

Submission by the Centre for Policy Alternatives regarding Sri Lanka's Response to the List of Issues Adopted.

Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

Issue raised in the LoI of HR Committee	
Issue 1: <i>Please provide examples of the application of the Covenant by domestic courts and information on the availability of remedies for individuals claiming a violation of the rights contained in the Covenant. Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol, and provide information on measures taken to ensure full compliance with the Committee's Views adopted in 14 communications, including Nos. 1862/2009, 1432/2005 and 1406/2005.</i>	
Relevant parts of the State Report (CCPR/C/LKA/5)	Civil Society Reply to the Issue / Question, Update and Other inputs
<p>§ 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)</p> <p>§ 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."</p> <p>§ 92: The ICCPR Act gives effect to, <i>inter alia</i>, corresponding Articles 14, 16, 20 and 24 of the ICCPR.</p> <p>§ 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.</p>	<ol style="list-style-type: none">1. In light of the passage of the 18th Amendment to the Constitution and the impeachment of the Chief Justice in January 2013, it is questionable as to whether the Supreme Court will engage in such creative interpretation of the existing constitutional provisions as was done by the Court in the late 1990's and early 2000's. In any event judicial decisions are not a substitute for legislative reform- in particular constitutional amendments.2. National Action Plan for the Promotion and Protection of Human Rights (NHRAP), which was approved by the Cabinet of Ministers in December 2011 recognising some of these shortcomings, proposed a Constitutional amendment to ensure the Right to privacy and legislation to ensure the Right to Information and the Right to Life within a period of one year.¹⁷ However as with almost all the activities in the NHRAP even these limited measures have not been implemented.3. ICCPR Act contains only four main substantive rights-conferring provisions in Sections 2, 4, 5 and 6 (viz., the right to be recognised as a person before the law; entitlements of alleged offenders to legal assistance, interpreter and safeguard against self-incrimination; certain rights of the child; and right of access to State benefits, respectively), and these provisions are

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§ 94: The Act recognizes,

- (a) The right of every person to “recognition as a person before the law”.¹
- (b) That alleged criminal offenders are entitled to the following:
 - “the right to be afforded an opportunity to be tried in his presence”,²
 - “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”,³
 - “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”,⁴
 - “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”⁵
 - “to have the assistance of an interpreter where such person cannot understand or speak the language in which the trial is being conducted.”⁶
 - “not to be compelled to testify against himself or to confess guilt.”⁷
- (c) The right of every convicted person to “appeal to a higher court against such conviction and any sentence imposed”.⁸
- (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”⁹

§ 95: The rights of the child are stipulated under the ICCPR Act as the right:¹⁰

- (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 or legislative bodies, *the best interest of the child shall be of paramount importance.*”¹¹ (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

formulated in terminology that is substantially and significantly different from the corresponding provisions of the ICCPR.

¹⁷National Action Plan for the Promotion and Protection of Human Rights, December 2011, p 23 available at

http://www.ohchr.org/Documents/Issues/NHRA/NPASriLanka2011_2016.pdf

¹Section 2 of the ICCPR Act

²Section 4(1) (a) of the ICPR Act.

³Section 4(1) (b) of the ICPR Act.

⁴Section 4(1) (c) of the ICPR Act.

⁵Section 4(1) (d) of the ICPR Act.

⁶Section 4(1) (e) of the ICPR Act.

⁷Section 4(1) (f) of the ICPR Act.

⁸Section 4(2) of the ICPR Act

⁹Section 4(3) of the ICPR Act

¹⁰Section 5 (a)-(d) of the ICPR Act

¹¹Section 5 (2) of the ICPR Act

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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.¹²

(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.¹³

(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.¹⁴

(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.

§ 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:

(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:¹⁵

¹²Section 7 (1) of the ICPR Act

¹³Section 7 (2) of the ICPR Act

¹⁴Section 7 (3) of the ICPR Act

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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*¹⁶ 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;
- 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).

Relevant para(s) in the Reply of GoSL to LoI

1. The application of the ICCPR was the subject of a Supreme Court Determination (SC Reference 01/2008) in 2008.
2. In this instance, His Excellency the President under Article 129 (1) of the Constitution referred the following two questions for an interpretation by the

Civil Society Comment on the Reply of GoSL

1. The Advisory opinion of the Supreme Court has to be considered in light of the extensive submissions made by the intervening Petitioners in the case including The Centre for Policy Alternatives (CPA), regarding compliance by the Sri Lanka with its obligations under the ICCPR. For the arguments made by the intervening Petitioners and a critique of how the Supreme Court dealt with these arguments. See Rohan Edrisinha and Asanga Welikala, "GSP

¹⁵S.C. Ref: No 01/2008.

¹⁶2000 1 Sri LR page 387.

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Supreme Court:

i) Whether the legislative provisions cited in the reference that have been taken to give statutory recognition to civil and political rights in the International Covenant on Civil and Political Rights (ICCPR) of the United Nations adhere to the general premise of the Covenant and whether individuals within the territory of Sri Lanka would derive the benefit and the guarantee of rights as contained in the Covenant through the medium of the legal and constitutional processes prevailing in Sri Lanka?

ii) Whether the said rights recognised in the Covenant are justiciable through the medium of legal and constitutional process prevailing in Sri Lanka?

The Covenant within the Sri Lankan Legal System

3. The Court held that as stated in the Preamble to the Covenant the rights recognised and enshrined therein stem from the Universal Declaration of Human Rights. As a basic premise, the fundamental rights declared and recognised in Chap. III of the Constitution are based on the Universal Declaration of Human Rights.

4. The Court cited Article 4 (d) of the Constitution and held that the fundamental rights declared and recognised by the Constitution form part of the Sovereignty of the People and have to be respected secured and advanced by all organs of government.

5. This was in the Court's opinion a unique feature of the Constitution which entrenches fundamental rights as part of the inalienable Sovereignty of the People. Thus, 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.

6. It was noted that the Court has permitted public interest litigation covering matters that transcend the infringement of individual rights. Directions have been issued in connection with matters of general importance as to liberty, personal security and administrative action connected with a wide array of matters that impact on the natural environment, particularly with regard to water, air and noise pollution.

7. The Court also emphasized that Parliament enacted special legislation titled International Covenant on Civil and Political Rights (ICCPR) Act No. 56/2007 to give legislative recognition in respect of certain residual rights and matters in the

Plus and the ICCPR: A Critical Appraisal of the Official Position of Sri Lanka in respect of Compliance Requirements", in "GSP+ and Sri Lanka: Economic, Labour and Human Rights Issues", CPA and Friedrich Ebert Stiftung, October 2008 pp. 80- 142 available at http://library.fes.de/pdf-files/bueros/sri_lanka/08684.pdf (Hard copies have been couriered together with the Hard copy of this matrix)

2. Whilst amending Personal Laws is a matter of great sensitivity, such Personal Laws are not the only laws that are inconsistent with the Covenant. Several other statutes (including the Official Secrets Act; Provisions of the Penal Code; Provisions relating to succession in the Land Development Ordinance No. 19 of 1935¹⁸; Public Security Ordinance) have been kept operative through this provision.
3. The NHRAP undertook to conduct a review and amend certain laws that were in existence at the time of the promulgation of 1978 Constitution which itself violated the rights recognised therein.¹⁹ However, there is no information available in the public domain if such a review was conducted and if so whether the government has taken steps to amend the law.
4. Even though the State party response suggests that the matters regarding its accession to the optional protocol of the ICCPR is before the Court of Appeal, the principle of *Stare decisis* dictates that the Court of Appeal is bound by the determination of the Supreme Court.

¹⁸Kishali Pinto-Jayawardena Jayantha de Almeida Guneratne "Is land only for men", *Law and Society Trust*, September 2010, p 55 available at <http://www.lawandsocietytrust.org/PDF/Is%20Land%20Just%20for%20Men.pdf>

¹⁹National Action Plan for the Promotion and Protection of Human Rights, December 2011, p 12 available at http://www.ohchr.org/Documents/Issues/NHRA/NPASriLanka2011_2016.pdf

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Covenant that have not been appropriately contained in the Constitution and the other operative laws.

8. Furthermore it was observed that 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 recognised by the Constitution.

9. The Court noted that "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."

Article 16(1) of the Constitution

10. The Court noted that Article 27 of the Covenant makes a specific reservation that 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 to use their own language

11. In the Court's 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 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.

Conclusion

12. For the reasons stated above, the Court was of the opinion in terms of Article 129(1) of the Constitution that –

- The legislative measures referred to in the communication of His Excellency the President dated 4.3.2008 and the provisions of the Constitution and of other law, including decisions of the Superior Courts of Sri Lanka give adequate recognition to the civil and political rights contained in the International Covenant on Civil and Political Rights and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights as contained in the Covenant.
- That the afore-said rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka.

(A list which details the legislative compliance within Sri Lanka vis-à-vis each Article of the Covenant and the relevant pronouncements made by the Supreme

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Court and the other Courts to further strengthen the guarantee of rights recognized in the Covenant which was attached to the determination of the Supreme Court, is annexed herewith)

Optional Protocol to the ICCPR

13. Sri Lanka having acceded to the optional protocol of the ICCPR had set in motion procedures to implement the views of the committee until the Supreme Court Judgement in the case of Nallaratnam Singarasa v Attorney General .

14. In this case, five judges of the Supreme Court held that the government of Sri Lanka by acceding to the optional protocol to the ICCPR had violated the provisions of the constitution and only courts and tribunals set up under the Constitution can vindicate the rights of the people of Sri Lanka.

15. The Government of Sri Lanka informed its position to the Human Rights Committee and the Office of the High Commissioner for Human Rights.

16. This matter is currently receiving the attention of the Court of Appeal in **CA/WRIT/697/10**. The Government of Sri Lanka will inform the Committee of the outcome of the case.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

HR Committee COs from the previous review (CCPR/CO/79/LKA): § 7: While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in chapter III of the Constitution of Sri Lanka, even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16, paragraph 1. of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (arts. 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist. **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.**

HR Committee's view on Individual Communication: Among others, nos. 1862/2009 (CCPR/C/103/D/1862/2009)²⁰, 1406/2005 (CCPR/C/95/D/1406/2005) and 1432/2005 (CCPR/C/103/D/1862/2009), violations found but the views of the Committee not fully or at all implemented.

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Implement Constitutional reform to ensure the Bill of Rights includes all rights contained in the ICCPR, Furthermore the restrictions clause in Article 15 should be amended to reflect the wording contained in the ICCPR in order to ensure the full enjoyment of Fundamental Rights.
- ii) Ensure the Independence of the Judiciary in order to facilitate the full realisation of ICCPR rights.

²⁰CCPR Centre case summary is available here: <http://www.ccprcentre.org/wp-content/uploads/2012/10/1862-2009-Peiris-v.-Sri-lanka.pdf> and Follow-up to the view of the Committee, CCPR Centre information sheet is available here: http://www.ccprcentre.org/doc/2012/09/FU-1862-2009-Peiris-v-Sri-Lanka_en.pdf

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Issue raised in the LoI of HR Committee

Issue 2: Please respond to concerns raised by several United Nations human rights mechanisms about the eighteenth constitutional amendment, made in 2010, which eliminated the Constitutional Council and empowered the President to make direct appointments of the chairpersons and members of a number of key oversight bodies. Furthermore, please provide information on measures taken to strengthen the independence and role of the Human Rights Commission of Sri Lanka in compliance with the Paris Principles (CCPR/C/LKA/5, paras. 242 to 248), and to ensure that its decisions and recommendations are fully implemented by State authorities.

Relevant parts of the State Report (CCPR/C/LKA/5)

§ 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

Civil Society Reply to the Issue / Question, Update and Other inputs

1. The implementation of the 18th Amendment to the Constitution in October 2010 provided substantial powers for the Executive to appoint Judges to the Supreme Court and Court of Appeal, The Attorney General, Commissioners of the Human Rights Commission of Sri Lanka and individuals to independent institutions.
2. The control of the Executive over independent actors was further exacerbated when institutions such as the Attorney General's Department and Legal Draftsman's office was moved from the Ministry of Justice to be directly under the control of the President.
3. The National Human Rights Commission (NHRC), the Judiciary and the National Police Commission, are of paramount importance in protecting the fundamental rights of citizens and ensuring the separation of powers. The politicization of these institutions was reinforced by the 18th Amendment.

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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.

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Relevant para(s) in the Reply of GoSL to LoI

17. In terms of the 18th Amendment the composition, manner and functioning of the Constitutional Council was changed and it became known as the Parliamentary Council after the 18th Amendment.

18. According to the amendment, the Parliamentary Council will consist of the Prime Minister, the Speaker, the leader of the opposition, a nominee of the Prime Minister, who shall be a member of Parliament, and a nominee of the Leader of Opposition who shall be a member of Parliament.

19. The Chairman and members of the Commissions referred to in Schedule I and the persons to be appointed to the offices referred to in Part I and Part II of Schedule II of the Amendment shall be appointed to the Commissions and the offices referred to in the said schedules by the President.

20. In making such appointments, it is incumbent upon the President to seek the observations of the Parliamentary Council. Thus a mandatory process of consultation, which the President has to perform undertake, has been introduced by the 18th Amendment.

21. One has to bear in mind that there were infirmities in the 17th Amendment that impacted upon the operationalization of bodies such as the Election Commission. Even the Constitutional Council could not be constituted because there was no agreement among minority parties on the composition. The legislature recognised the several weaknesses inherent in the 17th Amendment among which the principal critique was its non-workability and the 18th Amendment was a legislative response to cure the infirmities that had rendered the Constitutional Council non-workable. The fact that several Commissions and high offices that were operationalized since the 18th Amendment and the robust functioning today demonstrates the efficacy of the 18th Amendment and how it has strengthened the process of governance.

