



Tamil Information Centre

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TIC Note

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Sri Lanka: Failure of governance and destruction of democracy

Sri Lanka claims to be a democracy and the Sri Lankan Constitution says that the country 'shall be known as the Democratic Socialist Republic of Sri Lanka'. The claim is ludicrous in light of events in the island. Ordinary people in Sri Lanka at the heart of events, experience the wrecking of democratic principles and democratic institutions every day. The Sri Lankan government continues to violate every democratic principle and shows little regard for democratic institutions. Some of these institutions have been forced to become subservient to the politicians. Fear lurks the land and the people are unable to exercise their legitimate rights and carry on their daily lives in freedom and dignity without interference. The following statement clearly expresses the seriousness of the situation in Sri Lanka:

"It is with regret that we note the fast deterioration of processes of governance and vital public service institutions in the country. Waste of public finance due to the extravagance and greed of politicians, abductions of civilians for ransom, the functioning of independent institutions being dictated by powerful political figures, impunity of powerful elements, politicization of the public sector and many other serious lapses bear witness to the gravity of the failure of governance in the country."

- Transparency International¹
September 2006

Democratic principles

The 27 January 2003 report of the UN High Commissioner for Human Rights on *Continuing Dialogue on the Measures to Promote and Consolidate Democracy*, says that the way to build a real participatory democracy is that the system of governance must be characterized by the rule of law in conformity with human rights standards, including the right to development. A strong and independent judiciary is absolutely essential for the protection of basic human rights and, indeed, for the preservation of democracy. The report highlights the following:

- Democracy and the rule of law are interdependent and both are necessary to create an environment in which human rights can be realized.
- States bear ultimate responsibility as guarantors of democracy, human rights and rule of law.
- States must uphold their human rights obligations during periods of conflict and national emergency, in accordance with international law, the rule of law, and the principles of democracy.²

¹ Urgent need to address the institutional collapse and deterioration of democratic space – Transparency International, 21 September 2006 – www.tisrilanka.org

The Second Expert Seminar on Democracy and the Rule of Law in February-March 2005 made several comments and recommendations regarding democratic principles [Selected recommendations appear in italics below, followed by TIC comments].³

Rule of law

Recommendation: *The undermining of the rule of law is a fundamental constraint to the enjoyment of human rights and humanitarian law. International human rights law and international humanitarian law together reinforce the body of rules that regulate a societal order that is predictable, orderly and that respects human rights. The two bodies of law overlap as they seek to protect human dignity and reduce human suffering.*

The Sri Lankan government and the government institutions have no respect for the rule of law. In her address to the UN Human Rights Council in August 2006, UN High Commissioner for Human Rights, Louise Arbour said that the failure of the Sri Lankan government to provide the protection of the rule of law to all its citizens generates serious concerns.⁴

The current President Mahinda Rajapakse himself has wilfully breached the Constitution of Sri Lanka. He has so far failed to appoint a Constitutional Council as required by the 17th Amendment to the Constitution. Whereas the Constitution requires appointments to bodies such as the Supreme Court and the independent commissions to be made only from persons selected and screened by the Constitutional Council,⁵ the President has made appointments in the absence of the Constitutional Council. He has appointed members of the Police Commission, Public Services Commission, Human Rights Commission and the Supreme Court. Transparency International has expressed shock and dismay and says that the political decision taken by President Rajapakse to ignore the 17th Amendment will have serious repercussions on the implementation of the rule of law. It also says that the appointments to the judiciary would affect the independence and integrity of the judiciary while having the effect of embarrassing and undermining the judiciary.⁶

In a June 2006 letter to Sri Lankan Minister for Human Rights Mahinda Samarasinghe, the Asian Human Rights Commission (AHRC) says that the rule of law situation in the country is worsening day by day, and Sri Lanka, since becoming a Republic, primarily had two stages of the collapse of the rule of law. Firstly, by introducing new laws that do not conform to reasonable legal norms acceptable to any society based on the rule of law, through the majority power in the parliament and hence, violating the governance of the rule of law. Secondly, as it happens now, by direct illegal orders of the Executive President. The AHRC further says as follows:

“The country is experiencing the horrendous impact of the first stage now. The police and the armed forces behave, as if they are a law unto themselves. Violation of rights of the individual is fast becoming the rule rather than the exception, may it be in the village grocery or in the highest government office. The police show no interest in investigating complaints from the ordinary public other than in very grave crimes, which for the sake of their graveness the police cannot ignore. In the recent past, except in a few matters that were very heavily pushed for

² Civil and Political Rights – *The interdependence between Democracy and the Rule of Law*, Report of the Second Expert Seminar, Geneva, 28 February-2 March 2005, Sixty First Session of the Commission on Human Rights, 18 March 2005, E/CN.4/2005/58 – www.ohchr.org

³ Ibid.

⁴ Address of the UN High Commissioner for Human Rights Louise Arbour at the Second Session of the UN Human Rights Council, 18 September 2006 - www.ohchr.org/english/bodies/hrcouncil

⁵ Article 41B of the Sri Lankan Constitution

⁶ *President usurped powers of the Constitutional Council; TISL condemns appointments to Police Commission and Public Service Commission*, 11 April 2006; *Shameless Extra Constitutional Appointments Continue - President appoints HRC*, 19 May 2006; *President embarrasses judiciary with continuous arbitrary appoints*, 30 May 2006, Transparency International Sri Lanka – www.tisrilanka.org

*investigations for reasons such as the sensationality of the crime or the social standing of the victims, a very great lax in the investigation of crime is seen.*⁷

Emergency rule

Recommendation: *States must uphold their human rights obligations during periods of conflict and national emergency, in accordance with international law, the rule of law, and the principles of democracy. All measures taken to suspend temporarily those human rights that may be subject to derogation must be proportional, non-discriminatory, respectful of international obligations, and strictly required by the exigencies of the situation. In no circumstances may a State suspend or deny non-derogable rights such as the right to be free from torture and slavery, the right to equality under the law, and the basic guarantees of a fair and impartial hearing before a competent tribunal. Constant civilian oversight over the military and security forces is essential.*

Sri Lanka has been under Emergency rule for 11,063 days up to the end of November 2006 since independence. In other words, the Sri Lankan people have been ruled by Emergency Regulations for more than 30 out of the 58 years of independence and their rights have been systematically crushed. The land is now under Emergency rule, and the current draconian Emergency Regulations, which are primarily used against the Tamil community, have removed every tenet of democratic governance. The security forces have been given a free hand in the north-east and their abuses are not investigated or not investigated adequately.

