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**REFLECTING ON REPORTS OF THE UNITED
NATIONS SPECIAL RAPORTEURS ON
EXTRAJUDICIAL, SUMMARY OR ARBITRARY
EXECUTIONS AND FREEDOM OF
RELIGION OR BELIEF**

LAW & SOCIETY TRUST

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF RELIGIOUS INTOLERANCE

*Report of the United Nations Special Rapporteur
on Freedom of Religion or Belief
Asma Jahangir - MISSION TO SRI LANKA
(2 MAY TO 12 MAY 2005)*

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Editor's Note

Two important reports issued respectively by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston and the UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir who undertook missions to Sri Lanka in 2005 are published in this Issue.

In the first Report on Extrajudicial, Summary or Arbitrary Executions, Phillip Alston engages in a critical discussion of several outstanding issues affecting basic rights of life and liberty in Sri Lanka.

Insofar as the protection of the human rights of civilians in the North East is concerned, a broader human rights framework and more comprehensive international monitoring mechanism is recommended as imperative to address the many human rights issues that go beyond the ceasefire.

Looking at the criminal justice system as a whole, his cautionary observations are as follows;

"There is a nationwide pattern of custodial torture in Sri Lanka, and the Government has a legal responsibility to take measures to bring that pattern to an end. The vast majority of custodial deaths in Sri Lanka are caused not by rogue police but by ordinary officers taking part in an established routine. It is essential that government officials accept that disrupting this pattern of custodial torture is a necessary step not only in ensuring the human rights of those arrested but of retaining public trust and confidence."

These are concerns raised time and time again by civil society groups in Sri Lanka who have buttressed their call for effective action by well documented cases of torture and ill treatment of persons at the mercy of aberrant custodial officers. The Special Rapporteur's findings constitute a useful validation of these studies.

His comment that though, independent oversight bodies such the National Police Commission and the Human Rights Commission) have rendered valuable service, they lack resources and, even more importantly, political support is also relevant as is his concern in regard to the non-implementation of the 17th Amendment to the Constitution.

Concerns raised in the second Report are also of vital import. The freedom of religious worship as enshrined particularly in the right to freedom of thought and conscience has acquired for itself, a peculiar and distinctive meaning within the corpus of domestic human rights. Article 10 of Sri Lanka's Constitution guarantees to every person the freedom to have or to adopt a religion or belief of his choice.

The basic right is further protected in its various manifestations in the right to be treated equally in law (Article 12(1), the corresponding right not to be discriminated

against on religious grounds (Article 12(2), the right to free expression (including religious expression) guaranteed by Article 14(1)(a) and the entitling to every citizen, through Article 14(1) (e), the freedom, either by himself or in association with others and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

In addition, Article 10 of the Constitution, through judicial interpretation, also secures the right to information, *simpliciter*, as a corollary of the freedom of thought. These constitutional objectives are cumulatively reflected in the Directive Principles of State Policy (Vide Article 27((2) (a) and particularly Article 27(5)). The State is thereby enjoined to strengthen national unity by promoting corporation and mutual confidence among all sections of the people of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.

While this is so on the one hand, on the other, instances of forced or induced religious conversions cannot also be discounted. In an earlier Issue of the Review, (see LST Review, Volume 16, Issue 218 December 2005) we published a post tsunami study carried out by the Human Rights Center, University of Berkeley which had found that a major concern during this period had been the motivation underlying the work of some non governmental organisations which had 'arrived on the scene' in the wake of the disaster. The Berkeley Report pointed out that "sometimes these new groups were religiously based and their proselytizing goals were inappropriate to the needs of the people."

In this context, the findings of the UN Special Rapporteur on Freedom of Religion or Belief that a number of improper ways of persuading people to change their religion may have been used by members of some religious groups" are relevant. However, the warning that imprecise allegations made against some groups have resulted in generalised condemnation of religious groups is also pertinent as is her caution against the introduction of laws criminalising acts of conversion.

Her call for an inter-religious body vested with the task of maintaining constant dialogue between all religious communities remains a priority.

Cumulatively, concerns emerging from these two Reports of the Special Rapporteurs need to be effectively addressed by the Sri Lanka Government. Past reports of missions of other UN Special Rapporteurs to the country have not resulted in noticeable differences in governmental commitment towards implementing their recommendations.

It is hoped that this pattern of indifference may now change particularly in view of Sri Lanka's recent election to the United Nations Human Rights Council.

Kishali Pinto-Jayawardena

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF DISAPPEARANCES AND SUMMARY EXECUTIONS

*Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,
Philip Alston*

MISSION TO SRI LANKA* **
(28 November to 6 December 2005)

I. INTRODUCTION

1. This report describes the situation in Sri Lanka in relation to extrajudicial executions.¹ It is based upon in situ visits and extensive interviews undertaken in the districts of Ampara, Batticaloa, and Kilinochchi, as well as in Colombo, from 28 November to 6 December 2005. The Government of Sri Lanka maintained an open and constructive attitude towards my visit, provided useful assistance, and placed no restrictions on my access to all places and persons, including to LTTE representatives. I pay special tribute to the late Foreign Minister, the Honourable Lakshman Kadirgamar, who was himself the victim of a political killing in August 2005.

2. My goal is not to provide an inventory of the extrajudicial killings that are taking place. Various other groups are doing that and their figures are generally consistent and reasonably accurate. Rather, my aim is to contextualize these killings and identify measures which might address the underlying causes and lead to an improved situation. The killings reached their peak during and immediately after my mission and the resulting situation is fragile and potentially perilous.

3. The issue of killings, in many respects, provides an important window into many facets of the overall situation in Sri Lanka. They are symptomatic of the widespread use of police torture, of the failure to rein in abuses committed or tolerated by the military, and of the systematic efforts by various armed groups, and particularly the LTTE, to kill Tamils who refuse to support the LTTE and to provoke military retaliation. Endeavours to achieve peace which do not address human rights issues will fail, although the parties to the conflict do not appear to fully appreciate this reality.

II. ENDING THE CYCLE OF KILLING

A. Dynamics and causes of post-ceasefire killings

4. The conflict in Sri Lanka involves the intentional targeting of both combatants and civilians. The 2002 Ceasefire Agreement addressed both kinds of violence, committing the Government and the

* The summary of this report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission only. The footnotes are reproduced as received.

** The present report was submitted late in order to reflect the most recent information.

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¹ Throughout this report the term 'extrajudicial executions' is used to refer to executions other than those carried out by the State in conformity with the law. As noted elsewhere '[t]he terms of reference of this mandate are not best understood through efforts to define individually the terms "extrajudicial", "summary" or "arbitrary", or to seek to categorize any given incident accordingly.' Rather, 'the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly and the Commission.' E/CN.4/2005/7, para. 6.

Liberation Tigers of Tamil Eelam (LTTE) to halt “offensive military operation[s]” as well as “hostile acts against the civilian population”. Until December 2005, the ceasefire between the parties’ armed forces had been largely respected, with only few exceptions. In contrast, the ceasefire in relation to civilians has consistently been broken by a series of so-called “political killings.”

5. The problem of political killings cannot be appreciated through statistics. Those dead since 2002 number in the hundreds, not the thousands, and it could be tempting to speak dismissively of a “high murder rate” or of an “imperfect but workable peace”. The social consequences of these political killings are, however, exponentially more severe than those that would follow from a comparable number of common crimes or random ceasefire violations. The purpose of these killings has been to repress and divide the population for political gain. Today many people - most notably, Tamil and Muslim civilians - face a credible threat of death for exercising freedoms of expression, movement, association, and participation in public affairs. The role of political killings in suppressing a range of human rights explains why members of civil society raised this more than any other issue.

6. The last days of my visit witnessed what were then the deadliest attacks on Government forces since the ceasefire and even more deadly attacks have followed.² As the Sri Lanka Monitoring Mission (SLMM), established to monitor the ceasefire, has warned, the ceasefire is “in jeopardy” and “war may not be far away”.³ I deplore this turn of events, and reiterate that peace is necessary to fully ensure the right to life in Sri Lanka. I would emphasize, however, that the findings below remain relevant despite these developments: extrajudicial killings were not halted by the ceasefire and appear set to continue regardless of how the conflict develops.

1. The conflict

7. The primary participants in the conflict have been the Government and the LTTE. The latter began fighting the Government in the late 1970s with the aim of establishing the state of Tamil Eelam in the north and east of the island.⁴ Since the February 2002 ceasefire, its control of significant areas in the north and east has been acknowledged. Until December 2005 direct clashes between the Government and the LTTE had been extremely rare, and most post-ceasefire killings were of persons belonging to neither of these parties. Incidents in which LTTE cadres fired on the armed forces were generally understood by the latter as “provocations” designed to elicit a violent response rather than as serious attempts to resume hostilities.

2. The ceasefire and the post-ceasefire killings

8. The conflict-related killings taking place in Sri Lanka today should be seen in the context of the Ceasefire Agreement (CFA) signed by the Government and the LTTE in February 2002. Both parties to the CFA have sought to consolidate and improve their positions by exploiting the ambiguities and opportunities presented by the terms of the agreement as well as weaknesses in its monitoring mechanism, the SLMM. The parties have continued to advance their interests, in significant part, by committing or permitting widespread killing.

² At the time of writing, the series of attacks perpetrated against security forces since 4 December 2005 had resulted in the deaths of at least 78 members of the Sri Lankan armed forces, police force, and home guard.

³ SLMM, “The Cease Fire Agreement and the Peace Process in Jeopardy”, 29 Dec. 2005, *available at* http://www.slmm.lk/intros/press_releases.htm.

⁴ Sri Lanka has a population of 20 million, of whom 74% are Sinhalese, 13% Sri Lankan Tamil, 7% Sri Lankan Moor and Malay Muslims, 6% Indian Tamil, and 1% other.

9. When I talked with Government officials, members of civil society, and representatives of the LTTE, killings were often discussed as violations of one or another of the CFA's provisions. It was suggested implicitly that violations of one provision are justified by violations of some other provision by another group. This form of justification is without legal basis, but it is critical to understanding the logic of the post-ceasefire killings.

10. It is impossible to determine with precision the number of such killings. Virtually no deaths have been effectively investigated, and it is not always possible to distinguish common murders from conflict-related political killings. The most credible estimates that I received placed the total number of such in 2005 at over 300.⁵

3. Tamil political parties and "paramilitaries"

11. When the conflict began, there were other Tamil militant groups fighting alongside the LTTE. However, during the 1980s the LTTE repeatedly attacked these groups, killing many of their members. Some of the groups subsequently cooperated with the Indian Peace Keeping Force (1987-1990) or the Government in fighting the LTTE, and many of them also entered into electoral politics. CFA article 1.8 provides that "Tamil paramilitary groups" shall be disarmed by the Government and that those of their members integrated into the armed forces be transferred away from the Northern and Eastern Province.⁶ Representatives of these groups - notably, EPDP, EPRLF, and PLOTE - informed me that they had been disarmed and now function solely as political parties. Compliance has not been perfect, however. One example, confirmed by a government official, is the continuing operation of armed EPDP cadres in the islands off the Jaffna peninsula. Various Government officials suggested to me that the CFA required only a one-time disarming of these groups by the Government with no obligation to prevent them from rearming.

12. While that position is untenable, there is little evidence that most members of these groups do other than non-military, political work. Thus, reflexive references to "paramilitaries" rather than "political parties" dangerously distort the facts. As long as these groups continue to be targeted, they will require protection from the military, which is facilitated by locating their residences and political

⁵ The SLMM does not provide detailed data on conflict-related killings. At the time of my visit, it had received 138 complaints concerning assassinations of civilians, of which 20 had been resolved, and 14 were classified as CFA violations (by the LTTE). (These data cover the period from February 2002 through November 2005. Assassinations of civilians are violations of Art. 2.1 of the CFA. Data available at http://www.slmm.lk/intros/C_and_V.html.) There are no publicly-available SLMM statistics on how many total killings the 138 complaints concerned, nor regarding the number of complaints concerning the killing of combatants. (The killing of combatants violates Art. 1.2 of the CFA which proscribes all military action. The SLMM's statistics on violations of Article 1.2 do not, however, disaggregate killings.) Moreover, killings believed to have been committed by the Karuna group and other armed groups that are not party to the CFA are not reflected in these data.

The Government and others presented me with more comprehensive lists of killings. The Government claimed that as of 30 September 2005, the LTTE had killed 363 people. (I received various lists from different arms of the Government and the relationship among the lists is not always clear.) The EPDP (the Eelam People's Democratic Party) claimed that 43 of its members had been killed as of 14 October 2005. The EPRLF (the Eelam People's Revolutionary Liberation Front) claimed that the LTTE had killed 334 people in the Batticaloa and Ampara districts as of 5 December 2005. (Of the 334 alleged killed, 170 were Karuna cadres killed on 9 April 2004 in major fighting following the Karuna - LTTE split.) There is relatively little information that is not perpetrator or victim specific. However, a civil society group recorded a total of 295 killings by all parties during the period from 1 January through 21 November 2005. (Information provided by the Foundation for Co-Existence.) Another source recorded 338 killings during the period from 1 January through 13 November 2005. The discrepancy between these two figures is due mainly to differing characterizations of some incidents that may have been either conflict-related killings or common murders.

⁶ CFA, Art. 1.8.

offices near military posts. This protection unavoidably results in the appearance of cooperation with the military, but this cannot be generally assumed. Nor can particular allegations of cooperation be too readily discounted.

13. Post-ceasefire killings of members of these groups have continued, and most circumstantial evidence points to the LTTE. While some killings may have been motivated by the quest for military advantage, many appear to have been aimed only at upholding the LTTE's proclaimed role as the "sole representative" of the Tamil people. Members of these groups are justifiably concerned that CFA article 2.1, prohibiting hostile acts against the civilian population, has not provided greater protection to them.

