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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2156th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 31 October 2003, at 3 p.m.

Chairperson: Mr. AMOR

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Sri Lanka (CCPR/C/LKA/2002/4; CCPR/C/79/L/LKA)

1. At the invitation of the Chairperson, the members of the delegation of Sri Lanka took places at the Committee table.
2. Mr. KARIYAWASAM (Sri Lanka) said that his country's unwavering commitment to the promotion and protection of human rights had been severely challenged by the violent internal conflict of the previous decade. However, the ceasefire agreement of February 2002 had paved the way for a new era of peace and reconciliation. Through ongoing peace negotiations, the Government and the Liberation Tigers of Tamil Eelam (LTTE) were seeking to achieve a permanent political solution, within the framework of democracy and respect for human rights.
3. With a view to building confidence in the peace process, his Government had suspended implementation of the Prevention of Terrorism Act with regard to arrests, detentions and criminal investigations. The Attorney-General had dropped approximately 1,000 charges and released over 300 persons held in preventive detention under the provisions of the Act. The Emergency Regulations adopted under the Public Security Ordinance had also been suspended.
4. A number of legislative reforms had been carried out in recent years with a positive impact on the enjoyment of human rights. For instance, provisions concerning criminal defamation had been removed from the Penal Code; new citizenship laws had been adopted to enable over 500,000 persons of Indian origin to acquire Sri Lankan citizenship; an amendment to the Citizenship Act had allowed the acquisition of citizenship through the maternal line; the Penal Code had been supplemented to provide enhanced protection for women and children; and a Constitutional Council had been set up to enforce transparency in the appointment of senior officials.
5. A National Human Rights Commission had been established and was currently chaired by Mr. Radhika Coomaraswamy, the former United Nations Special Rapporteur on violence against women. Within the framework of its far-reaching investigative and advisory mandate, it had developed a strategic plan for the period 2003-2006, in which it proposed to play a more proactive role in securing the protection of human rights for all parties to the peace process. A national child protection authority and an independent press complaints commission had also been set up.
6. Sri Lanka had ratified the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of Discrimination against Women, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It was party to 17 international human rights instruments and to all eight core ILO Conventions. Several judicial decisions in Sri Lankan courts had referred to the provisions of international treaties in the interpretation of domestic legislation.

7. The CHAIRPERSON invited the delegation to reply to questions 1 to 17 of the list of issues (CCPR/C/79/L/LKA).
8. Mr. DE SILVA (Sri Lanka), replying to question 1, said that the Ministry of Constitutional Affairs had established a special task force and carried out an extensive study to ensure that Sri Lanka's international human rights obligations were taken fully into account during the constitutional reform process. The Ministry was analysing provisions in other jurisdictions with a view to addressing the issue of the right to challenge the constitutional validity of enacted legislation. The concerns expressed by the Committee in its concluding observations following its examination of the third periodic report had been given due consideration in that regard.
9. The issue of existing laws remaining valid notwithstanding constitutional inconsistency (question 2) would be addressed during the constitutional reform process. Nevertheless, legislative reforms had already been effected in several areas, such as citizenship and criminal procedure, to ensure compatibility with fundamental rights enshrined in the Constitution. In addition, the National Human Rights Commission had begun to review all existing legislation for consistency with fundamental constitutional rights and international human rights standards.
10. With regard to question 3, the Supreme Court had jurisdiction over fundamental rights and could be seized in respect of human rights abuses by State agents. The Attorney-General represented the State and public officials in criminal proceedings concerning fundamental rights violations, with the exception of cases involving allegations of torture by State agents. A total of 50 State agents had been charged with torture or other cruel, inhuman or degrading treatment or punishment, and over 300 had been charged with abduction and wrongful confinement. Those cases had resulted in 12 convictions. A Prevention of Organized Crime Bill would be submitted to Parliament shortly.
11. Mr. PERERA said that, under the February 2002 ceasefire agreement, both parties had undertaken to respect international human rights norms and to give the Nordic Monitoring Mission responsibility for ensuring compliance with those norms (question 4). At the sixth round of peace talks in Hakone (Japan), the parties had adopted a declaration of principles on human rights and humanitarian issues, to be discussed on resumption of the peace process. International organizations, such as the Office of the United Nations High Commissioner for Human Rights and the Office of the United Nations High Commissioner for Refugees, had been requested to assist in strengthening the National Human Rights Commission, so as to enable it to play a more proactive role in the peace process. He called for even greater support from the international community in that regard.
12. With regard to question 5, Mr. Jayawardena had been elected to Parliament in the elections of December 2001, whereupon he had been appointed Minister of Rehabilitation, Resettlement and Refugees. Pursuant to the Views of the Human Rights Committee in case 916/2000, the Government had ordered further inquiries, in the course of which Mr. Jayawardena had made a further statement. Since he had been unable to identify the persons who had allegedly threatened him, no further legal action had been taken. Nevertheless, the Government had agreed to provide additional protection for Mr. Jayawardena if and when it became necessary.

