



ASIAN HUMAN RIGHTS COMMISSION

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SRI LANKA: The Situation of Human Rights in 2006

A new year's wish list published in a daily newspaper by six Sri Lankan groups in early 2006 stated the following:

**New Year 2006
Wish List**

IMMEDIATE appointment of the members of the Constitutional Council, enabling the National Police Commission, Election Commission and other Constitutional Commissions to function.

CREATE an effective witness protection programme and a fund for victims.

STOP torture and extra judicial killings.

TAKE effective action to end delays in the administration of justice.

THOROUGHLY improve the prosecution system.

ENSURE disciplinary control in the policing system.

INITIATE prompt, independent and effective investigations into all crimes, including those allegedly committed by state officers.

GUARANTEE freedom of expression and association and protection to all journalists and human rights activists.

People Against Torture, Families of the Disappeared, Right to Life Human Rights Center, Setick, Wayamba Human Rights Forum, The Citizen's Committee for Human Rights - Kandy, The Citizen's Committee for Human Rights - Kalutara, Gampaha Human Rights Front, Rule of Law Center, Dambulla Human Rights Institute, Kandy Human Rights Forum, Organization for Human Rights - Galle, Organization to Safeguard Democratic & Human Rights, Media Center - Kandy, Human Resource Institute-Polpithigama, Asian Human Rights Commission, Hong-Kong, Janasansadaya.
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Immediate appointment of the members of the Constitutional Council, enabling the National Police Commission, the Election Commission and other Constitutional Commissions to function; create an effective witness protection programme and a fund for the victims; stop torture and extrajudicial killings; take effective action to end delays in the administration of justice; thoroughly improve the prosecution system; ensure disciplinary control in the policing system; initiate prompt, independent and effective investigations into all crimes, including those allegedly committed by state officers and guarantee freedom of expression and association and protection to all journalists and human rights activists.

As we reach the end of the year it is sad to note that none of these wishes have been fulfilled. In fact the human rights situation in the country has taken a turn for the worse. The trend of human rights in Sri Lanka as discussed below have developed over many

years and the state has not shown any determination to take steps to improve the situation. The absence of will on the part of the state to deal with the extremely grave situation of human rights violations is the major obstacle to the protection and promotion of human rights. The attempts by the international community acting through UN agencies and others have not produced any positive changes. If some decisive steps are not taken by the Sri Lankan government, 2007 may bring in even more dismal news about gross human rights violations in the country.

The wish for 2007 has to be that of an awakening on the part of the state to the catastrophic human rights situation in the country and cooperation by the state with the UN and other agencies to take some bold decisions to put their house in order. A failure to take steps in that direction may mean the country's rapid degeneration towards an even greater catastrophe.

1. Impunity

1.a. The following statement made by Amnesty International on November 17, 2006 sums up the situation of impunity in the country and highlights the only effective way to deal with this situation.

"In light of decades of impunity for perpetrators of violations of international human rights and humanitarian law in Sri Lanka, characterised by the failure of the authorities to investigate and prosecute such perpetrators effectively, only an international and independent Commission would have the credibility and confidence of all parties to the conflict and sections of society to be able to conduct meaningful investigations, obtain critical testimony or information from witnesses and gain the acceptance of its recommendations by all relevant parties. To this end, members of the body conducting the inquiry should be international experts, chosen for their recognised impartiality, integrity and competence. Crucially, they should be, and be seen to be, independent of any institution, agency or individual that may be the subject of, or otherwise involved in, the inquiry, including the Government of Sri Lanka. Amnesty International does not believe that an independent group of eminent persons observing an essentially national inquiry can serve as a substitute for the independence, real and perceived, of the Commission of Inquiry itself."

1.b. The causes of impunity: Presidential impunity

Section 35 (1) of the Constitution (Immunity of President from suit) reads as follows:

While any person holds office as President no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

The Court of Appeal in its judgement in CA Application 66/2006 held that the violations by the president cannot be challenged in any court of law. The following statement made by the AHRC outlines the implications of this judgement:

SRI LANKA: Implications of Court of Appeal judgment on 17th Amendment of the Constitution

FOR IMMEDIATE RELEASE

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A Statement by the Asian Human Rights Commission (AHRC)

SRI LANKA: Implications of Court of Appeal judgment on 17th Amendment of the Constitution

The judgment of the Court of Appeal on the application of two citizens regarding the recent appointments to the Police and Public Service Commissions by the President of Sri Lanka [CA Application 66/2006] raises some fundamental problems regarding the implementation of the Constitution of Sri Lanka.

The issue raised by the petitioners was that the Commissioners to these two Commissions have been appointed by the President, contrary to the provisions of the Constitution, which requires that the nomination of the candidates to be appointed to these Commissions should be done by the Constitutional Council and the President would thereafter appoint them. In the court this obligation of the President was questioned and the court relied on Article 35 (1) of the Constitution which provides for presidential immunity, from any proceedings in any court for his actions or omissions, whether they are official or private. Article 41 B (1) of the Constitution states as follows: No person shall be appointed by the President as the Chairman or a member of any of the Commissions specified in the Schedule to this Article, except on a recommendation of the Council...

These two provisions of the Constitution were examined before the Court of Appeal. The issue then was which Article was to prevail over the other. To answer this the court relied on Article 35 (3) which places only one limitation to Article 35 (1). Article 35 (3) reads as follows: The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceedings in any court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph (2) of Article 44 or to proceedings in the Supreme Court under paragraph (2) of Article 129 or to proceedings in the Supreme Court under Article 130 (a) [relating to the election of the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament:]. Thus, the essence of the judgment is that the violation of Article 41 B (1) by the President cannot be challenged by any court of law.

Flowing from this judgment is the conclusion that if the President by his act or omission violates any provision of the Constitution other than under three articles mentioned in the above paragraph [Articles 44 (a), 129 (2) and 130 (a)] he will not be liable to be questioned before a court of law. Under the Constitution of Sri Lanka everyone is equal before law. It means that any person who violates the Constitution is liable for action in an appropriate court of law. However, the position as of now is that if a President violates the Constitution then the President is not liable for any action before court. Thus, Article

12 (1) of the Constitution which reads all persons shall be equal before the law and entitled to the equal protection of law has no effect at all as far as the President is concerned. Thus, the President is above the jurisdiction of courts except regarding the three Articles of the Constitution mentioned above. He is thus entitled to remain outside the jurisdiction of courts when he violates the rights enshrined in the Constitution.

Article 19 of the Constitution reads ... the national language of Sri Lanka shall be Sinhala and Tamil. If the President by an act or omission violates this provision no action will lie against the President in a court of law. This also applies to other provisions regarding language in Chapter IV of the Constitution.

Chapter V of the Constitution is about citizenship. Under this chapter, the basic provisions of citizenship have been defined. If the President, by any act or omission violates the provisions of this Chapter no action cannot be brought against the President in a court of law. Chapter VI is the Directive Principles of State Policy and Fundamental Duties. If the current President decides to replace Mahindachinthanaya in place of Chapter VI of the Constitution, this too cannot be challenged before a court of law. For example, if a President prefers to deal with welfare in a particular part of the country (for example the President's home constituency), as against the rest of the country, this too cannot be challenged in a court of law.

Chapter VII of the Constitution is on the subject 'The President of the Republic'. Suppose the present or a future President decides to confer powers and privileges on the President which are not recognised in this Chapter, again, the same situation will follow. Sri Lanka has had one instance when a former President was awarded a piece of land by the present cabinet and later due to this being questioned in court, the gift was withdrawn. Suppose, the gift was given by the President himself, directly, to the former President, this cannot be challenged in a court of law. Suppose a president gives himself an award of land or any other state property, this too cannot be challenged before a court. In many countries there have been allegations of corruption committed by heads of state while in office, and inquiries have been held into the matter and sometimes actions have been taken in courts. This cannot be done in Sri Lanka in terms of the interpretation of Article 35 of the Constitution taken by the Court of Appeal.

Chapter VIII of the Constitution is on the executive. Under this, the President is responsible to the parliament for due exercise and performance and discharge of his powers, duties and functions under the constitution and other laws including public security laws. Suppose a president decides that he shall not be responsible for the parliament and makes orders directly in any manner he wishes, this too cannot be challenged in a court of law. There are whole series of judgments where immunity of state agents signing documents under the public security law had been given immunity under some laws or emergency regulations, the courts have interpreted such immunities in a very limited way, thus safeguarding the basic rights of the people. However, if any of these orders were directly made and signed by the president himself, then this too cannot be challenged before any court of law. Under the same chapter, there are such matters as cabinet ministers, deputy ministers, the prime minister, secretaries to the ministers and

the like. In any of these matters the president can violate any part of the constitution and the consequence as far as actions in courts are concerned is the same as stated above.

Chapter IX of the constitution is on the public service. It deals with such appointments as that of Attorney General, Head of Army, the Navy, the Air Force and the Public Force. Suppose, the president violates any of the provisions in the Constitution or in any other law or the best practices that have been traditionally followed in these matters, even such actions cannot be challenged before a court of law. If a person with no legal qualifications is appointed as the attorney general on the basis of a preference which a president may think it is to his advantage, there is nothing that can be done before a court of law on that matter too. In fact, on the issue of public service the president has already contravened the constitution as amended, and the court has held that they do not have jurisdiction to go into the matter.

The next section of the constitution is on legislature. It deals with parliament, official oath or affirmation, speaker, deputy speaker and chairman of committees, secretary general of the parliament, vacation of seats, privileges, immunities and powers of parliamentary members, allowances of members and power of parliament to act upon new vacancies. In any of these matters if the President by any of his acts or omissions violates the provisions of this chapter no action can be brought against him in a court of law. Article XI is on legislature covering subjects as sessions of parliament, adjournment, voting, quorum, standing orders, legislative power, delegation of legislative power, duties of attorney generals in regard to publication of bills and passing of bills of resolutions, certificate of speaker, when bill becomes law, expulsion of members and imposition of civic disability. The legal status of all these provisions is the same as far as action against the president in court in violation of any of these is concerned. Suppose, a president removes the civic abilities of the leader of opposition or for that matter any other member of political party, by his direct action, for example signing a paper directly stating such removal of such civic ability, such actions cannot be challenged before a court of law.

Chapter XII is on amendment of the Constitution. This covers subjects as amendment or repeal of the constitution, which must be expressed for approval of certain bills of a referendum and bills inconsistent with the constitution. In any of these matters the President may violate the constitutional provisions and no court will have power over it. For example, if Article 83 which prohibits the extension of the term of office of the president or duration of the parliament is violated by the president by his direct action or omission, say for example making a written declaration by him that he had extended his time of office, or time of duration of the parliament beyond six years, regarding this matter too no court will have jurisdiction to undo the action of the president.

Chapter XIII is on referendum and chapter XIV is on franchise and election. These are all very fundamental provisions of any constitution. Even on these the court has no jurisdiction if the president violates the constitution. For example if the issue of proportional representation is changed by the president directly through his action, for example a presidential decree, this too is a matter on which the courts will have no jurisdiction. Further if a person who had not been qualified to be elected as a member of

parliament in violation of Article 100 of the constitution, with direct approval of a President, this too will be outside the jurisdiction of the court.

Chapter XV is on the judiciary dealing with such matters as establishment of courts, public sittings, independence of judiciary, appointments, removal of judges to the supreme court and the court of appeal, salaries of judges of the supreme court and the court of appeals, acting appointments, performance or discharge of the function of judges, appointment, removal and disciplinary control of judges of the high courts, commissioners of the high courts, judicial service commission, secretary to the commission, fiscal for the whole island, appointment of other judicial officers, interference with the judicial service commission, interference with judiciary and immunity of members of the commission. Suppose a president was to establish courts outside those recognized by the constitution so far, for example starting courts of appeal in places other than Colombo, and the president does so with a presidential decree, this too cannot be challenged in a court of law.

Chapter XVI is on the Supreme Court. It covers such topics as general jurisdiction of supreme court, constitution of the supreme court, constitutional jurisdiction of the supreme court, ordinary exercise of the jurisdiction in respect of bills, special exercise of constitutional jurisdiction in respect of urgent bills, determination of supreme court in respect of bills, validity of bills and legislative process not to be questioned, constitutional jurisdiction in the interpretation of the constitution, fundamental rights jurisdiction and its exercise, appellate jurisdiction, right of appeal, consultative jurisdiction, jurisdiction in election and referendum petitions, in respect of parliamentary privilege, sittings of the supreme court, appointment of ad hoc judges, right to be heard by the supreme court, registry of the supreme court and the office of the registrar, the rules of the supreme court, court of appeal, its jurisdiction, powers of appeal, power to issue writs other than writs of habeas corpus, power to issue writs of habeas corpus, power to bring and remove prisoners, power to grant injunctions, parliamentary election petitions, inspection of records, sittings of the court of appeal, registry of the court of appeal and the office of the registrar. On any of these matters if a president decides to act contrary to the constitution, no court will have jurisdiction to adjudicate on the matter. For example, if the president by a presidential decree grants a magistrate court, the power of writ jurisdiction, there is nothing that can be done to prevent it by way of an action before a court.

Chapter XVII of the constitution is on finance. It covers such important matters such as control of parliament over public finance, consolidated fund, withdrawal of sums from consolidated fund, the contingencies fund, special provisions as to bills affecting revenue, auditor general, duties and functions of auditor general. It is well known that there had been considerable problems created by some agents of the present regime against the auditor general. Suppose a president decides to appoint an auditor general ignoring the provisions of the constitution in the same manner a supreme court judge and two appeal court judges have been appointed ignoring the 17th amendment, this matter too cannot be challenged, in any court of law. If a president decides to remove the control of parliament

over public finance and does so by a presidential decree, this too will fall within an action of the president under article 35 (1) of the Constitution.

Chapter XVII A is on provincial councils going into such issues as establishment of provincial council, governor, exercise of powers of the governor, membership of the provincial council, term of office, board of ministers, status of provincial council, assent, public security, failure to comply with directions, failure of administrative machinery, parliamentary confirmation of provincial powers to the president, financial instability, high court, function, powers, election etc. of the provincial council, finance commission, special provision enabling provincial council to exercise powers under this chapter and transitional measures. The legal situation is the same if a President acts in contrary to this chapter, it shall be no different to acting in contravention to the 17th amendment as far as the jurisdiction of courts are concerned.

Chapter XVIII is on public security. Chapter XIX is on the parliamentary commissioner for administration. Chapter XX is on entitled general, which covers such subjects as international treaties and agreements, prohibition of violation of territorial integrity of Sri Lanka. Article 157 states that no executive or administrative action shall be taken in contravention of the provisions of a treaty or agreement. However, this article is no different to the articles of the 17th amendment and will not be protected specially by the courts, if a president decides to contravene it. Regarding prohibition against violation of territorial integrity, if a president is acting contrary to this provision, again no action shall lie against him.

Chapter XXI is transitional provisions, XXII on interpretation and XXIII on repeal of the earlier constitution, XXIV is the promulgation of the constitution and there are schedules giving names of administrative districts, national flag, national anthem, the affirmations and several other incidental matters. On any of these matters to any action done by a president in contravention any of the constitutional provisions has the same status as violations of the 17th amendment.

There is a further issue arising from the court of appeal judgment. It is that if the appointments to the supreme court, court of appeal and commissions such as public service commission, police commission and the national human rights commission cannot be challenged in a court of law, then, dismissal of any persons of the supreme court, court of appeal and any of the commissions under the 17th amendment or under any other provisions of the constitution is done by the president no action shall lie against such action in a court of law. This should have a chilling effect on anyone who is holding any office in these institutions. For example, a Supreme Court judge can be removed only by way of a resolution, passed in parliament by the 2/3rd majority. However, if a president were to decide to do so and does any action for that purpose, such action will be covered within Article 35 (3) of the Constitution.

1.c. The absence of a credible mechanism for investigating human rights abuses by way of criminal justice inquiries

The Asian Human Rights Commission has extensively reported on the absence of proper criminal justice inquiries in recent times into even ordinary crimes, but more glaringly into gross abuses of human rights. The capacity for investigations by way of competent and experienced persons does exist, although their numbers may not be adequate. The real reason for proper inquiries not being held is political. Various pressures are brought on the investigators through their own superiors as well as from outside not to engage in serious and professional criminal justice inquiries. In sensitive cases heavy moral pressure is exercised on the investigating officers to ensure that the investigations stop before identifying the perpetrators and credible evidence through a charge before court.

