

Additional Update to the Fifth Periodic Report of Sri Lanka under the International Covenant on Civil and Political Rights

The Government of Sri Lanka wishes to submit the following Additional update to the United Nations Human Rights Committee on the implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee (CCPR) considered the Fifth Periodic Report of Sri Lanka (CCPR/C/LKA5/) under the ICCPR on 7th and 8th October 2014. Its Concluding Observations were adopted on 27th October 2014 (CCPR/C/LKA/CO/5). Sri Lanka submitted an Update to its Fifth Periodic Report in October 2015 detailing certain developments in Sri Lanka from January to October 2015, which positively impacted on the implementation of the provisions of the ICCPR. An Additional Update providing information on further developments up to June 2016 was submitted in June 2016.

The present Additional Update seeks to provide further information requested by the Human Rights Committee based on the information set out in the Additional Update submitted in June 2016.

Paragraph 05

(a) Nineteenth Amendment to the Constitution

The 19th Amendment to the Constitution repealed the 18th Amendment to the Constitution in its entirety. All provisions of the 18th Amendment, including (1) the removal of the presidential term-limit (i.e. the bar on holding the office of president on more than two occasions), (2) the replacement of the Constitutional Council, and (3) the granting of substantial powers to the President to appoint judges and members of the Judicial Service Commission, were repealed by the 19th Amendment.

(b) Criteria for appointment and dismissal of members of independent bodies

The 19th Amendment provided for the establishment of the Constitutional Council. The Council is a multi-partisan body that comprises seven members who are Members of

Parliament from a variety of political parties and three members with no political affiliation. The 19th Amendment significantly reduces the powers of the executive president to make appointments to high offices and independent commissions. Under the 18th Amendment, the President was only required to seek the observations of the Parliamentary Council when making appointments. Under the 19th Amendment, the Constitutional Council recommends appointments to independent commissions including the Judicial Service Commission, and the President is prohibited from making any appointments to such commissions unless on the recommendation of the Council. Moreover, the President cannot make appointments to high offices, including the Chief Justice and the judges of the Supreme Court and Court of Appeal, unless the Constitutional Council approves the appointments.

The independence of the Judicial Service Commission has ensured that persons appointed as judges of lower courts are reputable and competent. The Judicial Service Commission is also tasked with the disciplinary control of judges including judges of the High Court.

The removal of all judges of the Supreme Court and Court of Appeal is subject to the approval of Parliament. Judges may only be removed for proved misbehaviour or incapacity. Judges of the High Court meanwhile may be removed on disciplinary grounds by the President on the recommendation of the Judicial Service Commission.

(c) (i) Role and mandate of the Judicial Service Commission

The Judicial Service Commission comprises the Chief Justice and the two most senior Judges of the Supreme Court. The Commission is mandated to *inter alia* transfer judges of the High Court; and appoint, promote, transfer, exercise disciplinary control and dismiss judicial officers and scheduled public officers (e.g. the Registrar of the Supreme Court and the Registrar of the Court of Appeal). It may also make rules regarding training of Judges of the High Court, and the schemes for recruitment and training. It also enjoys exclusive powers to determine the question of whether or not a person is a judicial officer within the meaning of the Constitution.

(c) (ii) Content and implementation of the 19th Amendment to the Constitution

The 19th Amendment introduced major reforms in terms of the powers of the executive president, appointment procedure with respect to high offices and independent commissions, and fundamental rights. It re-introduced the term-limit imposed on any one individual to hold the office of President i.e. two-terms. It also removed presidential immunity from suit. The Supreme Court can now exercise its fundamental rights jurisdiction over any act carried out by the President in his official capacity. Moreover, as explained above, the 19th Amendment substantially restricts the President's powers of appointment. Through such reform it has strengthened the independence of high offices such as the Chief Justice and Attorney General, and the independence of commissions including the Judicial Service Commission, the Human Rights Commission of Sri Lanka, the National Police Commission and the Public Service Commission. Additionally, a new right to access information was introduced through the 19th Amendment.

The 19th Amendment has been implemented in full, as appointments to high offices and independent commissions have been made in full compliance with the Constitution as amended. Moreover, the Right to Information Act, No. 12 of 2016 was enacted in August 2016 to substantiate the new fundamental right guaranteed under the 19th Amendment.

