

## Written Additional Information submitted by the Government of Sri Lanka on the 5<sup>th</sup> Periodic Report to the UN Committee Against Torture (CAT)

### 1. Definition on Torture

On the specific reference that the Act No. 22 of 1994 does not contain the word “suffering”, it may be noted that, the words “severe pain, whether physical or mental”, invariably encompasses “suffering”, both in its physical and mental form.

In this context, it is noted that Professor Manfred Nowak (former Special Rapporteur on Torture), in his report following his visit to Sri Lanka in 2007, states:

*“The Special Rapporteur notes that the definition in article 12 is in conformity with definition of article 1 of CAT; however, it does not expressly include “suffering.”<sup>1</sup>*

Therefore, with regard to the question on the definition of torture, we wish to reiterate that Act 22 of 1994 is sufficiently broad to cover the aspect of “suffering”.

The Supreme Court in its Judgment delivered in Romesh Cooray v Jayalath, Sub-Inspector of Police and Others<sup>2</sup>, having considered UNGA resolution No.3452 in its 30<sup>th</sup> session in 1975 and Article 7 of the ICCPR recognized that a particular ‘act’ should be ‘*qualitatively of a specially reprehensible kind*’ for such act to fall within the ambit of ‘torture’. It further observed that “*it would not be an easy task for the court to decide and conclude as to what actions and conduct would constitute torture or cruel, inhuman treatment*”.

However having recognized conduct that has not caused any physical harm also could constitute ‘torture’, Court observed;

*“It has to be borne in mind that torture, cruel, inhuman and degrading treatment or punishment could take many forms, viz., psychological and / or physical and the circumstances of each case would have to be carefully considered to decide whether the acts in question had led to a violation of Article 11 of the constitution”.*

---

<sup>1</sup> The Special Rapporteur has stated the above in his Report (A/HRC/7/3/Add.6, para 25) published pursuant to his Mission to Sri Lanka in 2007.

<sup>2</sup>(2008) 2 SLR 43.

This illustrates the fact that the Supreme Court has taken due cognizance of the definition of torture, stipulated in Article 1 of the Convention in its interpretation of Article 11 of the Constitution and ensured that the definition of torture also encompasses the aspect of 'mental suffering.' Further, the Supreme Court held that since the enactment of Act No. 22 of 1994 "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", on the basis of the UN Convention Against Torture, any ambiguity concerning the element of "suffering" in the definition of torture does not exist.

It may be noted in this regard that, as explained by the Delegation, the right to life is not explicitly provided for in the Constitution. However, the Sri Lankan legal system recognizes the right to life as an established fundamental right. In the same manner, degrading treatment or punishment in Sri Lanka's context also extends to 'suffering', although it is not expressly provided for in writing. In this regard, it is important to bear in mind that the practices and drafting techniques of State Parties vary.

## **2. Medical facilities inside detention centres**

At present based on the government gazette released in 2007, 3 detention centres are being maintained namely, in Colombo, Boossa and Vavuniya. The Vavuniya centre is mainly for transit purposes and a suspect would stay a maximum of 1 day before being transferred to Colombo. All suspects arrested by the TID are produced before JMO within 24 hours and a report is obtained. Similarly, the HRC SL, the ICRC Colombo and Next of Kin (NoK) are informed of the custody.

When a suspect is produced before the Magistrate and if he assumes, or if it is brought to his attention, that the suspect may have been subjected to torture or a suspect requires medical treatment, then immediately Magistrate refers the suspect to the nearest judicial medical officer who is directed to forward a comprehensive medical report to the Magistrate after the examination of the suspect. If a detainee needs treatment or service of a doctor he is produced before the medical officer at the nearest government hospital.

At present there are 2 detainees in Boossa while 5 are in Colombo. Detainees are no longer kept at Vavuniya and are sent to Colombo for detention.

The Welikada prison, situated in Colombo has hospital and medical officers available on a 24 hour basis. Similarly, a medical assistant is attached to the Boossa detention centre. However, if a detainee who is detained in a prison outside Colombo needs medical treatment, the prison authorities take immediate action to produce him at the nearest hospital. If the detainee

makes a request for medical treatment or to consult a doctor, the prison authorities provide facilities to refer him to the nearest government hospital.