Even on some criminal matters which may not be directly political, such as investigations into drug abuse officers who engage in serious inquiries have faced threats and on some occasions they have even been assassinated, as demonstrated in the case Douglas Nimal and his wife.

When serious allegations are made against the government for failure to investigate it sometimes tries to pass this burden unto presidential commissions appointed under the Commissions of Inquiry Act, No. 17 of 1948. These inquiries are often fact finding inquiries and nothing more. They can never be a substitute for investigations into crimes, as envisaged by the Criminal Procedure Act of Sri Lanka. Often the appointment of these commissions has no other purpose than to create a false impression about a possible inquiry, when in fact no such inquiry takes place. The AHRC has drawn attention to this fact constantly throughout the year.

The absence of witness protection and a witness protection programme is a fundamental defect affecting criminal inquiries and prosecutions. There is a general reluctance in the country for people to come forward to provide information to the police or any other agency on crimes. This is due to a widespread perception that the police are either complicit in crimes or, are unable to protect witnesses. Witnesses suffer from assassinations, threats of assassination and other forms of harassment. Furthermore there are also various methods by which witnesses are brought over. The result is that the conviction rate in serious crimes is only 4%. The very prospect of finally ending a case successfully is so slim that it prevents many victims of crime from coming forward to seek justice. This prospect may also have a serious demoralizing effect on the investigators, prosecutors and judges themselves. The situation is even worse when the alleged perpetrators of an offence are police, military or other state officers. The very making of the complaint brings the complainants, their families and anyone who supports them into serious risk. The traumatic effect of horrendous repercussions creates a heavy toll on even the most determined complainants and their families.

Added to all this is the impact of the slow process of justice. Every area of justice such as the taking down of complaints to the final adjudication in courts goes through such a

slow process that takes years. The sheer mindlessness of such delays is one of the major obstacles to addressing the matter of impunity in the country.

The impact of several decades of instability on the Sri Lankan policing system has been thoroughly documented in a number of reports by the AHRC. Article 2, Vol. 1, No. 4 (<http://www.article2.org/mainfile.php/0104/>) and Vol. 3, No. 1 (<http://www.article2.org/mainfile.php/0301/>) and a 300 page book entitled 'An Exceptional Collapse of the Rule of Law' which have provided extensive documentation on this issue.

1.d. The failures and weaknesses of the Attorney General's Department as the prosecutor

The Attorney General's position remained much weakened due to political undermining. It has also has problems of being understaffed and lacking in resources.

When the Executive President made appointments to the Court of Appeal and the Supreme Court, ignoring the constitutional requirements that the selections be made by the Constitutional Council, he clearly ignored the advice of the Attorney General.

The Attorney General had advised, months ahead, that all appointments that come under the 17th Amendment must be done through the Constitutional Council. The Attorney General's advice to the government on this matter has been well publicised and is known to the whole nation. The President has neither reputed this advice nor explained why he chose not to follow it. The highest legal officer in the country has been ignored and humiliated.

Neither the rule of law nor the independence of the judiciary can survive when this type of neglect and bypassing takes place. The Attorney General is the Chief Legal Advisor to the government and ranks in precedence in the legal sphere to the Chief Judge of the Highest Appellate Court. He may communicate directly with the president, ministers and head of departments. He is the head of the Bar and has precedence over all Presidents' Counsel. The Attorney General's Department was established in 1884 and it is the boast of this department that it has long established traditions of playing a pivotal role within the legal system of Sri Lanka.

However, the President's action of completely ignoring the Attorney General has been preceded by other actions that have brought down the authority and the prestige of this important institution. We quote below from the book, Disorder in Sri Lanka, by former Supreme Court judge K.M.M.B. Kulatunga, who was also a long time member of the Attorney General's Department and who rose to the post of Acting Attorney General:

No Government will lightly disregard the opinion of the Attorney-General and advise itself wrongly. If it did so, that would lead to wrong decisions which would in turn

discredit it in the public eye. It may thus be true to say that in a particular situation the stability of the Government may itself depend on the correctness of the opinion tendered by the Attorney-General. As such he will not rest his advice on mere expediency.

(Attorney General as advisor to the government and as guardian of public interests)

The role of the Attorney General

It has been our experience that every administration wishes the judgements of the court to be in its favour. Perhaps we cannot fault politicians for this, But the Attorney General should be able to advise the Executive and explain the legal basis of most judgements which have gone against the State. When I was Acting Attorney General I was asked by the President whether the Supreme Court could review a Cabinet decision and whether a particular judgement was right. I sent him a letter defending the Supreme Court Judgement, in the context it was given. Perhaps the Attorney General is no longer free or strong enough to advise the Executive. But this will not give a licence to Executive or Members of Parliament to make insinuations against the judgements of the court or to offer advice to judges at public functions as to how they' may discharge their duty.

(Independence and dignity of the judiciary)

I have observed a gradual decline in the independence of the officers of the Attorney General's Department. They are unable to tender correct advice to the State for fear of incurring the displeasure of the executive. State officers do not appear to accept Attorney General's advice. The cause of this situation is the fear psychosis created by politicisation. Police officers are subject to political interference. They are not being trained in scientific methods of criminal investigation. Some of them are skilled in unlawfully detaining suspects and torturing them. Recently the police applied to be given the power to detain a suspect for 72 hours. To my knowledge no police officer who has been ordered by the Supreme Court to pay compensation for torture has been punished. On the other hand, a recent judgment of the Supreme Court has approved promotion of such officers.

(Functioning of the judicial system (administration of justice) in Sri Lanka)

The damage done to the Attorney General's Department by persistently ignoring the Attorney General's advice on the all-important issue of the 17th Amendment to the Constitution is irreparable. While society at large will see that the department has been thoroughly ignored by the all-powerful Executive President, the demoralisation that will follow to the members of the department will also be enormous. The unscrupulous ones will look forward to making compromises with powerful politicians to enhance their own personal situations.

However, under these circumstances, the Asian Human Rights Commission congratulates the Attorney General for offering the correct advice to the government and parliament on this matter, and hopes that the department will fight to retain its integrity as the highest legal office in the country.

I.e. The serious limitations of the judiciary in ensuring competent and speedy trial and winning the confidence of the people in the judicial process

The judiciary in Sri Lanka has been undermined from outside forces as well as from within. Under the Executive Presidency it became a norm to have the judiciary subordinated to the president. Gradually this situation led to a total considerable cooption of the judiciary to the Executive Presidency, particularly during the period of the presidency of Chandrika Kumaratunga. There have also been serious concerns expressed about the internal handling of appointments, promotions, transfers and the disciplinary process of the lower ranks of the judiciary. Two senior Supreme Court judges resigned who were part of the three-member Judicial Service Commission complaining of matters of conscience and no inquiry has yet been held into this matter. (Please see our statement SRI LANKA: Judges' resignations demand a response from the president – the full text of this statement may be found at: <http://www.ahrchk.net/statements/mainfile.php/2006statements/436/>. The AHRC has documented various aspects of this crisis on different occasions. We reproduce below some of the observations:

Some basic stages in the undermining of the judiciary

The following extract from a recently published book, *Disorder in Sri Lanka*, by a former Supreme Court judge, K.M.M.B. Kulatunga, helps us to understand the action of undermining the judiciary, the author traces a series of interferences by the executive over the years which resulted in the politicisation of the system of justice. (*Disorder in Sri Lanka*, published in Sri Lanka in August 2005).

We are also reproducing a section from an article "Constitution for Dictatorship" written by the late Colvin R. De Silva, from a collection of his essays written between 1977 and 1988. You will find these essays at:

http://www.srilankahr.net/modules.php?name=Content&pa=list_pages_categories&cid=75

From *Disorder in Sri Lanka*

Soulbury Commissioners in recommending the establishment of the Justice ministry said that this was without prejudice to the performance of the duties of the Attorney General and the Solicitor General. There was no interference of the functioning of the duties of the judges; and the Judicial Service Commission consisting of the Chief Justice and the next two most senior most judges were in charge of the appointment and the disciplinary control of Original Court Judges. However, during a period of over 50 years of independence, there has occurred a decline in the administration of justice mainly due to the progressive and total politicisation of the life of the community. Illustrations of this situation follows:

In 1947 Sir Alan Rose (Legal Secretary under the Donoughmore Constitution) was made Attorney General on the recommendation of Prime Minister D.S. Senanayake. At the same time the Attorney General was placed next to the Chief Justice. In 1948 Basnayake who was in the Attorney General's Department was appointed to the Supreme Court from where he returned to the Department as Attorney General.

In 1955 Basanyake was appointed Chief Justice on Prime Minister Sir John Kotalawala's recommendation. The same year Sir John Kotalawala overlooked T.S. Fernando Q.C. who was Solicitor General and procured the appointment of H.N.G. Fernando Legal Draftsman to the Supreme Court during the Bandaranaike Government.

In 1966 A.C.M. Ameer was appointed as Attorney General overlooking Victor Tennakoon Q.C. Solicitor General. It is said that this was a decision influenced by J.R. Jayawardena. Tennakoon was appointed to the Supreme Court, a position below the Attorney General on the precedence table. The new Government in 1970 appointed Tennakoon as Attorney General overlooking the claims of L.B.T. Premaratna Q.C. Solicitor General, Acting Attorney General.

From 1972 - 1974 several persons who were associated with pro-government political parties were appointed to the Supreme Court. Appointment of judicial officers and public officers was vested in the cabinet of ministers and its delegates. Appointments of Crown Counsels and the Solicitor General were taken over by the Secretary Justice. I was a crown Counsel in 1970, when Felix Bandaranayake Justice Minister visited the Department and directed that henceforth law officers should assist in implementing government policy. While other officers were silent. I remarked that our duty had always been to assist in implementing the policy of the law.

The new Government elected in 1978 established a Supreme Court and a Court of Appeal and reappointed some of the then judges to the Supreme Court, demoted some to the Court of Appeal. Some were retired. New judges were appointed to the Supreme Court from different sources including conservative judges. Samarakoon Q.C. was appointed Chief Justice over the most senior judge Samara Arickrema Acting Chief Justice. As Mario Gomis comments in his book "In the Public Interest" judges were generally pro executive and conservative.

At the very inception of the 1978 Constitution the late Colvin R. De Silva made the following observations:

The President's power over the judiciary is not inconsiderable although it is declared that the judicial power of the people shall be exercised by Parliament through courts and tribunals created and established, or recognized by the constitution, or created or established by other written law. The appointments to the Supreme Court, the Court of Appeal and the High Court are in his exclusive hands. So also, the creation and establishment of courts by other written law is in his control as head of Cabinet.

1.f. The weakening of the legal profession

Inability and unwillingness of lawyers to challenge legal wrongs

With the subjugation of the courts to the dictates of the executive since the 1978 Constitution, Sri Lankan lawyers have been facing tremendous angst. Over the past 28 years they have endured significant pressure, which has forced them to withdraw from undertaking their professional duties. A frame of mind has developed whereby they feel unable to discharge basic duties for their clients, particularly in disputes against the state. As well as being unable, lawyers are equally unwilling to undertake such pursuits. This has led to the absence of any will to fight, which is a key trait of the legal profession.

Today's legal profession is one from which persons have withdrawn completely or partially. Those who have withdrawn partially are active only as persons trying to make a living. There is no longer any pride or conviction of belonging to a noble profession. A researcher interviewing lawyers recently was left with the impression that lawyers are willing to adjust to anything, and will not protest any inconvenience or humiliation the courts may expose them to, for instance attending a court in which a judge will arbitrarily choose the time of sittings. The official time may be 9:30am but the judge may begin at 1:30pm. Or lawyers may accept without protest when evidence in a case is taken for 15 minutes and thereafter the case is postponed for several months. In fact, lawyers are unwilling to push for speedier hearings for fear that this may cause the case to be postponed for an even longer period. 'Wiser' lawyers may tell their client that his cause is better served by accepting any whims of the judge.

Similarly, most lawyers are unwilling to take on cases of public law where the judge may be placed in the embarrassing position of making judgments against the state. Pressing for such a judgment may antagonize the judge. Again, 'wiser' lawyers will therefore advise against such assertion; it is seen as futile and even counterproductive.

The prevailing feeling among the legal profession today is that to be too serious over one's obligations to clients or the public is only a trait of someone who does not understand 'reality'. The accepted principles by which most lawyers conduct their duties are cynicism, accepting the various whims of judges and an avoidance of serious social or political issues. For this reason, if lawyers are asked to represent a client challenging the president's recent appointments to the Court of Appeal and the Supreme Court on the grounds of unconstitutionality, the common response would be negative. Lawyers are concerned that they may appear before the same judges on other matters. Another response made by lawyers is that whatever applications are filed, and whatever their validity, the ultimate outcome will be negative for extraneous reasons. Other lawyers respond that the cases will not be resolved speedily and the issues themselves may cease to be relevant by the time a judgment is given.

The attitude of the legal profession has a direct impact on the justice system. At present the courts are unable to maintain the rule of law, and lawyers are not contributing to the revival of confidence in the courts. In fact, there is an overwhelming consensus that neglected courts may better protect the interests of powerful individuals in the state and society. According to a study conducted by the Ministry of Justice in 2004 on court delays, a primary cause of the delays is the non-compliance of state officers, particularly the police, with their obligation to attend court.

President Rajapakse's authoritarian appointments to the senior judiciary, in violation of the 17th Amendment, will reinforce the paralysis of the legal profession. By accepting the state's blatant attempts to dominate the court process, lawyers are demonstrating their extraordinary capacity to adjust and adapt, as well as their lack of professional pride and integrity. In fact, many lawyers may take advantage of the situation for unscrupulous gains, which under normal circumstances would result in disciplinary action. Under the present circumstances however, there can be no such thing as disciplinary action according to the rule of law. This is therefore a time when the unscrupulous can thrive.

The case of Elmore Marsh Perera who is facing the threat of a Rule being issued against him thereby removing him from the list of lawyers, is an illustration of the problems faced by lawyers in Sri Lanka. A statement issued by the AHRC on this matter provides information on this case

SRI LANKA: Show cause notice on lawyer Elmo Perera has no basis in law and is an attempt to silence critical voices among the legal fraternity pursuing public interest issues

A senior lawyer who has appeared in many issues of public interest in recent years is now facing the threat of being removed from the roll as a lawyer due to a fundamental rights application he filed raising questions regarding the constitutionality of some issues relating to the judiciary that he pleaded adversely affects his capacity to function as required by his profession as a lawyer.

Elmore Marsh Perera (73 years of age) was a senior civil servant holding the posts of Surveyor General of Sri Lanka and Additional Director, Training & Evaluation of the Civil Service. Later he became a lawyer and took a great interest in public interest issues and in safeguarding the independence of the judiciary and the integrity of the legal profession. The action that has been initiated against Mr. Perera has shocked lawyers as well as the public. A people's forum has been formed by a number of persons to ensure justice for Mr. Perera as well as to defend the independence of the judiciary and the rights of the people. This forum, in a statement says "he is a lawyer who did not charge anything for appearing on legal issues on justice. Such an honourable person is now facing a threat of destruction of his dedicated practice."

The story about this case is as follows: Mr. Perera filed a fundamental rights application bearing number SCFR 108/2006 stating that his fundamental right to practice as a lawyer has been infringed for the following reasons:

- a. Two members of the Judicial Service Commission (JSC) have resigned quoting reasons of conscience and no inquiry has been initiated to find the reasons for these resignations.
- b. In the past there has been precedence that when the Chief Justice of the Supreme Court is out of the country the next senior most judge of the court is appointed as

- the acting Chief Justice. However, when recently the Chief Justice was out of the country a far more junior judge of the Supreme Court was appointed as the acting Chief Justice.
- c. Two judges have been acting as members of the JSC as if appointed as members of the Commission while in fact no appointments as required by the Constitution have been made.

This petition has been filed on the 9th March by Mr. Perera citing himself as the petitioner. It came up on 21st March for supporting in open court before three judges of the Supreme Court. One of the judges was among the two people who were functioning as members of the JSC although not constitutionally appointed for that post.