22. It has to be pinpointed that the Supreme Court of the country had declared this amendment to be constitutional before its enactment by Parliament.

Human Rights Commission (HRC)

Civil Society Comment on the Reply of GoSL

1. In terms of the 18th amendment the President is only mandated to seek "observations" of the Parliamentary Council whereas the 17th Amendment prohibited the President to make certain appointments, except on a recommendation of the Constitutional Council or make certain other appointments unless the Constitutional Council approves the Presidents nomination.

Provision in terms of the 18 th Amendment	Provision in terms of the 17 th Amendment
<p>The Chairman and members of the Commissions referred to in Schedule I to this Article, and the persons to be appointed to the offices referred to in Part I and Part II of Schedule II of this Article, shall be appointed to the Commissions and the offices referred to in the said Schedules, by the President. <u>In making such appointments, the President shall seek the observations of a Parliamentary Council</u></p>	<p><u>No person shall be appointed by the President</u> as the Chairman or a member of any of the Commissions specified in the schedule: to this Article, <u>except on a recommendation of the Council</u></p> <p><u>No person shall be appointed by the President</u> to any of the Offices specified in the Schedule to this Article. <u>unless such appointment has been approved by the Council upon a recommendation made to the Council by the President.</u></p>

2. Because observations of the Parliamentary Council are non-binding in terms of the 18th Amendment, the President can disregard these "observations" of the Parliamentary Council. Further, as Article 35 provides the President immunity from suit no legal remedy will be available if the President disregards these "observations".
3. Furthermore the Parliamentary Council only consists of Members of Parliament who are also connected to the President. Since the inception of the Executive Presidential system in Sri Lanka, there has not been a single instance where either the President or the Prime minister or the President and the Opposition leader were not from the same political party/ configuration. This means the President is guaranteed a majority in the Parliamentary Council. Whereas the Constitutional Council under the 17th Amendment had a majority of members (6) who were not political actors and 5 of those members had to be nominated by the consensus of the Prime Minister and the Opposition Leader (thereby ensuring that non partisan individuals are appointed)

²¹www.hrcsl.lk

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23. In terms of Section 15 of the Human Rights Commission Act No. 21 of 1996, any authority or person to whom a recommendation has been made is required to report to the HRC of the action or proposed action taken to give effect to the recommendations of the HRC. If any authority or person fails to report to the Commission of the action or proposed action to give effect to the recommendation or it is the view of the HRC that the action taken is inadequate, the HRC is required to submit a full report of the facts to His Excellency the President who shall cause such report to be placed before parliament. Further to the above statutory requirement, the Ministry of Public Administration issued Circular 17/2005 to all public institutions directing them that they should take necessary action to implement the recommendations of the HRC. In the event they are unable for good reason to implement such recommendations they are obliged to inform the Human Rights Commission of such reason.

24. The draft legislation to amend the Human Rights Commission Act in order to strengthen its powers and mechanisms has been sent to relevant stakeholders for their observations.

4. Whilst the 17th amendment did have certain defects, such could have been remedied and a Select Committee of Parliament was in fact appointed for this purpose. However the 18th amendment is a complete reversal of the safeguards in the 17th amendment. The 18th amendment was not a recommendation of the said select committee of Parliament and was in fact enacted as an urgent bill thereby not providing any meaningful debate on its provisions before its enactment. Even the Supreme Court only had 3 days to hear all interested parties and make a determination on the constitutionality of the bill because the GoSL rushed it through as an urgent Bill.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

CAT (CAT/C/LKA/CO/3-4, Dec 2011): § 16: While noting the Human Rights Commission of Sri Lanka's (HRCSL) broad inquiry powers to investigate human rights violations vested in Section 11 of the Human Rights Commission Act No 21 of 1996, the Committee is concerned about its reported inactivity, the lack of cooperation from the police and the Government and the limited resources and challenges to its independence and impartiality as a result of the 18th Amendment to the Sri Lankan Constitution, which places the appointment of its members solely in the hands of the Head of State. The Committee is also concerned that, contrary to the information provided by the State party, the International Committee of the Red Cross (ICRC) is not allowed to visit the "rehabilitation centres" or facilities holding LTTE suspects yet to be formally charged. The Committee notes with concern that during 2009 the military administration in closed internment camps for IDPs denied access to humanitarian organisations, including the United Nations and the ICRC (arts. 2, 11, 12, 13 and 16). **The Committee calls upon the State party to establish an independent national system to effectively monitor and inspect all places of detention, including facilities holding LTTE suspects and closed IDP camps, and to follow-up on the outcome of its systematic monitoring. The State party should take necessary measures to support work of HRCSL, ensuring that its recommendations are fully implemented. It should also provide detailed information on the action taken on the recommendations made by the Commission on its visit to Mount Lavinia police station on 15 August 2011. The State party should strengthen the capacity of non-governmental organizations that undertake monitoring activities and adopt all appropriate measures to enable them to carry out periodic, independent and unannounced visits to places of detention. The Committee strongly encourages the State party to consider the possibility of ratifying the Optional Protocol to the Convention against Torture, with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.** § 17: The Committee is concerned that the new appointment process set out by the 18th Amendment to the Sri Lankan Constitution (September 2010), which ends Parliament's role in approving appointments, undermines the independence of the HRCSL. The Committee is also concerned about the difficulties the HRCSL has had in carrying out its function owing in part to the lack of cooperation from other State party institutions, limited human and financial resources, which has reduced its ability to investigate specific incidents and make recommendations for redress, and failure to publish the reports of its investigations (art. 2 and 12). **The State party should ensure that the HRCSL effectively fulfils its mandate and receives the necessary resources for that purpose. It should also ensure that the Commission is able to initiate as well as carry out independent investigations into alleged and possible cases of torture and ill-treatment, including those concerning military premises, as well as "rehabilitation centres" and other government-controlled facilities such as "welfare centres", and to publish the results. The State party should establish a transparent and consultative selection process to guarantee its full independence in line with the Paris Principles.**

CESCR (E/C.12/LKA/CO/2-4, December 2010): § 9: The Committee is concerned that the judiciary and important oversight bodies lack independence to effectively carry out their role in the promotion and protection of economic, social and cultural rights. The Committee is also concerned about the 18th amendment of the Constitution passed on 8 September 2010 which further reduces the independence of the judiciary and other oversight bodies as it provides for direct appointments by the president of, inter alia, chairpersons and members of the Commission to Investigate Allegations of Bribery or Corruption, members of the Judicial Service Commission and the Parliamentary Commissioner for Administration (Ombudsman). **The Committee calls upon the State party to take all the necessary measures to ensure the independence and integrity of the judiciary and oversight bodies. It also recommends that the State party consider reviewing the provisions of the 18th amendment of the Constitution related to the appointment procedure of chairpersons and members of oversight bodies.**

Civil Society Recommendations on the Issue

Submission by the Centre for Policy Alternatives regarding Sri Lanka's Response to the List of Issues Adopted

The State Party (GoSL) should:

- i) Ensure an independent mechanism for the appointment of members of institutions such as the Election Commission, the National Police Commission, the Human Rights Commission of Sri Lanka and the appointment of Judges of the Supreme Court and Court of Appeal and the Members of the Judicial Service Commission, the Attorney General
- ii) Amend the HRCSL Act in order to provide the Commission with the power to enforce its decisions.

Submission by the Centre for Policy Alternatives regarding Sri Lanka's Response to the List of Issues Adopted
Counter-terrorism measures

Issue raised in the LoI of HR Committee

Issue 8: *According to the State party's periodic report (paras.64-67), following the lifting of the emergency regulations in August 2011, some of the provisions remained within the framework of the Prevention of Terrorism Act. Please clarify whether all provisions in the Prevention of Terrorism Act are compatible with the Covenant, including the legal safeguards, for persons suspected of or charged with a terrorist or related crime. Also, please elaborate on the measures taken to ensure a comprehensive review of all security-related legislation and on the outcomes of reviews of cases of suspects detained under the Prevention of Terrorism Act (CCPR/C/LKA/5, paras.265-267). Please include statistics on the prosecution and the release of detainees and the issuance of the writ of habeas corpus. Please respond to reports that the remedy of habeas corpus in the State party is ineffective, mainly due to long delays in the disposal of complaints, a lack of cooperation from security agencies, and unwillingness by the judiciary to exercise its duty to protect the liberty of the individual.*

Relevant parts of the State Report (CCPR/C/LKA/5)

§ 64: Another significant development is the lapsing of the Emergency Regulations promulgated under the Public Security Ordinance in 2005.²² 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 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

Civil Society Reply to the Issue / Question, Update and Other inputs

1. During the period 1st January 2014 to 1st September 2014, two prominent Human Rights Defenders²³ and more than 65 other individuals from the Northern and Eastern Province were arrested under the PTA²⁴. Many of the arrests took place during 25th Session of the UN Human Rights Council. Several individuals arrested including Balendran Jeyakumari- who was arrested in Kilinochchi on 13th March 2014, allegedly for aiding and abetting an ex-LTTE cadre continue to be detained without charge.
2. Regulations No. 1 and No. 2 of 2011²⁵, which deal with the proscription of the Liberation Tigers of Tamil Eelam (LTTE) and the Tamil Rehabilitation Organization (TRO) establish extremely overbroad offences. The regulations make transacting with any organization that is 'reasonably suspected of being connected with or concerned in' unlawful activities, an offence. Hence even the provision of legal services to an organization that is reasonably suspected of unlawful activities would be considered an offence. These regulations also permit the President to arbitrarily seize properties in the possession of these persons. An inquiry may be held only if the President himself deems it fit. There is fear amongst civil society actors that these provisions could be used against NGOs.

²²The Emergency was re-imposed after the assassination of the then Foreign Minister in August 2005.

²³ On the 16 March 2014 Ruki Fernando and Father Praveen Mahesan were arrested in the northern town of Killinochchi and held by police for 48 see *Groundviews*, "Arrest of Ruki Fernando and Fr. Praveen", 17 March 2014, available at <http://groundviews.org/2014/03/17/arrest-of-ruki-fernando-and-father-praveen/>, BBC, "Sri Lanka frees arrested human rights activists", 19 March 2014, available at <http://www.bbc.com/news/world-asia-26641597>

²⁴Premalal Wijeratne, "TID arrests 65 LTTE suspects", *Ceylon Today*, 11 April 2014, available at <http://www.ceylontoday.lk/51-61534-news-detail-tid-arrests-65-ltte-suspects.html>

²⁵ See http://documents.gov.lk/Extgzt/2011/PDF/Aug/1721_02/1721_02%20%28E%29.pdf

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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).

§ 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.

Relevant para(s) in the Reply of GoSL to LoI

Civil Society Comment on the Reply of GoSL

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47. All detainees can challenge the lawfulness of the detention by way of Habeas Corpus in the High Court or Court of appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regard the fundamental rights applications it is noteworthy that complaints could be initiated by addressing a letter to the Supreme court- the epistolary jurisdiction which has been developed by the Supreme Court.

48. The GoSL continues to review the cases of suspects held under the Prevention of Terrorism Act (PTA) in order to prosecute, submit to rehabilitation or release persons held in detention, upon consideration of the evidence.

49. Human Rights Commission of Sri Lanka maintains a register of detention orders and it is a mandatory requirement of all the authorized agencies to keep the HRC informed of the enforcement of all detention orders.

Is the PTA compatible with the provisions of the Covenant?

50. Although a confession made to an Assistant Superintendent of Police was admitted under the Emergency Regulations, those Regulations have since been repealed in August 2011. Though a confession made to a police officer is inadmissible under the Evidence Ordinance, under Prevention of Terrorism Act (PTA), such confessions are admitted only if the Court is satisfied beyond doubt after a *voire dire* inquiry that such confessions were made voluntarily.

51. The burden of proving the ingredients of an offence is always on the prosecution. It is only with regard to confessions under PTA that the burden shifts to the accused to show that it is inadmissible under Section 24 of the Evidence Ordinance. Under Section 24 of the Evidence Ordinance, a confession made by an accused person is inadmissible in criminal proceedings if the making of the confession appears to the court to have been made under inducement, promise or threat. This reversal of burden of proof is a universal phenomenon and examples are galore of such provisions in common law jurisdictions. Article 13(5) of the Constitution is emblematic of this universal practice when it states-“Every person shall be presumed innocent until he is proved guilty: Provided that the burden of proving particular facts may, by law, be placed on an accused person.”

52. Voluntariness of making the confession and its truth are benchmarks that are taken into consideration before a Court would admit a confession against an accused person. Thus it can be asserted that none of the provisions of the PTA are offensive of the Convention.

53. The PTA is a special law enacted by parliament to deal with matters relating to terrorist activities. Persons arrested under the provisions of the PTA are entitled to all safeguards including visits by family members, attorneys-at- law, magistrates, medical officers, members of the clergy and representatives of ICRC and the National Human Rights Commission.

54. At the moment, there are 114 detainees held under the provisions of the PTA. All such persons have been in detention for a period less than 18 months. They are all afforded the facilities mentioned before. As such it is contended that the provisions of the PTA are compatible with the Covenant.

