



## Response to the UN Committee against Torture on torture in Sri Lanka

*Janasansadaya, Sri Lanka*

After reviewing the ‘List of Issues to be considered during the examination of the Third Periodic Report of Sri Lanka (CAT/C/48/Add.2)’ [CAT/C/35/L/LKA (List of Issues), 30 June 2005] in November 2005 by the UN Committee against Torture, which considers application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by treaty parties, Janasansadaya, a human rights group based in Panadura, Sri Lanka, and a partner organisation of the Asian Human Rights Commission, prepared and submitted the following edited replies to some of the questions posed.

Please describe the measures taken to strengthen the independence, impartiality and effectiveness of the Human Rights Commission. Please give examples of successful interventions and of progress actually made, with particular emphasis on the 24-hour hotline, the central register of detainees and the effective monitoring of all places of detention. Please inform the Committee about the effectiveness of the National Strategic Plan of Action (2003-2006), in particular its specific programme to combat torture through effective monitoring and follow-up.

Since March 2005 Janasansadaya has observed that the HRC [Human Rights Commission] has begun inquiring into complaints made to it regarding police torture and has made recommendations and issued directives to the AG [attorney general], NPC [National Police Commission] and IGP [inspector-general of police], as well as the police perpetrators, to pay compensation to the victims and take appropriate disciplinary action against the perpetrators.

Janasansadaya has also observed that the said “24-hour hotline” does exist. However, those who answer the hotline decline to reveal their identity, making it difficult for victims to follow up on their complaints—for instance, inquiring into what action has been taken or the plight of their loved ones. Furthermore, there are apparently no permanent staff employed to respond to the hotline. After office hours, the hotline is thus connected to the mobile phones of HRC officers who may be otherwise engaged and not in a position to respond immediately. This reduces the efficiency of the hotline.

Janasansadaya is unaware of any “central register for detainees”. In fact, interviews with the police in May 2004 by the Law & Society Trust failed to reveal the existence of such. Thus to our knowledge this is a fabrication invented to impress the international community.

The HRC’s powers to monitor places of detention are quite limited. The reason for this is that although the commission’s officers are empowered to enter the main police station building, they cannot enter other buildings within the premises, such as the garage, kitchen or private quarters. From victims’ experiences, torture usually takes place in these other buildings, not

in the actual police station. To enter other buildings, the HRC must inform the IGP or the assistant superintendent of police (ASP) in advance, which defeats the very purpose of the visit, allowing concealment of any illegal activities.

What steps are being taken with regard to prevention, investigation, prosecution and punishment in response to allegations of torture, extra judicial executions, disappearances and other violations of human rights?

There is neither an effective nor comprehensive methodology adopted by the State party [Sri Lanka] to prevent or combat torture. The first step towards prevention must be a firm conviction of the importance of prevention together with the intent to prevent torture. These can be ascertained through statements and policy directives issued by senior government officials and authorities. However, Janasansadaya has not noted any such statements or directives made publicly or privately by the IGP. Rather, his common response, whether made publicly or to individual incidents brought specifically to his attention, is to defend police behaviour-for instance, to justify police action by saying that the officers were using “minimum force” as required by the situation.

Furthermore, senior minister Ratnasiri Wickremanayake was recently quoted in the media as saying that the IGP should be given more powers vis-?-vis the NPC, which was set up as an independent body to monitor the police force. In fact, he stated that the IGP should actually be a member of the NPC, contrary to constitutional requirements. In the face of such attitudes, the mere denouncement of torture by the late Lakshman Kadirgama, the former Minister of Foreign Affairs, while addressing the 61st Session of the CHR [UN Commission on Human Rights] does not mean very much.

What internal disciplinary processes exist within the police force? Is torture and ill treatment included in their competence and, if so, is the sentence different from the one provided for under criminal law? How are inquiries conducted and how long does it take to complete such an inquiry? How are these inquiries made public?

