges relating to peace and reconciliation, the Government continues to pursue the path of making progress in the areas of rule of law, economic development, sustainable peace, and good governance for all. As set out by the Hon. Minister of Foreign Affairs at the UN Human Rights Council and as explained by the Sri Lanka delegation, the Government is firmly committed to working with the support of the international community to address all outstanding issues relating to reconciliation, accountability and human rights through credible processes to deal with truth-seeking, justice, reparations and the guarantee of non-recurrence.

- The Government, while being firmly committed to continuing on the path of democratic reform, reconciliation, and protection and promotion of human rights of all, is conscious of the need to do so through consultative and inclusive processes. This may entail the processes taking more time, yet, the importance of creating awareness, seeking views of the public etc., has its merits in terms of ensuring long-term durability and success of the reforms undertaken and implemented;

- On the specific matter of incidence of torture, several policy measures have been taken during the last 2 years with a view to preventing practices of torture and ensuring the provision of redress to victims of torture;
  - Of note in this regard is the declaration made the GoSL under Article 22 of the Convention Against Torture recognising the competence of the Committee against Torture to receive individual communications;
  - The UN Special Rapporteur on Torture and other cruel, inhuman and degrading treatment, Mr. Juan E. Mendez visited Sri Lanka from 29 April to 7 May 2016. At the conclusion of his visit, The Special Rapporteur on Torture in particular mentioned that he and his team were given ‘unrestricted access to all places of detention and unimpeded access to interview detainees in private’;
  - Following up on the visit of the Special Rapporteur on Torture, a decision was made by the Ministry of Law and Order to establish a Committee to visit/examine and take preventive measures on allegations of torture. The aforesaid Committee was established in July 2016. Experts on torture prevention, the Bar Association of Sri Lanka, the Attorney General’s Department and senior members of Sri Lanka Police are represented in the Committee.
5. The matters being taken up by the Committee include:
- Requiring the Police to forward a monthly report to the Committee in respect of torture cases reported to the Police during each month;
  - Providing tools, mechanisms, methodologies in order to enhance the capacity to investigate and trace scientific evidence;
  - Providing suggestions and recommendations to improve the skills of investigation officers on modern investigation methods;
  - Adopting best-practices and modern methodologies followed by police forces elsewhere;
  - Studying the sociological and psychological factors that lead to the practice of torture;
  - Implementation of a monitoring mechanism to prevent torture.
6. In the backdrop of the above, Sri Lanka wishes to provide the following information in respect of issues raised by the Committee in its List of Issues.

### **Definition of torture**

7. The Government of Sri Lanka is of the opinion that the definition of torture in its domestic law covers all the elements contained in Article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Although the word “suffering” is not specifically mentioned in the definition of torture in the Act No. 22 of 1994, the Government is of the view that the words “severe pain, whether physical or mental”, invariably encompasses “suffering”, both in its physical and mental form.

8. Therefore, Sri Lanka is of the view that its definition is consistent with the definition of torture contained in the said Convention. It has to be noted that purely mental torture is also included within the definition, so that the threat of torture may itself amount to psychological torture. Furthermore, the Government notes that Professor Manfred Nowak (former Special Rapporteur on Torture), in his report of February 2008 (A/HRC/7/3/Add.6), observed that the definition in article 12 is in conformity with the definition of article 1 of the Convention; however, it does not expressly include “suffering”. This is a clear indication that despite the lack of the term “suffering” in the Convention against Torture

Act No. 22 of 1994 (the CAT Act), it is consistent with the definition contained in the Convention.

9. Professor Nowak also stated that, according to the Act, torture is defined under article 12, which in principle corresponds to article 1 of the Convention, as any act which causes severe pain, whether physical or mental, to any other person, being an act, which is (a) done for any of the following purposes, that is to say (i) obtaining from such other person or a third person, any information or confession; or (ii) punishing such other person for any act which he or a third person has committed, or he is suspected of having committed; or (iii) intimidating or coercing such other person or a third person; or (iv) done for any reason based on discrimination, and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of a public officer or other person acting in an official capacity.

#### **Alleged incidents of torture & secret detention centres**

10. The new Government (following the Presidential Election on 8 January 2015) has examined allegations regarding the existence of secret detention centres and torture camps, and has found that no such camps/detention centres exist at present.

11. The Government is firm in its commitment of a zero-tolerance policy on torture.

12. The importance of a transparent and independent mechanism for criminal and forensic investigation into incidents of torture in custody is recognized by the Government. *Eg: The Kandy High Court convicted two police officers under the Convention Against Torture Act (case no. 183 of 2007) on 3rd December 2015 and 7 years rigorous imprisonment was imposed on the offenders.*

#### **Investigations of allegations**

- Investigations into allegations of torture are conducted by the **Special Investigations Unit** which functions directly under the supervision of the IGP;
- Magistrates visit detainees regularly to ascertain their well-being;
- A suspect has to be produced before the Magistrate within 24 hours of arrest. If the Magistrate observes signs of torture on the suspect or if the suspect complains of alleged torture, the Magistrate can refer the suspect to a Judicial Medical Officer;
- In terms of Clause 6:6 of Chapter XXXIII of the Establishments Code, 'where in proceedings for the enforcement of fundamental rights under Article 126 of the Constitution, allegations of a personal nature including allegations of torture or assault are made against any Public Officer, such officer should arrange for his defence through his own lawyers';
- The Department of Police has taken a number of steps to prevent torture and ensure the protection of suspects in police custody. This includes the issuance of Departmental Orders and Circulars by the Inspector General of Police;
- Further, extensive training on human rights, fundamental rights and the provisions of the CAT Act is provided to members of the Sri Lanka Police at the point of recruitment, promotion.

13. In addition to the above:

- The Human Rights Commission of Sri Lanka (HRCSL)<sup>1</sup> also receives complaints and conducts investigations pertaining to incidents of torture, and makes recommendations;
- The HRCSL conducts regular monitoring activities in places of detention;
- Members of the armed forces and the police force are legally obliged to assist and facilitate the HRCSL in the exercise of its powers, duties and functions and in ensuring that the fundamental rights of a person arrested or detained are respected;
- Officers of the HRCSL are required to be given access to the arrested/ detained persons;
- The HRCSL should also be informed within 48 hours of the arrest or detention of any person and the place of detention;
- The Prisons Ordinance provides for independent persons approved by the Ministry to monitor prisons and make appropriate recommendations in their capacity as 'Prison Visitors'; and
- The GoSL has facilitated for the ICRC to conduct monitoring activities in all places of detention.

