



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States parties under  
article 40 of the Convention**

**Fifth periodic reports of States parties due in November 2007\***

**Sri Lanka**

[29 October 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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Legislation

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\*\* Annex can be consulted in the files of Secretariat.

## Abbreviations and acronyms

AHSIB	Anti-Human Smuggling Investigation Bureau
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Act	Act to give effect to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Act No 22 of 1994
CCD	Common Core Document
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEVAW	Campaign to End Violence Against Women
CFA	Ceasefire Agreement
CGES	Commissioner General of Essential Services
CRC	United Nations Convention on the Rights of the Child
CRD	Criminal Records Division
DIG	Deputy Inspector General
FBI	Federal Bureau of Investigations
GoSL	Government of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
ICCPR Act 2007	International Covenant on Civil and Political Rights Act No 56 of 2007
ICAAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
ICRC	International Committee of the Red Cross
IGP	Inspector-General of Police
IPO/PO	Interim Protection Order or a Protection Order
ILO	International Labour Organization
ITN	Independent Television Network
LTTE	Liberation Tigers of Tamil Eelam
HRCSL	Human Rights Commission of Sri Lanka
MDMHR	Ministry of Disaster Management and Human Rights
NAPHR	National Plan of Action for the Promotion and Protection of Human Rights
NCPA	National Child Protection Authority
NFZ	No-Fire Zone
NPC	The National Police Commission
OIC	Circular directed Officers in Charge
PCID	Public Complaints Investigation Division
PCCS	Press Complaints Commission of Sri Lanka

PDVA		Prevention of Domestic Violence Act
PTP Unit	-	Prosecution of Torture Perpetrators Unit
SAARC		South Asian Association for Regional Cooperation
SCOPP		Secretariat for Coordinating the Peace Process
SIU		Special Investigation Unit
SLA		Sri Lanka Army
SLBC		Sri Lanka Broadcasting Corporation
SLMM		-Sri Lanka Monitoring Mission
SLBFE		Sri Lanka Bureau of Foreign Employment
SOP		Standard Operation Procedures
TIP		Trafficking in Persons
UAVs		Unmanned Aerial Vehicles
UN		United Nations
UNDP		United Nations Development Programme
UNHCR		United Nations High Commissioner for Refugees
UNHRC		United Nation Human Rights Council
UNCRC		United Nations Convention on the Rights of the Child
WGEID		Working Group on Enforced or Involuntary Disappearances

## I. Introduction

1. The Government of the Democratic Socialist Republic of Sri Lanka, (GoSL), is pleased to present to the Human Rights Committee Sri Lanka's fifth periodic report in accordance with article 40 of the International Covenant on Civil and Political Rights, (ICCPR), highlighting developments relevant to the period from 2003 to October 2012.
2. Sri Lanka acceded to the ICCPR on 11 June 1980 and the Covenant came into force for Sri Lanka on 11 September 1980.
3. The present report focuses primarily on issues raised by the Human Rights Committee in its report, concluding observations of the Human Rights Committee: Sri Lanka (CCPR/CO/79/LKA) dated 1 December 2003. The concluding observations were issued following the review of the fourth periodic report of Sri Lanka, (CCPR/C/LKA/2002/4) submitted by the GoSL in 2002 and reviewed by the Committee in 2003.
4. The report details the significant initiatives undertaken by the GOSL, since the concluding observations were made by the Committee for the promotion and protection of human rights in the country. Particular attention is given to the "principal subjects of concern and recommendations" expressed.
5. As recommended by the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a Common Core Document (CCD) and treaty-specific documents (HRI/MC/2006/3, dated 10 May 2006), Sri Lanka submitted to the United Nations its CCD containing general factual and statistical information on Sri Lanka as at April 2008. While reiterating the contents of the aforementioned submission, it is not the intention of the GoSL to reproduce information contained therein.

## II. Current developments

### Humanitarian operation and the end of the conflict

6. Sri Lanka draws the attention of the Committee at the outset to significant developments that have taken place in Sri Lanka during the reporting period, which have an important bearing on the democratic and political processes within the country, as well as a beneficial impact on the rights and freedoms enjoyed by all people of Sri Lanka, particularly in the North and East, having been the former theatre of terrorist conflict.
7. As the Committee is aware, Sri Lanka's sovereignty and territorial integrity was threatened by a terrorist group known as the Liberation Tigers of Tamil Eelam (LTTE) for a period of nearly three decades. The LTTE has been dubbed by the Federal Bureau of Investigations (FBI) of the United States of America as one of the world's most ruthless terrorist organizations and is proscribed in over 30 countries<sup>1</sup> worldwide. This terrorist group's activities determined the challenges that the Government of Sri Lanka faced in its efforts to prevent attacks against its citizens and the state and protect their human rights.
8. The LTTE waged a separatist conflict in the Northern and Eastern Provinces of Sri Lanka to create a mono-ethnic separate state in those areas. During this time, the democratic rights and the entitlements of the civilians in these areas were violently suppressed by the LTTE, which did not allow for any freedom of expression or airing of

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<sup>1</sup> The LTTE is proscribed in the US, India, Malaysia, UK, Canada and the EU.

alternate opinions. The LTTE also effectively eliminated the space for democratic Tamil leadership<sup>2</sup> to consolidate in these areas and in the country as a whole by assassinating Tamil leaders that held a moderate/alternative point of view.

9. The impact of the terrorist activities of the LTTE was not limited to the Northern and Eastern Provinces alone but permeated every area of civilian life in the country and affected the human rights of all of Sri Lanka's citizens. The indiscriminate attacks on civilian life and installations demanded that significant resources be diverted to national security thereby impeding full economic and social development of the country.<sup>3</sup>

10. The suicide bombings on civilian targets by the LTTE, resulted in the loss of valuable human lives - Sinhalese, Tamils and Muslims alike - including their political leaders and also destroyed economic and social infrastructure in the country. The conflict had a serious impact on women and children, leaving the country with a considerable population of widows, orphans and disabled from all ethnicities. These acts were despite a Ceasefire Agreement (CFA) brokered by facilitators Norway being in operation from 2002-2008.

11. The duration of the CFA was marked by an increase in targeted assassinations especially against moderate Tamil leaders in the country. Notable victims of the terrorists included Hon. Lakshman Kadirgamar, former Foreign Minister of Sri Lanka and Mr. Kethesh Loganathan, former Deputy Secretary General of the Secretariat for Co-ordinating the Peace Process (SCOPP) both of whom were of Tamil ethnicity.<sup>4</sup>

12. Between February 2002 and May 2007, the Sri Lanka Monitoring Mission (SLMM), observers of the CFA, ruled that the terrorist group had violated the CFA 3830 times as opposed to 351 attributed to Government forces.<sup>5</sup> It must also be noted that the large majority of violations attributed to the terrorist group by the SLMM included assassinations, abductions, extortions and recruitment of child soldiers and forced conscription.

13. The LTTE also significantly increased the strength of its auxiliary forces and provided mandatory training to civilians in areas which they had occupied unlawfully. The LTTE's recruitment drive during the CFA period led to a significant increase in its strength from less than 14,000 cadres in 2002 to 25,000 cadres by June 2006. It is estimated that the strength of the LTTE at the start of the Humanitarian Operation was around 30,000 cadres.

14. Facilitation process by the Norwegian Government in 2002 was still in place in July 2006, when the LTTE's many transgressions of the CFA culminated in the closure of a vital sluice gate at Mavil Aru in the Eastern Province. This completely denied access to water for thousands of people (9,510 Muslims, 8,013 Sinhalese and 4,439 Tamils living in 20 villages), resulting in an immediate and grave threat to human livelihoods and existence.

15. Faced with the prospect of an imminent humanitarian disaster, the GoSL launched a limited military operation to restore access to water. While this operation was underway, the LTTE launched attacks on Security Forces positions in the North and the East of Sri Lanka. Given the immediate threat to civilian lives, the GoSL launched the Humanitarian

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<sup>2</sup> Refer to annex A of Humanitarian Operation Factual Analysis July 2006 – May 2009 ([http://www.defence.lk/warcimes/humanitarian\\_operation\\_factual\\_analysis...html](http://www.defence.lk/warcimes/humanitarian_operation_factual_analysis...html)).

<sup>3</sup> Refer to Annex D of Humanitarian Operation Factual Analysis July 2006 – May 2009 ([http://www.defence.lk/warcimes/humanitarian\\_operation\\_factual\\_analysis...html](http://www.defence.lk/warcimes/humanitarian_operation_factual_analysis...html)).

<sup>4</sup> List of VIPs/VVIPs killed by the LTTE is at Annex E of Humanitarian Operation Factual Analysis July 2006 – May 2009 ([http://www.defence.lk/warcimes/humanitarian\\_operation\\_factual\\_analysis...html](http://www.defence.lk/warcimes/humanitarian_operation_factual_analysis...html)).

<sup>5</sup> Page 45 paragraph 125 of Humanitarian Operation Factual Analysis July 2006- May 2009([http://www.defence.lk/warcimes/humanitarian\\_operation\\_factual\\_analysis...html](http://www.defence.lk/warcimes/humanitarian_operation_factual_analysis...html)).

Operation to free the people of the North and East and to liberate all its citizens from LTTE terror.

16. The clearance of the LTTE from the Eastern Province took place in 2007, and the Government was able to hold Local Government and Provincial Council Elections in the Eastern Province in May 2008. A democratically elected Provincial Council, with representation from the Tamil, Sinhalese and Muslim communities and led by a former LTTE child soldier who renounced violence and joined the democratic mainstream, functioned up to 2012. Fresh elections were held in September 2012 and a new Provincial Council has been constituted. Hon. Najeeb Abdul Majeed was appointed as Chief Minister who is the first of Muslim ethnicity to be appointed to that high office of the Eastern Provincial Council.

17. The GoSL acted with restraint to protect civilians throughout the Humanitarian Operation. A “zero civilian casualty” policy was adopted, and Security Forces made every effort to minimize collateral damage during the armed conflict. As the Humanitarian Operation progressed in the North an increasingly isolated and desperate LTTE leadership surrounded itself with a human shield comprising many thousands of civilians for self-preservation. After the clearance of the terrorists from Kilinochchi in January 2009, the GoSL made every effort to encourage the movement of civilians to government controlled areas including conveying messages through the United Nations and the International Committee of the Red Cross (ICRC). However, the LTTE forcibly prevented and killed many civilians who attempted to escape.

18. The GoSL did not, at any stage, corral the civilian population in the Wanni as alleged by some quarters. The forced movement and corralling of civilians was an act of the LTTE, which blatantly used the civilians as a human shield.

19. In order to protect civilians held by the LTTE, the GoSL identified areas of large civilian concentrations and instructed Security Forces to avoid firing into such areas. This was how the “No Fire Zone” (NFZ) came into being. The assertion that Security Forces declared areas NFZs and forced people into them is a gross distortion. A NFZ was identified to provide a reference point for Security Forces to take precautions in planning operations. These zones were readjusted having regard to the movement of civilians under LTTE compulsion. Announcements on radio and through loudspeakers, airdropped leaflets, and requests conveyed through international agencies were used to inform civilians of safe locations and encourage them to escape from the conflict area. Through an abundance of caution, Unmanned Aerial Vehicles (UAVs) were deployed over these areas to make an accurate assessment of the ground in which civilians were held. The Sri Lanka Navy established secure sea corridors for civilians escaping from the areas unlawfully occupied by the LTTE which were continuously kept under close surveillance.

20. The ICRC, which was present in the conflict zone till the end of the conflict assisting both the Government and the LTTE, commended the Navy for its work in rescuing civilians<sup>6</sup>

21. As detailed above, it is evident that the Humanitarian Operation was carried out with utmost care to safeguard civilian lives. All Security forces [Army (1997), Navy (2002) Air Force (2002)] have Directorates of Human Rights and International Humanitarian Law (IHL) established internally. Security Forces received in-depth training on HR and IHL through these directorates. Assistance for training programmes within the directorates was obtained from Government and non-governmental and international organizations such as

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<sup>6</sup> Letter from ICRC Head of Delegation Paul Castella addressed to Admiral. Wasantha Karannagoda dated 14 February 2009.  
([http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201106/SriLanka\\_ICRC\\_Feb14\\_2009.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201106/SriLanka_ICRC_Feb14_2009.pdf))

ICRC, United Nations Development Programme (UNDP), the then Ministry of Disaster Management and Human Rights (MDMHR), British Council, Human Rights Commission of Sri Lanka (HRCSL), National Institute of Education, and Centre for the Study of Human Rights at the University of Colombo and Sri Lanka Foundation Institute.

22. Training in human rights and international humanitarian law has been continuously conducted for the armed services and police.<sup>7</sup> The ICRC in Sri Lanka continued to conduct training programmes on IHL for security forces, public officials and civil society organizations.

23. Police Department has included Human Rights as a subject for all recruits at the time of their basic training. In addition in all advance training programmes for the officers in service Human Rights is taught as a subject. A Human Rights Division was established in the Police Department in 2002. Reference is made to paragraph 5 of the Concluding Observations in that regard and the above measures are highlighted to demonstrate action taken by the GoSL.

24. Monitoring of Security Forces conduct and the process of investigating alleged infringements by its personnel is an integral part of the effort to safeguard human rights. A sophisticated institutional support mechanism within the SLA exists. The SLA and the Police Department have the greatest interactions with civilians due to its ground role.

25. The GoSL notes with the satisfaction the comments of the Committee in paragraph 5 on the measures taken by the State Party to improve awareness of human rights standards among public officials and the members of the armed forces and investigations of human rights violations. The measures detailed above demonstrate the State Party's continuing focus in this area to improve awareness on human rights standards and IHL.

26. Nearly 300,000 civilians were successfully rescued from LTTE captivity during the operation. The conduct of military operations in a manner as to avoid civilian casualties in line with GoSL policy and to rescue as many civilians from a virtual hostage situation meant that the conflict continued for a greater duration.

27. Recognizing the requirement to cater to the needs of civilians caught up in the conflict, the GoSL appointed a Commissioner General of Essential Services (CGES) and also established the Consultative Committee on Humanitarian Assistance (CCHA). It is important to note the collective nature of the CCHA<sup>8</sup>, which was partnered by stakeholders, including from the international community, and decided on key issues and their implementation pertaining to the delivery of humanitarian assistance, particularly the

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<sup>7</sup> Training in human rights and international humanitarian law has been continuously conducted for the armed services and police. Some of the relevant training provided includes: Army: Dedicated IHL / HRL courses 33,251 Officers and 346 Other Ranks; Other related programmes 1,020, 10,449 Officers and 96,087 Other Ranks; c. Other seminars (ICRC/HRCSL) - 169 attended by 2,589 Officers and 13,947 Other Ranks; Navy: 658 HR training courses during 2011. 127 Officers and 18,532 Sailors have been trained; Air Force: 26 HR training courses in 2011. 219 Officers and 4,743 Other Ranks have been trained; Police: human rights training courses from 2009 -2012. 1,173 Police Officials have been trained.

<sup>8</sup> The CCHA was chaired by the then Minister of Disaster Management and Human Rights with representatives from Ministries of Defence, Nation Building, Resettlement and Disaster Relief Services, Health, Education, and Foreign Affairs. The CGES and the Government Agents of the districts of the Northern Province together with the Ambassador of the United States and President of Co-chairs to the peace process, Representatives of the EU Presidency, Ambassador to Japan, UN Resident Coordinator, Heads of UN Agencies, Heads of ICRC and ECHO were also represented. The CCHA was kept fully apprised of the humanitarian situation developing on the ground and the measures taken by the Government to provide relief on an immediate, medium and a long term basis. Based on that feedback the CCHA provided policy guidelines.



supply of food, water and medicine and the evacuation of the sick and wounded. The principal facilitators were the ICRC and the World Food Programme (WFP). The CCHA met on 28 occasions and continued until May 2009 and proved a unique example of how humanitarian coordination between government and the relevant agencies including international partners could operate in a conflict situation to ensure that humanitarian assistance needs are met.

28. The conclusion of the humanitarian operation on 19 May 2009 gave rise to several post-conflict challenges. The manner in which these challenges were met is outlined below.

### **Post-conflict developments**

29. Several significant measures were taken by the GoSL to protect the civil and political rights of those that were affected by the conflict with particular attention being paid to the Internally Displaced Persons (IDPs).

#### **1. Resettlement**

30. One of the principal challenges the GoSL faced was the resettlement of approximately 300,000 IDPs displaced by the conflict. As the LTTE had laid antipersonnel mines, antitank mines and created obstacles using different types of Improvised Explosive Devices in towns and villages as they retreated from the military, it was not feasible for civilians to immediately return to their original places of habitation after the conflict ended. The places they had been displaced from were no longer safe for human habitation. As a result, the civilians had to be looked after by the Government at newly created welfare villages while every effort was taken to demine areas in which their homes were located.

31. There were five Welfare Villages in all: four in the Vavuniya District, including Manik Farm, and one in Mannar.

32. Each Welfare Village was divided into blocks of shelters, which were provided with electricity, and each block had separate kitchens, toilets, bathing areas and child friendly spaces. Special priority was given for the public areas and recreational activities within the centres. Provision of water exceeded the standards adopted by the World Health Organization (WHO), and the sanitation facilities were also kept to a standard. Food and nutrition was a particular area of focus. During the initial stages, cooked food packets were distributed to the IDPs, but within a couple of weeks, community kitchens were set up in each residential block. Basic rations were issued free of charge, and in addition to the Government provisions, assistance was also provided by foreign Governments, non-governmental organization (NGOs), civil society organizations and the general public. Cooperative outlets and markets were established, and the IDPs too soon started individual businesses within the Villages. State sector and private sector banks established outlets inside the villages, and post offices and communication centres were also established.

33. Extensive health-care facilities and adequate medical supplies were provided in the Welfare Villages. A Directorate of IDP Healthcare was established under the Ministry of Health, and medical officers were appointed to be in charge of each Welfare Village. Other health workers, including medical officers, nurses, pharmacists and public health officials worked under their guidance. Each Welfare Village had a Primary Health Care Centre and a well equipped Referral Hospital. Between May and June 2009, the crude mortality rate fell from 0.7 per 10,000 per day to 0.5 per 10,000 per day. This is the threshold rate for South East Asia. By July 2009, it had settled at 0.15 per 10,000 per day, which is the threshold rate for Sri Lanka.

34. Special facilities for psychiatric care, including support for individuals with Post Traumatic Stress Disorder, were provided within the Welfare Villages. Psychosocial support, including counselling programmes was provided. Many efforts were taken to promote religious, spiritual and cultural activities, and places of worship such as Kovils,

Churches and Mosques were established through community consultation, and special facilities were provided for all clergy. Community centres and common areas were reserved for adults, and young adults were provided with career counselling. Vocational training centres were also established in each Welfare Village for capacity building and empowerment. IDPs were assisted in setting up home businesses. Special public administrative services were provided, including facilities to reconstruct legal documents and issue temporary Identity Cards. 'Happiness Centres' were established for children, and various activities including art, music, drama, yoga and sports were conducted. Schools were established from Grade 1 to 11 in all the Welfare Villages, and special Advanced Level classes were conducted at the Kadirgamar Village, Menik Farm.

35. In the complex emergency situation of the last phase of the conflict a large number of children among the IDPs were separated from their families. These families displaced due to the conflict have been filing tracing requests and reporting missing children to a number of competent authorities at the district as well as at the national level. In December 2009, in response to the many tracing requests received, the *Vavuniya* Government Agent, and the Probation and Child Care Commissioner (Northern Province) jointly established a Family Tracing and Reunification (FTR) unit for unaccompanied and separated children with United Nations Children's Fund (UNICEF) support. As at the first quarter of 2012, 2631 tracing applications were recorded by the Unit out of which 736 are related to children and 1895 to adults. At that juncture 139 were matched and referred to the FTR for tracing and verification and approximately 42 children had been reunified with their families. UNICEF in its Report titled "Hope and uncertainty: the vital search for missing children in Northern Sri Lanka" states that 64% of tracing requests are reported by parents as LTTE recruitment.

## 2. Demining

36. In total, mines were suspected to have been laid in more than five thousand square kilometers (5000 km<sup>2</sup>) of land. Mine action activities are implemented by the GoSL through the Sri Lanka National Mine Action Centre (SLNMAC) that has been setup at the Ministry of Economic Development (MED) to coordinate and fast track the de-mining process. The National Steering Committee for Mine Action (NSCMA) acts as the decision making body on mine action through SLNMAC in collaboration with respective institutions and agents.

37. The demining programme was carefully conceived, and priority areas were chosen to maximize efficiency and enable the speedy return of the internally displaced. The first priority was to demine the towns and villages. The second priority was to demine the plantation areas and paddy fields. The last priority was accorded to the forested areas. Approximately 94% of the areas identified for demining have been cleared. Work only continues in areas where there was a very high concentration of mines. The extent of the problem the Government faced in this regard can be clearly seen from the sheer number of mines and other devices unearthed and neutralized during the demining process. Another less than 116 square kilometers of territory remains to be cleared. Priority has been given to clearing residential areas in villages identified for resettlement and livelihood purposes. Demining was principally undertaken by the Sri Lanka Army approximately 75% together with support from international and local partners<sup>9</sup> including certification of de-mined areas being undertaken by the UN.

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<sup>9</sup> The de-mining operations, which is a high cost, high risk, time consuming and painstaking process, at the ground level is led by the Humanitarian De-mining Unit (HDU) of the Sri Lanka Army and supported by local and foreign mine action operators including i.e. The HALO Trust, Danish Demining Group, Fondation Suisse de Déminage, MAG(Mines Advisory Group), Sarvatra, Horizon, Milinda Moragoda Institute for Peoples' Empowerment and Delvon Assistance for Social Harmony.

