

112th Session of the Human Rights Committee

Consideration of Sri Lanka's 5th Periodic Report under the International Covenant on Civil and Political Rights, 7-8 October 2014

Information by the Government of Sri Lanka to questions raised by the Human Rights Committee, in addition to earlier written response given by the Government of Sri Lanka to the 'List of Issues' and the Opening Statement of Leader of the Sri Lanka delegation

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

Issue 1

While reiterating the response to the List of Issues in answer to the said issue, it must be noted that presently judicial proceedings have been instituted and are pending in courts in the Eastern and Southern Provinces pursuant to persons invoking the rights contained under the ICCPR Act No 56 of 2007. In this context it is further noted that the civil and political rights referred to in the Covenant have been given legislative recognition in the Constitution of Sri Lanka, other legislation and through judicial pronouncements.

It is stressed that the ICCPR Act is a law to give effect to certain articles in the Covenant relating to rights which had not previously been given recognition through legislative and judicial measures.

Issue 2

The determination of the Supreme Court in regard to the Constitutionality of the 18th Amendment was determined by a bench of five judges presided by Dr. Shirani Bandaranayake. A copy of the said determination is annexed herewith marked 2A.

The State party rejects the suggestion made that 'because of the 18th amendment the institutional framework which is supposed to promote and protect human rights seems to be much weaker than in 2003.'

Issue 3

Alleged ad-hoc surveillance and monitoring by security forces restricting freedom of movement and reintegration of ex-combatants

The Government rejects the allegation of such surveillance, intimidation or monitoring of former combatants by security forces restricting freedom of movement and reintegration of ex-combatants. On the contrary, it must be noted that the Government has been committed in its efforts to reintegrate them into society and has taken every effort to do so. Studies by world renowned scholars in the field of rehabilitation such as Professor Arie Kruglansky¹ have proven that the rehabilitation programme in Sri Lanka has met and exceeded the benchmark requirements. The ex-combatants were found to have been successfully de-radicalized by the end of the programme.

Rehabilitation of Ex-combatants

The rehabilitation process comprised of 6 components (6-pillar rehabilitation programme) which included education component, spiritual and religious component, cultural component, social, community and family component, psychological and counselling component, sports and extracurricular activity component. There were many activities under the educational component such as enhancing formal education opportunities. All possible arrangements were made for the ex-combatants to appear at GCE (O/L) and G.C.E. (A/L) examinations by arranging special classes in the rehabilitation centres, and thereby giving them the opportunity to continue their education process that was interrupted. Over 48 different areas relating to

¹ LTTE Deradicalization: Preliminary Findings Arie W. Kruglansky, Michele J. Gelfard, Jocelyn J. Belanger; START (Centre for the Study of Terrorism and the Response to Terrorism), 2012

vocational training and skills development programmes have been provided to all the 12,000 beneficiaries. Therefore, it is factually incorrect to state that the detainees were not provided with “useful training, and counselling.” The Government took a considered decision to rehabilitate and re-integrate all 594 former child combatants and most of the ex-combatants, except the 116 who are still undergoing rehabilitation and the 84 who are still undergoing legal proceedings, under judicially mandated custody, based on restorative justice and as victims of the conflict.

Majority of them have now been reintegrated into the society with sufficient knowledge and skills to live a peaceful and contented life with their loved ones and the rest of the community. The Government continues to assist the beneficiaries. For example, as of to date 8733 rehabilitees are productively employed in a variety of areas such as farming -881, Civil Security Department - 666, labour force - 1216, drivers - 387, small businesses - 454, electricians - 105, tailors - 171, mine clearance - 59, private sector companies - 408, fisheries - 603, masons - 595, carpenters - 255, computer/IT - 29, overseas employment -492, animal husbandry - 67, teachers - 61, government service -248, motor mechanics - 184, private security - 174, self employment - 189, clergy - 16, barbers - 8, house wives - 1034, students -133.

All the rehabilitation centres were administered by officials with knowledge on the subject and the Government has spent over 375 million rupees for this rehabilitation programme during the period 2012-2014 alone.

Non-discrimination (arts. 2, 3 and 26)

Issue 4a

Low level of participation of women in active politics

Women in Sri Lanka have been enjoying the benefits of universal adult suffrage since 1931, which along with the universal free education system and the universal health care system has contributed significantly to their empowerment, equal participation in the labour force as well

as increased engagement in decision-making processes. Attitudinal changes that favour the position of women in society have been possible largely due to high levels of educational attainment and women being thereby recognized as equal partners and valuable contributors to the development process. Today, women represent themselves voluntarily in political and public decision-making bodies in Sri Lanka. Women continue to enjoy rights equal with men, both in political and public life. However, the number of women participating in active leadership roles in party politics, and it is reiterated party politics, remains low when compared to the percentage of women in the workforce. However, there is no legal impediment to women running for office nor engaging in party politics. Despite the low number of women political representatives, women's participation in the formulation of government policy, holding public office and performing public functions at all levels of the Government has increased. Today, women in the Sri Lanka Administrative Service number 1070 out of a total cadre of 2269 (which is 47.15 %), an increase from 17.1% in 1993. In the Sri Lanka Planning Service, the percentage of women is 47.63%, an increase from 28.8% in 1993. In the Sri Lanka Foreign Service, the percentage of women is 47.5%, an increase from 29.7% in 1993. It is to be noted that when it comes to professional services, participation of women is increasing, but is purely based on merit, not by quotas on the basis of gender. On the other hand, active leadership roles in politics does not seem to be a preferred choice by majority of women.

Status of the Women's Charter

The Women's Charter is in force and is being considered as one of the guiding documents in promoting and protecting women's rights. The Ministry of Child Development and Women's Affairs, Sri Lanka Women's Bureau and the National Committee on Women are mandated to implement the Charter. The Government of Sri Lanka has given priority to ensure that the rights of women are adequately protected in line with the Charter. The line Ministry, in collaboration with the Sri Lanka Women's Bureau and the National Committee on Women and also with an extensive field network at the Divisional level, work towards promoting and protecting the rights of women. Office space with modern facilities in the headquarters of the Ministry has

been provided to the National Committee. Further toll-free helpline and office facilities to respond promptly to complaints on Gender Based Violence (GBV) have been established.

The Cabinet of Ministers has recently approved the National Action Plan for Women which augments the activities carried out under the Women's Charter.

Issue 4(b)

Alleged discriminatory provisions against women in personal laws

In response to the request by the Committee for the composition of the Committee appointed to consider amendments to the Muslim Marriage and Divorce Act, which was appointed by the Minister of Justice with the approval of the Cabinet of Ministers, consists predominantly persons of Muslim ethnicity including four female members. It may be noted that the said Committee has now reached its final stage of drafting and the report is being prepared.

The Committee consists of the following:-

Justice Saleem Marsoof, P.C., Judge of the Supreme Court (Chairman),

Justice A.W.A. Salam, former President of the Court of Appeal,

Mr. Shibly Azeez, P.C., former Attorney General,

Mr. Faisz Muzthapha, P.C., former Deputy Director of Public Prosecutions,

Professor Mrs.Sharya Scharenguivel, Executive Director for Centre for Human Rights Studies.,

Judge Mohamed Mackie, District Judge (now Justice of Appeal of the Civil Appellate High Court

Mr. S.M.A. Jabbar, former Chairman of the Board of Quazis,

Dr. M.A.M. Shukri, Director, Jamiah Naleemiah,

Ash-Sheik Mohomead Magdoom Ahmad Mubarak, former President Jamiathul Ulama,

Ash-Sheik Mohummad brahim Mohummad Rizwe Mufthi, President of Jamiathul Ulama,

Mrs. Jezeema Ismail, Member of the National Committee on Women and Human Rights Commission of Sri Lanka,

Mr. Rasmara Abdeen, Attorney at Law,

Mrs. Safana Gul Begum, Attorney at Law and Member of the Muslim Women's Research and Action Forum,

Mrs. Fazlet Shahabdeen, Attorney at Law.

Ms. Dilhara Amerasinghe, Additional Secretary and

Mr. A.K.D.D. Arandara, Assistant Secretary to the Ministry of Justice have been appointed as joint secretaries to the committee.

The Supreme Court judgment on the application of the ICCPR noted that Article 27 of the Covenant makes a specific reservation that in states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group to enjoy their own culture, to profess and practice their own religion or to use their own language.

In the Court's view, it could not be contended that the provisions of Article 16(1) of the Constitution, that only provides for the continuance in force of the already operative law, could be considered to be inconsistent with the Covenant, only on the ground that there are certain aspects of Personal Law, which may discriminate women. The matter of Personal Law is one of great sensitivity. The Covenant should not be considered as an instrument which warrants the amendment of such Personal Laws. If at all there should be any amendment, such a request should emerge from the particular community governed by the particular Personal Law.

The Government is also in the process of amending provisions in the Third Schedule of the Land Development Ordinance and a Bill in this regard is in its draft stage to bring it in accord with the provisions of the Matrimonial Rights and Inheritance Ordinance, to enable gender equality in succession.

Issue 5

In the context of the Question posed as to whether persons belonging to LGBT groups have a right to invoke the jurisdiction of the Supreme Court it must be pointed that in terms of Article 12(1) of the Constitution, all persons are equal before the law and are entitled to the equal

protection of the law .Accordingly, persons belonging to LGBT Groups are not treated differently

Issue 6

Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)

In terms of the Act No.22 of 1995 an amendment to section 363(a) of the Penal Code was also introduced as follows:

- In terms of Section 363, a man is said to commit 'rape' who has sexual intercourse with a woman without her consent even where such woman is his wife and she is judicially separated from the man.
- Although the act of sexual intercourse without consent of the wife is by itself not a crime under the existing law, where such an act involves violence to such a degree that the violence amounts to a crime, the act of violence is punishable under the Penal Code. In such an event relief can also be sought under Domestic Violence Prevention Act.
- The Government has taken steps to prevent violence at work place by appointing General Focal Points in Line Ministries and setting up sexual harassment committees to provide awareness to the staff and to motivate them to report such cases and to carry out investigations.
- A shelter for victims of domestic violence was established in 2012 in collaboration with the International Organization for Migration. Domestic violence is a subject which is widely taken up in the awareness programmes conducted by the Women's Bureau. The Bureau has conducted case conferences on domestic violence in hospital gender desks and with the District Secretariats in the North and East.