13. Mr. PERERA, replying to question 6, said that marriage laws had been amended in 1995 to set the minimum age for marriage at 18 for both boys and girls. The Ministry of Justice and the National Child Protection Authority had initiated consultations with members of the Muslim community with a view to extending those reforms to areas governed by Islamic law. A new Maintenance Act adopted in 1999 had removed a discriminatory provision, dating from 1889, which had required mothers to apply for maintenance within one year of the birth of a child out of wedlock. A ban on the appointment of married women as guardians-ad-litem in civil actions had been removed through an amendment to the Civil Procedure Code enacted in 2002. A governmental steering committee on gender equality had been set up to oversee the continuing legislative review programme designed to eliminate discrimination against women and girls.

14. With regard to question 7, a draft Prevention of Domestic Violence Act had been prepared and which would enable victims to obtain court protection orders. Applications for protection could be made either by the victim or, on the victim's behalf, by a police officer, parent or guardian. Rather than creating new criminal offences, the draft Act recognized all Penal Code offences relating to assault or emotional abuse for purposes of domestic violence.

15. Mr. DE SILVA said, in reply to question 8, that the Emergency Regulations had been allowed to lapse from 7 July 2001 and had not been renewed or reinforced. Since the February 2002 ceasefire, no arrests, detentions or criminal investigations had been carried out under the provisions of the Prevention of Terrorism Act. Charges had been dropped against 1,000 persons and over 300 had been released. A special High Court had been established with a view to expediting the trials of persons charged with serious offences under the Prevention of Terrorism Act prior to the ceasefire. During the state of emergency, the rights to freedom of association, movement, expression (insofar as it affected national security) and assembly (insofar as it affected national security and public safety) had been restricted.

16. It had not been possible to conduct a meaningful inquiry into human rights violations and summary executions committed between 1984 and 1988 (question 9). Witnesses had been unavailable and individuals had been reluctant to come forward with information. The law enforcement authorities had therefore been unable to secure the necessary evidence.

17. In reply to question 10, he said Mr. Tiruchelvam had allegedly been killed by a LTTE suicide-bomber and investigations were pending. In the case of Mr. Ponnambalam, the Government had ordered a police investigation immediately after the assassination. Following a post-mortem, a verdict of homicide had been returned. Further investigations had been conducted by the Criminal Investigation Department (CID) and criminal proceedings had been instituted against three suspects; however, two of the suspects had been killed by rival criminal gangs and investigations of those killings were under way.

18. On question 11, he said that, out of a total of 432 cases filed with the Disappearances Investigations Unit (DIU), 178 had been concluded and 247 were pending; 12 convictions had been obtained, and in 130 cases the accused had been discharged.

19. Turning to question 12, he said the Board of Investigation had been established in an effort to ensure impartiality in the investigation of complaints against military and police personnel, and to prevent escalation of unlawful arrests that might lead to disappearances. The

Board had first gathered statistics to establish the number of persons detained in Jaffna on the basis of detention orders and subsequently transferred to remand prisons outside the area, and the number of those released after initial investigations.

