



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE:KF/fup-118

7 December 2016

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 15, 19, and 20 of the concluding observations on the report submitted by Sri Lanka ([CCPR/C/LKA/CO/5](#)), adopted at the 112th session in October 2014.

On 16 October 2015, the Committee received the reply of the State party. At its 117th session, held in July 2016, the Committee evaluated that information. The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations ([CCPR/C/117/2](#)). I hereby attach, for ease of reference, a copy of the advanced unedited version of the relevant section of the said report.

During its 118th session held in October-November 2016, the Committee noted that the additional information requested from the State party has not yet been provided and decided to send a reminder to the State party. The Committee would appreciate receiving the information requested by **7 March 2017**.

The State party is kindly requested, when submitting its reply to the Committee, not to reiterate information that has already been provided to the Committee.

The reply should be sent in Microsoft Word electronic version to the Secretariat of the Human Rights Committee (Kate Fox: [kfox@ohchr.org](mailto:kfox@ohchr.org) and [ccpr@ohchr.org](mailto:ccpr@ohchr.org)). In accordance with the Note by the Human Rights Committee on the procedure for follow-up to concluding observations (see [CCPR/C/108/2](#)), the follow-up report should not exceed a maximum of 3,500 words.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

H.E. Mr. Ravinatha P. Aryasinha  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
Fax: +41 22 734 90 84  
Email: [mission@lankamission.org](mailto:mission@lankamission.org)



Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, reading "Sarah H. Cleveland". The signature is fluid and cursive, with a prominent initial 'S'.

Sarah Cleveland  
Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee

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## Assessment of replies

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### *Reply/action satisfactory*

- A** Response largely satisfactory

### *Reply/action partially satisfactory*

- B1** Substantive action taken, but additional information required  
**B2** Initial action taken, but additional information and measures required

### *Reply/action not satisfactory*

- C1** Response received but actions taken do not implement the recommendation  
**C2** Response received but not relevant to the recommendation

### *No cooperation with the Committee*

- D1** No response received within the deadline, or no reply to a specific question in the report  
**D2** No response received after reminder(s)

### *The measures taken are contrary to the Committee's recommendations*

- E** Response indicates that the measures taken are contrary to the Committee's recommendations

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## *Sri Lanka*

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Concluding observations:	CCPR/C/LKA/CO/5, 27 October 2014
Follow-up paragraphs:	5, 14, 15 and 21
First reply:	16 October 2015
Committee's evaluation:	Additional information required on paragraphs 5[B1][B2][B1] 14[C1][B1], 15[B2][B2] and 21[B2].

### **Paragraph 5: The State party should:**

- (a) **Repeal the 18th Amendment to the Constitution;**  
(b) **Take legislative and other measures to ensure transparent and impartial processes for appointments to the judiciary and other independent bodies;**  
(c) **Take concrete measures to ensure the protection of members of its judiciary from improper influences, inducements, pressures, threats or interferences, including those of the executive and/or legislature of the State party.**

**In taking the above measures, the State party should take into full account the Committee's general comment No. 32(2007) on the right to equality before courts and tribunals and to a fair trial, the Basic Principles on the Independence of the Judiciary and the Paris Principles (General Assembly resolution 48/134, annex).**

### **Summary of State party's reply:**

- (a) The 19<sup>th</sup> Amendment to the Constitution was certified in May 2015. It places restrictions on the discretionary powers of the president, establishes the National

Procurement Commission, a Constitutional Council and the Audit Service Commission, and strengthens the Independent Commissions. It expressly recognises the right to access of information.

(b) The Constitutional Council is mandated to recommend Chairpersons and members who reflect the pluralistic nature of Sri Lankan society, for appointment to the nine independent commissions to the President.

(c) The 19<sup>th</sup> Amendment strengthens the independence of the Judiciary and the Judicial Service Commission. Article 111C of the Constitution makes interference with the judiciary an offence. Anyone found guilty of judicial interference following a High Court trial without jury can be sentenced to up to a year's imprisonment, a fine, or both, and may be disqualified for up to seven years from being an elector, voting or from holding public office.