(c) (iii) Follow-up information

The former Chief Justice Shirani Bandaranayake was reinstated in January 2015 following the democratic transition of the government. President Maithripala Sirisena effectively reversed the purported decision of Parliament to impeach her, as due process had not been followed in the impeachment process, and the removal of the former Chief Justice was deemed to be null and void. Justice Bandaranayake retired soon after, and was replaced by Justice K. Sripavan.

Paragraph 14

(a) Updated information on the plans to address the right to truth, justice, reparations and guarantees of non-recurrence

The Government of Sri Lanka (GoSL) co-sponsored UN Human Rights Council Resolutions 30/1 and 34/1 titled 'Promoting reconciliation, accountability and human rights in Sri Lanka' in September 2015 and March 2017 respectively. The resolutions set out Sri Lanka's broad commitments to promote reconciliation, ensure accountability for alleged abuses of international human rights law and international humanitarian law during the conflict, and improve the human rights situation in the country. The constructive recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) form part of the substance of the resolutions. The LLRC report was also a core document in the formulation of the National Human Rights Action Plan 2017-2021 (NHRAP). Hence, the government has sought to implement the recommendations of the LLRC via the fulfilment of its commitments under the resolution and the action points in the NHRAP. The resolutions specifically commit to the establishment of transitional justice mechanisms including an Office on Missing Persons, a truth-seeking commission, an Office on Reparations, and a special court with independent counsel.

Sri Lanka established three new agencies namely, the Ministry of National Integration and Reconciliation (MNIR) with H.E. the President as the Minister, the Ministry of National Co-existence, Dialogue and Official Languages, and the Office for National Unity and Reconciliation (ONUR) as an agency of the MNIR, to spearhead programmes to usher in unity and reconciliation in the country. In consultation with the two relevant Ministries, the ONUR developed a draft National Policy on Reconciliation through a one-year process of consultations with multiple stakeholders, and through revisiting previous national initiatives on reconciliation including the LLRC's report. The Policy provides direction to the process of reconciliation in the country, and steers all stakeholders working on reconciliation towards a uniform and coherent approach to national reconciliation. Consequent to a joint Cabinet Memorandum submitted by H.E. the President as the Minister of National Integration and Reconciliation, and the Minister of National Co-

existence, Dialogue and Official Languages, the Cabinet of Ministers approved the Policy for adoption in May 2017. ONUR, in collaboration with state and private media, and through social media, has meanwhile commenced a nation-wide media campaign to foster the vision of a pluralistic and inclusive Sri Lanka.

In December 2015, the government established the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) under the Prime Minister's Office to ensure that the commitments under UNHRC Resolution 30/1 are met. The SCRM was tasked with the design and facilitating implementation of the government's transitional justice mechanisms, and also serves to facilitate and provide support to achieving the non-recurrence agenda via ONUR.

Since its establishment, SCRM has entered into partnerships with the UN Country Team to ensure that international best practices are adopted in the design of the reconciliation mechanisms in Sri Lanka. These partnerships include those with UNDP, OHCHR, UN DPA, IOM, UNICEF, and UN Women. A Peace-building Priority Plan was accordingly formulated to provide support to actionable areas in the government's reconciliation agenda. The SCRM is currently engaged with the UN in finalising the monitoring and evaluation components of the Plan in addition to finalising the concept notes which have been developed in close coordination with key government stakeholders and UN agencies.

A high-level Steering Committee on Reconciliation was established to provide overall direction to all activities concerned with reconciliation and non-recurrence in Sri Lanka. The Chairperson of ONUR, former President Chandrika Bandaranaike Kumaratunga, chairs this Committee, and the Secretary General of the SCRM serves as the convenor of the Committee.

In January 2016, the government also appointed a Consultation Task Force (CTF) on processes relating to reconciliation and transitional justice. The CTF comprised reputed civil society representatives and was assisted by a Committee of Experts, and a Representatives Committee, which connected the task force to relevant stakeholders. The CTF carried out nationwide consultations and received over 7,000 submissions. Its final

report was presented to government in January 2017, and is being considered in the process of preparing draft legislation to establish transitional justice mechanisms.

