



ASIAN HUMAN RIGHTS COMMISSION

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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: Sri Lanka's refusal to implement recommendations made by the Human Rights Committee and the Committee against Torture

The Asian Human Rights Commission (AHRC) wishes to bring to your notice the dire situation of human rights in Sri Lanka, as a result of the breakdown in the rule of law, the breakdown of discipline within the police force--leading to grave torture and extrajudicial killings--and the blatant refusal by the government to implement the significant recommendations made by the Human Rights Committee and the Committee against Torture.

The breakdown of the rule of law within Sri Lanka has been commonly noted; even former vice president of the International Court of Justice, Mr Weeramantry, said in a recent publication that the rule of law in the country is at its lowest ebb. The AHRC has been making representations about the country's exceptional collapse of the rule of law to the Sri Lankan government as well as international bodies for several years now. In this, we refer to the entire country: the South, the North and the East. Although there is no conflict situation in the South, the rule of law in that area also continues to suffer, due to law enforcement agencies having been used by political authorities in the past to commit large scale extrajudicial killings, illegal detentions as well as torture.

To stop this degeneration and politicisation of public institutions, an amendment was made to the Constitution in 2001, known as the 17th Amendment. Under this amendment, various bodies were established to supervise the functioning of institutions such as the police. The National Police Commission was established and given control over appointments, promotions, transfers and disciplinary control of the police, making limited progress in reforming the police force. The Commission's efforts, accompanied by a Special Investigation Unit to inquire into torture committed by police officers, brought over a hundred policemen under trial for committing torture. While their trials were pending in court, the Commission interdicted these officers, as required by law. These interdictions led to strong protests by certain sections of the police, including the Inspector General of Police himself. The term of office of the existing

Commissioners ended on November 24, 2005 however, and no new Commissioners were appointed, rendering the Commission currently dysfunctional.

The commissioners for all such public institutions established under the 17th Amendment are to be appointed on merit by a Constitutional Council, consisting of persons of moral integrity. Without this Constitutional Council, no appointments can be made. However, the term of office of the Council members ended several months ago, with no new appointments having been made. Despite expressions of public concern, no action has been taken to redress this situation. For this reason, other commissions created under the 17th Amendment are also in a similar limbo. This has created an impasse that will inevitably affect Sri Lanka's few achievements in the protection and promotion of human rights.

After reviewing Sri Lanka's compliance with the provisions of the International Covenant on Civil and Political Rights, the Human Rights Committee in November 2003 made several recommendations to the government, requiring a report on the implementation of these recommendations within a year. However, none of the recommendations were implemented and no report was submitted. In November 2005, the Committee against Torture also made recommendations, particularly regarding torture, the lack of protection for victims and witnesses, the need for prompt and impartial inquiries, the significant court delays that obstruct attempts to seek legal redress for human rights violations, and a need for the protection of institutions such as the Human Rights Commission and the National Police Commission. With the National Police Commission now defunct, there is no likelihood that any of the other recommendations will be respected by the Sri Lankan government.

Under these circumstances, the rights of all persons are under grave threat, particularly those who have had the courage to make complaints about human rights abuse. One such complainant, torture victim Gerald Perera, was killed in November 2004, one week before he was due to give evidence in court against several police officers. Other complainants have suffered further torture in retaliation for their complaints.

On the occasion of Human Rights Day, the AHRC requests you to look into these matters seriously and to explore all diplomatic and others means to ensure that the recommendations of the Human Rights Committee and other treaty bodies are enforced. We particularly request you to intervene with the government for the appointment of the Constitutional Council, which will enable the National Police Commission and other bodies to function.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

December 7, 2005

A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

SRI LANKA: Deliberate neglect of U.N. treaty body recommendations adds to general lawlessness in Sri Lanka

Sri Lanka's record of human rights violations has come under severe scrutiny both by the U.N. Human Rights Committee (November 2003) and by the Committee against Torture (November 2005). Other U.N. agencies have also pointed to gross rights abuses within the country, as well as the lack of any credible system of redress. By ignoring the recommendations made by these bodies, the Sri Lankan government is perpetuating the lawlessness prevailing within the country.

