



12 September 2014

Sir Nigel Rodley  
Chairperson  
Human Rights Committee  
Office of the High Commissioner for Human Rights  
UNOG – OHCHR  
CH 1211 Geneva 10  
SWITZERLAND

Dear Sir Rodley,

**ALTERNATIVE REPORT TO THE UNITED NATIONS HUMAN RIGHTS  
COMMITTEE IN REGARD TO THE FIFTH STATE PARTY REPORT SUBMITTED  
BY SRI LANKA – SEPTEMBER 2014**

**BY THE ASIAN LEGAL RESOURCE CENTRE (ALRC)**

I am submitting on behalf of the Asian Legal Resource Centre (ALRC) the following submission.

May I take the opportunity to thank the Human Rights Committee for all its efforts to contribute to the improvement of the protection and promotion of Human rights in Sri Lanka.

I am sure that your good-self and the Committee is aware of continuously declining of respect for the protection of citizens in terms of their human rights in Sri Lanka. In that light may I be permitted to make an observation in terms of previous recommendations made to the State Party at previous sessions of the Human Rights Committee. It is not an exaggeration to say that the State Party has virtually ignored almost all previous recommendations of the Committee.

In that light, it is relevant to observe that in countries such as Sri Lanka where the basic constitutional structure and the public justice system negatively contributes in terms of protection of human rights, mere formal critique of the state party's performance and repetition of formal recommendations is unlikely to find a positive response from the State Party.

What might be a constructive approach is primarily to examine the constitutional obstruction to the implementation of ICCPR in particular and virtual erosion of the basic rule of law structure in Sri Lanka and virtual collapse of the criminal justice system in Sri Lanka. While the public justice system has radically declined what is emerging is the sad spectacle of privatization of justice. The critical issue is that within the existing structure of the public justice system recommendations relating to implementation of ICCPR cannot be done.

Among all the problems of human rights, faced in the country what is worse is the virtual demise of the authority of the Supreme Court. With this decline there is no state authority to act as the guardian of human rights in Sri Lanka.

The ALRC fervently hopes that these serious problems and the recommendations that the ALRC has made in this Submission, will find reflection in the recommendations of the Committee at this Session.

Thank you,

Yours Sincerely

(signed)

Bijo Francis  
Executive Director  
Asian Legal Resource Centre

**ALTERNATIVE REPORT TO THE UNITED NATIONS HUMAN RIGHTS  
COMMITTEE IN REGARD TO THE FIFTH STATE PARTY REPORT  
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**1. The conflict between the conceptual framework of the ICCPR and the Constitution of the Democratic Socialist Republic of Sri Lanka**

1.1. **Office of the Executive President is above the law:** The doctrine of the separation of power as understood in a liberal democratic framework has been rejected in the conceptual basis of the Constitution of Sri Lanka, and this is seen in the way in which power distribution is articulated in the said constitution. The office of the Executive President virtually subsumes every other organ of government. The President is neither answerable to the Courts nor to the Parliament. In other words, the President cannot be held accountable during his/her tenure of office, even for an act of intentional violation of the Constitution. The holder of the Office stands above the law. This has an immediate impact on the realization of Covenant rights, since the very basic idea of the independence of institutions - including that of the judicial institution - has been seriously undermined.

1.2. **Complete displacement of the principle of the separation of powers:** Universally recognized principles relating to the separation of powers are incapable of being realized in this constitutional structure. Parliamentary control of the Executive is not effectively exercised due to the overwhelming powers vested in the Office of the Executive President. Separation of power between the executive and the judiciary is also not practically evidenced due to presidential control of appointments of superior court officers and (indirectly) their transfers, promotions and dismissals. Even though, theoretically, the power over disciplinary control and transfer of judges rests with the Judicial Service Commission (JSC), the control to appoint the Chief Justice and other Superior Court Judges (who constitute the JSC) is exercised and rests unconditionally and entirely with the President.

Further, the dismissal of these higher-court judges is being done through a political process by a Select Committee of Parliament, which is ultimately controlled by the President - which again illustrates the preponderance of executive power over the Parliament. This was seen in 2013 when the Chief Justice of Sri Lanka was impeached by government parliamentarians, ejected from office and replaced by the politically compromised Attorney General who is currently Sri Lanka's *de facto* Chief Justice.

In a context where the Chief Justice and the judges of the Superior Courts hold office at the pleasure of the President, there can be no independence of the judiciary and consequently no realization of Covenant rights.

1.3. **The judiciary and the courts:** There are no constitutional impediments to obstruct the President and/or the Executive interfering into the decision making processes of judges. There are no operative Constitutional Conventions to prevent the President or the Executive giving directions to the judges on the outcome of cases. The practical result of which is, the reality of the absence of justice ó and which Sri Lankans experience on a daily basis. The JSC does not function independently but in accordance with the dictates of the government. Neither is there a public perception that independent decision making can be expected from this body. The JSC process is neither transparent nor accountable. Previous individual views expressed by the Committee regarding the need to ensure transparency and public access to decision making by the JSC have been wholly ignored.

1.4. **Direct impact on the protection of minority rights:** Currently the continuation of a public security regime in Sri Lanka is effected by regulations under Section 27 of the Prevention of Terrorism Act (PTA), which reflects the earlier Emergency Regulations (ERs) under the Public Security Ordinance (PSO).<sup>1</sup> The State Party response in the Periodic Report under review is that the emergency regime in Sri Lanka is no longer in force. This claim is not valid. In fact, on the contrary, 'a perpetual state of emergency has been created through subordinate legislation which, unlike the ERs which were subject to periodic parliamentary oversight',<sup>2</sup> entrenched the counter terrorism agenda within the public security framework in Sri Lanka. The judicial response to upholding rights of minority petitioners on constitutional grounds is abysmal. A common feature is that the anti-terrorism law is used to launch cases against individuals seen as opposing the regime and then, in some instances, the power of presidential pardon is employed to free that individual. Here again, what emerges is the supremacy of Presidential rule over the legal process. Some illustrations below indicate this fact.