38. Reconstruction was expedited in parallel with the demining efforts. Soon after the Humanitarian Operation ended, His Excellency the President appointed a Presidential Task Force for Reconstruction and Resettlement. This Task Force implemented a 180-day crash programme for resettlement. In addition to demining, reconstruction activities including the restoration of infrastructure, the renovation of roads and utilities, improvements to irrigation and rebuilding of houses were carried out. The Government spent a considerable sum of money on this effort, which was instrumental in enabling a large number of displaced civilians to return to their homes within six months of the end of the conflict.

39. Considering the challenges outlined above it is significant that, by the end of September 2012, the Government was able to close down Menik Farm, the last remaining IDP Welfare Camp. The last batch of the IDPs in Menik Farm was resettled in their villages in Mulaitivu on 24 September 2012. Therefore, just three years after the end of the conflict, the GoSL had successfully resettled a total of 242,449 IDPs. A further 28,398 have chosen to live with host families in various parts of the country. At the conclusion of resettlement, 7,264 IDPs had left the camps on various grounds and did not return while a further 1,380 sought admission to hospitals. 803 IDPs died due to natural causes during the time they were awaiting to be resettled.

40. While every effort is being made to resettle persons in their original habitat, in instances which this is not possible, they will be given alternate land. This process would have been executed much faster if not for the extensive mining of the area by the LTTE. Arrangements have also been made to resettle IDPs living with host families with their consent and such a batch, consisting of approximately 200 families have been resettled in Mulaitivu, in their original habitats, in September 2012.

41. The resettlement process has been voluntary, involving informed choice of the displaced family/person through facilitation of “go and see visits” prior to resettlement. Assistance for construction of housing and livelihood development is also being provided. An initiative by the Government in constructing over 78,000 new houses in the North and East has been launched, including houses constructed with donor assistance. As at July 2012, 27,983 permanent houses have been constructed.

### **3. Rehabilitation and reintegration**

42. Remarkable progress has also been made with regard to the rehabilitation and reintegration of ex-combatants. The Bureau of the Commissioner General of Rehabilitation was established to oversee the rehabilitation and reintegration of nearly 12,000 ex-LTTE combatants.

43. A 'six plus one' rehabilitation process model was adopted, which rested on six pillars. These were Spiritual, Religious and Cultural Activities, Vocational & Livelihood activities, Psychological & Creative Therapies, Sports & Extracurricular Activities, Socio-cultural Activities and Education. Community awareness programmes were also conducted, in which efforts were taken to sensitize the public to the needs of the beneficiaries of the rehabilitation programme.

44. A database of all the cadres in detention was created and released. Information was made available on a round-the-clock basis to the spouses, children, parents and siblings of the detainees through the Terrorist Investigation Division (TID) in Colombo, and TID units in Vavuniya and Galle. Various agencies and organisations including the ICRC and the HRCSL were given free access to the detention centres, as were several diplomats and foreign dignitaries who visited Sri Lanka from time to time. It should also be stressed that relatives of the detainees have been given access to places of detention and to the lawyers who represent the detainees in their legal affairs. The cadres currently in detention are mainly detained at the TID detention centre at Boossa, while the others are in judicial custody at the other Police divisions where they are being further investigated. These

facilities are of a much higher standard than the facilities given to ordinary criminals in Sri Lankan prisons. The inmates have access to psychological counselling and other services not dissimilar to what was provided to the cadres under rehabilitation. Opportunities to engage in spiritual activities and participate in cultural activities such as drama and music, has also been provided.

45. With regard to the rehabilitation and reintegration of ex-combatants, from approximately 12,000 persons, as of 1 October 2012, 777 beneficiaries are undergoing rehabilitation, and 278 are under judicially mandated custody (remand). As of 1 October 2012, 10,985 persons, which included 594 LTTE child soldiers have been rehabilitated and reintegrated into society. The GoSL adhered to a policy of not subjecting children to legal proceedings based on the rationale that they were victims and not perpetrators.<sup>10</sup> It is to be noted that the child soldiers released were afforded the opportunity of a formal education and restored to their families. 212 youth who were previously pursuing tertiary education were re-inducted into the university system to follow their undergraduate studies. Elderly persons were also released without being subject to any rehabilitative or legal processes. The rehabilitation programmes are carried out with the assistance of UNICEF, International Organizations for Migration (IOM), National Apprentice and Vocational Training Authority (NAIVTA) and some NGOs.

46. Particular attention was given to the 594 child soldiers who surrendered.<sup>11</sup> A special rehabilitation programme was organised with assistance from UNICEF. These programmes were carried out at the Child Protection Centre in Poonthottam and the Hindu College in Ratmalana. Great care was taken to providing counselling for the child beneficiaries of the rehabilitation programme. Special spiritual development activities and positive values cultivation programmes were conducted for them. Formal education was provided, with classes being conducted for more than 200 students between Grade 8 and Grade 11, and 65 students in the Advanced Level sections. Several 6 month long vocational training programmes were also conducted in subjects including information technology, aesthetics, carpentry, masonry, beauty culture etc. The child beneficiaries were reunited with their families within one year, and 74 came back to Hindu College in Ratmalana to continue the education programmes they had been following.

47. The offer of participating in a programme of rehabilitation is available to a LTTE suspect, in detention or subject to legal process. The ambit of the programme has been further extended with the induction of rehabilitated ex-combatants in to the Civil Defence Force (200 have been recruited from Kilinochchi) to participate in development programmes. This programme has been successful to the point that ex-combatants have been included in the national sports pools. Financial provision has also been made as a start up facility in respect of each beneficiary released.

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<sup>10</sup> Sri Lanka has now been delisted by the UN Secretary-General from Annex II of Security Council resolution 1612 (2005) on Children and Armed Conflict. This is a result of the concerted efforts taken by the GoSL to investigate several cases on child recruitment and comply with the recommendations of the Security Council Working Group on Children and Armed Conflict and those of the UNSG's Special Representative.

<sup>11</sup> The President of the UNICEF Executive Board Ambassador Kamau of Kenya who with the members, upon concluding an assessment Mission to Sri Lanka in early 2012 stated that "What was amazing to some of us was that during that civil war, the Government of Sri Lanka remained committed and made great efforts at continuing to support children.... They still sent money for vaccinations, for support to basic education and so forth, which was really a remarkable thing," "If you look at the basic indicators of Sri Lanka today, despite the – as I said – very difficult history of the last 30-odd years, Sri Lanka has clearly some of the best child health indicators in their region, and this is a remarkable achievement. There are lessons to be learnt here."

48. Attention was paid to reunification of families, with married ex-combatants being given the opportunity to re-join their spouses, children and parents at special rehabilitation centres called 'Peace Villages'. This enabled many beneficiaries to continue their rehabilitation without any disruption to their family life. A special Protective Accommodation and Rehabilitation Centre were established at Kaithady in Jaffna to cater to the reunification of married beneficiaries as well.

49. A special programme for “catch up education” was provided in collaboration with the Education Department for ex-combatants who were young adults. They were provided with the opportunity to sit for the two main public examinations providing them with qualifications which would assist in gaining employment and University entrance. Under this programme, 361 students sat for the General Certificate of Education, Advanced Level examination in 2010 with 222 of these students successfully passing. In 2011, 304 students sat for the Advanced Level examination and 43 became eligible for university admission. 166 students sat for the General Certificate of Education Ordinary Level examination in 2010 with 91 passing the examination and 77 students sat for the same exam in 2011. 54 rehabilitated ex-LTTE combatants have sat for the GCE A/L Examination in 2012 in Maradamadu, Welikanda and Kandakadu rehabilitation centres.

50. Forty six (46) different vocational training courses were also provided to the beneficiaries of the rehabilitation programme. The courses involved many sectors, including agriculture, industry, services and entrepreneurship. Substantial opportunities were provided for training information technology, with assistance from private sector implementation partners, and a computer lab was set up with the capacity to train approximately 100 persons at a given time. A number of programmes were created to support beneficiaries who wished to set up their own businesses, with courses being conducted on self-employment, entrepreneurship and micro enterprise development. A special loan scheme for self-employment was also launched and arrangements have been made with Foreign Employment Bureau and few other Recruiting Agencies to obtain Foreign Employment opportunities for the reintegrated ex-combatants.

51. The reintegration of the rehabilitees in to society takes place after trained counsellors assess their preparedness to adapt to society and resume normal lives.

52. The Government treated ex-combatants humanely and respected their Civil and Political Rights. This is despite the fact that most of these cadres were involved in attacks against Armed Forces personnel in the battlefield and participated in conducting atrocities against civilians. Due to the Government's deep and abiding commitment to reconciliation and peace, the vast majority of cadres were rehabilitated and released to society in just two years.

53. These good intentions have also extended to the LTTE cadres who were arrested and detained at various stages for their involvement in terrorist activities. Out of the approximately 4,500 cadres who were arrested and detained since January 2006, more than 2,000 were released after ascertaining that their involvement in LTTE activities was at a very low level. A further 1,592 detainees were sent for rehabilitation as an alternative to prosecution, after being investigated and after preliminary court hearings. 40 suspected cadres have been acquitted by the Courts; 71 are currently in prison after having been found guilty as charged. All remaining cadres are either still under investigation or are being prosecuted under the law. Of these suspects, 268 are in remand custody pending further investigations and indictment. A further 365 are in judicial custody, and are awaiting trial after having been indicted. To speed up due process for these individuals and clear the backlog, a special High Court has been established in *Mannar*, and the courts in *Vavuniya* and *Anuradhapura* have also been allotted their cases.

#### **4. Restoration of civil administration in the North and East**

54. A critical aspect to restoring normalcy was the holding of elections in the North and East soon after the areas were brought under the control of the Government. Provincial Council elections were held in the Eastern Province even before the Humanitarian Operation ended in the North, and Local Authority elections held for the Jaffna Municipal Council and Vavuniya Urban Council as early as August 2009. Presidential and General Elections were held island wide in 2010. Local authority elections, held in 2011, saw elections held throughout the country including in the North and East with the exception of two (02) local authorities in the Mullaitivu district in the North, namely Puthukudiruppu and Maritimpattu. Local Authorities elections in these two areas scheduled for 24th March 2012 were postponed due to an Interim Order issued by Court, as two petitions are pending before the Court of Appeal.

55. For the first time in decades, people in areas previously dominated by the LTTE had the opportunity to participate in the democratic process without duress.

56. The flourishing political plurality in these areas can be seen by the triumph of an Opposition party in the North, whereas the main Government party emerged triumphant in the East and came second in the North during the General Election held in 2010. The emergence of a large number of independent political parties during that election also demonstrates that electoral politics in these areas is regaining vitality after the defeat of the LTTE. Another significant development is that former LTTE combatants are now in active politics. The LTTE's one time Eastern Province Commander is a junior Cabinet Minister and a former LTTE child soldier, was the Chief Minister of the Eastern Province. A number of former LTTE cadres have also become members of local government bodies.

57. Civil administration has been established in the North and East after Local Authorities elections were held and local bodies elected. Provincial Council elections in the North would be scheduled in terms of the Provincial Councils Elections Act. Provincial wide governance for the Northern Province poses its own unique challenges as the people in the Province have not experienced elected democratic provincial representation for several years. In the interim, the present administrative arrangement under the Governor has been restored and governance structures that transcend purely local government are being gradually strengthened.

58. The civil administration system in the North and East is now fully functional with Government officials at the District, Divisional and grassroots level being appointed and discharging their functions.

#### **5. Demilitarization of the North and East**

59. With the termination of military operations and the gradual restoration of normality, the strength of the military in the North has been reduced considerably. The present level in the Jaffna Peninsula has been reduced to approximately 15,000. Further rationalization of this presence would be considered in line with national security interests. It must be noted that the role of the military in the North today is confined solely to security related matters.

60. The former High Security Zones (HSZs) have ceased to exist. The Palaly cantonment is now the only area in which some security restrictions remain, but even within the Cantonment, civilians have unrestricted access to the airport at Palaly and the Kankesanthurai harbour.

61. While it is true that there are still some civilian properties included in the Cantonment, it must be stressed that civilians have not occupied these properties for the last twenty to twenty-five years. The Government has taken measures to pay compensation to the owners of these properties and to provide alternate land to them. It should also be noted that lands that had been forcefully taken from the people and occupied by the LTTE for

many years have also been released to their legal owners. The former HSZ in the Eastern Province located in the Sampur area from 2007 has been reduced in extent by 65% and declared a Licensed Zone under the Board of Investment. The IDPs from this area who are to be resettled will be granted alternative land or compensation.

62. The military is no longer involved in civil administration in the North and East and the Police Department now continues its responsibility of maintaining law and order. In this context, 11 new Police Stations have been established in the North since 2009. 1,216 Tamil officers have been recruited; 789 (2005 to 2011) and 427 (Jan 2012 to date).<sup>12</sup> Tamil language training is also being provided to additional numbers of Police personnel. 3,424 Police Officials have been given Tamil language training in the period 2009 – 2012 and 409 Police Officials have been given English language training during this same period. This is in line with the GoSL's overall policy of promoting trilingual competency among public officers including military and the police.<sup>13</sup> It may be noted that all public officials recruited after May 2007 are now required to be competent in both national languages Sinhala and Tamil.

63. As at July 2012, all schools in the Northern Province which were being used by the Sri Lanka military have been released to civilian use. This is indicative of the GoSL's commitment to demilitarization of the region.

## 6. Lapsing of Emergency Regulations

64. Another significant development is the lapsing of the Emergency Regulations promulgated under the Public Security Ordinance in 2005.<sup>14</sup> As early as May 2010, one year after the end of the terrorist conflict, the GoSL reduced the scope of the Emergency Regulations in keeping with the improving ground situation.

65. By August 2011, the situation had improved to an extent that permitted the lifting of the Emergency altogether. Certain legal and regulatory arrangements were made to cater for any exigencies that could arise and these instruments are now in place within the framework of the Prevention of Terrorism Act, such as the proscription of the LTTE and the Tamil Rehabilitation Organization (TRO), a framework for the continued holding of detainees and remandees and the rehabilitation of surrendees.

66. The rollback and eventual abolition of the Emergency Regulations in August 2011 as the security situation improved in the country, demonstrated Sri Lanka's commitment for genuine aspiration to ensure that the normal law prevails in the post conflict phase.

67. States of Emergency, which had been in existence from time to time in Sri Lanka, stemmed from the terrorist conflict in the North and East and the continuous damage thereby to life and property caused in all parts of the country. A State of Emergency, in Sri Lanka, is promulgated via the Emergency Regulations under the Public Security Ordinance No 25 of 1947, as amended, in the interests of public security and the preservation of public

<sup>12</sup> In the period from 2005 to 2008 recruitment of Tamil officers to the Police was 396, from 2009 to 2011 it was 393 and in the first six months of 2012 it rose to 427. The total number of Tamil speaking police officers at present is 2,582 (of whom 2,181 are deployed in the North and East). In addition, several more persons with competence in Tamil (including ex-combatants) are being inducted into the Civil Defence Force which is a localized security force comprising personnel from within the District. The Army has recruited Tamil personnel as follows: 3 officers and 86 other ranks to its regular force and 1 officer and 27 other ranks into its volunteer force.

<sup>13</sup> The Military has also received language training as follows: Army: Full time Tamil language training courses for 15 officers and 301 Other Ranks; Navy: Full time Tamil language training course for 8 officers and 151 Sailors; Air Force: Full time Tamil language training courses for 15 officers and 141 other ranks; and General: Tamil language package introduced into the tri-forces and police training.

<sup>14</sup> The Emergency was re-imposed after the assassination of the then Foreign Minister in August 2005.

order, and the suppression of mutiny, riot or civil commotion or for the maintenance of supplies and services essential to the life of the community. Great care was taken by the GoSL to ensure the protection of the rights of the people during periods in which states of emergency were declared in the interest of national security. The extensive measures taken by Sri Lanka to ensure the protection of civil and political rights of its citizens in keeping with its obligations under article 4(1) of the Covenant is dealt with in detail in GoSL's response to Recommendation 2 of the Concluding Observations in this Report (paragraphs 147 - 174).

#### **7. Socio-economic developments in the North and East**

68. The Government is also determined to accelerate the economic, social and infrastructural developments in areas which were affected by the conflict and in that context has made substantial investments in the development of the North and East. The Neganahira Navodaya (Eastern Reawakening) programme has resulted in expenditure totaling Rs.142 billion up to 2011 with a further Rs.25 billion estimated for 2012. The Uthuru Wasanthaya (Northern Spring) programme for the North has seen a commitment of Rs.117 billion up to 2011 with a further 64 billion committed for 2012. In all, investment in the Northern Province under the four year investment plan will total nearly Rs.300 billion. This is in line with national policy on social protection that views welfare expenditure as a means to draw vulnerable segments into the national developmental process. The government recognizes the need for social protection support for most vulnerable segments of the society. As a result, the government continues all its social welfare programmes including *Samurdhi*<sup>15</sup>, fertilizer subsidy,<sup>16</sup> electricity and fuel subsidy programme. By providing a large amount of government welfare support to vulnerable groups, it is expected to build up the assets base of receiving families. In the long term, the government expects to change the dependency attitude of vulnerable groups from passive recipients of social support to active contributors to the economy. Therefore, it is expected that a significant portion of welfare support funds will be used for asset creation. Empowering women, creating opportunities for children, sharing the experience of elders and mainstreaming the differently-abled people are priority areas for government intervention made in social protection programmes. In 2011, the Government has spent Rs.98 billion towards upgrading the living standards of people.

69. The level of economic growth in the Northern Province in the areas is a clear indication of developments taking place. Following on a growth rate of 22% in 2010 the Northern Province in 2011 once again recorded the highest growth rate among all provinces of 27.1 % and continues to increase its share in the national economy driven by an expansion in agriculture, fishing, constructions, transportation and financial services. The Government is working in close cooperation with UN agencies, and international and local NGOs in developing and delivering the reconstruction programmes in the Northern and Eastern Provinces.

#### **8. LLRC and reconciliation process**

70. His Excellency President Mahinda Rajapaksa appointed the Lessons Learnt and Reconciliation Commission (LLRC) in May 2010 in order to strengthen the national reconciliation process and ensure the dividends of peace to all Sri Lankans.

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<sup>15</sup> The principal poverty alleviation programme which saw a commitment of Rs. 9.5 billion benefiting approximately 1.6 million persons. Consistent investment in this programme has seen the poverty headcount ratio drop from 22% in 2002 to 8.9% by 2009/10.

<sup>16</sup> In 2011 the Government spent approximately 42 billion on fertilizer subsidies – the biggest single item of welfare expenditure. The subsidy has important implications for agriculture, livelihoods and food security.



71. The LLRC began sittings on August 11, 2010 and any person or organization was free to give evidence before the Commission. All sittings were open to members of the public and the Commission also visited areas outside of Colombo to facilitate the general public living in those areas to give evidence. The public were afforded the option of giving evidence in camera.

72. The Commission also decided to consult and hear the views of persons who would have personal experience and knowledge on different aspects of matters related to its mandate and invitations were also extended to local NGOs as well as NGOs based outside Sri Lanka, that have produced reports on the situation in Sri Lanka of relevance to the Commission's mandate. However, despite these invitations being extended in good faith, seeking a constructive dialogue on what the Commission considered as issues of common concern falling under the purview of its mandate, they were not accepted by three organizations i.e. Amnesty International, Human Rights Watch and International Crisis Group. As the public sittings progressed and consequent to the wide media coverage, there was a keen response from members of the public to express their views before the Commission<sup>17</sup>.

73. The Commission handed over its Report to His Excellency President Rajapaksa in November 2011. The Report was submitted to Parliament and made public on 16th December 2011.

74. The Report contains detailed annexes, compiled following interviews with over 1,000 persons who gave evidence before the Commission, and over 5,000 submissions which had been received.

75. The Government on its own accord has been pursuing action on many areas prior to the release of the LLRC Report, resulting in the convergence of policies with regard to the implementation of the recommendations. Significant progress has been made with regard to resettlement of IDPs, infrastructure development projects in conflict affected areas, rehabilitation and reintegration of ex-combatants and initiating a process to address reconciliation issues inter alia through a political process. The GoSL remains committed to pursuing the implementation of the recommendations of its own domestic mechanism the LLRC.

