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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Follow up Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the visit to Sri Lanka**

**Comments by the State\***

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



## **Comments of the Government of Sri Lanka on the advanced unedited version of the follow-up report to the country visits (A/HRC/48/60/Add.2)**

1. In response to the communication dated 4 June 2021 received from the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, seeking comments on an excerpt of the advanced unedited version of the follow-up report country visits (A/HRC/48/69/Add.2), the Government of Sri Lanka (GOSL) wishes to make the following comments:
2. At the outset, the Government of Sri Lanka wishes to recall that Sri Lanka, as the country concerned, engaged in and facilitated constructive dialogue with the Special Rapporteur by Mr. Pablo de Grieff, former Special Rapporteur (A/HRC/45/45/Add.1) during his visit to Sri Lanka as well as when his Report was presented to the Human Rights Council by his successor during its 45<sup>th</sup> Session in September 2020.
3. With regard to references to Resolution 30/1 in the report, the GoSL wishes to recall that Sri Lanka's withdrawal from the said resolution was based on the serious constitutional, substantive and procedural issues which the country and its people had to encounter pursuant to the then Government's decision to co-sponsor the resolution without the concurrence of the Parliament on a matter concerning the sovereignty of the nation and in contravention of its Constitution. These grounds were explained in detail in the statement delivered by the Hon. Minister of Foreign Affairs of Sri Lanka at the High-Level Segment of HRC43.<sup>1</sup>
4. Sri Lanka reiterates that notwithstanding its withdrawal from Resolution 30/1 for the reasons stated above, Sri Lanka remains committed to implement its obligations arising from human rights Treaties to which Sri Lanka is a party, and as well as the country's voluntary undertakings. Sri Lanka has been actively engaged with the United Nations Human Rights mechanisms regularly with this objective.
5. It is reiterated that the present Government, which was elected to Office with a clear mandate of the people of Sri Lanka, undertook to look at deliverable measures of reconciliation as backed by the mandates given by the people, in the interest of Sri Lanka, within its constitutional framework, instead of opting to continue on a framework driven externally that has failed to deliver genuine reconciliation for over four and half years.
6. Since then, Sri Lanka has kept the HRC and the international community briefed on the progress of implementation of commitments that Sri Lanka had undertaken such as continuity of the existing mechanisms including the Office on Missing Persons (OMP), Office for Reparations (OR), appointment of a Commission of Inquiry (COI) headed by a Supreme Court Judge, achieving the SDGs, progress made in returning lands, demining and creating new avenues of livelihoods.<sup>2</sup> The Government also wishes to refer to its written response to the High Commissioner's Report on Sri Lanka presented to the HRC 46 for further details in this regard.<sup>3</sup>
7. The GOSL wishes to point out that these steps have been taken even as Sri Lanka continues to battle the effects of the COVID-19 pandemic for more than a year, and amidst its preoccupation with an electoral process which led to the general election in August 2020 and the formation of a new Government.
8. In the above context, Sri Lanka believes that it is incorrect and misconceived to state that

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<sup>1</sup> Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations of Sri Lanka during the High Level segment of the 43rd Session of the UN Human Rights Council (26th February 2020) , <https://mfa.gov.lk/43rd-session-hrc/>.

<sup>2</sup> Ref. Sri Lanka's statement delivered during the High -level segment of the HRC 46th Session on 23 February 2021 <https://mfa.gov.lk/fm-23-feb-2021-geneva/>.

<sup>3</sup> Ref. doc (A/HRC/46/G/16) - GoSL comments on the report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/46/20), <https://undocs.org/A/HRC/46/G/16>.

*“over the past year, the human rights situation in Sri Lanka has seen a marked deterioration that is not conducive to advancing the country’s transitional justice process and may threaten it.”* (ref. para 2)

9. Also, Sri Lanka believes that, in the context of the challenges posed by the COVID 19 pandemic to all countries, particularly those in the developing world, the principles of objectivity and impartiality require that assessments made of the human rights situation of a country take into account the difficult realities and priorities on the ground.

10. It is noted that the former Special Rapporteur’s Report (which was presented 3 years after his visit) failed to adequately portray the significant progress achieved by Sri Lanka in respect of truth, justice, reparations and guarantees of non-recurrence. It is regrettable that the current follow-up Report presented by the current Special Rapporteur also fails to acknowledge the progressive steps taken by the Government of Sri Lanka to address truth, justice, reparations and guarantees of non-recurrence to all communities.

11. Therefore, the GOSL wishes to share the following updates regarding the progress made with regard to domestic mechanisms and reconciliation process:

- On 17 November 2020, the Cabinet of Ministers approved the appointment of a **Commission of Inquiry (COI)** headed by a Justice of the Supreme Court, to review the reports of previous Sri Lankan COIs which investigated alleged violations of Human Rights and International Humanitarian Law (IHL), to assess the status of implementation of their recommendations, and to propose deliverable measures to implement them in keeping with the new Government’s policy. Accordingly, in terms of the Commission of Inquiry Act, a Commission of Inquiry has been appointed with the following mandate<sup>4</sup>; to investigate and inquire into, take necessary action or report on the following matters, namely –
  - (a) Find out whether preceding Commissions of Inquiry and Committees which have been appointed to investigate into human rights violations, have revealed any human rights violations, serious violations of the international humanitarian law and other such serious offences;
  - (b) Identify what are the findings of the said Commissions and Committees related to the serious violations of human rights, serious violations of international humanitarian laws and other such offences and whether recommendations have been made on how to deal with the said facts;
  - (c) Manner in which those recommendations have been implemented so far in terms of the existing law and what steps need to be taken to implement those recommendations further in line with the present Government policy;
  - (d) Overseen of whether action is being taken according to (b) and (c) above.
- The Commission of Inquiry (COI) consists of members representing all main ethnicities in Sri Lanka and its composition is gender-balanced. The 4 member panel presided over by a sitting Judge of the Supreme Court, on 4 March 2021 “invited any person, persons or organizations to submit written representations or information or any other material which relates to the above for the Commission to inquire”. The Commission has been conducting hearings since April, and heard testimony from witnesses.
- The **Office on Missing Persons (OMP)** continues to operate with financial provisions allocated for its statutory functions. The Commissioners have been appointed and the commission has setup the mechanism to expedite the work of the OMP in order to assist to the families, victims, witnesses and relatives of the missing persons. This includes;
  - Updating the database of the OMP with the records of the missing persons reported to OMP

<sup>4</sup> Ref. Extraordinary Gazette No.2211/55 dated 21 January 2021, [http://www.documents.gov.lk/files/egz/2021/1/2211-55\\_E.pdf](http://www.documents.gov.lk/files/egz/2021/1/2211-55_E.pdf).

