



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT

**on the findings of the investigation with respect to the effective implementation of
certain human rights conventions in Sri Lanka**

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1. *Initiation of the investigation*

1. The investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka was initiated by the Commission Decision of 14 October 2008 (OJEU L277/34 of 18 October 2008) pursuant to Article 18(2) of Council Regulation (EC) No 980/2005.¹ Article 16(2) of Regulation (EC) 980/2005 provided for the temporary withdrawal of the special incentive arrangement referred to in Section 2 of Chapter II of that Regulation (the "GSP+" treatment), if the national legislation incorporating those conventions referred to in Annex III of the Regulation which had been ratified in fulfilment of the requirements of Article 9(1) and (2) was not effectively implemented.

2. Reports, statements and information of the United Nations (UN) available to the Commission at that time, including the report of the Special Rapporteur on Extrajudicial Executions of 27 March 2006, the statement of the Special Advisor to the Special Representative for Children and Armed Conflict of 13 November 2006 and the statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of 29 October 2007, as well as other publicly available reports and information from other relevant sources, including non-governmental organisations, indicated that the national legislation of the Democratic Socialist Republic of Sri Lanka incorporating international human rights conventions, in particular the International Covenant on Civil and Political Rights ("ICCPR"), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") and the Convention on the Rights of the Child ("CRC"), was not being effectively implemented.²

3. The Commission examined this information and found that it constituted sufficient grounds for the opening of an investigation with the objective of determining whether the legislation of Sri Lanka incorporating the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child is effectively implemented.

2. *Conduct of the investigation*

4. Immediately after adoption of the Decision initiating the investigation the Commission received a Note Verbale from the Government of Sri Lanka (hereinafter "GOSL") dated 17 October 2008 stating that Sri Lanka "will not agree to be subjected to an investigation by the EC". A notice pursuant to Article 19(1) of Council Regulation (EC) No 980/2005 on the initiation of an investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka was published on 18 October 2008 (OJEU C/265/1). By means of this Notice, the Commission invited interested parties to send any relevant information and comments within four months from its date of publication. In a Note Verbale

¹ Regulation 980/2005 has been replaced by Council Regulation (EC) No 732/2008 of 22 July 2008 (OJEU L/211 of 6 August 2008) which at Article 10(6) states that investigations underway will be concluded under the new Regulation.

² The International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child, are listed as core human rights conventions respectively in points 1, 5 and 6 of Annex III, Part A, of both Regulation (EC) No 980/2005 and Council Regulation (EC) No 732/2008.

of 20 October 2008, the Commission informed the GOSL of the initiation of the investigation and invited it to co-operate in the investigation. In a further Note Verbale of 9 December 2008 the Commission reiterated its invitation to the GOSL to cooperate in the investigation. Sri Lanka however made no submission in the context of the investigation during the four months submission period indicated in the Notice. GOSL also made no submission in the context of the investigation prior to the conclusion of the investigation, although it provided some materials and information in the context of the ongoing political dialogue between the European Commission and Sri Lanka.

5. All submissions made by interested parties, together with all other information and materials gathered during the investigation and upon which the findings set out in this report are based (see Annex 1 to the report³), were entered into the file of the investigation, the non-confidential version⁴ of which has been made available to Sri Lanka for inspection, upon request, as stated in Note Verbale of 28 May 2009. Sri Lanka made no request for access to the file.

6. In the conduct of the investigation the Commission was assisted by three independent external experts (retired Judge L. Sevón, Professor F. Hampson and Professor R. Wieruszewski) who were tasked to provide independent legal advice on the matters at stake in the investigation, and in particular on whether Sri Lanka is effectively implementing its obligations under the ICCPR, CAT and CRC. For this purpose, the three independent external experts were asked to undertake a thorough examination of the legal and factual situation with respect to Sri Lanka's fulfilment of its human rights obligations and commitments under the three UN conventions.

7. In its Note Verbale of 28 May 2009 the Commission asked the GOSL to agree to a country visit to gather facts and information relevant to the investigation and conduct interviews with a comprehensive spectrum of individuals and organisations, including representatives of the Government of Sri Lanka. The proposed visit was to be carried out by European Commission officials accompanied by the three independent experts. The GOSL replied with Note Verbale of 17 June 2009 reiterating that the GOSL did not agree to be subjected to an investigation by the European Commission and stating that in this context it "does not agree to the proposed visit". In this connection, the European Commission considers that, by applying for the granting of GSP+ treatment under the rules and procedures foreseen in the applicable Council Regulations, the GOSL in 2005 and 2008 has *ipso facto* accepted the possibility of being subject to an investigation as provided for both in Council Regulation (EC) No 980/2005 and Council Regulation (EC) No 732/2008. In its Note Verbale of 11 August 2009, the Commission thus reminded the GOSL that it was in accordance with the procedures set out in the Regulations under which Sri Lanka had applied for and was benefiting from GSP+ treatment that the European Commission opened and was conducting the investigation.

8. In the context of conducting their assessment, the independent experts met and sought the views of several individuals with a particular knowledge of the issues under investigation, including some representatives of organisations which had made submissions to the Commission in the four-month period referred to above or which had produced important analyses of the issues under investigation. Two briefings sessions were held in Geneva and London on 15-16 June and 24-25 June 2009 respectively. Some participants in these briefings

³ The codes used in the footnotes identify documents indicated in the Annex.

⁴ In the non-confidential version of the file information identifying individuals making submissions has been obscured, as a result of data protection and in some cases personal security concerns.

asked that their participation or remarks be kept confidential and hence not divulged due to, inter alia, personal security concerns.⁵ As such these elements have not been relied upon in the preparation of the findings. Some participants agreed to a non-confidential treatment of the information they provided and summary statements of their remarks, reviewed by the respective authors, have therefore been included in the non-confidential file of the investigation.

9. With Note Verbale dated 11 August 2009, the Commission submitted to the GOSL for its comments the interim report prepared by the three independent experts referred to above. A deadline of 28 August 2009 was set for the submission of comments. In the same Note Verbale the Commission advised the GOSL that if it wished to submit any comments or information to the investigation, it should do so by 16 September. This deadline was set in the light of the obligation to conclude the investigation within one year from its initiation (as set out in Article 18(6) of Council Regulation (EC) No 732/2008) and in order to ensure that any such information could be duly considered by the Commission in the preparation of the report on the investigation findings. In the same Note Verbale, the Commission also reminded the GOSL (for the second time⁶), that in accordance with the provisions of Article 18(5) of that Regulation, and in the absence of information provided by Sri Lanka, findings may be based on the basis of facts available. The final version of the independent experts report (hereinafter "IER") was made available to Sri Lanka on 8 October 2009.

10. As noted above, the GOSL elected not to make any submission in the specific context of the investigation, despite repeated invitations by the Commission to co-operate in the exercise and thereby present its views on the matters at issue.⁷ Accordingly the Commission, consistent with the provisions of Article 18(5) of Regulation 732/2008, has reached its findings, as presented in this report, on the basis of the facts available. In so doing, the Commission has studied the documents submitted in response to the Notice of initiation of the investigation, as well as other documents available from public sources, including reports from UN special Rapporteurs and other documents and reports submitted by Sri Lanka to the UN treaty bodies. In the absence of any formal submission by the Sri Lankan Government to the investigation, these documents have served as a basis for assessment of Sri Lanka's actions as far as implementation of the three conventions is concerned. In evaluating conflicting evidence, the Commission sought to determine to what extent evidence was independently corroborated in other reports.⁸

11. In addition, while, as described above, the GOSL has expressly refused to be subject to the investigation and elected not to participate in the investigation process, the GOSL and the Commission have maintained an ongoing dialogue, including on human rights matters covered by the investigation.⁹ The informal discussions held¹⁰ and the information received

⁵ The Director of at least one of the organisations, which made a written submission in the context of the investigation, received a death threat explicitly connected to the fact that information was provided to the European Commission.

⁶ See Note Verbale of the European Commission to the GOSL of 28 May 2009.

⁷ See Notes Verbales of the European Commission to the GOSL of 20 October 2008, 9 December 2008, 28 May 2009, and 11 August 2009.

⁸ See IER, section 2.1.

⁹ Respect for human rights is an essential element of the EC-Sri Lanka Cooperation Agreement. Art. 1 of the Agreement provides that: "Cooperation ties between the Community and Sri Lanka and this Agreement in its entirety are based on respect for democratic principles and human rights which inspire the domestic and external policies of both the Community and Sri Lanka and which constitute an essential element of the Agreement." See OJ L85/33 of 19 April 1995.

from the GOSL,¹¹ while not part of the investigation as such, have nonetheless been taken by the Commission fully into account and have contributed to inform its assessment of the effective implementation of the international Conventions discussed in this report. It should be noted that most of the information received from Sri Lanka in this context concerned publicly available documents or statements of position by Sri Lanka which were already known to the Commission, and as such are referenced in this report. When new information was made available by the GOSL, it is also referenced in the report, as appropriate. Additional factual material gathered in this context is listed in Section C.3 of the evidentiary sources (see Annex 1) and referenced where appropriate in the findings. In addition, in its Notes Verbales the GOSL reiterated its view that Sri Lanka was effectively implementing the three conventions at issue.¹²

12. During the conduct of the investigation and pending its conclusion, pursuant to Article 10(6) of the GSP Regulation, Sri Lanka has continued to benefit from GSP+ preferences.

3. *Scope and objectives of the investigation*

13. In 2005 Sri Lanka applied for and was granted GSP+ benefits. Sri Lanka stated that it had ratified and effectively implemented all 16 human and labour rights conventions listed under Part A of Annex III of Regulation 980/2005, including the ICCPR, the CAT and the CRC.¹³ The GOSL gave an undertaking to maintain the enforcement of the conventions.¹⁴ It was stated that the legislation of Sri Lanka guaranteed the promotion and protection of human rights but that some of the derogable rights might be restricted by law only for specific purposes such as the interest of national security, racial and religious harmony and the national economy.

14. In its 2008 application for renewal of GSP+ treatment, the GOSL stated that Sri Lanka had continued to show tangible progress in complying with the conventions in issue.¹⁵

15. As recalled in paragraph 1, the Commission initiated the investigation in order to establish "whether the national legislation of the Democratic Socialist Republic of Sri Lanka incorporating the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child is effectively implemented."

16. To deliver on this task, the Commission had to assess whether the national legislation of Sri Lanka corresponds to the obligations assumed by Sri Lanka under the three conventions,¹⁶

¹⁰ Meetings were held at the officials' level on 26 January 2009 in Brussels in the margins of the visit of the Foreign Minister of Sri Lanka, and on 13 May 2009 in Colombo on the context of the visit of the EU Troika.

¹¹ Notes Verbales of the GOSL to the European Commission of 13 July, 30 July, 3 August, 19 August, 11 September and 16 September 2009. A full listing of the materials contained in these Notes Verbales is included in Annex II.

¹² See in particular Notes Verbales of 17 October 2008, 17 June 2009 and 11 September 2009.

¹³ "Status Report on Ratification and Implementation of Conventions referred to in Article 8 & 9 and listed under Parts A & B of Annex III by Sri Lanka", annexed to Note Verbale Ref. B/EC/8(5) and submitted to the European Commission on 20 September 2005, p. 2.

¹⁴ The GOSL provided this undertaking with Note Verbale Ref. B/EC/8(5) submitted to the European Commission on 20 September 2005.

¹⁵ Note Verbale Ref. B/EC/8(20) and submitted to the EC on 9 October 2008 and annexed Status Report on ratification and implementation on Conventions referred to in Articles 8 & 9 and listed under Parts A and B of Annex III by Sri Lanka.

whether these obligations are effectively implemented in practice, and, related to that, whether the institutions responsible for the protection of human rights and for providing remedies for violations are functioning adequately. These are essential elements for the implementation of human rights commitments to be deemed effective. This approach to the examination of Sri Lanka's effective implementation and fulfilment of its human rights obligations and commitments under the three UN instruments is in line with the relevant UN Treaty bodies' interpretation of the implementing obligations deriving from such instruments.¹⁷

17. Human rights obligations only bind the State and its agents. The State is required to protect individuals within its jurisdiction from violations, including violations at the hands of third parties such as forces over which it exercises or could exercise effective or actual control. The State is under an obligation to respect, protect and fulfil the human rights obligations and to implement those obligations. Implementation includes legislative enactment. It also includes administrative policies and measures to give effect to the commitments. The State is required not only positively to deliver the rights but also to put in place measures to guard against the risk of abuse. That includes, but is not limited to, an effective system of investigation in the event of alleged violations.¹⁸ Only in such a case can implementation be called effective.

18. The investigation has focused on actions and measures taken by the Sri Lankan government and authorities and has not dealt with human rights violations committed by the Liberation Tigers of Tamil Eelam (LTTE) or any other group outside Government control. The focus on the government's actions must not be understood as disregarding or minimizing

¹⁶ "Sri Lanka follows a dualist system in implementing its obligations under international law. Therefore the enactment or the existence of corresponding domestic legislation is an essential prerequisite for the implementation of an international Convention in the domestic forum. Domestic legislation to give effect to international Conventions subscribed to by Sri Lanka takes the form of rights guaranteed under the Constitution, enactment of comprehensive legislation by way of an enabling Act, and enactment of subsidiary legislation and regulations under a principal Statute." See Supplement to the Report to the 3rd and 4th Combined Reports of Sri Lanka to the Committee against Torture, submitted on 14 August 2009, doc. C.1.19, para. 4.

¹⁷ See General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004; General Comment No. 2, Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008; General Comment No. 5 (2003), General measures of implementation for the Convention on the Rights of the Child, 3 October 2003.

