Observations of the Government of Sri Lanka in respect of the "Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka", document no. C (2009) 7999, dated 19 October 2009

With reference to the Commission of the European Communities, (hereinafter EC), document C(2009)7999, dated 19th October 2009, titled "Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka", (hereinafter referred to as the EC Report), the Government of Sri Lanka, (hereinafter referred to as the GoSL), wishes to make the following comments, without prejudice to its position conveyed in its previous communications conveyed through diplomatic channels concerning the GSP+ "investigation" further referred to in paragraph 5 hereof;

1. The GSP+ tariff benefits extended to Sri Lanka resulted in exports to the EU increasing by 42% in comparison to what they were in 2004, to Euro 2.062 billion in 2008, thereby accounting for 36% of Sri Lanka's exports that year. Apparel and related items which account for 53% of Sri Lanka's total exports to the EU, benefitted in particular. Other sectors too such as fish products, ceramic products, rubber and rubber based products and jewellery augmented their exports to the EU, under the GSP+ Scheme. Along with the growth in exports, the bilateral trade turnover also expanded, from Euro 2.4 billion in 2004 to Euro 3.3 billion in 2008.

2. It must be noted that the apparel sector provides direct employment for more than 270,000 persons, benefitting both directly as well as through indirect employment at least a million persons, or 5% of a population of 20 million. It accounts as well for around 8% of GDP.

3. Thus it is clear that this Scheme has facilitated and promoted trade and development in Sri Lanka as envisaged by the Enabling Clause. It is noted that the guiding principle behind the Enabling Clause which forms the basis of the GSP+ Scheme, is precisely that such schemes be designed and, if necessary, modified to respond positively to the development, financial and trade needs of the developing countries. The continuation of the GSP+ Scheme would without

doubt bring further benefit to the people of Sri Lanka and strengthen the efforts of the Government to meet the challenge of the Millennium Development Goals. By contrast, any withdrawal of the GSP+ Scheme from Sri Lanka, will lead to disruption and loss of market share. While there will be some implications as well for European consumers in view of Sri Lanka's position as a major supplier of apparel to certain segments of the EU market, the burden of coping with such a situation will be much heavier for the Government and people of Sri Lanka and would significantly affect both Sri Lanka's trade and development, as well as the pace of her post-conflict recovery.

4. It must also be noted that the present moment is of great significance for Sri Lanka, since having accomplished a feat seldom paralleled in contemporary times, namely of defeating the scourge of terrorism and rescuing nearly 300,000 of its citizens from the LTTE, the GoSL has vigorously embarked on the process of developing the conflict affected areas, while further strengthening national amity and reconciliation. Both of these processes complement and support the other. The de-mining of areas in the East accompanied by the re-settlement of those displaced and the building up of infrastructure ravaged in the last 30 years due to terrorist activity will benefit in particular, the fisheries and agriculture sectors. These sectors are vital for the populace of the Northern Province which is predominantly Tamil as well as for those in the Eastern Province, which has almost equal numbers of Muslims, Sinhalese and Tamils. While the GSP+ Scheme has allowed the fisheries and agriculture related exports to grow, conversely its removal will result in some down-sizing of the expansion potential.

5. It is correct that the GoSL did not participate in the process of the GSP+ "investigation" and refused a request for "experts" to visit Sri Lanka as a matter of principle, as it was felt to be both inappropriate for Sri Lanka, a sovereign State, to participate in such a process, as well as to be unnecessary, given the numerous on-going processes of constructive engagement both between the GoSL and the European Institutions, as well as between the GoSL and the UN system.

6. Nevertheless, it also needs to be stated in this regard that Sri Lanka as a State Party to the core human rights treaties is consistently cooperating with the relevant treaty bodies who are the competent international organs established for the purpose of monitoring domestic measures

of implementation, *inter alia* through the submission of periodic national reports and through other methods of engagement such as visits by Special Rapporteurs. The most recent interaction of Sri Lanka was with the Committee on the Rights of the Migrant Workers in October 2009. Sri Lanka has already submitted its periodic Report relating to the Convention against Torture and the Convention on the Rights of the Child (hereinafter CRC). It is expected that the Periodic Report on the ICCPR, which is currently being considered by the Inter- Ministerial Committee established for that purpose, will be submitted during November 2009 to the relevant UN body.

7. Further it is also noted that while not subjecting itself to the process of "investigation", the GoSL continued to engage with the EC on the issues of mutual interest through existing diplomatic channels, a fact acknowledged in the EC report. It did so in-keeping with the spirit of transparency and mutual respect that is appropriate to the historic and long standing relationship between Europe and Sri Lanka. The engagement with the European Institutions and the transparency which prevails in Sri Lanka with its unbroken record of democratic governance dating back to 1931, should have sufficed to enable the "experts" and the EC to analyze the validity of the views clearly hostile to Sri Lanka, in an objective manner, with due weightage being given to the reality that in many instances, there is also another side to the story.

8. It is in the above context that any investigation of this matter could and should have been conducted following internationally recognized standards of objectivity.

9. The Annexure hereto, which is an integral part of the Observations of the GoSL, analyses the Report of the EC which is largely based on the findings of the "experts". The present analysis was conducted by a team comprising public officials drawn from several relevant Ministries and Departments of the GoSL, including the Office of the Attorney General, the Ministry of Disaster Management & Human Rights, the Ministry of Defence, the Ministry of Justice, the Ministry of Export Development and International Trade and the Ministry of Foreign Affairs. The analysis brings out repeated and indeed frequent instances in which the "experts" have "mis-directed" themselves.

10. In addition to the analysis in the Annexure, there are also some broader issues that permeate the whole process, which need to be flagged. For example, paragraph one of the Report states that the said "investigation" was initiated by the Commission decision of 14th October 2008 (OJEUL 277/34 of 18th October 2008) pursuant to Article 18 (2) of Council regulation (EC) No: 980/2005 to ascertain "if the national legislation incorporating those conventions referred to in annex III of the Regulation which had been ratified in fulfillment of the requirements of Article 9(1) and (2) was not effectively implemented". However, paragraph 16 of the Report gives a much more expanded remit to the investigation, *inter alia,* by dealing with additional issues such as whether institutions responsible for the protection of human rights and for providing remedies for violations are functioning adequately. The GoSL views this as an arbitrary expansion of the "investigation".

11. It is also regrettable that Sri Lanka's commendable achievements in relation to its compliance under the CRC, which have been acknowledged by the Committee on the Rights of the Child and the international community at large, have been glossed over, so that the Report focuses only on the limited aspect of child soldiers. In its allegations pertaining to the recruitment of children, the Report also fails to take into account the significant progress attained by the GoSL through the Tripartite Action Plan, whereunder only one child is reported to have been recruited after the entry into force of the Action Plan in December 2008, according to information provided by UNICEF as at 30 September 2009. This once again reflects the overall imbalance in the Report in that the effective implementation of the CRC has been largely ignored.

12. Furthermore, one of the benchmarks which lies behind the protection afforded by the Emergency Regulations barring legal proceedings against an officer acting in good faith as mentioned in paragraph 60 of the EC Report, stems from the universally accepted dictum "omnia praesumuntur rite esse acta", namely that acts are presumed to have been correctly performed. Given the universality of this dictum and its prevalence in other GSP+ beneficiary countries, singling out Sri Lanka alone is highly discriminatory. The same could be said about many of the other criticisms leveled against the GoSL under the EC Report, *inter alia*, those relating to the allocation of judges to a bench by the Chief Justice, the provisions of the anti – terrorism laws, matters relating to detention and the admissibility of confessions.

13. In an interview published in the *Sunday Times* (Sri Lanka) on 1st November 2009, a senior official of the EC in Sri Lanka has stated that the conduct of an investigation was necessitated in that "If we don't apply our own laws, not only will we be failing in our duty and be open to legal challenge in the European Court of Justice but also open to challenge in Geneva at the WTO by those countries who want GSP Plus but didn't get it for whatever reason. They can point the fingers and say that we are not applying our own rules, that there is no coherency in the application of the eligibility criteria and therefore the instrument is not in conformity with the WTO rules….our ethical responsibility is to the coherency and integrity of the instrument. It is also our legal responsibility". In this regard, GoSL wishes to question the EC decision to singularly apply these values to Sri Lanka. It is noted that this has been done notwithstanding the fact that there are States currently enjoying GSP+ benefits on whom strictures have been pronounced by UN monitoring bodies including the ILO, on whom a process of investigation has not been ordered. Therefore this manifest element of selectivity and discrimination contravenes the universally endorsed principle of the rule based granting of tariff preferences.

14. The aforementioned news report of 1st November 2009 also referred to a statement made to the Sri Lanka – Canada Business Council by a senior official of the EC in Sri Lanka published in the "Sunday Times" of 17th February 2008, where he observed "this is simply a matter of 27 conventions. It is not related to the issue of the conflict. It depends on the ratification and effective implementation of the conventions. The war and other internal matters are not an issue here". The GoSL contests this position and asserts that the decision to order the GSP+ "investigation" on Sri Lanka was politically motivated and accompanied by a high degree of prejudice. It wishes to place on record that a Commissioner of the European Commission had stated at a meeting with the Minister of Export Development and International Trade of Sri Lanka, on 13th March 2008, in Brussels, "this war is never, never, never going to be solved militarily. The only possible solution is a political one. We have been telling you this for a long time. You have ignored us. We now have a powerful weapon in the GSP+, which we will not hesitate to use". Furthermore, a Minister of the Federal Republic of Germany has stated, as reported in the "Der Tagesspiegel" newspaper published on 9th February 2008, "The

international community must influence both parties to the conflict to seek a political solution and withdraw from the war which brings only suffering to the people. In the beginning of March a EU-Troika will travel to Sri Lanka. If the Sri Lankan government continues to insist on a military option, I will demand that the EU should withdraw the General System of Preferences (GSP) offered to Sri Lanka. This concession enables Sri Lanka to export its goods and products to the EU at reduced or exempted tax and duty levies. This step will really bring economic pressure on the GoSL. For Sri Lanka a preference system plus is in place until the end of 2008 which, however, requires good governance."[1] These statements reflect the extraneous purposes for which the GSP + Scheme is sought to be withdrawn and are clearly violative of the letter and spirit of the Enabling Clause and other relevant practices of the WTO.

15. Such statements as referred to in paragraphs 13 and 14 above must be especially kept in mind, when considering the assertion made in paragraph 6 of the EC Report that "the Commission was assisted by three independent external experts". This use of terminology makes it explicit that the Commission was the driving force behind the "experts", who could only assist rather than for example guide the EC.

