



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

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## Committee against Torture Thirty-fifth session

### Summary record (partial)\* of the first part (public) of the 674th meeting

Held at the Palais Wilson, Geneva, on Friday, 11 November 2005, at 3 p.m.

*Chairperson:* Mr. Mariño Menéndez

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\* No summary record was prepared for the second part (closed) of the meeting.

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** (agenda item 5) (*continued*)

*Second periodic report of Sri Lanka (CAT/C/48/Add.2; CAT/C/35/L/LKA) (continued)*

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*
2. **The Chairperson** invited the delegation to reply to the additional questions that had been posed at the previous meeting.
3. **Mr. De Silva** (Sri Lanka), replying to questions raised by Mr. Mavrommatis, said that the law did not expressly forbid returning a person when there was reason to believe that he or she was in danger of being subjected to torture. However, the Supreme Court had ruled that when interpreting any law, the courts must apply the international treaties to which Sri Lanka was a party. Accordingly, when interpreting the law on extradition, the courts were required to take into account all of Sri Lanka's international obligations, including those set forth in the Convention against Torture. Moreover, extradition must also be approved by the executive branch, and when deciding on a case of extradition, the State was necessarily guided by its international obligations, especially those arising from article 3 of the Convention.
4. Concerning the question of whether under the peace agreements, leaders of the Liberation Tigers of Tamil Eelam (LTTE) could use Colombo international airport without being detained, he said that several leaders had already used that airport. In fact, the Sri Lankan Air Force had even transported LTTE staff between the areas controlled by LTTE and Colombo airport.
5. There was no legislation on the right to judge non-nationals who were in Sri Lanka after having committed a crime outside the country, and who had not been extradited. No such case had ever occurred. However, if the Committee wished to recommend that provisions on the matter should be adopted, the delegation would transmit the Committee's recommendation to the Legal Commission so that it could take any measures necessary.
6. Unfortunately, he was not able to comment on the observation attributed to the Supreme Court to the effect that the number of cases of torture had not decreased, because he had no knowledge of such a statement being made. In any event, the statistics showed that there had been a considerable decline in the number of cases of torture brought before the courts.
7. With regard to the case of Gerald Mervyn Perera, he said that the State had prosecuted seven police officers who had been accused of torturing Mr. Perera while he was in custody. Mr. Perera had been murdered before the beginning of the trial, and the question had been raised as to whether the State could proceed with the trial in the absence of the key witness. The Attorney-General had replied to that question in the affirmative, and the trial was currently under way at the High Court of Negombo. With regard to the murder, in order to avoid delays and acting under the legislation authorizing him to do so, the Attorney-General had transmitted the indictment directly to the High Court without first going through an investigating judge, as was usually done in homicide cases. He had also decided to grant a conditional pardon to one of the suspects who had only played a minor role in the matter in order to be able to support the charges against the main perpetrators of the offence, and he had refused to allow them to be released on bail.
8. In the case of Palitha Tissa Kumara, the Attorney-General had issued an indictment, pursuant to the law against torture, and the High Court of Kalutara was considering the

case. The defendant was a member of the reserve police, not the regular police. Finally, in the case of Nandani Sriyalatha Herath, the Attorney-General had issued three indictments (117 to 119/2003) against the police officers who were suspects, and the trial had begun on 21 October 2005.

9. The procedure for the National Human Rights Commission to conduct visits to places of detention had been established in consultation with that Commission, whose members were allowed to visit any police station at any time and without prior notice. Nevertheless, when visiting a place that was not open to the public, Commission members must be accompanied by the person in charge of the unit, since police officers did not know the Commission members, and they might be concerned about the presence of someone unknown to the unit. There were no hidden microphones in prisons or in police stations.

10. The independence of the judiciary was enshrined in the Constitution, and the executive branch was not allowed to interfere with the courts. The Special Investigation Unit was still in place, and neither the police nor the executive branch had any intention of eliminating it. The National Police Commission had been established under the seventeenth amendment to the Constitution and could only be abolished by an act of the executive branch. The mandate of the current members of the Commission expired at the end of November 2005, and under the regulations in force, they could either be maintained or replaced.

11. The Government and the Minister of Justice were considering the adoption of legislation and administrative procedures designed to expedite the work of the criminal justice system. It was indeed true that statements by defendants and witnesses had sometimes been recorded in a different language than the one used by the person making the statement. The problem had been taken into account, and the Inspector General of Police spared no effort to ensure that trilingual police officers were appointed at the different police stations.

