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NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15 (A)  
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1 \*

**Sri Lanka**

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## I. METHODOLOGY

1. The Sri Lanka National Report for the Universal Periodic Review (UPR) was prepared by the Government of Sri Lanka (GoSL) following the General Guidelines for the Preparation of Information under the Universal Periodic Review<sup>1</sup> after broad based consultation and discussion with a wide-range of stakeholders.
2. The Ministry of Disaster Management and Human Rights (MDM and HR) of the GoSL, the lead government agency tasked with the promotion of and coordination of activities connected with human rights, was responsible for organizing meetings/discussions and maintained a continuous dialogue with government ministries and departments, state agencies including the Human Rights Commission of Sri Lanka (HRCSL), police and armed services and with various civil society actors – including individuals and non-governmental organizations. The national report was drafted based on the seven core human rights treaties to which Sri Lanka is state party. The concluding observations of treaty bodies and the reports of the United Nations special procedures mechanisms were studied by relevant government institutions in order to ascertain the areas where the GoSL has made progress in protecting and promoting human rights and to identify shortcomings.
3. The report fulfils two functions: it complies with the requirement of the GoSL to submit a national report under the UPR process, and also forms a basis for an in-depth analysis of strengths and challenges which will aid the development of a proposed national plan of action for the promotion and protection of human rights in accordance with the Vienna Declaration and Programme of Action (1993).

## II. BACKGROUND

4. The Democratic Socialist Republic of Sri Lanka is an island nation in the Indian Ocean located to the South-East of the Indian subcontinent, with a land area measuring approximately 65,610 sq. km. It has a population of approximately 20 million, which is very diverse in terms of its ethnic makeup and religious affiliations. Sinhalese make up 74 per cent of the population; Tamils 18 per cent (including Tamils of recent Indian origin) and Muslims at 7 per cent are the main ethnic groups in the country (with approximately 1 per cent belonging to other minority ethnic groups). Sinhala and Tamil are the two major languages spoken in the country. English is also widely used. Both Sinhala and Tamil are constitutionally recognised as official languages and English as the link language. The people of Sri Lanka have enjoyed universal adult suffrage since 1931 and have continuously been governed by popularly elected governments based on a multi-party system of representative democracy. Economically the country is ranked as a middle-income country. Sri Lanka recently celebrated 60 years of independence which it secured in 1948.
5. The Constitution provides for the establishment and separation of powers of the three major branches of the government: the legislature, the executive and the judiciary. Sri Lanka has an executive presidential system; the president is the head of state and of government and is elected every six years. Parliament is the legislature and consists of 225 members<sup>2</sup>, elected for a term of six years based on a system of proportional representation, with the administrative district as an electoral unit. The independence of the judiciary is guaranteed by the Constitution. The judiciary dispenses justice according to the Constitution and other laws of the land. Legislation is subject to pre-enactment review by the apex court as regards its constitutionality (in terms of its consistency with Chapters III and IV dealing with fundamental and language rights) and the exercise of executive power is subject to judicial review. The Constitution also provides for devolution of power to Provinces within a unitary framework.

6. Sri Lanka's history of safeguarding fundamental rights can be traced to our longstanding respect for the rule of law. From the inception of our modern legal system in 1833, our domestic law has enshrined provisions which recognized many of the rights which have, since 1972, been constitutionally recognized as fundamental rights.

7. Sri Lanka's First Republican Constitution of 1972 pledged in its Preamble to realize the objectives of, *inter alia*, the fundamental human rights and freedoms of all citizens. It also incorporated therein a Chapter entitled "Fundamental Rights and Freedoms" and gave Constitutional recognition to the right to equality, to freedom from arbitrary deprivation of life, liberty and security of person, freedom of thought, conscience and religion, freedom to enjoy and promote one's culture, freedom of assembly, freedom of association, speech and expression, freedom of movement and of residence, and freedom from discrimination in appointments in the public sector. The development of fundamental rights jurisprudence was hampered by the lack of a special procedure to make these rights justiciable as fundamental rights.

8. The Second Republican Constitution of 1978 incorporated a Chapter containing provisions recognizing Fundamental Rights and also provided for a mechanism for obtaining an expeditious legal remedy from the highest court of the land, the Supreme Court. Article 3 states that "sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise". The Constitution provides the general framework for the governance of the country, it forms the standard on which national laws, government actions and decisions are based and evaluated.<sup>3</sup> Article 4(d) of the Constitution casts a positive obligation on all organs of government – executive, legislative and judicial – to respect secure and advance fundamental rights and circumscribes the extent to which these rights may be derogated from or limited. As under the 1972 Constitution, the suspension of these rights even under a state of emergency is not permitted.

9. The rights recognized by the 1978 Constitution include freedom of thought, conscience and religion, freedom from torture, or cruel, inhuman or degrading treatment or punishment; right to equality; freedom from arbitrary arrest, detention and punishment; prohibition of retroactive penal legislation; freedom of speech, assembly, association, occupation and movement. The rights to freedom of thought, conscience and religion and the right to freedom from torture are recognized as absolute and non-derogable rights.

10. Some of the rights are permitted to be restricted for specified purposes such as in the interests of national security; in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence; or national economy. Certain rights of the Armed Forces and Police Force are permitted to be restricted in the interests of the proper discharge of their duties and the maintenance of discipline amongst them. All restrictions are required to be prescribed by law.

11. Article 126, provides a right of direct access to the Supreme Court to seek redress for violations of fundamental rights. The Article vests the Supreme Court with sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement of a fundamental right set out in the Constitution. In general, the normative framework and institutional structures for the protection of human rights are laid out in the Constitution and in other legislation, as well in subordinate legislation.

12. Sri Lanka accords the highest importance to active participation in the multilateral treaty framework relating to human rights and is party to all seven core-human rights treaties.<sup>4</sup> Sri Lanka is also a signatory to the new Convention on the Rights of Persons with Disabilities. Domestic legislation to give effect to international conventions subscribed to by Sri Lanka take several forms such as: a) the enactment of comprehensive legislation by way of an enabling Act; b) piecemeal legislation including constitutional provisions; and c)

subsidiary legislation through framing of regulations under the principal statute (e.g. in the field of labour rights, the environment).<sup>5</sup>

### **A. Main contemporary challenges**

13. For nearly 25 years, Sri Lanka has been compelled to combat terrorism unleashed by a separatist terrorist organisation – the Liberation Tigers of Tamil Eelam (LTTE). The LTTE has been designated as a terrorist organisation by many United Nations member States including the 25 countries of the European Union, India, the United States, and Canada and is considered to be one of the most ruthless terrorist organisations in the world. The LTTE has been fighting for a separate state in the northern and eastern parts of the country. Recently the Government eliminated the presence of the terrorist group, the LTTE, from the entirety of the Eastern Province, and is now taking steps to harmonise the economic, social and political life of people who have lived in a conflict affected environment for over two decades. These efforts include reestablishment of civil administration, short-term and long-term economic development activity and infrastructure development to sustain economic progress. Political structures at the local level are being reinvigorated in order that the democratic rights of people of the East can be safeguarded and advanced. Direct fallouts of the conflict include: death and destruction of personal and collective property, internal displacement of persons and refugees, impeded economic development and strain on limited economic resources, psycho-social trauma, the need for rehabilitation and reintegration of ex-combatants including child soldiers, and a climate of insecurity and fear due to threats posed by terrorist activity.

14. In December 2004, the Indian Ocean tsunami devastated approximately two-thirds of Sri Lanka's coastline actuating heavy loss to life and property from which the country is still recovering. Despite the terrorist conflict and destruction caused by the tsunami, the Government's commitment to human rights has remained steadfast; the Government has taken steps to promote and protect the human rights of all – irrespective of religion, ethnicity or language.

### **B. National institutional framework for the protection and promotion of human rights**

15. The HRCSL was established in 1996<sup>6</sup> with the broad task of promoting and protecting human rights within Sri Lanka. The Commission can inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights – as laid out in the Constitution. The Commission has 10 regional offices to discharge its functions at the district level.

16. The MDM and HR was established in 2006 *inter alia* to: promote human rights and coordinate with the United Nations High Commissioner for Human Rights and other international human rights bodies; formulate and implement policies, programmes and projects for disaster mitigation, response and recovery, and initiate and coordinate foreign aided projects in this area. In all of the initiatives it is involved in, the MDM and HR ensures the integration of human rights based approaches. An Inter-Ministerial Committee on Human Rights (IMCHR), coordinated and facilitated by the MDM and HR, enables for multi-stakeholder involvement in human rights policy formulation – the Committee makes recommendations with regard to the promotion and protection of human rights in Sri Lanka and follows-up on the implementation of its recommendations by appropriate government agencies. The Committee also causes investigations into alleged violations of human rights that are brought to its attention. The Minister of Disaster Management and Human Rights established a high-level Committee to look into allegations connected with the abduction of children for use in armed conflict pursuant to engagement with the Working Group on Children and Armed Conflict. This Committee supplements the work of the Task Force appointed in terms Security Council Resolution 1612 on Children and Armed Conflict. Sri

Lanka was one of the first States to establish its national Task Force. Recognizing the robust and active role played by civil society in public affairs in Sri Lanka, especially in the sphere of human rights, the Ministry established an advisory committee to the Minister of Human Rights where civil society actors were facilitated to engage with key government stakeholders, raise concerns and initiate public policy formulation.