16. In this situation, of the very foundation of the Report being in question, it would be reasonable to keep action on the document in abeyance, while the authorities of the EC and the GoSL continue a constructive engagement concerning the issues at hand.

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[1] The wording as quoted originates from an unofficial translation into English of the German text carried by the "Der Tagesspiegel".

Annexure

to the

Observations of the Government of Sri Lanka in respect of the

"Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka", document no. C (2009) 7999, dated 19 October 2009

5 November 2009

No	Para No of EC Report	EC Comment	GOSL Position
1.	22	With regard to the Advisory opinion of the Sri Lanka Supreme Court on the ICCPR, the claim that the "Judgment can be questioned on a number of grounds"	According to the Constitution of Sri Lanka, the Supreme Court has the sole and exclusive jurisdiction on interpretation of the Constitution and Laws and no other opinion matters in this regard. Given this status of the Supreme Court, the Advisory Opinion is nothing less than a decision of the apex Court of the State. This position was made clear in D.M.S.B.Dissanayake (SC Rule 2004) which unequivocally held that the exercise of consultative jurisdiction by the Supreme Court forms part of the administration of justice by the Court to the like manner as the exercise of other jurisdiction vested in the Court. In fact, it was the European Commission itself, which suggested through diplomatic channels to the Government of Sri Lanka, that the issue of whether the ICCPR is incorporated into the laws of Sri Lanka, should be referred to the Supreme Court. The President of Sri Lanka then exercising his powers under Article 129 of the Constitution, sought on 4th March 2008, the opinion of the Supreme Court on the following; 1.*Whether the legislative provisions cited in the reference, i.e. the ICCPR Act No.56 of 2007, adhere to the general premise of the ICCPR and whether individuals within the territory of Sri Lanka derive the benefit and guarantee of rights contained in the ICCPR, through the medium of legal and constitutional processes prevailing in Sri Lanka?* *2. Are such rights recognized in the ICCPR justiciable through the medium of legal and constitutional process prevailing in Sri Lanka?* The Supreme Court in turn having conducted public hearings concluded on 17th March 2008 that the ICCPR has been adequately incorporated into the laws of the country in three ways; 1. by the provisions contained in Chapter III of the Constitution, 2. other provisions of legislation which recognize the principles of the ICCPR and, 3. judicial decisions

No	Para No of EC Report	EC Comment	GOSL Position
			Accordingly, the Supreme Court held; 1. that the legislative measures referred to in the communication of His Excellency the President dated 4.3.2008 and the provisions of the Constitution and of other law, including decisions of the Superior Courts of Sri Lanka give adequate recognition to the Civil and Political Rights contained in the International Covenant on Civil and Political Rights and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights as contained in the Covenant. 2. that the aforesaid rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka. . Accordingly, it must be stated that the opinion of the Supreme Court settled this matter conclusively. The suggestion made by the European Commission through diplomatic channels, also attests that there were no doubts on the part of the Commission concerning the competence of the apex Court of the State, to rule on the subject.
2.	22	"Article 16 of the Constitution ensured the continuation in force of laws which existed at the time when the Constitution came into force notwithstanding any inconsistency with the rights recognized by the Constitution."	The provisions of Article 16 of the Constitution which served to pre-empt the possibility of any post enactment review of existing legislation, is in reality a very necessary safeguard entrenched in the Constitution, inter alia, to protect the personal and customary laws of Sri Lanka. It should be noted that these laws have their roots even before the British gave statutory effect to such laws, by way of the Proclamation of 23rd September 1799. Based on this Proclamation the Roman-Dutch law, the Kandyan law, the Thesawalamai and the Muslim law continued in force. The application of personal laws arises only in the context of marriage, divorce, succession and property rights. These personal laws have moreover been enriched by the history, culture and the religious sacred values of the people, who are subject to such laws. Thus Sri Lanka's legal system is an unique blend of customary and personal laws, which are constantly being reviewed. In fact, several attempts have been made previously to amend the personal laws, with a view to ensuring consistency with

No	Para No of EC Report	EC Comment	GOSL Position
			the other laws of the country. However due to divergent views emanating from the minority communities themselves who voluntarily subject themselves to such laws, many of the suggested changes were not enacted. The conclusion to be drawn therefore is that a circumspect and long term approach is needed from the Legislators, lest the communities, to which the personal and customary laws apply, consider such changes intrusive and a violation of their community rights. It is also noted that Article 27 of the ICCPR states, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion…." As such the ICCPR itself recognizes the right of individuals belonging to certain groups to adhere to practices inherent to their culture.
3.	22	"The Constitution, ICCPR Act, and other legislation, do not include provisions corresponding to all ICCPR rights: the "Right to Life" is the most notable omission."	Despite the absence of a direct reference to Right to Life in the ICCPR Act, the provisions of Articles 11 and 13 (4) of the Constitution in combination with other guarantees have ensured the right to life have recognized the Right to Life and the Supreme Court in several landmark decisions, has reiterated this position. Accordingly this right has been declared by the Supreme Court of Sri Lanka as an inherent right, common to all persons regardless of the fact that such right is not expressly stated in the Constitution. This important pronouncement has been made in a series of Supreme Court decisions such as *Sriyani Silva (wife of deceased Jagath Kumara) v. Iddamalgoda, Officer in Charge, Police Station Payagala and others* (2003) 1 SLR 14 and *Rani Fernando (wife of deceased Hewage Lal) v. Officer in Charge, Police Station, Seeduwa and others (2004). (2005)1 SLR 40.* It should be specifically noted that the Penal Code goes onto protect life and limb by criminalizing acts that amount to onslaughts on the integrity of a person. The Offensive Weapons Act and the Firearms Act give additional protection by further penalizing acts that pose a danger to life. With regard to the right to life in the context of any enforced and involuntary disappearances, the Supreme Court in the case of *Kanapathipillai Machchavalan v OIC, Army Camp, Plantain Point, Trincomalee and Others* (SC Appeal No 90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.03.2003) held

No	Para No of EC Report	EC Comment	GOSL Position
			that the right not to cause disappearances is also a part of the right to life. The Court held that *"Article 13(4) of the Constitution does not deal directly with the right to life, but states that;* *no person shall be punished with death or imprisonment except by an order of a competent court, made in accordance with the procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person pending investigation or trial shall not constitute punishment".* *"Considering the content of Article `13(4), this Court has taken the position that no person should be punished with death or imprisonment except by an order of a competent court. Further, it has been decided in Kottabadu Durange Sriyani Silva v Chanaka Iddamalgoda…and in Rani Fernando's case… that if there is no order from Court, no person should be punished with death.* ***And unless and otherwise such an order is made by a competent court, any person has a right to live.*** *Accordingly, Article 13(4) of the Constitution, has been interpreted to mean that a person has a right to life unless a competent court orders otherwise".* (Emphasis added) In this regard it must be added that the Court has also expansively interpreted the principle of "locus standi", to enable the spouse as well of an aggrieved person, to petition the Supreme Court. (Reference: *Sriyani Silva (wife of deceased Jagath Kumara) v. Iddamalgoda, Officer in Charge, Police Station Payagala and others* (2003) 1 SLR 14) It has to be observed that though the offence of murder and some other offences are punishable with death, Sri Lanka has hardly ever carried out death sentences observing a moratorium on capital punishment. The President of the Republic in the exercise of his constitutional powers by virtue of Article 34 of the Constitution could pardon any offender or commute any sentence passed on an offender and thus these provisions guarantee and ensure right to life.
4.	22	"The Constitution, ICCPR Act, and other legislation, do not include provisions corresponding to all ICCPR rights…. The right to privacy"	It has to be noted that right to privacy can indeed be claimed by a person aggrieved by any violation thereof, through other causes for action recognized in law such as the tort of confidential information and the breach of confidence. It is noted that "actio Injuriarum" can be invoked to protect the right of privacy. Thus there does exist a mechanism to validate the right to privacy.

No	Para No of EC Report	EC Comment	GOSL Position
5.	22	"The Constitution, ICCPR Act, and other legislation, do not include provisions corresponding to the ICCPR…. right to leave"	The case of *Somawansa and 205 other v AG* – (SC SPL 1-205/2006) discussed matters relating to the freedom to leave and return to the State under immigration law. It was in response to international concerns on violations of immigration and emigration laws that the Immigrants and Emigrants Act of the country was amended in order to arrest abuses through the transportation of people in and out of Sri Lanka. It is axiomatic that the right to leave is also contingent upon a corresponding right to be received and if the right to leave is unfettered, the phenomenon of boat people is bound to increase and it would certainly impact on the immigration laws of the receiving country.
6.	22	"The Constitution allows for the greater limitation of rights than permissible under ICCPR….Article 15(7) of the Constitution is general in nature and permits restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health and morality"	With regard to the allegation that there are greater limitations on rights through the Constitution than permissible under the ICCPR, it may be noted that when in 2005 Sri Lanka applied for and was granted GSP benefits, the EC itself implicitly accepted, as stated in paragraph 13 of its report under reference, that while the legislation of Sri Lanka guaranteed the promotion and protection of Human Rights, there may be some restriction on derogable rights for specific purposes such as the interest of national security, racial and religious harmony and national economy. The Supreme Court has adopted an active role in the protection of the rights of those arrested under the laws of Sri Lanka. As regards freedom from arbitrary arrest and detention that are provided for in Articles 13 (1) and (2) of the Constitution, the Supreme Court has declared *in Channa Peiris v AG* (1994) that an arrest without lawful grounds and justification or legal cause for such arrest in the absence of material to the contrary is an arbitrary arrest which would not be "according to the procedure established by law". (Also vide *Munidasa vs Seneviratne* SC (FR) 115/91 SCM 3.4.92.). The conclusion is that if there exists no reason for an arrest, the subsequent detention would become illegal even if it is within 24 hours from the time of arrest. The Supreme Court has adopted an active role in the protection of the rights of those arrested under the laws of Sri Lanka.