1.4.1. *Detention and rehabilitation of Jaffna University students* - On the 27 November 2012, students of Jaffna University lit candles on *Maa Veerar Naal*, i.e. Heroes day, traditionally celebrated by the Liberation Tigers of Tamil Eelam (LTTE) to commemorate fallen members of their movement. The following day, the students organised a protest march, which the police suppressed, arresting protestors.<sup>3</sup> Four individuals were detained under the PTA Regulations. Two of the students were released from custody on 22 January 2013 after being rehabilitated at the Centre. The Government stated that the remaining students required further rehabilitation. These students were released later under the pardon of President Mahinda Rajapaksa. The President's 'benevolence' was

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<sup>1</sup> The Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011, the Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organisation) No. 2 of 2011, the Prevention of Terrorism (Extension of Application) Regulations No. 3 of 2011, the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011, and the Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011, respectively published in Extraordinary Gazette Notifications 1721/2, 1721/3, 1721/4 and 1721/5 of 29 August 2011.

<sup>2</sup> See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, *The Judicial Mind in Sri Lanka- Responding to Minority Rights*, Law & Society Trust, 2014, at p247.

<sup>3</sup> *Ibid.*

seen as a determinative factor in securing the release of the two students. The case demonstrates a critical departure from previous precedent where the courts were the fora for canvassing rights.<sup>4</sup> Now the *onus* has shifted from the legal arena to the arbitrary use and abuse of presidential power.

- 1.4.2. *Ganesan Nimalaruban's case* - In July 2012, Ganesan Nimalaruban and Mariyadas Pevis Delrukshan, two Tamil political prisoners, died in state custody.<sup>5</sup> They were severely beaten by the Special Task Force (STF) of the Police following their involvement in a hostage taking incident at the Vavuniya Prison. Nimalaruban (age 28) succumbed to his injuries in hospital on 4<sup>th</sup> July 2013 and Delrukshan (age 34), who was in a coma for several days, and later succumbed to injuries he sustained as a result of the assault.

Nimalaruban's father thereafter filed a fundamental rights application dated 3<sup>rd</sup> August 2012 before the Supreme Court. According to the petition, Nimalaruban was arrested by the Criminal Investigation Unit of the Vavuniya Police on 5<sup>th</sup> November 2009 while traveling on a motorcycle with a friend along Veppankulam Road, Vavuniya.<sup>6</sup> After being detained at the Criminal Investigation Unit, Vavuniya, for two days, Nimalaruban was taken to the Vavuniya Police Station. Meanwhile a Detention Order under Regulation 19(1) of the 2005 ERs was issued by the Additional Secretary to the Ministry of Defence to detain Nimalaruban for a period 30 days. According to the petition, Nimalaruban was thereafter produced before the Magistrate's Court in Vavuniya and the Magistrate ordered that he be remanded.

The matter was eventually decided by Sri Lanka's *de facto* Chief Justice, Mr Mohan Peiris, on 14<sup>th</sup> October 2013. The Court proceeded to dismiss the application without reasons. Hence, there is no official record of the proceedings or the exchange between counsel and Court. However, unofficial media reports cited by the Asian Human Rights Commission are illustrative of the events that took place.<sup>7</sup> Mr. Peiris is reported to have observed in Court that 'if children are brought up well, they won't be involved in these types of activities' thereby displaying what appears to be prejudicial sentiments regarding a case which he was yet to hear.<sup>8</sup> He was also reported as saying that the prison authorities needed to use some type of force to quell the riots and rescue prison officers who had been taken hostage. He then reiterated that Nimalaruban was already suffering from a heart ailment, and that that was the cause of his death.<sup>9</sup> The Asian Human Rights Commission pointed out that, at this

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> The petition was reproduced by the Asian Human Rights Commission in: Asian Human Rights Commission, *Sri Lanka: Ganesan Nimalaruban case: Chief Justice Mohan Peiris denies petitioner's lawyers right to see replies filed by Attorney General*, 22 May 2013.

<sup>7</sup> Asian Human Rights Commission, *Sri Lanka: In Ganesan Nimalaruban's case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013>.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

stage of the case, the Court did not have all the evidence that would be led by both parties, and that the *de facto* CJ was not in a position to make his judgment on the facts.<sup>10</sup> Moreover, when Counsel for the petitioner pointed out that there was no material before Court to prove the victim's connection to the incident at the Vavuniya Prison, Mr. Peiris indicated that he had personal knowledge about the incident.<sup>11</sup>

The case remains one of the starkest examples of the capitulation of the Sri Lankan judiciary to so-called public security concerns.<sup>12</sup> When the matter was taken up in Court on 21 May 2013, prior to its dismissal, Mr. Peiris is reported to have stated: "Human rights are there to protect the majority and not the minority of criminals. In effect, the Court was prepared to see Tamil political prisoners as criminals even before they had been tried by a court of law. When Counsel for the petitioner requested access to certain documents filed by the Attorney-General's department, Mr. Peiris responded:

*"The court is not a place to get documents for the petitioners. This is the way you all procure the evidence and then circulate to the entire world to tarnish the image of the country. The executive submits confidential reports only for the eyes of judges particularly where national security issues are concerned."*<sup>13</sup>

#### 1.4.3. **Negation of the remedies of Fundamental Rights and Habeas Corpus in relation to disappearances**

A detailed analytical study of 884 *habeas corpus* cases, covering the period from 1994-2002, found that the practical inefficacy of the implementation of writs defeats the remedy.<sup>14</sup> This status quo has not changed in the succeeding decade. For example, in the period under consideration by the Committee, the *habeas corpus* application of 'disappeared' journalist Prageeth Ekneligoda illustrates the failure of this remedy as this case has been pending for many years. Petitions filed by Tamil mothers and fathers of those who disappeared during the ending of the conflict in the *Wanni* in 2009 remain similarly pending before courts. State agents merely deny taking the victims into custody. Earlier, the State was compelled to pay compensation and acknowledge the disappearance where no specific state agent could be held responsible, but this practice has not been evidenced in recent years.

It has been pointed out that solutions require changes in law, administrative procedures, judicial structure, as well as securing of

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<sup>10</sup>*Ibid.*

<sup>11</sup>*Ibid.* Also see "De Facto CJ Exposed Himself In The Worst Possible Manner In Courts", *colombotelegraph.com*, 14 October 2013, at <https://www.colombotelegraph.com/index.php/de-facto-cj-exposed-himself-in-the-worst-possible-manner-in-courts/>

<sup>12</sup> See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, *The Judicial Mind in Sri Lanka Responding to Minority Rights*, Law & Society Trust, 2014, at p247.