76. The Cabinet of Ministers in May 2012 decided that a Task Force headed by the Secretary to the President would monitor the implementation of the recommendations of the LLRC.<sup>18</sup> In July a matrix containing the National Plan of Action to implement the LLRC recommendations developed by the Task Force and presented to Cabinet was approved setting out the main focus areas for implementation<sup>19</sup>. The main focus areas are IHL Issues, Human Rights, Land Return and Resettlement, Restitution/Compensatory Relief and Reconciliation. The Task Force has indentified a corresponding activity, an

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<sup>17</sup> Chapter 1 paragraph 1.12 of the LLRC Report

<sup>18</sup> The LLRC has made several core recommendations amongst a larger number of 285 "Observations and Recommendations", which have been broadly classified into four main groups, namely, (a) recommendations relating to National Policy; (b). Final phase of the conflict; (c) recommendations related to Human Rights and National Security concerns; (d) recommendations related to re-settlement and development. The recommendations relating to re-settlement and development have been broken up into issues pertaining to Reconciliation; Language policy; Education; Religion; Arts and culture; People to people contact; Vulnerable groups; Assistance to re-settled families; Land issues; Refugees from India; Muslim IDPs; Sinhala IDPs ; Long term IDPs; Compensation and monetary relief ; Re-settlement assistance; and Tamils of recent Indian origin

<sup>19</sup> The action plan matrix is now available at [www.priu.gov.lk](http://www.priu.gov.lk).

implementing agency, a key performance indicator and a time frame in respect of each recommendation.<sup>20</sup>

77. Special emphasis has been given to regulating the activities regarding the management of land in the Northern and Eastern Provinces. The Ministry of Land and Land Development has decided to resolve the land disputes in these areas by implementing a special programme of work. Specific Cabinet approval has been received for policy proposals relating to the matter. Amongst the steps being taken, directions have been given to temporarily suspend the distribution of lands. Priority is to be given to those persons who have been displaced or fled from their natural locales or lost their lands.<sup>21</sup>

78. An amendment to the Prescription Ordinance is presently being considered whereby displaced or disadvantaged owners of land will be exempted from the rules of prescription during a period of 30 years, during which the armed conflict took place, so as to enable them to defeat any adverse claims based on the running of time.

79. With regard to matters of accountability, the LLRC report clearly states, that protection of civilian life was a key factor in the formulation of policy for carrying out military operations and the deliberate targeting of civilians formed no part of this strategy<sup>22</sup>.

80. The Government on its own accord has already carried out a series of measures including a comprehensive census in the Northern Province which will enable firm and verifiable conclusions to be arrived at on issues involving accountability, without any element of conjecture or speculation. The Government has asserted clearly on many occasions that, if reliable evidence is available in respect of any contravention of the law, the domestic legal process will be set in motion.

81. As no comprehensive census had been carried out in the Northern Province since 1981, the Department of Census and Statistics was charged with the task of making an Enumeration of Vital Events (EVE) in the Northern Province which was completed in 2011<sup>23</sup>. The main objective of the EVE 2011 was to provide the Government with important information concerning the population and vital events in the Northern Province which were not recorded since 1981 due to acts of terrorism prevalent in the Province for 3 decades. It is to be noted that this enumeration was conducted by Tamil Government officers mostly school teachers serving in the Northern Province. While critical for socio-economic and development planning, the enumeration, followed by an Island-wide census in 2012, would provide an accurate picture of patterns of deaths, outward migration within and outside the country, caused by the conflict and other reasons. A comparison of the population data from the enumeration and from the island wide census will enable the GoSL to gain an understanding the causes of deaths as a result of the conflict. Causes could include LTTE cadres killed in action, LTTE cadres and civilians who escaped the conflict and migrated to other parts of the country/or overseas, civilians likely to have been killed in

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<sup>20</sup> The Task Force has identified the recommendations that have actually been implemented and those in which action is required to be taken. Following the approval of the Cabinet the Task Force will discuss the process of implementation with key government agencies, and all stake holders. A mechanism will be set up for the supervision of the implementation of the recommendations and progress reported to the Cabinet.

<sup>21</sup> It is proposed to set in place mediation boards in terms of Mediation (Special Provisions) Law to resolve disputes between owners who have paper title and have been displaced and those of them who are in unlawful occupation as an alternate dispute resolution mechanism.

<sup>22</sup> Chapter IV Section III paragraph 4.263 of the LLRC Report (<http://slembassyusa.org/downloads/LLRC-REPORT.pdf>).

<sup>23</sup> Available at [http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011\\_FinalReport.pdf](http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011_FinalReport.pdf) (last accessed 12 July 2012).

the crossfire, civilians killed by the LTTE whilst escaping from their control, false reporting and deaths reported but not occurring during the period of the humanitarian operation.

82. Additionally, the Sri Lanka Army has commenced investigations, firstly, by appointing a Board of Inquiry to study the LLRC recommendations and formulate a viable action plan to implement the recommendations that are relevant to the Army and, secondly, a Court of Inquiry has been appointed to investigate allegations of civilian casualties and the Channel 4 story, irrespective of the fact whether the video footage was genuine or not. The Sri Lanka Navy has also initiated similar measures. These boards have commenced work and several witnesses have testified.

83. With regard to the cases relating to 17 aid workers in Muthur (Action Contre La Faim) and the 5 students who met with their deaths in Trincomalee, the cases were referred to the Attorney-General with a view to ascertaining whether a prima facie case exists to launch prosecutions. The Attorney-General has advised the Inspector-General of Police (IGP) to conduct further investigations.<sup>24</sup> Steps have also been taken by the Attorney General's Department to peruse the material placed before the LLRC to ascertain whether it would be possible to impute liability so that offenders could be identified and prosecuted. It is expected to finalise both these matters where it would be possible to arrive at a conclusion whether the available material warrants a criminal prosecution and whether there is sufficient evidence to establish the identity of the offenders. If adequate evidence is disclosed by the investigations, filing of indictment is possible within one month thereafter.

#### **9. Parliamentary Select Committee**

84. A central feature of the Government's approach to evolving a consensus formula was the establishment of a Parliamentary Select Committee (PSC), aimed at achieving multi party consensus in respect of constitutional changes required for a sustainable political engagement. The nominations for the PSC from the opposition political parties are awaited<sup>25</sup>. Parallel with this multi-party mechanism, the Government is engaged in bilateral discussions with Tamil political parties as well as Muslim representation. Mindful of the fact that all previous attempts at evolving a constitutional formula failed due to the lack of consensus, the GoSL remains optimistic that the PSC would help achieve the required consensus, given its inclusivity, transparency, and commitment to democratic ideals.

#### **10. Other measures to strengthen reconciliation**

85. In order to address the language issue, the Government has announced its Trilingual Language Policy in January 2012. As a component of the reconciliation process, and taking into account the important focus of the LLRC recommendations in this regard Tamil speaking police officers have been deployed in the country including the North and East. Civil Service in the North and East is largely represented by the Tamil and Muslim communities.

#### **National Action Plan on Promotion and Protection of Human Rights**

86. Domestically very specific measures have been adopted by the Government to safeguard human rights. Subsequent to a commitment made by the Government at the first

<sup>24</sup> For the purpose of facilitating necessary further investigations, the material collected by and the recommendations made by the Commission of Inquiry to investigate and inquire into serious violations of Human Rights (Udalagama Commission), in relation to these two cases, has been submitted to the Inspector-General.

<sup>25</sup> The motion was adopted by Parliament and Government has already nominated its members to the PSC and is awaiting the nomination of members representing the opposition, after which its sittings can commence.

cycle of the UPR process in 2008, a National Human Rights Action Plan for Promotion and Protection of Human Rights (NHRAP) was developed through a consultative process involving civil society, the UN and the Government.

87. The Action Plan presents a structured framework to monitor the implementation of existing laws, policies and practices and enhance a better understanding and respect of human rights. The three broad objectives of the NHRAP are the achievement of genuine and substantive improvements in the observance of human rights, the promotion of greater awareness of human rights, both in the general public and in specific sectors, and the promotion of coordination of human rights activities among diverse government agencies and non-governmental organizations. The NHRAP received Cabinet approval in December 2011.

88. The implementation stage of the Action Plan, including monitoring and evaluation, is currently underway with the initial evaluation scheduled for December 2012/January 2013. The NHRAP addresses 08 areas, viz, Civil and Political Rights (CPR), Economic, Social, and Cultural rights, children's rights, labour rights, migrant worker rights, and the prevention of torture, women's rights and the rights of IDPs. An inter-ministerial committee on human rights has been established that will oversee its implementation and action is being taken to act upon other identified initiatives in keeping with the stipulated time frames. At the operational level, a body of senior officials of key institutions has been charged with overseeing implementation in line with their respective mandates and a dedicated unit has been established to support the various oversight mechanisms.

89. Examples of implementation of significant activities include the preparation of draft legislation on occupational safety, health and welfare at work by the Ministry of Labour and Labour Relations (Labour Rights), directives issued by the Police Department to ensure physical safety of persons taken into custody and the provision of access to legal counsel as of right (Prevention of Torture), the adoption and implementation of a national Trilingual policy as well as the enhancement of scope and reach of National Vocational Qualification (NVQ) by the Tertiary and Vocational Education Commission (Economic Social and Cultural Rights), accelerated demining and awareness raising among IDPs of risks due to mines and Unexploded Ordnance (UXO) (Rights of IDPs), implementation of the national action plan supporting the Prevention of Domestic Violence Act of 2005 (Rights of Women), strengthening capacity to support Child Helpline (Rights of Children), establishment by the Sri Lanka Police Department of a special unit to combat human smuggling and trafficking (Rights of Migrant Workers), completion of review and improvement of training syllabus and period of training for police officers.

#### **Legislative Measures to Strengthen Civil and Political Rights**

90. In 2007, Parliament enacted an Act to give Effect to the International Covenant on Civil and Political Rights (ICCPR) relating to Human Rights which has not been given recognition through legislative measures and to provide for matters connected thereto or incidental thereto, Act No. 56 of 2007. (ICCPR Act)

#### **The ICCPR Act No. 56 of 2007**

91. The Act in the preamble recognizes that a “substantial part of the civil and political rights referred to in that Covenant have been given legislative recognition in the Constitution of Sri Lanka, as well as in other legislation...”. The objective of the Act is stipulated to be to “...enact appropriate legislation to give effect to those civil and political rights referred to in the aforesaid Covenant, for which no adequate legislative recognition has yet been granted.”

92. The ICCPR Act gives effect to, *inter alia*, corresponding Articles 14, 16, 20 and 24 of the ICCPR.

93. The legislation performs a dual function, that of enhancement of rights of individuals covered thereunder, and the grant of relief in a just and equitable manner. Further the propagation of war or advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and attempting to, aiding or abetting or threatening to commit such acts are offences punishable under the Act.

94. The Act recognizes,

- (a) The right of every person to “recognition as a person before the law”.<sup>26</sup>
- (b) That alleged criminal offenders are entitled to the following:
  - “the right to be afforded an opportunity to be tried in his presence”,<sup>27</sup>
  - “to defend himself in person or through legal assistance of his own choosing and where he does not have such assistance to be informed of such right”,<sup>28</sup>
  - “to have legal assistance assigned to him in appropriate cases where the interests of justice so requires and without any payment by him, where he does not have sufficient means to pay for such assistance”,<sup>29</sup>
  - “to examine or to have examined the witnesses against him and to obtain the attendance of witnesses on his behalf, under the same conditions as witnesses called against him”<sup>30</sup>
  - “to have the assistance of an interpreter where such person cannot understand or speak the language in which the trial is being conducted.”<sup>31</sup>
  - “not to be compelled to testify against himself or to confess guilt.”<sup>32</sup>
- (c) The right of every convicted person to “appeal to a higher court against such conviction and any sentence imposed”.<sup>33</sup>
- (d) The right not to be “tried or punished for any criminal offence for which such person has already been convicted or acquitted according to law”<sup>34</sup>

95. The rights of the child are stipulated under the ICCPR Act as the right:<sup>35</sup>

- (a) To “have his or her birth registered and to have a name from his or her birth date”
- (b) To “acquire nationality”
- (c) To “be protected from malnourishment, neglect, abuse or degradation”
- (d) To “have legal assistance provided by the State at State’s expense in criminal proceedings affecting the child, if substantial injustice would otherwise result”
- (e) The Act also states that “In all matters concerning children, whether undertaken by *public or private* social welfare institutions, courts, administrative authorities

<sup>26</sup> Section 2 of the ICCPR Act

<sup>27</sup> Section 4(1) (a) of the ICPR Act.

<sup>28</sup> Section 4(1) (b) of the ICPR Act.

<sup>29</sup> Section 4(1) (c) of the ICPR Act.

<sup>30</sup> Section 4(1) (d) of the ICPR Act.

<sup>31</sup> Section 4(1) (e) of the ICPR Act.

<sup>32</sup> Section 4(1) (f) of the ICPR Act.

<sup>33</sup> Section 4(2) of the ICPR Act

<sup>34</sup> Section 4(3) of the ICPR Act

<sup>35</sup> Section 5 (a)-(d) of the ICPR Act

or legislative bodies, *the best interest of the child shall be of paramount importance.*<sup>36</sup> (Emphasis added). Thus the Act gives statutory force to the concept of the “best interests of the child” which had hitherto been developed and applied through case law. This development therefore allows the interpretations given to the “best interest” concept by the judiciary to be codified and further strengthened, in determining matters relating to children and to protect their interests to a great extent.

(f) The prohibition *inter alia* against propagation of war has been made an offence under Section 3(1) of the ICCPR Act. Accordingly, “No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

(g) The rights and opportunities of Sri Lankan citizens to take part in the conduct of public affairs, directly or through any representative, and have access to services provided by the State to the public are provided in Section 6 of the ICCPR Act.

(h) Another significant milestone in the ICCPR Act is the recognition of the jurisdiction of the High Court of Sri Lanka to enforce the human rights recognized under the Act. A person may, by way of a petition, apply to the High Court, against the infringement or imminent infringement by executive or administrative action, of any human rights stipulated above.<sup>37</sup>

(i) The petition may be filed by the person who alleges infringement or imminent infringement against himself or through another person on his behalf, within three months of the infringement or alleged infringement.<sup>38</sup>

(j) The Act provides that the High Court may also refer the matter to the HRCSL for an inquiry and report, and request the Commission to submit its report to the High Court within the time stipulated. This may be done at any stage of the proceedings.<sup>39</sup>

(k) The High Court also has the power to grant the relief prayed for in the petition or grant such relief or make such direction as it may consider just and equitable in the circumstances of the case. The Act therefore gives the High Court discretion, within the limits of the law, to give an appropriate remedy which is considered just and equitable. Sri Lanka submits that the “just and equitable jurisdiction” conferred on the High Court is a positive step towards the enforcement of the human rights recognized under the Act.

96. The entry into force of the ICCPR Act No. 56 of 2007 further protects and promotes human rights specified there under. The enactment of this legislation is a demonstration of the GOSL’s commitment to enact enabling legislation to ensure the full implementation of the ICCPR.

### **Opinion of the Supreme Court on the ICCPR Act**

97. In March 2007, the President of Sri Lanka referred two questions to the Supreme Court, the highest and final judicial body of record of the land. Article 129 of the Constitution enables the President to refer to the Supreme Court a question of law or fact that has arisen or is likely to arise, which is of such nature or of such public importance that it is expedient to obtain the opinion of the Supreme Court.

98. In that context, the President sought to obtain the opinion of the Supreme Court on whether:

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<sup>36</sup> Section 5 (2) of the ICPR Act

<sup>37</sup> Section 7 (1) of the ICPR Act

<sup>38</sup> Section 7 (2) of the ICPR Act

<sup>39</sup> Section 7 (3) of the ICPR Act

(a) The legislative provisions cited in the reference, i.e. the ICCPR Act No.56 of 2007, adhere to the general premise of the ICCPR and whether individuals within the territory of Sri Lanka derive the benefit and guarantee of rights contained in the ICCPR, through the medium of legal and constitutional processes prevailing in Sri Lanka ? and

(b) Such rights recognized in the ICCPR were justiciable through the medium of legal and constitutional process prevailing in Sri Lanka?

99. The Supreme Court, pursuant to hearings held with regard to questions (a) and (b) above, respectively expressed its opinion on 17 March 2008, as follows:<sup>40</sup>

The provisions of the Constitution, the ICCPR Act and other laws, including decisions of the Superior Courts of Sri Lanka give adequate recognition to the civil and political rights contained in the ICCPR, and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights contained in the ICCPR:

- rights recognized in the ICCPR are justiciable through the medium of the legal and constitutional processes prevailing in Sri Lanka. The Supreme Court, in a bench comprising five Supreme Court Justices, delivered the above opinion. Sri Lanka wishes to highlight the following salient observations of the Opinion of the Supreme Court;
- the Court held that, “The fundamental rights declared and recognized by the Constitution form part of the Sovereignty of the people...” as per Article 4 of the Constitution and “...have to be respected, secured, and advanced by all organs of Government...”;
- referring to the Fundamental Rights enshrined in Chapter III of the 1978 Constitution of Sri Lanka, the Court opined that, “.. the fundamental rights acquire a higher status as forming part of the Supreme Law of the land and cannot be abridged, restricted or denied except in the manner and to the extent expressly provided for in the Constitution itself”;
- in respect of the domestic application of the ICCPR, the Court held that in the past, “..the Supreme Court has in several decided cases relied on the provisions of the Covenant to give a purposive meaning to the provisions of the Constitution and other applicable law so as to ensure to the People that they have an effective remedy in respect of any alleged infringement of rights recognized by the Constitution” ;
- in this regard, the Court cited the case of *Weerawansa v. Attorney General*<sup>41</sup> where the Court had previously held that Sri Lanka is a party to the Covenant and a person deprived of liberty has a right of access to the judiciary. Thus, the Court has confirmed that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights contained in the ICCPR;
- with regard to the issue of justiciability, the Court noted that ICCPR rights are justiciable through the legal and constitutional processes prevailing in Sri Lanka.

100. In addition to ICCPR Act NO. 56 of 2007 the following legislation has also been enacted to further promote the Civil and Political Rights of the people:

- Protection of the Rights of Elders Act No. 9 of 2000 amended by Act No. 5 of 2011;
- Grant of Citizenship to Stateless Persons (Special provisions) (Amendment) No. 5 of 2009;

<sup>40</sup> S.C. Ref: No 01/2008.

<sup>41</sup> 2000 1 Sri LR page 387.

- Grant of Citizenship to Persons of Indian Origin (Amendment) No. 6 of 2009;
- Grant of Citizenship to Persons of Chinese Origin (Special Provisions) No. 38 of 2008;
- Follow-up on the “Concluding Observations of the Human Rights Committee: Sri Lanka: Sri Lanka. 01/12/2003” (CCPR/CO/79/LKA).

### **III. Follow-up to recommendations 1 to 22 contained in the concluding observations of the Committee (CCPR/CO/79/LKA)**

101. The Government of Sri Lanka draws attention of the Human Rights Committee to the Interim Responses submitted on the concluding observations of the Human Rights Committee on 24 October 2005, 16 October 2007<sup>42</sup>, 16 June 2008 and the discussions between GoSL Representatives and the Special Rapporteur for Follow-up on Concluding Observations, Sir Nigel Rodley.<sup>43</sup> It is not the intention of the GoSL to reproduce the content therein, in this report.

**Recommendation 1: The State Party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant (para. 7 of the concluding observations).**

102. It is observed that the Committee raises five specific areas of concern in this regard. These are as follows;

- “the right to life is not expressly mentioned as a fundamental right in Chapter III of the Constitution of Sri Lanka”,
- “some Convention rights are denied to non-citizens without any justification”,
- “provisions of Article 16 paragraph 1 of the Constitution permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution’s provisions relating to fundamental rights”,
- lack of “mechanism to challenge legislation incompatible with the provisions of the Covenant” and
- “limitation of one month to any challenges to the validity or legality of any “administrative or executive action jeopardizes the enforcement of human rights.”<sup>44</sup>
- The right to life is not expressly mentioned as a Fundamental Right in Chapter II of the Constitution of Sri Lanka

103. At the outset Sri Lanka wishes to draw the attention of the Committee to the fact that Sri Lanka follows the dualist approach in international law pursuant to the 1978 Constitution. Thus the Constitution, domestic legislation, subsidiary legislation, and regulations under the principal Statute, facilitate Sri Lanka’s compliance with international treaty obligations. In addition, Sri Lanka has implemented a plethora of procedures to ensure the full realization of the provisions of international Conventions, in keeping with their spirit and objectives.

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<sup>42</sup> See document CCPR/CO/79/LKA/Add.1 of 27 February 2008.

<sup>43</sup> TPN sent by the Special Rapporteur for Follow-up on Concluding Observations, Sir Nigel Rodley , on September 22, 2008.

<sup>44</sup> Paragraph 7 of the “Concluding Observations of the Human Rights Committee: Sri Lanka: Sri Lanka. 01/12/2003”, (hereinafter Concluding Observations), contained in document CCPR/CO/79/LKA dated 1st of December 2003



104. In reality, both the Legislature and the Judiciary play separate, but equally significant, roles in ensuring Sri Lanka's compliance with its international obligations. While the Legislature passes domestic legislative enactments to give effect to the provisions of international conventions, the judiciary expands the ambit and scope of such laws to ensure, in practice, the full coverage of Sri Lanka's international obligations. This dualist role ensures a comprehensive and thorough coverage of the provisions of the international Conventions to which Sri Lanka is a party.

105. This role adopted by the legislature and the judiciary provides a method of checks and balances existent since the inception of Sri Lanka's modern legal system. This maintains the integrity of Sri Lanka's Justice System and ensures the effective discharge of the responsibilities of the State.

106. The role of the judiciary in Sri Lanka should not be under-estimated, particularly with regard to the enforcement of the "right to life", a right recognized under the Universal Declaration of Human Rights and the ICCPR.

107. The Supreme Court has time and again exercised its jurisdiction, in the absence of written law, directly relying on the provisions of the ICCPR to give purposeful meaning to the provisions of the Constitution, and other applicable law, so as to ensure that the people in Sri Lanka have an effective remedy in respect of any alleged infringement of rights recognized by the Constitution.<sup>45</sup> In arriving at these determinations the Court has recognized the need to give consideration to international instruments to which Sri Lanka is a State Party and the obligations arising there under, even in instances where there is a lacuna in domestic legislation.