Remandees are entitled for daily visits. Appended below are records of such visits for year 2014 and 2015 :

	Boossa			Colombo		
	ICRC	HRCSL	NOK	ICRC	HRCSL	NoK
2014	11	02	1284	17	02	302
2015	09	none	432	04	03	81

#### Prisons Ordinance Sections 39 and 40

39 (1) Nothing in this Ordinance shall be deemed to abridge or affect the power of a Judge of the Supreme Court, a Judge of the Court of Appeal or a Judge of the High Court to visit any prison at any time and to hold therein any inspection, investigation or inquiry which he may consider necessary.

(2) Any Member of Parliament, District Judge or Magistrate may visit any prison, between the hours 5.30 a.m. to 5.30 p.m. on any day for the purpose of inspecting the general conditions of the prison and of the prisoners therein and may record in the visitor's book any observations or recommendations which he may think fit to make after such investigation.

(3) The provision of Section 38 as to the Production of the Visitor's book and the transmission of copies of entries made therein to the Commissioner General shall apply in to the case of Judges of Supreme Court, Judges of Court of Appeal, Members of Parliaments, Judges of the High Court, District Judges and Magistrates in like manner as in the case of Members of Board of Prison visitors.

(4) Every District Judge or Magistrate shall for the purpose of this ordinance be deemed to be a visitor of any prison situated within his jurisdiction, and may, in relation to any such prisons exercise the powers and perform the duties of a visitor accordingly.

40. (1) Every jailor or subordinate prison officers shall refuse admittance or offer any hindrance or obstruction to a visitor, a Judge of the Supreme Court, a Judge of Court of Appeal, Member of the Parliament, a Judge of the High Court or a Magistrate or any other person authorized by any written law to enter a prison.

(2) The Jailor or subordinate prison officer should act in contravention of this section shall be guilty of an offence and shall be liable to be tried and punished, therefore under the provisions of section 87.

### **3. Allegations pertaining to Torture in Welfare Centres**

We have taken serious note of allegations pertaining to torture and ill treatment of persons in Welfare Centres immediately following the end of the conflict and we appreciate these allegations being brought to our attention during the proceedings of this Committee. Cognizance has also been taken of the allegations regarding “detention centres”.

The Government takes all allegations that have been brought to its attention seriously. In this connection we would like to emphasize the unwavering commitment of the Government to deal with all aspects of the Right to Justice and to an effective remedy.

Consistent with the HRC resolution 30/1, the Government has embarked on an inclusive process with the objective of **ensuring the right to truth, justice, reparations and guarantees of non- recurrence.**

We affirm that all these aspects will be comprehensively dealt with on the basis of credible and admissible evidence, through an effective mechanism providing guarantees of a fair trial, taking into account rights of victims, which would be designed to address the problems of human rights violations suffered by all. In this context, a Task Force consisting entirely of civil society representatives has been appointed to seek the views of the public that will inform the designing of the mechanisms. This Task Force has now completed its work and their Report is to be handed over to the President and the Prime Minister this month. Based on the outcome of the process, due follow-up action will be taken.

We would like to stress that the Government remains firm in its commitment to ensuring reconciliation, peace building, justice and non- recurrence, upholding rights and dignity for all.

### **4. Question of the accusations regarding the Sri Lanka Battalion deployed in UN Peacekeeping Mission in Haiti (MINUSTAH)**

In 2007, the full strength of the Sri Lanka Battalion was 950 troops in MINUSTAH. In order to investigate fully into the allegations of sexual misconduct that was brought to the attention of the GOSL by the UN DPKO, an entire contingent comprising 134 military personnel including their contingent commander was withdrawn, as part of the rotation of the battalion.

As stated in paragraph 108 of Sri Lanka's Periodic Report, with the participation of a prosecutor from the UN Office of Internal Over Sights (OIOS), an Army Court of Inquiry (COI) was convened to investigate into these allegations. Based on the evidence recorded at the COI, and the cross-examinations done, The COI decided to take disciplinary action against 10 officers and 13 soldiers of the said contingent found to be guilty.

- Out of the 10 officers, disciplinary action was taken against one officer and his commission was withdrawn;
- One officer was made to retire in his substantive rank,
- Eight officers were given corresponding punishments based on the gravity of the offences committed.
- In respect of the 13 soldiers, one was discharged from the service,
- The respective regimental units that the rest of the 12 soldiers belong to, had been ordered to take punitive actions according to the gravity of the offences committed by each of them.

