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Position Paper

A REVIEW OF THE LEGAL AND POLICY FRAMEWORK PREVENTING TORTURE IN SRI LANKA

“We’re a government that believes in everybody having the illusion of free will.”

- Anthony Burgess, The Wanting Seed

A. INTRODUCTION

The right to be free from torture and inhuman and degrading treatment is a basic guarantee, recognized universally and without limitation. It is a right if assailed intrinsically affects the dignity of a person. Governance, in its processes of decision-making and implementation of policy for the benefit of the people, is regularly involved in decisions and actions which affect the dignity of people. As such basic rights are constitutionally guaranteed as a check on government decision and action. Protecting and maintaining the dignity of its people is meshed into the responsibility of all forms and every level of governance.



This position paper sets out the legal and policy framework that governs the protection of a most basic right in Sri Lanka: freedom from torture. It evaluates the protection framework in terms of Sri Lanka's obligations to the international community, and its political and judicial commitment to ensuring that Sri Lanka walks the talk of zero tolerance of torture. Recent exposure of systematic conflict related torture is also addressed as a special concern.

The brief exposition below concludes that today's context paints a picture of a diminished and weakened political and judicial will to protect and promote this right. It draws attention to the deficits in the framework and the need to implement and strengthen the existing legal and policy framework, particularly with regard to the investigation of complaints, right to information, witness and victim protection and adequate compensation and rehabilitation. The recommendations are geared to institutionalizing and operationalizing mechanisms so that victims and those assisting them have access to practical tools in the fight for redress and prevention.

B. LEGAL FRAMEWORK

I. INTERNATIONAL COMMITMENTS

International treaties

Sri Lanka is a signatory of the International Covenant on Civil and Political Rights (ICCPR) that specifically states "No one shall be subject to torture or to cruel, inhuman and degrading treatment or punishment."¹ In 1984, Sri Lanka also became party to the UN Convention against Torture (UNCAT)². This Convention specifically states, "Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"³. It is by these obligations that the fulfillment of Sri Lanka's international commitments are measured at every review.

There are two significant limitations to Sri Lanka's commitment to the UNCAT. Firstly, Sri Lanka has not made a declaration in terms of Article 22 of the UNCAT recognizing the competence of the Committee to receive and determine individuals 'complaints of violations'. Secondly, Sri Lanka is yet to sign the Optional Protocol to UNCAT, which "establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture". Sri Lanka has also not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

The UN Committee against Torture last reviewed Sri Lanka's progress towards effectively addressing torture and degrading treatment in 2011⁴. The Committee observed that torture by the military and the police continued to occur till 2011⁵. Some of the key recommendations pertaining to the legal framework included, amending the Convention Against Torture Act of 1994 to include a full definition of torture, criminalizing enforced disappearances and ensuring witness and victim protection. The Committee also recommended that Sri Lanka take immediate steps to investigate all complaints of torture, ensure that legal safeguards of detainees are secured, disclose the existence of secret detention facilities, maintain a central register of all persons in official custody, assess the effectiveness of training programmes to prevent torture and ensure appropriate legal aid and rehabilitation programs. Sri Lanka's fifth period report is due by November 2015.

Universal Periodic Review

The Universal Periodic Review of Sri Lanka was conducted in December 2012 and several recommendations were made in relation to torture, which included ratification of the optional protocol⁶, establishment of a national torture prevention⁷ or independent investigation mechanism⁸, adopt measures to prevent⁹ and conduct investigations including in cases of sexual violence¹⁰,

1. Article 7, ICCPR.

2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by UN General Assembly resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

3. Article 2(1) UNCAT.

4. Concluding Observations of the Committee Against Torture dated 8th December 2011, CAT/C/LKA/CO/3-4

5. Paragraph 6 of the Concluding Observations of UN Committee against Torture, 2011.

6. UPR Recommendations 2012 - 128.6. Ratify the Rome Statute of the ICC as well as OP-CAT and establish a National Torture Prevention Mechanism (Austria); 128.7. Ratify the OP-CAT (Brazil); 128.8. Ratify at the earliest the OP-CAT (Maldives); 128.9. Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Czech Republic).