4. The Karuna split

14. In March 2004 the LTTE commander of the Eastern Province, Colonel Karuna, split with the LTTE leadership in the Northern Province, initially taking with him perhaps one fourth of the LTTE's cadres. Terminology varies widely, but this new force may be termed the "Karuna group". While the LTTE continues to control most of the territory it did at the time of the ceasefire, the Karuna group has conducted many ambushes and killings of LTTE cadres, political representatives and supporters. This has weakened the LTTE's position in Government-controlled areas and has led the LTTE to close its offices and end most political work in those areas.⁷ Since the LTTE has long stated its aim to create the state of Tamil Eelam out of most of the territory of the Northern and Eastern Provinces, there is now a crucial battle for control in the east, accounting for many of the most recent killings.⁸

15. The LTTE's characterization of the Karuna group has evolved. When the split first occurred, the LTTE maintained that it was a purely internal matter. However, when I spoke with LTTE representatives, their position was that the Karuna group was a "Tamil paramilitary" within the meaning of the CFA, that it received assistance from the Government, and that it must be disarmed by the Government. As evidence, the LTTE representatives pointed to statements made by alleged defectors from the Karuna group. These persons stated that logistical support, arms, and ammunition were being provided by Sri Lankan Army Intelligence, that funding was being provided by an "external source", and that the leadership of the Karuna group was in close contact with several Government ministers.⁹ Regardless of the veracity of these allegations (see below), the LTTE's position on the Karuna group is untenable. Notwithstanding any support it may be providing, it is far from clear that the Government would be capable of disarming the Karuna group, and any future attempt at a comprehensive revised agreement would have to address the realities created by the Karuna group.

16. The Government's position on the Karuna group is also problematic. I was informed by a number of military personnel that ex-President Chandrika Kumaratunga had issued an order prohibiting any links with Karuna except by intelligence officers. I unsuccessfully requested a copy of that order. While I found no clear evidence of official collusion, there is strong circumstantial evidence of (at least) informal cooperation between Government forces and members of the Karuna group. I received

⁷ CFA Article 1.13 permits unarmed LTTE members freedom of movement in Government-controlled areas in the North and East for the purpose of "political work". On 18 November 2004, LTTE offices in Akkaraipattu and Arayampathy were attacked with grenades. On 21 November 2004, LTTE offices in Batticaloa and Kaluvanchikudy were attacked with claymore mines. These and subsequent attacks forced the LTTE to scale back its presence in Government-controlled areas in the East.

⁸ Prior to December 2005, roughly half of all killings in 2005 took place in the Batticaloa district.

⁹ "STF, SL Ministers complicit in paramilitary operations, Karuna in India", *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>.

credible reports from civil society groups of persons abducted by the Karuna group being released at military bases, a credible account of seeing a Karuna group member transporting an abductee in view of a Sri Lanka Army (SLA) commander, and equivocal denials from SLA personnel. Moreover, the stock line that members of both factions of the LTTE (Vanni or Karuna) were terrorists, between whom the Government does not distinguish, is disingenuous. Many of the people I spoke with in the Army and the Police Special Task Force (STF) candidly noted that the split had been beneficial for the Government, because the Karuna group was undermining the LTTE. (There has been a notable increase in the number of LTTE cadres killed since the split.) The strategic logic is undeniable, but it imperils the ceasefire and shows a dangerous indifference to the many civilians in the East who have been killed as a consequence of the low-intensity conflict between the LTTE and the Karuna group.

17. The 18 November 2005 attack on a mosque in Akkairapattu exemplifies the manner in which civilians are being caught in the crossfire. During morning prayers, two people rolled grenades to the front of the mosque, where they exploded, killing 6 persons and seriously wounding 29 others.¹⁰ I visited the mosque, met with victims and community representatives, and discussed the attack with Government officials and LTTE representatives.

18. While accounts differ widely, the conflict between the LTTE and the Karuna group figure in almost all. One explanation, attributed to two defectors from the group, is that the Karuna group was responsible as part of an effort to create dissension between the Tamil and Muslim communities.¹¹ Another explanation suggests that the attack was part of a cycle of retaliation. Two days earlier, the bodies of two LTTE members had been found on a road marking the unofficial boundary between the predominantly Tamil and predominantly Muslim areas of the town. Muslim community members suggested to me that the two LTTE cadres may have been killed by Muslim individuals cooperating with the Karuna group. While the Muslim community as a whole has avoided alignment with either group, many speculate that the LTTE attacked the mosque in retaliation and to deter further instances of cooperation.

19. Without an effective investigation, it is impossible to assign definitive responsibility for the attack. Sources close to the LTTE did, however, confirm to me that the LTTE engages in retaliatory killings, and the dynamics of retaliation can serve to explain much of the killing taking place in the East. Failure to clarify responsibility in such situations fuels tensions. Thus, in the course of my visit, the mosque attack provoked further convulsions of violence in the East. The conclusion is that unless crimes of this kind are properly investigated, and those responsible held to account, they will inevitably fuel the cycle of bitterness, retaliation and violence.

5. The use of civilian proxies by the Liberation Tigers of Tamil Eelam

20. The day before I visited Kilinochchi to meet with LTTE leaders, six Sri Lankan Army soldiers were killed in a claymore mine attack in Jaffna. (Such attacks have escalated since my departure.) While in Kilinochchi, I expressed serious concern about these killings, and the role that might have been played by civilians recently trained by the LTTE was not ruled out. The LTTE has recently called Tamil civilians living in Government-controlled Jaffna to the LTTE-controlled area around Kilinochchi to receive civil defence training. While it was denied that the LTTE gives commands to these civilians, it was acknowledged that it does have substantial "influence" over them. A senior

¹⁰ Eight of the injured remained in critical condition when I visited.

¹¹ "STF, SL Ministers complicit in paramilitary operations, Karuna in India", *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>; "Two paramilitary cadres surrender, say Karuna group responsible for attacks against Muslims", *TamilNet*, 6 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16483>.

LTTE official informed me that the frustration of the Tamil people with the slow progress in the peace process made such attacks inevitable. He added that the Jaffna peninsula is uncontrollable because the LTTE has had to withdraw its political cadres and is thus unable to exercise its calming influence on the people. The LTTE's apparent use of surrogate groups is a dangerous escalation.

6. Killings to control the Tamil population

21. One of the most disturbing aspects of post-ceasefire violence has been the use of killing to control the Tamil population. CFA article 2.1 requires that the parties "in accordance with international law abstain from hostile acts against the civilian population" and, indeed, such killings are prohibited by international human rights and humanitarian law apart from the CFA. However, the LTTE and, to a lesser extent, other groups have elected to reinforce their political and financial support from the Tamil population through the use of violence.

22. The LTTE's classification of its political opponents within the Tamil community as "traitors" and its efforts to enforce obedience with killings constitute fundamental violations of human rights. Governments as well as armed opposition groups are generally constrained to take account of human rights by the need to retain popular support within their constituencies. The LTTE has, however, been able to circumvent many of these constraints by relying so heavily for its financial and political support on a constituency that is largely exempted from its violence. This is the Sri Lankan Tamil diaspora, which numbers more than 800,000 and is centred in Australia, Canada, India, the United Kingdom and the United States of America.¹²

23. For members of the diaspora the problem is to distinguish between, and seek to reconcile, the two dramatically different faces of the LTTE. In Kilinochchi the apparatus it has established might appear an interesting experiment in governance, with its own judiciary and police force. It is endeavouring to promote some degree of human rights consciousness through the North-East Secretariat on Human Rights (NESOHR). Elsewhere, however, and especially in the East, its modus operandi inflicts intimidation, coercion and violence on a large population that is otherwise uninvolved in the conflict. The diaspora must accept the responsibility that comes with influence and insist on being a positive force for human rights. Even those who view the issue in unidimensional terms as a liberation struggle must reject unequivocally the killing of all innocent civilians and non-combatants.¹³ To the extent that the diaspora is funding the ongoing killing and terrorizing of innocent civilians, the Governments of the states in which they live should enter into a serious dialogue with them on the findings in this report and the opportunities they might have to promote respect for human rights.

B. The international legal framework governing the use of lethal force

24. Within Sri Lanka the recent political killings have been discussed primarily in terms of the CFA. Insofar as the Government and the LTTE endeavour to comply with the agreement, it is an appropriate frame of reference. But international human rights and humanitarian law continue to apply and in some cases impose more exacting obligations.

¹² In estimates prepared by the UNHCR as of June 2001 the number of internationally displaced Tamils was said to be 817,000, most of whom were refugees or asylum seekers. Canada hosted an estimated 400,000 Tamils, followed by Europe (200,000), India (67,000), the United States (40,000), and Australia (30,000).

¹³ In 2004 the Secretary-General's High-level Panel on Threats, Challenges and Change concluded at the end of a detailed analysis "that there is nothing in the fact of occupation that justifies the targeting and killing of civilians". *A More Secure World: Our Shared Responsibility*, (United Nations, 2004), para. 160.

25. Human rights law affirms that both the Government and the LTTE must respect the rights of every person in Sri Lanka. Human rights norms operate on three levels - as the rights of individuals, as obligations assumed by States, and as legitimate expectations of the international community. The Government has assumed the binding legal obligation to respect and ensure the rights recognized in the International Covenant on Civil and Political Rights (ICCPR). As a non-State actor, the LTTE does not have legal obligations under ICCPR, but it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights.¹⁴

26. I have previously noted that it is especially appropriate and feasible to call for an armed group to respect human rights norms when it "exercises significant control over territory and population and has an identifiable political structure".¹⁵ This visit clarified both the complexity and the necessity of applying human rights norms to armed groups. The LTTE plays a dual role. On the one hand, it is an organization with effective control over a significant stretch of territory, engaged in civil planning and administration, maintaining its own form of police force and judiciary. On the other hand, it is an armed group that has been subject to proscription, travel bans, and financial sanctions in various Member States. The tension between these two roles is at the root of the international community's hesitation to address the LTTE and other armed groups in the terms of human rights law. The international community does have human rights expectations to which it will hold the LTTE, but it has long been reluctant to press these demands directly if doing so would be to "treat it like a State."

27. It is increasingly understood, however, that the human rights expectations of the international community operate to protect people, while not thereby affecting the legitimacy of the actors to whom they are addressed. The Security Council has long called upon various groups that Member States do not recognize as having the capacity to formally assume international obligations to respect human rights.¹⁶ The LTTE and other armed groups must accept that insofar as they aspire to represent a people before the world, the international community will evaluate their conduct according to the Universal Declaration's "common standard of achievement".

28. Human rights law contributes two critical elements to the legal framework regulating the use of lethal force in this context. The first is that lethal force may never be used to suppress human rights. It violates human rights law to kill people for exercising their rights to freedom of expression, to peaceful assembly, to freedom of association with others, to family life, or to participate in public affairs and to vote. While the illegality of killing to suppress rights may appear obvious, it goes to the heart of many of the violations occurring in Sri Lanka.

29. The other element contributed by human rights law is that the intentional use of lethal force in the context of an armed conflict is prohibited unless strictly necessary. In other words, killing must be a last resort, even in times of war.

30. In an armed conflict, human rights law is complemented by the additional regime of humanitarian law. In 1959 the Government ratified the Geneva Conventions of 12 August 1949, and the LTTE has formally taken upon itself obligations under the Geneva Conventions and its Additional Protocols.¹⁷

¹⁴ Consistent with this analysis, the LTTE created North East Secretariat on Human Rights released the final version of the *NESOHR Charter* of human rights in Oct 2005. Its stated objectives include promoting respect for human rights "according to the Universal Declaration of Human Rights and the International Covenants on human rights ...", available at <http://nesohr.org/charter/Charter-English.PDF>

¹⁵ E/CN.4/2005/7, para. 76.

¹⁶ SC Res. 1265 (1999), preamble; SC Res. 1193 (1998), paras. 12, 14; SC Res. 814 (1993), para. 13.

¹⁷ This acceptance is recorded in the *Letter of Authorization for the Filing of a Legal Action and Representation of the Liberation Tigers of Tamil Eelam in the Judicial Review of the Terrorist Designation of the Organization Pursuant to Section 219 of the Anti-Terrorism and Effective Death Penalty Act of 1996* to the U.S. Court of Appeals, District of Columbia Circuit, from the LTTE International Secretariat, Nov. 6, 1997. The letter notes, inter alia, that the LTTE "never targets civilians who 'take no active part in the conflict.'"

All parties to the conflict are bound to comply with the terms of common article 3 of the Geneva Conventions of 1949 and of customary international humanitarian law. The Karuna group is a party to the conflict within the meaning of humanitarian law, regardless of whether it constitutes a paramilitary within the meaning of CFA article 1.8 and regardless of any support the Government may be providing. However, depending on the character of such support, the Government could also bear legal responsibility for its violations of humanitarian law.

31. Common article 3 prohibits the murder of persons taking no active part in hostilities. This prohibition is both more limited than sometimes hoped and more expansive than sometimes realized. It leaves the use of lethal force in the midst of combat - the "conduct of hostilities" - largely unregulated. However, in other contexts, it protects combatants as well as civilians, prohibiting the murder of all "[p]ersons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause". The killings that have taken place in which a person is abducted and subsequently killed violate this rule without exception. The bedrock legal principle that persons who are captured have a right to humane treatment should not be obscured by any implication that their execution is worse if they are civilians.

32. Motorcycle drive-by shootings have been a common tactic. It might be argued that when such a shooting occurs in territory controlled by an opposing party, it is governed by the principle of distinction whereby soldiers and military members of armed groups may be targeted but civilians may not be.¹⁸ In most of these incidents, however, the persons killed have been going about their daily lives rather than taking part in combat, and it is more appropriate to view such killings as murders within the meaning of common article 3. Moreover, regardless of how these killings might be conceptualized in humanitarian law, the prohibition on killing unless it is strictly necessary continues to apply under human rights law. The grenade attacks that became increasingly common in late 2005 raise further issues. While these too have generally constituted murders violating common article 3, they would often violate the prohibition of indiscriminate attacks even were they considered to fall within the conduct of hostilities.

33. The CFA has played a crucial role in ensuring the right to life in Sri Lanka. This role should not, however, lead to a de-emphasis of the requirements of human rights and humanitarian law. This is partly because the CFA binds only the Government and the LTTE; whereas, human rights and humanitarian law apply to all armed groups. It is also because the CFA affirms the international legal obligations of the parties only with respect to "civilians". In contrast, the right to life of "combatants" is only indirectly protected by the prohibition of offensive military operations.¹⁹ Under international law, all Sri Lankans, regardless of whether they are civilians, are bearers of the right to life. This right must be respected by all the parties quite apart from the obligations of the Government and the LTTE to each other. Human rights law, humanitarian law, and the CFA are overlapping and mutually-reinforcing frameworks that together serve to protect human lives.

¹⁸ Rule 1 of the ICRC's study on *Customary International Humanitarian Law* (J.M. Henckaerts and L. Doswald-Beck, eds., 2005) p. 3 states that "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians."; art. 13 (3) of Protocol II provides that "Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities." And Art. 8 (2) (e) (i) of the Rome Statute provides that it is a war crime to "Intentionally direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities".

¹⁹ CFA art. 1.2.

