

UNITED NATIONS HUMAN RIGHTS COUNCIL

14th Session of the Working Group on the Universal Periodic Review
22 October to 5 November 2012

COMPARISON OF ICJ SECOND CYCLE RECOMMENDATIONS FOR THE UPR OF SRI LANKA
WITH CORRESPONDING FIRST CYCLE RECOMMENDATIONS AND COMMITMENTS

| Concerning the use of National Commissions of Inquiry (NCOIs) | | |
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| <ul style="list-style-type: none"> • First cycle UPR Working Group report, UN Doc A/HRC/8/46 (2008): see Summary of Proceedings at paras 39(c), 33, 61(c), 72(b), 75(b), 21(d), 28(a), 28(b), 74(c), 75(a), 26, 36, 55(a), 33(b) and 60 (Mexico, Denmark, France, United Kingdom, United States, Canada, Portugal, Greece, Sweden, the Holy See, Czech Republic and Japan), and responses/commitments by the Government of Sri Lanka at para 52. • First cycle UPR response of the Government of Sri Lanka, UN Doc A/HRC/8/46 / Add.1 (2008): see paras 2, 3, 4, 5, 12, 13, 15, 16, 17, 19 and 20. • Second cycle ICJ submission (April 2012): see paras 2-6. | | |
| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
| <p>i) Calls upon the Sri Lankan Government to publicly commit to the principles set out in the 2011 report of the Special Rapporteur on torture as well as the 2008 report of the Special Rapporteur on extrajudicial and summary executions prior to the establishment of any future NCOI.</p> | <p>39(c). (Mexico) Implement various recommendations made by treaty bodies and special procedures to ensure that security measures adopted in the context of armed violence including the state of emergency, the 2005 emergency laws and measures to combat terrorism comply with international human rights law. – <i>Accepted</i> (See condition in Add.1, 17)</p> <p>82(16), 33 and 61(c). (France and Denmark) Implement the recommendations of the Special Rapporteur on the question of torture – <i>Accepted</i></p> <p>72(b). (United Kingdom) Implement the recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions. – <i>Accepted</i> (See condition in Add.1, 20)</p> | <p>No corresponding voluntary commitment.</p> <p>Related statements:</p> <p><i>On 39(c):</i> Doc 8/46/Add.1, 17. However, since article 4(1) of the ICCPR permits States to derogate from its obligations in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, all practicable measures including those necessary to combat terrorism would be put in place in conformity with its obligations under international law. Such measures will be strictly to the extent that is required for the exigencies of the situation.</p> <p><i>On 72(b):</i> Doc 8/46/Add.1, 20. Steps to disarm all paramilitary groups are in progress but finalization will be subject to satisfactory guarantees of safety from the attacks of the LTTE.</p> |
| <p>ii) Calls upon the Sri Lankan Government to implement the recommendations of the Lessons Learned Reconciliation Commission and past Commissions of Inquiry.</p> | <p>82(26) and 21(d). (Canada) Investigate all allegations of extrajudicial, summary or arbitrary executions and bring the perpetrators to justice in accordance with international standards (...)</p> | <p>No corresponding voluntary commitment.</p> |

