



**International Covenant on  
Civil and Political Rights**

Distr.: General  
17 September 2014

Original: English

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**Human Rights Committee**

**112th session**

7–31 October 2014

Item 5 of the provisional agenda

**Consideration of reports submitted by States parties  
under article 40 of the Covenant**

**List of issues in relation to the fifth periodic report of  
Sri Lanka**

**Addendum**

**Replies of Sri Lanka to the list of issues\***

[Date received: 3 September 2014]

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\* The present document is being issued without formal editing.

GE.14-16366 (E)



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

### **Question 1**

1. The application of the ICCPR was the subject of a Supreme Court Determination (SC Reference 01/2008) in 2008.
2. In that instance, His Excellency, the President, under Article 129 (1) of the Constitution, referred the following two questions for an interpretation by the Supreme Court:
  - (i) Whether the legislative provisions cited in the reference that have been taken to give statutory recognition to civil and political rights in the International Covenant on Civil and Political Rights (ICCPR) of the United Nations adhere to the general premise of the Covenant and whether individuals within the territory of Sri Lanka would derive the benefit and the guarantee of rights as contained in the Covenant through the medium of the legal and constitutional processes prevailing in Sri Lanka?
  - (ii) Whether the said rights recognised in the Covenant are justiciable through the medium of legal and constitutional process prevailing in Sri Lanka?

### **The Covenant within the Sri Lankan Legal System**

3. The Court held that as stated in the Preamble to the Covenant, the rights recognised and enshrined therein stem from the Universal Declaration of Human Rights. As a basic premise, the fundamental rights declared and recognised in Chap. III of the Constitution are based on the Universal Declaration of Human Rights.
4. The Court cited Article 4 (d) of the Constitution and held that the fundamental rights declared and recognised by the Constitution form part of the Sovereignty of the People and have to be respected, secured and advanced by all organs of government.
5. This was, in the Court's opinion, a unique feature of the Constitution, which entrenches fundamental rights as part of the inalienable Sovereignty of the People. Thus, fundamental rights acquire a higher status as forming part of the Supreme Law of the land and cannot be abridged, restricted or denied, except in the manner and to the extent expressly provided for in the Constitution itself.
6. It was noted that the Court has permitted public interest litigation covering matters that transcend the infringement of individual rights. Directions have been issued in connection with matters of general importance as to liberty, personal security and administrative action connected with a wide array of matters that impact on the natural environment, particularly with regard to water, air and noise pollution.
7. The Court also emphasized that Parliament enacted special legislation titled International Covenant on Civil and Political Rights (ICCPR) Act No. 56/2007 to give legislative recognition in respect of certain residual rights and matters in the Covenant that have not been appropriately contained in the Constitution and the other operative laws.
8. Furthermore it was observed that the Supreme Court has, in several decided cases, relied on the provisions of the Covenant to give a purposive meaning to the provisions of the Constitution and other applicable law so as to ensure to the people that they have an

effective remedy in respect of any alleged infringement of rights recognised by the Constitution.

9. The Court noted that “in the case of *Weerawansa vs Attorney General* — 2000 1 Sri LR page 387, this Court has specifically held that Sri Lanka is a party to the Covenant and a person deprived of liberty has a right of access to the judiciary.”

#### **Article 16 (1) of the Constitution**

10. The Court 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

11. 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 against 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 request should emerge from the particular sector governed by the particular Personal Law.

#### **Conclusion**

12. For the reasons stated above, the Court was of the opinion, in terms of Article 129 (1) of the Constitution, that:

- The legislative measures referred to in the communication of His Excellency the President dated 4.3.2008 and the provisions of the Constitution and of other law, including decisions of the Superior Courts of Sri Lanka give adequate recognition to the civil and political rights contained in the International Covenant on Civil and Political Rights and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights as contained in the Covenant.
- That the aforesaid rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka.

*(A list which details the legislative compliance within Sri Lanka vis-à-vis each Article of the Covenant and the relevant pronouncements made by the Supreme Court and the other Courts to further strengthen the guarantee of rights recognized in the Covenant which was attached to the determination of the Supreme Court, is annexed hereto)*

#### **Optional Protocol to the ICCPR**

13. Sri Lanka having acceded to the optional protocol of the ICCPR had set in motion procedures to implement the views of the committee until the Supreme Court judgement in the case of *Nallaratnam Singarasa v. Attorney General*.

14. In this case, five judges of the Supreme Court held that the Government of Sri Lanka by acceding to the Optional Protocol to the ICCPR had violated the provisions of the Constitution and only courts and tribunals set up under the Constitution can vindicate the rights of the people of Sri Lanka.

15. The Government of Sri Lanka informed its position to the Human Rights Committee and the Office of the High Commissioner for Human Rights.

16. This matter is currently receiving the attention of the Court of Appeal in CA/WRIT/697/10. The Government of Sri Lanka will inform the Committee of the outcome of the case.

## **Question 2**

17. In terms of the 18th Amendment, the composition, manner and functioning of the Constitutional Council was changed and it became known as the Parliamentary Council after the 18th Amendment.

18. According to the amendment, the Parliamentary Council will consist of the Prime Minister, the Speaker, the leader of the opposition, a nominee of the Prime Minister, who shall be a member of Parliament, and a nominee of the Leader of Opposition, who shall be a member of Parliament.

19. The Chairman and members of the Commissions referred to in Schedule I, and the persons to be appointed to the offices referred to in Part I and Part II of Schedule II of the Amendment, shall be appointed to the Commissions and the offices referred to in the said schedules by the President.

20. In making such appointments, it is incumbent upon the President to seek the observations of the Parliamentary Council. Thus a mandatory process of consultation, which the President has to perform undertake, has been introduced by the 18th Amendment.

21. One has to bear in mind that there were infirmities in the 17th Amendment that impacted upon the operationalization of bodies such as the Election Commission. Even the Constitutional Council could not be constituted because there was no agreement among minority parties on the composition. The legislature recognised the several weaknesses inherent in the 17th Amendment among which the principal critique was its non-workability and the 18th Amendment was a legislative response to cure the infirmities that had rendered the Constitutional Council non-workable. The fact that several Commissions and high offices that were operationalized since the 18th Amendment and the robust functioning today demonstrates the efficacy of the 18th Amendment and how it has strengthened the process of governance.

22. It has to be pointed out that the Supreme Court of Sri Lanka had declared this amendment to be constitutional before its enactment by Parliament.