It is commonly held within Sri Lanka itself that the rule of law is at its lowest ebb. The weaknesses of the country's police, whose engagement in torture has been criticised both by the Human Rights Commission of Sri Lanka and the National Police Commission, as well as other concerned groups, is endemic and structural. In fact, torture is the common method of criminal investigation. The Sri Lankan prosecution system as organised under the attorney general is extremely defective, as has been manifest in all human rights related cases, including the Bindunuwewa massacre. Only two torture perpetrators have been convicted since 1994; a large number of those prosecuted in courts are now being acquitted. In fact, the general conviction rate in criminal cases is between 2 to 4 per cent. The Sri Lankan judiciary has also come under heavy criticism from the Human Rights Committee, particularly with regard to the case of Tony Fernando. A code of conduct for judges was finally called for by the Bar Association of Sri Lanka, frustrated with the behaviour of certain judges. Over the past year there has been a drastic reduction of fundamental rights cases, and the few cases heard in the courts have been awarded paltry sums of compensation. Rather than a decrease in either credible reports on torture or the gruesome acts themselves, this trend reflects the Sri Lankan government's low appraisal of the gravity of torture as well as its international obligations under the various U.N. treaties they are party to.

The general attitude of the government towards the recommendations of the U.N. treaty bodies can be summed up as that of careless disregard and cynical dismissal. While both the Human Rights Committee and the Committee against Torture have considered Sri Lanka under special procedures and have called for reports on the implementation of their recommendations within a year--which has already elapsed since the recommendations of the Human Rights Committee--it is not known whether the government has submitted or is working to submit the reports.

The following matters in particular have come under serious U.N. scrutiny:

Institutional collapse

The purpose of the 17th Amendment to the Sri Lankan Constitution, adopted in 2001 unanimously by all political parties, was to address the collapse of basic public institutions due to decades of emergency and anti-terrorism laws. Under this amendment, several commissions were established to overlook various public institutions, to be headed by persons of integrity who would act above political interests. The appointment of these persons was to be done by the Constitutional Council, a body consisting of persons beyond reproach.

Unfortunately, this attempt to introduce merit as the criterion of leadership within Sri Lanka's basic institutions, rather than corruption or politicisation, was undermined by the state itself. To illustrate, the former president, Chandrika Bandaranaike Kumaratunga, did not reappoint members of the Constitutional Council for many months after their terms expired, and in fact left office without appointing them. Various excuses were given for this non appointment, such as a delay in the nomination of representatives by certain political parties. However, these excuses were merely a cover up for the power struggle between the president and the independent institutions under the 17th Amendment. The former president, like earlier presidents, wanted to manipulate public authorities by being able to control senior appointments. Where such control was not possible, she obstructed the functioning of these institutions by not signing and issuing appointment letters for commission staff. In this way the Commissions of Elections was never appointed and neither were new members to the Constitutional Council. Without a functioning Constitutional Council, new members to other commissions cannot be appointed, without which those commissions cannot function. This was the fate of the National Police Commission; its members' terms expired on November 24, 2005. Months before this date the issue was raised and brought to the attention of the president and others by the National Police Commission chairman as well as others, all to no effect. At the Committee against Torture sessions in November 2005, the Committee also raised this issue with the Sri Lankan government delegation and made the following recommendations:

7. While noting the significant role of the National Police Commission in disciplinary investigations of the police force, the Committee notes that the terms of office of its current Commissioners will expire at the end of November 2005 and is concerned that no new Commissioners have yet been appointed.

The State Party should proceed with the urgent reappointment of the Commissioners of the National Police Commission. Furthermore, the State Party should ensure that the public complaints procedure provided for in Article 155G(2) of the Constitution is implemented and that the Commission is given adequate resources and full cooperation by the Sri Lanka police in its work [CAT/C/LKA/CO/1/CRP.2].

While members of the delegation gave unequivocal assurance to the Committee that the Constitutional Council would be appointed promptly to avoid the present situation of there being no Council commissioners to appoint new members of the National Police Commission, those solemn undertakings proved to be hollow.

Removal of safeguards against police abuse

Without a functioning National Police Commission, the Sri Lankan police are granted further impunity to commit abuses. Among other things, the Commission has the constitutional duty of maintaining discipline within the police force. Amidst the significant criminal behaviour attributed to police officers and the breakdown of discipline within the police force, the involvement of the Commission created hope for the establishment of measures to address the situation. For instance, the Commission's interdiction of over 100 police officers who are facing criminal charges was a progressive step that could discourage further torture and criminal acts by the police. However, the measure brought retaliation from certain officers, including the Inspector General of Police himself. In fact, the Inspector General openly attacked the Commission and objected to its independence, implying that disciplinary control should remain an internal affair, as it had been in the past. This would allow senior officers to manipulate inquiries and to intimidate the complainants. The Inspector General further complained that the police force would be unable to function if its officers were interdicted. In response, the Commission publicly explained that it was merely carrying out its constitutional mandate and that the interdiction of police officers facing criminal charges is a requirement of the law, which lays down that all civil servants facing criminal charges should be interdicted from their posts.