A State of Emergency was reintroduced in Sri Lanka on 13 August 2005. The Emergency Regulations (ER) have the effect of removing judicial oversight in relation to arrest and detention, and suspend the relevant provisions of the normal law. They give authority to security force officers to arrest on mere suspicion, without warrant. The person arrested can be indefinitely detained without access and without charge. The ERs also give wide powers of preventive detention to the Defence Secretary. The ERs allow confessions to the police or any other person admissible as evidence in court and suspend the relevant provisions of the normal law. The ERs also erode the powers of the courts in relation to deaths in the custody of the security forces. Under the ERs enquiries into deaths in custody can take place only on application by the police.

The ERs encourage impunity among the security forces. The consequences of the ERs are indefinite detention without access or trial, admission of confessions obtained under torture, the absence of judicial oversight over arrest, detention and enquiry into custodial deaths and the absence of adequate penal provisions for breaches by detaining officers. These circumstances are ripe for arbitrary detention, torture, disappearances and executions to be carried out with impunity. The Prevention of Terrorism Act (PTA) has been in force despite objections by the UN, and it does not have any of the safeguards that are provided in the laws relating to terrorism in other countries.⁸ In December 2006, the government decided, in violation of the ceasefire agreement, to resume using the PTA.⁹

The judiciary

Recommendation: *The independence of the judiciary is a core component of democratic governance and mandated by international norms. States should respect the United Nations Basic Principles on the Independence of the Judiciary. While recognizing the importance of the principle of separation of powers and non-*

⁷ Sri Lanka: Open letter from the AHRC to the Minister for Disaster Management and Human Rights, 16 June 2006, AHRC-OL-018-2006 – www.ahrchk.net

⁸ The PTA was introduced in 1979 as a temporary measure, but still remains on the statute book.

⁹ Article 2.12 of the ceasefire agreement of 22 February 2002 says as follows: “The Parties agree that search operations and arrests under the Prevention of Terrorism Act shall not take place. Arrests shall be conducted under due process of law in accordance with the Criminal Procedure Code.”

interference with the judicial function, particularly with respect to political pressures or influence exercised by the other branches of Government, judges need to be accountable.

The judiciary is a vital institution of any democracy. The UN Special Rapporteur on Extra-judicial Executions says that in Sri Lanka, an ineffective justice system creates a climate of public opinion conducive to condoning police torture and summary execution of suspects.¹⁰ The Emergency Regulations erode, and in many instances remove, the powers of the judiciary.

On 15 September 2006, the Supreme Court effectively ruled that Sri Lankan citizens cannot seek remedy from the UN Human Rights Committee for human rights violations. It declared that the Accession to the Optional Protocol to the International Covenant of Civil and Political Rights (ICCPR) in 1997 does not bind Sri Lanka and has no legal effect within the island.¹¹ The decision effectively nullifies Sri Lanka's obligations under international law, except those that have been incorporated into local laws, and Sri Lanka will not be able to protect and promote human rights under the laws and institutions of the UN.

The AHRC has stated that the ICCPR is a universally accepted standard of human rights and gives wider scope for rights than anything contained in the Sri Lankan Constitution. By the Accession to the ICCPR, the scope of rights available to the people of Sri Lanka has been enhanced. The Supreme Court judgment, in essence, states that if the Constitution has provided for a certain degree of rights, further expansion of such rights by the State violates the sovereignty of the people.¹² The AHRC also says the Supreme Court's proposition that Accession to these international treaties violates the sovereignty of the people is a basic fallacy. In fact the contrary proposition that the ICCPR enhances people's sovereignty is both legally and politically more profound and valid.¹³

In a judgment on 16 October 2006, the Supreme Court declared that the merger of the Northern and Eastern Provinces in 1987 to form one administrative unit is unconstitutional and invalid.¹⁴ Lawyers K. Kanag-Iswaran and Batty Weerakoon who appeared for four Interventient Petitioners from the Eastern Province were not permitted to adequately explain the position of the Tamil people. In court, Chief Justice Sarath Silva did not allow them to appear as representing Interventient Petitioners and told them that they can appear only as *amicus curiae* (advisor to court). They were told that as *amicus curiae* they could not submit written submissions. Further, they were given only a few minutes to make their points. Mr Batty Weerakoon was told in no uncertain terms to sit down after three minutes. Mr Kanag-Iswaran walked out of the court in protest. But in the judgment, the Chief Justice refers to them as lawyers for the Interventient Petitioners, thus giving the wrong impression that the four Interventient Petitioners were properly heard in court. Observers have no doubt that the Chief Justice acted in breach of the rules of natural justice.

This case, filed by the People's Liberation Front (JVP), was taken up for hearing very quickly by the Supreme Court. There are many other cases pending for many months and some for several years. An example of the latter is the case against the Army Commander, on the question whether he has legal

¹⁰ *Civil and political rights, including the question of disappearances and Summary executions*, Report dated 27 March 2006 by Philip Alston, Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions to the 62nd Session of the Commission on Human Rights, Mission to Sri Lanka 28 November-6 December 2005, E/CN.4/2006/53/Add.5 – www.ohchr.org

¹¹ *Nallaratnam Singarasa vs The Attorney-General* – Decision of the Supreme Court 15 September 2006 – SC Spl (LA) No 182/99

¹² *Sri Lanka: The recent judgment of the Supreme Court on the Singarasa case is an attack on the sovereignty of the people* – 20 September 2006, AS-220-2006; *Sri Lanka: Further information regarding the recent Supreme Court decision on the Singarasa case* - 25 September 2006, AS-223-2006 – Asian Human Rights Commission - www.ahrchk.net

¹³ *ibid.*

¹⁴ *Jayantha Wijesekera, Mohamed Buhari, Wasantha Piyatissa vs Attorney General* – Decision of the Supreme Court 16 October 2006 – SC (FR) Application Nos 243-245/06

authority to declare high security zones (HSZ) in the north-east. Thousands of Tamils in the north-east have been deprived of their lands, houses and other buildings, which lie within HSZs and are occupied by the security forces. Thousands of houses within the HSZs have been demolished by them. Most of these Tamils are undergoing great suffering and live in refugee camps or with relatives. They have neither been compensated for the destruction of their houses nor paid any rent for occupation by the military. In the judgment, the Supreme Court speaks of the sovereignty of the people. It has no time to hear this case and alleviate the sufferings of thousand of citizens, but has time to take up and deliver quick judgments in cases which raise issues of a political nature.