What needs to be born in mind was that Government of Sri Lanka upon receipt of information on the allegation of sexual misconduct, immediately dispatched a team of National Investigation Officers (NIO) including a female officer to the Field Mission in Haiti (MINUSTAH), and out of an abundance of caution withdrew the entire contingent of 134 officers so that the allegations could be investigated fully. It did not mean that all 134 personnel were implicated. The subsequent Army Court of Inquiry (COI) on the basis of admissible evidence, established a case against 23 personnel of the said contingent. The decision to convict 23 personnel was a result of the due procedure followed by the GOSL.

A statement issued by the DPKO on the cooperation between the UN and the GOSL in this regard is attached as **Annex I**.

#### **A) On the question regarding the vetting process of the security personnel selected**

In keeping with Sri Lanka's close cooperation with the UNDPKO, the following comprehensive procedures have been adopted also in consultation with the relevant UN agencies and the security agencies of Sri Lanka.

**Internal Process:** A stringent vetting process has been set in place, which involves a three-tier approach;

1. At the military establishment level,
2. Vetting at law enforcement ( police ) level,
3. National Intelligence Agency level

At the **external level**, a stringent vetting process is being carried out by the Human Rights Commission of Sri Lanka (HRSL). It is only after the completion of these two processes that the names are submitted to the DPKO.

After the submission to the DPKO, the latter invokes a further vetting process by the OHCHR. It will be thus seen that the Government of Sri Lanka, with the cooperation of relevant agencies has put in place a stringent vetting process to ensure that no soldier tainted with sexual misconduct or any other serious allegation of violation of Human Rights is placed in its UN PKO contingents. A diagram depicting above process is given in **Annex II**.

GOSL continues to consult and cooperate closely with the DPKO, and there has been no occasion in the recent past for DPKO to raise a specific concern in this regard.

## **5. On the issue of protection of migrants in Sri Lanka, and the application of the principle of Non-refoulement**

- Although there is no specific legislative provision to give effect to the **principle of Non-refoulement** a well-established principle of Customary International Law, our courts take cognizance of the principle of Non-refoulement. In this context we wish to bring to the attention of the Committee Article 27.15 of our Constitution which provides as follows;

The State shall promote international peace, security and cooperation and the establishment of just and equitable international economic and social order and shall endeavor to foster respect for international law and treaty obligations in dealing among nations. The adherence to the directive principles of state policy in its judicial policy is manifested in the judgements of the Supreme Court

- Despite not being a signatory to the 1951 Convention Relating to the Status of Refugees, Sri Lanka has been accommodating refugees/ asylum seekers in the country. Sri Lanka has also been facilitating the work of the UNHCR as per the working arrangement between the Government and the UNHCR in 2006.
- Detention of irregular migrants in Sri Lanka is a step taken in accordance with the rules and regulations on Immigration and Emigration of Sri Lanka. It is not the intention of authorities to detain families and children, except in certain exceptional circumstances, where authorities are compelled to keep them in approved places to ensure the security and safety of such foreigners. Sri Lanka is aware of the importance of looking at the issues related to irregular migrants into Sri Lanka in a nuanced manner and the need to develop a coherent national policy, as well as the additional capacity and resources required as a developing country, to handle matters related to inbound migrant's welfare.

- The number of Refugees by country and sex

### **Number of refugees in Sri Lanka as at 31 July 2016**

Total - 695

Breakdown of the above by country:

Country	Number of Refugees
Afghanistan	80
Bangladesh	05
Iran	07
Maldives	03
Pakistan	574
Palestine	15
Somalia	01
Syria	08
Tunisia	01
Yemen	01

### **Number of refugees/refugee claimants arrested and presently in detention (for reasons including expiration of visa, etc.)**

Total – 78

Male	69
Female	09

Majority of the above are Bangladeshis (36 persons).

- The Department of Immigration and Emigration, now placed under the purview of the Ministry of Internal Affairs , Wayamba Development and Cultural Affaris (which was formally under the Ministry of Defence) is the competent authority on any detention of inbound migrants who have violated the laws of the county.
- Any person who has violated the Immigration and Emigration Laws of Sri Lanka may be detained until such time as arrangements are made for his/her departure. Any person who has violated the Immigrants and Emigrants Act, may be ordered to be removed from the country as soon as possible as per Sec. 28 (1) (a), (b), (c) of the amended Immigrants and Emigrants Act. No. 20 of 1948. For removing a person from Sri Lanka, Sec. 28, Sec. 45 and Sec. 48 should be read together.
- All such cases of detention are individually assessed to establish nationality, reasons for violating immigration regulations etc., in order to liaise with IOM, families of the detainees. Foreigners who are found violating Immigration regulations are immediately removed from the country if there is a valid passport and a return air ticket in their possession. In the event the persons concerned do not have the required documentation/tickets/finances, authorities are compelled

to house them in the Mirihana Immigration Detention Centre, until suitable arrangements for deportation are made. During this period, authorities make every possible effort to obtain valid travel documents for these persons by liaising with the respective embassies expeditiously.

