



Human Rights Commission of Sri Lanka

Submission by the Human Rights Commission of Sri Lanka

Review of Fifth Periodic Report of Sri Lanka under the
International Covenant on Economic, Social and Cultural Rights to the
UN Economic, Social and Cultural Rights Committee

May 2017

Independent Status of HRCSL

1. The Human Rights Commission of Sri Lanka (HRCSL) established by Act No.21 of 1996 was reconstituted under the Nineteenth Amendment to the 1978 Constitution (2015) in October 2015. The Nineteenth Amendment restored the independent status of the Commission that was in effect removed by the Eighteenth Amendment (since repealed). Members of the HRCSL (as members of other independent commissions) can now be appointed by the President only upon the recommendation of the Constitution Council that comprises of Member of Parliament various political parties and also distinguished citizens. The Constitutional Council calls for nominations for membership of Commissions from professional and other civil society organizations.
2. We are pleased that the composition and work of the current Commission has been commended by, among others, former UN Secretary General Ban Ki Moon¹, the High Commissioner for Human Rights Zeid Ra'ad Al Hussein² and also treaty bodies³. The Commission is of the view that it is fully compliant with Paris Principles and plans to apply to regain 'A' status from the Global Alliance of National Human Rights Institutions (GANHRI).
3. HRCSL is of the view that Concluding Observation 8 of CESCR (below) in response to combined periodic reports 2-4 of Sri Lanka (2010) has been addressed by Sri Lanka:

The Committee urges the State party to ensure that the National Commission on Human Rights meets the requirements of independence and autonomy set out in the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134)

¹ Secretary-General's remarks at event in Sri Lanka on SDG16: Sustaining Peace – Achieving the Sustainable Development Goals, 2 September 2016 at <https://www.un.org/sg/en/content/sg/statement/2016-09-02/secretary-general%E2%80%99s-remarks-event-sri-lanka-sdg16-sustaining-peace-%E2%80%93>

² Oral update on the human rights situation in Sri Lanka by the High Commissioner to the Human Rights Council 22 March 2017 at <http://www.un.org/apps/news/story.asp?NewsID=56403#.WQ3koImGNZ0>; Statement by Zeid Ra'ad Al Hussein on the Situation of Sri Lanka and Myanmar, 29 June 2016 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20218&LangID=E>; Statement by UN High Commissioner for Human Rights, Zeid Al Ra'ad Hussein, at the end of his mission to Sri Lanka, 9 February 2016 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17025&LangID=E>

³ Committee Against Torture, Concluding Observations on Fifth Periodic Report of Sri Lanka 27 January 2017 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fLKA%2fCO%2f5&Lang=en; CEDAW, Concluding observations on the eighth periodic report of Sri Lanka 3 March 2017 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/LKA/CO/8%20&Lang=En

HRCSL Commitment to Indivisibility of Rights

4. HRCSL is fully committed to the concept of indivisibility of rights. That position informs all activities undertaken to discharge its mandate. The HRCSL is conferred with a relatively broad mandate under its parent statute, Act No. 21 of 1996 (ss.10 & 11). Its mandate confers powers needed to investigate and inquire into complaints relating to violations or imminent violations of fundamental rights; to make recommendations to the Government of Sri Lanka on measures that should be taken to ensure that national laws and administrative practices are in accordance with constitutionally recognized fundamental rights and international human rights norms and standards; to make recommendations to the Government on treaties on human rights that it should ratify or accede to; and to promote awareness on human rights. The Commission currently has 10 regional offices. The Commission requires its regional offices to incorporate ESC rights into their activities.

5. HRCSL has established a series of thematic Sub-Committees in order to facilitate its commitment to prioritizing policy interventions, mainly on rights of marginalized communities assessed from the point of view of indivisibility of rights. The mandate of each Sub-Committee is to study pertinent issues and make recommendations for policy interventions on each theme by HRCSL. Themes covered include rights of migrant workers, plantation workers, the elderly, the disabled, gender justice, LGBTIQ Rights and education policy from a rights perspective. There is also a separate Sub-Committee on ESC Rights. Each Sub-Committee is chaired by a Commissioner/s and includes members of civil society recognized for their expertise on each theme. Interns too play an active role in the Sub-Committees. Work is ongoing and it is too early to report on outcomes.

6. HRCSL is currently engaged in a program in association with the Australian Human Rights Commission on implementing regulations on accessibility rights of the disabled. Similarly, the promotion of the right to an adequate standard of mental health has received the attention of the Commission. Consultations with various stakeholders are underway with a view to formulating concrete recommendations to be made to the Government. On International Women's Day (2017) an initiative was launched to examine the challenges facing women engaged in the informal sector with the participation of women giving leadership in related fields.

Incorporating ICESCR into Domestic Law

7. HRCSL recognizes the imperative need to address the following Concluding Observation of CESCR (2010):

The Committee calls upon the State party to ensure that the Covenant enjoys full legal effects in the domestic legal order and prevails over domestic legislation in case of conflict. It also urges the State party to bring its domestic legislation in conformity with the rights contained in the Covenant. The Committee calls upon the State party to improve human rights training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

8. HRCSL is of the view that the ongoing constitutional reform process taking place in Sri Lanka at present is an opportune moment to adopt a comprehensive Bill of Rights. Sri Lanka has a dualist legal system and has to incorporate international human rights standards via domestic legislation. The currently operative 1978 Constitution of Sri Lanka privileges civil and political rights over ESC rights. At present most economic and social rights are confined to the non-justiciable Directive Principles of State Policy (Chapter VI of Constitution).
9. The unique public representations process adopted by the current constitutional reform process reported on the public demand to have economic and social rights such as the right to education and health care enshrined in a future constitution.⁴ However, a small but politically influential group has commenced an active campaign to discourage the incorporation of ESC rights as justiciable rights in the constitution, mainly on the basis that ESC rights have resource implications and an unelected judiciary should not be left to decide such issues.⁵ HRCSL is deeply concerned by such efforts that could roll back decades of work to bridge the artificial cold war inspired divide between civil and political rights and ESC rights.