17. The Ministry of Justice and Law Reforms has, as its stated mission the formulation and implementation of policies, plans and programmes aimed at the efficient and meaningful administration of justice; and law reform for greater recognition, protection and promotion of the rights of the citizens. Its Departments include the Attorney-General's Department, the Legal Aid Commission (which was established in 1978, offers legal advice and provides legal representation to people in need and operates human rights desks and prisoners' rights desks), the Law Commission of Sri Lanka and the Prisons' Department.<sup>7</sup> An important alternate dispute resolution mechanism supported by the Ministry which has significant implications for dispute resolution and the realization of human rights are the mediation mechanisms that began operations in 1988, upon the enactment of The Mediation Board Act No. 72 of 1988, which elaborates the general rules regarding mediation in Sri Lanka. The Mediation Boards Commission is appointed by the President to provide oversight. Each of Sri Lanka's 25 districts has at least one Mediation Board consisting of 12 members drawn from the local community. These Boards deal with minor disputes at the local level on the basis of compulsory (and in some cases voluntary) submission of such disputes to mediation. The value of this mechanism is that persons of local repute and standing assist in settlement of disputes amicably and expeditiously without financial strain on the disputants and alleviating pressures on the caseload of the formal court system.

18. The Public Petitions Committee of Parliament is a mechanism available to persons who perceive a infringement of their fundamental right or other injustice by a public officer, or officer of a public corporation, local authority, or similar institution. The Committee may inquire into the violation directly or may refer such matter to the Ombudsman for investigation and report. A recent development in relation to a proposal by the Inter-Parliamentary Union (IPU) for establishing a Committee of Parliament on human rights, humanitarian issues and the rule of law is in the process of being referred to the leaders of parliamentary political parties by the Government. Once consensus is achieved on this modality, the assistance of the IPU will be sought to develop and strengthen this mechanism.

19. The Parliamentary Commissioner for Administration, popularly known as the Ombudsman, is a constitutionally recognized institution to which persons aggrieved by a decision of a public official or authority can have recourse to seeking relief. The Ombudsman is empowered to act by the enabling legislation (No. 17 of 1981) which was amended in 1994 to provide for direct access by the public to the office.

20. The Commissions of Inquiry Act of 1948 (as amended) provides for the appointment of commissions to investigate and inquire into various matters, including human rights related issues. Recently, the President appointed two such commissions to investigate and inquire into alleged serious breaches of human rights. Currently the Presidential Commission Appointed to Investigate and Inquire into Alleged Human Rights Violations is investigating 15 cases. Following investigation and inquiries conducted by law enforcement authorities under the direction of the Commission from early 2007, in January 2008 the Commission commenced public inquiries into one high profile case – the death of five youths in Trincomalee, and in March the Commission began public inquiry into the death of 17 humanitarian workers of French NGO *Action Contre La Faim*. Another case in relation to which public inquiries are to commence shortly is the killing of 10 Muslim civilians in Pottuvil in the Eastern Province. All other matters are currently in the investigation phase.

Opening the processes of the Commission to international scrutiny, the President invited a panel of international observers referred to as the International Independent Group of Eminent Persons (IIGEP)<sup>8</sup> with a view to ensure that the work of the commission is exercised in accordance with international norms and standards. The current experts serving in this unique structure have opted to relinquish their personal mandates on the completion of a one-year term at the end of March, 2008.

21. A Directorate on Human Rights and Humanitarian Law of the Sri Lanka Army conducts awareness programmes on human rights and humanitarian law for the security personnel. Up to the end of 2007, 95 per cent of Army personnel have received such training. Based on this model, the other armed services have developed training programmes for service personnel, whilst this model, which has widely been deemed successful, has been suggested for police training too. The IMCHR is currently discussing measures to enhance levels of training in cooperation with other state institutions as well as the International Committee of the Red Cross. Focal points for this initiative will be the human rights cells in all 3 armed services which report directly to the respective service commanders. Furthermore Civil and Military Liaison Officers (CMLOs) have also been appointed for all conflict-affected areas and the Government is looking into the establishment of a CML Directorate at the central level. A National Committee on International Humanitarian Law has also been established under the chairmanship of the Legal Advisor of the Ministry of Foreign Affairs to examine, *inter alia*, the necessity for domestic laws to implement IHL conventions and possible subscription to IHL conventions. The National Committee has wide participation of relevant line ministries and departments, such as the Ministry of Defence, the armed services, the Attorney General's Department and the Legal Draftsman's Department, etc. A direct outcome of the work of the National Committee was the framing of legislation to give effect to the Geneva Conventions of 1949 in the form of the Geneva Conventions Act No. 4 of 2006 and Sri Lanka's ratification of the Hague Convention on Protection of Cultural Property in times of Armed Conflict. Representatives of the ICRC are also invited to participate in the discussions of the National Committee when required.

22. The Sri Lanka Police Department operates a Human Rights Division which seeks to strengthen the role of the law enforcement authorities in protecting human rights.<sup>9</sup> With this goal the police has embarked on a programme to train staff on intelligence led policing, enhancing capacity building and establishing guiding policies of transparency, development of human rights / humanitarian law and legal processes and policing with the community. A Special Investigation Unit has been established to inquire into and prosecute alleged instances of torture. Women's and Children's Desks have been opened in almost all Police Stations in the country. These Desks are opened throughout the day, under the charge of a female officer and are expected to provide speedy redress to victims.

23. The Sri Lanka Foundation Institute was established by statute by the Government with the aim and object of protecting human rights, promotion of international understanding and cooperation and universal respect for the observance of human rights and fundamental freedoms for all without distinction. The Human Rights Centre of the Foundation is directly involved in human rights education (including curriculum development) and general dissemination of human rights related information.

### **III. PROMOTION AND PROTECTION OF HUMAN RIGHTS – IMPLEMENTATION**

24. The Constitution seeks to assure “all peoples, freedom, equality, justice, fundamental human rights, and the independence of the judiciary as the intangible heritage that guarantees the dignity and well being of succeeding generations of the People of Sri Lanka and of all the people of the world”.<sup>10</sup>

25. Sri Lanka has played an active role in the human rights machinery of the United Nations. It has been a member of the former United Nations Human Rights Commission and, from its inception in 2006, of the new United Nations Human Rights Council (UNHRC). Having become a State Party to the seven core treaties on human rights, Sri Lanka has made efforts to submit periodic reports as required under the respective provisions of these treaties. The Ministry of Foreign Affairs was earlier identified as the lead agency with respect to fulfilling reporting obligations, and a new strengthened national mechanism to ensure follow up to concluding observations and to monitor implementation of treaty obligations has emerged with the advent of the HRCSL and a line Ministry charged with promotion of human rights, in 1996 and 2006 respectively.

26. In addition to the core human rights treaties Sri Lanka is also a State Party to several other human rights related international instruments<sup>11</sup> and is also Party to the four Geneva Conventions of 1949. Sri Lanka enacted enabling legislation in 2006 to fully implement obligations under the Conventions relating to armed conflict and humanitarian law.<sup>12</sup>

27. Sri Lanka provides for the implementation of human rights obligations in several ways. The rights enshrined in Chapter III of the Constitution are justiciable by an action in the Supreme Court against executive or administrative action and by action in the ordinary courts against infringement of fundamental rights due to the action of private actors. As stated earlier, legislative action that infringes fundamental rights can be challenged by way of pre-enactment review of legislation. Executive and administrative action can also be challenged by way of prerogative writs such as *certiorari*, *mandamus*, prohibition, *quo warranto* and *habeas corpus* which are also available to any aggrieved person. These writ actions, adopted from the English legal system, enable an aggrieved person to seek justice against the wrongful act of a public officer and are enshrined in our Constitution. The Supreme Court has recognized that availability of writs is a constitutional right.

28. The HRCSL, The Parliamentary Commissioner for Administration (Ombudsman) and the Public Petitions Committee of the Parliament provide procedures for the settlement of an infringement of a right of a person by mediation, conciliation and the exercise of a statutory power to make recommendations directed to the agency/officer found to be in default. These institutions in Sri Lanka have played a substantive role in the protection of human rights of its people.

29. The Centre for the Study of Human Rights (CSHR) of the University of Colombo was established in 1991 with the aim of providing the public with human right awareness and information on remedies for violation of rights. The Centre has been conducting awareness programmes targeting secondary school students, rural community, plantation population, the military and law enforcement sectors, pre- service and in-service teachers, the differently-abled and the media. Radio programmes are also conducted weekly both in Sinhala and in Tamil to further educate the general public on human right standards and norms.