¹⁸ In this respect, the independent experts stated: "Isolated cases of alleged violations are not necessarily a sign of failed implementation as an individual State agent might engage in unauthorized action. Generally speaking, where the State's system for providing redress is functioning properly, it should be able to identify whether a violation has occurred, to compensate the victim and to ensure that the necessary steps are identified and implemented to ensure that the violation does not occur again. It is also possible that the domestic authorities fail to identify the act or omission as a violation. ... This being said, where there is clear and consistent evidence of conduct in violation of the State's obligations and where this is not corrected by the domestic remedial system, there is a lack of effective implementation of the relevant instruments which also constitutes a violation of the State's obligation to implement its international undertakings. ..." (IER, section 2.3). "Where any violation occurs on a widespread or systematic basis, there is a strong implication that domestic remedies are not operating effectively in that particular field. The assumption is that, if remedies were working effectively, they would both put an end to the practice and act as a deterrent against future violations. In case of violations occurring on a widespread or systematic basis the implementation of the relevant Conventions cannot be deemed effective" (IER, section 2.6).

in any way the significance of human rights violations committed by the LTTE or any other group outside Government control.¹⁹

19. In addition to being responsible for the acts of State agents,²⁰ the State may also be held responsible or accountable for any other forces over which they exercise or could exercise effective or actual control.²¹ Accordingly, the acts of forces under "Colonel" Karuna (the "Karuna group"),²² who defected to the government side in 2004, are in general attributable to the State from the start of the period under investigation. This applies also to other armed groups operating in government controlled areas.²³

20. The investigation has examined events and actions after the GSP+ treatment was granted to Sri Lanka on 27 June 2005 and is based on materials and information available up to 16 September 2009.

4. Findings of the investigation

4.1 Effective implementation: the legal and institutional framework with respect to the obligations contained in the ICCPR, CAT and CRC²⁴

21. Chapter III of the Sri Lankan Constitution transposes into Sri Lankan law many of the provisions of the ICCPR. In 2007, Chapter III of the Constitution was supplemented by the ICCPR Act. The ICCPR Act was a response to the ruling in the *Singarasa* case,²⁵ in which the Supreme Court had held that Sri Lanka's accession to the Optional Protocol to the ICCPR was unconstitutional and as a consequence also cast doubt on Sri Lanka's compliance with the ICCPR itself.²⁶ The object of the ICCPR Act was to give effect to certain articles in the ICCPR which had not yet been transposed either through the Constitution or through other legislation. UN High Commissioner for Human Rights Louise Arbour warned that "the new legislation (i.e. the ICCPR Act) risked confusing further the status of different rights in national law".²⁷ Following the adoption of the ICCPR Act, the government sought an advisory

¹⁹ The LTTE was included in 2006 in the EU list of terrorist groups, see Council Decision of 29 May 2006, OJEU L144/21 of 31 May 2006.

²⁰ State agents include all persons who exercise authority in the name of the State, such as the executive, police and security forces, courts, judges and prosecutors, see General Comment No. 31, cit., para. 4.

²¹ See International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, Article 8 (Conduct directed or controlled by a State): "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct", adopted by the International Law Commission at its fifty-third session (2001), in Report of the International Law Commission on the work of its Fifty-third session, *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10)*, chp. IV.E.1. See also IER, section 2.2.

²² The Karuna group is now known as Tamil Makkal Viduthalai Pulikal (TMVP), and was registered as a political party in 2007.

²³ For example the People's Liberation Organization of Tamil Eelam (PLOTE).

²⁴ See in general IER, chapter 3 and 4. In considering the legal framework relevant for the effective implementation of the three Conventions account should also be taken of the underlying purpose of the special incentive arrangement for sustainable development and good governance set out Articles 8 and 9 of Council Regulation (EC) No 732/2008 and the substantive criteria Sri Lanka had to meet in order to qualify for the special incentive arrangement.

²⁵ See doc. A.6.1.

²⁶ See doc. A.6.2. Some commentators indicated that "this decision is at absolute odds with accepted international law", see for instance doc. A.4.14.

²⁷ See doc. A.3.4.

opinion of the Sri Lankan Supreme Court, which stated that the combined effect of Chapter III of the Constitution, the ICCPR Act, a number of other laws and judgments of the Sri Lankan courts was to ensure that the provisions of the ICCPR were fully transposed into Sri Lankan law.²⁸

22. This judgment can be questioned on a number of grounds. First, Article 16 of the Constitution ensured the continuation in force of laws which existed at the time when the Constitution came into force notwithstanding any inconsistency with the rights recognised by the Constitution. Second, the Constitution, ICCPR Act and other legislation do not include provisions corresponding to all ICCPR rights: the “right to life” is the most notable omission,²⁹ although several others are also not included, such as right to leave the country or the right to privacy.³⁰ Third, the Constitution allows for greater limitations on rights than permissible under the ICCPR, as it does not provide that limitations are subject to tests of necessity and proportionality. Article 15(7) of the Constitution is general in nature and permits restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health and morality.³¹

23. Sri Lanka informed the UN Secretary General on 30 May 2000 that it had declared a state of emergency and wished to derogate from a number of ICCPR Articles.³² In decisions on individual cases, and especially in General Comment 29, the UN Human Rights Committee has explained how a State must respect the rule of law in a state of emergency, stressing that even in an emergency situation certain rights can under no circumstances be suspended (or derogated from), including the right not to be tortured, or suffer cruel, inhuman or degrading treatment or punishment, the right not to be arbitrarily deprived of life and the right to freedom of thought, conscience and religion or fundamental principles of justice, including

²⁸ The Supreme Court after a public hearing had concluded on the 17 March 2008 "(1) that the legislative measures referred to in the Communication of His Excellency the President dated 4. 3. 2008 and the provisions of the Constitution and of other law, including the decisions of the Superior Courts of Sri Lanka give adequate recognition to the Civil and Political rights contained in the International Covenant on Civil and Political Rights and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of Rights as contained in the covenant. (2) that the aforesaid rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka." See doc. A.6.2. See also Note Verbale of the GOSL of 11 September 2009, Annex 1.

²⁹ In the 2003 case *Kottabadu Durage Sriyani Silva vs. Chanaka Iddamalgodu, Officer in Charge, Police Station Payagala and Six others*, [2003] 2 Sri LR 63, the Supreme Court had stated that "although the right to life is not expressly recognised as a fundamental right, that right is impliedly recognised in some of the provisions of Chapter III of the Constitution. In particular, Article 13(4) provides that no person shall be punished with death or imprisonment except by order of a competent court. That is to say, a person has a right not to be put to death because of wrongdoing on his part, except upon a court order. ... Expressed positively, that provision means that a person has a right to live, unless a court orders otherwise. Thus Article 13(4), by necessary implication, recognises that a person has a right to life – at least in the sense of mere existence, as distinct from the quality of life – which he can be deprived of only under a court order."

³⁰ See doc. B.2.3, C.2.23.

³¹ See IER, para 4.2. Article 15(7) provides: The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.

³² The derogations related to ICCPR Articles 9 (2), 9 (3), 12 (1), 12 (2), 14 (3), 17 (1), 19 (2), 21 and 22. See IER, section 2.4.

the presumption of innocence. Not even war or threat to the life of the nation can justify ignoring such rights.³³

24. In 2005-2006, Sri Lanka adopted two emergency regulations: the Emergency (Miscellaneous Provisions and Powers) Regulation 2005 and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation 2006. The emergency regulations pose a number of grave problems.³⁴ The principle of legality requires criminal offences to be clearly defined in unambiguous language. However, there is evidence that many of the provisions in the emergency regulations, such as the offence of engaging in terrorism, “acts of terrorism”, transactions and communications with persons or groups committing terrorist offences, have been given an extensive interpretation.³⁵

25. Further, the emergency regulations delegate sweeping powers to military personnel to perform functions normally carried out by law enforcement officials, including powers of investigation, search, arrest and detention. Administrative detention is not adequately controlled by the provisions governing detention while under arrest or awaiting trial in line with the standards set out by the UN Human Rights Committee as the emergency regulations restrict court control of administrative detention. The emergency regulations also undermine the right against self-incrimination by creating a “duty” for persons to answer police questions and weaken the principle of the presumption of innocence by reversing the burden of proof. Lastly, the emergency regulations severely limit the accountability of civilian and military authorities for their actions in the performance of their duties by providing that no action or suit shall lie against any public servant specifically authorized by the GOSL to take action in terms of regulations, provided that such person has acted in good faith and in the discharge of his official duties.³⁶

³³ On 15 April 2008, the International Independent Group of Eminent Persons (IIGEP, the group of experts appointed by the President in 2006 to act as observers of the activities of a local commission of inquiry) issued its final Public Statement. In the Annex to the Public Statement dealing with international norms and standards, the report recognizes that: “Article 4 of the ICCPR does not permit, even in an emergency, any derogation from the provisions relating to the right to life, freedom of torture, and certain other fundamental rights. In the case of any derogation, it is incumbent upon the state to justify the measures against the yardsticks of necessity and proportionality. Sri Lanka has not chosen to announce to the States parties to the Covenant any measures of derogation pursuant to article 4 of the Covenant. Nevertheless, the IIGEP stresses the above principles in view of what has been described as the “culture of impunity” that prevails in certain quarters in Sri Lanka, which would lead to a failure to treat these grave human rights violations with the seriousness required, or even justify shielding the perpetrators from accountability, in a time of national emergency.” See doc. A.5.6.

³⁴ For an analysis of the emergency regulations see doc. C.2.15.

³⁵ See doc. C.2.1; A.4.6; A.3.10; A.3.13; A.4.3; A.4.8; A.4.1; A.4.11.

³⁶ Section 19 of the Emergency Regulations 2006 provides specific immunity for actions taken under the Regulations: “No action or suit shall lie against any Public Servant or any other person specifically authorized by the GOSL to take action in terms of these Regulations, provided that such person has acted in good faith and in the discharge of his official duties.” Similar immunity provisions are contained in Regulation 73 of the Emergency Regulations 2005. The ICCPR require States to bring to trial and punish those guilty of human rights violations. The UN Human Rights Committee considers that amnesty laws, or similar measures, help to create a climate of impunity for the perpetrators of human rights violations and has stressed that States may not provide immunities or amnesties for human rights violations as “amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future.” See General Comment No. 20 (on the prohibition of torture and cruel, inhuman or degrading treatment or punishment), 10 March 1992, para. 15. Similar immunity provisions are contained in other emergency legislation.

26. Sri Lanka's Constitution proscribes "torture or ... cruel, inhuman or degrading treatment or punishment" (Art. 11). Sri Lanka also has various domestic laws to prevent and criminalize torture. In relation to the implementation of the CAT, Sri Lanka has adopted the 1994 Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment Act ("CAT Act") whose objective is to transpose the CAT into domestic law.³⁷ Although in general the Constitution and the CAT Act incorporate the CAT in domestic legislation, several weaknesses have been identified. In particular, the Code of Criminal Procedure lacks several safeguards against torture, such as the right of a person arrested and held in custody to inform a family member of the arrest and the right of access to a lawyer and/or a doctor of his choice.³⁸ The Code of Criminal Procedure also does not specify the interrogation conditions. The absence of an effective *ex officio* investigation mechanism in accordance with article 12 of the CAT is another weakness. Furthermore, under the emergency regulations, many of the safeguards against torture contained in the Code of Criminal Procedure do not apply, which has led to a situation in which torture becomes a routine practice in the context of counter-terrorism operations. The non-applicability of important legal safeguards in the context of counter-terrorism measures, as well as excessively prolonged police detention, opens up the doors for abuse. While a significant number of indictments for torture have been brought under the CAT Act, the majority of prosecutions have been inconclusive.

27. Concerning the CRC, provisions giving effect to the Convention are to be found in the Constitution as well as in a number of laws. The Penal Code prohibits the recruitment of child soldiers in line with the provisions of the CRC. As a result, domestic legislation has incorporated the CRC.

28. The credibility of many of the *institutions for the protection of human rights* has suffered due to appointments to them having been made without observing the 17th amendment to the Constitution.³⁹ The 17th amendment makes appointments to independent commissions and senior positions in the public service - such as the Attorney General, the Inspector General of

³⁷ There are diverging views on whether the CAT Act fully transposes the CAT. See, e.g., Kishali Pinto Jayawardena, Rule of law in decline in Sri Lanka: Study on prevalence, deterrence and causes of torture and other forms of cruel inhuman and degrading treatment or punishment in Sri Lanka, published by The Rehabilitation and Research Centre for Torture Victims, Copenhagen, Denmark, page 10, where she states that "Torture has been criminalised in the CAT Act, but the Act does not live up to Sri Lanka's obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." In *Sriyani Silva*, cit., the Court relied primarily on the CAT itself, rather than the CAT Act, which does not contain any provision on the right of either the victim or a dependant to compensation.

³⁸ The GOSL in Note Verbale of 11 September 2009, Annex 1, notes that: "In order to ensure that the right to a fair trial is "practical and effective", a proposal is to be submitted that a suspect be allowed access to a lawyer at the initial stage of police interrogation no matter how serious the Charge is. This fundamental right would offer protection against ill treatment, reduce the risk of miscarriage of justice and promote equality of bargaining power between the police and the suspect and respect the suspect's privilege against self incrimination. These rights have been enacted into the law of England and the rights of access to a lawyer may be waived by the suspect, but the State must prove unequivocally that the waiver was of the suspect's own free will. This expands the right conferred on a person charged with an offence in terms of Article 13 of the Constitution. By implementing safeguards such as right to inform a relative and access to legal representation at the investigating stage, it is also the view of the National Action committee on Torture to avert allegations of torture against police officers. This would also be a response to an exhortation of the Thirty Fifth Session of the United Nations Committee against Torture that Sri Lanka should take effective measures to ensure that fundamental legal safeguards must be enacted by Sri Lanka for persons detained by police."