**Committee's evaluation:**

(a)[B1]: While the Committee welcomes the enactment of the 19<sup>th</sup> Amendment, it requires further information on whether it repeals all controversial provisions introduced in the 18<sup>th</sup> amendment, in particular with regard to the dismissal or appointment of members of the judiciary.

(b)[B2]: The Committee acknowledges the actions taken by the State party limiting the President's discretionary power and increasing transparency and impartiality in the appointment process of members of independent bodies. The Committee requires information on the criteria for appointment and dismissal, particularly with regard to members of the judiciary.

(c)[B1]: The Committee acknowledges the actions taken by the State party to strengthen the independence of the judiciary. The Committee requires information on:

(i) the role and mandate of the Judicial Service Commission;

(ii) the content and implementation of the 19<sup>th</sup> Amendment; and

(iii) the follow-up given to the impeachment of the Chief Justice in January 2013, which took place in circumstances that raised serious doubts about its consistency with basic principles of due process and judicial independence.

**Paragraph 14: The State party should take all measures necessary to vigorously investigate all allegations of unlawful use of force and violations of the right to life promptly, transparently and impartially, with the aim of bringing those responsible to justice by prosecution and punishment, and provide adequate remedies to victims and their relatives. It should redouble its efforts to implement the recommendations of the Lessons Learned and Reconciliation Commission pertaining to the need to investigate allegations of serious violations of international law through independent investigative mechanisms. In particular, the State party should:**

(a) **Cooperate with the Office of the United Nations High Commissioner for Human Rights in investigating all allegations of serious human rights violations;**

(b) **In the context of the killings that took place in the towns of Muthur and Trincomalee, as well as other similar cases, consider allowing witness testimony by video link from secure and secret locations in order to facilitate the investigations with due regard to the needs of witness protection.**

**Summary of State party's reply:**

The President acknowledged the tragedies which have occurred since the country's independence and emphasised the need for healing, unity and reconciliation in his first Independence Day speech.

Criminal proceedings for those in detention camps arrested for alleged terrorist activities

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are being expedited. The ICRC and families have access to these detainees.

The State party provided information on measures intended to be taken, including establishing a Commission for Truth, Justice, Reconciliation and Non-recurrence and establishing an Office on Missing Persons in line with international standards and ICRC expertise.

(b) The Trincomalee case was taken up for inquiry in March 2015, and all available witnesses have been summoned and their depositions recorded. Witnesses currently residing overseas have been officially summoned to give evidence at the Magistrate Court inquiry. Criminal proceedings were instigated against 13 personnel of the Special Task Force of the Sri Lanka Police and a pre-trial non-summary inquiry is now before the Magistrate of Trincomales. Thus far, the depositions of 25 witnesses have been presented and eight witnesses, including two injured boys who survived the incident, are believed to be residing overseas and are not available at their given addresses. Regarding the death of 17 aid workers of Action Contre La Faim, since January 2015 the Criminal Investigation Department (CID) has interviewed and recorded the statements of 18 military personnel. In December 2015, CID has recorded statements from 32 more Army personnel including the officer who commanded the first Commando Regiment, which was sent as reinforcements to Muttur on the day of the incident.

The Assistance to and Protection of Crime and Witness Act No. 4 of 2015 provides witnesses with maximum safeguards, including airport-to-airport security and the opportunity to give testimony through audio-video linkage from an authorized "remote location" within Sri Lanka instead of his or her personal attendance before a Court.

**Committee's evaluation:**

(a)[C1]: While acknowledging the plans envisaged to address the right to truth, justice and reparations, and to guarantee the non-recurrence of the violations, the Committee requests updated information on their concrete content and implementation or the envisaged timeline for their implementation. The Committee reiterates its recommendation.