- Verifying the records of the files of the recent cases ( date of missing between 2000-2020)
  - Developing a check list and filtering the mandate, and verifying those supporting documents produced
  - Assisting the families, victims, and witnesses for obtaining interim reports and in providing legal supports
- The **Office for Reparations (OR)** continues to function, and financial provisions have been allocated for that purpose from the 2021 budget. A Reparations Policy has been drafted and is awaiting approval by the Cabinet. According to the OR, 12,184 claims remain to be considered for compensation and 3389 cases have been processed between January – June 2021. As at 1 January 2021, a total number of 2,505 claimants have been provided compensation amounting to more than Rs. 164.6 million. The Government released SL Rs 79 million to the Office of Reparations in June 2021 to settle 1,230 processed claims for reparation. An additional SL Rs. 80 million was released on 29 June 2021 to settle a further 1,451 processed claims, out of a total of 3,389 processed claims.
  - The **Office for National Unity and Reconciliation (ONUR)** continues to execute its mandate which includes restorative justice and reconciliation, and financial provisions have already been allocated for this purpose. The ONUR was gazetted under the Ministry of Justice in August 2020. A new Board of Control comprising 14 members and a Director General was appointed in February 2021. The ONUR carries out programmes with a view to building national unity under 8 aspects including education, arts and culture, psychosocial support, ‘viruliya shakthi’ programme for military widows and families, media and communication, conflict transformation, higher education and research and reconciliation through economic engagement. The Office continues its work under the above 8 identified areas.
  - The **National Human Rights Commission (NHRCSL)** has been reconstituted in accordance with the procedure mandated by the Constitution and financial provisions have been allocated to implement its statutory mandate.
  - It is noteworthy that the Government has increased budgetary allocation for capacity building in the **justice sector** from the 2021 Budget. This allocation is a 500% increase compared to the previous allocations. This includes the establishment of new Court houses, the digitalization of the systems, increase of judicial officers, enhanced training, law reforms, the promotion of alternate dispute resolution, and the adoption of new techniques in legal education. Further, more Judges have been appointed to the superior courts, i.e. the Court of Appeal and the Supreme Court, consequent to the promulgation of the 20<sup>th</sup> Amendment to the Constitution. The objective of these measures is to further enhance access to justice and administration of justice in the country.
  - H.E. the President, in his inaugural speech in 2019, reaffirmed Sri Lanka’s commitment to Sustainable Development Goals.<sup>5</sup> In line with the above policy framework, the Government is committed to achieve the Sustainable Development Goals of the UN, with a determination to uplift the lives of all its citizens and ensure that there is no threat to peace, reconciliation or development in Sri Lanka. A high level inter-ministerial committee led by the Prime Minister has been appointed to steer the SDG implementation process by mobilizing the various government institutions as well as by promoting strong national ownership towards SDGs. A Road map and strategy for SDG implementation in Sri Lanka is currently being developed. The SDG Council is working on strengthening the data collection and monitoring of the SDGs. Sri Lanka shows a significant progress in achieving the Sustainable Development Goals (SDGs). According to the Sustainable Development Report 2021,<sup>6</sup> Sri Lanka

<sup>5</sup> Ref. H.E. the President’s inaugural speech in Anuradhapura on 18 November 2019, where it is stated that “We will have our fullest commitment to achieve the sustainable development goals of the UN”, <https://www.presidentsoffice.gov.lk/index.php/2019/11/18/new-president-sworn-in-2/?lang=en>.

<sup>6</sup> <https://www.sdgindex.org/reports/sustainable-development-report-2021/>.

has improved its global rank by 7 positions and is placed at 87th place out of 165 countries in 2021. Overall Country Score has increased to 68.1, which is well above the regional average. In 2019 and 2020, Sri Lanka ranked at 93rd and 94th places respectively with scores of 65.8 and 66.9 respectively.

- A coordinating mechanism with the participation of institutions/line agencies which hold primary responsibility on the implementation of the SDG 16 has been initiated by the Ministry of Justice in consultation and with coordination by the national SDG Council.

***Paragraph 6: “...progress on emblematic cases has stalled or encountered serious setbacks under the current administration”***

12. It may be noted that High Courts at Bar have been appointed in respect of the incident in the Welikada Prison, the Ekneligoda case, Weliveriya incident and the Rathupaswala Case. The trials before the High Courts at Bar are continuing in accordance with the Criminal Procedure Code. Assuch, the inference that not a single “emblematic case” is being pursued is refuted and it may also be noted that in keeping with the Constitutional requirements, law and accepted international norms and practices, a fair trial has to be afforded to all parties to a judicial proceeding.

13. The trial at Bar against former Navy Commander Admiral Wasantha Karanagoda had been stayed pursuant to the jurisdiction of the Court of Appeal being invoked in terms of a Writ application filed by Admiral Karanagoda. The Attorney General has filed objections, and the case is due to be taken up for Hearing in the Court of Appeal.

14. It may also be noted that a Special Presidential Commission of Inquiry comprising two sitting Supreme Court Judges and a Judge of the Court of Appeal has been appointed in terms of Special Presidential Commission of Inquiry Law No 07 of 1978 as amended with a mandate to consider the recommendations of the Commission of Inquiry to inquire into and obtain information in relation to the alleged political victimization of Public Officers, Employees of State Corporations, Members of the Armed Forces and the Police Service who held posts during the period commencing from 8<sup>th</sup> January 2015 and ending on 16<sup>th</sup> November 2019.

15. With regard to the death of 5 students in Trincomalee, it is noted that the Parliament of Sri Lanka, in 2017, passed an amendment to the Protection of Victims of Crime and Witnesses Act. The amendment was aimed at enabling the leading of evidence from remote locations through an audio-visual linkage, particularly in cases such as that of Dr. Kasipillai Manoharan, the father of one of the deceased students and a key witness in the case who was unwilling to visit Sri Lanka to testify. However, the said witness has yet to avail of the above facility afforded through a legislative amendment.