Many Tamil people believe that the Sri Lankan government is behind the recent decisions of the Supreme Court which affect the Tamil people. In the case against the Post-Tsunami Operational Management System (P-TOMS) filed by the JVP, alleging infringement of the right to equal protection of the law,¹⁵ the Chief Justice Sarath Silva said in a decision in July 2005 that relief must be granted to people of the north-east, who have suffered and continue to suffer, untold hardship and tragedy from the tsunami and that the interests of these hapless people should be borne firmly in mind. But in November 2005, the court suspended the enquiry indefinitely and in addition granted an indefinite injunction against the provisions of the P-TOMS. Many people, within and outside Sri Lanka, have expressed their suspicion to the TIC that this change is due to political intervention or some devious political deal. The court has still not taken a final decision, and, meanwhile, thousands of Tamils affected by the tsunami in the north-east continue to suffer.

On 5 September 2002, the Supreme Court declared that the military pass system, which was in force for some ten years in the north-east, violated the provisions of the Constitution relating to the freedom of movement. The Court also awarded Rupees 30,000 (\$280) compensation to the applicant and Vavuniya resident Peter Vadivel. In defiance of this judgment, the military introduced a pass system in Vavuniya and Mannar on 20 October 2006 and in Amparai on 23 October 2006. So far, no action has been taken to remedy the situation.

The Tamils have suffered and continue to suffer by decisions of the Sri Lankan courts, which have on many occasions been politically motivated. The judiciary failed to grant remedy to the Hill Country Tamils and allowed a million of them to suffer without citizenship and voting rights for more than 50 years. The judiciary also failed to protect the Tamils against political abuse and legislation which were clearly aimed at denying equality and other the rights of the Tamils, including in education and employment. The judiciary has further failed to protect the Tamils against physical abuses such as torture, injury and extra-judicial executions. The TIC has pointed out on earlier occasions that it has received many complaints from individual Tamils, particularly in cases under the PTA and the ERs, that they have been remanded or convicted and imprisoned without any evidence.

In August 2001, the International Bar Association (IBA) concluded that there was 'an overwhelming need for an independent credible judicial system' in Sri Lanka. It detailed instances of lack of accountability, breach of natural justice and potential for undue interference, and pointed out that institutions which should be protecting the rule of law, including the President, the government and the Chief Justice, were acting to undermine it. The UN Special Rapporteur on the Independence of Judges and Lawyers said in July 2003 that corruption in the judicial system is on the increase. Up to now, no action has been taken to address these concerns and the Supreme Court is still headed by the same Chief Justice.

The Supreme Court has original and exclusive jurisdiction on fundamental rights, but has on many occasions violated the rights of the people. In 2005, the European Union Election Observer Mission said that the Supreme Court violated the Constitution in a decision on 9 November 2005 by arrogating to itself the powers vested in Parliament. The Mission declared that the denial of liberty, lack of access

¹⁵ The Sri Lankan government and the LTTE signed the P-TOMS agreement on 24 June 2005 and the JVP filed action in the Supreme Court on 27 June 2005.

to a recourse mechanism and the presumption of guilt implied in the decision were counter to fundamental freedoms.¹⁶

Accountability is lacking in the judiciary. It is clear that justice cannot be expected from the courts, particularly from the current Supreme Court, which appears to be acting, not independently in the interests of the people, but to promote a programme of action by the Executive aimed at denying the fundamental rights and aspirations of the people of Sri Lanka.

Human rights

Recommendation: *Democracy and the rule of law are interdependent and both are necessary to create an environment in which human rights can be realized. States bear ultimate responsibility as the guarantors of democracy, human rights, and rule of law.*

Torture

The right of freedom from torture is not respected, and torture by the security forces has continued for more than 35 years and has become systematic, widespread and institutionalized. The most gruesome methods of torture are used by the security forces and the victims include women and children.

In December 2005, the UN Committee against Torture expressed its deep concern about continued well-documented allegations of torture and ill-treatment as well as disappearances, mainly by Sri Lanka's police forces. It also said it was concerned that such violations by law enforcement officials are not investigated promptly and impartially by Sri Lanka's competent authorities. The Committee was also concerned that fundamental safeguards for persons detained by the police, including habeas corpus rights, are not being observed. The Committee further expressed concern about continued allegations of sexual violence and abuse of women and children in custody, including by law enforcement officials, as well as lack of prompt and impartial investigations of these allegations. The Committee said it was further concerned about allegations of reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment as well as the lack of effective witness and victim protection mechanisms.¹⁷

Freedom from torture is a non-derogable right and no true free and democratic nation allows torture to become institutionalized. The Sri Lankan government on many occasions has stated that it intends to eradicate torture, but steps taken by the Inspector General of Police (IGP) are in the opposite direction and encourage police officers to engage in torture.