The government has taken steps to establish the four transitional justice mechanisms committed to under Resolutions 30/1 and 34/1. First, in August 2016, it enacted legislation to establish the Office on Missing Persons. Second, a Working Group comprising senior academics, government officials and transitional justice experts was appointed to draft legislation on a truth-seeking mechanism. The recommendations of the abovementioned CTF were fully considered in the drafting process. Third, a Reparations Technical Committee was appointed to draft legislation on the establishment of an Office of Reparations. The report of the Task Force, and the views of a number of state ministries and public officials with experience in granting reparations were considered in the drafting process. The draft laws on a truth-seeking mechanism and Office of Reparations will be presented to Cabinet once the drafts are vetted by the Attorney-General for constitutional compliance.

The government has also sought to promote reconciliation through short and medium term confidence building measures in the areas of land, education, livelihoods, language and psychosocial support. Many of these measures were in fact recommended by the LLRC.

The release of private land occupied by the military is another major priority of the government. 24,336.25 acres of private land in the Northern and Eastern provinces have been released since the end of the war in 2009, out of which 4,190.58 acres have been released since January 2015. A total of 6051.36 acres of private land in the Northern and Eastern provinces occupied by the military remain to be released.

In the conflict-affected Northern and Eastern provinces, schools have been re-opened since the conclusion of the conflict in 2009. Children, including former child combatants recruited by the LTTE, are currently attending school. Meanwhile, since 2009, female ex-child combatants whose education was disrupted by the LTTE have sat for General

Certificate of Education (GCE) Ordinary Level (O/L) and Advance Level (A/L) examinations conducted by the Department of Examination of Sri Lanka.

Since women head 23.4 percent of households in the North and East, in March 2015, the government set up a National Committee on Female-Headed Households (FHHs) and a National Centre for FHHs in Kilinochchi. These Committees have enabled FHHs to integrate into the workforce and access sustainable livelihoods.

Following the change of government in January 2015, the government introduced the practice of singing the national anthem in both national languages (Sinhala and Tamil). The national anthem was accordingly sung in both languages at the 4th February Independence Day celebrations in 2015, 2016 and 2017.

The government has taken steps to strengthen the framework for the provision of psychosocial care to war-affected communities. For example, ONUR has worked with consultant psychiatrists and psychologists to hold 'training of trainers' workshops in the Northern Province. The workshops aim to train over a thousand Development Officers in the provision of support to traumatised individuals in their respective communities.

(b) Measures taken to allow witnesses residing overseas to testify by video link from locations outside Sri Lanka

A Bill to amend section 31 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 to enable witnesses to give testimony through audio-video linkage from outside Sri Lanka was approved by the Cabinet of Ministers in 2016 and was presented in Parliament on 25 July 2017. This amendment, once enacted by Parliament, will enable a victim or witness to testify from any Sri Lankan diplomatic mission abroad from where such victim or witness seeks to do so. (The Bill is at **Annex I**)

Paragraph 15

(a) Clarifying cases of enforced disappearance

The GOSL has taken positive measures to investigate disappearances of the past, and to ensure non-recurrence of disappearances in the future. It has made progress in investigating the disappearance of journalists including Prageeth Eknaligoda. Several suspects have been arrested, and later granted bail; prosecutions are expected to begin once investigations are completed.

Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in May 2016. Following the ratification, a committee of experts prepared legislation to incorporate the provisions of the Convention into domestic law. The ICPPED Bill has received Cabinet approval and will be discussed in Parliament shortly. The Bill proposes to criminalise enforced disappearance, and to provide the families of victims with effective remedies to obtain compensation and to seek information on the whereabouts of victims.

12,341 cases relating to Sri Lanka have been reported to the UN Working Group on Enforced or Involuntary Disappearances (WGEID), of which 6,591 were clarified. Out of the remaining 5,750, the GOSL provided clarifications and information on further 1,997 cases which includes clarifications on 309 cases submitted by the GoSL in April 2016. The GOSL will endeavour to clarify the remaining 3,753 cases through the Office on Missing Persons.