12. In response to questions raised by Mr. Rasmussen, he said that human rights units had been set up within the armed forces to investigate allegations of human rights violations by those forces and to disseminate information on human rights. In the police force, those two tasks were the responsibility of the National Police Commission and the Human Rights Directorate.

13. All members of the armed forces and the police had been duly informed that they were not required to obey an illegal order to commit an act of torture and that they could not use such an order as justification in court proceedings or disciplinary inquiries. Moreover, refusing to comply with such an order did not constitute an act of insubordination. The National Human Rights Commission and the National Police Commission would be informed that it would be desirable for them to conduct more unannounced visits to police stations. As provided in article 29(1) of the Act on the National Human Rights Commission, the State allocated to the Commission the resources it needed to carry out its duties. The Commission was also allowed to receive funds from different organizations, so as to enable it to maintain its independence.

14. Non-governmental organizations that inspected prisons always informed the competent authorities of their conclusions and recommendations if they considered that measures should be taken to remedy a given situation. Detainees were informed of their rights, and the National Human Rights Commission had placed posters in the three official languages in the police stations.

15. Concerning police custody, he said that sometimes the police did not respect the maximum legal time limit of 24 hours. Police officers who had been accused of torture were not immediately suspended from their duties because suspects often made false statements for the sole purpose of hindering an investigation that affected them. It would be

unfair to suspend a police officer on the basis of mere allegations. Whenever charges against them were proven, the police officers concerned had been dismissed.

16. In cases of human rights violations, the 30-day time limit for filing an application was counted from the date on which the victim had access to the appeals mechanisms. Accordingly, if someone was detained, the one-month rule applied starting on the date of the person's release, even if he or she had been able to communicate with his or her lawyer during detention. Moreover, the Supreme Court allowed anyone who, for reasons beyond his or her control, had not been able to file a petition within the time limit, to do so after the deadline.

17. It was not the mandate of the Sri Lankan Human Rights Commission that would expire at the end of March 2006, but rather the mandate of its current members; the Commission was by law a standing body. The Committee would be provided with a detailed report on the allegations made by the Asian Legal Resource Centre regarding four cases of human rights violations mentioned by Mr. Rasmussen. In regard to article 14 of the Convention, Mr. Rasmussen had also referred to the question of compensating victims instead of prosecuting perpetrators. While it was true that the Sri Lankan Human Rights Commission had advocated that practice in the past, the Attorney-General had since decided that such arrangements should never prevent the perpetrators of acts of torture from being prosecuted. The Commission had also rejected that practice, even though victims sometimes preferred compensation.

18. Sri Lankan legislation established the inadmissibility of confessions obtained by the police or by anyone else while a person was in police custody; thus, a confession made spontaneously by a detainee to a doctor while under police custody, with no police official being present, was inadmissible. The police were perfectly aware of that rule and knew that extorting confessions in such circumstances would be futile. Allegations of police routinely obtaining confessions under constraint were therefore unfounded.

19. The prison tribunal, which was presided over by a district magistrate, ruled on serious offences — such as mutiny, escaping and others — committed by prisoners. The tribunal could order penalties of imprisonment from three months to five years, depending on the seriousness of the offence, to be added to the person's current sentence. In the case of less serious violations of prison regulations, prison authorities could impose penalties such as solitary confinement or meals without animal protein for a specific period of time. Finally, if a prisoner committed an offence against another prisoner, he or she would be tried following ordinary procedures.

20. Juvenile offenders, namely, those between the ages of 16 and 22, were usually placed in specialized training institutions. If one of them broke the rules of the institution, the director of the establishment could give the juvenile a warning or a reprimand, take away specific privileges, demote the juvenile or reduce his or her salary. Children who broke the law could be placed in a special school; if necessary, the director could order the same punishment that was applied in regular schools for minor issues, or if the breach of discipline was more serious, the child could be isolated for a specific period of time.

21. Committee members had expressed surprise at the large number of prisoners being held in pretrial detention compared with the number of convicted criminals. He wished to point out that the figures for the total number of persons in pretrial detention that had been provided only referred to one specific day of the year. Those statistics did not represent the average number of detainees at any given moment, but rather the total for the entire year. Convicts, on the other hand, remained in prison for a much longer time.