Those in detention at the Mirihana Immigration Detention Centre are free to move in and out of the facility. They have access to mobile phones and internet and are provided free medical care.

## **6. Functions of the Constitutional Council and the Constitutional jurisdiction of the Supreme Court**

The Constitutional Council consists of 10 members, which consists the following members:-

- (a) the Prime Minister;
- (b) the Speaker;
- (c) the Leader of the Opposition in Parliament;
- (d) one Member of Parliament appointed by the President;
- (e) five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition of whom two persons shall be Members of Parliament; and
- f) one Member of Parliament nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups, other than the respective political parties or independent groups to which the Prime Minister and the Leader of the Opposition belong, and appointed by the President.

The Speaker shall be the Chairman of the Council.

In nominating the five persons referred in (e) above, the Prime Minister and the Leader of the Opposition shall consult the leaders of political parties and independent groups represented in Parliament so as to ensure that the Constitutional Council reflects the pluralistic character of Sri Lankan society, including professional and social diversity. The persons who are not Members of Parliament to be appointed in this regard shall be persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party whose nomination shall be approved by Parliament.

The Constitutional Council is not a judicial body but it is a body established in terms of the Constitution and does not exercise any judicial power. The Constitutional Council approves, inter alia, appointments of Judges of the Supreme Court and such other appointments referred in the Constitution and other laws. It has no supervisory role over the Supreme Court or any other court.

## **Constitutional jurisdiction of the Supreme Court**

In terms of the Article 118 of the Constitution of Sri Lanka, the Supreme Court of Sri Lanka is the highest and final superior court of record in the Republic and it exercises jurisdiction, inter alia, in respect of constitutional matters.

In terms of Article 125 of the Constitution, the Supreme Court has the sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution and accordingly, whenever any such question arises in the course of proceedings in any other court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi-judicial functions, such question shall forthwith be referred to the supreme court for determination.

### **7. Response to the question on Prison overcrowding and conditions of detention**

- Sri Lanka remains concerned and fully comprehends the need to reduce overcrowding in prisons and makes every endeavor to address this issue. Construction of new prisons with enhanced facilities are considered and the construction of a new prison complex in Angunakolapelassa in the Southern Province is expected to be completed at the end of this year.
- In designing and construction of new prisons, the Department of Prisons has taken Standard Minimum Rules and ICRC standards as the minimum specification. Accommodation, ventilation, bedding, hygiene, sanitation and other requirements of these prisons have been designed on par with international standards.
- Community based correction measures are also being encouraged which can be imposed for an offence where the imposition of a minimum sentence of imprisonment is not mandatory and where the penalty of imprisonment is less than 2 years. In this regard, the GoSL has established the Department of Community Based Corrections (DCBC) under the Act No. 46 of 1999. At present, the DCBC handle approximately 9000 persons per year. This can be identified as a major step to reduce prison congestion. The Ministry of Rehabilitation and Prison Reform intends to upgrade the policies relating to the DCBC for better performance in the future.
- The Prisons Administration Bill with amendments is in the process of being drafted with the approval of the Cabinet. The scope of the proposed committees will be considered in the drafting process which will also include the following:
  - Make recommendations to Commissioner General of Prisons to promote overall welfare of the prisoners
  - Assist prisoners to live with self-respect and dignity

- Investigate and report any matter as requested by the Minister and CGP
- Visits both announced and unannounced by Judicial Officers, members of the Human Rights Commission of Sri Lanka, Members of Parliament and the International Committee of Red Cross are facilitated by the government to monitor the prison conditions.
- Prison officials are also educated on the humane treatment of prisoners, methods of rehabilitation and on the need to address root causes that lead to imprisonment.