³⁹ In 2007 it was announced that a Parliamentary Select Committee was in the process of finalizing a report which would enable the reconstitution of the Constitutional Council. See doc. A.6.7.

the Police, the Chief Justice and other Judges of the Supreme Court and the Court of Appeal - subject to a recommendation from, or approval of, the Constitutional Council. In practice, the President has made such appointments directly. As a consequence the institutions in question are widely perceived as having lost independence and fallen subject to political influence.⁴⁰

29. States must effectively investigate all allegations of serious human rights violations.⁴¹ There is a positive obligation on all States to investigate all crimes promptly, impartially and thoroughly. The duty to do so become paramount in cases where there are allegations of serious human rights violations by the State's security forces. However, the efficiency of police investigations in Sri Lanka has been strongly criticised.⁴² Persistent and credible allegations have been levelled against the police with respect to failure to act and obstruction of justice in order to cover up the role of government agents in human rights violations.⁴³

30. The Attorney General's Department is the chief legal adviser to the President and to all departments and ministries of government, including the State security forces and the police. The Attorney General is the principal official responsible for authorising prosecutions concerning serious offences and enjoys wide prosecutorial discretion. The independence and impartiality of the Attorney General are particularly important in Sri Lanka given his extensive powers, obligations and duties in criminal proceedings, including investigations into allegations of serious human rights violations committed by the State. The manner in which the current Attorney General was appointed in disregard of the 17th Amendment raises questions about his independence and impartiality. Reports indicate that the Attorney General's Department does not vigorously prosecute cases involving serious human rights violations.⁴⁴

31. The role of the Attorney General in the prosecution of cases may place the Attorney General in a conflict of interest as far as any inquiry into the administration of justice is concerned. This issue became evident in the context of the work of the Presidential Commission of Inquiry (CoI) set up in 2006 to investigate a number of serious violations of human rights. The conflict of interest generated by the Attorney General's actions was one of the main reasons behind the decision of the International Independent Group of Eminent Persons (IIGEP) to cease its activities.⁴⁵

⁴⁰ See doc. A.3.10, A.3.13, A.3.5, A.4.1, A.4.7, C.2.22, C.2.25, C.2.15, C.2.2, A.3.17.

⁴¹ In line with the obligations set in Art. 2 of ICCPR which refer to the obligation "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy".

⁴² On 13 October 2007, the UN High Commissioner for Human Rights Louise Arbour at the end of her official visit to Sri Lanka stated that "in the context of the armed conflict and of the emergency measures taken against terrorism, the weakness of the rule of law and prevalence of impunity is alarming. There is a large number of reported killings, abductions and disappearances which remain unresolved. This is particularly worrying in a country that has had a long, traumatic experience of unresolved disappearances and no shortage of recommendations from past Commissions of Inquiry on how to safeguard against such violations. While the Government pointed to several initiatives it has taken to address these issues, there has yet to be an adequate and credible public accounting for the vast majority of these incidents. In the absence of more vigorous investigations, prosecutions and convictions, it is hard to see how this will come to an end. ... While Sri Lanka has much of the necessary human rights institutional infrastructure, critical elements of protection have been undermined or compromised". See doc. A.3.4.

⁴³ See doc. A.3.17, C.2.25, A.4.4, A.4.6, A.4.1.

⁴⁴ See doc. A.3.17, C.2.7, C.2.29.

⁴⁵ See doc. A.5.2, A.5.4, A.5.6.

32. The judicial system of Sri Lanka has not been capable of meeting the challenges caused by the explosion of political crimes and human rights violations.⁴⁶ The judiciary is, or has been, vulnerable to political influence from the government and the former Chief Justice. It is widely reported that the former Chief Justice used the administration of case allocation as a way to sideline senior judges from hearing politically sensitive cases.⁴⁷

33. The National Human Rights Commission (NHRC) of Sri Lanka is an independent commission, which was set up to promote and protect human rights in the country. Its main duties are to inquire into, and to investigate, complaints regarding procedures, to ensure compliance with the provisions relating to fundamental rights as guaranteed under the Constitution and to promote respect for, and observance of, fundamental rights. The NHRC also is mandated to inquire into and investigate complaints regarding infringements of fundamental rights, and to provide for resolution thereof by conciliation and mediation in accordance with the provisions of the NHRC Act. The NHRC lacks the capacity to conduct detailed criminal investigations and is not adequately funded and resourced. Both the Bar and academics are unanimous that the NHRC does not have the will or power to address the more serious human rights issues. The Government has announced its intention to increase the powers of the NHRC. In October 2007, the Sub-Committee on accreditation of the International Coordinating Committee (ICC) of National Human Rights Institutions took the decision to downgrade the NHRC from "A" to observer "B" status (not fully compliant with Paris Principles) due to two primary concerns: (1) it was not clear that the appointment of Commissioners was in compliance with the Paris Principles;⁴⁸ and (2) in practice, it was not clear that the NHRC remained balanced, objective and apolitical, particularly with regards to the discontinuation of follow-up to 2,000 cases of disappearances in July 2006.⁴⁹ This decision confirmed the inadequacy of the NHRC in fulfilling its important mandate.⁵⁰

34. The use in Sri Lanka of Commissions of Inquiry (CoI) has been widely criticized because it represents an *ad hoc* response to a series of particularly shocking incidents which has tended to shift attention away from the deficiencies in the normal institutions devoted to the protection of human rights.⁵¹ CoI cannot be a substitute for effective action by the relevant enforcement agencies⁵². In addition, it should be noted that the IIGEP established in the

⁴⁶ See doc. A.3.13.

⁴⁷ See doc. C.2.29.

⁴⁸ Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993.

⁴⁹ See doc. A.3.5.

⁵⁰ See doc. C.2.29. On 11 December 2007, the UN High Commissioner for Human rights Louise Arbour addressed the 6th Session of the Human Rights Council in Geneva, reporting on her recent visit to Sri Lanka. In her statement concerning Sri Lanka she stated: "During my visit, I paid special attention to the issue of abductions and disappearances, which have been reported in alarming numbers over the past two years. While the Government pointed to several initiatives it had taken to address these issues, there has yet to be an adequate investigation or credible public accounting for the vast majority of these cases. I am also concerned about safeguards for those detained under the emergency regulations, including during recent mass arrests in Colombo. Regrettably, the various national institutions and mechanisms that could be expected to safeguard human rights have failed to deliver adequate protection. In particular, the Human Rights Commission of Sri Lanka, which had previously enjoyed a proud reputation internationally, has had its independence compromised by the irregular appointment of its Commissioners and the credibility of its work has suffered." See doc. A.3.7.

⁵¹ See doc. C.2.25.

⁵² See doc. C.2.7, C.2.25.

context of the 2006 Presidential Commission of Inquiry ceased its activities on the grounds that, *inter alia*, the proceedings of the Commission fell short of basic international norms.⁵³

35. Sri Lanka undertook voluntary commitments made in the framework of the UN Human Rights Council (HRC) Universal Periodic Review (UPR) in May 2008⁵⁴ to develop a National Action Plan on Human Rights (NAPHR) in 2009 and to implement it over a period of five years. Sri Lanka has started work to draft the NAPHR but at the time of writing the Action Plan has not yet been finalised. Comprehensive information on its expected content have not been made available by GOSL to the Commission⁵⁵ and it is not therefore possible to assess to what extent implementation of the Action Plan could contribute to addressing existing shortcomings.⁵⁶

4.2. Effective implementation: actual compliance with the obligations contained in the ICCPR, CAT and CRC

36. Throughout the period covered by the investigation a variety of credible sources, including UN special procedures and reputable NGOs have repeatedly expressed concern about the human rights situation in Sri Lanka and the existence of a widespread climate of impunity⁵⁷. When UN High Commissioner for Human Rights Louise Arbour visited Sri Lanka in October 2007 she issued a statement stressing that “the weakness of the rule of law and prevalence of impunity was alarming”.⁵⁸ In February 2009, ten UN independent experts and Special Rapporteurs on human rights came to a similar conclusion, recognising that “the deteriorating human rights situation... has led to unabated impunity for human rights violations”.⁵⁹ In May 2009 UN Special Procedures mandate holders reiterated “the wider and endemic problems and failures to protect human rights throughout the country. Weak

⁵³ On 19 December 2007, the International Independent Group of Eminent Persons (IIGEP), released its 4th Public Statement which stated that: “the above issues reinforce the IIGEP’s prior assessment that the Commission of Inquiry’s process falls short of international norms and standards. The Commission’s work also lacks transparency. For instance, all sessions conducted by the Commission have been held to the exclusion of the public, the victims and their families and, on occasions, the IIGEP. In addition, there continues to be a lack of full and timely disclosure of information to the IIGEP. The IIGEP reiterates its concerns regarding the Commission’s lack of independence, ineffective witness protection measures and shortcomings in the investigations.” See doc. A.5.2. The GOSL view on IIGEP’s position is expressed in doc. A.6.10.

⁵⁴ See doc C.1.15.

⁵⁵ Through Note Verbale of the GOSL of 11 September 2009, Annex 11, the Commission received a short note providing an update on the preparation of the NAPHR.

⁵⁶ For an update on the preparation of the action plan, see also doc. C.1.19.

⁵⁷ See doc. C.2.13, C.2.24. See also doc. B.1.10, B.2.2, B.2.4, B.2.5, B.2.10, A.4.15, A.4.16.

⁵⁸ The statement noted that “in the context of the armed conflict and of the emergency measures taken against terrorism, the weakness of the rule of law and prevalence of impunity is alarming. There is a large number of reported killings, abductions and disappearances which remain unresolved. This is particularly worrying in a country that has had a long, traumatic experience of unresolved disappearances and no shortage of recommendations from past Commissions of Inquiry on how to safeguard against such violations. While the Government pointed to several initiatives it has taken to address these issues, there has yet to be an adequate and credible public accounting for the vast majority of these incidents. In the absence of more vigorous investigations, prosecutions and convictions, it is hard to see how this will come to an end.” See doc. A.3.4.

⁵⁹ The group expressed their “deep concern at the deteriorating human rights situation in Sri Lanka, particularly the decreasing space for critical voices and the fear of reprisals against victims and witnesses which – together with a lack of effective investigations – has led to unabated impunity for human rights violations.” See doc. C.1.3

institutional structures permit impunity to go unabated.”⁶⁰ The overwhelming majority of these sources suggest that the situation has deteriorated⁶¹ whilst the GOSL, *inter alia* in its Status Report presented in the framework of the GSP+ application of 2008, as well as in the information provided by the Government in the framework of UN HRC Universal Periodic Review in May 2008 and UN HRC Special Session in May 2009 maintained that progress had been made. Allegations of violations of the three Conventions have been regularly denied by the Government.⁶²

37. Article 6 of the ICCPR prohibits *arbitrary killings*⁶³ and requires States to protect the right to life and to investigate all killings. During the conduct of hostilities a killing will only be arbitrary if it violates the laws of armed conflict and international humanitarian law. The right to life is non-derogable.

38. As noted above, Sri Lankan law does not expressly provide for the obligation to protect the right to life. The Penal Code, however, prohibits different types of unlawful violence against the person, including offences affecting life. During the period covered by the investigation, there has been a high rate of unlawful killings in Sri Lanka, including killings carried out by the security forces, persons for whom the State is responsible and the police. Reports noted that extra-judicial killings were widespread and included political killings designed to suppress and deter the exercise of civil and political rights as well as killings of suspected criminals by the police.⁶⁴

39. Unlawful killings perpetrated by soldiers, police and paramilitary groups with ties to the Government, have been a persistent problem in Sri Lanka. According to reports, many killings and disappearances of civilians have been carried out against persons suspected of being informants for, or collaborators with, the LTTE.⁶⁵ The army assisted by pro-government Tamil paramilitaries, reportedly engaged in a deliberate policy of extra-judicial killings

⁶⁰ The group recognised that “in addition to our concern at the severe abuses in areas of conflict, we want to emphasize the wider and endemic problems and failures to protect human rights throughout the country. Weak institutional structures permit impunity to go unabated. We continue to receive disturbing reports of torture, extra-judicial killings and enforced disappearances.” See doc C.1.14.

⁶¹ As a result several bodies and institutions, including UN bodies, called for the establishment of an independent Human Rights monitoring, see for example doc. A.3.2, A.3.4.

⁶² See for example doc. A.3.15. See also the submissions by individuals and organisations contained in doc. B.1.33, B.2.6, B.2.8, B.2.11, B.3.6, B.3.7, B.3.9.

⁶³ See IER, section 5.1.

⁶⁴ On 14 May 2008 Philip Alston, the UN Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, submitted a Report to the 8th Human Rights Council to consider the implementation of recommendations he had made following visits to Sri Lanka (28 November to 6 December 2005) where he noted that “During his visit, the Special Rapporteur found that the police failed to respect or ensure the right to life. He noted that the underlying cause was that the police had become a counterinsurgency force. Police officers were accustomed to conducting themselves according to the broad powers provided them under emergency regulations rather than to those provided by the code of criminal procedure. ... The Special Rapporteur observed that these deficiencies in the police force had resulted in failures to respect and ensure the right to life. ... The Special Rapporteur found that the Government’s response to human rights violations by the police was unsatisfactory. The system for conducting internal police inquiries was structurally flawed and, indeed, inquiries had not been held into the cases the Special Rapporteur presented to the Government..... More than two years later, the Government has completely failed to implement the Special Rapporteur’s recommendations for improving police respect for human rights, police effectiveness in preventing killings, and police accountability. Indeed, there has been significant backward movement ...”. See doc. A.3.13. See also doc. A3.10, A3.17, A4.1. The GOSL view on the report are set out in doc. A.6.5.