Following the non appointment of the commissioners, the mandate of disciplinary control has been transferred back to the Inspector General of Police. Complainants against police abuse cannot hope to have a fair inquiry anymore. Instead, criminal elements within the police will be encouraged to blatantly flout legal and disciplinary provisions, while complainants receive threats and intimidation.

Witness intimidation

The killing of torture victim Gerald Perera in November 2004 was such an instance of intimidation. Perera was to give evidence in court against the perpetrators a week after he was killed.

Upon hearing this news, torture victim Amarasinghe Morris Elmo De Silva, a former navy officer, said that his body went cold and he did not know what to do even though he wanted to pursue his complaint vigorously. The details of his case are as follows:

In the case of Amarasinghe Morris Elmo DE Silva, who was allegedly tortured by some officers of the Ja-ela Police Station in January 2001, had to flee the country due to threats to him and his wife as a case against the perpetrators is going on at the Negombo High Court. The indictment in this case was filed on 20 November 2003. However, to date the five police officers who were interdicted are continuing to work as police officers, although the U.N. Special Rapporteur on the Question of Torture made representation to the Sri Lanka government [Paragraph no. 1583 in the Special Rapporteur's annual report, E/CN.4/2003/68/Add. 1].

De Silva was pursuing his torture complaint against Inspector Lakpriya Niroshan Suriya Kumara P.C. 10282. The other four officers involved in the case are Sugath Jayantha Kumara, P.C. 38599 Tpahusha Kumara, P.C. 37495 Deepti Saman Senewiratne, and P.C. 25961 L.A. Siriwardene. Despite his case against the police pending in the Negombo High Court, De Silva went into hiding due to fears for his safety. Although the perpetrators of Perera's murder were arrested due to significant local and international pressure, and several of them confessed that they had killed

him in fear of imprisonment, the non functioning National Police Commission may change things. Genuine inquiries into police criminality being almost impossible without an independent supervisory agency, the intimidation of witnesses will be institutionalized. The following recommendations by the Committee against Torture have hence already been negated by the present situation in Sri Lanka:

15. The Committee is concerned about alleged reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment as well as the lack of effective witness and victim protection mechanisms (article 13).

In accordance with article 13, the State party should take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals in making such a report. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection [CAT/C/LKA/CO/1/CRP.2].

Lack of speedy and impartial disciplinary inquiries

Concerned by the lack of an effective procedure of inquiring into police abuse, the Committee against Torture made the following recommendations:

12. The Committee expresses its deep concern about continued well-documented allegations of widespread torture and ill-treatment as well as disappearances mainly by the State's police forces. It is also concerned that such violations committed by law enforcement officials are not investigated promptly and impartially by the State party's competent authorities (article 12).

The State party should: a) ensure prompt, impartial and exhaustive investigations into all allegations of violations of torture and ill-treatment and disappearances committed by law enforcement officials. Such violations should, in particular, not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture the accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation; b) try and, as appropriate, convict the perpetrators and impose appropriate sentences on them, thus eliminating any ideas of impunity that might be entertained by perpetrators of torture [CAT/C/LKA/CO/1/CRP.2].

Far from implementing these recommendations, the Sri Lankan government is allowing even the limited existing procedure to be undermined through the inaction of the Special Investigation Unit, which was established under the attorney general's office in 2002 to deal specifically with cases of police torture and abuse.

At present, fewer cases are being referred to this unit and more cases are being investigated by the local police or the deputy inspector general of police. This is why the National Police Commission, Human Rights Commission and other civil groups have been receiving an increasing number of torture complaints, while the Special Investigation Unit has been receiving a dwindling number: in 2002, 95 cases were referred to the Unit, in 2003, 158 cases, in 2004, 89 cases and in 2005, 33 cases. Bypassing the Unit ensures a greater possibility of inefficient and ineffective inquiries. One such instance is the case of Lalantha Fernando, who was arrested instead of his uncle on October 10, 2005, within a few hours of which his severely injured body was handed over to his relatives by the police themselves. The victim died on October 19. Despite

huge media coverage, the investigation was not handed over to the Unit but was left to the local police under the area deputy inspector general of police, who was the superior officer of the alleged perpetrators. Until now no one has been arrested.