No	Para No of EC Report	EC Comment	GOSL Position
7.	22	"..the Constitution allows for greater limitations on rights than permissible under the ICCPR, as it does not provide that limitations are subject to tests of necessity and proportionality."	On questions raised on necessity and proportionality, any person, if he/ she alleges that his/her rights are unnecessarily and disproportionately limited, may invoke the fundamental rights jurisdiction of the Supreme Court. For instance, the Supreme Court has taken adopted an active role in the protection of the rights of those arrested under Emergency Regulations. The Court in 2008 gave an order stating that persons arrested under section 19(1) of the Emergency Regulations could be kept in Police custody only for ninety days and that the said detainee should be transferred to the fiscal custody upon the expiration of 90 days from the date of arrest. This process moreover takes place under the direction and supervision of a Magistrate [vide SCFR 173/2008 decided on 29th July 2008.] Therefore, any derogations or disproportionate and unnecessary limitations that ensue seeking the cover of the provisions of Article 15 of the Constitution and their justifiability in a given case, can always be challenged in the Supreme Court on the test of necessity and proportionality. In the case of Wickremabahu v Herath (1990) 2 SLR 348, it was emphatically stated that if the Court is satisfied that restrictions are clearly unreasonable, they cannot be regarded as being within the intended scope of the power under Article 15 (7). Citing the decision of Hidaramani v Ratnavel (1971) 75 N.L.R 67, the Supreme Court in Wickremabahu's case went on to hold that a detention order made by the executive can be judicially reviewed on the tests of improper purposes, unreasonableness and bad faith. In other words a petitioner seeking a judicial review of arrest and detention can demonstrate that the opinion formed by the executive was manifestly absurd or perverse. It has to be noted that these tests are coterminous with necessity and proportionality. In fact in Abeysinghe v Rubesinghe (2000) 1 SLR 314 the Supreme Court commented that necessity is inherent in Article 15 (7) read with Article 155 (2). The emphatic declaration that necessity and proportionality are tests subjecting derogations to its legal limits is quite explicit in the following statement of the Supreme Court in the Abeysinghe case namely *" the necessity requirement involves a review of whether the restrictions are proportionate to the legitimate aim pursued. …Proportionality is, in my view, in Article 15(7) read with Article 155(2) of the Constitution. ….the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it….Thus it is patently inaccurate to assert that necessity and proportionality do not obtain in Sri*

No	Para No of EC Report	EC Comment	GOSL Position
			Lanka as effective tools of testing derogations." It must also be added that Sri Lanka had to cope with a situation of terrorism and conflict that prevailed in the country for over a three decade long period of three decades. It is in this specific context that the provisions of Article 15(7) of the Constitution, which impose restrictions in the interest of national security had to be invoked through the Declaration of a State of Emergency. Furthermore such a Declaration by the Executive is subject to a monthly review by the Legislature and if not endorsed by an absolute majority in Parliament, would automatically lapse.
8.	23	"Sri Lanka informed the UN Secretary General on 30 May 2000 that it had declared a state of emergency and wished to derogate from a number of ICCPR articles….not even war or threat to the life of the nation can justify ignoring such rights"	Paragraph 23 of the EC Report contains a singularly unfortunate juxtaposition of two elements. Firstly, it records the factual event of Sri Lanka informing the UN Secretary General in May 2000 of its declaration of a State of Emergency and the consequent need to derogate from some ICCPR Articles. Then it goes on to record a general observation that not even war or threat to the life of the nation can justify ignoring such rights. This juxtaposition therefore implies that Sri Lanka in her notification to the UN Secretary General sought to justify derogation from entrenched rights. The reality is quite to the contrary. The relevant extracts of the communication to the UN Secretary General are as follows; "*The Emergency Regulations do not entail any inconsistency with Sri Lanka's obligations under international law and do not involve any element of discrimination on the grounds of race, color, sex, language, religion, or social origin. These Regulations are consistent with Sri Lanka's obligations under the International Covenant on Civil and Political Rights to which Sri Lanka is a Party. There is no derogation from Articles 6,7,8,11,15,16, and 18 as stipulated under the provisions of Article 4 of the Covenant.* *The following Articles have been restricted under the Emergency Regulations in the interest of national security.* *Article 9(2) & (3)* *Article 12* *Article 14(3)*

No	Para No of EC Report	EC Comment	GOSL Position
			Article 17(1) *Article 19(2)* *Article 21* *Article 22(1)* *The above communication is being made pursuant to Sri Lanka's obligations under Article 4 of the International Covenant on Civil and Political Rights*." It must also be noted that the GOSL, in the same notification sent to the UN Secretary General, expressly provided for the following safeguards to persons affected by the emergency regulations. Thus, the notification informed the Secretary General as well that, *"The Emergency Regulations that have been proclaimed on 3rd May 2000, contain several salutary features which are designed to safeguard human rights and fundamental freedoms. The provision which existed in the earlier Regulations proclaimed in 1989, i.e.* ***Regulation 55FF,*** *which gave power to police officers to take measures as may be necessary for the taking possession of and the burial or cremation of any dead body and to determine in their discretion, the persons who may be permitted to be present at any assembly for the purpose of, or in connection with any such burial or cremation, have* ***not*** *been included.* *The current regulations* ***preserve the jurisdiction of the High Court*** *to inquire into the death of any person due to action of or in the custody of any police officer or any member of the armed forces, thus ensuring the application of the normal judicial process.* *Further safeguards have been incorporated in the current regulations relating to the procedure for arrest, period of detention and rehabilitation of persons who are detained or who have surrendered. Among the safeguards are the following :-* *1) A clear procedure has been laid down regarding the arrest of persons contravening Emergency Regulations and in respect of the seizure of property in the course of arrest. Accordingly, where a person in arrested for contravention of an Emergency Regulation:*

No	Para No of EC Report	EC Comment	GOSL Position
			(a) the arresting officer is required to inform the relevant authorities of the arrest, ***within 24 hours*** *of such arrest.* ***(b)*** *The arresting officer is* ***required to issue to the spouse, child or close relative of the arrested person, a receipt acknowledging the fact of such arrest.*** ***(c)*** *Where property is seized in the course of such arrest, the arresting officer is required* ***to issue a receipt describing the property*** *seized.* ***The failure to report, or to issue a receipt,*** *as required above, is an offence under the Regulations. These provisions are designed to prevent the arbitrary arrests of persons under the emergency.* *2) The period of detention of a person on an order by the Secretary to the Ministry of Defence is limited to one year.* *3) Any person aggrieved by an order of detention is given an opportunity to make his objections to the Advisory Committee established under the Regulations. The report of the Advisory Committee with respect to any such objection is required to be submitted to Secretary, Ministry of Defence who after consideration, may revoke the order.* *4) Persons could only be detained in approved places of detention which have been gazette.* *5) A Commissioner General of Rehabilitation is appointed for the purpose of monitoring rehabilitation programmes of persons who have been either detained or who have surrendered.* *6) Any prosecution for an office under the Emergency Regulations could be instituted in the Magistrate's Court only with the written sanction of the Attorney General. Trials before the High Court will be on indictment by the Attorney General, as required under the normal laws."* Therefore, not only does the juxtaposition of the two statements misrepresent the statement given by the Government of Sri Lanka, it also does not take into account the aforementioned express measures taken by the Government to safeguard the interests of the persons affected by the Emergency Regulations. Notwithstanding the above, the Courts have also been relentlessly reviewing the abovementioned procedures thereby ensuring transparency and accountability.

No	Para No of EC Report	EC Comment	GOSL Position
9.	24	"The principle of legality requires criminal offences to be clearly defined in unambiguous language. However, there is evidence that many of the provisions in the emergency regulations, such as offences of engaging in terrorism, "acts of terrorism", transactions and communications with persons or groups committing terrorist offences, have been given an extensive interpretation."	In any situation of the offenses having been defined in an ambiguous language as stated in paragraph 24 of the EC Report, the accused is given an opportunity of challenging any such ambiguity at the trial and there is a right of appeal available to a person aggrieved, if his challenge is not upheld. Any ambiguous language can therefore be challenged before a Court. In particular Chapter XVI of the Code of Criminal Procedure Act among other things stipulates the requirements of a valid charge and any deficiency in the charge can always be raised as a defence. This has resulted in trials being declared a mistrial or a non trial. (Reference: *Sameen v The Bribery Commissioner* (1991) 1 Sri LR 76 and *Godage and Others v Officer in Charge, Police station, Kahawatte* (1992) 1 Sri LR 54.) The Emergency Regulations themselves and the actions taken there under are moreover subject to challenge under administrative law remedies, in addition to the fundamental rights remedies. Parliament is also charged with the responsibility of approving on a monthly basis the continuation in force of a State of Emergency and the Regulations there under. It has to be observed that no person charged with the offences of unlawful activity has to date complained of any misunderstanding of the offences. On the contrary such persons have endeavored to present credible defences to such charges, however minor such charges might have been.
10.	25	"….the emergency regulations also undermined the right against self incrimination by creating a "duty" for persons to answer police questions and weakens the principle of presumption of innocence by reversing the burden of proof".	In terms of Clause 45(1) of the Emergency Regulations dated 3rd February 2005 published in Gazette No 1378/23, a person taken into custody and detained under any Emergency Regulation may during the period of such custody and detention be questioned and "it shall be the duty of the person so questioned to answer the questions addressed to him." This requirement imposes no burden on the person being questioned to self incriminate himself. Sections 105 -111 of the Evidence Ordinance also contemplates shifting of the burden of the proof. Moreover, the Emergency Regulations have under no circumstances have undermined the presumption of innocence. In fact, while during the existence of a State of Emergency, a confession made to a Police officer of and above the rank of an Assistant Superintendent of Police is

No	Para No of EC Report	EC Comment	GOSL Position
			admissible in legal proceedings, the admissibility thereof is contingent upon the Court satisfying itself of the voluntary nature of such confession. It is of course correct that in order to shut out the confessions made to a police officer, it would be incumbent on the accused to establish that such confessions were obtained from him by threat, promise or inducement. The accused has the option to do so relying on the balance of probability, a lower standard of proof. The Sri Lankan Courts have been careful to scrutinize the reception of confession evidence and every latitude has been given to the maker of the confession, having conscious regard to due process in respect of his/her rights. In all cases where the voluntariness of a confession is challenged, a voire dire inquiry is held to determine the voluntariness. The proviso to Article 13(5) of the Constitution of Sri Lanka states, "…provided that the burden of proving particular facts may, by law, be placed on an accused person", such as in relation to facts which are peculiarly within his knowledge in terms of Section 106 of the Evidence Ordinance. This position is also consistent with the famous dictum known as Ellenborough principles. The proviso therefore, explicitly recognizes the permissibility of the shifting of the burden of proof to a person accused of an offence. This is an emerging trend reflected in the legislation of many countries, including the United Kingdom, which enacted a reversal of burden to the accused in its Terrorism Act of 2000. The Strasbourg jurisprudence and the English authorities are in agreement that Article 6(2) of the European Convention on Human Rights, (ECHR), namely the presumption of innocence, does not establish an absolute rule. (Reference: *Salabiaku v France* (1988) 13 E.H.R.R. 379). Given the above, Sri Lanka has certainly not departed from any basic international norms relating to the administration of criminal justice. Moreover, while the lifting of the Emergency Regulations is desirable in the long term and will inevitably take place, such a step cannot be undertaken immediately, as although the conventional fighting capability of the LTTE has been defeated, remnant cadres and large caches of arms and ammunition remain. It must also be noted that countries despite the absence of terrorist attacks on their soil for many years, prefer for the sake of prudence not to reverse legislation introduced to fight terrorism.