20. More than 2,500 complaints had been received by the Board, but after elimination of duplicate applications, the actual number of alleged disappearances was 765, which the DIU had been directed to investigate. Investigations in 338 cases had been completed and the files sent to the Attorney-General; 209 cases had been closed owing to lack of evidence; 102 cases were pending; and 101 inquiries had yet to be commenced. In 15 cases, the complainants had not been traced.

21. With regard to investigations into 12 alleged disappearances brought to the attention of the Government by the United Nations Working Group on Enforced or Involuntary Disappearances, he said responses had been sent in five cases and were being prepared in four. Of the 651 cases of disappearances reported by the Working Group and referred to the Board in October 1997, it had been found that 301 had already been investigated by the Board.

22. The Attorney-General had indicted 27 police and military officers on charges of murder in relation to disappearances.

23. According to the Rehabilitation of Persons, Properties and Industries Authority (REPPA), as of August 2003 more than 610 million rupees in compensation had been paid to dependants of missing persons in districts within its jurisdiction. Nearly 40 million rupees were required for compensation for 960 outstanding cases. In five other districts, responsibility for compensation payments rested with the Ministry of Rehabilitation, Resettlement and Refugees.

24. In reply to question 13, he said the detention hotline was staffed by police personnel fluent in Sinhala, Tamil and English and enabled family members to ascertain whether an individual had in fact been arrested, the arresting authority and the place of detention. All arresting officers were now required to report arrests to the Central Police Registry within six hours.

25. On question 14, he said that his country's Convention against Torture and Other Cruel, Inhuman or Degrading Punishment Act No. 22 was in substantial conformity with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. His Government noted that the definition of torture did not include the word "suffering" but, in its view, the expression "causes severe pain whether physical or mental" would necessarily include any suffering caused to any person. Moreover, the judicial interpretation of the term "torture" would take any physical or mental suffering into account. Sri Lanka's courts had increasingly maintained that, in the interpretation of any domestic law giving effect to the State's international obligations, they would necessarily give expression to the provisions of the relevant international legal instrument.

26. Other provisions of the United Nations Convention, such as article 3, could be implemented under other legislation on extradition or immigration, for example, or through administrative measures.

27. With regard to question 15, he said the Inter-Ministerial Working Group on Human Rights worked closely with all investigative mechanisms such as the DIU, the CID and the Special Investigation Unit (SIU) in order to bring cases to a speedy conclusion. Torture cases would be a high priority under the National Human Rights Commission's strategic plan for 2003-2006, which also envisaged consultation with government authorities and NGOs.
28. Human rights was now a compulsory subject in training for recruits to all ranks at the Police College and for applicants for promotion, and successful participants in diploma courses on human rights were given due credit at promotion interviews. Detainees' rights were set out in multilingual posters in police stations and lawyers were granted access to suspects.
29. Under the principle of command responsibility, supervisory officers at police stations would be held responsible for acts of torture committed by their subordinates if negligence or lack of supervision on their part could be shown. Where incidents were reported in the media or complaints were brought by individuals, the Deputy Inspector-General in charge of the Police Legal Range was expected to initiate and monitor investigations and, where necessary, institute disciplinary proceedings and coordinate with the Attorney-General's Department in prosecutions involving police personnel.
30. Officers against whom a prima facie case could be made, or who were indicted under the Torture Act, were immediately interdicted. Indictments on charges of torture had been brought against 43 police or armed forces personnel and disciplinary proceedings instituted against 12 officers for failing to take proper steps to prevent acts of torture.
31. A total of 110 cases had been referred to the Government by the United Nations Special Rapporteur on the question of torture. In 25 of those cases, investigations had been completed but criminal proceedings had not been instituted, on the advice of the Attorney-General; in 4 cases, disciplinary action had been instituted; and in 9 cases, proceedings had been instituted in the High Court. Seventeen cases were currently under investigation and five cases were pending, awaiting instructions from the Attorney-General's Department. In 33 cases, the complaint had been withdrawn, the victim was living abroad or unable to be traced, or there was insufficient information to proceed with an investigation.
32. Ms. PERERA (Sri Lanka), replying to question 16, said proposed juvenile justice reforms sought to prohibit the use of corporal punishment for juvenile offenders. Corporal punishment in schools, however, continued to be a matter of much debate. Despite prohibitions by the Ministry of Education, many instances were still brought to the notice of the authorities. Some cases had been challenged as a violation of the right to freedom from torture or inhuman or degrading punishment, while others had been considered as offences involving cruelty to children and prosecuted under the Penal Code. The greatest obstacle to eliminating corporal punishment was the difficulty of changing attitudes, but a major campaign had been launched by the National Child Protection Authority and the issue taken up with the education authorities by the National Monitoring Committee under the Children's Charter.
33. Corporal punishment had not been inflicted on adult offenders for more than 20 years and proposals had been put forward to ensure that the Prisons Ordinance reflected Sri Lanka's international obligations in that regard.

