**Update to the Fifth Periodic Report of Sri Lanka under the International Covenant on Civil and Political Rights**

1. The Government of Sri Lanka wishes to submit the following update to the Human Rights Committee on the implementation of the provisions of the International Covenant on Civil and Political Rights. The Human Rights Committee considered the Fifth Periodic Report of Sri Lanka (CCPR/C/LKA5/) under the International Covenant on Civil and Political Rights (ICCPR) on 7th & 8th October 2014. Its Concluding Observations were adopted on 27th October 2014 (CCPR/C/LKA/CO/5). This update is to bring to the attention of the Human Rights Committee the developments in Sri Lanka from January to 15 October 2015, which positively impacts on the implementation of the provisions of the ICCPR and serves to address some of the concerns and recommendations of the Human Rights Committee raised in its Concluding Observations of 27th October 2014, especially the recommendations mentioned in paragraph 25 of the Concluding Observations.
2. The Government, since assumption of office in January 2015, undertook a series of steps to strengthen democratic institutions, good governance and rule of law and enhance efforts at achieving meaningful reconciliation between communities affected by conflict. These steps are outlined below:

**19th Amendment to the Constitution [paragraph 5 of Concluding Observations]**

1. The 19th Amendment to the Constitution certified on 15th May 2015, is a significant step taken by the Government to strengthen Sri Lanka’s democratic institutions. This important amendment builds upon the essence of the 17thAmendment to the Constitution and inter alia serves to place a restriction on the discretionary powers of the President. Furthermore it provides for the establishment of a National Procurement Commission and the Audit Service Commission and further strengthens the Independent Commissions referred to under the Schedule to Article 41B of the Constitution. The 19th Amendment to the Constitution expressly recognizes the Right of Access to Information as provided by law.
2. The 19th Amendment establishes a Constitutional Council, which is constitutionally mandated to recommend to the President persons for appointment as Chairmen or members of the Commissions specified, whenever the occasion for such appointments arises, and such recommendations shall endeavour to ensure that such recommendations reflect the pluralistic character of Sri Lankan society, including gender. In the case of the Chairmen of such Commissions, the Council shall recommend three persons for appointment, and the President shall appoint one of the persons recommended as Chairman.
3. The nine Commissions are:

- Elections Commission

- Public Service Commission

- National Police Commission

- Audit Service Commission

- Human Rights Commission of Sri Lanka

- Commission to Investigate Allegations of Bribery or Corruption

- Finance Commission

- Delimitation Commission

- National Procurement Commission

6. In terms of Article 41A to the Constitution the Constitutional Council shall consist of the following members:-

i) The Prime Minister;

Ii) The Speaker;

iii) The Leader of the Opposition in Parliament;

iv) One Member of Parliament appointed by the President;

1. five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition of whom two persons shall be Members of Parliament; and
2. one Member of Parliament nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups, other than the respective political parties or independent groups to which the Prime Minister and the Leader of the Opposition belong, and appointed by the President

The 19th Amendment also stipulates that in nominating the five persons mentioned in (v) above, the Prime Minister and the Leader of the Opposition shall consult the leaders of political parties and independent groups represented in Parliament so as to ensure that the Constitutional Council reflects the pluralistic character of Sri Lankan society, including professional and social diversity. It also provides that persons who are not Members of Parliament to be appointed shall be of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party and that such nominations shall be approved by Parliament. Accordingly, in September2015, parliament approved the nomination of Dr. A.T. Ariyaratne, Dr. Radhika Coomaraswamy and Former Attorney General Mr.Shibly Aziz,PC.