### **Question on Prison Conditions**

Pursuant to the work of the Special Task Force, discussions are underway on expediting the filing of indictment in respect of accused against whom charges are yet to be filed in the High Court. Further, the Task Force is considering measures in respect of around 2,000 persons who are in prisons owing to the inability to pay fines ordered by the court. It has been proposed to introduce a system whereby the prisoners are provided the opportunity of paying the stipulated fine on an installment basis.

The Bogambara and Jaffna prisons have already been relocated with a view to improving prison conditions. The Angunukolapelessa prison will be relocated by the end of 2016. It is proposed to relocate 8 more prisons around the country to improve prison conditions.

It may also be noted that through a Presidential pardon, the sentences of 182 prisoners who were in the death row were commuted to life sentences. The said prisoners may be eligible for remission after serving a particular period of their sentence.

## **8. Updates on Specific Cases**

### **Jeevandarage Ashan Tharanga**

The above person has been arrested in connection with the theft of a vehicle and the case is ongoing at the Mahara Magistrate Court. It will be taken up again on 22.11.2016. The suspect has filed a petition before the Supreme Court (No 156/2015) with regard to an alleged assault. The above petition has been considered and dismissed by the Supreme Court.

Noting the information provided by the Committee regarding **Ruki Fernando, Presley Fernando, Mauri Inoka, H.M.Ajith and H.M.Akila**, follow-up action will be taken by the Government.

## 9. No. of Fundamental Rights Cases and Habeas Corpus cases

All detainees can challenge the lawfulness of the detention by way of habeas corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regards the fundamental rights application, it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court — the epistolary jurisdiction which has been developed by the Supreme Court.

Majority of the matters concerning detention orders have been challenged through fundamental rights applications and this has been a remedy, which has been effectively used for several decades.

From 2012-2016, 151 fundamental rights petitions have been filed against members of the Police under Article 11 of the Constitution<sup>3</sup>. The Supreme Court has made declarations under Article 11 against four police officials during the above period. Judgements of the Supreme Court delivered in respect of fundamental rights petitions can be accessed at <http://www.supremecourt.lk/>

Apart from the fundamental rights petitions, disciplinary action has been taken by the Department of Police in respect of complaints pertaining to alleged torture:

Period	Incidents	Number of Officials	Number of officials found guilty	Number of officials found not guilty	Number of pending inquiries
2012-Oct 2016	150	170	23	01	126

In addition to the above, during the period 2012 to October 2016, the Supreme Court has granted leave to proceed for 107 applications filed under Article 13(1) and 13 (2)<sup>4</sup> of the Constitution.

## 10. Response to the Report of the SR on Torture

---

<sup>3</sup>Article 11: No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>4</sup> Article 13(1) and (2)

(1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

(2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.

The GoSL has received the report of the SR on Torture on 28 October 2016 and as per the procedure the GOSL will provide its observations to the Report

## **11. “Emblematic Cases”**

### **ACF Case**

As at present, 74 Navy officers, 34 commandos, 16 police officers, 2 Gamunu regiment officers and 120 civilians have been interviewed and their statements have been recorded by the CID.

The Government Analyst has informed that out of the 209 weapons submitted, examinations on 85 weapons with the 43 ammunition recovered from the place of the incident have been completed, and that the remaining weapons are being examined.

Therefore, the Court awaits receipt of the analysis reports in relation to all 209 weapons submitted to the Government Analyst by the Criminal Investigation Department (CID), as per the Court Order issued on 13 January 2016, for forensic/ballistic examination.

The Magistrate Court Muttur case no. 843/08 pertaining to the incident will be called again on 29 November 2016.

### **Case concerning death of five youth in Trincomalee:**

Regarding the case of the death of five students in Trincomalee on 2<sup>nd</sup> January 2006, the Criminal Investigations Department of the Police has conducted investigations. The Attorney-General having considered the material submitted by the Police has instructed the Police to initiate a non-summary inquiry on charges *inter alia* on Murder against 13 accused, who were police officers.

A senior Counsel of the Attorney-General’s Department is appearing in the Magistrate’s Court in the non-summary inquiry. Evidence of 25 witnesses had already been concluded. These witnesses include Forensic Pathologist, relatives of the deceased, police officers who visited the scene and who conducted the investigation.

According to the summons report, some witnesses are living overseas, and steps are under way to serve summons after ascertaining their addresses and to seek their evidence. It is pertinent to note that the Cabinet has approved the proposal to amend the Victim and Witness Protection Act to

enable a witness to testify from a remote location from overseas, and the draft Bill has been developed by the Legal Draftsman. The Bill will be presented to Parliament in January 2017.