14. *Chapter XXX of the Code of Criminal Procedure Act provides for inquest into sudden and unnatural deaths. There is currently an initiative by the Justice Ministry, in partnership with the ICRC, to amend this law. There is consensus that with regard to deaths in custody, in addition to holding a conventional inquest, in-depth judicial investigation should also be held.*

#### **Allegations by human rights groups**

- The Government has repeatedly requested from the international community including from the WGEID<sup>2</sup> to share confidentially, information they may possess on torture cases and on alleged secret detention centers to enable the Government to conduct investigations;
- Most of the NGO reports including reports by the ITJP (International Truth & Justice Project Sri Lanka) do not provide sufficient information to commence investigations. If such information is shared with the Government, it would be helpful for the Government to conduct investigations. If there is still reluctance to share information with the Government, it is urged that they share such information at least with the National Human Rights Commission of Sri Lanka to facilitate investigations being conducted with a view to bringing perpetrators to justice;
- Ms. Yasmin Sooka has, on 1 February 2016, written to the Minister of Foreign Affairs, regarding incidents of torture and also drawing attention to a torture camp (Joseph Camp) in Vavuniya, in addition to another in the Trincomalee Naval Dockyard. A number of cases relating to torture and sexual violence have been highlighted in the reports of the ITJP.<sup>3</sup>

<sup>1</sup> The independence of the Human Rights Commission of Sri Lanka has been further strengthened following the 19<sup>th</sup> amendment to the Constitution enacted in April 2015.

<sup>2</sup> UN Working Group on Enforced & Involuntary Disappearances — WGEID.

<sup>3</sup> Reports of the ITJP were released in March 2014, July 2015 and January 2016.

15. However, reaffirming the government's commitment to investigate such allegations and engage with the international community to end impunity, the following steps were taken:

(a) Ms. Yasmin Sooka was invited by the Minister of Foreign Affairs, in a letter addressed to her on 13 February 2016, to visit Sri Lanka at an early opportunity, to discuss with the Government the concerns raised in her reports with a view to helping the government to investigate these cases and for her to also visit the sites mentioned in her reports;

(b) The National Human Rights Commission (of which the independence has been strengthened since the enactment of 19th amendment and the appointment of the new Commissioners) has been requested to establish contact with Ms. Sooka with a view to obtaining relevant information (which Ms. Sooka is reluctant to share with government), and share the recommendations of the Commission on action to be taken by the Government in this regard. The Commission has decided to begin work on this matter and make their findings available to the GoSL;

(c) Despite the Government's intention of engaging with Ms. Sooka directly, she has responded to the Foreign Minister's invitation to visit, stating that "... *such an early visit to Sri Lanka would be premature because of the concerns I and my colleagues have regarding the current conditions that prevail in Sri Lanka.*"

#### Statistics

16. Specific details/statistics pertaining to alleged incidents of torture and the action taken in respect of such incidents are provided below.

17. During the period 2012-October 2016, 17 cases have been filed under the Convention Against Torture (CAT) Act against 36 members of the Police. The number of cases concluded and the number of pending cases in respect of the above period are 9 and 8 respectively. Four members of the Police have been convicted under the CAT Act during the reporting period. The above number comprises two Police Officials convicted and sentenced to seven years imprisonment in case no 183/2007 heard before the Kandy High Court, and two Sub Inspectors of Police convicted and sentenced to seven years imprisonment in case number 182/2007 heard before the Badulla High Court.

18. From 2012-2016, 151 fundamental rights petitions have been filed against members of the Police under Article 11 of the Constitution<sup>4</sup> and granted leave to proceed by the Supreme Court. The Supreme Court has made declarations under Article 11 against four police officials during the above period. Judgements of the Supreme Court delivered in respect of fundamental rights petitions can be accessed at <http://www.supremecourt.lk/>.

#### Disciplinary action taken by the Department of Police in respect of complaints pertaining to alleged torture:

Period	Incidents	Number of officials	Number of officials found guilty	Number of officials found not guilty	Number of pending inquiries
2012-Oct 2016	150	170	23	01	126

<sup>4</sup> Article 11: No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

19. In addition to the above, during the period 2012 to October 2016, the Supreme Court has granted leave to proceed for 107 applications filed under Article 13(1) and 13 (2)<sup>5</sup> of the Constitution.

20. Information pertaining to specific investigations/prosecutions concerning allegations of torture and ill-treatment raised by the CAT Committee in the List of Issues.

	<i>Incident</i>	<i>Date of incident</i>	<i>Number of suspects arrested</i>	<i>Progress of the investigation</i>	<i>Summary</i>
01	Disappearance of Prgeeth Eknaligoda	24.01.2010	9 Members of the Army	Investigation ongoing	The suspects were arrested and remanded. Facts have been reported to the Homagama Magistrate. The next date of the case is 15.11.2016
02	Abduction and murder of Mohammad Siyam	22.05.2013	5 Police Officials including a Deputy Inspector General of Police and one civilian	Trial concluded	All 6 accused were convicted and sentenced to death
03	Murder of Liyanarachchilage Samantha	19.02.2015	6 members of the Police	Investigation concluded	Following non-summary inquiries at the Hambantota Magistrates Court, the matter was committed by the Magistrate to the High Court  The Police Department has commenced disciplinary inquiries against the accused members of the Police

<sup>5</sup> Article 13(1) and (2) (1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest. (2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.

**Instructions to armed forces**

21. By a letter dated 18 March 2016, Commanders of all branches of the security forces have been directed by the Ministry of Defence to issue instructions to all Armed Forces personnel that strict action will be taken against human rights violations (**Annex I**). The instructions have been issued by the Commanders of the Army, Navy and Air Force to members of their respective forces in March and April 2016.

22. On 17 June 2016, H.E. the President, who is the Commander-in-Chief of the Armed Forces and the Minister of Defence, has issued directions (**Annex II**) requiring the Armed

23. Forces and the Police (1) to ensure that fundamental rights of persons arrested or detained are respected and that such persons are treated humanely; and (2) to assist and facilitate the Human Rights Commission of Sri Lanka to exercise and perform its powers, functions and duties.