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| | <p>- <i>Accepted Part</i></p> <p>(Cont.) ...in order to combat impunity for human rights violations. (Canada specifically referred to the public hearings of the Commission of Inquiry, which implicated members of the Government and security forces.) - <i>Not Accepted Part</i></p> <p>82(15) and 75(b). (United States) Ensure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal powers to their full extent. - <i>Accepted</i></p> | |
| <p>iii) Calls upon the Sri Lankan Government to hold criminally accountable all persons who were responsible for the violations of human rights law and humanitarian law amounting to crimes under international law, including in relation to the attacks on civilians, in the final stages of the civil war, including allegations found credible by the UN Panel of Experts on Accountability in Sri Lanka.</p> | <p>82(26) and 21(d). (Canada) Investigate all allegations of extrajudicial, summary or arbitrary executions and bring the perpetrators to justice in accordance with international standards (...) - <i>Accepted Part</i></p> <p>(Cont.) ...in order to combat impunity for human rights violations. - <i>Not Accepted Part</i></p> <p>28(a). (Portugal) To address torture and implement safeguards to prevent torture and extrajudicial executions. - <i>Accepted Part</i></p> <p>(Cont.) ...and combat impunity. - <i>Not Accepted Part</i></p> <p>82(29) and 74(c). (Greece) Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law. - <i>Accepted</i></p> <p>75(a). (United States) Investigate and report human rights violations and promote remedial measures, including criminal investigation, prosecution and capacity building. - <i>Not Accepted</i></p> <p>82(27) and 26. (Sweden) Adopt measures to investigate, prosecute and punish those responsible</p> | <p><i>On 28(a):</i> Doc 8/46/Add.1, 2. The Government does not condone torture or extra-judicial executions under any circumstances and refutes any implicit suggestion that it has been complicit in torture or extra-judicial executions.</p> <p><i>On 28(a):</i> Doc 8/46/Add.1, 3. All complaints of torture are impartially and comprehensively investigated into and perpetrators prosecuted in court. The victim is also entitled to pursue civil damages in court.</p> <p><i>On 28(a):</i> Doc 8/46/Add.1, 4. Extra-judicial killings are also criminalised without any exception. Comprehensive legal processes are available to act against those responsible for such criminal activity.</p> <p><i>On 28(a):</i> Doc 8/46/Add.1, 5. Sri Lanka will, as it does at present, continue to implement and further develop safeguards to prevent the occurrence of such criminal activity.</p> <p>Doc 8/46, 52. The Government is determined to ensure that all complaints are comprehensively and impartially investigated into, perpetrators identified, and evidence against them collected, so</p> |

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| | <p>for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner. – <i>Accepted</i></p> <p>82(39) and 32(a)(b). (Ireland) Take measures to safeguard freedom of expression and protect human rights defenders, and effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible. – <i>Accepted</i></p> | <p>that such persons can be prosecuted. (...). All alleged perpetrators of human rights violations would be prosecuted. Measures necessary to expedite the process of investigation, launch prosecutions and conduct trials would be adopted. The Government refutes the allegation of impunity.</p> |
| <p>iv) Calls upon the Sri Lankan Government to incorporate the offence of enforced disappearance into Sri Lankan law as a specific criminal offence, clearly distinguishable from related offences such as abduction, kidnapping, and be punishable by appropriately severe penalties.</p> | <p>36. (The Holy See) Share the findings of the special bodies created to stop the persistent pattern of enforced disappearances and the measures put into place to address this problem. – <i>Not Accepted</i></p> <p>82(27) and 26. (Sweden) Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner. – <i>Accepted</i></p> <p>55(a). (Czech Republic) Adopt measures to strengthen the rule of law; prevent human rights violations, including enforced disappearances (...) – <i>Not Accepted</i></p> <p>82(18) and 60. (Japan) Increase its efforts to further prevent cases of kidnapping, forced disappearances and extrajudicial killings; ensure that all perpetrators are brought to justice; and enhance its capacity in the areas of crime investigations, the judiciary and the NHRC (...) – <i>Accepted</i></p> <p>33(b). (France) Adopt measures to shed light on a number of existing enforced disappearances and comply with the request to visit by the Working Group on Enforced or Involuntary Disappearances. – <i>Not Accepted</i></p> | <p><i>On 36:</i> Doc 8/46/Add.1, 12. Sri Lanka refutes the allegation implicitly contained in the recommendation that there exists in Sri Lanka such a pattern of disappearances.</p> <p><i>On 36:</i> Doc 8/46/Add.1, 13. The substantive criminal law prohibits enforced disappearances and carries penal sanctions. All complaints are fully investigated into and where evidence exists, perpetrators prosecuted.</p> <p><i>On 36:</i> Doc 8/46/Add.1, 15. Various measures to prevent disappearances are already in place. The government is working towards setting in place further measures to totally eliminate enforced disappearances.</p> <p>Doc 8/46, 52. As regards the issue of disappearances, (...). It is not the policy of the State to illegally and surreptitiously arrest persons and detain them in undisclosed locations or to extrajudicially eliminate arrested and detained suspects. (...) The Government is determined to ensure that all complaints are comprehensively and impartially investigated into, perpetrators identified, and evidence against them collected, so that such persons can be prosecuted.</p> |