Mr. Perera objected to this judge being a part of the bench in a case where he was an interested party to the matters to be adjudicated. However, when this objection was taken the presiding judge replied that the particular judge that was referred to was present on the bench only as a passive member and that it would be the other two judges who would decide the case. At this stage the presiding judge overruled the objection. Mr. Perera made a further objection to the presiding judge being part of the panel hearing this case and this objection was also overruled. Thirdly, he made another objection to a two judge bench hearing this case as the case raised matters of grave constitutional importance. This objection was accepted by the court and the case was adjourned to the 31st March for fixing the case before a larger bench.

Subsequently Mr. Perera came to know of two newspaper reports which mentioned comments of the presiding judge to the effect that he, as the lawyer, had made remarks in court that were rude and that this demonstrated the extent to which the courts in the country has degenerated. As he was totally unaware of any such remark by the judge he believed that the journalists misinformed themselves. On the next date (31st March) of the case he brought to the notice of presiding judge the remarks that were attributed to the court and printed in the said newspapers. At this stage the presiding judge confirmed that such remarks had been made and in fact written in the case record.

Subsequently Mr. Perera heard that a rule had been issued by the Supreme Court in which he was asked to show cause as to why he should not be removed from the roll of being an Attorney-at-Law in Sri Lanka. Although he had learned about this issuing of this rule from some sources he did not receive any official notice of it or the date on which this matter is to be called before the Supreme Court. Fearing that the rule may be issued before he received notice he went to court on his own on the 2nd October and came forward when the case was called. The court was presided over by the Chief Justice Sarath N. Silva. Mr. Perera informed the court that he had not received any notice about the matter and that he was unaware of the content of the matter before court. At this stage the Chief Justice handed over the case docket bearing number SC Rule 1/2006 and asked Mr. Perera to read it.

Upon reading from the docket Mr. Perera found that there was no complainant mentioned in the Rule. He further discovered that the grounds on which he is asked to show cause were as follows:

WHEREAS you filed S.C. Application No.108/2006 (FIR) describing yourself as a practicing Attorney-at-Law of this Court and supported the application for Leave to Proceed on 31.03.2006

AND WHEREAS in your submission you:

1. Continued to read each and every averment in the Petition, despite a specific given that the Bench was in possession of the contents of the Petition and that you should not unduly take the time of Court by reading each and every paragraph but that you should make your submissions relating to the specific matters of law and fact, relevant to the in issue. Despite the said direction you in disobedience and defiance of said direction continued to read the said paragraphs in the Petition in disobedience of the specific orders of Court;
2. That in the course of the said proceedings when the Bench required you to address Court on certain issues for the purpose of clarification of questions of law that arose for consideration, you rudely and insolently refused to answer any questions despite repeated requests and you contemptuously told Their Lordships that they could look it up themselves, if they so desired.
3. That you used intemperate language and made gesticulations to bring the proceedings of Court into ridicule and contempt. That thereby, you engaged in conduct prejudicial to the administration of justice; failed to assist in the proper administration of justice and/or permitted your personal feelings to influence your conduct before Court in breach of Rules 50 and 54 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules 1988 amounting to misconduct and malpractice as an Attorney-at-Law.

On the matters mentioned above he is asked to show cause as to why action should not be taken against him under section 42 (2) of the Judicature Act (Act No. 2 of 1978) which reads as follows:

Every person admitted and enrolled as an Attorney-at-Law who shall be guilty of any deceit, malpractice, crime or offense may be suspended from practice or removed from office by any three judges of the Supreme Court sitting together.

The Asian Human Rights Commission finds it completely incomprehensible as to why a show cause notice for a rule should be issued on the grounds mentioned above against a lawyer. Clearly the matters mentioned as the grounds on which Mr. Perera is asked to show cause do not fall within section 42 (2) of the Judicature Act. Trying to extend this section of the Act in such a frivolous and elastic manner will not only have a chilling effect on the legal profession but also make it impossible for the rational practice of law. None of the matters mentioned in this case fall within the meaning of the definitions of deceit, malpractice or crime and offense.

A judge/lawyer relationship is not one of the feudal master/servant relationships. It is one in which a lawyer participates to represent his clients on the basis of rights and privileges which are well established globally and which have remained part of the tradition of the relationship of bar and the bench in Sri Lanka. A lawyer is not expected to blindly obey directions or orders given by a judge while he is making his representations to court on behalf of clients. The lawyer is at liberty to reply to the court of his disagreements on the courts' questions in dealing with his submissions. He cannot perform his function as a professional without the liberty to make his presentation in the manner he chooses best so long as he performs such duties within the usual norms of rational discourse. The question of disobedience as raised as the very first ground does not stand to reason or the best practices of the tradition of the profession. Lawyers do not owe obedience to court but only mutual respect on the basis of recognition of the dignity of the bar as well as the bench.

The second ground is equally irrational as the lawyer may point to relevant sections of a petition if the questions raised by the court are in fact answered in those sections of the petition. The answering of questions by a lawyer does not follow like a question and answer session in a contest or as it happens in cross examination. It is a lawyer's right to choose the manner in which he answers the questions from court. To treat a lawyer in the manner some feudal teachers treat primary school students is against the very nature of a learned profession where judges are expected to conduct the proceedings in higher traditions of rational discourse.

The third ground on which the show-cause notice is given is completely vague and will not constitute a proper charge even in a criminal case or a labour dispute. The lawyer is not shown as to what language amounted to contempt of court and what the gesticulations constituted misconduct and malpractice were. It is a basic principle that anyone who is charged on any matter should be given the details which in fact constitute what amounted to misconduct and malpractice. The proceedings of the 22nd March referred to above do not also show any detailing of facts on which this third allegation is based.

The Asian Human Rights Commission further points out that Supreme Court bench presided over by Sarath N. Silva the Chief Justice sentenced Tony Fernando, a lay litigant, for one year's rigorous imprisonment for talking loudly in answering to the court. The United Nations Human Rights Committee held this sentence to be a violation of the International Covenant on Civil and Political Rights (Communication No. 1189/2003, please see http://www.alrc.net/doc/mainfile.php/un_cases/351/) and further stated that Sri Lanka should take action to prevent a future happening of similar nature. Now, the attack on the right of representation in fair and rational manner has been extended to a rule against a well known lawyer.

Many human rights groups have constantly pointed out the atmosphere of intimidation that has begun to prevail in the Supreme Court in recent years. Many statements from human rights organisations including the AHRC have pointed to the refusal of senior

lawyers to accept briefs to appear before the Supreme Court due to such intimidation particularly by the Chief Justice.

Mr. Elmo Perera kept on appearing before this court despite of the many adverse judgments he had received on his applications which were most of the time matters relating to public interest. The matters raised in his fundamental rights application regarding the JSC were matters of constitutional importance and issues that the nation is very much interested in. Removing him from the roll of lawyers would prevent him from pursuing this fundamental rights application and that case from coming up before a larger bench can be prevented in that manner.

In the defense of human rights courts are the last resort in a democracy. However, in Sri Lanka this last resort has been lost to a very great degree in recent years. The deliberate attempt to close the doors of justice is taking place in the country when in all quarters of the state corruption is increasing in an unprecedented manner. Stilling and freezing the voices of people who air public interests including human rights groups and lawyers has proceeded to a great degree in the country.

The transformation of court of justice into courts of vengeance is frightening. We call upon everyone to defend the rights of this lawyer and to treat this as a matter of the highest social importance. If this voice is also stilled what may happen is reflected in the well known words of Pastor Martin Niemoller, "When the Nazis came for the communists, I remained silent; I was not a communist. When they locked up the social democrats, I remained silent; I was not a social democrat. When they came for the trade unionists, I did not speak out; I was not a trade unionist. When they came for me, there was no one left to speak out."

The latest situation of this case is that it was called before the Supreme Court on the 20th November. According to newspaper reports the Chief Justice was quoted as saying that the Supreme Court is of the view that a rule should be issued against the lawyer and that one member of the Supreme Court thinks that the lawyer's conduct amounts to contempt of court. It should be noted that the matter is only at the inquiry stage and such a statement would amount to prejudging the issue. President's Counsel, H.L. de Silva, appearing for the respondent raised a preliminary objection that the ruling is not in compliance with the Supreme Court Rules 79(5) which contemplates that a list of witnesses and documents shall accompany the said ruling. According to the newspaper report the Chief Justice overruled this objection on the basis that since the matter before court is something that has happened within the premises of the court this requirement on the basis of the Supreme Court rules will not apply.

The court also wanted to issue an interim order suspending the lawyer from practicing until the end of the inquiry. The president's counsel for the lawyer objected to it on the basis that there is no legal provision under which the court can make such an order. However, the Chief Justice overruled this objection also and suspended the lawyer from practicing law.

1.g. The fear psychosis in the media ensuring censorship by direct and indirect means

The media in Sri Lanka functions under heavy pressure. There have been many journalists killed during this year as well as in recent times. There have also been instances where even when senior editors were dismissed because of articles they have written in their papers. It is alleged that one editor was dismissed for getting the date of President Rajapakse's birthday wrong.

The practice of the intimidation of journalists has gone on for several decades now and in none of the cases of assassination, or other forms of intimidation, has there been any successful prosecution of the offenders. As an initial reaction to public criticism after such killings inquiries are promised, but at the end nothing ever happens. A recent book by a veteran journalist in the country, Victor Ivan, entitled 'Choura Reagina' (Rogue Queen) lists a series of cases where journalists and other activists have been assassinated and his book also exposes plans relating to the assassination of two editors.

In the government media there is a policy line of supporting the 'war' which means that any matters relating to criticism of the military or the police is actively discouraged.

There are particularly greater problems in reporting the matters relating to the north and the east. Access for journalists is limited.

There were also allegations against the LTTE and other armed military groups of being engaged in assassinations and harassment of journalists who appeared to be opposing them.

2. The present situation since the virtual breakdown of the ceasefire agreement.

In its 2005 report the AHRC made several observations regarding Sri Lanka and the situation at the end of 2006 has degenerated beyond the dismal situation that existed in the previous year. Two factors have contributed to the worsening of the situation.

They are:

- a. The faster dismantling of the institutions of democracy and rule of law by gross abuse of power and open disregard for constitutional safeguards;
- b. The virtual breakdown of the ceasefire agreement despite of the formal agreement remaining in force.

The features of the present situation are as follows:

- i. That there is intense violence perpetrated by the Sri Lankan military, the LTTE and the other armed groups. The violence in this regard is subjected to

no restrictions of any sort and many acts that have happened during this period may constitute crimes against humanity and gross abuses of human rights in terms of the definitions of such crimes accepted in international law. The AHRC has pointed out in its earlier statements that all sides to the conflict believe only in military victory against its opponents, and the search for negotiated settlement has been deliberately undermined by each, despite of rhetorical assertions of the pursuit of a settlement by peaceful means. The numbers of those killed in the recent violence has been estimated by some at over three thousand. There is no sign so far, that such killings may be reduced or brought to an end in the immediate future. The demands by the Co-Chairs, the Sri Lanka Monitoring Mission, local civil society organisations and the international community have not yet received an adequate and satisfactory response from the government, the LTTE or the other armed groups.

- ii. Disappearances and abductions have resurfaced in all parts of the country including the capital Colombo, itself. The Human Rights Commission of Sri Lanka (HRCSL) in the middle of 2006 gave the number of the disappeared from the Jaffna peninsular since December last year as 419. These abductions and disappearances are attributed to the military, the LTTE and other militant Tamil groups. Since this number was published there have been reported cases of further abductions and disappearances. The abductions in Colombo have increased and the alleged reason for several of these disappearances is to obtain ransom. For the first time in the protracted internal conflict in Sri Lanka, in the south as well as in the north and east, this is the first time that the rich and the affluent in Colombo have felt the threat of such abductions in their own midst. The situation regarding abductions and disappearances has been characterised by several observers as a situation that has gone out of control. As demonstration of the manner in which abductions take place we reproduce at the end of this section one of the statements on this issue and a further comment by a long-time activist, Jayanthi Dandeniya of the Families of the Disappeared.
- iii. There has been rigorous local and international pressure to bring this situation under control. However, the government has not taken a single effective step to achieve that end. The government first appointed a one-man commission to look into the matter and later appointed an eight-member commission to inquire into abductions and disappearances. The government announced that this commission will have a component of international observers. However, so far Amnesty International, which was invited to nominate eminent persons to the observer's team, has informed the government of their decision not to participate. The reasoning of AI on this matter can be found at the end of this report. The demand by many local and international groups supported by several authoritative sources within the UN system of human rights has been for international monitoring of the human rights in Sri Lanka and the familiar model that has been suggested is the one in Nepal which was developed in the aftermath of King Gyenendra's in February 2005. However, the government has resisted this move strongly. Under these circumstances no effective measures have yet been envisaged to deal with the present situation.

SRI LANKA: White vans without number plates; the symbol of disappearances reappear

FOR IMMEDIATE RELEASE

AS-213-2006

September 13, 2006

A Statement by the Asian Human Rights Commission

SRI LANKA: White vans without number plates; the symbol of disappearances reappear

In Sri Lanka a white van without a number plate is a symbol of terror and the disappearances that occurred in all parts of the country. Commissions on Disappearances in the South during the last few years of the 1980s have documented at some length how armed men, travelling in white vans without number plates abducted thousands of people who were never seen again. These reports are available at www.disappearances.org.

Now such vans have reappeared and do so frequently in the Jaffna peninsular. A report from one family states "the fear of the white van in the day and specially in the night is killing everyone [with fear] in the peninsular."

What the men who come in these vans do is the same as what happened in the South (in the time of terror). A story from one of the families in the Jaffna peninsular gives a first hand account of what happens when armed men travelling in these vans appear.

On September 11, 2006 early in the morning about 12:15 am 15 men fully equipped with heavy weapons jumped into the premises of a house. The owners had two fierce dogs and they were barking loudly. In a few minutes the dogs became silent. They may have been hit by heavy weapons or sprayed with some chemical to become unconscious. There were a number of people at home all of whom were sleeping. Suddenly the inmates were woken by the abnormal barking of the dogs. They thought thieves were entering the house. One adult said remove the wedding rings and all the gold jewellery, which everyone did. These were thrown under the bed. These days Jaffna peninsula is ravaged by thieves and killing contractors at night who abduct adults and students and then kill them.

The armed men broke open the main door of the house and forcefully entered. They wore black trousers and black shirts. Some of them wore shorts and T-shirts. The inmates shouted at high pitch in one tone "thieves." All of them who were in the rooms came out and stood along the corridor. As the inmates saw the men with heavy weapons they immediately told them to take away all they had and leave them unharmed. The gunmen had a very powerful torch with them. The family members had only two kerosene lamps. During this time the curfew was in effect. Since August 12, 2006 up to September 2 there was no electricity at night in the peninsular. Thereafter electricity was restored and was available until 11:00pm. The night after 11:00pm is when most of such incidents, as in this case, happen.

The inmates did not suspect that the armed men came to arrest anybody until one 30 year-old man was pulled by his shirt. The family cried that he was an innocent and responsible family man.

The inmates were unable to identify the faces of the armed men due to the powerful torch flashed in their faces. With the help of their torch the armed men thoroughly checked the house while the family members were standing along the corridor. The men came out of the rooms and threatened them at gun point. The gunmen told them that if they shout they would wipe them all out. The armed men began to question the adults. They questioned both the men and the women. Then again they started to inquire of the man his name, age, occupation, etc. Then they again questioned him. The men spoke irregular and unfamiliar Tamil but fluent Sinhala. All of a sudden they pulled him by the shirt he was wearing.

His mother hugged him strongly. She asked them not to take her son. She was pulling her son back against the men who were dragging him by his shirt. The armed men hit the mother on her head with a weapon. She received a head injury and was bleeding. She fainted immediately. Another family member was also hit on her chest by a gun. In fact several family members suffered injuries in trying to save the young man. The men hit him on his chest with the gun and he fell down. Then they dragged him by his leg. His shoulders and the back of the head were crashing against the rough ground. They dragged him nearly 50 meters by his leg. The men had parked their vehicles 45 meters away from the main gate along the roadside. They broke the pad lock at the gate and dragged him towards the vehicle. The family members rushed to the main gate. The armed men threatened the inmates at gun point. The gunmen thrust a gun into the young man's face and continued to threaten them that if they followed them they would kill him. The men had come in a van and on two motor bikes.