7. UPR Recommendations 2012 - 128.6. Establish a National Torture Prevention Mechanism (Austria)

8. UPR Recommendations 2012 -128.62. Establish an effective independent monitoring mechanism to investigate complaints of torture (Poland)

9. UPR Recommendations 2012 - 128.60. Take action to reduce and eliminate all cases of abuse, torture or mistreatment by police and security forces (Australia); 128.61. Adopt further measures to prevent torture and ill-treatment in particular in prison and detention centres (Czech Republic).

10. UPR recommendations 2012 -128.63. Carry out independent investigations into possible cases of torture as well as reprisals related to cooperation with international human rights bodies (Poland); 128.80. Conduct impartial investigations and prosecutions against members of the security forces, regardless of rank, implicated in violations of human rights and international humanitarian law, including sexual violence (Denmark)

improve detention conditions¹¹ and establish a publicly accessible central register of persons in custody¹². Many of these recommendations repeat themselves from those made after the UPR review in 2008 demonstrating that these recommendations had not been implemented given the lapse of four years.

Istanbul Protocol¹³

The Istanbul Protocol is endorsed by the United Nations and serves as a guideline for the “assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.” In a review of Sri Lanka applying the protocol, it was stated that no political commitment was observed towards internalizing the Protocol and that the expected outcome of effective documentation would not be evident¹⁴. The Protocol serves as a useful tool to guide practical measures to identify, investigate and assist successful prosecution of incidents of torture. Sri Lanka has not been able to put into practice the protocol mainly as a result of the administrative red tape encountered by advocates of the protocol.

II. DOMESTIC LEGAL FRAMEWORK AND JURISPRUDENCE

Constitutional guarantee

The freedom from torture is embedded in Sri Lanka's most basic law, its constitution. The constitution guarantees freedom from torture to all person¹⁵ and is recognized as a non-derogable right. This means that the limitations such as public order, national security and such that limit rights such as freedom of expression and freedom from arbitrary arrest cannot be raised by the State in the instance of torture or inhuman and degrading treatment.

The Supreme Court of Sri Lanka

A study published in 2008 stated that a significant decline in the Supreme Courts' rights jurisprudence was demonstrable since 2005.¹⁶ Between the period 2011 and 2014 the Supreme Court pronounced three

judgments relating to torture, none in which there was a finding of torture¹⁷. The judgments are mainly based on the Petitioners not having discharged the burden of proof required of them. There has been no academic review of the reasoning of these judgments to better evaluate the jurisprudence generated.

While fundamental rights cases involving torture did not result in judgments vindicating the rights of the Petitioner, a practice of settlements has been observed. This is when a case is dismissed or ‘proceedings are terminated’ on the basis that the perpetrators reach an out-of-court settlement with the victim. Alleged perpetrators pursue settlements in open court as a judgment or a finding of guilt will affect their employment in terms of promotions, salary increments and tarnish their record. No study has been conducted as to how these settlements are reached, it could be a mutually beneficial arrangement or a result of intimidation and harassment by the alleged perpetrators against the victims and their families. This practice contradicts the Supreme Court's own position articulated in *Herath Banda v. Sub Inspector of Police*¹⁸, where the Court refused a Petitioner to withdraw his case on the basis that “applications pertaining to fundamental rights are not ordinary private matters”. Therefore it appears that the recent approach of the Supreme Court demonstrates that the Court is treating the issue of torture more as a private dispute. There appears to be diminished emphasis on state responsibility and duty to protect its citizens. The public nature of the violation, the fact that torture and degrading treatment is also an offence against the state, is not given recognition.