C. The failure of police investigation in the context of the ceasefire

34. The Government has failed to effectively investigate most political killings. This is due both to the police force's general lack of investigative ability and to other impediments. When I asked police officers why a particular killing had not been resolved, I generally received the same answer: the suspect escaped into an LTTE-controlled area. While it is true that the police are unable to enter these areas,²⁰ two observations are in order. First, in many cases the belief that the suspect was in an LTTE-controlled area was speculation inasmuch as no investigation had been carried out. Second, the police have lost much of their appetite for serious investigations of political killings. Many officers operate under the impression that investigating any crime presumed to involve the LTTE would imperil the ceasefire. These cases are simply too hot to handle. The Government should unambiguously instruct the police that, while they are obligated not to violate the CFA, they continue to be obligated to investigate crimes and apprehend suspects within the terms of the law, regardless of who those suspects might be.

35. This has interfered with criminal investigations. Government officials brought several instances to my attention. In September 2005, government police entered an LTTE-controlled area in Mannar in pursuit of a suspected paedophile. The police officers were captured by the LTTE, and three were still being held in early January 2006. In the meantime, the suspect escaped and was detained only when he turned himself in to the police in Colombo. A more prosaic incident was raised by the police in Welikanda: they had reason to believe that a man had robbed at least five cars, but he escaped into an LTTE-controlled area, ending the investigation. A representative of the "Tamil Eelam Police" provided me with another example. He related that two years ago there had been a murder in an LTTE-controlled area of Mannar. The persons suspected of having committed this murder escaped into Government-controlled territory and were subsequently captured by the government police. It was his understanding that, for lack of evidence, the suspects were released by the Government within a month. Other similar cases were brought to my attention by victims, and the lack of cooperation in policing appears to be a persistent problem that adversely affects the protection accorded the population from crime.

36. The parties have a common interest in controlling crime and, as a confidence-building measure, the Government and the LTTE should initiate and regularize contact between the government police and the policing forces that operate in LTTE-controlled areas. This contact would allow access to evidence, information, and detainees. I raised this possibility with the Inspector General of Police (IGP) and the head of the "Tamil Eelam Police", himself a former government police officer. I sensed that both had political reservations but also understood the limitations the current arrangement imposed on their work. It is my view that such contact might be quickly and helpfully initiated as a pragmatic confidence-building measure. If appropriate, the Sri Lanka Monitoring Missions (SLMM) could assist in facilitating this dialogue.

37. The police also lack sufficient linguistic ability and cultural sensitivity to interview witnesses and gather the information required to effectively investigate killings that occur within the Tamil and

²⁰ The structural constraints the CFA places on police work must also be overcome. While the CFA's provisions restricting the movement of Government "armed forces" and LTTE "fighting formations" into areas controlled by the other party do not expressly address police officers, the understanding of the parties has given these provisions a prudent breadth. (CFA arts. 1.4-1.7.) It is clear that both parties have genuine security concerns regarding the movement of all armed personnel into their areas of control and understandable that police officers do not, in practice, have access to areas controlled by the opposing party.

Muslim communities.²¹ The political killings have disproportionately affected these communities, both of which speak Tamil. The police force, however, is only 1.2 per cent Tamil and 1.5 per cent Muslim, and Sinhala officers seldom speak Tamil proficiently. The only practical way for the police to acquire a larger number of fluent Tamil speakers is to recruit Tamil and Muslim officers.²² While it was sometimes argued that the low proportion of Tamils in the police force was inevitable, given the fear that the LTTE would target Tamil officers, it was acknowledged by informed actors that if the Government made such recruitment a priority, it could be achieved with meaningful financial incentives and preferences for promotion.

D. Problems and possibilities in the role of the Sri Lanka Monitoring Mission

38. The CFA established the Sri Lanka Monitoring Mission (SLMM) to verify compliance with the terms of the ceasefire. It has played a difficult but vital role in maintaining the confidence of the parties. However, the public does not share this confidence. In numerous meetings, members of civil society expressed frustration with the SLMM for at least three reasons: (a) its narrow interpretation of its verification mandate to exclude investigation; (b) the conflict of interest inherent in its link to the facilitator of the peace process; and (c) the inadequate information about violations that it makes public.

39. The SLMM draws a strong distinction between “monitoring” and “investigation”. It forwards complaints to the parties, elicits their responses, and attempts to determine whether a violation of the CFA occurred. However, as the SLMM has stated publicly, it “is not here to conduct police investigations”.²³ The SLMM explained to me that it continually presses the police to conduct effective investigations but is aware that these remain ineffective. The SLMM understands this limited role to reflect the parties’ tacit consensus on its mandate. However, the CFA does not preclude a broader investigative role for the SLMM and it makes the Head of the SLMM “[t]he final authority regarding interpretation of this Agreement”.²⁴ It would behove the SLMM to advance a less restrictive interpretation of its mandate, as a means of shoring up the ceasefire with more comprehensive and public monitoring and reporting.

40. The SLMM steadfastly insists that it is completely independent of the peace process’s facilitator, Norway. This is not borne out by the perception of the public, the experience of the parties, or the terms of the CFA. Under the CFA, the Government of Norway appoints the head of the SLMM, who in turn reports to that Government.²⁵ This arrangement gives Norway a conflict of interest. On the one hand, in its relationship with the SLMM it is charged with ensuring the disinterested verification of violations; on the other hand, as facilitator of the peace process, it has an interest in preventing ceasefire implementation issues from disturbing the broader peace process. For a public that needs accountability, this conflict of interest is disturbing. For the Government of Norway which has contributed so much, it is unnecessary.

²¹ Note also the finding of the National Human Rights Commission that the paucity of Tamil speaking officers “remains a major grievance [that] is linked to the deteriorating security situation”. *The Human Rights Situation in the Eastern Province: Update* (April 2005), p. 24.

²² The IGP noted that there were already financial incentives for Sinhala officers to learn Tamil and that he had introduced a program of three-months training in Tamil for new recruits. These measures have been inadequately implemented. The current financial incentives are based, not on demonstrating a high level of proficiency, but on completing a relatively short course. The language-training plan holds greater potential, but because there has been no regular recruitment since 2001, it remains a theoretical innovation.

²³ SLMM press release, 8 March 2005.

²⁴ CFA art. 3.2.

²⁵ CFA arts. 3.2–3.3.

41. Since it is the general public that has borne the brunt of the ceasefire violations it is unsurprising that so many complaints to the SLMM come from private individuals. The SLMM does not, however, provide public accountability. The complaints are confidential, going only to the parties, and the SLMM communicates to the public only aggregate statistical data. Most ceasefire violations implicate human rights and an effective monitoring arrangement must provide accountability for the victims as well as for the parties. This need is felt deeply by victims, civil society organizations, and politicians across the political spectrum.

E. Options for international monitoring

42. Many representatives of civil society pressed on me the need for international human rights monitoring. This proposal was motivated by dissatisfaction with the accountability provided by the SLMM and the police. Some favoured a strengthened SLMM while others made the case for a completely new mechanism.

43. Arguments made by the latter group included:

- Ceasefire monitoring is inherently bound up in the peace process and even de-linking the facilitator from the SLMM cannot remove this conflict of interest;
- Public findings of responsibility for violations have little impact on the LTTE or the support it enjoys;
- Conflict-related human rights violations occur frequently throughout the country, but SLMM field offices are located only in the north and east;²⁶
- The SLMM's institutional inertia and low public standing call for an entirely new initiative;
- Human rights violations by the Karuna group must be investigated and exposed, but it is not bound by the CFA.

44. A range of candidates was identified as possible providers of a new human rights monitoring role. Foremost among these was the United Nations, which has both an established expertise in human rights monitoring and a lack of political involvement in the peace process. Other candidates were the Sri Lanka Donor Co-Chairs, some unspecified but non-Nordic country, and a "high-level panel" of human rights experts. There was a general consensus that, even were its resources greatly increased, the Sri Lanka Human Rights Commission would not be an appropriate body to investigate political killings countrywide.²⁷ Few of my interlocutors felt that effective monitoring could be conducted without the participation of the LTTE.

45. A strengthened SLMM could achieve the following goals:

- Effective monitoring requires some investigative capacity, involving at least expanded SLMM staffing, the addition of persons with police training, and a significant number of Sinhala and Tamil interpreters;
- Effective investigations will involve protection for witnesses;
- The publication of information is indispensable. The current practice of publishing aggregate statistics and occasional press releases is insufficient and conducive to rumours and misinformation. The details of the alleged incidents, the results of investigation, and the basis for the monitoring mechanism's determination of responsibility must be made public (even if information is redacted to protect individuals);

²⁶ See CFA art. 3.6.

²⁷ Following the 2003 peace talks in Hakone, it was envisioned that, with international support, the HRC would play the lead monitoring role. However, the HRC itself has stated "its belief that no national or regional human rights entity will be able to effectively monitor and implement human rights standards in the north and the east. No organization or individual enjoys that kind of universal authority and legitimacy." Human Rights Commission of Sri Lanka, *The Human Rights Situation in the Eastern Province (Dec. 2003)*, p. 33.

- The inclusion of more human rights experts in the SLMM especially to assist in evaluating compliance with CFA article 2.1. The designation of such an official in each field office and in headquarters would have important symbolic and practical value.

46. These priorities may be realized by strengthening the SLMM without renegotiating its mandate under the CFA. Government officials and LTTE representatives alike emphasized that they would prefer this option. It would constitute an important and immediate confidence-building measure, but could not be achieved without significantly increased resources provided by the international community and a commitment by the parties to more effective monitoring.

47. From a human rights perspective, the goal of strengthening SLMM's human rights role is clearly not sufficient in itself in the medium-term.²⁸ For pragmatic reasons it seems to be the best interim measure, but before long significantly more will be needed. If the ceasefire fails, and that now appears to be an all too real possibility, the SLMM's role will be in question and there will be an urgent and pressing need to establish a full-fledged international human rights monitoring mission. Equally, if progress is made towards a longer-term settlement, more comprehensive monitoring will be needed of its human rights dimensions.

F. Violations must be unequivocally denounced

48. In my discussions with Mr. Thamichelvan, chief of the LTTE political wing, I stressed the difference between denying responsibility and denouncing attacks, and called on the LTTE to signal unequivocally its rejection of acts of violence. He responded by arguing that the LTTE is a movement of the Tamil people and that it cannot rightly denounce the actions of pro-LTTE civilians. This view is simply not compatible with the leadership role claimed by the LTTE. If it is serious about bringing an end to the widespread violation of the right to life, it must unequivocally denounce and condemn killings. This is a confidence-building measure that is essential if the CFA is to be understood to contain the essential aspects for ensuring human rights.

49. The Government's ambivalence toward the Karuna faction must also be addressed. It must fully accept that killings violate fundamental human rights that the Government is legally obligated to ensure. As confidence-building measures to that end, the Government should both publicly renounce any involvement with the Karuna group, unequivocally denounce and condemn those killings for which the Karuna group is alleged to be responsible, and demonstrate its determination to investigate and prosecute such cases.²⁹

²⁸ However, in evaluating criticisms of the limited human rights dimension of the SLMM's mandate, it should be borne in mind that the limited "jurisdiction" of the Mission does not restrict in any way the pre-existing and continuing legal obligations of both the Government and the LTTE under human rights and humanitarian law. Similarly, it would be unwise to attach too much importance to the fact that human rights are not affirmed or codified in the CFA. The CFA does, after all, prohibit both "hostile acts" against the civilian population and all "offensive military action" regardless of its target. Because killings are the single most important element in undermining respect for the full range of human rights of Sri Lankans today, full compliance with the CFA would go very far in restoring peace and the enjoyment of human rights.

²⁹ For instance, the report of a Presidential Commission appointed to investigate the ambush and killing of LTTE leader Kausalyan in February 2005, along with other attacks in the east, has never been made public.

III. DEATHS IN CUSTODY AND IMPUNITY

A. Introduction

50. Significant levels of police brutality and impunity were reported to me by a wide range of sources. The underlying causes are not difficult to discern. In the course of more than three decades of civil strife and violence, the police force has been transformed into a counter-insurgency force. More than two thirds of today's police officers belong to the "reserve" rather than the regular force and most of these have never received significant training in criminal detection and investigation.³⁰ One government official told me bluntly, "Police officers holding positions today were recruited as manpower - they do not do or know how to do police work."³¹ To make matters worse, police operations during the armed conflict were subject to "emergency" legislation that permitted prolonged detention without habeas corpus, the admission into evidence of confessions which would be inadmissible under the ordinary law of evidence, and the disposal of the bodies of persons killed by the armed forces or the police without a formal inquest. It is regrettable that many of these provisions are now back in force in emergency regulations promulgated since the assassination of Foreign Minister Kadirgamar.³² Today, too many police officers are accustomed to "investigating" by forcibly extracting confessions and to operating without meaningful disciplinary procedures or judicial review.

51. The lessening of tensions following the February 2002 ceasefire provided an ideal opportunity to transform the police force and introduce effective accountability measures. This has happened to some extent. In 2002 the Constitution was amended to establish an independent National Police Commission (NPC) with power over police discipline and a mandate to respond to public complaints. The NPC and the Human Rights Commission (HRC) have undertaken promising initiatives - but their efforts will be thwarted without political support and adequate resources. The other half of the problem is the broader deficiency of the Sri Lankan system of criminal justice. Progress requires transforming the culture and practices of police, prosecutors, and the judiciary. This is a daunting but not a hopeless task - these institutions have functioning bureaucracies with no small number of sophisticated and well-intentioned officials.

52. In Sri Lanka no single sweeping reform will transform the system of justice; instead, many relatively small problems must be solved. Such incremental reforms will be achievable only once their necessity is recognized. Today most Sri Lankans - in and out of Government - are complacent about the criminal justice system. Reform will require the recognition of uncomfortable truths. A single-digit conviction rate is unacceptable. And the conviction of only a handful of government officers implicated in the killing of Tamils is a travesty that has deeply corrosive effects. Recording confessions extracted with torture bears no relation to criminal investigation. An ineffective justice system creates a climate of public opinion conducive to condoning police torture and the summary execution of suspects. If these principles are recognized, and if the current sense of complacency is

³⁰ Of the 65,000 policemen and women, 20,000 belong to the regular police and 45,000 to the reserves.

³¹ See also the report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces (1997).