Concerning the writ of *habeas corpus* as a mechanism for accountability for human rights violations

- First cycle UPR Working Group report, UN Doc A/HRC/8/46 (2008): see Summary of Proceedings at paras 41, 39(b), 33, 61(c) and 55(b) (Czech Republic, Austria, Mexico, France and Denmark), and responses/ commitments by the Government of Sri Lanka at para 90.
- First cycle UPR response of the Government of Sri Lanka, UN Doc UN Doc A/HRC/8/46 /Add.1 (2008): see para 90.
- Second cycle ICJ submission (April 2012): see para 7.
- Report of the Special Rapporteur on torture, UN Doc A/HRC/7/3/Add.6 (2008): see paras 94 (b) and (c).

| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
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| <p>v) Calls upon the Sri Lankan Government to ensure that any delay in instituting proceedings is not treated as a bar to the granting of relief.</p> | <p>82(28) and 41. (Austria) Recommended that measures be taken to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims. – Accepted</p> <p>82(7) and 39(b). (Mexico) Take into account the comments of the Human Rights Committee that it include all the substantive provisions of the ICCPR within its national legal structure. – Accepted</p> <p>82(8) and 55(b). (Czech Republic) Ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT. – Accepted</p> <p>82(16), 33 and 61(c). (France and Denmark) Implement the recommendations of the Special Rapporteur on the question of torture. – Accepted</p> | <p>No corresponding voluntary commitment.</p> <p>Generally covered by:</p> <p>Doc 8/46, 90. A Witness and Victim Protection Bill will be introduced in Parliament shortly and measures will be taken to implement the legislation including the establishment of the necessary institutions.</p> <p>Doc 8/46, 82(16). Accepts to implement the recommendations of the SR on torture. <i>Note:</i> Doc 7/3/Add.6, The SR's recommendations, that Sri Lanka has accepted to implement, include:</p> <ul style="list-style-type: none"> ➤ 94(b). Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations; and ➤ 94(c). All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings. |
| <p>vi) Calls upon the Sri Lankan Government to enact <i>habeas corpus</i> legislation clarifying the applicable standard of proof imposed on the petitioner as “a balance of probabilities”.</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> |
| <p>vii) Calls upon the Sri Lankan Government to ensure that where counsel for the State submits information that the victim (or petitioner) has been discharged, released, indicted or committed for rehabilitation, that such information is substantiated by material evidence placed before the court.</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> |

Concerning witness and victim protection measures

- First cycle UPR Working Group report, UN Doc A/HRC/8/46 (2008): see Summary of Proceedings at paras 39(b), 55(a), 41, 90 and 80 (Mexico, Czech Republic, Austria and Sri Lanka), and responses/commitments by the Government of Sri Lanka at paras 90 and 80.
- First cycle UPR response of the Government of Sri Lanka, UN Doc UN Doc A/HRC/8/46 /Add.1 (2008): see para 3.
- Second cycle ICJ submission (April 2012): see para 8.

| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
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| <p>viii) Calls upon the Sri Lankan Government to enact legislation and implement a mechanism to protect witnesses and victims.</p> | <p>82(28) and 41. (Austria) Adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims – <i>Accepted</i></p> <p>82(7) and 39(b). (Mexico) Take into account the comments of the Human Rights Committee that it include all the substantive provisions of the ICCPR within its national legal structure. – <i>Accepted</i></p> <p>55(a). (Czech Republic) Establish an independent complaint mechanism in prisons, and prompt, impartial investigation into allegations of torture as well as protection for witnesses and others alleging torture or ill treatment against reprisals, intimidation and threats. – <i>Not Accepted</i></p> | <p>Doc 8/46, 90. A Witness and Victim Protection Bill will be introduced in Parliament shortly and measures will be taken to implement the legislation including the establishment of the necessary institutions.</p> <p>Doc 8/46, 80. The proposed new law on Victim and Witness Assistance and Protection has received constitutional clearance from the Supreme Court and is now before Parliament. Once enacted it will put in place a legislative framework to provide assistance and protection to not only victims of conventional crimes and witnesses of such incidents, but also to victims of human rights violations and witnesses of such violations. The proposed law will also establish a mechanism for compensation to victims of crime and facilitate the providing of treatment, including medical treatment, rehabilitation and counseling.</p> |
| <p>ix) Ensure that witness and victim protection legislation explicitly include protection and assistance to witnesses giving evidence or providing information before quasi-judicial proceedings, such as Commissions of Inquiry.</p> | <p>No specific corresponding recommendation.</p> | <p>No voluntary commitment.</p> |