55. Since the end of the conflict in 2009, the Attorney-General has in many instances opted to

1. Even the Supreme Court of Sri Lanka has recognised that parts of the PTA are inconsistent with the provisions of the Sri Lankan Constitution including Fundamental Rights

Weerawansa v Attorney General (2000) 1 SLR 387 at pp.394-395, emphasis added)

However, sections **7(1) and 9(1) (of the PTA)** authorise detention by the Executive without a prior judicial order and for longer periods than under the general law (but those provisions did not expressly dispense with the need to bring a detainee before a judge). When the PTA Bill was referred to this court, the court did not have to decide whether or not any of those provisions constituted reasonable restrictions on Articles 12 (1), 13 (1) and 13 (2) permitted by Article 15 (7) (in the interests of national security etc.), because the court was informed that it had been decided to pass the Bill with two-thirds majority (SC SD No. 7/79, 17.7.79). **The PTA was enacted with two-thirds majority, and accordingly, in terms of Article 84, PTA became law despite many inconsistencies with the constitutional provisions.**

2. The PTA also contains provisions relating to arrest, search and seizure, detention orders and allows statements admitted to higher ranking police officers as admissible in courts of law subjected to a test as to whether the statement had been made under some form of coercion, inducement or promise. The PTA provides legal immunity for actions of public servants in acts performed under the statute, provided that they were done in good faith and in pursuance of official duties. Furthermore arrests need not be with reasons, detentions could be extended without effective judicial scrutiny and suspects have no right to independent legal counsel or medical examination, which are all inconsistent with the ICCPR.

3. It is an **incorrect statement of law** that “confessions are admitted only if the Court is satisfied beyond doubt after a *voire dire* inquiry that such confessions were made voluntarily.” It is clear from the statute that the burden of proving that the confession was not voluntary is on the accused who asserts that fact.

4. Even the most lenient judicial pronouncements have indicated that the burden of proof in terms of section 16 (2) of the PTA is on the accused. However the Courts have suggested that this burden is a light burden and from the given circumstances of the case, sometimes a court of law may be able to decide whether it appears that the confession was not voluntarily.

The case of **Mahadevan Yogakanthan v Republic of Sri Lanka C.A. Appeal No. 41/2010** is one such case where the Court of Appeal took the above view. However in this case the reason the Court came to the conclusion that the confession was not given voluntarily was because;

“First and foremost it has to be recorded that the confession which runs into about 03 pages which appears to be an exhaustive confession was taken down in sinhala whereas the accused-appellant was a Tamil. Therefore a grave doubt arises as to whether it is a verbatim account of the statement of the accused..... **In situations of this nature, it would have been more advisable for the police to have recorded the statement in the Tamil language by a competent Tamil typist?**”

5. The delay in concluding proceedings in *Habeas corpus* applications raises serious concerns as to its effectiveness, these delays have continued even after decentralization of judicial power

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rehabilitate the suspects as an alternative to prosecution. This is in line with the policy of restorative justice followed by the Government. Rehabilitation is conducted only in instances where the suspect voluntarily agrees to rehabilitate himself before reintegration into society. Over 200 persons have been recommended by the Attorney general for rehabilitation in lieu of prosecution after 2009. The process is facilitated through courts and under judicial supervision. In addition to recommendation for rehabilitation by the Attorney General, the courts have also in many instances sent convicted persons for rehabilitation as a substitute for jail sentences.

56. The writ of habeas corpus is yet another remedy guaranteed under the Constitution to protect the liberty of persons. An application can be made to the Court of Appeal or the provincial High Court. Before issuing a writ of habeas corpus, the Court will cause an inquiry to be conducted by a judicial officer.

57. The Government refutes the allegation that this is an ineffective measure as many persons have sought this remedy through courts. Currently, there are 133 habeas corpus cases pending in courts throughout the country.

allowed Applications/ Petitions to be filed at the Provincial level.²⁶ The Habeas corpus case filed by Sandya Ekneligoda, wife of missing cartoonist and journalist Prageeth Ekneligoda (missing since January 2010) in March 2010 is still pending before court. The delay has been caused by witnesses failing to appear before court (Anura Shantha Jayasundara, a Police officer failed to appear before the courts 11 times and the former Minister of Media, Mr. Lakshman Yapa Abeywardena twice) and general delays such as the State not filing papers on time and Counsel being unable to attend.²⁷ A recent study also found that the Attorney General's department routinely made applications to have Petitions filed in Jaffna, Mullaitivu and Vavuniya transferred to Anuradhapura, and that Court generally conceded to these applications causing grave inconvenience and additional financial burden to victims.²⁸ Furthermore the practice of the Attorney General's department to request the Magistrate not to make available the order in relation to the *prima facie* inquiry has resulted in Petitioners being unaware of the status of their case for long periods of time.²⁹

²⁶ Chapter Ten - Part I - Habeas Corpus Applications, Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, available at http://www.disappearances.org/news/mainfile.php/frep_sl_western/38/; Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times, Law and Society Trust 2011, pp 209 – 2012, available at http://www.lawandsocietytrust.org/PDF/HABEAS%20CORPUS%20IN%20SRIL%20LANKA_%20THEORY%20AND%20PRACTICE%20OF%20THE%20GREAT%20WRIT%20IN%20EXTRAORDINARY%20TIMES.pdf

²⁷ See Ruki Fernando, "Disappearances and the struggle for truth and justice", Groundviews, 30 August 2014, available at <http://groundviews.org/2014/08/30/disappearances-and-the-struggle-for-truth-and-justice/>

²⁸ Authority without Accountability the crisis of impunity in Sri Lanka, International Commission of Jurists, November 2012, p 88, available at <http://www.refworld.org/pdfid/50ae365b2.pdf>

²⁹ See; Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times, Law and Society Trust 2011, pp 209 – 2012, available at http://www.lawandsocietytrust.org/PDF/HABEAS%20CORPUS%20IN%20SRIL%20LANKA_%20THEORY%20AND%20PRACTICE%20OF%20THE%20GREAT%20WRIT%20IN%20EXTRAORDINARY%20TIMES.pdf

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Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

HR Committee COs from the previous review (CCPR/CO/79/LKA): § 13: The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defense cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003. **The State party is urged to ensure that all legislation and other measure enacted taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.**

CAT (CAT/C/LKA/CO/3-4, Dec 2011): § 7: While noting the information provided by the State party on the content of the Presidential Directives of 7 July 2006 (reissued in 2007) and the Rules with regard to Persons in Custody of the Police (Code of Departmental Order No. A 20), the Committee expresses its serious concern at the State party's failure in practice to afford all detainees, including those detained under anti-terrorist laws, with all fundamental safeguards from the very outset of their detention. The Committee is concerned that, despite the content of the 2006 Presidential Directives, criminal suspects held in custody still have no statutory right to inform a family member of the arrest or to have prompt access to a lawyer of their choice. The Code of Criminal Procedure also lacks other fundamental legal safeguards, such as the right to have a lawyer present during any interrogation and to be assisted by an interpreter and the right to confidential communication between lawyer and client. The Committee notes with concern that access to a doctor is left to the discretion of the police officer in charge of the police station. It also expresses concern about reports that police fail to bring suspects before a judge within the time prescribed by law and that accused persons are often not adequately informed about their rights. The Committee also expresses its concern at the absence of a State-sponsored legal aid programme; and, at the variety of institutional, technical and procedural obstacles rendering the writ of habeas corpus ineffective (art. 2). **The State party should take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their detention. These include, in particular, the rights of each detainee to be informed of the reasons for his/her arrest, including of any charges against him/her; to have prompt access to a lawyer and to consult privately with him/her and, when needed, legal aid, as well as an independent medical examination, if possible by a doctor of his/her choice; to notify a relative and to be informed of his/her rights; to have a lawyer present during any interrogation by the police and to be assisted by an interpreter; to be brought promptly before a judge and to have the lawfulness of his/her detention reviewed by a court, in accordance with international instruments. The State party should ensure that, when suspects are produced before the courts by the police, magistrates always inquire whether the suspect was tortured or mistreated by the police while in custody. The State party should ensure that public officials, in particular judicial medical officers (JMO), prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, record and report any such suspected or claimed act to the relevant authorities.**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Repeal the PTA in its present form, and replace it (if necessary) with legislation that is consistent with international anti-terrorism standards reflected in relevant United Nations instruments and comparative constitutional practice

Submission by the Centre for Policy Alternatives regarding Sri Lanka's Response to the List of Issues Adopted
Right to life (art. 6)

Issue raised in the LoI of HR Committee

Issue 9: *Please respond to consistent and well-documented reports that unlawful use of force and violations of the right to life by State agents or by paramilitary groups directly under the control of the armed forces, including extrajudicial killings, suspicious deaths in custody and enforced disappearances, remain widespread and unpunished. Please indicate the measures taken to prevent such cases, to promptly and impartially investigate them, to prosecute and punish the perpetrators, and to provide adequate remedies to victims or their relatives. Please provide data on the number of deaths in detention, and their causes, and on the number of police and prison officials who have been disciplined or prosecuted for such cases, including the cases of deaths during the riots at Vavuniya prison and Weikada prison in 2012. Is the State party considering establishing enforced disappearance as an offence in domestic law?*

Relevant parts of the State Report (CCPR/C/LKA/5)

§ 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*³⁰ 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 Iddamalagoda*...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 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).

§ 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,

Civil Society Reply to the Issue / Question, Update and Other inputs

³⁰SC Appeal No90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.03.2003

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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.³¹ The Police report a relatively good rate of success in tracing alleged missing persons³²

§ 158: In addition the Inspector-General of Police, in December 2011, issued strict instructions to all officers regarding the treatment of detainees arrested.³³ 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.³⁴ Criminal prosecutions have been streamlined by the establishment of Divisional Prosecution Units at the Provincial level which expedites the prosecution of terrorism related offences.^{35,36}

Relevant para(s) in the Reply of GoSL to Lol	Civil Society Comment on the Reply of GoSL
	<ol style="list-style-type: none"> 1. Testimonies publicly made at the Presidential Commission to Investigate into Complaints Regarding Missing Persons allude very clearly to enforced disappearances involving the armed forces. These cases are yet to be independently investigated. 2. CPA welcomed the Assistance to and Protection of Victims of Crime and Witnesses Bill but raised concerns³⁷ reiterating the need for further reform if there is genuine interest in the full realisation of human rights protection and fundamental freedoms. 3. Although the reply of the Government notes that existing Penal Code provisions are adequate to tackle the issues of kidnapping, abduction and enforced disappearances, a draft section proposing amendment to the Penal code³⁸ on disappearances was prepared in accordance with the National Action Plan for the Protection and Promotion of Human Rights. However there is no update on the matter.
Relevant Recommendations made by HR Committee and/or other UN bodies on the issue	

³¹ 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.

³² 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 abducted in 2011 was 239 of whom 226 have been traced. Investigations continue into unresolved cases.

³³ IGP's Circular 2328/2011 dated 29 December 2011 (Safety of Persons in Police Custody)

³⁴ Extraordinary Gazette Notification 1758/36 dated 18 May 2012

³⁵ 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

³⁶ See footnote 7.

³⁷ CPA, "The Need for a Strong Victim and Witness Assistance and Protection Mechanism", 5 September 2014, available at <http://www.cpalanka.org/the-need-for-a-strong-victim-and-witness-assistance-and-protection-mechanism/>

³⁸ Ministry of Justice, Progress Report January-August 2013, available at http://www.justiceministry.gov.lk/images/stories/Reports/Progress_Report_2013/english.pdf

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HR Committee COs from the previous review (CCPR/CO/79/LKA): § 10: The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see para. 9 above), creates an environment that is conducive to a culture of impunity. **The State party is urged to implement fully the right to life and physical integrity of all persons (arts. 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the United Nations Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.**

CAT (CAT/C/LKA/CO/3-4, Dec 2011): § 9: While welcoming the State party's Supreme Court judgement in *KanapathipillaiMachchavallavanv Officer in Charge Army Camp Plaintiff Point, Trincomalee and Three Others* (2005), according to which enforced disappearance could constitute a violation of article 13(4) of the Constitution, the Committee notes with concern that this reasoning has not been reflected in more recent decisions. It also notes that that enforced disappearance is not a separate offence under Sri Lankan criminal law and that such acts are charged under other crimes in the Penal Code, including kidnapping, abduction and wrongful confinement. The Committee expresses its concern that 475 new cases of enforced disappearance were transmitted by the Working Group on Enforced or Involuntary Disappearances to the State party under its urgent procedure during the period 2006-2010, and the claims that military, police, the Criminal Investigation Department (CID) and paramilitary groups are the alleged perpetrators. It is also concerned at reports suggesting that the sweeping powers granted under anti-terrorist legislation contributed to the large number of new disappearances (arts. 2, 11, 12, 13 and 16). **The State party should:(a) Take all the necessary measures to ensure that enforced disappearance is established as an offence in its domestic law;(b) Ensure that the cases of enforced disappearances are thoroughly and effectively investigated, that suspects are prosecuted and those found guilty punished with sanctions proportionate to the gravity of their crimes;(c) Ensure that the any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person, as well as to fair and adequate compensation;(d) Adopt measures to clarify the outstanding cases of enforced disappearances and comply with the request to visit by the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48, para. 450).****The Committee furthermore calls upon the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance; § 15:** The Committee is concerned at reports from non-governmental organisations on deaths in custody, including police killings of criminal suspects in alleged staged "encounters" or "escape" attempts.¹ The Committee notes with concern that the State party only reported two cases of death in custody, where the cause of death was determined to be suicide, for the entire period 2006-2011, while for a similar period between 2000-2005 the State party had reported in its core document approximately 65 annual deaths in custody from all causes (HRI/CORE/LKA/2008, p. 87).**The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees assessing any possible liability of law enforcement officers and prison personnel, and provide, where appropriate punishment of the perpetrators and compensation to the families of the victims.The State party should provide comprehensive data regarding reported cases of deaths in custody, disaggregated by location of detention, sex, age, ethnicity of the deceased and cause of death**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Amend existing Penal Code provisions in order to adequately tackle the issues of kidnapping, abduction and enforced disappearances.