***Paragraph 7 – “Accountability efforts have been further obstructed by reported reprisals against several members of the CID involved in the past in the investigations of a number of high-profile killings, enforced disappearances and corruption. Some have been arrested and another has left the country.”***

16. Former Director of the Criminal Investigations Department, Senior Superintendent of Police (SSP) Shani Abeysekera was arrested in July 2020. Investigations are proceeding regarding the matter under judicial supervision and oversight and he is being represented by legal counsel in the Magistrate Court of Gampaha under Case No B 1536/20 in respect of the following offences:

- (i) Under Section 2(1) b of the Offensive Weapons Act No 18 of 1966 as amended;
- (ii) Section 27 (1) of the Explosives Act No 21 of 1956 as amended;
- (iii) Section 22 (3) of the Fire Arms Ordinance No 33 of 1916 as amended.

17. Mr. Shani Abeysekera was in remand custody and was diagnosed with COVID-19. He was transferred to the IDH Hospital for treatment for a heart condition and other chronic medical conditions. He was given all medical assistance and has since recovered. He has recently testified before the Commission of Inquiry on the Easter Sunday attacks.

18. After the High Court of Gampaha had refused his application for Bail in High Court of Gampaha in case No Bail/339/2020, the Court of Appeal, in CA(Rev) Application No CA/CPA/18/2021, had considered a revision application filed in the Court of Appeal and granted Mr. Abeysekera Bail on 16th June 2021, subject to conditions stipulated in the order of the Court of Appeal dated 16th June 2021.

19. It may also be noted that Mr. Nishantha Silva, a Police Officer attached to the CID having left Sri Lanka in 2019, is subject to an open warrant issued against him by the Magistrate Court of Gampaha, under case no: B 1536/20. In this context it may be noted that the said case under investigation relates to the recovery of a large cache of automatic weapons, explosives and ammunitions and that he had concealed and fabricated false evidence over a case and interfered with the course of justice.

20. Four persons including Nishantha Silva have been named as suspects and an open warrant has been issued on 24 August 2020 in respect of Mr. Nishantha Silva. The case is proceeding before the Magistrate Court of Gampaha and investigations are being conducted subject to judicial supervision and oversight in relation to the following offences:

(a) Under Section 2(1) b of the Offensive Weapons Act No 18 of 1966 as amended;

(b) Section 27 (1) of the Explosives Act No 21 of 1956 as amended;

(c) Section 22 93) of the Fire Arms Ordnance No 33 of 1916 as amended.

21. As such, Mr. Nishantha Silva Candappa aka Nishantha Silva is now a fugitive from justice.

***Paragraph 8- “..The Human Rights Council resolution 46/1 of March 2021, which mandate the Office of the High Commissioner for Human Rights to collect and preserve evidence for future prosecution and present recommendations to the international community on how justice and accountability can be delivered, is a welcomed development.”***

22. The Resolution 46/1 was presented to the HRC without the consent of Sri Lanka as the country concerned and was adopted by a divided vote. It was presented in spite of Sri Lanka’s continuous engagement with the UN and the Council and the continued and tangible progress demonstrated by Sri Lanka, while battling the effects the COVID-19 pandemic, in addressing issues related to achieving peace, reconciliation and development, including accountability, within the domestic legal framework of Sri Lanka.

23. Sri Lanka is of the view that this resolution will only serve to polarize Sri Lankan society and adversely affect economic development, peace and harmony at this extremely challenging time brought about by the pandemic. Sri Lanka rejects the establishment of any external evidence gathering mechanism, when domestic remedies and processes are ongoing. The international community is well aware that, without the consent and cooperation of the country concerned, such external accountability mechanisms are subject to politicization and cannot achieve their stated human rights objectives.

24. The recorded history of Sri Lanka portrays that a comprehensive system of dispute resolution existed and the current system introduced by the British in 1801 continues to play a robust role in the administration of justice. In this context, the judicial system that has prevailed in Sri Lanka over the years has proved to be independent, and several other jurisdictions including the UN tribunals and the International Court of Justice have invited and drawn from the expertise of Sri Lankan judges and prosecutors in complementing and strengthening the respective judicial systems. It may be noted that Fiji and Seychelles are amongst such countries that have sought the expertise of Sri Lankan judges.

25. As pointed out at HRC 46, it is the firm belief of Sri Lanka that the contents of resolution 46/1 does not reflect the actual ground situation in the country, a situation which, from an objective point of view, in no way warrants the disproportionate attention or the financial and human resources required by resolution 46/1. At a time of financial constraints for the HRC, the PBI of this resolution runs into over 2.8 million dollars, and makes provision for over a dozen new staff members.

26. Notwithstanding the unrealistic demands contained in the HRC Resolution 46/1, Sri Lanka, in keeping with its constitutional mandate and legal system the Government has always respected, secured and advanced the rights of its people and will continue to work with the UN, humanrights Treaty Bodies and mandate holders to advance its international human rights obligations.

***Paragraph 12 - “The Special Rapporteur is concerned about the several instances since November 2019 in which government authorities have tried to suppress memorialization efforts by families of victims and conflict- affected communities. This seems to have been exacerbated during COVID-19 pandemic which is being used as a justification to prevent memorialization.”***

27. The Global Threat Forecast 2021 of the UN Threat and Risk Assessment Service (TRS) states that the “LTTE ideology and doctrine are still upheld as romantic and attractive among the younger generation”. The UN Security Council Resolution of 1624 condemns “in the strongest terms the incitement of terrorist acts and repudiate attempts at the justification or glorification (apologie) of terrorist acts that may incite further terrorist acts” and calls upon all States to adopt such measures as may be necessary and appropriate to prohibit such incitement.

28. In this background, what the Government sought to prevent through judicial action was glorification of terrorism through public gatherings and events with the use of symbols of a proscribed terrorist organization. The local Courts in the relevant areas have prevented these events, taking into consideration among other things, the nature of these events, possible threats to public security and the health regulations amidst an ongoing pandemic.

29. The government authorities have never suppressed memorialization of families of victims and conflict affected communities. There are no restrictions whatsoever for individual family members to memorialize loved-ones with their relatives. However, it is noted that in the guise of memorializing deceased members of the LTTE, certain elements attempt to glorify and promote LTTE by way of displaying the flags and the logo of the LTTE.

30. The LTTE was designated as the most dangerous and deadly terrorist organisation in the world by the Federal Bureau of Investigations in 2008. Although this terrorist outfit was militarily defeated in 2009, its international network continues global operations, which explains why Malaysia had to take measures to ban the LTTE in 2014, years after the defeat of the LTTE in Sri Lanka.