## **Human Rights Commission (Commission)**

23. In terms of Section 15 of the Human Rights Commission Act No. 21 of 1996, any authority or person to whom a recommendation has been made is required to report to the Commission of the action or proposed action taken to give effect to the recommendations of the Commission. If any authority or person fails to report to the Commission of the action or proposed action to give effect to the recommendation or it is the view of the HRC that the action taken is inadequate, the Commission is required to submit a full report of the facts to His Excellency, the President, who shall cause such report to be placed before parliament. Further to the above statutory requirement, the Ministry of Public Administration issued Circular 17/2005 to all public institutions directing them that they should take necessary action to implement the recommendations of the Commission. In the event they are unable for good reason to implement such recommendations they are obliged to inform the Human Rights Commission of such reason.

24. The draft legislation to amend the Human Rights Commission Act in order to strengthen its powers and mechanisms has been sent to relevant stakeholders for their observations.

**Question 3**

25. Of the 12,288 former LTTE combatants that have surrendered or come under court order, 96.9 per cent have been rehabilitated and integrated into society as of 31 July 2014. Only 157 are currently undergoing rehabilitation and 85 remain under legal proceedings.

26. All 594 LTTE child combatants, who were treated as victims (and not as perpetrators), were reunited with their families within a period of one year subsequent to rehabilitation. Subsequently, Sri Lanka was delisted from Annex II of the UN Security Council resolution 1612 on Children in Armed Conflict, in 2012, reflecting closure on the issue. [It may be noted that Sri Lanka was one of the first countries to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, in 2000. Consequently, Sri Lanka made recruitment of children for use in armed conflict a punishable offence under the Penal Code with Amendment Act. No. 16/2006 of February 2006].

27. The Government categorically rejects the allegation that female ex-combatants face a higher risk of rape and violence.

28. As far as detainees are concerned, access is given not only to their legal representatives but also to family members, religious dignitaries, medical personnel and the ICRC. The Magistrates also visit the detainees regularly to ascertain their well-being. In addition, legal aid is provided by the State at its expense for accused and appellants in the High Court and Court of Appeal respectively, if they are unable to retain a lawyer of their choice. The Bar Association of Sri Lanka also assists persons with legal aid mainly in forwarding Fundamental Rights petitions to the Supreme Court. Legal aid is also available for civil matters.

29. Bureau of the Commissioner General of Rehabilitation is actively engaged in coordinating with all government and corporate sector institutions, INGOs, NGOs and the community to ensure the successful and sustainable socio-economic reintegration of all rehabilitated ex-combatants and their families in the respective districts.

30. Progress and welfare of those who have already been reintegrated are constantly monitored by the Socio Economic Welfare Coordinating Office for Rehabilitated Beneficiaries, established at the District Secretariat offices in all districts in the Northern and Eastern provinces.

31. After completing the government-sponsored rehabilitation program, each ex-combatant is eligible to receive a Rs 250,000 loan, with a minimal interest rate, to start a livelihood program. So far, 1,773 rehabilitated ex-combatants have received this loan and many more applications are being evaluated. In addition to the loan facility, the Bureau is also exploring ways to provide the rehabilitated individuals with employment opportunities abroad.

32. The rehabilitation period includes professional training courses in areas such as mechanical skills, information technology, agriculture, animal husbandry, beauty culture, food processing, education, handicrafts, carpentry and construction, among others. Many are currently employed in both government and private sectors.

33. The rehabilitation process also comprises psychological assistance, education, sports, and spiritual, religious and cultural empowerment. Since the end of the war in May 2009, the Government has spent Rs 2.5 billion on the rehabilitation of former LTTE cadres. In 2013, the Government increased the allocation for these programs from Rs 300 M to Rs 500 M.

34. The Department of Probation and Child Care Services, has given vocational training to 72 ex-combatants and has provided financial assistance to those who have successfully

completed the training. Special awareness and motivational programmes have also been conducted for the same group.

35. Female ex-child combatants whose education was disrupted due to conflict have sat the GCE (O and (A Level) exams or are being prepared for these examinations. Those who underwent rehabilitation have been provided vocational training suited to initiate self-employment ventures or gain formal employment. Counselling programmes are conducted by the National Counselling Centre for children suffering from trauma to improve their mental health, promote social integration and reduce school drop-out rates. Several programmes are carried out by the Ministry of Education through the school system to assist children affected by the conflict. These include:

- School-based “Guidance & Counselling Cells” introduced in 736 schools in Northern and Eastern provinces;
- Psycho-social care awareness seminar carried out for all Education Directors, Principals and Teachers in Northern and Eastern Provinces, under GIZ Assistance; The Ministry is also undertaking an assessment study on psychosocial factors influencing teaching and learning in the Northern and Eastern provinces;
- Ministry of Education and UNICEF collaborative programme on “Be Safe” awareness programme to protect children from abuse in 572 schools in the Northern Province;
- Generation of greater awareness on mental health by organizing Mental Health Day programmes in all schools in the Northern and Eastern Provinces.

36. There have not been any reports of any type of diminishing of mobility of former combatants who were integrated into society by ad-hoc surveillance and monitoring by security forces. Following the termination of military operations against the LTTE in 2009, the Government has undertaken a gradual process of reduction of military presence in the former conflict-affected areas. The total strength of the military in the Northern Province has been reduced by approximately 30 per cent from 2009 to October 2013, a process which is continuing to take place. In the Eastern Province, an approximately 26 per cent reduction of troop presence has been undertaken. Similarly, all check points in the Northern and Eastern provinces have been completely dismantled. The Government continues to evaluate and rationalize military presence according to the national security imperatives.

37. It should be noted that the UNHCR Report on “A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating (“Tool Three”)” of June 2013 states that a vast majority (96%) reports no restrictions on their freedom of movement in and out of their villages (Figure 1.19 on Page 17).

38. The Government has spent billions of Rupees on infrastructure development in the North and the East, which has immensely increased the mobility of each and every citizen of these areas. After 30 years, people of the North are travelling by train daily and commute to the south and other parts of the country without any disturbances. The much developed road network has increased mobility and decreased the time spent on roads.

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

### **Question 4 (a)**

39. Sri Lanka has complied with Article 1 of CEDAW and does not discriminate against women by any form of distinction, exclusion or restriction either by law or administrative practice. Article 12 (1) of the Constitution has clearly laid down the principle that all

persons are equal before the law and are entitled to the equal protection of the law. Furthermore, Article 12 (4) of the Constitution states that nothing in Article 12 would prevent special provisions being made by law for the advancement of women, children and disabled persons. Article 12 (2) of the Constitution prohibits discrimination based on sex.