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Issue raised in the LoI of HR Committee	
Issue 10: <i>Please provide an update on whether the State party is considering introducing legislation containing additional exceptions to the prohibition on abortion.</i>	
Relevant parts of the State Report (CCPR/C/LKA/5)	Civil Society Reply to the Issue / Question, Update and Other inputs
<p>§ 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.</p> <p>§ 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.</p> <p>§ 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.</p>	
Relevant para(s) in the Reply of GoSL to LoI	Civil Society Comment on the Reply of GoSL
Relevant Recommendations made by HR Committee and/or other UN bodies on the issue	
<p>HR Committee COs from the previous review (CCPR/CO/79/LKA): § 12: The Committee is concerned that abortion remains a criminal offence under Sri Lankan law, except where it is performed to save the life of the mother. The Committee is also concerned by the high number of abortions in unsafe conditions, imperilling the life and health of the women concerned, in violation of articles 6 and 7 of the Covenant. The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (art. 7 and General Comment 28), and repeal the provisions criminalizing abortion.</p> <p>CEDAW (CEDAW/C/LKA/CO/7, April 2011): § 36: While the Committee acknowledges the achievements of the State party in the area of maternal healthcare, it is concerned about the limited knowledge of reproductive health and the low rate of use of contraceptives, the high level of teenage pregnancies especially in less developed and conflict-affected areas, as well as the low accessibility to family planning and the increase in prevalence of HIV/AIDS infection among women. The Committee is also concerned that abortion is a punishable offence under the law, unless the purpose is to save the life of the mother and regrets that about 10 per cent of maternal mortality is reported as the direct result of clandestine abortion; § 37: Within the framework of the Committee's general recommendation No. 24, the Committee urges the State party: (a) To ensure that family planning and reproductive health education are widely promoted, in particular for internally displaced women and girls as well as women working in less developed and conflict-affected areas, with special attention to the prevention of early pregnancies of girls and the control of sexually transmitted diseases and HIV/AIDS; (b) To reduce maternal mortality rates by identifying and addressing causes of maternal death; (c) To take measures to ensure that women do not seek unsafe medical procedures, such as illegal abortion, because of lack of appropriate services in regard to fertility control; and (d) To review the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion, providing them with access to quality services for the management of complications arising from unsafe abortions.</p>	
Civil Society Recommendations on the Issue	
The State Party (GoSL) should: i ...	

Accountability

Issue raised in the LoI of HR Committee	
<p>Issue 11: <i>Please report on concrete measures taken to effectively address impunity for human rights violations committed by both State and non-State actors, in particular by ensuring independent and impartial investigations and applying the rule of law and due process in prosecuting perpetrators. What measures have been taken to ensure the right of victims of human rights violations to timely, prompt and effective remedies? Does the State party envisage accepting international assistance to resolve outstanding cases of serious human rights violations? How does the State party plan to strengthen the cooperation and coordination between different national and international authorities in investigating allegations of human rights violations during the conflict? Please provide an update on the progress made by the Sri Lankan Army's Court of Inquiry in investigating allegations of civilian casualties, including the allegations reported upon by Channel 4 documentary.</i></p>	
Relevant parts of the State Report (CCPR/C/LKA/5)	Civil Society Reply to the Issue / Question, Update and Other inputs
<p>§ 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 strategy³⁹.</p> <p>§ 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.</p> <p>§ 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 2011⁴⁰. 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 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.</p> <p>§ 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</p>	

³⁹Chapter IV Section III paragraph 4.263 of the LLRC Report (<http://slembassyusa.org/downloads/LLRC-REPORT.pdf>).

⁴⁰Available at http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011_FinalReport.pdf (last accessed 12 July 2012).

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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.⁴¹ 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.

Relevant para(s) in the Reply of GoSL to Lol	Civil Society Comment on the Reply of GoSL
	<ol style="list-style-type: none"> 1. CPA has attended, observed, critiqued⁴² the proceedings and raised concerns about the existing legal and policy framework in terms of investigations and inquiries in Sri Lanka. Furthermore, CPA raised concerns⁴³ regarding the newly expanded mandate of the Commission, which extended inquiry into a wide range of issues including violations of International Humanitarian Law and International Human Rights Law. This constitutes a major step back for accountability processes in the sphere of disappearances since the intended focus of the Commission has now been diluted into other areas. While CPA highlighted that independent investigations into these areas is crucial to post-war reconciliation, combining it with the existing workload⁴⁴ of the Commission investigating complaints of missing persons, is a damaging strategy for accountability on cases of disappearances. 2. CPA has previously highlighted⁴⁵ the role of the Ministry of Defence and other government actors in processes involving incidents implicating the military, which does not provide for an adequately impartial and independent investigation. Independence and impartiality of those

⁴¹For 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.

⁴² 'A Commentary on the Presidential Commission to Investigate Missing Persons', CPA Policy Brief, March 2014, available at <http://www.cpalanka.org/a-commentary-on-the-presidential-commission-to-investigate-missing-persons/>

⁴³ CPA, "Concerns on the Expansion of the Mandate of the Commission of Inquiry to Investigate into Complaints Regarding Missing Persons", 25 July 2014, available at <http://www.cpalanka.org/concerns-on-the-expansion-of-the-mandate-of-the-commission-of-inquiry-to-investigate-into-complaints-regarding-missing-persons/>

⁴⁴ CPA, 'INFOGRAPHIC: Presidential Commission on Missing Persons', 11 September 2014, available at <http://www.cpalanka.org/infographic-presidential-commission-on-missing-persons/>

⁴⁵ 'Commentary on the Progress Achieved in Implementing the National Plan of Action to Implement the Recommendations of the Lessons Learnt and Reconciliation Commission', CPA Policy Brief, February 2014, p4, available at <http://www.cpalanka.org/commentary-on-the-progress-achieved-in-implementing-the-national-plan-of-action-to-implement-the-recommendations-of-the-lessons-learnt-and-reconciliation-commission/>

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carrying out an investigation and conducting the inquiry is of utmost importance in order for any mechanism to have legitimacy. The Government's efforts to implement LLRC recommendations on International Humanitarian Law issues have therefore been ineffective in terms of achieving any form of justice, accountability and reconciliation. There is an evident lack of political will to conduct real investigations into these matters and the Government has remained hostile towards allegations of war crimes and attempts at truth seeking by the international community.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

CAT (CAT/C/LKA/CO/3-4, Dec 2011): § 21: The Committee notes that there have been a number of ad hoc commissions of inquiry looking into past human rights violations, including the Presidential Commission of Inquiry to investigate serious cases of human rights violations that occurred since 1 August 2005, which according to the International Independent Group of Eminent Persons (IIGEP) did not meet international standards of independence, witness and victim protection and transparency. The Committee notes the information on the mandate, composition and working methods of the Lessons Learnt Reconciliation Commission (LLRC) and the Inter-Agency Advisory Committee (IAAC), established in May and September 2010, respectively. The Committee notes the assurances by the delegation of the State party that the LLRC has the faculty to channel the complaints received "with a possibility of immediate investigation and remedial action", and that the Attorney General is "empowered to institute criminal proceedings based on the material collected during the course of the recommendations made by the LLRC". The Committee, nevertheless, regrets the apparent limited mandate of the LLRC and its alleged lack of independence. In addition, it regrets the lack of information provided by the State party on the investigations undertaken into allegations of serious violations of international human rights law, such as torture, including rape and enforced disappearances, and other forms of ill-treatment that allegedly occurred during the last stages of the conflict and in the post-conflict phase, as reported by numerous sources, including the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The Committee notes that the State party asserts that the LLRC "has taken cognizance of all the allegations", but regrets that it has not received any such information. The Committee notes that the State party "(...) will await LLRC's report before considering further action" and that a "comprehensive answer will be submitted" to this Committee on the establishment of programmes to assist victims of torture and ill-treatment that occurred during the course of the armed conflict "once the LLRC's report is finalized and made public" (arts. 2, 12, 13, 14 and 16). **Following the LLRC initiative, the State party should promptly launch impartial and effective investigations into all allegations of violations of the Convention, including torture, rape, enforced disappearances and other forms of ill-treatment, occurred during the last stages of the conflict and in the post-conflict phase, with a view to holding accountable those responsible and providing effective redress for victims of such violations. The State party should consider also the possibility of accepting an international investigatory body, which would address past concerns over the lack of credibility of previous investigations and any outstanding concern about the LLRC.**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Facilitate credible, independent investigations into IHL and IHRL matters that are now mandated under the missing persons Commission, in order to guarantee accountability and justice to those seeking truth of missing family members by not overburdening the current Commission.
- ii) Ensure credible, independent investigations into incidents implicating the army.

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Issue raised in the LoI of HR Committee	
<p><i>Issue 13: Please provide an update on the progress made in implementing the recommendations of the Lessons Learnt and Reconciliation Commission. Please clarify the State party's position regarding a number of significant recommendations which were not incorporated in the 2012 National Plan of Action to implement the recommendations of the Lessons Learnt and Reconciliation Commission (CCPR/C/LKA/5, para. 76) or in the 2011-2016 National Plan of Action for the Protection and Promotion of Human Rights.</i></p>	
<p>Relevant parts of the State Report (CCPR/C/LKA/5)</p>	<p>Civil Society Reply to the Issue / Question, Update and Other inputs</p>
<p>§ 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.⁴⁶ 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 implementation⁴⁷. The main focus areas are IHL Issues, Human Rights, Land Return and Resettlement, Restitution/Compensatory Relief and Reconciliation. The Task Force has identified a corresponding activity, an implementing agency, a key performance indicator and a time frame in respect of each recommendation.⁴⁸</p>	
<p>Relevant para(s) in the Reply of GoSL to LoI</p>	<p>Civil Society Comment on the Reply of GoSL</p>
<p>76. The Lessons Learnt and Reconciliation Commission (LLRC), the home-grown mechanism established by H.E the President, was tabled in Parliament in December 2011. In view of the importance assigned to the implementation of LLRC recommendations and its implications for the reconciliation process, the Secretary to the President was assigned, in May 2012, to monitor the implementation of LLRC recommendations. As a result, a National Plan of Action (NPoA) under his purview was set up for this purpose. The Cabinet approved the NPoA in August 2012. The NPoA is an evolving process. At present over 22 line Ministries and line agencies are working on implementation of respective recommendations of the</p>	<p>In February 2014 CPA published a Commentary on the Progress Achieved in Implementing the National Plan of Action to Implement the Recommendations of the Lessons Learnt and Reconciliation Commission (LLRC Action Plan).⁴⁹ This also included a detailed table that compared the GoSL periodic progress reports with information available in the public domain and provided by representatives from the ground.⁵⁰</p> <p>The concerns include:</p> <p>1. Disparity between Proposed Activity and Update: There are several instances where</p>

⁴⁶The 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

⁴⁷The action plan matrix is now available at www.priu.gov.lk.

⁴⁸The 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.

⁴⁹ CPA, "Commentary on the Progress Achieved in Implementing the National Plan of Action to Implement the Recommendations of the Lessons Learnt and Reconciliation Commission", 12 February 2014, available at <http://www.cpalanka.org/commentary-on-the-progress-achieved-in-implementing-the-national-plan-of-action-to-implement-the-recommendations-of-the-lessons-learnt-and-reconciliation-commission/>

⁵⁰ See <http://f.cl.ly/items/3C1A1C2z302e132W2X1o/Commentary%20on%20the%20progress%20of%20NPoA%20to%20implement%20recommendations%20of%20LLRC%20-%20Table.pdf>

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LLRC Report. The progress of the implementation of the LLRC Report is regularly shared with the Colombo-based diplomatic community and ongoing activities are published in the LLRC Action Plan website. NPoA has taken concrete measures to address the specific concerns and vulnerabilities of victims of conflict, especially women and children. Adequate financial allocations have been made to the respective government agencies engaged in the task of implementation of the recommendations.

77. The Government continues to implement the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) through the NPoA. Of the 285 paragraphs contained in Chapter 9 of the LLRC Report titled 'Summary of the Principal Observations and Recommendations' which comprises the sum total of observations and recommendations of the LLRC, the Government has identified 144 as recommendations for implementation. As of 3rd June 2014, out of 144 recommendations of the NPoA, 45 have achieved their objectives, and there are 89 recommendations where implementation has progressed to a considerable extent with long-term timeframes, and 10 recommendations where preliminary steps are being taken for implementation.

there is a mismatch between the recommendation of the Lessons Learnt and Reconciliation Commission (LLRC recommendation) and suggested activity contained in the LLRC Action Plan.⁵¹ These continue to persist even in the progress report on the implementation of the LLRC Action Plan, which renders the progress achieved meaningless.

- 2. Lack of genuine interest to involve and accept the support of civil society, local and foreign agencies:** The GoSL in certain areas has neglected the expertise of organizations that can support their activities. For example civil society and public consultation should be done on matters relating to legislation and public policy. These organizations can also provide the GoSL with financial and human resource assistance to expedite the activities.⁵²
- 3. Lack of Clarity/ Unreliability of statistics provided;** There are contradictory statements from the GoSL regarding the extent of the military presence in the Northern Province. As far back as June 2012 the GoSL claimed that the number of troops in the **Jaffna peninsula** had been reduced from 27,000 in December 2009 to 15,600 in June 2012.⁵³ In September 2013 and January 2014, President Mahinda Rajapaksa stated that the number of troops had been reduced to between 8,000 -12,000.⁵⁴ However it was reported recently that the Secretary to the President, Lalith Weeratunga had stated that the number of security forces personnel in the Northern Province as at October 2013 was 80,000.⁵⁵

The numbers mentioned by the Secretary to the President are still quite conservative as when compared to the number of existing security forces battalions⁵⁶ and land being acquired for the construction of military cantonments in the Northern Province.⁵⁷ They do highlight an important and serious concern with regard to the credibility of statistics provided by the GoSL.