⁴ Report of the Public Representations Committee on Constitutional Reform at http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf

⁵ 'Socio-economic rights in Sri Lanka's constitution may backfire on the poor', *Economy Next*, 25 February 2017 at http://www.economynext.com/Socio_economic_rights_in_Sri_Lanka_s_constitution_may_backfire_on_the_poor-3-7428.html

10. HRCSL has actively advocated the inclusion ESC rights as justiciable rights in the future Constitution of Sri Lanka. In our recommendations for constitutional reform (Annex I), the Commission endorsed an existing draft Charter of Rights that fully recognized indivisibility of rights. Further, our recommendations called for an expanded non-discrimination clause which is pivotal to the equal enjoyment of all rights including ESC rights, and also judicial review of legislation (not currently permitted).

11. Additionally, HRCSL issued a public statement specifically on the need to include ESC rights as fully justiciable rights in the Constitution of Sri Lanka (Annex II). It called on the government of Sri Lanka to give leadership to recognize ESC rights as fully protected constitutional rights.

Annex I



Submissions by HRCSL

Presented

to the Hon. Prime Minister, Hon. Speaker

&

the Public Representations Committee on Constitutional

Reform

Human Rights Commission of Sri Lanka

PROPOSALS FOR CONSTITUTIONAL REFORM

Preface

The HRCSL is of the view that deepening constitutional protection of human rights requires much more than the incorporation of a substantively rich constitutional Bill of Rights into a future constitution. Two critically important dimensions that require attention in the reform process are:

- a) the guaranteeing of a sound system of separation of powers and checks and balances; and
- b) strong regulation of the public security regime

Specific Proposals

1. Constitutional Principles

Foundational constitutional principles must be articulated either in the preamble to the constitution or as a substantive provision:

- Sovereignty of the people should be foundation of governance
- Transparency and accountability of governance
- Supremacy of the constitution
- Respect for pluralism, equality of dignity and inherent human rights of the people as individuals and as groups
- Respect for religious freedom of all
- Respect for social justice
- Power sharing
- Protection of the rights of future generations with special emphasis on environmental protection including protection of all animal species

2. **Bill of Rights:**

The HRCSL endorses the Draft Charter of Rights (attached) drafted by a Sub-Committee appointed by Minister Mahinda Samarasinghe the Chair of then Inter-Ministerial Committee on Human Rights in 2006 and completed in 2009. It is endorsed subject to the following amendments and those necessitated by the repeal of the 1978 Constitution:

- Further strengthen the non-discrimination clause by adding the ground of sexual identity. The HRCSL received many representations in regard to the need to include ‘sexual orientation’, ‘sexual identity’ and ‘disability’ as prohibited grounds of discrimination. The first and the last and many other grounds such as ‘age’ and ‘maternity’ have already been included in the Draft Charter. The clause should be clearly articulated in an open manner as required by our international obligations—“...no discrimination shall be permitted on grounds **such as...**”
- Recognize the right to be free from enforced disappearances
- Recognize the right to legal aid or the broader right of access to justice
- Include a positive obligation of the State to introduce affirmative action measures in instances of historical injustice and underrepresentation in various sectors of public life
- Horizontal obligations of private parties for abuse of fundamental rights in appropriate situations
- Fundamental rights jurisdiction must be decentralized to appropriate regional courts to make access to justice easy
- ICCPR Act, No. 56 of 2007 must be repealed and rights therein must be incorporated into a future Bill of Rights. There must be no gradation of human rights.
- All rights guaranteed by the Bill of Rights must be entrenched. The diminution (lessening) or revocation (removal) of any of such rights should require a referendum in addition to adoption by a special majority in parliament. An alternative is to recognize a constitutional Basic Structure Doctrine that does not permit the amendment of fundamental rights.
- Interpretation of the Bill of Rights should give primacy to protection of human dignity and equal rights; should necessarily take into account the spirit and objectives of International Human Rights Law; and Directive Principles of State Policy.

3. Ensure a strong system of checks and balances:

- The Constitutional Council shall consist of a majority of members from among respected citizens than of political representatives; social diversity must be represented on the Council
- Independence of the judiciary must be enhanced by strengthening the Judicial Services Commission. The JSC must have among its members respected retired justices and retired members of the official and unofficial Bar and also academics
- Providing for specific procedure by legislation for removal of judges that complies with principles of natural justice
- Ensuring judicial review of legislation is essential. Review should be with prospective (future) effect. Pre-legislative review also should be retained.

4. Public Security Regime:

- Should necessarily be in line with Sri Lanka's international human rights obligations (Article 4 of the International Covenant on Civil and Political Rights)
- A state of emergency could be declared only when the 'life of the nation is threatened'
- Judicial review of a declaration of a State of Emergency must be guaranteed
- Similarly, judicial review of emergency regulations and emergency orders must be expressly provided for
- If a state of emergency continues for more than six consecutive months, Parliament must approve its further extension by a special majority
- The HRCSL endorses provisions in the Draft Charter of Rights (above) on derogation of rights during periods of emergency

5. International Human Rights Treaties:

- The HRCSL recommends a process for human rights treaty ratification in accordance with its mandate, while recognizing that the recommendation could be of general application.
- The executive must inform Parliament of its intention to ratify international human rights treaties. Parliament must approve by resolution such ratification. Such resolution must be deemed to be an undertaking by Parliament of its intention to approve enabling legislation.

- The government must be bound to present enabling legislation within three months of ratification. If enabling legislation is not adopted within a year of ratification, courts should be authorized to give judicial recognition to the substantive rights in the ratified treaty.

