

**Response of the  
Government of Sri Lanka  
to the  
Country Report on Human Rights 2007  
on Sri Lanka**

**Released by the  
U.S. State Department  
on**

**11<sup>th</sup> March 2008**

**Ministry of Foreign Affairs  
Sri Lanka**

**31<sup>st</sup> March 2008**

## Contents

	<u>Page</u>
<b>Preamble</b>	... i - vi
<b>Executive Summary</b>	... vii–xiv
<b><u>Report</u></b>	
<b>1. Introduction and Background</b>	... 1
<b>2. Presidential Election</b>	... 2
<b>3. Claims of Arbitrary or Unlawful Deprivation of Life</b>	... 2
<b>4. Claims of ‘Disappearances’</b>	... 7
<b>5. Internally Displaced Persons (IDPs)</b>	... 13
<b>6. Allegations of impunity</b>	... 16
<b>7. Access for humanitarian agencies to the conflict areas</b>	... 18
<b>8. Victim and Witness Protection</b>	... 19
<b>9. Media Issues</b>	... 21
<b>10. Access for media to the conflict areas</b>	... 26
<b>11. Children and armed conflict</b>	... 28
<b>12. Freedom of Religion</b>	... 29
<b>13. Allegations of torture and poor prison conditions</b>	... 31
<b>14. Liberation of the East from the LTTE</b>	... 32
<b>15. SLMM and the CFA</b>	... 33
<b>16. Omissions and lack of understanding of laws and facts</b>	... 34
<b>17. Conclusion</b>	... 35

## **Response of the Government of Sri Lanka to the Country Reports on Human Rights Practices – 2007 (Sri Lanka Chapter)**

### **PREAMBLE**

The US Secretary of State Condoleeza Rice released the Country Reports on Human Rights Practices – 2007 (USCR) in Washington DC on 11<sup>th</sup> March 2008.

US Ambassador Robert Blake met with Hon. Rohitha Bogollagama, Minister of Foreign Affairs on 12<sup>th</sup> March and handed over the extract of the USCR on Sri Lanka. In the covering letter forwarding the USCR, it was stated that ‘the US would welcome the Government of Sri Lanka’s comments.’ The US Ambassador was called in to the Foreign Ministry on 14<sup>th</sup> March and the preliminary response of the Government of Sri Lanka (GOSL) was delivered. The Minister expressed the concern of the GOSL on the substance of the report which presented a distorted view of the actual situation in Sri Lanka during the year 2007 and appears to have been based on unsubstantiated allegations. The Foreign Minister regretted that none of the positive steps taken by the GOSL to address the concerns on human rights had been reflected in the USCR. The Minister further stated that a detailed response on the issues raised in the USCR would be prepared. Accordingly, the annexed document contains the detailed response of the GOSL to the contents of the USCR pertaining to Sri Lanka.

Sri Lanka is a vibrant multi-party democracy which accords the highest importance to the preservation and promotion of human rights, in keeping with the government's constitutional obligations and the rule of law. In recent decades, LTTE terrorism has affected Sri Lanka's economic and social progress and the welfare of its people. Nevertheless, it has been possible for the government to clear the Eastern Province last year from the LTTE presence and enable the people of the area to enjoy the fruits of democracy. The Government is determined to clear the remaining pockets in the Northern Province of the LTTE menace and restore the democratic process in those areas as well.

At the outset, it must be underlined that the USCR fails to reflect the difficult environment in which the GOSL operates, namely, promoting and protecting human rights whilst fighting a terrorist organization banned by the US, India, UK, EU and Canada, and described as 'among the most dangerous and deadly extremists in the world' by the US Federal Bureau of Investigation (FBI) and. According to a recent FBI report, the LTTE 'has perfected the use of suicide bombers, invented the suicide belt, pioneered the use of women in suicide attacks, murdered some 4,000 people in the past two years alone, assassinated two world leaders – the only terrorist organization to do so.'

The USCR does not refer to the terrorist attacks committed by the LTTE against civilians including women and children, in sufficient detail. In particular, the indifference shown in the report towards the murders of school children by the LTTE, and neglecting to reflect the facts in their proper context, may be seen as deeply offending to the feelings and sentiments of the families of the victims and the general public of Sri Lanka. Such feelings may also be exacerbated by the Report's rather lukewarm condemnation of conscription of women and teenage girls into the LTTE ranks.