31. In this background, what the Government sought to prevent through judicial action was glorification of terrorism through public gatherings and events with the use of symbols of a proscribed terrorist organization. The local Courts in the relevant areas have prevented these events, taking into consideration among other things, the nature of these events, possible threats to public security and the health regulations amidst an ongoing pandemic.

32. Furthermore, it may be noted that, due to the surge of Covid-19 cases, authorities had to prohibit mass gatherings throughout country, in order to prevent the spread of the virus.

#### **Paragraph 10 & 11 – progress in the work of the Office on Missing Persons (OMP)**

##### ***Regional Offices***

33. The OMP recognizes the importance of having regional offices in every province; and such needs will be assessed and openings of new office will be decided by the commission based on a rationale such as public consultations with the families of the missing and disappeared; and given geographical patterns in the incidence of missing and disappeared persons (the caseload and no offamilies).

34. The opening of regional offices is decided by considering the recommendations given by the commission based on the needs of the public, and caseload related to the missing persons. Accordingly, the regional offices in four provinces were opened in the past, in order to assess the needs of the public, the regional offices were instructed to consider a wider geographical coverage and cover the adjoining districts as well. The OMP has taken

alternative ways to cover the entire island with the support of the regional offices, district secretariats, and mobile units using technology.

### ***Appointments***

35. Retired Justice Upali Abeyratna, former Judge of the Supreme Court is a career judicial officer with 34 years of experience in the judicial service. His appointment to the OMP was based on his expertise and experience required to perform the powers, duties and functions of the OMP. All the powers, duties and functions of the OMP are subject to judicial oversight and as such the OMP is required to perform all its powers and functions according to its statutory mandate.

36. Further, it should be noted that the appointments of the Chairperson and the commissioners are based on expertise and professional qualifications, with a view of effective implementation of Government policies. And also, their appointments are based on the Sec 5 of the OMP Act and their functions can only be limited in accordance to the sec 6 and 7 of the Act. And all the appointments are bound by the legal provisions especially by the Constitution, and composition of the OMP and its objectives.

### ***Functions***

37. Under section 12(d) of the OMP Act, the OMP has the authority to apply to a Magistrate's Court for an order of the Court to carry out an excavation and or exhumation of suspected gravesites, and to act as an observer at such excavation or exhumation, and at other proceedings, pursuant to the same. In the course of exercising its powers as an observer at six inquiries into suspected gravesites.

38. The OMP has taken steps to issue Interim Reports to 68 families to facilitate the process for obtaining a Certificate of Absence (CoA) in respect of persons who are missing or disappeared as a result of the conflict in the North and East, due to political unrest, civil disturbances, enforced disappearances or as a member of the armed forces or the police reported Missing in Action (MIA).

39. The OMP intervened with District Registrars, Divisional Secretariats and Grama Niladhari officers regarding queries and requests for intervention received from families of the missing and disappeared regarding obtaining a Certificate of Absence (CoA) or a Certificate of Death (CoD), on a case-by-case basis.

40. The OMP continued to receive requests for assistance from civilian and military families of the missing and disappeared on varied subjects including accessing state services, financial services, compensation, obtaining CoDs and pensions, obtaining CoAs, ongoing legal cases, disputes regarding assets, ownership and succession. The OMP responded by taking up such matters with the relevant state institutions including the Office for Reparations, Department of the Registrar General, local Government institutions and the armed forces. The OMP also assisted with legal advice, practical guidance and referrals where possible.

41. The publication of the List of the missing persons is part of an ongoing process of collating data relating to missing and disappeared persons and enable the OMP to develop a comprehensive official record of missing and disappeared persons in Sri Lanka, as per its mandate. In November 2020, family members of the missing and disappeared and the public were invited to access hard copies of the List at the OMP Head Office in Colombo and its Regional Offices.

42. The OMP has shared the provisional list with the Office for Reparations (OR), and National Unity and Reconciliation (ONUR) and had consultations focused on collaborative work and partnerships.

43. The functional independence of the OMP and the exercise of its powers and functions are regulated by legislation governing its establishment. Though, the exercise of powers and functions by the OMP in terms of the said law is subject to judicial oversight, the following functions and recent move highlight the facts related to independence and effective functioning, and efforts taken to fulfill its mandate.

44. The OMP has developed rules and procedures for its effective functioning as per the Section 11(b), 26 of the OMP act (rules, guidelines and procedures related to the issuance of Interim Reports; process of data; COVID-19; and conduct of the Commission). And the new commission adopt and follow the decisions, rules and guide.

45. The Commissioners have been appointed and the commission has setup the mechanism to expedite the work of the OMP in order to assist to the families, victims, witnesses and relatives of the missing persons. This includes;

- Updating the database of the OMP with the records of the missing persons reported to OMP
- Verify the records of the files of the recent cases (reported the date of missing between 2000 to 2020)
- Develop check list and filtering the mandate, and verifying those supporting documents produced
- Assist to the families, victims, and witnesses for obtaining interim reports and in providing legal supports

46. Considering all the above, the GoSL rejects the allegations regarding the independence and credibility of the OMP, which is an independent mechanism established within the purview of a domestic system of a sovereign country.

***Paragraph 13 – “The harassment, threats, surveillance and blocking of accounts of victims and human rights defenders has reportedly increased both in frequency and intensity in 2020. In a reported case of reprisal, representatives of families of the disappeared in the North-East who attended the Human Rights Council in 2018 and 2019, were subjected to surveillance, harassment and intimidation upon their return to Sri Lanka. Families of the disappeared and witnesses to human rights violations have reportedly been harassed in similar ways.”***

47. The GoSL refutes the claims of alleged “harassment, threats, surveillance” mentioned in the Report. It invites all parties alleged to have faced such harassment, to submit their complaints to the different national mechanisms that have the competence and jurisdiction to receive and investigate such claims. These include the law enforcement authorities as well as independent institutions such as the Human Rights Commission of Sri Lanka or the National Police Commission. The Government is committed to protecting and promoting freedom of expression and civil society space, and ensuring that complaints received on alleged attacks against journalists, human rights defenders and civil society are investigated and prosecuted.

48. It is reiterated that apart from operating routine security networks in the interest of national security, particularly after the devastating Easter Sunday terrorist attacks, the Security Forces and intelligence agencies are not engaged in monitoring any specific group of people in the country. It is believed that any country compromising its national security interests amidst looming sophistication of strategies of radical and extreme elements world around, is bound to face regrettable consequences.