30. The Government is firmly committed to an open and constructive dialogue with the office of the United Nations High Commissioner for Human Rights and other agencies of the United Nations system working in areas related to human rights and humanitarian assistance with the objective of further strengthening national capabilities in the country. In pursuance of this policy, the Government has consistently invited United Nations officials and Special Procedures/Mandate Holders to visit Sri Lanka.<sup>13</sup> In 2007 the Government welcomed and facilitated the visits of High Commissioner for Human Rights Louise Arbour, Under Secretary-General for Humanitarian Affairs Sir John Holmes, the Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin and the Special Rapporteur on Torture Manfred Nowak. The Government will continue this policy of open and constructive engagement.

31. The armed conflict in the northern and, until recently, in the eastern regions of Sri Lanka, severely hampered the promotion and the protection of human rights in these areas. The Government has repeatedly stressed its commitment to addressing the issues faced by the people in conflict areas and finding a lasting solution thereto and, to that end, appointed the All Party Representative Committee (APRC) in 2006. This Committee has proposed the full implementation of 13<sup>th</sup> Amendment as a preliminary step including the conduct of an election for the Provincial Council for the Eastern Province and the appointment of an Advisory Council to the Governor of the Northern Province towards the achievement of this goal. The proposal has been accepted by the Government as an important advance towards the meaningful devolution of power aimed at finding a lasting political solution to the present crisis. The 13<sup>th</sup> Amendment was enacted in 1987 and provides for far reaching devolution measures to the Provinces. These provisions are in consonance with the provisions of the Indo-Lanka Accord of 1987. It is closely modelled on the power sharing arrangement in India between the centre and the periphery. These measures have been hailed by certain sections of the international community as “a welcome first step”. The APRC continues to conduct its deliberations in order to develop a fuller proposal for further amendment of the Constitution for consideration by the legislature.<sup>14</sup> The Secretariat for Coordinating the Peace Process (SCOPP, established in 2002) has a mandate to consolidate and strengthen the peace process whilst promoting a negotiated settlement to the conflict. The Secretariat was also mandated to promote livelihood development activities in particular for the benefit of internally displaced persons (IDPs), in consultation and coordination with relevant national and international stakeholders, in order that adequate income generation alternatives are provided to the people of the East and the North. It is also engaged in developing training in democratic principles and practices for former militants who have entered the political process.

#### **A. International Covenant on Economic, Social and Cultural Rights**

32. In Sri Lanka, important economic and social measures have been sustained which have ensured a high quality of life for its citizens. They include the making available of basic food items, medical services, educational facilities, housing and other essential services. These are not conceived purely as social welfare measures; in their totality they have helped citizens of the country to realize their full potential consistent with the civil and political rights they enjoy. Sri Lanka reaffirms that all human rights are universal, indivisible, interdependent and mutually reinforcing and that all human rights must be accorded equal weight.

33. The Directive Principles of State Policy as set out in Chapter VI of the Constitution provide that the legislature and the executive should be guided by the objectives of promotion of the social and economic welfare of the people by securing an adequate standard of living, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities, in the governance in Sri Lanka. In keeping with the provisions of the ICESCR, Sri Lanka has consistently applied and implemented social policies aimed at poverty eradication, universal access to health and education services and social welfare programmes, which have given Sri Lanka an enviable record in human development. The effective progressive realization of these rights is also dependant on positive international cooperation and technical assistance.<sup>15</sup>

34. Due to the long period of armed conflict of nearly 25 years consequent to the threat posed by a ruthless terrorist organization, there have been low levels of infrastructure and economic development in the Northern and Eastern Provinces. Despite the conflict, communities in these areas are consistently provided with essential food items (even those in uncleared areas affected by the conflict). Health and education facilities in these areas are



also maintained by the Government. Free meals and free uniforms are supplied to schoolchildren in these areas. Facilities are provided for students to sit for public examinations conducted by the Ministry of Education. The foregoing reflects the commitment of the Government to provide all its citizens with education and health facilities.

35. Following the securing of the Eastern Province in 2007, the Government embarked on a new programme entitled *Nagenahira Navodaya* (Reawakening of the East) to develop the Eastern Province and bring it on par with the other Provinces of the country. The programme for resettlement of IDPs is nearing completion and emphasis is now focused on economic recovery, restoration of livelihoods and development of infrastructure to enable a speedy and sustainable recovery and return to conditions of normality. Local authority elections in Batticaloa District were conducted on 10 March with approximately 60 per cent voter participation. The Government has announced that provincial elections are to be held in May which will result in the implementation of the 13<sup>th</sup> Amendment of the Constitution in the Eastern Province of Sri Lanka.

36. In the 2007/8 Human Development Report, Sri Lanka's HDI ranking is 99 out of 177 countries – the highest in the sub-region. GDP per capita income is approximately USD 4,595 (PPP)<sup>16</sup>. Free education has provided people in the rural areas and the underprivileged with greater access to employment. This has contributed to greater social equity as well as a more equitable distribution of income and upward mobility. The Government works in close cooperation with several non-governmental grassroots organizations such as the *Sarvodaya Shramadana* Movement and the *Sewalanka* Foundation in creating socio-economic opportunity in areas such as poverty alleviation, youth employment, skills development and vocational training, rural development and micro-credit schemes. This public sector – NGO partnership has proved productive and beneficial to thousands of beneficiaries from among vulnerable segments of society.

37. The overall aim of the national education policy is to ensure universal access to quality education. The adult literacy rate in the country is comparatively high at 90.7 per cent. In Sri Lanka education at primary and secondary level is free and compulsory all over the country, with university education also being free of charge. In order to ensure better access to quality education for high achieving students in less well resourced areas, 15 000 scholarships are provided annually for students moving from primary to secondary level, to national schools throughout the country. Since the education itself is free, the financial component is provided for maintenance purposes. Education in the State Universities is also free with financial assistance provided. Universities have now been set up in every province, with two in the Eastern Province, plus one university college each in the North and in the East. There are four universities in the Colombo District, in addition to the Open University, all of which admit students from all over the country.

38. In order to facilitate greater communication and understanding amongst communities, a policy change was introduced over the last decade whereby, in addition to English as a link language, Tamil is compulsory for Sinhala students and Sinhala for Tamil students from primary level. In addition, the choice of English medium education has also been made available through the state system, and the first batch of English medium students nationwide to sit the Ordinary Level General Certificate of Education have now moved on to senior secondary level. These reforms will not only facilitate communication and interaction between the two linguistic communities, but will also promote better employment opportunities in a globalized world for all levels of society.

39. The Government has incorporated human rights concepts, civic and ethical values, into the school curriculum in order to promote human dignity, a sense of nationhood, a sound work ethic and similar socio-cultural values from early childhood. The IMCHR has

commenced a dialogue with educational authorities to further enhance the quality of course content and teaching materials used in teaching human rights.

40. The national health policy implemented since the early 1950s has been governed by a commitment to provide comprehensive and free health care to the entire population. This policy has been applied to both preventive and curative programmes. It is generally recognized that free medical care has contributed to the quality of health and human life in Sri Lanka. The high life expectancy at birth (71.6 years), the low infant mortality (12 per 1,000 live births) and maternal mortality rates (43 reported per 100,000 live births) are indicative of the high standards of healthcare enjoyed by the people of Sri Lanka.

41. A distinctive aspect of the country's health care system is that while the system maintains near-universal coverage of the population through free primary health care facilities staffed by para-medical workers, it also provides a strong back up referral system of clinic and hospitals staffed by medical professionals. The Western (allopathic) healthcare system coexists with a government regulated system of *Ayurveda* and other traditional systems of medicine.

42. Sri Lanka has been successful in controlling communicable diseases such as malaria, encephalitis, measles, polio and leprosy. In 2006, special emphasis was paid in combating rabies, dengue, tuberculosis and HIV/AIDS. In the budget of 2007 it was proposed to upgrade all health care facilities in the plantation sector as a special project. Mobile health clinics, family planning clinics as well as health educational programmes are systematically conducted at divisional levels. The vision of the Health Master Plan 2007–2016 is to ensure easy access to quality and modern healthcare services for all with an emphasis on needs of lower income groups and those vulnerable in society. Even when the 2004 tsunami placed a great strain on all social infrastructures, the health services sector was able to ensure that there were no outbreaks of major epidemics.

43. The Sri Lankan Parliament passed an act to control the consumption of alcohol and tobacco products by the imposition of high taxes and the implementation of other regulations. Smoking is banned in all enclosed public places, buses and trains within the country. These steps have been taken with the objective of promoting a healthy lifestyle across the life span and of controlling major non-communicable diseases. Advertising of alcohol (including beer) and tobacco products is prohibited by law.

44. The government has taken action to combat malnutrition among children and expectant mothers. A free mid-day meal which is high in nutritional value is provided to schools where students' malnutrition levels are over 40 per cent. The programme covers a large number of needy students at a cost of Rs. 721 million per annum. To improve nutritional practices among expectant mothers, a 'National Nutrition Month' was declared in May 2006. A free nutritional supplement (*Thripasha*) is distributed to expectant mothers to improve their nutrition levels. In 2006 there were 715,211 beneficiaries under this programme. The State Pharmaceuticals Corporation has also launched a programme to provide drugs at a reduced price to pregnant mothers, the elderly and to children.