The WGEID undertook a visit to Sri Lanka from 9th to 18th November 2015, and noted the cooperation of the government in providing unimpeded access to places of detention. Further, according to the shadow report of the HRCSL, there have been no reported incidents of enforced disappearance in 2015/2016.

In many disappearance cases, the families of the disappeared believe that the person concerned is still living. In this context, in 2016, the government enacted an amendment to the Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010 in order to issue Certificates of Absence in lieu of death certificates which would enable the families of the

disappeared to access the right to utilise land and withdraw funds from bank accounts belonging to the missing person. ONUR has facilitated the activation of this process, and the Registrar General of Births and Deaths has called for applications for issuance of Certificates of Absence.

(b) Office on Missing Persons

The Office on Missing Persons Act, No. 14 of 2016 was passed by Parliament and was certified by the Speaker on 23 August 2016. (The Act can be accessed at http://docs.wixstatic.com/ugd/bd81c0_156157c2484244cba2fb9b2c1c0612df.pdf)

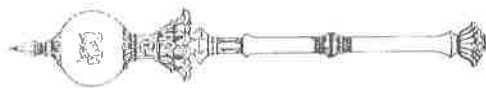
An amendment to the Act was passed by Parliament on 21 June 2017, following which the Office could be operationalised. Accordingly, the Office of Missing Persons was gazetted under the Ministry of National Integration and Reconciliation by H.E. the President on 20 July 2017. Assistance with regard to setting up of the OMP will be dispensed by the SCRM in close coordination with relevant entities. Next steps in operationalising the Office would include the appointment for Commissioners via the Constitutional Council prior to the commencement of formal operations by the respective office.

Paragraph 21

Details pertaining to investigations commenced into key cases involving attacks against journalists are as follows.

With regard to the case concerning Prageeth Ekneligoda, 9 suspects were arrested by police and investigations into the matter are in progress. In connection with the assassination of Lasantha Wickramatunge, the Magistrate of Mount Lavinia ordered the exhumation of the body of the deceased in order to facilitate further forensic investigations into the assassination, while one suspect has been arrested in connection with the matter. Investigations are continuing.

Sri Lanka would endeavour to provide more comprehensive information on the total number of complaints received since the Committee's Concluding Observations and action taken thereupon, in its 6th periodic report due in October 2017.



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**ASSISTANCE TO AND PROTECTION OF VICTIMS
OF CRIME AND WITNESSES (AMENDMENT)**

A

BILL

**to amend the Assistance to and Protection of Victims of Crime and
Witnesses Act, No. 4 of 2015**

*Presented by the Minister of Justice and Minister of Buddhhashasana on
25th of July, 2017*

(Published in the Gazette on May 08, 2017)

Ordered by Parliament to be printed

[Bill No. 193]

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA
TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 5

Price : Rs. 6.00

Postage : Rs. 10.00

*Assistance to and Protection of Victims of
Crime and Witnesses (Amendment)*

L. D.—O. 48/2016.

AN ACT TO AMEND THE ASSISTANCE TO AND PROTECTION OF VICTIMS
OF CRIME AND WITNESSES ACT, NO. 4 OF 2015

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Assistance to and Protection of Victims of Crime and Witnesses (Amendment) Act, No. of 2017. Short title.

2. Section 31 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 is hereby amended as follows:— Amendment
of section 31
of Act, No. 4
of 2015.

(1) in subsection (1) of that section, by the substitution for the words “within Sri Lanka,” , of the words “within or outside Sri Lanka,”;

(2) by the insertion immediately after subsection (1) of that section, of the following new subsection:—

“(1A) Where any evidence or statement of any victim of crime or witness is to be recorded from any remote location outside Sri Lanka under subsection (1), it shall be recorded at the Sri Lankan diplomatic mission in the country from where such victim of crime or witness seeks to testify or make the statement.”; and

(3) by the repeal of subsection (4) of that section, and the substitution therefor, of the following subsection:—

“(4) For the purposes of this section—

(a) “Court” means a Court before which any criminal proceedings are being conducted; and

2 *Assistance to and Protection of Victims of
Crime and Witnesses (Amendment)*

(b) “public officer” includes an officer
serving in the Sri Lanka Foreign
Service.”.

3. In the event of any inconsistency between the Sinhala
5 and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency.

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