22. Custodial rape was defined in article 364(2) of the Criminal Code, which provided that the following were guilty of custodial rape: Any State official or anyone in a position of authority who took advantage of that position to mistreat or rape a woman placed under

his or her authority; any person in charge of a detention centre where women or children were placed, or on the staff of such an establishment, who took advantage of his or her position of authority for the same purpose; finally, anyone directing a hospital establishment or on the staff of the establishment, in similar circumstances, who committed rape against a woman who was hospitalized.

23. The National Police Commission did not publish the conclusions of disciplinary investigations against police officials. However, if an investigation was opened as the result of a complaint, the complainant had the right to be informed of the outcome of the investigation. The duration of such investigations varied because it depended on the complexity of the case and the existence of witnesses and evidence.

24. In the two cases of torture committed by State officers, the officers concerned had appealed their conviction. Under Sri Lankan law, any convicted person could request authorization to pursue an appeal before the Court of Appeal or the Supreme Court. Referring to the question whether the procedure envisaged in article 155(g)(2) of the Constitution had to be implemented within a certain time limit, he said that the procedure would soon be officially announced.

25. He did not have statistics on the amounts of compensation that had been granted to victims. Preparations for the establishment of a victims compensation fund were in progress, but the financial implications of the project had not yet been determined.

26. In response to a question by Mr. Grossman regarding question 34 concerning the interpretation given in the jurisprudence on attacks against physical integrity, humiliating and similar treatment, he said that those concepts had been established by law in 1995, and the jurisprudence had yet to be established because very few cases had been tried. Regarding question 43, he said that the Committee's recommendation that information on its concluding observations should be disseminated would be officially published.

27. Concerning violence against women, he said that the Attorney-General had reviewed the files on all cases of custodial rape committed before 2002 and initiated proceedings whenever there had been enough evidence. Under a presidential directive, women held in police stations were placed under the custody of a female guard; if they needed to leave the police station on official matters, they were always accompanied by a female official. Cases of custodial rape committed before 2002 that had been brought to the attention of the Government by special rapporteurs had all elicited a response from the authorities; in two cases which were currently being tried, details could be provided to the Committee straight away. Information on other cases, as well as on the comments by Dr. Coomaraswamy that had been published in the journal *Redress*, would be provided at a later date. In its written reply to questions 4 and 37, the delegation had referred to the human rights violations committed by the LTTE; considering the blatant nature of those violations, it was inconceivable that the LTTE should have set up any kind of mechanism for the protection of human rights. If the Committee needed to be persuaded, it could refer to the website of the Sri Lanka Monitoring Mission, [www.slmm.lk](http://www.slmm.lk). The most recent information on violations of the ceasefire agreement reported by the Mission between February 2002 and September 2005 was also available.

28. The delegation was not able to furnish statistics on the number of proceedings against police officials that had been dismissed. In some instances, the proceedings had been abandoned at the express written or oral request of the victims. When a case had been brought before the High Court, it could only be interrupted with the authorization of the Court, and then only if the parties had reached agreement, for example, on the issue of compensation. If the Attorney-General decided not to prosecute, his or her decision could be reviewed by the Court of Appeal. Finally, in all cases where the State was requested to compensate a victim, that was done promptly. On the other hand, whenever the court

ordered an official to pay compensation, it could allow a certain period of time within which that should be done.

29. **Mr. Mavrommatis** (Country Rapporteur) thanked the delegation for their collaboration. He noted that the State party had made an effort to follow up on the mission that had visited Sri Lanka in connection with article 20 of the Convention and to implement the recommendations of the Special Rapporteur on torture, among others. Nevertheless, there were still many credible allegations of torture and cruel, inhuman or degrading treatment of detainees being held in police custody. It was clear from the Supreme Court's statement on the three cases discussed earlier, as well as from the interview Ms. Coomaraswamy had granted to a publication, that the efforts made so far were still inadequate. The Chairperson of the Sri Lankan Human Rights Commission had denounced what seemed to be at the heart of the problem, namely, an omnipresent culture of impunity. She had said that priority must be given to the training of police officials and to the interrogation methods used, and that every effort must be made to ensure that the decisions taken by political authorities or by senior police officials were transmitted to rank-and-file officers in the most remote villages. It was also essential to tackle the slow pace of the procedures followed in cases of torture, as delays only reinforced the culture of impunity.