<sup>13</sup> See Asian Human Rights Commission, *Sri Lanka: In Ganeshan Nimalaruban's case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013>.

<sup>14</sup> Kishali Pinto-Jayawardena & Jayantha de Almeida Guneratne, *Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times* (Sri Lanka: Law and Society Trust, 2011).

the independence of the judiciary<sup>15</sup>. The International Crisis Group<sup>16</sup> has linked the failure of the *Writ of Habeas Corpus* to the overall legal and political milieu that includes the diminishing independence of the courts, the inadequacy of constitutional provisions to empower the courts, the passage of emergency laws that further limit its powers, and the reprehensible political influence exercised by the executive on the judiciary.

The constitutional remedy of fundamental rights has virtually fallen into disuse as the Supreme Court has refrained from asserting its authority against powerful state actors, particularly the Ministry of Defence.

- 1.5. **Virtual absence of an effective legal mechanism for the control of corruption in the Executive and the Legislature:** Corruption plays a major role in the decision making processes. The existing system, which is under the Bribery and Corruption Commission and the relevant laws, are thoroughly ineffective. The functioning of the Commission itself is under direct political control. As in the case of appointments to the higher judiciary, appointments of Commissioners to the Bribery and Corruption Commission are also done entirely at the will and pleasure of the President. The Commission itself has been used to harass political opponents of the ruling party.
- 1.6. **Loss of the meaning of constitutionalism:** There is no effective legal mechanism through which the legality/constitutionality of any decision of the government can be challenged. Consequently, any action by the government remains valid irrespective of it being illegal or unconstitutional.
- 1.7. **Negation of public institutions:** Constitutional commissions, such as the National Police Commission, the Human Rights Commission and the Public Service Commission, are appendages of the government and are unable to function independently. The Commissioners of these bodies function according to the will and pleasure of the President. Even though a constitutional amendment in 2001 (the 17<sup>th</sup> Amendment) specified the intervening authority of an independent Constitutional Council into the appointments of members of these bodies, the 18<sup>th</sup> Amendment effectively decimated the 17<sup>th</sup> Amendment. Presently the President functions without any fetter in respect of these bodies. During the period under review by the Committee, none of these bodies have exercised their powers in even a single decision that goes contrary to the President or his government.

## 2. The displacement of the criminal justice process and its subsequent collapse

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<sup>15</sup> Basil Fernando, 'SRI LANKA: The politics of habeas corpus and the marginal role of the Sri Lankan courts under the 1978 constitution', Asian Human Rights Commission (2011), <http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011>, accessed June 10, 2013.

<sup>16</sup> International Crisis Group, 'Sri Lanka's Judiciary: Politicised Courts, Compromised Rights', International Crisis Group Report (June 2009) N° 172, p. 30.

- 2.1 A basic criminal justice principle, that it is the obligation of the state to investigate all credible allegations of crime, is no longer a principle adhered to in Sri Lanka. The accepted notion that an offense is an offense against the state is no longer respected. Crimes are treated as private disputes.
- 2.2 In all stages of what should be a functional criminal justice process, an approach advocating settlements of criminal disputes is followed. At the preliminary stage of recording a complaint at a police station, police officers routinely decline to record complaints against state agents and politicians. This applies even in instances of grievous human rights violations, such as torture, enforced disappearances and extra-judicial executions. This is followed through to the the second stage of the criminal justice process, namely, the prosecutorial stage, in which officers of the Attorney General's Department decide on whether to indict or not based on political realities rather than legal standards. In the period under consideration by the Committee, indictments filed by the Department have amply demonstrated this pattern. One such case was the indictment filed against the journalist J S Tissanayagam under the PTA. He was later convicted and sentenced. A Presidential pardon was granted to him thereafter. As this Submission observes above, the use of the power of pardon by the President is manifested as yet another way in which the law is being circumvented. The pattern is that indictments are issued unjustifiably, decisions are given thereafter by compromised judicial officers, and then, to offset public pressure, a Presidential pardon is granted. The meaning of the law is lost in the process.

Though the State Party has claimed the existence of a special unit within the Attorney General's Department to prosecute cases of torture, in reality there is no such special unit. State counsel is assigned torture cases on a random and *ad hoc* basis. There is no state will to effectively prosecute in these cases. This is the same with enforced disappearances and other gross human rights abuses.

- 2.3 Indictments are not issued by the Attorney General's Department despite credible allegations about the involvement of state agents in crimes such as torture and disappearances. This is done, despite the fact that under the CAT Act (No. 22 of 1994), torture is recognized as a crime punishable with 7 years rigorous imprisonment. From the year 2010, the practice of conducting inquiries and prosecutions under the above mentioned law has been abandoned - except in extremely rare instances. However, torture and ill treatment take place routinely across the country. The number of convictions under the CAT Act is minimal. Contrary to the State Party's position that this is due to the adversarial process followed in the courts, the reason for this dismal record is the absence of State will to prosecute. In no case has an officer in charge of a police station been indicted for complicity in acts of torture, even though the High Court, before which indictments are filed under the CAT Act, has castigated the Attorney General for this failure and despite relevant provisions of the CAT Act allow for such an interpretation. A lack of capacity and independence has resulted in increased possibilities for judicial corruption. As pointed out by the Human Rights Committee, delay in trial processes is a



manifestation of the failure of the criminal trial system in Sri Lanka<sup>17</sup>. One of the factors that contribute to the delay is the virtual abandonment of the practice of holding criminal trials continuously from start to end. Instead, postponements are allowed for months, which drag a case for years, often five years or more. In many cases, the trial judge who sits on the case at the start is transferred before the end of the case. As a result, five or six judges may hear parts of the same case and the judge who finally writes the judgment may not have heard most of the evidence in the case. There have been instances in which the judge who wrote the judgment had not heard even a part of the evidence<sup>18</sup>.

- 2.4 The habit of giving suspended sentences even in cases where the accused is charged with serious crimes, including murder, has become a common and a widespread practice, thus fundamentally obviating the efficacy of the legal remedy available.
- 2.5 Reprisals against witnesses and complainants are widespread, and in some instances, the witness or the complainant is killed so as to prevent them from giving evidence in court<sup>19</sup>. The absence of an effective witness protection law is a major reason for such reprisals. The draft witness protection law advanced by the Government has no practical meaning because it is premised on protection by state agencies in a context where the state itself is incapable of providing protection due to the deep politicization of state agencies, particularly the police.
- 2.6 There are heavy delays in the appeal process and cases that do not reach the final stage even after 12 years are not rare<sup>20</sup>.
- 2.7 Even after the Supreme Court confirmed the decision to hold a fresh trial nearly 12 years after the original date of the incident, the decision of the Supreme Court has not yet been communicated to the trial Court which is to hold the fresh trial, even after several months<sup>21</sup>.