### **Progress of Investigation into Ekmaligoda disappearance**

With regard to the abduction of Prageeth Ekmaligoda, after the new government came into power on 8<sup>th</sup> of January 2015, investigations were handed over to the CID in March 2015. After conducting in-depth investigations, the CID made a breakthrough in identifying the perpetrators of abduction and the modus operandi. Ninemembers of the Army were arrested and detained since August 2015 in connection with the abduction, murder and several other offences. The CID was able to locate the place where Ekmaligoda was detained after the abduction. Investigations are still continuing in order to gather evidence relating to incidents subsequent to the detention of Ekmaligoda. Once the investigations are completed, the CID is expected to send the dossier to Attorney General for a decision on the institution of legal proceedings.

In the meantime, the suspects, who are members of the Army, have filed a Fundamental Rights application challenging their arrest and detention.

## **12. Legal Status of Legislation on Enforced Disappearances**

With a view to incorporating the provisions of the Convention into the domestic law and criminalizing enforced disappearance, the legal process has been set in motion. The Legal Draftsman is formulating the draft legislation which is currently at an advanced stage. The Ministry of Foreign Affairs will submit the draft legislation to the Cabinet shortly for approval. **Once enacted, the new law on enforced disappearances will significantly strengthen Sri Lanka's legal system in terms of prosecuting and punishing perpetrators and preventing enforced disappearances in the future.**

### **Provision of adequate Financial Resources to Office of the Missing Persons**

With regard to a letter addressed to the Government on 22 August 2016 by the Human Rights Commission, welcoming the creation of the Office of Missing Persons, and recommendations to provide the Office with adequate financial resources, the following is noted :

Following its certification by the Speaker on 23 August 2016, the legislation on the establishment of the Office of Missing Persons has now been gazetted

as the Act. No. 14 of 2016. Steps have been taken to allocate funds for the Office on Missing Persons in the Budget for 2017 which is to be presented to Parliament this month.

In this context, the attention of the Committee is drawn to specific provisions of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016, namely sections 19 and 21, which respectively provide as follows:

"The State shall provide the OMP with adequate funds to enable the OMP to discharge the functions assigned to it by this Act. Such funds shall be charged on the Consolidated Fund.

The OMP may raise funds-

- (a) by obtaining grants, gifts or endowments from within Sri Lanka; and
- (b) to achieve its mandate by obtaining grants, gifts or endowments from outside Sri Lanka:

Provided that the funds under paragraph (b) are channelled through the Department of External Resources".

### **13. Deaths in Custody**

Noting the information provided by the Committee regarding **Sandun Malinga**, follow-up action will be taken by the Government.

With regard to the case of **four men who were arrested in Kamburupitya**, the Attorney General has given instructions to conduct further investigations and had called for additional material with a view to consider preferring charges.

### **14. Response to questions raised on the Draft Policy and Legal Framework on new Counter Terrorism Legislation in Sri Lanka to replace the Prevention of Terrorism Act, which would comply with international norms and standards.**

The questions raised a range of substantive issues which covered inter alia, the precise scope of the offences sought to be covered under the proposed law; Issues relating to the time period for producing a suspect before a magistrate, question of admissibility of evidence, in particular confessions and question of access to legal counsel. It is important to bear in mind that the output of the committee that was appointed to examine new counter terrorism legislation reflects the process of formulating a draft policy and legal framework on counter terrorism legislation, and it is not the draft legislation in itself. It is still an evolving document currently in the form of a White Paper.

The issues that were raised by the distinguished experts have been the subject of intensive deliberations within the committee. On the issue of the scope of offences, Sri Lanka as Chair of the UN Ad Hoc Committee on Measures to Eliminate International Terrorism since 2000, is very much conscious of the need to recognize the benchmarks and thresholds set by these conventions in defining terrorist offences. For example the definition found in Article 2 of the Terrorist Financing Convention (TFC) sets important criteria in defining the offence of terrorist financing and the Committee is conscious of the important guidance that these provisions provide in defining the scope of terrorist offences.

There had indeed been alternative views and perceptions within the committee on key issues such as the time period for producing a person arrested before a Magistrate, the question of access of a suspect to legal counsel and the question of admissibility of confessional statements. Salutory elements on which deliberations are being made within the committee include a requirement of notification of the arrest and custody of a suspect to the Human Rights Commission of Sri Lanka as soon as possible and not later than 24 hrs. of the suspect being brought to a Police Station; the need for strong judicial oversight on issues of arrest and detention; and for a Magistrate to see and inquire into the wellbeing and welfare of a suspect and also where necessary, for the Magistrate to direct forensic medical examination of a suspect.