40. Women in Sri Lanka, for over 60 years, have continued to enjoy the benefits of the universal health care system and the universal free education system from primary to tertiary levels, which 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 remains low when compared to the percentage of women in the workforce. 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 1,070 out of a total cadre of 2,269 (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.

41. With regard to ensuring women's participation in the post-conflict, reconstruction and peace building process, the Government of Sri Lanka has implemented a number of programmes, as an important part of its reconciliation efforts and in line with LLRC recommendations, aimed at assisting women and girls, and in particular, vulnerable groups such as war widows, single women households and women-headed households. An outline of such programmes is given below:

- **Staffing female officers:** Women and Children's Police Desks have been established in Police Stations, staffed with female officers, in the Northern and the Eastern Provinces. Specially trained police officers function at such desks which provide an enabling and protective environment for children, women and girls and their parents to report incidents of abuse and exploitation. This network is also linked to the National Child Protection Authority. Sexual and gender-based violence help desks are located in hospitals in the districts affected by the conflict;
- **Tamil-speaking officers:** Currently, there are 2,207 police officers who speak Tamil, working in the North and an additional 2,326 Tamil-speaking police officers are serving in the Sri Lanka Police. 3,849 Tamil civilians from the North were recruited to the Department of Civil Security, including 665 former LTTE combatants;
- **Helping women & children:** In the Northern Province, "Children's and Women's Development Units" are in operation. Care International supports the units in Kilinochchi and Mullaitivu. Women Development Officers, Counseling Assistants, and Psychosocial and Child Protection Assistants have been fully trained and provided resources to ensure that they effectively reach out to target groups, including those in remote areas;

- **Legal aid for single women household:** Single women households and war widows are especially catered to by Legal Aid and mediation mechanisms in the North and East. These mechanisms have undergone continuous improvement since 2010 providing awareness. Mobile public services are provided in collaboration with NGOs. Also, more than 70 Legal Aid Centres function island-wide to assist people in need of financial aid to litigate cases or defend themselves in Court;
- **Vocational Training:** Special vocational and non-formal training programmes are ongoing for women who have not been able to continue with their formal education due to the protracted conflict. Don Bosco Vocational Training Centre, Vavuniya, which is one of the 08 vocational training feeder centres, has 100% female participation in the trade course ICT in 2014. A large number of females also undergo on-the-job training under the National Apprentice and Industrial Training Authority;
- Vocational training programmes were conducted for 27,000 women-headed families in the North by the Ministry of Technology & Research. In addition, more than 7,600 women in the estate sector have attended awareness programmes on livelihood development. A “Diploma in Women Empowerment” in Tamil medium has been introduced by the Ministry of Child Development & Women’s Affairs aimed at enlarging skills and capacities of women;
- **Education:** ALP (Accelerated Learning Programme) and “Catch up education programmes” targeting adults, including women, who have not completed formal education, were successfully carried out since 2010. Awareness Programmes have been conducted for nearly 2,000 beneficiary women by the Sri Lanka Women’s Bureau. Women’s Development Officers (WDOs) have been actively mobilized to facilitate educational support for the target beneficiaries;
- **Formal education for Female ex-child combatants:** Female ex-child combatants whose education was disrupted by the LTTE have sat for both General Certificate of Education (GCE) Ordinary Level (O/L) and Advance Level (A/L) examinations conducted by the Department of Examination of Sri Lanka since 2009. 212 out of 361 ex-child combatants passed O/L in 2010, of which 65 were female ex-child combatants. Having sat for A/L examination, 37 ex-child combatants qualified for entering the universities in 2010, including 29 female ex-child combatants;
- **Livelihood programme:** Several livelihood and income generating projects are implemented by ministries to address the needs of women, particularly women-headed households in Northern and Eastern provinces, including the following:
  - “*Single Parent Families Development Programme*”, operating under the Ministry of Social Services has provided self-employment assistance and Micro Enterprise Assistance during the period January-June 2014, to 208 single parents from the Northern Province and 18 single parents from the Eastern Province, making the total number of beneficiaries to 533 individuals in the Northern Province and 92 individuals in the Eastern Province from 2009 to date;
  - *Livelihood programmes for women-headed households* have been extended to Jaffna, Mannar, Vauniya, Mullaitivu, Kilinochchi, Batticaloa, Ampara, Trincomalee, Karainagar, Vadamarachchi East (Marudankeni), Vavuniya–Vengalasettikulam, Batticaloa–Manmunai Pattu, Wakarai, Kilinochchi–Pachchileipalli, Mannar–Nanttán. They continue in PorathivePattu, Kandawali, Kopay, Velanai, Karaveddhi, Maritimé pattu, Kalmunai Tamil, Erawurpattu, Thenmarachchi, Kanthale, Kuchchaweli, Vengalasetti kulam,

Koraleipattu and Uduwil. Revolving credits have been issued for 283 women;

- The Ministry of Child Development & Women's Empowerment and Care International have commenced a *Special Development Programme* mainly targeting widows and women-headed families in Kilinochchi and Mullaitivu. Social empowerment of women is carried out through awareness programmes on cash management, reproductive health, alcohol abuse and prevention of gender based violence;
- Information on women-headed households in Northern Province is being used for provision of livelihood assistance under the *Divi Neguma* programme of the Ministry of Economic Development.

#### **Question 4 (b)**

42. The provisions of the Marriage Registration Ordinance as amended, which governs marriages between parties other than the Muslim community provide for the following:

- In terms of Section 18 of the Ordinance, no marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void. Therefore it confirms the fact that "polygamy" is prohibited;
- In terms of Section 15 of the Ordinance, no marriage shall be valid unless both parties to the marriage have completed 18 years of age. In addition the provisions of the Penal Code provide special protection to the underage by imposing criminal responsibility and punishment upon breach of certain provisions in the Penal Code, in particular section 363 (e) of the Penal Code;
- In order to eradicate underage marriages, the National Child Protection Authority (NCPA) has conducted awareness-raising programmes aimed at rural youth and has used electronic and print media to send the messages across to the communities. The NCPA has also requested the Registrar-General to take steps to confirm the age at marriage of the female party before registering the marriage by perusing the identity card or birth certificate and has taken action to prosecute underage couples who were living together, as a means of deterrence and prevention;
- Amendments to the Muslim Marriage and Divorce Act is being considered by a Committee headed by a Supreme Court judge. In this regard, the attention of the Human Rights Committee is drawn to paragraphs 131 to 139 of the State Party's fifth Periodic Report.