³² Problematic provisions of the Prevention of Terrorism Act, the Emergency Regulations Act, and emergency regulations previously in force are discussed in the report of my predecessor on his visit to Sri Lanka in 1997. E/CN.4/1998/68/Add.2, paras. 71-90. CFA Article 2.12 provides that, "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."

replaced with a sense of urgency, Sri Lankans face no insuperable obstacles to expeditiously establishing an effective system of democratic policing and criminal justice.³³

B. Deaths in police custody

53. The police are now engaged in summary executions, which is an immensely troubling development. Reports, unchallenged by the Government, show that from November 2004 to October 2005 the police shot at least 22 criminal suspects after taking them into custody. It is alleged that the use of force became necessary when, after having been arrested, presumably searched, and (in most cases) handcuffed by the police, the suspects attempted either to escape or to attack the officers. In all cases the shooting was fatal, and in none was a police officer injured. The Government confirmed that in none of these cases had an internal police inquiry been opened. The reason proffered was that no complaints had been received.³⁴ The pattern of summary executions that emerges demands a systematic official response that brings those responsible to justice and discourages future violations.

54. The other main cause of deaths in police custody is torture.³⁵ **(Deaths are an inevitable side-effect of the widespread use of torture.)**³⁶ Government officials were generally candid in recognizing that torture is widespread. While some officials said that the problem's magnitude had been exaggerated, they did not dispute that in Sri Lanka's police stations physical mistreatment is frequently used to extract confessions from suspects, sometimes resulting in death. However, this recognition of torture's prevalence was often accompanied by a complacent and fundamentally tolerant attitude. One high-ranking official acknowledged to me that torture was widespread and problematic but then proceeded to note that while he could understand why police tortured "in the line of duty", he felt it was completely inexcusable for police to torture in pursuit of private ends. This casual acceptance of torture is highly problematic. It also downplays the systemic nature of the problem. There is a nationwide pattern of custodial torture in Sri Lanka, and the Government has a legal responsibility to take measures to bring that pattern to an end. The vast majority of custodial deaths in Sri Lanka are caused not by rogue police but by ordinary officers taking part in an established routine. It is essential that government officials accept that disrupting this pattern of custodial torture is a necessary step not only in ensuring the human rights of those arrested but of retaining public trust and confidence.

55. Reforms to prevent deaths in custody must take account of the systemic causes. Those include, in particular, the lack of regular police training given to many officers, the credibility still accorded to coerced confessions, the preference for delivering instant "justice" given the weak investigative

³³ In this respect it is highly problematic that the Sri Lanka Police are now subject to the jurisdiction of the Ministry of Defence, Public Security, Law and Order (see <http://www.mod.gov.lk/role.html>). Inasmuch as the police are responsible for investigating crimes committed by the military, this arrangement limits the independence of these investigations. And inasmuch as the militarization of the police is part of the problem, this reorganization is surely not a helpful part of the solution.

³⁴ The Civil Rights Movement of Sri Lanka, a non-governmental organization, has brought these cases to the attention of the Human Rights Commission (HRC), which has entrusted a retired judge with an enquiry into some of the cases. The HRC enquiry is in course at the time of writing.

³⁵ A number of allegations of torture in police custody in Sri Lanka resulting in the death of the torture victim have been recorded by the Special Rapporteur on extrajudicial, summary or arbitrary executions. See, e.g., E/CN.4/2005/7/Add.1, paras. 649-53, 661-65; E/CN.4/2003/3/Add.1, paras. 461, 462 (response at E/CN.4/2004/7/Add.1, para. 538), 463 (response at E/CN.4/2004/7/Add.1, para. 539). See also the letter of 22 November 2005 included in E/CN.4/2006/53/Add. 1.

³⁶ During my visit, I was informed that between 1 January and 30 October 2005 the National Police Commission had received 221 complaints concerning assault and torture by the police, six of which resulted in death. The prevalence of custodial torture has been extensively documented by the international human rights system. The Special Rapporteur on Torture recorded 52 allegations in 2003 (E/CN.4/2004/56/Add.1) and the 76 allegations in 2004 (E/CN.4/2005/62/Add.1). And in its Concluding observations on the second periodic report of Sri Lanka (CAT/C/LKA/CO/1/CRP.2) (23 November 2005), § 16, the CAT Committee noted the "continued well-documented allegations of widespread torture and ill-treatment [...] mainly by the State's police forces".

capacities and proclivities of the police, and the near-complete failure to prosecute or even discipline police who commit serious human rights violations.³⁷

56. The lack of investigative capacity is due to a lack of police training and resources, ineffective forensics, and an unwillingness to ensure the security of witnesses. The Judicial Medical Officers (JMOs) who carry out most autopsies typically lack the requisite vehicles, equipment and specialized training. The range of obstacles to a prompt and effective examination means that too much evidence simply bleeds out onto the floor. Investigations are also impeded by the lack of effective witness protection. This makes witnesses especially reluctant to provide evidence on crimes committed by police officers, and led several interlocutors to joke that it would be better to be a victim than a witness. Inadequate investigations result in evidence insufficient to sustain a conviction. Various police and forensic training programmes have been supported through development assistance initiatives. In the absence of any detailed evaluations, my impression is that they have been worthwhile but regrettably limited in scope.

57. The frequent failure to prosecute police accused of responsibility for deaths in custody is due partly to deficiencies in internal investigation. Complaints about police misconduct are received by the Inspector General of Police (IGP), who selects either the Special Investigations Unit (SIU) or the Criminal Investigation Department (CID) to carry out an internal investigation. Internal investigations into serious incidents typically last from two to four years, and it seems likely that by no means all such complaints are investigated at all. When grave misconduct, such as torture or murder, has been alleged, the investigation is generally conducted by CID. The primary role of CID is assisting local police, and for it to also conduct internal investigations undermines both their actual effectiveness and outside perceptions of impartiality. Reform is needed, and it may be hoped that this can be spearheaded by a strong National Police Commission.³⁸

58. Cases that are referred to the Attorney-General seldom lead to convictions. This is partly due to the lack of evidence gathered, and partly to a judiciary that moves cases along slowly, sometimes tolerating years of delay preceding verdicts. One government official suggested that the judiciary was so overloaded that judges would seize on any plausible excuse to allow a postponement and cut the caseload. He pointed out that if indictments reliably resulted in interdiction, as the law requires, police officers and other government officials would be less likely to seek dilatory adjournments. I

³⁷ States have substantial legal obligations in this context. While the primary obligations and corresponding sanctions of international human rights law are placed on *States*, States are also required to impose sanctions on *individuals*. In general terms, the ICCPR obligates States to respect and ensure the right not to be arbitrarily deprived of one's life. More specifically, the State is required to take all necessary steps, including legislative and other measures, to give effect to the right to life and to provide an effective remedy for violations. One measure that is always required is to criminalize serious violations and to investigate, prosecute, and punish responsible individuals. As the Human Rights Committee has commented, "failure to bring to justice perpetrators of ... violations could in and of itself give rise to a separate breach of the [ICCPR]". (Human Rights Committee, General Comment 31, "Nature of the Legal Obligation on States Parties to the Covenant" (2004), CCPR/C/21/Rev.1/Add.13; CHR Resolution 2004/37, para. 18.) When an abuse is perpetrated by a private individual, the State is responsible if it failed to exercise "due diligence" in preventing that abuse, but when an abuse is perpetrated by a Government agent, the State is also responsible. (E/CN.4/2005/7, paras. 71-75.) In cases of custodial death, the State's two-fold obligation - to ensure as well as respect - justifies the presumption that the State, whether by act or by omission, is legally responsible. (*Dermot Barbato v. Uruguay*, HRC, No. 84/1981 (1990), para. 9.2.) When the State is responsible, in addition to its other obligations, it must make reparations to the victim's family. This legal framework provides not only a yardstick for assessing current practices but also a framework for considering possible reforms.

³⁸ Notably, the police disciplinary process is least effective when dealing with more senior officers. Statistics relating to "departmental lapses" show that disciplinary proceedings are almost exclusively initiated against low-ranking officers. There is a determined unwillingness to hold police officers with command responsibility accountable for torture and killings engaged in by their subordinates, whether at the disciplinary or at the criminal level. This applies to both internal and external accountability mechanisms. In 2001, constables were found responsible for 86% of "departmental lapses"; superintendents were found responsible for only 0.04% of such lapses. (*Sri Lanka Administration Report, 2001*, Appendix 1, Table 6.)

regret that I did not have the opportunity to meet with judges, but I note the widespread perception that the courts manage cases inefficiently. Prosecutors must also share the blame for the low conviction rates. The Attorney-General has become increasingly active in prosecuting police torture cases, and he informed me that there have been 64 indictments, 2 convictions, and 2 or 3 acquittals (most cases are pending). Time will tell whether this is the beginning of accountability or a further exercise in shadow-boxing.³⁹

C. The corrosive effects of impunity

59. The failure to effectively prosecute government violence is a deeply-felt problem in Sri Lanka. The paucity of cases in which a government official - such as a soldier or police officer - has been convicted for the killing of a Tamil is an example. Few of my interlocutors could name any such case, with the exception of Krishanthi, in which six soldiers and a policeman were convicted.⁴⁰ The cause of this impunity is unclear. The result, however, is clear: many people doubt that their lives will be protected by the rule of law.

60. The State's failure to convict anyone for the Bindunuwewa massacre is an example of this impunity: on 25 October 2000, 27 Tamil men were beaten, cut, and trampled to death by a mob while they were in custody and "protected" by roughly 60 police officers, but not a single private person or public official has been convicted. I had previously corresponded with the Government concerning this case⁴¹ and, during my visit, I met with the mothers of Bindunuwewa victims, a survivor, and an attorney for the families.

61. That there was both State and individual criminal responsibility is undeniable, and supported by multiple government reports.⁴² However, not a single person has been convicted of any crime related to the events at Bindunuwewa.⁴³ I was offered various explanations for this failure of justice: an

³⁹ I should note that the deficiencies in the system of criminal justice are not mitigated by the more effective process for vindicating the fundamental rights guaranteed by the Constitution, including the right to life and to freedom from torture. In the last two years, the Supreme Court has awarded compensation in a number of such cases. But while reparations are an important component of effective remedies, they are not a substitute for prosecution. In Sri Lanka the Court determines what portion of the compensation shall be paid by the State and what portion by the convicted officer. In one prominent case, involving the killing of WMGM Perera, less than a quarter of the compensation awarded was to be paid by the persons responsible, while the State paid the rest. The State's contribution undercuts the deterrent effect of the Court's fundamental rights jurisdiction and further emphasizes the importance of effective prosecution and punishment in cases of official torture and summary execution.

⁴⁰ The case involved the 1996 rape and murder of an 18 year old high school student and the murder of family members who went looking for her.

⁴¹ Letter of 10 August 2005, in E/CN.4/2006/53/Add. 1.

⁴² On 8 March 2001, the government established a Commission of Inquiry into the killings. The Commission faulted the local police commanders (identified by their rank and name) for failing to protect the detainees from the attack in spite of prior knowledge of a planned demonstration by local villagers in front of the detention centre, and for their failure to take any disciplinary action against their subordinates for failing to protect inmates under their control. A report of the National Human Rights Commission found no evidence to suggest the incident had been "an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack". (Human Rights Commission of Sri Lanka, *Interim Report on the Incident at the Bindunuwewa Rehabilitation Centre, Bandarawela - 24 & 25 October 2000*, 1 Nov. 2000, p. 16.) The Commission also found that the sixty or so police officers had "been guilty of a grave dereliction of duty in not taking any effective action to prevent the acts of violence ...". *Ibid.*, p. 12.

⁴³ Following autopsies on the victims' bodies the police arrested 56 suspects among both villagers and police officers. While the remains of 17 of the victims were identified at the mortuary by family members, the families of the remaining 10 victims refused to identify their loved ones among the badly mangled remains. In the course of my visit, I met the mothers of four of the latter group. In the immediate aftermath of the massacre they provided blood samples in order to match their DNA with that of the unidentified victims, as requested by the authorities. According to the authorities, the samples were sent to a DNA laboratory in New Delhi. According to the information presented to me the authorities have still not disclosed to these mothers the results of the DNA matching. This is an issue which the Government should clarify immediately. Prosecutors charged 41 persons with various crimes, including murder. Of those, 23 were released on the grounds that there was no case to answer. The remaining 18 were tried and 13 of them acquitted for lack of evidence. On 1 July 2003, the Colombo High Court found the remaining five individuals guilty and sentenced them to death. The Supreme Court subsequently quashed the conviction of one of the five, a police sub-inspector from Bandarawela, on grounds of "lack of evidence". On 27 May 2005, the Supreme Court acquitted the remaining four accused, again citing lack of evidence. The two commanding officers identified in the Commission of Inquiry report have neither been disciplined nor criminally prosecuted.

inadequate police investigation led to insufficient evidence for conviction; judicial bias or corruption produced acquittals; the complexity of the case forced the prosecution to rely on novel legal theories. I do not have the information available to form a judgement, but the bottom line remains that this is a deeply unsatisfactory outcome and one which is all too consistent with fears of impunity for those who kill Tamils.⁴⁴

D. Independent oversight bodies

62. The shortcomings of law enforcement and the justice system clearly require reforms of the relevant institutions. But independent bodies can play an important role in driving the reform process. While both the National Police Commission and the Human Rights Commission) have made valuable contributions, they lack resources and, even more importantly, political support.

63. The HRC has been acting as an independent oversight body for complaints concerning police conduct since 1997.⁴⁵ Its mandate is to investigate and respond to violations of fundamental rights under the Constitution and human rights under international law, including the right to life. It can receive complaints, and its investigations are facilitated by statutory powers to, for instance, pay unannounced visits to police stations and other places of detention. It has exercised its mandate with regard to torture cases, and is currently conducting an inquiry into the police shooting of criminal suspects. While the Commission lacks the power to impose remedial and preventative measures, it is empowered to recommend prosecutions and to refer cases to the courts. While it has the potential to play a crucial role, it lacks the necessary resources. Thus, for instance, it does not have enough vehicles to respond to all major mistreatment complaints by visiting detention places.

64. The NPC was established in 2001 by the Seventeenth Amendment to the Constitution. While it has a mandate to conduct independent investigations⁴⁶ and effective disciplinary procedures for police misconduct, its long-term effectiveness is threatened by the lack of a strong constituency supporting

⁴⁴ For most Sri Lankans, the legal ins-and-outs of any particular case are, understandably, less notable than the broader patterns of justice they perceive. In this regard the impunity in *Bindunawewa* stands in stark contrast in the public mind to the speedy and effective investigation following the November 2004 assassination of Sarath Ambepitiya, a High Court judge. Within seven months the investigation and trial were completed and convictions obtained. Success in the latter case holds two important lessons. Firstly, the efficiency of the process meant that although some of the witnesses were reportedly threatened, none of them withdrew, changed testimony, or was injured, unlike the situation in a great many other criminal cases. Secondly, sophisticated forensic evidence, including DNA evidence, was reportedly crucial in securing the conviction. The *Ambepitiya* case demonstrated that the Sri Lankan police, prosecution and judiciary are capable of delivering justice to the victims of extrajudicial killings. But in the public mind it seemed also to show that the speed and efficacy of justice depend on the identity of the victim rather than the difficulty of investigating the crime. There is an urgent need to dispel this perception with reforms that ensure timely and effective justice for all.