During 2004 and 2005 over 102 police officers accused of torture were interdicted after they were indicted before High Courts. In 2006, the former IGP, who served until October 2006, blatantly misused power and allowed some officers to return to work despite of the official interdictions, and stopped interdicting police officers indicted in new cases before the courts. The IGP also introduced a new system of exonerating police officers even before conducting an inquiry and while the cases are proceeding before the high courts. The IGP has also publicly stated that without torture criminal investigations cannot be conducted and that extra-judicial killing of criminals is justified. The IGP openly opposed the former National Police Commission, which under the leadership of Ranjith Abeyesuriya insisted on implementing the law regarding the interdiction of police officers who are the accused in High Court trials.¹⁸ The new IGP Victor Perera took office on 12 October 2006, but the

¹⁶ *Preliminary statement of the EU Election Observer Mission to Sri Lanka*, Presidential Election 2005, 19 November 2005 – www.eueomsrilanka.org

¹⁷ *Consideration of reports submitted by States Parties under Article 19 of the Convention against Torture, Sri Lanka: Conclusions and Recommendations*, UN Committee against Torture, 35th Session, 7-25 November 2005, CAT/C/LKA/CO/2 – www.ohchr.org

¹⁸ *Sri Lanka: Torture, worse than absurd*, Statement of the Asian Human Rights Commission (AHRC), 21 July 2006, AS-172-2006 – www.ahrchk.net

situation has hardly changed. Since this date, the police have been accused of more torture, illegal arrest and secret detention, imprisonment of a rape victim and disappearance.

Extra-judicial executions

The UN Special Rapporteur on Extra-judicial Executions says in his March 2006 report that the Sri Lankan police are now engaged in summary executions, and in none of the cases of killing by police, had an internal police inquiry been opened. He points out that when grave misconduct such as torture or murder has been alleged, the police Criminal Investigation Department (CID) conduct the investigation, which undermines both its effectiveness and impartiality, and that cases referred to the Attorney General seldom lead to conviction. The Rapporteur says that the 'failure to effectively prosecute government violations is a deeply-felt problem in Sri Lanka', and 'many people doubt that their lives will be protected by the rule of law'.¹⁹

A large number of killings have taken place in the north-east region since the ceasefire of February 2002 and many killings have also taken place outside this region, including in Colombo. After April 2004, the killings dramatically increased. UN officers estimated the number of killings in 2005 at 500. In 2006, the deaths rose to more than 1,300.

In many cases of civilian deaths, the killings were carried out by unidentified persons arriving at homes and shooting them or taking them away to other places and murdering them. Many people were abducted by unidentified persons, murdered and their bodies dumped in public places. Others were murdered in public places such as bus stations, streets, shops or offices. The phenomenon of civilian killing by unidentified persons is becoming widespread and has led to the belief that a new force is operational in the north-east, creating fear and panic among the people. People have been shot, hacked or battered to death or strangled. Some were killed by grenades and many others were killed by security forces in retaliatory attacks. Some were shot dead at security force checkpoints.

Many civilians were also killed in landmine or bomb attacks against security forces. Most of the civilians killed were between the ages of 15 and 35, but some people over the age of 60 were also targeted. They included students, housewives, businessmen, local councillors, fishermen, taxi or three-wheeler drivers or former members of Tamil militant groups. The Sri Lankan security forces, the Liberation Tigers of Tamil Eelam (LTTE) and paramilitary groups aligned to the security forces are accused of carrying out the attacks on civilians. People also say that some are taking the chaotic situation to settle private scores.

The government cannot deny the Sri Lankan State's legal and moral responsibility to take all measures to protect all civilians and take appropriate action to end the killings. The government, however, is involved directly in killings, and its actions and omissions are encouraging more and more killings.

Disappearances

The UN Working Group on Disappearances said in its report in December 2005 that of more than 12,278 cases of disappearances in Sri Lanka submitted to the government, 5,708 remain un-clarified and this is the highest number of disappearances in the world next to the case of Iraq with 16,517 disappearances. Of the 6,530 persons clarified by the Sri Lankan government, 6,444 are dead and 24 are in detention. The Working Group says that it had to increase the capacity of its secretariat to deal with the cases of disappearances in Sri Lanka.²⁰

In Sri Lanka, four Presidential Commissions inquired into 37,662 of the 54,404 complaints of disappearances, which took place between January 1988 and December 1995 and found evidence of

¹⁹ Report of the Rapporteur on Extra-judicial Executions, op.cit.

²⁰ *Civil and political rights including the question of disappearances and summary executions*, Report dated 27 December 2005 submitted to the 62nd session of the UN Commission on Human Rights, Working Group on Enforced or Involuntary Disappearances, E/CN.4/2006/56, www.ohchr.org

disappearance in 21,115 cases. No enquiries have been conducted into another 16,742 cases of disappearances. No further action has been taken in the 21,115 cases where the commissions have recorded the names of the security force personnel responsible for the disappearances. Most of them continue to hold positions in the forces. No true democratic nation would allow its citizens to disappear in this manner and fail wilfully to bring those responsible to justice despite the urging of the United Nations.

The SLHRC decided in mid-July 2006 that it will not hear 2,127 cases of disappearance passed on to it from the presidential commissions, ‘unless special directions are received from the government, as findings will result in payment of compensation’.²¹ It is an appalling state of affairs that an “independent commission” with constitutional powers, appointed for the protection of the people, is taking instructions from the executive, completely contrary to the purpose for which the 17th Amendment to the Constitution was introduced.

Since December 2005, the number of disappearances has increased dramatically in the north-east. Between December 2005 and August 2006, 368 complaints were made to the SLHRC regarding missing persons or disappearances. In 74 cases, arrests were witnessed by people, but security forces later denied the arrests or the relatives have not been able to find the place of detention. In most cases where people have been traced to security force detention centres or prisons, the relatives have not been issued with arrest receipts as required by the Presidential Directives. On 10 September 2006, the SLHRC announced that it had received 419 complaints of disappearances in the Jaffna peninsula alone since December 2005.

In 2006, 56 Tamils, mostly businessmen, were abducted in Sri Lanka’s capital Colombo. The bodies of nine people were found later. Ten persons were released after paying huge sums of money as ransom. The fate of the other 37 victims is unknown. Local agencies say that there is a very high level of security in Colombo, and abductions cannot be carried out without the complicity or participation of the security forces.

Freedom of religion

The Sri Lankan Constitution gives Buddhism the foremost place and imposes a duty on the State to protect the Buddhist priesthood. Other religions have suffered vilification and have come under increasing attacks by zealots, particularly by members of the Jathika Hela Urumaya (JHU). Hindu temples, Mosques and Christian churches have been attacked. In October 1993, the Ministry of Hindu Religious and Cultural Affairs issued a list of 1,479 Hindu temples damaged or destroyed by the mobs and the Sri Lankan military. Since then, many other temples have been destroyed by the security forces. In many instances, devotees or refugees in temples or churches have been killed in military shelling or air force bombing.

