



THE LUTHERAN WORLD FEDERATION

A COMMUNION OF CHURCHES – EINE KIRCHENGEMEINSCHAFT – UNA COMUNIÓN DE IGLESIAS – UNE COMMUNION D'ÉGLISES
LUTHERISCHER WELTBUND – FEDERACIÓN LUTERANA MUNDIAL – FÉDÉRATION LUTHÉRIENNE MONDIALE

General Secretariat - Office for International Affairs and Human Rights

The prevention of torture and other cruel, inhuman or degrading treatment or punishment in Sri Lanka

as addressed at the 35th Session of the Committee Against Torture

In November 2005, the United Nations Committee Against Torture (CAT) considered Sri Lanka's 2nd periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Countries that have ratified this Convention, ("States parties"), submit to the Committee reports on the measures they have adopted which give effect to the rights recognised in the Convention and on the progress made in the enjoyment of these rights. Each State party should submit a report every four years (or when the Committee requests for it). A delegation of representatives is invited to attend the session when that country's report is examined and are expected to answer questions put to them by the Committee. The Committee also receives information on the country under review from non-governmental organisations (NGOs). The Committee can only make recommendations and has no enforcement powers. These recommendations are known as "Concluding Observations". More information on the Committee Against Torture can be found at:

<http://www.ohchr.org/english/bodies/cat/index.htm>

The LWF's Office for International Affairs and Human Rights reports on the proceedings of the CAT and other human rights treaty bodies in order to inform LWF member churches and field programmes, to solicit feedback, and to encourage them to become involved in the promotion of follow-up at the national level. It is also intended to encourage member churches and field programmes to submit their own reports to the treaty bodies on whether previous recommendations have been implemented, for consideration during the next reporting cycle.

On 10-11 November 2005, the Committee Against Torture considered Sri Lanka's 2nd periodic report. The State Report and the List of Issues are available online at:

<http://www.ohchr.org/english/bodies/cat/cats35.htm>

Introducing the report was Ms Sarala Fernando, Permanent Representative of Sri Lanka to the United Nations Office at Geneva. Questions were then raised by members of the Committee, beginning with Committee Experts Mr Andreas Mavrommatis from Cyprus and Mr Ole Vedel Rasmussen from Denmark.

Inputs from NGOs

Before the committee's examination of Sri Lanka's 2nd periodic state report, a meeting with human rights NGOs and the committee was conducted in order to get more government-independent information about the current situation in Sri Lanka with regard to torture. A few NGOs and a lawyer of a torture victim were present at the meeting. An NGO called "Asian Legal Resource Centre" (ALRC) presented an alternative report to the Sri Lanka's state report. This alternative report presented many very well documented cases of torture by the state's police forces and proved systematic and widespread torture by state institutions in Sri Lanka (full report is available at: <http://www.alrc.net>). Furthermore the ALRC



reported an attempt by the police to burn down the building of the Human Right Commission of Sri Lanka.

Issues of Concern

The Committee against Torture discussed, *inter alia*:

1. Routine use of torture and culture of impunity.

The committee was deeply concerned about Sri Lanka's situation with regard to torture. It acknowledged the difficult situation arising from the internal armed conflict in Sri Lanka but pointed out that no exceptional circumstances whatsoever may be invoked as a justification of torture. A member of the committee pointed to the fact that despite a number of measures, institutions and mechanisms that had been installed, there were still reports of recurring incidents of torture, which indicated that the use of torture was still routine in Sri Lanka.

The delegation assured that statistics showed that there was a vast reduction in the number of cases relating to torture that have been filed in the courts. A member of the committee replied by quoting Sri Lanka's Supreme Court, which said that there was no reduction in torture cases. The Committee insisted that much more had to be done to reduce the incidents of torture. The statement by the Supreme Court was contested by the delegation but not further commented on.

The committee was alarmed about three very well documented cases identified in a report submitted by the Asian Legal Resource Centre: The case of Mr. Perera, Mr. Kumara, and Ms. Herath. According to the committee these three cases of torture by policemen show by its particular cruelty a pervading culture of impunity. In addition the committee was deeply concerned about the very slow process of the criminal justice system. Since torture needed a very quick response of allegation these law delays seemed to stress the impunity of policemen.

The delegation informed that the three cases were taken up for trial and that the government was considering legislative steps as well as administrative procedures to accelerate the process of the Criminal Justice System.

2. Accused public officials remaining at work during investigations

A member of the committee asked the delegation whether public officials that were accused for torture remained at work during the investigations.