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| <p>Concerning Convention against Torture obligations</p> <ul style="list-style-type: none"> • First cycle UPR Working Group report, UN Doc A/HRC/8/46 (2008): see Summary of Proceedings at para 67 (Morocco), and responses/commitments by the Government of Sri Lanka at para 5. • First cycle UPR response of the Government of Sri Lanka, UN Doc UN Doc A/HRC/8/46 /Add.1 (2008): no related response/commitment. • Second cycle ICJ submission (April 2012): see para 9. | | |
| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
| x) Amend section 12 of the Sri Lanka Convention against Torture Act to include the term 'suffering' within the definition of torture. | <p>No specific corresponding recommendation.</p> <p>Generally covered by:</p> <p>82(10) and 67. (Morocco) Continue its efforts for the full implementation of international human rights instruments to which it is a party. – <i>Accepted</i></p> | <p>No voluntary commitment.</p> <p>Related statement:</p> <p>Doc 8/46, 5. The Government has fulfilled international obligations through participation in most key human rights instruments and labour conventions, the full implementation of which is also one of its goals.</p> |
| xi) Enact a non-refoulement provision within the Sri Lanka Convention against Torture Act that is in conformity with obligations under article 3 of the Convention against Torture. | <p>No specific corresponding recommendation.</p> <p>Generally covered by:</p> <p>82(10) and 67. (Morocco) Continue its efforts for the full implementation of international human rights instruments to which it is a party. – <i>Accepted</i></p> | <p>No voluntary commitment.</p> <p>Related statement:</p> <p>Doc 8/46, 5. The Government has fulfilled international obligations through participation in most key human rights instruments and labour conventions, the full implementation of which is also one of its goals.</p> |
| <p>Concerning rehabilitation camps and the need for independent monitoring</p> <ul style="list-style-type: none"> • First cycle UPR Working Group report, UN Doc A/HRC/8/46 (2008): see Summary of Proceedings at paras 33, 61(c), 41, 55(a), 75(a), 26(b), 32(e), 43(c), 56(b) and 28(c) (France, Denmark, United States, Sweden, Ireland, Slovenia, Italy and Portugal), and responses/commitments by the Government of Sri Lanka at paras 52, 90, 80, 109 and 8. • Second cycle ICJ submission (April 2012): see paras 10 and 11. • Report of the Special Rapporteur on torture, UN Doc A/HRC/7/3/ Add.6 (2008) at paras 94(b) and 94(c). | | |
| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
| xii) Immediately provide access to a lawyer to all detained persons. | <p>No specific corresponding recommendation.</p> <p>Generally covered by:</p> <p>82(16), 33 and 61(c). (France and Denmark) Implement the recommendations of the Special Rapporteur on the question of torture. – <i>Accepted</i></p> | <p>No voluntary commitment.</p> <p>Doc 8/46, 82(16). Accepts to implement the recommendations of the SR on torture.</p> <p><i>Note:</i> Doc 7/3/Add.6, The SR's recommendations, that Sri Lanka has accepted to implement, include:</p> <p>➤ 94(b). Ensure that detainees are given access to</p> |