The US State Department says that ‘since late 2003, the country has witnessed a serious spate of attacks on Christian churches and sometimes pastors and congregants’.²² Approximately 200 attacks were reported since 2003.

Following a visit to Sri Lanka in May 2005, the UN Special Rapporteur on Freedom of Religion and Belief said in her report that the ‘recent deterioration of religious tolerance and the absence of appropriate action by the government have brought respect for freedom of religion or belief to an unsatisfactory level’. The Rapporteur reminded the government that it has to fulfil its positive obligation to protect the right of freedom of religion on behalf of all its citizens, irrespective of the religious community to which they belong. The Rapporteur also said that these positive obligations

²¹ *Sri Lanka: The Human Rights Commission of Sri Lanka has stopped investigation into disappearance cases to avoid having to pay government compensation to victims*, Asian Human Rights Commission, 18 July 2006, AS-169-2006

²² *Sri Lanka: International religious freedom report 2005* (8 November 2005) and *2006* (15 September 2006), US State Department – www.state.gov

include, first and foremost, the prompt investigation of any act of religious violence or intolerance, the prosecution of all perpetrators and the awarding of compensation to the victims of these violations.²³ The Sri Lankan government has failed to take action against the perpetrators.

Freedom of expression

Recommendation: *Freedom of expression, assembly and association are essential conditions for democracy and for a democratic election process. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement that prevent persons entitled to vote from exercising their right effectively.*

Emergency regulations give the government wide powers of prior restraint against the media. The Official Secrets Act makes it an offence to disclose “official secrets,” which are loosely defined. In addition, the Press Council Law of 1973 prohibits the disclosure of cabinet decisions, cabinet documents, certain defence and security matters, as well as a range of fiscal issues. In June 2006, the government approved the reintroduction of state-controlled regulation of the media through the Sri Lanka Press Council. The PTA also gives power to the government Minister to impose censorship. The government has also resorted to closing of satellite TV stations, banning of films and television dramas, obstruction of films being shown abroad, and interference in certification of films.

The UN Special Rapporteur on the Right to Freedom of Opinion and Expression said in his report of 27 March 2006 on Sri Lanka that he was seriously concerned, in the light of information that those responsible for attacks and killing of five journalists over the past four years had not yet been apprehended and brought to trial. The Special Rapporteur urged the government to provide protection to journalists and human rights defenders and called on the government to be thorough in investigating and in bringing to justice those responsible, in line with international human rights norms and standards.²⁴

Sampath Lakmal de Silva, who specialized in defence issues, was abducted and murdered in Colombo on 2 July 2006. The Director General of UNESCO, Koïchiro Matsuura, condemned the murder and said it was crucial that the circumstance of the abduction and murder is elucidated without delay and perpetrators brought to justice.²⁵ The Sri Lankan Free Media Movement (FMM) pointed out in July 2006 that six people working for the media, including four journalists, were killed in Sri Lanka in the previous 16 months, while not a single crime against a journalist has been solved in the country for the last 20 years.²⁶

An International Mission in October to Sri Lanka noted that the willingness of politicians and others to denounce the media reinforces self-censorship and makes the free expression of opinion a life threatening activity. The Mission found that there has been a serious deterioration in the security situation for the Sri Lankan media with threats, abductions and attacks committed by all parties in the conflict, including the Sri Lankan government. The mission also found that censorship exists, applied largely through indirect means. The Ministry of Defence sent a letter to the media institutions on 20 September 2006 requesting that “news gathered should be subjected to clarification and confirmation”. This, the Mission says is viewed as an attempt to impose censorship.²⁷

²³ *Civil and political rights including the question of religious intolerance*, Report dated 12 December 2005 submitted to the 62nd session of the UN Commission on Human Rights by Asma Jahangir, Special Rapporteur on Freedom of Religion and Belief, Visit to Sri Lanka 2-12 May 2005, E/CN.4/2006/5/Add.3 – www.ohchr.org

²⁴ *Civil and political rights including the question of freedom of expression*, Report dated 27 March 2006 submitted to the 62 session of the Commission on Human Rights by Ambeyi Ligabo, Special Rapporteur on the Right to Freedom of Opinion and Expression, E/CN.4/2006/55/Add.1 – www.ohchr.org

²⁵ *Director-General of UNESCO condemns the murder of Sri Lankan journalist Sampath Lakmal de Silva*, 7 July 2006, Communication and Information Resources, UNESCO – <http://portal.unesco.org>

²⁶ Press release of the Free Media Movement, Sri Lanka, 2 July 2006 – www.freemediasrilanka.org

²⁷ The International Fact-Finding and Advocacy Mission to Sri Lanka was in the island from 9 to 11 October 2006 and included the International Federation of Journalists, International Media Support, International Press Institute,

Investigation of human rights violations

Recommendation: *All States must act within the law and encourage accountability for abuses and wrongdoing. National action plans to combat impunity may be a suitable vehicle for implementing this principle. They should be based on a comprehensive approach, including mutually reinforcing measures, such as judicial accountability, mechanisms of truth and reconciliation, and programmes of reparation. Such plans should be developed in a participatory manner and the views of civil society should be taken into account.*

Recommendation: *It is necessary not only to react to violations of human rights, but to establish effective mechanisms that can prevent them. There is a need to place emphasis on building an early warning capacity to address problems of impunity.*

The UN Special Rapporteur on Extra-judicial Executions says that failure to effectively prosecute government violence is a deeply-felt problem in Sri Lanka and the result is that many people doubt that their lives will be protected by the rule of law.²⁸ In September 2006, the UN High Commissioner for Human Rights welcomed the Sri Lankan government's public commitment to investigate crimes, but noted that in too many cases, however, investigations have failed to produce results and victims have been denied justice and redress.²⁹

An important concern is the lack of monitoring and investigation of human rights violations, including extra-judicial killings. None of the deaths has been probed or effectively probed by law enforcement agencies to find the perpetrators. Investigations promised by Sri Lankan authorities have not been carried out. In most cases where there is a claim by the authorities and publicity that investigation is underway, in reality no action whatever has taken place. In many instances, the investigators themselves have turned protectors or defenders of the perpetrators, and witnesses have been threatened. Higher authorities have also acted to protect the perpetrators and some times to prevent investigations. In some massacre cases, investigations have commenced but not completed. Where charges have been brought due to international pressure, the accused have been acquitted (eg Bindunuwewa massacre case). The State security forces have carried out a large number of massacres of civilians. Most of these have not been investigated.