Issue 7

With regard to information requested by the Committee on reports of escalation of sexual violence against women in Northern and Eastern Provinces particularly against war widows, former female ex-combatants and single women, the GoSL wishes to state that

a) An island wide survey carried out on reported cases of sexual violence province wise in the last stages of the conflict (01st January 2007 to 18th May 2009) and post conflict period (19th May 2009 to 30th November 2013) revealed that the number of sexual offences committed as a ratio of the female population is as follows:

Province	Districts	Victim Ratio
Western	Colombo, Kalutara, Gampaha	0.7:1000
Eastern	Trincomalee, Batticaloa, Ampara	1:1000
Central	Kandy, Matale, Nuwara Eliya	1:1000
Southern	Galle, Matara, Hambantota	1.4:1000
Sabaragamuwa	Kegall, Ratnapura	1.5:1000
Uva	Badulla Monaragala	1.1:1000
North Western	Kurunegala Puttalam	1.1:1000
Northern	Jaffna, Kilinochchi, Mulaitivu, Mannar, Vavuniya	1.1:1000
North Central	Anuradhapura, Polonnaruwa	2:1000

Sexual offences recorded in the Northern Province and Eastern Province in comparison to the female population stands at the ratio of 1.1:1000 and 1:1000 respectively, which is also more or less similar to the ratios of Uva, Southern, Sabaragamuwa, North Western and Central Provinces. The Western Province has recorded the least with a ratio of 0.7:1000. The North Central province has recorded the highest at 2:1000.

Ethnically, the Sinhalese being the majority community counts 81.9% of the victims while Tamil and Muslim communities record 14% and 3.9% respectively. The balance 0.2% could be attributed to cases relating to other communities.

It should be noted that within these ratios there can be false complaints for collateral purposes. In most cases the victims have been raped or abused by neighbors, close family members or individuals who are close to the victim.

On the issue of comments made by the Committee on reported cases of rape and other acts of sexual violence that occurred during and after the conflict, in particular in military controlled camps, the Government would like to clarify that there were no military controlled camps holding civilians during or after the conflict. The IDP welfare centres were administered by the Government authorities with the process being led by the District Secretaries. There was also a coordination committee led by a senior Minister overlooking this process.

Sri Lanka has a well-established, zero tolerance policy on sexual and gender based violence against women and continues to take strong action against reported cases. Furthermore, Sri Lanka's reconciliation mechanism, the National Plan of Action for the implementation of the recommendations of the LLRC (LLRC NPoA) has also taken concrete measures to address specific concerns, vulnerabilities of victims of conflict, especially women and children.

Other extensive measures have also been taken by the Government to ensure the wellbeing and security of women and girls, including the establishment of Women and Children Desks at police stations, sexual and gender based violence help desks in hospitals, child and women development units at divisional secretariats in the Northern and Eastern provinces as well as the provision of health, security and legal assistance to women hospitalized as a result of gender based violence. Sensitization programmes on prevention of violence against women and protection of women's rights have been conducted for police and security forces personnel, community leaders and the general public.

Counter-terrorism measures (Arts. 2, 7,9,10 and 14)

Issue 8

The following is brought to the notice of the Committee:

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

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

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

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

The burden of proving the ingredients of an offence is always on the prosecution. It is only with regard to confessions under PTA that the burden shifts to the accused to show that it is

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

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

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

At the moment, there are 116 detainees held under the provisions of the PTA. All such persons have been in detention for a period less than 18 months. They are all afforded the facilities mentioned before. As such it is contended that the provisions of the PTA are compatible with the Covenant.

Since the end of the conflict in 2009, the Attorney-General has in many instances opted to rehabilitate the suspects as an alternative to prosecution. This is in line with the policy of restorative justice followed by the Government. Rehabilitation is conducted only in instances where the suspect voluntarily agrees to rehabilitate himself before reintegration into society. Over 200 persons have been recommended by the Attorney general for rehabilitation in lieu of

prosecution after 2009. The process is facilitated through courts and under judicial supervision. In addition to recommendation for rehabilitation by the Attorney General, the courts have also in many instances sent convicted persons for rehabilitation as a substitute for jail sentences.

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

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

In the context of the concern expressed about the reversal of the burden of proof to the detainee (accused person) to prove that he had been forced to make a confession under the Prevention of Terrorism Act No 48 of 1979, the following clarification is made.

Article 13(5) of the constitution of Sri Lanka stipulates thus;

“Every person shall be presumed innocent until he is proved guilty:

Provided that the burden of proving particular facts may, by law be placed on an accused person.”

It is in accordance with the said Constitutional provision that the burden of proving involuntariness of a confession shifts to an accused under the Prevention of Terrorism Act No 48 of 1979. This position is also consistent with sections 101 and 103 of the Evidence Ordinance, which has been in force for over a century and stipulates the rule of evidence that ‘he who asserts must prove’.

Accordingly, Section 101 of the Evidence Ordinance is as follows;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

Further, Section 103 of the Evidence Ordinance states;

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact shall lie on any particular person.”

However it must be noted that though said burden shifts to an accused under a voir dire inquiry held in respect of the said fact of voluntariness, the burden of proof so cast on an accused is a standard proof even less than the standard required in civil proceedings, which is a balance of probability. Furthermore the shift of the said burden of proof to the accused does not in any manner take away the burden cast on the prosecution to prove its case (ingredients of the offence) against the accused beyond reasonable doubt.

It is reiterated that at no stage in these proceedings does the burden of proving the ingredients of the offence shift away from the prosecution.

It is further submitted that arrests and detention made under the PTA are amenable to judicial review. In this context, the Supreme Court’s fundamental rights jurisdiction is frequently used in this regard.

In this regard it must be further noted that in cases filed under other penal laws for example offences under the Penal Code, the burden shifts to the accused person in regard to proving particular facts where the accused takes the defense of consent, alibi, self-defense, insanity etc. It may be noted that similar provisions and practices based on the rules of evidence exist in other common law jurisdictions.

Resurgence of Terrorism

Even as Sri Lanka moves on the path of reconciliation, the Government of Sri Lanka has for long maintained that although the LTTE has been militarily defeated in Sri Lanka its overseas network which includes a number of trained cadre, funded by some sections of the expatriate

Tamil community, continues to remain in place, posing a medium and long term security challenge to Sri Lanka and the region.

As you may be aware, India, USA, EU as well as many other countries have continued to keep the LTTE on the proscribed terrorist list. The recently released EU Terrorism Situation and Trend Report 2014 (TE-SAT 2014) of the EUROPOL observers that

"LTTE networks remain in numerous countries, and continue to attempt to rebuild their structures and operating capabilities, especially via fundraising and money laundering". It notes that "in Switzerland, for instance, police continued to investigate the activities of a number of former LTTE members. The investigation focused primarily on operations aimed at channeling funds collected on Swiss territory to Sri Lanka".

The records indicated that there are a number of cadres both in the country and outside who have evaded arrest and who have not undergone a rehabilitation process. Furthermore, the Security Forces continue to recover buried arms caches, ammunition, explosives and equipment. Such items may be accessed by residual cadres and / or self-motivated cadres who could prove to be extremely dangerous. There is evidence that members of some of these groups operating from overseas are trying to regroup having established contacts with local elements to carry out acts of sabotage and to disrupt peace and stability in the country.

Several incidents that took place in Sri Lanka during recent past have positively established the connections between LTTE remnants in Sri Lanka with those operating from overseas. The attempts were clearly directed towards the reorganization of the LTTE's military capability in order to function as a terrorist outfit in Sri Lanka.

In 2012, LTTE cadres operating on instructions of LTTE operatives in France carried out an assassination of a member of a political party (EPDP) in Trincomalee, Sri Lanka. This was the initial indication that the LTTE was regrouping to carry out acts of violence in the country.

Subsequently, further evidence emerged of a network of connections stemming from Europe, Malaysia, India, and Sri Lanka of LTTE operatives attempting a resurgence of terrorism in the country.

Based on information received a combined operation launched by the Indian and Sri Lanka authorities resulted in the arrest of connected LTTE operatives in Chennai in December 2012. The group in Chennai, had been found providing training to make IEDs (Improvised Explosive Devices) to youth/ex-LTTE cadres coming from Sri Lanka. These were clear indications of LTTE's new efforts of revamping the organisation.

In March 2014, as we noted in our statement to HRC 25, investigations confirmed that these activities were coordinated by a broader network of LTTE operatives functioning from overseas. Three LTTE operatives (Gobi, Theivian and Appan) who were overseas and had returned to Sri Lanka were found to have been actively involved in the reorganizing of the LTTE in the North. They were involved in the recovery of LTTE arms caches, re-establishing the LTTE intelligence network, recruiting unemployed youth and rehabilitated LTTE cadres and collecting information on potential VIP targets including in other provinces, with the intention of carrying out terrorist acts in the country. Investigations revealed that funding for such activities came from Europe and were being transferred using "Hawala" which is an illegal system of money transfer widely used in the subcontinent. It was also revealed that many safe houses, vehicles and other resources required for resurgence of the LTTE had been procured by them using this money. While these operatives were killed during search operations in the Vanni region on 11 April 2014, the incident highlights the very real dangers that exist for Sri Lanka in this regard.

In March 2014 the GoSL took measures to list 16 entities and 424 persons under UN Security Council Resolution 1373 who were, believed on reasonable grounds, to be committing, attempting to commit, facilitating or participating in the commission of acts of terrorism. This order designating entities and persons was undertaken following several years of consideration of information and monitoring of activities of these listed entities and persons. The substantial

effect of an order under the regulation 1373 is that funds, assets and economic resources belonging to or owned by the designated persons or entities remain frozen until they are removed from the designated list. There have been several actions by the law enforcement authorities both in Sri Lanka and in friendly countries before as well as after the GoSL action under UNSC Resolution 1373.

In May 2014 the Malaysian authorities immediately took action, at the request of the GoSL, to extradite 3 key LTTE operatives arrested by the Malaysian authorities who are wanted in relation to terrorism related offences in Sri Lanka.

All of the above attempts suggest that the LTTE international network is active and is making every possible effort to revamp its military capability in Sri Lanka. There have also been instances where these LTTE activists based overseas manipulating the UN system for their advantage. There have been instances where LTTE cadres have been designated as asylum seekers/refugees by the UNHCR.

The Government of Sri Lanka stands ready to provide any further information on issues and incidents outlined above if required.

Right to life (art. 6)

Issue 9

Questions raised by the Committee with regard to concerns on abductions and disappearances

The reference to "white vans" as a means of disappearances is a sensationalised allegation that appeared in some media reports rather than being based on realistic facts.

