

Response of the Delegation of Sri Lanka to the questions raised by the members of the CAT during the consideration of Sri Lanka's Second Periodic Report.

Delivered by Hon. C R De Siva, Solicitor General

A series of questions were raised by this Committee on the basis of our report and the responses provided to specific questions.

Responses to the Queries raised by Mr. Mavrommatis

Issue 8

1. A question was raised regarding non-extradition or refoolment. In this regard, there is no express prohibition in any statute in respect of non-refoulment of persons where there are grounds to believe that the person would be in danger of being subjected to torture. However, it must be noted that the process of extradition involves both the decision of our Courts as well as the Executive. The Supreme Court has affirmed the position that the Courts of our country are bound to give expression to international covenants where Sri Lanka is a party, when called upon to interpret any statute. Therefore, in the interpretation of the extradition law, the Courts would necessarily give expression to any international obligation to which Sri Lanka is a party, including the Convention Against Torture (CAT). In addition, for the completion of the process of extradition, the Executive should also agree to the extradition and in so deciding a question of extradition, the State would necessarily be guided by its international obligations, in particular Article 3 of the Convention.

Issue 9

2. A question was raised whether following the Peace Agreement, LTTE leaders could fly in and out of Colombo Airport without being subject to arrest. Since the signing of the Ceasefire Agreement, there have been a number of instances where LTTE leaders have flown in and out of the Colombo International Airport. In addition, there have been a number of instances where Sri Lanka Air Force provided transport to LTTE carders between the LTTE controlled areas and Colombo International Airport.

Issue 12

3. A question was raised in relation to Article 5 of the Convention regarding the right to try non-Sri Lankans who have committed offences outside Sri Lanka who are present in the territory of Sri Lanka territory and who have not been extradited. There is no such provision to deal with this aspect in the domestic legislation. Even though there had been no such cases, if the Committee wishes to make a recommendation in favour of such legislation, the State will refer this matter to the Law Commission for necessary action.

4. Further, a question was raised in relation to a Supreme Court judgment where it was stated that the Supreme Court had observed that there is no reduction in torture cases. We regret that without a particular case number we would not be in a position to comment on such a remark or whether in fact such remark was made. In addition, it must be noted that the statistics show that there is a vast reduction in the number of cases relating to torture that have been filed in our Courts.

5. Mr. Mavrommatis made certain observations regarding three cases identified in a report submitted by the Asian Legal Resource Centre. I would deal with these three cases separately.

(i) Case of Mr. Gerald Mervyn Perera

The State had forwarded indictments against seven police officers for the torture of Mr. Gerald Mervyn Perera while in custody. Prior to the commencement of the trial, Mr. Gerald Perera was murdered while traveling in a bus. The issue arose in the torture case, if the State could proceed with its indictments in the absence of its chief witness, Mr. Gerald Mervyn Perera, who is now deceased. Upon a consideration of the evidence, the Attorney General decided to continue with the case and the trial is now in progress before the High Court of Negombo. The evidence of two witnesses, including the wife of Mr. Perera have been led and concluded. In relation to the murder of Mr. Gerald Mervyn Perera, the Attorney General has forwarded a direct indictment to the High Court by passing a preliminary magisterial inquiry which usually precedes an indictment in all cases of murder. Further, the Attorney General has also decided to grant a conditional pardon to one of the suspects whose complicity in the offence was minimal, in the hope of strengthening the case against the principal architects of this murder. The accused are in remand pending trial. It should also be noted that the Attorney General strenuously resisted an application for bail made on behalf the accused.

(ii) Case of Mr. Palitha Tissa Kumara

In this case, the Attorney General has forwarded indictment under the Torture Act and the case has been already taken up for trial in the High Court of Kalutara. The accused in this case was a member of the reserve police force and not of the regular police force.

(iii) Case of Ms. Nandani Sriyalatha Herath

The Attorney General has forwarded three indictments Nos. 117-119/2003 against police officers alleged to be responsible for this incident. The case was last taken up for trial on 21st October 2005.