7. The Commissions will be constituted in accordance with the 19th Amendment to the Constitution.

**Independence of the Judiciary [paragraph 5 (c) of Concluding Observations]**

8. The enactment of 19th Amendment to the Constitution has further strengthened Independence of the Judiciary and the Judicial Service Commission. It is to be noted that Article **111C** of the Constitution which provides for interference with judiciary as an offence states thus:

* Every judge, presiding officer, public officer or other person entrusted by law with judicial powers or functions or with functions under this Chapter or with similar functions under any law enacted by Parliament shall exercise and perform such powers and functions without being- subject to any direction or other interference proceeding from any other person except a superior court, tribunal, institution or other person entitled under law to direct or supervise such judge, presiding officer, public officer or such other person in the exercise or performance of such powers or functions.
* Every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial powers or functions of any judge, presiding officer, public officer or such other person as is referred to in paragraph (1) of this Article, shall be guilty of an offence punishable by the High Court on conviction after trial without a jury with imprisonment of either description for a terms which may extend to a period of one year or with fine or with both such imprisonment and fine and may, in addition, be disqualified for a period not exceeding seven years from the date of such conviction from being an elector and from voting at a Referendum or at any election of the President of the Republic or at any election of a Member of Parliament or any local authority or from holding any public office and from being employed as a public officer. Furthermore Article **111L** of the Constitution which specifically provides that interference with the Judicial Service Commission as an offence states thus:

(i) Every person who otherwise than in the course of such persons lawful duty, directly or indirectly alone or by or with any other person, in any manner whatsoever, influences or attempts to influence any decision or order made by the Commission or to so influence any member thereof, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment:

Provided however that the giving of a certificate or testimonial to any applicant or candidate for any judicial office or scheduled public office shall not be an offence.

(ii) Every High Court established under Article 154P of the Constitution shall have jurisdiction to hear and determine any matter referred to in paragraph (i).

**The Assistance to and Protection of Victims of Crime and Witnesses Act**

9. The Act was passed by the parliament and certified on 7th March 2015.This is an essential piece of legislation which declares the rights and entitlements of victims of crime and witnesses and contains measures for the protection and promotion of such rights and entitlements and especially to give effect to appropriate international norms, standards and best practices relating to the protection of victims of crime and witnesses. The Government is in the process of setting up a National Authority for the protection of victims of crime and witnesses, which is a further step to enhance an efficient criminal justice process in Sri Lanka. The Act has identified and recognized widely the rights and entitlements of victims of crime and witnesses. The main objectives of the Act are:

* + - * To uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and to exercise such rights and entitlements;
* Provide assistance and protection to victims of crime and witnesses;
* Enable victims of crime to obtain compensation from persons convicted of having committed offences against them;
* Set out duties and responsibilities of the State, judicial officers and public officers towards the promotion and protection of the rights and entitlements of victims of crime and witnesses;
* Provide for the adoption and implementation of best practices relating to the protection of victims of crime and witnesses.

**Freedom of Expression *[paragraph 21 of Concluding Observations]***

10. The Government, since its assumption of office in January 2015 has taken decisive steps to ensure media freedom in the country. It has initiated action to remove all restrictions on websites and media outlets, liberalized the visa regime for visiting foreign journalists and invited all hitherto exiled Sri Lankans including journalists to return to the country. The media in Sri Lanka today operates in an environment void of fear, intimidation or harassment and journalists have been accorded with freedom to visit any part of the country.

11. The Government is committed to taking necessary steps to ensure the safety of media personnel and institutions. Any person who seeks to vindicate their rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the Human Rights Commission of Sri Lanka on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to canvass for the rights of media personnel.

12. Investigations into alleged cases of murder or disappearance of journalists are being pursued with a view to ensuring that justice is meted out to all parties.

**National Security Legislation**

13. The Government is aware that concerns have been expressed that certain provisions of the national security legislation in the country are not compatible with the provisions of the ICCPR. As the security situation improves, the Government intends to review and take steps to address these concerns. ***[paragraph 11 of Concluding Observations]***

**Reconciliation and Accountability**

14. At the first Independence Day ceremony since his election, departing from previous practice, President Sirisena acknowledged past tragedies that had taken place in the country since independence, and emphasized the urgent need for healing, unity and reconciliation. The Government made a “Declaration of Peace” in the three languages of Sinhala, Tamil and English. It paid respects to the citizens of the country, of all ethnicities and religions, who lost their lives due to the tragic separatist conflict that afflicted the nation for over three decades, and also to all the victims of violence since independence. The Declaration committed to ensuring that the country would never be allowed to be traumatized by the shedding of blood of her citizens.