49. In this context, in the aftermath to the Easter Sunday attacks on 21 April 2019, the process of recording personal information of members of the Human Rights defenders, INGO's and NGO's has been reviewed, in order to minimize any threat to national security. The preliminary investigations on the Easter Sunday attacks also revealed that the transferring of funds for terrorist related activities/organizations through the accounts of INGO's and NGO's without any interference. Therefore, regularizing activities of INGO's and NGO's is a precautionary action taken by the Government of Sri Lanka as an effective way of discouraging of unusual fund transferring to illegal and extremist organizations which could ultimately threaten the national security of the country.

50. It is important to note that several assassination attempts targeting members of the Parliament while they are engaging in political activities in the Northern and Eastern provinces have been reported. In view of this situation, a network of surveillance has been established, in order to deter any threat against any kind of violent and extremist act which affect the national security of the country and security of its people. Essential security

measures that are required to maintain law and order in the country are in force, including in the Northern and the Eastern Provinces where LTTE revamping attempts have been detected.

51. It is imperative to note that the Article 17 of the Constitution gives a right to every citizen to appeal before the Supreme Court on any infringement or imminent infringement of rights guarantees under Article 10, 12 and 14 (1) (a) of the Constitution. Therefore, any individual whose right is violated or where there is imminent threat of being violated can protect their rights by appealing to the Supreme Court which is the supreme law of the country.

***Paragraph 14 – “...the OMP set up a dedicated Unit for victim and witness protection, which developed procedures for the documentation of protection concerns and has reportedly intervened in relation to attacks against family members and other stakeholders involved in court proceedings in disappearance cases.”***

52. The OMP continued to operationalize its mandate in a manner consistent with its psychosocial strategy, which was adopted by the Commission. The OMP had consultations with victims and family members, and had consultation with Office for National Unity and Reconciliation (ONUR) for better coordinated service delivery.

53. The OMP also assisted families in individual cases to obtain Certificate of Absence (CoAs) or Certificates of Deaths (CoDs) though coordination with relevant District Registrars, Divisional Secretariats and *Grama Niladhari* officers, pursuant to queries received from families of the missing and disappeared.

54. A Protection Strategy for the Protection Unit was approved by the Commission, which outlines the objectives of the Unit; scope of collaboration with external institutions; and measures to be adopted to operationalize the Unit, follow tracking table maintain recording the reports, and follow up actions, oversee the protests and demands.

55. The OMP has intervened through the relevant authorities with regard to the allegations of protection concerns or allegations of threats to the families of the missing and disappeared, justice collaborators, including against individuals and organizations that work directly with the OMP, with a view to ensure the safety and security of persons involved. The OMP has continuously followed up on such reported incidents. No such reports were received by this unit of the OMP in the past 16 months.

56. It may also be noted that the Assistance to Protection of Victims of Crime and Witnesses Act No.04 of 2015 as amended provides for adequate legal protection for victims and witnesses of crimes other than protection extended from the dedicated unit to protect victims and witnesses in OMP.

57. A mere statement of allegation that family members and other stakeholders involved in court proceedings in disappearance cases are attacked does not suffice. The GOSL invites all parties alleged to have faced such harassment, to submit their complaints to the different national mechanisms that have the competence and jurisdiction to receive and investigate such claims. These include the law enforcement authorities as well as independent institutions such as the Human Rights Commission of Sri Lanka or the National Police Commission.

***Paragraph 15 – Ref. 20<sup>th</sup> Amendment - “...The amendment strengthened the powers of the president and the executive, effectively reversing many of the democratic gains introduced by the previous Government through the 19<sup>th</sup> amendment of 2015. It also significantly weakened the independence of several key institutions, including the Human Rights Commission of Sri Lanka and the National Police Commission, as well as the judiciary specifically in regard to the selection, appointment and dismissal of judges.”***

- The Constitutional and other reforms that the GoSL has undertaken since November 2019 constitutes the execution of this mandate conferred by Sri Lankans on its Government, and the standing of extraneous parties to question the Government’s action aimed at implementing the mandate it has received from its own people therefore is questionable and is an intrusion into the inalienable sovereign rights of

the People of Sri Lanka. The GoSL also wishes to note that the sovereign right to propose and make changes to the supreme law of the land and other legislation and policies of Sri Lanka lies exclusively with its people.

- On the specific concerns raised in respect of the 20th amendment to the Constitution, the GoSL wishes to point out that the amendment concerned was enacted in full compliance with the procedure set out in the Constitution with regard to enacting legislation, which contains a number of in-built safeguards relating to transparency and judicial review aimed at preventing the passage of bills that are in contravention of the Constitution including its fundamental rights chapter. It is recalled that the Bill was challenged in the Supreme Court of Sri Lanka by several petitioners in special determination no. 1-39 of 2020, with a number of other petitioners also intervening in the proceedings. The Supreme Court submitted its determination on the Bill to the Parliament of Sri Lanka. Having considered the determination of the Supreme Court, amendments were moved at the Committee Stage of Parliament before the 20th Amendment to the Constitution was enacted with a 2/3 majority of the Members of Parliament voting in its favour.
- It may be also noted that the 20th Amendment to the Constitution was only an interim measure as an immediate remedy for paralysis of the Government existing at the time, and will eventually lead to a comprehensive constitutional reform process which is currently underway.
- The assertion that the 20th Amendment has fundamentally eroded the independence of key Commissions and institutions is factually incorrect. In this context, it must also be noted that the judicial oversight provided under the Constitution under the 19th Amendment remains unaffected under the 20th Amendment.
- It may also be noted that the Parliamentary Council under the 20th Amendment consists of Members of Parliament and comprises the following:
  - (a) the Prime Minister;
  - (b) the Speaker;
  - (c) the Leader of the Opposition;
  - (d) a nominee of the Prime Minister, who shall be a Member of Parliament; and
  - (e) a nominee of the Leader of the Opposition, who shall be a Member of Parliament:
- Provided that, the persons appointed in terms of sub-paragraphs (d) and (e) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in paragraphs (a), (b) and (c) above, belong.
- The functional independence of the key Commissions including the Human Rights Commission, the Election Commission and the National Police Commission has not been eroded and continue to function under the Constitution and law governing their establishment, powers and functions without any compromise to the independence of such Commissions.