⁶⁵ See doc A.3.17, A.4.8, C.2.13., A.4.15.

against those they considered to be supportive of the LTTE.⁶⁶ An example of the high rate of killings is that in 2006-2007, forty-four humanitarian aid workers were killed and a further twenty-three disappeared.⁶⁷ The case of the killing of 17 aid workers of the French non governmental organisation *Action Contre la Faim* (ACF) in August 2006 was particularly striking. The lack of progress in the investigation into that incident led ACF to call for an international inquiry⁶⁸. This call was supported by leading human rights defenders worldwide.⁶⁹ Reports from a wide range of sources indicate that the overall number of extra-judicial killings increased dramatically between 2006 and 2008.⁷⁰

40. Reports also indicate that the police have engaged in *summary executions*. Several persons have been shot in police custody, while others have died as a result of torture.⁷¹ The government had, as of 2008, failed to implement the recommendations of the UN Special Rapporteur on Extra-Judicial Killings for improving police respect for human rights and police accountability.⁷² In March 2008 the International Committee of the Red Cross stated that “extra-judicial killings and disappearances are part of a terrible pattern of abuse in Sri Lanka which must be stopped”.⁷³

41. Attacks on the media, both through verbal threats by the Government and through brutal physical assaults by unknown persons, have been widely reported. Since 2006 a significant number of journalists have been killed which has deterred the press from closely monitoring conflict related violence.⁷⁴ Reported motives for targeting journalists include accusations of supporting the LTTE, having criticized the Government too strongly and having revealed information the Government disliked.⁷⁵ In January 2009, the prominent journalist Lasantha Wickrematunge, editor of *The Sunday Leader*, was murdered; no-one has been charged in

⁶⁶ See doc. A.4.5, A.4.8, A.3.18.

⁶⁷ See IER, p. 49.

⁶⁸ More than three years after the crime was committed all legal procedures initiated have failed to identify the people responsible of the crime. An investigative report from the organization University Teachers for Human Rights provided strong evidence about the implication of army commandos and Special Forces and highlighted gross flaws in the procedures. See doc. C.2.4, C.2.37, A.4.9, A.4.1, C.2.17, A.4.12, A.4.13, A.5.1, C.2.3, B.2.1.

⁶⁹ See for instance doc. C.2.37.

⁷⁰ See doc. A.3.1, A.3.12, A.3.14, A.3.17, A.4.2, A.4.4, A.4.6, A.4.8, C.2.25, C.2.37.

⁷¹ See doc. C.2.16, C.2.23, A.4.5, A.4.6.

⁷² In a report issued on 27 March 2006, the UN Special Rapporteur on Extrajudicial Executions Philip Alston noted that “the police are now engaged in summary executions, which is an immensely troubling development. Reports, unchallenged by the Government, show that from November 2004 to October 2005 the police shot at least 22 criminal suspects after taking them into custody. It is alleged that the use of force became necessary when, after having been arrested, presumably searched, and (in most cases) handcuffed by the police, the suspects attempted either to escape or to attack the officers. In all cases the shooting was fatal, and in none was a police officer injured. The Government confirmed that in none of these cases had an internal police inquiry been opened. The reason proffered was that no complaints had been received.... The pattern of summary executions that emerges demands a systematic official response that brings those responsible to justice and discourages future violations.... The other main cause of deaths in police custody is torture (Deaths are an inevitable side-effect of the widespread use of torture.) ... Government officials were generally candid in recognizing that torture is widespread. The failure to effectively prosecute government violence is a deeply-felt problem in Sri Lanka.” See doc. A.3.1, para. 53 and 54, page 18. The views of the GOSL on the report are set out in doc. A.6.4.

⁷³ See doc. A.5.5. In the statement the ICRC also deplors the misleading public use of its confidential findings on disappearances by the Sri Lankan authorities.

⁷⁴ See doc. C.1.3, A.4.6, C.2.7, C.2.26.

⁷⁵ See doc. A.4.10, A.4.11, C.2.5, C.2.26.

connection with his killing.⁷⁶ Human rights defenders have also reportedly been subject to intimidations, physical attacks and assassinations.⁷⁷

42. During the final phase of hostilities between government forces and the LTTE in 2009, there were widespread allegations that government forces attacked medical facilities and fired heavy artillery into an area which had been designated as a “no-fire” zone⁷⁸. It is impossible to ascertain the number of civilian casualties during the last phase of the armed conflict as no independent monitors or journalists were allowed into the conflict zone, despite repeated international calls for independent inquiries and appeals to document the events. Nevertheless a number of authoritative sources confirmed the use of heavy weapons by Government forces and a very high number of civilian casualties⁷⁹. For instance, the UN High Commissioner for Human Rights pointed out that “a range of credible sources had indicated that more than 2,800 civilians may have been killed and more than 7,000 injured many of them inside the no-fire zones between 20 January and 13 March 2009 alone”.⁸⁰ The May 2009 Report of the UN Secretary-General on the protection of civilians in armed conflict recognised that “the intensification of fighting in the Vanni region of Sri Lanka, for example, was reportedly marked by the repeated use of heavy weapons by Sri Lankan armed forces in attacks on areas containing large numbers of civilians, including the so-called 'no-fire zones', with reports of multiple strikes on medical facilities. Combined with the refusal of the LTTE to allow civilians within its control to seek safety in an attempt to render areas immune from attack and to seek military and propaganda advantage, the consequences for civilians were catastrophic. Thousands have been killed and wounded and their plight further compounded by extremely limited access to medical and other assistance.”⁸¹ Figures on civilian casualties quoted by international press and human rights organisations were as high as 20,000 for the period between January 2009 and the end of the conflict in May 2009.⁸² An accountability process and independent inquiries were called for, including by UN Secretary General.⁸³ The GOSL referred to the last phase of the conflict as the “world largest hostage rescue operation in history”; it systematically dismissed allegations of civilian casualties and consistently denied any wrongdoing.⁸⁴

43. Article 7 of the ICCPR prohibits *torture or cruel, inhuman or degrading treatment or punishment* (CIDT).⁸⁵ The provision is non-derogable even during states of emergency. Article 2 of CAT foresees that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

⁷⁶ See doc. C.2.39.

⁷⁷ See doc. A.4.11.

⁷⁸ See doc. C.2.12, C.2.24.

⁷⁹ See doc. C.1.8, C.1.10, C.2.9, C.2.10, C.2.11, C.2.12, C.2.18, C.2.19, C.2.24. See also B.2.7.

⁸⁰ See doc. C.1.1, C.1.22.

⁸¹ See doc. C.1.16, C.2.21, C.2.24.

⁸² *The Times* article on 29 May 2009, based on UN sources, eyewitnesses and an examination of aerial photographs, put the civilian death toll in the final army offensive against the LTTE at more than 20,000; *Le Monde* referred to similar order of magnitude in the article published on 28 May 2009.

⁸³ See doc. C.1.12, C.1.9, C.1.13, C.1.14, C.1.17, C.1.18.

⁸⁴ See doc. C.3.4, C.3.5, C.3.2, A.3.15.

⁸⁵ See IER, section 5.2.

44. International reports indicate continual and well-documented allegations of widespread torture and ill-treatment committed by State forces (police and military) particularly in situations of detention.⁸⁶ The UN Special Rapporteur on Torture has expressed shock at the severity of the torture employed by the army, which includes burning with soldering irons and suspension of detainees by their thumbs.⁸⁷ The UN Special Rapporteur on Extra-Judicial Killings has noted that the majority of deaths as a result of torture at the hands of the police are not caused by “rogue” police officers but by ordinary officers taking part in an established routine.⁸⁸ There are particularly widespread allegations of torture and CIDT in and near recent conflict zones. The allegations include claims of sexual assault and rape in IDP camps.⁸⁹

45. Government officials have recognized that torture by police and security forces is widespread,⁹⁰ although the GOSL denies that torture is widespread but “is only occasionally resorted to by over-zealous investigative personnel ...”.⁹¹

46. There are consistent reports that allegations of torture or CIDT are not promptly or impartially investigated.⁹² Detainees and other victims are reluctant to report incidents of torture or CIDT to the authorities due to intimidation by police officers and threats of further violence. Medical examination of persons who complain of torture is wholly inadequate. The UN Special Rapporteur on Torture has noted that his fact-finding was obstructed by officials who attempted to hide or transfer detainees, particularly those who had been most seriously subjected to torture, as they still bore marks of ill-treatment. A combination of antiquated facilities and severe overcrowding give rise to degrading treatment at some prisons.⁹³ In May 2009 the UN Special Procedures mandate holders pointed to the fact that they “continued to receive disturbing reports of torture, extra-judicial killings and enforced disappearances”.⁹⁴

47. Sri Lanka has various domestic laws to prevent and criminalize torture and CIDT, including the CAT Act. The Government has also created specific human rights bodies, such as the NHRC and the National Police Commission, which are designed to monitor human rights and to receive complaints regarding human rights violations, including of torture and CIDT. However, many of these institutions have been rendered ineffective due to lack of resources, lack of political will and conflicts of interest. The ineffectiveness of institutional safeguards has allowed the police, the armed forces and other Government officials to engage

⁸⁶ On 29 October 2007, Manfred Nowak, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, told the General Assembly's Third Committee that “the high number of indictments for torture filed by the Attorney General’s Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka”. See doc. A.3.6.

⁸⁷ See doc. A.3.10, A.3.11.

⁸⁸ See doc. A.3.6, A.3.10, A.3.1.

⁸⁹ It is difficult to verify these allegations which have been reported in the press, Sky News, Sri Lanka Tamil refugees under rape and kidnapping in camps, available at: <http://www.wikio.fr/video/1220176> [accessed on 25 September 2009]; Al Jazeera, No welfare for Sri Lanka's Tamils, 6 July 2009, available at: <http://english.aljazeera.net/news/asia/2009/06/200961962329963252.htm> [accessed on 25 September 2009].

⁹⁰ See doc. A.3.1, para. 53 and 54, page 18.

⁹¹ See doc. A.6.8, A.6.9.

⁹² The Asian Human Right Commission continues to document regular cases of alleged torture, see specific cases at: <http://www.srilankahr.net/>. See doc. A.3.10, A.4.8.

⁹³ See doc. A.3.10.

⁹⁴ See doc C.1.14.

in, or to be complicit in, torture or CIDT with impunity.⁹⁵ While a significant number of indictments for torture or CIDT have been brought, the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction, unlawful confinement or torture have been inconclusive due to a lack of sufficient evidence and the unavailability of witnesses. So far in the exercise of its jurisdiction under the CAT Act, the High Court has handed down very few convictions.⁹⁶ The lack of a legal framework for witness protection has also hindered effective prosecution of torture cases.⁹⁷

48. Many of the protections against torture contained in domestic laws do not apply in cases of detention under the emergency legislation.⁹⁸ The emergency legislation authorizes detention in a much wider range of circumstances than the law normally applicable.⁹⁹ The emergency legislation allows security forces to hold suspects for up to one year under “preventive detention” orders issued by the Secretary of the Ministry of Defence without complying with the procedural safeguards for detainees provided in the Criminal Procedure Code. Although involuntary confessions are not admissible in evidence, the onus of proving that the confession was involuntary rests on the person alleging torture.

49. Article 9 of the ICCPR states that everyone has the right to liberty and security of person and that no one shall be subject to *arbitrary arrest and detention*.¹⁰⁰ At the time of a person’s arrest, he must be informed of the reasons for his arrest and promptly informed of the charges. He must also be promptly brought before a judge and given a trial within a reasonable amount of time. Every person arrested and detained has the right to challenge the lawfulness of his detention and shall have an enforceable right to compensation. Article 10 states that everyone arrested and detained shall be treated with humanity and dignity. Accused persons must be segregated from convicted detainees and children segregated from adults in detention. Articles 9 and 10 are potentially derogable.

50. In Sri Lanka constitutional safeguards relating to arrest and detention include Article 13 of the Constitution which foresees a number of fundamental safeguards, such as freedom from arbitrary arrest and the right to be informed of the reasons for the arrest. Every person held in custody, detained or deprived of personal liberty shall be brought before a judge and shall not be further held in custody, detained or otherwise be deprived of personal liberty except upon and in terms of the order of the judge. The Code of Criminal Procedure includes safeguards regarding the integrity of detained persons. However, many of the protections in the Code do not apply in cases of detention under the emergency legislation. The emergency legislation allows security forces to arrest persons on broadly defined grounds and to hold suspects for up to one year under “preventive detention” orders issued by the Secretary of the Ministry of Defence without complying with the procedural safeguards for detainees provided in the Criminal Procedure Code.

⁹⁵ See doc. A.3.1, A.3.6, C.2.7.

⁹⁶ Republic of Sri Lanka vs. Madiliyawatte Jayalathge Thilakarathna Jayalath, Colombo High Court, 19 January 2004; Republic of Sri Lanka vs. Edirisinghe, Colombo High Court, 20 August 2004; Republic of Sri Lanka vs Selvin Selle and Another, Colombo High Court, 20 July 2007.

⁹⁷ A proposal for witness protection legislation has been tabled and recent information indicates that it might advance, see doc. A.6.3. See also Note Verbale of the GOSL of 3 August 2009.

⁹⁸ See doc. C.2.15.

⁹⁹ See doc. A.3.1 where it is stated that “today, too many police officers are accustomed to “investigating” by forcibly extracting confessions and to operating without meaningful disciplinary procedures or judicial review”, para. 50, and that “the failure to effectively prosecute government violence is a deeply-felt problem in Sri Lanka”, para. 59.

¹⁰⁰ See IER, section 5.3.

51. Under the 2005 Emergency Regulations (Regulation 19), persons suspected of “acting in any manner prejudicial to the national security or the maintenance of public order, or to the maintenance of essential services” may be arrested and held in detention for up to 18 months, without access to independent judicial review. Persons may be similarly detained under the Section 9 of the Prevention of Terrorism (Temporary Provisions) Act (“PTA”). There is also provision (Regulation 22) for automatic detention of a “surrenderer” up to two years for the purposes of “rehabilitation”, including persons seeking the protection of the state because of “fear of terrorist activities”.

52. A person held in administrative detention, under Regulation 19(1), is to be physically produced before a magistrate “within a reasonable time, having regard to the circumstances of each case, and in any event not later than thirty days from the date of such detention” and not within 24 hours of arrest as generally provided for under the Criminal Procedure Code. Court scrutiny and discretion to overturn an order made under Regulation 19(1) is in fact expressly excluded and where the Secretary to the Ministry of Defence has ordered detention under Regulation 19 or 21, the court “shall order” continued detention.