24. In May 2016 the HRCSL issued Directives to be followed by officers arresting persons under the PTA to ensure the fundamental rights of persons arrested or detained and to ensure such persons are treated humanely. The Directives clearly state that torture, cruel and inhuman and degrading treatment or punishment is an offence and prohibited at all times. The Directives are based on the Directives on Arrest and Detention issued by previous Heads of State and binding human rights law standards. According to the Directives, a person arrested or detained under the PTA is afforded safeguards, relating to the process with regard to the arrest, the process following the arrests and special measures for the arrests of women and persons under 18 years of age.

**Detainees database**

25. The Criminal Record Division of the Department of Police maintains a computerized database exclusively for the purpose of recording information pertaining to suspects arrested by Police. The aforesaid data base contains information relating to persons held in all places of detention. Information is provided to the next of kin/relatives of persons arrested.

26. Crimes Circular No. 02/2013 has made provision for taking action against officers who fail to properly register detained persons in the database. A copy of the circular is attached. No incidents of non-compliance have been reported.

27. With regard to persons arrested under the PTA, a complete list of detainees and those released from detention is available at the Terrorist Investigation Division (TID) offices in Colombo, Vavuniya and Boosa to be accessed by family members.

**Right of access to lawyer**

28. The government has given serious consideration to strengthening the rights of suspects in police custody in terms of the prevailing procedural law relating to the arrest, police custody and production of the suspect before a Magistrate as found in Code of Criminal Procedure Act No. 15 of 1979 (CCPA). A suspect may be arrested by a police officer with or without a warrant issued by a Magistrate who has considered the complaint and the investigative material available against such suspects. According to section 32 of the CCPA, a person may be arrested without a warrant only if he or she has committed or has been concerned in the commission of a cognizable (i.e. identifiable) offence. Following the arrest of a suspect he or she may be kept in police custody to facilitate investigations for a period not exceeding 24 hours. If further investigations are not required, he or she shall be produced before the Magistrate forthwith. In fact, section 37 of the CCPA provides that a police officer: 'shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and



such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

29. Section 2 of the CCPA (Special Provisions) Act, No. 2 of 2013 states that ‘any person arrested and detained for a further period shall be afforded an opportunity to consult an Attorney-at-Law of his choice and to communicate with any relative or friend of his choice during the period of such detention’.

30. During the period of police custody, it is the routine practice of the police to interview and record the statement of the suspect. Regulations published in Gazette No. 1758/36 dated 18 May 2012 (**Annex III**) issued by the Inspector General of Police under section 55 of the Police Ordinance provide that a lawyer representing the interest of a suspect held in police custody has the professional entitlement to meet with the Officer in Charge of the police station in which the suspect is being held, to ascertain the reasons for the arrest, and to make representation to the police officer on behalf of the suspect. Hence the right of a suspect to see a lawyer immediately after an arrest is effectively safeguarded through these regulations.

31. Furthermore, a suspect is entitled to be represented by a lawyer when he or she is produced before a Magistrate. It is at this stage that applications for bail are generally made.

32. As a general principle of the law of evidence, statements (including confessions) made by suspects to police officers are inadmissible against such persons at future criminal proceedings. In fact, section 25 of the Evidence Ordinance totally prohibits the admissibility of a confession as evidence against an accused. In terms of section 110(3) of CCPA, the contents of a statement made by a suspect to the police either during or outside police custody can be made use of at future judicial proceedings only for three limited purposes. First, if the accused opts to give evidence under oath, the non-confessional parts of such a statement to the police may be used for the purpose of cross-examination. Second, such a statement could be used for the purpose of leading evidence regarding the recovery of relevant facts based on information contained in the statement. Third, in the event of a prosecution for perjury, such a statement could be used as evidence against the accused.

33. In the circumstances, the information contained in a statement made by a suspect in police custody is primarily used to facilitate further investigations. This scheme, including aspects of procedural and evidentiary law, differs from certain schemes found in other countries. For example, in the United States, a caution is administered prior to the commencement of the interview, a lawyer is present when the interview takes place, and the statement so made is admissible against the accused.

34. It is with a view to strengthening the existing right provided under the aforesaid Regulations of 18 May 2012 that the government decided to introduce legislation providing suspects with a right to access a legal counsel. The proposed amendments to the CCPA received the approval of the Cabinet on 20 January 2016, and have been granted constitutional clearance of the Attorney General. The Cabinet approved the draft Bill, which was gazetted on 15 August 2016. The Bill was thereafter forwarded to the relevant Parliamentary Oversight Committee for discussions. Following deliberations, the Oversight Committee has referred the Bill to the Ministry of Justice. A committee appointed by the Hon. Minister of Justice is currently discussing matters pertaining to the Bill. The Human Rights Commission of Sri Lanka is a member of the above committee.

#### **Medical examination of detainees**

35. Although medical officers are not available at places of detention, detainees are promptly forwarded to the closest government medical officer depending on their needs & condition of health. A medical assistant of the Police hospital has been attached to the Boossa detention centre.

36. The Human Rights Commission of Sri Lanka & ICRC have been provided access to monitor places of detention at any time. The ICRC is granted access to all places of detention, and such access is facilitated by the Ministry of Law and Order with the cooperation of the Department of Prisons.

37. Additionally, the Human Rights Commission of Sri Lanka, which is an independent national human rights institution, is authorised under section 11(d) of the Human Rights Commission of Sri Lanka Act, No 21 of 1996 to 'monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention'. The Human Rights Commission has accordingly undertaken visits to detention centres to ascertain the welfare of detainees.

#### **Legal safeguards in respect of detention**

38. A Receipt confirming arrest is promptly issued to the next of kin of all persons arrested, by the arresting officer. The above Receipt must indicate, inter alia, the date, time and place of arrest, reason for arrest, details of the arresting officer, the place of detention and the court of jurisdiction.

39. All detainees can challenge the lawfulness of the detention by way of habeas corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regards the fundamental rights application, it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court — the epistolary jurisdiction which has been developed by the Supreme Court.

40. Details pertaining to habeas corpus applications and fundamental rights applications filed in respect of arbitrary arrest, during the reporting period are provided below.

41. With a view to addressing delays in the processing of cases, the Judicial Services Commission has issued circulars to all High courts and courts of first instance, directing judges to conclude cases expeditiously. The said circulars have directed judges to hear trials on a day to day basis, conclude the evidence of all witnesses present on the same day, journalise the reasons for postponing a case, deliver judgement before the lapse of one month of concluding the hearing, etc.