45. The Government's long-term housing development programme is predicated on a policy of "a house for everyone", and envisages meeting a large part of the existing and growing demand for housing. The policy aims at providing government assistance for low-income groups as well as ensuring planned human settlements. The National Housing Development Authority is the main public sector institution that implements housing programmes, targeted at low-income groups. In 2006, the NHDA completed 46,021 housing units under various housing development programmes. The Real Estate Exchange Ltd. (REEL), a Government undertaking, is planning to upgrade and reconstruct uninhabitable dwellings to reasonable levels of shelter in the under-served settlements of metropolitan

areas. The immediate target of this housing programme consists of housing 2,700 families belonging to low and lower-middle income groups. Specialised housing programmes have also been aimed at long-term IDPs; with World Bank assistance a provision has been made for the construction of 5,580 units commencing 2008. Fifty thousand houses will be constructed for estate workers (mainly Tamils of recent Indian origin), ensuring ownership of land and access to water, sanitation and electricity. To date, nearly 11,000 houses have been constructed. Approximately 85,000 houses have been either reconstructed or newly built in order to re-house tsunami-affected people. The total target is 114,000 housing units for the tsunami-affected.

46. Poverty alleviation has been one of the main concerns of successive Governments in Sri Lanka. Numerous schemes have been introduced such as ration cards to purchase essential items, the Food Stamp Scheme, *Janasaviya*, and the *Samurdhi* (prosperity) scheme which is currently being implemented by the government. The programme intends to support the poor in maintaining a minimum standard of living while also helping them to emerge from poverty. In 2006, the *Samurdhi* Programme was strengthened by several income generating projects: community development initiatives as well as capacity building efforts that were launched to support *Samurdhi* beneficiaries overcome poverty and the prevalent low standard of living. The *Janapubudu* programme issued loans amounting to Rs. 1,369 million to finance small-scale industries. The *Gam Pubudu* programme is aimed at upgrading infrastructure facilities in villages, and the *Diriya Piyasa* programme addresses the shelter problem of beneficiaries and agricultural development to increase their income levels.

47. Comprehensive labour laws, that give effect to the main ILO Conventions, provide for safety at the work place for employees, particularly for those in the industrial sector. Visits by the Department of Labour officers ensures compliance with laws relating to occupational diseases, injuries and other health hazards and guarantees that safety standards are observed in industrial environment.

48. The Sri Lanka National Campaign for Achieving the MDGs is spearheaded and administered by the Ministry of Finance and Planning, with the support of the United Nations Country Team and with direct implementation assistance by the United Nations Development Programme (UNDP). The National Council for Economic Development (NCED) brings together stakeholders from the private and state sectors to develop economic policies and action plans. The United Nations' MDG Monitor website states that: "Sri Lanka has long been viewed as a model developing country, having achieved noticeable success in attaining high levels of male and female literacy rates, school enrolment, and health outcomes, despite its low level of per capita income. Sri Lanka is doing well in most of the targets of the Millennium Development Goals (MDGs)." It adds, however, that disaggregated data reveals gaps between regions and income groups in poverty reduction and the attainment of human development. Tackling Sri Lanka's underperformance on Goal 1 (extreme poverty and hunger) requires prompt action. The Government, is engaged in the process of formulating strategies to address concerns relating to Goals 1, 3 and 7 and remains well on track in achieving the other goals.

49. The 2004 tsunami claimed 35,322 lives, displaced over 500,000 persons and damaged or destroyed 114,000 homes. It resulted in over 150,000 persons losing their livelihood. The cost of tsunami damage to the economy has been estimated at around 4.5 per cent of GDP and amounted to over Rs. 100 billion (or US \$1 billion), including outputs from fisheries, agriculture, tourism, and small enterprises, as well as livelihoods in those sectors. In Sri Lanka the additional poverty figures is estimated at 287,000. Around 79,000 houses have been completely destroyed and another 41,000 damaged, rendering between 500,000 to 600,000 people homeless. Although the overall impact on macroeconomic growth was not

as significant as feared, we are still struggling to overcome the tsunami's devastating impacts. The estimated loss of output in 2005 and 2006 was USD 330 million and the loss of employment as much as 275,000. Though the tsunami damage was enormous, the reconstruction process presented opportunities to improve on the status quo ante. Progress on reconstruction has been slower in conflict affected areas but the Government is committed to completing all development projects. Hospitals and schools damaged during this period have been restored. Livelihood restoration has been initiated via cash grants, asset replacement and micro-finance schemes.<sup>17</sup>

50. The Government is working to overcome the effects of over two decades of conflict that impeded development, stability and the democratic life of the people. In relation to IDP relief, the Government has been providing humanitarian assistance to IDPs through the respective District Secretaries. The MDM and HR has been coordinating assistance provided by international humanitarian agencies including the United Nations, donors and the ICRC which complement the efforts of the Government in providing humanitarian relief. Food, shelter, non food relief items have been provided to IDPs and other conflict-affected communities. In 2006 the Consultative Committee on Humanitarian Assistance (CCHA) was formed by the President to deliberate on and resolve humanitarian issues relating to support and assistance for the displaced and the conflict affected. The Committee, is chaired by the Minister of Disaster Management and Human Rights and comprises senior public officials responsible for defence, foreign affairs, humanitarian assistance and relief and reconstruction together with representation from the co-chairs to the peace process, heads of United Nations agencies and the ICRC. It is a policy making and coordinating mechanism to improve and ensure that IDPs and other conflict-affected persons are provided essential goods and services.

51. Walter Kaelin, Representative of the United Nations Secretary General on the Human Rights of IDPs, visited Sri Lanka from 14 to 22 December 2007. He expressed his appreciation for the Government's cooperation and facilitation of his visit and further stated that he was encouraged by the willingness of officials to acknowledge existing problems as well as their readiness to take up his recommendations on key issues. The Government is taking measures to implement Professor Kaelin's recommendations.

52. The Government has, in partnership with UNHCR, developed a comprehensive strategy on confidence-building and stabilisation measures which will assist in overcoming challenges in the post-return phase in the East and will ensure sustainability of resettlement by restoring confidence amongst and between former displaced and host communities. The focus for the immediate future will be on economic recovery, safety and security, livelihood development and infrastructure. The Government has successfully resettled nearly 120,000 IDPs and, with further de-mining of 23 per cent of uncleared land in Batticaloa District, will be able to resettle the remaining IDPs. The drafting of a comprehensive Bill on the rights of the internally displaced and returnees to supplement and complement other relevant legislation such as the Resettlement Authority Act (2007) is an initiative which has been undertaken by the IDP Unit of the HRCSL with the assistance of the office of the United Nations High Commissioner for Refugees under the aegis of the National Protection and Durable Solution for IDPs Project.

53. In terms of disadvantaged or marginalised groups, Sri Lanka has initiated special projects aimed at women who live under difficult circumstances, the differently-abled, the elderly, the homeless, widows and single parent families, orphans, families of prisoners, drug-addicts. Project include: community-based rehabilitation programmes for persons with disabilities, vocational training for differently-abled persons in the north and east of the country, family counselling, rehabilitation of drug-addicts and street people, and child

guidance centres. Building on the statutory framework provided by the Protection of the Rights of Persons with Disabilities Act (1996, as amended) and the national policy on disability (2003) a new statute on disability rights has been prepared and will be submitted to the legislature in due course.

**B. International Covenant on Civil and Political Rights; Convention Against Torture**

54. Sri Lanka's history since 1931 witnessed the increasing involvement of an ever larger number of people who became politically conscious and articulate. The people by the exercise of the right to participate in public life have, over the years, acquired a democratic space unparalleled in other countries of comparable historical experience.

55. The Constitution is structured to preserve and promote democratic values which have gained universal acceptance. Participation and democratic scrutiny are guaranteed by a free media - both print and electronic - in all three languages spoken in Sri Lanka. The media plays an important role in opinion formation, dialogue and public discussion on issues of national and social importance. Sri Lanka expressed its willingness in 2006 to invite the Special Rapporteur on the Freedom of Opinion and Expression to visit Sri Lanka and is open to discussing issues and concerns relating to media freedom and related issues with the Special Rapporteur and others in keeping with its policy of constructive engagement.

56. All the rights enumerated in the ICCPR have been incorporated in Chapter III of the Constitution titled 'Fundamental Rights' and in other legislation.<sup>18</sup> The Constitutional bill of rights enumerates the following rights:

- Article 10 Right to freedom of religion, Right to the freedom of conscience and the Right to change one's religion;
- Article 11 Freedom from being subject to cruel, inhuman or degrading treatment or punishment;
- Article 12 (1) Right to the equality and equal protection of the law;
- Article 12 (2) Barring discrimination on grounds of sex, caste, religion, language, race, political opinion and place of birth;
- Article 12 (3) Right not to be discriminated on the grounds of race, religion, language, caste, sex or any such grounds with regard to access to shops, public restaurants, hotels, places of public entertainment and place of worship of his religion or be subject to liability, restrictions on such a basis;
- Article 12 (4) Provision for limited affirmative action in favour of women, children or disabled persons;
- Article 13 Freedom from arbitrary arrest, detention and punishment, rights in relation to criminal justice including the presumption of innocence and the right to be heard in person or by an attorney at a fair trial by a competent court and the prohibition of retroactive penal legislation; and
- Article 14 the freedom of speech, the freedom of peaceful assembly, freedom of association, the freedom, either by himself or in association with others, and either in public or in private to manifest his religious belief in worship, observance, practice and teaching and the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language, the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise, the freedom of movement and of choosing his residence within Sri Lanka and the freedom to return to Sri Lanka.