53. The only remedy for a person under Regulation 19 detention is to make objections to an “Advisory Committee”, consisting of persons appointed by the President, or the President himself, which reports to the Secretary of the Ministry of Defence who may revoke the detention order, except where the person is a member of a proscribed organization. This is inconsistent with Article 9 (4) of the ICCPR which provides that any detained person is entitled to take proceedings before a “court”, not a committee appointed by the Executive, in order for the court to decide without delay on the lawfulness of detention.

54. On 7 July 2006, the President issued directions to the Heads of the Armed Forces and the Police Force to enable the Human Rights Commission of Sri Lanka reaffirm that the police and armed forces shall assist and facilitate the work of the NHRC in the exercise of its powers and duties to ensure the fundamental rights of those arrested and detained. However, the Presidential Directions are guidelines only and their exact legal status and impact are unclear.

55. The emergency and anti-terrorism legislation has been used to arrest and detain – in some cases without charge - critical journalists, newspaper operators and political opponents of the government. A notable example is the detention without charge for five months under the emergency legislation of the prominent journalist J. S. Tissainayagam.¹⁰¹ Moreover, on 31 August 2009, Mr. Tissainayagam was found guilty under the Prevention of Terrorism Act of (1) attempting to cause the commission of acts of violence or racial or communal disharmony with clear intentions of causing disrepute to the government, an act of conspiracy; (2) attempting to cause the commission of acts of violence or racial or communal disharmony relating to articles published in the North Eastern Monthly magazine in 2006 and 2007, and (3) collecting and obtaining information for the purpose of terrorism and raising funds for the purpose of terrorism through the collection of funds for the said magazine. He was given consecutive sentences of 5, 5 and 10 years rigorous imprisonment respectively.

56. Over the period covered by the investigation several cases alleging arbitrary detention were referred to the UN Working Group on Arbitrary Detention. In the majority of cases, the

¹⁰¹ See doc. C.2.38 and many statements from human rights organisations (such as Amnesty International, "Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression", 1 September 2009), Governments, and the EU.

Sri Lankan government responded to the communication of the Working Group.¹⁰² In every case referred to it, the Working Group found the detention to be arbitrary because of the conditions of arrest allowed under the emergency regulations.¹⁰³

57. There are reports that the TVMP/Karuna group has detained children suspected of association with the LTTE and in some cases recruited them into the TVMP.¹⁰⁴ The UNHCR reported in April 2009 that the TVMP was continuing to conduct arbitrary detentions and abductions in the east of Sri Lanka.¹⁰⁵

58. The Emergency Regulations authorise the creation of counter-terrorism detention camps which are not subject to inspection by the NHRC. Provisions under the 2005 Emergency Regulations and the PTA allow for persons to be detained in places of detention other than a regular police station, detention centre, penal institution or prison, and the publication of a list of such authorised places of detention is not required.¹⁰⁶ The risk of human rights violations, such as *incommunicado* detention or enforced disappearance, is significantly increased when detainees are held in locations that are not recognised places of detention, without the normal procedures and safeguards to protect detainees.¹⁰⁷

59. In the aftermath of the end of the conflict in spring 2009, almost 300,000 persons crossed to the Government controlled areas from the conflict zone and have been held in military controlled Internally Displaced Persons camps for security reasons. The UN High Commissioner for Human Rights stressed in September 2009 that in Sri Lanka internally displaced persons are effectively detained under conditions of internment.¹⁰⁸ It must be recognized that the GOSL was faced with a daunting practical challenge in dealing with the sudden movement of such large numbers of persons. Nevertheless, the conditions in the

¹⁰² Opinions adopted by the Working Group on Arbitrary Detention, E/CN.4/2006/7/Add.1, 19 October 2005, Opinion 8/2005, pp. 33-36; A/HRC/10/21, Opinion 30/2008, p. 8; see also Urgent Appeal, p. 12.

¹⁰³ The Emergency Regulations allow confession made to a police officer of a rank not lower than assistant superintendent of police to be admitted as evidence (provided that such confession was not made under threat, coercion or promise). Accordingly, there exists no possibility of admitting as evidence any confession made under torture. Confessions made to police officers in the circumstances described violate the principles of article 14 ICCPR, regardless of whether the legislation concerned is of an emergency nature. Sections 25 and 26 of the Evidence Ordinance declare inadmissible confessions made to a police officer, a forest officer or an excise officer and confessions made by any person while in the custody of the these three categories of officers, unless made in the immediate presence of a Magistrate. However, Regulation 41 (4) of the 2005 Emergency Regulations allows the use of confessional evidence and Regulation 63 (4) excludes the applicability of Sections 25 and 26 of the Evidence Ordinance. Regulation 41 also reverses the burden of proof placing it on the maker of a statement to attempt to “reduce or minimize” the weight to be attached to it. In addition, Regulation 48 of the EMPPR 2005 provides that any documents found in the possession, custody or control of a person suspected of an offence under any emergency regulation “shall be submitted in evidence against such person without proof thereof”. See C.2.15.

¹⁰⁴ See doc. A.3.3, A3.9, C.1.21, A.3.17, C.1.11, C.2.20, C.2.35.

¹⁰⁵ See doc. C.1.23.

¹⁰⁶ See doc. C.2.15.

¹⁰⁷ The UN Working Group on Enforced or Involuntary Disappearances has stated that for places of detention to be ‘officially recognised’, “requires that such places must be official - whether they are police, military or other premises - and in all cases clearly identifiable and recognised as such. Under no circumstances, including states of war or public emergency, can any State interests be invoked to justify or legitimise secret centres or places of detention which, by definition, would violate the Declaration [for the protection of all persons from enforced disappearances], without exception”, see General comment on article 10 of the Declaration, WGEID Report 1996 (excerpt of E/CN.4/1997/34, 13 December 1996), para. 24.

¹⁰⁸ See doc. C.1.20.

camps raise grave concerns. There is severe over-crowding, and inadequate water, sanitation, food and health care.¹⁰⁹ The security forces not only patrol the perimeters of the camps but also manage the camps internally.¹¹⁰ The over-riding priority is security and not the meeting of humanitarian needs.¹¹¹ No one can enter the camps without the permission of the security forces. The detainees do not have the right to leave the camps and are thus deprived of their liberty. It is not clear whether the Government regards them as being detained. While the huge practical challenge which faces the Government has to be taken into account, the situation in the camps amounts to mass internment and is disproportionate to the genuine need to screen IDPs in order to identify former LTTE members. Despite the presence of large numbers of soldiers guarding the camps, it is reported that allegedly many persons have disappeared from the camps, apparently at the hands of the security forces or paramilitary groups.¹¹² These reports cannot be confirmed because the camps are closed to human rights organisations, journalists and other independent observers. In addition, the screening process of IDPs in the camps takes place without transparency, independent monitoring or accountability. Moreover, there is no information available concerning the treatment and present location of persons identified during screening as LTTE cadres. This raises serious concerns about due process and the nature of the screening.¹¹³

60. So far as obtaining redress for unlawful detention is concerned, emergency regulations, such as Section 19 of the Emergency Regulations 2006 or Section 26 of the PTA, bar legal proceedings against any officer for acts done in good faith. These provisions thus render it impossible to use normal avenues of redress and compensation for unlawful arrest and detention. Although it remains possible to apply for *habeas corpus* in the High Court and the Court of Appeal, such applications have been rarely successful in gaining release.¹¹⁴ Relief against arbitrary arrest and detention can also be found by filing a fundamental rights application in the Supreme Court, but distance, difficulty of travel and of access to a Supreme Court lawyer create very significant barriers for most litigants.

61. *Enforced disappearances* constitute a multiple human rights violation.¹¹⁵ They potentially violate the right to life, the prohibition on torture and CIDT, the right to liberty and security of the person, and the right to a fair and public trial. They represent the ultimate violation of the prohibition of arbitrary detention and also constitute inhuman treatment for the next-of-kin.

62. Sri Lanka has among the highest number of disappearances in the world since 2006.¹¹⁶ The numbers provided for disappearances vary between different organisations but all reports agree that the number of disappearances is substantial. The UN High Commissioner for Human Rights has stated that some 1500 persons disappeared between December 2005 and December 2007.¹¹⁷ Human Rights Watch has reported 1000 cases of disappearances were reported to the NHRC in 2006 and over 300 in the first four months of 2007.¹¹⁸ In June 2008,

¹⁰⁹ See doc. C.2.36.

¹¹⁰ See doc. C.1.7.

¹¹¹ See doc. C 2.36.

¹¹² See doc. C.2.36, C.2.42, C.2.43 and news published on the BBC website on 15 June 2009 http://www.bbc.co.uk/sinhala/news/story/2009/06/090615_sunila_hooded.shtml [accessed on 25 September 2009].

¹¹³ See doc. C.2.36, C.2.42, C.2.43.

¹¹⁴ See doc. C.2.23, C.2.29.

¹¹⁵ See IER, section 5.4.

¹¹⁶ See doc A.3.12, C.1.2, A.3.14.

¹¹⁷ See doc. A.3.7, A.4.5.

¹¹⁸ See doc. A.4.8.

the UN Working Group on Enforced and Involuntary Disappearances noted that it had sent 22 urgent actions to the Sri Lankan Government in the previous two months alone and that both women and humanitarian aid workers were being targeted.¹¹⁹ The former Sri Lankan Minister of Foreign Affairs Mangala Samaraweera in January 2007 was quoted in several news agencies stating that a person was abducted in Sri Lanka every five hours.¹²⁰ The figures made available in November 2008 by Judge Tillekeratne, Chairman of the Presidential Commission on Disappearances, showed that 886 persons disappeared in less than 12 months.¹²¹

63. Reports indicate that in a significant number of cases individuals who initially disappeared were subsequently discovered in state detention. This strongly suggests that the state was implicated in their original disappearance.¹²² The UN Working Group on Enforced and Involuntary Disappearances has found that the Sri Lankan army, the police and the TVMP/Karuna group were responsible for many of the disappearances between November 2006 and November 2007.¹²³ The report noted a growing culture of impunity enjoyed by members of the security forces and pro-government armed groups who perpetrated enforced disappearances as the government took no steps to combat the problem. Disappearances appear to be part of the Government's counter-insurgency strategy.

64. The TMVP continued to abduct children during the period covered by the investigation. Reports indicate that Sri Lankan security forces were complicit in these abductions.¹²⁴

65. Reports indicate that senior officials have interfered in complaints brought by families of disappeared persons and witnesses and family members have been threatened.¹²⁵ Although the government has created at least nine special bodies to investigate disappearances among other human rights violations, reports indicate that these bodies have failed so far to carry out effective investigations into alleged disappearances and to bring an end to disappearances.¹²⁶ The government responded to any criticism concerning disappearances by issuing strong

¹¹⁹ See doc. A.3.14. A previous report issued on 10 January 2008 reported cases examined by the Working Group between November 2006 and November 2007. Regarding Sri Lanka the report states that "the Working Group sent 37 cases under its urgent action procedure to the Government of Sri Lanka. The majority of these cases concerned males aged between 22 and 56. One case concerned a female victim and one case concerned a 16-year-old male. Eleven cases occurred in Jaffna and 19 in Colombo. The Sri Lankan Army and the Criminal Investigation Department were allegedly responsible for a large number of these cases. Other possible perpetrators include the Sri Lankan security forces, the police, and the Karuna Group". See doc. A.3.9.

¹²⁰ See Sunday Leader, January 28, 2007.

¹²¹ See doc. A.4.8.

¹²² One example is the case of the controversial arrest of Sudar Oli, editor Mr. N. Vidyatharan in February 2009; the police spokesman first told the media that he had been abducted by a group of gunmen and driven off in a white van in broad daylight while he was attending a family funeral. The story was later modified to the effect that he was arrested by the Colombo Crimes Bureau. See "Controversy Over Arrest of Tamil Newspaper Editor", in LankaNewspaper.com, 27 February 2009, available at: http://www.lankanewspapers.com/news/2009/2/40123_space.html [accessed on 25 September 2009]. Reporters without Borders and other NGOs also reacted strongly on this arrest.

¹²³ See doc. A.3.14 and C.2.7.

¹²⁴ See IER, p. 83-84.

¹²⁵ See doc. C.2.14, C.2.6.

¹²⁶ See doc. A.3.14, C.2.7.

remarks against international monitors, NGOs and journalists, often labelling them as “traitors”.¹²⁷

66. Article 12 ICCPR provides that any person lawfully within the territory of a State has the right of liberty of movement and freedom to choose his residence. This right can be subject to restriction if provided by law, necessary to protect national security, public order, public health or morals, or the rights of others and if the restrictions are necessary and proportionate. Under the ICCPR, the right to freedom of movement can only be restricted in exceptional circumstances, if provided by law, and in conformity with the obligations contained in Article 12 (3). Moreover, the UN Human Rights Committee has stated that laws authorising restrictions should use “precise criteria and may not confer unfettered discretion on those charged with their execution.”¹²⁸

67. Article 14 of the Sri Lankan Constitution gives all citizens *freedom of movement*¹²⁹ and freedom to choose a place of residence in Sri Lanka.

68. Emergency laws and regulations allow for the imposition by government officials of curfews, restrictions on travel outside of Sri Lanka and prohibitions of movement in particular areas (zones), with considerable power given to the Secretary to the Ministry of Defence and the “Competent Authority” (generally a member of the military) to restrict or authorise movement.¹³⁰ Specific Emergency Regulations established a number of special zones designated as High Security Zones (zones with high security presence), Prohibited Zones (compounds with high security zones) and Restricted Zones (areas temporarily restricted).

69. The UN Human Rights Committee has noted that evacuation or relocation must not lead to “forced transfer” or “forced internal displacement” of a population from one part of the country to another in violation of human rights obligations.¹³¹ IDPs are entitled to the protection of their human rights, including those in the ICCPR, during and after displacement, including with respect to return, resettlement and reintegration. Under the ICCPR (Article 2 (1)) IDPs must not be subjected to discrimination or distinction based on race, colour, sex, language, religion, political or opinion, national or social origin, property or other status.