⁴⁵ The HRC was established pursuant to the Human Rights Commission of Sri Lanka Act of August 1996 available at <http://www.hrc-srilanka.org/docs/HRActe.pdf>. In 2002 it was brought under the Seventeenth Amendment to the Constitution.

⁴⁶ Apart from its disciplinary powers, discussed below, the NPC has an investigate mandate to “entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance” with the law. (Constitution, Article 155(G)(2).) The NPC’s Public Complaints Investigation Unit (PCIU) has been operating since October 2004. While the PCIU remains in its infancy, the plan is to take a multi-pronged approach. A centralized office will investigate especially serious complaints, such as summary execution and torture, determine disciplinary sanctions, and report cases to the Attorney-General as appropriate. Other complaints, especially of police inaction, will be resolved by staff in the field engaging directly with local police stations and still others will be delegated to the IGP. This approach promises to be fruitful if the NPC receives the resources and political support it needs.

its independence. At one level this is unremarkable, given that many interlocutors reported a long history in Sri Lanka of politicians influencing appointments, transfers and promotions of police. Thus, vesting administrative powers over the police in an independent body promised to replace patronage and politics with professionalism. While most members of civil society and Government that I talked with had favourable impressions of the NPC's efforts thus far, some also feared that, in struggling to insulate the police from politics, it would fall victim to politics itself.⁴⁷

65. The gap between theory and practice is illustrated by a turf war that played out over much of 2005. In March the NPC provided the IGP with a list of 106 officers to be interdicted (suspended), pursuant to the Establishment Code, due to their indictments for torture. I received varying accounts of the subsequent events from persons inside and outside of Government. Some insisted that no one had yet been interdicted; others that some had been interdicted but only after a delay of many months. According to the IGP, he did not move immediately because of the need to double-check the list provided by the NPC against his own files to avoid any errors. He reported to me that he found a few such errors and then proceeded to interdict the remaining officers. To have interdicted the officers based solely on the NPC's list would, he insisted, have compromised the due process rights of the officers. But this reflects a fundamental misunderstanding of the institutional structure set up by the Seventeenth Amendment. The IGP was given a purely consultative role subordinate to the NPC's power to discipline officers; while the NPC may well make mistakes, those are its responsibility.⁴⁸ Unless the NPC's independence is ensured in practice, its great potential will remain unrealized.

IV. SECURING FOR THE FUTURE THE SUCCESSES OF TODAY

66. The attention paid to the significant violations of the right to life that are being perpetrated in Sri Lanka today should not distract from what has been achieved. During the JVP insurgencies of 1971 and 1989 and earlier phases of the conflict with the LTTE, tens of thousands of persons disappeared or were killed in military operations. The important commitment of both the Government and the LTTE to a cessation of hostilities and a peace process should not be overlooked. Since the ceasefire was signed, the total number of killings related to the conflict has remained in the hundreds. Progress has been achieved not only in relation to the conflict but also in relation to ordinary policing. Institutional cultures accepting of extrajudicial executions, disappearances and torture are being changed for the better.

67. Even while the pace of change has sometimes been slow and half-hearted, it would be truly tragic if the mass violations of the past were reprised.

68. With that in mind, I was very disturbed to receive reports during my visit which appeared to indicate a re-emergence of the pattern of enforced and involuntary disappearances that has so wracked Sri Lanka in the past. During my visit to the east, I received complaints of Tamil youths being picked up by white vans (allegedly with involvement by the security forces), and of two Tamil men from the east abducted from a trishaw shortly after being released by the police in Colombo and later turning

⁴⁷ I met only with the NPC's secretariat since the Commissioners' mandates had expired and new members had not yet been appointed. While this was due to a political stalemate blocking the appointment of members of the Constitutional Council, concern was expressed by some that there might be a lack of political will to support the NPC and the other independent commissions created by the Seventeenth Amendment. At the time of writing, this worrying situation persisted. "Govt keen to resolve CC impasse", *Daily News*, 17 December 2005.

⁴⁸ "The appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, shall be vested in the Commission. The Commission shall exercise its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police." Constitution, Article 155(G)(1)(a).

up dead. During the month of December, the Human Rights Commission of Sri Lanka received 16 complaints of disappearances from the north of the country. I am seeking further information on these cases and will pursue them with the relevant authorities, but I flag them here as an alarming warning that the escalating security situation could trigger a reversion to abusive practices of the past. I urge the Government to respond to these cases promptly and effectively and ensure that all the necessary safeguards with respect to detention are fully observed.

69. It is true that only knowledge can prevent history from repeating itself. Efforts to document past violations are critical for the future. While the Government has established several commissions of inquiry into disappearances, much work remains to be done in both documentation and publicity. I spoke with a researcher at the Human Rights Commission who has been compiling a comprehensive database of disappearances, and I also spoke with staff of the North-East Secretariat on Human Rights who have been documenting the disappearances that occurred in 1990 in Mandaitivu, Allaipiddy and Mankumban. These efforts are vital, and their results should be made widely accessible to the public. A lasting peace founded on respect for human rights will be very difficult to achieve if the crimes of history remain hidden in archives and mass graves.

70. It is often asserted that there is a tension between peacemaking and the threat of prosecution. However true that may be in some situations, the two interests are complementary in Sri Lanka. The jurisdiction of the International Criminal Court extends only to crimes committed after the country's ratification has taken effect and cannot be retroactive. In the current situation of relative calm, ratification would work to deter a return to the massive violations of the past, thereby helping to consolidate the gains of the ceasefire and the place of human rights in the peace process. Both parties have committed the kind of massive, serious violations of international criminal law that might well have led to prosecution had the Rome Statute then been in force. In the current situation, ratification would provide a measure of confidence to all that such violations will never be committed again.⁴⁹

V. RECOMMENDATIONS⁵⁰

Strengthening the ceasefire and respect for human rights and humanitarian law

71. At the time of writing, the Government and LTTE had agreed to talks on strengthening the implementation of the CFA in late February 2006. Issues relating to extrajudicial executions are fundamental to the recent erosion of the ceasefire and the threats to the credibility of its monitoring mechanisms. The recommendations below should be squarely addressed in the talks:

- (a) The Government and LTTE should complement the CFA with a wide-ranging human rights agreement, as discussed during their earlier rounds of talks in 2003. An effective international human rights monitoring mechanism should be established with powers to document and investigate abuses, to report to the relevant authorities, and to work closely with other agencies involved in human rights at all levels;
- (b) The Government needs to take the various steps outlined below immediately in order to comply with its existing human rights obligations;

⁴⁹ Ratification should be undertaken without making the declaration permitted under article 124 of the Statute that temporally limits the jurisdiction of the ICC.

⁵⁰ These recommendations are not intended to be comprehensive. They focus primarily on specific concrete measures which should be taken immediately by those concerned.

- (c) The LTTE, in compliance with its professed commitment to human rights, and in response to the international community's requirement that all non-State actors respect the Universal Declaration of Human Rights, must take a range of concrete steps to demonstrate that it is serious about human rights. These are outlined below;
- (d) All parties to the conflict, including the Government, the LTTE and the Karuna group, must comply with their legal obligations under common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, humanitarian law requires respect in the conduct of hostilities for the distinction between civilians and combatants. The killing of anyone not taking an active part in hostilities (regardless of civilian status) is prohibited.

72. In any revision of the CFA, the monitoring role of the SLMM should be de-linked from the role of facilitating the peace process. As a more immediate measure, steps should be taken to strengthen the SLMM's work, including:

- (a) More sustained follow-up to killings with a view to identifying the party and persons responsible;
- (b) The prompt and accessible publication, within necessary limits, of complaints received and of the results of investigations;
- (c) The establishment of a protocol to better protect witness identities;
- (d) The designation of a senior human rights officer in each SLMM field office and a senior focal point in headquarters.

73. The Government should invite the Office of the High Commissioner for Human Rights to expand its field presence in Sri Lanka to enable it to provide technical support and assistance to the Human Rights Commission, SLMM and other United Nations agencies, pending the creation of a broader monitoring mechanism.

The Government

74. The Government should publicly reiterate its renunciation of any form of collaboration with the Karuna group, and should demonstrably take action to discipline military officers who breach this rule.

75. The Government is requested to provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation for the families of non-combatants subjected to extrajudicial execution. Existing arrangements are uneven at best, and non-existent at worst.

Police

76. The CFA must not be used as a pretext for failures to investigate killings. The Government should unambiguously instruct the police to investigate all killings vigorously and, wherever possible, to apprehend suspects.

77. A programme is urgently needed to provide essential training in criminal detection and investigation to all police reservists.

78. A police force which can only communicate very poorly in the Tamil language will be hard pressed to win the confidence and trust of the general public. The Government should adopt a

programme of financial and other incentives to recruit Tamil and Tamil-speaking police officers, especially to work in the north and east.⁵¹

79. The Government and the LTTE should initiate and regularize contact between the government police and the policing forces that operate in LTTE-controlled areas with a view to minimizing the CFA's adverse effects on crime control.

National Police Commission⁵²

80. The members of the National Police Commission should be promptly appointed.

81. The Government should publicly confirm that it will insist upon respect for the Constitution's allocation of powers between the NPC and the IGP. Accordingly, the IGP should play only a consultative role in the NPC's exercise of its "powers of promotion, transfer, disciplinary control and dismissal".⁵³

82. The Government should provide the NPC with the resources required to enable it to effectively exercise its investigative and disciplinary powers.

The ICC Statute

83. The Government should ratify the Rome Statute of the ICC without reservation or declaration. Members of the Sri Lanka Army and LTTE fighters should be made aware of the rules of individual criminal responsibility and be trained in the provisions of international criminal law.
Liberation Tigers of Tamil Eelam

84. The LTTE should unequivocally denounce and condemn any killing attributed to it for which it denies responsibility. Mere denials are neither adequate nor convincing.

85. The LTTE should refrain from violating human rights, including those of non-LTTE-affiliated Tamil civilians. This includes in particular respect for the rights to freedom of expression, peaceful assembly, freedom of association with others, family life, and democratic participation, including the right to vote. The LTTE should specifically affirm that it will abide by the North-East Secretariat on Human Rights charter.

86. The LTTE should refrain from providing arms, training and encouragement to groups such as the "People's Army" civilian proxies and self-defence organizations.

The international community

87. The human rights capacity of the United Nations Country Team should be expanded immediately, pending the creation of a broader monitoring mechanism.

⁵¹ I note that a similar recommendation has been made previously by the National Human Rights Commission. *The Human Rights Situation in the Eastern Province: Update* (April 2005), page 24.

⁵² I note that similar recommendations have been made previously by the Committee Against Torture and the Human Rights Committee. CAT, Concluding Observations on the Second Periodic Report of Sri Lanka (25 Nov. 2005), para. 7; HRC, Concluding Observations (1/12/2003), para 9.

⁵³ Article 155G(1)(a) of the Constitution. The NPC may delegate this power, but has not and should not. See Article 155J.

88. Concerned Member States, particularly the Donor Co-Chairs and contributing countries to SLMM, should provide political, human and financial resources for expanded human rights monitoring by SLMM or another international mechanism. •

89. The Governments of all United Nations Member States in which there is a significant Tamil diaspora should enter into serious dialogue with those communities in light of the findings in this report. The diaspora has a responsibility to use its considerable political and financial influence and funding to promote and to insist upon respect for human rights.

Follow-up

90. A follow-up to this report by the Special Rapporteur will evaluate all measures taken to implement these recommendations.

Civil and Political Rights, Including the Question of Religious Intolerance

Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir

MISSION TO SRI LANKA

(2 May to 12 May to 2005)

INTRODUCTION

1. From 2 to 12 May 2005, the Special Rapporteur on freedom of religion or belief carried out a visit to Sri Lanka in fulfilment of her mandate, at her request and at the invitation of the Government.
2. The Special Rapporteur had most of her meetings in Colombo, but also travelled to Kandy, Batticaloa, Kattankudy, Ampara, Umagama, Jaffna and Killinochi, where she met with local officials, political leaders and religious representatives as well as members of the civil society.
3. During her visit, she held talks with the Minister for Foreign Affairs, the Minister of Justice, the Minister for Constitutional Affairs, the Minister for Hindu Affairs, the Minister of Buddha Sasana, the Minister for Christian Affairs, the Attorney-General, the Secretary-General of the Peace Secretariat and other officials dealing with questions related to the mandate on freedom of religion or belief. She also had meetings with the leader of the opposition, representatives of different political parties, including the Jathika Hela Urymaya (JHU) and the Janatha Vimukthi Peramuna (JVP), and the Human Rights Commission of Sri Lanka.
4. The Special Rapporteur also had talks with representatives of religious communities and religious organizations, including Venerable Udagama Sri Buddharakhitta, Bishop Frank Marcus Fernando of the Catholic Church and Bishop Duleep de Chickera of the Anglican Church, as well as Muslim religious leaders in Colombo and Kattankudy. She is particularly grateful to Venerable Udagama Sri Buddharakhitta for agreeing to see her on short notice and giving her the unique opportunity of visiting the heart of the Temple of the Sacred Tooth Relic.
5. In Killinochi, the Special Rapporteur met with representatives of the Liberation Tigers of Tamal Eelane (LTTE) and with members of the Northeast Secretariat on Human Rights.
6. Consultations with non-governmental human rights organizations were organized individually and in group at all locations that the Special Rapporteur visited, including with the Civil Rights Movement, the Centre for Policy Alternatives, the Law and Society Trust, INFORM, the Institute of Human Rights (IHR), the Centre for Human Rights and Development and the Joint Committee of Buddhist Organisations.
7. The Special Rapporteur wishes to thank the Sri Lankan authorities for their invitation and for the cooperation they extended to her during her visit despite the still difficult circumstances related to the post-tsunami period. She considers that the practical organization of official meetings was remarkable and was particularly pleased by the transparency and openness shown by her interlocutors at the governmental level. Moreover, further to an exchange of letters she already had with the Permanent Mission of Sri Lanka in this regard, she would like to reiterate her sadness at the assassination of the Minister for Foreign Affairs.