Visit to places of detention by the Human Rights Commission

6. The procedure for visits has been agreed in consultation with the Human Rights Commission of Sri Lanka whose officers may visit at any time without notice, any police station. However, if they are to visit any place within the police station where public has no access, the police have been directed to provide the assistance of a senior police officer to escort such members of the Commission for reasons of security of the Commission officers. Further, there are no bugging devices in any prison or police station in Sri Lanka.

7. A question was raised on the quantum of compensation awards made by the Supreme Court. In this regard we wish to point out that the independence of the Judiciary is enshrined in the Constitution and leaves no room for the Government to either give directions or issue instructions to any Court regarding any judicial matter.

8. A question was raised whether the SIU has been disbanded. This is not correct and members of this delegation had consultations with the SIU only a few days prior to visiting Geneva.

9. A question was raised on whether the mandate of the National Police Commission (NPC) will soon come to an end. The NPC has been established under the 17th Amendment to the Constitution and it cannot be in any way abolished by executive action. The term of office of the present Commissioners will come to an end in November 2005 and fresh appointments would be made to the Commission. There is also provision for the reappointment of serving members.

10. In answering the Question on laws delays, the Government and the Chief Justice are presently considering legislative steps as well as administrative procedures to accelerate the process of the Criminal Justice System.

11. A question was raised regarding language in which statements are recorded. It is conceded that statements of accused persons as well as witnesses have been in certain instances recorded in a language other than in the language the statement was made orally. This problem has been recognized and the IGP has taken cognizance of this problem and he is making every endeavor to ensure that people who are conversant in all three languages be appointed to the various police stations as a remedial step in addressing this problem.

Responses to the Question raised by Mr. Rasmussen

12. Mr. Rasmussen also inquired about human rights cells in the forces and inquired whether there are such cells in the police. Human rights cells were set up in the forces to deal with internal allegations of human rights violations in the forces and for the dissemination of information in relation to human rights. However, the administrative structure of the police does not require human rights cells to investigate human rights violations within the police and the Human Rights Directorate of police ensures the dissemination of information on human rights to all police stations. The National Police Commission is empowered to investigate human rights violations within the police. We have not received any adverse reports on the functioning of the human rights cells in the armed forces.

13. Mr. Rasmussen raised the question whether a junior officer has been sufficiently trained and educated to appreciate that he is not obliged to comply with an order of a senior officer to commit an offence of torture. All military personnel and police officers have been fully apprised of the fact that they are not obliged to follow any such illegal orders of a superior officer and the fact that such order is made by superior officer would not be a defence in any Court proceeding or disciplinary inquiry. They have also been clearly instructed that failure to follow illegal orders made by senior officers will not constitute an act of insubordination.

14. We have taken note of Mr. Rasmussen's observation regarding the desirability of increasing random visits to police stations and we will pass his observations to the Human Rights Commission of Sri Lanka for any further improvement possible.

15. Mr. Rasmussen also raised the question of adequate financing of the Human Rights Commission of Sri Lanka. Under the provisions of Human Rights Commission of Sri Lanka Act No. 21 of 1996, Section 29 (1), the State shall provide the Commission with adequate funds to enable the Commission to discharge the functions assigned to it by the Act. Further, the Commission is empowered to receive funds from donor organizations. We appreciate funding received from various donors, which has assisted the Human Rights Commission of Sri Lanka to carry out its work and preserve its independence.

16. A question was raised on how findings of reports of inspection visits to prisons were communicated to relevant authorities for implementation. Our response is that NGOs will always inform the relevant authorities of their findings, conclusions and recommendations, if they are of the view that remedial action is required.

17. A question was asked about information provided to arrestees about their rights. The Human Rights Commission of Sri Lanka has put up posters in all the police stations in all three languages informing the arrestees about their rights.

