

LST REVIEW

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THE MARCH 2014 RESOLUTION ON SRI LANKA BY THE UNITED NATIONS HUMAN RIGHTS COUNCIL

LAW & SOCIETY TRUST

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Editor's Note... ..

On the request of readers, this Issue of the *LST Review* contains three important documents relating to the March 2014 debates on Sri Lanka before the United Nations Human Rights Council (UNHRC). These are the final text of the Resolution passed by the UNHRC, the preceding report of the OHCHR and the relevant response by the Government of Sri Lanka presented before the Council.

At its core, the Resolution has several components covering virtually the gamut of Sri Lanka's Rule of Law crisis. The most controversial element is the Resolution's call for the Office of the United Nations High Commissioner on Human Rights (OHCHR) to 'undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC).'

The OHCHR is mandated to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability. Experts and special procedures mandate holders are authorised to provide assistance in that regard. The Government of Sri Lanka is called upon to cooperate with the inquiry. It is evident however that the inquiry will proceed regardless of whether cooperation is afforded or not, bringing Sri Lanka to the dangerous brink of courting specific and yet undefined consequences if continuing defiance is demonstrated.

In its other sections relating to post-war questions of state impunity, the Resolution requests the Government to investigate and hold accountable perpetrators of human rights violations, including those responsible for attacks on human rights defenders, and journalists as well as those carrying out attacks on places of religious worship. The Government is called upon to implement all recommendations of the OHCHR reports as well as those of the LLRC.

Serious concerns regarding the deterioration of the Rule of Law are emphasized. The dominance afforded to the military and the continued militarisation of the police, which should have been converted to a civilian law enforcement agency post-war in practical and demonstrable terms rather than being cosmetically brought under a law and order ministry are primary issues. The Resolution specifically mentions the need

for public release of the report on the Weliveriya incident which led to the deaths of three bystanders, the injuring of countless others and the assaults on priests and nuns when the army was called out during an ordinary demonstration by villagers for clean water.

In assessing its thrust, it is important to note the context in which the March 2014 Resolution was passed. Several requests had been made to the Government by the UNHRC in previous years to fully implement the recommendations of the LLRC. These calls were however not heeded, with the Government focussing on rehabilitation, reconstruction and development rather than ensuring state accountability for violations. This clear divergence is seen in the theme of the OHCHR report as contrasted to the response of the Government which is contained in this Issue.

Thus, a main focus in the OHCHR report is the inability of the Government implemented national plan of action on the LLRC recommendations to correspond with the specific action called for by the LLRC in respect of justice and accountability, (see paragraphs 30 to 33). Particularly mentioned is the continued refusal by the Government to adhere to the LLRC recommendation to release the report of the 2006 Government-appointed Udalagama Commission of Inquiry, which inquired into several incidents of serious human rights violations.

This is, by no means, a technical recommendation. The contents of the Udalagama Commission report have important and far reaching impact on the responsibility of state actors for grave human rights abuses, including the Trincomalee students killings (January 2006) and the horrific extra-judicial executions of seventeen aid workers in Mutur later that same year.

Indeed, this is illustrated by the fact that soon after the Udalagama Commission was prematurely wound up by the Government, some sections of the Sri Lankan (private) media in an exercise of deliberate deception, published extracts from the submissions of defence counsel appearing for the army before the Udalagama Commission purporting these to be extracts from the (unpublished) Commission report itself. It is a pity that individuals associated with the Commission in various capacities as well as the Commissioners themselves lacked the courage and the determination to issue a public refutation of the same. No doubt if such pre-emptive action had been taken by the Government at least as a result of demonstrable public pressure, we would not have

come to this current predicament where Sri Lanka has been marked for an external international inquiry. Instead, the Government's defence was to embark on long delayed prosecutions of junior officers which are compromised by the highly politicised nature of the prosecutorial and legal process as it stands and moreover, ignores the responsibility of the command hierarchy for these crimes.

This pattern of disingenuous behaviour if not outright lying in the context of state accountability is the main theme of this Issue's final contribution by *Basil Fernando* on invitation of the *LST Review*. Premised on the general basis of the improper use of force and violence, Fernando warns that interventions aimed at the prevention of torture, ill-treatment and other forms of the improper use of force and violence require a more comprehensive approach than condemnation of individual officers who engage in such abusive practices.

As he contends, a far wider approach is warranted rather than to merely call for reforms of institutions which are part of the security apparatus, such as the police, the military and the intelligence agencies. Thus, recommending the investigation of abuses and prosecution of abusers do not go far enough to address root causes of the politicisation of Sri Lanka's systems. This remains a core challenge posed by the March 2014 United Nations Resolution.

Taken positively and responded to wisely, the Resolution should generate informed public debates within Sri Lanka in regard to fundamental questions of the responsibility of State and Government in this regard rather than be confined to negative - and ultimately futile - anger at the Resolution's call for an international inquiry.

Kishali Pinto-Jayawardena

United Nations General Assembly (A/HRC/25/L.1/Rev.1),
Human Rights Council, 26th March 2014
Twenty- fifth session
Agenda item 2

Resolution on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations,

Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments.

Bearing in mind General Assembly resolution 60/251 of 15 March 2006,

Recalling Human Rights Council resolutions 5/1, on institution-building of the Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders, of 18 June 2007,

Recalling also Human Rights Council resolutions 19/2 of 22 March 2012 and 22/1 of 21 March 2013 on promoting reconciliation and accountability in Sri Lanka,

Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka,

Reaffirming also that it is the responsibility of each State to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population,

Reaffirming further that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law, as applicable,

Reaffirming that all Sri Lankans are entitled to the full enjoyment of their human rights regardless of religion, belief or ethnicity, in a peaceful and unified land,

Welcoming and acknowledging the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining and resettling the majority of internally displaced persons, while noting nonetheless that considerable work lies ahead in the areas of justice, reconciliation, land use and ownership, the resumption of livelihoods and the restoration of normality to civilian life, and stressing the importance of the full participation of local populations, including representatives of civil society and minorities, in these efforts,

* Albania*, Austria, Belgium,* Bulgaria,* Canada,* Croatia,* Cyprus,* Denmark,* Estonia, Finland,* France, Georgia,* Germany, Greece,* Hungary,* Iceland,* Ireland, Italy, Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Mauritius,* Montenegro, Netherlands,* Norway,* Poland,* Portugal,* Romania, Saint Kitts and Nevis,* Sierra Leone, Slovakia,* Spain,* Sweden,* Switzerland,* the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America: Resolution on promoting reconciliation, accountability and human rights in Sri Lanka (*signifies Non-Member States of the Human Rights Council).

Welcoming the successful holding of Provincial Council elections on 21 September 2013 and, in particular, the high turnout and participation in all three provinces, while noting with concern reports of election-related violence, as well as of voter and candidate intimidation,

Expressing appreciation for the efforts and cooperation of the Government of Sri Lanka in facilitating the visit of the United Nations High Commissioner for Human Rights and providing her with open access, and welcoming the visit of the High Commissioner to Sri Lanka in August 2013,

Expressing deep concern at reported intimidation and retaliation against civil society members who engage with United Nations human rights mechanisms, including those who met with the High Commissioner during her visit.

Expressing serious concern at the continuing reports of violations of human rights in Sri Lanka, including sexual and gender-based violence, enforced disappearances, extrajudicial killings, torture and violations of the rights to freedom of expression, association and peaceful assembly, threats to judicial independence and the rule of law, as well as intimidation of and reprisals against human rights defenders, members of civil society, lawyers and journalists,

Alarmed at the significant surge in attacks against members of religious minority groups in Sri Lanka, including Hindus, Muslims and Christians,

Calling upon the Government of Sri Lanka to fulfil its public commitments, including on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population,

Taking note of the report of the Lessons Learnt and Reconciliation Commission of Sri Lanka, its findings and recommendations, and acknowledging its possible contribution to the process of meaningful national reconciliation in Sri Lanka,

Recalling the constructive recommendations contained in the Commission's report, including the need to credibly investigate widespread allegations of extrajudicial killings and enforced disappearances, demilitarize the north of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all persons and enact rule of law reforms,

Taking note of the national plan of action to implement the recommendations of the Lessons Learnt and Reconciliation Commission of the Government of Sri Lanka and its commitments as set forth in response to the findings and recommendations of the Commission,

Noting that the national plan of action does not adequately address all of the findings and constructive recommendations of the Commission, and encouraging the Government of Sri Lanka to broaden the scope of the plan to adequately address all elements of the Commission's report,

Noting with concern that the national plan of action and the Commission's report do not adequately address serious allegations of violations of international human rights law and international humanitarian law,

Emphasizing the importance of a comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures, including, *inter alia*, individual

prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, *inter alia*, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law, with a view to preventing the recurrence of violations and abuses,

Underlining that truth-seeking processes, such as truth and reconciliation commissions, that investigate patterns of past human rights violations and their causes and consequences are important tools that can complement judicial processes, and that, when established, such mechanisms have to be designed within a specific societal context and be founded on broad national consultations with the inclusion of victims and civil society, including non-governmental organizations,

Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to end impunity,

Recalling also the High Commissioner's conclusion that national mechanisms have consistently failed to establish the truth and to achieve justice, and her recommendation that the Human Rights Council establish an international inquiry mechanism to further investigate the alleged violations of international human rights law and international humanitarian law and monitor any domestic accountability processes,

Encouraging the Government of Sri Lanka to increase its dialogue and cooperation with the Office of the High Commissioner, including with regard to technical assistance,

1. *Welcomes* the oral update presented by the United Nations High Commissioner for Human Rights to the Human Rights Council at its twenty-fourth session¹ and the subsequent report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka² and the recommendations and conclusions contained therein, including on the establishment of a truth-seeking mechanism and national reparations policy as an integral part of a more comprehensive and inclusive approach to transitional justice;

2. *Calls upon* the Government of Sri Lanka to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable; to hold accountable those responsible for such violations; to end continuing incidents of human rights violations and abuses in Sri Lanka; and to implement the recommendations made in the reports of the Office of the High Commissioner;

3. *Reiterates its call upon* the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission, and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans;

4. *Urges* the Government of Sri Lanka to investigate all alleged attacks, by individuals and groups, on journalists, human rights defenders, members of religious minority groups and other

¹ See A/HRC/24/CRP.3/Rev.1.

² A/HRC/25/23.

members of civil society, as well as on temples, mosques and churches, and also urges the Government to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future;

5. *Calls upon* the Government of Sri Lanka to release publicly the results of its investigations into alleged violations by security forces, including the attack on unarmed protesters in Weliveriya on 1 August 2013. and the report of 2013 by the court of inquiry of the Sri Lanka Army;

6. *Encourages* the Government of Sri Lanka to ensure that all Provincial Councils, including the Northern Provincial Council, are able to operate effectively, in accordance with the 13th amendment to the Constitution of Sri Lanka;

7. *Welcomes* the visit by the Special Rapporteur on the human rights of internally displaced persons in December 2013. and calls upon the Government of Sri Lanka to facilitate the effective implementation of durable solutions for internally displaced persons, including the long-term displaced;

8. *Also welcomes* the invitation to the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to education;

9. *Encourages* the Government of Sri Lanka to cooperate with other special procedures mandate holders and to respond formally to their outstanding requests, including long-standing requests;

10. *Takes note* of the recommendations and conclusions of the High Commissioner regarding ongoing human rights violations and the need for an international inquiry mechanism in the absence of a credible national process with tangible results, and requests the Office of the High Commissioner:

(a) To monitor the human rights situation in Sri Lanka and to continue to assess progress on relevant national processes;

(b) To undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders;

(c) To present an oral update to the Human Rights Council at its twenty-seventh session, and a comprehensive report followed by a discussion on the implementation of the present resolution at its twenty-eighth session;

11. *Encourages* the Office of the High Commissioner and relevant special procedures mandate holders to provide, in consultation with and with the concurrence of the Government of Sri Lanka, advice and technical assistance on implementing the above-mentioned steps;

12. *Calls upon* the Government of Sri Lanka to cooperate with the Office of the High Commissioner in the implementation of the present resolution.

**Promoting Reconciliation and Accountability in Sri Lanka - Report of the Office of the
United Nations High Commissioner for Human Rights***

Summary

In the present report, the Office of the United Nations High Commissioner for Human Rights acknowledges the progress made in reconstruction and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission. The Government of Sri Lanka has, however, failed to ensure independent and credible investigations into past violations of international human rights and humanitarian law. The report also contains updates on the ongoing attacks on religious minorities, and the harassment and intimidation of human rights defenders, lawyers and journalists.

The Government has not responded to the offers of technical assistance made by the High Commissioner and the special procedures. Meanwhile, new evidence continues to emerge on the events that took place in the final stages of the armed conflict. Against this background, the High Commissioner recommends the establishment of an independent, international inquiry mechanism, which would contribute to establishing the truth where domestic inquiry mechanisms have failed.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 22/1, in which the Council encouraged the Government of Sri Lanka to implement the constructive recommendations of the Lessons Learnt and Reconciliation Commission,¹ as well as those made by the United Nations High Commissioner for Human Rights in her report,² and to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law.³

2. In resolution 22/1, the Human Rights Council also encouraged the Government of Sri Lanka to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans, and to cooperate with the special procedures. It also encouraged

* Late submission.

¹ The Commission was appointed in May 2010 by the President of Sri Lanka to investigate the facts and circumstances that led to the failure of the 2002 ceasefire agreement, the lessons to be learned from those events, and to suggest institutional, administrative and legislative measures to prevent any recurrence of such events, and to promote national unity and reconciliation among all communities. The report of the Commission is available from; www.llreaction.gov.lk/reports/en/Final_LLRC_Report_en.pdf.

² A/HRC/22/38.

³ For the comments of the Government of Sri Lanka on the draft version of the present report, see A/HRC/25/G/9.

the Office of the High Commissioner (OHCHR) and relevant special procedures mandate holders to provide advice and technical assistance on implementing the above-mentioned steps. Lastly, the Council requested OHCHR to present a comprehensive report on the implementation of the resolution at its twenty-fifth session, with input from relevant special procedures.

II. Engagement of the Office of the High Commissioner and the Special Procedures

3. At the invitation of the Government, the High Commissioner visited Sri Lanka from 25 to 31 August 2013. In accordance with the request made by the Human Rights Council in resolution 21/1, she presented an oral update on the situation to the Council at its twenty-fourth session (A/HRC/24/CRP.3/Rev.1), in which she suggested concrete steps that the Government could take that could help the Council to assess progress made in the areas identified by the Council in resolution 22/1 by the time of its twenty-fifth session. These included inviting the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues; demonstrating a credible national investigation process with tangible results, including the successful prosecution of individual perpetrators; and setting a clear timeline for disengagement of the military from activities that are meant to be civilian. Regrettably, none of these steps had been taken by the end of the period of review.

4. The Government of Sri Lanka did not respond positively to the offer of technical assistance made by the High Commissioner following an OHCHR technical mission to Sri Lanka in November 2012. On 31 October 2013, following her visit to Sri Lanka, the High Commissioner again addressed a letter to the Minister for External Affairs and other officials in which she reiterated the readiness of her Office to provide technical assistance. The areas of possible assistance highlighted by the High Commissioner were in line with some of the recommendations accepted by the Government during its universal periodic review and with those made by the Secretary-General's Panel of Experts on Accountability in Sri Lanka.⁴ The High Commissioner regrets that she has received no response.

5. With regard to the issue of disappearances, the High Commissioner urged the Government to invite the Working Group on Enforced or Involuntary Disappearances, to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and to finalize measures to criminalize disappearances in national law.

6. With regard to criminal justice and accountability, the High Commissioner offered technical assistance in various areas, including draft legislation on hate speech and witness and victim protection, to ensure compliance with relevant international standards. In relation to some long outstanding criminal investigations, the High Commissioner offered to identify international experts who could assist the national inquiries.

7. Furthermore, the High Commissioner offered to provide technical advice on how truth-seeking mechanisms and reparations policies could be developed in accordance with international standards.

8. On 17 December 2013, the Assistant Secretary-General for Human Rights met with the Secretary of Defence of Sri Lanka, in New York, and reiterated the High Commissioner's offer of technical cooperation. Subsequently, on 20 January 2014, the High Commissioner met with the Secretary to the President, Lalith Weerathunga, in Geneva.

⁴ See www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

9. There are currently nine outstanding requests to visit Sri Lanka by special procedures: on minority issues; freedom of peaceful assembly and of association; freedom of opinion and expression; extrajudicial, summary or arbitrary executions; enforced or involuntary disappearances; human rights defenders; independence of judges and lawyers; discrimination against women in law and practice; and truth, justice, reparation and guarantees of non-recurrence. In October 2013, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the rights to freedom of peaceful assembly and of association followed up on their requests to visit or made specific offers of technical assistance. These requests remain pending. Since January 2012, the Government has transmitted responses on 842 cases to the Working Group dating back to the 1990s.