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11.	25	"…the emergency regulations delegate sweeping powers to military personnel to perform functions normally carried out by law enforcement officials, including powers of investigation, search, arrest and detention."	As regards the assertion that the Emergency Regulations delegate sweeping powers to military personnel to perform functions normally carried out by law enforcement officials, this assertion does not reflect the current position. Since 2005, the powers of investigation and detention have been within the exclusive domain of the Police Force and such aforesaid powers are not exercised at all by the Armed Forces. In terms of the relevant provisions of the Emergency Regulations (Regulation 20 of the Emergency (Miscellaneous Provisions and Power) Regulation 1 of 2005) members of the Armed Forces are vested with powers only to search, seize and arrest any person who is committing or has committed or whom they have reasonable ground to suspect was concerned in or was committing or have committed any offence under the Emergency Regulations. Moreover, as per the Emergency Regulations published in Gazette Extraordinary No 1405/14 dated August 13, 2005, the Armed Forces cannot detain any arrested person for more than 24 hours. (Regulation 20 (2)). Accordingly, there are no detention centers maintained by the Armed Forces.
12.	25	"…the emergency regulations severely limit the accountability of civilian and military authorities for their actions in the performance of their duties by providing that no action or suit shall lie against any public servant specifically authorized by the GOSL to take action in terms of regulations, provided that such person acted in good faith and in the discharge of his official duties."	The provision that no action or suit shall against any public servant provided that such person had acted in good faith and in the discharge of his official duties, is uniformly found, in many a statute in Sri Lanka and is not exclusive to the Emergency Regulations. The underlying rationale behind these provisions is to encourage public officers to discharge their functions, in keeping with procedures established by law. It is a complete misconception to construe this as a license to violate the law. This provision does not preclude a person alleging mala fides on the part of civilian and military authorities from suing them and obtaining redress by way of damages through the Courts of Sri Lanka. Apart from a civil remedy available in the District Court of Sri Lanka, persons alleging mala fide can also seek just and equitable relief through the Supreme Court of Sri Lanka, in the exercise of its fundamental rights jurisdiction under Article 126 of the Constitution. In *Saman v Leeladasa* (1989) 1 Sri.L.R 1, Justice Mark Fernando clearly recognizes that an infringement of fundamental rights is justiciable under Roman Dutch Law as a delict or civil wrong. Indeed, in *Vivien Gunawardene v Hector Perera* (1983) 1 Sri. L.R 315 at p321 Soza J stated that

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			the Constitution of 1978 provided a special forum and machinery for enforcement of fundamental rights but that "old remedies co-exist with the new". Thus there is no impediment that exists for an aggrieved person to sue a public servant in several fora for any infraction of law**.** Moreover, Section 114(D) of the Evidence Ordinance whose provenance derives from English law, creates a presumption of regularity of acts of public officials and it is open to anyone to rebut this presumption in a Court of law.
13.	26	"Code of Criminal Procedure lacks several safeguards against torture"	The Code of Criminal Procedure Act has specific procedures. Thus whenever an accused is brought before a Court he or she has the right to inform the Court of any abuse, mistreatment, torture, inhuman or degrading treatment or punishment. In addition, Articles 13(1) and (2) of the Constitution provide for further safeguards as regards the arrest, detention, or deprivation of personal liberty of a person arrested under the provisions of any law. Article 13 (1) states that "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest." Article 13 (2) states, "Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to the procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law." In terms of Article 13(2) of the Constitution and Sections 36 and 37 of the Code of Criminal Procedure Act, when a person is arrested, he should be brought before the magistrate within a reasonable time, but in any event, not exceeding twenty-four hours. When a suspect is brought before the Magistrate, the Magistrate gets an opportunity to ascertain not only whether there are any complaints to be made, but also to observe any physical injuries on the suspect. These provisions are supplemented by the Convention against Torture Act No 22 of 1994.

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14.	26	"Code of Criminal Procedure lacks several safeguards against torture….right of access to a lawyer"	In practice, lawyers attend police stations upon being notified of arrest of a person and police officers do not prevent such attendance. Moreover Article 13 (3) of the Constitution states any person charged with an offence shall be entitled to be heard in person or to be represented by an Attorney at law at a fair trial by a competent Court. Further the provisions of Section 41 of the Judicature Act permit legal assistance and representation on behalf of persons who have or claim to have a right to be heard in every Court. It has to be noted that the State defrays the cost of legal representation for a person charged with an offence, if he is in indigent circumstances and requests legal assistance. Building on the above, as per Section 4 (1) of the ICCPR Act a person may "defend himself in person or through legal assistance of his own choosing and where he does not have such assistance to be informed of such right" and "have legal assistance assigned to him in appropriate cases where the interests of justice so requires and without any payment by him, where he does not have sufficient means to pay for such assistance".
15.	26	"The absence of an effective *ex officio* investigative mechanism in accordance with article 12 of the CAT is another weakness."	The claim that the absence of an *ex officio* investigative mechanism in accordance with Article 12 of the CAT operates as a weakness, is erroneous. On the contrary whenever there is an allegation of torture a due investigation is launched by the Attorney General who is empowered by the Code of Criminal Procedure Act to direct and supervise the conduct of such an investigation. If on examination he is satisfied that the material submitted to him warrants an indictment, he is empowered to indict the alleged perpetrator for torture. In appropriate cases the Attorney General of Sri Lanka forwards direct indictments without committal proceedings. In fact the Report itself in its footnote 86 refers to the reference of 29 October 2007 made by the UN Special Rapperteur on Torture to "the high number of indictments for torture filed by the Attorney General's office.
16.	26	"…under Emergency Regulation, many of the safeguards against torture contained in the Criminal Procedure do not apply…"	On the issue raised that the safeguards against torture contained in the Code of Criminal Procedure Act do not apply in the context of the Emergency Regulations, this position has been refuted by Sri Lanka in her communication of May 2000 to the UN Secretary General concerning the declaration of a State of Emergency and the consequent need to derogate from some ICCPR articles (Vide paragraph

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			23 above).
17.	26	"While a significant number of indictments for torture have been brought under the CAT Act, a majority of prosecutions have been inconclusive".	The fact that not too many cases end up in convictions is a result of the adversarial system of criminal justice that is practiced in Sri Lanka. The adversarial system has certain salutary safeguards such as presumption of innocence, burden of proof beyond reasonable doubt, and the possibility of impeaching the credibility of witnesses, which make it imperative that a Court acquit an accused, unless the prosecution proves its case beyond reasonable doubt. In another wards, the court must be satisfied that the accused committed the offence as alleged. In these circumstances the conviction of all the accused who are indicted for torture may not have been possible. The obligations flowing from the Convention against Torture Convention is to "submit the case to its competent authorities for the purpose of prosecution" and not an obligation to guarantee a conviction in all cases. While all efforts will be made in good faith to investigate and prosecute and secure a conviction, a reasonable interpretation of the Convention does not warrant a conclusion that every prosecution must as of necessity lead to a conviction. Furthermore, it is also noted that the mere occurrence of torture does not constitute a violation of the Convention, unless it forms part and parcel of State Policy. It is pertinent to note that the Special Rapporteur, Professor Manfred Nowak, at a briefing in October 2007, stated that torture was not systemic in the criminal justice or law enforcement systems.
18.	26	"The non-applicability of important legal safeguards in the context of counter-terrorism measures, as well as excessively prolonged police detention, opens up the doors for abuse."	Whenever States have enacted counter terrorism laws, somewhat prolonged police detention has been permitted in a number of Statutes, such as the UK Terrorism Act of 2000. Such a detention was found acceptable in the European Court of Human Rights in the case of *Brogan v United Kingdom*. (1988 11 EHRR 117). In any event, the legality or otherwise of an incarceration can be challenged and even if upheld, there is periodic judicial review of the continuing detention. It is noted as well that the Report also seeks to establish a wholly unrealistic dichotomy between the areas of Sri Lanka that continued to be affected by LTTE dominance and those

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			areas that were not. This argument is not tenable, as a terrorist group even while not being present in numbers in an area, nevertheless has the capacity to instill a state of fear among the people in that area and cause damage. At the same time, the new situation that has developed since the ending of the armed conflict in mid May 2009 needs to be recognized and all assistance must be provided to support efforts at restoring normalcy.
19.	28	"The credibility of many of the institutions for the protection of human rights has suffered due to appointments to them having been made without observing the 17th Amendment to the Constitution".	The 17th Amendment of 2001 was hastily drafted and contained a series of compromises, which had to be made to secure the two third majority in Parliament needed for this package. This deprived the amendments of internal consistency and implementability. Since then there have been four administrations that have held office in which both the current ruling party and current opposition have participated. The confirmed inability to operationalize the amendment despite changes of administration as a consequence of elections, indicates the existence of practical issues that have to be resolved prior to implementation. It must be observed that the 17th Amendment to the Constitution accordingly has a two-fold weakness from the perspective of its practical implementation. Firstly, there is an intrinsic abdication of parliamentary power by the elected representatives of the people to non-elected persons, which is contrary and repugnant to the doctrine of public trust that entrenches the principle that the sovereignty of the people is inalienable. Secondly, serious suspicion could arise with regard to the degree of independence which can be exercised by those persons appointed in terms of Article 41 (c) of the 17th Amendment due to the fact that the appointees are agents of the respective political parties/ persons authorized to nominate members to the Constitutional Council. It is due to these two reasons that neither of the two leading parties of Sri Lanka can find consensus with regard to the implementation of the 17th amendment. In 2007, a Parliamentary Select Committee was appointed to resolve the issues and its sittings are continuing.