34. Mr. DE SILVA, replying to question 17, said no investigations were now carried out under the Prevention of Terrorism Act and no one was detained under its provisions. The Attorney-General had taken steps to review all cases pending as of the signing of the ceasefire agreement, and more than 1,000 indictments had been withdrawn. Only 65 cases filed under the Act were now pending in the courts.
35. The CHAIRPERSON invited Committee members to put follow-up questions to the delegation of Sri Lanka.
36. Mr. BHAGWATI said it was gratifying to note that a ceasefire had been in place for a considerable period, holding out hope of a political settlement in Sri Lanka. The internal conflict and violence of the past 20 years had considerably affected the observance of human rights.
37. Recalling that the Supreme Court had certain powers to examine the validity of executive or administrative actions in the event that they violated human rights, he noted that there was a time limit of one month in which to apply for such a review. That was a serious limitation, but the Court had held that the one-month time bar was not mandatory but discretionary. It had also adopted a highly creative and liberal interpretation of the concept of “administrative action” in an attempt to expand its ability to intervene where the Government had violated human rights. He wondered how consistently those views had been applied.
38. It was normally impossible to challenge legislative acts in Sri Lanka, and the Supreme Court had made efforts to bring certain types of legislative act within the framework of administrative acts so as to be able to examine their effect on human rights. He wondered whether any progress had been made with a proposal made some years previously to allow challenges to legislation on human rights grounds to be brought within two years.
39. Much good legislation, including social legislation, had been introduced by the present Government. He welcomed the establishment of the National Human Rights Commission, which he was sure would be able to improve the human rights situation in Sri Lanka, provided the Government was prepared to carry out its recommendations.
40. He was pleased that the Prevention of Terrorism Act was no longer being applied, and was confident the Government would do its utmost to see that judicial review was restored in full and that the human rights of citizens were fully protected. He looked forward to a fruitful and constructive debate.
41. Mr. RIVAS POSADA said the question of the status of the Covenant in Sri Lanka’s domestic constitutional and legal framework had not been specifically addressed in the report, or indeed in the Committee’s list of issues. He would welcome some information on how the provisions of the Covenant were implemented in the State party’s legislation. What happened in the event of a conflict between domestic law and the Covenant? What remedies were available to persons who considered themselves victims of human rights violations? Could they apply directly to the domestic courts?
42. Article 16 of the Constitution stipulated that all existing laws remained valid and operative, notwithstanding any inconsistency with the Constitution’s provisions relating to fundamental rights. The State party had indicated, however, that the issue would be addressed in

the future as part of the constitutional reform process and that several laws - such as the Civil Procedure Code and the Criminal Procedure Code - had already been amended to ensure compatibility with the fundamental rights enshrined in the Constitution. He would be interested in knowing whether any further efforts were currently being made pending the completion of the reform process to invalidate other legislative provisions that were clearly inconsistent with the Constitution.

43. Although the information provided by the State party was not comprehensive, it illustrated the commitment of the authorities to addressing the problem of impunity. He particularly welcomed the fact that a Prevention of Organized Crime Bill had been presented to Parliament. A central concern, however, remained the need to fight impunity for flagrant human rights violations committed in the past.

44. He noted with satisfaction that, in the context of the Peace Agreement reached on 24 February 2002, the authorities had engaged in a process of reflection on how best to proceed with the implementation of the strategic plan of the National Human Rights Commission for the period 2003-2006. It was equally satisfying to note that the authorities had been working closely with independent advisers to develop an ambitious plan to end organized crime.

