

24<sup>th</sup> October 2007

International Coordinating Committee  
of National Institutions for the  
Promotion and Protection of Human Rights

### **Sub-Committee on Accreditation**

#### **Review of the Human Rights Commission of Sri Lanka**

We are members of civil society, based in diverse parts of the country, including Colombo and the several provinces of Sri Lanka, and represent organizations working on a variety of human rights issues such as arbitrary detention, children's rights, conflict transformation, enforced disappearances, extrajudicial executions, good governance, internal displacement, torture, rights of sexual minorities, and women's rights.

We are aware that, this month, your committee will complete a review of the Human Rights Commission of Sri Lanka, and determine whether the Commission complies with the Paris Principles, the widely accepted international benchmark for National Human Rights Institutions (NHRIs). As members of civil society in Sri Lanka, we would like to bring the following matters to the attention of the Sub-Committee on Accreditation:

1. Sri Lanka has witnessed a steady erosion of the independence and effectiveness of many of its democratic institutions including the police, the public service, Parliament, the Attorney General's Department, the judiciary and most recently, the Human Rights Commission (HRC). This fact was most recently reflected in the statement of the High Commissioner for Human Rights, after her visit to Sri Lanka: *'people from across a broad political spectrum and from various communities have expressed to me a lack of confidence and trust in the ability of existing relevant institutions to adequately safeguard against the most serious human rights abuses'*.<sup>1</sup>
2. You are no doubt aware that in May 2006 the President of Sri Lanka appointed five persons as members of the HRC. These appointments were made even though there was no recommendation from the

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<sup>1</sup> Statement of Louise Arbour, High Commissioner for Human Rights, 13<sup>th</sup> October 2007.

Constitutional Council, a multi partisan body set up under the Constitution of Sri Lanka. According to Article 41B of the Constitution, appointments to the Human Rights Commission can only be made after the recommendation of the Constitutional Council is received. The appointments in May 2006 were made in violation of this explicit constitutional requirement. This deliberate and intentional violation of the Constitution is in direct conflict with the Paris Principles, which seek to ensure an institution that is both independent in its operations and plural in its composition.

None of the members appointed by the President had a human rights background and the criteria for selection are not known. Persons of integrity with human rights experience declined to be appointed, including some former commissioners of the HRC.

This process moreover violates the General Observation of the Sub-Committee on Accreditation which emphasized that the selection of members to an NHRI should be through a transparent and inclusive process.<sup>2</sup>

3. Over the past two years, as a result of the escalation of the conflict, there has been a significant increase in the intensity and magnitude of the violations of human rights and humanitarian law, both by state and non-state actors. These violations have been well documented in reports by the UN Special Procedures, by international and domestic human rights groups, and most recently by the High Commissioner for Human Rights at the conclusion of her visit to Sri Lanka.

In the current context of the human rights situation in Sri Lanka we expected the HRC to play a dynamic and proactive role in investigating human rights violations, identifying those responsible, publishing its findings and taking steps to reduce the level of violations through other interventions. Its 10 regional offices and six IDP offices make it particularly well placed to perform these roles effectively. Paradoxically, it is at this very moment that the Commission has chosen to be inactive and invisible, and consequently, ineffective.

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<sup>2</sup> Contained in the Annex to the Report of 19<sup>th</sup> Session of the International Coordinating Committee held in March 2007.

We would like to draw the attention of the Sub-Committee to its General Observation that *‘in the situation of a coup d’état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of its mandate’*.<sup>3</sup>

Despite the proclamation of ‘an emergency’ by the state and the promulgation of harsh emergency regulations, the HRC has chosen to be silent and inactive. As the High Commissioner observed *‘the HRC’s failure to systematically conduct public inquiries and issue timely public reports has further undermined confidence in its efficacy and independence’*.<sup>4</sup>

The Human Rights Commission Act of 1996 contemplates an institution that will perform a broad range of functions from investigating human rights violations to advising government on appropriate legislative and administrative procedures. Although the current moment demands that the HRC exercise the full extent of its mandate and responsibilities, it has chosen instead to be a silent spectator. This silence and inaction of the HRC at a moment of severe human rights crisis violates one of its key responsibilities as laid down in the Paris Principles and in the Human Rights Commission Act.

Two specific acts of the HRC, one in 2006 and the other in 2007, warrant particular mention:

**A.** The Secretary of the HRC, by a note dated 29<sup>th</sup> June 2006, stated that the HRC had decided to stop inquiring into the complaints of over 2,000 enforced disappearances ‘for the time being, unless special directions are received from the government’.