### 3. Application of the Covenant by the domestic courts

#### 3.1 Constitutional jurisdiction

In previous decades, provisions of the Covenant have been applied by the Sri Lankan Supreme Court and the domestic expansion of rights has been affected as a result. However, during the period under review by the

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<sup>17</sup> *Lalith Rajapakse v Sri Lanka* 6 Decision - CCPR/C/87/D/1250/2004 - 26 July 2006

<sup>18</sup> *State Vs Havahandi Garwin Premalal Silva*, Kalutara High Court Case No HC 444/2005; *Attorney General v Mahadura Wasantha Sri Uvindasiri and others*, Kandy High Court Case No HC/231/2005; *Lalith Rajapaksa v Sri Lanka* CCPR/C/83/D/1250/2004

<sup>19</sup> *State Vs Makavitage Suresh Gunasena and others*, Negombo High Court Case No HC 326/2003; *Sugath Nishantha Fernando v Sri Lanka*, CCPR/C/103/D/1862/2009

<sup>20</sup> *State Vs Makavitage Suresh Gunasena and others op.cit.*; *Attorney General v Warnakulasuriya Mahawaduge Rohan Prasanga Peiris* High Court of Negombo Case No. HC 259/2003 and High Court of Negombo HC/445/2005

<sup>21</sup> *The Hon. Attorney General v. M Suresh Gunasena and five others*, SC/SPL/LA/No 259/2012

Committee, use of the Covenant by the Supreme Court has been minimal, if not non-existent. In the State Party's report presently under consideration by the Committee, it is relevant to note that all references to case law applying Covenant rights are old precedents. In fact, in the *Sinharasa case (2007)*<sup>22</sup> the Supreme Court ruled that Sri Lanka's accession to the Covenant was in violation of the Constitution on the legally mistaken basis that the Committee exercised judicial power within Sri Lanka. Subsequent to this decision, the application of the Covenant by domestic courts has been rendered of little effect.

### **3.2 Statutory jurisdiction**

The ICCPR Act (No. 56 of 2007) brings in certain limited rights from the Covenant into domestic law. However, to date, there has been no significant application of the Covenant by any domestic court in Sri Lanka under this law.

## **4. Remedies available to individuals claiming violations of rights under the ICCPR**

### **4.1 The overall structure of the Constitution defeats the efficacy of remedies**

The Sri Lankan Constitution specifies that the exercise of the sovereignty of the people, where judicial power is concerned, shall be by the Parliament through the Courts. This particular wording, "by the Parliament through Courts", privileges the Parliament above the Courts and subordinates the Court to the Parliament. This is not a mere theoretical abstract, but is of immediate practical concern to the efficacy and availability of remedies.

The Parliament's 2013 impeachment of Sri Lanka's 43<sup>rd</sup> Chief Justice was ruled against by both the Supreme Court and the Court of Appeal on the basis that one organ of government (i.e. the Parliament) should not be allowed to "punish" the Chief Justice or any Judge of the Supreme Court without due process being followed. In this instance Parliament appropriated the disciplinary process regarding the removal of a judge of the Supreme Court. Previous concerns expressed by the Committee as to the process of impeachment being incompatible with the Covenant were realized in a practical sense as a result of this illegal impeachment process.

Contrary to what the State party previously stated before the Committee, the government's position was that proceedings of Parliament relating to the impeachment of superior court judges are not amenable to judicial review. After disregarding the opinions of the Supreme Court and the Court of Appeal to withdraw from the impeachment, the government put into place a "compromised Chief Justice" under whom a Bench of the Supreme Court ruled one year later that the judiciary could not challenge the process or decisions of a parliamentary committee on impeachment.

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<sup>22</sup> *Nallaratnam Sinharasa v. Attorney General and Others*, S.C. SpL (LA) No. 182/99, SCM15.09.2006

We submit that this question is central to the Committee's consideration of Sri Lanka's compliance with the Covenant and the availability of remedies thereto. In a practical sense the judiciary in Sri Lanka has been made structurally incapable of being independent by the Constitution itself. This has impeded the proper functioning of remedies for individuals whose rights are violated under the Covenant. In a basic sense, it has undermined the independence of the judicial institution, though theoretical remedies exist for fundamental rights violations.

4.1.1 **Immunity of the Executive President:** The Sri Lankan Constitution provides no remedy for individuals whose Covenant rights have been violated when the act in issue is by the Executive President. Article 35(1) of the Constitution provides for the immunity of the President while holding office as President for any acts done either in his official or private capacity.

4.1.2 In terms of the Constitutional structure itself, the Parliament is empowered to make retrospective laws and/or repeal or amend the constitution with minimal accountability. In terms of Article 122 of the Constitution, the Supreme Court is mandated to come to a decision on the constitutionality of a Bill within 24 hours in some cases. As a result, there is little space for public comment/criticism of such Bills. The 18<sup>th</sup> Amendment to the Constitution - which repealed the progressive 17<sup>th</sup> Amendment and returned to the absolute power of the President, the power to make appointments to key constitutional commissions and public positions - was passed by the Parliament in such a context.

4.1.3 **The privileging of public security law by the Constitution:** Article 15 privileges law relating to public security over the exercise and operation of fundamental rights, including the presumption of innocence and the prohibition of retrospective legislation.

## 5. The right to life and other fundamental rights;

5.1.1.1 **The absence of a right to life in the Constitution:** Even though the Supreme Court has recognized a limited right to life, to the extent that the death penalty can be enforced only through a decision of a competent court, this has little impact on a positive recognition of the right to life. The judicial reasoning was in any event, only in three decisions of the Court several years ago and have not been reflected in recent jurisprudence. Our submission is that a limited judicial recognition cannot satisfy the need for express constitutional inclusion of a right to life.