45. He was pleased to note that the Sri Lankan authorities had reacted so swiftly to the Views of the Committee on Case No. 916/2000 (Jayawardena v. Sri Lanka) and that the author of the communication had been appointed to the Cabinet of Ministers. It was satisfying to know that the Committee's intervention had yielded positive results.

46. While he welcomed the fact that arrests or investigations could no longer be carried out under the Prevention of Terrorism Act, he expressed concern that that outdated Act, which allowed human rights violations, remained in force. He urged the State party to reconsider those provisions of the Act that might be inconsistent with the Covenant and to monitor compliance with the Covenant at all stages of the reform process.

47. He expressed concern that some of the fundamental rights enshrined in the Constitution could be claimed only by citizens of Sri Lanka. Apparently, the rationale for such a distinction between citizens and non-citizens in affording protection for an individual's human rights was to safeguard the economic and political sovereignty of Sri Lankan citizens. Although the Covenant did not expressly forbid such differentiation, the Committee had always maintained that any differential treatment should be based on reasonable and objective grounds. In the case of Sri Lanka, the differential treatment accorded to citizens and non-citizens seemed to be discriminatory.

48. He welcomed the fact that the Emergency Regulations were no longer in force. However, article 15 of the Constitution permitted the imposition of restrictions in times of emergency on certain fundamental rights, such as freedom of worship and freedom from retrospective punishment. Those rights were guaranteed under the Covenant at all times and should not be subject to derogation or suspension. He would like further information about such restrictions.

49. Mr. LALLAH expressed his satisfaction that so much attention had been devoted in the report to the right to equality. It appeared that a number of measures had been taken to alleviate the repression of women's rights. However, further attention should be given to the question of violence against women. He would like to know to what extent rape was a problem in Sri Lanka and how the problem was addressed. He would also like to know how many prosecutions for rape were instituted each year.

50. He would welcome information about the steps being taken to reduce maternal mortality in Sri Lanka. It would also be interesting to learn which specific provisions of the Penal Code criminalized abortion and whether any measures had been introduced to discourage women from undergoing unsafe abortions. Reference was made, in various provisions relating to termination of pregnancy, to the point of time when a woman was "quick with child"; the reporting State should define what exactly was meant by that outdated term.

51. Sri Lanka had become a popular holiday destination. He would like to know to what extent sex tourism was considered to be a problem in Sri Lanka and the steps that were being taken to address it. Further information should be provided, for example, on the measures taken by the Government to stem the spread of HIV/AIDS among sex workers.

52. The situation of women in Sri Lanka seemed to have improved. The Civil Law contained a provision stating that female judgement debtors could not be sent to prison in default of payment. He wondered whether, for the sake of gender equality, the same privilege could be extended to men. He asked whether there was a specific legal provision under which judgement debtors could be sent to prison and to what extent it was compatible with article 11 of the Covenant.

53. He expressed concern about the differential treatment accorded to women on the basis of their ethnic origin or religion. A Muslim girl could legally marry at the age of 12 with the consent of her parents. However, girls of other religions had to attain the age of 18 before being allowed to marry. The Covenant required that marriage should take place with the free consent of the persons involved. A girl of 12 was too young to act with informed consent on matters such as her own marriage. He noted, furthermore, that different marriage codes applied to different sectors of society. Having a multi-ethnic society was no excuse for discrimination. In such societies there was a greater need for legal protection against discrimination.

54. He noted with satisfaction that a correction had been made to paragraph 174 of the report. He had been pleased to learn that so far 10 individuals had been prosecuted - and not convicted as originally stated in the report - for transgressing the provisions of the Torture Act. He had also been pleased to learn that 40 cases had been lodged against public officials pursuant to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. However, he would like to know when those cases had been lodged and how long it had taken or would take to obtain a result. He had been surprised to read that some 300 public officials had been charged with abduction. He wondered for what reason a public official might wish to abduct a person. He also wished to know how many officials had been convicted for such a crime and whether the victims had been raped.