The initial attempt to refer cases to the Unit as reflected in 2002 and 2003 gradually changed in 2004, with the situation worsening in 2005. The process of impartial and independent investigations is at present being subverted and the small developments of 2002 and 2003 are being lost. This is a direct attempt by the police to resist more serious forms of investigations into their conduct.

Deliberate failure to prosecute

Lalantha Fernando's case is also indicative of the lack of prosecution of police officers by the Sri Lankan state. As already mentioned, Fernando was abducted from his home mistaken for his uncle, who had been making a series of complaints against a Sub Inspector (SI) Nilanga Perera. Several family members were able to identify the abductor who came in a van bearing number 592158 as Perera. Another officer who took part in the abduction has been identified as Police Constable Jude. Both these officers belong to the Koswatte Police Station. Several neighbours and family members were also witnesses to SI Perera coming to the house once again to ask for the uncle who witnessed Lalantha's abduction. Despite significant media coverage, local protests and international lobbying for prompt and impartial investigations, until now SI Perera has not been arrested. In fact, serious attempts have been made to cover up this incident despite the eyewitnesses and other available evidence.

Delay in trials

Civil society groups within the country have repeatedly noted that the present delays in justice amount to a betrayal of justice, and expose victims and witnesses of abuse to mortal danger. Local human rights groups have severely criticised the delays in justice and have published articles, news items and advertisements in their attempts to deal with this key issue. The Committee against Torture has also made recommendations regarding such delays:

14. The Committee is concerned about the undue delay of trials, especially in the cases of trials of people accused of torture.

The State party should take the necessary measures to ensure that justice is not delayed [CAT/C/LKA/CO/1/CRP.2].

Although the Sri Lankan delegation stated to the Committee in November 2005 that measures are being contemplated to address the issue of delays, there is no evidence to substantiate such a claim. There is no indication that the government is seriously attempting to deal with this fundamental flaw in the country's justice system, which has paralysed criminal justice in particular.

The case of Lalith Rajapakse is a clear indication of this paralysis. Lalith was arrested on April 18, 2002 and was severely beaten at the Kandana Police Station. He was found unconscious on April 20 at the police station by his grandfather, and remained unconscious for 15 days at the National Hospital of Colombo.

Due to the interventions of the U.N. Special Rapporteur on the Question of Torture as well as others, inquiries were conducted and indictments were finally filed at the Negombo High Court in

July 2003, after more than a year since the incident occurred. Since then, the case has been pending before the court, and the hearing has now been postponed to May 2006. Lalith also filed a fundamental rights application in the Supreme Court on May 20, 2002. While the Sri Lankan constitution requires that such applications be dealt with promptly, Lalith's is still pending and will only be taken up after the High Court case is finally adjudicated. This case could go on for the next two or three years, as trials in Sri Lanka's high courts are not heard daily--at each date set by the court, only part of the evidence is recorded, and the trial is then postponed to another day, which could be several months later. The last hearing of the case was on November 28, 2005 and the next hearing has been scheduled for six months later.

Since making his complaint, Lalith has been living away from his home, in the care of a human rights group, due to fear of reprisals. This situation must continue now for several years, until both cases are over. Furthermore, a key witness in the case is Lalith's 75-year-old maternal grandfather, Elaris. Whether Elaris will survive until his testimony is recorded in court is currently in question. Several cases involving disappearances, which were delayed for more than ten years, were later withdrawn because eyewitnesses had died. However, neither the attorney general, who is prosecuting Lalith's case, nor the court seem to be taking such matters into consideration.

The reason for Lalith's fundamental rights application pending the High Court verdict is a judgement made by the Supreme Court (Case no. SCFR483/2002), stating that hearing the fundamental rights petition at the Supreme Court while the case is pending at a high court may prejudice the high court trial. In all incidents where high court trials have been fixed, the Supreme Court hearings will therefore only occur after the case is over at the high court. In this way, the delays inherent in the high court process will inevitably affect the Supreme Court hearings.

Torture victim Chamila Bandara's case is indicative of such delays. Bandara filed a fundamental rights application in July 2003 and the case proceeded before the Supreme Court, with Chamila's lawyer making the initial submission. However, on November 30, 2005 when the case was to be heard again, the Supreme Court's attention was drawn to the case filed by the attorney general against the alleged perpetrators in the Kandy High Court. The fundamental rights case is now pending until the end of the high court trial, which has yet to even begin.