In response, the GoSL wishes to state that twenty one (21) criminal abductions using white colour vans have been reported in the six year period from January 2009 to August 2014. Each and every case reported has been investigated by the Police and 17 victims have been found and reunited with their families. In one abduction reported in June 2011 in the Southern village of Thanamalwila a person of Sinhalese ethnicity who was abducted was later found dead. Judicial inquiries on other three cases are in progress under case numbers B654/09, B121/09 and B3446/11.

Therefore, the need expressed by some quarters to expand the mandate of the Commission of Inquiry on disappearance and abductions to cover other parts of the country does not arise as the existing law adequately addresses this need.

With regard to the question raised by one Committee Member i.e. "can you also address concerns with regard to the involvement of military in disappearance, is it true that the military is registering complaints to the commission, and whether any witness protection measures have been put in place in advance of the passage of the new Witness Protection Bill in the Parliament", the GoSL wishes to state the Sri Lankan military is a disciplined force tasked to protect the country's territorial integrity, maritime boundary, national strategic interest and overall safety and security of the nation and its citizens, and categorically rejects the claim of involvement of the military in disappearances. In addition the military has no involvement whatsoever in registering complaints to the Commission of Inquiry on abductions and disappearances. This is a baseless allegation.

Cases relating to the Working Group on Enforced and Involuntary Disappearances (WGEID)

1. Sri Lanka has conducted regular meetings with the Working Group on Enforced or Involuntary Disappearances (WGEID).

2. Since January 2012, the Government has thus far transmitted responses on 1470 cases to the WGEID. In many of these cases, no formal complaints have been made with regard to alleged disappearances.
3. In 2012 the GoSL established an Inter - Ministerial Working Group to verify cases of alleged disappearances brought to its attention by the WGEID. In addition to this, a Working Committee has been appointed headed by Deputy Inspector General to conduct ground verifications to ascertain present facts. It should be noted that 80 per cent of the caseload of the WGEID under consideration dates back over 20 years to the pre-1990 period.
4. Cases are being investigated in batches of 200 by the Inter Agency Working Committee appointed to conduct ground verifications in Sri Lanka.
5. Of the cases thus far investigated 77 persons have been found alive. These persons include rehabilitated LTTE cadres, residual LTTE cadres, and LTTE cadres and civilians that have illegally migrated overseas.
6. The GoSL maintains a very close dialogue and working relationship with the Working Group with regular meetings being held on the sidelines of UNHRC sessions and also during the sessions when the WGEID meets in Geneva.

The Government of Sri Lanka observes “zero tolerance policy” on torture. The Attorney General, as a policy provided in the Establishments Code, does not represent persons against of whom allegations of torture are alleged in fundamental rights applications filed before the Supreme Court. It is further pointed out that apart from the indictments preferred under the Convention against Torture Act, the Attorney General has also taken steps to indict Police officers under the Penal Code for offences that entail more stringent punishment.

A few recent examples are given below:

- A sub Inspector, who was the Officer in Charge of Crimes of a Police station, was under indicted along with another person for the killing of a witness in a pending case. The High Court trial is in progress and is presently adjourned for the conclusion of the defence case. (HC Negombo case No: 445/2005)
- Four Police Officers including an Inspector who was in Charge of a Police Station were convicted by a Trial-at-Bar (a panel of three judges of the High Court) in August, 2011 for Conspiracy, Abduction and Murder of two individuals. A five judge bench of the Supreme Court on 02 April 2014, dismissed the appeal of all four accused and affirmed the conviction and sentence pronounced by the Trial-at-Bar.
- The trial of a Deputy Inspector General of Police who is indicted along with several others on charges of Conspiracy, Abduction and Murder before a Trial-at-Bar is presently in progress before the High Court of Colombo.
- Furthermore in a judgement delivered on October 7, 2014 in case no.182/2007 at the High Court of Badulla, two police officers were convicted and sentenced to a term of 7 years imprisonment.

To protect the rights of Victims and Witnesses, the “Bill on Assistance of Victims of Crime and Witnesses” presented by the Ministry of Justice which safe guards the rights of the victims and the witnesses has been approved by the Cabinet and was gazetted on 8th August 2014. It was placed on the order paper of parliament. The Bill was challenged as to its constitutionality and the determination of the Supreme Court in this regard would be conveyed to parliament. Upon receipt of the said determination parliament would deliberate on the Bill.

With regard to the incidents in Vavuniya and Welikada Prisons, on whether there had been an independent investigation on the incident that occurred in the Welikada Prison, and on the 27 deaths caused

Para 60 of the response of the Government to the list of issues explains the circumstance that compelled the military to engage in a rescue operation to free the prison officials, other inmates and civilians passing by. Following this incident, a three-member independent committee headed by a retired high court judge as its Chair was appointed by the Hon. Minister of Prisons and Rehabilitation and a retired Senior Deputy Inspector General of Police and Senior legal advisor of the Ministry of Prisons, who also has been a former District Judge were, appointed as the other two members. The Committee submitted its findings and recommendations to the Hon. Minister. The Committee concluded that the military was compelled to take action to protect the prison officials and other inmates who got trapped. The officials who were on protection duty of the armoury were subjected to disciplinary action for the lapses on their part which enable the inmates to arm themselves. The Ministry is now in the process of implementing the recommendations made by the Committee, with a view to prevent any such incidents happening in the future.

With regard to the question raised on the obstacles to investigate the incident in the Vavuniya Prison, it may be stated that the government of Sri Lanka has found no obstacles to conducting the investigation. However, investigations that had been conducted up to now, following the incident, do not disclose sufficient material to attach criminal responsibility to any particular person.

Issue 10

The chairman of the committee in his concluding comments made reference to whether the State party would recognize therapeutic abortions. In this regard it brought to the attention of the committee that a Bill to provide for medical termination of pregnancy in cases of rape and serious foetal impairment is presently being considered by the Law Commission. It further

noted that the Supreme Court in interpreting the Constitution has recognized the right to life. As such the right to life of the unborn child would also be a matter that is considered.

Accountability (arts. 2, 6, 7, 9, 10 and 14)

Issue 11

Killing of 5 Students in Trincomalee

The Non summary inquiry commenced on 9th September 2013 in terms of the Special procedure under the Criminal Procedure(Special Provisions) Act No. 2 of 2013.

Although the prosecution had moved for summons on the first 18 witnesses on the charge sheet. Out of 25 witnesses testimony that has been concluded so far, 12 affidavits of witnesses were filed of record. These witnesses included relatives of the deceased, the Judicial Medical Officer (JMO) who did the post mortems and the Medico Legal Reports, Army, Navy and Police Personnel who were near the scene as well as police witnesses who were in the party which first came to the scene on hearing the shooting. These witnesses were cross examined by the defence counsel where necessary and their evidence concluded. The police officers who investigated the above incident have also given evidence in this case.

The summary report of the Criminal Investigation Department (CID) filed in court indicate that 8 witnesses are overseas.

These witnesses include the two injured boys who survived the incident who have since left Sri Lanka. The CID wanted further time to locate the present foreign addresses of these witnesses.

The Prosecution moved for summons on 3 witnesses by email. The registrar of the Trincomalee Magistrates Court directed to issue email notice about the date of further inquiry. However, there was no response to the email that was successfully delivered.

On the last occasion when this matter was taken up for inquiry on 17th September 2014, the Prosecution moved for further time to trace the whereabouts of the witnesses through the Ministries of Justice and External Affairs. Further Inquiry was fixed for the 21st January 2015.

ACF Case

With regard to the Muttur (ACF) case, following instructions by the Attorney-General, action has been taken to identify and record statements from witnesses' material to this incident. The police have also obtained clarifications on the issue of the exact number of dead bodies from the Additional Director of the Consortium of Humanitarian Agencies (CHA) and the report he prepared with regard to his visit to Muttur on the 6th of August 2006. Meetings have also been held between the Attorney General and French Embassy Officials, during which, the progress of the investigation was discussed. It is noted that the Attorney General has expressed willingness to accept the assistance of the Embassy in facilitating the obtaining of statements from witnesses known to them and living in France, whether in France or in Sri Lanka.

Progress on the Army Court of Inquiry (C of I)

1. It is well recognised that in matters pertaining to internal military matters including matters of military discipline, especially with regard to violations of IHL, military courts have the jurisdiction, and the legality of these military courts have been recognised by many international instruments on IHL including Geneva Conventions and the Hague Conventions. This practice is followed almost universally regarding military matters.
2. Therefore, by virtue of the powers vested in the Commander of the Army by the Army Act and regulations made thereunder, a Court of Inquiry was appointed to inquire into the observations made by the Lessons Learnt and Reconciliation Commission (LLRC) in its report on alleged civilian casualties during the final phase of

the Humanitarian Operation and probe as regards Channel-4 video footage irrespective of its authenticity or otherwise.

3. The five-member C of I was appointed on 2 January 2012 by virtue of the powers vested in the Army Commander by Regulation 4 of the Courts of Inquiry Regulations, read with the Regulation 2 of the Army Disciplinary Regulations, and is headed by a Major General.
4. A Court of Inquiry (C of I) is an initial fact-finding inquiry, akin to a Magisterial inquiry where there are no suspects but on certain matters affecting the reputation of military personnel they are allowed to be present and to cross examine the witnesses. If there is a prima facie case disclosed against any person from the evidence led before the Court of Inquiry, a General Court Martial is convened to try the alleged offenders. A General Court Martial has the jurisdiction that is similar to a High Court Trial-at-Bar and can award any sentence according to law. Findings of such Court Martial are subject to review by civil courts.
5. Further the fact that this exercise was undertaken approximately 7 months before the National Plan of Action for the implementation of the LLRC Recommendations was launched, demonstrates the GoSL's commitment to addressing issues of accountability.
6. The first part of the C of I (alleged civilian casualties during the final phase of the Humanitarian Operation) has been concluded and the C of I report was handed over to the Commander of the Army on 15 February 2013. Although the C of I report cannot be made public, a summary of the findings is available online which include inter alia the following-