55. According to the information provided by the State party, 12 public officials had been convicted and sentenced for violating the Covenant. However, no indication had been given of the nature of those violations. Although he appreciated the information that had been provided about new legislation in Sri Lanka, more information should be given on how that legislation was being implemented in practice.

56. A number of cases appeared to have been brought before the Supreme Court for violations of fundamental human rights by public officials. He would like to know the number of times the Supreme Court had found officials to be guilty of such offences. It appeared that no disciplinary action had ever been taken against those officials. Society was therefore being deprived of a culture that condemned impunity.

57. Further information should be provided about the role of the Attorney-General's Department. It was unclear whether or not the Attorney-General, who was responsible for prosecution, was a political figure. If so, he wondered how the two roles were compatible. The person responsible for prosecutions should be appointed by an independent body and should not be answerable to politicians. The delegation should indicate to what extent prosecutions were independent and free from political control.

58. Sir Nigel RODLEY said that he was pleased to note that the cataclysm that had torn Sri Lanka apart for so long seemed to be on the verge of resolution. That would inevitably have a positive impact on the full enjoyment of human rights in Sri Lanka. Regrettably, however, it did not mean that the Government could turn its back on the past. The practice of impunity in the past continued to have an effect. Furthermore, it was difficult to construct a society based on respect for the rule of law if the society that had been inherited was based on impunity and disrespect for the rule of law.

59. The Committee had requested information about steps taken towards conducting an inquiry into the human rights violations and summary executions that had occurred between 1984 and 1988. The State party had revealed that, in the circumstances, conducting a meaningful inquiry "was not feasible". He had rarely heard a State confess to such an abandonment of its responsibilities. He reiterated the questions asked by Mr. Lallah about the lack of indictments and wondered whether the 12 public officials convicted for violations of the Covenant were the same 12 who had been convicted for disappearances. The number of convictions was lamentable given the high number of disappearances. It would surely not be too difficult, during the course of a serious investigation, to determine which units and commanders had been operating in a particular area.

60. He wondered whether in the fight against insurgency the Emergency Regulations had been viewed as a licence to perpetrate extrajudicial executions, disappearances and torture with impunity. The Attorney-General had apparently indicted 27 persons, including police officers and army personnel, on charges of murder in relation to disappearance cases after the completion of investigations. He would be interested to know the ranks of those indicted and to know how many individuals had received compensation as a result of those indictments. Every failure of the State party to solve cases of torture, murder and disappearance was a multiple violation of the Covenant.

61. He welcomed the fact that ordinary law was now in force in Sri Lanka; according to that law, all detained persons must be brought before a magistrate within 24 hours. However, it was unclear whether those persons had access to a lawyer, doctor or family member during that initial 24-hour period.

62. The Committee had received reports from NGOs of serious ill-treatment of common criminal suspects. They alleged that basic safeguards against arbitrary detention, such as bringing suspects before a magistrate within 24 hours, were not being respected. The previous day the Committee had met a 17-year-old high-school graduate who claimed to have been tortured by the Sri Lankan police to the extent of losing the use of his left arm. He had been detained on 20 July 2003 and taken to hospital one week later after signing certain statements. He had thus allegedly spent seven days instead of 24 hours in detention. While the delegation would not be expected to explain the circumstances of that particular case, the fact that such illegal confinement could occur indicated that the necessary procedures to bring those responsible to justice were not in place. He wondered whether the problem lay with the Attorney-General or the courts, or whether there was just no system in place to deal with it.

63. Referring to the delegation's answer to question 16 of the list of issues, he welcomed the planned prohibition of corporal punishment as a sentencing alternative for juvenile offenders and the proposal to amend the Prison Ordinance so as to abolish corporal punishment. He wished to know who was proposing the reforms and when they were likely to be adopted. How frequently had corporal punishment been used in prisons recently?