We are confident that the outcome of these deliberations would ensure a delicate balance on the concerns raised on these key issues as the work of the Committee progresses.

These issues were also the centre of focus during the in-depth consultations that took place at the High-level Dialogue with the participation of international experts from the agencies such as the UN CTED, the UNODC and OHCHR. There was a comprehensive and open exchange of views at the High-Level Dialogue and the international experts appreciated the fact that the dialogue on proposed counter terrorism legislation was taking place while the Legal and Policy Framework was yet in an evolutionary stage so that proposals that are made could be taken into due account prior to finalizing the legislation.

A question was also raised yesterday on a possible timeline or a calendar for the finalization of the draft legislation. This would very much depend on the completion of established procedures within Parliament and the executive. As already referred to in the Opening Statement, the Parliamentary Sectorial Oversight Committee on National Security has just commenced its deliberations on the draft framework last week. This Committee is also expected to engage with members of civil society.

As the work of the Parliamentary Oversight Committee on the draft progresses, it is our expectation that concerns and challenges that are being highlighted will be duly addressed. At the end of these deliberations views of the Oversight Committee will be submitted to the Cabinet of Ministers. Thereafter the established procedures for passage of legislation such as the preparation of legislation by the Legal Draftsman in final form and securing the approval of the Attorney General on the constitutionality of the proposed legislation will need to be complied with. Once the bill is gazetted, an aggrieved party could invoke the jurisdiction of the Supreme Court in respect of Bills being presented to Parliament.

### **15. Sexual violence against women in the former conflict areas**

The Government fully recognizes that women and girl children are a vulnerable group of the population particularly in conflict and post-conflict situations and has given priority to addressing their grievances. However, while allegations of 'mass rapes by the military' are unlikely to have taken place, the Government remains open for this as well to be examined/ investigated by the independent and credible mechanisms that will be set up.

Action has been taken to bring perpetrators of reported incidents of rape by individual members of the security forces, to justice (Eg. KrishanthiKumaraswamy case, Vishwamadu case).

#### *Sexual violence complaints:*

-In October 2015, the Jaffna High Court sentenced four soldiers to 25 years rigorous imprisonment each over rape and sexual abuse incidents in Viswamadu, Kilinochchi in 2010. The four military personnel were also ordered to pay Rs 500,000 each to the victim, and if they failed to pay, an additional two years to be added to the prison term. They were also ordered to pay Rs 25,000 as legal cost and failing which, another year to be added.

-Apart from the cases that are currently proceeding, there would also be provision for the Truth Seeking Commission which the Government intends to establish, to also receive complaints and investigate into such incidents. The Judicial Mechanism with a Special Counsel which the Government proposes to establish as well as the Reparations Office will also provide avenues for accountability and reparations respectively. Currently, the Consultation Task Force comprising of 11 civil society members, which is headed by a female and comprising of 6 women (and 5 men) are in the process of seeking the views of the public all over the country, in all provinces, regarding the establishment of these mechanisms and any other mechanisms in relation to reconciliation, accountability and reparations that the public may wish to present ideas on.

*Statistics on sexual violence reported from the Women and Children's Bureau of the Police (all-island figures):*

2015

Number of reported cases of sexual violence against women and children: 7743

Number of cases regarding which action\* was taken within the year: 6193

2016 (Upto June 2016)

Number of reported cases of sexual violence against women and children: 3940

Number of cases regarding which action\* has been taken to date: 2931

\*Referred for filing of legal action

It is noted that, according to the Bureau, the highest number of cases of sexual violence in 2015 and 2016 have been reported from the Anuradhapura (North Central province) and Ratnapura (Sabaragamuwa province) districts, two areas where the large majority of the population is from the Sinhala community.

With wider space having opened up after January 2015, there is now greater awareness being created and a dialogue and discourse that is necessary to combat sexual and gender based violence, with the involvement of civil society as well.

Following national consultations, the national Action Plan on Gender Based Violence was finalized and approved by the Cabinet on 15 June 2016. The GBV Action Plan was launched on 16 November 2016.