15. Within days of assumption of office, two senior civil servants were appointed as Governors of the Northern and Eastern Provinces, which hitherto had been held by retired military personnel.

16. A series of measures to address the particular requirements and grievances of the people in the former conflict affected areas also commenced. This includes tangible solutions to the complicated issue of land ownership. Land that was earlier allocated to High Security Zones (HSZ) in the former theatre of conflict, including 1,000 acres in the Northern HSZ and a further 818 acres in the East, have been released to their owners. Involvement of the military in civilian activities is gradually being phased out. ***[paragraph 13 of Concluding Observations].***

17. Investigations and the consideration of the institution of criminal proceedings relating to the remaining detainees previously arrested with regard to their alleged involvement in terrorist activities held in detention camps in terms of judicial orders are being expedited. The International Committee of the Red Cross (ICRC) and family members of these detainees are granted access to regularly meet with the detainees.

18. Item 93 of President Sirisena’s manifesto in the lead up to the January 2015 election expressed the intention, if elected, to address issues of accountability through national, independent judicial mechanisms.

19. The Government of Sri Lanka is pleased to work with the support of the international community to address outstanding issues relating to reconciliation, accountability and human rights. The Government recognizes the importance of credible, domestic processes to deal with truth seeking, justice, reparation and guarantees of non-recurrence. The Government will continue to take steps within the framework of the Constitution and the envisaged steps are as follows:

- For **truth seeking**, the establishment by law, of two mechanisms:

i. a Commission for Truth, Justice, Reconciliation and Non-recurrence to be evolved in consultation with the relevant authorities of South Africa. This mechanism is envisaged as having a dual structure: a ‘Compassionate Council’ composed of religious dignitaries from all major religions in the country and a structure composed of whichever community, where the perpetrators are unclear for a judicial mechanism to handle, or where the practices of the state and society have resulted in discrimination, this Commission will allow them to discover the truth, understand what happened and help remedy any sense of injustice.

ii. an Office on Missing Persons based on the principle of the families’ right to know, to be set up by law with expertise from the ICRC, and in line with internationally accepted standards.

* On the **Right to Justice**, a proposed Judicial Mechanism with a Special Counsel to be set up by law. This takes into account the right of victims to a fair remedy and aims to address the problem of impunity for human rights violations suffered by all communities
* On the **Right to Reparations**, an Office for Reparations to be set up by law to facilitate the implementation of recommendations relating to reparations made by the proposed Commission on Truth, Justice, Reconciliation and Non-recurrence, the Office of the Missing Persons, the Lessons Learnt and Reconciliation Commission (LLRC) and any other entity
* To guarantee **non-recurrence**, a series of measure are being contemplated including administrative and judicial reform and the adoption of a new Constitution. These include, among other, amendments to the penal code to criminalize hate speech and enforced disappearances.

*Investigations into the murder of 5 students in Trincomalee in 2006*

The prosecution has encountered a practical difficulty in locating 08 crucial witnesses, which includes 02 students injured in the incident, as their foreign addresses are not known. Thus, when the case was taken up for inquiry in March 2015, the state moved for a later date in order to trace the whereabouts of these witnesses with the assistance of the Ministry of Justice and Ministry of Foreign Affairs. Further inquiry was fixed for 10.08.2015 as there were no other locally available witnesses to be led and as an earlier date would not be practical in the circumstances of this case. On 10.08.2015, an order was made seeking summons to be served on the witnesses required for further inquiry and next date of inquiry fixed for 7 December 2015.

Non Summary Inquiry in this case commenced on September 9, 2013. As at present, evidence of 16 witnesses had concluded. They include members of the Police, Army, Navy and relatives of one of the deceased. Also, affidavits of 10 official witnesses have been tendered as evidence. Summons have been issued on 14 witnesses to appear.