64. Mr. DE SILVA (Sri Lanka) said that the Attorney-General was the principal law officer of the State. He was not a member of the Cabinet, a political appointee or under any kind of political supervision. In most cases, he was someone who had worked his way up through the public service. He had been known to prosecute persons from the governing political party or even members of Parliament serving in the Government. All indictments to the High Court were preferred in his name. The staff of his Department included the Solicitor General, a number of deputy Solicitors General, senior State counsel and State counsel.

65. With regard to the 30-day period for the filing of a fundamental rights application, a Supreme Court judge had categorically held that such a time limit was not mandatory and that the Court should entertain an application filed after expiry of the limit if there was reasonable cause for non-compliance.

66. The constitutional reforms involving a proposed two-year period for challenging the validity of legislation raised far-reaching issues which would be considered in the near future in the context of the general overhaul of the Constitution. Although the right to life was not expressly protected in the Constitution, it had been held by judicial interpretation to be part of the law.

67. With regard to the limited number of successful prosecutions of public officials for the offences of abduction and wrongful confinement, the problems in most cases were of a practical nature. For example, where complainants and witnesses who had made statements to the effect that they were unable to identify their abductors changed their minds several years later, the courts were reluctant to accept their testimony. That was the main reason for the discharge or acquittal of a large number of police officers and members of the armed forces.

68. Out of 40 indictments preferred under the Torture Act, about 25 cases were pending in the High Court. In a number of cases, the accused had been acquitted owing to the failure of witnesses to identify their torturers. The Court had doubted the veracity of many witnesses and concluded that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt.

69. Mr. PERERA (Sri Lanka), responding to a question about the status of the Covenant in domestic law, said that the legislative framework established by chapter 3 of the Constitution on fundamental rights had formed the backdrop to ratification of the Covenant in 1980. In view of the contradictions between the two instruments, especially in respect of the right to life, property rights and the distinction between citizens and non-citizens, a number of proposals had been made for reform of the Constitution in 2000. The right to life was now recognized through judicial interpretation as a fundamental right and the Supreme Court had read it into article 11 of the Constitution dealing with freedom from torture. The constitutional reform proposals were still under discussion.

70. Ms. PERERA (Sri Lanka) said that the Penal Code permitted medical termination of pregnancy only to save the life of the mother. An attempt had been made in 1995 to amend the Code to permit termination under strict conditions where pregnancy was the result of rape or incest or where there was a probability of severe congenital abnormalities. The attempt had failed owing to strong opposition. A wide process of consultation had recently been initiated in a second attempt to reform the Penal Code.

71. Rape had been recognized as an offence under the 1889 Penal Code but in 1995 far-reaching amendments had been introduced. The penalties had been substantially increased and included minimum mandatory prison terms and mandatory compensation for victims. The concept of gang rape had been recognized and that of marital rape in the limited circumstances of judicial separation. The age of statutory rape had been raised from 12 to 16. The preliminary investigation or non-summary inquiry had been dispensed with in the case of statutory rape because it subjected a young rape victim to trauma twice, during the preliminary investigation and the trial.

72. Mr. KARIYAWASAM (Sri Lanka) said that his delegation would reply to the remaining oral questions at the next meeting.

73. The CHAIRPERSON invited the delegation to reply to questions 18 to 26 of the list of issues.

74. Mr. PERERA (Sri Lanka), replying to question 18, said that the Prison Department had taken steps to safeguard the welfare of prisoners, taking into account, inter alia, the recommendations of the Board of Prison Visitors. The steps included lectures by the National Human Rights Commission to prison guards focusing on minimum standards for the effective discharge of their duties; facilities for prisoners to read books, magazines and newspapers; home leave for prisoners nearing completion of their sentence; technical training for prisoners; and meditation training by a local NGO.

75. Turning to question 19, he said that financial and resource constraints had prevented the National Human Rights Commission from monitoring conditions of detention on a regular basis. There had been no case of imposition of penalties for failure by the police to inform the Commission of arrests or detentions.

76. The Commission's strategic plan for 2003-2006 recognized the need for surprise visits to check human rights abuses by custodial institutions, and the Commission intended to give priority to the development of a sustainable system of regular monitoring by the Monitoring and Complaints Team of places of detention, including juvenile homes, psychiatric institutions, police stations and prisons. The procedures and conditions in such institutions would be examined to ensure consistency with national laws and international standards. The Commission would then prepare reports containing suggestions for remedial action. Donor countries had been approached for assistance in funding the plan.