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20.	29	"The efficiency of police investigations in Sri Lanka has been strongly criticized".	The criminal investigative system of Sri Lanka functions to the best of its ability while coping with the resource constraints of a developing society. Moreover, during the period of the conflict situation in some cases investigators found it impossible to comprehensively investigate certain cases, due to the inability of the law enforcement agencies to access the so called "uncleared" areas dominated by the LTTE. At the same time, there are now several processes aimed at improving the investigative phase, the adjudicatory phase, and the penal sanction management phase of the criminal justice system. Thus significant endeavours have been made to enhance the capacity in criminal investigations. 1. A system of "Scene of Crime Officers" (SOCO) has been operationalized, with the view to enabling criminal investigators to record with the highest degree of professionalism scenes of crime and collect items of evidence from scenes of crime having forensic value. 2. Plans are afoot to automate the finger print screening and tallying system. 3. All police stations in the country now have Women and Child offences desks, staffed by female officers to record and investigate offences relating to women and children. 4. Special programs are afoot to train police officers in the use of both official languages (Sinhala and Tamil) and the link language (English). It is believed that these initiatives and the improved security environment prevalent in the country would help the Police to focus on crime prevention and reduction, in addition to improving the efficiency of the conduct of criminal investigations. There is also adequate legal remedy available in the event of any Police malfeasance taking place. These remedies are as follows; 1. Complaining to the relevant magistrate under whose judicial purview the particular case is being investigated.

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			2. Obtaining from the Court of Appeal a Writ of Mandamus compelling the Police to pursue certain investigational leads. 3. Obtaining redress through the filing of fundamental rights application in the apex Court of Sri Lanka. 4. Through administrative processes which are available to the aggrieved party such as by complaining to the hierarchical command and to the Parliamentary Commissioner for Administration, (Ombudsman), for appropriate remedial measures.
21.	30	"The Attorney-General's Department does not vigorously prosecute cases involving serious human rights violations".	The Attorney-General's Department is mandated by the Code of Criminal Procedure Act to initiate legal proceedings in criminal matters, when the material available warrants the exercise of its statutory functions. Regardless of the subject matter, the Department has always exercised its functions diligently. The allegation that the Attorney General's Department does not vigorously prosecute cases involving serious human rights violations is unsubstantiated. The Attorney General of Sri Lanka has a quasi judicial role, by virtue of the multi faceted powers vested in him, under legislative enactments, including the Code of Criminal Procedure Act. His powers include the launching of investigations, examining material and initiating charges. Moreover, any decision of Nolle Prosequi is solely his prerogative. Accordingly, the office of the Attorney General is held in high esteem as an impartial arm of governance.
22.	31	"The role of the Attorney-General in the prosecution of cases may place the Attorney-General in a conflict of interest as far as any inquiry into the administration of justice is concerned…….. was one of the main reasons behind the decision of the IIGEP to cease its activities".	The Attorney General is not representing any party when he exercises his responsibility to guide a criminal or other investigation. His sole objective is the eliciting of the facts. Thus, in a situation of the Attorney General having decided to prosecute an offender, there is no scope for any conflict of interest arising. Stemming from the above, the officers of the Attorney General's Department only assist the finding of facts by the Commissions of Inquiry and as such no conflict arises thereafter when the Attorney General assumes the role of a prosecutor. It is therefore unfortunate that the situation of

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			an unfounded misreading of the Attorney General's role arose, during the period of the IIGEP. This position is confirmed by the Communication sent by Justice Bagawathi who headed the IIGEP. *Please see the comments below with reference to paragraph 34 of the EC Report.*
23.	32	"The judiciary is, or has been, vulnerable to political influence from the Government and the former Chief Justice. It is widely reported that the former Chief Justice used the administration of case allocation as a way to sideline senior judges from hearing politically sensitive cases".	With regard to the allegation that the judiciary is vulnerable to political influence, it is submitted that the judiciary, which is constitutionally recognized and established as a separate and independent branch of the Government, maintains the separation of powers at all times. This is amply reflected in the decision of the Magistrate's Court delivered on 3 November 2009, regarding the acquittal of four Tamil MPs charged under anti-terror laws for making statements against the Government and the Security Forces. An independent decision of this nature, which is adverse to the Government, would not have been possible in a situation where the Courts are politically influenced by the Government. With the doctrine of separation of powers, at all times the Supreme Court of Sri Lanka, including during the tenure of the former Chief Justice, enjoyed absolute independence. While the Commission Report has in paragraph 33 opted to allege the vulnerability of the judiciary to political influence, the same document nevertheless hails in its paragraph 70, the decision of the Supreme Court under the same Chief Justice to halt the "mass eviction…… of Tamils from Colombo". It is therefore submitted that through the reference in paragraph 70, the Commission itself has conclusively disproved the validity of its allegation in paragraph 32. As regards the matter of case allocation, it has been a recognized and established prerogative of the Chief Justice to assign judges to hear cases. The example of the legal recognition of the validity of the prerogative is *Queen v Liyanage* (1962) 64 N.L.R 313 which examined the question of the then Minister of Justice nominating a bench of judges to hear a particular case arising from an attempted coup d'état. The Minister acting under Section 440a of the Criminal Procedure Code as amended by the Criminal Law (Special Provisions) Act No 1 of 1962, directed that certain persons accused of the offence

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			be tried before the Supreme Court through a Trial at Bar by three judges, without a jury. At the same time acting under section 9 of the Criminal Law (Special Provisions), he nominated three judges of the Supreme Court to preside over this trial. At the trial a preliminary objection was raised as to the constitution of the court. It was argued that the nomination of the judges by the Executive to hear the case, violated the concept of the separation of powers and was therefore unconstitutional. The three nominated judges, however, upheld the preliminary objection that the court was improperly constituted and therefore went on to rule that they had no jurisdiction to proceed with the trial. From this it is quite evident that the power of nomination is one which falls within the domain of the judiciary. The former Chief Justice did not accordingly violate any norm when he exercised his rightful prerogative to nominate judges to hear cases.
24.	34	"The use in Sri Lanka of Commissions of Inquiry (COI) has been widely criticized …….the IIGEP established in the context of the 2006 Presidential COI ceased its activities on the grounds that, inter alia, the proceedings of the Commission fell short of basic international norms".	Justice P.N. Bhagwati, a former Chief Justice of India who functioned as the Chair of the IIGEP, in his letter to the President of Sri Lanka, dated 26 April 2008, stated, "I may add that so far as the Commission of Inquiry is concerned it has been doing very good work and the Members of IIGEP have had the best of cooperation from the Chairman and Members of C.O.I. I have no doubt that C.O.I. will continue to carry on its work with the same zeal and dedication as it has been doing so far, All my best wishes to C.O.I. and to the Government of Sri Lanka." Justice Bagawati's observations certainly do not endorse the allegation that the Commission fell short of the basic international norms.
25.	35	"Sri Lanka has started work to draft the NAPHR but at the time of writing the action plan has not yet been finalized".	The Government of Sri Lanka pledged to develop the National Action Plan at its Universal Periodic Review in May 2008. In fulfilling this pledge, the Government began drafting the Action Plan in September 2008. A stocktaking exercise to identify the most pressing human rights issues also led to the identification of eight focus areas of the Action Plan namely civil and political rights, torture as a special area of emphasis, economic social and cultural rights, women, children, IDPs, migrants and labour rights. The development of the National Action Plan is being guided by a high level Coordinating Committee comprised of representatives of both Government and civil society. The National Action Plan for the Protection and Promotion of Human Rights will have

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			short and medium term targets within a 5-year timeframe. The process of developing the Sri Lankan National Action Plan conforms to the model process prescribed by the OHCHR. There has been a strong emphasis on a participatory approach to developing the Action Plan in which representatives of Government agencies and civil society organizations have been included in the drafting process on an equal footing to ensure a balanced and progressive plan. Drafting Committee members were selected based on their expertise, to ensure that those who are working at the ground level on the various issues are directly involved in drafting the Action Plan. In addition, the various Government Agencies that will be implementing the plan are also involved in drafting it in order to ensure a smooth transition from drafting to implementation. A deadline of end November 2009 had been set for the drafting Committees to conclude their work. Pursuant to the completion of the drafting, the Ministry of Disaster Management and Human Rights will consolidate the texts received by the eight Drafting Committees. The consolidated text will be made public for comment prior to implementation of the final National Action Plan. Monitoring and evaluation of the implementation of the Action Plan will be conducted by a dedicated monitoring unit based at the Ministry of Disaster Management and Human Rights under the guidance of the multi-agency Coordinating Committee. It is also noted that that European Parliament urgency resolution of 22 October 2009, said it "Recognizes Sri Lanka's development of a National Action Plan for the Promotion and Protection of Human Rights". The indications of a widest possible consultative process with all stakeholders towards the formulation of the NAPHR in a manner that ensures transparency, must be appreciated.
26.	36	"Throughout the period covered by the investigation a variety of credible sources including UN special procedure and reputable NGOs have repeatedly expressed concern about the human rights situation in Sri Lanka and the	The suggestion made by the sources that there is a wide spread climate of impunity, is rebutted by the vigorous investigations conducted by the Police and the prosecutions launched in various forums. In the year 2009, 17 files relating to allegations of torture were opened in the Attorney General's Department subsequent to investigations carried out by the Police and three persons have been indicted to stand trial for the offence of torture so far. Advice in respect of 13 subject matters relating to allegations falling under the CAT Act, has been rendered by the office of the Attorney General. The investigation and the subsequent filing of the

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		existence of a widespread climate of impunity".	indictments demonstrates the commitment on the part of the respective law enforcement authorities in relation to the ICCPR and this should be taken note of as a positive measure. In addition to the institutional criminal proceedings, any offenders are disciplinarily dealt with by their respective agencies and there are procedures in the Establishment Code to interdict public officers against whom allegations of serious criminal charges are made. (Chapter XLVIII of the Establishment Code) The Acts pertaining to the Armed Forces provide for suspension from service and or trial by courts martial. Thus, criminal prosecutions have been launched against army personnel in respect of 9 incidents which occurred in 2006-2009 of alleged offences against civilians, as well as for a recent incident of causing grievous hurt to 2 civilians by discharging fire arms at an IDP facility in Vanni. This incident which occurred on 26th September 2009 has resulted in the prosecution of the offending soldiers, while a parallel Court of Inquiry has been convened to inquire into this incident by the Army.
27.	38	"Sri Lankan law does not expressly provide for the obligation to protect the right to life"	*See comments to paragraph 22 of the EC Report above.*
28.	38	"During the period covered by the investigation, there has been a high rate of unlawful killings in Sri Lanka, including killings carried out by the security forces, persons for whom the state is responsible and the police".	Any unlawful killings that are claimed to have taken place would have occurred in extraordinary circumstances beyond government control, arising from the conflict situation prevalent during the last three decades. They certainly did not take place with the knowledge or concurrence of the Government. In fact, whenever credible evidence of the involvement of rogue elements within the security forces emerged, effective action has been taken to bring the perpetrators to book These efforts have resulted in a very sharp decline in the number of allegations unlawful killings. *See also comments in respect of paragraph 36 of the EC Report.*