**Paragraph 16 – “militarization of civilian government functions”**

58. The GOSL rejects the allegation of militarization of civilian Government functions. The appointment of key government officials is entirely a domestic matter of a sovereign country, as per the Constitution and the comments made by the OHCHR is clearly outside the mandate of the Council. These appointments are based on subject matter expertise and professional qualifications, with a view of effective implementation of Government policies.

59. With regard to the involvement of the military in the national COVID-19 response, Sri Lanka wishes to point out that in view of the need to contain the rapid spread of the virus which caught the world off guard, not only Sri Lanka but most countries in the world have resorted to seek the help of their military in assisting with containing the transmission of the pandemic and providing necessary relief to the public on emergency grounds.

60. As the UN Under-Secretary General for Emergency Relief has noted, coordination of civilians and military is essential during an emergency response. Many countries have deployed the military in post conflict situations for coordination of relief and rehabilitation. In Sri Lanka, the military has always performed an effective and constructive role in humanitarian assistance and disaster relief including in natural disasters such as landslides, mudslides, floods and droughts. Examples from recent history include their contribution in the aftermath of the Tsunami in 2004.–

61. It is imperative to highlight that as at present, most of the public entities which were under the oversight of the Ministry of Defence have been excluded from the purview of the Ministry of Defence, including the Police, Secretariat for Non-governmental Organizations, the National Media Centre and the Telecommunications Regulatory Commission as highlighted by the Special Rapporteur.

#### **Paragraph 17 and recommendation 5 – PTA**

62. The Government is in the process of revisiting provisions of the **Prevention of Terrorism Act(PTA)**.

- The Prevention of Terrorism Act (PTA) has been enacted in Sri Lanka in 1979 as a response to a developing terrorism threat. Taking cognizance of the concerns related to several provisions of the PTA, successive Governments have attempted to amend the provisions or repeal the PTA and to introduce comprehensive legislation with regard to Counter Terrorism Law in line with international standards.
- While the previous Government too attempted to repeal the PTA and introduce new counter terrorism legislation, it had not been completed for over 04 years due to the sensitive nature of the topic, and the resistance of trade unions, student and religious groups and others based on its impact on freedoms. Although the PTA had been placed in abeyance by the previous Government, with the Easter Sunday attacks in April 2019, the PTA became instrumental in the arrests that followed to stop a second wave of attacks.
- The present Government has commenced the process of revisiting provisions of the PTA. Towards this endeavour the existing legislation, is being studied to propose necessary amendments, and will also draw on international best practices adopted by other jurisdictions. Further, during this process, previous work done on counter terrorism legislation referred to above will also be taken into consideration.
- Towards this end, on 21st June 2021, the Cabinet of Ministers met and decided to appoint a Cabinet Sub-committee and an Officials Committee to assist the Cabinet Sub-Committee, in order to review the Prevention of Terrorism Act, No 48. of 1979 and to submit a report to the Cabinet within three months. The Officials Committee has been appointed and has commenced its work.
- The President, exercising his powers in terms of Article 34 of the Constitution of Sri Lanka has granted pardon to sixteen (16) LTTE cadres convicted and serving sentence, under the PTA.
- Further, a process has also been set in motion to grant release to detainees who have been in judicial custody for a long time, under the PTA.
- Much misunderstanding has been caused by the aforesaid regulations that have been published in Gazette No. 2218/68 of 12 March 2021 for the rehabilitation in terms of the provisions of section 27 of the Prevention of Terrorism Act. of those who may be arrested as a result of the ongoing investigations into the Easter Sunday bombings.
- It may be noted that the Deradicalization Gazette promulgated under the provisions of section 27 of the Prevention of Terrorism Act No. 48 of 1979, has been impugned before the Supreme Court in Fundamental Rights applications that have been fixed for support before the Supreme Court, for leave to proceed. Accordingly, domestic remedies in this regard have not been exhausted. It may be noted that the said cases have been filed in the public interest by the said Petitioners before the Supreme Court.

- It is recalled that in the aftermath of the three decades' conflict against terrorism which ended in May 2009, the Sri Lankan Government decided on the more humane path of rehabilitation and release of thousands of former LTTE cadres, instead of prosecuting them. Due to the Government's progressive and sincere commitment with regard to the protection and welfare of children and former child soldiers, and considering Sri Lanka's successful completion of Security Council-mandated programmes to end the recruitment and use of children in armed conflict, Sri Lanka was delisted from the UN Secretary General's List of Shame (Annex II of the UN Security Council Resolution 1612 on Children and Armed Conflict) in June 2012.
- It may be noted that on 29<sup>th</sup> August 2011, a Gazette titled "Prevention of Terrorism (Surrendered Care and Rehabilitation) Regulations No. 5 of 2011" was published in Gazette Extraordinary No. 1721/5, promulgated under Section 27 of the Prevention of Terrorism Act.
- The purpose of the regulations issued in Gazette No. 2218/678 is to similarly rehabilitate the suspects being arrested pursuant to investigations into terrorism, in lieu of prosecuting them.

### **Paragraph 18 – Land**

63. Of the **lands** previously held by the security forces, i.e. 89.26% of State lands and 92.22% of private lands, have already been released to the civilian owners by 31 December 2019. The releasing of the remaining land would be considered, having regard to the strategic requirements of the security forces establishments in the North and the East subject further to the procedures established by law with regard to the vesting of land and the divesting of land in terms of the procedures established by law. 98.7% of land in the North and East which had been contaminated due to landmines and Unexploded Explosive Ordnances (UXOs) placed by the LTTE without records in civilian areas, have already been demined, thereby facilitating the process of land return and resettlement.

64. Considering the contemporary security situation after Easter Sunday attack, the GoSL is in the process of releasing remaining civilian owned lands in Northern and Eastern provinces to lawful land owners, in accordance with the established land releasing mechanism without compromising the vital National Security concerns of the country.

65. As at present, majority (more than 92%) of the private lands occupied by the military at the end of the conflict in year 2009 had been released to legitimate land owned civilians by the military forces through local government authorities. Considering the various deficiencies with regards to the verification of legitimate ownership of the present private land owners and issues on the exact boundaries of the private land owners prevailing in the North and East provinces (mostly area affected by civil war for three decades) are being addressed by the local government authorities in consultation with the relevant government Ministries and Departments, at present.

66. It is a fact that during three decades of conflict in the Northern and Eastern Provinces of the country, there were some areas where the LTTE exercised de facto control by the use of force for decades. During that period, some lands had been given for civilian settlements by the LTTE without adhering to proper procedures. Therefore, legitimate land ownership of some contemporary land owners could not be able to prove their legitimate ownership which ultimately created complications in the current process.