42. In addition, the Supreme Court has increased the number of divisions hearing cases, with the objective of minimizing laws delays and expediting the process of administration of justice.

#### **Detainees under the PTA**

43. Following the consideration of a proposal submitted by the Law Commission, the government decided to appoint a Committee to develop the policy and the legal framework of new counter terrorism legislation for Sri Lanka. The new legal framework focuses on reviewing the provisions of the PTA that are incompatible with the ICCPR and would draw upon international human rights standards.

44. The Committee identified the following objectives to be achieved by the new law:

- To ensure that the proposed law will conform with Sri Lanka's obligations, to its citizens as well as, in terms of international law relating to counter terrorism and other related international norms and standards;
- To ensure that the proposed law is compliant with Sri Lanka's obligations to its citizens as well as International Human Rights Law and other applicable human rights norms and standards;

- To ensure that the proposed law is consistent with principles of democracy, good governance and the rule of law;
- To provide a comprehensive legislative framework to efficaciously and comprehensively respond to contemporary manifestations and threats of terrorism and other attacks on national security;
- To create a legislative framework that could be effectively used to prevent the use of Sri Lankan territory and Sri Lankan nationals to launch acts of terrorism and commit terrorist acts in foreign countries.

45. The proposed Bill thus aims to replace the PTA while complying with international standards pertaining to counter terrorism and human rights.

46. When developing the proposed Bill, careful consideration will be given by the Committee to ensure that provisions of the proposed bill are in compliance with international human rights law and, in particular, adhere to the norms and standards contained in the following human rights treaties:

- The International Covenant on Civil and Political Rights and its First and Second Optional Protocols;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention for the Protection of All Persons from Enforced Disappearance;
- The Convention on the Elimination of all forms of Discrimination against Women;
- The Convention on the Rights of the Child.

47. The Committee tasked with drafting of the new legislation has drawn upon inputs, as appropriate, from the United Nations Counter Terrorism Executive Directorate and the government of the United Kingdom.

48. The relevant foreign laws on counter-terrorism were also considered by the Committee in order to obtain guidance.

49. The aforesaid Committee appointed to develop the new counter terrorism legislation has handed over its report on the legal and policy framework to the Hon. Prime Minister. Thereafter, the said report was submitted to H.E. the President for his consideration prior to its presentation to the Cabinet of Ministers for approval.

50. The Report of the committee was presented to the Cabinet of Ministers in October 2016 where the Cabinet has approved the Report as a White Paper for discussion.

51. The GoSL anticipates that the UN Counter Terrorism Executive Directorate (UNCTED) will continue to provide technical assistance in respect of the enactment of the proposed Counter Terrorism Act. (During the deliberations of the committee, the UNCTED provided technical assistance through an expert, who studied a preliminary version of the proposals of the Committee and expressed his preliminary views.)

52. Information relating to persons arrested in terms of the PTA (island-wide) as at 13 October 2016 are as follows:

- 05 suspects held in detention in terms of the PTA (It is expected to bring this figure down to zero);

- 15 cases (pertaining to 66 suspects) where criminal investigations have been completed, reports have been presented to the Hon. Attorney General (Of this number, 11 suspects are in judicial custody and 55 have been released on bail);
- 96 cases in respect of which indictments have been filed in High Court.

53. The GOSL considers it a major priority to prevent the long-term detention of any person without charges being preferred against them. In view of this priority, the GOSL has brought the number of suspects held in custody without charges for a period of more than eighteen months to zero. **No new arrests have been made under the PTA since 25 June 2016.**

54. It is noted that the maximum period a person can be held in detention under the PTA is 3 months at a time upto a maximum period of eighteen months, after which the suspect shall be placed in remand custody until charges are preferred against him or her. The GOSL has taken a policy decision to ensure that charges are brought expeditiously against such suspects and to ensure that no person is held in long-term detention without charges.

55. Meanwhile, the GOSL has taken steps to expedite the disposal of cases under the PTA and the previous Emergency Regulations which lapsed in August 2011. A special High Court in Colombo has been assigned to dispose of cases filed in terms of the PTA and the Emergency Regulations. Another special High Court in Anuradhapura also deals with cases under the PTA with a view to expedite the disposal of those cases. The Attorney General's Department has identified 23 suspects whose charges could be reduced to facilitate a lesser plea.

56. As already stated, in May 2016 the HRCSL issued Directives to be followed by officers arresting persons under the PTA to ensure the fundamental rights of persons arrested or detained and to ensure such persons are treated humanely. The Directives clearly state that torture, cruel and inhuman and degrading treatment or punishment is an offence and prohibited at all times. The Directives are based on the Directives on Arrest and Detention issued by previous Heads of State and binding human rights law standards. According to the Directives, a person arrested or detained under the PTA is afforded safeguards, relating to the process with regard to the arrest, the process following the arrests and special measures for the arrests of women and persons under 18 years of age. The Government is committed to ensuring that the directives of the HRCSL are complied with in respect of arrest of persons under the PTA.

57. As already stated, all detainees can challenge the lawfulness of their detention by way of habeas corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regard the fundamental rights application, it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court — the epistolary jurisdiction which has been developed by the Supreme Court.

#### **Role of HRCSL**

58. Pursuant to the 19th Amendment to the Constitution, the Human Rights Commission of Sri Lanka (HRCSL) has been strengthened further as an independent institution of which the members are appointed by the Constitutional Council.<sup>6</sup> It is expected that HRCSL will be able to obtain a Grade 'A' status in time to come.

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<sup>6</sup> The **Constitutional Council** consists of 10 members. These comprise the Prime Minister, the Speaker, the Leader of the Opposition, a Member of Parliament nominated by the President, 2 Members of Parliament and 3 civil society members (reflecting the pluralistic nature of the Sri Lankan society) nominated by the Prime Minister and the Leader of the Opposition, and a Member of Parliament

59. With a view to facilitating the effective discharge of its functions by the HRCSL, the government has, during the last 2 years, taken steps to increase the resources allocated to the HRCSL.