A few of the recent fundamental rights applications to the Supreme Court involving torture document threat and intimidation by the alleged perpetrators against victims and their families pursuant to making of complaints including filing fundamental rights applications¹⁹. Therefore threat and intimidation of victims and witnesses is real and prevalent and requires urgent attention by way of victim and witness protection legislation.

11. UPR Recommendations 2012 - 128.76. Improve detention conditions and respect for judicial guarantees for inmates, fighting against torture and inhuman and degrading treatment in detention centers in line with commitments taken during the May 2008 UPR session (Spain)

12. UPR Recommendations 2012 - 128.66. Establish immediately a publicly accessible central register for all persons missing or in custody (Germany)

13. Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

14. Implementation of Istanbul Protocol for effective documentation of torture – review of Sri Lankan perspectives, Perera, Clifford et al. Journal of Forensic and Legal Medicine, Volume 18, Issue 1, 1 – 5.

15. Article 11 of the Sri Lanka Constitution 1978.

16. Sri Lanka the Right not to be tortured: A critical analysis of the judicial response by Kishali Pinto Jayawardene and Lisa Kois, published by the Law and Society Trust in 2008.

17. SC FR Application No. 555/2009 decided on 18.02.2014 (judgment by S Tilakawardane JJ), SC FR Application No. 431/10 decided on 22.02.2013 (judgment by S I Imam JJ), SC FR Application No. 43/2008 decided on 18.11.2013 (judgment by S Tilakawardane JJ)

18. A decision of Amerasinghe J in *Herath Banda v. Sub Inspector of Police* (1993) 2 SLR 324

19. SC FR 194/2012 – Affidavit dated 28th March 2012 and Order of Supreme Court dated 21 May 2013. This case is pending argument before the Supreme Court.

Another factor is the Petitioner's lack of access to his/her own medical reports by the judicial medical officer. It appears that a Petitioner has no right to his own medical report. In a case that sought leave on the question that the judicial medical officer had refused to provide the Petitioner with a copy of his own medical report, the Supreme Court refused to grant leave against the judicial medical officer.²⁰ This is because it is seen as an accepted norm that the medical report is shared only with Court, when requested. The basic principle of confidentiality between a patient and the doctor is breached by this practice. Also the simple fact of a potential litigant having access to information relating to his own medical condition would help in deciding whether or not to institute action. Once medical reports are submitted it is often found that case histories are very brief and uninformative, and that there is no professional assessment as to whether the injuries correspond to the incident narrated by the complainant. The need for comprehensive and detailed medical reports to support or properly determine cases is also apparent.

In two cases²¹ in the Supreme Court applications have been made to substitute appropriate family members as Petitioners as the original Petitioner had passed away as a result of suicide. It is of concern that there is no psychological evaluation of these original petitioners. The lack of a system to assist victims who maybe suffering from trauma and depression as a result of the treatment and consequent life changes is another pressing concern.

The jurisprudence must revert to and uphold the principles set by older cases, recognizing the public nature of the offence, protecting the rights of even the blackest of criminals from torture and to call for official records when necessary. Jurisprudence may also draw on international and comparative legal developments to provide a nuanced and meaningful remedy to litigants. In some cases, the Attorney General's Department, appearing on behalf of the State in fundamental rights applications, is seen as a partial participant. The institution does not appear for state officials against whom a complaint of torture or degrading treatment is alleged. However it does appear on behalf of the officer in charge of stations, if no direct allegation is pending, and all other higher ranking officers who may have been

informed of the violation at the time or has inquired into the violation. During hearings, in many cases the Department also is seen to make arguments against the case of the Petitioner. Its approach appears to protect the chain of command and thereby strengthens the hand of the alleged perpetrator without properly and impartially investigating the complaint before it.

National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) is also empowered to investigate, receive and make recommendations regarding complaints of fundamental rights violations. However a key concern is the lack of independence of the Commission post the 18th Amendment to the Constitution that provides that appointments be solely made by the President.