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29.	39	"The Army assisted by pro-government Tamil paramilitaries, reportedly engaged in a deliberate policy of extra judicial killings against those they considered to be supportive of the LTTE….2006-2007, forty four humanitarian aid workers were killed and a further 23 disappeared. The case of the killing of 17 aid workers of French NGO ACF in August 2006 was particularly striking"	This together with other incidents have been inquired into by the CoI. With specific reference to the ACF case, there has been no evidence to suggest that the government Forces were responsible for this attack. Earlier suggestions by an Australian Forensic Pathologist based on a perceived similarity of projectiles recovered from the scene of this incident which cast aspersions on the Forces, was proved erroneous by ballistic experts. The Pathologist involved then accepted the validity of the assessment by the ballistic expert.
30.	39	"…..reports from a wide range of sources indicates that the overall number of extra-judicial killings increased dramatically between 2006 and 2008."	With the winding down of the operations in the East and the elimination of the LTTE in May 2009, the Government's writ now runs effectively throughout the entire territory of Sri Lanka and the reports of alleged disappearances and extra judicial killings have reduced dramatically.
31.	41	"Attacks on the media, both through verbal threats by the government and through brutal physical assaults by unknown persons had been widely reported. Since 2006 a significant number of journalists have been killed ….. in January 2009, the prominent journalist Lasantha Wickrematunge, Editor of the Sunday Leader,	The due process is been followed in the case pertaining to the murder of the late Lasantha Wickramatunge. Accordingly, the Police are reporting with the regularity required by law to the Magistrate on the status of the investigation. At present certain possible clues have emerged, consequent to the arrest of a suspect and vigorous investigations are being pursued. With regard to the other alleged attacks on journalists, the relative lack of visible progress is due to the investigations not eliciting adequate evidence for the launching of a prosecution, despite the best endeavors of the law enforcement authorities. It is noteworthy that during this period there have instances of attack on journalists who have supported the government position as well, such as that of Upali Tennekoon, editor of the "Rivira". It should also

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		was murdered; no one has been charged in connection with his killing.	be kept in mind in this regard that there is a record of successful Police investigations being followed by prosecutions, irrespective of the status of the perpetrators. For example, the complaint made by a senior journalist led a few years ago to the arrest, indictment, and successful prosecution of two commissioned Sri Lanka Air Force Officers, who were heading the personal security detachment of the then Commander of the Air Force.
32.	42	"During the final phase of hostilities.. government forces attacked medical facilities and fired heavy artillery into an area which had been designated as a "no-fire" zone…..figures on civilian causalities quoted by international press and human rights organizations were as high as 20,000 for the period between January 2009 and the end of conflict in May 2009".	The last phase of the operations resulted in the movement of over 250,000 men, women and children who had been held as human shields by the LTTE, fleeing to the government controlled areas once the Army breached the LTTE lines. Had they perceived themselves as being targeted by the Security Forces, they would obviously not have done so. Accounts provided on 08th July 2009 at a media briefing by 05 medical doctors who were located in the no-fire zone during this period have made clear that under the pressure of the LTTE they had provided exaggerated and contradictory figures about the claimed civilian causalities, as well as about alleged destruction caused to Government hospitals due to Security Forces shelling. It may also be noted in this regard that the Report to Congress on Incidents During the Recent Conflict in Sri Lanka has observed in its paragraph 2 on page 10 that "Numerous commercial imagery-based reports issued by UN agencies and non governmental organizations identified evidence of shelling in the NFZ. ***US Government sources are unable to attribute the reported damage to either the Government of Sri Lanka*** or LTTE forces."(Emphasis added). Thus the report lacks any credibility on attributing responsibility to the Government.
33.	44	"The UN Special Rapporteur on Torture has expressed shock at the severity of the torture employed by the army, which includes burning with soldering irons and suspension of detainees by their thumbs."	A perusal of the Special Rapporteur's Report would indicate that he is referring to LTTE cadres apprehended by the Army during the course of security operations. It must be noted that such persons enjoyed during the conflict situation the facility of being visited by the members of the ICRC, pursuant to the acceptance by Sri Lanka of the offer of protection of the ICRC made under its humanitarian mandate. The visits of the ICRC members were moreover complemented by visits by family members. In such a context any severe torture of the nature alleged to have taken place by the Special Rapporteur would not have gone unnoticed and would have led to complaints.

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			Therefore, the correct conclusion to be drawn is that there has always been in place adequate measures, including through the visits by the ICRC, to prevent any possibility of torture taking place. With respect to the other allegations of torture made by the Report of the Special Rapporteur, the Government of Sri Lanka has in a statement on 10 March 2008 at the Human Rights Council, observed that at a de-briefing session in October 2007, the Special Rapporteur Professor Nowak had stated that though instances of torture could be seen at diverse locations, it was **not systemic** in the **criminal justice or law enforcement** system.
34.	44	"…… the allegations include claims of sexual assaults and rapes in IDP camps"	As regards the allegation of sexual assault and rape in IDP camps, it must be noted that the Ministry of Disaster Management and Human Rights has convened meetings of the Protection Cluster involving key UN agencies, INGOs and NGOs. Law enforcement and Armed Forces personnel as well as civil authorities participated in these meetings, which were followed up by visits to the main IDP camps in Vavuniya. The visits which took place during the course of 2009 were used to specifically pose the question as to whether incidents of physical and sexual abuse had taken place. The responses were in the negative. Another pertinent fact to be kept in mind is that a Delegation of 10 Members of the Indian Parliament elected from constituencies in the South Indian language with the Tamil community in Sri Lanka, visited on 11th October 2009 the IDP camps. The Delegation acknowledged at the end of their visit that they had had absolutely unrestricted access to all areas of the camps and that they were able to go wherever they wanted and to speak to whomever they wished to. The media reports based on comments by members of the delegation, both while in Sri Lanka and upon their return to India, stated that the IDPs had impressed upon the visiting Members of Parliament their desire to return to their homes at the earliest possible opportunity. Nowhere were there any reports of the IDPs having claimed they were subject to sexual assault and rape. Nor indeed, have any of the members of the Delegation made such an assertion. It may also be noted that in May 2009 an EU TROIKA delegation visited the IPD camps. Then too as happened later with the Indian Delegation there were no reports of that the IDPs were subject to sexual assault and rape.

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			The above is cited in order to flag that great care must be taken to authenticate the veracity of reports, without loosely referring to allegations that are palpably unsubstantiated. In fact footnote 89 of the European Commission Report itself states that, "It is difficult to verify these allegations which have been reported in the press". There is a track record in the Sri Lanka situation of vested interests presenting such charges, in order to attain their sinister objectives.
35.	46	In May 2009 the UN special procedure mandate holders pointed to the fact that they "continued to receive disturbing reports of torture and extra judicial killings and enforced disappearances"	This comment can be traced to the joint statement made on behalf of all special mandate holders during the Human Rights Council (HRC) Special Session on Sri Lanka, in May 2009. The observation is of a general nature. It is noteworthy that the wide ranging Resolution on Sri Lanka which was approved by the HRC did not endorse this view. In fact it is important to note that the UN Working Group on Enforced or Involuntary Disappearances itself, in its data, reflects the steep downward trend experienced by Sri Lanka with regard to disappearances. There have been 3 three reported incidents of disappearances in 2009, in comparison to 120 incidents alleged to have taken place in 2008. Even the 2008 figures represent a significant drop from the number of 206 reported in 2006 and 163 reported in 2007.
36.	46	The UN Special Rapporteur on Torture has noted that his fact finding was obstructed by officials who attempted to hide or transfer detainees.	On the contrary, Professor Manfred Nowak in the "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Sri Lanka", (A/HRC/7/3/Add.6) dated 26 February 2008, expressed "…appreciation to the Government for the respect of the terms of reference for the visit. In particular, he wishes to thank the Inspector General of Police and the Commissioner General of Prisons for opening up the prisons and police detention facilities without restrictions, including the carrying out of unannounced visits, and enabling him to conduct private interviews with detainees."
37.	47	"So far in the exercise of jurisdiction under the CAT Act, the high court has handed down very few convictions".	Though convictions are few, a large number of indictments have been filed in the High Court which by itself demonstrates that there is no conscious and deliberate policy of not prosecuting offences falling under the provisions of the CAT Act. Moreover, Sri Lanka's criminal jurisprudence requires the prosecution to prove the guilt of an accused beyond reasonable doubt. In the event of a reasonable doubt being created or of the prosecution failing

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			to discharge its burden of proof beyond reasonable doubt, the accused is inevitably given the benefit of doubt and acquitted. The Special Rapporteur Professor Nowak seeks to attribute the low rate of convictions to his supposition that the mandatory minimum sentence of seven years imprisonment acts as a disincentive towards judicial conviction. While the Government of Sri Lanka is not insensitive towards this theory, it is the Government's view is that torture by its very nature is so abhorrent an act, as to merit strong penalties against the perpetrators. The Government has also informed the Rapporteur that it would be open and flexible to look at the jurisprudence and the national experiences of other States in this regard. The Government also wishes to draw attention to a recent judgment by the Supreme Court (SC No.3 of 2008) delivered on 15/10/2008. The Court held that "In the circumstances we hold that the minimum mandatory sentence in S. 364 (2) (e) is in conflict with Articles 4(c), 11 and 12 of the Constitution and that the High Court Judge is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding minimum mandatory sentence." This recent judgment is binding on the lower Courts including the High Courts, which have jurisdiction to try cases of torture. As such applying the judicial reasoning in this case, the High Court Judge can deviate from the minimum mandatory sentence required in appropriate cases. This would serve to meet any validity in the issue pertaining to concerns relating to sentencing raised by Professor Nowak.
38.	47	"The lack of a legal framework for witness protection has also hindered effective prosecution of torture cases".	The Government of Sri Lanka after wide consultation with key government officials, as well as with civil society, tabled in Parliament a proposed law to provide assistance and protection to victims of crime and witnesses. An important feature of this proposed law is the wide definitions given to the terms "victim of crime" and "witness", so as to include not only victims and witnesses of conventional crimes, but also victims and witnesses of human and fundamental rights violations. Once the proposed law is enacted, it will address problems relating to intimidation, threats, reprisals and other forms of harassment against all victims of crime and witnesses and would necessarily include victims of alleged torture and ill treatment.