77. Mr. DE SILVA (Sri Lanka), replying to question 20, said that there were no unofficial places of detention. A person could be held only pursuant to an order of court in a place of detention established by law.

78. In reply to question 21, he said that the Children and Young Persons Ordinance of 1939 governing the administration of justice to children in conflict with the law had not contributed to the promotion of the "best interest" concept. The Legal Sub-Committee of the National Child Protection Authority was working on a new juvenile justice law that would incorporate Law Commission recommendations and take into account the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The reform proposals envisaged diversion from the formal criminal justice system, a child-friendly court procedure, wider use of community-based correctional schemes, better institutional care, legal aid services and promotion of professionalism among law enforcement personnel.

79. Turning to question 22, he said that judges of the Supreme Court or the Court of Appeal could be removed only by the President at the request of a majority of members of Parliament on the ground of proven misbehaviour or incapacity. Some legal experts believed that a judicial determination of misbehaviour or incapacity was necessary, while others took the view that the decision could be taken by a parliamentary committee appointed by Parliament. The issue would be addressed in the context of the constitutional reform process and due account would be taken of the Human Rights Committee's recommendations.

80. Replying to question 23, he said that the Supreme Court had held in the Attorney-General v. Nadesan case that the Parliamentary (Powers and Privileges) Act could not be used to stifle objective criticism of the conduct of members of Parliament and parliamentary proceedings. The issue would be addressed in the context of the constitutional reform process.

81. In reply to question 24, he said that a multitude of private radio and television channels broadcast a variety of programmes, including live talk shows on political and economic issues with panels including ministers and other persons in authority and with audience participation. Although no action was envisaged to repeal provisions of the Sri Lanka Broadcasting Corporation Act, the Government intended to vest licensing power and authority to allocate frequencies with an independent commission.

82. On question 25, he said that a series of complaints of harassment of journalists by police officers and members of the public had not resulted in legal proceedings because of the inability of victims to identify the perpetrators, lack of interest in pursuing the complaints and lack of supporting evidence. However, in one case filed in a magistrates' court, a person found in possession of the cellular telephone of a journalist who had been covering a political demonstration in Colombo had been convicted of possessing stolen property. In another case the defence correspondent of a leading English-language weekly had been threatened by a group later identified as members of the Sri Lankan air force. The perpetrators had been convicted and sentenced to two years' rigorous imprisonment.

83. Turning to question 26, he said that investigations would be carried out if information was received concerning the failure of public officials to implement judicial orders relating to violations of the right to freedom of expression. An inter-ministerial working group on human rights issues had investigated 29 allegations but most had been terminated for reasons such as withdrawal of the allegations by the complainant.

84. The offence of defamation had been decriminalized in April 2002 and the Sri Lanka Press Council Act had been amended with a view to developing an environment in which the media could perform their functions without fear of adverse repercussions. A civil remedy continued to be available in cases of defamation.

85. Manifesting its commitment to fostering transparency and accountability in public bodies, the Government had appointed a high-level committee to study draft legislation on freedom of information proposed by the Editors' Guild. The bill would minimize administrative restrictions and bureaucratic procedures relating to public access to government-held information. It would also increase the protection of journalists against being forced to divulge their sources of information. The bill would allow only minimal restrictions on freedom of information.

86. The Government had undertaken to provide the infrastructure for the establishment, on a priority basis, of a training institute for journalists which would have an autonomous governing body composed of professional journalists.

87. In response to a proposal by the Editors' Guild, a press complaints commission would be established with government support. The commission would be self-regulatory and be run and financed by the newspaper industry. Its membership would include nominees of organizations representing publishers, editors and journalists. It would seek to ensure that the media were free and responsible and that they maintained the highest standards of journalism without prejudice to national security and social harmony. Disputes referred to the commission would be resolved through arbitration on the basis of a voluntary code of conduct subscribed to by newspaper editors and publishers.

The meeting rose at 6 p.m.