⁵¹ See LLRC Action Plan – Progress Report, January 2014, 9.57, 9.73, 9.81, 9.111, 9.270

⁵² See LLRC Action Plan – Progress Report, January 2014, 9.59, 9.115 a-c, 9.115e, 9.144, 9.148, 9.270, Interim recommendation 1(b)

⁵³ Defence.lk, "Troop strength in Jaffna drastically reduced", 17 June 2012, available at

http://www.defence.lk/new.asp?fname=troop_strength_in_jaffna_drastically_reduced_says_defence_secretary_20120617_01

⁵⁴ Groundviews, "The Al-Jazeera Interview- Calling the bluff, 29 September 2013, available at <http://groundviews.org/2013/09/29/the-al-jazeera-interview-with-mahinda-rajapaksa-calling-the-bluff/> ; Colombo Telegraph, "President Rajapaksa claims 12 00 soldiers left in North", available at

<https://www.colombotelegraph.com/index.php/president-rajapaksas-lies-claims-12000-soldiers-left-in-the-north-but-reality-is-more-than-150000/>

⁵⁵ Colombo Telegraph, "Lalith Weeratunge rebuts president on Northern troop numbers" February 2014, available at <https://www.colombotelegraph.com/index.php/lalith-weertaunge-rebuts-president-on-northern-troop-numbers/>

⁵⁶ Colombo Telegraph, "President Rajapaksa claims 12 00 soldiers left in North", available at <https://www.colombotelegraph.com/index.php/president-rajapaksas-lies-claims-12000-soldiers-left-in-the-north-but-reality-is-more-than-150000/>

⁵⁷ Bhavani Fonseka and Dharsha Jegatheeswaran, "Policy Brief - Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka," CPA, November 2013, available at p 43- 47, available at <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/>

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Furthermore the progress update provided by the GoSL states that military involvement in civilian administration does not occur. However, reports from the Northern Province indicate that the military remains involved in the daily lives of civilians.⁵⁸ Furthermore the Presidential Task Force for Resettlement, development and security in the Northern Province (PTF) until it was abolished recently continued to play a prominent role in activities conducted in the Northern Province, including being the key agency tasked with the responsibility for implementing several activities as per the LLRC Action Plan.

4. **Action Plan does not include activities:** There are an alarmingly high number of instances where no Activities are proposed in order to achieve a recommendation included in the LLRC Action Plan,⁵⁹ whilst in several others there is no mention of the key responsible agency or time frame or key performance indicator in order to evaluate the implementation of the recommendation⁶⁰. In some instances none of these components have been included.⁶¹ A majority of such cases relate to recommendations added to the LLRC Action Plan in July 2013. This raises serious questions as to the *bona fides* of the GoSL in including these recommendations in the LLRC Action Plan.
5. **Key implementation mechanisms being stalled:** Several mechanisms⁶² included in the LLRC Action Plan to deal with a number of important recommendations have not even begun functioning. CPA had previously indicated that these mechanisms could be used as a “delaying tactic”.⁶³
6. **Independent Institutions have been undermined:** The LLRC Report placed particular emphasis on the need to strengthen independent institutions and made several key recommendations to this end. The Progress reported suggests almost all of these recommendations have been implemented.⁶⁴ However considering the provisions of the Eighteenth Amendment to the Constitution and the power it confers on the Executive President, none of the supposedly independent institutions (that are presently in operation) are actually ‘independent’.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

⁵⁸ See Centre for Monitoring Election Violence, Northern Provincial Council Election 2013 – Communiqué No 1, 13th September 2013, available at <http://cmev.files.wordpress.com/2013/09/northern-provincial-council-election-2013-e28093-communicuecc81-no-1.pdf>; Centre for Monitoring Election Violence, Northern Provincial Council Election 2013 – Mullaitivu District Situation Report, 20 September 2013, available at <http://cmev.wordpress.com/2013/09/20/northern-provincial-council-election-2013-mullaitivu-district-situation-report/>

⁵⁹ See LLRC Action Plan, 9.70, 9.93, 9.98, 9.99, 9.100, 9.105, 9.112, 9.139, 9.144, 9.145, 9.147, 9.148, 9.165, 9.221, 9.222, 9.230

⁶⁰ See LLRC Action Plan, 9.57, 9.115e, 9.14, 9.55, 9.58, 9.65, 9.70, 9.80, 9.93, 9.94, 9.95, 9.98, 9.99, 9.100, 9.105, 9.112, 9.139, 9.144, 9.145, 9.147, 9.148, 9.165, 9.220, 9.221, 9.222, 9.230

⁶¹ See LLRC Action Plan, 9.22, 9.26,

⁶² Parliamentary Select Committee, The 4th Land Commission.

⁶³ CPA, Bhavani Fonseka, Luwie Ganeshathasan, Mirak Raheem, Commentary on the National Plan of Action to implement the recommendations of the Lessons Learnt and Reconciliation Committee, August 2012, (Available at <http://www.scribd.com/doc/103800519/CPA-Commentary-on-LLRC-Action-Plan>).

⁶⁴ See Table 9.57, 9.215, 9.218, 9.219

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Ref. CAT (CAT/C/LKA/CO/3-4, Dec 2011): § 21 above.

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Implement all recommendations of the Lessons Learnt and Reconciliation Commission

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Issue raised in the LoI of HR Committee	
<p><i>Issue 17: Please report on the measures taken to strengthen the independence of the judiciary from any outside interference and to ensure the implementation of court orders. Please respond to concerns about the impeachment of the Chief Justice following a series of attacks and acts of intimidation against judges and judicial officers.</i></p>	
Relevant parts of the State Report (CCPR/C/LKA/5)	Civil Society Reply to the Issue / Question, Update and Other inputs
<p>§ 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.</p> <p>§ 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.</p> <p>§ 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.</p> <p>§ 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.</p> <p>§ 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.</p> <p>§ 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</p>	<ol style="list-style-type: none"> 1. The GoSL submitted to the Human Rights Committee (of CCPR) that any inquiring body that would investigate allegations against a sitting judge would be subject to judicial review if such a body “were to misdirect itself in law or breaches the rules of natural justice its decisions could be subject to judicial review.” However despite this undertaking the GoSL purported to pass a resolution impeaching the Chief Justice disregarding a ruling of the Supreme Court and the Court of Appeal that the procedure adopted was flawed and violated the principles of natural justice.⁶⁵ 2. Several issues have been raised regarding the legality of the impeachment and the flawed process, particularly with regards to the lack of a fair hearing and a ruling by the Supreme Court that the Chief Justice could not be impeached through the process which was being followed [the Chief Justice was not given a proper opportunity to answer the allegations against her. She was not given adequate time to go through the documents on which some of the charges were being based. The government members of the Parliamentary Select Committee (PSC) probing the allegations were numerically superior (7 as opposed to 4 members representing the opposition) with no scope for the opposition members to raise objections. At least two of the members of the PSC had personal conflicts of interest, which should have precluded them from sitting in judgment of the Chief Justice. Reports also indicate that some government members of the PSC verbally abused the Chief Justice during the proceedings. After the Chief Justice and her lawyers and the opposition members had walked out of the PSC in protest of its manifestly unfair and improper procedure, the remaining members of the PSC (all government MPs) heard evidence from witnesses and published a report within 48 hours which found the Chief Justice guilty of 3 of the 5 charges probed by the PSC. The Supreme Court, which has the sole and exclusive jurisdiction to interpret the Constitution held that Parliament could not impeach a judge based on a procedure set out in standing orders which provided for the establishment of the PSC.⁶⁶ 3. In these circumstances the impeachment process was both manifestly unfair and

⁶⁵ CPA, “Statement on judgments by Court of Appeal and Supreme Court on impeachment process of Chief Justice”, 8 January 2013, available at <http://www.cpalanka.org/statement-on-judgements-by-court-of-appeal-and-supreme-court-on-impeachment-process-of-chief-justice/>; See also SC Ref. 3 of 2012 to SC Ref. 9/2012, available at <https://www.colombotelegraph.com/wp-content/uploads/2013/01/S.C-Referance-No.-358-2012.pdf>; C.A. (Writ) Application 411/2012 available at <https://www.colombotelegraph.com/wp-content/uploads/2012/12/411-2012.pdf>

⁶⁶ See for more information Groundviews, “A legal primer: The impeachment of the Chief Justice in Sri Lanka”, 10 January 2013, available at <http://groundviews.org/2013/01/10/a-legal-primer-the-impeachment-of-the-chief-justice-in-sri-lanka/>

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underscores the strength of the independence of the judiciary in Sri Lanka.

§ 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.

§ 226: The NPC was re-constituted on 22 February 2012 under the Chairmanship of Mr. SenakaWalgampaya, 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.

§ 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.

unconstitutional. However the GoSL used the powerful state media to attack the credibility of the judges of the Supreme Court, the Court of Appeal and any one in the legal community who opposed the impeachment process. These attacks included accusing judges of engaging in a coup against the GoSL⁶⁷ and being complicit with terrorist organisations.⁶⁸

4. Opposition Members of Parliament in December 2012 requested the GoSL to pass legislation with adequate safeguards prior to the impeachment of the Chief Justice, and even moved to submit a draft bill to be adopted by Parliament. This move was however scuttled by the GoSL.⁶⁹ The Opposition in January 2014 introduced a similar bill, but yet again the GoSL defeated attempts to reform the flawed impeachment process using its majority in Parliament.⁷⁰
5. Furthermore immediately prior to the tabling of the impeachment motion in Parliament, the Secretary of the Judicial Service Commission was attacked by an unidentified group. This attack took place in the context where the Judicial Service Commission had alleged that there was interference in its functions by the Executive.⁷¹ Several incidents of attacks and threats on lawyers who publicly opposed the impeachment process were reported during and immediately after the conclusion of the impeachment process.⁷² In none of these cases have the perpetrators been arrested and/or prosecuted. Subsequently the BAR association of Sri Lanka raised concerns about the transfer of several lower court judges who opposed the impeachment process and who were hearing politically sensitive cases.⁷³

Relevant para(s) in the Reply of GoSL to LoI

87. Administration of justice, inclusive of independence of judiciary is constitutionally enjoined, and any infringement of these entrenched rights is visited with sanctions. Judges hold office during good behaviour, and proven misbehaviour or incapacity triggers constitutionally entrenched disciplinary proceedings. Any procedure adopted in this regard has been in accordance with the

Civil Society Comment on the Reply of GoSL

⁶⁷ "Cj Convenes District Judges in 'Hulftsdorp Coup', The Daily News, 3 December 2012, available at <http://archives.dailynews.lk/2012/12/03/news01.asp>

⁶⁸ "Pro-LTTE elements, NGOs backing CJ – academia", The Daily News, 20 December 2012, available at <http://archives.dailynews.lk/2012/12/20/news12.asp>

⁶⁹ dbsjeyaraj.com, "UNP Working Committee Wants Govt to Enact "Removal of Superior Court Judges (Special Provisions)" Bill", 12 December 2012, available at <http://dbsjeyaraj.com/dbsj/archives/13531>

⁷⁰ Saman Indrajith, "Wijeyadasa's bill meant to benefit SC judges torpedoed", The Island, 22 January 2014, available at http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=96415

⁷¹ CPA, "Statement on the assault of the Secretary of the Judicial Services Commission (JSC), Mr. Manjula Tillakeratne", 10 October 2012, available at <http://www.cpalanka.org/statement-on-the-assault-of-the-secretary-of-the-judicial-services-commission-jsc-mr-manjula-tillakeratne/>

⁷² Colombopage, "Sri Lankan lawyers protest attacks, Bar Association to hold special meeting", 21 December 2012, available at

http://www.colombopage.com/archive_12B/Dec21_1356104061JR.php; Asian Human Rights Commission, "Senior Lawyers Romesh de Silva PC, Jayampathi Wickremarathna PC, MA Sumanthiran MP and JC Weliamuna Receive Threatening Letters", 18 January 2013, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-024-2013>

⁷³ "BASL disturbed by unusual transfers of judicial officers", Sunday Times, 7 April 2013, available at <http://www.sundaytimes.lk/130407/news/basl-disturbed-by-unusual-transfers-of-judicial-officers-40284.html>

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Constitution and such action in compliance with constitutional provisions.

88. All constitutional stipulations inclusive of due process rights were followed in relation to the impeachment proceedings of the former Chief Justice. Sri Lanka reiterates that similar provisions exist in other countries in relation to the removal of higher judiciary, and the impeachment process was in keeping with the constitutional imperatives.

89. It has to be noted that Article 107 of the Constitution provides for the appointment and removal of judges of the Supreme Court and Court of Appeal. Article 107(2) specifically states that every such judge shall hold office during good behaviour and shall not be removed except by an order of the President made after an address to Parliament, supported by a majority of the total number of members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity. Parliament, as mandated by the Constitution, has provided by Standing Orders for all matters relating to the procedure for the passing of such resolution, the investigation and proof of the alleged behaviour or incapacity and the right of such judge to appear and to be heard in person or by representation.

90. The Standing Orders promulgated in this regard contain provisions of due process and the impeachment of the Chief Justice followed the aforesaid stipulated procedures.