**B.** More recently, by internal circular No. 7 dated 20<sup>th</sup> June 2007, the HRC imposed a three month limitation with regard to the investigation of complaints even though the enabling legislation makes no mention of this time limit. What this means is that a complaint must, in most circumstances, be made to the HRC within

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<sup>3</sup> Contained in the Annex to the Report of 19<sup>th</sup> Session of the International Coordinating Committee held in March 2007.

<sup>4</sup> Statement of Louise Arbour, High Commissioner for Human Rights, 13<sup>th</sup> October 2007.

three months of the incident. If it is outside this time limit the Commission will investigate the complaint only at its discretion.

4. Your Committee in its General Observations has emphasized that NHRIs should '*maintain consistent relationships with civil society*'.<sup>5</sup> The Sri Lankan HRC has chosen instead to maintain relationships with select NGOs raising the inference that it is not independent and objective in the way it functions. It has refused to share even basic information with NGOs and the general public and had also specifically instructed its staff at the Regional Offices, who had previously maintained constructive relationships with NGOs, to refrain from sharing information with civil society. Recently, the Chairperson and the Commissioners refused to dialogue with an NGO that had requested a constructive dialogue with them in order to prepare an objective report of the Commission to the 12<sup>th</sup> Annual meeting of the Asia Pacific Forum of National Human Rights Institutions.<sup>6</sup>
  
5. Independence, flexibility in its operations, and close relationships with civil society, are three key elements of the Paris Principles. The HRC, in the way it is currently constituted and operates, violates all these three fundamental features of the Paris Principles. At a moment of severe human rights crisis in the country, the HRC has chosen to be silent and inactive, thereby abdicating its fundamental responsibility to the people of Sri Lanka.

We, as members of civil society, have no confidence in the Sri Lankan HRC, as it is currently constituted and in the way it currently operates. We believe that it lacks independence, credibility and has been ineffective in responding to the victims of human rights abuses in this country at a moment of severe human rights crisis.

We would request that the Sub-Committee keep these factors in mind as you make your assessment. The ICC and the OHCHR should not lend credibility and legitimacy to an institution that has failed to live up to its mandate and

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<sup>5</sup> Contained in the Annex to the Report of 19<sup>th</sup> Session of the International Coordinating Committee held in March 2007.

<sup>6</sup> FORUM-ASIA open letter to Chairperson of the APF, 13<sup>th</sup> August 2007.

has been unwilling and unable to respond to the severe human rights crisis facing the country.

At the same time, we appeal to the ICC, in cooperation with the OHCHR, to facilitate the transformation of this institution, as a matter of urgency, so that it may once again be a credible and effective actor on behalf of the victims of human rights abuse in Sri Lanka.

Sincerely,

1. Association of Family Members of the Disappeared (AFMD), Colombo
2. Centre for Human Rights and Development (CHRD), Colombo
3. Centre for Peoples Dialogue (CPD), Negombo
4. Centre for Policy Alternatives (CPA), Colombo
5. Centre for Society and Religion (CSR), Colombo
6. Centre for Women and Development, Jaffna
7. Christian Alliance for Social Action (CASA), Colombo
8. Commission for Justice and Peace of the National Christian Council, Colombo
9. Ecumenical Association of Third World Theologians (EATWOT), Colombo
10. Equal Ground, Colombo
11. Families of the Disappeared (FOD), Katunayake
12. Free Media Movement (FMM), Colombo
13. Galle Citizens Committee for Human Rights, Galle
14. Gampaha District Human Rights Committee, Ekela
15. Human Development Organization (HDO), Kandy
16. Human Rights Media Resource Centre, Kandy
17. INFORM Human Rights Documentation Centre, Colombo
18. Institute of Human Rights (IHR), Colombo
19. International Centre for Ethnic Studies (ICES), Colombo
20. International Friends for Global Peace, Colombo
21. International Movement Against all forms of Discrimination and Racism (IMADR), Colombo
22. Janasansadaya, Panadura
23. Kurunegela Citizens Committee, Kurunegela
24. Law & Society Trust (LST), Colombo
25. Mannar Women for Human Rights and Democracy, Mannar

26. Mothers and Daughters of Lanka, Colombo
27. Movement for Defense of Democratic Rights (MDDR), Colombo
28. National Fisheries Solidarity Movement, Negombo
29. Oblate Justice and Peace Committee, Colombo
30. Rights Now Collective for Democracy, Colombo
31. Right to Life, Katunayake
32. Social Scientists' Association of Sri Lanka (SSA), Colombo
33. Suriya Women's Development Centre, Batticaloa