The Sri Lankan Establishment Code sets out general departmental disciplinary inquiry procedures of state institutions. These procedures also apply to the police department. However, the partiality of police department disciplinary hearings maybe ascertained from the following facts: (i) the inquiring officer is always a senior police officer; (ii) the prosecutor is always a police officer; (iii) the defending officer is usually a senior retired police officer; and, (iv) inquiries are held at police stations or within the office premises of senior officers. The result of such hearings is further victimization of torture victims.

To illustrate, the inquiry may take an inordinate amount of time to be completed, being postponed on numerous occasions due to the absence of the inquiring officer, the prosecutor or the perpetrator. During these times, the complainants and witnesses are required to ‘hang around’ the police stations for hours and even days, giving the perpetrators and their colleagues an ideal opportunity to pressurize the victims into either reaching a compromise or scaring them away. In other instances, the victims-who often belong to the poorer segments of society and have to forfeit their daily work and wages to attend these inquiries-simply give up in desperation. Then a verdict is given of ‘complainant not present’ and the inquiry discontinued (from the experiences of torture victim Suresh Pradeep Kumara, who finally informed the inquiring officer that he would no longer attend the inquiry against his perpetrators).

Even with the victim's perseverance, disciplinary inquiries can take many years to complete. In the rare instances that a verdict is given, neither the victim nor the public is informed of the outcome. In fact, during a 2004 interview conducted by the Law & Society Trust with senior officers from the police legal division, the officers were unable to give details of even one completed disciplinary inquiry. The following statistics for completed and pending disciplinary inquiries by the police department in 2003 affirm the situation:

Year: 2003

Complaints received: 156

Inquiries pending: 3

Inquiries completed: 11

Finally, to give an appearance of transparency to these inquiries, sometimes civilian observers-usually retired judges-are allowed to sit in. However, they are not empowered to get actively involved or to raise objections during the sessions. If they do, they are not invited again. It is thus clear that all these procedures are merely attempts to mislead public opinion.

*Do accused public officials remain at work during investigations of torture?*

The impunity granted to state officials in Sri Lanka is such that not only do police officers remain at their posts during investigations of torture, but continue to do so after being indicted by the AG before the high courts under the CATA [Convention against Torture Act, No. 22 of 1994] for committing torture.

In fact, even after the Supreme Court of Sri Lanka-exercising its fundamental rights jurisdiction under chapter III of the constitution-rules that victims have been tortured and directs perpetrators to pay compensation, in almost 99 per cent of the cases the perpetrators continue serving at their posts.

*Please provide more detailed information on the instruction and training provided for law enforcement officials and other public officials with respect to the prohibition against torture, and specifically the treatment of detainees, and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please provide information on training in areas such as non-coercive investigatory techniques. What forms of monitoring and evaluation are used to assess the impact of these programmes, if any?*

The Sri Lankan police department conducts several programmes on torture and other abuses. However, these are largely for the purpose of obtaining promotions within the department as well as to serve as propaganda for the international community.

In fact, with regard to the practice of torture, police officers seem better trained at innovative methods of torture rather than non-coercive investigatory techniques. They are particularly adept at torture methods that leave minimal external injuries and thus minimize chances of detection, such as the piling of books on victims' heads and hammering with poles, which is known to cause severe internal head injuries but few external injuries.

Janasansadaya is not aware of any monitoring or evaluation of the few training programmes that exist. Furthermore, no mention was made of such monitoring and evaluation in the State

party's second and third periodic reports to the Committee or in its fourth and fifth periodic reports to the [UN] Human Rights Committee.

*Please indicate further whether there are programmes to train medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims. How many qualified Judicial Medical Officers (JMOs) have been accredited within the system? What training is provided to JMOs, particularly with respect to rape and sexual abuse? What safeguards are in place to ensure that JMOs are not subject to police intimidation and are able to examine victims independently of the police?*

Janasansadaya is unaware of any such training programmes for medical professionals.