The abducted person has not been seen or heard of ever since although the family members have made complaints to the police and all other authorities. Will he become one more statistic to be added to the hundreds of disappearances that have been reported in the recent months from the North and the East and also a few in Colombo (according to the Human Rights Commission of Sri Lanka about 30 persons)? Also will he be an addition to the tens of thousands of people who have disappeared in Sri Lanka in the recent decades?

The Human Rights Commission of Sri Lanka (HRCSL) gives the number of the disappeared from the Jaffna peninsular since December last year as 419. Not all these disappearances are attributed to "armed men coming in white vans without number plates", which usually means the military. The LTTE and other militant Tamil groups alleged to be working with the military have also been accused of such abductions which end up as disappearances. International human rights groups have accused the LTTE and other militant groups also on that score.

However, in cases such as the one quoted above, the suspicion of the family members is that such occurrences are done either directly by the military or with its approval. Such

complicity will not come as a surprise to anyone who is aware of the extent of the disappearances that have taken place in Sri Lanka in recent decades. The reports of the Commissions appointed to investigate these earlier disappearances place the responsibility squarely on the shoulders of the state agencies.

In Sri Lanka causing of forced disappearances has been treated by the state as a legitimate means by which to deal with 'terrorism'. The failure to investigate and to take appropriate legal action is also evidence of the state's involvement in such matters. The fact that the opponents of the government at various times, like the LTTE and the JVP, have taken to violence is used a legitimate reason for the state carrying out forced disappearances and similar modes of the use of extreme violence; that the poison must be killed with poison and that the violence of terrorism must be dealt with by equal or more ferocious violence is an unquestioned part of the state ideology, regardless of which government is in power. A former Deputy Minister of Defence, Ranjan Wijeratne, was known in the latter part of the 80s as a leader who openly advocated and carried out this policy. The disappearances during that period officially amount to about 30,000 while the other non-state sources have given much larger numbers. It is today not challenged that except for a handful of cases, the victims of these disappearances were not hard core insurgents. This of course does not mean that even hard core insurgents can be killed after securing arrest. The reports of the Commissions of Disappearances mentioned above have demonstrated that most cases of disappearances have happened after securing arrest which often takes the form of abduction.

For Ranjan Wijeratne and others (political leaders as well as some military and police officers) disappearances were the most practical method of dealing with insurgency. Disappearances help to do away with the necessity for arrest and detention which can create many legal problems, the keeping of political prisoners, which is again a complicated problem, having trials which requires security arrangements and similar problems which in turn create practical problems for state agents. Disappearances also help to erase all evidence as secret abductions often end up in the secret disposal of bodies. If in the use of this easy method some mistakes are made in the arrest of innocent persons, even if they far outnumber any "culprits", that is unavoidable and Ranjan Wijeratne called such acts mere excesses. Talking to parliament he said that these things cannot be done through legal means as that will take too much time. This same ideological position has never been clearly repudiated by any of the Sri Lankan governments.

Within Sri Lanka at the moment there is no government authority with the capacity to efficiently investigate the disappearances like the one in the case mentioned above. The HRCSL may record some facts of such disappearances but it does not have the capacity to investigate them in any manner that could be called a credible, criminal investigation. The assurance of some state authorities to the effect that if soldiers are found to be guilty of such acts they would be punished is a mere rhetorical gesture in the face of heavy criticism from local and international sources. There is no state machinery to give credibility to such assurances.

The Asian Human Rights Commission has been pointing out for several years now the deep impasse in the state's criminal justice system which makes it impossible for any gross abuse of human rights to be credibly investigated or prosecuted. There have been no attempts to cure this situation. Instead with time this situation has degenerated even further. Now after the virtual collapse of the cease fire agreement the country is entering into a further period of terror in the name of counterinsurgency. The local and international agencies including the AHRC has called on the United Nations to ensure a strong human rights presence, as in the case of Nepal during the last year to ensure that this situation is brought to an end and that the state will be willing to respect its duty to protect the lives of its citizens. We once again reiterate this basic demand which has been repeated by many.

Posted on 2006-09-13

SRI LANKA: The launching of a signature campaign by victims of past disappearances to demand authentic investigations and against sham commissions

FOR IMMEDIATE RELEASE

AS-278-2006
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A Statement by the Asian Human Rights Commission

SRI LANKA: The launching of a signature campaign by victims of past disappearances to demand authentic investigations and against sham commissions

Ms. Jayanthi Dandeniya, the coordinator of Families of the Disappeared based at Raddoluwa, Seduwa, has announced the launching of a signature campaign by the victims of past disappearances to demand authentic investigations into the present spate of disappearances and to have them stopped.

"Our experience regarding the disappearances in the late eighties clearly demonstrates that fact finding commissions into abductions and disappearances are useless and that without serious criminal investigations within the framework of the law nothing positive will come out of such commissions," said Ms. Dandeniya who lost her fiancé and two of her brothers in the disappearances which took place in the late 1980s that claimed the lives of about 30,000 people. "We tried hard to get justice. We went before those fact finding commissions. Despite of all that no justice of any sort happened," she said.

Ms. Dandeniya spoke about the annual event of the gathering of the families of the disappeared at a monument which exhibits the pictures of about five hundred disappeared persons and said, "this year we had this commemoration on the 27th October as usual. When we discussed with the parents and others who had lost their loved ones in those

days and told them that about 686 disappearances have taken place in recent months in Sri Lanka these family members were shocked and could not believe it. When we told them about the white vans which come without number plates and take people from their families that reminded them of what happened to their own children and how they were taken away. And then they said, 'we thought it would never happen again.'"

She explained that many parents of past disappearances agree that not enough was done to get justice for those cases and that it is because of that that these disappearances are recurring now.

She emphatically states, "You cannot get justice from fact finding commissions. You must have thorough criminal investigations through persons competent in conducting such investigations and who will have the independence to conduct them."

Ms. Dandeniya further said, "This is just not fair. The victims and the families of past disappearances were cheated. Cheated by fact finding commissions; the government did not provide proper investigations and then the Attorney General's Department says we cannot prosecute because there is no evidence. This is what happened to the case of my fiancé who was a young trade unionist. We worked hard and for a long time to get the case investigated and prosecuted. We even gave the names of some persons whom we thought were behind the disappearance. We had strong reason to believe that on the instructions of a manager in a company one senior police officer at the time got my fiancé killed. But there was no result, no justice."

Ms. Dandeniya urges everybody to take a more active part to avoid the same type of mistakes being made this time, saying, "We did not get justice but at least this time let these people who are facing the same problem get justice."

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This statement represents the views of the AHRC and the following organisations based in Sri Lanka: People against Torture - Ekala, Janasansadaya - Panadura, The Home for Torture Victims - Kandy, SETIC - Kandy, Right to Life - Negombo and the Rule of Law Centre - Colombo.

Posted on 2006-11-08

3. Torture

3.a. Torture - custodial deaths

Custodial deaths in Sri Lanka have increased dramatically during 2006. There are two types of extrajudicial killings taking place, mainly through the police and these are extrajudicial killings after the arrest of criminals. In this first category there are reports of several deaths, almost every week in the newspapers, with a short announcement that a person who had been arrested police custody and, as a result of the ensuing conflict he had been killed. The AHRC has reported a policy line that has been growing gradually in

Sri Lanka where the police are in some way encouraged to get rid of alleged criminals by the use of such methods. The former Inspector General of Police defended such a position, even in radio interviews, and described an alleged criminal who had a previous conviction and continued to engage in further crimes. Such discourse on the permissible limits on extrajudicial killings ridicules the entire discourse of the rule of law and blurs all the lines around which law enforcement officers are permitted to carry out their functions.

In several instances magistrates after initial inquests make orders stating that several such deaths amount to a justifiable homicide. This is clearly outside the powers of the magistrates when conducting inquests.

The following sections of the Criminal Procedure Code of Sri Lanka are relevant to the issue of the conduct of inquests by magistrates.

Sec.369 - An inquest of death shall not be made except under the provisions of the Code; Sec 370 (1) - Every inquirer on receiving information that a person; Sec.370 (1) (c) has died suddenly or from a cause which is not known, shall proceed to the place where the body of such deceased person is and there shall make an inquiry and draw up a report of the apparent cause of death; Sec 370 (3) - If the report (which is forwarded to the magistrate) discloses a reasonable suspicion that a crime has been committed the magistrate shall take the proceedings under ch. XIV and XV of the code.

Deaths in custody of police are dealt separately in Sec. 371 of the code: Sec 371 – (1) When a person dies in the custody of the police or in a mental or leprosy hospital or prison Forthwith give information to the magistrate..... Forthwith hold an inquiry into the cause of death. (2) For the purpose of an inquiry under this section a magistrate shall have all the powers which he would have in holding an inquiry into an offence.

Section 9(b) (iii) deals with the Magistrate's jurisdiction to inquire into cases of death by violence, accident or sudden; sections 114 and 115 of the Code deals with situations where evidence against a suspect is deficient and well founded. Under section 114 if evidence is insufficient or no reasonable ground to justify suspicions, the inquirer (or the magistrate) may release the suspect on bail on the conditions the person may appear before the magistrate.

None of these provisions authorize the magistrate to discharge a suspect at the stage of an inquest.

If the police claim, as has happened in many cases, that they have taken a suspect to a particular spot where they had been told that some illegal arms are being stored and that when being taken to the location the suspect attempted to take up arms and tried to attack the police, and that as a result the police shot him dead, the duty of the Magistrate is to record all these statements and to forward his report so that further inquiries can be made by the police and the prosecuting authorities on this issue. The police version on such occasions can be verified by forensic evidence and the like. In many instances when a

further inquiry has been requested the matter is usually referred to a Special Investigating Unit so the version of the police themselves can be seriously scrutinised. Once all this is done in the duty of the Attorney General to decide as to whether there is sufficient evidence to prosecute. It is at that stage the validity of self defense put forward by the accused will be examined on the basis of available evidence by the High Court judge who will conduct the trial. The High Court judge's decision on this matter may even be challenged by way of appeals. All such legal process is subverted when a Magistrate makes a finding of justifiable homicide based on the version given by the police at the very initial stage. All such decisions should be reviewed by the Attorney General and requests must be made for further enquiries to be carried out into such incidents.



The second category is death after arrest of those in police custody, mostly due to torture. The pattern of cases clearly shows the breakdown of supervision at the time of arrest during detention and in some instances even in prison custody. The case of Lalantha Fernando (shown at left) was an instance where it is alleged that a young nephew of a person that a police officer had a personal conflict with was arrested in an attempt where the intention was to arrest the uncle. Within hours of the arrest

Lalantha Fernando was brought to hospital by the police where he succumbed to his injuries.

Mudalige Sunil Fermin Perera was arrested on mistaken information that he had made a hoax telephone call and was ordered to be remanded. In the remand prison he and his friend were severely assaulted by the prison guards. A short time later Mr. Perera succumbed to his injuries. The police admitted that the arrest was not well founded. In both of the above cases despite of severe public outrage and international interventions requesting inquiries, no such inquiries have taken place.

The following are cases taken up by the AHRC with the Sri Lankan government on deaths in police custody including one case which occurred in prison custody.

3.a.1. Name of the victim: Nallawarige Sandasirilal Fernando, 36 years old, a mason by occupation, married with three children; two sons aged 17 and 14 and a daughter aged 11; all studying at the Baudhaloka Maha Vidiyalaya, Wekaeda, Panadura, Wife currently employed abroad

Name of perpetrator: A police officer attached to Panadura Police Station (can be identified by the victim's family)

Date of incident: 27 March 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1037/>

3.a.2. Name of the victim: Don Wijerathna Munasinghe, 49 years old
Address of the victim: No. 05, Pasal Mawatha, Niwanthidiya, Piliyandala, Colombo, Sri Lanka
Alleged perpetrators: Police officers attached to the Maharagama Police Station
Date of incident: 10-11 April 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1052/>

3.a.3. Name of the victim: K.A. Ganga Kalpani,
Address of the victim: Galwandguwa
Alleged perpetrators: Officers of the Embilipitiya police,
Date of incident: 30 April 2004

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1071/>

3.a.4. Name of the victim: Helwala Langachcharige Susantha Kulatunga, 30, single father of four (wife deceased), resident of RajaMahavihara, Athgalawatte, Atakalampanna, Madampe, Sri Lanka
Alleged perpetrators: Police personnel attached to the Rakwana Police Station
Place of incident: Rakwana Police Station
Date of incident: 20 April 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1091/>

3.a.5. Name of the victim: Lelwala Gamage Nandiraja (53), of Ambana, Kahaduwa in Elpitiya in Southern Province in the District of Galle
Date and place of arrest: 29 May 2005 at 8:30p.m in Ambana, Kahaduwa in Elpitiya
Police who took victim into custody: Weliveriya Police Station, about 30 km from Colombo in the District of Gampaha, Western Province
Alleged perpetrators during the arrest: Unnamed policemen from the Weliveriya Police Station and Pitigala Police Station. Two of them wore police uniforms while the others wore civilian clothes

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1111/>

3.a.6. Name of the victim: Kosma Sumanasiri, 41 years old, unmarried and a casual labourer by occupation
Address of the victim: 19, Panvila, Mavadavila, Ratgama, Galle division, Southern Range, Sri Lanka
Complainant: K Leelaseeli and Vitharana Varalieshamy (the victim's elder sister and mother).

Alleged perpetrators: Police personnel attached to the Ratgama Police Station
Date of incident: Arrested on 20 May 2005, allegedly tortured by the Ratgama police while in custody and died on 27 May 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1147/>

3.a.7. Name of the victim: Hettiarachchige Abeysiri, 52 years old, married with one child

Address of the victim: 506/1 Delgahawatte Wanawasala, Kelaniya

Period of arbitrary detention and torture: 13-14 July 2005

Case status: The victim died on 14 July 2005 after being brutally tortured by the Peliyagoda police

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1173/>

3.a.8. Name of the victim: R. Damikka Dissanayake of No. 294, Mahara Prison Road, Ragama

Name of the Complainant: Kara Dissanayake (father of victim)

Alleged perpetrators: Police officers attached to the Kadawatha Police Station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1177/>

3.a.9. Name of the victim: A.D. Lalantha Fernando (23), living in Meegaswela, Koswatte

Date and place of incident: 10 October 2005 in Meegaswela, Koswatte

Alleged perpetrators: Sub Inspector Nilanga Perera and other policemen attached to the Koswatte police station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2005/1316/>

3.a.10. Name of victims/deceased: Ariyadasa (49) and A.H. Sudath Udaya Kumara (29) of Palana Weligama.

Name of complainant: Ms. Kamala Mallika (widow of AH Ariyadasa and mother of Sudath)

Name of alleged perpetrators: Policemen attached to the Weligama police station.

Dates of incident: Ariyadasa was arrested, detained and died in October 1999. His son Sudath was arrested on 24 October 2002 and died on 7 December 2002.

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1632/>

3.a.11. Name of the Victims: 1. **Mudalige Sunil Fermin Perera** of 55 1/A Pitakotte Kotte, aged 55, a father of three sons, the employee of Oxygen Company and made a living providing Helium balloons (killed). 2. Linton Gamini Munaweera of Makola, aged about 35, a father of two children (injured)

Alleged Perpetrators: Some prison guards of Kuruwita prison for torture and some officers of the Ratnapura police for illegal arrest

Date of incident: Illegally arrested on 28 June 2006 and allegedly tortured between June 28 and July 3.

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1832/>

3.a.12. Name of deceased: Sinnappan Abraham Kiragory, 41 years; married with 3 children aged 12, 11 and 7. Wife: V Pushpaleela. Address: Hemingford Estate, Parakaduwa (Now at Weheragoda, Wellampitiya); Occupation of deceased: trader in clothes (pavement hawker) in Colombo at the time of his death.

Name of perpetrators: the OIC and 10 policemen attached to the Eheliyagoda police station including policemen Perera, Abeygunawardena and Nishanka.

Date of incident: 13 to 15 August 2006 and continuing.

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1959/>

3.b. Torture – extreme cases



In delivering the judgement in Gerard Perera's (shown at left) case the Supreme Court observed that credible complaints against torture are increasing and there is no sign of any change for the better. Now at the end of 2006 it can once again be stated that torture at police stations in Sri Lanka is continuing as usual.