¹²⁷ For example a text published on the Ministry of Defence website in April 2008 entitled “Deriding the war heroes for a living - the ugly face of Defence Analysts in Sri Lanka” begins with the following paragraph: “There has been much controversy among the media and political circles over the stance taken by the Ministry of Defence on the media freedom in this country. Some have even called it a government's war on media; some call it an anti democratic stance taken by the government. Whatever it is, the Ministry stands affirm on its stance over the irresponsible defence reportage and will assure to take all necessary measures to stop this journalistic treachery against the country”; And concludes: “The Ministry expects all the responsible media professionals to comprehend that soldiers are in a noble mission; i.e.: to rid the country from the scourge of terrorism. Thus, the Ministry does not find any other word better than a Traitor to call whoever attempts to show the soldiers as thieves or fools by making false allegations and raising baseless criticism against them.” See doc. C.2.27. See also doc. A.4.7, A.4.10, A4.11.

¹²⁸ See UN Human Rights Committee, General Comment No. 27, Freedom of Movement, CCPR/C/21/Rev.1/Add.9, 1999, para. 13.

¹²⁹ See IER, section 5.5.

¹³⁰ Regulation 18 (1) (a) and (b), 2005 Emergency Regulation gives the Secretary to the Minister of Defence discretion to use a wide array of powers to restrict freedom of movement to prevent a person “acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services”, the Competent Authority is given power to authorize access into the specified zone under various emergency regulations creating such zones.

¹³¹ See General Comment No. 27, Freedom of movement, cit., para. 7, and General Comment No. 29, States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11 (2001), para. 13(d).

70. However, it is reported that Tamils often cannot leave their areas of residence, such as for example the Jaffna peninsula, without permission of the security forces. Permission is required to enter security areas. Mass evictions have also occurred: for example, in 2007 hundreds of Tamils were expelled from Colombo. This decision was challenged by the NGO CPA through a fundamental case submitted to the Sri Lanka Supreme Court in December 2007. The Supreme Court reversed the decision and ordered the eviction to stop.¹³²

71. Displaced persons who have sought to return to their homes have faced several obstacles. Significant restrictions have been placed on the movement of fishermen, who are allowed to fish only during certain hours and in a limited zone. Returnees have been issued with a specific identification card in addition to their normal identification card. Villagers have expressed concern that this additional documentation restricts their mobility and access to education, since this additional document provides their residence status and only those who can prove residence in a specific area can go to school in that area. The government has in some cases forced thousands of IDPs to return against their wishes.¹³³ These IDPs were subject to physical attacks from the security forces and were threatened that supplies of food, water and electricity would be cut off in case of resistance.¹³⁴ In other cases, the government has refused to allow IDPs to return to their homes. In May 2007 an area spanning some 90 km in the Muttur East and Sampur areas was first designated as a High Security Zone and then as a Special Economic Zone; the effect of these designations was to bar the original inhabitants, largely ethnic Tamils, from returning to their homes.

72. The existence of effective remedies to challenge restrictions on movement of people or denial of access to areas would contribute to ensure that any such measures taken are strictly necessary and proportionate. On 18 July 2007, the Supreme Court rejected a fundamental rights petition, which challenged the creation of a high security zone in Sampur on grounds of discrimination and freedom of movement¹³⁵.

73. The emergency legislation has been criticized for stifling media freedom and freedom of expression.¹³⁶ ICCPR Article 19 provides for *freedom of expression* and covers the right not only to impart information and ideas but also to seek and receive them.¹³⁷ The right to freedom of expression can be limited for reasons of national security, and could be suspended in a state of emergency, but such restrictions must be strictly required and proportionate to the threat. There must be a direct causal link between the words spoken, or written, and the legitimate security concern. Restrictions cannot be arbitrary, and there must be no other adequate means available.¹³⁸

74. The Constitution of Sri Lanka guarantees freedom of the press and freedom of expression. However, the emergency legislation enables the Government to restrict freedom of expression

¹³² The Sri Lankan Supreme Court on June 8, 2007 issued an injunction on the Sri Lanka Police to stop the evacuation of residents of Colombo lodges after hearing a fundamental rights petition filed by a non governmental organization, the Centre for Policy Alternatives, Sri Lanka (CPA). As a result of the ruling, police boarded 185 out of the 270 people who were sent to Vavuniya onto five buses and took them back to Colombo.

¹³³ See doc. C.2.14, C.2.41, see also HRW, News Release, “Sri Lanka: Civilians Who Fled Fighting Are Forced to Return”, 15 March 2007.

¹³⁴ See doc. C.2.27 and A.3.18.

¹³⁵ See doc. A.4.15.

¹³⁶ See doc. C.2.15 and C.2.22.

¹³⁷ See IER, section 5.7.

¹³⁸ See General Comment No. 10, Freedom of expression, para. 4: “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”

in a disproportionate way. Several emergency laws create broad criminal offences aimed at limiting the communication and possession of information or material “prejudicial to national security”.¹³⁹ These broadly defined offences leave so much room for interpretation to the point that it is difficult for a person to know whether or not he is committing an offence. This may lead to self-censorship. In addition, regulation 15 of the 2005 Emergency Regulation provides that a “competent authority” may “take such measures and give such direction” as necessary to prevent and restrict publications in and transmission outside Sri Lanka, of matters which “might be prejudicial” to the interests of national security, public order or essential services, or of matters “inciting or encouraging” persons to “mutiny, riot or civil commotion”, or to “commit breach of any law”, which may be prejudicial to public order or essential services.

75. Implementation of the right to freedom of expression remains a serious problem. Sri Lanka has been ranked as one of the most dangerous countries in the world for journalists.¹⁴⁰ It is reported that senior Government officials have repeatedly accused critical journalists of treason and often put pressure on editors and publishers to run stories that portrayed the Government in a positive light. Journalists who criticise the government have reportedly been subject to verbal and physical attacks, harassment, restrictions on access and vilification.¹⁴¹ A considerable number of Sri Lankan journalists have been driven into exile;¹⁴² in some cases, their families remaining in Sri Lanka have continued to receive threats. Government representatives have often attempted to discredit critical voices, notably journalists, as supporters of the LTTE and traitors to Sri Lanka. The Ministry of Defence website has accused journalists of acting as mouthpieces for the LTTE.¹⁴³

76. In October 2008, a mission of press organisations to Sri Lanka noted that the situation concerning press freedom had deteriorated since 2007 and was marked by continuing murders of journalists, abductions, intimidation and harassment.¹⁴⁴ On 8 January 2009 Lasanatha Wickramatunge, editor of *The Sunday Leader*, was murdered. Reports indicate that the number of threats against journalists increased still further during 2009.¹⁴⁵ The GOSL has thus failed to take adequate steps to prevent attacks against journalists.

¹³⁹ See 2005 Emergency Regulation 18 (1) (vi) enabling the Secretary to the Minister of Defence to make an order imposing upon a person restrictions on association or communication, and in relation to “dissemination of news or the propagation of opinions”, to prevent that person acting “in any manner prejudicial” to national security, public order or the maintenance of essential services; Regulation 27 making it an offence to distribute leaflets that are “prejudicial” to public security, public order or essential services; Regulation 28 stating that: “No person shall, by words of mouth or by another other means whatsoever, communicate or spread any rumour or false statement which is likely to cause public alarm or public disorder”; Regulation 29 making it an offence to print, publish or comment on any pictorial, photographic or cinematograph film of the activities of any proscribed organization, any matters relating to Government investigations of a terrorist movement, any matter relating to national security, or “any matter likely, directly or indirectly to create communal tension”; and Regulation 9 of the 2006 Emergency Regulations making it a criminal offence, punishable by up to 10 years imprisonment, to “provide any information which is detrimental or prejudicial to national security” to anyone engaged in “terrorism” (as defined in Regulation 6).

¹⁴⁰ See doc. A.4.6, A.5.3, C.1.3, C.1.14, C.2.26.

¹⁴¹ See A.4.10, C.2.28. See also B.2.5 and B.2.9.

¹⁴² See doc. C.2.26. According to the Committee to Protect Journalists Sri Lanka has the highest number of journalists in exile in the world.

¹⁴³ See doc. C.2.27.

¹⁴⁴ See doc. C.2.5.

¹⁴⁵ See doc. C.2.22, C.2.26.

77. Article 14 of the ICCPR guarantees *access to justice and the right to a fair trial*.¹⁴⁶ The Sri Lankan Constitution provides for the independence of the judiciary. However, reports indicate that the criminal justice system has critical shortcomings that obstruct justice for victims of human rights violations.¹⁴⁷ The judiciary is reportedly subject to political pressure. There have been unjustified threats of impeachment and some judges have been dismissed or transferred without objective reasons.¹⁴⁸

78. Reports indicate that the vast majority of human rights violations are never subject to legal proceedings.¹⁴⁹ Those cases that are tried rarely conclude with a conviction. Since 1994, only three persons have been convicted of torture and fewer than thirty for abduction or wrongful imprisonment. In only one case has a member of the security forces been convicted of murder.¹⁵⁰ Cases are frequently transferred from one court to another which hinders effective trials by making it difficult for witnesses and victims to attend. Due to significant intimidation witnesses are often reluctant to testify. As noted, there is currently no witness protection programme, although a witness protection bill is pending in Parliament.¹⁵¹ It is to be noted that in 2008, following a request by the Commission of Inquiry (CoI), the IIGEP facilitated video-conferencing from abroad from witnesses of serious human rights violations.¹⁵² The sudden decision in May 2008 by the President's Secretary to suspend testimony through video conferencing pending the approval of the future witness protection law was a major setback to the functioning of the CoI.

79. In the context of the CRC the situation of *child soldiers* has been of particular concern.¹⁵³ The Penal Code of Sri Lanka prohibits the recruitment of a child as soldier. The GOSL regards the recruitment and use of children in armed conflict as a serious child rights' violation and has consistently asserted its "zero tolerance" position on the practice.¹⁵⁴ Although the LTTE was the main body responsible for child recruitment, reports indicate that the Karuna group subsequently known as the TMVP continued to abduct children in government-controlled areas during 2006 to 2008.¹⁵⁵ Reports also indicated that certain elements of the government security forces supported and sometimes participated in these

¹⁴⁶ See IER, section 5.9.

¹⁴⁷ See doc. C.2.22, C.2.29.

¹⁴⁸ See doc. C.2.29.

¹⁴⁹ See doc. C.1.14, C.2.22

¹⁵⁰ See doc C.2.25.

¹⁵¹ See doc. A.6.3.

¹⁵² Reportedly the CoI was beginning to make progress and further video conferencing testimony on the ACF case would have possibly revealed important evidence on the perpetrators of the cases relating to the five students and the ACF massacre. According to Devanesan Nesiiah, former member of the CoI, the cancellation of the programmed video-conferencing on the directions of the presidential secretariat was a major setback as there were very good prospects of reaching satisfactory conclusions in the ACF aid workers case, the Trincomalee youth case, and, perhaps, in a few other cases. But these were sharply diminished as a result of that directive. Devanesan Nesiiah was quoted in an interview by Namini Wijedasa of Lakbima News, "Dr Nesiiah: President wanted me to quit the commission", posted by FEDERALiDEA on 2 August, http://federalidea.com/fi/2008/08/dr_nesiiah_president_wanted_me.html [accessed on 20 September 2009].

¹⁵³ See IER, section 5.10.

¹⁵⁴ See doc. A.6.6.

¹⁵⁵ The TMVP (Karuna Group) was listed in Annex 2 of the 2006 Report of the Secretary General to the Security Council on Children and Armed Conflict together with the LTTE as a group that used and recruited children. Following that listing, the leader of TMVP made a commitment in December 2006 to the Secretary General's Special representative for Children and Armed Conflict to stop child recruitment and release all child soldiers. See doc. A.3.3, C.1.11, C.1.6, C.2.20.

abductions.¹⁵⁶ The UN Secretary General noted in December 2007 that there was no evidence that the police or security forces had taken any steps to secure the release of abducted children although the police and security forces had clear knowledge of the abducted children.¹⁵⁷

80. In 2009 the government has launched a National Campaign against the recruitment of child soldiers¹⁵⁸ and has undertaken certain steps to improve the situation of children affected by the armed conflict including the establishment of dedicated centres for “child surrendees” The government has taken further steps to remedy the situation through encouraging the Karuna/TMVP Group to sign a time-bound Action Plan for the release of child soldiers in co-operation with UNICEF in December 2008.¹⁵⁹ It is too early to assess whether the Action Plan will achieve the desired effects, but preliminary information indicates that not all child soldiers have been released. Moreover in June 2009 the UN Secretary General’s Report on Children and Armed Conflict stated that “while TMVP is now a registered political party, recruitment of children by this group continues, although at a reduced rate. Furthermore the group has failed to abide fully by its previous commitments and relevant national and international law. According to UNICEF data-bases as of 31 August 2009 there were 94 outstanding cases of under age recruitment by the TMVP. Of these, 15 were under the age of 18, and 78 were recruited while under 18 but had passed that age”.¹⁶⁰ The UN Secretary General has also indicated that during the reporting period (15 August 2007-31 January 2009) “concerns have emerged relating to an armed group that has been operating in both the east and the north of Sri Lanka for some time. The Country Task Force has received and followed up a small number of reports of children being recruited and harassed by the pro-Government People’s Liberation Organization of Tamil Eelam (PLOTE), and other human rights agencies have reported incidents of violence and abductions, including against children, by this group.”¹⁶¹ It is noteworthy that to date there has been no conviction in Sri Lanka in relation to child recruitment.