#### **Question 5**

43. Article 12 of the Constitution recognizes non-discrimination based on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds as a Fundamental Right. This measure protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities.

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

#### **Question 6**

44. 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.

#### **Question 7**

45. Island wide, the involvement of security personnel in the reported cases of sexual offences have decreased in the post-conflict period in the Northern, Eastern, Western, Uva and North Central Provinces. A slight increase is observed in Southern, Sabaragamuwa, North Western and Central provinces. The average percentage of decrease in the Northern and the Eastern Provinces are 0.15% and 0.03%, respectively.

46. As far as the progress of cases involving the security personnel is concerned, of the 39 cases (North-19, East-20), eight (8) cases have been discharged due to lack of evidence, 23 cases have referred to Attorney General seeking advice, five (5) cases are being prosecuted and one (1) remains unresolved. There have been no reported incidents/cases of sexual violence in detention or in any military-controlled camps in Sri Lanka.

### **IV. Counter-terrorism measures (arts. 2, 7, 9, 10 and 14)**

#### **Question 8**

47. 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 application, 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.

48. The Government of Sri Lanka 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.

49. The 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 Commission informed of the enforcement of all detention orders.

#### **Compatibility of the PTA with the provisions of the Covenant**

50. 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. Although 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 *voire dire* inquiry, that such confessions were made voluntarily.

51. 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 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 there are examples 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."

52. The voluntary nature 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.

53. 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.

54. At the moment, there are 114 detainees held under the provisions of the PTA. All such persons have been in detention for a period of 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.

55. 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.

56. 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 call for an inquiry to be conducted by a judicial officer.

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

## V. Right to life (art. 6)

### Question 9

58. The Government of Sri Lanka rejects the assertion that there are “consistent and well documented reports” of the violation of the right to life involving the armed forces and paramilitary groups, including extrajudicial killings, disappearances and deaths in custody that remain widespread and unpunished. Whenever credible evidence is available, steps have been taken to prosecute police officers who are responsible for arbitrary killings. A few examples are given below:

- A sub-Inspector, who was the Officer in Charge of Crimes of a Police station, was 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 — AG’s Ref CR1/96/2005);
- In relation to the shooting incident at Katunayake in May 2011, steps have been taken to institute non-summary proceedings before the Magistrate of Negombo against two police officers on charges of Murder and Attempted Murder. The inquiry is in progress;
- 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.

59. The Bill on Assistance of Victims of Crime and Witnesses presented by the Ministry of Justice, which safeguards the rights of the victims and the witnesses has been approved by the Cabinet and was gazetted on 8 August 2014. It will be presented to Parliament shortly. The Act for Protection of Witnesses in Sri Lanka aims to enhance the balance in the criminal justice system between the rights of the accused, the rights and entitlements of victims of crime and the entitlements of witnesses, and will thereby facilitate the conduct of fair trials and justice meted out to both victims of crime and the accused. The salient features of the Bill are:

- (i) Recognition and setting out of:
  - (a) Rights of victims of crime; and
  - (b) Entitlements of witnesses;
- (ii) Creation of certain offences that may be committed against victims of crime and witnesses;

- (iii) Establishment of a mechanism for inquiry into complaints against infringement or imminent infringement of rights or entitlements of victims of crime or witnesses;
- (iv) Establishment of an authority for the purpose of administering the provisions of the Bill;
- (v) Establishment of a special division by the IGP to provide assistance to victims of crime;
- (vi) Imposing duties on courts, commissions or law enforcement authorities to provide protection to victims of crime and witnesses;
- (vii) Establishment of a special fund to be utilized for the payment of compensation to victims of crime;
- (viii) Providing for the recording of evidence through contemporaneous audio-visual linkage from remote locations within Sri Lanka.

60. *Cases of deaths during the riots at Welikada prison:* Upon a formal request by the Commissioner General of Prisons, a team of unarmed police officers from the Special Task Force undertook a search operation in Welikada prison on 09 November 2012 to look into reported possession of narcotics and offensive weapons by the inmates. The police team was able to discover a substantial quantity of narcotics during the initial search. When the search was extended to the ward of the hardcore prisoners, they attacked the Police, who had to retreat using tear gas. Thereupon, the inmates broke open the prison armoury and armed themselves with automatic assault rifles and started shooting indiscriminately. The prison which was built during the British colonial period is located adjacent to a busy highway and consequently, several motorists and passers-by were hit by bullets. During this riot some of the hardcore convicts escaped from custody. The Police, unable to contain and control this situation, called for assistance from the Sri Lanka Army. When the Army arrived on the scene, they observed that the shooting was still continuing and that several police officers, including the STF Commandant had sustained serious gunshot injuries. Assessing the situation and realizing the need to protect and rescue lives of the unarmed police officers, prison officials, other inmates and civilians passing by, the Army was compelled to use force in order to bring the situation under control.

61. *Cases of deaths during the riots at Vavuniya prison:* Investigations conducted up to now do not disclose sufficient material to attach criminal responsibility to any particular person. Consequent to an order made by the High Court judge of Vavuniya in case No. HCB 2275/2011 to transfer a prisoner to a detention camp in the South, the other prison inmates began a protest campaign and took three prison officers hostage and continued this protest for more than a day. Unable to control this siege, the prison authorities summoned the assistance of the STF of the Police in order to rescue the prison officers held as hostages. In the course of this operation, two prisoners, three prison officers and seven STF personnel were injured as a result of the attack launched by the prisoners. The two prisoners who sustained injuries during the rescue operation later succumbed to their injuries.

62. *Proposed legislation for the criminalization of disappearances:* the existing provision in the Penal Code, sections 350 to 360, adequately covers any situation of kidnapping, abduction or disappearances.

63. The State has used the provisions of the Penal Code to prosecute those responsible for causing the disappearance of persons. In the recently decided case of *C. Earl Fernando and H.P.Premarathna vs The Attorney General* in the Court of Appeal, concerning a disappeared person, the court affirmed the conviction and sentence given by the High Court of Gampaha, against the police officer who was in charge of the police station. The court held, *inter alia*, that:

“This Court is of the view that failure to comply with the legal provisions that complete a legal act of an authorized officer make such an act illegal with consequent liabilities. I, therefore, hold that taking away Upali from his workplace by the first Accused Appellant was none other than abduction with intent to cause him to be secretly and wrongfully confined. With this conclusion, this Court upholds the conviction of the first Accused Appellant.”