Even some diplomats based in Sri Lanka have been targeted by the LTTE. Such incidents have been internationally condemned but have not been reflected in the USCR.

The promotion and protection of human rights in Sri Lanka is enshrined in the Constitution. Fundamental rights were incorporated in the first Republican Constitution of 1972 and their scope was enhanced in Chapter III of the second Republican Constitution of 1978.

The Constitution makes fundamental rights justiciable and vests the Supreme Court, the apex court with exclusive jurisdiction to hear and determine any question relating to fundamental rights. In the recent Supreme Court determination on the International Covenant on Civil and Political Rights (SC No. 01/2008), it was observed that fundamental rights declared and recognized in Chapter III of the Constitution are based on the Universal Declaration of Human Rights. The Court further observed that ‘... fundamental rights declared and recognized by the Constitution form part of the Sovereignty of the People and have to be respected, secured and advanced by all organs of Government. This is, in our opinion a unique feature of the Constitution which entrenches fundamental rights as part of the inalienable Sovereignty of the People.’

The Supreme Court has vastly enhanced its jurisdiction on fundamental rights by giving wide and purposeful interpretations, which has been guided by Article 4 (d) of the Constitution to evolve such expansion.

Reflecting the Government’s consistent policy of openness, transparency and constructive engagement with the international community, it welcomed high level visits of UN officials to Sri Lanka.

Sir John Holmes, the UN Under-Secretary General for Humanitarian Affairs and Humanitarian Coordinator, who visited Sri Lanka in August 2007, acknowledged that “the situation which had gone through a bad period was getting better.” Ms. Louise Arbour, the UN High Commissioner for Human Rights, Professor Manfred Nowak, UN Special Rapporteur on Torture, and Mr. Walter Kaelin, the Special Representative of the UN Secretary General on the Human Rights of the Internally Displaced Persons, also visited Sri Lanka in 2007. Moreover, the UN Assistant Secretary General for Political Affairs, Ms. Angela Kane, visited Sri Lanka twice, in February 2007 and February 2008, with a view to strengthening the relations between GOSL and the United Nations.

Sri Lanka reaffirms that all human rights are universal, indivisible, interdependent and mutually reinforcing and that all human rights must be accorded equal weight. In Sri Lanka, important economic and social measures have been sustained which have ensured a high quality of life for all its citizens. Sri Lanka was one of the first developing countries to promote universal, comprehensive and free health and education which has translated into gender equality and social mobilization. Sri Lanka’s socio-economic indicators compare well with those of other medium income countries. In the 2007 Human Development Index, Sri Lanka ranked 99 out of 177 countries, the highest in South Asia. Amongst countries affected by conflict, Sri Lanka is unique in that the administrative machinery and infrastructure facilities in uncleared areas affected by the conflict, are funded and maintained substantially by the Government, despite the fact that some of these funds are known to be siphoned off by the LTTE.

Moreover, Sri Lanka is a Party to the following seven major international human rights instruments, namely:

- International Convention on the Elimination of All Forms of Racial Discrimination.
- International Covenant on Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.
- Convention on the Elimination of All Forms of Discrimination against Women.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Convention on the Rights of the Child.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Sri Lanka is a State Party to the following four human rights instruments as well:

- Optional Protocol to the International Covenant on Civil and Political Rights.
- Optional Protocol to the Convention on the Elimination of Discrimination against Women.
- Optional Protocol to the Convention on the Rights of the Child.
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Sri Lanka is a State Party to other related instruments including the four Geneva Conventions of 1949 relating to armed conflict and international humanitarian law. Sri Lanka enacted enabling legislation in 2006 (Act No. 4 of 2006) to fully implement obligations under the Geneva Conventions.

Following the successful clearing of the Eastern Province in 2007 with minimal civilian casualties by the Security Forces from the LTTE terrorists, the Government embarked on a new programme entitled ‘Nagenahira Navodaya’ (Reawakening of the East) to develop the Eastern Province. This has paved the way for GOSL to organize local government elections in the Batticaloa District after a lapse of 14 years. The “Tamil Makkal Viduthalai Pulikal” (TMVP), a breakaway group of the LTTE, was able to contest the elections as a registered political party, and thereby enter the democratic mainstream. The US Administration and Congress may be interested to know that the Provincial Council election in the Eastern Province will be held in May 2008.