10. At the invitation of the Government, the Special Rapporteur on the rights of internally displaced persons visited Sri Lanka from 2 to 6 December 2013 (see also para. 14 below). In August 2013, the Special Rapporteur on the right to education received an invitation from the Government, but had to defer his visit owing to conflicting engagements. The Government has since extended an invitation to the Special Rapporteur on the human rights of migrants to visit the country in May 2014.

11. The High Commissioner welcomes the Government's engagement in these important issues, but reiterates her calls to invite the special procedures on enforced or involuntary disappearances and minority issues as a matter of priority, considering that these issues featured prominently in the recommendations made by the Lessons Learnt and Reconciliation Commission and have also been identified by the Human Rights Council as key concerns.

III. Recent Human Rights Developments

12. In her oral update to the Human Rights Council at its twenty-fourth session, the High Commissioner acknowledged the achievements made by the Government, with the help of the international community, in demining, resettlement, reconstruction and rehabilitation since 2009. She welcomed the elections to the Northern Provincial Council in September 2013, and recommended that the Government should work with new provincial authorities to promote meaningful community participation in reconstruction and development programmes. She however also highlighted pressing concerns, including the lack of progress in accountability for serious human rights violations; the situation of detainees and former combatants, with regard to extrajudicial, summary and arbitrary killings; continued militarization⁵ and compulsory land acquisition⁶ (particularly in the north and east of the country); shrinking space for civil society and the media; rising religious intolerance; and the undermining of independent institutions, including the judiciary.

13. Following his visit in December 2013, the Special Rapporteur on the human rights of internally displaced persons also acknowledged the reconstruction effort, but emphasized the need

⁵ See Office of the United Nations High Commissioner for Refugees (UNHCR), *A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating ("Tool Three")*, June 2013 (available from <http://unhcr.lk/wp-content/uploads/2014/01/Tool-Three-Final-Report-July-12-2013.pdf>) figures 1.5, 1.6. & 1.7.

⁶ See case studies on Jaffna, Sampur and Weli Oya in Centre for Policy Alternatives, *Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka*, November 2013, available from www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/.

to promote durable solutions and to address the protection of women and girls, access to land, and the withdrawal of the military from all civilian functions.⁷

14. In its comments on a draft version of the present report, the Government of Sri Lanka stated that, since 2009, the total strength of the military had been reduced by approximately 30 per cent in the Northern Province, and by 26 per cent in the Eastern Province, and the vast majority of checkpoints had been removed. It added that a total of 20,011 acres of private land and 5,740 acres of State land had been released in the two provinces. The High Commissioner noted, however, reports that more than 6,000 acres of private land had been acquired by the State in Jaffna around the Palaly cantonement, and that more than 2,000 petitioners had taken legal action to reclaim their land.⁸ The Government stated that steps were being taken to compensate the owners.

15. The High Commissioner remains concerned that non-governmental organizations are still required to register and report through a secretariat under the Ministry of Defence. She also draws attention to concerns that women are vulnerable to sexual harassment and violence when there is a heavy military presence.⁹ For instance, in May 2013, a soldier attached to an army camp in Nedunkerny reportedly confessed to raping a 6-year-old child. In its comments on the present report, the Government reported that the military had taken strict action in such cases.

A. Former Combatants and Detainees

16. During the visit of the High Commissioner, the Government informed her that more than 11,758 former combatants had been rehabilitated and reintegrated into society, 234 detainees were undergoing rehabilitation, and 91 detainees were facing legal proceedings. The Government also reported that the files of 977 detainees who had been held for long periods of time without charge had been opened, and that 160 files were pending a decision by the end of January 2014.¹⁰

17. The High Commissioner welcomes such progress and urges the Government to expedite decision-making on pending cases by bringing charges, releasing or sending individuals for rehabilitation, and to ensure that lawyers have access to their clients.

18. The High Commissioner again urges the Government to repeal the Prevention of Terrorism Act and the regulations promulgated under it, which allow for arbitrary detention.

19. The High Commissioner notes with appreciation the Government's report that all former child combatants had been reintegrated by May 2010 and been provided with formal education.¹¹ At the same time, she reminds the Government that, as highlighted in Lessons Learnt and Reconciliation Commission recommendation 9.79, there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former cadres of the Liberation Tigers of Tamil Eelam (LTTE) and former paramilitary leaders now serving in the Government.

⁷ See the press release of the Special Rapporteur on the human rights of internally displaced persons after his visit to Sri Lanka from 2 to 6 December 2013, at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14086&LangID=E.

⁸ See Centre for Policy Alternatives, Politics, Policies and Practices with Land Acquisitions and Related Issues (see footnote 6), p. 45.

⁹ See UNHCR, A Protection Assessment of Sri Lankan Internally Displaced Persons (see footnote 5), figures 1.14, 1.15, 1.16 and 1.17.

¹⁰ See the National Plan of Action for the Implementation of LLRC Recommendations (available from www.llrcaction.gov.lk/npoa.html), IR (1a), p. 7.

¹¹ *Ibid.*, p. 11.

B. Attacks on Religious Minorities, Human Rights Defenders and Freedom of Opinion and Expression

20. The High Commissioner remains deeply disturbed by the significant surge in attacks against religious minorities and the incitement of violence by Sinhala Buddhist nationalist groups, led predominantly by certain extremist Buddhist monks. She received reports from the Secretariat for Muslims, a non-governmental organization, according to which there were some 280 incidents of threats and violence against Muslims in 2013,¹² as well as attacks on mosques and places of business. Christian groups also reported more than 103 incidents of attacks on churches and Christians in 2013. After a lull prior to the Commonwealth Heads of Government Meeting, five violent attacks led by Buddhist monks were reported against multiple churches in December 2013 and January 2014. In its comments on the present report, the Government cited 182 incidents affecting all religions, of which only 147 were reported to police. Although the Government stated that, the police had taken necessary action, in many cases perpetrators were readily identifiable in video footage, where police are seen standing as onlookers to the violence. The Government also reported that amending legislation to enhance existing provisions of the Penal Code and ICCPR Act with regard to hate speech had been prepared.

21. OHCHR continues to receive complaints of widespread harassment and intimidation targeting human rights defenders, activists, lawyers and journalists, including reprisals against those who engage with the United Nations human rights mechanisms and OHCHR. The High Commissioner expressed grave concern at the harassment and intimidation against individuals or groups who met or attempted to meet with her, even months after her visit. OHCHR received reports of at least 10 serious cases involving targeting individuals and groups between the end of October and November 2013 in the run-up to and during the Commonwealth Heads of Government Meeting hosted by Sri Lanka. These included the case of a prominent human rights defender who, on 4 November, was the target of threats and derogatory remarks during a radio broadcast hosted by the State-owned Sri Lankan Broadcasting Corporation. In another instance, on 13 November, the police blocked buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event and in a demonstration calling for accountability for enforced disappearances.

22. Attacks against journalist and media outlets continued in 2013. Several incidents targeted the Tamil newspaper *Uthayan*: on 10 January, two distributors were attacked and copies of newspapers burned; on 13 April, armed men attacked employees and set fire to printing machines in the Jaffna office; and, on 11 July, armed men attacked the newsroom. On 24 August, an associate editor of the *Sunday Leader* was attacked by masked men at her home, and her computer was stolen in a subsequent break-in, on 8 September.

C. Extrajudicial, Summary and Arbitrary Killings

23. The High Commissioner and several special procedures mandate holders continued to follow developments in recent cases in which the apparent excessive use of force led to the death of unarmed protesters or of prison inmates. On 1 August 2013, approximately 6,000 residents of Weliveriya, a small suburb of Colombo, protested against the State's failure to address community concerns about the contamination of their drinking water supply by a local factory. Army personnel were deployed in support of the police to control the protest, which had turned violent and reportedly used excessive force, leaving three people dead and many others with

¹² Statistics provided by the Secretariat for Muslims.

critical injuries.¹³ On 2 August 2013, the Army Commander appointed a military court of inquiry into the incident. The court submitted its report on 21 August, but it has not been made public. On 30 August 2013, the Army announced that four senior officers had been relieved of their duties with immediate effect, although no court martial has been initiated.¹⁴ The factory has since been relocated and compensation offered to the families of those killed.

24. On 12 November 2012, the Ministry of Rehabilitation and Prison Reforms appointed a committee to inquire into events in Welikada prison on 9 November 2012, when Special Task Force personnel conducted a search operation and army personnel subsequently intervened to control a riot; at least 27 inmates were killed and 43 injured.¹⁵ The committee handed over its report to the Ministry of Rehabilitation and Prison Reforms on 15 January 2014, but it has not been published. According to media reports, it concludes that the prisoners shot each other. The Government informed the High Commissioner that a similar inquiry had been carried out into custodial deaths when security forces had stormed Vavuniya prison to free officials taken hostage by prisoners in June 2012, which was highlighted in her previous report,¹⁶ but to date no report has been made public.

D. Mass Graves

25. On 26 November 2012, a mass grave with approximately 155 skeletal remains was uncovered in Matale, central Sri Lanka. In June 2013, a presidential commission of inquiry was appointed to probe the circumstances surrounding the gravesite, despite the initiation of a judicial process in the Matale Magistrate's Court. There are concerns regarding the manner in which the remains are being preserved, the protection of the site and the investigation process.¹⁷ In December 2013, it was reported that another gravesite with 52 skeletal remains, including of children, was discovered in Mannar, northern Sri Lanka.

26. It is vital that the integrity of the sites, and exhumation and identification procedures, be given due attention. The rights of families to know the fate of their missing loved ones is critical, and they must be actively involved in the legal and humanitarian efforts to locate, exhume, rebury and memorialize the dead. In this context, an uncompromised exhumation and investigation process is essential, and could benefit from international assistance.

IV. Implementation of the Recommendations of the Lessons Learnt and Reconciliation Commission

27. In May 2012, the Cabinet appointed a presidential task force to monitor the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission. In July 2012, the task force issued a national plan of action for the implementation

¹³ See Human Rights Watch, "Sri Lanka: Investigate 'Clean Water' Protest Deaths", 9 August 2013, available from www.hrw.org/news/2013/08/09/sri-lanka-investigate-clean-water-protest-deaths; and Ministry of Defence and Urban Development, press communiqué, 30 August 2013, available from www.defence.lk/new.asp?fname=Press_Communique_Weliweriya_Incident_20130830_03.

¹⁴ See Ministry of Defence press communiqué (see footnote 13).

¹⁵ Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006-2012)", 12 March 2012, available from www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/.

¹⁶ A/HRC/22/38, para. 21.

¹⁷ For instance, the Matale magistrate overseeing the inquiry was subsequently transferred according to the Government, on disciplinary grounds to Colombo.

of some of the recommendations. The Government released its latest update on the implementation of the plan of action in January 2014.¹⁸ The High Commissioner had the opportunity to discuss progress with the Secretary to the President on 20 January 2014.

28. The High Commissioner welcomes the progress reported in implementing a number of recommendations made by the Lessons Learnt and Reconciliation Commission, for instance giving effect to the trilingual policy, promoting the official use of the Tamil language, the upgrading of schools in the northern and eastern provinces, and measures to promote ethnic diversity in schools and equity of access to higher education.

29. Noting the breadth and depth of the full range of recommendations made by the Lessons Learnt and Reconciliation Commission, the High Commissioner has questioned the process and rationale for the Government's selectivity in implementing only some of the recommendations. In some instances, as discussed below, she also observed that certain recommendations had been watered down in the national plan of action or during various stages of implementation.

30. The Lessons Learnt and Reconciliation Commission made approximately 285 recommendations. In the national plan of action, the Government pledged to support the implementation of 92 recommendations. In August 2013, it announced that it would implement an additional 53 recommendations,¹⁹ bringing the total to 145 recommendations. At the universal periodic review of Sri Lanka in November 2012, the Government stated that some of the remaining Commission recommendations fell under the ambit and scope of the national plan of action for the protection and promotion of human rights (2011-2016), progress reports on which are not available in the public domain.

31. In many instances, however, the specified activity in the national plan of action does not fully correspond to or address the recommendations made by the Lessons Learnt and Reconciliation Commission, or the activity has been only partially completed. For instance, while recommendation 9.73 calls for the investigation of allegations against illegal armed groups, the corresponding activity is the disarming of armed groups.²⁰

32. In other examples, recommendation 9.46 called upon the Government to direct law enforcement authorities to take immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention are properly investigated and perpetrators brought to justice. The corresponding activity identified by the Government does not respond to the call for investigations, but focuses on the capacity-building of police and community policing.²¹ Recommendation 9.270 called for the establishment of interfaith mechanisms to facilitate early warning and prevention of communal or religious violence, but this is being implemented by civil defence committees established by the Ministry of Defence during the war.²²

33. Little progress has been made with other key recommendations relating to justice and accountability issues, a core concern for the Human Rights Council; for instance, recommendation 9.120 urged the Government to implement the recommendations of the report of the presidential commission of inquiry (the Udalgama Commission) appointed in 2006 to investigate alleged

¹⁸ Available at, www.llrcaction.gov.lk/npoa.html.

¹⁹ See the press release of the Presidential Secretariat of Sri Lanka, 15 July 2013, at www.presidentsoffice.gov.lk/index.php?option=com_k2&view=item&id=120:cabinet-approves-action-on-53-more-llrc-recommendations.

²⁰ Other examples include recommendations 9.57 and 9.81.

²¹ There are similar issues with recommendations 9.73, 9.285 and 9.213.

²² The Government announced the reactivation of civil defence committees in August 2011; see www.defence.lk/new.asp?fname=20110824_01.

serious violations of human rights committed since August 2005,²³ particularly the killing of five students in Trincomalee, in January 2006, and of 17 aid workers of Action contre la Faim, in August 2006. Limited progress has been reported under the national plan of action on these two cases (see paras. 47 – 64 below); furthermore, the plan does not address any of the other 13 high-profile cases investigated by the Udalagama Commission, including the murder of a former Minister for Foreign Affairs and of other parliamentarians, and the disappearance of a Catholic priest.

34. Recommendation 9.213 called upon the Government to investigate the serious allegations against illegal armed groups (some of which had operated as paramilitaries), and to prosecute and punish perpetrators irrespective of their political links. In the national plan of action, the Government reported that, as at January 2014, 76 suspects were being detained by the Terrorist Investigation Division, and that an investigation concerning some of them was ongoing.²⁴

35. While the paramilitary groups have largely been disbanded, no action has been taken to date in relation to two senior paramilitary leaders now serving in ministerial positions, Douglas Devananda and Vinayagamoorthy Muralitharan (alias Karuna), or the former Chief Minister of the Eastern Province, Sivanesathurai Chandrakanthan (alias Pillaiyan), all of whom are linked to numerous allegations of serious crimes during the armed conflict.²⁵ Both Karuna and Pillaiyan were former LTTE commanders who subsequently formed the breakaway Karuna faction named in the Lessons Learnt and Reconciliation Commission as well as successive reports of the Secretary-General on children and armed conflict as being responsible for child recruitment, a war crime.²⁶

V. Progress in Accountability Issues

A. Domestic Initiatives

36. In its resolution 22/1, the Human Rights Council called upon the Government to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. A number of the recommendations made by the Lessons Learnt and Reconciliation Commission also called for further investigation into specific cases and issues, in particular allegations of the indiscriminate killing of civilians and the summary execution of prisoners. To date, the Government has taken limited and piecemeal steps towards investigating serious allegations of violations of international human rights and humanitarian law, and none of these have had the independence or credibility required.

37. The Lessons Learnt and Reconciliation Commission recommended further investigations into, *inter alia*, the circumstances under which specific instances of death or injury to civilians could have occurred, and, that, if such investigations disclosed wrongful conduct, that perpetrators be prosecuted and punished, as well as into the Channel 4 video recordings to establish the truth of

²³ See Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees" (see footnote 15).

²⁴ See National Plan of Action (see footnote 10), p. 30.

²⁵ See Human Rights Watch, "Sri Lanka: Probe into LTTE Crimes Should Start with Karuna", 28 March 2013 (www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna), and Amnesty International, Sri Lanka report, available from www.amnesty.org/en/region/sri-lanka/report-2010.