67. Considering all these aspects, a mechanism has been introduced and it is already in place, in view of expediting the process of releasing remaining private lands, in accordance with a proper land release process. Furthermore, necessary compensation scheme has been initialized to offer reparation for the private lands which could not be released due to national security concerns.

68. In addition to the above, it is noteworthy mentioning that almost all aforesaid government authorities who have been entrusted in land releasing process in the Northern and Eastern provinces are native Tamil government officials.

69. Furthermore, contemporary legal framework of the country would provide adequate legal protection against any sort of forced eviction or relocation of native citizens from their

lands. It is imperative to note that the existing criminal and civil laws of the country are adequate for ensuring the rights of the victims who were affected by forced eviction and relocation, if there are any. Any such victim can file a Civil Action at the relevant District Court to ensure the rights against any infringement and any arbitrary decision or act of any administrative or executive officer be challenged by a Writ application, in addition to soliciting the fundamental jurisdiction of the Supreme Court. Therefore, the existing law of the country amply provides adequate protection for any forced eviction or relocation of victim, if necessary.

70. The GoSL wishes to make the following observations regarding the Status of implementation of the recommendations made in the country visit report (A/HRC/45/45/Add.1):

**Recommendation 8 – military involvement in commercial activities and reduce military presence in those areas, such as the North and the East**

71. The strength of the armed forces and their deployment is a matter exclusively vested with an independent sovereign state. The GoSL continues to evaluate and rationalize military presence and the military's role according to national security imperatives. The timelines for such activities correlates directly to the threat perceptions of the GoSL to national security and is one which evolves as situations unfold.

72. Following the termination of military operations against the LTTE in 2009, the GoSL undertook a gradual process of reduction of military presence in former conflict affected areas and the involvement of the military in civilian functions were reduced to a bare minimum. However, two exceptional challenges that Sri Lanka had to and continues to face during the last 2 years, have necessitated the intervention/involvement of the military. These were (i) renewed threats of terrorism against Sri Lanka, as manifested by the brutal terrorist attacks on Easter Sunday of 2019 which targeted innocent civilians at churches and hotels, resulting in massive loss of life including those of foreign nationals; and (ii) the COVID-19 pandemic which continues to endanger the health and lives of our people and which has caused a devastating impact on economies around the world including in Sri Lanka.

73. In a context where for over 30 years the sovereignty and territorial integrity of the country and the right to life of its people were threatened by terrorism, the Easter Sunday terrorist attacks as well as several revamping attempts by LTTE elements, have raised legitimate and real concerns regarding the security of Sri Lanka and its people. In fact it is clear that relation of security measures played an important role in the devastation and loss of life caused by the Easter Sunday attacks in April 2019. Therefore, national security interests need to play an important role in decisions of the Government with a view to preventing any recurrence of violence in the future.

74. Further, it is imperative to note that the military forces are the main institutions which could effectively engage in a crisis situation of a country. Despite the extremist Tamil politician's alleged demands against the present military deployment in strategically important locations of the country, the ordinary citizens in the areas including North and East are against, the decision of removing military camps from their areas emphasizing the natural disaster assistance efforts and Civil Military Coordinating (CIMIC) activities conducted by the military during the past and contribution and commitment of the military for fighting against the COVID-19 global pandemic situation at present.

75. Furthermore, it is noteworthy to highlight the assistance rendered by the armed forces deployed in North and East through CIMIC activities, in addition to formal duties as indicated above. Under the GIMIC activities, different types of projects had been conducted and name a few; refurbishing of hospitals, schools, and religious places, offering scholarships and distributing stationaries and bicycles for school children, distribution of spectacles, dry rations and donating blood as per the request by the respective provincial and regional hospitals (even during the conflict), sports development programmes, construction of irrigation tanks and water ways, in addition to the construction of a large number of houses under housing projects initiated by the armed forces, and some projects with the financial assistance of the GosL, that amounting to more than 2,580 permanent houses. The aim of these housing projects had been predominantly focused on uplifting the living standard of

the civil community with special consideration for the architectural values, culture, and traditions of the Sri Lankan Tamil society, while deciding upon a suitable housing Plan.

76. In relation to allegations on the military involvements in commercial activities in North and East, it is noteworthy mentioning that strict instructions have been issued by the respective service headquarters by directing to refrain from commercial activities by the armed forces especially in the North and the East. Nevertheless, few facility centers are in operational in North and East, in order to facilitate retired and serving military personnel and their families as a part of welfare project, in support of pilgrimage purposes and activities.

**Recommendation 11: Office on Missing Persons ( OMP)**

77. Please refer to the information provided in response to the paragraph 10 and 11 above, regarding the progress in the work of the OMP.

78. As described previously, the assistance to the families will be considered through a multi-disciplinary team. And efforts will be taken to reach the families through the regional office, District Secretaries, and other service providers.

79. The OMP has functioned in collaboration with the Department of National Archives, Government Analyst Department, Department of Police, Attorney General's Department, Academia, Department of Registrar General (Birth and Deaths) and District Registrars (death) Government Examiner of Questioned Documents, Judicial Services Commission, National Unity and Reconciliation (ONUR), Reparations Commission, Registrar of Fingerprints or a Government Medical Officer for the better realization of the mandate of the OMP.

80. The OMP has organized several training programs. This include but not limited to the following;

- A training programme for all Regional Coordinators was conducted on (i) OMP's mandate and functions; (ii) confidentiality and OMP's legal obligations; (iii) process of issuing Interim Reports and Certificate of Absence (CoAs); (iv) common legal issues raised by families including obtaining a Certificate of Death (CoD) and tracing of missing persons.
- Senior Legal Consultant of the OMP conducted trainings for lawyers and OMP staff designated to function as Inquiring Officers in the process of issuing Interim Reports.
- And also, the staff were trained on investigation process, introduction to the psychosocial context of families of missing and disappeared persons; introduction to the concept of psychosocial well-being and understanding that psychosocial support extends beyond counselling and psychiatric care; skills development in engaging with families of missing persons with respect and psychosocial sensitivity; awareness of the operational framework, psychosocial principles that guide OMPs psychosocial support provision; and practice sessions on active listening.

81. This is considered as a main component in the action plan of the OMP (2021); and as per the strategy developed by the OMP.