These delays in prosecution render the considerable effort put into the filing and investigation of complaints futile. In a written submission to the U.N. Commission on Human Rights in 2005, the Asian Legal Resource Centre (ALRC), sister organisation of the Asian Human Rights Commission (AHRC) noted how the efforts of rape victims--who are often very young--are frustrated by the delays in trials.

1. The incidence of rape against women in Sri Lanka has become incredibly high in recent years. While more women are now lodging complaints against rape than they did in the past, there are still significant numbers of rape cases that go unreported. There are many reasons for this but perhaps the most prevalent is the delay in finding justice in the courts, and thus the reluctance therefore to pursue it. The Asian Legal Resource Centre (ALRC) wishes to demonstrate four cases where delays in rape cases occurred.

Case 1: Jesudasa Rita was allegedly raped at the age of 16 on 12 August 2001. No immediate investigation was carried out. An investigation only came about, after some time, due to the intervention of human rights groups. A case bearing No. 32151 Magistrate's Court, Nuvara Eliya, was filed and evidence was recorded. In October 2002

the case was committed to the High Court for trial and the file was sent to the Attorney General's department. To date, the victim has heard nothing further about the case. The victim has made several complaints regarding this matter to the Attorney General and also the Human Rights Commission of Sri Lanka. However, to her knowledge, no case has yet been filed in the High Court. Generally, after indictments are filed in the High Court, it may take between three to five years before a judgement is given. Then the judgement can be appealed and this itself may take another three to five years. Thus, Jesudasa may have to wait up to twelve years from the date of her alleged rape to the date that she will get a final verdict from the court...

Case 2: Yamuna Sandamali was a mere 13 years old at the time of her alleged rape on 2 September 2002. After the police conducted an initial investigation a case was filed in the Magistrate's Court of Kandy bearing No. 25248. This case is still pending before the Magistrate's Court. It is not possible to predict when the Magistrate's Court Non-Summary proceeding will end. However, once it has ended it will be sent to the Attorney General's department for the filing of the indictments. Going by earlier cases, the victim can expect to wait at least three years before the indictment is prepared and sent to the High Court. At the High Court it will possibly take a further three to five years for judgement. If the case is appealed, which is most likely, there can be expected to be a further three to five years before the final judgement. During that time Yamuna may experience the same problems as mentioned above.

Case 3: S.S. Kumary Anushka was allegedly raped on 2 July 2003. Her case bears the number B 40152 at the Magistrate's Court. Having a 'B' number for a case means that the Non Summary Inquiry has not begun yet. Going by earlier cases, a Non Summary Inquiry often takes two to three years to finalise. The victim will then most likely face the same prolonged wait as mentioned above.

Case 4: Inoka Samanthi was 17 when she was allegedly raped on 7 April 2002. The case bears No. B 37112 at the Kandy Magistrate's Court. Again, bearing a 'B' number means that not even Non Summary proceedings have begun. Thus, Inoka can expect to wait many more years to come before any justice can be sought in her case.

2. Evident from these cases is the extreme lack of judicial remedy within the Sri Lankan court system. Though article 14 (3) of the International Covenant on Civil and Political Rights guarantees speedy trial for everyone, the women of these cases and many more rape victims across Sri Lanka have this right violated by the very system that is there to protect them. Women who wish to seek justice must prepare themselves for heightened stress, potential intimidation and even further violence for a period of time that may extend to more than ten years. Through such a flawed system, the state puts the lives and liberty of such victims at risk for the prolonged duration of their trial [ALRC, 'Rape and the failure to provide justice in Sri Lanka, E/CN.4/2005/NGO/116].

Unless the issue of delays in trials is addressed, it is not possible to avoid the increase of crimes and people taking the law into their own hands, both of which are already happening. By overlooking this situation, the Sri Lankan government has confined its involvement on this issue to mere rhetoric. In his opening address to the parliament, Sri Lanka's new president stated that reforms to the criminal justice system will be considered, however, no mention was made about delays in justice. In fact, among human rights groups there is a fear that these reforms may involve the enactment of more draconian laws, resulting in the further deterioration of the criminal justice system.

Neglect of the Human Rights Commission of Sri Lanka

Despite the public statements of support given by the Sri Lankan government to the Human Rights Commission, in reality the Commission remains a neglected institution. The Commission receives little support from the government: insufficient resources have been allocated for its functioning and the government does very little in way of implementing its recommendations.