Both the number and the extent of injuries caused to persons remain a matter of grave concern. Meanwhile the usual remedies proposed against torture such as filing of fundamental rights applications, institution of prosecution under the CAT Act, No. 22 of 1994 and complaints to the Human Rights Commission of Sri Lanka have failed to produce any form of effective intervention, either to stop the trend of torture or to bring any relief to the victims.



In yet another case Rohitha Upali Liyanage (shown at left) who with his friend, Sarath Bandara Ekanayake, was so severely beaten by police officers that his right leg was fractured, was more inhumanly treated when he was chained to his hospital bed.

Fundamental rights before the Supreme Court

Fundamental rights cases before the Supreme Court have suffered greatly this year due to the following factors. Many of the lawyers, who in previous years have undertaken fundamental rights cases on behalf of victims, and who have acquired the knowledge and the skills needed in the pursuit of such applications, are now refusing to undertake such cases as they feel that the increase of harassment in their pursuit has reached intolerable levels.

Being exposed to heavy levels of intimidation, many of these lawyers feel that it is both unfair to the victims and to themselves, to undertake such cases, which in all likelihood will lead to unpleasant experiences and also are unlikely to produce a satisfactory result, despite of the justifiability and the gravity of the complaint. They manifest a 'once bitten, twice shy' approach with regard to the pursuit of such applications.

The number of complaints also is declining despite of the fact that the political climate and the level of violence in the country have taken a turn for the worse. Under the present circumstances the number of fundamental rights applications should in fact have increased. In 2004 the total number of fundamental rights filed was 626; in 2005 it was 517, thus 109 less than the previous year. By the end of November 2006 the number of applications filed is 342, 175 less than in 2005 and 284 less than in 2004.

The rejection level of the applications at the time of granting leave has also increased in a remarkable manner. The hurdles to overcome in getting leave by way of extra requirements have increased a great deal. In cases where leave to appeal is refused no reasons are generally given. Many lawyers for the victims complain that they are compelled to come to some form of settlement during the court hearings. Even in instances where the lawyers do not expressly agree they sometimes find recorded in the court file that the applicant's lawyer seeks leave to withdraw the applications.

While the number of successful cases is becoming fewer, even in successful cases the extent of compensation has been reduced to risible sums even in despite of heavy



physical or mental injuries suffered by the petitioners. In 2003 and 2004 there had been cases where compensation awarded was around Rs. 800,000 which is around US\$ 8,000. Such compensation was paid in the cases of Kottabadurage Sriyani Silva (SCFR 471/2000) decided on 8 August 2003 and the case of Gerard Mervyn Perera, (SCFR 328/2002) decided on 4 April, 2003. However, in more recent times the compensation has been reduced to Rs. 25,000 or Rs. 15,000 and similar. In the case of B.A.S. Sunrange Wijewardene (SCFR 553/2002) decided on 27.5.2005 the compensation was Rs. 15,000 to be paid by three respondents, each having to pay only Rs. 5,000. In the case of Korale Liyanage Palitha Thissa Kumara (SCFR

211/2004) (shown below at left) where the Supreme Court itself came to a finding of extensive physical injuries caused on the petitioner, the court ordered compensation and costs amounting to Rs. 25,000. In the application made by D.A. Nimal Silva Gunaratne against ASP Ranmal Kodituwakku (SCFR 565/2000), decided in November 2006 the court held that the allegation of the petitioner relating to illegal arrest, illegal detention and torture which resulted in the loss of the use of one eye had been proved. However, the court exonerated the 1st Respondent, ASP Ranmal Kodituwakku on the basis that he had provided documentation to show that on the day of arrest he had been engaged in other duties. However, the arrest was carried out by the ASP who headed the unit named as the QUICK RESPONSE UNIT. For all the violations of rights including torture which caused the loss of an eye the compensation ordered amounted to Rs. 50,000 by the state (to be paid by the Inspector General of Police) and Rs. 5,000 by the 4th Respondent who was held to have caused the injury to the eye and the costs of Rs. 20,000. The court rejected the claim that Article 14(1)(g) of the Constitution which relates to the loss of employment and income for his inability to engage in a lawful occupation was not proved. The fact that the petitioner had lost his eye due to torture was not considered as a matter relevant to his capacity to engage in lawful employment.

Given the gravity of torture as a human rights violation and the need to attach serious consideration of standards in granting compensation, the practice of the Sri Lankan Supreme Court in recent years falls far short of what is required by the application of international norms and standards on this matter. The issue of compensation is not just a matter of insignificance. The Convention against Torture requires that the state pays adequate compensation to the victims of torture. The development of legislation in this area remains an urgent need as part of the discharge of state obligations as well as being a reflection of pursuing a policy to discourage and eliminate torture.

The prosecutions under the CAT Act.

The number of cases filed under the CAT Act on complaints, particularly made during 2002 to 2004 has increased. Such filing of complaints was made possible by the operation of a Special Investigation Unit which was developed to deal with complaints of torture. However, as for the years from 2005 to 2006, though allegations of torture have increased, the number of cases filed in High Courts on such complaints is very few so far. There seems to be a shift from the policy of prosecuting such cases that prevailed between 2003 and 2004. More cases are being assigned to the senior police officers of local areas, who are also the superior officers of the alleged perpetrators.

Even in cases that have been filed in the High Courts there are serious shortcomings due to the failure to ensure speedy trial. Victim complainants of torture suffer many harassments and at least one, that is Gerard Perera, was assassinated while pursuing his case in court. There are many instances where victims have reported to human rights organisations how they and their families have been exposed to severe pressures by the police officers who are facing accusations in court. Often the victims are compelled to give affidavits stating that they do not wish to pursue their cases. According to a number

of victims the reason for giving such documents to accused police officers is to avoid being exposed to prolonged harassment.

A further problem that has arisen is the absence of understanding of the law relating to torture as found in the CAT Act, No. 22 of 1994 by some High Court judges. At the High Court of Kalutara the trial judge came to the following conclusion at the end of the trial in the case of Korale Liyanage Palitha Thissa Kumara:

".....Even though it appears that when considering the number of injuries the accused has used some force beyond that which was necessary that does not prove the charge against the accused in this case."

Kalutara HC 444/2005

In other cases it has been held that the police officers beating of the victim has not been for the purpose of obtaining a confession and therefore does not fall within the torture act.

In yet other instances the courts have given consideration to the fact of the mandatory sentence of seven years as a relevant consideration when considering the guilt or innocence of the accused.

The Human Rights Commission of Sri Lanka

Many victims who have gone to make complaints regarding torture to the Human Rights Commission of Sri Lanka (HRCSL) find that the whole exercise has brought on further frustration upon them. The commission does not have a competent and efficient service for recording complaints; it does not have any form of capacity for being engaged in the preliminary stages of investigations into allegations of torture. The final inquiries it conducts follow the same model as adopted by Rent Boards and the like where both parties are directly questioned by an investigating officer. Although in recent times the qualifications of such inquiring officers have improved, this mode of conducting inquiries, where the burden of proving the charge lies on the complainant himself is not a suitable model for dealing with violations relating to torture. It is not within the capacity of victims of torture to bring all the evidence that is required, such as the police books, the relevant officers who have information about the incident, documents relating to police inquiries such as inquiries of the SIUs and the like. If there is a prosecuting officer on behalf of the HRCSL at these inquiries such an officer can call all the necessary documents and evidence and assist a proper inquiry. Where the HRCSL acts as a neutral party, as it has done at the inquiries at its office, there is a clear failure of the commission's duty to engage in thorough investigations into such grave abuses of human rights such as torture. Thus the model followed in the conduct of inquiries at the HRCSL should change radically.

3.b.1. Name of the victims: S. D. Kodituwakku, A. B. Abeywardena, A. Ruwantissa, W. Shantha and Sujeewa Kodituwakku

Alleged perpetrators: The Officer-in-Charge (O.I.C.) of the Dickwella police station and several policemen attached to the Tissamaharama police station

Date of incident: 28 February 2005 and several subsequent dates

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1437/>

3.b.2. Name of the victim: Amila Prasad

Date of incident: 20 December 2005

Alleged perpetrators: Some officers from the Thanamalvila Police Station (Moneragala)

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1436/>

3.b.3. Name of alleged victim: SA Akila Chaturanga, 22, unmarried; Occupation: farmhand

Names of alleged perpetrators: The Officer-in-Charge of Horana Police Station, Sergeant Kaldera and Police Constables R 1768 and 31288.

Date of alleged incident: 22 December 2005

Place of alleged incident: Horana Police Station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1441/>

3.b.4. Name of the victim: Navinna Arachchige Manjula Prasad (27), a baker living at 476/30, Sagarsirigama, Epamulla, Pamunugama.

Alleged perpetrators: Four police officers attached to the Pamunugama Police Station in the Assistant Superintendent of the Police (ASP) Division of Negombo

Date of the incident: 18 December 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1442/>

3.b.5. Name of the victim: M.H. Priyantha Minipura (25), single and a farmer by occupation living in Ayagama

Alleged perpetrators: Sub Inspector (SI) Jayatissa and other policemen attached to the Ayagama police post

Date of incident: 24 December 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1446/>

3.b.6. Name of victims: Nihal Kithsiri, 30, married with one child, occupation - casual labourer; and Kumara and Sumith Haputhatri, friends of the victim.

Alleged perpetrators: Policemen including Bandara and Kaldera of the Horana Police station

Date of incident: 7 December 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1453/>

3.b.7. Name of the victim: P.K.G. Jayawardena (46), married, Rajanganaya Gemunupura

Alleged perpetrators: Sub Inspector Mendis and three policemen attached to the Thambuththegama police station (near Anuradhapura)

Date of incident: 23 December 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1451/>

3.b.8. Name of the victim: D.A. Gayan Rasika (24), married, a resident of Kalavila, Beruwela. He is presently detained at the Kalutara remand prison.

Alleged perpetrators: Two policemen attached to the Welipenna police station and personnel at the Kalutara prison

Date of the incident: 7 January 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1462/>

3.b.9. Name of victim: R.D. Kanishka Gayan, 21-years-old, unmarried;

Occupation: mechanic;

Address: Wewala, Horana.

Name of alleged perpetrators: Sergeant Rajapakse, PC Chandraratne and others from the Horana police

Date of incident: 5 January 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1461/>

3.b.10. Names of victims: 1. Mr. D Indika Wasantha, aged 28, businessman, of Owakanda, Rathgama, Sri Lanka. 2. **Mrs. H.L. Kumudini Malkanthi**, 8 months pregnant, Mr. Wasantha's wife

Names of alleged perpetrators: 1. Mr. Jayarathne, Inspector of Police (IP) of the Rathgama Police Station 2. Police Constable No. 63063 of the Rathgama Police Station 3. Around five other officers attached to the Rathgama Police Station, who can be identified by the victims.

Time and date of incident: At around 5:30pm on 16 February 2006

Place of incident: Rathgama Police Station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1571/>

3.b.11. Name of victim: Mr. E. Gnanadasa, 39-years-old, farmer, married with a two-year-old child, Pingala Hill, Kalavana

Name of alleged perpetrators: Two policemen from the Kalavana police station

Place of incident: Mr. E. Gnanadasa's home in Pingala Hill, Kalavana, as well as Mr. E. Siripala's home in Kalavana

Time and date of incident: 10:30am on 12 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1587/>

3.b.12. Name of victim/complainant: Chintaka Kumara Welivitagoda Hevage, 21-years-old, living with his parents.

Name of alleged perpetrators: Policemen Indika and Chaminda and the Officer-in-Charge (OIC) of the Poddala police station

Date of incident: 17 February 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1602/>

3.b.13. Name of victim: V.M. Duminda Jayawardena, 24-years-old, married with two children; occupation: labourer; address: Polhunnawa, Ambagas-handiya, Batapola

Name of alleged perpetrators: Two policemen from the Mitiyagoda police station

Date of incident: 11 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1618/>

3.b.14. Name of victim: OKD Kithsiri Dhanawardena, 32-years-old, unmarried; occupation: three wheel cab driver; address: Thanthiriwatte, Ganegoda

Name of alleged perpetrators: Trainers and trainees attached to the Ketapola police training college

Date of incident: 27 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1645/>

3.b.15. Names of victims: 1. W Sunil, 31-years-old, married with one child; occupation: farmer; address: higher Kihimbiya, Galle 2. **Wasanthi Sunil**

Names of alleged perpetrators: The Sub-Inspector and policemen attached to the Wanduramba police station

Date of incident: 17 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1681/>

3.b.16. Name of victim: E. P. Dharmasiri, 45 years old; married with 2 children; Occupation – Mason; Address – Kanaththeruwa, Kurunegala.

Name of alleged perpetrators: Policeman Pushpakumara and others of the Katupotha police station

Date of incident: 8 to 10 April 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1688/>

3.b.17. Name of the victim: Kariyawasam Peradorapage Tsuitha Ejith

Name of the alleged perpetrator: A Police Constable and other police personnel from the Ja-Ela police station

Date of incident: 10 October 2005 and 23 February 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1687/>

3.b.18. Name of victim: Kodey Thuwaku Walter Thilakarathana, resident of No 18, Dunhinna, Werapitiya, Sri Lanka

Name of alleged perpetrators: SI Rasika, Police officer Allakoon, and other police officers attached to the Teldeniya police

Date of Incident: 29 to 30 April 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1730/>

3.b.19. Name of victim: Indika Kulasekara (27), Bus driver

Name of alleged perpetrators: PC Sarath, Balagolla Police and Teldeniya Police officers

Date of incident: 7 April 2006

Place of incident: Near Digana-Madarwala bus shelter

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1746/>

3.b.20. Name of the victim: Amitha Deepthi Kumara, aged 22, unmarried, mechanic by occupation, residing in Welapahala, Meegahathenna, Sri Lanka

Alleged Perpetrators: Officers attached to the Meegahathenna Police Station

Date of incident: from 8:30am on 28 June 2006 up to now

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1821/>

3.b.21. Name of the victim: D Chamara Lanka, aged 24, unmarried; a three wheel driver by occupation, resides in Puttalam Road, Kurunegala, Sri Lanka

Alleged Perpetrators: Officers attached to the Kurunegala Police Station

Date of incident: 27-30 May 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1826/>

3.b.22. Name of the victim: B Nimal, aged 43, a mason by occupation, married with four children, resides in Hiralugoda, Bataduwa, Sri Lanka.

Alleged perpetrators: Officer-in-Charge (OIC) and other officers attached to the Wanduramba police station

Date of illegal arrest and detention: Arrested on 18 December 2005 and remanded in a prison for about a week for allegedly fabricated charges by the Wanduramba police. Next court hearing is set for 18 September 2006 but the victims are still not aware of the details of their charges due to the inaction of their lawyer

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1853/>

3.b.23. Names of the victims: 1. Dhanuka Tisara, aged 19, unmarried, labourer by occupation, resides in Pinwatte, Panadura, Sri Lanka 2. **Don Dhanushka**, Dhanuka's brother.