#### **Question 10**

64. The Bill to Provide for the Medical Termination of Pregnancy in Cases of Rape and Serious Foetal Impairment is being finalized by the Law Commission and it is being discussed with the relevant stakeholders.

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

#### **Question 11**

65. The following is submitted in addition to information furnished in reply to question 9 above: Commission of Inquiry to Investigate Complaints regarding Missing Persons in the Northern and Eastern Provinces. The Commission was appointed based on the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), by Gazette Notification 1823/42 dated 15 August 2013, issued by His Excellency, the President of Sri Lanka. The duration of the Commission was extended on 15 February 2014 and the scope of its mandate was expanded on 15 July 2014 to, among others, investigate and report into the facts and circumstances that led to the loss of civilian life during the internal armed conflict that ended on 19 May 2009, and whether any person, group or institution, directly or indirectly bears responsibility for violations of international humanitarian law or international human rights law.

66. Since the establishment of the Commission on 15 August 2013, the Commission, to date, has received in excess of 19,471 complaints, including approximately 5,000 complaints from relatives of missing security forces personnel.

67. The Commission has since held Public Sittings during the months of January, February, March, June, July and August, in Kilinochchi, Jaffna, Batticaloa, Mullaitivu and Mannar. During these sittings, the Commission heard oral evidence of 939 complainants. The recorded evidences of these complainants are being analysed for further investigations through an independent Investigative Team.

68. The Commission has held regular meetings with the International Committee of the Red Cross (ICRC) and the United Nations Development Programme (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 a conflict.

69. The following international experts have been appointed to serve on an Advisory Council to the Commission of Inquiry to advise the Chairman and Members of the Commission, at the latter's request, on matters pertaining to the work of the Commission:

- The Right Honourable Sir Desmond de Silva, QC (Chairman);
- Sir Geoffrey Nice, QC;
- Prof. David Crane;
- Mr. Avdhash Kaushal;
- Mr. Ahmer Bilal Soofi.

70. **Army Court of Inquiry:** The first part of the Army Court of Inquiry (COI) investigation into allegations of civilian casualties concluded in February 2013. The inquiry concluded that instances of shelling referred to in the LLRC Report were not caused by the Sri Lanka Army and that civilian casualties may have occurred due to the unlawful acts by the LTTE. These acts include targeting civilians fleeing to the safety of Army-held areas and likely routes of escape, dropping of artillery rounds fired by ill-trained LTTE gunners on civilian concentrations. The COI has indicated that further evidence, if presented, will be examined.

71. The COI appointed by the Army is now addressing the second part of their mandate, comprising the Channel 4 allegations, which commenced in March 2013.

72. Acting on the recommendations of the LLRC, a Military Court of Inquiry has been established to inquire into the unsubstantiated allegations contained therein which is in progress. At present, the court is interviewing various Field Commanders to identify the relevant formations and potential witnesses. Once the potential witnesses are identified, they will be formally called to testify as witness.

73. It may be further noted that while the LLRC wrote to the Independent Television Network (ITN), United Kingdom, requesting a copy of the original broadcast footage of Channel 4 and any other information that the Network could share with the Commission, including the dates, location, etc. related to the alleged incidents, ITN did not provide a copy of the original broadcast video. In the absence of a copy of the original broadcast footage, the LLRC used for its investigative purposes “the video as available in the public Internet domain”.

74. The identification of potential witnesses is currently in progress and, once identified, they would be formally called to testify as witnesses. It may be noted that the LLRC, in its Observations/Recommendations on the Channel 4 video, expressed, *inter alia*, its regret at “the fact that the broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information”, and noted that “greater cooperation by the organization that provided to the television stations these video images and by the producers/broadcasters that aired this footage is essential to establish the facts of the case”.

#### **Question 12**

75. The Government has made known its position on the Panel of Experts (PoE) report. The PoE report is a discredited document containing unverified and unsubstantiated information from questionable sources. The Report was meant to be an advisory document for the UN Secretary General and has also not received the endorsement of the intergovernmental process. The Government of Sri Lanka has consistently reiterated its rejection of the Report as elaborated in, among others, its statements to the Human Rights Council, and therefore the question of its implementation does not arise.

#### **Question 13**

76. The Lessons Learnt and Reconciliation Commission (LLRC), the home-grown mechanism established by H.E the President, was tabled in Parliament in December 2011. In view of the importance assigned to the implementation of LLRC recommendations and its implications for the reconciliation process, the Secretary to the President was assigned, in May 2012, to monitor the implementation of LLRC recommendations. As a result, a National Plan of Action (NPoA) under his purview was set up for this purpose. The Cabinet approved the NPoA in August 2012. The NPoA is an evolving process. At present over 22 line Ministries and line agencies are working on implementation of respective recommendations of the LLRC Report. The progress of the implementation of the LLRC

Report is regularly shared with the Colombo-based diplomatic community and ongoing activities are published in the LLRC Action Plan website. NPoA has taken concrete measures to address the specific concerns and vulnerabilities of victims of conflict, especially women and children. Adequate financial allocations have been made to the respective government agencies engaged in the task of implementation of the recommendations.

77. The Government continues to implement the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) through the NPoA. Of the 285 paragraphs contained in Chapter 9 of the LLRC Report, “Summary of the Principal Observations and Recommendations”, which comprises the sum total of observations and recommendations of the LLRC, the Government has identified 144 recommendations for implementation. As of 3 June 2014, out of 144 recommendations of the NPoA, 45 have achieved their objectives, and there are 89 recommendations where implementation has progressed to a considerable extent with long-term timeframes, and 10 recommendations where preliminary steps are being taken for implementation.

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

### **Question 14**

78. 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.

79. 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. Furthermore, the Government notes that Professor Manfred Nowak (former Special Rapporteur on Torture), in his report of February 2008 (A/HRC/7/3/Add.6), observed 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 (the CAT Act) is consistent with the definition contained in the Convention. Professor Nowak also stated that, according to the Act, torture is defined under article 12, which in principle corresponds to article 1 of the Convention, as any act which causes severe pain, whether physical or mental, to any other person, being an act, which is (a) done for any of the following purposes, that is to say (i) obtaining from such other person or a third person, any information or confession; or (ii) punishing such other person for any act which he or a third person has committed, or he is suspected of having committed; or (iii) intimidating or coercing such other person or a third person; or (iv) done for any reason based on discrimination, and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of a public officer or other person acting in an official capacity.