**Recommendation 17: Recommendations on Reparations**

82. The provisions of the Reparations Act, No. 34 of 2018 provides for a victim centric and gender sensitive approach to reparations. It is important to note that the grant of reparations does not envisage the undermining of other rights that aggrieved persons may have, since primacy is accorded to the needs of the aggrieved persons irrespective of other considerations.

83. Following are the activities discharged by the Office For Reparations since it was operationalized with effect from April, 2019, which are an indication that, as envisaged by the Act, a victim centric approach is adopted with a focus on the needs of vulnerable sectors such as women, the disabled and children.

84. In pursuance of its statutory mandate, the OR formulated a Policy and Guidelines document which was submitted to the Government in April 2020. In formulating the Policy, consultations were had with stakeholders including aggrieved persons, civil society groups representing aggrieved persons and also examined the report of the Consultation Task Force on Reconciliation Mechanisms, amongst other documents. The OR also familiarized itself with the international regime for reparations in the context of 'Dealing with the Past'.

85. Several steps were taken within the OR Secretariat to professionalize its work and processes. Among these were initiatives to streamline the process for the evaluation of applications for compensation; to ensure that the procedure to submit applications with relevant documentation to authenticate claims was user friendly and fair; to ensure speedy disposal of claims; to introduce transparency within the system; to grant priority to the most deserving of claims; to introduce targets to the officers and to introduce a meaningful monitoring mechanism.

86. Importantly, OR has been engaged in formulating a Plan of Action and an Activity Plan to bring clarity and a wholistic approach to its work and avoid ad hoc interventions. The intention is to focus on a victim centric approach to the reparations regime.

87. Information sharing and creating awareness regarding the reparations policy, guidelines and the activities of OR is considered vital and hence the website is being updated to include all information that's relevant to stakeholders and to interested persons.

88. A booklet (Q&A) was published in all three languages to disseminate to the public the features of the new OR Act and to clarify that the reparations regime introduced by the Act seeks to contribute to the ultimate objective of reconciliation for the well-being and security of all Sri Lankans including future generations.

89. Programmes were held to sensitize the OR staff with regard to the new reparations regime and to explain the responsibility of implementing the statutory objectives.

90. Programmes were held to sensitize the OR staff on gender issues and the need to adopt a gender sensitive approach to Reparations interventions.

91. A needs assessment is being conducted to obtain feedback from aggrieved persons as to their further requirements. This will be rolled out as soon as COVID restrictions are relaxed. This is planned to be conducted in phases, after training the data capturing officers.

92. A programme to provide psychosocial support to aggrieved persons was commenced. The OR adopted the position that all persons in geographical areas that were most affected by incidents should be taken as needing support. The programme has been designed with professional expertise and commenced with training of case managers.

93. A needs assessment that will be conducted will identify the individuals from among the vulnerable groups that will need support.

94. The establishment of a comprehensive information management system is underway. This was considered a vital need given the challenge to capture data on aggrieved persons and to include them in a system for purposes of rolling out reparations programmes and to avoid duplications.

95. Payment of monetary compensation:

(a) Data with regard to claims for compensation that were processed and settled during the period 2019- to date, are as follows:

(b) The Office for Reparations has received a further Rs. 80 million from the Government at the end of June, 2021 for settlement of compensation and it is likely that a further 1,451 applicants can be paid compensation by mid-July, 2021.

96. In the grant of reparations by way of monetary compensation, the OR looks only to ascertain the authenticity of the harm suffered with no information asked for. This approach obviates discrimination, and the allegations of discrimination are baseless. In fact, compensation has been paid to families of disappeared persons, and the only requirement is that the required documents to establish the claim have been produced.

97. The OR has provided leadership to convene quarterly meetings with the OMP and ONUR (Office for National Unity and Reconciliation) to discuss collaboration, avoid duplication and thereby support the work of each Institution.

**Recommendation 22: Independence of the judiciary**

98. The GoSL refutes the comments made by the Special Rapporteur that “The 20<sup>th</sup> Amendment (2020) undermined the integrity of key institutions and concentrated power in the hands of the President.”

99. As per Article 107 of the Constitution of the Democratic Socialist Republic of Sri Lanka, the Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of Appeal shall be appointed by the President by warrant under his hand. All such appointments shall be subject to the process set out in Article 41 A of the Constitution in order to secure the independence of the judiciary.

100. Every such judge shall hold office during good behavior and shall not be removed except by the order of the President made after an address of Parliament supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehavior or incapacity:

101. Provided that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misbehavior or incapacity.

102. The Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehavior or incapacity and the right of such judge to appear and to be heard in person or by representative.

103. As per Article 111 and Article 111(2) of the Constitution, the Judges of the High Court shall, on the recommendation of the Judicial Service Commission, be appointed by the President by warrant under his hand and such recommendation shall be made after consultation with the Attorney General and be removable and be subject to the disciplinary control of the president on the recommendation of the Judicial Service Commission.

104. In view of chapter XV A of the Constitution of the Democratic Socialist Republic of Sri Lanka, the provisions relating to the Judicial Service Commission is included and as per Article 111D, the aforesaid Judicial Service Commission consists of the Chief Justice and the two most senior Judges of the Supreme Court appointed by the President, subject to the provisions of Article 41 A. The Judicial Service Commission is vested with the power to,

(a) Transfer judges of the High Court,

(b) Appoint, promote, transfer, exercise disciplinary control and dismiss judicial officers and scheduled public officers.

105. The Commission is empowered to make Rules regarding training of Judges of the High Court, the schemes for recruitment and training, appointment, promotion and transfer of judicial officers and scheduled public officers.

106. The aforesaid provisions contained in the Supreme Law of the country ensures the judicial independence.

107. According to Article 3 of the Constitution, sovereignty rests with the people, and includes the power of government, fundamental rights and franchise. Article 4 vests the exercise of the legislative power of the people in Parliament, and the exercise of the executive power of the People including the defense of Sri Lanka in the President. Except the powers pertaining to Parliamentary privileges and immunities, the judicial power of the people is exercised by Parliament through courts, tribunals and institutions created and established or recognized by the Constitution, or created and established by law.

108. The independent processes that are followed regarding appointment, transfer, disciplinary control of judges has ensured that that the persons who are appointed and who

serve as judges are reputable and competent. In addition, members of the Sri Lanka judiciary participate in training programmes in Sri Lanka as well as abroad, and the Sri Lanka Judges Institute (an independent body) is engaged in providing capacity building programmes for members of the judiciary.

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