- As referred to in GoSL's response to the List of Issues of this Committee the government has taken action to request the Human Rights Commission of Sri Lanka to contact the authors of the ITJP (International Truth & Justice Project Sri Lanka) Report with a view to obtaining relevant information and share the recommendations of the Commission on action to be taken by the Government in this regard.
- If such information is made available, the GoSL reiterates its commitment to work on this information and take action on admissible evidence.

## **16. National Human Right Action Plan (NHRAP) 2017- 2021**

- The GoSL is presently formulating the NHRAP 2017-2021. In this context the following are taken into account in drafting the said NHRAP :
  1. the outstanding issues that were not implemented in the NHRAP in 2012-2016
  2. the concluding observations and recommendations of the treaty bodies pursuant to the reports submitted to the respective treaty bodies
  3. the recommendations made pursuant to the UPR process
  4. recommendations made by other human rights mechanisms

The call for a new NHRAP from 2017-2021 came in the context of Sri Lanka's structured engagement with the UN and other organizations as well as other partners and the civil society. It was a voluntary undertaking by the GoSL, noting the need for sustained promotion and protection of human rights, adopting a whole-of-government, whole-of-system approach. That led to working on the NHRAP 2017-2021.

- The Plan will not only take forward hitherto unimplemented action points in the human rights arena, but will also widen the scope of such action points since the current emphasis of our multi-stakeholder engagement is inclusive, participatory and imaginative.

- The ten Drafting Committees have come up with their preliminary draft inputs which are now being considered by the relevant ministries, the Human Rights Commission of Sri Lanka, INGOs based in Colombo and in particular, the civil society.

## **17. Role of the Attorney General**

With regard to the role of the Attorney General on the conduct of prosecutions in Sri Lanka, the following is stated :

In Sri Lanka, prosecutions are instituted in the original courts, namely the Magistrate Court and the High Court. Prosecutions in the High Court are instituted by the Attorney General. I would like to apprise this Committee of the procedure that is followed in this regard.

In serious crimes the police under Section 393 (5) and (6) of the Code of Criminal Procedure Act send to the Attorney General a file containing the notes of investigation and the statement of witnesses and the suspects, together with the report of the case and the other relevant documents. Upon receipt of the same, the Attorney General may forward an indictment to the High Court depending on the sufficiency of evidence.

In cases where Magistrate is required to hold a preliminary inquiry under Section 145 of the Code of Criminal Procedure Act, the Magistrate, if he is satisfied of the sufficiency of evidence, commits the accused to stand trial in the High Court and forwards to the Attorney General a copy of the proceedings, together with the other relevant documents. In this regard, the Attorney General, if he is satisfied of the sufficiency of evidence for committal, may forward indictment to the High Court.

Accordingly, the distinct role played by the Attorney General in prosecutions should be clearly understood as opposed to the role of an investigator. Therefore, **it may be noted that the Attorney General does not have investigative powers.**

### **18. The Prosecution of Torture Perpetrators Unit of the Attorney General's Department**

In accordance with the Government's zero tolerance policy with regard to torture, the Attorney General has assigned a senior officer holding the post of ASG who is a President's Counsel to deal with matters under the purview of torture that are referred to the Attorney General's Department. In this regard, all matters of torture investigated and referred to the Department pursuant to such investigations are given the highest consideration.

### **19. Rehabilitation of accused indicted under the PTA**

Addressing **the process of rehabilitation** that was discussed before the Committee, it may be noted that in situations where the investigations have been completed and accused are indicted in different High Courts, the accused are in judicial custody. Taking in to consideration the duration of the custody and the nature of the offence with which the accused is charged representations are made to the Attorney General to explore the possibility of giving redress to such accused.

Taking in to account the government policy and commitment to the reconciliation process, cases were individually vetted. In appropriate cases considering the nature of the charges decisions were taken to provide those accused persons, if they volunteered to do so, to terminate proceedings by going through rehabilitation. It may be noted that in certain instances the Attorney General took steps to reduce charges which is a practice in many jurisdictions where similar decisions are taken.

Accordingly, having regard to the nature of the offences an accused is charged with and the time period the person had been in custody, and the sentence that is prescribed for the offence, decisions were taken in acceding to the request that was made by the Counsel on behalf of the accused to drop or to reduce

charges and provide that facility of rehabilitation. It is in this context that it is reiterated before this Committee that rehabilitation was offered with the objective of facilitating the accused early disposal of criminal proceedings and ending those proceedings expeditiously to facilitate the reconciliation process.

---