- a. The Court examined senior field commanders and infantry, armour, artillery, intelligence, civil affairs and medical officers who had participated in the Humanitarian Operation. From the evidence presented, the Court of Inquiry concluded that LTTE terrorists had violated the international law with impunity by committing various unlawful acts inter alia, using of civilians as human shields, placing of artillery and other heavy weapons amidst civilian concentrations and illegal conscription of civilians, including children and old people, for combat purposes thus exposing them to danger and transforming their status to that of combatants.
- b. Evidence before the Court has conclusively established that the Humanitarian Operation was conducted strictly in accordance with the "Zero Civilian Casualty" directive made by His Excellency Mahinda Rajapaksa, President of Sri Lanka and commanders at all times obeyed the said directive and even where the LTTE terrorists had fired from No Fire Zones (NFZs), commanders refrained from firing at such NFZs. It has also been revealed that as an additional measure of safety, artillery commanders had added 500 meters more to the boundaries of NFZs.
- c. During the Court of Inquiry it transpired that LTTE terrorists had placed artillery and other heavy weapons amidst civilian concentrations and from such locations they repeatedly fired at Sri Lankan Army positions. However despite heavy bombardments by LTTE terrorists, Sri Lankan Army troops had refrained from firing heavy weapons and this self-imposed moratorium had caused heavy casualties to Army troops.
- d. Evidence revealed that at all stages of the Humanitarian Operation, the Sri Lanka Army behaved as a well-disciplined military force observing the International Humanitarian Law (IHL) and the law of war and they took all the precautions to avoid civilian casualties and all those who came under the care of the Sri Lanka

Army, including surrendered/captured LTTE cadres, were treated humanely observing the IHL. On the contrary, shocking details of war crimes committed by LTTE terrorists such as using of civilian as Human Shields, summary executions of civilians who attempted to escape to army lines, forced conscription of children for combat purposes etc. were revealed at the inquiry. The Court noted that even the International community had failed to stop the war crimes committed by the LTTE terrorists.

- e. From the testimony presented, the C of I concluded that the instances of shelling referred to in the LLRC Report were not caused by the Sri Lanka Army and civilian casualties might have occurred due to unlawful acts by LTTE. These acts include firing at civilians fleeing to the safety of Army held areas, “dropping” (falling away from intended targets) of artillery rounds fired by ill-trained LTTE gunners on to civilian concentrations, employment of sub-standard artillery rounds obtained from illegal sources by the LTTE, forced conscription of civilians including children and old people by LTTE for combat purposes, thus exposing them to danger.
7. It may also be noted, that collateral damage may be caused in any armed conflict, even those operations conducted under the auspices of the UN.
8. Although the evidence presented before the Court of Inquiry does not attach blame to any Sri Lankan Army member, if new evidence is presented by any person giving precise information on civilian casualties, such instances will be investigated further by giving such persons the opportunity to present their evidence.
9. Notwithstanding the authenticity of the Channel 4 video footage, and acting on the recommendations of the LLRC, the C of I is currently investigating the 2nd part of their mandate, to examine the Channel 4 allegations. The failure on the part of the parties alleging excesses by the Sri Lankan military to provide the original footage despite

requests for provision of same along with further information on the possible locations, dates and other relevant information has impeded the progress of the investigation. Despite these difficulties faced the Court of Inquiry continues to endeavour to ascertain the veracity of the incidents. It is unfortunate that the Sri Lankan military continues to be unfairly accused on this matter on the baseless and uncorroborated allegations.

10. The Court of Inquiry report is a classified document and hence not a public document. Even Courts recognize this and as such does not insist on the production of such documents. These documents within the military also can be accessed only by authorized persons and is meant for internal use only. However this is different to proceedings of Court Martial which can be called upon by civil Courts for scrutiny.
11. With regard to clarifications sought on whether the evidence used by the COI to refute allegations were based on specific testimonies presented to the POE Report and specific photos revealed in the Channel 4 footage, the GoSL wishes to reiterate that no specific testimonies were contained in the POE report. The Report itself states that it is not a fact-finding or an investigative body. The Panel also revealed that its "sources" and the "Panel's substantive records will be classified as strictly confidential.....". Therefore, none of the so-called sources and material according to which the Panel claims to substantiate their conclusions, can be examined or verified by the public at large, or the Government of Sri Lanka. In addition it is also stated in the Report: *"This account should not be taken as proven facts, and any effort to determine specific liabilities would require a higher threshold."*
12. On the issue of provision of evidence such as military operational documents, the GoSL wishes to state that during the proceedings of the Court of Inquiry, commanders at various levels were questioned in detail as to the incidents of shelling and firing

mentioned in the LLRC Report. Those commanders had testified at the COI that they had not undertaken any direct or indirect firing in the locations concerned and were not deployed in close proximity to the areas concerned on the dates/ times alleged in the LLRC Report. In addition the testimony had revealed that precise orders had been issued with regard to the locations of NFZs and had strict orders not to fire at the NFZs. As an additional precaution, 500 meters to the NFZ boundaries had been added for all planning purposes. Artillery fire was never directed to NFZs.

13. Prior to engaging targets verifications were conducted including intelligence sources to ensure that no civilians were present in the target locations. Such information made it evident that the LTTE were firing from areas adjacent to NFZs. However despite heavy firing, the Sri Lanka Army refrained from counter bombardment. Due to moratorium imposed on artillery firing, troops received heavy casualties due to LTTE artillery firing.

Issue 12

The Government wishes to reiterate that the Panel of Experts (POE) Report on Sri Lanka which was commissioned by the UN Secretary General was the culmination of a private consultation that the latter sought for his own advice, and is not the product or request of the UN Human Rights Council, the UN General Assembly or any other UN body. As it has not received the endorsement of the intergovernmental process, it has neither credence nor legitimacy within intergovernmental fora. For the above reasons, the GoSL does not extend any credence or legitimacy to the POE Report.

It may be further noted that though the PoE was invited by the LLRC to make presentations to the Commission, they chose not to present themselves to the LLRC (for reasons which are best known to them). What the Government of Sri Lanka said it will do and it has done is to appoint on the recommendations of the LLRC, a Commission of Inquiry to investigate into missing

persons in the Northern and Eastern provinces on 15th August 2013. The scope of the mandate of the Commission was extended on 15th August 2014, among others to investigate and report into facts and circumstances that led to the loss of civilian lives during the internal armed conflict that ended on 19th May 2009. The original mandate was to investigate into disappearances, the extension was to look at civilian loss of lives and whether persons, groups or institutions, directly or indirectly bear responsibility for violations of international humanitarian law or international human rights law. The Commission has held regular meetings with the ICRC, the UNDP and have obtained their views and experiences gained in other parts of the world particularly on matters relating to missing persons at the end of the conflict. The following international experts have also been appointed to serve as Advisors to the Council at the request of the Chairman of the Commission. These Commissioners are:

1. The Right Hon. Sir Desmond de Silva, QC, Chairman
2. Sir Goeffrey Nice, QC
3. Prof. David Crane
4. Mr. Avdash Kaushal
5. Mr. Ahmer Bilal Soofi

It is a fundamental principle of international law that national remedies have to be exhausted before resorting to international mechanisms and in this context, it is pertinent to note that national mechanisms for accountability are underway and have not been exhausted. Therefore, while Sri Lanka remains open to international assistance to its domestic mechanism as and when necessary it rejects any undue and unwarranted interference that seeks to impede its ongoing reconciliation process.

This position was stressed by the Government of Sri Lanka when the High Commissioner's oral update came up for discussion on the 25th of September 2014. These are in the records of the HRC. A group of 22 Likeminded Countries also stressed that the intrusive mandate given to the

OHCHR by Resolution 25/1 to carry out investigations on Sri Lanka is unwarranted. It was noted that the OHCHR efforts should contribute towards a state's own efforts in promotion and protection of human rights as stipulated in UNGA Resolution 48/141, UNGA Resolution 60/251, UNGA Resolution 65/281 and on the IB package. 61/126

Therefore, we wish to reiterate that we do not recognize the PoE. We are engaging in a domestic process of reconciliation and we maintain, in accordance with principles of international law, that all domestic remedies must be exhausted before international remedies. This position has been acknowledged by many countries in the Human Rights Council.

Issue 13

Implementation of the LLRC recommendations

The Chapter 9 of the LLRC Report titled 'Summary of the Principal Observations and Recommendations' contains 285 paragraphs which is the sum total of observations and recommendations. Several of such recommendations are widely similar, have common objectives and outcomes, and are repetitive. The GOSL has identified 144 as recommendations with the approval of the Cabinet of Ministers, which have been clustered in the LLRC National Plan of Action (NPoA) under five themes:

- (i) International Humanitarian Law Issues (07 recommendations)
- (ii) Human Rights (54 recommendations)
- (iii) Land Return & Resettlement (24 recommendations)
- (iv) Restitution/Compensatory Relief (09 recommendations)
- (v) Reconciliation (50 recommendations)

These recommendations have been comprehensively incorporated into the LLRC NPoA and are now under implementation. Further, all agencies assigned with the implementation of the NPoA are instructed to consider the recommendations in their entirety and implement them in

the spirit in which they had been made in the LLRC report. However, originally defined time frame could be amended if it becomes necessary for further extension.

Of the 144 recommendations contained in the LLRC Report, 46 have realized their objectives, and 88 recommendations which have long-term implementation time frames are well underway.

National Plan of Action is the Road map officially announced by the GOSL as a process towards durable solutions for IDPs. The GOSL is fully committed to realizing the targets. The Bureau for Reconciliation was established as the focal coordinating mechanism to accelerate the process and to assist the line Ministries and agencies vested with the responsibility of implementing the assigned tasks.

With regard to the question in relation to mobilization of funds for restitution for those affected by the conflict, as recommended by the LLRC, the Government has mobilized funding for restitution/compensation and monetary assistance for those affected by the conflict. Since 2009 up to August 2014, SLR 1,455 Million has been provided for the payment of such relief to the people who were affected by the conflict. This includes SLR 299 Million granted under the Concessionary Credit Scheme for Socially Re-integrated Trainees (LTTE ex-combatants). The 2014 budget has allocated SLRs. 475 Million to continue the implementation of this recommendation.

Significant achievements have already been made with regard to recommendations made on reconciliation, particularly in relation to resettlement, implementation of trilingual policy, economic and social support for the vulnerable groups, women, children and disabled.

Prohibition of torture and cruel, inhuman or degrading treatment, liberty and security of person, fair trial and independence of judiciary (arts. 7,9,10 and 14)

Issue 14

The Government of Sri Lanka is of the opinion that the definition of torture in its domestic law covers all the elements contained in article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Although the word “suffering” is not specifically mentioned in the definition of torture in the Act No 22 of 1994, the Government is of the view that the words “severe pain whether physical or mental” invariably encompasses “suffering” both in its physical and mental form.