6. Human Rights Commission of Sri Lanka

- The Commission is set up under Act No. 21 of 1996. However, the appointment of Commissioners is dealt with under the Nineteenth Amendment to the 1978 Constitution. It is recommended that the HRCSL (as should all independent Commissions) be recognized in a future constitution as a constitutionally established body. Its powers and functions and the duty of public authorities to comply with its recommendations should be stipulated in the Constitution.

The HRCSL is currently studying its current legal framework in order to make recommendations for improvement.

7. Linguistic Accessibility

- The HRCSL strongly recommends that the future Constitution be drafted and translated using simple language so as to enable the citizenry to read and access its provisions easily. It is a right of the citizens to know what their Basic Law says. That is of fundamental importance to constitution-building and in legitimizing constitutional governance.

The Draft Charter of Rights

The HRCSL endorses the incorporation of the attached Draft Charter of Rights into a future constitution subject to the amendments recommended and to the removal of references to the 1978 Constitution.

The Draft Charter of Rights was formulated between 2006-2009 by a Committee appointed on the initiative of Minister Mahinda Samarasinghe, then Chair of the Inter-Ministerial Committee on Human Rights. The Committee included academics specialized in human rights, civil society advocates, legal practitioners and representatives of the Legal Draftsman's Department. Dr. Deepika Udagama, current Chairperson of the HRCSL was appointed as a member of the Committee and also served as the Chair of its Sub-Committee on Economic, Social and Cultural Rights. Dr. Jayampathy Wickramaratne, P.C. chaired the Committee.

The Committee deliberated on the framework and the substantive provisions of the Draft Charter for nearly two years, drawing from Sri Lanka's international human rights obligations and also from comparative constitutions, in particular the Constitution of India and the Constitution of South Africa.

The Draft Charter was meant to be presented as the Eighteenth Amendment to the 1978 Constitution. The ending of the 26 year civil war in Sri Lanka in 2009 was an opportune moment for its release for public deliberations and eventual adoption. However, it was not officially released to the public for public debate and adoption by Parliament.

DRAFT BILL OF RIGHTS



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10 Freedom of thought, conscience and religion

- (1) Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.
- (2) No restrictions shall be placed on the exercise of the fundamental right declared and recognized by this Article.

10A Right to human dignity

- (1) Every person has inherent dignity and the right to have his or her dignity respected and protected.
- (2) No restrictions shall be placed on the on the right declared and recognized by this Article.

10B Inherent right to life

- (1) Every person has inherent right to life and no person shall be arbitrarily deprived of life.
- (2) No person shall be punished with death.
- (3) Every person against whom a sentence of death has been pronounced before the coming into force of the Eighteenth Amendment to the Constitution, shall have such sentence commuted to one of rigorous imprisonment for life.
- (4) No restrictions shall be placed on the on the rights declared and recognized by this Article.

10 C Right to recognition as a person before the law

- (1) Every person shall have the right to recognition as a person before the law.
- (2) No restrictions shall be placed on the right declared and recognized by this Article.

11 Freedom from torture

- (1) No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
- (2) No restrictions shall be placed on the exercise of the fundamental right declared and recognized by this Article.

11A Security of the Person

- (1) Every person has right to-
 - (a) bodily and psychological integrity; and
 - (b) not to be subjected to medical or scientific experiment without such person's informed consent.
- (2) No restrictions shall be placed on the on the right declared and recognized by this Article.

12 Right to equality and freedom from discrimination

- (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) (a) No person shall be arbitrarily discriminated against on any ground including on the ground of such as race, gender, sex, sexual orientation, maternity, marital status, caste, ethnic or social origin, colour, age, disability, religion, conscience or belief, political or other opinion, culture, language, place of birth, and place of residence.
- (b) It shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any national language as a qualification for any employment or office in the service of the State or in the service of any public corporation, Provincial Public Service or local government service where such knowledge is reasonably necessary for the discharge of the duties of such employment or office.
- (c) It shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment of office where no function of that employment or office can be discharged otherwise than with knowledge of that language.
- (3) No person shall, on any of the grounds referred to in subparagraph (a) of paragraph (2) (a) of this Article, be arbitrarily subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of the person's own religion.

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(4) Nothing in this Article shall prevent special measures being taken by law, subordinate legislation or executive action where necessary for the sole purpose of the protection or advancement of disadvantaged or underprivileged individuals or groups including those that are disadvantaged or underprivileged because of ethnicity, gender, sex, age or mental or physical disability.

(5) No restriction shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order or the protection of public health or for the purpose of securing due recognition and respect for the rights and freedoms of others.



13 Freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation, &c.

(1) No person shall be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.

(2) Every person arrested, held in custody, or otherwise deprived of his or her liberty shall be treated with respect for the inherent dignity of the human person.

(3) Save as otherwise provided by law, no person shall be arrested except under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court in accordance with procedure prescribed by law.

(4) Every person arrested shall be informed, in a language which the person appears to understand, of the reason for the arrest and of the person's rights under paragraphs (5) and (6) of this Article.

(5) Every person arrested shall have the right to communicate with any relative or friend of the person's choice, and, if the person so requests, such person shall be afforded means of communicating with such relative or friend.

(6) Every person arrested shall have the right to retain and consult an attorney-at-law. The State shall afford all reasonable facilities to enable the effective representation of the arrested person.

(7) Every person arrested shall not be detained in custody or confined for a longer period than under all the circumstances of the case is reasonable, and shall, in any case, be brought before the judge of a competent court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to such judge, and no person shall be detained in custody beyond such period except upon, and in terms of, the order of such judge made in accordance with procedure established by law.

(8) Every person detained in custody or confined, has the right to be released on bail or upon the execution of a bond unless otherwise provided by law. The amount of bail and the amount of every such bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(9) Every person suspected of committing an offence shall be charged or indicted or released without unreasonable delay, having regard to the facts and circumstances of the case.