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			Due to the many amendments suggested when it was first introduced in Parliament, the Bill was referred to the Parliamentary Consultative Committee on Justice and Law Reforms, which recently reached consensus on amendments to be moved to the Bill before its enactment. The Bill awaits return for listing for continuation of the debate.
39.	48	"Many of the protections against torture contained in domestic laws do not apply in cases of detention under the emergency legislation".	The Code of Criminal Procedure contains procedural provisions as regards the arrest, detention, and production of offenders before a Magistrate. The production of a suspect before a Magistrate ensures due process being observed in regard to a suspect and no where in the Emergency Regulations is this protection taken away. The proviso to Clause 21(1) of Emergency Regulations No 1405/14 dated 13 August 2005 stipulates that a person arrested under Regulation 19 has to be mandatorily produced before a Magistrate within a reasonable time having regard to the circumstances of the particular case and in any event not later than 30 days after his arrest. It is noteworthy that the Supreme Court has demanded the strict requirement that the detention orders for suspects should be signed by the Secretary/Defence on basis of each individual case and not in batches. This provision guarantees against deviation from the due process and therefore invalidates the assertion that the Emergency Regulations do not contain protective measures.
40.	48	"Emergency Legislation allows to hold suspects for up to one year under preventive detention orders issued by the Secretary of the Ministry of Defence without complying with the procedural safeguards for detainees provided in the Criminal Procedure Code"	The further assertion at paragraph 48 of the Report that the Emergency Regulations allows to hold suspects for up to one year under preventive detention orders issued by the Secretary of the Ministry of Defence without complying with the procedural safeguards for detainees provided in the Criminal Procedure Code is also erroneous, for the reason that no such incarceration is permitted under the provisions of the Emergency Regulations. It has to be noted that derogation from the right to liberty was used by the UK Government in relation to Prevention of Terrorism (Temporary Provisions Act 1974-1989) permitting the detention of terrorist suspects for a longer period than permitted under ordinary circumstances without production before a Court, was held to be valid in the case of *Brogan v United Kingdom* (1988 11 EHRR 117). The basis of this derogation from the right to liberty was premised on Article 15 of the European Convention on Human Rights that permits a State to derogate from the Convention "in time of

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			war or other emergency threatening the life of the nation." In the circumstances the adoption of reasonable detention in the Emergency Regulations, is not inconsistent with the standards adopted by the European Union. Moreover, each month the persons who have been arrested under the Emergency Regulations have to be produced before a Magistrate and there are prison visits in addition to the visits by the Magistrates, that are undertaken.
41.	50	"Many of the protections in the Code do not apply in cases of detention under the emergency legislation"	*Please also refer to the comments above pertaining to paragraphs 23 and 26 of the EC Report.*
42.	51	"Under the 2005 Emergency Regulations (Regulation 19), persons suspected of acting in any manner prejudicial to the national security or the maintenance of public order, or to the maintenance of essential services" may be arrested and held in detention for up to 18 months. Persons may be similarly detained under Section 9 of the Prevention of Terrorism (Temporary Provisions) Act.	This claim is erroneous. The Supreme Court in May 2008 made an order stating that persons arrested under section 19(1) of the Emergency Regulations could be kept in Police custody only for ninety days and that the said detainee should be transferred to the fiscal custody upon the expiration of 90 days from the date of arrest. [SCFR 173/2008 decided on 29th July 2008]
43.	51	There is also a provision (Regulation 22) for automatic detention of a "surrendee" up to two years for the purposes of "rehabilitation", including persons	This claim is false. Regulation of the Emergency Regulation No 1 of 2005 states that "any person who surrender to a police officer, to a member of the armed forces or to any other person…such person shall within 24 hours of such surrender be handed over to the Officer in charge of the nearest Police station. It shall be the duty of the Officer in charge to produce such person forthwith before the Magistrate and obtain ***an appropriate order***."(Emphasis

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		seeking the protection of the state because "fear of terrorist activities".	added). Thus instead of "automatic detention" as suggested by the Report, the Emergency Regulations operate to ensure that the rights of the surrendee are safeguarded through judicial supervision. It is also noted that pursuant to the Emergency Regulations the Magistrate may make an order which is appropriate in the circumstances. In the event of any misconception having arisen due to the on-going care for "child soldiers", it must be noted that the Government established a protective rehabilitation centre for child combatants in Ambepussa, located in the Kegalle District. The Centre functions on the basis of a policy on the Protective Care, Rehabilitation and Reintegration for Children associated with the armed conflict developed by the National Child Protection Authority, in close collaboration with the Office of the Commissioner General of Rehabilitation and other professional institutions and Ministries, particularly the Ministry of Child Empowerment and Child Development and the Department of Probation and Child Care. The centre provides opportunities for child combatants who had been forcibly recruited who chose to "surrender", to be reunited with their parents and obtain rehabilitation and protection. Such children are reunited and provided access to education and vocational training, based on their individual needs and capacities. They also have access to health care and psychosocial care and support based on each child's individual needs. New regulations have been framed and gazetted under Section 5 of the Public Security Ordinance by the President of Sri Lanka in order to introduce "Child Friendly" procedures and processes related to the "surrender" and "release" of children who were forcibly recruited as combatants. The new regulations came into effect on 15th December 2008. A plan of action for the implementation of such regulations has been formulated by the Commissioner General of Rehabilitation and the Ministry of Justice. UNICEF is closely involved in providing technical and financial support for these activities.
44.	52	"Court scrutiny and discretion to overturn an order made under Regulation 19(1) is in fact expressly excluded…"	The Supreme Court has time and again decided on matters dealing with the Emergency Regulations as highlighted above in the comments pertaining to paragraph 51 of the EC Report.

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45.	52	"…where the Secretary to the Ministry of Defense has ordered detention under Regulation 19 or 21, the court "shall order" continued detention"	This claim is erroneous. Under the doctrine of separation of powers, the executive cannot, and will not, demand compliance by the judiciary. The Executive has always fallen in line with due process safeguards and all directions given by the judiciary have been scrupulously followed with a view to upholding the rule of law.
46.	53	"The only remedy for a person under Regulation 19 detention is to make objections to an advisory committee……this is inconsistent with article 9 (4) of the ICCPR which provides that any detained person is entitled to take proceedings before a court".	There is no inconsistency with Article 9(4) of the ICCPR. In addition to any Advisory Committee mechanism, a person detained wrongfully is also entitled in law to seek relief by way of Writ or Habeas Corpus.
47.	54	"Presidential directions are guidelines only and their exact legal status and impact are unclear".	These are directions given by the President in his capacity of the Head of State and Government and the Commander in Chief of the Armed Forces. The Armed Forces officers in turn are duty bound to fully implement them and they remain answerable to the President. Hence these directions have all the necessary legal status for their due implementation. To view them as mere "guidelines" as the Report has done, would be to grossly under estimate their status. Any contravention of these directions would render the recalcitrant officers liable to be prosecuted under the Armed Forces Act and the with respect to the Police, the Establishment Code.
48.	55	"The emergency and anti terrorism legislation has been used to arrest and detain-in some cases without charge-critical journalists, newspaper operators and political opponents of the	Mr. Tissanayagam was found guilty of the charges after due process and was given the minimum possible sentence as prescribed by law. He now has the option of appealing his judgment in the Court of Appeal and thereafter, if necessary, taking the matter up to the level of the Supreme Court. Until the appeal process is exhausted, the President cannot exercise the prerogative of executive clemency.

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		government a notable example is ……prominent journalist, J.S. Tissanayagam".	Reference must also be made to the third and most serious of the charges faced by Mr. Tissanayagam, in that he was in receipt of funds from the LTTE and used such funds to propagate the LTTE cause of terrorism. During the trial, Mr. Tissanayagam did not deny these facts. It is therefore unfair and misleading to insinuate that Mr. Tissanayagam was convicted merely for criticizing the Sri Lankan Army in two publications.
49.	56	"In every case referred to it the UN working group found the detention to be arbitrary because of the conditions arrest allowed under the emergency regulations"	Even under the Emergency Regulations, the reasons for arrest have to be informed. This legal requirement is in accordance with the provisions of the Constitution and the Criminal Procedure Code. The detention order served on a detainee after arrest would also specify the place of detention. Any person alleging arbitrary arrest and detention has a constitutional right to challenge such an arrest and detention in the Supreme Court.
50.	57	"the UNHCR reported in April 2009 that the TMVP was continuing to conduct arbitrary detentions and abductions in the East of Sri Lanka".	This allegation is based on UNHCR Report UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, April 2009, available at: http://www.unhcr.org/refworld/docid/49de0b6b2.html [accessed 30 October 2009]. The footnote in the Report relating to this particular allegation accepts it is based on news items drawn from, amongst others Asia Times and from Tamil Net, which was then operated by the LTTE. Therefore this is an allegation without credibility.
51.	58	"The emergency regulations authorize the creations of counter terrorism detention camps which are not subject to inspection by the NHRC".	Sri Lanka does not have "counter terrorism detention camps" and furthermore the Human Rights Commission of Sri Lanka (HRCSL) has a legal mandate to visit any detention centre. Furthermore, under a Presidential Directive, HRCSL should be notified of arrests and detention.

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52.	59	"The UN High Commissioner for Human rights stressed in September 2009 that in Sri Lanka internally displaced persons are effectively detained under conditions of internment".	This very question has been put before the Supreme Court by an NGO filing a public interest lawsuit. This is proof that the legal system has remedies available where these kinds of questions can be raised before the highest judicial authority. The fact is that over 40% of IDPs have moved out since the conflict ended (i.e. almost 100,000 persons to either stay with host families or to go back to their original areas of habitation.) This large scale outward movement in a relatively short period and the declared commitment of the Government of Sri Lanka to the resettlement of the vast majority of the IDPs by 31 January, is ample proof of the political will to ensure a return to normality for these conflict-affected individuals. Any temporary limitation of movement stems from the need to de-mine the areas of habitation in order to allow for safe return and occupation. The de-mining process for which Sri Lanka has acquired state of the art apparatus is also well in progress.
53.	60	"Although it remains possible to apply for habeas corpus in the High Court and Court of Appeal, such applications have been rarely successful in gaining release. Relief against arbitrary arrest and detention can also be found by filing a fundamental rights application in the Supreme Court, but distance, difficulty of travel of access to a Supreme Court lawyers create very significant barriers to most litigants".	Habeas Corpus applications that are brought before appropriate Courts require the Petitioners to establish the fact of unlawful detention to the satisfaction of Court. In the absence of such proof, the Courts are unable to grant redress. As regard fundamental rights applications it has to be noted that a letter written by an aggrieved person to the Chief Justice is sufficient to initiate the invocation of the jurisdiction. (Epistolary Jurisdiction). As regards distance, decentralization of the powers of the Courts of Appeal granting High Courts of each Province writ jurisdiction has made it easier for people to seek justice. Additionally, extensive public interest litigation and the provision by the Legal Aid Commission of services of lawyers *Pro Bono* without any burden to the litigant, have helped overcome these difficulties. It must also be remembered that Sri Lanka's land area of 65,000 has a well connected road and rail network, distance and difficulty to travel are not issues that obstruct such access.