A law for a Sri Lanka Human Rights Commission (SLHRC) was introduced in 1996 and a commission was appointed to investigate human rights violations.³⁰ International human rights agencies have continually pointed out that the SLHRC lacks the power and support needed to carry out its mandate. The powers of the SLHRC are limited to mediation and reconciliation and has a mandate only on the limited fundamental rights guaranteed in the Sri Lankan Constitution. The Supreme Court has so far failed to make rules to enable the SLHRC to refer cases to the courts, although the legislation creating the SLHRC provides for the Supreme Court to make such rules. The SLHRC lacks capacity to conduct detailed investigations of a criminal nature into human rights complaints.³¹

International News Safety Institute, and UNESCO. For the full Mission Statement see the website of the International Federation of Journalists – www.ifj-asia.org

²⁸ *Civil and political rights, including the question of disappearances and summary executions, Extra-judicial, summary and arbitrary executions* – Report dated 27 March 2006 of the Special Rapporteur Philip Alston, Addendum, Mission to Sri Lanka 28 November to 6 December 2005, Sixty-second Session of the Commission on Human Rights – E/CN.4/2006/53/Add.5

²⁹ Address at the UN Human Rights Council, 18 September 2006, op.cit.

³⁰ Human Rights Commission of Sri Lanka Act No 21 of 1996

³¹ *Prevalence of torture in Sri Lanka: Persisting problems and out standing issues* – Report to the UN Committee Against Torture by Law & Society Trust, Sri Lanka) and Asian Human Rights Commission, Hong Kong, 7 November 2005 – www.lawandsocietytrust.org

Furthermore, the current SLHRC lacks credibility and a legal basis, as it was appointed by the President in the absence of the Constitutional Council which should make recommendations for such appointments. Sri Lankan agencies have noted that some of the new commissioners lack human rights experience, commitment and skills needed for the important task. In such circumstances, it is unlikely that the SLHRC would be able to provide adequate relief to the people affected by human rights violations.

Following mounting international pressure, Sri Lankan President Mahinda Rajapakse announced on 4 September 2006 that the government will invite an 'independent international commission to probe abductions, disappearances and extra-judicial killings in all areas of the country, which will have powers to investigate all such incidents' and that 'the security forces and the police have been requested to extend their fullest cooperation'. But within two days, the President went back on his promise. A new statement on 6 September said that the government will invite an 'international group of eminent persons to act as observers of investigations into alleged abductions, disappearances and extra-judicial killings'. It is clear that the Sri Lankan government is intent on denying adequate and effective international involvement, and proper investigations into violations of human rights.

Amnesty International says that 'in light of decades of impunity for perpetrators of violations of international human rights and humanitarian law in Sri Lanka, characterised by the failure of the authorities to investigate and prosecute such perpetrators effectively, only an international and independent Commission would have the credibility and confidence of all parties to the conflict and sections of society to be able to conduct meaningful investigations, obtain critical testimony or information from witnesses and gain the acceptance of its recommendations by all relevant parties'.³²

Amnesty further notes that the members of the body conducting the inquiry should be international experts, chosen for their recognised impartiality, integrity and competence. Crucially, they should be, and be seen to be, independent of any institution, agency or individual that may be the subject of, or otherwise involved in, the inquiry, including the Sri Lankan government. Amnesty International has declared that it does not believe that an independent group of eminent persons observing an essentially national inquiry can serve as a substitute for the independence, real and perceived, of the Commission of Inquiry itself.³³

The AHRC alleges that the government's policy is to prevent any form of serious investigations into any complaints on the basis that the morale of the soldiers and the police should not in any way be disturbed at the present time and that the government media is working on the instructions that all forms of criticism of the military and the police should be avoided. The AHRC says further as follows:

*"Under these circumstances the appointment of commissions to inquire into abductions, disappearances and extrajudicial killings is only a public relations exercise which is not meant to be pursued seriously... The addition of the International Independent Group of Eminent Persons in Sri Lanka is nothing more than a ploy to add some respectability to a government sponsored commission which lacks credibility locally as well as internationally."*³⁴

³² *Observations on a proposed commission of inquiry and international independent group of eminent persons* – Amnesty International, 17 November 2006, ASA 37/030/2006 – <http://web.amnesty.org>

³³ *Sri Lanka: Amnesty International urges effective action to end impunity* – Amnesty International, 1 December 2006, IOR 41/026/2006

³⁴ *Sri Lanka: Government has not yet taken any credible steps to investigate gross abuses of human rights* – A statement by the Asian Human Rights Commission, ASA 37/030/2006 – <http://web.amnesty.org>

Internally displaced people

More than 550,000 people remain displaced in north-east Sri Lanka, including 160,000 newly displaced since April 2006. Nearly 15,000 Tamils also fled to India in 2006. The displaced people in the north-east are particularly vulnerable to increasing violence and human rights abuses by armed groups and security forces. The government has so far failed to provide them adequate protection. The government has also miserably failed to take effective measures to ensure reconstruction of the war and tsunami damaged infrastructure in the north-east or provide adequate assistance for rehabilitation of the people affected in the areas by these disasters. On government initiative, the Parliamentary Select Committee for the Operations of NGOs was established, after politicians attacked NGOs and critical articles appeared in the Sri Lankan media. The International Commission of Jurists (ICJ) has urged that the Select Committee should follow due process, provide sufficient time and opportunity for representation, ensure fairness and impartiality and refrain from taking on quasi-judicial functions.³⁵

Seventeen Tamil aid workers of the French agency Action Contre La Faim (ACF) were shot dead at Muthur in Trincomalee District on 4 August 2006. The Sri Lanka Monitoring Mission (SLMM) has said that there are very strong indications of the involvement of the Sri Lankan security forces in the act despite their denial. Instead of launching a proper inquiry, the government ordered all foreign staff of NGOs to obtain work permits within 48 hours and has withdrawn the visas of several international agencies. The government has also ordered agencies to hand over assets to the military if they were leaving embattled areas. On 29 August 2006, the government froze the accounts of the Tamils Rehabilitation Organization (TRO), which has access to all areas of the north-east controlled by the Liberation Tigers of Tamil Eelam (LTTE).