30. Stressing that complaints about acts of torture should be addressed with special diligence, he said he welcomed the delegation's assurances that legislative and other measures could be adopted in order to remedy the problem of the slow pace of justice. According to certain non-governmental organizations, the Attorney-General's Special Investigation Unit had not been dismantled, but some of its powers had been conferred on the Deputy Inspector General, a move that had considerably limited its manoeuvring room. He invited the delegation to comment on those reports.

31. Noting that the post of commissioner of the National Police Commission had been vacant for eight months, he asked if anyone had been put in charge for the interim. Would someone be appointed to replace Ms. Coomaraswamy on the National Human Rights Commission when her mandate expired?

32. **Mr. Rasmussen** (Alternate Country Rapporteur) said that members of the police who had been accused of torture should be suspended until the events had been clarified. He did not share the delegation's misgivings about the possibility that police officials might be falsely accused. Making false accusations was usually a serious offence that should be properly punished. In any event, it was in the interest of the police to ensure that such a case would not be closed, but that, on the contrary, an investigation would be conducted so as to either eliminate all suspicion about police officials being wrongly accused or to get rid of the black sheep.

33. He would also like to know what was the maximum time limit during which a prisoner could be placed in a punishment cell or in solitary confinement. Speaking as a doctor, he said that it would be better to abolish the punishment of imposing a vegetarian diet for prisoners, as that could be harmful to their health.

34. Bearing in mind the difficulties encountered by the State party in gathering statistics on the number of detainees, he suggested that a simple evaluation method might be used which would consist of subtracting the number of releases from the number of admissions; that would give an approximate idea of the situation. He was surprised that the duration of pretrial detention should be only one or two days. Why was that the case? How many prisoners were convicts, and how many were in remand detention? Finally, since the available figures showed that the percentage of accused persons awaiting trial was extremely high, he would like to know what was the average duration of a criminal trial, and how many trials had ended with convictions.

35. **Ms. Gaer** said that the definition of custodial rape in the State party's legislation was restrictive, since only women were mentioned as potential victims of such offences. It was a well-known fact that men could also be subjected to sexual violence in prison. She asked the Sri Lankan delegation to indicate if the domestic legislation included provisions to protect men from such violence and if so, to mention some cases in which those provisions had been invoked.

36. Returning to the delegation's explanation regarding the attack on the National Human Rights Commission, she said she would like to know if the investigation on that matter had led to a conviction or if the case was still ongoing, given that on the previous day, Ms. Coomaraswamy had shared with the Committee her concerns about the attitude of the police, which she had described as hostile. She (Ms. Gaer) shared the concern expressed by Mr. Mavrommatis regarding the risk that key positions on the National Human Rights Commission and the National Police Commission would be left vacant. She hoped that the delegation could reassure the Committee that appointments would be made without delay, so as to ensure that those two agencies could continue their work. Those appointments were all the more necessary because the statistics showed that more and more petitions were being made to the National Human Rights Commission, while fewer cases were being considered by the Special Investigation Unit.

37. Noting that the amounts of compensation paid to victims of torture who had won their cases were inadequate, she asked whether the domestic legislation could be amended so as to set a minimum threshold for compensation payments, with a view to bringing the law more in line with article 14 of the Convention, which stipulated that victims had the right to "fair and adequate compensation", a wording that also implied that the amounts due to victims should be paid within a reasonable time period.

38. **Mr. Mavrommatis** (Country Rapporteur), recalling the Bindunuwewa massacre of 25 October 2000, in which 28 inmates of a rehabilitation centre had died and others had suffered bodily harm, asked the delegation what remedies were available to the victims to seek reparation, following the Supreme Court's decision of 21 May 2005, to acquit the alleged perpetrators of the massacre. Had the Supreme Court's decision had the effect of depriving the families of victims and the persons who had been injured during the massacre of their right to compensation?

39. **The Chairperson** said he would like to know if the Attorney-General, when deciding not to follow up on complaints from individuals, was required to notify the parties concerned of his decision and if so, within what time frame? Also, considering that the decisions of the National Human Rights Commission were not binding, could a victim of torture invoke a decision of the Commission establishing the existence of a human rights violation in order to sue for compensation?