²⁶ S/AC.51/2007/9. See also Human Rights Watch, "Sri Lanka: Karuna Group Abducts Children for Combat", 25 January 2007, available from www.hrw.org/news/2007/01/23/sri-lanka-karuna-group-abducts-children-combat.

the allegations arising from them. The Commander of the Army convened a military court of inquiry in February 2012 to investigate and submit a report on the observations made by the Commission. Little, however, is known about the proceedings, as the court has been closed to the public and it has not issued any report.

38. In its update of the national plan of action of January 2014, the Government reported that the court of inquiry of the Sri Lanka Army completed in February 2013 its investigation into the allegation of killings of civilians, and concluded that instances of shelling referred to in the report of the Lessons Learnt and Reconciliation Commission had not been caused by the Army, and that civilian casualties might have been due to unlawful acts by the LTTE. The Government reported that the second part of the investigation into allegations made in the Channel 4 video was under way.

39. The High Commissioner has observed that military courts of inquiry do not have the necessary impartiality and independence to inspire confidence. The Commander of the Army who established the courts was also the commander of the security forces in the main battle zone of the conflict, and was actively engaged in the overall military planning and operations there. In cases of alleged human rights violations by the military or armed forces, investigations should be carried out by civilian authorities, not by the armed forces themselves.²⁷

40. According to the Government, the Census on Human and Property Damages due to Conflict, completed in December 2013, will shed light on the number of civilian deaths and injuries during the war, as well as on the fate of missing persons. The results are reportedly being analysed. The outcome of the census will not, however, provide a total picture of all those who have died or disappeared since 1982; for instance, data were collected only from the immediate family members of those dead or missing, thereby missing those cases where all family members had died, disappeared or left the country.

41. Other issues for which the Lessons Learnt and Reconciliation Commission recommended further investigation remain unaddressed by the courts of inquiry or any other process. For instance, in paragraph 9.114 of its report, the Commission expressed deep concern at the persistent reports concerning the killing of journalists and other forms of attacks on journalists and media institutions, and the fact that these incidents still had to be conclusively investigated and perpetrators brought to justice.

42. The High Commissioner is also concerned that legal proceedings have not begun against any LTTE suspect for alleged war crimes or other human rights abuses.

43. In August 2013, the Government announced the appointment, by the President, of the new Commission of Inquiry on Disappearances. The Commission, which conducted its first public sittings from 18 to 21 January 2014, in Kilinochchi District, received approximately 13,700 complaints from all parts of the country.²⁸ The Government has also sought information from other countries concerning Sri Lankans who may now be abroad. The High Commissioner welcomes this effort, but notes that the Commission will only cover disappearances in the northern

²⁷ See for example; CCPR/C/79/Add.76, CCPR/CO/71/VEN, CCPR/CO/69/KGZ, CCPR/C/79/Add.104, CCPR/C/79/Add.86, para. 9, CCPR/C/79/Add.96, CCPR/C/79/Add.80, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40)*, para. 249, and CAT/C/CR/31/1, para. 9 (d) (iii).

²⁸ Ministry of Defence and Urban Development. "Commission probing disappearances receives 13,700 complaints", 27 January 2014, available at: www.defence.lk/new.asp?fname=Commission_probing_disappearances_receives_13700_complaints_20140127_07.

and eastern provinces between 1990 and 2009. Many disappearances reported in Colombo and other parts of the country in recent years will therefore not fall within its scope.

44. In November 2013, the Government announced that the Human Rights Commission of Sri Lanka would conduct a national inquiry into allegations of torture committed between 2009 and 2013, with the support of the Human Rights Division of the Commonwealth Secretariat. In early December 2013, the Commission announced that the inquiry had been postponed indefinitely.²⁹

45. In her previous report,³⁰ the High Commissioner recommended that Sri Lanka should establish a more comprehensive truth-seeking mechanism, which would build upon the recommendations of the Lessons Learnt and Reconciliation Commission. It is important to stress that any truth-seeking mechanism must fully comply with the State's international legal obligations, and must be fully independent, including the selection of its members and budgetary considerations. It should enjoy the broadest possible mandate covering the entire period of the conflict and the whole territory. It should be based on a broad national consultation process, which should include the views of victims and survivors and of civil society organizations from all parts of the country. Lessons must be learned from the failure of past commissions of inquiry to ensure that any new mechanism enjoys the independence and powers necessary to be effective. For instance, any comprehensive truth mechanism should be established on a specific legislation meant for the mechanism, not under the currently flawed Commission of Inquiries Act.

46. The High Commissioner notes that it would not be permissible for any truth mechanism to grant amnesties that prevent the prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations. A truth commission should consider seeking international support, for example special technical, legal and policy assistance, as well as the involvement of international investigators to assist the process. Lastly, any such truth commissions should be complemented by comprehensive and coherent transitional justice mechanisms and processes that include prosecution, reparations, vetting and other accountability or reform programmes.

B. Emblematic Cases

47. The failure of the Government to make any significant progress towards accountability is illustrated by the lack of independent and credible investigations into allegations of serious human rights violations in several emblematic cases. These cases have been repeatedly drawn to the attention of the Human Rights Council by the High Commissioner and international human rights mechanisms. The Secretary-General's Panel of Experts highlighted in its report many of these cases (paras. 149, 170 and 414), which were investigated by previous national commissions of inquiry and for which the Lessons Learnt and Reconciliation Commission also recommended further investigations. In some cases, the Government has repeatedly reported to the Council that progress had been made in investigations. None of these cases has, however, resulted in the perpetrators being brought to justice. These cases are only a small but representative sample of the grave allegations of serious human rights violations committed by the Government and the LTTE during the conflict that have yet to be investigated or remain unresolved.

²⁹ Ramanathan Ahilan, "HRC Postpones Set Up Of Torture Commission On Alleged Requests By CSOs – Rights Now Asks Chairman To Name The Orgs", *Rights Now*, 14 December 2013, available from www.rightsnow.net/?p=4347.

³⁰ A/HRC/22/38.

1. The Trincomalee Five

48. On 2 January 2006, five students were allegedly beaten and executed by Sri Lankan security forces at the Trincomalee sea-front. The Trincomalee Magistrate's Court concluded in its inquest that the deaths had been due to gunshot injuries, and directed the police to conduct further investigations and to bring the suspects to court. A number of special task force members at the scene were detained as suspects soon after the incident, but released the same year. Since then, the magistrate in Trincomalee has postponed the case on a monthly basis, requesting the Criminal Investigation Division to produce reports of its investigations. The Division has failed to do so and has not provided justifiable reasons for the delay. Several witnesses and their family members fled the country after receiving threats.³¹

49. In 2006 and 2007, the Trincomalee case was investigated by the Udalgama Commission, which was observed by an international independent group of eminent persons. The Government has never published the Commission's report. The case was also investigated by the Human Rights Commission of Sri Lanka at the time; its report, which concluded that security forces had been involved, first appeared in the public domain in January 2014.³² The Lessons Learnt and Reconciliation Commission had expressed dismay at the lack of follow-up to the findings of the Udalgama Commission, and recommended that the Government investigate the killings further.

50. In 2013, the Government informed the Human Rights Council that the Attorney-General had instructed the police to commence a non-summary inquiry before judicial authorities. At the time, the Government noted that the matter "may be brought to a conclusion and is concrete evidence of our commitment to accountability".³³

51. In June 2013, 12 Special Task Force officers were arrested and remanded in connection with the murders. The Senior Superintendent of Police, who was in command at the time, was not among them (he has since been promoted to Deputy Inspector General and returned to Trincomalee). The Attorney-General informed the High Commissioner in August 2013 that the anticipated time frame for proceedings of this kind was three months, but pointed out the difficulties in convincing witnesses to come forward. The officers were released on bail in October 2013. On 20 January 2014, during a meeting with the Secretary to the President, the Attorney-General's Office informed the High Commissioner that evidence had been recorded from 14 witnesses, and affidavits examined from another seven. The Attorney-General's Office has summonsed a further 14 witnesses, although it has had difficulties contacting those outside the country. After eight years of investigations, commissions of inquiry and repeated commitments by the Government, it is of great concern that this case has not been brought to a conclusion.

³¹ See University Teachers for Human Rights (Jaffna), special report No. 30, 1 April 2008. Available from www.uthr.org/SpecialReports/Spreport30.htm

³² Available from www.colombotelegraph.com/wp-content/uploads/2014/01/report-by-the-HRC-appointed-Special-Rapporteur.pdf.

³³ Statement by the leader of the Sri Lanka delegation, Mahinda Samarasinghe, at the high-level segment of the twenty-second session of the Human Rights Council, available from <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/22ndSession/OralStatements/Sri%20Lanka%20mtg%206.pdf>.

2. Action contre la Faim

52. On 4 August 2006, 17 aid workers from Action contre la Faim were executed at their office premises in Muttur, when the Government and LTTE were fighting for control of the town.³⁴

53. An inquest into the killings began in the Muttur Magistrate's Court on 15 August 2006. In subsequent months, however, the case was transferred to Anuradhapura then to Kantale, and then back to Anuradhapura. In November 2007, the magistrate of Anuradhapura was transferred to another location and the case was sent back to the magistrate in Muttur (a different magistrate to the one who initially heard the case in August 2006), where it has since ground to a halt. Action contre la Faim lodged a complaint with the Human Rights Commission of Sri Lanka, later complaining of its total ineffectiveness and lack of cooperation.³⁵

54. Credible and independent local and international organizations have conducted substantial inquiries into the case and made serious allegations about its mishandling by the Attorney-General's Department, the police, the Judicial Medical Officer and the Ministry of Justice. They noted that officials had destroyed, removed and otherwise tampered with evidence. The families of the victims had been intimidated, threatened and, in some cases, encouraged to sign statements of withdrawal.³⁶

55. The case was also among those investigated by the Udalgama Commission in 2007/08, although its report has never been published. The Lessons Learnt and Reconciliation Commission recommended that the Government should complete the investigation and prosecute those responsible. During the High Commissioner's visit to Sri Lanka, the Attorney-General informed her that he had instructed his staff to re-examine archived files, while pointing out that the investigation was proceeding slowly. In its comments on the present report, the Government stated that a team of senior prosecutors continued to pursue various lines of inquiry, although it has not been possible to establish the identity of those responsible.

3. Executions of Prisoners and those who Surrendered

56. Since the end of the armed conflict in 2009, video and photographic material have emerged depicting scenes from the last phase of the war, in which prisoners appear to have been killed upon their surrender or while in the custody of the security forces.

57. In June 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions presented a technical report to the Human Rights Council that demonstrated the authenticity of portions of the video footage first broadcast by Channel 4 in August 2009.³⁷ On 10 September 2009, the Government had announced the outcome of its own technical analysis on the basis of which it disputed the previous findings of the Special Rapporteur. In response, the Special Rapporteur commissioned independent experts to undertake a technical analysis, which confirmed his initial conclusion. While the Lessons Learnt and Reconciliation Commission did not reach a firm conclusion on the authenticity of the material, it recommended that the Government should

³⁴ In its ruling addressed to the Sri Lankan Secretariat for Coordinating the Peace Process on 29 August 2006, the Sri Lanka Monitoring Mission concluded that the Army was in control of the town at the time of the death of the aid workers.

³⁵ Action contre la Faim, *The Muttur massacre: a struggle for justice*, study report, June 2008, available at: www.actionagainsthunger.org/sites/default/files/publications/ACF-IN-Sri-Lanka-Advocacy-Report-6-18-08.pdf.

³⁶ See University Teachers for Human Rights, special report No. 33, 4 August 2009, available at: http://uthr.org/SpecialReports/spreport33.htm#_Toc237059512.

³⁷ A/HRC/17/28/Add.1, appendix.

conduct further investigations. According to the Government, this is now the subject of a second stage of proceedings by the military court of inquiry, yet to be concluded.³⁸

(a) Balachandran Prabhakaran

58. In February 2013, a series of photographs emerged depicting Balachandran Prabhakaran, the 12-year-old son of LTTE leader Villupillai Prabhakaran, sitting in a bunker, alive and apparently in the custody of Sri Lankan troops, then his apparently dead body lying on the ground, his chest pierced by bullets. The photographs were taken in May 2009, a few hours apart and with the same camera. The authorities have maintained that the boy was killed in cross-fire.

(b) T. Thurairajasingham (alias Colonel Ramesh)

59. Video and photographic material obtained by Channel 4 and other sources depict LTTE commander Colonel Ramesh being interrogated by Sri Lankan security forces, followed by still images of his mutilated dead body. According to several witness testimonies to the events surrounding the fate of Colonel Ramesh, he was in the custody of the security forces at the time of his death.

(c) Shoba (alias Isaipriya)

60. The analysis by the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Channel 4 photographic and video material of the death of a high-profile member of the LTTE press and communications wing, Isaipriya, revealed the likelihood of summary execution by the army. The video and pictures showed that her clothing had been pulled away to reveal her bare body.³⁹ In November 2013, Channel 4 released new footage that shows her being captured alive by the army.

61. With regard to each of the above three cases, the Government stated the authenticity of the footage and photographs remained unsubstantiated and unverified. Whether this has been the subject of any further investigation is unknown.

(d) "White flag" incident

62. The Secretary-General's Panel of Experts examined allegations of extrajudicial executions of high-level LTTE leaders on 18 May 2009, despite assurances from the Government that they could safely surrender. High-ranking government and military officials have provided conflicting accounts of the events in rallies and international forums.⁴⁰ While the circumstances surrounding the incident remain uncertain, the Panel concluded that the LTTE leadership intended to surrender. Evidence of this incident continues to emerge through non-governmental sources from witnesses

³⁸ See National Plan of Action (see footnote 10), p. 2.

³⁹ See Amnesty International, Sri Lanka: Briefing to Committee against Torture, October 2011 (available from www.amnesty.org/en/library/asset/ASA37/016/2011/si/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf), p. 20.

⁴⁰ See Frederica Jansz, "'Gota ordered them to be shot' - General Sarath Fonseka", *Sunday Leader*, 12 December 2010, available at www.thesundayleader.lk/2009/12/13/%E2%80%9Cgot-a-ordered-them-to-be-shot%E2%80%9D-%E2%80%93-general-sarath-fonseka/.

now located outside the country. In its report, the Lessons Learnt and Reconciliation Commission failed to critically analyse or investigate the “white flag” incident, but it cited testimonies from an army general and a government agent, who dismissed these allegations. In its comments on the present report, the Government stated that no further inquiries were being conducted into the incident owing to lack of credible evidence.

4. Prageeth Ekneligoda

63. On 24 January 2010, a Sri Lankan journalist and cartoonist, Prageeth Ekneligoda, disappeared shortly after leaving work. A few days earlier, he had published an article critical of President Rajapaksa. Local residents told the Sri Lankan press that they had seen a white van without numbered plates close to his house around the time of his disappearance. In August 2009, Prageeth had already been abducted, then released the following day, with his abductors saying that they had made a mistake. This case is emblematic of the tens of thousands of cases of disappearance witnessed over the past 30 years in Sri Lanka and remain unresolved. The Ekneligoda case has been raised by the High Commissioner, the Working Group on Enforced or Involuntary Disappearances, the Committee against Torture and the Secretary-General’s Panel of Experts. While the Lessons Learnt and Reconciliation Commission did not investigate this case, it made general recommendations that the Government investigate abductions, enforced disappearances and attacks on journalists.

64. In June 2011, former Attorney-General (now Chief Justice) Mohan Peiris was ordered to appear at a habeas corpus hearing in the case after telling the Committee against Torture, in 2011, that Ekneligoda was living in a foreign country. At the hearing, Mohan Peiris admitted that he did not know Prageeth Ekneligoda’s whereabouts and said that his statement to the Committee had been based on the instructions received. Ekneligoda’s wife faced hostile questioning from State counsel over her activities at the Human Rights Council side event held in March 2012, in Geneva.⁴¹ The Government has reported that a magisterial inquiry is in progress. This case, together with many of this kind, will not fall within the mandate of the new Commission of Inquiry on Disappearances, which is mandated to examine cases of disappearances only in the northern and eastern provinces.

VI. Conclusions and Recommendations

A. Conclusions

65. Despite the significant progress achieved in the physical aspects of resettlement and recovery, and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission, the Government of Sri Lanka has yet to satisfy the call made by the Human Rights Council for a credible and independent investigation into the allegations of serious human rights violations that persist or to take the necessary steps to fulfil its legal obligations to ensure justice and redress.

66. It is important for the Human Rights Council to recall the magnitude and gravity of the violations alleged to have been committed by the Government and the LTTE, which left many thousands of civilians killed, injured or missing. In its report, the Secretary-General’s Panel of Experts concluded that, if proven, some of these acts would amount to war crimes and crimes against humanity. During her visit to Sri Lanka in August 2013, the High Commissioner was

⁴¹ See A/HRC/21/18.

struck by the overwhelming sense of grief and trauma among victims and survivors that, if left unaddressed, will continue to undermine confidence in the State and reconciliation.