108. For information on the full implementation of the "right to life" and judicial interpretation there under Sri Lanka wishes to refer the Committee to the report submitted by Sri Lanka to the Committee on October 16, 2008. The material in that Report is not reproduced. However, it should be noted that by judicial determination the Supreme Court has continuously recognized the 'right to life' as a fundamental right regardless of the fact that such right is not directly given expression to in the Constitution as a fundamental right. Such determinations have been made in the cases of *Sriyani Silva (wife of deceased Jagath Kumara) v. Iddamalgoda, Officer in Charge, Police Station Payagala and others* (2003) and *Rani Fernando (wife of deceased Hewage Lal) v. Officer in Charge, Police Station, Seeduwa and others* (2004).

109. With regard to the right to life in the context on enforced and involuntary disappearances the Supreme Court in the case of *Kanapathipillai Machchavalan v OIC, Army Camp, Plantain Point, Trincomalee and Others*<sup>46</sup> held that the right not to be "disappeared" is also a part of the right to life. In this case it was held that article 13 (4) of the Constitution was violated. The Court held that:

"Article 13(4) of the Constitution does not deal directly with the right to life, but states that no person shall be punished with death or imprisonment except by an order of a competent court, made in accordance with the procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person pending investigation or trial shall not constitute punishment".

Considering the content of Article 13(4), this Court has taken the position that no person should be punished with death or imprisonment except by an order of a competent court. Further, it has been decided in *Kottabadu Durange Sriyani Silva v Chanaka Iddamalgoda*...and in *Rani Fernando's case*... that if there is no order from court, no person should be punished with death. And unless and otherwise such an order is made by a

<sup>45</sup> Supreme Court Opinion at supranote16.

<sup>46</sup> SC Appeal No90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.03.2003

competent court, any person has a right to live. Accordingly, Article 13(4) of the Constitution, has been interpreted to mean that a person has a right to live unless a competent court orders otherwise”. (Emphasis added).

110. Thus, the Sri Lankan judiciary’s active involvement in the recognition of the ‘right to life’ under the existing provisions of the Constitution, particularly in article 11 and article 13(4) of the Constitution, together with the expansive interpretation of “locus standi”, should be recognized as an expansion of the scope of the ‘right to life’, to ensure the full enjoyment of the right by the people in Sri Lanka.

111. Sri Lanka welcomes the Committee’s finding that the “Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution.” Nevertheless, Sri Lanka expresses its concern that the Committee thought it fit to express regret, “...that the right to life is not expressly mentioned as a fundamental right in Chapter III of the Constitution.”

112. In this respect Sri Lanka notes that the Covenant in article 2 (2) states:

“Where not already provided by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such laws and other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

113. Sri Lanka underscores that the necessity to ensure compliance with the Covenant exclusively through the Constitution or other explicit written domestic laws to the Committee is not a requirement under the Covenant. The Convention leaves it for the sovereign State to determine the measures, whether executive, legislative or judicial, to be adopted to ensure effective compliance. Accordingly, if a right is recognized by the judiciary and if such right is given effective implementation, then Sri Lanka is well within its obligations recognized under Article 2(2) of the Covenant, even in the absence of express legislation.

114. Sri Lanka as a State Party to the Convention, undertakes simply to, “... ensure that any person whose rights or freedoms ... recognized [under the ICCPR] ... are violated shall have an effective remedy...”. (art. 2(3) (a) of ICCPR).

115. Sri Lanka wishes to draw the attention of the Committee to the fact that there is an effective remedy for a violation to the ‘right to life’ and the right not to be arbitrarily deprived of life, which is effectively redressed by the Supreme Court of Sri Lanka.

116. In addition, the Executive may also pardon any person who may be sentenced to death. It is vital to note that even though the sentence of death is a penalty under domestic laws, there has been a de-facto moratorium on the death penalty since 1976 despite sentences being handed down for murder and drug trafficking offences by the High Court and the Supreme Court.

117. The second undertaking a State Party takes with regard to the ICCPR is to “ensure that any person claiming such remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities....” (Article 2(3) (b)) (Emphasis added)

(a) A person whose rights have been violated by virtue of executive or administrative action has the right to petition the Supreme Court under Article 17 read together with Article 126 of the Constitution. Article 118(b) of the Constitution vests the jurisdiction in the Supreme Court for the protection of fundamental rights and Article 118(a) vests jurisdiction on constitutional matters also on the Supreme Court.

(b) Article 126(1) vest in the Court an exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive

or administrative action of any fundamental right declared and recognized by the Constitution.

(c) Article 126(2) gives the right to any person who alleges an infringement or an imminent infringement to invoke the jurisdiction of the Court.

(d) The Supreme Court Rules enable any person in indigent circumstances to invoke this jurisdiction by merely addressing a letter directly to the Chief Justice and such person is then granted legal aid for the effective presentation of his case.

(e) Article 126(4) of the Constitution empowers the Court to grant just and equitable relief in respect of any alleged infringement and also to make directions.

(f) The Court has permitted public interest litigation covering matters that transcend the infringement of individual rights through the liberal interpretation and expansion of the concept of “locus standi”. Progress has also been made by the Supreme Court to bring in the principle of judicial review of administrative action by excluding any legislative ouster clauses which seek to prevent the judicial review of administrative acts, particularly where the administrative authority has acted in excess of its statutory powers. The rationale is that the legislature would never intend the application of the ouster clauses where an administrative authority acts beyond its legal limits.

(g) The above Constitutional and other provisions, and judicial activism in this area operate to ensure that a person claiming remedy for violation of a right has the right to seek a judicial remedy as stipulated under the Covenant.

118. The third undertaking under Article 2 of the Covenant is to “ensure that the competent authorities shall enforce such remedies which are granted.” The administrative authorities and executive is bound by the laws of Sri Lanka to take effective measures to enforce the judgments of the Supreme Court.

119. In conclusion, Sri Lanka is well within its responsibilities and obligations stipulated within the ICCPR, in particular Article 2 of the same, with regard to the “right to life” and the “right not to be arbitrarily deprived of life” set out in Article 6(1) of the ICCPR.

#### **Denial of Convention rights to non-citizens**

120. Sri Lanka wishes to state the following in response to the Commission’s concerns with respect to the denial of Covenant rights to non-citizens and the denial of the principle of non-discrimination to non-citizens.

121. Non-citizens enjoy extensive rights under the Sri Lankan Constitution Chapter III of the fundamental rights recognized under Articles 10-14 of the Constitution, Article 12(2) and 14(1) are applicable exclusively to Sri Lankan citizens.

122. Article 12(2) operates in order to enable preference to be given to the citizens on matters such as employment and education. Such rights are necessary in the context of Sri Lanka being a developing country with limited resources and opportunities.<sup>47</sup>

123. However, Article 12(2) is preceded by Article 12(1) which holds that “all persons are equal before the law and are entitled to equal protection of the law”. The applicability of this provision to non-citizens as well ensures the effective protection of their rights against discrimination.

124. The category of rights that are exclusively for Sri Lankan citizens are also set out in Article 14(1) (a) – (i).<sup>48</sup> Sri Lanka recalls that in a majority of the Bills of Rights or Human

<sup>47</sup> Article 12 (2) holds that “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.”

<sup>48</sup> Article 14.

Rights Legislation in different parts of the world, including those widely renowned as being extensive in their coverage, considers certain rights contained therein as a reflection of the sovereignty vested in the people, which is inherent to the people, accruing to them by virtue of their citizenship.

125. These include, inter alia, the freedoms of speech, peaceful assembly, freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise, and the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language.

126. These rights limited to citizens are not intended to be discriminatory. The requisite that foreign persons should take work permits before such persons can seek gainful employment in a foreign country is a common phenomenon in many countries. This is necessitated by underlying practicalities such as employment, market competition, economy and other factors of national interest.

127. Sri Lanka is a multi-ethnic, multi-racial and multi-religious country. The need to ensure the enjoyment and promotion of one's own culture and to use one's own language as between the different ethnic and religious groups arises from the need to ensure racial and religious harmony.

128. Thus the measures taken to limit certain rights to individuals of Sri Lankan origin should be understood in the light of wider State practice and circumstances that are unique to the multi ethnic and multi religious fabric of society.

#### **Concerns relating to the provisions of Article 16(1) of the Constitution**

129. Sri Lanka, in response to the observations of the Committee that the "provisions of Article 16 paragraph 1 of the Constitution ... permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights", states as follows:

- It is noted that the observations of the Committee is limited to a generalized statement and does not make any specific reference to any existing laws that are incompatible with the Constitution.
- The Supreme Court of Sri Lanka in the ICCPR Opinion examined the allegation that the continued validity of certain personal laws under Article 16(1) was inconsistent with the Constitution.
- The Supreme Court opined that:

"These are customary and special laws that are deeply seated in the social milieu of the country. It is to be noted that Article 27 of the Covenant makes a specific reservation that

- 
- (1) Every citizen is entitled to -
    - (a) the freedom of speech and expression including publication;
    - (b) the freedom of peaceful assembly;
    - (c) the freedom of association;
    - (d) the freedom to form and join a trade union;
    - (e) the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching;
    - (f) the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language;
    - (g) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise;
    - (h) the freedom of movement and of choosing his residence within Sri Lanka; and
    - (i) the freedom to return to Sri Lanka.

“in states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group to enjoy their own culture, to profess and practice their own religion or also use their own language”

“In our view it could not be contended that the provisions of Article 16(1) of the Constitution that only provides for the continuance in force of the already operative law could be considered to be inconsistent with the Covenant only on the ground that there are certain aspects of Personal Laws which may discriminate women. The matter of Personal Law is one of great sensitivity. The Covenant should not be considered as an instrument which warrants the amendment of such Personal Laws. If at all there should be any amendment such request should emerge from the particular sector governed by the particular Personal Law.”

130. Sri Lanka’s personal laws are enriched by history, culture and sacred beliefs of the people who are subject to such laws. Accordingly, the GoSL is of the view that any amendments to personal laws must invariably come from within those sectors. This is an essential pre-requisite to ensure compliance with such changes and to protect the rights of those persons to enjoy such rights in accordance with their religion and culture.

131. Personal and customary laws of Sri Lanka have its roots even before the British gave statutory effect to such laws by way of the Proclamation of 23rd September 1799.<sup>49</sup> Based on this proclamation the Roman-Dutch law, the Kandyan law, the Tesawalamai and the Muslim laws continued in force. The application of personal laws arises only in the context of marriage, divorce, succession and property rights. The Tesawalamai, Muslim and the Kandyan laws have now been modified and restated by legislation. Tesawalamai and Kandyan laws, to a large extent, are based on a territorial application, while Muslim law is based on the principles of the Islamic faith. These laws include the Kandyan Marriage and Divorce Act No 44 of 1952, the Kandyan Law (Declaration and Amendment) Ordinance No 39 of 1938, the Kandyan Succession Ordinance No 23 of 1917, The Tesawalamai Regulation No 5 of 1869, the Jaffna Matrimonial Rights and Inheritance Ordinance No 1 of 1911, the Muslim Marriage and Divorce Act No 13 of 1951 and the Muslim Intestate Succession Ordinance No 10 of 1931.

132. Thus Sri Lanka’s legal system is a unique blend of customary and personal laws which are constantly being reviewed, but the call for change in any laws which are seen to be discriminatory require a circumspect approach from the legislators, in the long term, out of necessity, lest the communities to which the personal and customary laws apply consider it intrusive and a violation of their community rights.

133. The minimum age for marriage which was 12 years for females (in the case of females of Burgher origin 14 years) and 16 years for males under the general law (Marriage Registration Ordinance, No.19 of 1907) and the Kandyan Marriage and Divorce Act (applicable as a personal law) was raised to 18 years in 1995 by the Marriage Registration (Amendment) Act, No. 18 of 1995 and Act, No. 19 of 1995 respectively for both females and males.

134. It was not possible to extend these reforms to those governed by the Muslim Marriage and Divorce Act, given the traditional customs and values particular to the Muslim community. However a Committee has been established chaired by a Supreme Court judge and comprising Muslim religious leaders, Muslim Scholars and eminent persons in the Muslim Community to discuss on extension of aforementioned reforms to

<sup>49</sup> Campbell v Hall [1774] 1 Cowper 204

Muslim Marriage and Divorce Act. These discussions have been conducted in a positive manner and are ongoing.

135. Under the Penal Code of Sri Lanka, the general age of consent for sexual relations was twelve years. In 1995 the Penal Code was amended to raise the age to 16 years. Sexual relations with a girl under 16 years with or without her consent would constitute statutory rape under the general criminal law of the land.

136. Regardless of the origins, race or religion, any Sri Lankan can enter into a marriage under the General Marriages Ordinance. Thus, the application of personal laws are not automatic, but a matter of choice of the individual. As recognized in Article 18 of the ICCPR.

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice and freedom, whether individually, or in community with others and in public or private, to manifest his religion or belief or worship, observance, practice and teaching.” (Emphasis added).

137. Nevertheless, developments in these areas have been forthcoming from the relevant sectors. The GoSL has sought the assistance of eminent persons in the Muslim Community who are well versed with Muslim law and the system of Quazi Courts to consider reforms to Muslim law. This Committee is headed by a sitting Supreme Court judge.

138. In July 2009 the Cabinet of Ministers of Sri Lanka approved a proposal to bring in certain reforms to the Muslim Personal laws, uplift the system of Quazi courts and enhance the knowledge of Quazis. Quazis are appointed under the Muslim Marriage and Divorce laws and the appointment is made by the Judicial Services Commission as they are deemed to be judicial officers and carry out a judicial function.

139. The GOSL through the Equal Access to Justice Project, executed by the Ministry of National Languages and Social Integration, has undertaken various initiatives to train judges of the Quazi Courts, in particular on women’s issues. The need for reforms to existing laws affecting the Muslim community in Sri Lanka is also being considered through this project with the aim of identifying practices and procedures which are gender discriminatory.

#### **Mechanisms to challenge legislation incompatible with the provisions of the Covenant**

140. Citizens are given the opportunity under Article 121(1) of the Constitution to challenge any proposed legislation at the Bill Stage for inconsistency with the Constitution. Such Petition can be filed in the Supreme Court within one (01) week of the Bill being placed on the Order Paper of Parliament. No proceedings can take place in Parliament until the Supreme Court has made a determination on the same on its constitutionality or the expiration of three weeks from the date of the Petition, whichever occurs first.

#### **Limitation of one month to any challenges to the validity or legality of any administrative or executive action**

141. As recognized by the Committee, the “Supreme Court has found that the one month rule does not apply if sufficiently compelling reasons exist” for such delay.<sup>50</sup> Case law has liberally interpreted this provision in the Supreme Court Rules so as to facilitate the access to justice. Thus in certain cases<sup>51</sup> the Supreme Court has heard petitions filed even after one month, where compliance with the rule was impossible.

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<sup>50</sup> Paragraph 7 of the Concluding Observations

<sup>51</sup> In re Perera (SC 1/90 Supreme Court Minutes 18.9.1990), Saman v Leeladasa [1989] 1 SLR 1

142. Therefore the rule is subject to the principle of *lex non cogit ad impossibilia*. It was observed by the Supreme Court in *Navasivayam v Gunawardena*<sup>52</sup> that “if a liberal construction is not adopted for petitions under Article 126 (2), the petitioner’s right to his constitutional remedy under Article 126 can turn out to be illusory”. And this approach has been consistently adopted by the Supreme Court.

143. Persons alleging actual or imminent human rights violation can also have recourse to the Human Rights Commission of Sri Lanka established under the Human Rights Commission of Sri Lanka Act No 21 of 1996. The Human Rights Commission of Sri Lanka is not constrained by a time limitation in entertaining petitions and as such can exercise its Jurisdiction even after one month of the alleged infringement.

144. In the case of rights recognized under the ICCPR Act, the petition may be filed in the High Court by the person who alleges infringement or imminent infringement against himself or through another person on his behalf, within three (3) months of the infringement or alleged infringement.

## Conclusion

145. Sri Lanka notes the Committee’s concerns that the State Party should ensure that its legislation gives full effect to the rights recognized in the Covenant. Sri Lanka is of the view that the Constitution of Sri Lanka, domestic laws, including the ICCPR Act, and other regulations and by laws, as well as judicial interpretation give effect to Sri Lanka’s obligations arising out of the Covenant.

### **Recommendation 2: The State Party should bring the provisions of Chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant**

#### **Conformity with article 4(1) of the Covenant**

146. Sri Lanka wishes to refer to the concerns of the Committee that the provisions of Article 15 of the Constitution may go beyond what is permissible under the provisions of the Covenant, in particular article 4(1) of the Covenant which stipulates,

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, State Parties may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” The declaration of a state of emergency and the promulgation of the regulation is in accordance with the Constitution of Sri Lanka and the ICCPR. Article 15 of the Constitution of Sri Lanka permits the imposition of restrictions on the fundamental rights enumerated in Articles 12, 13(1), 13(2), (5) and (6) and 14 of the Constitution. According to Article 15(7), these provisions are “subject to such restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health or morality or for the purpose of securing due recognition and respect and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society”.

147. In this respect, Sri Lanka draws the attention of the Committee to the fact that the restrictions, when applicable, apply across the board to any person, irrespective of their

<sup>52</sup> [1989] 1 SLR 394

race, color, sex, language, religion or social origin and without any discrimination against anyone on these grounds.

148. It is also noted that any derogations or disproportionate and unnecessary limitations that ensure seeking the cover of the provisions of Article 15 of the Constitution and their justifiability in a given case, can always be challenged in the Supreme Court on the test of necessity and proportionality. In the case of *Wickremabandu v Herath* (1990) 2 SLR 348, it was emphatically stated that if the Court is satisfied that restrictions are clearly unreasonable, they cannot be regarded as being within the intended scope of the power under Article 15(7). Citing the decision of *Hidramani v Ratnavel* (1971) 75 N.L.R 67, the Supreme Court in *Wickremabandu's* case went on to hold that a detention order made by the Executive can be judicially reviewed on the tests of improper purposes, unreasonableness and bad faith. In other words a petitioner seeking a judicial review of arrest and detention can demonstrate that the opinion formed by the Executive was manifestly absurd or perverse. It has to be noted that these tests are coterminous with necessity and proportionality. In fact in *Abeyasinghe v Rubesinghe* (2000) 1 SLR 314 the Supreme Court commented that necessity is inherent in Article 15(7) read with Article 155(2). The emphatic declaration that necessity and proportionality are tests subjecting derogations to its legal limits is quite explicit in the following statement of the Supreme Court in the *Abeyasinghe* case namely “the necessity requirement involves a review of whether the restrictions are proportionate to the legitimate aim pursued. ...Proportionality is, in my view, in Article 15(7) read with Article 155(2) of the Constitution. ...the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it....Thus it is patently inaccurate to assert that necessity and proportionality do not obtain in Sri Lanka as effective tools of testing derogations”.

149. It must also be added that Sri Lanka had to cope with a situation of terrorism and conflict that prevailed in the country for nearly three decades. It is in this specific context that the provisions of Article 15(7) of the Constitution, which impose restrictions in the interest of national security, had to be invoked.

#### **Limitation on the powers of the armed forces and the police**

150. As stated previously in this report in section f. titled “Lapsing of Emergency Regulations”, a significant development during the reporting period is the lapse of Emergency Regulations in August 2011. Emergency Regulations have not been re-imposed since that time.

151. However, as the reporting period covers a period in which Emergency Regulations were in operation in Sri Lanka the GoSL will detail in this section extensive measures taken by the Government to ensure the protection of civil and political rights of its citizens in keeping with its obligations under Article 4(1) of the Covenant.

152. In terms of the relevant provisions of the Emergency Regulations [Regulation 20 of the Emergency (Miscellaneous Provisions and power) Regulation 1 of 2005] members of the Armed Forces were vested with powers only to search, seize and arrest any person who is committing or has committed or whom they have reasonable ground to suspect was concerned in or was committing or have committed any offence under the Emergency Regulations.

153. Further the Sri Lanka Army had also established Human Rights cells at a Divisional Level in the Army, island wide in order to monitor and report on Human Rights Violations. Sub directorates of human rights have also been established in the Sri Lanka Navy and Air Force and a similar directorate was established in the Sri Lanka Police in 2002.

154. The President of Sri Lanka, in his capacity as Minister of Defence, also issued directions to the Armed Forces and Police as the Minister of Defence, in connection with



persons arrested and detained. In terms of these directives, these institutions are expected to respect the fundamental rights of the persons arrested and to treat such persons humanely. The Presidential directives of 7th July 2006 contain rules concerning Arrest, Detention and Interrogation.

155. The Secretary, Ministry of Defense has on 12 April 2007, re-circulated to the Commanders of the Army, Navy and Air Force as well as the Inspector General of Police, directions on protecting Fundamental Rights of Persons Arrested and/or Detained issued by H. E. the President referred to above. The re-circulated directive is accompanied by instructions from the Secretary/Defense that the Service Commanders and the IGP arrange for officers of their Forces to be fully informed about the presidential directive and to ensure its full implementation.