5.1.1.2 Since 1971 Sri Lanka has experienced large-scale enforced disappearances. The law in Sri Lanka does not prescribe a limitation

to the power of the Executive and the Parliament to, respectively, take actions or legislate in a way that undermines the basic right to life. Public security laws, developed in terms of emergency regulations and anti-terrorism laws, empower the security forces to engage in enforced disappearances and other acts that deprive citizens of the right to life. There is no provision in the Sri Lankan Constitution to guarantee Article 6 of the ICCPR, which lies down that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". The vast number of enforced disappearances of Sri Lanka demonstrates how officers in the security forces can deprive the life of a person without any reference to a court decision on the matter. Under the pretext of someone being classified as a "terrorist" by the security forces, the decision and action to deprive the life a person can be taken by the security forces themselves. What is internationally known as the power of the Russian *Cheka* has been operative in Sri Lanka, leading to large-scale enforced disappearances over a period of about 40 years.

**5.1.2 Fundamental Rights: The exercise of the Fundamental Rights jurisdiction also suffers from many defects.**

**5.1.3 Declarations do not lead to any consequences:** A declaration made under the Fundamental Rights jurisdiction of the Supreme Court, stating that violations of anti-torture law have been committed by the respondents, i.e. the police or military officers for the most part, does not have any direct practical consequence. It does not affect the further employment of these officers in their departments, or their promotions.

**5.1.4 Financial awards low:** Further, where compensation is awarded, the financial awards are of very low amounts and in no way reflect the obligations of the State under the CAT Act for compensation of torture victims in terms of covering their medical costs, legal costs, as well as compensation for the psychological damage. The Sri Lankan Supreme Court has not yet adopted legal principles relating to the assessment of responsibilities for causing psychological damage to victims. Many of the victims suffer serious abuse at the hands of the respondents, which can cause trauma, acute stress disorder, post-traumatic stress disorder, as well as many other forms of psychological damage. A few years ago the Supreme Court adopted better standards for the assessment of compensation, such as, the case of Jerad Perera and a few other cases. In Jerad Perera's case, the total compensation came to Rs. 1.6 million which is around US\$ 16,000 which was without calculating the damages from the point of view of of psychological injury. However, in recent cases in which torture is proved, damages may run from around Rs. 5,000 up to, Rs. 100,000 - in rare cases,. That is between US\$ 50 to US\$ 1,000. Perhaps the reason for reducing the amounts of damages may be to

discourage more persons from pursuing litigation. However, the clear policy for such reduction has not been stated.

5.1.5 **The Attorney General plays a negative role:** A further defect of the Fundamental Rights jurisdiction is that, in recent times, even before notice is issued to respondents, the Attorney General is notified and he comes before the court to object to notice being given on these applications. In other words, the Attorney General objects to the filing of Fundamental Rights writs on behalf of the police officers or other state agents before the case has been commenced and any evidence has been heard. As the objection taken by the Attorney General at this stage is based on the instructions received from the respondents, there is no evidential basis for the Attorney General to appear at this stage. The Constitution provides that the court can issue notice if they are satisfied that there are grounds for a *prima facie* case. This new practice of hearing the Attorney General before issuing notice to the respondents acts in favor of the respondents and is quite open to abuse.

**Evidence by way of affidavits alone is adverse to the victim:** An even further defect in the fundamental rights jurisdiction is that the entirety of the proceedings depends on affidavits, and no investigating unit makes a credible inquiry into torture and submits a report to the court. When the Supreme Court receives a complaint of torture by way of a fundamental rights application, it can refer the matter to a Special Investigation Unit (SIU) of the Criminal Investigation Division (CID) through the Inspector General of Police, who is always an official respondent. If a special unit makes such an inquiry, the State's obligations could be carried out. Mere reliance on affidavits is often to the disadvantage of the applicant, who is often unfamiliar with the system and, more often than not, poor. Thus, torture victims cannot be expected to have all the resources required to find out the necessary matters relating to the violations of their rights and have them placed before the courts. In cases where an SIU of the CID has conducted investigations into torture complaints, they have come out with a great deal of evidence that the ordinary layman is unable to have access to. For example, in such SIU inquiries, documents in the possession of the police stations have been looked into and, often, much evidence has been found to support victims' allegations. All the considerations shown above require a re-examination of Article 126 of the Sri Lankan Constitution, and ways to improve this remedy should be found. However, the present government policy, which is to discourage investigations into torture and other allegations of human rights, is likely to adversely affect the fundamental rights writ as a remedy.

5.1.6 **The loss of freedom of expression and the intimidation of the media**

The State Party's response that the Parliamentary Powers and Privileges Act of 1978 has been repealed<sup>23</sup> is incorrect. What has been repealed is only a limited amendment to the Act. The Act remains in full force, restricting the power of journalists to report on proceedings in Parliament. The killings and abductions of journalists remain uninvestigated. The militarization of the state structure has resulted in journalists being assaulted, threatened and intimidated in situations of public disorder (i.e. the attack by the army on unarmed protestors at *Weliveriya* in 2013 and, in 2014, the communal violence on Muslim villages by radical Buddhist priests in Sri Lanka's South West). Journalists who reported on these matters were routinely questioned and put under surveillance. The Government, in a 2014 circular, prohibited non-governmental organizations from holding training workshops for journalists. Tamil journalists travelling from the North to Colombo to participate in such workshops have been detained at checkpoints.

Though the State Party refers to the existence of bodies set up by the media industry in support of its position that freedom of expression is not under threat, mobs stormed the central office of the Sri Lanka Press Institute, situated in Colombo, in July 2014 during the holding of a training programme. Perpetrators responsible for these attacks have not been identified and brought before the Courts.

Widespread abuse of state media and state resources by the Government in election campaigns is also evident.

## **6. Procedure for implementing the Committee's Views under the Optional Protocol**

No procedure exists to implement the Committee's Views under the Optional Protocol. What exists is a well set out procedure, formed through practice, to treat the Optional Protocol procedure as irrelevant. Following steps depicts the manner in which the government responds to a communication filed under the Optional Protocol, of which the government is given notice by the Human Rights Committee;

*Step 1:* The government will write to the Human Rights Committee stating that due to the operation of the law set out by the Sri Lankan Supreme Court<sup>24</sup>, which is also known as the *Sinharasa* case, the Sri Lankan Government is not under any obligation to implement the views of the Human Rights Committee expressed in terms of the Optional Protocol. The government will further state that, as the Executive, it is unable to act outside the law as set out by the Supreme Court of Sri Lanka in the above-mentioned case. On this basis, the government will state that it will not submit any reply to the allegations set out in the communication, and the government will not participate in the process any further. The result is that the Human Rights Committee will have to make its Views purely on the basis of the Communications and without the benefit of the government's response.