67. The Government has launched initiatives and established mechanisms, such as the military courts of inquiry and the Commission of Inquiry on Disappearances, but none of these have the independence to be effective or to inspire confidence among victims and witnesses. The military courts of inquiry lack independence and transparency and are limited in scope. Past commissions of inquiry have not always completed their mandate, their reports have not been published and their recommendations have not been implemented or followed by prosecutions. The Human Rights Commission of Sri Lanka, although handling many routine cases, has a poor record in responding credibly to serious violations committed by the military and security forces.⁴²

68. For the past several years, Sri Lankan courts have been compromised by politicization and interference by the executive.⁴³ Cases or presiding magistrates and judges are often transferred from one court to other, thereby delaying judicial proceedings.⁴⁴ The High Commissioner heard from lawyers about large numbers of fundamental rights applications, including in cases of arbitrary detention and torture, that are discouraged or not given leave to proceed by the Supreme Court.⁴⁵

69. One consequence of this situation is the understandable reluctance of victims and witnesses to come forward in the absence of any effective system for their protection. In many cases, witnesses have been intimidated to discourage their giving testimony, and even killed. This has been a major constraint on criminal investigations, as well as on the work of previous commissions of inquiry and the Lessons Learnt and Reconciliation Commission. The Attorney-General himself informed the High Commissioner that the reluctance of witnesses to come forward was the main reason for the lack of progress in such emblematic cases as the ones concerning Trincomalee and Action contre la Faim.

70. A bill on assistance and protection for victims of crime has been in preparation since 2007, and was tabled in Parliament in June 2008. The previous drafts contained many provisions that were not compliant with international human rights law. Although the Supreme Court recommended several amendments, it is not clear whether they were incorporated. According to the Government, the legislation is being finalized, even though the final version has yet to be released for public consultation.

71. At the same time, new evidence -- including witness testimony, video and photographic material -- continues to emerge on the events that took place in the final stages of the armed conflict. Human remains are also still being discovered, for instance in Matale, in November 2012, and Mannar, in December 2013.

⁴² For example, the attack on the Vavuniya prisoners and subsequent custodial deaths, in June 2012; the prison riot and subsequent custodial deaths in Welikada prison, in November 2012; and excessive use of force and subsequent deaths in Weliweriya, in August 2013.

⁴³ In her oral update to the Human Rights Council (A/HRC/24/CRP.3/Rev.1), the High Commissioner highlighted concerns about the degree to which the rule of law and independence of the judiciary had been undermined in Sri Lanka, notably by the 18th amendment and controversial impeachment of the 43rd Chief Justice in January 2013. The 18th amendment abolished the Constitutional Council, which once recommended appointments to the independent bodies, such as the Elections Commission, the Police Commission and the Human Rights Commission.

⁴⁴ As seen, for example, in the transfer of the magistrate overseeing the case of the Matale mass graves.

⁴⁵ For example, the Fundamental Rights application (SCFR115/2011) submitted by the parents of Ganeshan Nimalaruban, who died in custody following the attack on the prisoners in Vavuniya in June 2012.

72. As the emblematic cases highlighted above show, national mechanisms have consistently failed to establish the truth and achieve justice. The High Commissioner believes this can no longer be explained as a function of time or technical capacity, but that it is fundamentally a question of political will. The Secretary-General's Panel of Experts and the initiatives taken by international non-governmental organizations have shown that witnesses are willing to come forward to testify to international inquiry mechanisms that they trust and can guarantee their protection. For this reason, the High Commissioner remains convinced that an independent, international inquiry would play a positive role in eliciting new information and establishing the truth where domestic inquiry mechanisms have failed. In the absence of a credible national process, she believes the international community has a duty to take further steps, which will advance the right to truth for all in Sri Lanka and create further opportunities for justice, accountability and redress.

73. The High Commissioner reiterates her concern at the continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human rights defenders, journalists and families of victims, the rising levels of religious intolerance, and continued militarization, which continue to undermine the environment where accountability and reconciliation can be achieved. She therefore reiterates and updates the recommendations made in her previous report to the Human Rights Council, most of which remain unimplemented.

B. Recommendations

74. The High Commissioner recommends that the Human Rights Council establish an international inquiry mechanism to further investigate the alleged violations of international human rights and humanitarian law and monitor any domestic accountability processes. OHCHR stands ready to assist in such a process.

75. The High Commissioner recommends that the Government of Sri Lanka:

(a) Finalize laws dealing with incitement to hatred, witness and victim protection, the right to information and the criminalization of enforced disappearances, and revise existing laws in accordance with international standards;

(b) Repeal the Prevention of Terrorism Act and lift the regulations promulgated under it that allow for arbitrary detention;

(c) Arrest, prosecute and punish perpetrators of attacks on minority communities, media and human rights defenders, and ensure protection of victims;

(d) Undertake independent and credible criminal and forensic investigations with international assistance into all alleged violations of human rights and humanitarian law, including recently discovered mass graves;

(e) Establish a truth-seeking mechanism and national reparations policy in accordance with international standards as an integral part of a more comprehensive and inclusive approach to transitional justice;

(f) Broaden the scope and tenure of the Commission of Inquiry on Disappearances to encompass cases from all parts of the island and all periods of the history of disappearances;

(g) Publish the final report of the military courts of inquiry, the presidential commission of inquiry of 2006 and the more recent commissions of inquiry to allow the evidence gathered to be evaluated;

(h) Take further steps in demilitarization, ensure military disengagement from activities that are meant to be civilian, resolve land disputes and promote meaningful community participation in reconstruction and development;

(i) Engage civil society and minority community representatives more fully in an inclusive and consultative process to support the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission;

(j) Implement the Commission's recommendation for a national day of commemoration, allow all citizens their right to hold individual or group commemorations, and hold national consultations on the design of appropriate memorialization for the victims of the war;

(k) Give positive consideration to the offers of technical assistance made by the Office of the High Commissioner;

(l) Invite special procedures mandate holders with outstanding requests to visit the country in 2014, particularly the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues.

Comments received from the Permanent Mission of Sri Lanka on the draft report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/25/23)*

I. General Observations

1. This may be read without prejudice to the Government of Sri Lanka's (GoSL) position of rejection of resolution 22/1. The GoSL wishes to observe that the mandate of Resolution 22/1 is placed within the broad parameters of requesting the GoSL to implement the recommendations of the LLRC. The High Commissioner's draft Report to HRC 25 (A/HRC/25/23) however goes beyond the mandate granted by resolution 22/1 in making reference to and recommendations on numerous issues extraneous to the resolution under reference, as well as in its request to establish an international inquiry mechanism to further investigate alleged violations. Additionally, the recommendations are arbitrary, intrusive and of a political nature, and are not placed within the ambit of the LLRC as mandated by 22/1. The GoSL wishes to respectfully submit that the above is in contravention of the rules of procedure governing the conduct of the Council as stipulated in GA resolution 60/251 and HRC resolutions 5/1 and 5/2.
2. The GoSL wishes to request the OHCHR to delete references to the discredited UNSG's Panel of Experts (POE) Report on Sri Lanka contained in the paragraphs 6, 47, 65, 71, and in footnotes 30 and 44, as well as the full link to the POE Report given in the two footnotes under reference, for the following reasons:
 - (a) The POE was not referred to in the Resolution 22/1 on Promoting Reconciliation and Accountability in Sri Lanka and therefore alluding to it in the Report A/HRC/25/23 clearly takes it beyond the scope and mandate of Resolution 22/1;
 - (b) The POE Report on Sri Lanka which was commissioned by the UN Secretary General was the culmination of a private consultation that the latter sought for his own advice, and is not the product or request of the UN Human Rights Council, the UN General Assembly or any other UN body. As it has not received the endorsement of the intergovernmental process, it has neither credence nor legitimacy within intergovernmental fora;
 - (c) The POE's mandate did not extend to fact finding or investigation. In its Report, the three-member Panel also makes it clear that the assertions set out therein remain unsubstantiated and require a higher standard of proof;
 - (d) For the above reasons, the GoSL does not extend any credence or legitimacy to the POE Report and protests reference to it in the Council, and particularly in this instance where it is clearly not mandated by the Council;
 - (e) It may be further noted that the POE though invited by the LLRC to make representation to the Commission, chose not to present themselves before the Commission for reasons best known to them.

* Editors Note; Some paragraphs of the High Commissioner's report were amended following the submission of the Government's Response to the report issued in February 2014 and available for public perusal under 'Communications from Government' on the OHCHR website.

II. Engagement by OHCHR and Special Procedures of the Human Rights Council

3. Sri Lanka has consistently interacted with the United Nations system and the wider international community in a spirit of goodwill and cooperation. It is in this context that Sri Lanka remains committed to a positive engagement with the OHCHR and Special Procedures Mandate Holders of the Human Rights Council.
4. In pursuance of this objective, Sri Lanka facilitated an advance mission by officials of the OHCHR to Sri Lanka in 2012 which was followed by the visit of the High Commissioner for Human Rights which took place from 25-31 August 2013, pursuant to an invitation extended by GOSL in early 2011. By the High Commissioner's own admission it was her "longest visit", and while in Sri Lanka she was able to "go anywhere and see anything" that she "wished to see" including the former conflict-affected Northern and Eastern provinces; she had the opportunity to call on the President and have candid discussions with senior Cabinet Ministers, Government officials and opposition MPs. She also noted that she was able to meet independently with a wide range of civil society representatives and attend events organised by civil society activists and organizations. Hence, there was legitimate expectation that the High Commissioner would adopt an objective and unbiased approach to the country. It is unfortunate that this has not been the case.
5. The GoSL has continued its engagement with Special Procedures, and its Permanent Representative in Geneva has engaged in a regular dialogue with them including the SR on Truth, Justice, Reparation and Guarantees of Non-recurrence Mr. Pablo de Greiff and the SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Christof Heyns. The GoSL has also conducted regular meetings with the Working Group on Enforced or Involuntary Disappearances (WGEID), including with senior representation from Sri Lanka's Attorney General's Department. Since January 2012, the GoSL has transmitted responses on 842 cases to the Working Group. Additionally, an Inter-Agency Task Force has been established to respond to the Working Group. Further, at the meeting with the WGEID it has been informed that the latter's request to visit is under consideration as with other similar requests, which will be processed as mutually convenient and taking into account national imperatives.
6. The GoSL has already informed the Human Rights Council, it will continue to schedule pending visits of Special Procedures mandate holders to Sri Lanka following the visit of the High Commissioner. In line with this commitment, the GoSL has extended three invitations to Special Procedures since August 2013 and the SR on Human Rights of IDPs, Dr Chalokya Beyani visited Sri Lanka in December 2013.
7. As previously committed at the UPR, the GoSL agreed to implement recommendations of the LLRC in line with the NPoA, and also make available financial and other resources for same. Additionally, Sri Lanka made 19 voluntary commitments in relation to the UPR. The GoSL is of the view that the UPR second cycle on Sri Lanka is an appropriate context to explore avenues for technical cooperation. High Commissioner's letters to GoSL containing, *inter alia*, offers of technical assistance in specific areas were received on 31 October 2013. In this context, it is observed that in keeping with HRC Resolution 5/1, offers of technical assistance need to be made in consultation with and with the concurrence of the receiving State. The GoSL remains open to consideration of technical cooperation from the OHCHR in some key areas of reconciliation, in line with the needs of the country, in the context of implementing the accepted recommendations of its UPR 2nd cycle. Sri Lanka has also undertaken commitments on technical cooperation under the UN Development Assistance Framework 2013-2017.

8. Under Section II of the High Commissioner's Report, she has additionally raised concerns regarding a range of issues based on information of questionable veracity and arrived at conclusions in a selective and arbitrary manner.
9. Unlike some other countries, Sri Lanka does not have compulsory military service or conscription. Even at the height of the armed conflict, the GoSL did not resort to any conscription into the armed forces. Sri Lanka adheres to an "All Volunteer" concept and thus enlistment to the armed forces is entirely at the free will of citizens. Under the Sri Lanka law, the supreme legislative organ, the Parliament, is entrusted with the power to raise and maintain armed forces. Sri Lanka's military is a disciplined entity tasked to protect the country's territorial integrity, maritime boundary, national strategic interest and overall safety and security of the nation and its citizens. Therefore, considering the national security requirements and threat perception, the size of the armed forces is evaluated from time to time. Strength and size of the armed forces and their deployment is a matter exclusively vested with an independent sovereign state. It is not the mandate of the High Commissioner for Human Rights of the UN to call for the demobilization and disarmament of the military of a sovereign State and set timelines for same and the GoSL wishes to emphasize that it does not intend to disarm or demobilize its military. The GoSL continues to evaluate and rationalize military presence according to national security imperatives. The timelines for such activities correlates directly to the threat perceptions of the GoSL to national security and is one which evolves as situations unfold.
10. Following the termination of military operations against the LTTE in 2009, the GoSL has undertaken a gradual process of reduction of military presence in former conflict affected areas. It may be noted that the total strength of the military in the Northern Province has been reduced by approximately 30% from 2009 to October 2013, a process which is continuing to take place. In addition, in the Eastern Province approximately 26% reduction of troop presence has been undertaken. Also 50% of the troops have been deployed in areas which were not affected by the conflict.
11. The following concrete steps taken by the GoSL, can be highlighted in this regard:
 - (a) The former High Security Zones (HSZs) have ceased to exist. The Palaly Cantonment is now the only area in which some security restrictions remain, but even within the Cantonment, civilians have unrestricted access to the airport at Palaly and the Kankesanthurai harbour. Action is also being taken to release lands within the Cantonment area for agricultural and religious activities;
 - (b) While it is true that there are still some civilian properties included in the Cantonment, it must be stressed that civilians have not occupied these properties for the last twenty to twenty-five years. The Government has taken measures to pay compensation to the owners of these properties and to provide alternate land to them. It should also be noted that lands that had been forcefully taken from the people and occupied by the LTTE for many years have also been released to their legal owners. The former HSZ in the Eastern Province located in the Sampur area from 2007 has been reduced in extent by 65% and declared a Licensed Zone under the Board of Investment;
 - (c) As at January 2014 the GoSL has released 19,322 acres of private land and 2,518 acres of State owned land in the Northern Province which were hitherto occupied by the military. In the East, the GoSL has released 689 acres of private land and 3,222 acres of State land. Therefore the total figure of lands released in the North and the East amounts to 20,011 acres of private land and 5,740 acres of State land;
 - (d) The full responsibility for Law and Order has been handed over to the Police. A new Ministry of Law and Order has also been created. 16 new Police Stations and 3 new posts have been established and recruitment of more Tamil speaking Police personnel (1,447) has taken place. Tamil language training is also being provided to additional

numbers of Police personnel. 3,424 Police officials have been given Tamil language training in the period 2009 – 2012 and 409 Police officials have been given English language training during this same period. This is in line with the GoSL's overall policy of promoting trilingual competency among public officers;

(e) All schools in the Northern Province used by the Sri Lanka military have been handed over to civilian use. The schools occupied by the LTTE were renovated by the Government and handed over to the respective zonal directors of education which was only possible because the war ended;

(f) The military has no involvement in civilian administration. The civil administration system in the North and East is fully functional and discharging their duties. The culmination of this process was the successful conclusion of Provincial Council elections in the North in 2013 and the establishment of the Northern Provincial Council;

(g) The activities carried out by the Sri Lankan military are within the ambit of Civil Military Cooperation and are not intended to usurp the powers of civil administration. These activities are similar to post-conflict activities undertaken by military forces across the globe and involve reconstruction/renovation of houses, provision of adequate safe drinking water, construction of sanitary facilities, reconstruction of religious places for communities, improving access roads, irrigation projects etc. Whilst these were undertaken more intensively in the immediate post-conflict period, these activities have also become limited due to the strengthening of civilian institutions and their capacity to undertake such work.