40. **Mr. De Silva** (Sri Lanka) said that the fact that the Deputy Inspectors General of the General Police Inspectorate were competent to investigate allegations of torture by members of the police force did not preclude the Special Investigation Unit of the police from exercising their own investigative powers in such matters. The seriousness of the offence was the criterion for distributing competencies between the two agencies; thus, serious human rights violations always fell within the competence of the Special Investigation Unit of the police, while less serious offences were considered by the Deputy Inspectors General of the police. It should also be noted that in order to prevent the police from trying to make an alleged act of torture appear less serious by improperly referring it to the General Police Inspectorate, the Attorney-General could at any time request that it should be brought to the Special Investigation Unit, which was responsible for investigating allegations of torture.

41. Concerning compensation for victims of the Bindunuwewa massacre, he said that the fact that the alleged perpetrators had been acquitted by the Supreme Court, by its decision of 21 May 2005, did not preclude the victims from seeking compensation from the courts.

42. Replying to a question on the maximum duration of solitary confinement of detainees who violated internal prison regulations, he said that the maximum term was three days if the detainee was held incommunicado; the maximum duration of simple solitary confinement was 14 days.

43. One Committee member had expressed surprise at the short duration of pretrial detention; in Sri Lanka, liberty was the rule, and pretrial detention was the exception. Every accused person could be released on bail if pretrial detention did not seem strictly necessary for the proper administration of justice. The question of prolonging pretrial detention had to be reviewed every 14 days by the investigating judge.

44. There were no laws that dealt specifically with sexual harassment, but the legislation on serious sexual abuse, such as the law on rape, could be applied to acts of sexual violence committed in a place of detention. However, the legislation on rape was applicable only to women.

45. Responding to the concern of a Committee member regarding the possibility that the Constitutional Council created under an act of 25 September 2001 might be dismantled, he said that the Council's work had been delayed simply because the members of national minorities in Sri Lanka had been unable to reach agreement about who should represent them on the Council. That problem had since been resolved.

46. Replying to several questions on the remedies available to victims of torture, he explained that the Supreme Court was not normally empowered to decide on compensation because it did not judge on the facts of a case. The law creating the National Human Rights Commission had not envisaged the possibility of the Supreme Court granting compensation. If compensation was envisaged in some of its decisions, it would not be assimilated with the granting of damages and interest. Consequently, victims of torture must sue for compensation in the courts of the first instance, which were the only ones that were competent to assess and grant damages and interest.

47. The delegation did not have the necessary information on hand to reply to concerns regarding criminal penalties incurred by the perpetrators of acts of sexual violence. Information on that matter would be transmitted to the Committee at a later date. He hoped he had replied to all the questions that had been raised and thanked the Committee for allowing his delegation to explain the difficulties that his country faced in the area of human rights, as well as the efforts it was making to restore those rights.

48. **Ms. Fernando** (Sri Lanka) said that her country had made significant progress since the ceasefire agreement of 2002 and, as the international community had recognized, the human rights situation had improved considerably. Denying the existence of a culture of impunity in Sri Lanka, she stressed that all acts of torture, as well as human rights violations in general, were prosecuted. As her delegation had pointed out when submitting its second periodic report, there had been no allegations of enforced disappearance, summary execution or torture implicating members of the security forces. In that regard, she invited Committee members to consider the statement by the Chairperson of the National Human Rights Commission at the sixty-first session of the United Nations Commission on Human Rights, explaining that the National Human Rights Commission was aware of the challenges faced by the security forces in their effort to transform a police force that had been created to deal with emergency situations into a police force that would respond to the concerns of the population in peacetime. In that context, Sri Lanka welcomed all international assistance in the area of human rights education and training of



the civilian police, or any other type of aid that would enable it to modernize the police and introduce new investigation methods. The Government would provide all necessary support to the National Human Rights Commission and any other official agency charged with ensuring the promotion and effective protection of human rights, and it welcomed the increased role played by civil society in that effort. Her Government was also gratified by the fruitful dialogue with the Committee against Torture and looked forward to continuing it in future.

49. **The Chairperson** thanked the Sri Lankan delegation and invited them to return at another time to consider the Committee's conclusions and recommendations.

50. *The Sri Lankan delegation withdrew.*

*The discussion covered in the summary record ended at 4.50 p.m.*