

**The statement of the delegation of Sri Lanka during the Interactive Dialogue with the  
Special Rapporteur on torture**

**16<sup>th</sup> Session of the UN Human Rights Council, 7 March 2011**

Mr. President,

My delegation has taken note of the report submitted by the Special Rapporteur on torture and in particular on follow-up to the recommendations made by Mr. Manfred Nowak, the former Special Rapporteur, pursuant to his visit to Sri Lanka in October 2007. In this regard, my delegation regrets the delay in submitting the written observations of the government of Sri Lanka on measures taken to follow-up his recommendations, which were forwarded to the Special Rapporteur last week.

Mr. President,

Sri Lanka wishes to observe that violations of fundamental guarantees can take place irrespective of the nature of the legal regime adopted. The legal regime may be the adoption of normal laws or emergency provisions. Whichever may be the case, it is important to ensure that the said regime is not subject to such abuse that will result in the violations of the rights of a person. Derogable rights must therefore be accompanied by the appropriate checks and balances that would ensure proper balance of the sustainability of such derogations. It is therefore our view that it would be an overstatement to observe simpliciter that emergency regulations lend support to a violation of rights.

It may be noted that in May 2010 there has been a substantial scaling down of the emergency regulations, and those retained, promote and guarantee due process.

It must be appreciated that illegal arrest and detention are tantamount to infringement of our Bill of Rights and any infraction of these process rights would give rise to the intrusive jurisdiction of the Supreme Court. The remedy of habeas corpus is acknowledged to be a bulwark against abuse of executive powers of arrest and detention and this constitutionally entrenched right has been in existence in Sri Lanka as an efficacious remedy for any illegal detention.

Any violation of these enactments exposes an errant state agent to visitations of prosecution in addition to a civil suit and this host of safeguards and remedies demonstrates Sri Lankan legal position that incommunicado or illegal detention has no place in Sri Lanka and under no circumstances would Sri Lanka derogate from this State Policy and practice.

Mr. President,

In response to some of the concerns highlighted by the Rapporteur, my delegation wishes to state that Sri Lanka will soon enact its amendments to the Code of Criminal Procedure Act, which will make a paradigm shift in the post arrest and pre-trial safeguards available to a suspect. The novel features of the amendments envisaged include, the establishment of a duty solicitor scheme funded by the State and administered by the Bar Association of Sri Lanka, whereby each police division will have solicitors who will provide advice and legal representation to suspects immediately upon arrest. The pre-trial standards necessitate the presence of an investigating magistrate to record statements, and the provision of a medical examination. These legal standards in the Code of Criminal Procedure Act would constitute positive legal measures in the fight against torture. This measure will go a long way to eliminate all allegations of torture to which Sri Lanka has proclaimed its zero tolerance at all times.

Mr. President,

Sri Lanka, which follows a Common Law system, excludes evidence obtained through inducement, threat, or promise, inclusive of torture and the burden of proving the ingredients of an offence is always on the prosecution. Even under special law, the admission of a confession against its maker is permissible, it is after an intensive *voir dire* inquiry where the Court has to be satisfied that no torture, threat or inducement was ever used. If a public official or police officer procures a confession by way of torture, the domestic Act, which gives effect to the Convention against Torture, exposes him to severe penalties.

The contents of a confession have never and will never be used in a cross examination of a defendant. It is to be noted that section 24 of the Evidence Ordinance prescribes an absolute bar against any statement of a confessionary nature made to a police, excise or forest officer. This principle has been jealously guarded during the entire existence of our criminal jurisprudence. The observation therefore is misconceived in both fact and law.

Mr. President,

While we take note of all other constructive comments of the Special Rapporteur, Sri Lanka once again reiterates its position that no exceptional circumstances whatsoever may be invoked as a justification for torture nor will it acquiesce in acts of torture and that the proposed amendments to the Code of Criminal Procedure Act will enable Sri Lanka to comprehensively address these issues.

Thank you.