(10) Every person charged with or indicted for an offence shall be entitled to be heard in person or by an attorney-at-law of the person's own choosing and shall be so informed by the judge.

(11) (a) Every person charged with or indicted for an offence shall be entitled to be tried –
 (i) without undue delay;
 (ii) by a competent court;
 (iii) at a fair trial; and
 (iv) subject to sub-paragraph (b) of this paragraph, at a public hearing.

(b) A judge may, at the judge's discretion, whenever the judge considers it necessary, in proceedings relating to sexual matters or where the interests of juveniles so require or for the protection of national security or public order necessary in a democratic society or in the interests of order and security within the precincts of such court, exclude there from, persons who are not necessary for the purposes of those proceedings.

(12) (a) Every person shall be presumed innocent until the person is proved guilty.

(b) Nothing contained in any law shall be held to be inconsistent with sub-paragraph (a) of this paragraph to the extent that such law imposes upon an accused the burden of proving particular facts.

(13) No person shall be compelled to testify against himself or herself or to confess guilt.

(14) (a) No person shall be held guilty of, or punished for, an offence on account of any act or omission which did not, at the time of such act or omission, constitute an offence, except for any act or omission which, at the time it was committed, was criminal according to the principles of public international law.

(b) No penalty shall be imposed for an offence more severe than the penalty in force at the time when an offence was committed.

(15) Every person who has been convicted or acquitted of an offence in accordance with law by a competent court shall not be liable to be tried for the same offence save on the order of a court exercising appellate or revisionary jurisdiction.

(16) (a) No person shall be punished with imprisonment except by order of a competent court and in accordance with procedure established by law.

(b) The arrest, holding in custody, detention or other deprivation of personal liberty of a person –
 (i) pending investigation or trial shall, if not unreasonable having regard to the circumstances, not constitute punishment;
 (ii) by reason of a removal order or a deportation order made under the provisions of the Immigrants and

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Emigrants Act or other such law as may be enacted in substitution thereof, shall not be a contravention of this paragraph.

(17) (a) No restrictions shall be placed on the rights declared and recognized by paragraph (2), paragraph (10), items (ii) and (iii) of sub-paragraph (a) of paragraph (11), paragraph (14), paragraph (15) and paragraph (16) of this Article.

(b) No restriction shall be placed on the rights declared and recognized by paragraphs (1), (3), (4), (5), (6), (7), (8), (9), items (i) and (iv) of sub-paragraph (a) of paragraph (11) and paragraphs (12) and (13) of this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order, or for the purpose of securing due recognition and respect for the rights and freedoms of others.



14 Freedom to hold opinions

(1) Every person shall have the right to hold opinions without interference.

(2) No restriction shall be placed on the rights declared and recognized by paragraph (1) of this Article.



14A Freedom of speech and expression including publication and freedom of information

(1) Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium.

(2) No restrictions shall be placed on the right declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order, the protection of public health or morality, racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence or for the purpose of securing due recognition and respect for the rights and freedoms of others.



14B Right of Access to Information

(1) Every person shall have the right of access to –

- (a) any information held by the State, including Provincial authorities; and
- (b) any information held by any other person and that is required for the exercise or protection of the person's rights.

(2) Parliament shall by law make provision to give effect to this right.

(3) No restrictions shall be placed on the right declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, privacy, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



14C Freedom of peaceful assembly

(1) Every person is entitled to the freedom of peaceful assembly.

(2) No restrictions shall be placed on the exercise of the right declared and recognized by this Article other than such restrictions prescribed by any law as are necessary in a democratic society for the protection of national security, public order, racial or religious harmony, the protection of public health or for the purpose of securing the due recognition and respect for the rights and freedoms of others.



14D Freedom of association

(1) Every person is entitled to the freedom of association.

(2) No restrictions shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order, racial or religious harmony, national economy the protection of public health or morals or for the purpose of securing due recognition and respect for the rights and freedoms of others.



14E Trade Union Rights

(1) Every person is entitled to the freedom to form and join a trade union of the person's choice and for such trade union to function without undue hindrance.

(2) Every person is entitled to the right to participate in trade union action, including strike, provided that the right is exercised in conformity with law.

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(3) No restrictions shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order, racial or religious harmony or for the purpose of securing due recognition and respect for the rights and freedoms of others.



14F Freedom to manifest religion

(1) Every person is entitled to the freedom, either alone or in association with others, and either in public or in private, to manifest the person's religion or belief in worship, observance, practice, propagation and teaching.

(2) In the exercise of the rights declared and recognized by paragraph (1) of this Article, no person shall have the right to impair or otherwise restrict any other person's freedom to have or to adopt a religion or belief of that other person's choice.

(3) No restriction shall be placed on the rights declared and recognized by paragraph (1) of this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order, or for the purpose of securing due recognition and respect for the rights and freedoms of others including the freedom declared by paragraph (2) of this Article.



14G Right to enjoy and promote culture and use of language

(1) Every person is entitled alone or in association with others to enjoy and promote such person's culture and, to use the language of such person's choice.

(2) Persons belonging to a cultural or linguistic community shall not be denied the right, with other members of that community, to enjoy their own culture or to use their own language.

(3) No restriction shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of public order, racial or religious harmony, the protection of public health or morality, the protection of the environment or for the purpose of securing due recognition and respect for the rights and freedoms of others.



14H Freedom to engage in any lawful trade, occupation, profession, business or enterprise

(1) Every person is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise.

(2) No restrictions shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of the national economy, national security, public order, protection of public health or morality, the protection of the environment or for the purpose of securing due recognition and respect for the rights and freedoms of others or in relation to –

(a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of a person practising a profession or carrying on an occupation, trade, business or enterprise in the exercise of such fundamental right; and

(b) the carrying on by the State, a State agency, a company fully owned by the State or a public corporation of any trade, business, industry, service or enterprise, whether to the exclusion, complete or partial, of citizens or otherwise.