12. As outlined above, the aforementioned meaningful steps have been taken by the GoSL which are a part of the process of reduction of the military presence in former conflict affected areas. Therefore, the assertion by the High Commissioner regarding demilitarization is erroneous and misleading. It seeks to create the impression that the presence of the military in these areas remains the same as during the conflict.
13. Given that for over 30 years the sovereignty and territorial integrity of the country was threatened by a terrorist group, the GoSL has legitimate concerns regarding resurgence of terrorist activity in the areas in which they were fully functional and therefore national security interests play a crucial role in decisions regarding the level of military presence in those areas in order to prevent any recurrence in the future.
14. In addition, there have also been repeated attempts, including by the High Commissioner, to draw a non-existent correlation between the presence of the military and vulnerability of women to sexual harassment and violence in the North. This position is not borne out by the available statistics. The GoSL in its statement to the 24th Council highlighted that a survey conducted covering the period 2007-2012 had revealed that of the reported incidents of sexual violence in the North a large majority were carried out by close relatives/ neighbors and only a very few could be attributed to the Security Forces. In all these cases involving Security Forces personnel disciplinary and legal action has been taken. The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have been filed in civil courts, some of which are pending in Courts and with the AG's department.
15. Furthermore, the GoSL wishes to reiterate that there exists no basis for concerns as expressed by the High Commissioner with regard to presence of the security forces contributing to the vulnerability of women to sexual violence in the North. The GoSL deplores all acts of violence against women and girls and has taken concrete action against reported cases and will continue to do so. The GoSL requests the High Commissioner to provide factual evidence to substantiate

this allegation and to refrain from making general comments without a degree of specificity which would allow the GoSL to investigate and respond in a comprehensive manner.

16. Sri Lanka had initiated action to prepare legislation with regard to Witness and Victim Protection. Consequent to extensive consultation in this regard, including examination by the Cabinet Sub Committee on Legislation and action being taken thereon by the Legal Draftsman, the finalization of legislation is in progress. The need for legislation for the criminalization of disappearances is being examined by a Committee appointed by the Ministry of Justice, in consultation with the Attorney General. Further, amending legislation to enhance existing provisions in the Penal Code and the ICCPR Act with regard to hate speech has been prepared.
17. Bilateral discussions are ongoing with regard to a truth seeking mechanism. With regard to reparation policies, they are entrenched in the existing domestic legislation. They are implemented through administrative and judicial processes.

III. Recent Human Rights Developments

18. With regard to the High Commissioner's Oral Update at the 24th Session of the Council it may be recalled that the GoSL provided its observations on the issues referred to therein.
19. The GoSL rejects the assertion that there is an undermining of the independence of the judiciary. Administration of justice, inclusive of independence of the judiciary is constitutionally enjoined and any infringement of these entrenched rights is visited with sanctions. Judges hold office during good behavior and proven misbehavior or incapacity triggers constitutionally entrenched disciplinary proceedings. Any procedure adopted in this regard has been in accordance with the Constitution and such compliance with constitutional provisions cannot be regarded as undermining the independence of the judiciary.
20. It is mandatory for all INGOs and NGOs working in Sri Lanka to register with the NGO Secretariat which is under the Ministry of Defence & Urban Development. They are also required to submit comprehensive details on their proposed activities in the country. The incidents under reference in paragraph 15 are therefore not a reflection of militarization or involvement of the military in civilian functions. Drawing such a correlation is erroneous.
21. The statement attributed to the Secretary to the President about steps being taken to replace senior officials in the Northern Province with civilians is incorrect and it gives a misleading impression that military personnel are engaged in civil administration. All civil administration positions in the Northern Province are in fact occupied by civilians.
22. In addition to the substantial reduction of the military presence in the North and the East, the numbers of security barricades, road blocks and checkpoints have been reduced by 99 percent in these areas.

A. Former Combatants and Detainees

23. With regard to the numbers concerning rehabilitees and detainees referred to as having been provided by the GoSL to the High Commissioner during her visit, it may be noted that the GoSL has consistently provided updates to the HRC at the regular sessions on this matter.

24. The GoSL rejects the assertion that access to legal representatives of the detainees remains a matter of concern. Access is given not only to their legal representatives but also to family members, religious dignitaries, medical personnel and the ICRC. The Magistrates also visit the detainees regularly to ascertain their well-being. The presidential directives of 07th July, 2006 and reissued in 2007 remain valid to date. These directives protect the rights of the arrested person. Every member of the armed forces and the police force shall assist and facilitate the National Human Rights Commission of Sri Lanka (NHRCSL) and any person authorized by the NHRCSL in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.
25. In addition, legal aid is provided by the State at its expense for accused and appellants in the High Court and the Court of Appeal respectively, if they are unable to retain a lawyer of their choice. The Bar Association of Sri Lanka also assists persons with legal aid mainly in forwarding Fundamental Rights petitions to the Supreme Court. Legal aid is also available for civil matters.
26. All detainees can challenge the lawfulness of the detention by way of Habeas Corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regards the fundamental rights applications it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court –the epistolary jurisdiction which has been developed by the Supreme Court.
27. Despite the tremendous advances being made in Sri Lanka, it needs to be understood that the international network of the LTTE still remains active. Before and during the war, this network enabled the LTTE to establish links through which it sustained terrorist activities in the country. This included, *inter alia*, the procurement of arms and financing of terrorist activities. In addition, they linked with media, international agencies and non-governmental organisations for propaganda purposes and financed electoral campaigns internationally. By inciting Tamil populations living abroad and courting influential opinion makers, the LTTE network creates a distorted picture about developments in Sri Lanka that is unfortunately believed by certain foreign politicians and officials, and disseminated within the international community. The ground reality that prevails in Sri Lanka continues to be distorted by this misinformation to the international community. Though the LTTE has been defeated, its global network continues to garner support for terrorist activities through its transnational organizations thus seeking to destabilise peace and derail the reconciliation process that is taking place in Sri Lanka. In the circumstances Sri Lanka needs to retain its anti-terrorism law and the call for its repeal is tantamount to a request to Sri Lanka to renege on its international obligations to effectively respond to domestic and international terrorism. Therefore it is unjustified to demand the repeal of the Prevention of the Terrorism Act (PTA). It is to be noted that the UK and the USA have more stringent legislative responses to terrorism.
28. The GoSL continues to review the cases of suspects held under the Prevention of Terrorism Act in order to prosecute, submit to rehabilitation or release persons held in detention, upon consideration of the evidence.
29. While the High Commissioner asserts that there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former LTTE cadres and former paramilitary leaders now serving in Government, it may be noted that Sri Lanka was delisted from Annex II of the UN Security Council resolution 1612 on Children in Armed Conflict in 2012 reflecting closure on the issue. It may be further noted that Sri Lanka was one of the first countries to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000. Consequently, Sri Lanka made recruitment of children for

use in armed conflict a punishable offence under the Penal Code with Amendment Act. No. 16/2006 of February 2006. All 594 LTTE child combatants who were treated as victims were reunited with their families within a period of one year subsequent to rehabilitation.

B. Attacks on Religious Minorities, Human Rights Defenders and Freedom of Opinion and Expression

30. It is erroneous to note that there has been a 'significant surge in attacks against religious minorities and incitement of violence by Sinhala Buddhist nationalist groups.' There have been sporadic incidents focusing on places of worship of all four religions. These include 105 attacks on Hindu religious places, of which 95 cases were robberies committed by the locals. With regard to the reported attacks, 16 relate to Buddhist, 41 to Christian/Catholic and 20 to Muslim places of worship during the period from June 2009 to December 2013. Out of the 182 attacks, judicial inquiries are in progress regarding 112, and 22 cases have been concluded. It may be noted that out of the 182 incidents only 147 cases were reported to the police. In all such instances police has taken steps to report facts to Magistrates and action has been taken to produce suspects before Magistrates where credible information has been available.
31. All people living in Sri Lanka enjoy freedom of religion, which is a constitutionally guaranteed right. The Government of Sri Lanka remains committed to ensuring that this right is protected. This is evidenced by the action taken to address reported incidents of disturbances in the recent past. Action has been taken on those who have contravened the law of the land, once sufficient evidence has been gathered for prosecution
32. More broadly, In keeping with Sri Lanka's societal, cultural and historical norms, regular dialogue continues to take place at various levels to ensure interfaith harmony and understanding amongst its diverse populace.
33. Whenever credible information relating to incidents has been made available the GoSL has taken appropriate action.
34. The general practice of the OHCHR has been to make claims on the basis that credible information is available. However, these claims have not been substantiated. For instance, in the High Commissioner's Oral Update to the Council at the 24th Session she referred to 50 new incidents of arbitrary arrests (reported between 2009 and 2013). Whilst the GoSL in its response requested the High Commissioner to share that information, to date no such details have been provided by her Office which would enable the Government to respond.
35. The basic premise of engagement with a State by the OHCHR should be to provide that country with an opportunity to respond to allegations before statistics are placed before the Council. This is practiced in the breach by the OHCHR to seek to legitimize pre-judged and misplaced agendas thereby misleading the international community. We reject attempts to portray Sri Lanka as intolerant of religious minorities. Whilst sporadic incidents have occurred, as is the case with any multi-cultural, multi-ethnic, multi-religious society, they do not characterize the peaceful existence of the different religious communities of Sri Lanka.
36. With regard to the allegation of police blocking buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event on 13 November 2013, it may be noted that having perused all records, the GoSL wishes to state that no such incident has been reported to the Police. The GoSL therefore requests that this section be duly corrected.

37. Any attacks against journalists and media outlets that were reported to the Police have been duly investigated and facts have been reported to the relevant Magistrate's Court.
38. Successful prosecution of individual perpetrators requires proof beyond reasonable doubt of all elements of the offence inclusive of the identity of the offender and in a common law system of prosecution that prevails in Sri Lanka unless such evidence satisfies the degree of proof rebutting the presumption of innocence, a prosecution cannot be launched. The GoSL has reiterated that it has not, nor will hesitate to prosecute perpetrators whenever credible evidence is available and that domestic mechanisms inclusive of its criminal laws are adequately equipped to achieve this end.
39. It may also be noted that there is opportunity for media personnel to lodge a complaint immediately through an online complaints system launched by the Sri Lanka Press Council.
40. The GoSL rejects the assertion that there is 'a continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human rights defenders, journalists and families of victims'. The Government of Sri Lanka is fully committed to the protection of human rights defenders. While GoSL has repeatedly requested for specific information with regard to these allegations made regarding the period of the visit of the High Commissioner for Human Rights to Sri Lanka in August 2013, we note that almost 6 months later, a Joint Urgent Appeal from the OHCHR in this regard containing unsubstantiated, uncorroborated allegations of intimidation has been received by the Sri Lanka Permanent Mission in Geneva only on 10th February 2014, less than 24 hours before the deadline set by the OHCHR for GOSL to submit comments on the High Commissioner's draft report. While this communication is receiving the high attention of the GoSL, which would be responding to it in a timely manner, the GoSL takes note of the timing of the communication transmitted just three weeks ahead of the upcoming March Session of the Council where Sri Lanka is due to be considered.
41. The wide range of interactions that the High Commissioner for Human Rights and other foreign dignitaries have had with civil society during their visits to Sri Lanka in 2013 and 2014, as well as the active engagement of civil society from Sri Lanka in successive sessions of the Council are testimony to the vibrant nature of Sri Lanka's civil society and the freedoms they enjoy.
42. There have also been repeated allegations on curtailment of media freedom and freedom of expression in the country. Whilst it is true that there remain certain unresolved cases of violence against media personnel, there is no restriction placed on what may be reported by the press. The law of evidence plays the most crucial role, and due process is required for prosecution. This should not be interpreted as unwillingness on the part of the Government to bring perpetrators to justice.
43. Further, in recent years, the spread of social media networks and online news outlets has contributed to the diversity and the increased speed of propagation of information throughout the country at large. The wide spectrum of views on display in Sri Lanka is amply demonstrated by its print and electronic media, much of which is fiercely critical of the Government. Despite some of the views expressed being on occasion vituperative and targeted at individuals, it is nevertheless recognized that this is the price to be met for upholding the democratic norms of a free and vibrant media. It should also be noted that during the period of the present Government, no press censorship has been imposed. Further the law relating to criminal defamation has been repealed by Parliament.

44. Sri Lanka remains committed to taking necessary steps to ensure the safety of media personnel and institutions. Although no special laws have been formulated with regard to media personnel or institutions, any person who seeks to vindicate their rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the Human Rights Commission of Sri Lanka on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to canvass for the rights of media personnel.
45. Further, in order to ensure media freedom, the Government of Sri Lanka is seeking to strengthen grievance mechanisms which include complaints to Police, processing Fundamental Rights applications filed in the Supreme Court and complaints to the Press Council. The Government is also pursuing investigations into current cases of alleged attacks on media personnel and institutions.

C. Extrajudicial, Summary and Arbitrary Killings

46. For reasons more fully stated below, the incidents referred to under this heading cannot be categorized as falling under alleged extrajudicial, summary and arbitrary killings.
47. The facts as represented in the High Commissioner's report on the Weliveriya incident are erroneous and misleading. The following maybe highlighted in this regard:
- It appears from the comments contained that the Police and Army disrupted a peaceful protest which is not the case. The public protest campaign in the Weliveriya area alleging the contamination of water by a private factory located there turned violent and police were compelled to seek the assistance of the Army to maintain law and order. A crowd of around 4,000 protestors that had surrounded the factory had attacked police officials and blocked junctions connecting the main Colombo-Kandy road thereby obstructing traffic. Some rioters attempted to grab the weapons of the soldiers and a nearby petrol station was attacked using petrol bombs.
 - The number of fatalities is factually incorrect. There were 3 civilian deaths due to the clash and several civilians also sustained injuries. In addition 1 policeman and 8 army officials also sustained injuries.
 - Consequent to the Weliveriya incident a 5 member Court of Inquiry (CoI) was appointed by the Army Commander on 02/08/2013 and the said CoI submitted its report to the Commander on 21/08/2013. The report has been referred to the Director Legal/Chief Prosecutor of the Army for further action. Once the findings and recommendations of the CoI have been examined, the procedure leading to Court Martial, known as the recording of Summary of Evidence, will be ordered against persons where a prima facie case has been made out.
 - In order to facilitate this process the Brigade Commander who was in charge of the Weliveriya area and 3 Sector Commanders have been relieved from their duties.
 - From the evidence led before the CoI it has been revealed that the Army was deployed in the Weliveriya area at the request of the Police and this was justifiable considering the security situation in the area. Further, in terms of the Code of Criminal Procedure Act the Army is empowered to take appropriate action in a riot situation.

- The Police investigations on the 3 deaths that occurred during the incident are being conducted by the Colombo Crime Division of the Police. The Magistrate Court of Gampaha has concluded the magisterial inquiry into these deaths and the dossier of the inquiry has been forwarded to the Attorney General for consideration.

48. With regard to Welikada prison incident, the sequence of events that occurred is detailed below:

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

49. With respect to the Vavuniya prison incident, investigations conducted up to now do not disclose sufficient material to attach criminal responsibility to any particular person. Consequent to an order made by the High Court judge of Vavuniya in case no. HCB 2275/2011, to transfer a prisoner to a detention camp in the South, the other prison inmates began a protest campaign and took hostage 3 prison officers and continued this protest for more than a day. Unable to control this siege the prison authorities summoned the assistance of the STF of the Police in order to rescue the prison officials held as hostages. In the course of this operation 2 prisoners, 3 officers of the prison and 7 STF personnel were injured as a result of the attack launched by the prisoners. The 2 prisoners who sustained injuries during the rescue operations later succumbed to their injuries. As the facts demonstrate this incident is in no way characteristic of extrajudicial, summary or arbitrary killing.

D. Mass Graves

50. The remains found in the graves in Matale and Mannar have been taken into judicial custody and are being sent for examination and carbon dating under judicial orders. Thus the integrity of evidence available for any potential prosecution has been preserved.
51. With regard to the recovery of skeletal remains in Matale, police investigations have revealed that there had been a cholera epidemic in 1940s and those who died had been buried in a remote corner of the Matale hospital premises itself. All these aspects are being investigated by the police.

52. The Magistrate of Matale was transferred consequent to complaints made by the entirety of the Bar in Matale on irregular practices committed by the said Magistrate in association with local police. This disciplinary measure of transfer has been taken by the Judicial Service Commission in accordance with the provisions of the Constitution and the transfer has nothing whatsoever to do with the handling of the mass graves' case.
53. With regard to the recovery of skeletal remains in Mannar, it has been revealed that the area had been occupied by the LTTE for 30 years, except during the period 1988/89 when it was occupied by the Indian Peace Keeping Force (IPKF), till the area was liberated in 2008, it was not under the control of the GoSL. The matter is presently being investigated by the Police under the supervision of the Magistrate of Mannar.