Furthermore, it is increasingly facing threats from law enforcement officers whose abuses they attempt to investigate. The Commission's Chairperson, Dr Radhika Coomaraswamy, said to the London based REDRESS magazine that, "the police are hostile to us". In fact, the Inspector General of Police and many other senior officers have openly shown their hostility towards the Commission. Neither the government nor public authorities such as the attorney general have done much to foster police respect for the Commission. On several occasions, Commission officers have been assaulted during their attempts to visit police stations.

Public institutions such as the Human Rights Commission cannot function without an environment of cooperation, in which their role is legitimised. No such environment has been established in Sri Lanka. Rather, an environment of active hostility exists, reinforced by the violence instilled within the country's law enforcement agencies, which creates a threatening situation for Commission staff. Dr Coomaraswamy further made these remarks regarding police violence:

I am very worried about extrajudicial killings; recently there have been eighteen cases of shootouts with the police. The challenges are really training the police force in a way that makes it a community police. We are not talking about isolated cases of rogue policemen: we are talking about the routine use of torture as a method of investigation. It requires fundamental structural changes to the police force to eradicate these practices [Interview with REDRESS magazine, May 2005].

On October 11, 2005 there was an attempted arson at the Commission's headquarters. Although the Sri Lankan delegation to the Committee against Torture attempted to dismiss this as an attempt of vandalism by some disgruntled drivers, in actual fact the complete destruction of the building was prevented by mere fortune. Despite investigations conducted by the Criminal Investigation Department, none of the culprits have yet been arrested or charged. Meanwhile Chairperson Dr Coomaraswamy has said that "the police and Human Rights Commission are conducting investigations and it is proving to be a complex process".

Under these circumstances it is very unlikely that the Sri Lankan government will implement the following recommendations made by the Committee against Torture in November 2005:

11. The Committee is concerned about the lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places (article 11), by the Human Rights Commission of Sri Lanka and other monitoring mechanisms.

The State party should allow independent human rights monitors, including the Human Rights Commission of Sri Lanka, full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review [CAT/C/LKA/CO/1/CRP.2].

Failure to implement the recommendations of the U.N. Human Rights Committee

The following table is an indication of Sri Lanka's blatant disregard for the recommendations of the Human Rights Committee even after the Committee has stressed the importance of these recommendations by requiring a report of progress within one year.

| Section | Recommendations (A summary from the concluding observations of the Human Rights Committee, December 1, 2003) | Implementation |
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| Article 7 | To bring the Constitution into conformity with the International Covenant on Civil and Political Rights (ICCPR), including provisions relating to the right to life, judicial review, changing the time limitation on the filing of Fundamental Rights cases and to remove all laws incompatible with obligations undertaken under the ICCPR. | None of the recommendations under Article 7 have been implemented and there is no indication that any attempts were made at implementation. There is therefore no likelihood that the recommendations would be implemented in the near future. |
| Article 8 | Bring Chapter 3 of the Constitution into conformity with articles 4 and 15 of the ICCPR. | Nothing has been done in this regard by Sri Lanka. No attempt was made to propose any law to this effect. |
| Article 9 | To address the issue of torture, legislative measures in keeping with Articles 2, 7 and 9 of the ICCPR should be taken. Provisions to ensure prompt investigations and effective prosecution of perpetrators should be established and the complaint procedure (Article 155 (G)(2) should be implemented by the National Police Commission. Positive actions for victim protection, elimination of the climate of fear that plagues the investigation and prosecution, and increasing the Human Rights Commission's capacity in investigation and prosecution should be taken. | Nothing of any significance has been done in these areas. In fact, at present the National Police Commission is not functioning due to the absence of commissioners, the Special Investigation Unit are taking up fewer cases and disciplinary inquiries have been handed over to internal authorities, which are partial towards the perpetrators. The Human Rights Commission was severely undermined by a recent arson attack, for which no one has yet been prosecuted. |
| Article 10 | Regarding disappearances, Sri Lanka was asked to implement articles 6, 7, 9, and 10 of the ICCPR. The government was also asked to implement recommendations made by the U.N. Working Group on Enforced or Involuntary Disappearances and the recommendations of presidential commissions. The capacity of the Human Rights Commission to monitor investigations and prosecutions should also be improved. | Nothing has been done in this regard. The government has misled the international community regarding the enormous number of disappearances by promising to take various measures, none of which have materialised. The U.N. Working Group has not been monitoring the implementation of its recommendations. |