The original investigation into this matter was handled by a special team of police officers of the Trincomalee Police Division. Thereafter, the Criminal Investigation Department (CID) took-over the investigation. Based on the conduct of such investigations, the AG advised the CID to institute criminal proceedings in the Magistrate’s Court of Trincomalee against 13 personnel of the Special Task Force (STF) of the Sri Lanka Police. Accordingly, criminal proceedings were instituted and a Non-Summary Inquiry commenced on August 5, 2013 against the said accused. [In terms of the Sri Lankan law, a Non-Summary Inquiry is conducted to assess the available evidence, in order to enable a magistrate to determine whether there is reliable and sufficient evidence to try the accused on indictment in the High Court.] The prosecution of the case is being handled by a Senior State Counsel of the Attorney General’s Department.

At this point of time, the prosecution has presented the depositions of 25 witnesses. Eight (8) witnesses cited by the prosecution are not available at their given addresses and are believed to be residing overseas. Hence, summons could not be served. These witnesses include the two injured boys who survived the incident who have since left Sri Lanka. The CID wanted further time to locate the present addresses of these witnesses. The prosecution moved for summons on witnesses 1, 10 and 11 by email. The registrar of the Trincomalee Magistrate's Court was directed to issue an email notice about the date of further inquiry. However there was no response to the email that was successfully delivered. At present, the prosecution has encountered this practical difficulty of locating the crucial witnesses to this case as their foreign addresses are not known. The prosecution has sought the assistance of the Ministries of Justice and Foreign Affairs to have the Summons served through formal and alternate means, including via the Office of the United Nations’ High Commissioner for Human Rights.

• *Death of 17 aid workers of Action Contre La Faim (ACF)* in 2006

The original investigation into this matter was handled by a special team of police officers of the Trincomalee Police Division. Thereafter, the Criminal Investigation Department (CID) took-over the investigation and proceeded. Since January 2015, the CID has interviewed and recorded the statements of 18 military personnel. A further 22 are to be interviewed. The CID continues to brief the Attorney General on the progress of the investigation. The CID is desirous of interviewing two key witnesses who are said to be living in France. The Ministry of Foreign Affairs has requested the Embassy of France in Colombo to extend its good offices to facilitate the conduct of the interviews of these two possible witnesses.

The Government believes these measures would serve to address matters raised in **paragraph 14** of the Committee’s Concluding Observations.

20. Following the parliamentary elections held on 17 August, and the formation of the National Government, Mr. R. Sampanthan of the Tamil National Alliance (TNA), was appointed as the Leader of the Opposition. This appointment, as well as the appointment of the present Chief Justice of Sri Lanka in January are clear messages that extraneous considerations such as ethnicity, religion, class or gender would not be used to deny anyone their rightful place.

**Allegations of Disappearances *[paragraph 15 of Concluding Observations]***

21. The Government of Sri Lanka intends to ratify at the earliest, the International Convention for the Protection of All Persons from Enforced Disappearance. Currently, the existing provision in the Penal Code, sections 350 to 360 covers any situation of kidnapping, abduction or disappearances.

22. The report of the Presidential Commission appointed to Investigate into Complaints Regarding Missing Persons (Paranagama Commission) was submitted to the President. This Report along with the Udalagama Commission Report will be presented to parliament shortly.

23. As of September 2015, the Government has clarified 1688 cases out of 5750 cases referred by the UN Working Group on Enforced or Involuntary Disappearances (WGEID), and steps have been taken to expedite the processing of the remaining cases.

24. A visit to Sri Lanka by the UN WGEID is scheduled for 9-18 November 2015.

25. The Government has been working closely with the ICRC to establish a mechanism including an office for missing persons by statute to address concerns pertaining to missing persons. The ICRC conducted a Family Needs Assessment for the families of missing persons in the country, based on the ICRC standards and sampling methods and the report is expected to be shared with the Government by early next year.