IV. Implementation of the Recommendations of the Lessons Learnt and Reconciliation Commission (LLRC)

54. Please find given below GoSL observations with regard to Paragraphs 29 to 32 of Section IV of the Report. GoSL requests that these paragraphs be corrected as per the observations provided below:

i. The statement that GoSL has been selective in implementing only some of the recommendations of the LLRC is erroneous. It is also factually incorrect to say that only 30 of the 145 recommendations 'are only partially reflected in the NPoA', and that 'a remaining 140 recommendations have been left unaddressed in the NPoA altogether';

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

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

iii. These recommendations have been comprehensively incorporated into the LLRC NPoA and are now under implementation. Further, all agencies assigned with the implementation of the NPoA are instructed to consider the recommendations in their entirety and implement them in the spirit in which they had been made in the LLRC report;

iv. The recommendations itemized under Footnote 14 as being only partially reflected in the NPoA is erroneous. Recommendations 9.81, 9.98, 9.103, 9.117 and 9.134 referred to are adequately reflected in the NPoA and are under implementation. Further, with regard to recommendation 9.98, Article 12 of the 1978 Constitution stipulates the Right to Equality and Article 12(4) states that no law can be made to prevent the advancement of women, children or

disabled persons. Protection of The Rights of Persons with Disabilities Act (No. 28 of 1996) amended by Act No. 33 of 2003 stipulates the legal provisions on protection to disabled persons. It may be noted that Sri Lanka is a signatory to the Convention on the Rights of Persons with Disabilities as of 30 March 2007. With regard to implementation of recommendation 9.103, GoSL continues to work closely with UN agencies, INGOs, NGOs and civil society on infrastructure development and reconstruction, including re/construction of housing. With regard to Recommendation 9.117 GoSL has removed all restrictions at all places of religious worship in Sri Lanka. Further, the implementation of the Recommendations 9.134 and 9.140 are completed, while Recommendation 9.128 is under implementation. Recommendation 9.236 has been referred to the Parliamentary Select Committee for further action. The GoSL requests that the above footnote and related reference (Paragraph 30) be corrected to reflect the above;

v. Paragraph 31 – Of the items referred to at Footnote 15, 9.56, 9.166, 9.121 and 9.170 are observations. However, the gist of all observations made in Chapter 9 of the LLRC Report is incorporated into the 144 recommendations contained in the NPoA. Hence it is erroneous to affirm that ‘the remaining 140 out of the LLRC’s 285 recommendations have been left unaddressed in the NPoA altogether’. GoSL requests that this misperception be corrected.

vi. Paragraph 31 - It is erroneous to indicate that the NPoA does not include the safeguards recommended by the LLRC to ensure the security and safety of any person taken into custody. For example, Recommendation 9.47 itemized at Footnote 16 which refers to the responsibility of the State to ensure the security and safety of any person taken into custody through surrender or arrest is fully covered by Recommendations 9.53, 9.67, 9.54, 9.55, 9.57, and Interim Recommendation IR (1b) in the NPoA Report (Serial Nos. 12, 13, 14, 15 and 22). Further, in regard to recommendation 9.64 which refers to the full implementation of all Interim Recommendations (IR) of LLRC pertaining to detainees, it may be noted that the latter recommendations are reflected under IR (1a) and IR (1b) in the NPoA (Serial Nos. 17 and 22). It may be further noted that IR (1a) and IR(1b) (i) and (ii) are completed and IR (1b) (iii) is in progress. Similarly, 9.62 itemized at Footnote 16 which pertains to detainees is adequately covered by LLRC IR 1(a) which is included in the NPoA Report at Serial No. 17. While 9.66 in Footnote 16 contains both an observation and a recommendation, the implementation of the recommendation with regard to cooperation and constructive engagement with the ICRC has been in progress even before the NPoA and still continues, e.g., cooperation on detention issues and prisons visits etc. GoSL requests that this paragraph be corrected;

vii. Paragraph 32 - With regard to recommendation 9.46 on taking immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention, are investigated, the NPoA comprehensively provides the progress of the implementation of this recommendation.

55. The implementation of the NPoA is a dynamic process which evolves over time to culminate in the accomplishment of the recommendations. This process is envisaged to incorporate additional measures and modifications of the activities as and when required to fulfill the respective recommendations.

56. Significant and tangible progress has been made by the GoSL in the reconciliation process, including implementing the recommendations of the LLRC through the NPOA, with particular reference to addressing issues of accountability, including, *inter alia*, issues related to disappearances, detention, casualty figures, rehabilitation, resolution of land issues, demilitarization, restoration of civil administration, reduction of military presence in the Northern province, demining, resettlement of IDPs, infrastructure and socio-economic development of the Northern and Eastern provinces, restitution and compensatory relief,

implementation of Trilingual policy, promotion of ethnic and cultural harmony through school curricula, livelihood development, integration of youth in reconciliation, recruitment of Tamil speaking officers to the public service, institutional strengthening and democratization including election of the Northern Provincial Council, establishment of a separate Ministry for Law and Order, strengthening of the Official Languages Commission, fully functional Courts in the Northern Province with the exclusive use of the Tamil language, etc., which have been disregarded by the High Commissioner in her Report.

57. The High Commissioner's call to establish an international inquiry mechanism to further investigate the alleged violations of IHRI and IHL and monitor any domestic accountability process gives scant or no regard to the domestic processes ongoing in Sri Lanka within the framework of the LLRC NPOA, and is politicized in premise. The GoSL therefore, categorically rejects this call.
58. At Sri Lanka's UPR in November 2012, the GoSL stated that '...some of the recommendations fall under the ambit and scope of the NHRAP' (National Plan of Action for the Protection and Promotion of Human Rights). GoSL would appreciate if this statement is accurately reflected in Paragraph 31.
59. Investigations of this nature are complex and time consuming. The GoSL has consistently reaffirmed its commitment to investigate any allegation and whenever credible evidence emerges to make out a prima facie case, the GoSL will engage in prosecuting those found responsible for such crimes.
60. With regard to specific references made in Paragraph 35 of the High Commissioner's report please see the response of the GoSL under 'Former combatants and detainees'.

V. Progress on Accountability Issues

61. The fact that multiple mechanisms of accountability have been set in motion by the GoSL cannot be discounted by mere assertions of lack of independence and credibility. The multiple mechanisms of accountability demonstrate the comprehensive initiatives taken by the GoSL and they are in no way piecemeal.
62. By virtue of powers vested in the Executive under the Commission of Inquiry Act, a 3 member Commission of Inquiry has been appointed to investigate and report on matters relating to involuntary disappearances that were alleged to have occurred in the Northern and Eastern Provinces between 10 June 1990 and 19 May 2009. The Commission is vested with a wide mandate (Gazette Extraordinary No. 1823/42 dated 15 August 2013).
63. The said Commission is empowered to inquire and report on several matters relating to the alleged incidents. They include evidence on identity of any resident of these 2 provinces who had been abducted or disappeared from their residences, their present whereabouts and identity of persons responsible for such abductions and disappearances. The Commission is further required to report on the possible legal measures that can be initiated against the persons who are found responsible for such abductions and disappearances and measures that could be taken to prevent recurrence of such acts in future. The mandate of the Commission further includes inquiry into the obligation of the government to grant reasonable relief to the immediate family members of persons who have been so abducted or disappeared.

64. The Commission's mandate is to focus on the alleged abductions or disappearances that occurred during the period 1990 to 2009 of persons resident in the Northern and Eastern provinces which was the former theatre of conflict. It was specifically confined to the North and East as the majority of allegations of disappearances emanated from within the said Provinces.
65. This wide ambit and the fact that the Commission has so far received over 13,000 complaints establish that the Commission is an effective accountability mechanism which commands the credibility to hold accountable anyone who has been responsible for violations, if any, of international human rights law and international humanitarian law and thus, Sri Lanka possesses today an efficacious institution which cannot be discounted by any standards.
66. In addition to the above, the GoSL has also taken the following measures to address accountability issues:
- Established Military Courts of Inquiry
 - Conducted the Enumeration of Vital Events (2011)
 - Set up a database on detainees with access to next of kin
 - Streamlined reporting procedure to the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID)
 - Regular discussions take place between the GoSL and the ICRC on exploring possible areas of cooperation on alleged disappearances
67. It is well recognized that in matters pertaining to breaches of military discipline, especially with regard to violations of IHL, military courts have the jurisdiction, and the legality of these military courts have been recognized by many international instruments on IHL including Geneva Conventions and the Hague Conventions. Therefore, by virtue of the powers vested in the Commander of the Army by the Army Act and under international law he has appointed a Court of Inquiry to inquire into and investigate the alleged violations of IHL.
68. The country-wide Census on Deaths/Injuries to Persons or Property Damages due to conflicts since 1982 will address, *inter alia*, the issue of enumerating casualty figures, considering that victims were not confined only to the end stage but were affected during the entire duration. This Census which was carried out by the Ministry of Public Administration and the Department of Census and Statistics was concluded in December 2013. With regard to the census in the former theatre of conflict it was carried out by Tamil-speaking public officials serving in the North and the East. The Census will help establish casualty figures with a level of credibility which is not to be found in the unsubstantiated, arbitrary figure of 40,000 referred to in the UNSG's POE Report on Sri Lanka which is discredited and rejected by the Government of Sri Lanka.
69. Since many of these persons who have been reported as missing have taken refuge abroad, mainly in countries in the Western hemisphere, including the UK, USA and Canada, the GoSL requested for information of such persons who had sought asylum. This request has been denied by the aforementioned countries citing laws, regulations and policies of those governments and stating that they could not confirm, deny or otherwise comment on whether particular individuals have applied for or been granted asylum. This would also have a bearing on the work of the Commission on Disappearances.

70. References made by the High Commissioner to alleged killings of journalists and attacks on media institutions has been responded to in the section on 'Attacks on religious minorities, human rights defenders and freedom of opinion and expression'.
71. The GoSL does not have the competence to comment on the content of Paragraph 44 as it relates to an initiative by the NHRCSL which is an independent entity.
72. The LLRC is a homegrown mechanism established with the objective of truth seeking and reconciliation. The GoSL is best placed to determine its own processes with regard to truth seeking and reconciliation.
73. With regard to the Trinco Five case, the Non Summary inquiry which is in progress has concluded the evidence of 14 witnesses and affidavits of 7 official witnesses have been tendered before court. 14 other witnesses have been summoned for the next date of inquiry which is 06 March 2014. 7 witnesses are said to be living overseas and steps have been taken to trace their whereabouts. Attempts to serve summons on witnesses via email failed. The progress up to now is due to relentless efforts of the GoSL and the investigators. The Attorney General has appointed a senior prosecutor to monitor the investigations and directed the special investigating team to pursue any clue to unearth the identity of the offenders. Even up to date the identity of the offenders has not been established specifically. However, going on the available evidence it has been established that the accused against whom proceedings have now been instituted were around the place when the offence had been committed. Prosecution has been instituted on the basis that those accused being law enforcement officers, should offer a reasonable explanation if an offence was committed when they were around the place and if no such explanation is offered a court of law may reasonably conclude that they were involved in the commission of the crime, especially since they were under a legal duty to prevent the commission any crime. Therefore, it is evident that a judicial process is ongoing and the GoSL remains committed to bring this matter to a conclusion.
74. With regards to the Action Contre la Faim (ACF) case, a team of senior prosecutors comprising 6 Senior State Counsels and a State Counsel reviewed material gathered during the investigation, inquest and Presidential Commission of Inquiry, pertaining to the incident. This team works under the direct supervision of two Additional Solicitors General. Several official witnesses such as the Judicial Medical Officer and the Government Analyst (ballistic expert) were interviewed.
75. On the instructions of the AG, further investigations are being conducted by the Criminal Investigation Department (CID) as recommended by this team of prosecutors, who are especially dedicated to the ACF case. The CID has been instructed to investigate details of calls made using the telephones used by the deceased workers and to interview, *inter alia*:
- all members of armed units that regained control of this area after the attack by the LTTE which was repulsed following two to three days of fighting,
 - family members of the deceased aid workers on contacts they had during the relevant period,
 - ACF members who were attached to the Muttur Office as well as the Trincomalee Office from where the deceased workers were sent to Muttur.
76. The progress of further investigation conducted by the CID is reviewed periodically by the team of prosecutors. It must be specifically stated, that in this case too, it has not been possible to establish the identity of the accused. These offences have been committed after the LTTE

invaded the village and all inhabitants abandoned the area on receipt of information of the advancing LTTE cadres. The law enforcement officers retreated as they felt that they could not engage the LTTE who by far were numerically larger. A Catholic Priest who testified had stated that he was the last to leave the village and found the ACF workers still remaining. Further, he had requested them to leave but they had refused. The available evidence is to the effect that the forces found the dead bodies when they arrived at the village after several days. Investigations into this incident under prevailing conditions of the conflict in that region became extremely difficult. The GoSL unreservedly condemns the murder of the ACF workers. The Attorney General has stated that a prosecution would be launched if any evidence is made available to establish the identification of the perpetrators of the offence. A request has been made by the GoSL through relevant diplomatic channels for assistance to locate witnesses abroad even on the basis of anonymity to facilitate investigations.

77. The reference to the Channel 4 video footage without qualification in the Report leads to confusion between the original video footage of 1mn 17s in duration (November 2009) referred to by the former SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Philip Alston; the second 'extended video footage' of 5mn 25s in length, (December 2010) referred to by current SR on Extrajudicial, Summary, or Arbitrary Executions Mr Christof Heyns; and the subsequent Channel 4 documentary video 'Sri Lanka: Killing fields' which continues to be periodically recycled and screened, with the tacit support of elements of the diaspora linked to the former LTTE, to coincide with the March sessions of the Human Rights Council when the resolution on Sri Lanka comes under consideration.
78. It should be noted that reference to the footage of the latter Channel 4 documentary has not been the subject of any investigation. Therefore, reference to pronouncement on authenticity or otherwise of the latter documentary of Channel 4 without distinction between the different footage is erroneous and misleading. Furthermore, this footage has not been the subject of investigation of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The GoSL requests that this misperception be duly corrected in the Report.
79. It may be further noted that while the LLRC wrote to the Independent Television Network (ITN), United Kingdom, requesting a copy of the original broadcast footage of Channel 4 and whatever other information the Network could share with the Commission including the dates, location, dates, location etc., related to the alleged incidents, ITN did not provide a copy of the original broadcast video. In the absence of a copy of the original broadcast footage, the LLRC used for its investigative purposes "the video as available in the public internet domain". The Commission in its observations / recommendations on the video, *inter alia*, expressed its "regrets" at "the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information", and noted that "greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case." (LLRC Report November 2011).
80. Notwithstanding the lack of authenticity of the Channel 4 video acting on the recommendations of the LLRC, a Military Court of Inquiry has been established to inquire into the unsubstantiated allegations contained therein which is in progress. At present, the Court is interviewing various Field Commanders to identify the relevant formations and potential witnesses. This is a tedious task and once the potential witnesses are identified, they will be formally called as witnesses.
81. With regard to the assertions on Balachandran, Thurairajasingham and Isaipiriya, it is categorically stated that the authenticity of the footages/photographs referred to remain

unsubstantiated and unverified. In the circumstances, the GoSL objects to the inclusion of a reference to this unverified material in the High Commissioner's Report.

82. Due to the lack of credible evidence there are no further inquiries being conducted pertaining to the "White Flag" incident.
83. The wife of Prageeth Ekneligoda filed a Habeas Corpus application in relation to his alleged disappearance. This case is pending in the Magistrate Court of Homagama. A witness that was called to give evidence by the Counsel representing Mrs. Ekneligoda who claimed to be a friend of Prageeth Ekneligoda stated that he was to meet Prageeth that evening, who had telephoned him stating that he will be getting late. Subsequently, Prageeth spoke with this witness over the telephone and informed that he was with some friends and was on his way to meet the witness. While this conversation was taking place the witness claims that the call got disconnected and subsequent attempts to contact Prageeth over the phone immediately thereafter were unsuccessful. This witness was the last person who had contact with Prageeth Ekneligoda. Another witness called to give evidence by the Counsel for Mrs. Ekneligoda has stated of a sighting of Prageeth in France.
84. Former Attorney General giving evidence at the said inquiry stated that what was told by him before the Committee Against Torture was that there was information that Prageeth Ekneligoda is living in a Western country and that the GoSL was investigating that aspect. When the former Attorney General was questioned in court if he was personally aware of the whereabouts of Prageeth Ekneligoda, he replied in the negative, and he further stated that he made this statement on instructions received that the information was being investigated. The Magisterial inquiry is in progress.