156. The presidential directive of 07 July 2006, instructs the Heads of the Armed Forces and the IGP on measures to be fulfilled to enable the Human Rights Commission of Sri Lanka (HRC) to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected and such persons are treated humanely. The salient features of the directive include inter alia the following:

(a) That every member of the Armed Forces and Police should assist the HRCSL by ensuring that human rights are respected;

(b) That no person shall be arrested or detained under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law and by following proper procedure and by a person who is authorised by law to make such an arrest or order such detention;

(c) That the person making the arrest or detention should identify himself by name and rank, to the person or relative or friend of the person to be arrested. The person to be arrested should be informed of the reason for the arrest. All details of the arrest should be documented in the manner specified by the Ministry of Defence. The person being arrested should be allowed to make contact with family or friends to inform them of their whereabouts;

(d) That when a child under 18 years or a woman is being arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning. As far as possible, any such child or woman arrested or detained should be placed in the custody of a Women's Unit of the Armed Forces or Police or in the custody of another woman military or police officer;

(e) That the person arrested or detained should be allowed to make a statement in the language of his choice and then asked to sign the statement. If he wishes to make a statement in his own handwriting it should be permitted;

(f) Those members of the HRC or anyone authorised by it must be given access to the arrested or detained person and should be permitted to enter at any time, any place of detention, police station or any other place in which such a person is confined. Further, the HRC must be informed within 48 hours of any arrest or detention and the place the person is being detained;

(g) The respective Heads of the Security Forces and the IGP have already commenced programmes of training for officers and other ranks, to make them aware of these instructions and also augmented processes to ensure that they are strictly adhered to;

(h) Extensive human rights programmes are continuing to be conducted by the Directorate of Human Rights and Humanitarian Law of the Sri Lanka Army, in association with the ICRC and the Institute of Human Rights. ICRC cites the Humanitarian Law Training Programme as a model for other military organisations around the world. This has

been reiterated by the National Commission on International Humanitarian Law. Human rights cells of the Army have been also tasked with monitoring the process of implementation and ensuring that any violations are reported. Instructions have been issued for all violations within the Sri Lanka Army to be reported to Army Headquarters;

(i) Meanwhile the Police while enhancing the existing human rights programmes within the Department, have taken steps to introduce training programmes on a divisional basis in 43 SSP divisions. A process of monitoring to ensure that the directives are complied with, are also underway.

157. Forty three (43) Women & Child Bureau desks were established island wide at Police Stations to provide protection to women and children who have suffered from acts of violence. In areas where such desks are not in existence, arrangements have been made at each Police Station to assign a female officer or two to handle the needs of women and child complainants.

158. In addition the Inspector-General of Police, in December 2011, issued strict instructions to all officers regarding the treatment of detainees arrested.<sup>53</sup> Safeguards include measures for ensuring the physical safety and dignity of the arrested individual as well as reiterating internal controls with regard to handling of persons in custody. Moreover, directions have also been made to the effect that Attorneys-at-Law will be enabled to visit their clients in custody as of right as opposed to with the leave and license of the Police.<sup>54</sup> Criminal prosecutions have been streamlined by the establishment of Divisional Prosecution Units at the Provincial level which expedites the prosecution of terrorism related offences.<sup>55,56</sup>

#### **Measures taken by the Courts of Sri Lanka**

159. The Supreme Court has adopted an active role in the protection of the rights of those arrested under the laws of Sri Lanka. As regards freedom from arbitrary arrest and detention that are provided for in Articles 13(1) and (2) of the Constitution, the Supreme Court has declared in *Channa Peiris vs Attorney General* (1994) that an arrest without lawful grounds and justification or legal cause for such arrest in the absence of material to the contrary is an arbitrary arrest which would not be “according to the procedure established by law”. (Also vide *Munidasa vs Seneviratne* SC (FR) 115/91 SCM 3.4.92.). The conclusion is that if there exists no reason for an arrest, the subsequent detention would become illegal even if it is within 24 hours from the time of arrest.

160. The Judiciary has held that even the persons arrested under these special provisions should be produced before the relevant Magistrate’s Court within a certain period, and then periodically.

161. The Supreme Court has taken an active role in the protection of the rights of those arrested under Emergency Regulations. The Court in 2008 gave an order stating that persons arrested under section 19(1) of the Emergency Regulations could be kept in Police custody only for ninety days and that the said detainee should be transferred to the fiscal custody upon the expiration of 90 days from the date of arrest. This process moreover takes place under the direction and supervision of a Magistrate [vide SCFR 173/2008 decided on 29th July 2008.]

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<sup>53</sup> IGP’s Circular 2328/2011 dated 29 December 2011 (Safety of Persons in Police Custody)

<sup>54</sup> Extraordinary Gazette Notification 1758/36 dated 18 May 2012

<sup>55</sup> Police Officials have been trained on Crime Investigations and Prosecution Procedures, 2009 – 2012; Divisional Prosecution Units are headed by Assistant Superintendents of Police and have been established in each Province (9) since 2009; 3 special high courts have been established in Anuradhapura, Vavuniya and Colombo to expedite terrorism related cases

<sup>56</sup> See footnote 7.

162. The Supreme Court had also given orders to Police and the Security Forces not to conduct house searches in the night between 9 p.m. and 6 a.m. unless to investigate terrorist activities.<sup>57</sup>

163. The Supreme Court had also directed the Police to be vigilant when they detain suspects in their custody and to provide them with the humane conditions and treatment in place of detention.<sup>58</sup> It is a requirement that these persons should also be given sufficient water, enough space to sleep and sufficient ventilation, while in custody. In certain cases the Supreme Court has directed the authorities not to keep suspects in congested conditions when they are being interrogated.

164. Regardless of whether a person is arrested under the Regular Laws or the Emergency Regulations, the Court closely monitors the investigation and other activities of the police in connection with these persons. The suspects are given the opportunities to complain to the judges or any other party, if they were tortured or ill-treated by the police.

165. Persons alleging a breach of their fundamental rights may also invoke the jurisdiction of the Supreme Court under Article 126 of the Constitution. In addition, a person detained wrongfully is also entitled in law to seek relief by way of Writ of Habeas Corpus.

#### **Visits to places of detention**

166. As per existing legislation<sup>59</sup>, all Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates.

167. The “Directions Issued by H.E. The President Commander-in-Chief of the Armed Forces and Minister of Defence” on 7 July 2006, re-iterates the ability of the members of the HRCSL or any person authorized there under, to have access to persons arrested or detained under the Prevention of Terrorism Act or under a Regulation made under the Public Security Ordinance and their place of detention.<sup>60</sup>

168. Opportunities are also given to persons arrested to meet members of the ICRC to whom they could make their complaints, if any. During the time of conflict the ICRC was permitted to visit persons in detention pursuant to the Prevention of Terrorism Act of 1979 and the Emergency Regulations, in pursuance of the 1989 Agreement between the GoSL and the ICRC. The ICRC continues to visit those detained under the PTA being held in the Boossa detention centre.

#### **Concerns on the imposition of retroactive punishments**

169. Sri Lanka wishes to refer to the concerns expressed by the Human Rights Committee on the permissibility “...to impose restrictions on the freedom from retroactive punishments”, a freedom that is recognized under Article 13(6) of the Constitution and Article 15 of the Covenant. Sri Lanka in response wishes to state that this is a generalized statement without specific reference to cases or examples.

170. On the above, Sri Lanka wishes to draw the attention of the Committee to the opinion of the Supreme Court on the ICCPR Act. The Supreme Court highlighted the lack of “any specific instance where a law has been enacted by the Parliament of Sri Lanka or

<sup>57</sup> Fundamental Rights Application No. 297/2007

<sup>58</sup> Fundamental Rights Applications 73, 74, 75, 76 of 2002

<sup>59</sup> Section 39 of the Prisons Ordinance No 16 of 1877 and Amendments thereafter.

<sup>60</sup> Paragraph 6(i) of the Directives

where any Regulation has been promulgated in the interest of national security to create an ex post facto offence.” In light of the above the Court stated that,

“In the circumstances we are of the opinion that the submission... is based on a hypothetical premise. If and when a law is sought to be made to create an ex post facto offence, the constitutionality of that law would be considered by this Court on the basis of the firm guarantee as contained in Article 13(6) that there shall be no enactment of ex post facto offences.

In the case of *Weerawansa vs. Attorney General* – 2000 1 Sri LR page 387, this Court has specifically held that Sri Lanka is a party to the Covenant and a person deprived of liberty has a right of access to the judiciary.

The only instance of ex post facto penal legislation in Sri Lanka is contained in the Offences against Aircraft Act No.24 of 1982, which was enacted by Parliament after a Sri Lankan national hijacked an Alitalia aircraft and brought the ransom to Sri Lanka. The Law was enacted by the Sri Lankan Parliament based on the International Covenants that were already in operation to ensure that the instance of hijacking is appropriately prosecuted and if found guilty punished.”

171. Sri Lanka wishes to submit to the Committee that it has not prescribed by law any restrictions to the freedom from retroactive legislation which is guaranteed under Article 13(6) of the Constitution. In the event of such a situation arising, there are sufficient judicial guarantees to ensure the freedom from retroactive legislation.

### **Conclusion**

172. The declaration of a State of Emergency and the promulgation of Regulation, pursuant to the need to counter terrorist activity in the country, is not inconsistent with Articles 4 and 5 of the ICCPR. Moreover, the Sri Lankan Supreme Court has insisted on a rational nexus between the purpose and the content of the regulations and has not hesitated to strike down excessive regulations and invalidate actions taken in reliance of such legislation.

173. Therefore, in practice the GoSL has taken measures to ensure that the rights of those arrested are protected to the maximum extent possible.

### **Recommendation 3: The State Party should adopt legislative and other measures in keeping with Articles 2, 7 and 9 of the Covenant (para. 9)**

#### **Article 2 of the Covenant**

174. The GoSL reiterates the contents of paragraphs 90 - 101 which deal with States compliance with Article 2 of the Covenant. By way of further submission the GoSL wishes to state that the individuals within the territory of Sri Lanka and those subject to its jurisdiction are ensured the Rights recognized in the Covenant without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, through its constitutional framework and other legislation. Further the State has ensured that any person whose rights under the Covenant are violated have an effective remedy notwithstanding that such violation has been committed by persons acting in an official capacity. The rights enshrined in the Constitution and the ICCPR Act is justiciable providing for an effective judicial remedy for rights that are violated.

#### **Article 7 of the Covenant and the definition of torture**

175. The Constitution gives domestic expression to Sri Lanka’s commitment to eliminate torture and all forms of cruel inhuman and degrading treatment or punishment, even before

the entry into force of the Convention Against Torture Other Cruel Inhuman Degrading Treatment or Punishment (CAT). Article 11 of the Constitution specifically prohibits torture, or cruel, inhuman and degrading treatment or punishment<sup>61</sup> and considers the right not to be tortured a non-derogable, absolute and salient right under the Fundamental Rights Chapter III of the Constitution.

176. Immediately upon Sri Lanka becoming a State Party to the Convention against Torture in 1994, the Parliament enacted the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No 22 of 1994 (Torture Act).

177. Article 1(1) of CAT defines the term torture. It is well recognized that the definition of torture, under Article 12 of the Torture Act "... is in conformity to Article 1 of CAT..."<sup>62</sup> and is in fact wider than that of CAT. Under the Torture Act of Sri Lanka, for an act to be torture, it need not be intentionally inflicted as required under CAT. Thus, the Torture Act contains "provisions of wider application" with regard to torture, than those stipulated in CAT. (See Section 1(2) of the CAT).

178. Professor Manfred Nowak, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states in paragraphs 24 and 25 of the "Report of the Special Rapporteur for Torture and Other Cruel, Inhuman, or degrading treatment and or Punishment, Manfred Novak, Mission to Sri Lanka" to the Human Rights Council that;

"Sri Lanka applies a dualist legal system and has implemented the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Act No. 22 of 1994... The Special Rapporteur notes that the definition of Article 12 is in conformity with the definition of Article 1 of CAT ..."<sup>63</sup>

179. Professor Nowak further "...notes that the definition in article 12 is in conformity with the definition of Article 1 of CAT: however, it does not expressly include suffering". This is a clear indication that despite the lack of the term "suffering" the Convention against Torture Act No.22 of 1994 (CAT Act) is in conformity with the definition of the Convention against Torture.

180. In *De Silva v Fertilizer Corporation* [1989] 2 SLR 393, Justice Amerasinghe held that

"Article 11 of the Constitution guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. The words of the Constitution are in terms identical to those in Article 5 of the Universal Declaration of Human Rights, adopted by the General Assembly of the UN...I am of the opinion that the torture, cruel, inhuman or degrading treatment or punishment contemplated in Article 11 of the Constitution is not confined to the realm of physical violence. It would embrace the sphere of the soul or mind as well. ..The fact that mental aggression should be looked upon in the same manner as we contemplate physical attack is supported by Resolution 3452 (XXX) which was adopted by the General Assembly at its 30<sup>th</sup> session in 1975."

181. Sri Lanka wishes to refer to the concerns of the Human Rights Committee on the omission of the terms "...no one shall be subjected without his free consent to medical and

<sup>61</sup> Article 11-"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

<sup>62</sup> "Report of the Special Rapporteur for Torture and Other Cruel, Inhuman, or degrading treatment and or Punishment, Manfred Novak, Mission to Sri Lanka" presented to the Human Rights Council, 7th Session in A/HRC/7/3/Add.6, dated 26 February 2008, in paragraph 24.

<sup>63</sup> Ibid.,

scientific experimentation.” which is reflected in Article 7 of the Covenant. Sri Lanka is of the view that if a person were to be subjected to medical or scientific experimentation without his or her consent, it would undoubtedly cause him or her severe mental and/or physical pain. Both of these terms are adequately covered under the definition of torture, both in the Torture Act and in the Constitution of Sri Lanka.

182. To date there have been no reported instances in Sri Lanka of any allegations of any person being subjected to medical or scientific experimentation, without his or her consent. The judicial interpretation of the term ‘torture’ would take into account any suffering, physical or mental, that any person would be subject to. It is increasingly evident that in the interpretation of domestic law giving effect to Sri Lanka’s international obligations, the Court would necessarily give expression to the provisions of the relevant international legal instruments.

#### **Legislative compliance with article 9 of the Covenant**

183. Article 9 of the Covenant stipulates the rights of the persons arrested or detained. These rights find expression in the Constitution of Sri Lanka, the Criminal Procedure Code of Sri Lanka No 15 of 1979 as amended, Civil Procedure Code No 2 of 1889 as amended, Bail Act No. 30 of 1997, other domestic laws, regulations, directives and judicial decisions.

#### **Article 9, para. 1, of the Covenant**

184. Article 9(1) of the Covenant states that “everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

185. As per Article 13(1) of the Constitution an arrest is only possible in accordance with the procedure established by law.

186. The procedure to be followed in arresting a person is governed by the Code of Criminal procedure Act, No 15 of 1979 as amended. Section 32 and 33 provides for the specific and limited circumstances where an arrest can be made without a warrant. In all other circumstances an arrest can only be made with a warrant of arrest, thus ensuring freedom from arbitrary arrest. Further guarantee is given in Section 37 of the above Code in that persons arrested without a warrant must be presented before a Magistrate within a reasonable time not exceeding 24 hours. Section 298 of the Civil Procedure Code provides also for the specific and limited circumstances in which an arrest can be made under this Code with a warrant.

#### **Article 9, para. 2, of the Covenant**

187. Article 9 (2) of the Covenant states, “anyone who is arrested shall be informed at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

188. Article 13(1) of the Constitution states that “No person shall be arrested except in accordance with the procedure established by law. Any person arrested shall be informed of the reason for his arrest”.

189. In addition, the Criminal Procedure Code in Section 23 reiterates that any person arrested must be informed of the nature of the charge or allegation upon which he is being arrested. Section 53 of the above Code provides for the substance of the warrant to be communicated to the party in question in executing an arrest under a warrant of arrest. This right is also recognized in the Presidential Directives issued on 7th July, 2006.

### **Article 9, para. 3, of the Covenant**

190. Article 9(3) of the Covenant requires anyone arrested or detained on a criminal charge to be brought promptly before a judge and to be entitled to trial within a reasonable time.

191. This is a constitutional guarantee in Sri Lanka and every person has a fundamental right to be presented before the nearest competent court according to procedure established by law if being held in custody or otherwise deprived of personal liberty and for such detention not to be continued except upon terms of that court according to procedure established by law.<sup>64</sup>

192. This is reiterated in Section 54 of the Code of Criminal Procedure Act No. 15 of 1979 which provides for the due presentation of a person arrested under a warrant of arrest before Court. Section 37 provides for persons arrested without warrant to be produced before Magistrate's Court within 24 hours.

193. Article 9(3) of the Covenant also states "that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial"

194. Bail is governed in Sri Lanka by the Bail Act No.30 of 1997. Section 2 of the above Act provides that "the grant of bail shall be regarded as the rule and the refusal to grant bail as the exception". Section 21 of the above Act also provides for anticipatory bail.

### **Article 9, para. 4, of the Covenant**

195. Article 9(4) of the Covenant states "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court..."

196. Article 13(3) of the Constitution provides the guarantee to a fair hearing before a competent court in person or by an Attorney-at-law. Article 13(4) further provides the right not to be imprisoned except by order of a competent Court. These rights cannot be limited in anyway even in times of emergency and they remain absolute rights at all times.

197. The procedure governing the due presentation of a person arrested before a Court is governed by the Code of Criminal Procedure Act.<sup>65</sup>

198. Any person detained wrongfully is also entitled in law to seek relief by way of a Writ of Habeas Corpus.

### **Article 9, para. 5, of the Covenant**

199. Article 9(5) states that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Any violation of a fundamental right recognized by the Constitution is enforceable before the Supreme Court of the country and in the event of a violation, is entitled to just and equitable remedies including compensation.<sup>66</sup>

<sup>64</sup> Articles 13(1), (2) and (4) of the Constitution

<sup>65</sup> Section 54.

<sup>66</sup> Article 126 of the Constitution.

**Recommendation 4: Investigations into Allegations of Torture, Abduction and Illegal Confinement by State Security Forces (Paragraph 9 of the Concluding Observations)****Torture**

200. The GoSL has submitted its third and fourth combined period report under article 19 of the Convention against Torture to the Committee in 2009. The GoSL also responded to the list of issues raised by the Committee based on the combined report on 20th October 2011.

201. The Constitution of Sri Lanka recognizes the right not to be subject to torture as a right that cannot be subject to any limitation. It is an absolute right. Certain fundamental rights under the Constitution may be "...subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society".<sup>67</sup> However, no such restriction is permissible in respect of the right to freedom from torture under the Sri Lankan Constitution. This protects the sanctity of the prohibition and serves as a deterrent even in times of conflict and public emergency.

202. Strict judicial supervision of allegations of torture is another measure taken by the State to ensure prevention of occurrence of torture. Professor Nowak, in his report to the Human Right Council, in February 2008, stated that he was encouraged by 34 indictments filed by the Attorney General under the Torture Act.<sup>68</sup> The commission of torture is an offence under the Convention against Torture Act and if convicted after trial, by the High Court of Sri Lanka, it is punishable with a minimum mandatory sentence of seven years rigorous imprisonment.

203. Sri Lanka has accepted that sporadic and isolated incidents of torture have occurred within its territory in the past. However, the State has not made excuses on behalf of perpetrators nor granted impunity to such persons. Instead the State has bolstered the measures taken at the judicial and practical levels to prevent the occurrence of torture.<sup>69</sup>

204. However, it is noted that in his report Professor Nowak makes allegations that "torture is widely practiced in Sri Lanka". At a briefing in October 2007, the Special Rapporteur clarified this comment and stated that what he meant by "widely practiced" was that instances of torture could be seen at diverse locations and was not systemic in the criminal justice or law enforcement systems. This confirms the findings of the confidential inquiry by the Committee against Torture, under Article No. 9 of the Convention that there is no systematic torture in Sri Lanka. In fact the Sri Lankan Government's assessment of the situation is that the problem of torture is not found in a widespread manner.

205. One of the measures taken by Sri Lanka to prevent torture is to ensure unannounced visits to places of detention. As per existing Regulations, all Magistrates are legally empowered to visit and inspect remand prisons, where suspects are held on remand on judicial orders of the Magistrates.

206. The Sri Lanka Police has also taken several measures to prevent the torture of persons in detention following directives issued by the President of Sri Lanka, circulars issued by the Ministry of Defence and the Attorney General's Department following orders

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<sup>67</sup> Article 15 of the 1978 Constitution of Sri Lanka.

<sup>68</sup> "Report of the Special Rapporteur for Torture and Other Cruel, Inhuman, or degrading treatment and or Punishment, Manfred Novak, Mission to Sri Lanka" presented to the Human Rights Council, 7th Session in A/HRC/7/3/Add.6, dated 26 February 2008, in paragraph 24.

<sup>69</sup> See paragraphs 176 - 200



of the Supreme Court. The Inspector General of Police has issued circular No. 2328/2011 dated 29<sup>th</sup> December 2011 on the protection and safety of suspects in police custody.

207. The Special Rapporteur on Torture, Professor Manfred Nowak, was invited to visit Sri Lanka from 1-8 October 2007 to assess the situation relating to allegations of torture. During his visit he noted:

“Sri Lanka already has many of the elements in place necessary to both prevent torture and combat impunity, such as fundamental rights complaints before the Supreme Court in relation to article 11 of the Constitution, indictments and prosecutions based on the 1994 Convention against Torture Act, bringing suspects before magistrates within the statutory 24-hour period, formal legal medical examinations by trained forensic experts (Judicial Medical Officers), and investigations and visits by the NHRC.”<sup>70</sup>

208. His positive assessment of the several measures already taken by the Government to combat torture, particularly the legislative and administrative measures, is reflected in the Report of the Special Rapporteur. In his Report Mr. Nowak also noted the commitment of the Government to prevent torture by the establishment of mechanisms by the IGP and the Attorney General's Office specifically to investigate allegations of torture.