57. Numerous applications are filed annually and the Supreme Court has given many judgments declaring the actions of public officials as violating the fundamental rights of individuals. Compensation has been frequently awarded against the State and in some instances compensation has been declared to be payable by the public officer in question. The Supreme Court, by making use of Article 4 (d) of the Constitution,<sup>19</sup> has expanded the scope of protection afforded by the exercise of its fundamental rights jurisdiction to include and enable public interest litigation as well.

58. Besides the Fundamental Rights Chapter the provisions relating to citizenship, right to franchise for every citizen over 18 years of age, the right available to a party to a court proceeding, to an interpretation or translation of any part of the proceeding, are further safeguards available elsewhere in the Constitution.

59. In Sri Lanka the right to life is not expressly included as a fundamental right.<sup>20</sup> However, the Penal Code, as amended in 1989, stipulates that no death sentence will be pronounced on persons under 18 years of age or on a pregnant woman and, furthermore, that the sentence of death can be imposed on only for the most serious crimes. For more than 30 years, there has been a moratorium on executions and no executions have taken place. Moreover, Sri Lanka supported the adoption of a resolution at the sixty second United Nations General Assembly declaring a moratorium on the use of the death penalty.

60. In 2007 the Parliament passed legislation to give effect to Articles 16, 20 and 24 of the ICCPR and also enhanced the rights of an alleged offender and that of a child, corresponding to Articles 14 and 24 respectively as these rights were not a part of the domestic law. The enactment of the ICCPR Act was to provide for human rights which have not hitherto been given recognition through provision in the Constitution. This reflects the Government's commitment to enact enabling legislation to ensure the full implementation of the ICCPR.<sup>21</sup>

61. The criminal justice system in Sri Lanka provides numerous legal processes for the protection of persons including payment of compensation to a victim of unlawful arrest or detention. The legislation regarding grant of bail stipulates that the grant of bail shall be the rule and not the exception except where it is provided that no bail is granted until the conclusion of trial. The State provides an assigned counsel to look after the interests of an accused person at state expense in all indictments for capital offences.

62. Sri Lanka acceded to the Torture Convention in 1994 and immediately thereafter the Parliament passed the necessary legislation to give effect to the provisions of the Convention.<sup>22</sup> Sri Lanka has adopted a zero-tolerance policy in respect of torture. Under the provisions of the Act, torture is an offence punishable with imprisonment for a term not less than 7 years and not exceeding 10 years on conviction after a trial in the High Court. In keeping with the pledge made by Sri Lanka when presenting its candidature for election to the UNHRC in 2006, the Special Rapporteur on Torture, Professor Manfred Novak, was invited to visit Sri Lanka from 1-8 October 2007. The purpose of his visit was to assess the situation relating to allegations of torture, and to strengthen a process of sustained cooperation with the Government to assist in its efforts to improve the administration of justice.

63. Professor Nowak in his report said that he was encouraged by 34 indictments filed by the Attorney-General under the Torture Act. However, to date, these prosecutions have only led to three convictions.<sup>23</sup> The view of the government is that torture is a serious offence which warrants a heavy penalty. This view led to the imposition of the mandatory minimum for the offence. The argument has been made, by Professor Nowak, that this measure has acted as a disincentive for conviction of offenders and imposition of punishments. The Government has assured the Special Rapporteur that it will study sentencing policies in other

jurisdictions in consultation with his office with a view to considering law reforms in this area. The Government has set up a working group to study all the recommendations made by Professor Nowak.

64. Professor Nowak thanked the Government for granting him access to prisons and police detention facilities without restrictions, including the carrying out of unannounced visits, and enabling him to conduct private interviews with detainees. He stated that he fully appreciated the challenges the Government is faced with from the violent and long lasting conflict with the LTTE. He said that: “Notwithstanding the difficult security situation the Government is faced with, Sri Lanka in principle is still able to uphold its democratic principles, ensure activities of civil society organizations and media, and maintain an independent judiciary.”

65. The HRCSL has, in keeping with the spirit of the Optional Protocol to the Convention Against Torture, embarked on a programme of unannounced visits to custodial facilities maintained by the State.

66. A state of emergency has been in existence from time to time in Sri Lanka due to the conflict in the north and east and the continuous damage to life and property caused by terrorist activities in other parts of the country. Most recently, Emergency Regulations were promulgated on 14 August 2005 following the assassination of Foreign Minister Lakshman Kardigamar. The state of emergency is subject to monthly review by the legislature under the terms of the Public Security Ordinance. Emergency Regulations are aimed at maintaining a balance between individual rights and freedoms and interests of the society at large. Article 15 of the Constitution of Sri Lanka permits the imposition of restrictions on the fundamental rights enumerated in Articles 12, 13(1), 13(2), 14. According to Article 15(7), these provisions are “subject to such restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health or morality or for the purpose of securing due recognition and respect and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society”. The declaration of a state of emergency and the promulgation of regulation due to the need to counter terrorist activity in the country is also in accordance with Article 4 and 5 of the ICCPR. Moreover, the Sri Lankan Supreme Court has insisted on a rational nexus between the purpose and content of the Regulations and has not hesitated to strike down excessive regulations and invalidate actions taken thereunder.

67. The Government views alleged acts of torture, extra judicial killings and enforced disappearances (that have been committed anywhere in Sri Lanka) with the utmost concern. Where such allegations are levelled at the armed services or the police service, impartial investigations have been initiated and all necessary punitive measures are taken within the bounds of the law including the arrest and detention of security forces personnel alleged to have been involved in these acts and their prosecution. This remains the policy of the Government. In light of concerns expressed on specific human rights cases and humanitarian issues, in April 2007, the Ministry of Foreign Affairs established an Inter-Ministerial Coordinating Committee – a collaborative mechanism which meets weekly – to address specific concerns, press for further investigation in instances where credible evidence exists and institute modalities that would help prevent the recurrence of incidents of concern.

68. The Attorney General’s Department has established special units to which specific responsibilities relating to human rights have been assigned. There is a Missing Persons Unit which handles matters relating to persons who are alleged to have disappeared, the Emergency Regulations unit which handles cases under the Regulations, and the Habeas corpus Unit which handles cases filed in relation to missing persons. These Units help in the expeditious disposal of matters brought before them.<sup>24</sup>

69. On 7 July 2006 His Excellency the President issued Directions to the Heads of the Armed Services and the Police in his capacity as Commander in Chief of the Armed Forces and the Minister of Defence. Similar Directions were issued in June 1995 and July 1997. These Directions of 1995 and 1997 as well as those issued in 2006 do not create any new legal provisions, but restate the obligations owed by the Armed Forces and the Police to persons arrested or detained, as laid out in existing statutes, regulations, judicial decisions and international standard setting documents. The aim of the 2006 Directions was the protection of fundamental rights and the humane treatment of persons arrested or detained and includes the following safeguards:

- that the officer carrying out the arrest identify himself and give reasons for the arrest;
- that a receipt be issued to the relatives of the individual arrested;
- that the arrested individual be provided with reasonable communication to make known his/her whereabouts;
- that a statement from the arrested individual be recorded in a language of his/her choice or in the alternative the option of handwriting a statement or his/her own be given;
- that a relative of a child under the age of 18 or a woman be allowed to accompany such child or woman to the place where the questioning is to take place.

70. The Directions place special emphasis on the role of the HRCSL and require the Armed Forces and the Police to facilitate the officials of the Commission in carrying out their mandate in relation to arrested or detained persons. Furthermore, the Commission was designated as the authority to which all instances of arrest or detention were to be reported to. The MDM and HR reiterated the validity of and necessity for abiding by the Directions in December 2007. Implementation of these Directions were monitored by a committee appointed by the Minister of Disaster Management and Human Rights which included three members of civil society. Measures taken included unannounced visit and remedial measures required were notified to the IMCHR.

71. The United Nations Working Group on Enforced or Involuntary Disappearances has reported on a backlog of approximately 5,516 outstanding cases out of a total number of 12,463 cases transmitted to the Government. Clarification of 6,530 cases has also been reported. The Government notes that over 5,000 of the pending cases relate to a three-year period between 1988 and 1990. These cases were deliberated upon by four Commissions of Inquiry (which held their sittings from 1994 to 2004) and the outstanding cases could not be clarified and disposed of due to the criteria of the Working Group relating to conclusion not being satisfied. During the seventh session of the UNHRC the delegation of the Government of Sri Lanka met with the Working Group and, subsequent to a discussion, proposed a modality to provide necessary documentation relating to these cases which would enable the Working Group to finally clarify and remove them from its caseload.<sup>25</sup> The Inter-Ministerial Committee has proposed that a special unit be created within the Attorney-General's Department to facilitate Government action.