The recommendations of the NHRC have no force in law and state institutions, particularly the police have been reported not to cooperate with its inquiries. As a result of state institutions refusing or ignoring to implement recommendations, the NHRC is not an effective forum for victims to seek redress. Most cases have the victim making a complaint both at the NHRC and filing a fundamental rights application in the Supreme Court. Therefore the burden that was sought to be lifted from the Supreme Court in the form of the NHRC, continues to persist. The fact that two institutions hold out to facilitate redress and yet the jurisprudence of neither specializes in assisting victims of torture is an example of an ineffective framework for the protection of rights of victims of torture.

Some of the practical failings of the NHRC include, non adherence of recommendations made by the Commission, lack of action to complaints, continued complaints of lack of resources to conduct effective investigations, poorly drafted recommendations and an apparent lack of appreciation of the gravity of a finding of torture reflected in the small amounts of compensation recommended²². Families of and those assisting victims of torture relate that it is often difficult to elicit a response or intervention from the NHRC and most often a response will be a telephone call to the offending police station informing the officer in charge of the complaint, which may provoke the perpetrators into further acts of violence against the victim.

20. SC FR 194/2012 – decision granting leave dated 23 November 2012.

21. SC FR 278/2008 in which the question of substitution was decided on 25.10.2013 and SC FR 479/2010 pending before the Supreme Court.

22. Human Rights Commission of Sri Lanka Recommendation dated 24th January 2012 in Complaint No. HRC/K/70/11/T/A, HRC/415/11 and HRC/1827/11, recommended a sum of Rs.5,000 to be paid by the three defendants to the complainant. The complainant had submitted with corroborating medical evidence that the defendants had beaten and kicked and attacked him with poles.

The NHRC has a key role in the prevention of torture. However it is evident that the investigative functions and provision of redress to victims of torture is far from effective. It is necessary to strengthen resources and powers of the Commission and develop mechanisms that work together with interested civil society organizations to address the issue of torture. The Commission has failed to initiate a program to address torture in Sri Lanka and develop recommendations for the police and judicial medical officers and work with the Attorney General's Department and judiciary to implement the zero tolerance policy that is said to exist. However it is the independence of the Commission that is an urgent and overarching concern to be addressed without delay.

Convention Against Torture Act

In 1994 domestic legislation in the form of the Convention Against Torture Act (CAT Act)²³ was introduced to fulfill its obligations to criminalize torture and degrading treatment²⁴ under the international treaty. Thereby criminalizing the act of torture, inhuman and degrading treatment as a serious offence to be tried in the High Court²⁵ and imposing on conviction a sentence of a minimum of seven years and a maximum of ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees²⁶. The offence was also classified as a cognizable and a non-bailable offence²⁷.

Obtaining statistics of cases instituted and the manner in which they are concluded has proven to be an unacceptably arduous task. In 2010, it was reported that of the cases initiated under the CAT Act an unconvincing 3 cases concluded in convictions and 19 in acquittals while several continued as pending cases²⁸. In 2011, it was reported that 529 cases had been filed against police officers since 2006²⁹.

The CAT Act has been continuously criticized for its lack of effectiveness. An important aspect is the referrals that need to be made by the Magistrates, Judicial Medical Officers and Police officers who come into first contact with complaints of torture. Commitment of the Attorney General's Department has been seen as

lacking, for example the removal from the list of accused the name of the Officer in Charge of the Police station in the case involving the murder of Gerard Perera.³⁰ Another example is the several fundamental rights cases which are filed in the Supreme Court for which notice is given to the Attorney General's Department in the first instance, which are not thereafter followed up in terms of prosecutions against such officers. In cases that the Attorney General's Department considers that it cannot represent the state officers as there is an allegation of an Article 11 (torture) violation, it would stand to reason that such cases are subjected to further examination and in the face of sufficient information indictments are served. However, this is not the case as at present. In fact organizations assisting victims have often complained that there is no access to the Attorney General's Department for the victim or the family to check if prosecutions are being considered against the perpetrators.