60. Details pertaining to the resources allocated to the HRCSL in 2015 and 2016 are as follows.

#### **Year 2015 — financial allocation made and spent by HRCSL**

61. Recurrent expenditure (salaries, travel, services, etc) — Rs. 159.9 million.

62. Capital expenditure (buildings, vehicles, capacity building, etc) — Rs. 8.7 million.

63. Total — Rs. 168.6 million.

#### **Year 2016 — allocated amount**

64. Recurrent expenditure (salaries, travel, services, etc) — Rs. 168.7 million.

65. Capital expenditure (buildings, vehicles, capacity building, etc) — Rs. 12.4 million.

66. Total — Rs. 181.1 million.

#### **Present Cadre of the HRCSL**

Total — 122

Executive officers — 2

Mid-level officers — 13

Clerical staff — 68

Minor staff — 39

#### **Independence of the judiciary**

##### **Measures taken since the Presidential Election on 8 January 2015, to uphold the independence of the judiciary and lawyers:**

- Soon after the election of President Sirisena at the Presidential Election on 8 January, the senior most Judge of the Supreme Court, Justice K. Sripavan, was appointed as the 44th Chief Justice of Sri Lanka on 30 January 2015;<sup>7</sup>
- Following the formation of the new Government under the leadership of President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe, the Parliament of

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nominated by other political parties/groups represented in Parliament which the Prime Minister and the Leader of the Opposition do not represent. The Council is headed by the Speaker.

<sup>7</sup> **Justice Sripavan**, the most senior Judge of the Supreme Court was appointed as the 44<sup>th</sup> Chief Justice of Sri Lanka on 30 January 2015, following **Chief Justice Shirani Bandaranayake** (43<sup>rd</sup>). The appointment of Mr. Mohan Peiris as 43<sup>rd</sup> CJ by the previous Government was revoked on the basis that Justice Bandaranayake's removal had been unlawful and that there had therefore not been any vacancy created for the post, for the appointment of Mr. Mohan Peiris. Justice Bandaranayake was subjected to a controversial impeachment by the previous government in 2013. On 29 January 2015, President Sirisena reinstated Justice Bandaranayake to office based on a **procedural point** of the law pertaining to the impeachment in 2013. This was based on the fact that President Mahinda Rajapaksa did not have the power to remove Justice Bandaranayake, because, in accordance with Article 107 of the Constitution, President Rajapaksa had not received an address by Parliament which is a prerequisite, following impeachment proceedings, for the constitutional removal of a sitting Supreme Court Judge.

Sri Lanka, on 28 April 2015, enacted the 19th Amendment to the Constitution, which, amongst several other progressive reforms, introduced a number of constitutional safeguards to uphold the independence of the judiciary and the bar.

**The most significant among these provisions are:**

**I. Safeguards to the process of appointment of senior judges**

67. Prior to the 19th Amendment to the Constitution, the authority to appoint the Chief Justice and other judges of the superior courts rested solely with the President. With the enactment of the 19th Amendment, the following safeguards have been introduced to the appointment process:

- The Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of Appeal can be appointed by the President only upon the approval of the said appointments by the Constitutional Council;<sup>8</sup>
- In the discharge of its functions relating to the appointment of judges to the Supreme Court and the Court of Appeal, the Constitutional Council is required to obtain the views of the Chief Justice.

**II. Appointment of the Attorney-General and the Attorney-General's Department**

- In terms of the 19th Amendment, the appointment of the Attorney General (who is considered the leader of the Bar) by the President is subject to the approval of the Constitutional Council;
- Under the previous government (before 8 January 2015), the AG's Department was placed directly under the President with regard to matters of establishment, instead of its traditional position under the Ministry of Justice. This was rectified by the new Government by placing the Department under the Ministry of Justice with regard to matters of establishment.

**III. Appointment of the members of the Judicial Services Commission (JSC)**

- The 19th Amendment clearly stipulates the composition of the Judicial Services Commission, i.e. that it shall comprise the Chief Justice and the two most senior judges of the Supreme Court appointed by the President subject to approval by the Constitutional Council;
- The Chief Justice is required to be the Chairman of JSC;
- The President is required to obtain the approval of the Council to remove any members of the JSC for cause assigned. Under the previous constitutional provisions, the President had the sole discretion to appoint any 2 judges of the Supreme Court to function as members of the JSC alongside the Chief Justice (also appointed by him) who was to be the Chairman of the Commission;
- The infusion of independence to the JSC is important because, under the Constitution, the Judicial Services Commission is vested with authority over the

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<sup>8</sup> The **Constitutional Council** consists of 10 members. These comprise the Prime Minister, the Speaker, the Leader of the Opposition, a Member of Parliament nominated by the President, 2 Members of Parliament and 3 civil society members (reflecting the pluralistic nature of the Sri Lankan society) nominated by the Prime Minister and the Leader of the Opposition, and a Member of Parliament nominated by other political parties/groups represented in Parliament which the Prime Minister and the Leader of the Opposition do not represent. The Council is headed by the Speaker.

appointment, transfer, dismissal and disciplinary control of judicial officers in the lower courts;

- Judges of the High Court are appointed by the President on the recommendation of the JSC and the Attorney General.

**In addition to the safeguards introduced in April 2015 through the 19th Amendment, provisions contained in Chapter XV of the Constitution have continuously sought to uphold the independence of the judiciary by stipulating the following:**

(a) The tenure of the office of the judges of the Supreme Court and the Court of Appeal are guaranteed under the Constitution;

(b) Judges of the Supreme Court and the Court of appeal hold office during good behaviour and cannot be removed except by an Order of Parliament made after an address to Parliament supported by a majority of the total number of Members of Parliament has been presented to the President for removal on the ground of proved misbehaviour and incapacity;

(c) The salaries and the pension of the Judges of the Supreme Court and Court of Appeal are paid from the Consolidated Fund and cannot be reduced after they are appointed. The same rule applies with regard to the salaries of members of the JSC;

(d) Interference with the judiciary is a punishable offence. Judges are also vested with a degree of immunity from suit for acts performed in their judicial capacity. In addition to these, Sri Lankan courts have varying powers to deal with persons for Contempt of Court to prevent unwarranted attacks on the authority of the judiciary and to ensure the sanctity of its orders;

(e) Interference with the decisions and the members of the JSC is a punishable offence, and immunity has been constitutionally granted to members of the JSC for acts done in good faith in the performance of their duties.

### **Violence against women**

68. In terms of Section 363, a man is said to commit “rape” who has sexual intercourse with a woman without her consent, even where such woman is his wife and she is judicially separated from the man.