### **Question 15**

80. The draft Bill to amend the Code of Criminal Procedure Act No. 15 of 1979 was sent for the Attorney General’s observations and such observations have now been sent to

the Ministry of Justice. The amendment proposes to enhance the protection of an arrested person as well as make provisions that could be required to provide for the proposed amendments to the Human Rights Commission Act. This Bill contains provisions relating, *inter alia*, to the issuance of a certificate of acknowledgment of the arrest which will be given to a family member of the arrested person. Copies would be submitted to the relevant police station and the magistrate's court. The Bill further provides for the right of such accused person to have access to legal representation during the time that he is in police custody.

81. As per existing law and practice, whenever an arrested person is in need of medical attention, it is the duty of the police to provide him with such assistance, prior to being brought before a judicial officer.

#### **Question 16**

**(a) To address overcrowding in prisons and poor detention conditions**

82. The Prisons Department, with the guidance of the Ministry of Rehabilitation and prisons reforms has taken necessary measures to meet the problem of overcrowding in prisons by constructing a new prison in Dumbara, and a new prison in Jaffna (nearing completion). The foundation stone was recently laid to construct a new modern prison at Angunakolapalassa to overcome the overcrowding factor.

**(b) To limit the number and duration of pretrial detentions**

83. 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.

**(c) To segregate incarcerated juvenile from adults and remand detainees from convicted felons**

84. The juveniles incarcerated for offences are not kept in closed prisons. The juveniles are kept in separate institutions called the Training School for Youthful Offenders (T.S.Y.O) at Watareka, and the 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.

85. The amendment of the prison legislation (Prison Ordinance) is in progress and expected to be finalized soon.

#### **Question 17**

86. Administration of justice, including the independence of the judiciary, is constitutionally enjoined, and any infringement of these entrenched rights is visited with sanctions. Judges hold office during good behaviour and proven misbehaviour or incapacity triggers constitutionally entrenched disciplinary proceedings. Any procedure adopted in this regard has been in accordance with the Constitution and such action in compliance with constitutional provisions.

87. All constitutional stipulations inclusive of due process rights were followed in relation to the impeachment proceedings of the former Chief Justice. Sri Lanka reiterates that similar provisions exist in other countries in relation to the removal of higher judiciary, and the impeachment process was in keeping with the constitutional imperatives.

88. It has to be noted that Article 107 of the Constitution provides for the appointment and removal of judges of the Supreme Court and Court of Appeal. Article 107 (2)

specifically states that every such judge shall hold office during good behaviour and shall not be removed except by an order of the President made after an address to Parliament, supported by a majority of the total number of members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity. Parliament, as mandated by the Constitution, has provided by Standing Orders for all matters relating to the procedure for the passing of such resolution, the investigation and proof of the alleged behaviour or incapacity and the right of such judge to appear and to be heard in person or by representation.

89. The Standing Orders promulgated in this regard contain provisions of due process and the impeachment of the Chief Justice followed the aforesaid stipulated procedures.

90. The Supreme Court has recently decided that there has not been any infringement of fundamental rights alleged in a number of petitions to the Supreme Court in this regard. In an appeal to the Supreme Court referred by the Attorney General, which arose consequent to the impugnation of the impeachment proceedings, a Bench of seven judges of the Supreme Court has unequivocally disposed of the questions raised in these proceedings and declared that the procedure adopted is in accordance with the Constitution.

## **VIII. Protection of the rights of children (arts. 2, 7, 24 and 26)**

### **Question 18**

91. Raising the minimum age of criminal responsibility is a matter of concern and the National Child Protection Authority (NCPA) has included this requirement in the Child Protection Policy which awaits the Cabinet approval and has requested the Ministry of Justice to take steps to amend the laws to raise the minimum age of criminal responsibility.

### **Question 19**

92. The Ministry of Education has banned corporal punishment in schools. Judicial corporal punishment, described in the legislation as “whipping”, was outlawed in Sri Lanka in 2005.

93. Regarding eradication of corporal punishment, the NCPA has included this concept into the Child Protection Policy, which awaits Cabinet approval. A Training of Trainers programme was conducted to train the NCPA District staff on non-violence and positive discipline methods as a way forward to prevent corporal punishment. The subject of eradicating corporal punishment was taken up at the teacher training programmes and in awareness programmes on violence against children through School Child Protection Committees.

94. The Ministry of Child Development and Women’s Affairs has established Child and Women Development Units in each Divisional Secretariat enabling the officers working on women and children to work together in order to develop cohesiveness in their efforts to eradicate child abuse and protection of children. They work collaboratively in resolving issues pertaining to children with other line Ministries such as the Police, Ministry of Health, Ministry of Social Services, etc. The Ministry also provides financial support to children living in difficult circumstances.

95. With regard to combatting child abuse, the following actions were taken in this regard by the NCPA:

- Developed child protection policy and submitted for Cabinet approval;
- Submitted recommendations to amend the Laws on Children and Young Persons Ordinance;

- Conducted awareness programmes at district, divisional and village levels to prevent all forms of child abuse;
- Effective operating of 1929 child line, a toll free 24-hour telephone facility in all three languages which entertain complaints of child abuse;
- Law enforcement with the assistance of the Department of Police, Labour and Probation and Child Care Services to ensure the best interest of the child;
- A safe home was established to provide psychosocial support for the victims and to ensure temporary protection for them. Steps have been taken to setup safe homes regionally;
- Victim assistance is provided through district and divisional staff of NCPA for the victims of child abuse and constant follow-up is carried out;
- Cyber surveillance unit is in operation to nab pedophiles who try to abuse children through the Internet;
- Programmes conducted to develop skills of the parents and the Government officers who handle children, such as teachers, principals, doctors and nurses;
- Monitoring of institutions providing child-care facilities were carried out to minimize abuse at the institutional level;
- Developed guidelines on child care institutions to prevent children from being abused in child-care institutions.

#### **Question 20**

96. In Sri Lanka, education from primary to tertiary level is free. The Government provides admission to schools as well as text books and uniforms. The Government has taken a number of steps to facilitate the education of children with disabilities.

97. Participation of disabled persons, including children with disabilities, in vocational training is promoted at the ORHAN Vocational Training Centre in Vavuniya, one of eight (8) feeder training centres of the Sri Lanka-German Vocational Training Institute established in the Northern Province. ORHAN Centre has a current enrolment of 70% disabled students. The Ministry of Youth Affairs & Skills Development is receiving assistance from the German Government to encourage the participation of a greater number of disabled persons, with the objective of empowering them.