14I Freedom of movement

(1) Every person lawfully resident within the Republic is entitled to the freedom of movement within the Republic and of choosing such person's residence within the Republic.

(2) Every person shall be free to leave the Republic.

(3) No restrictions shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security or public order or national economy or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or for the extradition of persons from the Republic.



14J Freedom to return to Sri Lanka

(1) Every citizen shall be entitled to return to the Republic.

(2) No restrictions shall be placed on the exercise of the right declared and recognized by this Article.



14K Right to privacy and family life

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(1) Every person has the right to privacy, the right to be protected from arbitrary interference with family life, the inviolability of the home, correspondence and communications and shall not be subjected to unlawful attacks on such person's honour and reputation.

(2) No restriction shall be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society for the protection of national security, public order or national economy or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or for the enforcement of a judgment or order of a competent court.



14L Right to ownership of property

(1) Every citizen is entitled to own property alone or in association with others subject to the preservation and protection of the environment and the rights of the community.

(2) No person shall be deprived of property except as permitted by law.

(3) No property shall be compulsorily acquired or requisitioned save for a clearly described public purpose or for reasons of public utility or public order and save by authority of law which provides for the payment of fair compensation having regard to the prevalent market value of the property at the time of such acquisition.



14M Family rights

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(2) Every man or woman of marriageable age shall be entitled to marry and to found a family and the rights of men and women within the family shall be equal.

(3) No marriage shall be entered into without the free and full consent of the intending spouses.

(4) The State shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution, in which instance provision shall be made for the necessary protection of any children.



14N Rights of the Child

(1) Every child shall have the right -

(a) to have his or her birth registered and to have a name from his or her date of birth;

(b) to acquire nationality;

(c) to be protected from maltreatment, neglect, abuse or degradation;

(d) to family care or parental care or to appropriate alternative care when removed from the family environment;

(e) to basic nutrition, shelter, basic health care services and social services;

(f) to have legal assistance provided by the State at State's expense in criminal proceedings affecting the child, if substantial injustice would otherwise result;

(g) not to be detained except as a measure of last resort, in which instance, the child may be detained only for the shortest appropriate period of time, and has the right to be -

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age;

(h) Not to be used directly in armed conflict and to be protected in times of armed conflict.

(2) No child shall be discriminated against on the ground of the child's or his or her parent's or legal guardian's race, colour, sex, sexual orientation, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status including the marital status of parents.

(3) Every child shall have the right to grow up in an environment protected from the negative consequences of the consumption of addictive substances harmful to the health of the child and, to the extent possible, from the promotion of such substances.

(4) Every child shall have the right to free education provided by the State.

(5) A child shall not be employed in any hazardous activity, shall be protected from exploitative labour practices and shall not be required or permitted to perform work or provide services that-

(a) are inappropriate for a person of that child's age;

(b) places at risk, the child's wellbeing, education, physical or mental health or spiritual, moral or social development..

(6) The rights recognized by this Article shall be in addition to and not in derogation of any other right to which a child is entitled as a citizen or person under this Chapter.

(7) For the purposes of this Article "child" means a person under the age of eighteen years.

(8) In all matters concerning children, whether undertaken by institutions of state or public or private social welfare institutions, the best interest of the child shall be of paramount importance.

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14O Right to education

- (1) Every person has the right to education which shall be directed to full development of the human personality and the sense of its dignity, and to the strengthening of respect for human rights and fundamental freedoms.
- (2) Primary education shall be compulsory and available to all.
- (3) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, including by free education provided by the State.
- (4) Higher education shall be made available to all on the basis of capacity and equitable opportunity, by every appropriate means, including by free education provided by the State b.
- (5) Basic education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.
- (6) Nothing in this Article shall exclude the right of a lawful guardian of a child, acting on that child's behalf, or of any adult to select an education provided by a private institution of education whether denominational or otherwise.



14P Freedom from Exploitation

- (1) No person shall be subjected to trafficking, slavery or forced labour.
- (2) "Forced labour" as used in paragraph (1) of this Article shall not include performance of labour pursuant to a sentence of a court of competent jurisdiction or any work or service which forms a part of normal civic obligations.



14Q Labour rights

- Every citizen has the right to the enjoyment of just and favorable conditions of work which ensures, in particular:
- (a) remuneration which provides fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (b) safe and healthy working conditions;
 - (c) equal opportunity for everyone to be promoted in employment to an appropriate higher level, subject to no considerations other than those of competence and appropriate qualifications including seniority and experience where relevant; and
 - (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay.



14R Right to health

- (1) Every citizen has the right to enjoy the highest attainable standard of physical and mental health and to have access to preventive and curative health-care services including through free health services provided by the State to all who require such services.
- (2) No person may be denied emergency medical treatment.



14S Social rights

- (1) Every citizen has the right to have access to –
 - (a) sufficient food and water;
 - (b) adequate housing; and
 - (c) appropriate social assistance including social security when unable to support the citizen and the citizen's dependents.
- (2) No person shall be evicted from the person's home or have the home demolished, except as permitted by law.



14T Right to an adequate environment

- All persons have the right to an environment that is –
- (a) not harmful to their health or well being; and
 - (b) protected for the benefit of present and future generations.



14U Responsibility of the State to respect, secure and advance Fundamental Rights

In giving effect to Article 4(d) of this Constitution, all organs of State shall take all necessary measures including

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the enactment and implementation of necessary legislation and the adoption and implementation of appropriate policies and programmes for the full realization of the rights declared and recognized by this Chapter.