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<sup>23</sup> See at paragraph 329 of the state party report.

<sup>24</sup> *Nallaratnam Sinharasa v. Attorney General and Others*, op.cit.

*Step 2:* Once the Human Rights Committee makes known its Views on a particular Communication, the Government will not implement or take any action on the basis of the same. There are several instances in which the Government has acted in the manner described above and the Human Rights Committee has expressed its Views *ex parte*<sup>25</sup>.

## 7. What has happened regarding the Committee's Views on the Complaints?

No Views under the Individual Complaints Procedure have been implemented.

<b>Author Date of Views</b>	<b>Violation</b>	<b>Remedy ordered – Effective remedy, including:</b>	<b>Follow-up report</b>
Peiris (2011)	Articles 6,7 & 17 (alone and w/23/(1); 9(1); 2(3) w/6 and 7	Ensuring perpetrators are brought to justice; ability to return to domicile safely; and reparation, including compensation and an apology.	The Committee indicates that dialogue is ongoing but provides no other updates on this case <sup>26</sup> .
Gunarathna (2009)	Articles 2(3) w/7 and 9; 9(1) alone	Protection from threats and intimidation; proceedings against perpetrators pursued without undue delay; and reparation, including compensation.	No response from the State Party.
Weerawansa (2009)	Articles 6(1) and 10 (1)	Commutation of death sentence; compensation; and humane treatment while incarcerated.	No response from the State Party.
Sathasivam and Saraswathi (2008)	Articles 6; 7; and 2(3) w/6 and 7	Initiation and pursuit of criminal proceedings; compensation.	No response from the State Party.
Bandaranayake and Banda (2008)	Article 25(c) w/14(1)	Compensation	No response from the State Party.
Dissanayake and Banda (2008)	Articles 9(1); 19; and 25(b)	Compensation; restoration of right to vote and to be elected; and change relevant	No response from the State Party.

<sup>25</sup> Mention a few other cases

<sup>26</sup> The authors of this letter, who represented the victim, confirm that no remedy has in fact been provided.

		laws and practice to avoid recurrence.	
Banda (2007)	Article 2(3) w/7	Compensation; effective measures to ensure Magistrate Court proceedings are expeditiously completed; full reparation granted	No response from the State Party.
Rajapakse (2006)	Articles 2(3) w/7; 9(1)(2) and (3) alone and w/2(3) re: circumstances of arrest; 9(1) re: security of person	Effective measures to ensure High Court and Supreme Court proceedings are expeditiously completed; protection from threats and intimidation; effective reparation	No response from the State Party.
Sister Immaculate Joseph, et. al.(2005)	Articles 18(1) and 26	Full recognition to rights	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of any court within Sri Lanka .
Fernando (2005)	Article 9(1)	Compensation; necessary legislative changes	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of the Supreme Court.
Sinharasa (2004)	Articles 14(1); (2); (3)(c) ; and (3)(g) w/2(3) and 7	Release or retrial and compensation; legislative changes	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of the Supreme Court.
Kankanamage (2004)	Articles 14(3)(c); and 19 w/2(3)	Compensation	In 2005, State party stated that it referred the matter to the Sri Lankan Human Rights Commission but no follow-up or confirmation has



			been provided since.
Sarma (2003)	Articles 7 and 9 re: author's son; Article 7 re: author and wife	Thorough and effective investigation into disappearance and fate; immediate release if still alive; adequate information from investigations; compensation; expediting of current criminal proceedings; prompt trial of those responsible	Author is said to have received confirmation that recommendation for compensation had been forwarded to the Attorney General, but had not received compensation at last communication. Author claims State has failed to effectively investigate claims and no further information provided by State party since 2005.
Jayawardena (2002)	Article 9(1)	Appropriate remedy	No further investigation provided. The State party provided additional protection as per the author's request made in 2004, but did not respond to the author's concerns for his safety in 2006. Dialogue considered ongoing but no information provided by the State party since 2006.

## 9. Recommendations:

### 9.1 Recommendations relating to Article 6 of the ICCPR:

- 9.1.1. **The government of Sri Lanka must ensure, both by legislation and the enforcement of laws, that only a competent court has the power to order the death sentence:** The practice that has prevailed, particularly in the last 40 years, of allowing officers of the security forces to be the accuser, investigator, adjudicator, executioner and disposer of the bodies, should be specifically outlawed by legislation; particularly in situations in which

emergency laws and anti-terrorism laws are in operation. Clear prohibitions must be laid down and enforced to ensure the end of the above-mentioned practice, which can also be summed up as the imitation of the practices of the Russian *Cheka*.

- 9.1.2. **The government should take speedy action to bring legislation criminalizing enforced disappearances:** No perpetrator of enforced disappearances should be allowed to avoid prosecution due to the absence of a law criminalizing enforced disappearances, as is the case at present. The State Party should speedily become a signatory to the International Convention for the Protection of All Persons from Enforced Disappearances. The State Party should legislate with regard to the offence of enforced disappearance; the principle against retrospective criminalization should not operate.
- 9.1.3 **The State Party should ensure that the offence of murder would necessarily lead to credible investigations and prosecution through the country's public justice system:** In instances of the offence of murder, private settlement ó as in private disputes ó should be disallowed.
- 9.1.4 The prevalent practice of offering and granting suspended sentences to those charged with murder should be discontinued forthwith.
- 9.1.5 Particularly in cases of murder alleged to have been motivated by political reasons, the State Party should ensure that credible investigations take place.
- 9.1.6 All steps must be taken to make sure that investigating officers are not afraid of properly carrying out their duties due to fear of reprisals.
- 9.1.7 **The State Party should ensure that trials, particular in relation to murder and other serious offences, should be held from start to finish continuously:** The present practice of postponing cases after short hearings, with cases going on for years, should be discontinued forthwith.
- 9.1.8 After the completion of an investigation, indictments should be filed and the case should be held and completed within a period of about a year. The United Nations Human Rights Committee's recommendations regarding undue delay on the holding of trials (expressed through its views on several communications from Sri Lankan petitioners) should be carefully implemented<sup>27</sup>.
- 9.1.9 Particularly, during investigations and trials relating to murder and other similarly serious offences, the protection of the complainant and the victims should be ensured. The State Party should ensure that police officers attend to complaints, relating particularly to murder and other serious offences - and, in relation to all offences ó without the harassment of complainants and witnesses. The State Party should ensure the existence of a disciplinary procedure, particularly in relation to police officers and officers of the Attorney-General's Department, which will ensure credible investigations into all allegations of bribery and corruption, through which the suspects or accused in murder cases and other serious cases of crime find ways to escape the process of strict enforcement of the law.