Name of alleged perpetrators: Policemen attached to the Kalutara South police station
Date of incident: Dhanuka Tisara was brutally tortured and later released on 2 July 2006 and Don Dhanushka was illegally arrested on the same day and later remanded due to the alleged fabricated charges by the Kalutara South police
Place of incident: Kalutara South police station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1861/>

3.b.24. Name of victim: Suppaiya Saundarajan, resident of Hapugollawatta, Vilanagama, Kandy, Sri Lanka; occupation – Mason, single.
Names of alleged perpetrators: 1. Mr. Hettiarachchi (Sub Inspector of Police of Alawathugoda Police Station), 2. Mr. Kulathissa (driver)
Place of incident: Vilanagama
Date of incident: 9 July 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1870/>



3.b.25. Name of victim: Hevamarambage Premalal (32), married with three children
Name of alleged perpetrators: Sergeant Samaranayake and other officers from the Wanduramba Police
Place of incident: Wanduramba Police Station
Date of incident: 11 July 2006

For full details please follow this link:
<http://www.ahrchk.net/ua/mainfile.php/2006/1869/>

3.b.26. Name of the victim: Mr. Suddage Sirisena, aged 50, married with two children. Farmer by occupation, residing in Millewa, Maradankadawela, Sri Lanka
Alleged perpetrator: Officers attached to the Kekirawa police including policeman No. 47934 (prime culprit)
Date of incident: 24 August 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1936/>

3.b.27. Name of victim: Mr. Illukumbura Mudiyanse; A 49-year-old trader and resident of Thalathuoya, Kandy district III, Kandy division, Sri Lanka
Alleged perpetrators: 1. Owner of the local "Sugath Timber Mills" in Thalathuoya
2. Officer-In-Charge (OIC) of the Thalathuoya police station in Kandy
3. Police Sergeant Thushara attached to the Thalathuoya police station
4. Other police officers attached to the Thalathuoya police station
Date of incident: 9 June 2006
Place of incident: Thalathuoya police station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1994/>

3.b.28. Name of victim: 1. Mr. P. Gnanasiri; a 44-year-old local fisherman, now resident of the Weligama camp for internally displaced persons (IDPs) of the 2004 tsunami 2. Ms. Chandralatha, the victim 1's sister-in-law 3. Ms. Mallika, the victim 1's wife 4. A twelve-year-old daughter and a nine-year-old son of the victim 1

Alleged perpetrators: 1. Officers attached to the Weligama Police Station in Matara district II, Matara division, Sri Lanka 2. Unidentified resident of the Weligama camp for IDPs with whom Mr. Gnanasiri had had a disagreement

Date of incident: 13 September 2006

Place of incident: Weligama camp for IDPs and Weligama Police Station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/2002/>

3.b.29. Name of victim: Mr. Suddage Sirisena; fifty-year-old farmer, married with two children

Alleged perpetrators: 1. PC Jinadasa; one of the two alleged torturers, and who was later suspended following Mr. Sirisena's formal complaint 2. Sergeant Keerthi; falsely arrested Mr. Sirisena as part of an intimidation ploy 3. Unidentified security guard of local politician 4. Officers of the Kerikawa police station

Date of incident: Tortured on 24 August 2006 and arbitrarily arrested on 22 September 2006

Place of incident: Kerikawa Police Station, Anuradhapura district, Anuradhapura division, Sri Lanka

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/2013/>

3.b.30. Name of victim: Pasquelge Don Dudley Mervyn from Seeduwa, Negombo Division, Sri Lanka

Alleged perpetrators: Police officers attached to the Seeduwa police station, Negombo District II, Negombo Division, Sri Lanka

Date of incident: 27 October 2006 to 3 November 2006

Place of incidence: Seeduwa police station

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/2081/>

3.c. Torture against children

One of the most dismal aspects of torture in Sri Lanka as shown in cases for several years now is that police officers do not spare children and often engage in severe forms of cruelty with a view to obtaining information.

While many cases have been reported in recent years hardly any have been taken with the seriousness they deserve by the investigating and prosecuting authorities.

Further, the use of physical punishments, although forbidden in law, is continuing to happen in the educational institutions in Sri Lanka. Once again the machinery for redress does not seem to function within any sense of efficiency. The list of cases below illustrates this aspect of the problem.

3.c.1. Name of victim: UG Isani Madushani, eight-years-old, grade 4 student of the Mahabodhi School

Name of alleged perpetrator: Sarath, a grade 4 class teacher of the Mahabodhi School

Place of incident: Mahabodhi School, Panagala Galle

Date of incident: 22 February 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1582/>

3.c.2. Name of the victim: M Rukman Asanka Perera, 18-years-old, grade 13 of the Jayanthi Navodya School

Names of the alleged perpetrators: 1. Hiriwewe Gnaneswara, a Buddhist monk who teaches Buddhism 2. MD Ariyadasa, the principal of the Jayanthi Navodya School.

Place of incident: Jayanthi Navodya School, Nikaveratiya

Date of incident: 9 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1590/>

3.c.3. Name of victim: D.K Ranjith Kumara (12), a student at Nivithigala Junior School, Nivithigala. (Son of D.K Gunawardena a labourer)

Name of alleged perpetrator: Saman Iddamalgodha, teacher of the Nitithigala Junior School.

Date of incident: 19 October 2005

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1599/>

3.c.4. Name of victim: Manoj Tillakaratne, a 14-year-old, grade 9 student of the Bombuwela Senior School; Address: Batakuluketiya, Bombuwela.

Names of alleged perpetrator: The sports master [Physical training Instructor], A.D.C. Renuka of the Bombuwela School.

Date of incident: 31 January 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1612/>

3.c.5. Name of the victim: Nimalka Marasinghe, 8 years, a grade 4 student of the Parakrama School, Rambukkana. (Father's name: Jayantha Marasinghe, a three-wheel cab drive also of Rambukkana)

Name of the alleged perpetrator: Mrs. Ranasinghe, a teacher of the Parakrama School, Rambukkana

Date of incident: in 17 March 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1620/>

3.c.6. Name of victim: Name withheld

Names of alleged perpetrators: 1. Thushara, owner of a flower business, 2. Panadura police

Date of incident: 29 April 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1732/>

3.c.7. Name of victim: Victim's name withheld, 13 years; grade 7 student of St. Anthony's College Panadura.

Name of alleged perpetrator: Mr. Wijesiri, a teacher of St. Anthony's College, Panadura.

Date of incident: 17 July 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1880/>

3.c.8. Name of the victim: D Dilan Samaranayake, aged 15, student of Sri Sumangala Boys' School, Panadura, Sri Lanka

Alleged Perpetrators: Sub Inspector (SI) Neville attached to the Panadura (South) police station

Date of incident: 2 August 2006

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/1897/>

3.c.9. Name of victim: Miss B.T.F (only the victim's name initial is quoted for her privacy), aged 16, the grade 11 student at the Panadura, Prime Minister's Girls' (Agamethi Balika) School, daughter of a 45-year-old senior manager of the Metropolitan Company, Panadura

Alleged perpetrator: Ms. Nandani Jayasundara, Principal of the Prime Minister's Girls' School, Panadura

Date of incident: 20 October 2006

Place of incident: Within school premises; inside Principal's office

For full details please follow this link: <http://www.ahrchk.net/ua/mainfile.php/2006/2058/>

4. The 17th Amendment

The 17th Amendment to the Constitution was brought about in 2001 due to a common realisation that a fundamental crisis had arisen in all the basic public institutions due to decades of politicisation of these institutions and the loss of a credible system of command responsibility.

A Constitutional Amendment, which was passed almost unanimously, gave powers of appointment, transfer, dismissal and discipline of public authorities to independent

commissions, whose members were to be appointed by the Constitutional Council created by this amendment. However, some of these commissions were never appointed such as the Election Commission. The National Police Commission and Public Service Commission faced crises when the terms of office of the commissioners expired at the end of 2005. To appoint the new commissioners the Constitutional Council had to exist and this Council ceased to exist due to the non appointment of members since November 2004.

In the Judicial Service Commission two of the three members resigned complaining of matters of conscience as reason for their inability to continue as members of that Commission.

The president appointed members to the National Police Commission, Public Service Commission and the Human Rights Commission of Sri Lanka without selection having been made by the Constitutional Council as required by the Constitution. These appointments are therefore ultra vires to the Constitution. The president also appointed judges to the Court of Appeal and the Supreme Court also violating the provisions of the Constitution. When an attempt was made to challenge the appointment to the National Police Commission by way of a writ, the Court of Appeal held that no legal action may lay against the president due to Article 35 (1) of the Constitution. Thus, a constitutional crisis of a very fundamental nature continues to exist in Sri Lanka which puts into question the legitimacy of many persons holding power without being properly appointed as required by the Constitution.

This crisis of legitimacy is also a crisis of authority. Thus the very function of the institutions for maintaining the rule of law suffers from the absence of the recognition of legal validity of their authority. At a time when command capacity and command responsibility are most needed, the present crisis of legitimacy contributes negatively to any resolution of the most fundamental questions facing the nation.

The 17th Amendment issue has been extensively documented in AHRC statements. You may find such statements (<http://www.ahrchk.net/statements/>).

5. Disregard of views expressed by the Human Rights Committee

(The state's failure to implement the views and recommendations of the Human Rights Committee on individual complaints, and the failure to implement the Committee's and the CAT Committee's recommendations after periodic reviews - the resulting situation of the bewildering absence of protection to the citizens and the total absence of effective mechanisms to investigate, monitor or prosecute gross human rights abuses)

The Non-implementation of views and recommendations expressed by the HRC in all the communications decided upon to date.

The Sri Lankan government has consistently failed to respect or to take any measures to implement the views expressed by the Human Rights Committee, although Sri Lanka became a signatory to the Optional Protocol in 1997. Since then there have been many communications filed by Sri Lanka's before the Committee and the Committee has made its final decisions in six cases.

1. In chronological order of the final views expressed by the Committee these six cases are as follows:

July 22, 2002, Communication 916/2000 in the communication submitted by Mr. Jayalath Jayawardena, a member of parliament, the author complained that a statement made by the president of Sri Lanka on the state owned media put his life at risk and further that the failure of the state to investigate and take appropriate action on the threats also placed him at risk. The Human Rights Committee held that the author's rights under article 9, para 1 of the Covenant had been violated and recommended the government to provide an appropriate remedy.

July 16, 2003, Communication No. 950/2000 in the communication submitted by Mr. S. Jegatheeswara Sarma. This case related to the disappearance of the author's son regarding which the Committee held that article 7 and 9 regarding the author's son and article 7 regarding the author and his wife were violated and stated that the state party is obligated for a thorough and effective investigation into the disappearance, providing adequate information to the author and for adequate compensation.

July 21, 2004, Communication No. 1033/2001 in the communication submitted by Mr. Nallaratnam Singarasa, which was the case of the sentencing of the author for 35 years of imprisonment without fair trial solely on the basis of a confession from the author without any collaboration, taken in a language that the author did not understand and without addressing that claim that the confession was taken under torture. The Human Rights Committee held that the facts disclosed violations of article 14 (1), para 1, 2, 3, (c) and 14, para (g) read together with article 2, para 3, and 7 of the Covenant. The Committee recommended release or retrial of the prisoner and compensation and to impugn the Prevention of Terrorism Act to make it compatible with the provisions of the Covenant.

July 27, 2004, Communication 909/2000 in the communication submitted by Mr. Victor Ivan, who is a well known journalist the allegation was that certain indictments filed by the then Attorney General (now the Chief Justice), violated the rights of the author and that some judgments of the Supreme Court amount to violations of the rights of the author in the failure to provide equality before law, equal protection of the law and the right to freedom of expression. The Human Rights Committee held on the basis of the facts before it a violation of article 14 para 3 (c), and article 19 read with article 2 (3) of the ICCPR had taken place. The Committee recommended that an effective remedy

including appropriate compensation should be paid to the author and the state party should prevent future occurrences of this nature.

March 31, 2005, Communication 1189/2003 in the communication submitted by Mr. Tony Fernando, the author alleged that he had been sentenced for one year's rigorous imprisonment without appeal for allegedly talking loudly in court and thereafter he was also severely torture while in prison custody. The Human Rights Committee held that the author's rights under article 9 para 1 had been violated and left the issue of torture to be determined by the courts in Sri Lanka. The Committee recommended that the author be provided with an adequate remedy, including compensation and to make such legislative changes as are necessary to avoid similar violations in the future.

July 26, 2006 Communication 1250/2004 in the communication submitted by Mr. Sundara Arachige Lalith Rajapakse, the author alleged that he was subjected to torture, further subjected to unlawful and arbitrary detention and violation of the liberty and security of persons by constant threats to his life and the lack of adequate remedy within his country. The Human Rights Committee held that the author's rights under article 2, para 3 in connection with article 7, article 9, para 1, 2 and 3 and article 9, para 1 have been violated. The Committee recommended that the state party take effective measures to ensure that: (a) the High Court and Supreme Court proceedings are expeditiously completed; (b) the author is protected from threats and/or intimidation with respect to the proceedings; and (c) the author is granted effective reparation. The state party is under an obligation to ensure that similar violations do not occur in the future.

The government holds that it cannot implement HRC recommendations relating to court decisions

2. The government of Sri Lanka has paid no respect for any of these views of the Committee and has not done anything to implement the recommendations. The authors of these communications have constantly written to and even made press statements requesting the government to implement the Committee's recommendations but the state party has failed to heed these requests. In two of these communications, that is Mr. Nallaratanam Singarasa, Communication No. 1033/2001 and Mr. Sundara Arachige Lalith Rajapakse Communication 1250/2004 the state party wrote to the Human Rights Committee stating that it is unable to implement the recommendations of the committee on these two communications on the basis that the views of the Human Rights Committee affect the decisions made by Sri Lankan courts. The view of the state party was that the views of the Committee regarding violations of the ICCPR by the courts cannot be binding.

Supreme Court holds the president's signature to the Optional Protocol unconstitutional

3.a. The situation of the state party's disregard of the Human Rights Committee's decisions reached an even more critical level due to a case which came up before the Supreme Court of Sri Lanka, Nallaratnam Singarasa vs. The Hon. Attorney General (S.C. Spl(LA) No. 182/99). An application was filed on behalf of Nallaratnam Singarasa by way of review and/or revision of the earlier judgment of the court affirming the prison sentence against him on the basis of error in law. Lawyers on behalf of the prisoner requested the court to use the Human Rights Committee's view as a persuasive authority and to revise the earlier judgment on that ground and several other grounds. A five bench judgment led by the Supreme Court without going into the issues of law raised instead decided that the accession of Sri Lanka to the ICCPR in 1980 has internal implications for Sri Lanka and that the signing of the Optional Protocol in 1997 by the president is ultra vires and unconstitutional. This judgment of the Supreme Court virtually sealed off the possibility of implementation of any of the recommendations of the Human Rights Committee in the future in Sri Lanka.

The Attorney General's view

3.b. During this case the Attorney General, who is the chief legal advisor for Sri Lanka, made submissions on behalf of the state to the effect that the views of the Human Rights Committee and its recommendations regarding this case should be rejected. Thus, the views of the court and the views of the state party are the same on this matter.

Optional Protocol and sovereignty

3.c. Over several decades the Supreme Court of Sri Lanka has been brought under severe pressure by the ruling regime and the court itself has become severely politicised. The present decision which speaks of international obligations under the Optional Protocol as an infringement of the sovereignty of the country reflects a political view of the state to depart from international obligations.

Ignoring the recommendations of the HRC made after periodic reviews

4. Besides the above Sri Lanka as the state party has also disregarded recommendations of the Human Rights Committee in the periodic reviews as well as the recommendations of the CAT Committee and other sub-committee. The Human Rights Committee on December 1, 2003 made the following

recommendations: To bring the Constitution into conformity with the ICCPR and also to recognise the right to life, judicial review, removing the limit of one month for the filing of fundamental rights applications and to remove all laws incompatible with the ICCPR; to bring Chapter three of the Constitution (the fundamental rights provisions) in conformity with articles 4 and 15 of the ICCPR; to address the issue of torture by improving provisions to ensure prompt investigations and effective prosecution of perpetrators and to provide victim protection and eliminate the clear of fear that plagues the investigation and prosecution and to increase the Human Rights Commission of Sri Lanka for investigation and prosecution of torture; regarding disappearances Sri Lanka was asked to implement article 6, 7, 9 and 10 of the ICCPR and to implement the recommendations of the working group on forced and involuntary disappearances; to eliminate corporal punishment from schools; to ensure legislation to bring the Prevention of Torture Act (PTA) compatible with the ICCPR; combat the trafficking of children for exploitative employment and sexual exploitation; to reduce the overcrowding of prison institutions and grant sufficient resources for the monitoring of prison conditions; to strengthen the independence of the judiciary by providing judicial rather than parliamentary supervision and discipline of judicial conduct; to protect media pluralism and to avoid the state monopolization of the media; take steps to prevent harassment of the media personnel and journalist and investigate their complaints properly; have legislative review and reform of all discriminatory laws; bring local legislation against domestic violence and marital rape; publish the Committee's recommendations and submit a report within a year on some of these recommendations. None of these recommendations have been implemented by the state party.