Therefore, Sri Lanka is of the view that its definition is consistent with the definition of torture contained in the said Convention. It has to be noted that purely mental torture is also included within the definition, so that the threat of torture may itself amount to psychological torture. Further, the Government notes that Professor Manfred Nowak (former Special Rapporteur on Torture) in his report of February 2008 observes that the definition in article 12 is in conformity with the definition of article 1 of the Convention; however, it does not expressly include “suffering”. This is a clear indication that despite the lack of the term “suffering” in the Convention against Torture Act No.22 of 1994 (CAT Act) is consistent with the definition of the Convention.

Also, it may be noted that the concern on impartial investigations regarding torture or ill treatment has been dealt with in paragraph under Issue 9 above.

Issue 15

The government of Sri Lanka categorically rejects the assertion that there are detention centres maintained by the Sri Lankan military for the detention of non-military personnel. All detention centres are under the Ministry of Rehabilitation and Prison Reforms and the Ministry of Law

and Order. As per the provisions of the Prison Ordinance as well as other written laws dealing with detention of persons, no place of detention can be maintained in Sri Lanka without duly publishing it in a Government Gazette. The Government Gazette can be accessed by any member of the public.

Access has been provided to detention centres maintained in the country to NOKs, Judicial Medical Officers (JMOs), Magistrates, and in addition there have also been instances where members of the diplomatic corps have also been provided access. It should also be noted that the ICRC has also been provided access to detainees and ICRC delegates undertake regular visits to detention centres.

In a recent interview (26/02/2014) by the Head of Operations for South Asia of ICRC Mr Anthony Dalziel, which followed a visit to Sri Lanka, he stated the following in response to the query “who are the detainees you are visiting?”

“..... Currently, with the agreement of the Sri Lankan government, the ICRC is visiting people held in places of detention under the responsibility of the Ministry of Rehabilitation and Prison Reform, the Terrorist Investigation Division, or the Criminal Investigation Division and in Police stations. During these visits, our delegates assess conditions of detention and the treatment of all detainees and share their observations with the detaining authorities, propose solutions to any problems and provide direct assistance to detainees where necessary...”

“The ICRC arranges for families to visit relatives detained in connection with past conflicts and provides them with a travel allowances. In the past year, as many as a thousand detainees received visits from family members every six weeks”.

The GoSL has provided access to the ICRC to visit places of detention. Monthly visits by the ICRC to these centres were facilitated by the Government of Sri Lanka.

With regard to the prisons, a system has been developed to conduct regular and independent ‘visiting committees’ in the Prisons, a minimum of two per each month. These committees

comprise reputed retired public servants, and these independent groups visit Prisons and report to the Authorities, on the conditions of the prisons and any relevant issues that needs attention of the authorities. In addition, the ICRC conducts regular visits based on the requests. Also, Members of Parliament, Human Rights Commission of Sri Lanka (HRC-SL) undertake visits and on case by case basis requests from other agencies have been processed by the Prison authorities. Approximately 1000 visits per last year to all 40 prisons in the country.

Issue 16

On the issue of prison overcrowding, Sri Lanka responded to this issue during its introductory statement including where it was explained that GOSL is mindful of the fact that prison overcrowding is an issue that needs the attention of the Government and accordingly action is ongoing to construct new prisons with enhanced facilities in three locations, namely, in Vavunia, Angunakolapellessa, and Jaffna. A written response is also provided in para 80 of the response of Sri Lanka to the list of issues.

The juveniles incarcerated for offences are not kept in closed prisons. The juveniles are kept in separate institutions called “Training School for Youthful offenders (T.S.Y.O)” at Watareka and “Correctional Centre for Youthful offenders (C.C.Y.O)” located in Pallansena. The convicted felons are kept in Welikada prison and all remand suspects in Welikada prison have been transferred to other remand prisons in Colombo. Hence there is concerted action taken and in progress to handle Juvenile Offenders, remand prisoners and convicted prisoners separately. The completion of the new Prisons and enhanced facilities, would further help implementing this regard.

The amendment of the prison legislation (Prison Ordinance) is in progress and is expected to be finalized soon. The Prisons Department is vested with legal powers to notify the courts regarding inmates in detention who have not received dates to be produced in court and the

department has been informing courts accordingly. This process is administered as part of daily routine of the Prison Department, in coordination with the Ministry of Justice.

Issue17.

In Response to a concern raised by a member of the Committee in regard to the grounds of removal of the former Chief Justice, the following matters are brought to the attention of the Committee.

14 allegations were made against Dr Bandaranayake who was afforded the fullest opportunity to answer the same.

The said allegations inter alia include:

- Failing to declare her assets fully;
- Failing to declare foreign currency;
- Failing to provide details of "more than 20 bank accounts;
- Harassing a female magistrate
- Being unsuitable to continue as chairperson of the Judicial Services Commission because of bribery/corruption charges against her husband.

The said allegations are set out as follows:

1. Whereas by purchasing, in the names of two individuals, i.e. Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne using special power of attorney licence bearing No. 823 of Public Notary K.B. Aroshi Perera that was given by Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne residing at No. 127, Ejina Street, Mount Hawthorn, Western Australia, 6016, Australia, the house bearing No. 2C/F2/P4 and assessment No. 153/1-2/4 from the housing scheme located at No. 153, Elvitigala Mawatha, Colombo 08 belonging to the company that was known as Ceylinco Housing and Property Company and City Housing and Real Estate Company Limited and Ceylinco Condominium Limited and is currently known as Trillium Residencies which is referred in the list of property in the case of fundamental rights application No. 262/2009, having removed another bench of the Supreme Court which was

hearing the fundamental rights application cases bearing Nos. 262/2009, 191/2009 and 317/2009 filed respectively in the Supreme Court against Ceylinco Sri Ram Capital Management, Golden Key Credit Card Company and Finance and Guarantee Company Limited belonging to the Ceylinco Group of Companies and taking up further hearing of the aforesaid cases under her court and serving as the presiding judge of the benches hearing the said cases;

2. Whereas, in making the payment for the purchase of the above property, by paying a sum of Rs 19,362,500 in cash, the manner in which such sum of money was earned had not been disclosed, to the companies of City Housing and Real Estate Company Limited and Trillium Residencies prior to the purchase of the said property;

3. Whereas, by not declaring in the annual declaration of assets and liabilities that should be submitted by a judicial officer, the details of approximately Rs. 34 million in foreign currency deposited at the branch of NDB Bank located at Dharmalpala Mawatha, Colombo 07 in accounts 106450013024, 101000046737, 100002001360 and 100001014772 during the period from 18 April 2011 to 27 March 2012;

4. Whereas, by not declaring in the annual declaration of assets and liabilities that should be submitted by a judicial officer the details of more than twenty bank accounts maintained in various banks including nine accounts bearing numbers 106450013024, 101000046737, 100002001360, 100001014772, 100002001967, 100101001275, 100110000338, 100121001797 and 100124000238 in the aforesaid branch of NDB Bank;

5. Whereas, Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake is a suspect in relation to legal action initiated at the Magistrate's Court of Colombo in connection with the offences regarding acts of bribery and/or corruption under the Commission to Investigate into Allegations of Bribery or Corruption Act, No 19 of 1994;

Whereas, the post of Chairperson of the Judicial Service Commission which is vested with powers to transfer, disciplinary control and removal of the Magistrate of the said court which is due to hear the aforesaid bribery or corruption case is held by the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake as per Article 111D (2) of the Constitution;

Whereas, the powers to examine the judicial records, registers and other documents maintained by the aforesaid court are vested with the said Hon. (Dr.) (Mrs.) Upatissa Atapattu andaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake under Article 111H (3) by virtue of being the Chairperson of the Judicial Service Commission;

Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake becomes unsuitable to continue in the office of the Chief Justice due to the legal action relevant to the allegations of bribery and corruption levelled against Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake in the aforesaid manner, and as a result of her continuance in the office of the Chief Justice, administration of justice is hindered and the fundamentals of administration of justice are thereby violated and whereas not only administration of justice but visible administration of justice should take place;

Whereas, despite the provisions made by Article 111H of the Constitution that the Secretary of the Judicial Service Commission shall be appointed from among the senior judicial officers of the courts of first instance, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake acting as the Chairperson of the Judicial Service Commission by virtue of being the Chief Justice, has violated Article 111H of the Constitution by disregarding the seniority of judicial officers in executing her duties as the Chairperson of the Judicial Service Commission through the appointment of Mr. Manjula

Thilakaratne who is not a senior judicial officer of the courts of first instance, while there were such eligible officers;

7. Whereas, with respect to the Supreme Court special ruling Nos. 2/2012 and 3/2012 the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake has disregarded and /or violated Article 121 (1) of the Constitution by making a special ruling of the Supreme Court to the effect that the provisions set out in the Constitution are met by the handing over of a copy of the petition filed at the court to the Secretary General of Parliament despite the fact that it has been mentioned that a copy of a petition filed under Article 121 (1) of the Constitution shall at the same time be delivered to the Speaker of Parliament;

8. Whereas, Article 121(1) of the Constitution has been violated by the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake despite the fact that it had been decided that the mandatory procedure set out in the said Article of the Constitution must be followed in accordance of the interpretation given by the Supreme Court in the special decisions of the Supreme Court bearing Nos. 5/91, 6/91, 7/91 and 13/91;

9. Whereas, irrespective of the absolute ruling stated by the Supreme Court in the fundamental rights violation case, President's Counsel Edward Francis William Silva and three others versus Shirani Bandaranayake (1992 New Law Reports of Sri Lanka 92) challenging the appointment of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake, when she was appointed as a Supreme Court judge, she has acted in contradiction to the said ruling subsequent to being appointed to the office of the Supreme Court judge;

10. Whereas, the Supreme Court special rulings petition No. 02/2012 filed by the institution called Centre for Policy Alternatives to which the Media Publication Section 'Groundview' that

had published an article of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake, while she was a lecturer of the Law Faculty of the University of Colombo prior to becoming a Supreme Court judge, has been heard and a ruling given;

11. Whereas, in the case, President's Counsel Edward Francis William Silva and three others versus Shirani Bandaranayake (1992 New Law Reports of Sri Lanka 92) that challenged the suitability of the appointment of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake who holds the office of the Chief Justice and thereby holds the office of the ex-officio Chairperson of the Judicial Service Commission in terms of the Constitution, Attorney-at-Law L.C.M. Swarnadhipathi, the brother of the Magistrate Kuruppuge Beeta Anne Warnasuriya Swarnadhipathi filed a petition against the appointment of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake owing to which the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake has harassed the said Magistrate Kuruppuge Beeta Anne Warnasuriya Swarnadhipathi;

12. Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake who holds the office of the Chief Justice and thereby holds the office of the ex-officio Chairperson of the Judicial Service Commission in terms of Article 111D (2) of the Constitution has, by acting ultra vires the powers vested in her by the Article 111H of the Constitution ordered the Magistrate (Mrs.) Rangani Gamage's right to obtain legal protection for lodging a complaint in police against the harassment meted out to her by Mr. Manjula Thilakaratne, the Secretary of the Judicial Service Commission;

13. Whereas, the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake being the Chief Justice and thereby being the Chairperson of the Judicial Service Commission, in terms of Article 111D (2) of the Constitution,

has abused her powers by ordering the Magistrate (Mrs.) Rangani Gamage to obtain permission of the Judicial Service Commission prior to seeking police protection thereby preventing her from exercising her legal right to obtain legal protection;

14. Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake by performing her duties as the Chairperson of the Judicial Service Commission has referred a letter through the Secretary of the Judicial Service Commission to the Magistrate (Mrs.) Rangani Gamage, calling for explanation from her as to why a disciplinary inquiry should not be conducted against her for seeking protection from the Inspector General of Police by exercising her legal right;

It is also brought to the notice of the Committee that cases are pending against Dr Bandaranayake and her husband pursuant to proceedings filed by the Commission to Investigate Allegations of Bribery or Corruption.

In this context the State party rejects any suggestion that Dr Bandaranayake was removed from office for any decisions made by her as a judge.

The removal of Dr. Shirani Bandaranayake from the office of Chief Justice followed the due process stipulated in the Constitution. The proceedings of the Select Committee of parliament on the proceedings for removal of Dr. Shirani Bandaranayake from of the office of Chief Justice is annexed marked "17A."

In regard to the suggestion made by the Members of the Committee on the Judgments of the Supreme Court in regard to the removal of Dr. Shirani Bandaranayake as Chief Justice it is submitted that, there were three judgments of Supreme Court in this regard.

In regard to the Writ Application filed by Dr. Shirani Bandaranayake and issued by the Court of Appeal quashing the proceedings of the Parliamentary Select Committee, the Supreme Court

has clearly stated that the Court of Appeal did not have jurisdiction. The Supreme Court has also concluded that the Constitutional process has been adhered to with regard to the removal of Dr. Shirani Bandaranayake.

It is also brought to the notice of the committee that the said procedure referred to in the relevant Supreme Court judgments with regard to the removal of Superior Court Judges has been a Constitutionally mandated procedure that has been in existence in Sri Lanka for almost 30 years and not an ad hoc procedure that was followed with regard to the removal of Dr. Shirani Bandaranayake.

The relevant Supreme Court Judgments have been widely publicized and may be read at the following web links:

(http://www.supremecourt.lk/images/documents/sc_appeal_67_2013.pdf)

(http://www.supremecourt.lk/images/documents/sc_appl_fr_665_7_and_672.pdf)

http://www.supremecourt.lk/images/documents/sc_appeal_114_13.pdf

Protection of rights of children (arts. 2,7,24 and 26)

Issue 18

Minimum age of criminal responsibility – What will the new age of responsibility be?

The National Child Protection Authority (NCPA) has included the requirement to raise the age of criminal responsibility in the draft Child Protection Policy which awaits Cabinet approval and has requested the Ministry of Justice to take steps to amend the laws to raise the minimum age of criminal responsibility. Currently, discussions are ongoing with relevant stakeholders and the new age of criminal responsibility will be determined based on the stakeholder discussions.

Issue 19

Training program by NCPA on non-violent disciplinary measures

The National Child Protection Authority (NCPA) has, under the SAIVEC, conducted 14 training programmes island-wide for teachers on the subject of corporal punishment and the

importance of, as well as techniques of positive disciplinary methods. The trainers were trained with the support of Canadian and Nepali trainers. So far 1200 schools have been covered by these trained Sri Lankan trainers. Another project, which is being implemented in collaboration with SAIVEC, contains four thematic areas of which one is corporal punishment.

An awareness creation march was also organized in Colombo in January with the participation of school children to create public awareness on the effects of corporal punishment and the need to eradicate it as a school disciplinary method.

In a number of schools island-wide, the NCPA has established around 3000 letter boxes under the title 'Laughter and Tears' where children can drop in their suggestions or complains regarding any matter they wish to. The keys to these boxes are in the hands of NCPA officials of the area.

Steps taken to end corporal punishment in family settings

The National Child Protection Authority (NCPA) is currently conducting door-to-door awareness creation campaigns aimed at educating parents on child abuses, child labour and the importance of the family for the well-being of the children. NCPA has launched the ANGEL Network programme to create awareness of the ethics of child management.

Initiatives implemented by Government of Sri Lanka to eliminate Child Labour including its

Worst Forms

In Year 2010, at the Child Labour Conference held in Hague, Netherlands, Sri Lanka committed to eliminate the Worst Forms of Child Labour by 2016. Translating this commitment to action, Sri Lanka developed a Road Map on the Elimination of Worst Forms of Child Labour by 2016, which is one of the policies relating to Child Labour and implemented the actions stipulated in the Road Map since then.

Child Activity Survey conducted in 2009 covering the whole island, except North & East, was released in 2011. As per the report, 107259 number of children were estimated as being engaged in child labour (2.5% of total child population) of which 63,916 were estimated (1.5% of the total child population) as Hazardous Forms of Child Labour.

The Government of Sri Lanka has taken every effort to eliminate Child Labour including its Worst Forms. The National Steering Committee on Child Labour continues to function. It has launched a project to create Child Labour Free Zones by 2016, which will serve as a model to be replicated in all 25 districts. The Ratnapura, Kegalle and Ampara districts have been declared as Child Labour Free Zones and overall child development plans prepared at district levels are being implemented with the help of all relevant stakeholders and monitored by the District Secretaries under the guidance of the Ministry of Labour and Labour Relations. The Ministry of Labour and Labour Relations has also implemented an innovative, full-automated labour inspection system application that supports on-site inspection process.

In Year 2013, the Department of Labour employed 428 Labour Officers to enforce all labour laws including those related to child labour. It conducted enforcement-training programme and Training of Trainers programmes on child labour and Hazardous Child Labour for Police, Probation and Labour Officers. The Department of Labour has also introduced a new labour inspection form which has an increased number of questions on Child Labour and prepared training manuals on the Worst Forms of Child Labour including its Hazardous Forms.

Moreover, large number of awareness campaigns for General community and schoolchildren have been held on Child Labour.

In 2013, the Department of Labour conducted 54213 labour inspections including 231 special Child Labour inspections. In year 2013, Department of Labour received 232 complaints on Child Labour of which 90 cases were not falling under the subject of Child Labour. Out of 142 genuine

cases, two cases were successfully completed and penalties were applied. Another 2 cases are being prosecuted; the rest 138 cases are being investigated by the Department of Labour.

Ministry of Labour and Labour Relations launched the inspection system application, which is the first of its kind in South Asia. The fully automated system supports on-site inspection process where authorized personnel can use a hand held tablet to enter information on inspections as they occur and track and monitor their status and disposition. The system was developing with funding support from US Department of Labour and technical support from the ILO. Labour offices will be provided with the tablet computers with the customize application to record inspections findings. Labour officers can use the application to monitor and track specific children and ensure that they do not return to child labour once they have been identified and removed.

Facility of a toll free helpline number 1929 is available for complaints and the NCPA takes prompt action on complaints.

Other steps taken to combat the phenomenon of child labour are:

- Ministry of Child Development and Women Affairs provide victims with safe shelter and access to medical, psychological, and legal assistance.
- Five-year education project financed by the World Bank has been started with the objectives of promoting access to primary and secondary education, improving the quality of education and strengthening governance and delivery of education service.
- ILO technical assistance project (decent work country program) is detailing the policies, strategies, and results required to realize progress toward the goal of decent work for all. This Program has four strategies to reduce the Worst Forms of Child Labour namely, capacity building for mainstreaming WFCL into sectoral plan and program, area based integrated approaches within districts, strengthening institutional mechanism for improved co-ordination and monitoring and development of knowledge-base for tracking process. Decent Work Country Program outcomes are linked to United Nations Development Assistance and National Human Resources and Employment Policy

(NHREP) outcomes. Ministry of Labour and Labour Relations has committed to budget and prioritized this programme and agenda to combat the Worst Forms of Child Labour.

- UNDAF stipulates that UN agencies will support national efforts to strengthen justice for children and achieve the goal of zero-tolerance of the Worst Forms of Child Labour including the trafficking of children for exploitative employment. The National Human Resources Employment Policy for Sri Lanka has been prepared including its action plan. This provides an overarching umbrella framework to several existing national policies related to employment and human resources. It sets eliminating child labour in hazardous activities as a priority and a goal of zero-tolerance of the Worst Forms of Child Labour by 2016.
- The Government of Sri Lanka has developed institutional mechanism, effective enforcement of Criminal Laws on Child Labour/Forced Labour /Trafficking/ Commercial Sexual Exploitation and use of Children in illicit activities under the Ministry of Justice.

Elimination of slavery and servitude (art.8)

Issue 21

The Ministry of Justice has established an anti-trafficking task force to combat trafficking in persons especially women and children. The task force comprises representatives from important government organizations and INGOs and they meet under the chairmanship of the Secretary, Ministry of Justice. The Task Force meets once a month and has developed a national Plan of action and standard operational procedures which will be laid before Cabinet soon.

Victims are assisted and protected and are given the normal rights to remedies. The Task force seeks to combat trafficking of victims to other countries as well as locally.

A shelter has been established for trafficking under the aegis of the Ministry of Child Development and Women's Affairs and is fully operational.

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

Issue 22

Durable solutions for IDPs, Land Return

As of 31 August 2014, GoSL has successfully resettled 228,298 families, consisting of 774,447 members in the former conflict zones in the Northern and Eastern Provinces of the country. At present, there are only a total of 7,840 families consisting of 26,056 members in protracted displacement and remain to be resettled. Accordingly, the percentage of such IDPs remain to be resettled is just 3.3 percent when compared with the total of 228,298 of displaced and already resettled.