91. The Supreme Court has recently decided that there has not been any infringement of fundamental rights alleged in a number of petitions to the Supreme Court in this regard. In an appeal to the Supreme Court referred by the Attorney General, which arose consequent to the impugnation of the impeachment proceedings, a Bench of seven judges of the Supreme Court has unequivocally disposed of the questions raised in these proceedings and declared that the procedure adopted is in accordance with the Constitution.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

HR Committee COs from the previous review (CCPR/CO/79/LKA): § 16: The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges. **The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.**

CAT (CAT/C/LKA/CO/3-4, Dec 2011): among others, § 16: While noting the Human Rights Commission of Sri Lanka's (HRCSL) broad inquiry powers to investigate human rights violations vested in Section 11 of the Human Rights Commission Act No 21 of 1996, the Committee is concerned about its reported inactivity, the lack of cooperation from the police and the Government and the limited resources and challenges to its independence and impartiality as a result of the 18th Amendment to the Sri Lankan Constitution, which places the appointment of its members solely in the hands of the Head of State. The Committee is also concerned that, contrary to the information provided by the State party, the International Committee of the Red Cross (ICRC) is not allowed to visit the "rehabilitation centres" or facilities holding LTTE suspects yet to be formally charged. The Committee notes with concern that during 2009 the military administration in closed internment camps for

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IDPs denied access to humanitarian organisations, including the United Nations and the ICRC (arts. 2, 11, 12, 13 and 16). **The Committee calls upon the State party to establish an independent national system to effectively monitor and inspect all places of detention, including facilities holding LTTE suspects and closed IDP camps, and to follow-up on the outcome of its systematic monitoring. The State party should take necessary measures to support work of HRCSL, ensuring that its recommendations are fully implemented. It should also provide detailed information on the action taken on the recommendations made by the Commission on its visit to Mount Lavinia police station on 15 August 2011. The State party should strengthen the capacity of non-governmental organizations that undertake monitoring activities and adopt all appropriate measures to enable them to carry out periodic, independent and unannounced visits to places of detention. The Committee strongly encourages the State party to consider the possibility of ratifying the Optional Protocol to the Convention against Torture, with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment; § 17:** The Committee is concerned that the new appointment process set out by the 18th Amendment to the Sri Lankan Constitution (September 2010), which ends Parliament's role in approving appointments, undermines the independence of the HRCSL. The Committee is also concerned about the difficulties the HRCSL has had in carrying out its function owing in part to the lack of cooperation from other State party institutions, limited human and financial resources, which has reduced its ability to investigate specific incidents and make recommendations for redress, and failure to publish the reports of its investigations (art. 2 and 12). **The State party should ensure that the HRCSL effectively fulfils its mandate and receives the necessary resources for that purpose. It should also ensure that the Commission is able to initiate as well as carry out independent investigations into alleged and possible cases of torture and ill-treatment, including those concerning military premises, as well as "rehabilitation centres" and other government-controlled facilities such as "welfare centres", and to publish the results. The State party should establish a transparent and consultative selection process to guarantee its full independence in line with the Paris Principles.**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Enact legislation to provide for a process of impeachment for judges for the Supreme Court and Court of Appeal which guarantees the right to a fair hearing and adhere to the basic principles of natural justice.
- ii) Investigate and prosecute all those responsible for physical attacks and threats against Judges and Lawyers to ensure they can carry out their functions without fear.
- iii) Ensure appointment of Judges to the Supreme Court and Court of Appeal is done through an independent appointment mechanism– as was established by the Seventeenth Amendment to the Constitution.

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Freedom of movement and right to privacy (arts. 12 and 17)

Issue raised in the LoI of HR Committee

*Issue 22: In light of the State party's efforts to resettle a large number of the persons who had been internally displaced as a result of the conflict (CCPR/C/LKA/5, paras. 30-35), please indicate what **further measures have been taken to ensure durable solutions on a comprehensive basis for all internally displaced persons and for those who have returned to their areas of origin, including the return of their land and property.***

Relevant parts of the State Report (CCPR/C/LKA/5)

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§ 30-35

1. The Urban Development Authority (UDA), which is under the purview of the Ministry of Defence has undertaken a project titled the Urban Regeneration Project (URP). Official estimates indicate the number of families to be relocated over next few years due to this project vary from “nearly 70,000”⁷⁴ to 135,000.⁷⁵
2. These re-locations are taking place disregarding the existing legal framework (including the Land acquisition act) and the GoSL's own National Involuntary Resettlement Policy adopted in 2001.⁷⁶ Persons with legal title to their land are being coerced into moving by military personnel and other coercive measures.⁷⁷ These “forced evictions” have taken place even disregarding orders made by the Human Rights Commission of Sri Lanka (HRCSL) with some UDA officials stating that the said orders were not binding as the HRCSL was nothing more than a mediation body.⁷⁸
3. Furthermore those being forcefully evicted are not being compensated for the loss of property with them having to pay substantial amounts of money at the outset and then continue monthly payment for a period of 20 – 30 years for the new housing that is much smaller than their previous accommodation.⁷⁹

⁷⁴ “Colombo to become Garden City, 70,000 families to be relocated: Gota”, *The Island*, 20 March 2013, available at http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=75149

⁷⁵ *Defence.lk*, “Prospects of relocating underserved settlements in Colombo suburbs”, 2 Feb.

2013, available at http://www.defence.lk/new.asp?fname=Prospects_of_relocating_underserved_settlements_in_Colombo_suburbs_20130205_01

⁷⁶ CPA, “Forced evictions in Colombo: The ugly price of beautification”, 9 April 2014, available at <http://www.cpalanka.org/forced-evictions-in-colombo-the-ugly-price-of-beautification/>; Bhavani Fonseka, “The Spectre of Evictions and Land Grabs in Colombo”, *Groundviews*, 26 August 2014, available at <http://groundviews.org/2014/08/26/the-spectre-of-evictions-and-land-grabs-in-colombo/>

⁷⁷ “Army trying to relearn Weliweriya lesson in Wanathamulla: Ranil” *Daily Financial Times*, 28 February 2014, available at <http://www.ft.lk/2014/02/28/army-trying-to-relearn-weliweriya-lesson-in-wanathamulla-ranil/>

⁷⁸ Camelia Nathaniel, “Wanathamulla Residents Raise Concerns” *The Sunday Leader*, 20 April 2014, available at <http://www.thesundayleader.lk/2014/04/20/wanathamulla-residents-raise-concerns/>

⁷⁹ Iromi Perera, “From shanty to home: Myth vs reality of Colombo's Urban Regeneration Project”, *Groundviews*, 11 July 2014, available at <http://groundviews.org/2014/07/11/from-shanty-to-home-myth-vs-reality-of-colombos-urban-regeneration-project/>

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Relevant para(s) in the Reply of GoSL to LoI	Civil Society Comment on the Reply of GoSL
<p>101. As of September 2012, all IDPs who were displaced during the final phase of the conflict have been resettled in their places of origin, or located in close proximity to their place of origin with their consent. As at 31st July 2014, 226,824 families consisting of 767,748 persons have been so resettled but there remain 7094 families consisting of 23568 persons in the respective districts in the Northern and Eastern provinces awaiting resettlement.</p> <p>102. A draft Resettlement Policy Framework has been formulated consequent to stakeholder consultations. This Policy Framework has now been revised taking into account the comments and observations that were received from wider stakeholders. It will be submitted to the Cabinet of Ministers for approval shortly. The updated version is uploaded in the Ministry Website (http://resettlementmin.gov.lk/site/index.php?lang=en). This Framework for Resettlement Policy outlines the administrative, logistical, advisory, humanitarian and other forms of support available to internally displaced persons, returnee refugees of legitimate Sri Lankan origin and resettled communities. The concept of durable solution to the returnee IDPs and refugees is very much addressed in the Policy framework.</p> <p>103. As per the policy of the Government of Sri Lanka to provide durable solutions to resettled IDPs and Returnee Refugees, there are various projects and programme that have been implemented and to provide permanent houses and renovation of damaged houses in the Northern and Eastern Districts of Sri Lanka. 58,847 new houses have been constructed and 9,104 partly damaged houses had been renovated as at 30th June 2014. Currently, 23,710 new houses are being constructed and 237 houses being renovated. Additionally, there is a commitment by the government and other agencies to construct 10,403 new houses and 3,647 partly damaged houses during the next 03 years. A significant portion of such houses had been built on “owner driven” basis. For all these houses a toilet unit is also included.</p> <p>104. Further to above housing project, there are several additional projects implemented to provide sanitation facilities in the resettled areas of Northern and Eastern Districts. As at 30th June 2014, 5,803 toilet units were constructed by various organizations. Further, to the above another 3,744 toilet units were constructed by Ministry of Resettlement from the Consolidated Fund allocated to the Ministry.</p> <p>105. In addition, there are a number of projects implemented for the reconstruction of community</p>	<ol style="list-style-type: none"> 1. The primary concerns raised by CPA and other actors regarding statistics on the number of Internally Displaced Persons (IDPs) are the basis on which persons are de-registered as IDPs⁸⁰ and concerns as to “who” was initially registered as an IDP⁸¹. 2. Whilst it is acknowledged that the GoSL has resettled a vast majority of persons who were displaced as at 19th May 2009, it is still a cause for concern as to why many of the remaining IDP populations are not resettled. In this regard many of these IDPs are unable to return because their land is being occupied by the Security Forces and has been earmarked for economic and military purposes. Furthermore, even those considered by the GoSL to be already resettled have not found durable solutions to persistent issues such as lack of livelihood opportunities, housing and shelter and in fact some of their situations have worsened in light of problems that have emerged in light of resettlement. 3. Furthermore, while the GoSL has opened up some areas that were previously considered to be High Security Zones, there are several continuing cases where de facto military occupation of civilian land is sought to be regularised by appropriating them for military purposes.⁸² 4. The GoSL is attempting to acquire 6380 acres of largely private land to build a purported military cantonment. It is abundantly clear that the stated purpose of a ‘military cantonment’ is a guise for other commercial enterprises, and in any event, there is absolutely no justification for requiring such a large amount of land for a military cantonment purported to hold 13, 200 personnel, a figure provided by the GoSL. This figure is in addition to land being acquired in

⁸⁰ Mirak Raheem, *Protracted Displacement, Urgent Solutions: Prospects for Durable Solutions for Protracted IDPs in Sri Lanka*, Centre for Policy Alternatives, 2013, <http://www.cpalanka.org/wp-content/uploads/2013/09/Protracted-Displacement-Urgent-Solutions-Prospects-for-Durable-Solutions-for-Protracted-IDPs-in-Sri-Lanka.pdf>, p. 19.

⁸¹ Ibid pp. 20-27

⁸² See Bhavani Fonseka and Dharsha Jegatheeswaran, “Policy Brief- Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka,” CPA, November 2013, available at <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/>; Bhavani Fonseka and Mirak Raheem, “Land in the Northern Province – Post-War Politics, Policy and Practices,” CPA, December 2011, available at <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>

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infrastructure in the Northern and Eastern Provinces.

106. The Presidential Task Force for Resettlement, Development & Security of Northern- Province (PTF), which was established on 07 May 2009 by the President, was wound up on 07 May 2014. It has duly completed its mandate and submitted the report on completion to the President.

107. Work has also commenced on the Joint Needs Assessment (JNA) conducted by OCHA to address residual displacement needs. The Letter of Agreement was signed between the Government and the UN Country Team on 25 March 2014 to give effect to the JNA which aims to identify the specific needs of those displaced persons who have returned or resettled but are still having specific needs linked to their displacement.

several other parts of the Northern Province to establish cantonments and commercial ventures for the Sri Lanka Army.⁸³

5. In Sampur (Eastern Province), the GoSL is appropriating land with no regard for due process under the guise of development. The area in question has had a contentious history shifting from a Special Economic Zone to a High-Security Zone and finally in May 2012, to a 'Special Zone for Heavy Industries'. Families displaced from the area have received mixed messages from local officials and have yet to see any formal acquisition procedures, with the exception of a small area of land allocated to a Coal Power Plant.
6. Both in Sampur and in Jaffna, a majority of persons unable to return to their homes because of these activities, are still languishing in welfare camps often with minimal support being provided for their sustenance by GoSL officials.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

CESCR (E/C.12/LKA/CO/2-4, December 2010): § 29: The Committee is concerned that in spite of progress made by the State party to resettle internally displaced persons (IDPs) and to rebuild damaged infrastructure in conflict-affected areas, thousands of IDPs are still prevented from returning due to the establishment of High Security Zones (HSZs) on their homelands. The Committee is also concerned about the conditions of resettlement of internally displaced persons who often lack basic shelter, access to sanitation and water and livelihood opportunities, a situation aggravated by the regular restrictions placed on United Nations agencies, international organizations and international and national NGOs to access internally displaced persons requiring urgent assistance. (arts. 11 and 12) **The Committee urges the State party to speed up the closing of HSZs as indicated during the interactive dialogue, to restore housing land and/or property of which IDPs have been arbitrarily or unlawfully deprived and to establish adequate mechanisms at local levels to resolve land and property disputes and to provide compensation to land owners for the occupation of their land. The Committee draws the attention of the State party to its obligation to respect and protect the work of United Nations agencies, human rights advocates and other members of civil society who assist internally displaced persons in the realization of their economic, social and cultural rights and to refrain from imposing further restrictions on access to IDPs, especially those who are living in food insecurity. The Committee requests the State party to provide detailed information on the situation of internally displaced persons in its next periodic report.**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Confirm its commitment to the durable solutions framework by recognising all persons who have not achieved durable solutions as IDPs.
- ii) Release lands of IDPs which are being used for Military and Economic purposes other than those "essential" for such purposes.
- iii) If land is needed to be acquired for any public purpose ensure that persons losing their land are compensated as per the mechanism set out in the National Involuntary Resettlement Policy.
- iv) Facilitate voluntary choices on the part of IDPs by providing them with accurate and timely information.

⁸³ Land from the following GN Divisions in Jaffna were issued notice of acquisition in April 2013: Valikamam North, Valikamam East, Kopay, Telipellai, Kankasanthurai West, Kankasanthurai Central, Wimannamum South, Theiyyaddi South, Palali South, Ottampulam and Walallai

Freedom of expression, freedom of assembly and association (arts. 19, 21 and 22)

Issue raised in the LoI of HR Committee

Issue 23: Please respond to reports of (a) intimidation and harassment, including physical attacks, death threats, and politically motivated charges, against journalists and human rights defenders, by state officials; and (b) the State party's failure to bring perpetrators to justice. Please provide an update on the outcome of the investigation into the outstanding cases of attacks against human rights defenders and media personnel. Please describe the measures taken to protect individuals in the exercise of their freedom of expression and to prosecute the perpetrators of such attacks.