81. According to Sri Lanka’s National Report, which was presented during the UPR in 2008, “Sri Lanka volunteered to work with the United Nations Security Council Working Group on Children and Armed Conflict pursuant to SC Resolution 1612 in setting up a Task Force for Monitoring and Reporting as a means to giving effect to the Government’s zero-tolerance policy on child recruitment.”¹⁶² This policy was confirmed by the statement made by Mr Suhada Gamalath, Secretary/Ministry of Justice and Commissioner General of Rehabilitation at the Meeting of the Security Council Working Group on Children and Armed Conflict held in New York on 1 July 2009 that most child combatants had been identified and were in a

¹⁵⁶ On 13 November 2006, Allan Rock, the Special Advisor to the UN Special Representative for Children and Armed Conflict visited Sri Lanka The press statement said that “under-age recruitment continued and the LTTE had yet to release several hundred children as verified by UNICEF. The mission also found that so-called Karuna faction continued to abduct children in government-controlled areas of the East, particularly Batticaloa district. Between May and November 2006, 135 cases of under-age recruitment by abduction had been reported to UNICEF, with evidence that this trend was 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.” See doc. A.3.3.

¹⁵⁷ See doc. A.3.8.

¹⁵⁸ See doc. C.1.5.

¹⁵⁹ See doc. C.3.1. On 31 July 2009 a National Framework on the Reintegration of Ex-combatants covering also child soldiers was adopted, see doc. C.3.3.

¹⁶⁰ See doc. C.1.11.

¹⁶¹ See doc C.1.11.

¹⁶² See doc. A.3.18, para. 79, p. 18. Further details are contained in doc. C.1.19, para. 4.13.

process of being sent to child rehabilitation centres. According to that statement "these children are being treated as victims and not as suspects in detention for their involvement in terrorist activities. It is a high priority for the Government to see these children returned to their families and to be able to either resume schooling or be gainfully employed in a trade and integrate into normal life in society."¹⁶³ In addition, on 31 July 2009 a National Framework on the Reintegration of Ex-combatants which included child soldiers was adopted.¹⁶⁴ The GOSL provided further information on action taken relating to former child combatants attached to its Note Verbale of 3 August 2009.

4.3. Conclusions

82. In this investigation, the Commission has reviewed a number of distinct aspects of effective implementation of the ICCPR, CAT and CRC. The Commission has conducted this review with a particular focus on those obligations which are amongst the most important and fundamental human rights obligations established in the three Conventions, and where in light of the information available to the Commission, most of the problems in effective implementation were concentrated.¹⁶⁵ The following conclusions of the investigation are based on the Commission's analysis of these aspects.

83. The legal and institutional framework giving effect to the ICCPR, CAT and CRC is not sufficient to ensure effective implementation of all relevant obligations provided for by the three instruments. Some of the provisions of the Conventions have not been transposed in full, while provisions in the domestic legislation are in some cases more restrictive than the corresponding provisions in the Conventions. Domestic legislation also contains provisions which are not entirely in compliance with the Conventions. In particular, the emergency legislation overrides other current legislative provisions and imposes restrictions on human rights which are incompatible with the Conventions.

84. The police are unwilling or unable to investigate human rights violations. The criminal investigation system and the court system have proven inadequate at investigating human rights abuses. The NHRC is weakened, incapable of performing its role and has lost international recognition. The emergency legislation shields officials against prosecution.

85. So far as effective implementation in practice of the conventions is concerned, the evidence shows that unlawful killings, perpetrated by police, soldiers and paramilitary groups, are a major problem. While Sri Lanka has a strong record of adopting legislation to criminalize torture, in practice torture both by the police and the armed forces remains widespread. The powers of detention conferred by the emergency legislation have enabled arbitrary detention without effective possibility of review of the lawfulness of detention. There have been a significant number of disappearances which are attributable to state agents or paramilitary factions complicit with the government; hence Sri Lanka has failed to implement its obligation to prevent disappearances by State agents and other forces for which it is responsible.

¹⁶³ See doc C.3.2. See also Note Verbale of the GOSL of 3 August 2009, Annex 2.

¹⁶⁴ See doc. C.3.3.

¹⁶⁵ For instance, issues connected to the freedom of association (regulated by ICCPR Article 22 which makes reference to the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize) have not been addressed in this report. This does not mean that the Commission excludes that questions related to freedom of association may exist, see B.2.12.

86. Serious restrictions have been placed on freedom of movement, notably concerning the thousands of persons interned in IDP camps. Strong verbal condemnations by government representatives of journalists combined with a failure to take effective action to protect journalists against physical violence have undermined the right to freedom of expression.

87. Child recruitment was a serious problem in the period 2005 to 2008. The government has taken important steps to address child recruitment and implement its zero tolerance policy. At present it is impossible to assess if these steps will be adequate. However, it is clear that during the period covered by the investigation child recruitment was taking place in government-controlled territory by the Karuna group/TMVP with at least the occasional involvement of government forces.

88. The Government of Sri Lanka has taken the position that Sri Lanka has effectively implemented the three Conventions.¹⁶⁶ However, on the basis of the facts and information available, including relevant materials and information provided by the GOSL (although outside the formal context of the investigation), the Commission has concluded that neither the ICCPR, the CAT, nor the CRC, nor the legislation incorporating the obligations under these Conventions have been effectively implemented in Sri Lanka during the period covered by the investigation.

¹⁶⁶ See in particular Notes Verbales of 17 October 2008, 17 June 2009 and 11 September 2009.

Annex 1

Evidentiary sources

The sources on which the findings contained in this report are based are those included in the non-confidential file of the investigation. The ones specifically referred to in this report are indicated below and identified with the same codes used in the non-confidential file of the investigation.

A. 3: UN reports and other materials available prior to the opening of the investigation

A.3.1 Report of the Special Rapporteur, Philip Alston, Civil and Political Rights, Including the Question of Disappearances and Summary Executions, Mission to Sri Lanka, 28 November-6 December 2005, E/CN.4/2006/53/Add.5, 27 March 2006

A.3.2 Statement by the Special Rapporteur on Extrajudicial Executions, United Nations High Commissioner for Human Rights, 5 September 2006

A.3.3 Office of the High Representative of the Secretary-General for Children and Armed Conflict, Statement from the Special Advisor on Children and Armed Conflict, Allan Rock, 13 November 2006

A.3.4 Press Statement by UN High Commissioner for Human Rights on Conclusion of her visit to Sri Lanka, 13 October 2007

A.3.5 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Subcommittee on Accreditation, Geneva, 22 to 26 October 2007

A.3.6 UN News service, UN Human Rights expert reports allegation of torture in Sri Lanka, 29 October 2007

A.3.7 Address by Louise Arbour, UN High Commissioner for Human Rights, on the occasion of the resumed 6th Session of the Human Rights Council, Geneva, 11 December 2007

A.3.8 UN Security Council, Report of the Secretary-General on Children and armed conflicts in Sri Lanka, S/2007/758, 21 December 2007

A.3.9 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, Sri Lanka chapter, 10 January 2008

A.3.10 UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 7th Session of the UN Human Rights Council, A/HRC/7/3/Add6, 26 February 2008

A.3.11 UN Press Release, Statement of the Special Rapporteur on Torture, Manfred Nowak 7th Session of the UN Human Rights Council, 26 February 2008

A.3.12 Working Group on Enforced or Involuntary Disappearances, Human Rights Council, Inter-active Dialogue with the Council, Statement of the Chair-Rapporteur during the period covered by the report, Santiago Corcuera Cabezut, 10 March 2008

A.3.13 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Follow-up to country recommendations, A/HRC/8/3/Add.3, 14 May 2008

A.3.14 UN Press Release, United Nations Expert Group Deplores Recent Wave of Disappearances in Sri Lanka, 11 June 2008

A.3.15 Report of the Working Group on the Universal Periodic Review Sri Lanka, A/HRC/8/46, 5 June 2008

A.3.16 CRC 3rd and 4th combined periodic report by Sri Lanka, October 2008

A.3.17 Universal Periodic Review, Summary of stakeholders information, 3 April 2008

A.3.18 National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1, 2 May 2008, A/HRC/WG.6/2/LKA/1

A. 4: NGOs materials available prior to the opening of the investigation

A.4.1 International Crisis Group (ICG), Sri Lanka's Human Rights Crisis, Asia Report No. 135, 14 June 2007

A.4.2 Report of the Civil Monitoring Commission, Free Media Movement and Law & Society Trust, Second submission of the Presidential Commission of Inquiry and public on human rights violations in Sri Lanka: January – August 2007, 31 October 2007

A.4.3 Minority Rights Group International, One year on: counter-terrorism sparks human rights crisis for the Sri Lanka minorities, 13 December 2007

A.4.4 Mark Lattimer, State of the World's Minorities 2008, People under Threat, Minority Rights Group International, 27 February 2008

A.4.5 Asian Human Rights Commission, State of Human Rights in 11 Asian Nations, 2007 (Sri Lanka chapter)

A.4.6 Amnesty International Report, Sri Lanka: Silencing Dissent, 7 February 2008

A.4.7 UN Human Rights Council: Third regular session: Compilation of statements by Amnesty International (including joint statements), 22 December 2006

A.4.8 Human Rights Watch, Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka, 6 March 2008, Volume 20, No. 2(C)

A.4.9 University Teachers for Human Rights, Jaffna (UTHR), Special Report No: 30, Unfinished Business of the Five Students and ACF Cases – A Time to call the Bluff, 1 April 2008

A.4.10 International Federation of Journalists, 6th Press Freedom Report for South Asia (2007-2008), 3 May 2008

A.4.11 International Federation of Human Rights (FIDH), Asia - Observatory for the Protection of Human Rights Defenders - Annual Report for 2007, 19 June 2008

A.4.12 University Teacher for Human Rights, Special Report No 25, 31 May 2007

A.4.13 International Commission of Jurists, Report on the ACF case – April 2007

A.4.14 Commonwealth Human Rights Initiative, “Police Accountability in Commonwealth South Asia” 2007

A.4.15 Human Rights Watch, Return to war: human rights under siege, August 2007.

A.4.16 South Asians for Human Rights (SAHR), The State of Human Rights in Sri Lanka January-June 2008

A. 5: Other materials available prior to the opening of the investigation

A.5.1 International Independent Group of Eminent Persons (IIGEP), 3rd Public Statement: The IIGEP Reiterates Concerns over the Work of the Commission of Inquiry, 19 September 2007

A.5.2 IIGEP, 4th Public Statement: IIGEP Reports No Indication of Implementation of its Recommended Corrective Actions and Lays down Minimum Conditions for Success of Presidential Commission of Inquiry's Impending *Public* Inquiries, 19 December 2007

A.5.3 US Department of State, Bureau of Democracy, Human Rights, and Labour, Sri Lanka Country Report 2007, 11 March 2008

A.5.4 IIGEP, 5th Public Statement: The Presidential Commission's Public Inquiry Process so Far Falls Short of International Norms and Standards, 6 March 2008

A.5.5 International Committee of the Red Cross News Release, Sri Lanka: ICRC deplores misleading public use of its confidential findings on disappearances, 19 March 2008

A.5.6 IIGEP, 6th Public Statement: The Members of the IIGEP Submit their Concluding Public Statement on the Work of the Commission of Inquiry and find a Lack of Political Will to Support a Search for the Truth, 15 April 2008

A. 6: Sri Lanka materials available prior to the opening of the investigation

A.6.1 Sri Lanka Supreme Court, Nallaratnam Singarasa v. Attorney General, S.C. SPL (LA) No. 182/99 (2006), 15 September 2006

A.6.2 Supreme Court determination on the ICCPR Bill 2008, 17 March 2008

A.6.3 Draft Witness Protection Bill, June 2008

A.6.4 Statement by the Delegation of Sri Lanka following Special Rapporteur Mr. Alston's presentation at HRC, 19 September 2006

A.6.5 Statement of Sri Lanka Ambassador to UN, Mr Kariyawasam on agenda item 67 (c), 27 October 2006

A.6.6 Security Council Working Group on Children and Armed conflict by H.E. Prasad Kariyawasam, 15 February 2007

A.6.7 Press Release - Visit of Ms Arbour, UN High Commissioner for Human Rights to Sri Lanka, 13 October 2007

A.6.8 Response of GOSL on Report on his mission to Sri Lanka of Mr. Nowak, October 2007

A.6.9 Response of GOSL Delegation on Report on his mission to Sri Lanka of Mr. Nowak, at the Human Rights Council, 2008

A.6.10 Position of GOSL with regard to the several issues contained in the 6th Public Statement of the IIGEP, 23 April 2008

B: Official submissions during the 4-month comment period under art. 18 of Council Regulation (EC) No 980/2005

B.1.10 Submission by individual

B.1.33 Submission by individuals

B.2.1 Submission by Action contre la faim, 16 February 2009

B.2.2 Submission by Amnesty International, 13 February 2009

B.2.3 Submission by Centre for Policy Alternatives (CPA), 13 February 2009

B.2.4 Submission by Human Rights Watch, 18 February 2009

B.2.5 Submission by International Federation of Journalists (IFJ), 16 February 2009

B.2.6 Submission by Lawyers for Human Rights and Development (LHRD), 2 February 2009

B.2.7 Submission by National Capital Region Tamil Association, Canada, 3 December 2008

B.2.8 Submission by Parent United to Legislate a More Sentient Epoch (PULSE), 7 February 2009

B.2.9 Submission by Reporters sans Frontiers, 17 February 2009

B.2.10 Submission by Tamil Centre for Human Rights, 4 January 2009

B.2.11 Submission by Tamil United Liberation Front, 27 January 2009

B.2.12 Submission by the European Trade Union Confederation and the International Trade Union Confederation of 19 November 2008

B.3.6 Submission by Joint Apparel Association Forum (JAAF), 20 January 2008

B.3.7 Submission by Jinadasa

B.3.8 Submission by Sri Lanka Apparel Association

B.3.9 Submission by Sri Lanka First

B.3.10 Submission by Stirling Group

C. 1: UN reports and materials collected during the investigation

C.1.1 UN Press Release, UN Human Rights Chief Deplores Deteriorating Situation for Civilians in Sri Lanka, 29 January 2009

C.1.2 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/10/9, 6 February 2009

C.1.3 Press release by the Office of the High Commissioner on Human Rights (OHCHR), Sri Lanka: UN Experts Concerned at Suppression of Criticism, Impunity, 9 February 2009

C.1.4 Report of the Representative of the Secretary-General on the Human Rights of the Internally Displaced Persons, Walter Kälin, A/HRC/10/13, 9 February 2009