- Persons with disabilities in conflict-affected areas receive benefits from government schemes providing housing and livelihood support. Under the “*Housing Assistance Programme for Persons with Disabilities*”, 152 families in the North and 502 families in the East have been provided Rs 250,000 each to construct houses with accessibility facilities. A sum of Rs 76M has been incurred for this purpose;
- With regard to livelihood support, nearly 4,000 families in North and East with a disabled member receive a monthly cash allowance of Rs 3,000 under the “*Monthly Livelihood Assistance Programme*”. Also, 209 persons in the Eastern Province and 539 persons in the Northern Province have been assisted to set up self-employment ventures under the “*Self Employment Assistance Programme for Persons with Disabilities*”;
- 31,700 disabled persons in the two provinces were provided with assistive devices such as spectacles, wheel chairs, crutches, commode-wheel chairs and tricycles, based on individual requirements. Financial assistance for urgent medical needs is provided by the government on priority basis;

- 50 disabled youth from Kilinochchi were selected through formal interviews for training in job-oriented vocational disciplines by the Social Services Department;
- Other measures implemented for the benefit of disabled persons in these areas include training of 500 community leaders and volunteers to create conducive disabled-friendly environments in affected areas; awareness programmes on “Providing Accessibility Facilities to Public Buildings” conducted in Jaffna, Vavuniya, Kilinochchi, Mullaitivu and Mannar districts in the Northern Province and Trincomalee, Ampara and Batticaloa districts in the Eastern Province; awareness programme for 150 government officers involved in providing assistance to vulnerable people to apprise them of the services provided by the Ministry of Social Services.

## **IX. Elimination of slavery and servitude (art. 8)**

### **Question 21**

98. 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 the Cabinet soon.

99. 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.

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

## **X. Freedom of movement and right to privacy (arts. 12 and 17)**

### **Question 22**

101. As of September 2012, all internally displaced persons (IDPs) who were displaced during the final phase of the conflict have been resettled in their places of origin or located in close proximity to their places of origin, with their consent. As at 31 July 2014, 226,824 families, consisting of 767,748 persons, were so resettled, but 7,094 families, consisting of 23,568 persons, still remain in the respective districts in the Northern and Eastern provinces awaiting resettlement.

102. A draft Resettlement Policy Framework has been formulated consequent to stakeholder consultations. This Policy Framework has now been revised taking into account the comments and observations that were received from wider stakeholders. It will be submitted to the Cabinet of Ministers for approval shortly. The updated version is uploaded in the Ministry Website (<http://resettlementmin.gov.lk/site/index.php?lang=en>). This Framework for Resettlement Policy outlines the administrative, logistical, advisory, humanitarian and other forms of support available to internally displaced persons, returnee refugees of legitimate Sri Lankan origin and resettled communities. The concept of a durable solution to the returnee IDPs and refugees is very much addressed in the Policy Framework.

103. As per the policy of the Government of Sri Lanka to provide durable solutions to resettled IDPs and returnee refugees, there are various projects and programmes that have been implemented to provide permanent houses and renovation of damaged houses in the

Northern and Eastern Districts of Sri Lanka. As at 30 June 2014, 58,847 new houses had been constructed and 9,104 partly damaged houses had been renovated. Currently, 23,710 new houses are being constructed and 237 houses being renovated. Additionally, there is a commitment by the Government and other agencies to construct 10,403 new houses and renovate 3,647 partly damaged houses during the next three (3) years. A significant portion of such houses had been built on an “owner-driven” basis. For all these houses, a toilet unit is also included.

104. Further to above housing project, there are several additional projects being implemented to provide sanitation facilities in the resettled areas of Northern and Eastern Districts. As at 30 June 2014, 5,803 toilet units had been constructed by various organizations and another 3,744 toilet units were constructed by the Ministry of Resettlement from the Consolidated Fund allocated to the Ministry.

105. In addition, there are a number of projects implemented for the reconstruction of community infrastructure in the Northern and Eastern Provinces.

106. The Presidential Task Force for Resettlement, Development & Security of Northern-Province (PTF), which was established on 7 May 2009 by the President, was wound up on 7 May 2014. It has duly completed its mandate and submitted the report on completion to the President.

107. Work has also commenced on the Joint Needs Assessment (JNA) conducted by OCHA to address residual displacement needs. The Letter of Agreement was signed between the Government and the UN Country Team on 25 March 2014 to give effect to the JNA which aims to identify the specific needs of those displaced persons who have returned or resettled but are still having specific needs linked to their displacement.

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

### **Question 23**

108. 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.

109. 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.

110. Furthermore, 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.

111. 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.

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

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

#### **Question 24**

114. There are no restrictions imposed particularly on the Northern Province with regard to peaceful assembly and freedom of expression. The laws and regulations applicable in other parts of the country are applicable in the Northern Province. It is particularly noteworthy that elections to the Northern Provincial Council were held on 21 September 2013, for the first time since the introduction of the Provincial Council system in Sri Lanka in 1987. The Northern Province gave the ruling coalition 18.38% and the UNP 0.68%, while the ethnic Tamil party, Ilankai Tamil Arasu Kadchi (ITAK), secured 78.48%, which remains testimony to the vibrant and pluralistic nature of Sri Lanka's democracy.

115. Article 14 of the Constitution recognizes the fundamental right of freedom of expression. The freedom of expression so recognized is, however, subject to the restrictions imposed under Article 15 of the Constitution. The restrictions so imposed also include the prohibition not to vilify others as judicially recognized by the Courts of Sri Lanka. It must also be noted that Article 28 of the Constitution casts a fundamental duty on every person to protect the rights and freedoms of others.

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

#### **Question 25**

116. Mr. Sarath Fonseka was tried by a Court Martial for an offence under S.102 (1) of the Army Act (Disobedience to an Army order prohibiting political activities). He was convicted on 13.08.2010 and sentenced to be cashiered. i.e. Dishonorable Discharge (stripping of rank). Hence on 13.08.2010 Sarath Fonseka ceased to be an officer of the Army.

117. On 17.09.2010 he was convicted by another Court Martial for an offence under S. 109 (e) of the Army Act (Disgraceful conduct) for awarding a tender to his son-in-law. For this offence he was sentenced to a prison term of two and a half years. The writ application filed by Sarath Fonseka challenging the Court Martial decision was dismissed by the Court of Appeal.