The GOSL is deeply appreciative of the pro-active measures taken by the US Government to stop the procurement of weapons by the LTTE as well as to curb fund raising by the LTTE and its front organizations.

Sri Lanka and the US, being thriving democracies have a shared and abiding interest in promoting and protecting human rights. It should be the common endeavour of the two countries to engage in a constructive dialogue, which would further strengthen the existing friendly relations.

## **EXECUTIVE SUMMARY**

The US State Department released the Country Reports on Human Rights 2007 (USCR) on 11<sup>th</sup> March 2008 as required by the relevant US statutes. The contents of the report fall well short of the standards expected of such reports.

The Government of Sri Lanka (GOSL) vehemently disagrees with and rejects the contents of the USCR, which is replete with factual inaccuracies, omissions, biased opinions and uncorroborated and unsubstantiated statements for the reasons set out in detail hereinafter. The report carries serious and blatantly unfair allegations against the GOSL and state officials based on unfounded media reports and questionable sources.

The preamble of the report itself refers to an unsubstantiated and malicious allegation of a 2005 agreement between the President and the LTTE to enforce a boycott of the Presidential Election in the North and the East depriving the Tamils of their right to vote. The GOSL categorically and strenuously denies this allegation. As there has been no evidence to support this allegation, and the LTTE itself has never acknowledged such an agreement, the reflection of this allegation in the USCR is highly unwarranted. In keeping with the GOSL's policy of transparency and accountability, the government initiated action to appoint a Parliamentary Select Committee to inquire into this allegation.

The USCR has blamed the GOSL for failing to conduct comprehensive investigations into alleged 'extra judicial killings.' It is unfortunate that the report has overlooked the progress of the Presidential Commission of Inquiry (COI) that is already functioning, and the extensive and far reaching steps taken by law enforcement authorities in this regard.

An International Independent Group of Eminent Persons (IIGEP) was invited by the President to observe the proceedings of the COI and that these were in accordance with international norms and standards. Sri Lanka has adopted a zero tolerance policy on any person violating the laws of the land, including fundamental rights.

The report refers to the killing of E. Kausalyan, and criticizes the lack of progress in the investigations into the killing. The GOSL confirms that investigations are underway into the killing of Kausalyan who was the leader in the Batticaloa-Ampara District of the LTTE, a ruthless terrorist organization. It also wishes to point out that it is extremely unlikely that a similar demand would find favour if one were to query on the progress made in the investigations into the killings of terrorist leaders around the world, in the context of the global war against terror.

The Special Task Force (STF) has been identified as a ‘paramilitary’ group, and categorized together with the ‘Karuna’ Faction, EPRLF, etc. perhaps to give a mischievous construction. The STF is a well trained, highly disciplined arm of the Sri Lanka Police specializing in law enforcement in conflict areas. In recognition of their specialized skills and professionalism, the STF has been invited to join specialists from the US, the UK, Russia and France in planning the security for the 2008 Beijing Olympics.

The ‘statistics’ relating to alleged ‘disappearances’ in the USCR are highly questionable and exaggerated. A list of such ‘disappearances’ handed over by the US Ambassador to the Sri Lankan authorities in April 2007 was seriously flawed and upon investigation was found to include even persons who had eloped or left their marital homes due to family disputes!

The report has failed to take cognizance of the well documented practice of forcible recruitment of civilians including women and children by the LTTE which is a regular occurrence in the uncleared areas. There is a general tendency that such persons are reported as ‘missing.’ Moreover, there have been numerous occasions on which the LTTE has refused to accept bodies of their cadres slain in action through the ICRC good offices and therefore, those persons too, remain ‘missing,’ according to their families.

The GOSL is deeply committed to the facilitation of the voluntary return of all Internally Displaced Persons (IDPs) to their original homes. Approximately 120,000 IDPs in the East have been re-settled, with the UNHCR fully involved in the return process. The UNHCR, in its report of May 2007, has commended the GOSL for facilitating the resettlement of IDPs which were voluntary and in line with international protection standards, thus contradicting the false allegations in the USCR. Another allegation which has been proved to be unfounded is that in Batticaloa, the Army had forced IDPs to perform hard labour with no-pay.