The delegation said that during the stage of investigation, the accused official remained in place. It was referred to the fact that in practice, it had been found that very often persons accused of offences, made false allegations for purposes of stifling the investigations that were being conducted against them. In such circumstances it would be unfair to interdict a police officer on a mere allegation of torture. However, the delegation assured that a police officer against whom a prima facie case had been established would be interdicted by the National Police Commission.

The committee was very concerned about this practice and was not happy with the delegations reasons for it. If the accused public official remains at work he can intimidate the victim and witnesses. And in deed the committee was informed by NGOs that many victims and their lawyers were being harassed and intimidated by policemen with the result that many torture victims had withdrawn or not made

complaints and that lawyers were afraid to make official complaints. In addition the committee drew the delegations attention to the fact that any false acquisition was a very serious crime and that any person who made false allegations should be seriously convicted.

3. Human Rights Commission of Sri Lanka

Several committee members appreciated the establishment of the Human Rights Commission of Sri Lanka in 1997. The committee stressed the very importance of the independent monitoring body for further improvements in the implementation of the convention against torture at several occasions. According to the delegation the Human Rights Commission was a fully independent body that had declared a zero-tolerance policy against torture and appointed special teams to make visits to places of detention without notice.

However, the committee was informed about many public officials that were ill-disposed towards the Human Rights Commission and shared the concern that had been expressed by the chairperson of the Human Rights Commission, Dr. Radhika Coomaraswamy: The police forces are hostile to the commission and many members are worried. The delegation didn't want to comment on the statement made by Radhika Coomaraswamy.

The committee inquired about the recent attack on the office of the Human Rights Commission in October 2005, and about rumours that the national police was behind this act. The delegation rejected the notion of attack and qualified the incident as an act of vandalism and referred to the ongoing inquiry in this case.

Moreover the committee raised concern about the mandate of the Human Rights Commission that would end in 2006. It was assured by the delegation that it was only the three-year term of office of the present commissioners that would come to end by 2006 and that the commission would continue to function with new appointed members.

4. The National Police Commission

The committee was informed by NGOs that the National Police Commission, which is empowered to investigate human rights violations within the police, would come to an end. Several committee members asked for information about that. The delegation commented on this by saying that the National Police Commission was a constitutional body that cannot be abolished by any executive action. Furthermore it was reassured by the delegation that when the term of office of the present Commissioners would come to an end in November 2005, reappointments of serving members and fresh appointments would be made.

Concluding observations

The Committee Against Torture recommended that the Government of Sri Lanka should, *inter alia*:

- Strengthen the Human Rights Commission of Sri Lanka so as to allow it to function effectively and ensure that its recommendations are fully implemented. The Commission should be provided with adequate resources, notification of arrests and full cooperation in implementing its 24-hour torture hotline and improving the system of inspection visits. Furthermore, the State party should ensure

prompt reappointment of Commissioners when the three-year term of office of the present Commissioners ends in March 2006.

- Adopt a definition of torture that covers all the elements contained in article 1 of the Convention
- Proceed with the urgent reappointment of the Commissioners of the National Police Commission. Furthermore, the State party should ensure that the public complaints procedure provided for in Article 155G(2) of the Constitution is implemented and that the Commission is given adequate resources and full cooperation by the Sri Lanka police in its work.
- Allow independent human rights monitors, including the Human Rights Commission of Sri Lanka, full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review.
- Ensure prompt, impartial and exhaustive investigations into all allegations of violations of torture and ill-treatment and disappearances committed by law enforcement officials. Such violations should, in particular, not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture the accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;
- try and, as appropriate, convict the perpetrators and impose appropriate sentences on them, thus eliminating any ideas of impunity that might be entertained by perpetrators of torture.
- ensure that procedures are in place to monitor the behaviour of law enforcement officials and promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. Furthermore, the State party should take all necessary measures to prevent such acts, including by ensuring full implementation of the directive concerning the treatment of women in custody, and should consider setting up women and children's desks at police stations in conflict areas.
- Take the necessary measures to ensure that justice is not delayed.
- Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals in making such a report. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection.
- Take the necessary steps, in a comprehensive manner and to the extent possible in the circumstances, to prevent the abduction and military recruitment of children by the Liberation Tigers of Tamil Eelam and to facilitate the reintegration of former child soldiers into society.
- Take effective measures to ensure that the fundamental legal safeguards for persons detained by the police are respected, including the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their own choice, and the provision of information about their rights.

(The full text of the Committee's concluding observations is available from the LWF Office for International Affairs and Human Rights on request.)

In conclusion, the Committee invited Sri Lanka to submit its next report by 1 February 2007.

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