69. Although the act of sexual intercourse without consent of the wife is by itself not a crime under the existing law, where such an act involves violence to such a degree that the violence amounts to a crime, the act of violence is punishable under the Penal Code. In such an event, relief can also be sought under the Prevention of Domestic Violence Act.

70. The findings of a study conducted by the Ministry of Women and Child Affairs on marital rape have been referred to the Taskforce on the Prevention of Violence against Women and the Girl Child. The Task Force has finalized its recommendations and the final recommendations were handed over to the Hon. Prime Minister on 28 March 2016. Provisions relating to marital rape including the criminalization thereof, have been incorporated into the final recommendations of the Task Force.

Amendments to the existing law on marital rape are presently being studied by a Committee appointed by Hon. Minister of Justice to consider reforms to the Penal Code and Code of Criminal Procedure Act

Statistics pertaining to reported incidents of violence against women:

### I. Rape

<i>Year</i>	<i>Number of complaints</i>	<i>Number of investigations concluded</i>	<i>Number of ongoing investigations</i>
2011	407	221	186
2012	350	248	102
2013	353	187	166
2014	326	157	169
2015	379	138	241
2016 (upto July)	175	79	96
<b>Total</b>	<b>1 990</b>	<b>1 030</b>	<b>960</b>

### II. Unnatural offences/Grave sexual abuse

<i>Year</i>	<i>Number of complaints</i>	<i>Number of investigations concluded</i>	<i>Number of ongoing investigations</i>
2011	36	21	15
2012	33	17	16
2013	23	11	12
2014	45	26	19
2015	39	16	23
2016 (upto July)	25	12	13
<b>Total</b>	<b>201</b>	<b>103</b>	<b>98</b>

### III. Domestic violence

<i>Year</i>	<i>Number of complaints</i>	<i>Number of investigations concluded</i>	<i>Number of ongoing investigations</i>
2011	181	145	36
2012	485	254	31
2013	526	489	37
2014	549	528	21
2015	522	506	16
2016	264	245	19
<b>Total</b>	<b>2 527</b>	<b>2 167</b>	<b>360</b>

**Note: The average period of time that has elapsed between the filing of a complaint and the conclusion of the trial is approximately 4 years.**

71. Training in the area of domestic violence is part of the curriculum for members of the Police at the time of recruitment, promotion and also while in service.



72. A shelter for victims of domestic violence has been established in 2012, in collaboration with the International Organization for Migration. Domestic violence is a subject which is widely taken up in the awareness programmes conducted by the Women's Bureau. The Bureau has conducted case conferences on domestic violence in hospital gender desks and with the District Secretariats in the North and East.

73. The Task Force on the Prevention of Violence against Women and the Girl Child handed over its final recommendations to the Hon. Prime Minister on 28 March 2016. Measures to be taken in relation to domestic violence have also been incorporated into the final recommendations of the Task Force.

**The draft legal framework is to be submitted to an expert committee, following which it will be forwarded to the Legal Draftsman's Department**

#### **Training for law enforcement personnel**

74. Human Rights and International Conventions including CAT are taught in all Military and police training programs as an important component of the syllabus. International as well as national experts, practitioners and academics contribute to teaching and training on a regular basis.

75. Even in the degree awarding tertiary institution established for military personnel, the Kotalawala Defence University where many military cadets pursue degree programmes, human rights is taught as an important component of the academic programme.

76. The concept of education or specific training on human rights has moved from teaching and theoretical work to participating and contributing to work at the community level thereby practicing what was learned.

77. Human rights and humanitarian principles, and international Conventions form part of the curricular of the Police Academy and Training and Immersion Programmes.

78. Members of Sri Lanka Police are provided training in this regard under local and foreign training programs conducted with the assistance of the officials of Scotland-yard Police Academy. Further officials who have participated in trainings for trainers continue to provide training to other members of the Police.

79. The GOSL in collaboration with UNDP currently runs several programmes aiming to build human rights enforcement capacity among Police Prosecutors, lawyers, and Prison officers. One such project was delivered in collaboration with the University of Sydney and resulted in the training of several mid-level officers in the military, Police and Prison Department in human rights training, in order to build training capacity within these institutions. Follow Up assessments are conducted by the Police Legal and Crimes divisions.

80. The Human Rights Commission of Sri Lanka has also conducted a number of training programs for the military and the police on human rights. Details of the programs conducted by HRCSL in 2015 and 2014 are at **Annex IV**.

81. Details of training programs conducted for members of the security forces during the period 1997 to 2013 are at **Annex V**.

#### **Internally displaced persons**

82. The Government recognizes the importance of the safe and dignified resettlement of all persons who were displaced, for ensuring sustainable peace.

83. According to the latest figures (as at end August 2016), the Government has resettled a total of 253,231 families consisting of 882,392 individual persons. The number of persons remaining to be resettled is 13,670 families consisting of 43,607 persons.

84. The Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs has developed a Policy on Durable Solutions for the Displaced and Persons Affected by Conflict Displacement with technical assistance from UNHCR.

85. The Policy has been drawn up based on, inter alia, draft policies drawn up in previous years and other key documents such as the Report of the Lessons Learnt and Reconciliation Commission, and in line with key principles enshrined in national and international law. The Policy is an inclusive one. Hence, it will focus on durable solutions for the Internally Displaced and those affected by conflict displacement.

86. The following guided the preparation of the draft national Policy:

- Right-based approach to dealing with displacement and reaffirm the Government commitment to the principles and rights guaranteed by the Sri Lankan Constitution and internal human rights and humanitarian law;
- The shift in approach from that of the previous government by addressing displacement directly and in a comprehensive manner rather than by denying the scale and nature of the problem;
- The priority accorded by the Government to the issue of displacement, as a key step towards consolidating reconciliation in the country.

**The Policy was approved by the Cabinet on 27 August 2016. The approved Policy has been forwarded to relevant agencies to be incorporated into their respective work programs. The Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs has aligned its budget proposals for 2017 with the implementation of the measures identified in the Policy.**

87. The Government provides financial support to the civilians who return to live on their lands that have been released. This includes allowances amounting to around Rs. 40,000/- for clearing the land, purchasing equipment and food and for constructing a temporary shelter.

88. The Government has allocated 14 billion rupees for the infrastructure development of conflict-affected areas of the Northern and Eastern provinces. It is planned to build approximately 10,000 houses with sanitary units; 2,400 partly damaged houses will be renovated. 7,600 toilets will be constructed; a livelihood programme for 12,000 families will also be implemented by utilizing the allocated funds. Preference will be given to recently released areas for construction of houses.