15 Protection of fundamental rights in times of public emergency

(1) Where a Proclamation has been duly made pursuant to the provisions of Chapter XVIII, and subject to paragraphs (2) and (3) of this Article, measures may be prescribed by law derogating from the exercise and operation of the fundamental rights declared and recognized in this Chapter to the extent strictly required by the exigencies of the situation and necessary in a democratic society, provided that such measures do not involve discrimination on grounds recognized under paragraph (2) of Article 12 and for the purpose of this Article "law" includes regulations made under the law for the time being in force relating to public security.

(2) In prescribing measures under paragraph (1) of this Article, there shall be no derogation -
 (a) from any of the rights declared and recognized by Articles 10, 10A, 10B, 10C, 11, 11A, 14, 14M, 14N (except 14N(1) (e)), and 14P;
 (b) from the right declared and recognized by Article 13(7) unless at the same time legal provision is made requiring -
 (i) the Magistrate of the area in which such arrest was made to be notified of the arrest; and

(ii) the person arrested to be produced before any Magistrate, within such time as is reasonable in all the circumstances of the case.

(3) In prescribing measures under paragraph (1) of this Article, the State shall have a minimum core obligation to ensure the satisfaction of minimum essential levels of the rights recognized by Articles 14N (1) (e), 14O, 14Q, 14R 14S and 14T and in discharging such obligation the State shall not discriminate solely on any of the grounds set out in Article 12 (2).



16 Existing written law and unwritten law

All written and unwritten laws in force at the time of coming into force of the Eighteenth Amendment to the Constitution shall be read subject to the provisions of Chapter III and IV and in the event of a court declaring that any such law is inconsistent with any such provision, such law shall be deemed to be void to the extent of such inconsistency.



17 Remedy for infringement of fundamental rights by State action

(1) Subject to following paragraphs of this Article, every person shall be entitled to apply to the Supreme Court as provided by Article 126 in respect of the infringement or imminent infringement by State action of a fundamental right to which such person is entitled under the provisions of this Chapter;

(2) Where the person aggrieved is unable to make an application under Article 126 owing to reasonable cause, an application may be made on behalf of such a person, by any relative or friend of such person, if the person aggrieved raises no objection to such application.

(3) An application may also be made in respect of any group or class of persons affected, in the public interest, by any person or by any incorporated or unincorporated body of persons, acting bona fide.

(4) Notwithstanding anything to the contrary in the Constitution, every person shall be entitled to apply to the Supreme Court as provided by Article 126 for a declaration that any law, statute of a Provincial Council or a provision thereof is inconsistent with a fundamental right under the provisions of this Chapter.

(5) For the purposes of this Article and Article 126, "State action" includes legislative action, executive or administrative action and judicial action.



17A Rights of non-citizens permanently and legally resident

A person who, not being a citizen of any country, has been permanently and legally resident in the Republic on the date on which the Eighteenth Amendment to the Constitution comes into force and continues to be so resident, shall be entitled to all the rights declared and recognized by this Chapter, to which a citizen of Sri Lanka is entitled.



17B Interpretation of fundamental and language rights provisions

(1) In interpreting the rights declared and recognized by Chapter III and Chapter IV, a court, tribunal or other body -
 (a) shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 (b) shall have regard to the international legal obligations of the Republic and other sources of international law; and
 (c) may have regard to foreign law.

(2) When interpreting any written or customary law, every court, tribunal or other body shall promote the spirit, aims and objects of this Chapter and Chapter IV.

(3) The rights declared and recognized in this Chapter and in Chapter IV do not derogate from any other rights

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or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with Chapter III and Chapter IV .



35 Immunity of President from suit

(1) While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

(2) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds the office of President shall not be taken into account in calculating any period of time prescribed by that law.

(3) The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceedings in the Supreme Court under Article 126 or to any proceedings in any court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph (2) of Article 44 or to proceedings in the Supreme Court under paragraph (2) of Article 129 or to proceedings in the Supreme Court under Article 130 (a) relating to the election the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament:

Provided that any such proceedings under Article 126 and proceedings in relation to the exercise of any power pertaining to any such subject or function shall be instituted against the Attorney-General.



126 Fundamental rights and language rights jurisdiction and its exercise

(1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by State action or any question relating to the inconsistency of any law, any statute made by a Provincial Council or provision thereof with any fundamental right or language right declared and recognised by Chapter III or Chapter IV.

(2) The jurisdiction of the Supreme Court under this Article may be invoked by any person or body of persons referred to in Article 17 in accordance with such rules of Court as may be in force. Any such person or body of persons may apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement or imminent infringement or for a declaration that any law, statute of a Provincial Council or any provision thereof is inconsistent with any fundamental right or language right declared and recognised by Chapter III or Chapter IV. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused as the case may be by not less than two Judges of such Court.

(3) Where in the course of hearing in any Court, of an application for orders in the nature of a writ of habeas corpus, certiorari, prohibition, mandamus or quo warranto, it appears to such Court that there is prima facie evidence of an infringement or imminent infringement of the any fundamental right or language right declared and recognised by Chapter III or Chapter IV by a party to such application, such Court shall forthwith refer such matter for determination by the Supreme Court.

(4) Where in the course of hearing in any court a question of the inconsistency of any law, any statute made by a Provincial Council or provision thereof with a fundamental right or language right declared and recognised by Chapter III or Chapter IV is raised by a party, such court shall forthwith refer such matter for determination by the Supreme Court. Such matter may be proceeded with only if the Supreme Court grants leave to proceed with the matter and such leave may be granted or refused as the case may be by not less than two Judges of such Court.

(5) The Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any petition or reference referred to in this Article or refer the matter back to the Court making the reference if, in its opinion, there is no infringement of a fundamental right or language right or there is no inconsistency of a law or statute with any fundamental or language right declared and recognised by Chapter III or Chapter IV.

Provided that in the case of an infringement or imminent infringement of a fundamental right or language right by judicial action, no order for compensation or costs shall be made against a judicial officer who had acted bona fide and the Supreme Court may, in lieu thereof, order the State to pay any compensation or costs.