(b)[B1]: While welcoming the information provided on the Trincomalee and Action Contre La Faim cases, and on testimony through video link, the Committee requests information on measures taken to allow overseas witnesses to testify by video link from secure and secret locations outside of Sri Lanka.

**Paragraph 15: The State party should:**

(a) **Expediently investigate, prosecute and punish perpetrators of enforced disappearance and establish the whereabouts of missing persons in a transparent and impartial manner;**

(b) **Ensure the rights of families to know the location or status of disappeared persons by ensuring that the Presidential Commission to Investigate into Complaints regarding Missing Persons and other relevant bodies are provided with adequate legal powers, as well as human, technical and financial resources, to operate in an independent, timely and effective manner that ensures adequate witness protection.**

**Summary of State party's reply:**

The State Party intends to ratify the International Convention for the Protection of All Persons from Enforced Disappearance as soon as possible. The report of the Presidential Commission to Investigate into Complaints regarding Missing Persons has been submitted to the president and will be presented to parliament along with the Udalagama Commission Report shortly. Of the 5750 cases referred to the Government by the UN Working Group on Enforced or Involuntary Disappearances, 1688 were clarified by September 2015. Steps have been taken to process the remaining cases. The Working Group was due to visit Sri Lanka from 9 to 18 November 2015. The Government has worked with the ICRC to establish a statutory mechanism including an office for missing

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persons to address concerns pertaining to missing persons.

**Committee's evaluation:**

(a)[B2]: The Committee notes the steps taken by the State party in clarifying cases of enforced disappearances, but requests additional information on (a) any new cases of missing persons or enforced disappearances from the prior conflict that have been identified, (b) the number of investigations, prosecutions and convictions of perpetrators, and (c) the results of the 2015 visit of the Working Group. It also requires information on the follow-up given to the report of the Paranagama and the Udalagama Commissions.

(b)[B2]: The Committee welcomes the State party's cooperation with the ICRC to establish an office for missing persons and requests information on progress made in this regard. It requires further information on measures taken to ensure the rights of families to know the whereabouts of the disappeared persons in a transparent and impartial manner, and to ensure adequate witness protection. It also requires information on measures taken to ensure that the Presidential Commission to Investigate into Complaints regarding Missing Persons and other relevant bodies are provided with adequate legal powers, as well as human, technical and financial resources.

**Paragraph 21: The State party should refrain from any measures amounting to intimidation or harassment taken against persons exercising their right to freedom of expression, and ensure that any restriction to that right is in compliance with article 19, paragraph 3, of the Covenant. It should vigorously investigate all cases of threats and attacks against journalists, lawyers, clergymen, political activists, members of non-governmental organizations and human rights defenders, hold the perpetrators accountable and provide effective remedies to victims. Furthermore, it should ensure that any individual or organization can provide information freely to the Committee, and should protect them against any reprisals for providing such information.**

**Summary of State party's reply:**

The State party has taken action to remove restrictions on websites and media outlets and all restrictions on news websites were lifted in January 2015. It has also lifted restrictions on the freedom of journalists including foreign journalists to visit and report on issues throughout the country and has taken action to invite exiled journalists to return. Investigations into alleged cases of murder or disappearance of journalists are being pursued. Certain suspects have been arrested regarding the disappearance of journalist Prageeth Ekmalgoda and the investigation into the assassination of Lasantha Wickrematunge has been reopened with a firm commitment to bring perpetrators to justice.

**Committee's evaluation:**

[B2]: While the Committee notes the State party's efforts to remove restrictions on websites and the media, it requests more information on the number of complaints received since the adoption of the concluding observations and the actions taken to investigate cases of harassment and attacks against journalists, lawyers, clergymen, political activists, members of non-governmental organizations and human rights defenders, hold perpetrators accountable and provide remedies to the victims.

**Recommended action:** A letter should be sent reflecting the analysis of the Committee.

**Next periodic report:** 31 October 2017

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