89. In addition, some funds have been provided to meet the immediate needs of newly resettled families through the UN Peacebuilding Fund's Immediate Response Facility (IRF) at the request of the Government.

90. The intention of the Government is to ensure the resettlement of all conflict related IDPs by the end of 2016.

#### **Rehabilitation of persons detained under the PTA**

91. As of October 2016, 12,169 ex-combatants have completed the rehabilitation programme and have been reintegrated to the society. 19 ex-combatants are currently undergoing rehabilitation.

92. A system is in place to provide livelihood support to the ex-combatants who are re-integrated to the society, through the provision of bank loans, etc.

93. Detainees are forwarded for rehabilitation only on a voluntary basis and the rehabilitation period is approximately one year.

### Deaths in custody

94. During the reporting period (2012-Oct 2016), 31 incidents of death in custody have been reported. Judicial and disciplinary action has been taken against 6 police officials. 25 deaths have been determined to be due to natural deaths and justifiable deaths by the inquirer into sudden deaths, during the period. The number of pending inquiries/cases relating to deaths in custody is 6.

### Outcome of investigations identified by the Committee:

<i>No</i>	<i>Incident</i>	<i>Date of incident</i>	<i>Number of persons arrested</i>	<i>Progress of the investigation</i>	<i>Action</i>
01	Death of Chandrasiri Dassanayake — It would be appreciated to receive adequate information on the matter in order to follow up				
02	Death of four suspects while being arrested in connection with the killing of a Police Officer and his wife	Date of which the suspects died: 1st suspect — 22.11.2013 2nd & 3rd Suspects — 26.11.2013 4th suspect — 03.12.2013	-	Special investigations have been conducted	Information pertaining to the incident has been reported to the Matara Magistrate under case no 3146/2013  Pursuant to an inquest, the Magistrate has forwarded the matter to the Attorney General for further steps
03	Death of Sadun Malinga — It would be appreciated to receive adequate information on the matter in order to follow-up				
04	M.D. Chaminda Pushpakumara	04.03.2015	01	During the investigation it has transpired that the death was a suicide	Information pertaining to the incident has been reported to the Kuliyaipitiya Magistrate under case no B402/15  The case has been concluded as it was decided that the death was a suicide

### Conditions of detention

95. The Cabinet has approved the draft Prisons Administration Bill with amendments. The Ministry of Justice is now in the process of amending the Bill, which will be sent to Legal Draftsman for legislative drafting.

96. A Taskforce chaired by the Secretary to the Ministry of Justice on Judicial Causes for Prison Overcrowding was established in 2015. The Taskforce meets regularly to address issues related to prison overcrowding. ICRC provides technical assistance to the Taskforce.

### The Task force is considering the adoption of a policy with regard to the payment of fines and release of long term prisoners.

97. The Bogambara Prison has been shifted to Pallekale and the Welikada Prison will be shifted to Horana with a view to provide improved prison conditions. A new prison is also being constructed in Agunukolapalassala which is expected to be completed by the end of the year.

### Investigations into torture

98. The special investigations unit operates under the direct supervision of the inspector general of Police and report only to the IGP. To date the SIU has investigated and facilitated the filing of 12 cases before the High Court in respect of torture.

99. The degree of independence enjoyed by the SIU is evident in the conviction of even high ranking officers of the police upon investigation conducted by the Unit.

100. For instance, as already mentioned, a DIG and three Police Officers have been sentenced to death on charges of Murder pursuant to investigations conducted by the Criminal Investigation Department.

101. Further, an Inspector of Police who functioned as the OIC of the Angulana Police Station and two other Police Officials have been sentenced to death on charges of Murder.

### The establishment and operationalisation of the Independent Police Commission through the 19th Amendment to the Constitution has infused independence and non-interference in the processes involving the police. In terms of the 19th Amendment, the members of the Police Commission are appointed by the Constitutional Council.

### Alleged torture during the conflict

102. Details relating to cases identified by the Committee.

	<i>Case</i>	<i>Date of incident</i>	<i>No. of persons arrested</i>	<i>Progress of the Investigation</i>	<i>Current status</i>
01	Death of five students in Trincomalee in 2006	02.01.2006	13	The investigation has been concluded and the details have been reported to the Trincomalee Magistrate under case No. 4634/P/C/13	The case will be taken up again 08.11.2016  All available lay witnesses have been summoned and their depositions recorded. However, a couple of lay witnesses including  Dr. Kasippillai Manoharan, the father of one of the victims who are believed to be living

<i>Case</i>	<i>Date of incident</i>	<i>No. of persons arrested</i>	<i>Progress of the Investigation</i>	<i>Current status</i>
				overseas are yet to appear in the Magistrate Court of Trincomalee
				Sri Lanka's Permanent Representative in Geneva has communicated to Dr. Manoharan, the Government's willingness to provide him airport to airport and in-country protection if the witness chooses to come to Sri Lanka to participate in the judicial proceedings
				In the meantime, the Cabinet, on 05 July 2016, approved a draft Amendment to the Protection of Victims of Crime and Witnesses Act, intending to facilitate the leading of evidence from remote locations outside Sri Lanka. It is expected that the draft Amendment, once enacted would facilitate the leading of evidence from Dr. Manoharan and the other witnesses residing abroad
02 The death of 17 aid workers of Action Contre La Faim	01/02.08.2006 -		Statements have been recorded from 50 civilians, 15 police officers and 95 members of the armed forces in respect of the incident  209 weapons taken into custody by the CID has been sent for forensic studies by the Government Analyst	The case will be taken up again 29.11.2016 in the Muttur Magistrate Courts

### **Enforced disappearances**

103. Sri Lanka signed the Convention on Enforced Disappearances on 10 December 2015.

104. With a view to incorporating the provisions of the Convention into the domestic law and criminalising enforced disappearance, the legal process has been set in motion. The Legal Draftsman has formulated the draft legislation which, once finalized, will be submitted to the Cabinet for taking further steps required to enact the draft law. Once enacted, the new law on enforced disappearances will significantly strengthen Sri Lanka's

legal system in terms of prosecuting and punishing perpetrators and preventing enforced disappearances in the future.