18. An observation was made by Mr. Rasmussen that the police have in some cases failed to follow the 24 hour rule regarding police custody. We do concede that in a few instances the police may have failed to abide by this requirement. But as a rule the police have followed 24 hour requirement and complied with the law as well as the circulars issued to them. This delegation will undertake to convey to the National Police Commission and the Human Rights Commission the suggestion made by Mr. Rasmussen in this regard and that there should be an increase of random inspections by the Human Rights Commission of Sri Lanka.

19. A comment was made as to why police officers against whom allegations of torture are made are not immediately interdicted. In practice, it has been found that very often persons accused of offences, made false allegations for purposes of stifling the investigations that were being conducted against them. In the circumstances it would be unfair to interdict a police officer on a mere allegation of torture. However, a police officer against whom a prima facie case has been established will be interdicted by the National Police Commission.

20. Mr. Rasmussen also observed that the 30-day requirement in fundamental rights applications was unreasonable. The Supreme Court in computing the 30-day rule has held in innumerable cases that for the computation of the one month rule, the time begins to run from a date on which a person who alleges that his fundamental rights have been breached was in a position to have access to the judicial process. For example, if a person is in remand, the one month rule will apply only after he is released from custody.

21. In addition, considering the liberal interpretation given by the Supreme Court on the one month rule, any person who cannot access the process of justice within the period of one month for reasons beyond his control, the Supreme Court would allow him to proceed with his application.

22. A question was raised whether the mandate of the Human Rights Commission of Sri Lanka would end in March 2006. Our reply is that it is only the 3 year term of office of the present Commissioners that will come to an end by March 2006 and that the Commission is a body corporate having perpetual succession vide Section 2 of Act No. 21 of 1996, and will continue to function in terms of the Act.

23. Mr. Rasmussen also mentioned the following allegations of human rights violations as reported by the Asian Legal Resource Centre.

- i) Vidana Arachchige Norman Krishantha Jawawardana
- ii) Wijekoon Mudiyanseelage Sujith Priyantha Wijekoon, (a seven year old child)
- iii) P H K Sanjeeva Ranasinghe
- iv) Aththana Gamaralalage Ravindra, J S Chaminda, B W L Ajith Kumara and Nagalingam Rishantha Kumar (with regard to false medical certificates issued by medical doctors)

A detailed report on the above cases will be submitted to the Committee as soon as possible.

24. Under Article 14, Mr. Rasmussen had raised the question of the offending party paying compensation in lieu of a prosecution. Our response is that there was an earlier practice in the Human Rights Commission of Sri Lanka in this regard. However the Attorney General's Department has taken up the position that such settlements by the Human Rights Commission of Sri Lanka did not bind the Attorney General in forwarding indictments against perpetrators of torture. The present Commission has now discontinued this practice.

25. Under Article 15, Mr. Rasmussen made an observation regarding confessions. In this regard, it must be noted that a confession made by any person to a police officer or any confession made by any person whilst in police custody to another, is inadmissible under the normal law. For example, even a confession made by a person in police custody to a doctor who examines him, is inadmissible even if it can be proved that such confessions were voluntarily made and there was no police officer present at the time of making the confession. These elementary legal principles are well within the knowledge of all police officers. Thus the police officers are aware that there is no practical purpose that could be achieved by obtaining such a confession. In the light of these circumstances the allegations that the police officers are in the habit of obtaining confessions under duress is unfounded.

26. Mr. Rasmussen making his observations in terms of Article 16 of the Convention, raised the question about the types of punishment meted out in penal institutions in respect of inmates who violate the prison rules.

27. In terms of the Prisons Ordinance, serious offences such as mutiny, escape from prison, causing grievous hurt to a prison officer, are inquired into by a prison tribunal chaired by a judicial officer (District Judge). These tribunals are empowered to impose punishments of imprisonment in addition to the sentence the offender is serving. These

sentences could range from three months up to a maximum of five years, depending on the severity of the offence committed by the prisoner.