209. Government is committed to conduct prompt, impartial and comprehensive criminal investigations and domestic inquiries into all complaints and information received, relating to alleged perpetration of torture by members of the armed forces and the police. The objective of conducting criminal investigations is to inter alia uncover evidence which could lead to the institution of criminal proceedings. The objective of the conduct of domestic inquiries is to consider the adoption of necessary disciplinary action and the identification of suitable action for prevention of torture.

210. In Sri Lanka the conducting of criminal investigations into allegations of torture is assigned to the Special Investigation Unit (SIU) of the Department of Police.

211. These investigations are monitored by the Prosecution of Torture Perpetrators (PTP Unit) of the Attorney General's Department. The progress of investigations is reported by the SIU to PTP Unit. The Unit also advises the SIU on the conduct of investigations.

212. Upon completion of criminal investigations, the corresponding notes of investigations are submitted by the SIU to the PTP Unit to consider the institution of criminal proceedings.

213. Upon a decision taken to indict the alleged perpetrators of torture, the SIU is advised to arrest the suspect(s) and produce the suspect(s) before a Magistrate. Thereafter, the indictment is prepared and forwarded to the relevant High Court. The conduct of the prosecution in the relevant High Court is handled by the Attorney General's Department.

214. The aforementioned mechanism serves to facilitate the conducting of prompt, impartial and comprehensive investigations into all complaints relating to alleged perpetration of torture. It also serves as an efficient process to facilitate the prosecution of perpetrators of torture.

215. The Attorney-General's Department, which usually represents the State and its officers in the proceedings relating to fundamental rights applications, does not appear for any public officer against whom there are allegations of torture.

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<sup>70</sup> “Report of the Special Rapporteur for Torture and Other Cruel, Inhuman, or degrading treatment and or Punishment, Manfred Novak, Mission to Sri Lanka” presented to the Human Rights Council, 7th Session in A/HRC/7/3/Add.6, dated 26 February 2008, in paragraph 24.

216. Taking serious note of allegations of torture, as well as deaths while in police custody, the Government enforces strict rules against police officers held responsible for any act of torture. The IGP issued a warning to all officers-in-charge of police stations that they would be held responsible in accordance with the law, if any suspect dies while in their custody. The IGP has reiterated his orders that under no circumstances should any suspect be subjected to torture or to other cruel, inhuman or degrading treatment while in police custody.

217. The IGP has given directions to all Deputy Inspector General's of Police that under no circumstances should any act of torture be permitted to take place within their respective ranges. Whenever a complaint or information is received alleging the perpetration of torture the Deputy-Inspectors-General of Police are directed to take prompt and impartial action against the alleged perpetrators.

218. The fact that not too many cases end up in convictions is a result of the adversarial system of criminal justice that is practiced in Sri Lanka. The adversarial system has certain salutary safeguards such as presumption of innocence, burden of proof beyond reasonable doubt, and the possibility of impeaching the credibility of witnesses, which make it imperative that a Court acquit an accused, unless the prosecution proves its case beyond a reasonable doubt. Therefore in some cases the accused may not have been convicted due to the lack of evidence to meet the standard of proof required for a conviction. The obligations flowing from the Convention against Torture is to "submit the case to its competent authorities for the purpose of prosecution" and not an obligation to guarantee a conviction in all cases. In most of the cases that ended up in acquittal the reason for it was that the Court was not satisfied about the credibility of the victim's evidence beyond reasonable doubt.

219. Furthermore, it is also noted that the mere occurrence of torture does not constitute a violation of the Convention, unless it forms part and parcel of State Policy. As referred to above, the Special Rapporteur, Professor Manfred Nowak, at a briefing in October 2007, stated that torture was not systemic in the criminal justice or law enforcement systems in Sri Lanka.

220. In accordance with Sri Lanka's legal system the cases filed against police and/or members of the armed forces on allegation of torture require a degree of proof that is "beyond reasonable doubt". Either due to lack of evidence or witnesses going back on their statements in certain instances the perpetrators go unpunished. However disciplinary actions are being initiated simultaneously against such officers under the Police Departmental Orders and the Establishment Code for breach of discipline.

221. Due to the awareness and advanced training programmes on Human Rights conducted with the help of HRCSL, UNDP and University of Colombo at the Police Academy and Police College, there is a drastic change in the conduct of police officers and a significant drop in the cases of torture against police officers. The Police Department has introduced new scientific methods of investigation into crimes. Access to all police stations by the members of HRCSL is a main tool to monitor police activities on arrest and detention of suspects. Posters regarding the rights of suspects are prominently displayed near the cells in the Police Stations.

222. Paragraphs 225-231 below detail the powers vested in the National Police Commission through the 18th Amendment to the Constitution to deal with complaints against officials of the Department of Police.

#### **Abductions and illegal confinement by Security Forces**

223. Please also refer to paragraphs 150 - 168 on the limitations of the powers of the armed forces on arrest and detention.

224. The HRCSL is also vested with the power to investigate and inquire into complaints related to torture and it follows a “Zero tolerance policy on torture”. Regular visits and sudden night visits are undertaken as main activities by the HRCSL. A Hotline facility is available on a 24 hour basis for the public to inform HRCSL on torture.

**Recommendation 5: Implementation of the complaints procedure of the National Police Commission (Paragraph 9 of the Concluding Observations)**

225. In response to the Committee’s observation on the complaints procedure of the National Police Commission (NPC), the GOSL wishes to inform that with the enactment of the 18th Amendment to the Constitution the Commission has been specifically empowered to entertain and investigate complaints from members of the public or any aggrieved person against a police officer or the police force and provide redress in accordance with the provisions of any law enacted by Parliament. For this purpose the Commission has made rules and established procedures for entertaining and investigating complaints from members of the public or any aggrieved person<sup>71</sup> (*Extraordinary Gazette* no. 1770/19 10th August 2012).

226. The NPC was re-constituted on 22 February 2012 under the Chairmanship of Mr. Senaka Walgampaya, P.C., in keeping with provisions contained in the 18th Amendment to the Constitution and with the concurrence of the Parliamentary Council and comprises seven independent individuals.

**Procedures**

227. Members of the public or any person aggrieved by an act or omission committed by a Police officer or the Police force in carrying out his or its duty may lodge any complaint against such officers of the police force with the NPC and seek appropriate redress in accordance with the law.

228. Every complaint received by the Commission shall be recorded in a Register according to the province and district and acknowledged within seven days of the receipt thereof the complaint, and related documents, if any, shall be securely maintained by the Commission.

229. The Commission shall make every effort to conclude investigations under Segment C<sup>72</sup> of the Schedule to these rules within 30 days and investigations under Segments A and B of the Schedule within 60 days of the receipt of the complaint.

**Functioning of the NPC**

230. The NPC has 9 Provincial directors. District directors have also been appointed to the Kalutara and Gampaha districts as it has been found that there are a large number of complaints from those areas. These Provincial directors including in the North have been appointed to entertain and investigate public complaints effectively at regional and district levels. With the establishment of the Public Complaints Investigation Unit (PCIU) and the Provincial and District directors, public investigation process has commenced and as at 30th September 2012, investigations have commenced on over 400 cases 222 of which had been resolved/finalized.

<sup>71</sup> Clause 27, Article 155 FF of the 18th Amendment to the Constitution

<sup>72</sup> Segment C – 1. Refusal to record complaints, 2. undue delay in making available certified copies of statements, 3. Discouraging complainants or witnesses from making statements, 4. Use of abusive words, threats or intimidation on complaints or witnesses, 5. Inaction or partiality by the Police in taking action on complaints made.

231. In order for the public to be informed of the NPC and its mandate, a website has been launched and a media conference and several media interviews have been held. The vision of the NPC is to be “A protector of Justice & Fairplay” and its mission is “to entertain and investigate public complaints against the police with a view to upholding human rights, public accountability and respect for the rule of law”.

**Recommendation 6: Establishment of a Victims and Witness Protection Programme (para. 9 of the concluding observations)**

232. In order to afford protection to victims, witnesses and complainants, a Bill titled “The Assistance and Protection to Victims of Crime and Witnesses” was drafted. The policy framework of this proposed law which was approved by the Cabinet of Ministers on the basis of a Draft Bill was presented to Parliament in 2008. This Bill was then referred to a Parliament Consultative Committee on Justice and Law Reform which recommended amendments. A Bill has been drafted incorporating the recommendations made by the Consultative Committee. The Bill is being considered by the Attorney General Department as to its compatibility with the Constitution and will subsequently be presented to the Cabinet of Ministers for approval.

233. The objectives of the proposed redrafted Bill are to (a) establish rights and entitlements of victims of crime and witnesses, (b) provide for rendering of assistance and protection, (c) provide for payment of compensation and rendering of other forms of redress such as restitution, reparation, and rehabilitation, and (d) establish mechanisms for the providing of assistance and protection to victims of crime and witnesses. The proposed law contains separate and special provisions pertaining to child victims of crime and child witnesses.

**Setting in place the Witness Protection Programme**

234. An important feature of this proposed law is the wide definitions given to the terms “victim of crime” and “witness” so as to include not only victims and witnesses of conventional crimes but also to include victims and witnesses of human and fundamental rights violations.

235. Once the proposed law is enacted it will address problems relating to intimidation, threats, reprisals and other forms of harassment against all victims of crime and witnesses and would necessarily include victims of alleged torture and ill treatment.

236. It is important to note that even as the law stands today, intimidation and reprisals taking the form of bodily harm constitute criminal offences and therefore, persons who allege such harassment have recourse to the criminal justice system. Furthermore, persons who complain of harassment of any form arising out of their having complained of the committing of any offence, (including the offence of torture), as well as having been a witness to such an incident is provided with necessary security and protection within the framework of the existing policing system.

237. According to the Assistance and Protection to Victims of Crime and Witnesses Protection Bill, the Police Department is required to establish a Victims of Crime and Witnesses Protection Division under the command of a senior Deputy Inspector General of Police for the purpose of providing protection to victims of crime and witnesses.

238. During the functioning of the Presidential Commission to Investigate and Inquire into Allegations of Serious Violations of Human Rights a special unit had been established under the command of a senior Retired DIG to provide necessary measures of protection to witnesses of serious violations of human rights who volunteered to testify or whose testimony was required by the Commission.

239. The Bill seeks to create a new legal regime for the protection of both the victim of crime and the witnesses and was developed following wide ranging consultations with GoSL and civil society stakeholders. The law stipulates the rights and entitlements of victims of crime and witnesses and provides for a mechanism for the promotion, protection, enforcement and enjoyment of such rights and entitlements.

#### **Definition of a victim of crime**

240. According to the definition in the Bill a “victim of crime” is –

- any person who has suffered harm due to an offence being committed
- any person who has suffered harm as a result of an infringement of a fundamental right or human right.
- any person who has suffered harm by intervening to assist a victim of crime, or to prevent the commission of an offence
- any member of a family of such victim of crime the next of kin of a victim of crime
- any other person of significant importance to a victim of Crime.
- Substantive Aspects of the New Bill

241. The Bill provides for the following:

- The Bill sets out the rights and entitlements of victims of crime and witnesses and provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements. The core rights of victims include:
  - (a) the right to be present and participate in criminal justice proceedings;
  - (b) the right to apply and receive compensation for harm suffered as a result of being a victim of crime ;
  - (c) the right to be informed by proceedings and events in the criminal justice process, of legal rights and remedies and of available services;
  - (d) the right to protection from intimidation and harassment ;
  - (e) the right to restitution from the offender;
  - (f) the right to be represented by counsel;
  - (g) the right to be medically treated for any mental or physical injury suffered as a result of being a victim of crime;

#### **The Bill provides for the establishment of;**

(a) The **National Authority for the Protection of Victims of Crimes and Witnesses**, for the promotion and protection of the rights of victims of crime and witnesses. There shall also be an Advisory Commission chaired by the Chief Justice to advise the Board of Management of the Authority regarding the performance of its functions. The Authority is empowered to compensate victims of crime and provide immediate relief till the Court orders the payment of comprehensive compensation.

(b) The "**Victims of Crime and Witness Assistance and Protection Fund**" for the payment of compensation to victims. The Authority is required to establish a fund primarily for the purpose of providing interim compensation to victims of crime and generally to provide financial resources necessary to give effect to the objective of the law.

(c) The "Victims of Crime and Witness Protection Division" in the Police Department to implement an effective witness assistance and protection programme.

- The Bill provides for the rendering of assistance and protection to victims of crime and witnesses. The assistance shall include security to the person and property, provision of temporary housing or accommodation, permanent relocation, including housing, provision of temporary or permanent employment, necessary finances, re-identification.
- The Bill stipulates the offences that may be committed against victims of crime and witnesses and the penal sanctions that may be imposed on persons who commit such offences
- The Court is empowered, upon conviction of an offender in addition to the penal sanctions imposed on such accused, to order the convict to pay an amount not exceeding one million rupees as compensation to a victim of crime
- The Bill set out the duties and responsibilities of the judicial officers and the public officers towards the promotion and protection of the rights and entitlements of victims of crime and witnesses. The assistance and protection which may be provided to victims and witnesses by the Courts or Commission of Inquiry includes the adoption of special measures:
  - i. to protect the best interest of the child victims and witnesses;
  - ii. to conduct judicial proceedings in camera;
  - iii. to prevent the victim of crime or witness being unnecessarily harassed, intimidated or influenced by seeing the accused present at venue of the trial or inquiry;
  - iv. to prevent the identity of the victim of crime or witness from being disclosed.

**Recommendation 7: Strengthening the role of the National Human Rights Commission (para. 9 of the concluding observations)**

242. The HRCSL was established by the National Human Rights Commission of Sri Lanka Act No 21 of 1996. The members of the Commission have been appointed according to provisions in the 18th Amendment to the Constitution. The HRCSL operates as an independent institution and it is appointed in terms of the applicable law.

243. The GoSL has continued to provide funding for the HRCSL and contributions to the annual budget has been increased. The HRCSL published its Annual Report for 2011.

244. The HRCSL Act provides for any person authorized by the Commission to enter at any time any place of detention, police station, prison, or any other place in which any person is detained and HRCSL officers visit police stations and detention centres to look into the welfare of detainees. An important development is the expansion of its network of 10 regional offices island wide (Kandy, Vavuniya, Jaffna, Badulla, Kalmunai, Anuradhapura, Trincomalee, Matara, Batticaloa and Ampara) to carry out their activities.

245. In addition, under “Directions Issued by H.E. The President as Commander-in-Chief of the Armed Forces and Minister of Defence” on 7 July 2006, it is provided that “Every member of the Armed Forces and the Police Force shall assist and facilitate the HRCSL and any person authorized by the HRCSL in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.”

- As such any officer who makes an arrest or order of detention must, according to the above Directives, within 48 hours from the time of arrest or detention, inform the HRCSL of such arrest or detention and the place of custody or detention.
- Special mention is made on the ability of the members of the HRCSL or any person authorized there under, to have access to persons arrested or detained under the

Prevention of Terrorism Act or under a Regulation made under the Public Security Ordinance and their place of detention.

246. The Sri Lanka Police have in place the necessary arrangements for the HRCSL Officers to visit the places of detention to look into the welfare of the suspects. The names and details of suspects arrested during the period the Emergency Regulations were provided regularly to the HRCSL. Legal Division of the Police continues to inform details of arrested suspects and detainees to the HRCSL on a regular basis.

247. The role of the HRCSL was also strengthened by the ICCPR Act (No. 56 of 2007) which provides that the High Court may also refer a matter arising under the Act to the HRCSL for an inquiry and report, and request the Commission to submit its report to the High Court within the time stipulated. This may be done at any stage of the proceedings.

248. A hotline has been introduced by the HRCSL for the public to make complaints regarding unlawful arrest, detention or torture. Capacity building programmes have also been undertaken for the staff of the HRCSL with the assistance of the UN Joint Programme on Human Rights of the UNDP. The HRCSL also maintains a website in all three languages giving details of its activities.<sup>73</sup>

**Recommendation 8: Full implementation of the right to life and physical integrity (para. 10)**

249. The position of the GoSL on this matter is set out in response to Recommendation 1 of this report.

**Recommendation 9: Giving effect to relevant recommendations made by the UN Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigations into Enforced or Involuntary Disappearances (para. 10)**

250. Sri Lanka has been engaging with the respective UN special procedures on Human Rights. An inter-ministerial working group to verify cases of alleged disappearances has been established. In this context, the GoSL submitted its response in June 2012 on 59 cases of disappearances referred to in the report (A/HRC/19/58/Rev.1) of the Working Group on Enforced or Involuntary Disappearances (WGEID) to the 19th Session of the UN Human Rights Council in March 2012. In addition clarification on 100 cases of alleged disappearances referred to the GoSL by the WGEID was sent in October 2012. Further investigations are being conducted on the remaining cases of alleged disappearances communicated by the WGEID. Arrangements have been made for the maintenance of a database of allegedly disappeared persons created from the communications of the Working Group. As Sri Lanka has stated on previous occasions, including to the WGEID, information sharing on the presence of some of these persons in countries which have given them asylum is critical to making an accurate assessment of the number of alleged disappearances.<sup>74</sup> The Police report a relatively good rate of success in tracing alleged missing persons.<sup>75</sup>

<sup>73</sup> www.hrcsl.lk

<sup>74</sup> Investigations reveal that among the alleged disappearances there are genuine complaints, persons later traced, deceased persons including suicides, persons who have run away, eloped or left home for other personal reasons, persons in law enforcement custody as well as a number of false complaints/ instances of misreporting.

<sup>75</sup> The total number of persons reported allegedly missing in 2010 was 7,940 out of which 6,653 have been found. The corresponding numbers for 2011 are 7,296 and 5,185. In 2010 the number of persons allegedly “abducted” was 225 of whom 207 were later traced. The number of allegedly

**Recommendation 10: Allocation of resources for the National Human Rights Commission (para. 10)**

251. The HRCSL is functionally independent and is appointed in terms of the applicable law. A substantial amount of funding has been made available by the GoSL for the HRCSL. Details of funding for the HRCSL is as follows:

<i>Year</i>	<i>GoSL Contribution(LKR)</i>	<i>Foreign grants(Projects) LKR</i>
2009	105,381,254.42	-
2010	111,375,000.00	1,244,100.00
2011	131,199,400.00	544,100.00

252. Financial resource allocations have been increased as per HRCSL requirements and HRCSL has established its office in a new premises. New staff has also been recruited and most of them have been allocated to the Inquiry and Investigation division. The HRCSL appointed retired Judges on contract basis to clear the backlog cases. Assistance for office requisites have been provided by UN Joint Programme on Human Rights – UNDP.

253. The HRCSL and the UN Joint Programme on Human Rights allocates funds for capacity building of HRCSL staff at local level as well. The staff of the HRCSL has also participated in several international training programmes.

**Recommendation 11: Abolition of corporal punishment (para. 11)**

254. Corporal punishment was provided for in the statutes of Sri Lanka under the Corporal Punishment Ordinance (Chapter 21) and certain provisions in the Code of Criminal Procedure Act No 15 of 1979. This Ordinance was repealed by the Corporal Punishment (Repeal) Act No 23 of 2005 which prohibits the imposition of corporal punishment as a penalty that may be imposed by courts and as a punishment that may be imposed under the Prisons Ordinance for offences against prison discipline. Provisions in the Code of Criminal Procedure pertaining to corporal punishment were also repealed.

255. Strict instructions have been issued to schools, via the Ministry of Education Circular No. 2001/11 dated 20th March 2001, to prohibit the use of corporal punishment to discipline school children. Circular No 11/2001 was replaced by Circular No 17/2005 dated 11th May 2005.

256. The Circular highlights the obligations imposed on the State Party under the provisions of the Convention on the Rights of the Child, Article 28(2), wherein it is stated that States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

257. It also states that a physical punishment or mental suffering imposed by a teacher on a pupil would also give rise to legal action for subjecting children to cruelty under section 308(a) of the Penal Code.

258. Action was under taken by the Child Protection Authority (NCPA) to produce and distribute a booklet to all teachers and the conduction of orientation through principals was also undertaken to distribute educational material to the general public including the mass media. Thus these instructions have been implemented in schools to a great extent although some incidents of corporal punishments have been reported to the Ministry of Education.

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abducted in 2011 was 239 of whom 226 have been traced. Investigations continue into unresolved cases.



259. When complaints of corporal punishment or other degrading punishments are brought to the attention of the Ministry of Education, the Ministry takes appropriate action and where necessary, disciplinary action is taken against those who have violated the Circular No 17/2005.

260. In the event of any blatant violations of these Circulars, the courts of law will not be hesitant to impose a sentence on the person concerned. The Torture Act (No. 22 of 1994) has also recognized corporal punishment as an offence.

261. School Child Protection Committees setup under the circular issued by the Ministry of Justice, Village Alert Groups setup by NCPA and Village Committees set up by Department of Probation and Child Care Services (DPCCS) are used to discuss the issues of corporal punishment and trafficking of children.

**Recommendation 12: Repeal provisions criminalizing abortions and take measures to ensure that women are not compelled to continue with pregnancies in contravention of article 7 of the Covenant and General Comment 28 (para. 12 of the concluding observations)**

262. Sri Lanka takes cognizance of the concerns of the Committee that abortion remains criminalized under the law. In terms of Sections 303 and 306 of the Penal Code, abortion is permissible only to save the life of the mother.

263. A proposal to include termination of pregnancy in the instances of rape and incest was part of the Bill on amendments to the Penal Code in 1995. However this was withdrawn in Parliament after considerable debate, as it proved to be controversial given certain ethical and religious factors raised during the debate.