There are an inadequate number of qualified JMOs in Sri Lanka: only around 30 in the entire country. They are mostly attached to general and teaching hospitals. In district, rural and base hospitals, the examination of torture victims and autopsies are therefore conducted by senior general practitioners or District Medical Officers (DMOs), who only possess basic medical degrees such as Bachelor of Medicine/ Bachelor of Surgery (MBBS); they do not have the qualifications to conduct such examinations. As a result, examinations are conducted improperly and vital evidence is lost.

With regard to police intimidation of medical officers, in the experience of torture victims the greater problem is the collaboration of these medical practitioners with the police to falsify medical reports, shield the perpetrators and thus promote the practice of torture. There are many incidents where after being tortured the victims were taken to a medical practitioner who issued a report stating that the victim was in good health without conducting any examinations.

In fact, often the police do not take the tortured person to a hospital but to a medical practitioner known to them personally, thereby obtaining false medical reports. These are then used in court to proclaim that the victim is in a suitable condition to be remanded.

*What steps has the State party planned to take to ensure that the supervision of detention facilities is effective and independent? Are prisoners systematically examined by a doctor upon arrival at a prison? Are injuries recorded?*

Janasansadaya is unaware of any systematic medical examination of prisoners upon their arrival in prison. When a remandee complains of having been tortured, prison officials may admit such persons to the prison hospital; however, these usually lack qualified personnel and adequate facilities for the treatment of torture injuries.

At other times, prison officials do not even comply with court orders for the remandee to be produced before a JMO.

*Which institutions can visit places of detention? How often do these visits take place? Are the reports made public? Can NGOs make visits?*

As stated above, the HRC is empowered to visit the main police station building. However, according to a circular issued by the IGP in 2004, the HRC was explicitly prohibited from visiting adjoining buildings within the police station premises-where it had been reliably

noted that most torture takes place-unless the HRC obtained prior approval from the ASP in charge of the police station. Furthermore, reports of such visits have not been made public.

Non-governmental organizations (NGOs) are not permitted to visit places of detention. In reality, not even lawyers can accompany their clients to police stations or be present during interrogations, unless the police agree.

*Please describe how detained persons are informed about their rights (orally or in writing). Do these rights include the right to inform a relative and the right to a medical examination by a doctor of his/her own choice?*

While the above question presumes that detained persons are in fact informed of their rights, the reality is that they are simply dragged to the police station, or even severely assaulted before being taken. While Sri Lanka's Criminal Procedure Code requires that a person be informed of the reason of arrest at the time of arrest, this provision seems to be confined to the legal statutes. For this reason many victims are produced in court on charges unknown to them. They then plead guilty to these charges, having been coerced by the police to do so, who threaten them with further torture.

Many police stations even objected to displaying posters printed by the HRC depicting the rights of an arrested person within their premises.

When individuals have mustered the courage to ask for the reasons of arrest, they have been mercilessly tortured for daring to question the police. After having drugs, illicit liquor or offensive weapons (bombs) planted on them they have then been remanded and maliciously prosecuted.

To illustrate: on 9 March 2004, John Pollage Udaya Saman Jayasuriya was tortured by the Kadugannawa police to such an extent that he lost four front teeth, merely because he asked the identity of the two policemen in civilian clothes who asked for his driver's licence and insurance slip. Similarly, on 13 May 2004, A.G. Ravindra had his ear cracked by the Katupotha police after asking for the reason of his arrest.

*Which authority can order the initiation of a criminal investigation in cases of torture or cruel, inhuman or degrading treatment or punishment? Does this require a formal complaint by the alleged victim? Please update the data contained in the report and provide examples of cases investigated and indicate the results of the proceedings, both at the penal and disciplinary levels.*

In Sri Lanka criminal investigations have rarely been initiated after torture victims lodge complaints; investigations have only begun after international human rights bodies such as the AHRC [Asian Human Rights Commission], the Committee [against Torture] or the [UN] Special Rapporteur on Torture have referred specific cases to the AG or the IGP and requested investigations. While these authorities have the capacity to initiate investigations, they do not do so without pressure from outside agencies.