(6) Notwithstanding anything to the contrary in the Constitution, the Supreme Court shall have power to make-
 (a) a declaration that any law, any statute made by a Provincial Council or provision thereof that is inconsistent with any fundamental or language right declared and recognised by Chapter III or Chapter IV is invalid to the extent of the inconsistency; and
 (b) any order that is just and equitable, including –

(i) an order limiting the retrospective effect of the declaration of invalidity; and
 (ii) an order suspending the declaration of invalidity for such period and subject to such conditions as would enable Parliament or a Provincial Council to take steps to make the impugned law or statute cease to be inconsistent with the provisions of this Chapter.

(7) Where at the hearing of a petition or reference referred to in this Article there are any disputed questions of fact, the Supreme Court may refer such questions to the Human Rights Commission of Sri Lanka, the Official Languages Commission or other appropriate body or person for inquiry and report.

(8) The Supreme Court shall hear and finally dispose of any petition or reference under this Article as expeditiously as possible and in any event, not later than three months of the filing of the petition or the making of the reference, as the case may be. In computing the period of three months, any period taken for inquiry and report by the Human Rights Commission of Sri Lanka, the Official Languages Commission or any other body or person referred to in paragraph (7) 0 2

(9) Where the State action complained of is that of a Judge or Judges of the Supreme Court, leave to proceed

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shall be granted or refused and the matter shall be heard, if leave to proceed is granted, by a Bench comprising all the Judges of the Supreme Court save those whose action is complained of and any Judge who does not wish to participate.

Annex II

Human Rights Commission of Sri Lanka



The Need to Incorporate Economic, Social and Cultural Rights in the Future Constitution of Sri Lanka

The Human Rights Commission of Sri Lanka (HRCSL) calls on HE the President to give leadership in calling for, and the Hon. Prime Minister and all members of the Constitutional Assembly to ensure, the incorporation of economic, social and cultural rights in the future constitutional chapter on rights as fully protected rights. The HRCSL is deeply concerned by moves by some to prevent the inclusion of such rights in violation of the principle that human rights are all inter-connected and cannot be divided. The constitution-making process must necessarily recognize the views articulated by the public in the public consultations process (2016) demanding the constitutional protection of rights such as the right to education, an adequate standard of health, housing and fair conditions of labour in the future Constitution. Failure to do so is also a violation of legal obligations undertaken by Sri Lanka, particularly under the International Covenant on Economic, Social and Cultural Rights (1966). Sri Lanka's improving human rights record will be sullied by such a failure and would seriously undermine public confidence in the future Constitution.

The HRCSL is deeply concerned by attempts made by some quarters closely associated with the current constitution-making process to prevent the inclusion of economic, social and cultural rights (ESC rights), such as the right to education and an adequate standard of health, from the constitutional Bill of Rights as full-fledged rights for which judicial remedies are available. It has been argued that only civil and political rights should be guaranteed as full rights.

The HRCSL, the primary institution charged with the protection and promotion of human rights in the country, rejects this artificial division of human rights. It calls on the Constitutional Assembly to ensure that the people's rights are fully guaranteed in the future Constitution. Failure to do so would seriously impede full protection of human rights and undermine the legitimacy of the new Constitution in the

eyes of the public. It is the opinion of the HRCSL that such a move would also amount to a violation of international human rights obligations undertaken by Sri Lanka.

In March of this year, the HRCSL made submissions before the Public Representations Committee on its proposals for constitutional reform. The proposals were sent to the Hon. Prime Minister and the Hon. Speaker and were made available to the public in Sinhala, Tamil and English. In its proposals, the HRCSL endorsed the Draft Charter of Rights completed in 2009 for inclusion in the new constitution of Sri Lanka. The Charter, formulated by a group of experts appointed by an inter-ministerial committee guarantees not only civil and political rights but also economic, social and cultural rights as full-fledged rights capable of attracting judicial remedies.

The HRCSL proposals also emphasized the need to, among other things, recognize the promotion of social justice as a fundamental constitutional principle. It reiterated the importance of incorporating a strong system of checks and balances, including judicial review of legislation to ensure the effective protection of people's rights. Above all, the need to recognize the principle of supremacy of the constitution was underscored.

The HRCSL proposals were made fully conscious of the unique opportunity this moment presents for Sri Lanka, especially as a post-war society, to acquire a modern constitution that addresses concerns of its people within a strong democratic State structure. This is a moment to right the wrongs of the past, and forge ahead to create a new Sri Lanka that is humane and just, as much as it is prosperous. Protection of the rights of the people in a strong and holistic manner is critical to achieving those goals. The post-conflict constitutions of South Africa, Kenya and Nepal, for example, are illustrative of such efforts. Sri Lanka too should follow suit and not miss out on this unique opportunity.

The HRCSL points to the following in that regard:

1. Human rights are recognized in order for people to live in dignity realizing their full potential. As much as all aspects of human life are inter-connected, so also are human rights. It would be futile to divide rights and selectively protect only some of them. Today, the idea of indivisibility of rights is a firmly established principle recognized by the community of nations. The Vienna Declaration and Program of Action adopted by consensus by 171 States participating in the World Conference on Human Rights held in Vienna in June 1993 declares that 'All human rights are universal, indivisible and interdependent and interrelated'.
2. The unique feature of the current constitution-making process in Sri Lanka is the importance attached to public consultations. Such a process was missing in the making of the first two republican constitutions. The basis of constitution-making must be the will of the people in whom sovereignty lies. No entity is more powerful than the people in a democracy. The Constitution is for the people and must necessarily be by the people.

According to the detailed report of the Public Representations Committee on Constitutional Reform (May 2016), public representations had strongly demanded the strengthening of the

existing constitutional chapter on rights by including rights such as the right to education, an adequate standard of health, housing and just conditions of work (Chapter 12). It is clear that such rights are no longer viewed by the people as welfare entitlements. They are recognized as human rights. It is worthy of note that the representations place strong emphasis on social justice in shaping the nature of the State. The demand is clearly not for cosmetic entitlements, but for full-fledged rights.