#### **Certificates of absence**

105. The amendment to the Registration of Deaths (Temporary Provisions) Act No 19 of 2010 was enacted by Parliament on 25 August 2016 enabling the issuance of Certificates of Absence to those who claim that their family members are missing. The Certificates will enable families of missing persons to apply for benefits under social welfare schemes, temporarily manage, under the supervision of the District Court, the property and assets of the missing person and act as a provisional guardian for dependent children of the missing person.

106. 12,341 cases relating to Sri Lanka have been reported to the UN Working Group on Enforced and Involuntary Disappearances, of which 6,591 have been clarified to date. Out of the remaining 5,750, the GOSL provided clarifications and information on further 1,997 cases which includes clarifications on 309 cases submitted by the GoSL in April 2016, and now awaits the Working Group's consideration. Clarifications and information on rest of the cases will be provided as and when investigations are completed by Sri Lanka Police and legal clearance is obtained from the Attorney General's Department.

107. The GOSL will endeavour to clarify the remaining 3,753 cases through the Office on Missing Persons. In terms of the recently enacted law, the new Office has been conferred with a range of investigative powers as required, and will be empowered to provide appropriate mechanisms for searching and tracing of missing persons. Thus, the work of the Office will advance the right to the truth and will provide a mechanism through which families could obtain information about their missing relatives.

**The Office on Missing Persons Act, No. 14 of 2016 was passed by Parliament and was certified by the Speaker on 23 August 2016. Steps are currently being taken to operationalise the Act. Measures are also being taken to allocate funds for the Office on Missing Persons in the Budget for 2017, which is to be presented in Parliament in November 2016.**

108. It is also to be noted that the OMP has the authority vested in it by law, to receive funds from entities outside Government, both local and foreign. The OMP will also have its own witness and victim protection unit in accordance with the legislation approved by Parliament.

109. In this regard, it must be stated that the Government has decided that, unlike budget allocations for other government agencies, the financial allocations for the OMP will be provided by Parliament with a view to avoid any bureaucratic delays/obstacles.

110. Steps have been taken to make the report of the Paranagama Commission available online at <http://www.scrm.gov.lk/documents-reports>.

#### **Details pertaining to cases highlighted by the Committee:**

111. The CID has conducted investigation into the death of Nimal Chandrasiri Appuhamy and reported details to the Panadura Magistrates Court under case no. 4561. Investigations are continuing. The case will be taken up next on 02.03.2017.

#### **National Authority for the Protection of Victims of Crimes and Witnesses**

112. All parts of the Protection of Victims of Crimes and Witnesses Act have been gazetted. The National Authority for the Protection of Victims of Crimes and Witnesses (a statutory body created by the Act), which is entrusted with the task of giving effect to the

relevant provisions of the Act, has been established. The Board of Management of the Authority has commenced developing a Programme of Action. A decision has been taken by the Authority for the Protection of Victims of Crime and Witnesses to seek technical and capacity building support from the bi-lateral and multilateral partners.

113. The Cabinet has approved a draft Amendment to the Protection of Victims of Crime and Witnesses Act, intending to facilitate the leading of evidence from remote locations outside Sri Lanka.

**Police Victim and Witness Protection Division under the Authority was inaugurated on 3 November 2016.**

**Redress for victims of torture**

114. During the period 2011-2016, compensation amounting to Rs. 1,065,000/- has been paid in respect of cases relating to torture heard before the Supreme Court.

115. It is noted that compensation paid for a violation of Article 11 of the Constitution is only a form of *solatium*. This does not preclude a person seeking damages in any other forum such as the District Court.

**Burden of Proof under PTA**

116. A confession made to a police officer is inadmissible under the Evidence Ordinance. However, under Prevention of Terrorism Act (PTA), such confessions made to a police officer above the rank of Assistant Superintendent of Police are admitted only if the Court is satisfied, after a *voire dire* inquiry, that such confessions were made voluntarily.

117. The burden of proving the ingredients of an offence is always on the prosecution. It is only with regard to confessions under PTA that the burden shifts to the accused to show that it is inadmissible under Section 24 of the Evidence Ordinance. Under Section 24 of the Evidence Ordinance, a confession made by an accused person is inadmissible in criminal proceedings if the confession appears to the court to have been made under inducement, promise or threat. This reversal of burden of proof is a universal phenomenon and there are examples galore of such provisions in common law jurisdictions. Article 13 (5) of the Constitution is emblematic of this universal practice when it states, "Every person shall be presumed innocent until he is proved guilty: provided that the burden of proving particular facts may, by law, be placed on an accused person."

118. The voluntary nature of making the confession and its truth are benchmarks that are taken into consideration before a Court would admit a confession against an accused person.

119. Information on cases identified by the Committee:

(a) Jeevandarage Ashan Tharanga.

120. The above person has been arrested in connection with the theft of a vehicle and the case is ongoing at the Mahara Magistrate Court. It will be taken up again on 22.11.2016. The suspect has filed a petition before the Supreme Court (No 156/2015) with regard to an alleged assault. The above petition has been considered and dismissed by the Supreme Court. Since no complaints were received with regard to the Police Officials concerned no disciplinary action has been taken.

(b) W.T. Presley Fernando.

121. The HQI of Chilaw has not found any complaint in respect of the above. It would be appreciated to receive adequate information on the matter in order to follow-up.

(c) H.M. Ajith and H.M. Akila.

122. The HQI of Matara has not found any complaint in respect of the above. It would be appreciated to receive adequate information on the matter in order to follow-up.

### **Human rights defenders**

#### **Cases identified by the Committee**

- Alleged attacks against journalists and a human rights activist:
  - The Magistrate of Mount Lavinia has ordered the exhumation of the body of Lasantha Wickramatunge in order to facilitate further forensic investigations into Wickramatunge's assassination. One suspect has been arrested in connection with the matter. Investigations into the incident are in progress;
  - The Kohuwala Police has received a complaint with regard to a Hand Grenade attack at the residence of Mr. J .C Weliamuna on 27.09.2008. The initial investigations have been conducted and details have been reported to the Gangodawila Magistrate under case no. 3380/2008. No suspects have been arrested so far.

### **Minorities**

#### **Information on cases identified by the Committee**

123. Investigations conducted into the Alutgama attacks.

124. Pursuant to 88 complaints received, information has been reported to the Kalutara and Matugama Magistrates on the incidents. Five petitions have also been filed before the Supreme Court regarding the incidents. The said petitions are to be taken up on 21.11.2016.

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