Relevant parts of the State Report (CCPR/C/LKA/5)

§ 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

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1. On 4 January 2014 the Secretary of Defence, Gotabhaya Rajapaksa accused⁸⁵ "foreigners"- and in particular members of the Sri Lankan Tamil diaspora, of misusing tourist visas to engage in "political activities". He stated, "We cannot allow people to go about projecting false propaganda on human right violations against the country. These people don't even know the meaning of the term human rights" Some tourists engage in politics".

2. On 6th March the State owned Sri Lanka Rupavahini Corporation made accusations against 24 civil society organisations in the country of issuing a Joint Civil Society Memorandum⁸⁶. Photographs of 8 members of some of the signatory organizations were broadcasted⁸⁷ alongside the names of the organizations against a narration that stated:

"It had been found that group of nongovernmental organisations has submitted false information to the international community to discredit the country. The Washington Post and several foreign media reported that 24 nongovernmental organisations in Sri Lanka has appealed to the United Nations Human Rights Council in Geneva to carry out a war crimes investigation against Sri Lanka".

Intimidation of Human Rights Defenders

3. During the 25th session of the UNHRC, Human Rights Defender and campaigner for families of the disappeared, Balendran Jeyakumari and her 13-year old daughter Vibhooshika, were arrested under the provisions of the draconian Prevention of Terrorism Act for allegedly aiding and abetting an ex-LTTE cadre who was fleeing after shooting a police officer in Kilinochchi. While Vibhooshika was handed over to the department of child-care and probation, Jeyakumari is still

⁸⁵ "Some tourists engage in politics", *Ceylon Today*, 4 January 2014, accessible at <http://www.ceylontoday.lk/27-51894-news-detail-some-tourists-engage-in-politics.html>

⁸⁶ *Joint Civil Society Memorandum To The Human Rights Council And The International Community*, 4 March 2014, available at <http://www.cpalanka.org/joint-civil-society-memorandum-to-the-human-rights-council-and-the-international-community/>

⁸⁷ Rights Now, *Reprisals against HRDs in Sri Lanka: Civil Society Organisations accused by state broadcaster for their appeal to UNHRC*, 9 March 2014, available at <http://www.rightsnow.net/?p=5139>

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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.

§ 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.

§ 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

held at the Boossa detention centre. Jeyakumari, searching for her missing son who she claims surrendered to the Government forces at the end of the war in 2009, was at the forefront⁸⁸ of a large number of families searching for their disappeared family members, including during the visit of the UN High Commissioner for Human Rights in August 2013⁸⁹. Both Jeyakumari and Vibhooshika took part in demonstrations during the British PM's visit to Jaffna during CHOGM⁹⁰. Photos⁹¹ of Vibhooshika welcoming the High Commissioner during her visit to Sri Lanka as well as the tearful Jeyakumari campaigning for her son have been emblematic of reprisals against persons cooperating with and appealing to the UN and international community. The absence of any concrete evidence against her has elongated her detention under the Prevention of Terrorism Act and postponed any progress with her trial. This is strong evidence to suggest that charges against her are politically motivated and aimed at intimidating her and others like her.

4. CPA heavily criticised⁹² the arrest of prominent human rights defenders Mr. Ruki Fernando and Fr. Praveen. Following only days after Jeyakumari's arrest, Mr. Ruki Fernando and Fr. Praveen were arrested under the Prevention of Terrorism Act. The Police spokesman announced that Ruki faced three charges, including that of "selling information abroad". In a CNN interview⁹³ given by Mr. Ruki Fernando prior to a court order barring him from speaking to the media⁹⁴, he said, "I think what happened to us is very much linked to the resolution discussion... I was repeatedly asked who in Geneva, who outside Sri Lanka, was I sharing information with? It seemed very clear they took great care for other nations not to hear any alternative information or perspectives from within Sri Lanka."

5. On 30th March, the Sinhala daily "Divaina" newspaper published a photograph of missing Cartoonist/Journalist Prageeth Eknaligoda's wife Ms. Sandya Eknaligoda, with Rev. Fr. S.J. Emmanuel, the president of the Global Tamil Forum (GTF) during UNHRC sessions in Geneva. The news item⁹⁵ attacked her for associating Fr. Emmanuel and Callum Macrae from Channel 4. She has also been a leading campaigner against disappearances and human rights in Sri Lanka.

6. Following the UNHRC resolution adopted at the 25th session, a number of individuals and Tamil Diaspora organizations were proscribed by the Government of Sri Lanka⁹⁶ under UN Resolution 1373 as terrorist entities operating abroad with links to the LTTE. Several of these organizations and individuals provided information and/or lobbied for the adoption of successive resolutions in the UNHRC. The existing legal regime allows for persons affiliated to and co-operating with these organizations and individuals to also be prosecuted. The list includes 16 organisations and over 400 individuals with very different opinions and understandings⁹⁷ as regards the LTTE. The indiscriminate nature of this categorisation strongly suggests that the proscription of these organisations was in order to delegitimise their input to the UNHRC inquiry and to cut off their links with contacts in Sri Lanka, further alienating the war affected communities.

7. The Justice Minister and the leader of the Sri Lanka Muslim Congress, Mr. Rauff Hakeem, was heavily criticized⁹⁸ for submitting a report on attacks against religious places in August 2013. The President himself was reported⁹⁹ to have asked the Mr. Hakeem if he wished to continue as a Minister in the United People's Freedom Alliance (UPFA) Government. Following the incident, a number of events took place where the Minister faced reprisals for the

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of citizens to know information and for maintaining a high standard in communication ethics.

§ 331: The Press Complaints Commission of Sri Lanka (PCCSL)⁸⁴ 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.

§ 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

report submitted to the Office of the High Commissioner. These include the Jathika Hela Urumaya (JHU) requesting that stern action be taken¹⁰⁰ against him, the National Freedom Front (NFF) leader Wimal Weerawansa MP alleging¹⁰¹ that the Minister had collaborated with those bent on subverting the country, the Minister for public relations, Mervyn Silva warning¹⁰² the Justice Minister that the same fate of the slain leader of the LTTE, Prabhakaran, awaits him for his treacherous activities against the country and threats by the leader of the extremist Buddhist organization Bodu Bala Sena (BBS) where its General Secretary Ven. Gnanasara Thero vowed not to allow the Justice Minister to be active further. He further said¹⁰³ that the Minister has to apologize to the Sinhala community for his actions, or face the consequences.

8. The Bishop of Mannar was to attend Easter Religious Services in the prison complex of Anuradhapura together with the Bishop of Anuradhapura. However it was reported that prison officials had given instructions to inmates that they should not speak to him for too long nor give him any letters or anything in writing. The Bishop of Mannar together with several other priests from the Northern and Eastern Provinces sent a letter to the UNHRC calling for an international

⁸⁸ "Sri Lankan army arrests mother, 13-year old sister of disappeared youth in Wann", *Journalists for Democracy in Sri Lanka*, 14 March 2014, available at

<http://www.jdslanka.org/index.php/2012-01-30-09-30-42/human-rights/438-sri-lankan-army-arrests-mother-13-year-old-sister-of-disappeared-youth-in-wanni>

⁸⁹ Asian Human Rights Commission, *SRI LANKA: Release Balendranjeyakumari - stop harassments of human rights defenders!*, 25 March 2014, available at

<http://www.humanrights.asia/news/forwarded-news/AHRC-FST-024-2014>

⁹⁰ TNA demands release of disappearances activist", *Daily FT*, 15 March 2014, accessible at <http://www.ft.lk/2014/03/15/tna-demands-release-of-disappearances-activist/>

⁹¹ CHOGM And Beyond", *The Sunday Leader*, available at <http://www.thesundayleader.lk/2013/11/17/chogm-and-beyond/>

⁹² CPA, "Statement on arbitrary detention of Human Rights Defenders", 18 March 2014, available at <http://www.cpalanka.org/statement-on-arbitrary-detention-of-human-rights-defenders/>

⁹³ "Are Sri Lanka's 'anti-terror' arrests an attempt to intimidate activists?", *CNN*, 23 March 2014, available at <http://edition.cnn.com/2014/03/19/world/asia/sri-lanka-ruki-fernando-arrest/>

⁹⁴ "Ruki Fernando barred by court from speaking to media about his arrest", *The Republic Square*, 21 March 2014, available at

<http://www.therepublicsquare.com/politics/2014/03/21/ruki-fernando-barred-by-court-from-speaking-to-media-about-his-arrest/>

⁹⁵ *Divaina* (in Sinhala), available at <http://www.divaina.com/2014/03/30/defence.html>

⁹⁶ Gazette of the Democratic Socialist Republic of Sri Lanka no. 1854/41, available at [http://www.documents.gov.lk/Extgzt/2014/PDF/Mar/1854_41/1854_41%20\(E\).pdf](http://www.documents.gov.lk/Extgzt/2014/PDF/Mar/1854_41/1854_41%20(E).pdf)

⁹⁷ "The logic of the ban: How the proscription of 16 Tamil diaspora groups will be felt locally and internationally", *Ceylon Today*, 4 April 2014, available at

<http://www.ceylontoday.lk/83-60806-news-detail-the-logic-of-the-ban-how-the-proscription-of-16-tamil-diaspora-groups-will-be-felt-locally-and-internationally.html>

⁹⁸ "Hakeem's 'damning' report", *Ceylon Today*, 16 March 2014, available at <http://www.ceylontoday.lk/90-58931-news-detail-hakeems-damning-report.html>

⁹⁹ "Irate President takes on SLMC", *Daily Mirror*, 1 March 2014, available at <http://www.dailymirror.lk/news/43852-irate-president-takes-on-slmc.html>

⁸⁴ www.pccsl.lk

¹⁰⁰ "JHU alleges Muslim Congress submitted anti SL report", *Daily News*, 4 March 2014, available at <http://www.dailynews.lk/local/jhu-alleges-muslim-congress-submitted-anti-sl-report>

¹⁰¹ "Another NGO project to tarnish Sri Lankas image - President", *The Island*, 13 March 2014, available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=99691

¹⁰² "Mervyn warns Hakeem: Prabha's fate awaits any traitor", *Ceylon Today*, 13 March 2014, available at <http://www.ceylontoday.lk/51-58576-news-detail-mervyn-warns-hakeemprabhas-fate-awaits-any-traitor.html>

¹⁰³ "Sri Lanka's Buddhist extremist threatens to deny Sinhala market to Muslims", *Colombo Page*, 18 March 2014, available at http://www.colombopage.com/archive_14A/Mar18_1395158914CH.php

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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.

§ 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.

investigation into allegations of violations of international human rights and humanitarian law during the war by all parties to the conflict.¹⁰⁴ Several Government Ministers and members of constituent political parties of the government criticized the Bishop's actions as attempts to destabilize the country¹⁰⁵ and even called on the government to prosecute the Bishop.¹⁰⁶ In these circumstances the acts of the prison officials are seen as attempts made at preventing the Bishop from having access to the many Tamil inmates housed in the Anuradhapura prison.

9. Cabinet Spokesperson and the Minister of Mass Media Keheliya Rambukwella stated, "We will take legal action against anyone who testifies before this commission, if the evidence submitted by them is in violation of the country's Constitution".¹⁰⁷ He also stated that Members of Parliament cannot testify before the UN mandated inquiry, because they have taken an oath to protect the sovereignty of the country when they assumed office. Testifying before the international committee was said to be tantamount to treason and the Government is said to initiate legal action against such individuals under the State Secrets Act.¹⁰⁸

10. A number of workshops conducted on behalf of journalists' capacity building have recently come under intimidation with the workshops having to be cancelled.¹⁰⁹ Investigative journalism workshops for Tamil journalists were organized by Transparency International at prominent hotels. The hotels cancelled the events due to "threats" received. The repeated occurrence of such intimidation paints a bleak picture of the level of intimidation and the repressive atmosphere in which journalists operate in the country.

11. In a recent letter¹¹⁰ issued by the NGO Secretariat, under the purview of the Ministry of Defence, it has been stated¹¹¹ that NGOs should not conduct press conferences, workshops, training for journalists, and disseminate press releases. The crackdown on free speech is a prime example of the Government's intimidation of organizations that are essential to a functioning democracy. Further to this letter, a second 'notice'¹¹² was published to further intimidate activities of NGOs and civil society organisations.