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<sup>27</sup> Please see UNHRC Decisions - CCPR/C/87/D/1250/2004 - 26 July 2006

## 9.2 Recommendations relating to Article 7 of the ICCPR

- 9.2.1. The State Party should discontinue all policies and instructions through which the police and other security officers have been allowed/encouraged to use torture and ill-treatment during interrogations.
- 9.2.2. The State Party should discontinue with any policies or instructions given to the police to not investigate and prosecute offences under the CAT Act (No. 22 of 1994).
- 9.2.3. The State Party should be encouraged to establish a credible commission of inquiry to find out the causes of such widespread use of torture by the Sri Lankan police force.
- 9.2.4. The State Party should direct the Inspector General of Police to take measures to stop the widespread practice of harassing complainants, and refusal to take complaints, by officers at the police stations in Sri Lanka.
- 9.2.5. The State Party should inquire into, and take effective actions to stop, the widespread use of torture and ill-treatment by the Sri Lankan police for purposes of extortion. Specific attention must be paid to instances where complainants pay or forced other favours, such as consuming alcohol, to have some persons arrested and tortured.
- 9.2.6. The State Party should inquire and intervene into the use of the widespread excuse given by the members of the Sri Lankan police force regarding the killings of suspects in their custody (often by shooting), namely that such actions take place in self-defence because arrestees try to attack and harm police officers. The suspects in these cases are invariably unarmed, and often in handcuffs.
- 9.2.7. The State Party should inquire and intervene into reports of the failure of police officers to provide immediate medical care to persons who suffer injuries at their hands due to torture and ill-treatment<sup>28</sup>.
- 9.2.8. The State Party should particularly intervene to stop the violence directed against women by police officers when they seek the assistance of the police, either as complainants in offences or as relatives of arrested persons.
- 9.2.9. The State Party should particularly investigate complaints of alleged acts of torture and ill-treatment by the Unresolved Crimes Unit.
- 9.2.10. The State Party should particularly inquire into and take actions to stop forthwith the following prevalent kinds of torture; a. Twisting the victim's arms behind their back before hanging them from the ceiling, causing serious

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<sup>28</sup> *Jerad Perera's case – op.cit.* and <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-130-2014/>

injuries, including the loss of the use of the victim's arms, and beating the victim all over their body; b. The use of chili powder in the eyes, genitals and other sensitive parts of the body, causing extreme forms of pain; c. Putting books on the head of the victim and beating the books with iron or wooden poles, thereby causing internal injuries to the brain; d. Using blunt instruments to penetrate the anus, and putting genitals into drawers and slamming them shut; e. Inserting objects, such as bananas or PVC pipes, into the vaginal entrances of female victims; f. Getting persons suffering from diseases, such as tuberculosis, to spit into the mouth of victims; g. Urinating on the face of victims; h. Stripping a victim, putting them between two poles, tying them there and rotating them while beating them. A detailed study of more than 400 cases of torture in Sri Lanka has been completed and published by the Asian Legal Resource Centre<sup>29</sup>.

9.2.11. The State Party should inquire into allegations of the torture of military officers by other officers, or police officers by other police officers.

### **9.3. Recommendations relating to Article 14 of the ICCPR**

9.3.1. The State Party should provide opportunities to the Sri Lankan public to air their grievances and criticisms relating to the setbacks on fair trial, assess such grievances, and take corrective actions to ensure that Article 14 of the ICCPR is respected and implemented in Sri Lanka.

9.3.2. The State Party should make amendments to the Constitution to ensure that the judiciary is treated as an independent branch of the government and that the recognition of such independence is manifested through the processes of appointments and promotions, as well as in the disciplinary process and in the dismissals of judges; the prevalent understanding is that the Executive President controls all these functions and, therefore, the appointments, promotions, disciplinary control processes and dismissals of judges, including judges of the Supreme Court, are done for political reasons that act detrimentally to the independence of the judiciary.

9.3.3. The prevalent constitutional provisions and practices which were used in the impeachment of the Chief Justice, Dr. Shirani Bandaranayake, were all done in direct contradiction to the principles relating to the removal of judges followed in countries where the independence of the judiciary is respected and where the separation of powers principle is entrenched. The foul play practiced on the occasion of the removal of the Chief Justice has thoroughly shaken public confidence in the judiciary as an independent institution. Thus, all constitutional provisions relating to the impeachment of judges must be laid down in terms of international norms and practices applicable to such impeachment processes.

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<sup>29</sup> The Asian Legal Resource Centre, *Narrative of Justice Sri Lanka*, 2013 - <http://www.humanrights.asia/resources/books/ALRC-PUB-001-2013>