The greater majority of IDPs, including Tamils flee uncleared areas to the safety of the Government controlled areas. The GOSL, being well aware of this fact is committed to providing all facilities to IDPs until their resettlement and continues to enhance the protection of rights of those who are displaced. This is exemplified through the enactment of a comprehensive Bill on the Rights of the Internally Displaced and Returnees.

The Government is committed to taking timely and comprehensive action against any persons who commit crimes and engage in unlawful activities. Over 200 indictments have been served against approximately 700 members of the security forces and the Police for alleged human right violations.

The GOSL recognizes and appreciates the valuable work undertaken by the UN agencies with regard to humanitarian assistance. High level visitors from the UN, the latest being Assistant Secretary General Angela Kane, have visited the Eastern Province and acknowledged the success of the Government's accelerated development and humanitarian programs. The GOSL has conveyed its appreciation of the valuable partnership with the UN family.

The GOSL also recognizes and appreciates the useful work done by Non Governmental Organizations (NGOs) and International Non Governmental Organizations (INGOs). The GOSL continues to provide unrestricted access to 21 INGOs to carry out humanitarian assistance in conflict areas, despite the conduct of some INGOs, leading to breaches of security.

The Cabinet of Ministers has approved a new law to be enacted shortly by Parliament for witness protection and assistance to victims. Once enacted, Sri Lanka will stand unique in that it would have a single law to provide both assistance and protection to victims and witnesses of conventional crimes and human rights violations.

The GOSL recognizes the important role of the media in a democratic state where the freedom of expression is guaranteed under the Constitution. There is no government media censorship, despite the conflict. Further, there are 8 television and 14 radio channels that are privately owned against the 2 television and 6 radio channels that are state owned. There are also many privately owned major newspaper companies publishing numerous Sinhala, English and Tamil newspapers, whilst there is only one state-owned newspaper company. In 2006, the GOSL invited the Special Rapporteur on the Freedom of Expression to visit Sri Lanka.

The USCR has criticized the destruction of the “Voice of Tigers” (VOT) broadcasting tower by the Air Force jets. It is surprising that the USA, which is fighting its War on Terror, is lending acceptability to a terrorist broadcasting facility that was used as a communications centre by the LTTE leadership to issue directives to their cadres. It should also be noted that the VOT was a mechanism for the incitement of terrorism and was part and parcel of the LTTE military infrastructure and not a civilian installation protected under International Humanitarian Law. In this regard, the GOSL wishes to draw the attention of the US authorities, to UN Security Council Resolution 1624 of 2005 relating to terrorism, which expressly outlaws incitement of terrorism.

Members of both local and foreign media have been provided access to the areas of conflict in the north. In July 2007, a five-day visit was undertaken by a group of international journalists. During their visit, a key terrorist leader, S.P. Thamilselvan made a statement to these journalists, to the effect that the LTTE would attack economic targets to weaken the Sri Lankan Government. Permitting even this type of abhorrent and extremely provocative coverage, singularly demonstrates the GOSL’s commitment to media freedom.

Sri Lanka has adopted a zero-tolerance policy on the recruitment of children in armed conflict. Sri Lanka is fully committed to the rehabilitation and reintegration of child combatants, who have escaped from captivity of the armed groups and this is being done through the provision of a protective environment as well as family re-unification and vocational training. It should be noted that Sri Lanka took a lead role in the UN initiative to outlaw the recruitment of children in armed conflict.

It is deeply regrettable that the report has cited an isolated incident of religious disharmony to imply that a climate of religious intolerance prevails in Sri Lanka. It should be emphasized that in Sri Lanka, freedom of religion is enshrined as a fundamental right in the Constitution.

Article 10 of Chapter III of the Constitution states as follows:

*Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.*

In a country where there are more than 18,000 places of worship and over 50,000 members of the clergy from 4 major religious denominations who co-exist peacefully, it is most unfortunate that the USCR has deemed it fit to portray Sri Lanka as a nation void of religious harmony by highlighting a few isolated incidents. Needless to say, the GOSL vehemently condemns any attack on any place of worship of any religion, in any part of the country.