72. In relation to current figures on disappearances, it is apparent that many different sources report on cases of enforced or involuntary disappearances or abductions; international human rights organizations and local civil society groups, the HRCSL, the ICRC (in confidence) and the Police. The sometime wide disparity in numbers only highlights the need to establish one authoritative source of information relating to these incidents. The HRCSL reports that it has commenced maintaining a database of reported incidents and the MDM and HR and the Police have initiated discussions on collecting and collating data through the modality of the Inter-Ministerial Committee.



73. The Police have received 342 complaints of alleged enforced disappearance in the entirety of Sri Lanka during the calendar year 2007 of which the whereabouts of 43 persons has been ascertained. Of these, 293 cases have been reported to the Police in the North and East, and 34 persons have been found. Thus, there are 299 unresolved cases of disappearances island-wide, 259 of which are reported from the North and East. Although fully committed to doing so, the authorities remain hampered in their ability to thoroughly investigate these cases until more conducive conditions are created through the restoration of normal civilian administration in the East and regaining the ability to conduct investigations throughout the Northern Province. All killings reported in the country in 2007 amount to 1,648 of which 842 are reported from the North and East. 639 cases have been resolved nationwide including 80 cases resolved from the North and East. The conflict situation has contributed to the lack of rapid progress in these investigations.

74. Due to the ongoing conflict which has lasted for almost 25 years, the Government has been frustrated in its efforts to investigate and prosecute cases of alleged human right violations, especially when the offence was committed within, or the alleged perpetrators victims and/or witnesses have fled to or live in, uncleared areas.<sup>26</sup> Some victims or witnesses fear coming forward and giving evidence that would facilitate inquiries, for fear of reprisal and threats to personal safety and the safety of their families. This, however, is not a problem exclusively limited to uncleared areas; instead it can be viewed as a general reluctance of victims and witnesses to participate in criminal proceedings. These are some of the obstacles faced by Government authorities investigating such allegations given the complexity of the contemporary situation in Sri Lanka.

75. To address this problem, the Cabinet of Ministers has approved draft legislation for the protection of victims of and witnesses to crime. The bill is soon to be placed before Parliament for approval, the Government hopes that the passage of this bill will enhance public confidence in the law enforcement process and lead to greater participation in investigations and prosecutions by the general public. It is hoped that, in addition to enhancing criminal investigations and prosecutions, this enactment will ensure greater participation in investigations and prosecutions of human rights violations including cases of torture, killings, abductions and disappearances which remain unresolved due to lack of evidence. The Commission of Inquiry<sup>27</sup> has, pending the passage of this legislation, established and operates a Witness and Victim Protection Unit that has gained valuable practical experience in the methods, practices and the range of issues that will potentially be dealt with by a future formal witness and victim protection agency.

76. Professor Phillip Alston, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, was invited by the Government to visit Sri Lanka. The Government provided him with all necessary assistance and facilitation in connection with his visit during the period 28 November to 6 December 2005. He was provided an opportunity to undertake extensive interviews in the south, the east and north of the country with Government officials, representatives of political parties, civil society, the LTTE, the Sri Lanka Monitoring Mission and members of the diplomatic community.

### **C. Convention on the Rights of the Child**

77. Nearly a third of the population of Sri Lanka is below 18 years of age. Sri Lanka is Party to the Convention on the Rights of the Child and both its Optional Protocols. As highlighted above, Sri Lanka has a very good record with regard to child development, education and healthcare. A dedicated line ministry – the Ministry of Child Development and Women's Empowerment - with four statutory bodies under its purview namely: Sri Lanka National Child Protection Authority, Department of Probation and Childcare Services, Children's Secretariat and the Office of the *Sevana Sarana* Foster-Parent Scheme, exists to

formulate and implement policies to advance, secure and guarantee the rights of children. The National Plan of Action for the Children of Sri Lanka (2004 – 2008) has, as its main targets, access to education, reducing infant mortality, child labour law enforcement, access to safe drinking water and sanitation and the eradication of several forms of abuse of children.

78. The Children and Young Persons Ordinance forms the legal basis for child protection and covers a vast array of issues. Additionally, Sri Lanka has taken several measures to combat the exploitation and abuse of children. Enhanced statutory penalties have been prescribed for utilization of children in unsuitable work including compensation in keeping with our obligations under Worst Forms of Child Labour Convention, 1999. The exploitation of children for pornography, sexual exploitation, begging and trafficking also draws heavy penalties. Adoption of children (especially international adoption) is an area of particular concern and, as a state party to the Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption, 1993, a strict legal regime exists to protect children's interests. The criminal justice system is geared towards the rehabilitation of child offenders. Free telephone hotlines have been established to provide contact in case of any abuse of children. Cyber surveillance operations monitor internet-based predation upon children. The National Child Protection Authority was established in 1998 with the intention of creating a central body that would focus its attention and efforts on preventing child abuse, prosecuting offenders, fostering national awareness of children's rights, providing policy advice to Government and in assisting victims of abuse. A series of amendments to the Penal Code in 1995 greatly enhanced protection for children by introducing new penal provisions relating to exploitation of and cruelty to children and also prescribing enhanced penalties for a range of offences where the impugned acts were committed against persons under the age of 18.<sup>28</sup>

79. The issue of children and armed conflict has been of particular concern for Sri Lanka. Sri Lanka played an active role in bringing the issue of child combatants to the forefront at the United Nations. Sri Lanka volunteered to work with the United Nations Security Council Working Group on Children and Armed Conflict pursuant to SC Resolution 1612 in setting up a Task Force for Monitoring and Reporting as a means to giving effect to the Government's zero-tolerance policy on child recruitment. All efforts are being made to ensure that children who have been recruited to engage in armed conflict are afforded access to avenues of rehabilitation and reintegration. These efforts are supported by the Commissioner-General of Rehabilitation appointed by the President in 2006 to direct rehabilitation and reintegration of former child combatants into society. In pursuance of its zero-tolerance policy relating to the use of children in armed conflict,<sup>29</sup> Sri Lanka has actively engaged with its international partners including the United Nations Security Council's Working Group on Children and Armed Conflict on measures to eradicate this practice.

#### **D. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

80. Non-discrimination on the grounds of sex is a seminal principle underlying the *corpus* of human rights law in Sri Lanka. The Sri Lankan legal system has long recognized the equality of married women being able to enjoy the status of an equal partner in terms of full rights relating to ownership of property independent of their spouses. Women have also enjoyed the right to vote since 1931. Sri Lanka has had the first female elected head of government and has also had an elected female head of state. However greater need to involve women in political, social and economic activity has been recognized as a national priority.

81. The Government has taken steps to further empower the women of Sri Lanka through the implementation of policies, plans and programmes aimed at the advancement of the quality of life of women and increasing their participation in national decision making forums. Moreover, the Government has committed itself to promoting gender equality and gender justice. In 1993, we adopted the Women's Charter, although declaratory in nature, the document vests specific obligations on the State in terms of giving full effect to our international obligations under CEDAW.

82. As stated above, the women of Sri Lanka enjoy comparatively high levels of participation in human development when assessed against other countries in the sub-region. Sri Lanka's Gender-related Development Index ranking is 89 (of 177 countries) whereas its HDI ranking is 99 (of 177). Challenges to the full achievement of MDG 4 - Promote Gender Equality and Empower Women – remain, and concerted action is necessary to redress imbalances in participation in decision making and enhancing women's socio-economic status.

83. An island-wide Campaign to End Violence Against Women (CEVAW) was launched in 2004 with the aim of reducing social acceptance of violence against women. The Women's and Children's Bureau of the Sri Lanka Police operates 36 specialized desks in the Island under the supervision of Assistant Superintendent's of Police for the relevant District.

84. As a country afflicted with conflict, Sri Lanka is of the view that implementation of Security Council Resolution 1325 (2000) on Women, Peace and Security is important as millions of women and children around the world remained adversely affected by conflict and terrorism. We recognize the need to address grave violations of women's human rights in situations of armed conflict, and their potential contribution to peace-building. Sri Lanka fully endorses the approach based on giving greater impetus to gender mainstreaming in the promotion of international peace and security.

#### **E. International Convention on the Elimination of all Forms of Racial Discrimination**

85. The Fundamental Rights Chapter of Sri Lanka's Constitution sets unequivocal standards relating to non-discrimination on the basis of race and equal access to public facilities without regard to racial/ethnic background. The Supreme Court has fully endorsed these standards and has developed extensive jurisprudence on the subject including striking down executive and administrative action perceived as contrary to equality and equal protection under the law.

86. Language has been one of the main issues underlying the ethnic problem in the country. The Government has taken concerted action to ensure language rights in accordance with Constitutional obligations. Given the importance of securing language rights and acknowledging the multi-lingual character of the Sri Lankan society, the Constitution, in Chapter IV, recognized by a long overdue amendment in 1987, the equal status of Sinhala and Tamil as Official Languages of the Republic. English is recognized as the link language. In order to ensure language rights in accordance with the Constitution, an Official Languages Commission and Department has been established by law. Recently a National Institute of Language Education was established to enhance training, to support research, archiving and dissemination of information relating to the implementation of language policy. The Government has also adopted administrative measures that will encourage the acquisition of bi-lingual skills by all sectors in public service, particularly in the Police service.