8. She is also grateful for the positive attitude that religious representatives manifested throughout her presence in Sri Lanka and for the information and opinions that they transparently shared with her. The Sri Lankan civil society was also extremely open and flexible during the duration of the visit and provided invaluable assistance in the organization of different meetings.
9. Lastly, she would like to thank the United Nations Development Programme in Colombo which assisted in organizing all practical aspects and logistics related to the visit. In particular, she would like to express her gratitude for the invaluable assistance of the Senior Human Rights Adviser to the United Nations Country Team.
10. During her visit and in this report, the Special Rapporteur has concentrated on the situation of freedom of religion or belief in Sri Lanka including in the light of recent reports related to the attacks on certain religious groups, allegations of unethical conversions, and the introduction of draft laws criminalizing certain attempts/acts intending to convert anyone to another religion. She has also collected information on various problems faced by different religious minorities.
11. Finally, the Special Rapporteur deplors the fact that after her visit attempts were made by individuals and certain groups to intimidate and pressurize her, possibly to influence her conclusions. She also received a communication from one group challenging her impartiality. She regrets that the content of this communication was misleading and mischievous.

I. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

12. Sri Lanka is a State party to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict; and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
13. The Special Rapporteur would like to recall the text of article 18 of the International Covenant on Civil and Political Rights (ICCPR):
- “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- “2. No one shall be subject to coercion that would impair his freedom to have or to adopt a religion or belief of his choice.
- “3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals.
- “4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”
14. The Special Rapporteur would also like to emphasize that in her analysis of the situation in Sri Lanka, she relies both on the terms of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, general comment No. 22 (1993) of the Human Rights Committee on article 18 and other relevant provisions of ICCPR.

II. RELIGION AND BELIEF IN SRI LANKA

15. The main religions present in Sri Lanka are Buddhism, Hinduism, Islam and Christianity.

16. Buddhism is the religion of most members of the Sinhalese community, who represent approximately 70 per cent of the population. Buddhism constitutes therefore the major religion of the country and is found in most parts of Sri Lanka except in the predominantly Tamil areas of the north and east.

17. Hinduism is the religion of 15 per cent of the population and the major religion of the Tamil community.

18. Christians represent 8 per cent of the population and live almost everywhere, but mainly in the west. There are many Christian denominations present in Sri Lanka: Roman Catholics account for 90 per cent of the Christian population, the other 10 per cent being composed of Anglicans and other Protestant Churches, including Methodists, Baptists, Lutherans and Dutch Reformed, as well as newer Evangelical and Pentecostal Churches and other smaller groups like the Jehovah's Witnesses.¹ According to various estimated that are sometimes contested, the Christian population has not significantly grown over the last 20 years. While it is true that Evangelical and Pentecostal Churches have increased in number, this has mainly been at the expense of more "traditional" Christian Churches.

19. With respect to the different Christian denominations present in Sri Lanka, citizens – have generally taken the habit of making a distinction - not always with much thought – between (usually) recently established Christian communities, which they characterize as "fundamentalists", and the other more traditional Christian churches.

20. According to most figures, Muslims account for 7 per cent of the population, but they contest this figure and consider that it has recently come closer to 10 per cent owing to the birth rate and conversions. A particular characteristic of the Muslim community in Sri Lanka is that it is also recognized as a separate ethnic identity.

21. The great majority of Muslims are of Sunni background while a small minority is Shia. Other Muslim minorities are present in Sri Lanka such as the Sufi Muslims, who are located in the east of the country. There is also an Ahmadiyya community whose members are mainly concentrated in the outskirts of Colombo.

22. Finally, there are smaller religious groups or communities of belief who are disseminated throughout the country, like the Bahà'i community.

23. The Rapporteur on Religious Intolerance of the Human Rights Commission of Sri Lanka reports that, "there has been general acceptance in Sri Lanka that a person is free to change his or her faith or belief for any reason, or to become an unbeliever, although such change may not find acceptance with all religions. Unquestionably the spirit of tolerance in [the] matter of religious belief is very strong, and for this much of the credit must go to the dominant religion, Buddhism". He addressed the question of conversion in the light of the current situation, which had "arisen from attacks on persons who want to assert their right to spread their faith by preaching and practice."

¹ There are a large number of "new Churches" in Sri Lanka, some calling themselves "prayer centres".

24. Some of the Special Rapporteur's interlocutors pointed out that religion is being used for political purposes and that the heightened religious tensions are being driven by a few from various communities, in particular the Buddhist community.

III. LEGAL FRAMEWORK

25. The Constitution of Sri Lanka does not provide for a State religion, but it gives Buddhism a prominent place. Indeed, according to article 9 of the Constitution, "[t]he Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)."

26. This article of the Constitution has recently become a matter of controversy with emerging religious tensions and following the third determination of the Supreme Court in the *Sisters of Menzingen* case.² Certain members of the Buddhist community rely on the foremost place accorded to Buddhism and the State's obligation to protect and foster Buddha Sasana³ to justify measures designed to protect Buddhism from threats perceived to be emanating from other religious groups.

27. In its article 10, however, the Constitution unequivocally provides for freedom of religion: "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice." This provision is complemented by article 14 (e) according to which "[e]very citizen is entitled to] the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching."

28. Finally, it is to be noted that "in the interest of religious harmony", article 15 provides that the right to freedom of peaceful assembly as well as the right to freedom of association may be subjected to certain restrictions, which in many cases could potentially affect the right to manifest one's religion.

29. In practical terms, religious affairs are dealt with by separate ministers, one for each of the main religions: the Ministry of Buddha Sasana, the Ministry for Hindu Affairs, the Ministry of Muslim Religious Affairs and the Ministry for Christian Affairs.⁴

30. To have legal status, religious communities have to register either as charitable organizations or as corporation. While the first type of entity permits tax exemption, the second allows less government involvement in the internal affairs of the community. However, by a decision of 1 August 2003, the Supreme Court rejected the incorporation of an organization called the "Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka" because the provisions of the incorporation bill created "a situation which combines the observance and practice of a religion or belief with activities which would provide material and other benefits to the inexperienced, defenceless and vulnerable people to propagate a religion. The kind of activities

² See Supreme Court Special Determination No. 19/2003 of 1 August 2003, examining the constitutionality of a bill entitled "Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)" and holding, *inter alia*, that the propagation and spreading of a religion other than Buddhism "would not be permissible as it would impair the very existence of Buddhism or the Buddha Sasana."

³ Buddha Sasana involves every aspect connected to the practice of Buddhism.

⁴ According to information received, the Ministry for Christian Affairs only covers the so-called traditional Churches to the exclusion of, for instance, evangelical communities.

projected in the Bill would necessarily result in imposing unnecessary and improper pressures on people, who are distressed and in need, [in] their free exercise of thought, conscience and religion [and in] the freedom to have or to adopt a religion or belief of [their] choice.”⁵

31. The reasoning of the Supreme Court in the above case has remained partly the basis on which it later addressed the questions raised by the draft legislation on conversion (see sect. V)

IV. INTERRELIGIOUS TENSIONS

A. Overview and background

32. For the past few years, religious tolerance and harmony among religious groups in Sri Lanka has undoubtedly declined. The main religious tensions can be found between the Buddhist community and certain Christian groups.

33. Many interlocutors at the governmental level but also from different religious communities, including from so-called traditional Christian communities, have asserted that there was a problem with the alleged proselytising behaviour of certain Christian religious groups, often referred to as “Christian fundamentalists” or “fundamentalists”, which have arrived or appeared in the country in recent decades. Today, many Sri Lankan Buddhists, but also members from the Hindu community, allege that they feel their identity threatened.

34. This phenomenon has existed for many years in Sri Lanka but, because of the war, did not attract very much attention. It has amplified even further with the humanitarian efforts after the tsunami, though the draft laws on conversion were proposed much earlier and strong lobbies were being built around that issue.

35. While this phenomenon originally developed because of the activities of certain religious communities, it has increasingly included the activities of some, mainly foreign, nongovernmental organizations with a religious agenda that work in development and humanitarian assistance. The issue came to a climax during the crisis that immediately followed the tsunami. After 26 December 2004, an important number of foreign humanitarian NGOs arrived in Sri Lanka and it has been claimed that some of those with a religious affiliation took advantage of the disaster to promote their religion.

36. In 2002, on the basis of complaints that Christian communities were carrying out improper conversions, the “Presidential Commission on Buddha Sasana” was created to inquire into a wide range of matters bearing on the well-being and long-term survival of the position of Buddhism. The conclusions of the Commission, which the Special Rapporteur will not discuss in the present report, were aimed inter alia, at preserving the place of Buddhism in the Sri Lankan society. It appears that instead of easing the religious tensions, it provided more justification for religious intolerance.

37. Many Buddhists, including those who support the draft legislation intending to criminalize (see sect. V) “unethical” conversions, maintain that while Buddhism has been established in the country for 2,300 years, there has never been a real difficulty with traditional Christian denominations which have arrived since the beginning of the sixteenth century. Religions lived side by side in mutual respect and conversions, when they occurred, were genuine. However, as confirmed by the conclusions of the Presidential Commission on Buddha Sasana, new Christian groups have started to

⁵ Supreme Court Special Determination No. 19/2003 of 1 August 2003, op. cit.

arrive in recent decades and have, it is claimed, damaged the existing harmony with aggressive proselytism. These groups or communities have allegedly taken advantage of Buddhist tolerance to try to convert Sri Lankans to their faith.

38. There is also a strong feeling among people motivated by religion but also among politicians that the programme carried out by these "new" Christian communities constitutes outside interference, in particular from the United States. Whether representing a genuine feeling or one that is induced by outside discourse, some have claimed that it is tantamount to a new form of colonialism. In this regard, many refer to the significant financial means that these communities enjoy, with funds coming mostly from abroad, and to the very professional way their missionary activities are conducted.

39. Religious sensitivity is thus very often coupled with nationalism, and the words "Sinhalese" and "Buddhist" are increasingly becoming interchangeable.

40. At the same time, there does not seem to be a very high level of knowledge among the population, but also among religious leaders or authorities, about the differences between Christian denominations or groups, or between different religious minorities. A distinction is, for example, often made between Catholics and Christians, the Church of Scientology is sometimes considered a Christian movement, and there is rarely agreement on which groups or Christian communities should qualify as "fundamentalist". This confusion has had the general effect of stigmatizing Christian minorities among the population.

41. Many interlocutors have claimed that the Government's reactions to these tensions have been very weak. Even Buddhists said that the present situation could have been avoided if there had been appropriate action on the part of the authorities in due time.

42. Finally, there were numerous reports of destruction of religious symbols such as crosses and statues of Buddha and other religious personalities. For instance, a dispute over the erection of a Buddhist statue in Trincomalee was the cause of considerable tension in the weeks following the Special Rapporteur's visit. It was often claimed that these symbols or revered statues had been deliberately put in a place populated by followers of another religion. Sometimes it appeared that the level of intolerance had fallen so low that even the sight of religious symbols of other communities was seen as offensive.

B. Complaints of "unethical conversions"

43. The description of the behaviour complained of is not clear, but has mainly to do with a feeling that the religious groups that are the objects of complaint deceive people because they are not totally transparent about their motivations. It is claimed, in particular, that some groups promise material benefits such as food and medicine, bicycles or even housing. In some cases, assistance was promised with getting a job or an authorization to build a house.

44. It is claimed that those who are the most sensitive to these appeals are the poorest sections of the population. Therefore, it is felt by many that those actions are a form of manipulation and abuse of the most vulnerable.

45. After the tsunami, it was reported that in the east of the country many have converted for health reasons because medical assistance and supplies were brought in by Christian nongovernmental organizations and groups. However, a significant number converted back to their original religions later, which sometimes provoked negative reactions from the community.

46. Even members of those Christian communities whose beliefs are relatively close to those being complained of told the Special Rapporteur that it was true that some Evangelical Churches were conducting a rather aggressive form of proselytism with which Sri Lankans were not familiar and which disturbed them. Many, including Christians themselves, emphasized that the Buddhists and Hindus have a far less proactive attitude in propagating their religion.

47. Members of the communities blamed for aggressive proselytism have categorically denied using any coercive methods. Most have also denied using unethical methods, but a few have argued that inducement is central to all beliefs, like the promise of reward for being pious and adhering to the tenets of one's belief. They claimed that there was inducement in all conversions like there was inducement in all political campaigns before elections, but ultimately the choice lies with every individual.

C. Assessment of the complaints

48. Incidents of inappropriate methods of conversion and proselytizing by some "nontraditional" Christian groups were brought to the attention of the Special Rapporteur. These incidents were usually vaguely described and unclear with regard to the circumstances. Despite repeated requests, the Special Rapporteur did not meet any person who had changed his or her religion because of allurements or other form of inducement. She has also not received any substantiated cases of conversion that would constitute a violation of the right to freedom of religion or belief, such as forced conversions.

49. The Special Rapporteur has also tried to obtain some statistical data on religious affiliation in Sri Lanka as well as on the number of conversions that have occurred in the last few years. Since she has received contradictory data, she has not been in a position to confirm the veracity of the sources of this information and has received no official figures from the Government in this regard. According to the information available, there does not appear to have been a significant number of conversions in the last few years, in particular from Buddhism to Christianity.

50. Having said this, the Special Rapporteur understands from different testimonies and statements she heard during her visit that some religious communities or religiously affiliated non-governmental organizations have demonstrated behaviour that, while not constituting per se violations of the freedom of religion of others, were very disrespectful and dishonest vis-à-vis the local population they were addressing. A number of such organizations have proved culturally insensitive and have lacked respect for the beliefs of Sri Lankans.

51. Nevertheless, at the same time, the reaction to such inappropriate behaviour has been sharp and somewhat alarmist. The resulting acts of violence and threats against the Christian community clearly are in violation of their freedom of religion or belief.

D. Other forms of religious tension

52. Although the tensions between Buddhists and some Christian communities attract the most attention, the Special Rapporteur wishes to underline that in some places, including in the east, instances of violence between other religious minorities have been reported, including between Christians and Hindus or Muslims and Hindus, although at a more limited level than the attacks described in part VI and not always motivated on purely religious grounds.

E. Desecration of religious symbols

53. In many occasions, people complained to the Special Rapporteur about the improper use of some religious symbols, in particular Buddha. In the majority of cases, the complaints related to commercial use of Buddha. This inappropriate exploitation was sometimes compounded by the fact that pictures of Buddha were associated with images or behaviours that constitute an insult to the religion such as the case of a picture of Buddha printed on underwear or trousers.⁶

54. The Special Rapporteur has also observed that Sri Lankan legislation includes provisions that criminalize acts of defilement or discretion of religious symbols. The interpretation of these provisions by the Sri Lankan judiciary has appeared to be relatively strict. In one case where young boys had been found in possession of Buddha Bar CDs, prison sentences were suspended only because the boys confessed to their offence.