In regard to the reference to the Committee's suggestion of the IDP figure of 90,000, it is stated that a Joint Study was undertaken by the GOSL with the participation of UN High Commissioner for Refugees in Colombo to identify the exact number of internally displaced families within the respective administrative districts in the Northern and Eastern Provinces of Sri Lanka. The above figures of 7,840 families consisting of 26,056 persons as those in displacement in Sri Lanka are based on the outcome of this study. The GOSL intends to publish a joint report with the UNHCR shortly once the remaining formalities are completed.

As a matter of policy, GOSL is committed to make available durable solutions to all the internally displaced and resettled families and the framework within which it intends to do so it clearly spelt out in the Government's policy, "Mahinda Chinthana"

With regard to the provision of durable solutions in the area of provision of shelter to the resettled families, 65,747 new houses have been constructed as at 31 August 2014 and 9,246 partly damaged houses have been renovated with the facilitation of Govt. and the donor agencies. At present, construction of 23,713 houses is in progress. Further commitments have been made to construct 9,367 new houses and renovate 2,820 partly damaged houses. A significant portion of these houses are being built on 'owner driven' basis.

On the question of return of land and property of those displaced around 23,000 people as referred to in the question, over the last four and half years, Sri Lankan security forces have progressively returned land held by them to facilitate resettlement. In fact, the total privately owned land held by the security forces in the Northern Province has now reduced to 7382 Acres from an around 25,627 Acres in 2009. It is pertinent to note that among those displaced and already resettled, only 637 families could not be resettled in their places of origin and had to be relocated in close proximity to their original habitat, as their land being required for public purposes.

The GOSL maintains 32 welfare centres in the Northern District of Jaffna for the benefit of 1,185 internally displaced families. However, 790 families who are in welfare centres do not own land in their places of origin and in any case landless.

However, there remain 4,815 displaced families in the Jaffna District living with host families. Their land, totaling to 7382 Acres are earmarked for acquisition for public purposes under laws applicable. The legal owners of such land will be paid compensation once the acquisition proceedings are completed. However, legal action filed in Courts against proposed acquisition is pending for determination.

With regard to the question relating to gender dimension, the draft resettlement policy recognizes the equality in gender in the delivery of services and entitlement as one of the Guiding Principles. Accordingly, all IDPs, disregarding their gender would be recognized and accepted in equal measure, in the provision of assistance and entitlement. Further, under the draft resettlement policy both the men and women have equal rights to obtain necessary documents and have the right to have such documentation issued in their own names.

In the case of voluntary choices available to IDPs in the draft resettlement policy, it recognizes a number of resettlement options such as resettlement and reintegration in the places of origin,

local integration, relocation with the consent. The draft policy also ensures informed choice for displaced families through facilitation of “go and see visits” prior to resettlement.

As regards any arrest of women in the context of resettlement activities, no such complaints have been received by the Ministry of Resettlement.

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

Issue 23

The GoSL wishes to make a clarification on statement made by Mr Zlatescu that "In 2009 Lasantha Wickramatunga was killed in broad daylight in a High Security Zone guarded by the Army". It should be noted that this crime was committed on a main public road South of Colombo which was neither in a High Security Zone nor an area guarded by the Army. Therefore we reject the suggestion that Mr Wickramatunga was killed in a High Security Zone guarded by the Army.

The Government of Sri Lanka rejects the assertion that there is ‘a continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human rights defenders, journalists and families of victims.’

Whilst it is true that there remain certain unresolved cases of violence against media personnel, there is no restriction placed on what may be reported by the press. The law of evidence plays the most crucial role, and due process is required for prosecution.

Further, in recent years, the spread of social media networks and online news outlets has contributed to the diversity and the increased speed of propagation of information throughout

the country at large. The wide spectrum of views on display in Sri Lanka is amply demonstrated by its print and electronic media, much of which is fiercely critical of the Government. It should also be noted that during the period of the present government, no press censorship has been imposed. Further the law relating to criminal defamation has been repealed by Parliament.

Sri Lanka remains committed to taking necessary steps to ensure the safety of media personnel and institutions. Although no special laws have been formulated with regard to media personnel or institutions, any person who seeks to vindicate their rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the Human Rights Commission of Sri Lanka on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to canvass for the rights of media personnel.

The Government is also pursuing investigations into current cases of alleged attacks on media personnel and institutions.

The Government has initiated action to prepare legislation with regard to Witness and Victim Protection. Details of such proposed legislation are dealt with in answer to paragraph 5 of this submission.

Issue 24

Regarding the question raised by a Committee member on a so called "Mullaiwaikkal Remembrance Day," the following response by the Permanent Representative of Sri Lanka is submitted for the Committees notice :

Quote

The second reference which I take exception to, is that of a so called "Mullivaikkal Day", because I do not know whether the member who mentioned it knows that Mullivaikkal Day is

celebrated to commemorate the LTTE Leader, Velupillai Prabhakaran, who met his death on that day. Now, whether it is the normal norm that terrorist leaders and the places they died are venerated and commemorated in this civilized society is a question I leave to you learned ladies and gentlemen to answer. But I must say that to us in Sri Lanka, while we do mourn all those who have died, and allow the families to do so on that day, allowing that to be done with respect to leaders of terrorist organizations and senior terrorist cadres in particular amount to the glorification of terrorism.

Unquote

Right to take part in the conduct of public affairs (art. 25)

Issue 25

In further response to the concerns raised by members of the Committee in regard to matters in Issue No 25.

A specific concern was raised by a distinguished member regarding the acquisition of property belonging to Mr. Daya Gamage, an opposition politician under the Revival of Underperforming Enterprises or Underutilized Assets Act No.43 of 2011.

It is submitted that the said Act was passed into law pursuant to a determination by the Supreme Court with regard to its constitutionality. A copy of the said judgment is **annexed marked 25A**. In this context, it must be further noted that the Sevanagala Sugar Industries had filed applications in the Supreme Court and Court of Appeal and the said applications were dismissed. Presently, a matter is pending in the District Court of Embilipitiya.

The State party rejects any suggestion that the said Act was politically motivated as the said Act included several other underperforming assets and enterprises which came within the definition of “underperforming enterprises and under utilized assets” set out in the Act.

Responding to the concerns raised by the members of the Committee in regard to the temporal proximity between the multiple legal proceedings that were initiated against Sarath Fonseka and his participation in the 2010 Elections; it is brought to the attention of the Committee that the legal proceedings instituted against Sarath Fonseka under the Army Act for actions committed while he was an officer of the Army had to be instituted in terms of the said Act within a period of 6 months from Mr Sarath Fonseka ceasing to be a person subject to military law. In these circumstances any assertion that such legal proceedings were hastily conducted is rejected.

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

Issue 26

Incident in Aluthgama/Beruwala in June 2014

The initial incident that led to the disturbances took place on 12th June 2014 when the driver of a vehicle taking a Buddhist priest, Ven. Ayagama Samitha Thero, was assaulted by a Muslim youth from Dharga Town on *Poson Poya* day, a day of religious significance for Buddhists. When the Buddhist priest who was in the vehicle at the time tried to intervene and stop the assault, he too had been manhandled. The said priest had been warded at the hospital. On 15th June, another Buddhist priest from Dharga town had organized a reception/meeting to greet Ven. Ayagama Samitha Thero, who was released from hospital on the same day. Suspecting that the persons who were due to attend the reception/meeting might proceed to conduct processions after the meeting, the police took action to meet with the persons organizing the reception/meeting and with Muslim clergy and prominent persons in the area. The Muslim leaders had informed the police that they would, in order to ensure that there would be no trouble, close their shops early and as such there would be no problem even if the police allowed the persons attending the reception to proceed in procession after the meeting was concluded. The persons responsible for organizing the reception/meeting had also assured the police that there would not be any breach of the peace. The police presence was strengthened in the area and senior police officers were entrusted to ensure that there would not be any breach of the peace.

At the conclusion of the reception/meeting, those present had been informed by the organizers to disperse peacefully. However, some of the residents of Dharga town had wanted to escort Ven. Samitha Thero back to his temple in Dharga town. By then the police were informed that a large crowd of Muslim persons had gathered at the mosque, which was on the way to Dharga town. Suspecting a breach of the peace, the police had not allowed Ven. Samitha Thero to proceed on foot and he and his followers were sent by four (04) vans and placards in the possession of the crowd were also not allowed to be displayed. After Ven. Samitha had left, some of the Sinhala villagers walked back to their residences in Dharga town as a group. On the way, the group had to pass the mosque where the Muslims had gathered. The available video evidence suggests that stones were pelted towards the crowd going past the mosque. A confrontation had thereafter occurred with both sides pelting stones at each other. The police had arrived at the scene and had managed to disperse the crowd.

At this time, a rumour had spread in and around the adjoining villages that two Buddhist priests were dragged inside the mosque and were being attacked inside the mosque. The police have not been able to ascertain who was responsible for spreading this rumour. However, this rumour had inflamed passions resulting in violence spreading to a larger area in and around Aluthgama/Beruwala. As this was a totally unexpected turn of events, it took the police a few hours to bring in reinforcements to the area. Senior police officers including the Inspector General of Police immediately went to the area to personally supervise and coordinate operations. A police curfew was declared and both Muslims and Sinhalese were directed to remain indoors. Even though police curfew was imposed, several mobs consisting of both Muslims and Sinhalese violated the police curfew. The police, using tear gas, were not able to immediately bring the situation fully under control. It must be noted that the police had to act with a degree of restraint on its part, given the sensitivities of the situation at hand, while acting to bring the situation under control. As such, the police refrained from shooting at the crowd, which would have caused harm to life and limb. The police also refrained from sending a

police party into the mosque to ascertain the truth and veracity of the rumour that two Buddhist monks were being attacked inside the mosque.

The police were able to, within 24 hours, bring the situation under control whereby the major incidents stopped. However, sporadic incidents took place within the next 48 hours.

President Rajapaksa, who was abroad at the time of the incident, issued immediate instructions to bring the situation under control and to prevent passions from being inflamed by miscreant elements. Following his return, the President visited the affected area and met with religious leaders, leaders of civil society, government officials and other stakeholders and ensured the implementation of measures aimed at strengthening the bonds of religious co-existence and harmony that have existed between the Sinhala and Muslim people in Sri Lanka for centuries.