- 9.3.4. The State Party should take serious measures to ensure that the principle of open justice is respected in Sri Lanka. The recent practice of holding *in camera* court proceedings for the examination of the constitutionality of proposed legislation, including proposed amendments to the constitution, is a blatant violation of the judicial process and the notion of open justice. The exclusion of public participation and the absence of lawyers in such judicial actions result in judgments which cannot be considered as judicial in nature. By making such exclusions the judiciary virtually acts as an arm of the Executive. Such judgments can have disastrous effects on the rule of law and democracy. Further, such actions expose the judiciary to public ridicule and decrease confidence in the institution.
- 9.3.5. The judiciary as a branch of the government must exercise its duty to protect its own independence. In the recent past there have been many instances in which the judiciary itself has acted in a manner that is contrary to the principles of the independence of the judiciary. This was well illustrated in the impeachment of Sri Lanka's 43<sup>rd</sup> Chief Justice, which was initially ruled to be contrary to constitutional principles relating to due process by Sri Lanka's Court of Appeal and Supreme Court. The Court of Appeal in fact quashed the proceedings of a Parliamentary Select Committee which, through its government parliamentarians, had upheld the impeachment. One year later, another bench of the Supreme Court, under a new Chief Justice, reversed this decision and stated categorically that a Parliamentary Select Committee is not subject to judiciary review. This was a manifest travesty of justice.
- 9.3.6. The interpretation of the principle of the Supremacy of Parliament as meaning that the Parliament can act in violation of the principle of the independence of the judiciary can have a virtually nullifying effect on the meaning of judicial power in Sri Lanka. The interpretation of these principles by the Parliament, as well as by the judiciary, is contrary to the manner in which these principles are interpreted in other common law jurisdictions. At present, there is a serious crisis on the manner in which the judiciary is being treated in Sri Lanka. So long as this matter is not addressed in favour of a proper liberal democratic interpretation, the public in Sri Lanka will have serious doubts about the protection of their rights against arbitrary violations by the Executive through the judicial process. This crisis casts serious doubts on what valid and legitimate roles the legal profession can play on behalf of their clients in defense of their basic rights.
- 9.3.7. The State Party should take serious action in order to restore the legitimacy and the democratic role of the legal profession in Sri Lanka. The prevalent situation is one in which the role of the legal profession is being drastically undermined, not only on constitutional matters but also in every kind of litigation, including litigation relating to property rights.
- 9.3.8. The State Party should address the serious crisis that exists in the criminal justice process in Sri Lanka. The prevalent situation is one in which the roles

of all relevant state actors, such as the police in their investigative role, the Attorney General's Department in its role as the public prosecutor, and the judiciary in its role, have all been undermined due to constitutional provisions which have resulted in the politicization of all these institutions. These constitutional provisions have also led to the erosion of the power of the police as a civilian policing institution, the Attorney General's Department as an institution working within the framework of rule of law, and the judiciary as one that functions within the of principles of open justice.

- 9.3.9. The State Party should re-examine its claim about implementing the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), to ensure the functioning of the policing system as a civilian policing system by bringing the Department of the Police under a Ministry of Law and Order. However, the prevalent situation is that of a directly politically controlled policing system, where the Inspector General of Police and higher-ranking police officers have lost the command of the institution and the institution is controlled from outside. This has drastic consequences on the rule of law in the country as a whole, and the capacity of the police to bear the responsibility for the control of crime.
- 9.3.10. The State Party should critically examine the deepening militarization within the police. Since the Justice Soertz Commission of 1946, the matter of the militarization of the police has been raised by several subsequent commissions. However, none of the recommendations of these commissions have been implemented. Instead, the policing system has been allowed to be further militarized, both in its mentality and its practices. The idea of the development of a civilian policing system within the conceptual framework of the British metropolitan police has not even been ventured into in Sri Lanka.
- 9.3.11. The State Party should address the problems relating to the politicization of the Attorney General's Department and its virtual incapacity to act within the framework of the rule of law. The prevalent situation is a result of direct political control of the Executive of this institution, which has brought it directly under the Presidential Secretariat by virtue of a Gazette notification.
- 9.3.12. The State Party should also seriously examine its inability and failure to address some of the perennial failures of the judicial system, particularly in terms of undue delays and archaic procedures that result in dragging litigation on for over ten years or more.
- 9.3.13. The State Party should look into several failures of the appellate process, both in the Court of Appeal and in the Supreme Court, and in particular the failures to immediately communicate the decision of the Appellate Court to the relevant trial court, even in instances when the court has ordered fixing of retrials at the trial courts in the relevant cases. A direct case in point is

regarding Jerad Perera's case referred to above<sup>30</sup>. It must be emphasized that such failures leave room for corrupt practices with the connivance of certain judges.

#### **9.4. Relationship of the State Party to the United Nations and its agencies dealing with human rights**

- 9.4.1. The State Party should act in a manner in-keeping with its membership with the United Nations and with other agencies of the United Nations, such as the Human Rights Council; the prevalent position, particularly after the passing of the Human Rights Council Resolution<sup>31</sup> on the Promotion, Reconciliation, Accountability and Human Rights in Sri Lanka, is of a visibly hostile attitude towards the United Nations and the Human Rights Council. Senior members of the government and its media spokesman continuously criticise the United Nations and the Human Rights Council, which is contrary to the best interests of the United Nations and the aims that the United Nations is committed to.
- 9.4.2. The State Party should take immediate action to stop creating a hostile image of the United Nations and the Human Rights Council within the State Party's territorial jurisdiction in Sri Lanka. The prevalent situation is that the state media is constantly being used to create an image that the United Nations and the human rights community are acting in a manner hostile to the interests of the people of Sri Lanka.
- 9.4.3. The State Party should take responsible action to stop forthwith the characterization of the United Nations and the Human Rights Council, and all those who are critical of human rights abuses allegedly committed by the State Party, as traitors who deserve condemnation and punishment by the public. The prevalent situation is one in which such propaganda is being constantly carried out and persons such as the UN Secretary General Mr. Ban Ki Moon, the former High Commissioner for Human Rights Ms. Navinathan Pillay, and other Senior UN officials, as well as local and international human rights activists, are being named in the state media as enemies of Sri Lanka.
- 9.4.4. The State Party should act in a spirit of cooperation with the United Nations and its human rights agencies, including the Human Rights Council, even where its own human rights record is being examined within the due institutional processes of the United Nations and the relevant agencies.
- 9.4.5. The State Party should desist from portraying international norms of human rights as enshrined in United Nations' human rights instruments as alien notions that are contrary to the interests of Sri Lanka.
- 9.4.6. The State Party should make credible inquiries into all reprisals against human rights defenders and those who are committed to the protection and

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<sup>30</sup> *Supreme Court SC/SPL/LA/No: 259/2012 op.cit.*

<sup>31</sup> A/HRC/25/L.1/Rev.1

the promotion of human rights of all persons, including minorities. It is notable that, to date, not a single such incident of reprisal has been brought to justice through the law.

- 9.4.7. The State Party should appreciate and promote all human rights of all persons, and promote the notion that any attack or erosion of such rights is against its own self-interest and the interest of all the citizens of Sri Lanka.
- 9.4.8. The State Party should appreciate that the mandate of the Human Rights Committee encompasses human rights for all people. Its priorities span discrimination; the rule of law and ending impunity; poverty; violence; continuing efforts to improve international human rights mechanisms; and widening the democratic space. The State Party should act in a spirit of cooperation with the Committee to ensure that all persons in Sri Lanka will have the benefit of the exercise of the Committee's mandate.