*How many police personnel are attached to the Special Investigating Unit of the Attorney-General investigating complaints of torture and ill treatment? How many lawyers are available to the Attorney General for the preparation of indictments?*

*What steps is the State party taking to ensure that adequate resources are allocated for this purpose?*

The Special Investigation Unit (SIU) is a non-permanent arrangement at the AG's department, which attends to cases on an ad hoc basis. There are very few personnel attached to the SIU and it is under-resourced. There are also very few personnel in the AG's department for the preparation of indictments. Due to such arrangements and the inadequacy of staff and resources, the cases get delayed for a very long time.

*Please provide more detailed information about the specific measures that have been taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by State agents. What steps are being taken to ensure that State agents and others guilty of torture violations are brought to justice?*

It is difficult to think of specific measures that have been taken to fight impunity for human rights violations when measures provided by law and existing in statute books for decades have not been utilized. For example, the Establishment Code specifically provides for the interdiction of public servants charged or indicted on a criminal offence until the completion of the court case and they are exonerated. However, in numerous cases policemen indicted before the high courts under the CATA continue to serve at their posts. Not only does such action deter the course of justice, but it also sends a clear message to the perpetrators that torture is acceptable.

*How many State officers have been found in torture-related cases to have violated the human rights guaranteed by the Constitution in recent years? How many State officers have been indicted under the Torture Act or the Penal Code, and how many successful prosecutions have taken place? What were the punishments meted out to such persons, and how many such officers have been dismissed from their employment with the State? The State party is requested to provide a list of these cases to the Committee if one exists.*

Sri Lanka ratified the CAT in March 1994 and enacted domestic enabling legislation-Act No. 22 of 1994-in November 1994. In the 11 years this legislation has been in place, there have been only two convictions under the act before the high courts, both in 2004.

*What role does the National Police Commission play with respect to complaints of torture and ill treatment? Has the National Police Commission established a public complaints procedure, as required under article 155 G (2) of the Constitution of Sri Lanka?*

The NPC cites a lack of resources and personnel as the reason for which it cannot investigate complaints of torture received from the public. Therefore, when any of the five NPC coordinators-three of which are retired DIGs [deputy inspector-generals]-receive a torture complaint they refer it to a DIG of police, who in turn sends the complaint either to the ASP [assistant superintendent of police] or the SP [superintendent of police] in charge of the relevant police station. This officer then refers the complaint to the OIC [officer-in-charge] of the station at which the victim alleges to have been tortured. Meanwhile, the ASP or the SP may summon the victim and witnesses to record their statements. These statements may then be referred to the police legal division but are usually not, unless the IGP is notified of the

incident by international sources, in which case he will request a report from the relevant DIG, who in turn will request it from the ASP or the SP.

In a recent interview, the NPC chairman explained the absence of an established public complaints procedure through a lack of resources and not seeing eye-to-eye with the incumbent IGP.

Although the 17th Amendment to the Constitution of Sri Lanka grants significant power-including authority over all police promotions, transfers, disciplinary action and dismissals with the exception of the IGP-to the NPC, it has yet to fully assert its powers. Under the view that it cannot interfere with the daily functioning of the police, the NPC has delegated these powers with regard to officers at the rank of inspector and below to the IGP. With regard to disciplinary action against officers above the rank of inspector, the NPC chairman has complained that his instructions are not complied with.

*Does the State party plan to establish an effective witness protection programme, particularly for victims of torture, extra judicial killings and other abuses? Is this matter under review? In particular, have financial or other resources been allocated for this purpose?*

Despite the [UN] Human Rights Committee's recommendation in 2003 of the importance of a witness protection scheme, to date there is no such programme. As a consequence, victims and other witnesses in torture and extrajudicial killing cases continue to be intimidated, threatened and even killed, such as Gerald Mervyn Perera. Janasansadaya is unaware of any financial or other resources being allocated for such purposes.

*Please provide information on compensation measures ordered by the courts and actually provided to victims of torture or cruel, inhuman or degrading treatment or punishment since 1998. Can torture victims obtain compensation through a civil suit in the absence of a guilty verdict in criminal proceedings? In this respect, please provide statistics and examples of compensation received by victims in such cases.*

Under its fundamental rights jurisdiction, the Supreme Court is empowered to award compensation to victims of human rights violations. This is to be paid either by the state, the individual perpetrators, or both. However, recently the court has been awarding amounts of compensation far below what would be proportionate with the gross human rights violations found.