In the immediate aftermath of the riots, the Sri Lanka Police took steps to investigate the incidents and to bring the suspects before courts. Altogether 148 people (116 Sinhalese and 32 Muslims) have been arrested so far. Three (03) have been remanded for murder, three (03) have been granted police bail and 142 have been granted court bail. In addition, the Police have reported facts to court, in 461 cases, on the basis of complaints made.

The Criminal Investigations Department (CID) of the Sri Lanka Police has been assigned to conduct an overall investigation on the incident. In the course of its investigations, the CID has questioned suspects including those who were alleged to have indulged in hate speech, which includes 8 Buddhist monks. Upon completion of investigations, the report will be referred to the Attorney General for advice on the institution of legal proceedings.

In order to expedite the repair and reconstruction of damaged property, the Sri Lanka security forces were instructed, by President Rajapaksa, to repair all damaged properties. So far, construction work on 55 houses and 13 commercial buildings have been completed. The work on 114 houses and 34 commercial buildings are in progress.

Following the incident, vigorous campaigns aimed at promoting religious harmony and creating greater understanding between communities have been launched by government, civil society, professionals, academics, business and community leaders.

It has to be made clear at the outset that there are no Muslim and Tamil Homelands in Sri Lanka. In addition the GoSL has not "expropriation" lands belonging to any community. With specific reference to "Ashraff Nagar", approximately 59 acre land block in the village of Pallekadu in the Eastern Province, 34 families have been cultivating maze during the rainy season. This land belongs to the Forest Department and the cultivation of the said land is a violation of the law. When the authorities brought this to the attention of the said families 30 families stopped cultivation and shifted their agricultural activities to their original places of inhabitants. Four families are still illegally occupying part of the land. There is Fundamental Rights Case filed in the Supreme Court (No. 192/2012) on this matter and the matter is under judicial review.

Comments by Ambassador Ravinatha Aryasinha, Leader of the delegation winding up GOSL replies on 7 October 2014

Mr. Chairman,

Responding to Mr. Newman's question, as to why the PTA is still in existence in Sri Lanka, my colleagues have very comprehensively dealt with both the legal as well as the practical aspects, including recent incidents pointing to attempts at resurgence of terrorism in Sri Lanka with involvement of external networks.

I would like to address the direct question he asked, which is "when will the detention regime under the PTA Act be repealed?"

The question as to when a terrorist legislation ends is a good question. When terrorism begins, when it is recognised as a problem, and when action is taken to address it legally, are also very important questions.

Mr. Chairman this morning you drew attention to what is happening in parts of Iraq and Syria calling it a "brazen challenge". It is fortunate that on what is happening there, we are taking note, coming together to meet the threat and in exercising remedies for it. But for us in Sri Lanka while terrorism began in the early 1980s, it was not until 1991 when Shri Rajiv Gandhi, the former Prime Minister of India was killed that the world started recognising the ruthlessness of the LTTE. It was not until 1996 when the US banned the LTTE that the Western world recognised our problem. And it was only after 2001 following 9/11 that actually this question got any real attention.

My submission therefore Mr. Chairman, is when confronted with such challenges, there is need for countries to enact laws and take actions within it to meet such threats. The issue here is whether the action which Sri Lanka is taking right now in retaining the PTA, is proportionate to the challenge Sri Lanka continues to face.

Mr. Chairman and Commissioners, not only on this issue, but as a country that emerged from a 30 year long terrorist conflict, we have had to answer this at each step in our post conflict period.

- when the IDPs were moved into welfare camps, this question was asked. It was said they would never be allowed to go free, that their rights were going to be violated. But, within a couple of months they started going out and within about two years almost all have been re-settled. There was a risk that if you let these people out, that some of them you hadn't even identified as ex-combatants could start trouble. But the Government of Sri Lanka took that risk. That was a considered choice.

- then once again with respect to the ex-combatants, this question came up. While many had feared they would never be released, I recall when told that we were releasing them, a member of the European Parliament asking me in Brussels, "Ambassador, but isn't that dangerous?". I said "yes, but it is a calculated risk you have got to take because rehabilitation within Government institutions is one thing, but re-integration in society probably is the best place where people can get rehabilitated". So government has allowed ex-combatants to go. Out of approximately 12,000 ex-combatants arrested or who surrendered, while some 594 child soldiers were sent to their parents within months, and most in stages, at present we have only 116 undergoing rehabilitation, and 84 are under legal proceedings -under judicially mandated custody, remanded or bailed out. That too was a considered choice.

- I must also add, that in 2011 we allowed the emergency to lapse. That was something which at the time many felt was too fast. But Sri Lanka did it.

So I think when you ask the question of whether or not Sri Lanka retaining the PTA is fair, you have to also take into consideration that this is not a Government which does so because it has problems with these people or simply because there is legal framework, but because it is a government which does not shy away from taking considered choices and is adept at differentiating, in the best interests of its people.

I think it is very important that this factor be taken note of when you look at the retention of the PTA in Sri Lanka. It remains only because we feel that there is reasonable concern based on a pattern of events.

This is true not only in Sri Lanka. If you take other countries in the world which have faced terrorism, their laws also continue to remain in place.

I am sure that it is correct for you to ask the question when these laws will end. But, as States which are responsible for human life, as I said right to life, I think if one is aware that there is danger, a responsible government needs to be cautious.

So my point on this is, that when Sri Lanka is asked to do things, please appreciate that we are also conscious of the responsibility which we have towards our people. In this instance on the PTA, we reluctantly have to keep it in place, because we feel that the challenge and the threat continues.

**Concluding Remarks by Ambassador Ravinatha Aryasinha, Leader of the GoSL Delegation –
8 October 2014**

Mr. Chairman, members of the Committee, I wish to respond to a few issues and also wind up. But before that, just as much as I very readily apologized for one reference made of naming a country of a member of the Committee by my delegation, we feel that in the questions read out by some of the Committee members that correctness has to be taken on board and sensitivity shown. I particularly refer to the reference by one, to parts of Sri Lanka as belonging to one community, very specifically in the form of, I quote, “Tamil home land”. This is the basis on which the 30 years separatist conflict was fought. There was never a mandate given by anybody in any election for a separate homeland in Sri Lanka. All citizens in Sri Lanka are free to choose their place of residence regardless of their ethnicity. It should be noted that a large number of Tamils and Muslim community lives in Sri Lanka. In fact, in the main city of Colombo the percentage of the Muslims and Tamils put together is much more than that of the Sinhalese community, which is the majority community. I also want to add that, any lands acquired for state purposes in any part of the country is done under the Land Acquisition Act and compensation and alternative lands are provided.

The second reference which I take exception to, is that of a so called “Mullivaikkal Day”, because I do not know whether the member who mentioned it knows that “Mullivaikkal Day” is

celebrated to commemorate the LTTE Leader, Velupillai Prabhakaran, who met his death on that day. Now, whether it is the normal norm that terrorist leaders and the places they died are venerated and commemorated in this civilized society is a question I leave to you learned ladies and gentlemen to answer. But I must say that to us in Sri Lanka, while we do mourn all those who have died, and allow the families to do so on that day, allowing that to be done with respect to leaders of terrorist organizations and senior terrorist cadres in particular amount to the glorification of terrorism.

Now, as far as the whole discussion has gone, I want to make a few points.

You would note that many of these questions which have been posed to us are questions which are faced by many countries which are in a comparable state of development and socio-economic progress. I would think that from our responses you would appreciate that we are leaps and bounds ahead of even countries in the developed world, in terms of some of these indicators. This, I think is a factor which I hope the Committee to which we are coming after a lapse of 11 years would appreciate.

Further, a transition is taking place in Sri Lanka from a country fighting terrorism for 30 years, to now a country which has emerged from it and is trying to address matters. But the transition, as many of those countries who have come out of it would know, is not so easy and there are problems we have to grapple with, which we are doing.

In relation to the PTA, as well as in relation to several other issues, Sri Lanka should be judged in proportion to the challenges it has continued to face as a country emerging from a 30 year terrorist conflict. I made the point yesterday and I repeat it today, that Sri Lanka does not shy away from taking considered choices and it is adept at differentiating in the best interest of its people. So when we take a deliberate choice to allow IDPs to go without too much scrutiny, or to allow ex-combatants to go after some rehabilitation, that is a considered risk. But that was a risk which we took because we felt comfortable to do so. But when on issues like the PTA, and

also on some of the precautions we take in the Northern and Eastern provinces at present in view of what is happening on the ground and in view of our consciousness that still a large part of the LTTE's arsenal remains buried in the area and some people know where these are, you must take into account that we have to tread with caution. I go back to the point that there are many countries who have acted similarly when faced with comparable situations.

Then as to questions about the delay in Commission reports, there seems to be a sense of prejudgement of the Commission of Inquiry that is taking place on disappearances whose mandate has been broadened. I want to say very clearly that with respect to Commissions contemporary history gives us many examples. Ask yourselves how long the Blood Sunday Investigation took, how long the Royal Commission of Aboriginal people in Canada took, even the South African Truth Commission, the Commission to Inquire into Child Abuse in Ireland, the Commission on Truth & Reconciliation in Congo, the National Commission for Reparation and Reconciliation in Columbia, and let's not forget that with respect to the Chilcott Inquiry officially launched on 30 July 2009, the report is still to see the light of day.

Now in Sri Lanka's case, when the LLRC was sitting, many said 'this is useless', and there will be no report. When the report was given to the President, it was said that it will never be published. When it was published, it was said Sri Lanka will never implement it. When a National Plan of Action was put in place to be implemented, it was said that it was not practical and there was a question about the number of recommendations that had been sought to be operationalized, on which I believe my colleague earlier gave you the necessary clarification.

Therefore, we are deeply respectful for the questions asked by the members of this committee. I want to assure you that Sri Lanka is doing all possible and I have with us the colleagues leading the main Ministries which are involved in this, and where possible, we will try to provide further information in the next 48 hours permitted. But we take back the points made by you, and the sensitivity you show to some of these issues. Not immediately in this fora, but in others, we will be responding to those as time goes by.

In conclusion, I wish to thank you and other members of the Human Rights Committee for the fruitful discussion that we have had, during the course of the past afternoon and this morning. I am only sad that we did not have more time and to more extensively address some of the issues, considering the particular context in which Sri Lanka has had to ensure the upholding of human rights for its citizens. I also thank the Secretary and the staff of the Committee, as well as the interpreters and Conference Services for helping us, in spite of the fast reading or speaking, for keeping abreast with us. On behalf of my delegation, I wish you, Mr. Chairman and the Committee, all the best for the rest of the Session. I wish you a good afternoon.