55. The Special Rapporteur was told by a number of interlocutors that the use of the image of Buddha was not done with the intention of insulting Buddhists, or in any way calculated to disrespect Lord Buddha. Some insisted that the Buddha symbol is often used as a sign of respect and admiration for the message of tolerance, peace and serenity spread by him.

V. DRAFT LEGISLATION ON "UNETHICAL CONVERSIONS"

A. Background and overview

56. The idea of criminalizing certain conduct or acts leading to unethical conversions has circulated in Sri Lanka for some years. Recently, however, a number of initiatives have led to the drafting of at least three different bills. Some of the Special Rapporteur's interlocutors asserted that these bills were political manoeuvres rather than being essentially related to religious tensions.

57. The adoption process nevertheless remains relatively slow. This is probably due to reluctance on the part of Sri Lankan society, in particular the authorities but also to the outcry from the international community. For example, the governmental bill prepared by the Ministry of Buddha Sasana has been delayed several times.

58. While she is not able to ascertain to what extent these texts are public documents, the Special Rapporteur has received a copy of each of the drafts and observed that they have been widely circulated among the public by different means of communication, including the Internet. Government officials have not raised any problem in this respect. The Special Rapporteur therefore considers that she may openly refer to certain parts of the drafts in question.

59. The Special Rapporteur has noted that those who supported the adoption of specific legislation to fight "unethical" conversions argued that the existing legislation, in particular the Criminal Code of Sri Lanka, does not appropriately address such behaviour. These arguments have, however, not been sufficiently substantiated. The Supreme Court has indeed held that the use of force and the adoption of fraudulent means in this regard were offences already punished by sections 169 c (2)(b) and 23 of the Penal Code.

60. While it is not disputed that Christian communities such as Anglicans and Roman Catholics may have complained about certain behaviour or actions by other Christian groups, including Evangelical Churches, they also oppose the criminalization of unethical conversions. So-called traditional

⁶ In the majority of the cases, reference was made to commercial products produced outside Sri Lanka.

Christian Churches have taken a clear position against the draft laws and have proposed alternative solutions to emerging religious tensions.

61. During her visit, the Special Rapporteur noticed that a number of political leaders, government officials as well as religious leaders of all communities were not in favour of the adoption of this legislation. The Buddhist leaders were clearly irritated and upset by the methods of proselytism of "non-conventional" Christian groups but they recognized that the adoption of such legislation might add to religious tensions.

B. Content of the bills and Supreme Court determination

62. The first draft, entitled "Prohibition of forcible conversion of religion" and presented by members of (JHU), based on article 9 of the Constitution, was designed to "protect and foster the Buddha Sasana"⁷ which is "the foremost religion professed and practised by the majority of people of Sri Lanka."⁸ In this context, the JHU Bill provides in its article 2 that "No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by allurement or by any fraudulent means nor shall any person aid or abet any such conversions."

63. Those who contravene the above provision may be sentenced to imprisonment for up to five years and a fine of up to 150,000 rupees. These penalties are increased (up to seven years and 500,000 rupees) if the victim of the attempted conversion is a woman, a minor, or a person listed in the first schedule to the Bill.⁹ The proceedings can be instituted by a great variety of persons. The police may take action upon complaint by any "person who has reasons to believe that the provisions of the act have been violated" or by "a person aggrieved by the offence."¹⁰

64. The JHU Bill also provides that those who have converted to another religion as well as those who have converted another person should report the conversion to the authorities.¹¹

65. The other draft bill proposed by the Ministry of Buddha Sasana has similar provisions, but its definition of the offence of "unethical conversion" appears wider than the one of the JHU Bill. According to its article 2:

"No person shall unethically convert or attempt to unethically convert any other person espousing one religion, or holding or belonging to, one religious belief, religious persuasion or faith, to another religion, religious belief, religious persuasion or faith which such person does not hold or belong to. No person shall abet any such unethical conversion."

66. The terms "unethically convert" are further defined in article 10 of the Minority Bill and include a wide variety of acts,¹² which allows for a very broad interpretation of the offence.

⁷ Preamble to the Bill.

⁸ *Ibid*

⁹ The persons listed in the first schedule are those who have a subordinate position to the one attempting to convert, such as prison inmates or students.

¹⁰ Article 5 of the Bill.

¹¹ Article 3 of the Bill.

¹² "Unethically convert" means: (a) to directly or indirectly make, persuade or influence a person to renounce his religion, religious belief, religious persuasion or faith and to adopt another religion, religious belief, religious persuasion or faith which such person does not hold or belong to; or (b) to intrude on the religion, religious belief, religious persuasion or faith of such person, with the aim of undermining the religion, religious belief, religious persuasion or faith which such person does not hold or belong to, either by the use of any kind of allurement or promise of allurement, or inducement or promise of inducement, or moral support or promise of moral support, or of material assistance or promise of material assistance, or by fraudulent means or by coercion or by the use of force or by other means or by taking advantage of such person's inexperience, trust, need, low intellect, naivety or state of distress.

67. The constitutionality of the JHU Bill was challenged before the Supreme Court under article 121(1) of the Constitution by 21 petitions. In its determination under article 123 of the Constitution, the Supreme Court held that the provision is requiring a person who is converting and any person performing or involved in a conversion ceremony to report to the authorities, as well as the corresponding penalties, are contrary to article 10 of the Constitution. In terms of institution of the proceedings, the Court recommended that they should be initiated according to the Criminal Procedure Code Act subject to the written permission of the Attorney-General. Finally, the Court suggested a minor amendment to the definitions of "allurement", "force" and "fraudulent means" as they appear in the draft.

68. Therefore, if the JHU Bill is amended according to the Supreme Court's determination, it would no longer be in violation of the Constitution, in particular its article 10, and could pass to the next phase of the legislative process. On the contrary, if the Bill is not amended according to the Court determination, it would require a two-thirds majority in Parliament and a referendum by the people of Sri Lanka to become law.

69. The Supreme Court has so far not made any determination on the Ministry Bill.

C. Compatibility with the right to freedom of religion or belief

70. Supporters of the "unethical" conversions bills were confident that the text of the bills had been carefully drafted and did not violate or contravene international law, including the right to freedom of religion or belief. They often referred to the findings of the European Court of Human Rights in the case *Kokkinakis v. Greece*,¹³ and in particular its paragraph 48 where the Court held that "First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others."

71. In commenting on the determination of the Supreme Court, the Rapporteur on Religious Intolerance of the Human Rights Commission of Sri Lanka observed that the Court had relied on *Kokkinakis* case, "albeit mistakenly". The Court had made its determination in *abstracto*. Unlike the *Kokkinakis* case, the Court's jurisdiction had not been invoked by a victim. The Rapporteur concluded that in all three determinations made by the Supreme Court around the issue of conversion, its decisions were "in the realm of conjecture or speculation that the disadvantaged or vulnerable would be subject to improper conversion. What material was submitted to the Court to back this impression is not clear."

72. While not willing to discuss the findings of the European Court of Human Rights in a particular case, the Special Rapporteur is of the opinion that the supporters of the draft laws have disregarded the context of the *Kokkinakis* case. She recalls that the European Court eventually found a violation of the right to freedom of religion or belief of those who wanted to propagate their religion. The Court also held that

¹³ Judgement of the European Court of Human Rights of 19 April 1993, *Kokkinakis v. Greece*, case No. 3/1992/348/421.

“freedom to manifest one's religion is not only exercisable in community with others, ‘in public’ and within the circle of those whose faith one shares, but can also be asserted ‘alone’ and ‘in private’; furthermore, it includes in principle the right to try to convince one's neighbour, for example through ‘teaching’, failing which, moreover, ‘freedom to change [one's] religion or belief’, enshrined in Article 9 (art. 9), would be likely to remain a dead letter”.

73. In the opinion of the Special Rapporteur, the draft laws do indeed raise concern in terms of human rights law, including in terms of the right to freedom of religion or belief. While some maintain that freedom of religion, and in particular the right to choose a religion, may be violated in cases where, for example, a person in need has converted after having received presents and inducements that may significantly improve his or her life, the enjoyment of that right by the same person may equally be impaired if he or she does not have the possibility to freely decide to convert to another religion, even after having received a gift. Of even greater concern is that the decision to complain is not restricted to the aggrieved party. The Special Rapporteur's role is indeed to ensure that individuals are both protected against acts aimed at forced conversions and that their freedom to adopt a religion of their choice or to change religion is safeguarded. In its general comment No. 22, the Human Rights Committee clearly held that

“the freedom to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief”.

74. Moreover, the draft laws challenge an aspect of the right to manifest one's religion because they would criminalize certain acts that, according to how restrictively the laws are interpreted, may be part of the right to manifest one's religion. According to the Human Rights Committee,

“The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest... In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”

75. Finally, the Special Rapporteur considers that article 9 of the Constitution, which gives a “foremost” place to Buddhism, may not per se be contrary to international human rights law, and in particular the right to freedom of religion. Nevertheless, the provision should not be used to limit the right to freedom of religion or belief of religious minorities living on the territory of Sri Lanka. In this respect also, the Human Rights Committee held that

“The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or nonbelievers. In particular, certain measures discriminating against

the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.”

D. Difficulties pertaining to the future implementation of the laws

76. Probably one of the main problems with the draft laws on “unethical” conversions will be in their implementation. In particular, they use wording that allows for too broad an interpretation. Moreover, it is very difficult to assess the genuineness of a conversion. While it may be easy to prove that a person has received a gift, it would not be easy to demonstrate that the person has converted because of the gift. Under international law, freedom of conscience is absolute and cannot be subject to any limitation. A mechanism designed to monitor conversions and thus the reasons and purposes behind them could constitute a limitation on freedom of conscience.

77. The wording of the draft laws is also too vague. It allows too great a margin of interpretation, which could be a source of possible abuse and could potentially transform the law into a tool of persecution by those who are genuinely opposed to religious tolerance. The Special Rapporteur is concerned that the adoption of these laws would provide legitimacy to those who want to promote religious intolerance and hatred vis-à-vis certain religious groups.

78. Criminalizing unethical conversions, as defined by the bills, in particular the Ministry Bill might pave the way for persecution of all religious communities, and particularly of religious minorities. The bills allow anyone to complain even if the victim may be unwilling to do so. It thus leaves the door wide open for overzealous people to create further polarisation and to generate an atmosphere of fear among religious minorities.

VI. REPORTS OF PERSECUTION OF RELIGIOUS COMMUNITIES

79. Before, but also during and after her visit to Sri Lanka, the Special Rapporteur received numerous reports of attacks and other acts of religious intolerance committed against religious minorities, in particular Christian groups. She notes that these reports are usually very well documented and are very precise as to the factual circumstances of each case submitted. They come from different sources, some religiously affiliated, some not. These attacks have taken place in the context of the religious tensions that have existed in Sri Lanka in the last few years (see sect. VII).

A. Specific cases

80. During her visit, the Special Rapporteur travelled to Homagama, a locality situated on the outskirts of Colombo where St Michael’s Catholic Church has allegedly been attacked four times between December 2002 and December 2004.¹⁴ During the attacks, the church was seriously damaged, including by fire, and a number of religious symbols or other objects of worship were desecrated or destroyed. The leaders of the community claim that they were attacked not so much because of their religion, but because they had settled in a place that is considered to be Buddhist land.

¹⁴ The two other attacks on the church allegedly took place on 30 December 2003 and 15 June 2004.

81. The Minister for Christian Affairs visited the site of the attacks and promised that the church would be rebuilt. However, although the Special Rapporteur was not able to meet with the police officer responsible for the area, there has not been any tangible result in terms of criminal investigation or judicial proceedings for any of the four incidents. According to her information, no one has been brought to justice and compensation has not been given to the Catholic community.

82. Besides Homagama, between 80 and 100 similar cases have been reported for the year 2004 and the figures are similar for the years 2002 and 2003. Among the acts complained of are attacks, destruction or burning of places of worship and other properties targeted because of the religious affiliation of their owners, desecration of religious symbols or objects, assaults and beatings of members of Christian communities, threats and insults, distribution of leaflets and other publications inciting religious hatred, and disruption of religious ceremonies.

83. It is claimed that the perpetrators of these acts of religious intolerance are generally members of the Buddhist community and, in many cases, Buddhist monks. It has also been alleged that some of these acts were accompanied by threats against the victims who refused to return to Buddhism.

84. As a result of the atmosphere of religious intolerance, many Christians live in fear of being attacked. Certain communities have closed their place of worship or only hold religious ceremonies at night.

B. Government response

85. Although the Special Rapporteur's interlocutors at the official level all condemned the attacks, the reports received claimed that the measures taken by the authorities to bring the perpetrators to justice and to remedy the situation have been either insufficient or non-existent. In only a very few cases have perpetrators been prosecuted under applicable criminal law provisions (destruction of property, violence). Certain interlocutors claimed that there was political pressure behind the apparent reluctance to make the judicial apparatus function properly.

86. Victims, both communities and individuals, claimed that they have rarely been compensated for the material and moral damage suffered. In a few instances, promises of compensation have been made but not implemented. In some cases the victims themselves were arrested and detained for certain periods. Victims feel that a climate of injustice and impunity for such crimes prevails.

87. In the longer term, besides a number of ad hoc measures taken on security grounds, the Special Rapporteur has been surprised by the weakness of more general policies set up by the Government to promote a climate of religious tolerance among the different religious communities of Sri Lanka. While numerous initiatives have been proposed by some of the religious communities themselves, they appear to have gained little support from government authorities. It has, however, been claimed by the Inspector General of the Police that police training now includes the topics of religious harmony.

88. By letter of 14 September 2005, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva transmitted to the Special Rapporteur tables detailing the actions taken by the police and other law enforcement agencies to address attacks on religious communities. The tables cite a total of 101 cases reported for the years 2001, 2002, 2003, 2004 and 2005. Of the 101 cases reported, 30 inquiries are pending, 46 are pending in the courts and 4 complaints have been withdrawn; 11 cases have been settled by the police, 8 by the courts and 1 by a mediation board.

89. The Permanent Mission claims that the information provided in these tables indicates that the timely intervention and action by the police, including the arrest of 10 suspects in Kabithigollawa on 8 February 2004, brought the violence to a halt in 2005. It recognizes nevertheless that there had been instances of failure to identify perpetrators, which had hampered investigations and further legal action.