Civil actions to redress loss caused by torture and inhuman and degrading treatment

While the civil law in Sri Lanka has the space for victims of torture to pursue personal claims for loss and damage caused to them against the individuals directly responsible for the acts, it is a remedy rarely pursued. Only two cases in which victims of torture, both involving severe injuries, blindness in the case of one and death in the case of the other, are known to have sought this form of redress. It is a forum in which the victim has a degree of ownership over assessing the loss caused and over the process of reparation. However the burden of pursuing litigation of a civil nature requires a greater commitment of time, to give evidence and attend court during the trial. This commitment is difficult considering the economic backgrounds of most victims and lack of legal aid and other support for this type of case.

23. An Act To Give Effect To The Convention Against Torture And Other Cruel Inhuman Or Degrading Treatment Or Punishment Act No. 22 of 1994
24. Article 4(1) UNCAT.

25. Section 2(4) of Act No. 22 of 1994.

26. Section 2(4) of Act No. 22 of 1994.

27. Section 2 (5) of Act No. 22 of 1994.

28. Sri Lanka, State of Human Rights Report 2009-2010 published by the Law and Society Trust.

29. Concluding Observations of the Committee Against Torture dated 8th December 2011, CAT/C/LKA/CO/3-4, paragraph 29.

30. Criticism of the Attorney General's Department at Page 23 in the judgment of The Government of the Democratic Socialist Republic of Sri Lanka v Suresh Guneseena and others, HC Case No. 326/2003, Negombo High Court, HCM 02.04.2008.

C. POLICY FRAMEWORK

Sri Lanka adopted a National Plan for the Protection and Promotion of Human Rights (2011-2016) that dedicates an entire chapter to the prevention of Torture. 10 areas of focus were identified for intervention – legal framework, detection and post investigation, prevention, institutional mechanisms for monitoring, database on incidents of torture, addressing impunity, special protection for women and children, rehabilitation and reparation, convention against torture and Sri Lankan victims of torture abroad.

There is no official system by which the status of implementation of the tasks set out in the National Action Plan could be ascertained. This is despite a specific commitment to transparent monitoring and implementation³¹. There is only a website which hosts the Plan itself. Many of the activities under the chapter on torture of the Plan have been scheduled for completion within 6 months to a year. Only two interventions were identified for completion in 2 years and 5 years. However it is difficult to assess if any of these tasks have been completed to date.

Sri Lanka has reiterated that the State practice is a zero-tolerance policy on torture. Given the lack of effectiveness and political and judicial will displayed towards addressing complaints of torture the policy remains a hollow statement.

The LLRC skirts the issue of sexual violence as a result of heavy military presence by stating “it was claimed that such a situation exposes women to various forms of sexual and gender based violence that compromise their dignity, security, well being and rights, and any effort to find durable solutions must take these issues into account”. Sri Lankan State claims that “on the supposed increase in sexual violence in the North, Women’s Protection Units with female police officers and Women’s Centres have been established in the welfare centres and counseling services provided”³² while in the same breadth stating that “Any correlation between military presence and sexual violence is unfounded”³³.

31. Page 6 of the National Action Plan for Protection and Promotion of Human Rights 2011-2016. “A Cabinet Sub-Committee will be set up to monitor the implementation of the Plan. It will be supported by a Monitoring Committee consisting of senior government officials from across the sectors. There will be a mechanism for the Monitoring Committee to maintain a dialogue with civil society wherever necessary and with any state or other institution through which problems in the implementation of the Plan at ground level could be reported to the Committee.”

Wider citizen participation in monitoring and providing feedback on the implementation of the Plan will also be facilitated, through the setting up of a website as well as communication through other social media.”