28. With regard to minor offences arising as a result of violation of prison rules, the Superintendent of Prisons is empowered by the Prisons Ordinance to impose punishments such as solitary confinement and closed confinement. In addition they are also empowered to order a punishment diet to be given to the offender for a stipulated time. A punishment diet means a low diet consisting of vegetables and rice without any animal protein.

29. All serious offences committed by a prisoner against a fellow prisoner are tried under the normal law.

30. Mr. Rasmussen also made an inquiry pertaining to youthful offenders and children who come into conflict with the law. Youthful offenders are defined as offenders between the ages 16-22 and are normally confined in special training schools for youthful offenders. In Sri Lanka there are several such institutions. Any youthful offender violating the rules of the institution is dealt with by the Superintendent of the institution. He is empowered to impose the following punishments.

1. Warning or reprimand
2. Forfeiture of any privilege
3. Reduction in grade or wages

(all convicted prisoners are paid a wage during their stay in prison)

31. Children who come in conflict with the law may be detained in certified schools and the wardens of these schools are empowered to impose punishments. Minor offences on the part of the child offender will be visited by such modes of correction as are generally used in normal schools. Serious breaches of discipline shall be punished by seclusion for a limited period of time. There is no corporal punishment inflicted in our prisons presently.

32. Mr. Rasmussen and other members referred to the statistics presented in our response to Question 17. He observed that the proportion of remandees to those convicted seemed 'extraordinary'. I wish to clarify these statistics. When computing the numbers of remand prisoners for a year, even a person who was in remand custody for a single day would be taken into the computation. These statistics do not reflect the average number of remand prisoners in the remand prison on a particular day but the accumulated total of remandees during that particular year. However, the convicted prisoners are in prison for much longer durations. As a developing country we are faced with overcrowded prisons due to lack of sufficient resources.

Questions raised by Mr. Claudio Grossman

33. With regard to issue No. 7, Mr. Grossman asked for the legal definition of custodial rape.

In terms of 364(2) of the Penal Code any person commits custodial rape if such person:

- a) being a public officer or a person in a position of authority, takes advantage of his official position and commits rape on a woman in his official custody or wrongfully restrains and commits rape on a woman;
- b) being on the management or on the staff of a remand home or other place of custody, established by or under law, or of a women or children's institution, takes advantage of his position and commits rape on any woman inmate of such remand home, place of custody or institution;
- c) being on the management or staff of a hospital takes advantage of his position and commits rape on a woman in that hospital.

Women or children's institutions means an institution for the reception and care of women or children howsoever described.

Hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

34. With regard to issue No. 10, a question was raised as to whether the outcome of the police disciplinary inquiries is made public by the National Police Commission. Our response is in the negative. However, if such disciplinary procedure is based on a complaint made by any person, such complainant has the right to know the outcome of the disciplinary inquiry.

35. It is not possible to give an average estimate of the duration of such inquiries since this will depend on the complexity of the case and the availability of witnesses and documents.

36. Mr. Grossman raised a question on issue 17 to which we have already responded.

37. On issue 26, an inquiry was made whether there are pending appeals in respect of two convictions in the torture cases. In terms of our law, every convicted person has a right to appeal against his conviction to the Court of Appeal and to the Supreme Court by way of special leave to appeal. In both cases, appeals have been preferred by the convicts.

38. Mr. Grossman asked whether there is a deadline for the establishment of a comprehensive procedure envisaged under Article 155 G (2) of the Constitution. The formal establishment of a comprehensive procedure is expected to be gazetted in the near future.

39. Mr. Grossman also inquired whether there are statistics on compensation awarded to victims. We are unable to provide a response as we do not have statistics with us at this time.

40. Under Question 33, Mr. Grossman inquired whether there is a deadline for establishing a victim's compensation fund. Although the drafting work is progressing satisfactorily, financial implications of this project are yet to be finalized.