264. However action is being taken by the Ministry of Child Development and Women's Affairs to amend the Penal Code. Several Meetings were held with relevant stake holders namely the Ministry of Justice, Ministry of Health, Ministry of Social Services, Ministry of Cultural Affairs, Attorney General's Department, Legal Draftsmen, Family Planning Association, Gynecologists, and Pediatricians etc in this regard.

**Recommendation 13: The State Party is urged to ensure that all legislation and other measures taken to fight terrorism are compatible with the provisions of the Covenant. (para. 13 of the concluding observations)**

265. The Government of Sri Lanka will review the cases of suspects held under the Prevention of Terrorism Act in order to secure either the prosecution or the release of persons held in detention, upon consideration of relevant circumstances. This new initiative is a result of recent developments in Sri Lanka resulting from the end of the terrorist conflict.

266. The PTA was enacted to "deal with acts of terrorism" within the context of accepted norms and principles of the penal legislation of Sri Lanka.

267. The procedures governing these individuals are similar to those found under the Code of Criminal Procedure. Accordingly, the validity of an arrest, the legality of detention, the period of detention, and a decision of a lower court made under the PTA can be subject to judicial review. Additionally the right to seek the issuance of the writ of Habeas Corpus and recourse to the fundamental rights jurisdiction of the Supreme Court are also available to any person aggrieved by measures taken under the Act.

**Recommendation 14: The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crimes Bill to the extent that they are incompatible with the Covenant. (Paragraph 13 of the Concluding Observations)**

268. The Prevention of Organized Crimes Bill was envisaged several years ago with a view to dealing effectively with serious organized crimes. However, the debate on this Bill was not proceeded with and thereafter the Bill does not stand on the Order Paper of Parliament.

**Recommendation 15: The State Party should vigorously pursue its public policy to combat trafficking in children for exploitative employment and sexual exploitation, in particular through the effective implementation of all components of the National Plan of Action adopted to give effect to this policy (para. 14 of the concluding observations)**

**Legislation to Protect Children**

269. In 1995, several amendments were made to the Penal Code, the Code of Criminal Procedure and the Evidence Ordinance on combating child trafficking. The momentum generated by working towards the designing of a National Plan of Action (NPA) to combat the trafficking of children for exploitative employment has resulted in attention being drawn to introducing further amendments to the Penal Code so as to effectively deal with the offence of trafficking for exploitative employment, not confining it to adoption alone.

270. Legislation was passed in recent years on a number of areas to strengthen children's rights and enhance their protection. New laws include:

- The Prevention of Domestic Violence Act No.34 of 2005 which provides for protection orders to be urgently obtained to safeguard those suffering and at risk of domestic violence, including both women and children;
- The Employment of Women, Young Persons and Children (Amendment) Act No. 8 of 2003. This Act strengthened child labour laws by inter alia increasing the minimum age of employment from 12 to 14 years, and prohibiting the employment of children under 14 while enhancing the sentence for violation of this provision. This is in conformity with the compulsory age of education for children which is 14. Legislation in this regard has already been passed through Parliament<sup>76</sup>.
- The new section 358A of the Penal Code has criminalized outstanding worst forms of child labour in accordance with the International Labour Organization (ILO) Convention No.182: debt bondage and serfdom, forced or compulsory labour, and slavery.
- The Penal Code (Amendment) Act No16 of 2006 was enacted to strengthen the law against child trafficking including by electronic media. The new section 360C adopts the wider definition of trafficking which is incorporated in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and it has made trafficking a very serious offence (360 C of The Penal Code (Amendment) Act No16 of 2006).
- Presently the Penal Code is the main operative criminal law that is used to prosecute an offender for the commission of the offence of trafficking. The 2006 Amending Act criminalizes the multiple forms of trafficking, exploitation including forced or compulsory labour, slavery, servitude, organ removal, sexual exploitation, or any

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<sup>76</sup> Regulation made under the Education Ordinance No 31 of 1939 gazetted in the Extra-ordinary Gazette Notification 1003/5 – November 25,1997

other act which constitutes an offence under the law (Section 360C). On conviction, the prescribed penalty for trafficking is a period of imprisonment of not less than two years and not more than twenty years. This can also be combined with a fine. For an offence involving a child less than 18 years of age, the minimum penalty is enhanced to three years imprisonment.

- A National Task Force has been set up by the Ministry of Justice comprising several relevant institutions to deal with trafficking including that of children. Standard Operating Procedures have also been developed. A Hotline (#1929) has been established under the NCPA for the purpose of reporting any form of child abuse including trafficking.
- The HRCSL conducted an island wide awareness creation programme for police officers on trafficking covering child trafficking and other related issues (2007).
- A national network comprising more than 750 field officers (women development officers and child rights protection officers, early childhood development officers, relief sisters and psycho social coordinators) function island wide mainly at the Divisional Secretariat level to protect the rights of children.

The Penal Code (Amendment) Acts No. 22 of 1995, 29 of 1998 and 16 of 2006

271. These amendments:

- Created, *inter alia*, the offences of obscene publication, exhibition relating to children, cruelty to children, sexual harassment, sexual exploitation of children, trafficking, causing or procuring children to beg, hiring or employing children to act as procurers for sexual intercourse, hiring or employing children to traffic in restricted articles;
- Created a duty for persons providing service by computer (e.g. a cyber café) to prevent sexual abuse of a child, and cast a duty on a person having the charge, care, control or possession of any premises such as hotels to inform the police of the use of such premises for the commission of an act constituting the abuse of a child and provides that contravention of such provisions is an offence carrying stringent punishments;
- Created the offences of debt bondage, serfdom, forced or compulsory labour slavery and recruitment of children for armed conflict. The offence of recruiting a child for armed conflict carries with it a penalty of 30 years of imprisonment;
- redefined the offence of trafficking to bring it in line with international standards;
- set out the circumstances which would constitute offences relating to adoption;and,
- created the offence of soliciting a child.

272. These amendments provided stringent penalties for such offences. A significant feature of the latest amendments is the inclusion of psychological or mental trauma into the meaning of “injuries”.

273. The Attorney General has also initiated a process of providing legal advice to the police in the conduct of investigation into these alleged violations. The Attorney General’s Department maintains a separate unit called the Prosecution of Child Abuse Offenders Unit to handle successfully and expeditiously the institution of criminal proceedings against persons accused of having committed all forms of abuse of children.

274. On completion of the investigation the Attorney General will consider the institution of criminal proceeding against those found responsible for committing crimes against children.

275. Recognizing the challenges and difficulties involved in the collection of data on human trafficking, the Ministry of Justice in consultation with the Criminal Records Division (CRD), Crimes Division and Inspector General of Police is in the process of Amending the Schedule to the Prevention of Crimes Ordinance No. 02 of 1926 to make human trafficking a finger printable offence.

276. The Mutual Assistance in Criminal Matters Act, No. 25 of 2002 has been enacted to provide for the rendering of assistance in criminal matters by Sri Lanka and specified countries. Such Assistance includes the location and identification of witnesses or suspects, the service of documents, the examination of witnesses, the obtaining of evidence, documents or other articles, the execution of requests for search and seizure, the effecting of a temporary transfer of a person in custody to appear as a witness, and the enforcement of orders for the payment of fines or for the forfeiture or freezing of property. So far Sri Lanka has signed bilateral agreements on mutual legal assistance with Hong Kong, Pakistan, India, and Thailand. It is envisaged that an agreement with the Russian Federation will be signed shortly. Sri Lanka has also signed in 2008 a multilateral agreement with South Asian Association for Regional Cooperation (SAARC) member states with a view for law enforcement authorities of member states to enhance cooperation in the prevention, suppression and prosecution of offences. Mutual legal assistance may also be provided by the government without a treaty to 54 Commonwealth countries that have been designated by order in the gazette by the Minister of Justice.

277. A new National Project has been launched by the Ministry of Justice and the Attorney General's Department in partnership with the Police Department to enhance the efficacy of the criminal justice response to child abuse to better protect the rights of children in the country. The resources for the project are provided by the GoSL and UNICEF. The primary objectives of this project are to expedite the processing and the passage of cases of child abuse through the several phases of the criminal justice system and to prevent secondary victimization of child victims of abuse in consequence of their involvement in the criminal justice system.<sup>77</sup> A secondary objective of the project is to enhance the professionalism in the conduct of criminal and forensic investigations, and the conduct of prosecutions.<sup>78</sup>

278. An Anti-Human Smuggling Investigation Bureau (AHSIB) has been established in the CID to investigate into cases of Human Smuggling / Trafficking. Further a Marine Unit has been established to effectively combat human smuggling and trafficking by sea.

279. In addition to this Unit, the Women and Children's Bureau and the Investigation Unit under the Child Protection Authority handle such investigations. Further a number of Police Officers have been trained to investigate such cases and are attached to Women and Children Units in all Police Stations island wide. Adequate Women Police Officers are deployed to function in these units.

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<sup>77</sup> The several phases of the criminal justice system sought to be expedited are, (i) the conduct of criminal investigations by the police; (ii) conduct of forensic investigations by the judicial medical service and reporting; (iii) consideration of the institution of criminal proceedings by the Attorney-General and the institution of criminal proceedings; and (iv) the conduct of the trial. Time frames have been specified for each of these phases.

<sup>78</sup> The project is presently being implemented as a pilot activity in the Western Province (High Court zone of Gampaha), North Central Province (High Court zones of Anuradhapura and Polonnaruwa), Eastern Province (High Court zone of Batticaloa) and the Northern Province (High Court zone of Jaffna). The implementation of the project is monitored by a National Steering Committee headed by the Secretary Justice and involves the participation of representatives of the Attorney-General, Inspector General of Police, Chairman of the NCPA, Secretary to the Ministry of Health and a UNICEF representative.

280. Understanding the importance of multi sectoral participation of all relevant authorities to combat the complex issue of human trafficking, the GoSL made significant progress in increasing coordination among all stake holders where under the leadership of the Ministry of Justice with technical assistance from the International Organization for Migration, a National Anti-Human Trafficking Task Force was launched in October 2010. This Task Force has been established with a view to strengthen the co-ordination among key government stakeholders and to foster success in prosecutions and to improve the protection of victims. The Task Force will also be useful in the implementation of preventive strategies. The members of the Task Force include the Ministry of External Affairs, Ministry of Defence, Ministry of Women's Affairs, and Child Development, Attorney General's Department, Ministry of Labour, Ministry of Social Services and Social Welfare, Criminal Investigation Department, Police Crime Division, Immigration and Emigration Department, Police Women and Children's Bureau, Sri Lanka Bureau of Foreign Employment, National Child Protection Authority, Police Criminal Records Division, DPCCS and the Chief Judicial Medical Officer. Task Force members meet on a monthly basis and share information and good practices among participating stakeholders. The members develop individual action plans on counter trafficking in their respective institutions which is developed into one National Action Plan. Such a National Action Plan is intended to identify gaps and needs to accelerate the government's efforts in combating human trafficking. The Task Force is an important initiative which will foster better coordination among key stake holders. The government also welcomes engagement with other government organizations, civil society organizations and multilateral organizations to address trafficking issues.

281. The Task Force has also developed and is implementing, on the technical advice of several national task force members, a 'Standard Operation Procedures (SOP)' that would assist in the accurate and timely identification of victims of trafficking and establish a referral mechanism to provide victim assistance and protection. This SOP has been presented to the National Task Force and a legal subcommittee was appointed to streamline the procedures. Currently the SOP is referred for observations of the Hon. Attorney General. Steps will be taken in the near future to have these procedures adopted by all stakeholders.

282. The National Anti-Human Trafficking Task Force is now looking into the protection of victims of human trafficking and the members of the Task Force have expressed the national importance of immediate need for a government shelter for vulnerable victims of human trafficking. For this purpose it is collaborating with the Ministry of Child Development and Women's Affairs for the management of the shelter. IOM will provide technical and financial support for this initiative.

283. Several other government and intergovernmental agencies including the Ministry of External Affairs, the Sri Lanka Bureau of Foreign Employment (SLBFE), the Department of Labour, and International Organization for Migration are to varying degrees, involved in the identification of trafficking victims. Non-governmental agencies including the Salvation Army, Women in Need etc. are also involved in the identification of victims and in providing protective care.

284. The Police CRD of Sri Lanka with the technical assistance from the IOM established a comprehensive and central data collection system in October 2009. This database collects relevant data on cases of human trafficking and assists law enforcement officers to track and prosecute the cases. The database provides immediate access to recorded cases on human trafficking and contains information on the profile of the victim, mode of transportation, means of exploitation, referral and assistance provided to the victim, prosecution status of the investigation, and an archive on related documents.

285. The Inspector General of Police through a Circular directed Officers in Charge (OIC) of each Police station to record all instances of trafficking in a special screening form provided to them.

#### **International Conventions on the rights of the child to which Sri Lanka is a Party**

286. Moreover the GOSL is a signatory to many international Conventions which ensure the protection of the rights of children including:

- ILO Worst Forms of Child Labour Convention (No. 182)
- ILO Minimum Age for Employment Convention (No.138)
- ILO Forced Labour Convention (No.29)
- ILO Abolition of Forced Labour Convention (No.105)
- United Nations Convention on the Rights of the Child (CRC)
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (ICAAC)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

287. The GoSL is a party to all seven core international human rights treaties that include those which provide for the prevention and suppression of human trafficking. Additionally, the GoSL is a party to the Slavery Convention, the Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of others and the United Nations Conventions against Transnational Organized Crime and a number of core ILO Conventions including those on forced and child labour. Sri Lanka has ratified the Hague Convention on Protection of Children and Cooperation in Respect of inter-country adoption. At the regional level, Sri Lanka has signed the SAARC Convention on Trafficking and also the SAARC Convention on Child Welfare.

#### **Institutional mechanisms to protect children**

288. The Ministry of Child Development and Women's Affairs which is the lead agency has 5 statutory bodies. These include the Sri Lanka National Child Protection Authority, DPCCS, Children's Secretariat, National Committee on Women and the Sri Lanka Women's Bureau. These bodies assist to formulate and implement policies to advance, secure, and guarantee the rights of children and women and have the capacity to inquire into incidents of violations of rights of children and women.

289. The establishment of the NCPA is one of the most significant measures taken by the Government in relation to the protection of children from abuse and exploitation. The NCPA was established by Act, No. 50 of 1998. This Authority has a wide mandate with regard to the prevention of all forms of child abuse and the protection and treatment of child victims, and functions as a focal point to coordinate the many sectors involved in protecting children. These include law enforcement, protective childcare, legal reform, media, the education sector, and therapy and rehabilitation services.

290. The NCPA works in collaboration with the DPCCS and the Children and Women's Unit of the Ministry of Labour as well as with various NGOs providing services to protect children. Dealing with child rights, the NCPA has established District level Child Protection Committees headed by the Government Agent. This Committee is supported by Village level and Divisional level officials to enable it to carry out its functions more effectively. Child Protection Committees have been established in some schools and action has been taken to establish them in other schools.

291. The DPCCS is responsible for the correction and rehabilitation of children, victims of child abuse and children in need of special protection, especially the orphaned, the abandoned and the destitute.

292. In carrying out its mandate, the DPCCS has undertaken several activities, including administering sponsorship schemes for needy children, initiating legal action against perpetrators of child abuse, taking measures to rehabilitate child victims of abuse and preventing child abuse. The modern approach is to discourage the institutionalization of children and encourage de-institutionalisation and rehabilitation in their own environment. The DPCCS conducts awareness programmes on child rights for children, parents, teachers and the community. It implements special protection programmes for children of migrant mothers. It promotes and assists children who do not attend school to do so. The DPCCS, in order to realize its mandate more effectively has appointed Child Rights Promotion Officers at District level.

293. The DPCCS has also assisted the Ministry of Justice to finalize amendments to laws dealing with juvenile justice including the, Children and Young Persons Ordinance to make them consistent with international standards. A new Children (Judicial Protection) Bill has been drafted and a joint Cabinet Memorandum will be submitted to Cabinet.

#### **Policies and mechanisms undertaken to protect children**

294. The Government has established a Women and Children Police Desk which also includes similar desks at District levels. Specially trained police officers function at such desks which provide an enabling environment for children and their parents to report incidents of abuse and exploitation. This network is also linked to the NCPA.

295. The National Plan of Action for the Children of Sri Lanka 2004-2008 was developed in collaboration with UNICEF. This has, as its main targets, increasing access of children to education, reducing child mortality, the enforcement of child labour prevention laws, providing access to safe drinking water and sanitation and the eradication of several forms of abuse of children. The Government makes financial allocations for activities identified in the NPA with emphasis on action to be implemented at District level. The National Plan of Action for the Children for the period 2013 – 2017 has been drafted and discussions are currently underway on this draft.

296. Consideration has also been given to develop a National Action Plan for Combating Child Trafficking.

297. Sri Lanka recorded its first human trafficking conviction in May 2011 which sentenced three persons including one foreign national for nine years of rigorous imprisonment with fine of LKR 100,000 each. The Attorney General's department took steps to ensure that the foreign victims gave evidence before the High Court and ensured their repatriation to their home country with the assistance of IOM.

298. As a result of the Government's continued efforts to eradicate human trafficking and child labour on 28th June 2011 Sri Lanka was upgraded from the 'Tier 2 watch list' to 'Tier 2' in the human trafficking ranking list in the Trafficking in Persons Report 2011 released in Washington D.C. The Trafficking in Persons (TIP) Report assesses the human trafficking status in 184 countries around the world and ranked them in terms of their effectiveness as a country that is making significant efforts to comply with the international standards.

299. In accordance with the Government obligations under UNCRC no children were recruited by the Government of Sri Lanka during the 30 year conflict and in addition, all feasible measures were undertaken to care for children affected by the conflict. This also included the effective implementation of Article 38 of UNCRC in relation to the rehabilitation of the "Child surrendees". This included the Extraordinary Gazette notification No 1580/5 on 15th December 2008 which included "Child friendly procedures

in relation to “Child surrendees” and policies. These take into account the promotion of physical and psychological recovery, social integration of all children within government jurisdiction. This also includes the setting up of Protective Accommodation Centres for such children through which such recovery and reintegration take place in a manner which safeguards the dignity and self-respect of the children. There is also respect for the child’s view and special emphasis is placed on family reintegration.

300. Reference is made to rehabilitation of ex-combatants section in this Report which details GoSL’s treatment of LTTE child soldiers and young adults who surrendered at the end of the conflict (Paragraphs 42 - 53).

**Recommendation 16: The State Party should pursue appropriate steps to reduce overcrowding in prisons, including through resorting to alternative forms of punishment. (para. 15 of the concluding observations)**

301. In respect of the observations of the Committee on the overcrowding of prisons, Sri Lanka remains concerned and fully comprehends the need to reduce overcrowding in prisons and makes every endeavour to address this issue.

302. Sri Lanka has taken measures to reduce overcrowding, including the conduct of awareness raising programmes organized for judges on the merits of Community Based Correction Orders. These orders are provided for under the Community Based Corrections Act No 46 of 1999. This is invaluable in combating the overcrowding of prisons and judges are being encouraged to impose these orders in lieu of prison sentences for certain offences.

303. The former Ministry of Constitutional Affairs and National Integration and the Ministry of Justice and Law Reforms together with the United Nations Development Programme set up a data base in prisons to collect all relevant details of all the prisoners. The first database was installed at the Welikada Prison. It is expected that this data base would, in the long term, assist in the improvement of prison conditions.

304. The former Ministry of Constitutional Affairs together with the UNDP organized several training programmes including vocational training and counseling programs for the inmates and the prison officials. These programs are expected to positively address issues relating to overcrowding and ensure uplifting of standards and conditions in prisons.

305. The building of a modern prison complex is also being contemplated by the GOSL as a method for reducing overcrowding. The GOSL welcomes international assistance in the form of funding for the proposed prison complex and for other measures targeted at the improvement of infrastructure and the administration in prisons.

306. The Government has also adopted the following measures to reduce overcrowding in prisons;

- Following the end of the conflict, a new prison complex is expected to be constructed in Jaffna.
- Plans are underway to establish an open prison camp at Mankulam under the “Uturu Vasanthaya Programme”.
- Discussions are underway to construct two new remand prisons in Mulaitivu and Kilinochchi.
- The License Board, headed by a retired High Court Judge and comprising the Commissioner General of Prisons, makes recommendations to the Minister of Justice, on the release of certain inmates.
- Prisoners are also released on special pardon granted by the President of Sri Lanka



307. Discussions have been held between ICRC and the Ministry of Rehabilitation and Prison Reforms on prisons overcrowding in Sri Lanka in order to address the problem through an inter-institutional approach.

**Recommendation 17: The National Human Rights Commission should be granted sufficient resources to allow it to monitor prison conditions effectively. (para. 15 of the concluding observations)**

308. With the available resources the Human Rights Commission is undertaking prison visits on a very regular basis for the purposes of, inter alia, monitoring prison conditions. The matter relating to the resources for the National Human Rights Commission is dealt with in Recommendations 7 and 10 of this Report above.

**Recommendation 18: The State Party should strengthen the independence of the judiciary by providing for judicial rather than parliamentary supervision and discipline of judicial conduct. (para. 16 of the concluding observations)**

309. Sri Lanka wishes to bring to the notice of the Committee that the Republican Constitution of 1978 is founded upon the separation of powers between the Legislature, Executive and Judicial organs of government. Whilst none of these three organs enjoy plenary power, the essence of the Sri Lankan Constitution is the checks and balances between the three organs.