90. The Permanent Mission also stressed that the Inspector General of Police had provided security guards for places of worship that could be subject to similar attacks. Moreover, appropriate actions had also been taken against the police officers who had failed to comply with the instructions of the Inspector General on this issue. On the basis of this information, it is claimed that there is no evidence to substantiate allegations of inaction or reluctance on the part of the police in these cases of religious intolerance.

C. Situation of other religious groups

1. Buddhists

91. Many Buddhists feel that the existence of their religion is threatened, including because of the so-called aggressive missionary activities of certain Christian communities. They consider that in many cases these activities violate or otherwise limit the freedom of conscience of Buddhists, in particular those in a vulnerable situation.

92. In other instances, Buddhists have complained that the offensive and insulting ways in which the image of Buddha has been used constituted persecution of the Buddhist community. Cases involving the use of pictures of Buddha on pornographic websites on the Internet or the commercialization of bikinis with Buddha pictures have been filed with the Supreme Court of Sri Lanka.

93. Finally, while there have been no reports of persecution or limitation of the rights of Buddhists in areas controlled by the LTTE, the Special Rapporteur has noted that almost all Buddhists had fled those territories, and that there was not much room for those who would like to manifest their Buddhist faith. She had the chance to meet one of the last Buddhist monks remaining in the northern areas and noted that religious practice in those areas was very limited.

94. Buddhist has also complained about the Governments' refusal to grant a radio frequency for the Temple of the Sacred Tooth in Kandy, the most sacred Buddhist site in Sri Lanka.

2. Hindus

95. During meetings with members of the Buddhist community, members of the Hindu community were usually also present and expressed very similar concerns.

3. Muslims

96. While the Muslim community used to live in harmony with the other religions for most of Sri Lankan history, their expulsion from northern Tamil areas by the LTTE in 1990 remains an extremely painful experience, although it was not related to their religion. Today, many of those who have been affected by the expulsions would like to return to rebuild their lives with dignity.

97. Recently, the LTTE authorities have shown themselves willing to improve their relationship with the Muslim community. Reports that Muslims are being encouraged to return to the areas from which

they had been expelled have to some extent been confirmed. Nevertheless, many difficulties remain in terms of land issues and Muslims are still very reluctant to go back in the present conditions.

98. Besides this particular issue, Muslims complain about the behaviour of the media towards their religion. They claim that, on a regular basis, the Muslim community or their religion is depicted in a very wrong or negative way. Moreover, while they usually take advantage of a right to reply, their statements are allegedly never published.

4. Minority groups within the Muslim community

99. Representatives of a Sufi group in Batticaloa met with the Special Rapporteur and told her about the difficulties they had suffered for 25 years. Between 1979 and 1982 their mosque was burned three times, and more recently, in September 2004, Muslim organizations allegedly incited a mob which destroyed the mosque used by 32 Sufi families. The attack went on for seven days. Shortly afterwards, a fatwa was pronounced against their leader, declaring him an infidel. It was subsequently withdrawn under the condition that the Sufi leader would give up teaching Sufism.

100. In another incident, members of the Tharikathul Mufliheen society, a religious movement based on Islam but rejected by mainstream Muslims, reported to the Special Rapporteur that in October 2004 in Kattankudy, their place of worship and the residences or properties of some of their members were allegedly attacked by a mob of approximately 500 people lead by Muslim organizations. The properties were either destroyed or set on fire and several members of the society were injured. The police arrested eight alleged perpetrators who were later released on bail. Meanwhile, some mainstream Muslim organizations continued to threaten the members of the society to force them to abandon their belief. As the police reportedly failed to provide protection to the victims of these attacks, they had to flee and find refuge in Colombo. Since then, they have not been able to return to their properties because of continued threats and the absence of appropriate measures by the authorities.

101. As in other countries, the Ahmadiyyas community's main difficulty is that its members are not recognized as Muslims by mainstream Muslims. As a result, they are also not recognized as Muslims by the authorities, which are under strong pressure from Islamic leaders, and face many obstacles in the exercise of their right to freedom of religion. The Ahmadiyyas cannot build a proper place of worship. Instead, they have a community centre in Negambo that they use for worship. Burials are particularly difficult because members of their community are refused access to Muslim cemeteries. They do not enjoy any form of tax exemption and they cannot offer long-term residence status to their foreign missionaries. In their daily life, Ahmadiyyas are also the object of insults by the Muslim population and Ahmadiyya children attending Muslim schools are rarely accepted.

102. Finally, women's groups complained that there was a constant pressure on Muslim women by their community leaders to dress "modestly" and to preserve "Islamic social values". The Special Rapporteur was not, however, presented with actual cases, policies or laws that discriminated against Muslim women. She is therefore not in a position to draw any conclusions on this subject.

5. Others

103. The Special Rapporteur was informed that Sri Lanka did not offer any legal framework for those citizens who do not believe in any religion. In this regard, the obligation to follow religious education

at school may constitute an infringement on the right to freedom of religion, which includes the right not to believe.¹⁵

104. The Special Rapporteur has noted that violence occurs in and between all religious groups. In this respect, she has received reports according to which members of the Jehovah Witnesses community were allegedly attacked by a mob of 200 Catholics in Negambo on an unspecified date.

VII. RESOLVING RELIGIOUS TENSIONS AND ALTERNATIVES

TO THE DRAFT LEGISLATION ON CONVERSION

105. The Special Rapporteur considers that the criminalization of acts leading to so called "unethical" conversions is not an adequate response to existing religious tensions. Many interlocutors expressed their confidence that neither the Ministry bill nor the JHU Bill would ever be adopted by Parliament. The Special Rapporteur cannot however rely on this to eliminate the sources of her concerns.

106. It was also reported to her that a referendum on this question (to be organized if the initiators of the draft laws did not want to amend them in accordance with the determination of the Supreme Court) would be a perilous exercise and could lead to violence and a deepening of differences.

107. The Special Rapporteur has observed that in response to these tensions, religious minorities have not only proposed alternatives to the legislative process but also unilaterally committed themselves to abide by certain rules or principles, or taken other actions in particular cases. In one of the cases reported to the Special Rapporteur, the Catholic Church formally and publicly apologized for showing a movie that injured the sensitivities of Buddhist believers. More generally, and in the longer term, a number of religious minorities, in particular Christians, have taken steps to adopt and formally recognize sets of guidelines or codes of conduct for church activities and to promote the establishment of mechanisms to deal with religious tensions, including allegations of improper conversions. Among them is the creation of an inter-religious council composed proportionately of representatives of the religious communities present in Sri Lanka and tasked with taking preventive measures to strengthen religious tolerance, as well as with acting on certain cases and situations that reveal improper conducts by religious communities. So far these proposals have not been followed up by the authorities.

VIII. EDUCATION

108. Throughout her visit, the Special Rapporteur tried to establish a link between the situation of freedom of religion or belief in Sri Lanka and the educational system. She had received complaints from different groups, most of them blaming the educational system for not giving sufficient importance to their respective religion. Some Christians complained that in public schools children were forced to perform certain Buddhist rituals in violation of their freedom of religion. She has not received information about actual initiatives that were taken to promote religious tolerance and dialogue by the school system.

¹⁵ See general comment No. 22 of the Human Rights Committee, para 2.

IX. CONCLUSIONS

109. The Special Rapporteur considers that Sri Lanka is a country with a high level of tolerance and which has always experienced religious harmony. Moreover, the Government generally respects freedom of religion or belief and has so far remained neutral vis-à-vis the different religious communities present on its territory. Nevertheless, 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.

110. While the acts that have led to violations of the right to freedom of religion or belief are usually committed by non-state actors, the Government has to fulfil its positive obligations under the right to freedom of religion. The best way to prevent escalating religious intolerance is prompt action by Governments, who are obliged to address the situation in a timely and appropriate manner.

Persecution of religious minorities – Acts of religious intolerance

111. The right to freedom of religion or belief is a universal right enjoyed by all human beings and therefore by members of all religious communities, whether old or new and whether they have been established in a country for a long time or recently.

112. In this context, the Special Rapporteur condemns all acts of religious violence and intolerance that have been committed in Sri Lanka against any religious communities, but also within religious communities. These acts depending on the circumstances constitute violations, or unlawful limitations of the right to freedom of religion or belief.

113. In the face of such events, the Government of Sri Lanka has to fulfil its positive obligation to protect the right to freedom of religion or belief of all its citizens, irrespective of the religious community to which they belong. These positive obligations 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.

114. The Special Rapporteur considers that in most of the cases that have been brought to her attention and despite the information provided by the Permanent Mission, these obligations have not been satisfactorily fulfilled by the Government. Moreover, the implementation of these obligations should constitute an essential priority in guaranteeing the enjoyment of the fundamental right to freedom of religion or belief of all Sri Lankan citizens and a prerequisite for maintaining the high level of religious tolerance and harmony that has so far prevailed in Sri Lanka.

Religious tensions

115. Like many observers, the Special Rapporteur had the feeling that while religious minorities felt vulnerable, the Buddhist majority seemed to feel insecure. Members of the Buddhist community indeed often voiced their concerns with respect to the behaviour of members of certain religious minorities. Nevertheless, the Special Rapporteur considers that the allegations of “unethical” conversions have rarely been precise and largely overestimated.

116. The Special Rapporteur deplors in particular the lack of precision in the claims that have been made against certain religious groups. The resulting confusion has led to generalized condemnation of those groups. This lack of caution has provoked among the population a dangerous pattern of blaming certain religious groups as a whole; a groundless conviction that certain groups are per se the perpetrators of wrongdoing.

117. One of the main characteristics of a State that is governed by the rule of law is that only those persons in respect of whom there are clear indications that they have personally committed wrongful acts are prosecuted according to the laws of the land. A society where individuals are considered wrongdoers merely because they are or – even worse – thought to be members of the same community as persons who may indeed have committed wrongful acts, is displaying clear and dangerous signs of becoming a place where there is discrimination and persecution of a certain group, with terrifying consequences.

118. The Special Rapporteur is convinced that the foundations of Sri Lankan society have been solidly laid and strengthened with history to address the signs of such dangers appropriately.

119. Moreover, the Special Rapporteur has not received sufficient elements of proof to convince her that some of the acts complained of were in fact forced conversions. While it is arguable that forced conversion can also be committed by subtle, indirect means, coercion still has to be proved, which is difficult. However, while some have exaggerated behaviour that does not necessarily raise concern in terms of human rights, the Special Rapporteur recognizes that a number of improper ways of persuading people to change their religion may have been used by members of some religious groups or organizations and that many Sri Lankans may perceive this as a form of disrespect on the part of certain groups of Western origins, which might have affronted Sri Lankan values and traditions without respecting and understanding them.

120. The Special Rapporteur is of the opinion that these religious groups should make a clear separation between their humanitarian efforts and their religious work, respect other religious beliefs in their missionary activities and not use aggressive forms of proselytizing, as they could disturb the atmosphere of religious harmony and provoke further religious intolerance.

Draft laws

121. Further to the observations made in section V, the Special Rapporteur is of the opinion that the draft legislation¹⁶ is not an appropriate response to the religious tensions and is not compatible with international human rights law, in particular with the right to freedom of religion or belief.

122. She considers that the adoption of such laws would lead to violations of the essential and fundamental part of the right to freedom of religion or belief; the Government would be taking a very serious risk with respect to its obligations under the relevant international conventions. Moreover, the very principle of these laws as well as their wording could engender widespread persecution of certain religious minorities. Finally, the future implementation of the laws may prove extremely difficult and lead to an unlawful discrimination.

¹⁶ The Special Rapporteur here generally refers to any of the proposed bills that have been brought to her attention.

123. On the other hand, the Special Rapporteur considers that alternative mechanisms such as an inter-religious council would have the advantage of promoting an interreligious dialogue, which is the only way to address such tensions.

124. The Special Rapporteur wishes to make clear that a majority of the persons with whom she spoke during her visit expressed sentiments that could pave the way for dissipating emerging tensions and overcoming the forces of intolerance. In the current situation, as is often the case, the voices of intolerance are given a place that does not correspond to their real position in society. The Government clearly has the tools to reverse this tendency and properly address religious tensions while observing respect for international human rights law.

X. RECOMMENDATIONS

Persecution of religious minorities

125. With respect to the persecution of religious minorities, the Special Rapporteur is of the opinion that the primary obligation of the Government of Sri Lanka is to ensure that justice is done promptly and properly. This obligation extends to guaranteeing the full investigation of all acts of violence or other acts of religious intolerance committed against religious minorities, including the identification and prosecution of the alleged perpetrators, allowing victims the possibility of filing claims for the damage they have suffered and the awarding of appropriate compensation.

126. The Government should also abide by its obligation to ensure the protection and security of all religious groups that may be targeted and that should be entitled to practice their religions freely and without any obstacles, including those erected by non-State actors. This obligation includes the protection of religious groups within wider religious communities and ensuring that the right to freedom of religion of members of these groups is not limited. In this regard, the Government should pay particular attention to the protection of Muslim minorities and take the appropriate measures to ensure for the members of the Ahmadiyyas community the full enjoyment of their rights.

Religious tensions

127. For the reasons explained in section V and in the above conclusions, the Government should reconsider whether to adopt legislation that would criminalize so called unethical conversions, and instead take suitable measures to implement existing criminal provisions that could appropriately address the behaviour of certain religious groups and organizations.

128. The Government should urgently take steps to consider the different mechanisms proposed to deal with religious tensions, including those aiming at creating an interreligious body, and start the relevant procedures for their implementation. In this context, the Government should hold consultations with members of the civil society and representatives of religious communities, both at the national and at the local level, and make a detailed assessment of the needs to be addressed by these mechanisms.

129. In addition, the Government should seek assistance from United Nations agencies and civil society to explore possible models for the creation of an inter-religious body that would help to

diffuse tensions and take appropriate measures to maintain a constant dialogue between religious communities at all levels of the society and encourage all initiatives that seek to promote religious tolerance in the educational system.

130. The Special Rapporteur also calls on all religious actors and groups as well as religiously affiliated NGOs present in Sri Lanka to abide strictly by the recognized principle of humanitarian ethics as well to demonstrate sensitivity and respect for the religious symbols and sentiments of the Sri Lankan society in all their activities.

131. Finally, the Special Rapporteur urges the leaders of the LTTE to further implement a culture of religious tolerance in the territories they control, to increase their efforts to fully reintegrate with dignity the Muslim communities that have been displaced during the conflict in their places of origin, to allow access to all places of worship and other religious sites, and to ensure the protection of religious minorities present on their territory, regardless of their size.

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