41. With regard to issue No. 34, Mr. Grossman inquired about the interpretation in case law on what is considered bodily harm, humiliation etc. Our response is that this area of law received legislative expression in 1995 and there have been only a few cases and as a result the jurisprudential aspect is yet to be developed by the superior courts of our country.

42. With regard to Issue No. 43, in response to Mr. Grossman's inquiry, I am happy to inform you that we intend to Gazette this Committee's recommendation as a start.

Ms. Gaer made some observations in her capacity as Rapporteur on gender related issues.

43. On issues 7,16 and 27, our response is that in all reported cases of custodial rape that have been committed before 2002, the Attorney General has examined the available material and initiated criminal proceedings in all cases where there was sufficient evidence. We can confirm that in accordance with the Presidential Directive, women arrestees held in police stations are kept in custody under the care of a female police officer or matron. In the event they are taken out of the police station for any official purpose, the female arrestees are accompanied by a female police officer or matron.

44. The question was also raised as to how many offenders in respect of custodial rape have been brought to book before 2002. In this regard we wish to state that whenever these incidents were brought to the notice of the Government by the respective Special Rapporteurs, detailed responses have been forwarded. We can provide details with regard to two such cases immediately and will forward details of other cases in due course. The two cases are Velu Arshadevi and Thambilillai Thanalakshmi. In both these cases, judicial proceedings have already been instituted and are presently pending in the court.

45. With regard to comments made by Dr. Radhika Coomaraswamy as reported in the publication "redress" we are unable to share our observations since we have just seen it.

46. Ms. Gear also raised the question whether there is any mechanism within the LTTE to deal with human rights violations. In our written response to the questions raised by the Committee, we have provided a detailed account of the violations of human rights by the LTTE. In this regard we would invite Ms. Gear to refer to the answers provided to the Questions No. 4 and 37. Considering the flagrant violations of human rights by the LTTE it is unconceivable that there are any mechanisms within the LTTE to deal with human rights violations.

47. With regard to information on specific violations of human rights by the LTTE, we would recommend you to refer to the web site of the Sri Lanka Monitoring Mission which is www.slmm.lk and we have circulated among the members of the Committee, a copy of the latest position with regard to the violations of the Ceasefire Agreement as reported by the SLMM for the period from 22 February 2002 to 30 September 2005. These statistics would clearly demonstrate that there are no existing safeguards within the LTTE to deal with human rights abuses taking place in the areas controlled by them.

Question raised by the Chairman, Mr. Menendez

Issue 23

48. The Chairman Mr. Fernando Menendez raised a question on whether there are statistics of discontinued cases against police officers. Our response is that although we are unable to provide statistics there have been cases of discontinuation of proceedings on applications made by the victims either by way of affidavit or by an oral application to the Court for the purpose of obtaining the permission of the High Court for such withdrawal.

49. Another question was raised on whether a decision of the Attorney General not to proceed with a case could be reviewed. The response is that since the Attorney General performs a statutory function, his decisions are amenable to the writ jurisdiction of the Court of Appeal.

Issue 31

50. The Chairman also made a final inquiry whether compensation ordered by the Court is paid immediately or whether there is any delay based on budgetary constraints. It is our response that in all cases where the State has been ordered to pay compensation, this has been paid on the due date. However, in cases where public officers are directed by the Court to pay compensation personally, the Court may grant sufficient time to make such payments.

51. Before I conclude I wish to take this opportunity on behalf of my delegation to thank the distinguished members of this Committee for the constructive dialogue that was provided in the course of these deliberations. I also wish to thank the various Non Governmental Organisations for their contribution. Finally, Mr. Chairman, I wish to state that Sri Lanka has always been mindful of its obligations and respected secured and advanced human rights to its society. The Constitution of the Republic confirms to its people that fundamental rights will be recognized as an intangible heritage that guarantees the dignity and well being of mankind.