310. The independence of the judiciary is strengthened considerably by the Constitution. One of the most important functions of the Supreme Court relates to the prerogative to interpret the Constitution and protect fundamental rights. As highlighted throughout this Report, the Supreme Court of Sri Lanka has time and again interpreted the express provisions of the Constitution manifesting Judicial activism so as to recognize substantive rights under the Covenant where they are not so expressly recognized, or interpreted express procedural provisions in a positive manner so as to lessen their rigidity and thereby facilitating access to justice. There are numerous case law to this effect as referenced in the response to recommendation 1.

311. The tenure of the office and the independence of the judges of the Supreme Court and the Court of Appeal are guaranteed under the specific provisions of the Constitution. Appointments are made by the President of the Republic and judges hold office during good behaviour and cannot be removed except by an Order of Parliament made after an address to Parliament supported by a majority of the total number of Members of Parliament has been presented to the President for removal on the ground of proved misbehavior and incapacity.

312. It is also noted that any disciplinary control of the judicial officers other than those of the Supreme Court and the Court of Appeal is conducted by the Judicial Services Commission. The Judicial Service Commission consists of the Chief Justice and two other Judges of the Supreme Court.

313. The salaries and the pension of the Judges of the Supreme Court and Court of Appeal cannot be reduced after they are appointed. These are some of the constitutional safeguards provided to promote and preserve the independence of the Judiciary.

314. It should be noted that although three decades have passed since the present Constitution came into being, no judge of the Superior Courts has ever been impeached by Parliament. This fact underscores the strength of the independence of the judiciary in Sri Lanka.

**Recommendation 19: The State Party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in Article 19 of the Covenant. The State Party should take measures to ensure the impartiality of the Press Complaints Commission. (para. 17 of the concluding observations)**

315. The Government of Sri Lanka attaches the greatest importance to strengthening the media and providing a framework within which the media can function independently and without inhibition. The rights of the people to obtain information freely will be safeguarded by the Government.

316. In keeping with the Government policy of upholding media freedom, the mass media of Sri Lanka is dominated by private news organizations. Out of 36 media institutions only 4 are owned by the Government of Sri Lanka.

317. Only 15 major newspapers are published by the State-owned newspaper company, namely the Associated Newspapers of Ceylon Limited, whereas the other 52 newspapers are in private hands. These newspapers are published in Sinhala, Tamil and English languages.

318. Similarly, television channels are predominantly in private hands. Of the 15 television stations, only two are state owned i.e. the Rupavahini Corporation and the Independent Television Network (ITN).

319. The vast majority of radio channels are owned by private companies. There are 22 companies owning radio stations, of which only two, the Sri Lanka Broadcasting Corporation (SLBC) and ITN (Lakhandha service) are state owned. The SLBC operates 06 regional stations including the Palaly service in Tamil broadcast in the Northern Province. Around 70 foreign satellite television channels can be watched by Sri Lankans without any restrictions. This is run by a private TV operator.

320. Newspaper companies whether owned by Government or private entities, enjoy freedom and independence in publishing and no restrictions are placed on such institutions.

321. In order to ensure media freedom, the Government is seeking to strengthen grievance mechanisms which include complaints to Police, processing FR applications filed in the Supreme Court, and complaints to Press Council.

322. The GoSL is committed to taking necessary steps to ensuring safety of media personnel and institutions. In order to ensure media freedom, the Government is seeking to strengthen grievance mechanisms which include complaints to Police, processing FR Applications filed in the Supreme Court and complaints to Press Council. The Government is also pursuing investigation into current cases of alleged attacks on Media personnel and institutions.

323. Although no special laws have been formulated with regard to Media personnel and institutions, any person who seeks to vindicate their rights has the option of filing a Fundamental Rights Application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the HRCSL on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, are available to individuals or groups who wish to canvass for the rights of media personnel.

324. Any individual including Media Personnel can make a complaint of any alleged assault or intimidation directly to the Department of Police through established hotlines. Furthermore, the IGP has arranged for a weekly public day (Friday) where media personnel have access to senior officials of the Police including the IGP to make their complaints. A dedicated email account (telligp@police.lk) has also been established for complainants to reach the IGP directly.

325. In order to safeguard freedom of expressions and the rights of journalists and media personnel the Ministry of Mass Media and Information through the Department of Government Information continues to implement several measures to facilitate their work. The Department issues media accreditation to all journalists including foreign journalists which allow them to report freely on any incidents which are of news value from any parts of the country. This accreditation facilitates their travel and ability to engage in media Activities Island wide. Any journalist or media person can write, report, broadcast or perform any content without being censored by any party.

326. H.E. the President conducts regular meetings with media heads/editors and they are free to bring any issue pertaining to his administration, policies of the government and conduct of politicians or government officials or any other matter to his attention.

#### **Repeal of criminal defamation**

327. Media freedom was strengthened with the repeal of the 120 year old criminal defamation provisions in the Penal Code, by the Penal Code (Amendment) Act No.12 of 2002. Consequential amendments were also introduced to the Press Council Law to repeal the criminal defamation provisions therein.

328. The civil remedy of an action for damages is available to persons who allege defamation.

#### **Repeal of Parliamentary Powers and Privilege Act of 1978**

329. In order to further strengthen media freedom and create a more vibrant media the Government repealed the Parliamentary Powers and Privilege Act of 1978 which empowered the Parliament and Judicial authority to summon journalists before the Parliament and punish them without trial in a court of law.

330. Action was also initiated to appoint a Parliamentary Select Committee to make recommendations for setting up of a Media Council for the maintenance and promotion of the right of citizens to know information and for maintaining a high standard in communication ethics.

#### **Establishment of a Press Complaints Commission**

331. The Press Complaints Commission of Sri Lanka (PCCSL)<sup>79</sup> is an independent body that entertains complaints on editorial content from members of the public and seeks to resolve disputes through conciliation, mediation or arbitration. There is no fee involved for this service.

332. Any person who reasonably believes that he has been adversely affected by a Published item, including a news story, article, photograph and/or graphic that appeared in a newspaper or a magazine published in Sri Lanka may complain to the PCCSL.

333. The PCCSL strives to resolve the matter within 30 working days of receiving a complaint.

334. In the event a publication fails to abide by the terms of settlement of conciliation, mediation and/or arbitration proceedings, the Council shall assist the members of the public to enforce such terms of settlement before High Court in terms of the Arbitration Act, No. 11 of 1995.

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<sup>79</sup> [www.pccsl.lk](http://www.pccsl.lk)

335. An arbitral award may be enforced by applying to the High Court within one year after the expiry of fourteen (14) days of the making of the award in accordance with the provisions of the Arbitration Act No 11 of 1995.

336. Any adjudication of the Council of the PCCSL shall be published, in full, by the relevant news paper or magazine in its very earliest publication thereafter.

**Recommendation 20: The State Party should take appropriate steps to prevent all cases of harassment of media personnel and journalists and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted (para. 18)**

337. Sri Lankan media continues to display a wide spectrum of views. A perusal of the country's print and electronic media on any given day would demonstrate the diversity of views which exist with some of them being virulently anti-Government. Despite these views being on occasion even vituperative and targeted at personalities, it is nevertheless recognized that this is the price to be met for upholding the democratic norm of a free and vibrant media.

338. The GoSL remains committed to taking necessary steps to ensuring safety of media personnel and institutions and are also pursuing investigation into the current cases on alleged attacks on media personnel and institutions.

**Recommendation 21: The State Party should complete the ongoing process of review and reforms of all discriminatory laws, so as to bring them in conformity with the Covenant (para. 19 of the concluding observations)**

339. With regard to the concerns expressed by the Committee on compatibility with Article 3 of the ICCPR,<sup>80</sup> the Constitution of Sri Lanka provides in Article 12 (2) that "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex..." This constitutional guarantee operates as a safeguard to prevent any legal or factual discrimination between women and men. In addition Article 12 (4) provides that nothing in Article 12(1)-(3) shall prevent special provision being made by law, subordinate legislation or executive action for the advancement of women, children or disabled persons."

340. In accordance with Article 23 of the Covenant,<sup>81</sup> the family is the natural and fundamental group unit of the Sri Lankan society. As such Sri Lankan laws strive to protect the rights and entitlements of all members of the family, in particular the children.

341. It is noted that in accordance with Article 23(2) of the Covenant, there is no legal bar for consenting men and women of marriageable age to enter into marriage in Sri Lanka.

342. With respect of Article 23 (3) of the Covenant, the domestic legislation of Sri Lanka, in particular the General Marriage Ordinance and the Kandyan Marriage and Divorce Act, provides that the express consent of the bride and the bridegroom is a legal requirement prior to entering into a valid marriage. (Section 35 of the GMO and 22 of the KMDA). In addition the Courts have upheld that the consent of the bride to enter into marriage is a legal requirement under the general law of Sri Lanka.

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<sup>80</sup> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

<sup>81</sup> 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

343. The Muslim Marriage and Divorce Act have provision on consent with regard to women of the Shafi sect. It enacts that the marriage of a Shafi women is not valid unless her Wali (her guardian) is present at the Nika (ceremony) and communicates her consent and his approval. (Section 25 (1)). The Quazi may exceptionally authorize the marriage and registration and dispense with the presence and approval of the Wali. There is provision for a women or someone acting on her behalf to make a complaint to the Quazi against a Wali who unreasonably withholds consent.

344. In addition there are safeguards in the Sri Lankan legal system to ensure that individuals in Sri Lanka, who are of a marriageable age, enter into marriage only pursuant to the mutual consent of the Parties concerned. Under the General Marriages Ordinance, for any person to enter into marriage, such person must be above 18 years of age. In the event that a person who enters marriage without consent such a marriage becomes voidable.

345. The Government has appointed a Committee of eminent persons to consider and propose reforms to the Tesawalamai Law. The Committee is headed by a Judge of the Supreme Court. However, owing to perceived resistance by the community itself the Committee has not proceeded with its recommendations. See above paragraphs 131-139 on the Committee established to look into matters relating to Muslim law.

346. Adequate safeguards are also in place to ensure the protection of the rights of children pursuant to dissolution of marriage.

347. The Civil Procedure Code provides certain safeguards to ensure the protection of the rights of children pursuant to –

- separation;
- divorce; and
- nullity.

348. The Code provides that upon the pronouncing of a decree of divorce or separation the Court may order that a spouse shall for the benefit of the children of the marriage

- make a conveyance or settlement as the court thinks reasonable of such property or any part thereof as he may be entitled to ;
- pay a gross sum of money;
- pay annually or monthly such sums of money as the court thinks reasonable;
- secure the payment of sums of money ordered under paragraph (b) or (c) by the hypothecation of immovable property or by the execution of bond with or without sureties, or by the purchase of a policy of annuity in an insurance company or other institution approved by court

349. The Court is also empowered in the case of a decree absolute for dissolution of marriage or a decree of nullity of marriage to inquire into the existence of any ante nuptial or post nuptial settlement made on the parties and make such orders for the benefit of the children, as to the Court seems fit.

350. In an action for obtaining a separation the court may make interim orders and may make such provision in the decree as it deems proper with respect to the custody, maintenance and education of the minor children of the marriage and where it thinks fit, direct proceedings to be taken for placing such children under the protection of such court.

351. Even after a decree of separation the Court may make provision with respect to the custody, maintenance and education of the minor children of the marriage or for placing such children under the protection of such Court.

352. In an action for dissolution of marriage or a decree of nullity of marriage the court may make interim orders and may make such provision in the decree absolute or decree as the Court deems proper with respect to the custody, maintenance and education of the minor children of the marriage and may also direct proceedings to be taken for placing such children under the protection of the Court.

353. Even after making the decree absolute for dissolution of marriage or a decree of nullity of marriage the Court may on summary procedure make from time to time, orders with respect to the custody, maintenance and education of the minor children or for placing such children under the protection of such Court.

354. The attention of the Committee is drawn into the Section of this report at page 33 dealing with the ICCPR Act in regard to the rights of the child all persons in respect of Article 24 of the Covenant.<sup>82</sup>

355. The enactment of the Citizenship (Amendment) Act No. 16 of 2003 enabling a Sri Lankan Woman to transmit her citizenship to her child.

**Recommendation 22: The State Party is urged to enact appropriate legislation in conformity with the Covenant without delay. It should criminalize marital rape in all circumstances. The State party is also urged to initiate awareness-raising campaigns about violence against women (para. 20)**

356. With regard to the concerns expressed by the Committee on acts of violence against women and the need to criminalize marital rape in all instances, Sri Lanka makes the following observations:

- Sri Lanka is pleased to inform the Committee that as a positive step towards addressing the issue of domestic violence, the Government of Sri Lanka enacted the *Domestic Violence Act No 34 of 2005*, which came into effect on 3<sup>rd</sup> October 2005. The Act was enacted primarily to conform to the obligations of Sri Lanka under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and as a response to the Observations made by the CEDAW Committee on Sri Lanka's 3<sup>rd</sup> & 4<sup>th</sup> Periodic Reports. It provides an important opportunity for renewed and refocused efforts to address the issue of domestic violence and is significantly gender neutral in its approach.
- The definition under the Act of "domestic violence" implies both physical and emotional violence committed by a relevant person within the environment of the home or outside. Whatever bodily harm that is caused has to come within Chapter XVI of the Penal Code. Therefore it covers such acts of "Grievous Hurt", "Wrongful Restraint", "Assault", "Rape", "Cruelty", "Incest", "Grave sexual abuse", "Extortion", "Criminal Intimidation" and any attempt to commit any of such offences.

357. Emotional abuse is meant to be a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature. The relationship between the aggrieved person and the perpetrator has to be personal and the relevant person could be a spouse, ex-spouse, cohabiting partner or any other ascendants, descendants or collaterals of the aggrieved person, or of a spouse, ex-spouse or partner.

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<sup>82</sup> Article 24 of the Covenant states, "1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality. "

358. In terms of relief, an aggrieved person can apply to the Magistrate's Court where an act of domestic violence has been committed or is likely to be committed, requesting either an Interim Protection Order or a Protection Order (IPO/PO) directing the person who has caused the grievance to refrain from committing any further act of domestic violence.

359. Significantly the Court is given the discretion to determine whether the circumstances are such so as to grant immediate relief, without a hearing, by issuing an IPO. Under both Orders however, the Court may in due course forward the matter for counseling and order of a third party to monitor the observance of the Order and submit a Report to Court.<sup>83</sup> A PO may be altered, modified, varied, extended or revoked on an application made by either party after hearing both sides.<sup>84</sup>

360. A PO can initially remain in force up to one year and both types of Orders may prohibit the respondent from either entering the aggrieved person's residence, place of employment, school or a temporary shelter, from occupying the shared residence, stalking, having access to shared resources, having any contact with a child or from performing any transaction related to the matrimonial home<sup>85</sup>.

361. Section 12 of the Act further empowers the Court to issue supplementary orders whereby steps can be taken to protect and provide for the immediate safety, health or welfare of the aggrieved person. Significantly the Act also shares a concern with ensuring the financial stability of the aggrieved person where the respondent may be directed to provide monetary assistance where he/she has a duty of support.

362. Notably, as far as the hearing of evidence is concerned, where a respondent is not being questioned by a legal representative, he or she may not directly question witnesses or the aggrieved; instead the questions may be directed at Court which in turn will be directed at the individual concerned.

363. The Act provides a civil remedy; therefore any charge has to be proved only on a balance of probability, which places a lesser onus on the aggrieved. Any violation of an IPO or PO would bring in penal sanctions of a fine or imprisonment or both<sup>86</sup>. And the granting of a civil remedy will have no bearing on the normal criminal law jurisdiction. Thus where an offence has been committed, the normal criminal justice process of investigation, prosecution and punishment will follow.

364. Sri Lanka notes that the enactment of this Act has brought a subject earlier thought to be a "private" matter outside the interference of the State, particularly in the cultural background of the country, into the public domain. This is a marked example of the Government's commitment to the enforcement of rights guaranteed under the Covenant and other international instruments to which Sri Lanka is a party.

365. Sri Lanka also notes however that a full implementation of the Act, would require awareness raising campaigns in all parts of Sri Lanka and particularly cooperation between all the support networks contemplated in the Act, namely social workers, the police, the aggrieved person and the courts. The government is confident that this will be achieved in the long term.

#### **Successful implementation of the Prevention of Domestic Violence Act**

366. The Prevention of Domestic Violence Act, 2005 (PDVA) provides for protection orders to be urgently obtained to safeguard Women and Children suffering from or at risk

<sup>83</sup> Section 5(2) (b)

<sup>84</sup> Section 14(1)

<sup>85</sup> Section 11(1)

<sup>86</sup> Section 18

of domestic violence. Measures have also been introduced that look into basic needs such as housing and safety, and the economic needs of victims. The Penal Code (Amendment) Act 2006 addressed child trafficking and the ICCPR Act of 2007 was enacted to provide for certain rights which had not been provided in the Constitution and domestic laws.

367. Studies and anecdotal evidence indicate that the PDVA is being implemented, and women are filing cases, particularly with the support of women's groups, the complaints and counseling centers of the State at the National Committee on Women, and the Police Women and Children's Desks.

368. Sri Lanka also wishes to highlight the importance of the Women's Charter, which was approved by the Cabinet of Ministers in 1993. The principles laid down in the Charter act as a guide for all persons, institutions, organizations and enterprises in all matters relating to women. The Charter recognizes the following rights, which are well elaborated within the Charter:

- Political and Civil Rights
- Rights within the family
- Rights to Education and Training
- Rights to Economic Activity and Training
- Rights to Health Care and Nutrition
- Rights to Protection from Social Discrimination .

369. The Charter also established a National Committee on Women for the purpose of examining programmes on the realization of the obligations undertaken by the Charter. This is an advisory body which meets monthly to take policy decisions on issues relating to women. There is a Secretariat and a Complaints Center for the benefit of women, children and husbands. The Committee is also engaged in conducting island wide awareness programmes for the prevention of domestic violence.

370. In terms of awareness raising measures on domestic violence, many state and non-state institutions carry out such campaigns. For example the Ministry of Child Development and Women's Affairs launched a national campaign "STOP Rape Now" and this campaign was conducted successfully in 2011 and 2012. Women who have been identified as victims of domestic violence have been granted legal aid. Awareness programs are conducted continuously with a special focus in the North/East Provinces and also the plantation sector. Legal aid desks have also been established to provide legal aid to women subject to violence, including domestic violence.

371. In order to engage men in addressing gender base violence in Sri Lanka the Ministry of Child Development and Women Affairs conducted two workshops "Men too can make a difference". This was both a bold and pioneering step undertaken with the engagement of male parliamentarians, policy makers and military among others to inform on the role men can play in addressing gender based violence.

372. The Ministry of Child Development and Women's Empowerment had organized a workshop in order to ascertain the progress of the Domestic Violence Act No 34 of 2005. The Ministry is now in the process of taking progressive steps as a follow up to the matters raised at the workshop. This also involves the participation of the children's and women's secretariat of the Police and other Non-governmental Organizations. The Ministry has also conducted programmes on Violence Against Women in 183 Divisional Secretariats in 12 Districts in commemoration of the international day on Prevention of Violence Against Women. In addition, short films have also been telecasted to raise awareness and minimize violence against women. Furthermore, awareness programs have also been conducted for 80 Counseling Officers attached to the Ministry of Social Services and Social Welfare and



the Ministry of Child Development and Women's Empowerment on the Domestic Violence Act. Awareness programs have also been conducted with the aim of sensitizing law enforcement authorities and with the aim of promoting organizational capacity building in minimizing such harassments at Divisional level.

373. The National Action Plan on Women has been finalized and has been sent to the Ministry of Plan Implementation for its observations. A National Plan of Action for Women were developed by consulting individuals at the grass roots levels NGOs, government organizations and experts in the fields. The NPA is dedicated to combat violence against women and girls and has been drafted taking into considerations the Beijing Declaration and Platform for Action.

374. Four Workshops have also been organized in different Districts of Sri Lanka to sensitize Police officers on Violence against Women. This is organized by the Ministry of Justice and Law Reforms, the National Committee on Women and Medico-Legal Society of Sri Lanka.

375. In addition, the Judges Training Institute in collaboration with the Ministry of Justice and Law Reforms, the National Committee on Women and Women in Need have organized four workshops to sensitize all Magistrate's regarding domestic violence for the effective implementation of the Domestic Violence Act.

376. The first government sponsored shelter for women victims of violence was established and can provide accommodation for almost 30 inmates. At present there are several inmates at the shelter and the second shelter is to be established in Mulaithivu. The Ministry of Child Development and Women's Affairs is also in the process of setting up counselling centres in selected districts to provide counselling for victims of violence.

377. An island-wide Campaign to End Violence Against Women (CEVAW) was launched in 2004 with the aim of reducing social acceptance of violence against women. The Women's and Children's Bureau of the Sri Lanka Police operates 36 specialized desks in the Island under the supervision of Assistant Superintendents of Police for the relevant District.

378. The National Committee on Women has embarked on an island wide programme to monitor and implement the Prevention of Domestic Violence Act. These involve holding of awareness seminars to sensitize women to the provisions of the Prevention of Domestic Violence Act, the opening up of shelters, counselling, centres for abused women & children under protection orders of the new legislation.

379. Action has been taken by the Police Department to increase the number of Women & Children's Desks.

380. Even during the conflict there was an induction of 175 persons of Tamil linguistic origin, including 50 women into the police force in the Eastern Province.

381. Marital rape is recognized by the Penal Code amendment of 1995 by section 363(a) as an offence when the parties are judicially separated. It should be noted that there are cultural sensitivities relating to the criminalization of "marital rape" in all circumstances within Sri Lankan society.