VI & VII. Conclusions & Recommendations

85. In the light of the aforementioned positions contained in this response, the GoSL repudiates the conclusions and recommendations that have been erroneously arrived at in the High Commissioner's Report as they are based on incorrect and/or unsubstantiated and extraneous sources/material.
86. While the GoSL has categorically rejected resolution 22/1, it has nevertheless continued to make significant progress in its own reconciliation process, and Sri Lanka has continued to regularly update the Council on such progress. In this context, GoSL rejects, without prejudice to its position of non-recognition of resolution 22/1, the High Commissioner's claim that most of the recommendations made in her previous report to the Human Rights Council remain unimplemented.
87. With regard to the statement attributed to the Attorney General in paragraph 68, the Attorney General has categorically stated that this is a misrepresentation of his position by a false and misleading link being drawn between the lack of progress in cases such as the Trincomalee and ACF killings, and the absence of a Victim and Witness protection mechanism. On the contrary, he had informed the High Commissioner during the discussion, that the absence of such a law never posed an impediment to the judicial process, pointing out that whenever a complaint of intimidation of witnesses was brought to the attention of authorities, steps were taken to ensure the securing of that testimony without any let or hindrance.
88. The trajectory that has emerged with regard to the recommendation of the High Commissioner to the HRC for the establishment of an international inquiry mechanism reflects the

preconceived, politicized and prejudicial agenda which she has relentlessly pursued with regard to Sri Lanka. It may be recalled that just a week following the defeat of terrorism in Sri Lanka, on 26th May 2009, at the 11th Special Session of the UNHRC on Sri Lanka, the High Commissioner in the first instance, called for “an independent and credible international investigation” which was subsequently reiterated by her at the 11th regular session on 3rd June 2009, 14th session on 31st May 2010, and the 17th Session on 30th May 2011. In the Report of the OHCHR (A/HRC/22/38) dated 11th February 2013, she “reaffirms her long-standing call for an independent and credible international investigation...” The reference in the current report that “the High Commissioner remains convinced” for an “independent, international inquiry” demonstrates her persistent efforts against Sri Lanka. It is pertinent to question the factual basis for the High Commissioner’s initial formal call to the HRC for an independent, international investigation and its continuation. in order that the international community not be misled.

89. The Government of Sri Lanka reiterates its categorical rejection of the Conclusions and Recommendations contained in the High Commissioner’s Report, reflecting bias and is tantamount to an unwarranted interference in the internal affairs of a sovereign State.

The UN Resolution of March 2014 – Examining Human Rights Strategies for the Prevention of the Improper Use of Force and Violence

*Basil Fernando**

Introduction: Potential of the UN Resolution

In dealing with the question of human rights violations in Sri Lanka as well as the shortcomings of the legal system, the Resolution presented at the 25th Session of the Human Rights Council in March 2014 is likely to remain a significant reference for a long time to come, both in Sri Lanka and globally. This Resolution is the most important intervention that an agency of the United Nations has made on Sri Lanka. The future relationship of Sri Lanka to the United Nations and particularly to its human rights agencies will be influenced by this Resolution.

This Resolution signifies an opportunity to address many of Sri Lanka's political, social and legal dilemmas. It is not purely limited in its focus to the conflicts that Sri Lanka has faced during the last four decades. It has far greater significance than this. A positive feature of this Resolution is that it proposes a comprehensive approach in addressing the entirety of Sri Lanka's dysfunctional legal system and the steady decline in the Rule of Law

The following two paragraphs are important in grasping the meaning of this comprehensive approach.

"Emphasizing the importance of a comprehensive approach to the transitional justice incorporating the full range of judicial and non-judicial measures, including, inter alia individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law, with a view to preventing the recurrence of violations and abuses,

Underlining that truth-seeking processes, such as truth and reconciliation commissions, that investigate patterns of past human rights violations and their causes and consequences are important tools that can complement judicial processes, and that, when established, such mechanisms have to be designed within a specific societal context and be founded on broad national consultations with the inclusion of victims and civil society, including non-governmental organizations."

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For decades, many educated Sri Lankans, particularly belonging to the legal and judicial community, were led to believe that Sri Lanka has a proud legal heritage. In recent years however, this view has gradually been displaced by cynicism and loss of faith in the legal and judicial system by legal practitioners as well as the broader public. Such truths are spoken in private by many Sri Lankans while in the public sphere, the usual preference is to keep silent or to make hypocritical claims about the existence of a functional system. Only a few dissenting voices are heard.

Speaking the truth in public is not a cultural habit of Sri Lankans. Had that not been so, the many ills that have beset this nation could have been avoided. Truth has the capacity to be a problem solver. But the kind of truth that is capable of contributing to the solution of common problems is the truth that is told at some risk. As Michael Foucault once observed at a public lecture 'for the Greeks, the truth meant a statement that carries risks for the truth teller'.¹ The cultural habit of avoiding risks is so deeply rooted in the Sri Lankan context that every generation gets trapped in the adverse consequences of avoiding 'telling the truth'. Perhaps one of the major adverse consequences of the cultural habit of avoiding taking risks is that even the rebels in Sri Lanka (from both ethnic communities) could not escape from that trap. The easy resort to violence by the JVP (People's Liberation Front) as well as the LTTE (Liberation Tigers of Tamil Eelam) and other militant organizations can be traced to the absence of a belief in the problem solving capacity imbedded in 'truth telling'. Under those circumstances, resort to violence becomes a bluff where a rebel contemplates the possibility of victory by frightening the ruler and the population as a whole.

Lies and deception are used by politicians and rebels alike in misleading the public. This habit of bluffing and "telling lies" has permeated all layers of the Sri Lankan administration including the administration of justice. When a society is steeped in such untruths and deception, such lies are used to in a bid to escape grave even life threatening situations. The programmes currently aired on state electronic media, articles and editorials featured in the state print media and even in some segments of the private media indicate how far Sri Lankans have developed self-deception into a fine art while being oblivious to the perils that they face.

For example, certain sections of the legal and judicial community still believe that Sri Lanka has a rule of law system and is a functioning democracy when it is far from the case. The improper use of force and violence is widespread and the last decades have witnessed grave violations of human rights such as enforced disappearances, illegal arrest and detention, torture and failure of law enforcement to arrest and contain murder, rape and other forms of sexual violence. Sri Lanka has failed to resolve even the more manageable problems due to this practice of "lie telling" as against the tradition of "truth telling".

In this contribution, I will try and demonstrate that Sri Lankans adopt an ambivalent position regarding what is usually considered elsewhere "as improper use of force and violence." What the rest of the world considers as improper is considered as quite proper in Sri Lanka. With a proper understanding of these realities, Sri Lankans can make good use of this Resolution to remedy the ills affecting Sri Lanka's political and legal system. It is up to the Sri Lankan people to make use of this opportunity for positive change. Certainly not doing so will place the country in immense peril.

¹ <http://www.youtube.com/watch?v=VOURrVbpjW0>

Some General Reflections on the Improper Use of Force and Violence

Interpreted in its widest sense, the human rights project is centered on eliminating the improper use of force and violence in the manner in which the state deals with the individual.

In the context of industrialized western countries, the struggle to eliminate the improper use of force and violence has a long history. Michel Foucault² illustrates how, before the 19th century, physical violence was used as part of a spectacle in the punishment of culprits. In the 19th century this approach was abandoned and replaced by imprisonment as the mode of punishment. Thus, for those who grew up in these western countries, the use of direct force on the body of a human being by an agent of the state has now become unfamiliar. However, this is not the case in most countries. Like elsewhere, in most Asian countries the direct use of force on the body of the alleged culprit is common. Thus, the improper use of force and violence by the agents of the state on alleged culprits follows the old model used in Europe, making the sufferings imposed on the body of a person, a spectacle for all to see.

The answer as to why this remains so should be sought, not from officers of the security apparatus (police and military) as the agents of the state, but from the state itself. If not for the approval from the state, the police officers, military and others are unlikely to use such force and violence. In the event that any agent of the state on their own exercises such improper force on anyone, s/he would incur disapproval and consequent punishments by the state. What is usually called 'impunity' following the improper use of force and violence is a demonstration of the state's approval of the use of such methods.

The mere fact that a particular state has ratified UN conventions forbidding such improper use of force and violence does not necessarily indicate actual disapproval of the use of such methods by its agents in dealing with alleged criminals. The same can be said of constitutional provisions outlawing torture and other improper uses of force and violence. The test as to whether the state disapproves of the improper use of force and violence is the practical means by which it ensures that such actions by its agents are prevented.

The prevalence of torture, ill-treatment and other improper uses of force and violence in many Asian countries has been demonstrated through research and documentation.³ In recent years, there have been numerous attempts to document the practice of torture in many Asian countries. The agencies involved in such documentation include human rights organisations,⁴ United Nations agencies (such as the Rapporteur

² Michel Foucault, *Discipline & Punish: The Birth of the Prison*, Random House, New York, 1975.

³ The following discussion reflects the main conclusions of a recent literature review on torture and ill-treatment in Asia, *The Practice of Torture, the Threat to the Rule of Law and Democratisation*. (A report on Indonesia, Bangladesh, Burma, Sri Lanka, the Philippines, India, Pakistan, Nepal and Thailand), AHRC 2013

⁴ The following are some of the reports published by the AHRC/ALRC in the bi-monthly publication, Article 2: AHRC/ALRC Documentation: ALRC has published following reports of torture through its quarterly publication Article 2; On SRI LANKA, Volume 1 no 4, i Volume 3 No 1ii, Volume 4 No 4iii, Volume 4 No 5iv, Volume 6 No 2, v Volume 8 No 4, vi and Volume 10 No.4vii; INDIA Volume 1 No 3viii, Volume 2 No.1ix, Volume 2 No 4, x Volume 2 No 5, xi Volume 3 No 4xii, Volume 5 No 6xiii, Volume 7 No 2xiv, Volume 9 Nos 3 and 4xv, Volume 10

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee against Torture, and reports presented to the former Human Rights Commission and the present Human Rights Council). Besides these, there are also a few academic foundations which have engaged in extensive studies as well as established local and regional non-governmental organisations.

Approaches to the Improper use of Force and Violence

The general approach to the improper use of force and violence is to attribute such abuse to the security agencies, such as the police, military and intelligence agencies. Some attribute such abusive practices to individual security officers and demand action against these individuals only. This approach has not proved adequate for the prevention of such improper use of force and violence. A more comprehensive approach is required in examining the root causes for the prevalence of such abuses, rather than merely attributing it either to the individual officers, or even to the security apparatus as a whole.

The widespread practice of abuse that prevails indicates that the state, as the ultimate political authority in the country, bears the responsibility for its prevalence. Without the direct or overt approval of the state, the individual officers of the security apparatus, or the security apparatus as a whole, cannot engage in such widespread abuses. State responsibility is two-fold: that is, a positive responsibility, through its approval for the improper use of force and violence; and a negative responsibility, when it fails to take the necessary steps to eliminate such practices.

The general approach is to attribute only responsibility in the negative sense to the state; the failure on the part of the state to take the necessary steps to punish the perpetrators of such abuses, and further the failure to take the necessary steps to ensure internal controls within the security apparatus in order to prevent the individual officers from committing such abuses. However, this negative attribution is inadequate in explaining the widespread nature of such violations. The positive attribution of responsibility to the political authority is justified on the basis that it is the overarching idea of discipline that the political authority holds and insist on enforcing which creates the space for such widespread abuse by individual officers and the security apparatus as a whole. On that basis, it could justifiably be argued that in committing such abuses, individual officers and the security apparatus as a whole conform to the expectations of the political authority, which expects the improper use of force and violence as a legitimate means of imposing discipline within society.

The political authority may consider that the widespread use of torture and ill-treatment is necessary in order to keep the citizens under its control. The use of torture and ill-treatment as a spectacle in order to

No 3xvi; BURMA, Volume 2 No 2xvii, Volume 2 No 6xviii, 5Volume 6 nos 5 and 6xix, Volume 7 No 3xx, Volume 11 No.1xxi; THAILAND , Volume 2 No 3xxii, Volume 4 No 2xxiii. Volume 4 No.3xxiv, Volume 5 No 3xxv, Volume 6 No 3xxvi; PHILIPINES Volume 5 No 5xxvii, Volume 6 No 4xxviii, CAMBODIA Volume 1 No 1xxix, Volume 1 No 2xxx, Volume 5 No 1xxxi, BANGLADESH Volume 5 No 4xxxi, Volume 10 No 2xxxiii, NEPAL Volume 3 No 2xxxiv, Volume 3 No 6xxxv, Volume 4 No 1xxxvi, Volume 7 No 1xxxvii; INDONESIA Volume 5 No 2xxxviii, Volume 9 No 1xxxix, PAKISTAN Volume 1 No 5xl, Volume 3 No 3xli, Volume 3 No 5xlii, Volume 8 no 2xlili and Volume 8 No 3xliv. All these volumes are available at www.article2.org. The State of Human Rights in ten Asian Countries, published annually since 2005, devotes a chapter to each of these countries .

create a culture of fear and intimidation is a political strategy of social control. In the same way, enforced disappearances are also approved under certain circumstances, such as in a situation of rebellion or insurgency, as a method of instilling fear and to intimidate anyone who dares to rebel against the state. In this sense the example given by Michel Foucault in his book, "Discipline and Punish: the Birth of the Prison"⁵, in the case of Damiens is quite relevant to the Asian context.

The improper use of force and violence is used by the political authorities in most Asian countries as a mode of social control, so as to achieve obedience by way of instilling fear and intimidation. The political authorities in Asian countries have failed to achieve rule by consent. Although in some of these countries, processes may exist for the election of governments, this does not imply that the form of governance is democratic; it is not governance by consent. In fact, in many of these countries even the electoral process is manipulated through violence used on political opponents. In any case, day-to-day ruling does not take place in a democratic manner; improper use of force and violence is used to control the population. The group particularly vulnerable to the improper use of force and violence by the state, is the lower income group; that is, the poor. In these countries, they are the overwhelming majority. The affluent middle classes and the rich constitute only a minority. The majority is controlled through the widespread use of force and violence. Thus, such improper use of force and violence is the mode of politics that is prevalent in these societies.

The Need for a Fresh Approach to Understand the Improper use of Force and Violence in Asia (and, in General, for Countries other than Developed Democracies)

The approach that has become quite common in the human rights field in particular, and in the discourse on state violence generally, is to attribute it either to individual officers or to some of the defects of the security apparatuses in particular countries. However, in terms of the analysis made above, what is required is a more comprehensive approach that takes into account the ultimate responsibility of the political authorities for the widespread use of force and violence. This approach requires an attempt to understand the nature of the political system in a particular country, in the attempt to comprehend why torture and ill-treatment, enforced disappearances and other forms of the improper use of force and violence remain widespread within a particular context.

A similar distinction made in this paper relating to developed democracies and others has been made by Nick Cheesman in a recent analysis.⁶ He makes the distinction between the rule of law and law and order. He further states that the two concepts are asymmetrical. The present paper is also based on that premise.

Approaches Needed for Prevention of Abuses

An important aspect that needs to be addressed is the responsibility of the political authorities in their overall approach to social control. These political authorities finally condition the behaviour of the individual security officers, the nature of the security apparatus and the independence enjoyed by the

⁵ Michel Foucault, *Discipline & Punish: The Birth of the Prison*, *op.cit.*

⁶ Cheesman, Nick (Dr), *The Hague Journal on the Rule of Law*, <http://journals.cambridge.org/ORL>

institutions of the administration of justice, such as the judiciary, prosecution department, investigating authorities and the prison authorities. As Sri Lanka well demonstrates now, it is not within the power of any of these agencies to transgress the parameters set up by the political authorities, directly or covertly. And the prevention of torture, ill-treatment and other forms of the improper use of force and violence cannot be left purely to the integrity or heroism of the officers who manage these activities. This approach requires going beyond reforms of the institutions of the administration of justice, such as the judiciary, prosecution, investigating agencies and prison services.

The capacity for investigations requires the freedom and independence to conduct such investigations. They also require the necessary resources, such as professional training, forensic facilities and other material resources for effective transport, communications and the like. But the paradox comes in the fact that granting such independence and freedom, as well as providing the necessary resources remains in the hands of the political authorities. When the political authorities lay down, directly or indirectly, the parameters within which the person working in these institutions should operate, these parameters ultimately control the manner in which the work of these institutions takes place. In any case, the political authority can determine what these other institutions may be able to achieve by the control of resources. Also, the political authority can also decide whom to recruit or dismiss.

It is important to realise that the concept of *change from inside*, meaning the change from within the institutional framework of the security apparatus, may not be a realistic possibility within a context where a political authority creates limitations on what the security apparatus is allowed to do. Thus, the *change from inside* concept must start with the change from within the political authority itself. It is only when the political authority internalises norms and standards of justice that the rules which could operate within a particular society, including the rules governing the security agencies, could come into being. When the internalised conception of the political authority on modes of social control involves suppressing freedoms of individuals, the rules which are formulated by such political authorities will necessarily create a culture of repression. When the political authority creates a culture of repression, it is not within the capacity of the security apparatus to ignore or go against such rules.