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| Article 11 | To eliminate corporal punishment in prisons and primary and secondary schools. | Nothing has been done to eliminate corporal punishment in prisons. All reports indicate that corporal punishment continues in prisons at many levels. Violence remains the method of control in prisons, although there is no official recognition of the use of corporal punishment. While there have been some educational activities in schools, there is no indication that the overall use of corporal punishment has been reduced. A law relating to corporal punishment has been passed, but there have been no serious efforts at implementation. |
| Article 13 | To ensure that all legislation, including the Prevention of Terrorism Act (PTA) are compatible with the provisions of the ICCPR. | Since the cease fire agreement of February 2002, the use of the PTA has become minimal. However, the establishment of emergency rule in the aftermath of the December 2004 tsunami has placed restrictions on freedom of assembly and protest. Periods of detention have also been extended under the pretext of crime prevention. |
| Article 14 | To combat the trafficking of children for exploitative employment and sexual exploitation through the implementation of the National Plan of Action. | Although the Child Rights Authority has been taking some action to address the issue, what is being done is nowhere near enough to deal with the magnitude of the problem. The conflict situation and tsunami devastation further aggravates the problem. |
| Article 15 | To reduce the overcrowding in penitentiary institutions and grant sufficient resources for the monitoring of prison conditions by the Human Rights Commission. | Penitentiary institutions are now more overcrowded than in 2003, when the recommendation was made. While the Human Rights Commission carries out a few monitoring visits, it does not have the resources or the capacity to carry out effective monitoring on a regular basis. |
| Article 16 | To strengthen the independence of the judiciary by providing for judicial rather than parliamentary supervision and discipline of judicial conduct. | This recommendation was not implemented. The present perception within the country is that the Supreme Court has been brought under political control. The Chief Justice has in particular been criticised as being an ally of the current and former presidents. The judicial disciplinary process relating to the suspension, dismissal and transfer of |

judges has been criticised as arbitrary. Many judges suspended for reasons other than misconduct are kept out of service for years due to delays in the completion of inquiries. There have been reports of threats received by judges who refuse to resign under pressure. Other judges have resigned in protest, while lawyers are bitterly critical of the suppression of judicial independence.

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| Article 17 | To protect media pluralism and avoid state monopolization of media, which would undermine freedom of expression, as enshrined in article 19 of the ICCPR. Measures should also be taken to ensure the impartiality of the Press Complaints Commission. | No positive developments have been noted regarding pluralism of the media. The state media is used by the present government for propaganda, particularly during elections. Impartial and objective journalists working in state media have been removed from editorial positions. |
| Article 18 | Appropriate steps to prevent harassment of media personnel and journalists should be taken and such incidents must be investigated promptly, thoroughly and impartially, and those found responsible must be prosecuted. | In not a single instance have inquiries into the killing of journalists been completed, including recent killings. While constant requests for investigations are made, there are no arrests or prosecutions. Journalists make constant complaints of threats to their lives. |
| Article 19 | To complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them in conformity with articles 3, 23, 24 and 26 of the ICCPR. | No such legislative review has been undertaken, nor have any reforms been proposed. |
| Article 20 | To enact appropriate legislation in conformity with ICCPR provisions relating to domestic violence. Marital rape should be criminalised in all circumstances. Awareness about violence against women should be initiated. | There have been no attempts to enact the relevant legislation in conformity with the provisions of the ICCPR and many cases of marital and custodial rape are not investigated or prosecuted. |
| Article 21 | The present concluding observations should be published and widely disseminated. | No attempts have been made to publish or disseminate the concluding observations. In fact, the observations were not even officially presented to the parliament, judiciary and other government bodies. |
| Article 22 | In accordance with rule 70, paragraph 5 of the Committee's rules of procedure, the government should make its responses | There is nothing to indicate that the Sri Lankan government has complied with this recommendation. |

regarding the committee's recommendations within one year.

Failure to implement decisions made by the U.N. Human Rights Committee on specific cases under the Optional Protocol to the ICCPR

The case of Tony Fernando – Communication No. 1189/2003

In this case the Human Rights Committee held on March 31, 2005, that the State party has violated article 9, paragraph 1 of the ICCPR. The Committee further held:

In accordance with article 2, paragraph 3 (a), of the Covenant, the State Party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future. The State Party is under an obligation to avoid similar violations in the future.

The Committee required from the State party within 90 days information about the measures taken to give effect to its views. The State Party was also requested to publish the Committee's views.

However, seven months after the incident, the Sri Lankan government has not taken any measures to this effect. Whether the State party made any communication to the Committee is not known to the author of the communication. The State party also did not make any attempt to publish the communication.