32. Paragraph 17 of the section titled ‘Presentation by the State under review’ in the Report of the Working Group on the Universal Periodic Review dated 18 December 2012, A/HRC/22/16.

D. INTERNATIONAL REPORTS OF CONFLICT RELATED TORTURE

There have been several reports of systematic torture including sexual violence and deaths in custody particularly of captured LTTE members and their families³⁴. These reports support a case of systematic torture with case studies and medical evidence.

E. RECOMMENDATIONS FOR A SYSTEM OF GOVERNANCE REFLECTIVE OF A ZERO TOLERANCE POLICY ON TORTURE

RECOMMENDATIONS RELATING TO LEGISLATIVE CHANGES

(1) Legislate to protect witnesses and victims of torture

The Convention establishes the responsibility to and the National Plan of Action recognizes the need for legislation on this issue. This would necessarily be legislation widely protecting the interests of victims and witnesses from threat and harassment and such legislation may also require accompanying independent support structures within the relevant enforcement agency.

For cases in which torture is alleged, immediate steps to relocate the alleged perpetrators till the completion of the case is a basic protection that needs to be realized. Over and above this, measures to punish intimidation and harassment and complain to an independent authority must be publicized.

(2) Repeal the Prevention of Terrorism Act (1979)

The continuance of the Prevention of Terrorism Act also potentially encourages and protects acts of torture. UN Committee Against Torture commented that it was “concerned about the sweeping nature of these PTA regulations”³⁵ and “the fact that the PTA allows all confessions obtained by police at or above the rank of Assistant Superintendent of Police (ASP) to be admissible (sect. 16) placing the burden of proof on the

33. Ibid

34. See pages 10 to 15 of Amnesty International Submission to the UN Human Rights Committee, 112th session in 2014 available online at <http://www.amnesty.org/fr/library/asset/ASA37/011/2014/en/4c09c88e-a298-4cba-bdee-4b6a077ef55a/asa370112014en.pdf>.

The Unfinished War: Torture and Sexual Violence in Sri Lanka 2009–2014 by Yasmin Sooka, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth & Justice Project, Sri Lanka.

35. Paragraph 10 of the Concluding Observations of the UN Committee Against Torture on Sri Lanka 2011.

accused that a confession was obtained under duress (sect. 17(2))”³⁶ and “that in most cases filed under the PTA the sole evidence relied upon is confessions”³⁷. It is imperative that laws of this nature be repealed in view of the potential rights violations that breed within its provisions.

(3) Legislate or introduce rules to enable victims or their representatives to obtain access to their medical records.

The unwritten practice of providing only the police and Court a copy of the judicial medical officer’s findings once a complainant of torture has been examined and not as of practice giving access to that report to the complainant or his representative, violates a basic tenet of patient confidentiality particularly when releasing same to the police. It also violates a basic right to information of the complainant and denies him/her even the opportunity to properly evaluate pursuing legal action.

RECOMMENDATIONS TO THE EXECUTIVE

(4) Establish and maintain systematic review

(i) Article 11 of the Convention states that each State should review interrogation rules, instructions, methods and practices relating to the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture. The National Action Plan only looks at the aspect of maintaining a central database of statistics on complaints.

(ii) Review Fundamental Rights applications to the Supreme Court for possible indictments in terms of the CAT Act.

(iii) Issue rules to judicial medical officers to whom complaints of torture are disclosed to make referrals direct to the Attorney General’s Department for investigation and indictment if necessary.

(5) Establish a national response to complaints of torture and judicial findings of torture.

(i) A national fund to compensate victims of torture maybe set up to adequately and appropriately compensate such individuals for the indignity and sometimes life long trauma perpetrated by state officials.

(ii) A rehabilitation program should be offered consisting of physical and mental treatment for victims of torture at the expense of the State.

(iii) A state sponsored independent medical and

psychosocial evaluation for complainants of torture to be setup to ensure that full and proper medical examination that is legally admissible and valuable is provided.