¹⁰⁴Mannar Bishop leads call for int'l war crimes probe" *The Island*, 4 March 2014, available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=99161

¹⁰⁵ "Wimal accuses Mannar Bishop of trying to destroy country", *Ceylon Today*, 17 March 2014, available at <http://ceylontoday.lk/16-59009-news-detail-wimal-accuses-mannar-bishop-of-trying-to-destroy-country.html>; "Row over Bishop's letter to the UNHRC", *The Nation*, 7 March 2014, available at <http://www.nation.lk/edition/latest-top-stories/item/3578-row-over-bishop%E2%80%99s-letter-to-the-unhrc.html>

¹⁰⁶ "Row over Bishop's letter to the UNHRC", *Ada Derana*, 6 March 2014, available at <http://adaderana.lk/news.php?nid=17236>

¹⁰⁷ "Govt. warns against testifying before UNHRC inquiry", *Ceylon Today*, 7 April 2014, available at <http://www.ceylontoday.lk/51-61100-news-detail-govt-warns-against-testifying-before-unhrc-inquiry.html>

¹⁰⁸*ibid*

¹⁰⁹ Transparency International, "Arbitrary Disruption of TISL's Investigative Journalism Workshop", 10 June 2014, available at <http://www.tisrilanka.org/?p=11979>

¹¹⁰ Letter available at <http://t.co/j7DFooTYLJ>

¹¹¹ "Sri Lanka tells civil society organizations 'no press conferences'", *Lanka Business Online*, 9 July 2014, available at <http://www.lankabusinessonline.com/news/sri-lanka-tells-civil-society-organizations-no-press-conferences/98878549>

¹¹² "Be Alert.... Notice to All Government Officials, Civil Society Organisations and General Public", *Daily News*, 18 July 2014, available at <http://epaper.dailynews.lk/?id=03&tday=2014/07/18>

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	<p>12. Media reports also indicate that the GoSL is finalising legislation that would allow it to control the content of specific projects sought to be implemented by NGOs and restrict foreign funding obtained by NGOs.¹¹³</p> <p>13. CPA condemns¹¹⁴ the attack on the discussion with families of the disappeared the 4th August 2014, where a group of Buddhist monks and supporters stormed the event. The event was organized in order to share experiences and struggles of the families. A detailed incident report¹¹⁵ indicates how it took law enforcement authorities over two hours to evict the mob from the premises.</p>
Relevant para(s) in the Reply of GoSL to Lol	Civil Society Comment on the Reply of GoSL
	<p>1. As noted in CPA's statement on Religious Intolerance and Violence¹¹⁶, the under-reporting of violence by almost all mainstream media institutions on the events that transpired in Aluthgama, Beruwala and other parts of the country, be it on an official GoSL directive or on account of self-censorship on the part of media institutions, underlines the restrictions on freedom of expression of journalists and their prevailing fear to report on crucial and sensitive events. The mainstream media silence is highlighted by this compilation¹¹⁷ (https://app.box.com/s/frnz8fg4khjj6zeq04iq), which illustrates the news items that that took precedence over the horrific events that unfolded in Aluthgama during the days violence erupted.</p>
Relevant Recommendations made by HR Committee and/or other UN bodies on the issue	
<p>HR Committee COs from the previous review (CCPR/CO/79/LKA): <u>§ 17</u>: While appreciating the repeal of the statutory provisions relating to criminal defamation, the Committee notes with concern that State radio and television programmes still enjoy broader dissemination than privately owned stations, even though the Government has taken media-related initiatives, by repealing the laws that provide for State control of the media, by amending the National Security Act and by creating a Press Complaints Commission (art. 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; <u>§ 18</u>: The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices (arts. 7, 14 and 19). 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.</p> <p>CAT (CAT/C/LKA/CO/3-4, Dec 2011): among others, <u>§ 13</u>: The Committee expresses its concern at reports that human rights defenders, defence lawyers and other civil society actors, including political activists, trade unionists and independent media journalists have been singled out as targets of intimidation, harassment, including death threats and physical attacks and politically motivated charges. It regrets that, in many cases, those allegedly responsible for acts of intimidation and reprisal appear to enjoy impunity. The Committee notes with regret that the State party was unable to provide adequate information on the specific incidents about which the Committee had inquired, including the cases of journalists, such as Poddala Jayantha, PrageethEknaligoda and J. S.</p>	

¹¹³ Chamikara Weerasinghe, "Probing Wild-Ass NGOs Three already being investigated", The Daily News, 15 July 2014, available at <http://www.dailynews.lk/?q=local/probing-wild-ass-ngos#sthash.FN68lgGW.dpuf>; Kelum Bandara, "New law on NGOs is ready", Daily Mirror, 14 July 2014, available at <http://www.dailymirror.lk/news/49662-new-law-on-ngos-is-ready.html>

¹¹⁴ CPA, "Condemnation of violent attack on discussion with families of the disappeared", 5 August 2014, available at <http://www.cpalanka.org/condemnation-of-violent-attack-on-discussion-with-families-of-the-disappeared/>

¹¹⁵ "Mob disrupts meeting of families of disappeared: Police & Government hound participants", *Groundviews*, 7 August 2014, available at <http://groundviews.org/2014/08/07/mob-disrupts-meeting-of-families-of-disappeared-police-government-hound-participants/>

¹¹⁶ CPA, "CPA Condemns Religious Intolerance and Violence", 18 June 2014, available at <http://www.cpalanka.org/cpa-condemns-religious-intolerance-and-violence/>

¹¹⁷ <https://app.box.com/s/frnz8fg4khjj6zeq04iq>

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Tissainayagam, and lawyers, such as J.C. Welliamuna and Amitha Ariyaratne. This resulted in a number of submissions to the Committee by some of the individuals concerned containing contradictory information. The Committee is also concerned about information received according to which the Ministry of Defence has published articles on its website implying that lawyers defending individuals are "traitors" to the nation. The Committee is concerned about the fact that one of these articles, entitled "Traitors in Black Cloaks Flocked Together", included the names and photographs of five lawyers, putting them at risk of attacks (art. 2, 12, 13 and 16). **The State party should: (a) Ensure that all persons, including those monitoring human rights and combating torture and impunity are protected from intimidation or violence as a result of their activities; (b) Take prompt and effective measures, including investigation and prosecution, to address concerns regarding the extremely hostile environment for human rights defenders, lawyers, journalists and other civil society actors in Sri Lanka.**

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Prosecute perpetrators responsible for attacks on Human Rights Defenders and civil society organisations.
- ii) Stop the verbal attacks and the concerted media campaign carried out by State owned media institutions against Human Rights Defenders and civil society organisations.
- iii) Stop proposed legislative and administrative measures targeted at curtailing the freedom of association and expression of Civil Society organisations.

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Issue raised in the LoI of HR Committee	
<p>Issue 24: <i>Please comment on restrictions imposed on the freedom of expression and freedom of peaceful assembly of communities in the North. Please provide information on any measures through which the State party controls or monitors access to websites containing news and other political content.</i></p>	
Relevant parts of the State Report (CCPR/C/LKA/5)	Civil Society Reply to the Issue / Question, Update and Other inputs
<p>NA</p>	<p>1. The day the Sri Lankan forces celebrated 5 years since the end of the war, 'Victory Day', is also the death anniversary of not only combatants but also a number of civilians caught in crossfire during the final stage of the war. The Government of Sri Lanka sealed off access to the office of 'Uthayan' newspaper, closed down Jaffna university, blocked meetings of Tamil political parties and went on to place restrictions on public commemorations of the dead.¹¹⁸ (http://www.nytimes.com/2014/05/19/world/asia/on-anniversary-a-victory-parade-and-a-crackdown-in-sri-lanka.html?smid=tw-share). The right to mourn your dead loved ones was deprived to a number of families in the North. It also constitutes a grave breach of their right to peaceful assembly. While so many restrictions were placed in the North, however, a grand Victory Day celebration was organised by the Government in the South.</p> <p>2. Amongst a number of media websites including Colombo Telegraph, Sri Lanka mirror, Lanka E news continue to be blocked by ISPs in Sri Lanka, ostensibly on directives from the GoSL.¹¹⁹</p>
Relevant para(s) in the Reply of GoSL to LoI	Civil Society Comment on the Reply of GoSL
	<p>1. Although hard-line Buddhist groups were permitted to rally in Dharga town in Aluthgama, only days after a tense situation erupted between religious communities, there are severe restrictions placed on other peaceful protests. In May, students of the Allied Health Science (AHS) Degree programme protested against the government's decision to reduce the length of the programme from four years to three years. A number of students belonging to the Inter-University Students Federation were arrested¹²⁰ and brutally assaulted using disproportionate force.¹²¹ The curtailment of peaceful demonstrations is a violation of the fundamental right of freedom of assembly and freedom of expression.</p>

¹¹⁸ "On Anniversary, a Victory Parade and a Crackdown in Sri Lanka", *The New York Times*, 18 May 2014, available at <http://www.nytimes.com/2014/05/19/world/asia/on-anniversary-a-victory-parade-and-a-crackdown-in-sri-lanka.html?smid=tw-share>

¹¹⁹ "Colombo Telegraph Blocked, How To Reach Us Now: Sri Lanka Telecom And Mobitel Joins The DPI Club!", *Colombo Telegraph*, 28 August 2013, available at <https://www.colombotelegraph.com/index.php/colombo-telegraph-blocked-how-to-reach-us-now-sri-lanka-telecom-and-mobitel-joins-the-dpi-club/>; "Sri Lankan Govt. Periodically Blocked Colombo Telegraph: US Human Rights Report", *Colombo Telegraph*, 28 February 2014, available at <https://www.colombotelegraph.com/index.php/sri-lankan-govt-periodically-blocked-colombo-telegraph-in-2013-us-human-rights-report/>

¹²⁰ "Sri Lanka university teachers denounce students' arrests, call on authorities to resolve issues", *Colombo Page*, 17 May 2014, available at http://www.colombopage.com/archive_14A/May17_1400341838CH.php

¹²¹ "Unmerciful assault is not minimum force: Magistrate", *Daily Mirror*, 19 May 2014, available at <http://www.dailymirror.lk/news/47248-unmerciful-assault-is-not-minimum-force-magistrate.html>

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Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

NA

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

i) Take measures to unblock all websites that have been blocked.

ii) Allow ALL citizens of Sri Lanka including those resident in the Northern and Eastern Provinces to mourn their deceased next of kin on 19th May including by participating in Religious and non violent remembrance events.

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Rights of persons belonging to minorities (arts. 18, 26 and 27)

Issue raised in the LoI of HR Committee

Issue 26: Please indicate the measures taken to eliminate discrimination against ethnic, linguistic and religious minorities, including Muslim and Tamil communities. Please provide information on (a) cases of schools refusing admission to Protestant children on the grounds of religion; and (b) efforts made to prevent and to punish offences against the free exercise of religion in line with the provisions of the Covenant. In particular, please indicate the outcome of the State party's action regarding allegations of increasing pressure and harassment by the authorities against certain religious groups, including attacks on the places of worship of Hindu, Muslim, Evangelical Christian and Jehovah's Witnesses communities.

Relevant parts of the State Report (CCPR/C/LKA/5)

§ 339: With regard to the concerns expressed by the Committee on compatibility with Article 3 of the ICCPR,¹²² 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."

Civil Society Reply to the Issue / Question, Update and Other inputs

1. Recent events have highlighted that the culture of impunity surrounding law enforcement has fuelled religious intolerance.¹²³
2. On 9th April 2014, several members of the BoduBalaSena organization, including monks, stormed a press conference.¹²⁴ During the incident the General Secretary of the organization, Galagodaatte GnanasaraThero forced a host of the Press Conference, Ven. Watareka Vijitha Thero to make a statement under duress. The incident took place in the presence of the on looking Police.
3. On 23rd April, members of the Bodu Bala Sena trespassed on Government property when they combed through the Ministry of Industry and Commerce headed by Minister Rishad Bathiudeen saying they were looking for the Ven. Watareka Vijithathero.¹²⁵
4. Following a Presidential statement on 24th April, a special Police unit was established on the 28th April within the Ministry of Buddha Sasana and Religious Affairs Ministry to inquire into complaints on religious matters. This unit has been unable to tackle increasing levels of intolerance and religious extremism.
5. Testament to these claims is evident by the incidents that transpired on the 15th June in areas surrounding Aluthgama and Beruwala. Four persons were killed and 88 persons injured along with damages to hundreds of houses and businesses¹²⁶ in what was the worst religious attacks Sri Lanka had seen in a long time. These attacks followed remarks in a speech made by Galagoda Aththe Gnanasara Thero, in a charged atmosphere, against a minority community that amounts to hate speech. Due to a tense situation that preceded the incident, concerned civil

¹²² 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.

¹²³ In 2014, 69 incident reports have been recorded by the National Christian Evangelical Alliance of Sri Lanka. See <http://nceasl.org/category/religious-liberty/incident-reports/>; The Muslim Secretariat recorded 284 incidents between January-December 2013.

¹²⁴ "BBS abuse monk and Muslim cleric", *Colombo Gazette*, 9 April 2014, available at <http://colombogazette.com/2014/04/09/bbs-abuse-monk-and-muslim-cleric/>

¹²⁵ "BBS mob storms Rishad's Ministry", *Colombo Gazette*, 23 April 2014, available at <http://colombogazette.com/2014/04/23/bbs-mob-storms-rishads-ministry/>

¹²⁶ "Striking the Match", *DailyFT*, 26 June 2014, available at <http://www.ft.lk/2014/06/26/striking-the-match/>

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society members made authorities aware of ground realities and advised against permitting the rally to continue. The authorities however did not take heed. Although in the past the Police have proactively obtained court orders against protests and rallies, there was seemingly no urgency or will to do so in this case. The sheer impunity is evident in that Galagoda Aththe Gnanasara Thero has to date not been indicted for inciting violence in Aluthgama, and continues to incite hate amongst religious communities. See CPA statement.¹²⁷

Relevant para(s) in the Reply of GoSL to LoI

Civil Society Comment on the Reply of GoSL

1. Following the incidents in Aluthgama and Beruwala, President Mahinda Rajapaksa assured that a high-level panel would be appointed¹²⁸ to investigate the incidents that transpired. To date no such panel has been appointed. There have been no investigations into the matter. The lack of political will to hold those accountable is thereby evident not only in the fact that there was no action taken against instigators but also by the mere lack of appointment of an independent, official investigative team.

Relevant Recommendations made by HR Committee and/or other UN bodies on the issue

NA

Civil Society Recommendations on the Issue

The State Party (GoSL) should:

- i) Prosecute all perpetrators of attacks against religious places of worship.
- ii) Facilitate and encourage interfaith dialogue at the local level and the establishment of inter faith groups at local level so tensions can be detected and addressed at an early stage by members of the community.

¹²⁷ CPA, "CPA Condemns Religious Intolerance and Violence", 18 June 2014, available at <http://www.cpalanka.org/cpa-condemns-religious-intolerance-and-violence/>

¹²⁸ President to appoint high-level panel to investigate Aluthgama incident", *News First*, 21 June 2014, available at <http://newsfirst.lk/english/2014/06/president-appoint-high-level-panel-officials-investigate-aluthgama-incident/41080>