Non-implementation of the recommendations of the CAT Committee

5. Sri Lanka as the state party has also failed to implement any of the recommendations made by the CAT Committee on November 23, 2005 (CAT/C LKA /CO/1/CRP.2). The Committee recommended to strengthen the Human Rights Commission of Sri Lanka, to appoint under the Constitution the National Police Commission and also to establish a public complaints procedure as required by the Constitution, that effective measures to ensure the fundamental safeguards for persons detained by the police are respected including the right to habeas corpus, the right to inform a relative, access to a lawyer of a doctor of their own choice and the provision of information about their rights; bring domestic legislation to implement the principle of non-refoulement of article three of the convention; ensure that acts of torture become subject to jurisdiction in Sri Lanka even regarding non Sri Lankan citizens who have committed torture outside Sri Lanka but are present in the territory of Sri Lanka; allow independent human rights monitors including HRCSL full access to places of detention including police barracks without prior notice and set up a national system of review on the basis of such monitors; cause prompt and impartial and exhaustive investigations

into all allegations of violations of torture, ill treatment and disappearances committed by law enforcement officers, particularly by the police; prosecute offenders without impunity; ensure that procedures are in place to monitor the behaviour of law enforcement officials and promptly and impartially all allegations of torture and ill treatment including sexual violence with a view to prosecuting those responsible; take necessary measures to ensure that justice is not delayed; take effective steps to ensure that all persons reporting acts of torture or ill treatment are protected from intimidation and reprisals in making such reports; provide programmes for witness and victim protection; establish a reparation programme including treatment of trauma and other forms of rehabilitation; take necessary action in a comprehensive manner and to the extent possible in the circumstances to prevent abduction and military recruitment of children by the LTTE. None of these recommendations have been implemented by the state party.

Consequences of ignoring recommendations of UN bodies on the morale of the people

6. The failure of state party to respect its international obligations and also the failure to implement the Human Rights Committees views and recommendation of UN human rights bodies has placed the citizens in an extremely helpless situation. It is commonly admitted even by the state authorities that the rule of law situation is at its lowest ebb at the moment. Extreme forms of torture including death in police, military and prison conditions are a frequent feature in all parts of the country. In the north and east there are massive acts of violence done by the agencies of the state, the LTTE and other militant groups which the UN High Commissioner for Human Rights and the UN Rapporteur against disappearances have described as gross abuses of human rights. What is worse is that there are no effective authorities to ensure that people have access to institutions to make complaints and/or to have them investigated. As for the monitoring of human rights there is a near total absence of it. Due to the failure to appoint the Constitutional Council the commissioners who lead several leading monitoring bodies cannot be appointed in conformity with the Constitution. As such there is almost complete impunity due to the lack of investigations and this situation encourages further violations of human rights.

The need for international monitoring of human rights

7. The UN High Commissioner for Human Rights, the Rapporteur for extrajudicial killings, amnesty international, Human Rights Watch, the International Commission of Jurists and the Asian Human Rights Commission and several human rights watchdogs have called for a UN mission for the monitoring of human rights.

6. Some references to important statements from various sources on the human rights situation in Sri Lanka

A few important statements from UN agencies and other international agencies, these being:

- An extract from the report of Prof. Alston, Special Rapporteur on Extrajudicial Killings, made to the Human Rights Council on 19 September 2006 General Assembly
- An extract from the report of Prof. Alston, Special Rapporteur on Extrajudicial Killings, made to the General Assembly

We reproduce below the extract of UN Special Rapporteur Prof. Alston at the UN Human Rights Council relating to Sri Lanka. We also reproduce below a statement by Amnesty International.

Human Rights Council, 19 September 2006

Statement by Professor Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions

(ii) Sri Lanka

The situation in Sri Lanka has gravely deteriorated since my visit at the end of 2005. 700 civilians are widely reported to have been killed in the past four months. Over 200,000 have been displaced and many thousands have fled to India. "Political killings" continue apace while the Government and the Liberation Tigers of Tamil Eelam (LTTE) as well as other military groups deny all responsibility and blame the other side.

The most important characteristic of the tragedy that is again engulfing Sri Lanka is that the most widespread types of killing amount to quintessential human rights violations. Many people are killed for the purpose of keeping them from speaking freely, assembling freely, participating in politics, and so on. The years of peace did not end these violations and a rising death toll has not changed their character. There is sometimes also a sense that human rights accountability must be subordinated to the pursuit of peace. First peace, then human rights. But in Sri Lanka a sustainable peace will forever prove elusive if the underlying problem that multiple communities in Sri Lanka fear abuse from one or more of the parties is not addressed. Human rights accountability especially in relation to extrajudicial executions is truly essential to improving the situation in Sri Lanka. At present, the Government, the LTTE, and others succeed in committing deniable human rights abuses through the use of proxies, the subversion of accountability mechanisms, and disinformation that shifts the blame. The ability to commit "deniable" abuses assumes strategic importance, because it is understood that the conflict is as much about

achieving international and domestic legitimacy as territorial control. Both parties seek the moral high-ground of being a defender of human rights, but they believe that this moral high-ground can be reached without actually respecting human rights in practice.

The only way forward is to establish effective human rights monitoring which would foreclose the possibility of employing this strategy of deniability, and would pressure the Government and the LTTE to seek legitimacy through actual rather than simulated respect for human rights.

National accountability mechanisms are important but insufficient for achieving the necessary accountability. The criminal justice system police investigations, prosecutions, and trials has utterly failed to provide accountability. Indeed, it is an enduring scandal that convictions of government officials for killing Tamils are virtually non-existent. National oversight mechanisms are also incapable of playing this role. The National Human Rights Commission has gone on record as concluding that it would not be an appropriate body to investigate political killings countrywide. Moreover, the current Government has undermined that body's independence, thus further limiting its ability to provide human rights oversight.

President Mahinda Rajapakse's announcement that he would invite an international commission to inquire into recent killings, disappearances and abductions in Sri Lanka promised to be a very important initiative and I welcomed it. But I also noted that the commission needed to be independent, credible, effective, and empowered to make a difference. Recent announcements that the commission would consist merely of "observers" have cast doubt on whether it will prove a credible project. It is now incumbent upon the Government to honour the President's original undertaking and for the international community to ensure that its support and assistance is directed to this end rather than to supporting an initiative that seems more likely to distract attention than contribute to a solution.

The time has come for the establishment of a full-fledged international human rights monitoring mission. This mission must conduct in-depth investigations throughout the country, report publicly on its findings, and report to a neutral body. Such a mission would stand a real chance of changing the manner in which political ends are pursued, reducing human rights abuse, and creating the conditions for a sustainable peace.

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions submitted by Philip Alston, Special Rapporteur, in accordance with paragraph 20 of General Assembly resolution 59/197.

Summary

This report is submitted pursuant to General Assembly resolution 59/197. In its first part the Special Rapporteur reviews the situation of country visits requested and replies received thereto. He concludes that the prolonged lack of a positive reply by numerous countries, including members of the Human Rights Council, is deeply problematic. The Special Rapporteur then reviews developments in the two countries he visited in the course of 2005, Nigeria and Sri Lanka. He concludes, inter alia, that there is an urgent need for a robust international human rights monitoring mission in Sri Lanka.

The second part of the report deals with substantive issues of relevance to the mandate, elaborating on principles of international law that are applicable to numerous cases raised by the Special Rapporteur in communications with Governments. The Special Rapporteur explores the standards applicable to the use of lethal force by law enforcement officials, explaining the role of the twin principles of proportionality and necessity, and highlighting the interplay between customary law, treaty law and so-called soft law standards in this respect. He also explains the * A/61/150. A/61/311 2 06-48801 central concept of due diligence obligations, both with respect to the recently adopted International Convention on the Protection of All Persons from Enforced Disappearance and to deaths in custody. Finally, the Special Rapporteur discusses problems raised by certain legal doctrines that enhance the role of victims in death penalty cases, both in the decision on whether capital punishment should be executed and in the actual execution.

The Special Rapporteur's recommendations to the General Assembly concern country visits, the need to investigate the killings in Gaza, Israel and Lebanon since June 2006, and international human rights monitoring in Sri Lanka.

2. Sri Lanka

1. The human rights situation

10. I visited Sri Lanka in November/December 2005 and met with government officials, members of civil society and representatives of the Liberation Tigers of Tamil Eelam (LTTE).¹⁰ The conflict in Sri Lanka is complex, but its outline may be briefly summarized.¹¹ LTTE began fighting the Government in the late 1970s with the aim of establishing a State of Tamil Eelam in the north and east of the island. In February 2002, the Government and LTTE had signed the Ceasefire Agreement (CFA) brokered by the Government of Norway. In March 2004 the LTTE Eastern Province commander, Colonel Karuna, split with the LTTE leadership, initially taking with him perhaps one fourth of the LTTE cadres. The "Karuna group" has since killed many LTTE cadres and supporters. Attacks on government forces that occurred during my visit placed CFA under unprecedented stress. Three weeks later the Sri Lanka Monitoring Mission warned that "war may not be far away", and subsequent events have only intensified this

perception.¹² At times like this, it is often argued that respect for human rights must await the emergence of political or military solutions.

EXTRACTS FROM THE HIGH COMMISSIONER'S STATEMENTS

From the HC's Statement to the 2nd Session of the Human Rights Council

Mr. President,

Also in Sri Lanka conflict has flared up again. In the past six months, the country has descended further into violence with the death toll climbing to include an increasing number of civilians. As the Special Rapporteur on extrajudicial, summary and arbitrary killings will report to this session, scores of extrajudicial and political killings, allegedly committed by Government security forces, the Liberation Tigers of Tamil Eelam (LTTE) and other armed elements, continued. At present, several cases of killings and disappearances are reported each day in the Jaffna area. Since April 2006, some 240,000 people have been newly displaced from their homes, in addition to the hundreds of thousands who were forced to flee during earlier stages of the conflict as well as by the tsunami. Restrictions on humanitarian access have been imposed by both sides, worsening the vulnerability of these populations. The LTTE's persisting record of forced military recruitment, including children, is a major concern.

While LTTE abuses continue on a large scale, human rights violations by State security forces, and the failure of the Government to provide the protection of the rule of law to all its citizens also generate serious concerns. The Government's public commitment to investigate these crimes, including the killings of 17 humanitarian workers of Action Contre la Faim, is welcome. In too many cases, however, investigations have failed to produce results and victims have been denied justice and redress.

There is an urgent need for the international community to monitor the unfolding human rights situation as these are not merely ceasefire violations but grave breaches of international human rights and humanitarian law.

The HC's statement on disappearances and extrajudicial killings in Sri Lanka

6 November 2006

United Nations High Commissioner for Human Rights Louise Arbour today welcomed the Sri Lankan President's establishment of a Commission of Inquiry into extrajudicial

killings and disappearances, expressing hope that it will see the perpetrators of serious human rights violations brought to justice.

The High Commissioner underlined the significance of this initiative in addressing impunity for human rights violations related to the on-going conflict in Sri Lanka. She noted that the Government has also invited a group of international observers in the form of an International Independent Group of Eminent Persons to monitor, provide advice as requested, and report on the Commission's work.

The High Commissioner thanked the Government for inviting her to provide advice on the terms of reference for the Commission of Inquiry and the observer group in line with international standards. She expressed satisfaction that many of the comments by her Office had been taken into account in establishing the Commission, including the need for witness protection and measures to increase the transparency of the inquiry.

The High Commissioner expressed concern, however, over several shortcomings in the national legal system that could potentially hamper the effectiveness of the Commission of Inquiry, particularly the absence of any legal tradition of establishing command responsibility for human rights violations. She also noted that many recommendations of past commissions of inquiry, including into disappearances, had not yet been fully implemented.

"It will be critically important for the Commission to establish not only individual responsibility for crimes, but the broader patterns and context in which they occur", the High Commissioner said.

The High Commissioner also noted that any commission of inquiry can only investigate a selection of cases, and that a broader international mechanism is still needed to monitor, ultimately prevent, human rights violations in the longer term.

At the invitation of the Government, the Office of the High Commissioner for Human Rights (OHCHR) has submitted a list of names of suitable candidates who could potentially serve as observers to the inquiry. These persons, if selected, would serve in their personal capacities and would not represent the High Commissioner or OHCHR.

Statement from the Special Advisor on Children and Armed Conflict

<http://www.un.org/children/conflict/pr/2006-11-13statementfromthe127.html>

Allan Rock, the Special Advisor to the United Nations Special Representative for Children and Armed Conflict on Sri Lanka, has concluded his 10 day mission to the country

Colombo, 13 November 2006 - Allan Rock, the Special Advisor to the United Nations Special Representative for Children and Armed Conflict on Sri Lanka, has concluded his

10 day mission to the country. During those ten days, the mission visited Colombo, Ampara, Batticaloa, Kilinochchi and Jaffna districts. The Mission enjoyed the full cooperation of the Sri Lankan government and met with all parties concerned with the ongoing conflict. In his meeting today with President Rajapakse, the Special Advisor expressed his appreciation for the extensive efforts made by the Government of Sri Lanka to facilitate his visit and access to all areas.

The purpose of Mr. Rock's visit was to ascertain first-hand the situation on the ground, mainly in the North and East, with a particular focus on compliance with the Action Plan for Children Affected by Conflict. The Action Plan was endorsed by the Government and the LTTE following their commitment during peace talks in 2002 and 2003 to work with UNICEF and the Government to end the recruitment of children and to release under-age recruits in their ranks.

The mission's initial findings reveal that the LTTE has not complied with its commitments under the Action Plan to stop child recruitment and release all the children within their ranks. Under-age recruitment continues and the LTTE have yet to release several hundred children as verified by UNICEF.

The mission also found that the so-called Karuna faction continues to abduct children in government-controlled areas of the East, particularly Batticaloa district. Since May of this year, 135 cases of under-age recruitment by abduction have been reported to UNICEF, with evidence that this trend is accelerating.

The mission also discovered a disturbing development involving the Karuna abductions. It found strong and credible evidence that certain elements of the government security forces are supporting and sometimes participating in the abductions and forced recruitment of children by the Karuna faction.

The mission met with the parents of many of the abducted children in Batticaloa district. As a result, it learned of eye-witness evidence that links the Karuna faction abductions to certain government elements. Based on the evidence as a whole, the mission concluded that some government security forces are actively participating in these criminal acts.

Apart from the issues of child recruitment and abductions, the mission also observed the deteriorating humanitarian situation in certain areas of the North and East. During his visits to Vaharai and Jaffna, Mr. Rock saw first hand the fear, isolation and critical unmet needs of IDP children there.

The Special Advisor met with the leadership of the Muslim Community in Batticaloa and elsewhere, and learned of their feelings of isolation and vulnerability. The mission concluded that special efforts should be made to acknowledge the rights and needs of the Muslim Community.

With respect to attacks on civilian areas, the mission called on all parties to respect their obligations under International Humanitarian Law.

In the case of LTTE, the mission reminded it of its obligation to ensure that military assets are not placed in areas where civilians, especially children, can be at risk. It also called on the LTTE not to engage in the use of civilians as human shields.

With respect to the Government, the Mission reminded it that it has a responsibility to ensure that no civilians are targeted in military operations.

On these various issues, Mr. Rock sought and received several assurances and commitments by the parties involved.

The LTTE gave him assurances that they would work with UNICEF, commencing immediately, to accelerate the release from their ranks of all children, with the objective of completing that process by January 1, 2007. They also committed to better training for their military commanders in relation to recruitment, and a process of discipline for those who do not comply.

The Tamil Makkal Viduthalai Pulikal (TMVP), on behalf of its military wing Karuna, undertook to publish formal policy statements forbidding under-age recruitment, and to release any children who may now be in its ranks. The TMVP agreed to work with UNICEF in an effort to trace the whereabouts and arrange the release of those abducted children whose families have complained to UNICEF.

Mr. Rock also received assurances from President Rajapakse concerning the allegations that elements of the Sri Lankan security forces have been complicit with the Karuna faction in its child recruitment, and that they participated in or facilitated child abductions. The President made clear to Mr. Rock that he will order an immediate and thorough investigation to determine whether such things have occurred and, should the evidence support that conclusion, he will take action to hold accountable those who are responsible.

The Special Advisor welcomes all such assurances and will seek concrete evidence of compliance by all parties before the submission of his formal written report to the Security Council in January next year.

"It is increasingly clear that children are at risk from all sides," said Mr. Rock. "It is crucial that ways be found to monitor and protect their rights and interests. Wherever I traveled, I saw with my own eyes that systems meant to safeguard children's rights are either deteriorating or absent. It is apparent that there is an urgent need for an independent monitoring capacity to ensure that children affected by the conflict are protected" stated Mr. Rock.