It is the political authorities that finally decide and shape the rules which operate in a particular society, including the rules under which the institutions of the security apparatus function. What is meant by 'rules' may be described through the following words of John Rawls:

In saying that an institution, and therefore the basic structure of society, is a public system of rules, I mean that everyone engaged in it knows that he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this and so on.⁷

It is these rules which, among other things, create the nature and functions of a criminal justice system within a particular country.

⁷ *A Theory of Justice*, John Rawls, Harvard University Press, revised edition 1971, p. 48.

Political Authorities as the Shapers of Criminal Justice

When there is the widespread improper use of force and violence followed by impunity in a particular country, it implies that this situation is an integral part of the criminal justice system within that country. Thus, the improper use of force and violence coupled with impunity and the criminal justice system are not two opposites as it is often presupposed in popular discussions. In fact, such abusive practices coupled with impunity are an integral part of the criminal justice system in that particular context.

Political authorities create the kind of criminal justice that safeguards the type of political system that they have created. For illustration: under the regime of Joseph Stalin, a criminal justice system was created for safeguarding the absolute power of Stalin himself as the ultimate political authority of the country. This system was based on what was understood to be socialist principles. The state was understood to be the representative of the people and therefore the idea of protecting people's freedoms and rights against intrusion from the state was quite contrary to these principles. Within that setup, the criminal justice system operated to protect the political authorities and the socialist property system. This is in contrast to a liberal democratic political system and a criminal justice system within the liberal democratic framework which is based on the idea of protection of the rights of individuals as duty of the state.

Thus, in understanding a particular criminal justice system in a given country, it is necessary to comprehend the nature of the political system that exists in that country. However, in doing that it would be quite misleading to go by the constitutions, statutes and other declarations only. What is essential is to understand the political system that actually exists within a particular country. The constitutions and other statutes may or may not be in conformity with the actual political system. The political system may use the constitution and other statutes merely as ornaments or things with limited purposes. What the system really is can be found in the actual operative principles that exist within a particular context. This can only be understood by proper observation of the way a system works in practice.

This difference between the system as it is expressed through the constitution and the statutes and the system as it practically operates is essential to understanding systems in the Asian context. Some countries have constitutions which, in fact, have very little possibility of practical implementation. Cambodia is a case in point. There are countries where what is expressed through the constitutions and what actually operates is vastly different, for example in Thailand, the Philippines and the like. There are yet other countries which use democratic jargon so ambiguously in the constitution and other laws that it is possible for a practically authoritarian system to exist while the constitution may look like a democratic one. Sri Lanka is a case in point. Thus, what is important in understanding a system is to be able to judge the nature of the system by the manner in which it actually operates in practice.

A criminal justice system is related to the political system. Though a particular criminal law and procedure may be expressed in liberal democratic jargon, the actual nature of criminal justice can be measured only by the manner in which the justice system is allowed to operate by the political system. When the system allows the widespread use of force and violence with impunity, for all practical purposes such practices become an inherent part of the criminal justice within that particular context. Thus, the practice of torture and ill-treatment, enforced disappearances and other improper uses of force and violence exists. It simply

means that the liberal democratic norms relating to criminal justice are modified and distorted within those particular circumstances.

Caution that should be Exercised in Reading International Literature about the Prevention of the Improper use of Force and Violence

Particular histories create particular institutions and practices. The literature that is produced from each society is a product that rises from those particular historical circumstances. When applying lessons learned from a particular historical circumstance, it is necessary to examine whether the historical circumstances in the country where these lessons are to be implemented are similar.

This is particularly important in applying systems and rules which emerge in what may be called the developed democracies. Over several centuries, vast political changes have taken place in those countries. Particular types of political control have been uprooted and different forms of control have developed. Both the political system and the criminal justice system have assimilated these principles and the principles are held in common in both the political sphere and the legal sphere. And the people, including those who are functionaries in the security apparatus, have internalised these principles. Thus, a person who is subjected to interrogation has the right to expect that he will be examined under the rules that are commonly held within his society.

This situation does not exist in countries where the norms within the political system are different. What the actual norms are can be understood only by direct observation of the system at work. Before the norms that have been developed in developed democracies can be applied, there needs to be vast changes brought about within the political system, and the legal system needs to be brought in conformity to these changed political norms.

A Review of some Human Rights Strategies used in the Fight against the Improper use of Force and Violence in its many Different Forms

In light of the root causes of the improper use of force and violence in countries outside developed democracies, some work strategies need to be critically examined from the point of view of how effective they have been, and can be, in dealing with those root causes.

- a. Demanding investigations and the prosecution of perpetrators for the improper use of force and violence, with the view to punish individual perpetrators as deterrence to further abuse.

This is the most commonly used strategy to fight violations of human rights. Usually, after reporting on individual cases of human rights violations or even on patterns of such violations, human rights organisations and UN agencies dealing with human rights will demand from the relevant government action to be taken to investigate and bring the perpetrators to justice.

The problem with this approach is that the perpetrators who are required to be investigated act on the basis of the policies and overall strategies designed by the political authorities represented by the government. The investigating authorities are also bound by the same policies and strategies that are authorised by the political authorities regarding the use of force and violence. Besides this, the same political authorities control both the perpetrators and those who are supposed to investigate such abuses.

It is beside the point that, often, the perpetrators and the investigators happen to be more or less the same person or authority. What is important is that, ultimately, the supposed improper use of force and abuse and the responsibility for the investigations into the same emanate from the same source of authority. The constant complaint by the human rights organisations is that, despite much demand for action against the abuses, impunity continues to prevail. This is no surprise as the violations are committed on the basis of direct or indirect assurances of impunity. The source of the violation, as well as the subsequent impunity, is politically conditioned. Mere repetition of the demand for investigations and prosecutions is unable to break the political wall that protects the improper use of force and violence. Much of the frustration within the human rights movement is due to the unwillingness to recognise this political reality; that the ultimate source of the matters that they complain of are not merely the perpetrators, meaning the officers of the security apparatus, but the political authorities themselves.

b. Efforts to educate the police and military on human rights norms and standards as a way to eradicate the improper use of force and violence.

Many human rights education projects are undertaken by different parties, including the governments of developed countries, UN agencies, universities and human rights NGOs. Large sums of money have been allocated for such projects. At the same time, there is a general complaint that, despite many such projects being carried out, no tangible improvements have been made as a result of such education. The reason for such failures and the resulting frustration is not difficult to identify. While this or that individual perpetrator may undergo some conversion as a result of such education, there will be many to take their place; the main reasons for the violations are the policies and strategies that are imbedded in such societies.

Whatever education that the personnel of the security forces may receive, they are duty-bound to carry out the policies and strategies that come from the political authorities who stand above them. When the same political authorities who have conditioned their behaviour also allow human rights agencies to carry out such educational programmes, it only creates cynicism. People from human rights agencies who have worked to impart such education have often heard remarks from security agency participants about how naive such efforts are in light of 'the real situation' in which they have to work.

c. Efforts to improve legislation without reference to problems obstructing the implementation of legislation once passed.

One of the primary areas of human rights work is to lobby for the improvement of legislation to incorporate remedies for violations of human rights. Thus, the campaigns for the criminalisation of torture

and enforced disappearances, for example, receive top priority. The same applies about every other aspect of the UN conventions. However, where there has been some success in bringing about such legislation, the problem that has surfaced thereafter is that the law remains in the books and is hardly ever implemented. Any search for reasons for the government's failure to implement the legislation would reveal that if such law is implemented there would be serious political repercussions, including serious conflicts between the security agencies and the government.

The relevant legislation may be passed due to pressure from the international community and local human rights groups. A government which passes such laws expects that the international community will give them credit for doing so. However, if there is also insistence that the law should be implemented, there is likely to be serious friction. Perhaps the international community is also aware of this. Therefore it does not emphasise implementation. However, the net result is that, despite the law being passed, the victims of violations do not get redress. If the human rights community is to go beyond convenient thinking in trying to resolve problems it has to address the overarching hazards that exist in the context of a particular country. This requires a much more comprehensive approach, one which takes into consideration the political causes of human rights violations. When these are ignored, the ultimate result, even after the passing of the relevant law, is general cynicism and frustration.

d. Working for judicial remedies for violations of rights without addressing the fundamental problems affecting the justice system itself, which is unable to deliver justice in any case.

Human rights groups work hard and assign considerable resources to assist victims in order to bring their cases to courts. However, once the cases are brought to court the course of justice is in many ways subverted by various problems, such as extraordinary delays in the adjudication process, insecurity caused by insufficient/ineffective victim protection laws and programmes, bribery at all levels of the adjudication process, and all sorts of manipulations which are allowed to take place to subvert justice. Thus, despite enormous efforts made by the victims and the human rights organisations, the results are some very rare and occasional successes, and an overwhelming amount of failures and losses. With regard to the improper use of force and violence, where this is widespread it is not only the security forces that are responsible; it is the judicial branch as well.

The judicial branch also works within the overarching scheme of policies and strategies of a particular state. They are not in a position to ignore these strategies and schemes without causing serious disturbances to the usual management of the state. Often the human rights community works on the assumption that the separation of powers is a part of the state structure. Superficial observations of the external aspects of the courts are used to try to buttress the idea of the existence of the separation of powers. However, what often exists is well-entrenched unification of power in the hands of the executive, and the executive also manipulates the judiciary. One of the most common forms of manipulation is directly selecting judicial officers that act in compliance with the executive. To ensure compliance, any judge who even slightly deviates from the expectations of the executive is subjected to punishment. On the other hand, those who comply are given many forms of rewards, including the engagement in corrupt practices. Human rights victims who reach court in search of remedies for the violations of their rights also get caught up in this web of manipulation.

The strategy of using judicial remedies as a solution to human rights violations, while not taking into consideration the actual situation of the separation of powers within the country and the obstacles to justice, can cause even more problems to the victims and also to human rights defenders, and the net result is always negative.

e. A further strategy, which has been resorted to recently, is to demand international remedies, such as tribunals for all violations of human rights.

This approach arises from realisations about the impossibility of achieving justice through domestic legal systems. That realisation is again a direct or indirect recognition of the wider web of causes that make such human rights violations possible and impunity inevitable. However, this demand for international remedies for all violations of human rights is not practicably realisable. By their very nature these international remedies for human rights violations are possible only for extremely extraordinary circumstances where the nature of the violations is one of the primary considerations. The day-to-day violations of human rights by way of the use of force and violence do not fall within the requirements for such interventions. Further, the international remedies can come about only through an international process and obtaining the consensus for such actions is extraordinarily difficult. Besides, such international actions are also extremely costly. What all this means is that although the demand for international remedies can be made easily, the actual possibility of practically realising such demands is quite limited. This implies that beyond creating some protests, no practical outcome could be expected from such demands.

The problems in the domestic system need to be addressed and resolved if the protests against violations of human rights are to lead to practical outcomes. The essential sphere within which most human rights violations need to be remedied is the domestic legal system. The obstacles to such a system cannot be ignored. Direct and indirect attempts to ignore the problems that exist within the domestic sphere lead only to peril for all rights of the people subject to such a system.

f. Academic courses on human rights with the view to encourage the protection and promotion of human rights.

There are several graduate and post-graduate courses being introduced in an attempt to create a greater understanding on human rights. However, many of these courses conducted in countries outside developed democracies tend to follow the same syllabus as those followed in the developed democracies. Addressing the specific problems which exist within the framework of a specific context has not been a priority in designing these syllabuses. The result is that the domestic obstructions to the implementation of human rights do not receive any attention. Often the education is more concentrated on international remedies for human rights, such as the International Criminal Court and other international tribunals, and matters such as transitional justice receive top priority in these syllabuses.

The result is that those who are educated in these courses have hardly any opportunity to address their minds to the specificities of their legal systems, which deny the population of their country the possibility of remedies for the abuse of force and violence by the state. Thus, these courses as they are designed at

present do not equip students with the capacity to analyse their own domestic systems and thereby to become capable of contributing to much needed changes in their countries and make human rights a practicably achievable goal. Perhaps the reason for the limited perspective within which the syllabuses are made is due to mere limitations relating to study modules from developed countries, or a lack of awareness on the part of those who design such syllabuses of the ground realities of the specific countries from which their students come.

Concluding Comments

All these and similar strategies have a limited value as forms of protest against injustice. Also, all these actions are expressions of solidarity for the victims of violations of human rights, particularly for those who have become victims of the abusive use of force and violence by the state. All acts of injustice demand immediate reactions and protest. What has been pointed out above is that, given the overall context within which these violations take place, there is no valid reason to expect the achievement of the particular objectives of these strategies. Therefore, in all protests relating to such injustice, it is necessary also to bring in a perspective on the basic causes that generate the injustice and make impunity the ultimate outcome. Thus, by making efforts to link all protests to the root causes that makes such injustice possible, the victims and all those who take part in the protests can be educated and empowered through the motivation to see the meaning of their protests in terms of addressing root causes.

Where no such overall perspective is present, the initial protests against injustice may generate greater frustrations about the impossibility of finding redress, and thereby cause demoralisation among the victims, as well as among those who come to their support. In fact, such a state of demoralisation exists due to the limited perspectives within which these objectives are pursued. Such demoralisation itself contributes to the strengthening of the repressive systems and makes the political control of dissent easier. The suppression of all protests is also a part of the overall scheme of the political system, which limits the freedoms of their populations by permitting the improper use of force and violence.

When studying the improper use of force and violence with the view to work towards the elimination of such abuses, it is necessary to develop a theory of change which is comprehensive enough to take all relevant factors into consideration. A theory of change which takes only individual security officers or the security apparatus into consideration, and leaves out the overarching political system, is unlikely to produce any positive change. The mere insistence on international norms and their application, without taking into consideration the nature of the political and criminal justice systems is so superficial that it will not be taken seriously by people who are undergoing serious repression in their countries. A theory of change should look comprehensively into a combination of factors, giving serious consideration to the political system and those who bear political responsibility within the country, if such a theory is to express the reality of a given society. The project for the implementation of international norms relating to human rights, if it is to become capable of eliminating the improper use of force and violence, should be developed by taking into consideration all the complexities that have made such widespread abuses possible.

In developing such a theory of change for human rights violations in countries outside those of the developed democracies, extensive studies about the ground realities of the specific countries is an unavoidable step. A discourse on the historical circumstances of the nature of the state in particular countries and the nature of political control of each country from the point of view of recognition or the lack of recognition of human rights in the practical sphere needs to be brought to the surface and be made a subject of discourse both academically and also in terms of popular discourse. The emphasis on the practical sphere is meant to signify that a mere study of the ratification of UN conventions, constitutional bills of right and other statutes needs to be distinguished from the way such provisions are made practically implementable within each country. The practical scheme of implementation needs to be based on an understanding of the overall political control of all agencies in the legal system, and an attempt to measure the extent to which such institutions enjoy the independence to carry out their functions. Of particular importance is to research the manner in which the functionality or the dysfunctionality of these institutions have been viewed and assessed from the point of view of the actual possibility of the practical realisation of human rights. On this particular point, importance needs to be given to the possibilities of eliminating the improper use of force and violence within each of the countries.

The basic concept behind the theory of change could be formulated within the framework of Article 2 of the International Covenant on Civil and Political Rights (ICCPR). Article 2 obligates the state parties to ensure an effective remedy for violations of human rights. For this purpose, it obligates the governments to take legislative, judicial and administrative measures to ensure an effective remedy. Most commentators on Article 2 concentrate on legislative changes, such as, for example, the criminalization of acts which amount to improper use of force and violence - the criminalization of torture, enforced disappearances, sexual abuse, and the like. However, what is often ignored is the obligation of the state to take judicial and administrative measures to ensure an effective remedy.

A holistic view of change from the law and order approach to the rule of law approach for the elimination of improper use of force and violence requires legislative, judicial and administrative measures. In short, the legislation must be in terms of the normative framework of the rule of law. The judicial framework should also be within such a normative framework, and the government should also ensure that administrative measures, such as budgetary provisions that enable the proper functioning of the judicial process through ensuring the necessary resources, both by way of personnel and other technical resources, are also within such a framework. The whole approach must conform to the normative framework of the rule of law. Issues such as the training of the security officers and their internal discipline could be satisfactorily addressed only within a legal system which is constructed on the basis of such a normative framework.⁸

These are vital questions that Sri Lankans must contemplate seriously when responding to the imperatives of the March 2014 Resolution passed by the UNHRC in regard to Sri Lanka.

⁸ Fernando, Basil, "Reflection on article 2 of the ICCPR: The role of human rights activists in diagnosing the lack of effective remedies," Article 2 (Vol 9, 2010) <http://www.article2.org/mainfile.php/0902/376/>.

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