3. The need to secure social justice in a post-war society cannot be emphasized more. It is the glue that could hold a fractured society together by building trust. People need to believe that the State is empathetic to their critical needs such as housing, food security, livelihoods, schooling for children and healthcare. Experiences in post-conflict societies everywhere, more recently in countries such as South Africa, Kenya, Nepal and Colombia, have proved that a constitutional commitment to social justice is needed to bring about political stability and instill credibility in governance.
4. It is significant that recent public representations have referred to Sri Lanka's international human rights obligations in articulating their demands (Report on Public Representations on Constitutional Reform (2016), Chapter 12). Reference has been made, among others, to legal obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which Sri Lanka ratified way back in 1980.
5. States that have ratified the ICESCR are under an obligation to realize the rights through 'progressive realization utilizing the maximum of available resources' (Article 2). The State has to demonstrate that available resources are used maximally to realize ESC rights of the people. The State must ensure equal access to services. The State must ensure that the qualitative nature of services is commensurate with available resources. The economic development model of the State is irrelevant for those purposes. What is important is that the State discharges its obligations and demonstrates results.

Often, what is at issue is not the unavailability of resources but the failure to use available resources in a responsible and reasonable manner to realize the rights of the people. International human rights obligations compel States to utilize resources in a disciplined and accountable manner for public benefit.

6. 'Where there is a right, there is a remedy' (*ubi jus ibi remedium*) is a sacred legal maxim. Critics of full recognition of ESC rights argue that canvassing such rights before courts would permit unelected judges to pronounce upon policy matters involving allocation of public resources and, therefore, should not be constitutionally recognized as rights for which judicial remedies would be available. That position is unacceptable for conceptual reasons and is also in violation of the international obligations of Sri Lanka.

Judges would not be called on to **initiate** policy making in that regard, but are called on to **review** questionable policies. That is an essential feature of any functional democracy. The ICESCR obligates Sri Lanka to provide remedies, including judicial remedies, for violation of ESC rights (Committee on Economic, Social and Cultural Rights, General Comment No.9 on 'Domestic Application of the Covenant', E/C.12/ 1998/24 (1998)). The UN Committee on Economic, Social and Cultural Rights, which supervises the implementation of ICESCR, has declared that it is no longer possible to deny remedies, including judicial remedies, in regard to ESC rights.

Human rights discourse at both national and international levels has moved on to new frontiers, recognizing that ESC rights as well as civil and political rights entail positive as well as negative State obligations and that the realization of all rights have financial implications for the State.

In fact, the right to vote and the right to a fair trial (civil and political rights) are two of the most expensive rights entailing the formulation and implementation of complex policies. That does not mean, therefore, such rights should be denied judicial remedies. However, skeptics argue that the right to education and right to health, for example, should not have judicial remedies as they entail both State resources and policy implications. Therefore, such matters should be left to the whims of the political branches without judicial review. The HRCSL finds such a position to be illogical and internally contradictory. As the ESC rights Committee points out, such reasoning negates the linkage between rights (indivisibility of rights) and seriously curtails the possibility of courts to protect the rights of the most vulnerable and disadvantaged in society (General Comment No. 9 (above), para 10).

7. Reluctance to fully recognize ESC rights has much to do with one's economic policy orientations. Human rights of the people cannot be contingent on the shifting vagaries of the market or official economic policy priorities that may change from time to time.
8. The Responsibility of private economic actors to respect human rights is also increasingly recognized both at national and international levels. The UN Guiding Principles on Business and Human Rights (Ruggie Principles) (2011) recognize that States are obligated to enforce laws that require private business entities to respect human rights. The much respected Constitution of South Africa (1996) extends human rights obligations to private actors as well.

In Sri Lanka too public representations have been made to that effect (Report of the Public Representations Committee (2016), p 127). HRCSL proposals on constitutional reform have recommended that human rights obligations be extended to private actors. The right to property and the right to engage in an occupation of one's choice should be balanced with obligations to larger society. Rather than be deterred by such obligations, private business entities should welcome the opportunity to earn public goodwill and credibility. Many are

discovering that socially responsible business practices are good for business. It is evidenced by the 8000 + companies that have joined the UN Global Compact.

9. It is also argued that full constitutional recognition of ESC rights would encroach on devolved powers. Devolution of power is not a license to violate or diminish people's rights, but is a means to better protect rights. Recognized human rights norms recognize **minimum standards** that should be respected and protected by **all** constituent units of a State.

The world is watching the reform agenda in Sri Lanka with great anticipation, especially in regard to deepening of democratic governance and protection of human rights. Regression of the kind proposed by the critics of ESC rights would be a serious rolling back of progressive constitutional trajectories established by more recent constitutions such as those of South Africa, Kenya and Nepal. It would be a black mark against Sri Lanka's improving human rights record. Not only should the people of Sri Lanka make use of this unique opportunity to secure a strong constitution for themselves, but also ensure that a healthy precedent is established for other countries to emulate.

Accordingly, the HRCSL calls on His Excellency the President to give leadership in this regard. We urge the Hon. Prime Minister and all members of the Constitutional Assembly to ensure that the ongoing constitutional reform process ensures the inclusion also of ESC rights in the future constitutional chapter on rights as fully protected rights capable of vindication by courts, respecting the principle of indivisibility of rights that would enable the full enjoyment of human rights by the people of Sri Lanka.

The HRCSL calls on concerned citizens and civil society organizations to step up advocacy for full constitutional recognition of all human rights so that there will be no future regrets on missed opportunities.

Dr. Deepika Udagama,
Chairperson
Human Rights Commission of Sri Lanka