A statement by Amnesty International

[EMBARGOED FOR: 17 November 2006] -- Public

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Amnesty International

Sri Lanka

Observations on a Proposed Commission of Inquiry and International Independent Group of Eminent Persons

AI Index: ASA 37/030/2006

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UNITED KINGDOM

Amnesty Internationals observations on a proposed Commission of Inquiry and International Independent Group of Eminent Persons

On 4 September 2006 the President of Sri Lanka announced that the government would invite an international independent commission to probe abductions, disappearances and extra-judicial killings in all areas of the country. Amnesty International welcomed the Government of Sri Lanka's commitment to address past human rights violations. On 6 September 2006 the President, instead announced that he would invite an International Independent Group of Eminent Persons (IIGEP) to act as observers of the activities of the Commission which will investigate alleged abductions, disappearances and extra judicial killings. The eight Sri Lankan commissioners were formally announced on 6 November with a mandate to inquire into fifteen specific incidents that have occurred since August 2005 and the possibility of broadening their investigations to include cases arising during their inquiries and complaints received by the commission on other serious violations.

Amnesty International has benefited from having been in dialogue with the Government of Sri Lanka on its proposal and has welcomed the opportunity to provide recommendations on establishing a commission of inquiry into serious violations of human rights law and international humanitarian law in Sri Lanka¹. The following are Amnesty International's observations on the proposals. Amnesty International's comments are made on the basis of dialogue with the Government of Sri Lanka in Colombo, London and Geneva and documents produced by the Government of Sri Lanka preparatory for the Commission of Inquiry (CoI) and International Independent Group of Eminent Persons. AI has also benefited from meetings with civil society actors and Sri Lankan human rights defenders in Colombo and Geneva. Amnesty International has confirmed to the Government of Sri Lanka, in response to their request, that it is not in a position to nominate anyone to stand as candidate for the International Group of Eminent Persons.

In light of decades of impunity for perpetrators of violations of international human rights and humanitarian law in Sri Lanka, characterised by the failure of the authorities to investigate and prosecute such perpetrators effectively, only an international and independent Commission would have the credibility and confidence of all parties to the conflict and sections of society to be able to conduct meaningful investigations, obtain critical testimony or information from witnesses and gain the acceptance of its recommendations by all relevant parties. To this end, members of the body conducting the inquiry should be international experts, chosen for their recognised impartiality, integrity and competence. Crucially, they should be, and be seen to be, independent of any institution, agency or individual that may be the subject of, or otherwise involved in, the inquiry, including the Government of Sri Lanka. Amnesty International does not believe that an independent group of eminent persons observing an essentially national inquiry can serve as a substitute for the independence, real and perceived, of the Commission of Inquiry itself. Amnesty International therefore calls on the President of Sri Lanka to:

- Add independent, impartial and competent international experts to the proposed CoI;
- Ensure that the CoI's work is developed in consultation with a representative profile of civil society, including NGOs;
- Ensure that the CoI will assess the information collected in light of relevant provisions of international human rights law and international humanitarian law, as well as relevant Sri Lankan laws;
- Ensure the safeguarding of the CoI's independence, access to all relevant persons and information, accessibility to the public, protection of witnesses, and full discretion as to its mode of operation and publication of interim and other reports;
- Ensure that the CoI's recommendations are carefully considered with a view to their full implementation.

Unless the CoI is established and allowed to function under these standards, the organization believes that the CoI will not be able to function as an investigative body that would address violations of international law in a meaningful way, as required by international standards.

Further, Amnesty International is concerned that the current terms of reference for the IIGEP would undermine its independence, effectiveness and ability to publish its reports at its own discretion, as detailed below.

Amnesty International has requested to see the terms of reference for the CoI itself but this has not yet been provided by the Government of Sri Lanka. However the organisation understands that the CoI has been established under the Commissions of Inquiry Act No. 17 of 1948. Amnesty International has significant concerns about the ability of the Commission of Inquiry to attract the degree of public confidence and cooperation necessary for it to carry out meaningful investigations and for its recommendations to be accepted by all relevant parties. These concerns in large part arise from the broad powers granted to the President under the Commissions of Inquiry Act

No. 17 of 1948 and the absence of a process to involve all relevant sectors of Sri Lankan society, including members of Sri Lankan civil society, and all relevant parties, including the Liberation Tigers of Tamil Eelam (LTTE), in providing input to the establishment of the Commission, the appointment of its members, and the development of its terms of reference.

The Commissions of Inquiry Act No. 17 of 1948 grants the President the power to set the terms of reference of the CoI and appoint all its members (sec.2); add new members at his/her discretion (sec. 3); revoke the warrant establishing the CoI at any time (sec. 4); and appoint the Commission's secretary (sec. 19) without needing to consult the Commission or its chairperson. The decision as to whether the inquiry — “or any part thereof” is to be public also rests solely with the President (sec. 2(2)(d)). In addition, there are no provisions in the Act requiring that the reports or recommendations of the CoI are made public. Amnesty International is concerned that these and other provisions, which grant the President a wide discretion, may undermine the independence and impartiality of the CoI,² as well as the Commission's ability to inspire public confidence and interact freely with the public³. Accordingly these factors may undermine the willingness of the public to engage with the CoI and to come forward with evidence.

Amnesty International is deeply concerned that there does not appear to have been an adequate consultation process to solicit and take into account the views of Sri Lankan civil society, during the preparations for the establishment of the CoI and IIGEP. In establishing a commission of inquiry, it is essential that, before being finalised, the draft terms of reference are circulated among civil society for their input, and that civil society's views are also taken account of in selecting the members of the commission. However, AI is concerned that in this instance civil society groups, including those involved in the promotion and protection of human rights, may not have participated in the selection and appointment process of the Commissioners, or the selection of incidents to be investigated by the Commission. If this is the case, the CoI may lack the perception of credibility and independence which are essential for its acceptance by all parties to the conflict and sections of society throughout the country. A commission appointed without such consultation and support runs the risk of being perceived to be partial.

Amnesty International takes the view that the CoI and the IIGEP should be free to issue interim reports throughout the duration of their work. The interim and final reports of each of these bodies should be presented to the government, the LTTE and other relevant parties, and must be made public without undue delay and in their entirety, except where witness protection or the need to avoid prejudicing future legal proceedings requires certain elements to be withheld.⁴ Beyond these reasons there should be no restrictions placed on either of these bodies to prevent them from speaking or reporting publicly.

Amnesty International is concerned that the publication of the IIGEP's final report will, according to its present Terms of Reference, be subject to the exclusion by the President of “any material which in His Excellency's opinion may be prejudicial to, or absolutely necessary for the protection of, national security and public order”.⁵ While Amnesty International recognizes that in certain instances issues of this kind may arise, the

organization is concerned that this proviso may be used by the Executive as a way of censoring the IIGEP's report or parts of it. Amnesty International believes that concerns of this nature regarding the IIGEP's final report should be treated in the same way as are public statements by the IIGEP "during and after the completion of investigations and inquiries of the Commission of Inquiry". In the present Terms of Reference⁶ such statements are first to be provided to the "Chairman of the Commission of Inquiry" and the Attorney General, who may object to a statement's release, but the final decision as to publication rests with the IIGEP (with the objections being published alongside the statement).

Amnesty International emphasises that protection for complainants, witnesses, those conducting the investigation and others involved in any way, will be a critical element for the success of the CoI and the IIGEP. Efforts must be made to ensure at all times the protection of all those involved with these bodies and this should form part of their terms of reference. The practical implementation of such measures of protection will need to be the subject of serious and detailed discussions between the government and these bodies prior to beginning investigations.

Amnesty International understands that the access of the IIGEP to witnesses is subject to the agreement of the Commission. Amnesty International believes that this is an unnecessary constraint on the IIGEP's work and has the potential to limit its ability to perform its functions effectively. Amnesty International emphasises that, if it is to be effective in performing its task of monitoring the work of the Commission, it must have powers which enable it to observe all aspects of the work of the Commission without limitations.

Amnesty International is also concerned that the IIGEP's Terms of Reference state that "[T]he Secretary to the Ministry of Justice will be the Head of the Secretariat of the IIGEP" and similarly that "representatives of His Excellency the President, Minister of Disaster Management and Human Rights, the Attorney General and Secretary to the Ministry of Foreign Affairs, will be attached to the Secretariat of the IIGEP."⁷ Amnesty International is deeply concerned that these provisions, which give the government control of the administrative functions of the IIGEP, will undermine the independence of the IIGEP and accordingly of the Commission, and create the impression, if not the reality, that its movements and actions are closely monitored by, if not under the supervision of, government officials. While the government must ensure the provision of all necessary technical and administrative assistance, including staff, that independent investigatory bodies may require, any such assistance must be an option for them to take, not be imposed upon them, and it should be made explicitly clear that the administrative staff are responsible and accountable only to the independent body in respect of all functions they perform with regard to the work of the independent body.

In the present circumstances, with the armed conflict escalating and the failure of the recent Peace Talks in Geneva, Amnesty International wishes to reiterate its strong preference for a commission of inquiry comprising international experts, as suggested by the President in his statement of 4 September 2006. In the alternative, the CoI should be

composed of both Sri Lankan and international members. Amnesty International understands that the government takes the view that it would not be possible to do this because, Sri Lankan law prohibits international participation on a commission, and because the Commission exercises (quasi) judicial power. In this regard Amnesty International notes that it has not identified any provision in the Commission of Inquiry Act No. 17 of 1948 which would preclude the appointment of a commission composed of, or including, international members. Were such members to be appointed to the Commission, it would remain a national body, established under Sri Lankan law. Indeed, precedents exist in Sri Lanka where Commissions of Inquiry have been of a mixed or wholly international nature, such as the inquiry into the killing of Denzel Kodbekaduwa which was initiated under the Commissions of Inquiry Act of 1948 in 1993, and comprised of international judges from Ghana, New Zealand and Nigeria.

Moreover, the Commission of Inquiry Act No. 17 of 1948 does not grant a commission appointed under this Act any judicial or similar powers such as powers to arrest, detain, charge, try, convict or impose punishment. A commission of inquiry established under the 1948 Act and composed of or including international members, as by the President in his statement of 4 September 2006, could in this regard make only recommendations for prosecution, which would be taken up for consideration by prosecutorial authorities through their regular procedures. Recommendations for changes in laws and policies would similarly be taken up by the relevant legislative and executive authorities. In neither case would the powers granted by the Constitution to these authorities be in any way compromised by the recommendations of the Commission of Inquiry.

Amnesty International wishes to emphasise that while the establishment of an international independent Commission of Inquiry has the potential to be an important step in addressing impunity and reducing the violence which has prevailed for many years and intensified sharply in recent months, it will not address the need for effective and ongoing international monitoring and investigation of human rights abuses in Sri Lanka. Amnesty International has therefore, in addition, urged the Government of Sri Lanka to consider putting in place effective measures to address this need in the near future, and will continue to do so.

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1 See “Establishing a commission of inquiry into serious violations of human rights law and international humanitarian law in Sri Lanka: Amnesty International’s recommendations” (ASA 37/031/2006).

2 See *ibid.* point II

3 See *ibid.*, point IV(A).

4 See *ibid.*, point V(A).

5 The Terms of Reference of the International Independent Group of Eminent Persons, version of 31 October 2006, para. 13.

6 *Ibid.*, para. 11.

7 *Ibid.*, para. 13.

7. Overreaching observations and recommendations

Observations

1. The Asian Human Rights Commission observes that the entire system of the rule of law and democracy has suffered a serious collapse during the recent decades and the aggravating impact of this collapse is now making its impact seriously felt in all areas of life. At the moment there appears to no effort underway to stop this process and even a limited reform package which was brought about by the 17th Amendment to the Constitution in 2001 has been abandoned. The likelihood of a greater societal and legal catastrophe hangs over Sri Lanka unless the government and the international community collaborate in a serious attempt to counter this situation.
2. On the issue of the 'ethnic' conflict the situation has degenerated greater since the virtual undermining of the Ceasefire agreement and recent months have seen extreme levels of violence, allegedly perpetrated by the military, LTTE and other armed groups. At the moment no effort appears to be under way to stop this trend and evolve possibilities of political settlements in the matter. This situation is also causing great hardships to the civilian populations living in the north and east. Meanwhile it is also creating and deepening the insecurity throughout the whole country including the capital.
3. All attempts at credible inquiries in terms of the international norms and standards have failed.

Recommendations

- 1.a. The immediate establishment of a credible investigating unit with the competency and resources to conduct investigations within the framework of the Criminal Justice Procedure of the country, into all allegations of human rights abuses is the only real initial step that will be an effective measure to eliminate the abuse of human rights and to bring the perpetrators to justice. Any amount of fact finding inquiries and commissions can never be a substitute for proper criminal justice inquiries under the provisions of the law and in conformity with international norms and standards. The Sri Lankan state has this obligation under the country's own laws as well as under the obligations it has undertaken by being a state party to international treaties on human rights. In all reviews of state obligations to protect and promote human rights both local agencies and international agencies including various UN authorities should give priority to the review of this aspect.
- 1.b. An effective witness protection law and programme is one of the urgent needs in the country. Though there has been discussion and undertakings about such a law

and programme for quite some time now, no tangible action has been taken to give effect to such promises.

- 1.c. Without drastic steps to ensure speedy trial in criminal cases it is not possible to make any progress in dealing with human rights abuse or crime in general. The state has not only a duty to respect and protect human rights but also to take steps to fulfill such rights. The obligation to fulfill implies that there should be allocation of funds for the needed reforms and personnel resources to supervise a change from an archaic system with unconscionable delays into a modern system capable of delivering justice and of winning the confidence of the people.
2. The problems relating to the implementation of the 17th Amendment needs to be dealt with immediately and the Constitutional provisions must be respected. The appointment of the Constitutional Council of an urgent basis is the very first basic step that needs to be taken if the constitutional order is to be respected in the country. The tremendous problem of legitimacy existing in all areas of public institutions can only be overcome after the constitutional council is put back in place. Though this will not solve all the problems, no problem can be resolved without taking this initial first step.
3. As for the situation of intense violence resulting from the virtual collapse of the ceasefire agreement, international monitoring of human rights has become an unavoidable necessity. Instead of resorting to pure public relations exercises through mere fact finding commissions, with or without international observers, the crux of the present time problems must be dealt with by obtaining the assistance of an international monitoring mission. The benefit such a mission has brought about in Nepal should act as an encouragement in taking this decisive step.
4. That the government accepts the command responsibility to restore the rule of law in the country. To that end the government must propose a series of policy decisions and actions that could make a beginning of a return to the rule of law and democratic process within the country. In the series of actions the restoration of the operation of the institutions created under the 17th Amendment should receive priority. The appointment of the Constitutional Council in proper manner as required by the Constitution is perhaps the most elementary step needed.
5. In the armed forces and the police command responsibility should be restored and strictly adhered to. In all instances where human rights abuses are taking place the immediate superiors and other who bear command responsibility must be brought under discipline. Until this happens it will not be possible to stop the gross abuses of human rights that are taking place now both in the areas of conflict as well as in other areas of the country which suffer from serious problems of rule of law.
6. As for the violations of the LTTE and other armed groups the inquiries and institution of prosecutions is the responsibility of the government of the country. Since under the present circumstances the government is beset with serious problems relating to such investigations it should seek the assistance of the international community to establish a human rights monitoring mechanism in the country which will ensure proper investigations into human rights abuses of everyone. For the government to be able to bring this about it will necessarily

have to allow international monitors to scrutinise its own alleged human rights abuses. There seems to be no out of adopting such a procedure if the intention of the government to bring down the present level of violence by all agents as required under the circumstances.

7. From the point of view of the entire country the situation of the policing system needs immediate attention. A well thought out reform programme for the police remains one of the major steps that need to be taken if the country is not to collapse into further anarchy. While pending such reforms steps must be taken to ensure credible criminal inquiries under the criminal procedure law into all allegations into torture, extrajudicial killings and other forms of gross abuses of human rights by the police through a Special Investigation Unit with competent persons. Inspection of police premises in terms of the following recommendations of the Supreme Court is also urgent.

December 21, 2006