The case of Nallaratnam Singarasa – Communication No. 1033/2001

Regarding this case, the Committee made its decision on July 21, 2004. The Committee held that the author's rights under article 14 paragraph 1, 2, 3, (c), and 14, paragraph (g) read together with articles 2, paragraph 3 and 7 of the ICCPR had been violated. The State party was to inform the Committee within 90 days the information about the measures taken to give effect to the Committee's views. The State party was also requested to publish the Committee's views.

On February 2, 2005 however, the State party informed the Committee that it has declined to take any measures on the grounds that "the State party does not have the legal authority to execute decisions of the Human Rights Committee to release the convict or grant a retrial".

The author of the communication subsequently sought intervention of the Supreme Court to compel the government to comply with the decision of the Committee. In response, the attorney general on December 5, 2005 was reported to have said on the BBC Sinhala service that to urge for the alteration of "a ruling by the Supreme Court is an intervention on the independence of the judiciary". In fact, such a position is a violation of Sri Lanka's international obligations under the ICCPR and its Optional Protocol, which require all branches of the government--the executive, legislative and judicial--as well as other public authorities to respect the enshrined rights.

The case of Lalith Rajapakse – Communication No. 1250/2004

In this case the decision was made on March 8, 2005, holding that the delay in the Supreme Court and criminal cases amounted to an unreasonable and prolonged delay within article 5, paragraph 2(b) of the Optional Protocol. The Committee also overruled the objection by the government to the admissibility of the communication of alleged violations of articles 7 and 10 of the ICCPR. The Committee stated that under article 99, paragraph 2 of the Optional Protocol, the State party should submit within six months of the transmittal of the present decision, a written explanation or statement clarifying the matter and indicating what measures have been taken, if any.

Though six months have lapsed from this decision, the State party has not made any response to the Committee on the implementation of its decision, nor has the decision been implemented.

The case of Jayalath Jayawardena – Communication No. 916/2000

In this case, on July 22, 2002 the Committee adopted that the author's rights under article 4, paragraph 4 of the Optional Protocol and article 9, paragraph 1 of the ICCPR had been violated. The State party was requested to inform the Committee within 90 days information about the measures taken to give effect to its views. The State party was also requested to publish the Committee's views. However, the author of the communication, who is also a member of parliament, has since repeatedly complained that he was not provided with adequate security and in fact his security has been reduced. He has further repeatedly complained that he receives death threats. The government also did not publish the decision of the Committee.

The case of Victor Ivan - Communication No. 909/2000

On July 27, 2004 the Committee held that article 14, paragraph 3(c) and article 19, read with article 2 (3) of the ICCPR had been violated by the State Party. The Committee further held that the State party is under obligation to provide the author with an effective remedy, including appropriate compensation. The State party was also requested to publish the Committee's views. The AHRC is unaware of any compensation paid or anything done by the State to implement this decision. Furthermore, the State did not publish the views of the Committee.

Lawlessness affects all aspects of life in Sri Lanka

A key indicator of the anarchy prevailing throughout Sri Lanka is the state of healthcare within the country. Almost everyday, cases of medical negligence are reported. For instance, a woman who went to get her wound cleansed found her healthy leg amputated instead. An old man was given the wrong injection and subsequently had to have his arm amputated. In another instance, a nurse rushed a mother through childbirth so she would not miss her bus home. Many cases of meningitis have also been reported, due to the use of contaminated syringes.

The impossible task of obtaining a credible inquiry into such neglect worsens the situation. In the instance of the mistaken leg amputation, doctors and other medical staff went on strike, and threats were made of further strikes throughout the country if independent investigations were conducted. Statements were made publicly that police should keep out of the inquiry as they did not have any medical knowledge.

Such incidents, all of which could be avoided in a society governed by the rule of law, are affecting ordinary citizens all over Sri Lanka. A passenger was raped inside the airport after passing through immigration and waiting to board her flight. Corruption is reported at all levels of society; a huge fraud was even reported recently at the Inland Revenue Department.

Effective rule of law is therefore essential for the enjoyment of people's rights. The new president has yet to put in action any strategies to reform the justice institutions. A start can be made by implementing the recommendations of the Human Rights Committee and the Committee against Torture. Furthermore, the members of the Constitutional Council must immediately be appointed, which will in turn enable commissioners for important public authorities to be appointed, especially the National Police Commission.

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About AHRC The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984