In recent times the Supreme Court of Sri Lanka has also shown a certain reluctance to grant leave to proceed in fundamental rights cases, which may be a regression from earlier positive developments, for example, the strong judgments in *Silva vs Iddamalgoda* (2003) and in *W R Sanjewa AAL (for Gerald Perera) vs Sena Suraweera (Inspector of Police) and eight others* (2003) [SCFR. 328/2002 Supreme Court of Sri Lanka].

Another disturbing trend is the attempts made by the court to induce the victims to enter into out-of-court settlements with the perpetrators. This results in the perpetrators being fully exonerated, and also prevents the victims from petitioning the court for further violations of their rights.

Torture victims or families of those killed in custody may seek compensation via civil suits. In fact, a few victims have instituted action in the district courts against their perpetrators and the state, for example, L Madusanka vs. Iddamalgoda et al [MR 32765 Colombo District Court], and Kusumawathi's case [MR 5130 Kalutara District Court]. However, proceedings before the district courts are time-consuming and costly, and many victims cannot afford them.

In the case of L Madusanka vs Iddamalgoda, for instance, although the case was instituted in 2002, a date for trial has been fixed for November 2005. Inordinate delays have occurred due to the inability or willful neglect of the police in handing summons to the defendants and also due to delays in filing answers by the AG's department. These court delays also provide ample opportunities for the intimidation of victims and for the perpetrators to abscond.

In a positive development, the HRC has begun to recommend compensation for victims. However, the compensation recommended has to date [at time of writing] not been paid by any of the perpetrators.

*What are the arrangements for payment of compensation to successful complainants? Does the State or the individual officer pay this compensation? Is the payment made in a lump sum or instalments, and what safeguards are in place to prevent further harassment or intimidation of complainants?*

*What provisions are made for victims to have their own legal representation in criminal cases? What rights do complainants' lawyers have to cross-examine defendants and witnesses?*

In accordance with the Criminal Procedure Code, a torture victim-the aggrieved party-has the right to retain a lawyer to look after their interests in court. However, in practical terms this right depends on the discretion of the court. In certain instances, lawyers may be prevented from conducting cross-examinations or even participating in the trial at all, such as in the Bindunuwewa massacre case.

This situation is worsened when cases are prosecuted in the magistrates' courts, for instance, when police have charged perpetrators with causing simple hurt. In such cases, the police lead the prosecution against the defendant, a fellow policeman. With the victim's legal representative being unable to actively participate in the trial, the likelihood of partiality is enhanced.

*What services exist for the treatment of trauma and other forms of rehabilitation of torture victims? What financial allocations have been made for this purpose?*

We are unaware of the existence of any such facilities and interviews conducted by senior police officials of the legal range of the police department and the army revealed that there are no such facilities.

*What safeguards are in place to prevent cruel, inhuman or degrading treatment in schools?*

In May 2005, the Ministry of Education issued a circular (ED/01/12/01/04/24) prohibiting corporal punishment in schools and also warned that teachers found to mete out such



punishment to students would be liable for disciplinary action. However, Janasansadaya has found that many schools, especially among those falling under provincial councils, had not received this circular. Regardless of the circular, corporal punishment and ill treatment are still prevalent in schools throughout the country.

*Please indicate whether there is legislation in Sri Lanka aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.*

To our knowledge there is no need to trade in any special equipment for inflicting torture. The police seem to have an enormous talent to improvise ingenious instruments of torture as indicated by the numerous horrifying reports from victims.

*Describe the measures taken to disseminate information on the submission of reports and on their consideration by the Committee, particularly on the Committee's concluding observations.*

Janasansadaya is not aware of any measures being taken to disseminate information regarding the submission of reports to or the concluding observations of the Committee. To date the government has also not made any public statement in this regard.

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