C.1.5 Joint Press Release by the Bureau of the Commissioner General of Rehabilitation and United Nations Children's Fund (UNICEF), National Campaign against Recruitment of Child Soldiers, 26 February 2009

C.1.6 UNICEF, Sri Lanka Monitoring and Reporting, March 2009

C.1.7 UN Press Release, UN Expert Appeals to save the Lives of Internally Displaced Persons in the Vanni, 7 April 2009

C.1.8 UN Press Conference on Sri Lanka by Under-Secretary-General for Humanitarian Affairs, 15 April 2009

C.1.9 UN News Centre, "Urgent International Scrutiny needed in Sri Lanka, say UN Human Rights Experts", 8 May 2009

C.1.10 UN Secretary General Statement, "Secretary-General, appalled at killing of hundreds in Sri Lanka, urges government to explore all options to bring conflict to end without further bloodshed", SG/SM/12235, 11 May 2009

C.1.11 UN Security Council, Report of the Secretary-General on children and armed conflict in Sri Lanka, S/2009/325, 25 June 2009

C.1.12 United Nations Office of the Resident Co-ordinator, Joint Statement at the conclusion of the UN Secretary-General's visit to Sri Lanka, 23 May 2009

C.1.13 Message of the High Commissioner for Human Rights Navi Pillay at the Human Rights Council Special Session on the human rights situation in Sri Lanka, 26 May 2009

C.1.14 Statement by Ms Magdalena Sepúlveda, Independent expert on the question of Human rights and extreme poverty, delivered on behalf of all Special Procedures mandate holders of the Human Rights Council at the Eleventh Special Session of the Human Rights Council, The human rights situation in Sri Lanka, 26 May 2009

C.1.15 Report of the Human Rights Council on its Eleventh Special Session, A/HRC/S-11/2, 26-27 May 2009

C.1.16 UN Security Council, Report of the Secretary-General on the protection of civilians in armed conflict, S/2009/277, 29 May 2009

C.1.17 UN Secretary General's press encounter following the Security Council's informal interactive discussion on Sri Lanka, New York, 5 June 2009

C.1.18 Press release by UN Special Rapporteur on extrajudicial, summary or arbitrary executions, An independent Investigation into Sri Lankan executions is urgent, 28 August 2009

C.1.19 3rd and 4th Combined Periodic Report on Sri Lanka under Article 19 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 14 August 2009

C.1.20 Statement by the UN High Commissioner for Human Rights, N. Pillay, September 2009

C.1.21 UNICEF Press Release – August 2009

C.1.22 Statement by the UN High Commissioner for Human Rights, N. Pillay, 13 March 2009

C.1.23 UNHCR Guidelines for Asylum seekers from Sri Lanka, April 2009

C. 2: NGOs and other materials collected during the investigation

C.2.1 Law and Society Trust, Article on the report "Sri Lanka: The Right not to be Tortured, a Critical Analysis of the Judicial Response", June 2008

C.2.2 ICG, Sri Lanka's Eastern Province: Land, Development, Conflict, Asia Report No. 159, 15 October 2008

C.2.3 UTHR, Special Report No. 31, Paws of an Un-Heroic War, 28 October 2008

C.2.4 UTHR, Special Report No. 33, Third Anniversary of the ACF Massacre – A Travestied Investigation, Erosion of the Rule of Law and Indicators for the Future of Minorities in Sri Lanka, 4 August 2009

C.2.5 International Press Freedom and Freedom of Expression Mission to Sri Lanka, Media under Fire: Press Freedom Lockdown in Sri Lanka, December 2008

C.2.6 Human Rights Watch (HRW), Trapped and Mistreated – LTTE Abuses against Civilians in the Vanni, December 2008

C.2.7 Asian Human Rights Commission (AHRC), The State of Human Rights in Sri Lanka, 10 December 2008

C.2.8 IFJ, IFJ Calls for Inquiry into Lasantha's murder, 12 May 2009

C.2.9 International Committee of the Red Cross (ICRC) News Release No. 09/02, Sri Lanka: Major Humanitarian Crisis Unfolding, 28 January 2009

C.2.10 HRW, War on the displaced – Sri Lankan and LTTE Abuses against Civilians in the Vanni, February 2009

C.2.11 Testimony by R. Dietz, Asia Program Coordinator Committee to Protect Journalists, before the Subcommittee on the Middle East and South Asia, US Senate Foreign Relations Committee, Washington D.C., 24 February 2009

- C.2.12 HRW, "Recent Developments in Sri Lanka" – Hearing of the US Senate Foreign Relations Committee, 24 February 2009
- C.2.13 US Department of State, Bureau of Democracy, Human Rights, and Labour, 2008 Human Rights Report: Sri Lanka, 25 February 2009
- C.2.14 Centre for Policy Alternatives (CPA), A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya, March 2009
- C.2.15 International Commission of Jurists (ICJ), Sri Lanka: Briefing Paper – Emergency Laws and International Standards, March 2009
- C.2.16 AHRC – Urgent appeals programme, Sri Lanka: Police allegedly torture a young man, 10 March 2009
- C.2.17 ICG, Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province, Asia Report No. 165, 16 April 2009
- C.2.18 UTHR, Information Bulletin No. 47, LTTE is No Excuse for Killing Vanni Civilians, 17 April 2009
- C.2.19 ICRC News Release No. 08/14, Sri Lanka calls for exceptional precautionary measures to minimize further bloodshed in "no-fire zone", 21 April 2009
- C.2.20 Coalition to Stop Child Soldiers Press Release, Sri Lanka: Child Soldiers Coalition calls for UN Special Envoy to urgently investigate abductions and other abuses of children, London, 20 May 2009
- C.2.21 CARE International Statement, Aid agencies urge Sri Lankan government to lift restrictions as conditions in the internally displaced camps deteriorate, 26 May 2009
- C.2.22 International Bar Association, Justice in retreat: A report of the independence of the legal profession and the rule of law in Sri Lanka, May 2009
- C.2.23 Kishali Pinto-Jayawardena, The rule of Law in Decline; Study on Prevalence, Determinants and Causes of the Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CIDTP) in Sri Lanka, May 2009
- C.2.24 UTHR, Special Report No. 32, A Marred Victory and a Defeat Pregnant with Foreboding, 10 June 2009
- C.2.25 Amnesty International, Twenty Years of Make-Believe – Sri Lanka's Commissions of Inquiry, 10 June 2009
- C.2.26 Committee to Protect Journalists, Special Report: Journalists in Exile 2009, 17 June 2009
- C.2.27 Sri Lanka Ministry of Defense, Review of statements related to lawyers, journalists, civil society, 18 June 2009
- C.2.28 Media Matters Sri Lanka Bulletin (15), 29 June 2009

C.2.29 ICG, Sri Lanka's Judiciary: Politicised Courts, Compromised Rights, Asia Report, No. 172, 30 June 2009

C.2.35 Coalition to Stop the Use of Child Soldiers, Sri Lanka: Issues concerning protection of children post armed conflict, July 2009

C.2.36 Amnesty International, Unlock the camps in Sri Lanka, Safety and Dignity for the Displaced Now – A Briefing Paper, August 2009

C.2.37 HRW, Sri Lanka: Adopt International Inquiry for Aid Worker Killings, 3 August 2009

C.2.38 International Commission of Jurists, Trial Observation Report Regarding Proceeding before the High Court of Colombo, Sri Lanka Brought against Mr J. S. Tissainayagam, 11 September 2009

C.2.39 Journalists for Democracy Sri Lanka (JDS), Monthly Summary Report, August 2009

C.2.40 JDS, Monthly Summary Report, August 2009

C.2.41 CPA, Trincomalee High Security Zone and Special Economic Zone - September 2009

C.2.42 Amnesty International, "Sri Lanka's displaced face uncertain future as government begins to unlock the camps", statement of 11 September 2009

C.2.43 Human Rights Watch, Letter sent to EU Foreign Ministers on September 11, 2009

C: 3: Sri Lanka materials collected during the investigation

C.3.1 Action Plan between the Tamil Makkal Viduthalai Puligal (TMVP) and the Commissioner General for Rehabilitation (CGR), GOSL and UNICEF regarding Children Associated with TMVP, 1 December 2009

C.3.2 Statement at Meeting of Security Council Working Group on Children and Armed Conflicts by Mr. Gamalath, Sri Lanka Secretary, Ministry of Justice, New York, 1 July 2009

C.3.3 Media Release from Sri Lanka Ministry of Disaster Management and Human Rights - National Framework Proposal on the Reintegration of Ex-combatants, 31 July 2009

C.3.4 Statement at 12th Session of UN Human Rights Council by Mr. Peiris, Attorney General of Sri Lanka, 15 September 2009

C.3.5 Statement at 12th Session of UN Human Rights Council by Hon. Samarasinghe, Minister of Disaster Management and Human Rights of Sri Lanka, 14 September 2009

Annex 2

Political Dialogue

As part of the Commission's ongoing dialogue with the GOSL on issues relevant to this investigation, as described in paragraph 11 of the report, the Commission received the following written materials. The majority of these documents were already available to the Commission and have been used as part of the evidence and have been recorded as such in Annex 1. Where pertinent to the analysis and not already available in other public documents the views expressed by the GOSL are indicated in the footnotes by reference to the relevant Note Verbale.

1. Note Verbale of 13 July 2009

- i. on the trial of journalist J.S. Tissanayagam
- ii. on the detention of 3 Doctors who were part of the LTTE propaganda machine
- iii. on GOSL-UNICEF Action Plan on Child Soldiers

2. Note Verbale of 30 July 2009 on the GOSL statement to the UN Security Council Working Group on Children and Armed Conflict, New York, 1 July 2009

3. Note Verbale of 3 August 2009 providing an update on recent developments relating to protection and promotion of human rights

- i. on preparation and submission of periodic reports of the GOSL relating to the CEDAW, CAT and ICCPR to the OHCHR bodies
- ii. on consensus reached by the Parliamentary Consultative Committee on Justice and Law Reforms on 23 July 2009 relating to amendments to be moved for the enactment of the Assistance and Protection to Victims of Crime and Witness Bill
- iii. on the formal adoption on 30 July 2009 by a gathering of state, civil society, international organizations and diplomatic representatives of the Government of Sri Lanka, a document setting out a framework for national reconciliation including the rehabilitation and re-integration of ex-combatants (Annex 1 – Press release and final draft of the National Framework for the Reintegration of ex-combatants adopted on 31 July, 2009)
- iv. on GOSL's decision to move amendments to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act with a view to remove the minimum mandatory jail term to be imposed on convicts
- v. on the handing over of the Report of the Commission of Inquiry (COI) into serious violations of human rights to the President in July 2009, and that thereafter the Attorney

General's advice had been sought by the President on the implementation of the recommendations of the Commission

vi. on the preparation of the National Action Plan on Human Rights which had reached the 4th phase of the programme

vii. on steps being taken in recent weeks in pursuance of the Government's commitment to protect and promote the rights of former Child Combatants in consultation with relevant organizations including the UNICEF (Annex 2 – update on the status regarding action taken relating to former child combatants)

4. Note Verbale of 19 August 2009 informing the EC of the transmission of the Periodic Report of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 August 2009

5. Note Verbale of 11 September 2009

i. Note on GOSL's compliance with the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and Convention on the Rights of the Child (CRC) - Annex 1

ii. Statement by Delegation of Sri Lanka following UN Special Rapporteur on extrajudicial, Summary and Arbitrary Executions, Ambassador Philip Alston's presentation at the UN Human Rights Council on 19 September 2006 - Annex 2

iii. Statement by the Permanent Representative of Sri Lanka to the UN at the UNGA 61 Session, Social, Humanitarian and Cultural Committee, on matters including Alston Report of 27 October 2006 - Annex 3

iv. Statement made by GOSL on 15 February 2007 at the UN Security Council Working Group on Children and Armed Conflict in New York where the Report of the UN Secretary General's Representative on Children and Armed Conflict (which was based on the previous Report of Ambassador Allan Rock) was presented and considered - Annex 4

v. Ministry of Disaster Management & Human Rights Press Release on the visit of the then UN High Commissioner for Human Rights Madam L. Arbour, 13 October 2007 - Annex 5

vi. Letters addressed by the Minister of Disaster Management and Human Rights Hon. Mahinda Samarasinghe to Mrs. Arbour dated 5 November and 5 December 2007 - Annex 6

vii. Response of GOSL dated Geneva, 20 February 2008, to the Report of the UN Special Rapporteur on Torture Ambassador Manfred Nowak's mission to Sri Lanka in October 2007 - Annex 7

viii. Response of GOSL to Ambassador Nowak's statement of 10 March 2008 at the Human Rights Council- Annex 8

- ix. Press Statement of GOSL dated 23 April 2009, issued on the occasion of the resignation of the members of the IIGEP and the issuance of the 6th Public Statement of the IIGEP - [Annex 9](#)
- x. Voluntary Pledges made by Sri Lanka and Recommendations of Member States made to Sri Lanka and accepted for implementation by the GOSL during Sri Lanka's participation in the Universal Periodic Review - [Annex 10](#)
- xi. Update on the National Action Plan on Human Rights - [Annex 11](#)

Annexure

- 1. Supreme Court Determination on ICCPR Bill
 - 2. ICCPR Act No. 56 of 2007
 - 3. 3rd and 4th Combined Periodic Report – CAT (July 2009)
 - 3. National Child Protection Authority Act No. 50 of 1998
 - 4. 3rd and 4th 4th Combined Periodic Report – CRC (October 2008)
 - 6. Assistance and Protection to Victims of Crime and Witnesses Bill
6. Note Verbale of 16 September 2009
- i. Statement at 12th Session of UN Human Rights Council by Mr. Peiris, Attorney General of Sri Lanka, 15 September 2009
 - ii. Statement at 12th Session of UN Human Rights Council by Hon. Samarasinghe, Minister of Disaster Management and Human Rights of Sri Lanka, 14 September 2009