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| | | legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations. |
| xiii) Immediately provide all detained persons with the right to go before a Court of law to challenge the legality of their detention. | No specific corresponding recommendation. Generally covered by: 82(16), 33(d) and 61(c). (France and Denmark) Implement the recommendations of the Special Rapporteur on the question of torture. – <i>Accepted</i> | Doc 8/46, 82(16). Accepts to implement the recommendations of the SR on torture. <i>Note:</i> Doc 7/3/Add.6, the SR's recommendations include: ➤ 94(c). All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings. |
| xiv) Immediately release all persons who are being arbitrarily detained. | No corresponding recommendation. | No voluntary commitment. Related statement: Doc 8/46, 52. It is not the policy of the State to illegally and surreptitiously arrest persons and detain them in undisclosed locations or to extrajudicially eliminate arrested and detained suspects. The Government is determined to ensure that all complaints are comprehensively and impartially investigated into, perpetrators identified, and evidence against them collected, so that such persons can be prosecuted. |
| xv) Provide an effective legal remedy before a Court of law to all persons who have been wrongfully or illegally detained. | 82(28) and 41. (Austria) Adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims – <i>Accepted</i> | Doc 8/46, 90. A Witness and Victim Protection Bill will be introduced in Parliament shortly and measures will be taken to implement the legislation including the establishment of the necessary institutions. Related statement: Doc 8/46, 80. The proposed new law on Victim and Witness Assistance and Protection has received constitutional clearance from the Supreme Court and is now before Parliament. Once enacted it will put in place a legislative framework to provide assistance and protection to not only victims of conventional crimes and witnesses of such incidents, but also to victims of human rights violations and witnesses of such violations. The |

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| | | proposed law will also establish a mechanism for compensation to victims of crime and facilitate the providing of treatment, including medical treatment, rehabilitation and counseling. |
| xvi) Allow detained persons regular visits with their families. | No corresponding recommendation. | No voluntary commitment. |
| xvii) Make public the number of persons detained in rehabilitation camps and the location of the rehabilitation camps. | 55(a). (Czech Republic) Adopt measures to strengthen the rule of law; prevent human rights violations, including enforced disappearances, extrajudicial executions and torture; ensure punishment of those responsible; and include, inter alia, systematic review of all detention areas. – <i>Not Accepted</i> | Doc 8/46, 109. Improve and upgrade detention facilities. |
| xviii) Allow international independent monitoring bodies, such as the International Committee for the Red Cross, access to the rehabilitation camps. | 75(a). (United States) Re-engage with international human rights monitoring and assistance mechanisms by agreeing to establish an OHCHR field presence, whose mandate would allow unfettered access to monitor, investigate and report human rights violations and promote remedial measures, including criminal investigation, prosecution and capacity-building of domestic human rights mechanisms. – <i>Not Accepted</i> 26(b). (Sweden) Urged for acceptance of independent international monitoring. – <i>Not Accepted</i> 32(e) (Ireland) Permit the establishment of an OHCHR presence to monitor the human rights situation in the country as well as to take measures to improve the humanitarian access. – <i>Not Accepted</i> 43(c). (Slovenia) Promptly invite the United Nations to establish a presence in Sri Lanka, the mandate of which would include protection, monitoring, investigation and reporting. – <i>Not Accepted</i> | No voluntary commitment. Related statement: Doc 8/46, 8. The Government is not in agreement with the suggestion for the establishment of a monitoring mission. The imposition of foreign institutions will stifle the potential for growth of national institutions charged with these functions at present. Doc 8/46, 82(16). Accepts to implement the recommendations of the SR on torture. <i>Note:</i> Doc 7/3/Add.6, the SR's recommendations include: ➤ 94(w). Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews. ➤ 94(y). Establish a field presence of the Office of the OHCHR with a mandate for both monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention (...). |

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| | <p>56(b). (Italy) Allow UN human rights mechanisms and OHCHR to establish and reinforce their presence in the country in order to guarantee an independent monitoring of the human rights situation. – <i>Not Accepted</i></p> <p>28(c) (Portugal) Reconsider establishing a local OHCHR presence with monitoring capacities. – <i>Not Accepted</i></p> <p>82(16), 33 and 61(c). (France and Denmark) Implement the recommendations of the Special Rapporteur on the question of torture. – <i>Accepted</i></p> | |
| <p>xix) Comply with the Human Rights Commission of Sri Lanka Act No 21 of 1996, notifying the National Human Rights Commission of all detentions within 48 hours of the event.</p> | <p>No corresponding recommendation.</p> | <p>No voluntary commitment.</p> |