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54.	62	"Sri Lanka has among the highest number of disappearances in the world since 2006".	The disappearances reported to the UN Working Group on Enforced and Involuntary Disappearances in Sri Lanka date back to the 1980's with the vast majority of the cases pre-dating 2006. A Central Registry has been established by the Ministry of Human Rights and Disaster Management of Sri Lanka to look into cases on alleged disappearances reported by the UN Working Group. After entering all the names given by the Working Group the Ministry has identified 450 cases of possible duplication. This information has been sent to the Working Group and the Ministry of Human Rights is awaiting their clarification on the same. The Ministry is also actively engaging with the Working Group to resolve the existing backlog. The Police have been requested to investigate and report on progress in all cases with a special focus on cases in the recent past. In fact it is important to note that the UN Working Group on Enforced or Involuntary Disappearances itself, in its data, reflects a steep downward trend with regard to disappearances. There have been only 3 three reported incidents of disappearances in 2009, in comparison to 120 incidents alleged to have taken place in 2008. Even the 2008 figures represent a significant drop from the number of 206 reported figures in 2006.
55.	64	"The TMVP continued to abduct children during the period covered by the investigation reports indicates that Sri Lankan Security Forces were complicit in these abductions".	On the allegation that the TMVP continued to abduct children during the period covered under the investigation, it is noted that since December 2008 only 1 child is reported to have been recruited, according to information provided by the UNICEF as at 30 September 2009. While there have been allegations concerning the complicity of the Security Forces in turning a blind eye to the possible recruitment of children by the TMVP, which in the situation of conflict that then prevailed was illegally functioning as an armed group, these are uncorroborated and unsubstantiated. For example the allegations do not indicate the date, time and place at which members of the Armed Forces or the Police supposedly willfully ignored the phenomenon of children being abducted for recruitment and the service identification such as rank and regimental number of those alleged to be involved.

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56.	65	Although the government has created at least 9 special bodies to investigate disappearances among other human rights violations, reports indicate that these bodies have failed so far to carry out effective investigations into alleged disappearances and to bring an end to disappearances".	As stated in the comments to paragraph 62 of the EC Report the number of allegations of disappearances has reduced drastically.
57.	67 68 69	"Emergency law and regulations allow for the imposition by Government officials of curfews, restrictions on travel outside of Sri Lanka and prohibition of movement in particular areas (zones) with considerable power given to Secretary Ministry of Defence and the competent authority to restrict or authorize movement."	FR Application Nos 646/2003 and 647/2003 were filed in the Supreme Court by petitioners claiming that they had been denied access to their houses on the basis of the houses being situated in the High Security Zone. The Court directed the Divisional Secretary, Jaffna to submit a report as to the number of persons who have been displaced in such a manner. During the course of the proceedings, 7456 families indicated willingness to resettle on conditions stipulated by court as follows; a. they would submit themselves for interview by the District Secretary and representatives of the Security Forces to establish their identity, claims to the particular portion of land and other relevant particulars; b. that they would form into Citizens Committees and ensure that the Security Forces are in no way imperiled in the area due to any armed or terrorist activity; c. Engage in agricultural and other activities as may be agreed upon between the persons re-settling and the

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			relevant authorities; The Court ordered for a Judge, nominated by the High Court Judge set up a committee to conduct such interviews in order to facilitate speedy resettlement.
58.	70	"Permission is required to enter security areas. Mass evictions have also occurred; for eg. in 2007 hundreds of Tamils were expelled in Colombo. This decision was challenged by the NGOs CPA through a fundamental rights case submitted to the Sri Lanka Supreme Court in 2007". The Supreme Court reversed the decision and ordered the eviction to stop."	Since the judgment of the Supreme Court in 2007, no mass evictions have taken place. In fact, the Report hails (in particular paragraph 70) the decision of the Supreme Court to halt the "mass eviction" …… "of Tamils from Colombo". Restrictions placed on entry to security areas are applicable irrespective of ethnicity. Such restrictions, if any, have been imposed for reasons of security. Moreover, with the end of the conflict situation, these restrictions are being progressively relaxed.
59.	71 72	"Displaced persons who have sought to return to their homes have faced several obstacles" …"the existence of effective remedies to challenge restrictions of movement of people or denial of access to areas would continue to ensure that any such measures taken are strictly necessary and proportionate".	*See comments above pertaining to paragraph 59 of the EC Report and paragraphs 67-68 of the EC Report on the resettlement process.*
60.	75	"Implementation of right to freedom of expression remains the serious problem.	Sri Lankan media continues to have a wide diversity of views, A perusal of the country's print and electronic media on any given day would afford a wide diversity of views with some of them being virulently anti-Government. Despite these

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		Sri Lanka has been ranked as one of the most dangerous countries for journalists in the world…..journalists who criticized the government have reportedly been subject to verbal and physical attacks, harassment, restriction on access and vilification. A considerable number Sri Lankan journalists have been driven into exile".	views being on occasion even vituperative and targeted at personalities, it is nevertheless recognized that this is the price to be met for upholding the democratic norm of a free and vibrant media. The isolated incidents against a small minority of journalists are being investigated, when credible allegations are made and formal complaints registered. *See also comment above in relation to paragraph 41 of the EC Report.*
61.	77	"The judiciary is reportedly subject to political pressure there have been unjustified threats of impeachment and some judges have been dismissed or transferred without objective reasons".	With the doctrine of separation of powers, the judiciary at all levels, enjoys absolute independence. The only impeachment of a Judge took place nearly two decades ago. Transfer and dismissal of Judges of Courts of First Instance is the responsibility of the Judicial Services Commission comprising the Chief Justice and two senior Judges of the Supreme Court. In fact, the Report which states that the judiciary is vulnerable to political influence also hails (in particular in its paragraph 70) the decision of the Supreme Court to halt the "mass eviction" …… "of Tamils from Colombo".
62.	78	The vast majority human rights violations are never subject to legal proceedings. Those cases that are tried rarely conclude with a conviction. Since 1994 only three persons have been convicted of torture and fewer 30 for abduction or wrongful imprisonment. In only one case has a member of the	Legal proceedings are instituted when complaints of human rights violations have been made. Upon a complaint being made, investigations are conducted and until the completion of investigations no legal proceedings can be instituted. All cases filed in Court are tried and concluded. If the convictions are few it is due to the Courts at all times upholding the fundamental legal principle of presumption of innocence. In upholding this presumption, the prosecution is required by law to prove the guilt of an accused beyond reasonable doubt. In the event a reasonable doubt is created or the prosecution fails to discharge its burden of proof beyond reasonable doubt, the accused is given the benefit of doubt and acquitted. The alleged offenders against whom petitions are filed in the Supreme Court are also dealt with administratively if they

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		security forces been convicted of murder".	happen to be public officials. In addition if there is a prima facie case of torture, the Attorney General chooses not to appear on behalf of the public official. *In this regard, please also see the comments made above in response to paragraph 25 of the EC Report.*
63.	78	"It is noted that in 2008, following requests by the Commission of Inquiry (COI), the IIGEP facilitated video conferencing from abroad from witnesses of serious human right violations. The sudden decision in May 2008 by the President's Secretary to suspend testimony through video conferencing pending the approval of the future witness protection law was a major setback to the functioning of the COI".	The reception of evidence by a C.O.I. has some flexibility in terms of the Evidence Ordinance, but any evidence recorded by it has to have probative value and it has to be in conformity with the legal framework if, for instance, that evidence is to be used in a future prosecution. The law as it stands does not explicitly permit the reception of contemporaneous video testimony and there are no safeguards to guarantee the quality of recorded testimony. This measure was taken out of an abundance of caution and not as an attempt to stifle the discovery of the truth.
64.	79	"Reports indicate that the Karuna Group subsequently known as the TMVP continued to abduct children in government-controlled areas during 2006 to 2008. Reports also indicated that certain elements of the governments security forces supported and sometime participated in those abductions".	*Please see the comments above in relation to paragraph 64 of the EC Report.*

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65.	80	"It is too early to assess whether the action plan will achieve the desired effects, but preliminary information indicates that not all child soldiers have been released…..according to UNICEF data bases as of 31.08.2009 there were 94 outstanding cases of underage recruitments by the TMVP……the country task force has received and followed up a small number of reports of children been recruited and harassed by the pro-government People's Liberation Organization of Tamil Elam (PLOT), and other human right agencies have reported incidents of violations and abductions, including against children by this group. It is noteworthy that to date there has been no conviction in Sri Lanka in relation to child recruitment".	With regard to the claim that it is too early to assess whether the action plan will achieve the desired effects, it is submitted that since the entry into force of the Action Plan in December 2008, only 1 child is reported to have been recruited, according to information provided by the UNICEF as at 30 September 2009. Thus, in light of the above, to argue that it is too early to assess the effectiveness of the Action Plan shows bias and a lack of objectivity. (Please see Annex (a) for the list of all known recruited children as at 30th September. Source: UNICEF) The claim of 94 outstanding cases of under aged recruitment by the TMVP on the basis of the UNICEF data bases, is false. On the contrary UNICEF has clearly stated in its database as of 30 September 2009, that there are only 14 outstanding cases. In regard to these cases while regular investigations of all possible leads is carried out by a joint team consisting of police and UNICEF officials, it has still not been possible to ascertain their whereabouts, for the purpose of commencing their rehabilitation process. On the allegation that "to date there has been no conviction in Sri Lanka relating to child recruitment", it must be stated that consequent to the successful completion of operations against the LTTE, the investigation process into allegations of child recruitment have become more productive. Accordingly two persons were arrested, thereby enabling the commencement of judicial proceedings against them. With regard to the allegations of recruitment of children by PLOT, it is noted that the UNICEF has informed the GOSL in October 2009 that it is unable to provide information on the name/s of the child/children recruited by PLOT and information on witnesses to any such claimed acts. These two elements, particularly determining the accuracy of the allegations providing facilitatory material for the investigations, are essential pre-requisites under UN SC Resolution 1612 before the allegation with regard to child recruitment can be accepted. Accordingly as provided for by UNSC Resolution 1612 itself, the claims made against PLOT cannot be treated as anything more than unsubstantiated and uncorroborated evidence.

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