118. Whilst serving the said prison term, on 18.11.2011 he was convicted by the Colombo High Court for an offence under S.120 of the Penal Code (Inciting the public) and sentenced to a prison term of three years.

119. On 21.05.2012, His Excellency the President granted him a pardon and released him from the prison. The pardon had been granted by the President of the Republic under Article 34 of the Constitution.

120. In view of the Presidential pardon obtained, Sarath Fonseka did not proceed with his appeals before the Supreme Court with regard to the judgment of the High Court that convicted him and sentenced him to a prison term of three years or in respect of the dismissal by the Court of Appeal in which he challenged the Court Martial decision that convicted and imposed a term of 30 months imprisonment.

121. Presently, the following cases are pending against him in Colombo High Court.

<i>Srl No</i>	<i>Court</i>	<i>Case No</i>	<i>Charge</i>
1	Colombo High Court No. 01	HC 5331/2010	Harbouring army deserters

122. In addition, four cases were filed by Mr. Sarath Fonseka in the Court of Appeal/Supreme Court.

<i>Srl No</i>	<i>Court</i>	<i>Case No</i>	<i>Subject matter of the Petition</i>
01	Court of Appeal	CA 196/2010	Preliminary objection with regard to the jurisdiction of Court Martial I
02	Court of Appeal	CA 625/2010	Appeal against the verdict of Court Martial I
03	Court of Appeal	CA 676/2010	Unseating as a MP owing to the Court Martial II verdict
04	Court of Appeal	CA HC 02/2010	Habeas corpus application
05	Supreme Court	SC (FR) 65/2010	Fundamental rights violation due to arrest and detention

The Presidential pardon granted does not affect the above cases.

123. With regard to concerns regarding the possible utilization of the 2011 Revival of Underperforming Enterprises and Underutilized Assets Law to seize the property of prominent opposition politicians, it is to be noted that the Bill was not enacted to target any person. The following is submitted:

#### **Objectives of the Bill**

- Article 27 (1) of the Constitution requires the Parliament, the President and the Cabinet of Ministers to be guided by the Directive Principles of State Policy contained therein in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society;
- The objective of the Bill was to vest in the State, in the national interest identified, Underperforming Enterprises and Underutilized Assets in order to ensure their effective administration, management or revival through alternate methods of utilization such as by restructuring, entering into management contracts;
- The rationale for the Bill is that it is an inherent obligation on the part of the Government to ensure to the people have maximum benefits from limited resources available, by securing and protecting as effectively as possible a social order in which social, economic and political justice would prevail. The vesting in the State of the two types of assets, Underutilized Assets or Underperforming Enterprises, identified in the Bill is to give effect to this obligation. This is in conformity with the Directive Principles of State Policy, in particular Articles 27 (2) (b) and 27 (2) (d);
- The Underutilized Assets identified in the Bill encompass two categories of land: one is State land alienated, within a period of twenty years prior to the date of the coming into operation of the Act, for the purpose of generating employment, foreign exchange earnings or savings or economic activities beneficial to the public but

where such benefits have not accrued and as such prejudicial to the national economy and public interest; the other is land owned by a person who had been granted, within a period of twenty years prior to the date of coming into operation of the Act, either tax incentives specified therein or any government guarantee, on the basis that the related operations proposed to be carried out in connection thereto will result in generating employment, foreign exchange earnings or savings or economic activities beneficial to the public, but where such benefits have not accrued and as such are prejudicial to the national economy and public interest;

- In both these situations, either State land or tax incentives or government guarantee has been given on the basis that related operations proposed to be carried out will result in generating employment, foreign exchange earnings or savings or economic activities beneficial to the public, but where such benefits have not accrued and as such are prejudicial to the national economy and public interest;
- Vesting such assets in the State is giving effect to the inherent obligation on the part of the Government to ensure to its people have maximum benefits from limited resources available, by securing and protecting as effectively as possible a social order in which social, economic and political justice would prevail;
- Underperforming Enterprise is identified in the Bill as a company or other authority, institution or body established by or under any written law for the time being in force, in which the Government owns shares *and* where the Government has paid contingent liabilities of such enterprise *and* the Government is engaged in protracted litigation with regard to such enterprise which is prejudicial to the national economy and public interest;
- It is to be noted that three conditions need to be fulfilled if an enterprise is to fall within this definition. The most important is that the Government has paid contingent liabilities of such enterprise. Vesting such enterprise in the State is giving effect to the inherent obligation on the part of the Government to ensure to its people maximum benefits from limited resources available, by securing and protecting as effectively as possible a social order in which social, economic and political justice would prevail;
- It is submitted that this is a permissible classification under Article 12 (1) of the Constitution. It is based on an intelligible criteria which has a rational relation to the objectives sought to be achieved. The intelligible criteria is that the land is either State land given with a particular objective to be achieved which has not been realized or is private land and certain exemptions from tax and other incentives under written law has been given with a particular objective to be achieved which has not been realized;
- The rational connection is that such failures are prejudicial to the national economy and public interest and the objective of the Bill is to, in the national interest and national economy, ensure their effective administration, management or their revival through alternate methods of utilization to ensure to the people of the country maximum benefits from the limited resources available, by securing and protecting as effectively as possible a social order in which social, economic and political justice would prevail.

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

#### **Question 26**

124. All people living in Sri Lanka enjoy freedom of religion, which is a constitutionally guaranteed right. The Government of Sri Lanka remains committed to ensuring that this right is protected. This is evidenced by the action taken to address reported incidents of disturbances in the recent past. Action has been taken on those who have contravened the law of the land, once sufficient evidence has been gathered for prosecution.

125. There had been sporadic and isolated incidents focusing on places of worship of all four religions. No such incident has State patronage nor has the Government condoned such action. The Police have taken steps to report facts to the magistrates when a breach of peace has occurred and steps have been taken to produce suspects before a magistrate when credible information is available on the identity of the perpetrators.

126. More broadly, in keeping with Sri Lanka's societal, cultural and historical norms, regular dialogue continues to take place at various levels to ensure interfaith harmony and understanding amongst its diverse populace.

127. In Sri Lanka, education from primary to tertiary level is free. The Government provides admission to schools as well as text-books and uniforms. However, there are some schools run by religious denominations of all faiths. These schools cater to admission of children of a given faith and admission is carried out without government interference. However, it must be noted that these schools also admit students of other denominations while particularly catering to their denomination. However, this does not preclude children from gaining admission to other schools. The Government of Sri Lanka denies that protestant children are particularly targeted for discrimination as alleged by the Committee.