87. One important initial step in the implementation of police powers, under the Thirteenth Amendment to the Constitution, was the recent induction of 175 persons of Tamil linguistic origin (including 50 women) into the police force in the Eastern Province. Sri Lanka maintains policies of non-discrimination in recruitment to the police force. However,

the language divide, conflict and fear of reprisals by terrorists against persons joining the security and law enforcement services have prevented greater recruitment from among minority groups.

88. The proposed power sharing mechanisms under the Thirteenth Amendment to the Constitution will permit ethnic minorities to participate more effectively in public life and to secure greater representation of their interests in the formulation of policy relating to matters directly affecting their lives.

#### **F. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**

89. Sri Lanka, acceded to the Migrant Workers Convention in 1996, and will shortly be submitting its national periodic report as required by Article 73(1) of the Convention. Sri Lanka, being a country which has a large number of its citizens working overseas as of migrant workers<sup>30</sup> is especially concerned about the rights of female migrant workers. Sri Lanka attaches high priority and has consistently reiterated the need for labour recipient countries to subscribe to the Migrant Workers Convention in order to make the Convention a strong legal framework to protect the rights of migrant workers through prescribing international minimum standards. As a sending country, Sri Lanka has established two line Ministries to deal with Labour Relations and Manpower and Foreign Employment Promotion and Welfare respectively. Under the purview of the latter, the Sri Lanka Bureau of Foreign Employment functions as the operational arm of Government tasked with facilitating safe migration and providing protection and welfare to migrant workers. In addition, the Bureau seeks to regulate the labour migration industry and promotion of Sri Lanka's labour force for overseas employment. It also provides pre-departure orientation and training.

90. Sri Lanka had, until recently, a number of persons of recent Indian origin who were brought to Sri Lanka as indentured labour by the British colonial rulers and who had not acquired citizenship despite living in Sri Lanka for several generations. This was recognized as a joint problem by the Indian and Sri Lankan governments, which led to an agreement in 1964 under which some were to be granted Sri Lankan citizenship and the rest repatriated to India to obtain citizenship there. Unfortunately about 100,000 persons were left out of the agreement, to be decided on later. During the eighties, however most of those desiring citizenship were granted it, while a further Grant of Citizenship to Persons of Indian Origin Act (2003) provided that any others left out of the previous arrangements, of such persons resident in Sri Lanka since 1964 (and their descendants), were granted full citizenship rights.

91. Although being a party to all of the core ILO conventions, Sri Lanka has yet to ratify Conventions for Migration for Employment Nos. 97 and 143 (of 1945 and 1975 respectively). Due to its recognition of obligations derived by virtue of acceptance of the ILO Constituent Document the Government has endeavoured to submit reports to the ILO on migrant-worker related issues.

#### **IV. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND KEY CONSTRAINTS**

92. Sri Lanka was elected to the UNHRC for a period of two years from 2006-2008. The Sri Lanka delegation, led by the Minister of Disaster Management and Human Rights, has participated actively at each session. As chair of the Asian group in 2007, Sri Lanka has made a major contribution to building consensus on the vital institution-building process of the new Council. In keeping with pledges made in 2006, Sri Lanka demonstrated a high degree of openness and transparency by engaging constructively with a number of high-profile United Nations officials who have visited the country upon the invitation of the Government.<sup>31</sup> In June 2007, Sri Lanka was elected as a Vice President of the Council

representing the Asian Group. Sri Lanka will stand for re-election to the Council in 2008 and has made a series of pledges in connection with its candidature

93. The Government recognises that strengthening the human rights protection framework available to the people of Sri Lanka is essential. The current Chapter on Fundamental Rights in the Constitution of Sri Lanka does not address economic, social and cultural rights nor does it recognize environmental and group rights. The GoSL recognizes that guaranteeing the full spectrum of human rights is essential to instil confidence in the human rights protection machinery available to them, and also allow Sri Lanka to better fulfil obligations under the various international human rights treaties the country has ratified, via expression and enforcement through the supreme law of the land. The Government has, accordingly, established a Steering Group – consisting of government representatives, members of civil society and academia – to draft a constitutional charter of rights. Such a charter of rights for Sri Lanka will assist in reinforcing the values of respect for human dignity of all the people of Sri Lanka – regardless of ethnicity, culture, language, religious affiliation, gender, caste or any similar factors. The envisaged country-wide consultation process will lead to greater awareness on human rights issues, the protection framework in Sri Lanka, and it will bring together people from different ethnic groups and social backgrounds to discuss and agree on the key components of the human rights charter. The proposed draft is ultimately expected to reflect the will, aspirations and vision of the people of Sri Lanka.

94. The strengthening of the HRCSL is a key challenge and has been identified as a priority for the Government. The need to expand the mandate and powers of the Commission has been overshadowed by the debate over the perceived unconstitutionality of appointment of the Commissioners by the President due to the non-functioning of the Constitutional Council mechanism.<sup>32</sup> Two initiatives have been devised to address this problem. The first is the Parliamentary Select Committee on the 17<sup>th</sup> Amendment to the Constitution which has engaged in sustained deliberations as to possible constitutional amendments that can forestall any future impasse in the formation of the Constitutional Council. The recommendations of this Committee will be released in due course. The second initiative is a Motion, currently before Parliament, proposing the establishment of a Select Committee of Parliament to study the statutory mandate and powers of the Commission with a view to enhancing its powers and functions.<sup>33</sup> This second measure will complement and buttress the outcome of the first initiative. The Government, through these measures, hopes to strengthen the powers and functions of the Commission in order to enable it to fulfil its statutory role in accordance with its recently published Strategic Plan for 2007-2009. Another important consideration is the expansion of its network of regional offices and relevant capacity building and training of officers and support staff.

95. Another important matter for consideration by the Government are the implications of the judgment of the Supreme Court in the *Singarasa case*<sup>34</sup> in relation to the application of international treaties in domestic law and also the fulfilment of obligations under international law – specifically the Optional Protocol to the ICCPR which permits citizens of state parties to address communications to the Human Rights Committee for its consideration. The judgement of the Supreme Court in this case is being studied by relevant Government authorities with a view to resolving the several questions that have been raised by that judgement.

96. Serious consideration must also be given to the nature and functioning of mechanisms to be established by the Government to consider and follow-up on:

- The national monitoring of implementation of international treaty obligations;

- Concluding observations made by treaty bodies and their subsequent implementation; and
- Recommendations made by special rapporteurs and other mechanisms and procedures of the United Nations (working groups and special representatives).

97. As mentioned earlier herein, legislation relating to the protection of witnesses and victims is envisaged, is being prepared and will be enacted shortly. The key challenge for the Government in this regard is to ensure that sufficient and relevant capacities are built up in the new institutional mechanisms to be created, in order that they may, from their inception, perform with a high degree of effectiveness and efficiency to meet domestic and international expectations.

## **V. KEY NATIONAL PRIORITIES – INITIATIVES AND COMMITMENTS**

98. The following have been identified by the Government:

- National Plan of Action on Human Rights – to improve human rights protection and promotion in all areas – this will set targets to be achieved during the next five years (commencing 2009), facilitate a holistic approach to human rights protection and promotion, and lead to greater cooperation between government and civil society;
- Full implementation of the thirteenth amendment to the Constitution;
- Development and economic recovery of the Eastern Province aided by reconstitution and reinvigoration of democratic institutions including training in political practices and principles for former militants;
- Accelerated inclusive economic growth for all Sri Lankans – full achievement of the MDGs by 2015 and development of an MDG plus strategy;
- Implementation of the official languages law and policy and continuing encouragement of bilingualism, in particular in the security forces and the state bureaucracy;
- Confidence Building and Stabilisation Measures: implementation of action plan for IDPs and conflict-affected communities, including host communities;
- Development of a comprehensive and uniform compensation policy for the displaced and dispossessed;
- Completion of drafting, consultations on and enactment of bill on the rights of IDPs;
- Enactment of victim and witness protection legislation and initiation of programme;
- Constitutional bill of rights – expansion of constitutionally guaranteed rights which address issues such as, economic, social and cultural rights, group rights and environmental rights;
- Guarantee the right to work – including the fair remuneration, safe conditions of work and recognition of gender equality;
- Awareness raising and education campaign on UDHR – for sixtieth anniversary in keeping with the Human Rights Voluntary Goals agreed upon at the UNHRC;
- Rehabilitation and reintegration of former combatants – particularly children and young persons in need of training for productive employment;
- Improve and upgrade detention facilities;
- Improving the capacity of the Criminal Investigation Department of the Police in carrying out investigations with additional training in interrogation and prosecution;

- Uphold the rights of persons with disabilities in conformity with the principles in the disabilities convention;
- Having been elected as a member of the HRC and contributing to the institutional development of the Council, its working methods and procedures, Sri Lanka shall continue to participate and promote constructive dialogue and cooperation with the Council – in a effort to protect and promote human rights domestically and globally.