The Sri Lankan government is also using humanitarian aid as a weapon of war in a clear breach of international law. On 11 August 2006, the government closed the A9 Kandy-Jaffna main road linking southern areas of Sri Lanka with Mullaitivu, Kilinochchi and Jaffna districts in the north, and blocked the entry points into LTTE-controlled areas in the east. It imposed restrictions on food, fuel, medicines and other essential materials into these areas. The security forces have introduced restrictions on fishing and freedom of movement within the areas. The blockade has affected agriculture, transport, communication, health and sanitation, education, employment and tsunami reconstruction, and has adversely impacted on the vulnerable sections of the population such as children, the elderly and the disabled. The government actions have been condemned internationally. UN Emergency Relief Coordinator Jan Egeland said the following in October 2006:

“I have been shocked by the lack of access for relief agencies to civilian communities in many conflict areas. The parties should be reminded that they are under international legal obligations to enable unimpeded access to civilians in need of assistance irrespective of where they are or the circumstances under which they live.”³⁶

Transparency, corruption and abuse of power

Recommendation: *All organs and institutions of the State should operate in a transparent manner and be held accountable. Transparency is essential to ensure that there is respect for the rule of law. Thus, access to information about public affairs and the operation of government bodies must be guaranteed.*

Recommendation: *All forms of corruption, including political, economic and corporate corruption, undermine democratic values and institutions, degrade the enjoyment of rights, and impair the ability of the State*

³⁵ Letter dated 5 September 2006 to President Mahinda Rajapakse from Nicholas Howen, Secretary General of the International Commission of Jurists

³⁶ UN Relief Coordinator Jan Egeland's statement of 18 October 2006

to implement human rights, in particular, economic and social rights. Anti-corruption strategies should be nationally led and based on the principles of transparency and accountability.

A Commission to Investigate Allegations of Bribery or Corruption (CIABC) was created in 1994.³⁷ Sri Lanka ratified the UN Convention Against Corruption in March 2004 and became a member of the Anti-Corruption Initiative of the Organization for Economic Co-operation and Development (OECD) in May 2006. Despite these measures, corruption in the island has become endemic and successive governments have shown no political will to combat corruption. Sri Lanka declined in rank on the Corruption Perception Index (CPI) of 163 countries of Transparency International, from 78th in 2005 to 84th in 2006, showing deterioration of the corruption situation in the country.³⁸

The CIABC has no power to initiate investigations, but must wait for a member of the public to make a complaint. The lack of legal powers and under-funding have made the CIABC completely ineffective. There are also no laws to protect insiders providing information on corruption to the authorities. The Attorney General's report for 2006 reveals that between 2002 and 2006, the Sri Lankan state lost Rupees 389 million (\$3.6 million) due to tax frauds, whereas the entire expenditure of the Inland Revenue Department was Rupees 320 million (\$3 million) for 2005.³⁹

Sri Lanka has, according to some reports, the largest government in the world, with ninety two ministers, some of whom have become millionaires, only months after assuming office. Election by people to political office has become irrelevant. The party in power buys off the MPs and politicians from other parties, offering posts in the government. The public sector is corrupt and much of the bureaucracy, public health and education sectors are also highly corrupt. It is widely known in Sri Lanka that most principals, vice principals and other key functionaries of prestigious schools take bribes when admitting students to their schools. The Police Department is one of the most corrupted departments in the country. The Attorney General's report also revealed that certain senior police officers had swindled thousands of rupees in the police cash reward scheme for police officers.⁴⁰

The Director General of the Commission of Bribery and Corruption said in March 2006 that some 68% of those in the government service appear to be involved in bribery and corruption that if the increasing trend of bribery and corruption continued it might spark more terrorism in the country.⁴¹

Abuse of power by people holding office, including the President, Ministers, government officers and the security forces, is a daily occurrence in Sri Lanka. The heads of State have continued to abuse the enormous power granted by the Sri Lankan Constitution. The Constitution not only vests all the power in the President but also facilitates the abuse of power. It says that no action can be instituted or continued against the President, while he/she holds office, in any court or tribunal in respect of anything done or omitted in an official or private capacity.⁴² Such absolute immunity is incompatible with the very essence of the rule of law, that is, no one is above the law. There are great many instances of abuse of power which have been recorded by national and international agencies. Some of the instances are given below:

President J R Jayewardene obtained undated letters of resignation from 141 members of the United National Party (UNP) in Parliament, including Ministers, on 28th October 1982, thus preventing these members from voicing their opinions within and outside Parliament. This measure was unprecedented

³⁷ Under the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994

³⁸ *Sri Lanka's rank slides down: Cause for alarm* – Transparency International Sri Lanka, 6 November 2006 – www.tisrilanka.org

³⁹ Sunday Times (Sri Lanka), 12 November 2006, article by Chandani Kirinde

⁴⁰ *Corruption that gobbles up foreign aid* – Dagnes Nyheter (Sweden), 11 February 2005

⁴¹ Daily Mirror (Sri Lanka), 7 March 2006

⁴² Article 35 of the Sri Lankan Constitution

in the history of parliamentary democracy.⁴³ Instead of general elections, a referendum was held on 22 December 1982, while Emergency was in force, and the life of the Parliament was undemocratically extended by another six years. This was done not only to ensure that the UNP remains in power but also to make certain that the two-thirds majority in Parliament is maintained.⁴⁴ President R Premadasa suspended Parliament on 31 August 1991, in order to delay a debate on an impeachment motion against him which listed 24 charges of abuse of power.