(6) Adopt the Istanbul Protocol

Ministry of Health to adopt and operationalize Istanbul Protocol on documenting torture including a right for the patient to obtain a copy of the medico legal report from the respective judicial medical officer.

(7) Raise awareness of law enforcement officials

The international obligation states that States “shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”³⁸. The obligation extends to setting in place rules and procedure for duties and functions of these persons³⁹. Comparatively the section on prevention in the National Action Plan only refers to capacity building of enforcement officials in arrest, detention and interrogation methods and awareness raising for the public. There is no mention of introducing any rules and procedure to operationalize the ‘zero tolerance’ policy that the State refers to.

(8) Sri Lanka to make declaration in terms of Article 22(1) of the Convention

This basic recognition allows for individual complaints to be entertained by the Committee Against Torture and such complaints will be determined against a State response in line with international law jurisprudence on this subject. It is a means of strengthening domestic law with comparative experience.

(9) Ratify the Optional Protocol to the Convention

The Optional Protocol recognizes the competency of the Sub Committee on Prevention to conduct country visits to places of detention and also requires the state to establish and maintain an independent national preventive mechanism.

(10) Investigate conflict and military administration related torture

(i) It is necessary to investigate these allegations in the several reports mentioned above as part of the mechanism for accountability.

36. Paragraph 11 of the Concluding Observations of the UN Committee Against Torture on Sri Lanka 2011

37. Ibid

38. Article 10 (1) UN CAT

39. Article 10 (2) UN CAT

(ii) A study and review of the complaints received by the Women's Protection Units and other non-governmental organizations working on the issue of sexual violence as a result of heavy military presence in the North of Sri Lanka is necessary to understand and address this silent concern.

(11) Publicly share information on the progress of the implementation of the National Plan of Action.

RECOMMENDATIONS TO IMPROVE JUDICIAL/LEGAL RESPONSE

(12) Raise awareness amongst judges and lawyers on international standards and commitments towards torture survivors and the responsibility of the state to ensure that complaints of torture are properly and effectively redressed.

(a) Share findings and initiate discussion on studies on judicial trends in the Supreme Court and High Court in relation to torture in Sri Lanka and compare with international standards.

(b) Recommend that all judgments in which a violation of Article 11 is determined require the Attorney General's Department to consider appropriate action against the relevant officials in terms of the CAT Act.

(c) Lawyers to cite international standards in written and oral submissions for judicial consideration.

(d) Lawyers to pursue civil actions for damages where possible to ensure that victims recover by way compensation loss and damage resulting from being subjected to torture

RECOMMENDATIONS FOR PUBLIC AWARENESS

(13) Raise public awareness on the zero tolerance policy of the state towards torture, the national rights framework preventing torture and steps to be taken in the event a complaint needs to be made.

(14) Provide a secure and impartial public complaints system to counter the fact that there have been instances of police stations refusing to record statements of victims of torture.

E. CONCLUSION

The legal and policy framework protecting the freedom from torture in Sri Lanka has been substantially dormant since the 1994. From time to time Sri Lanka has reiterated its commitment to protect this right, usually in response to international scrutiny and review. Sri Lanka has also adopted the phrase a 'zero tolerance' policy on torture. However as shown above there are significant lacunae in the realization of this freedom.

The words of Anthony Burgess of a government attempting to create the illusion of free will are striking, in that it seems this is what governments do. However, we in Sri Lanka appear not even to be living in such an illusion when it comes to freedom from torture. It remains to be seen whether the change in government will result in the political will and judicial space to address this pressing concern.

Transparency international Sri Lanka is the Sri Lankan representative of Transparency International; the premier global organization that holds prevention of corruption as its primary objective. The organization, with more than hundred branches around the world, has dedicated its entire network to promote policies of transparency, accountability and good governance. Enhancing public awareness, mobilizing public participation and building a country with integrity is our objective.

Please forward your views on this position paper to

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