#### **VI. CAPACITY BUILDING AND TECHNICAL ASSISTANCE NEEDS**

99. The Government of Sri Lanka seeks the support of its international partners in the following areas:

- Assistance with building national capacities on treaty body reporting, follow up on concluding observations and recommendations of special procedures and mechanisms of the United Nations including national monitoring of the implementation of international human rights instruments;
- Continued human rights and international humanitarian law education and training for the police and armed forces;
- Better language training, with the development of simulations and role play (as also for human rights training);
- Training for specialised branched of the Police, such as the Criminal Investigation Department, Special Investigation Unit, in investigation techniques – including forensic investigation and use of modern technological methods;
- Improvement of case management and tracking procedures throughout the criminal justice process with a special focus on custodial facilities;
- Technical support in developing a Directorate on Civil and Military Liaison;
- Technical support and assistance in conducting national mapping of human rights protection and promotion initiatives, as well as major gaps and areas to address – this will form basis for the National Action Plan (NAP);
- Assistance in development of the NAP – comparative examples, technical assistance;
- Assistance for national review and initiation of a revision of laws in light of the norms established and given expression to by fundamental rights and international obligations in the sphere of human rights;
- Assistance in strengthening national capacity to protect and promote human rights – particularly support to the HRCSL and the MDM and HR;
- Support for the Attorney-General's Department in clearing backlogs of cases relating to grave human rights violations including involuntary or enforced disappearances.

#### *Notes*

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<sup>1</sup> Decision 6/102, Follow-up to Human Rights Council resolution 5/1; adopted by the Council on 20 September 2007

<sup>2</sup> 196 of whom are elected on the basis of District Proportional Representation and 29 in a National List declared elected on the basis of National PR

<sup>3</sup> In the Directive Principles of State Policy in the Constitution (Chapter VI), the State has the responsibility to establish a democratic, socialist society the objective of which includes the full realization of the fundamental rights and freedoms of all persons.

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<sup>4</sup> International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

<sup>5</sup> See Annex A – Analysis of conformity of Sri Lankan law with key international instruments on human rights to which Sri Lanka is a State Party.

<sup>6</sup> Human Rights Commission Act No. 21 of 1996

<sup>7</sup> The Attorney-General's Department has full functional independence and autonomy but for purposes of administration is nominally under the purview of the Ministry of Justice

<sup>8</sup> This unique mechanism was created in consultation with the Office of the High Commissioner for Human Rights

<sup>9</sup> See <http://www.police.lk/divisions/hr.asp>

<sup>10</sup> Preamble to the 1978 Constitution

<sup>11</sup> Optional Protocol to the CRC on the involvement of children in armed conflict (2000); Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography (2000); Optional Protocol to ICCPR, concerning individual petition (1966); Optional Protocol to CEDAW, concerning individual complaints and inquiry procedures (1999); Convention on the Prevention and Punishment of the Crime of Genocide (1948); Slavery Convention (1926 as amended in 1955); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); United Nations Convention against Transnational Organized Crime (2000); the United Nations Anti-Corruption Convention (2003) as well as a number of ILO instruments dealing with labour rights.

<sup>12</sup> Act No. 4 of 2006

<sup>13</sup> The GOSL invited the United Nations Working Group on Disappearances to undertake missions in 1991, 1992 and 1999 and United Nations Committee Against Torture in 2000. In 2005, the Special Rapporteur on extra-judicial, summary or arbitrary executions and the Special Rapporteur on the freedom of religion or belief visited Sri Lanka. The Special Representative of the United Nations Secretary General for children and armed conflict undertook a visit to Sri Lanka on the invitation of the GOSL in 2006.

<sup>14</sup> The present configuration in Parliament does not make for expeditious passage of a constitutional amendment which requires a two-thirds majority and, in some instances, a national referendum for enactment. It is likely that, in this case, any extensive amendments will require both approval of Parliament and the people at a referendum.

<sup>15</sup> The ICESCR requires States Parties to undertake steps “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized” in the Covenant (Article 2(1)). Further, Article 23 enumerates the ways in which the rights of the Covenant can be realized, i.e. by the “conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings, for the purpose of consultation and study organized in conjunction with the Governments concerned.”

<sup>16</sup> Based on purchasing power parity

<sup>17</sup> In light of increasing trends in the occurrence of natural disasters, the Government has given due consideration to adopting mitigation measures to minimize the damage caused by such calamities in future. A separate Ministry was established in 2006 for the purpose of disaster management. A ten year roadmap for disaster mitigation was prepared including 109 projects identifying key areas for intervention.

<sup>18</sup> A reference was recently made by the President, invoking the consultative jurisdiction of the Supreme Court under Article 129 of the Constitution seeking the opinion of the Court as to the status of justiciability of the ICCPR rights in the Constitution and other local legislation consequent to the enactment of International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007. The GoSL's position is that these rights are all expressly incorporated in law or are otherwise made enforceable. The Supreme Court's report is awaited at the time of writing.

<sup>19</sup> See paragraph 8 *supra*

<sup>20</sup> However, Article 13 (4) contains the provision that “No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law.” The Supreme



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Court in its determinations in the cases of Sriyani Silva (wife of deceased Jagath Kumara) v. Iddamaloda, Officer in Charge, Police Station Payagala and others (2003) and Rani Fernando (wife of deceased Hewage Lal) v. Officer in Charge, Police Station, Seeduwa and others (2004), recognized the right to life, as a right falling within the scope of existing fundamental rights enshrined in the Constitution. Thus in instances of lacuna in domestic legislation, the courts have been proactive in recognizing broad international human rights, in keeping with Sri Lanka's obligations under international law.

<sup>21</sup> See Annex A for a comprehensive analysis.

<sup>22</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

<sup>23</sup> Professor Nowak referred to cases of relatively recent origin. To date there are approximately 79 indictments forwarded over a longer period and prosecutions have been launched against approximately 115 members of the armed services and police.

<sup>24</sup> Pursuant to the Government's policy of viewing acts of abduction, disappearance and extra-judicial killings as well as wrongful confinement with utmost concern, and ensuring that there are no allegations of impunity, the Attorney-General has, between 2004 and the present, forwarded over 200 indictments to the High Court in respect of approximately 600 members of the armed services and police. The commission of these offences were disclosed and the prosecutions arose out of the inquiries of Presidential Commissions of Inquiry inquiring into acts of disappearance, abductions, wrongful confinement and extrajudicial executions which took place prior to 2004.

<sup>25</sup> These measures include 1) issuance of Government certification based on the relevant Commission of Inquiry that the person in question was determined as missing; 2) based on the Commission's recommendation, that compensation was paid to the next-of-kin; and 3) the issuance of a death certificate notwithstanding the absence of a body under special legal provisions so that matters relating to inheritance, marriage and disposal of estates could be commenced under the appropriate private law. Upon completion of this procedure the Working Group will communicate the information to the complainant who will be given 6 months to respond. If no response is received, the matter will be considered closed. In addition, the Government was requested to inform the Working Group if any perpetrators were identified in relation to any of these cases and, if prosecutions were initiated, the details thereof.

<sup>26</sup> Other factors include the need to establish bona fides of allegations in the context of the LTTE adopting a practice of pressuring persons to make false complaints against the Government. Investigations have revealed that, in some cases, persons allegedly abducted have gone overseas or are residing in uncleared areas. An officer of the Child Protection Authority was detained in the Vanni when he attempted to make inquiries relating to child abductions. In another case 10 of 48 children said to have been abducted/recruited by armed groups were found to have returned home or left Sri Lanka.

<sup>27</sup> See paragraph 20 *supra*

<sup>28</sup> Penal Code (Amendment) Act No. 22 of 1995

<sup>29</sup> Relevant changes have also been made in the Penal Code stipulating that any person who engages or recruits a child for armed conflict shall be guilty of an offence and shall on conviction be liable to a term of imprisonment not exceeding 30 years.

<sup>30</sup> 203,841 documented workers as of 2006 and an unverifiable number of undocumented workers.

<sup>31</sup> Several senior United Nations officials visited Sri Lanka and made recommendations on improving the human right situations of the respective areas of their mandates. Ms Asma Jahangir, United Nations Special Rapporteur on freedom of religion or belief, Professor Phillip Alston, Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, Professor Manfred Nowak Special Rapporteur on Torture, Ms Louise Arbour, United Nations High Commissioner for Human Rights and Mr Walter Kaelin Special Representative of United Nations Secretary-General on the human rights of IDPs have visited Sri Lanka during the past two and a half years.

<sup>32</sup> The Constitutional Council is a multi-partisan mechanism created by the 17<sup>th</sup> Amendment to the Constitution (2001) that, *inter alia*, makes recommendations of persons to be appointed to the HRCSL. Such recommendations are made to the President who then appoints the members of the Commission. The second Constitutional Council has not been functioning since 2005 due to lack of consensus among minority parties in Parliament relating to their nominee. In 2006, the President directly appointed the members of the HRCSL due to the non-functioning of the Constitutional Council.

<sup>33</sup> The Motion also proposes the consideration, by the Select Committee, of the implications of the introduction of post-enactment judicial review of legislation.

<sup>34</sup> *Singarasa v. The Attorney General* (S.C. Spl(LA) No. 182/99 - SCM 15.09.2006).

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