The judges of the superior courts – Supreme Court, Court of Appeal and High Court – are appointed by the President under Constitutional powers. When President Jayewardene made such appointments in 1978, after the promulgation of the new Constitution, many serving judges lost their offices.⁴⁵ Police officers found guilty of breach of fundamental rights of citizens by the Supreme Court on 8 February 1983 and 8 June 1983 were promoted at the instance of President Jayewardene.⁴⁶ The fines imposed by courts in such instances were paid out of public funds. President Chandrika Kumaratunge appointed Sarath Silva as Chief Justice on 15 September 1999, over the heads of senior judges of the Supreme Court. At the time of appointment, Sarath Silva was Attorney General and two cases, in which he was accused of gross misconduct, were pending against him before the Supreme Court.⁴⁷ Since his appointment, the Judiciary has become subservient to the Executive.⁴⁸

When she became President on 1994, Chandrika Kumaratunge appointed her mother as the Prime Minister in a clear case of nepotism. Four days after the LTTE submitted proposals for an Interim Self-governing Authority (ISGA) for the north-east region, President Chandrika dismissed three Cabinet ministers on 4 November 2003, while Prime Minister Ranil Wickremasinghe was away in the US. The Army and the Presidential Security Division (PSD) were deployed at several institutions. She replaced the Chairman of the government-controlled Lake House (Associated Newspapers of Ceylon Ltd) and removed the Chairman of the Independent Television Network (ITN). On 7 February 2004, Sri Lankan President Chandrika dissolved Parliament nearly four years before its six-year term, in a gross abuse of power. She also sacked all 27 non-Cabinet ministers and 12 deputy ministers on 11 February 2004.⁴⁹

President Mahinda Rajapakse appointed the independent commissions illegally, without appointing the Constitutional Council (See under Rule of law). The Attorney General initially advised the government against making such illegal appointments. But after the appointments were made, the Attorney General has said that appointments made by the president cannot be challenged in a court of law.

Elections

Recommendation: *Free, fair, and periodic multiparty elections are a key component of democracy, the rule of law, and the protection of human rights. The conduct of elections should be entrusted to an independent mechanism, as appropriate, that is free from executive or other interference that could undermine the fairness of elections.*

⁴³ *Recent Politics in Sri Lanka: The presidential election and referendum of 1982*, WA Wiswa Warnapala and L Dias Hewagama, 1983, page 214

⁴⁴ “The Conduct of the Referendum” by Priya Samarakone, in *Sri Lanka in Change and Crisis*, Ed. James Manor, pages 84-117; Civil Rights Movement, Document No E 05/10/82

⁴⁵ *Human Rights: The Sri Lankan Experience 1947-1981* by Nihal Jayawickrama (Doctoral thesis), University of London, December 1983, page 115

⁴⁶ *A mounting tragedy of errors* by Paul Sieghart, pages 56-61, March 1984

⁴⁷ *Sri Lanka: Attacks on justice 2000*, International Commission of Jurists, 13 August 2001 – www.icj.org

⁴⁸ See *Sri Lanka: Judiciary serving Executive detrimental to human rights*, Briefing Note, Tamil Information Centre, 2 November 2006

⁴⁹ President Chandrika was re-elected in 1999 in a presidential election to hold office until 2005. But her party, the People’s Alliance (PA) lost the parliamentary elections in December 2001 to the United National Front (UNF) led by Ranil Wickremasinghe who became Prime Minister.

The 17th Amendment to the Sri Lankan Constitution was introduced in October 2001, providing for the independent commissions, including the Election Commission to conduct elections and enforce election laws. But up to now, and Election Commission has not been appointed, although five major elections, including general and presidential elections have been held after October 2001.

Past elections have been marred by extreme violence, including murder, attempted murder, grievous hurt, assault, robbery and arson. Prior to and during the general election of December 2001, 55 people were killed and there were 88 attempted murders and 262 incidents of arson. Election monitors also recorded misuse of state property, and election offences. The major parties were involved in violence with senior members of the parties, including ministers, taking active part. The ruling People's Alliance was responsible for 1,346 incidents and the main opposition United National Party (UNP) was responsible for 1,021 incidents. The EU Observer Mission stated that the freedom to express views publicly was prevented, and the President, a UNP candidate and JVP leader Somawansa Amarasinghe made highly irresponsible statements which could be construed as incitement to commit violence.⁵⁰ Violence and election offences have continued in the subsequent elections on a lesser scale.

The EU Election Observer Mission said in 2005 that it observed misuse of public resources for the purpose of election campaigning and the state media did not fulfil their duty to provide balanced and impartial reporting in their election related coverage. The Mission also noted that the decision of the Supreme Court on 9 November 2005 establishing provisions for cluster polling stations for the north-east region only and the new coercion measures of preventive detention relating to the identity of the voter, introduced double standards among Sri Lankan citizens.⁵¹

Civil society

It is clear that Sri Lanka is no more a democracy upholding democratic principles, but a nation where the rule of law has ceased to exist. Sri Lanka has become a place where human right violations are the norm, impunity is the standard and corruption is the routine.

A casualty of the denial of democracy and the destruction of democratic institutions is the peace process. The Second Expert Seminar on Democracy and the Rule of Law⁵² also observed that the participation of civil society is essential in building a wide range of pluralistic institutions and supporting democratic processes. The civil society has suffered greatly in Sri Lanka and successive governments have deliberately targeted civil society institutions. The civil society has no voice in any of the affairs of the State including the peace process. Unless and until the civil society in Sri Lanka is afforded the opportunity of participation, reconciliation may not be possible, and without reconciliation, progress in the peace process to find a lasting solution is unlikely.

An appeal relating to Sri Lanka in March 2002 by academics and human rights advocates across the globe said as follows:

*“The legitimacy of the peace process depends not only on the cessation of hostilities, but also on broader questions of democratic accountability. Being open to a plurality of voices, including those critical of the participants in the peace process, provides a crucial starting point for strengthening the legitimacy and enhancing the substantive direction of the peace process. It is from this standpoint that this appeal focuses on the space for dissent as crucial for the sustainability of a peace agreement.”*⁵³

⁵⁰ Report of the Centre for Monitoring Election Violence on the 2001 general elections – www.cpalanka.org

⁵¹ Preliminary Statement, Presidential Election, 19 November 2005, *op.cit*

⁵² *op.cit*.

⁵³ Appeal for peace and democracy in Sri Lanka, 2 March 2002 – www.zmag.org