The GOSL invited the Special Rapporteur on Torture, Professor Manfred Nowak to visit Sri Lanka. As isolated instances of torture do not make it systemic, and it is clear from Professor Nowak's report, and that of his predecessor, this is not the case in Sri Lanka. It is also noteworthy that Prof. Nowak has remarked that, "Notwithstanding the difficult security situation the Government is faced with, Sri Lanka in principle, is still able to uphold its democratic principles, ensure activities of civil society organizations and media, and maintain an independent judiciary."

The GOSL was able to restore democracy in the East after clearing the Eastern Province from the LTTE stranglehold in 2007 and was able to hold elections in that Province in 2008. Breakaway LTTE leaders, Mr. Karuna Amman and Mr. Pillaiyan, have entered the mainstream of politics and have set up a political party “Tamil Makkal Viduthalai Pulikal (TMVP)” which has contested the recent local authority elections in the Batticaloa district, winning a majority of seats. This election has been deemed free and fair by the independent monitors, PAFFREL. The elections also won recognition of the international community. These elections illustrated the yearning and eagerness of the people of the East, including Tamil citizens, to join the democratic process after being suppressed by the LTTE.

The USCR states that: “By mid-year, although the CFA technically remained in force, the SLMM ceased citing specific violations due to a lack of any response to previous complaints.” It should be noted that it was the LTTE that insisted on the withdrawal of monitors from EU Member States, namely, Denmark, Sweden and Finland from the SLMM, which led to the depletion of the strength and capacity of the SLMM to carry out their functions effectively. The termination of the CFA has enabled the government to introduce a political process to the North and the East as recommended by the All Party Representative Committee (APRC).

The report is poorly researched, and appears to rely on information obtained from dubious sources and carries fundamental inaccuracies. In more than 100 instances, the report has failed to provide any sources of reference, and simply covered up such shortcomings by using blanket clauses such as ‘numerous credible sources,’ ‘reliable sources,’ etc.

The report, instead of presenting properly researched and credible material, bases almost all its “findings” on the many allegations made by opposition politicians, sometimes under the cover of parliamentary privilege which provides immunity from actions for libel, and a few political tabloids.

The USCR was subject to a detailed scrutiny and the response of the GOSL has been prepared accordingly. If prior consultations had taken place with the GOSL authorities, the discrepancies and shortcomings that have been highlighted in the GOSL Response, could have been addressed before the publication of the USCR.

It is, therefore, hoped that the US Congress would take cognizance of the matters presented in this Response of the GOSL so that they would be able to understand the issues in a more balanced manner and also take necessary action to prevent the recurrence of such erroneous and biased reports being presented to it in the future.

# REPORT

## 1. Introduction and Background

The United States of America State Department released the Country Reports on Human Rights 2007 (USCR) on 11<sup>th</sup> March 2008 as required by the relevant U.S. statutes. According to Appendix A: Notes on Preparation of the country reports and explanatory notes, the compilers of the report are presumed to ‘have attempted to make the reports as comprehensive, objective and uniform as possible in both scope and quality of coverage.’ Furthermore, the report is said to ‘have paid particular attention to attaining a high standard of consistency in the reports despite the multiplicity of sources and the problems associated with varying degrees of access to information, structural differences in political, legal, and social systems, and differing trends in world opinion regarding human rights practices in specific countries.’ Whilst appreciating the challenges that would be faced in the preparation of such reports, it is deeply regrettable that the contents of the report lack scope and quality, while falling short of the high standards usually associated with reports of this nature.

It is particularly regrettable that the USCR has levelled numerous allegations against the Government of Sri Lanka (GOSL), based on information allegedly provided primarily by unnamed and dubious sources, while neglecting to cross check the veracity of the information with either the Government or any state institution, prior to finalizing the report, as was the practice that was followed in the past in order to lend objectivity to the Report. Therefore, the USCR may lead the US Administration and the Congress to arrive at a distorted and flawed understanding of the actual human rights situation in Sri Lanka.

Sri Lanka deeply regrets the compilation of this report replete with factual inaccuracies, omissions, biased opinions and statements which are uncorroborated, unsubstantiated and based mostly on hearsay.

The report also carries several serious and baseless allegations against various officials of the GOSL, while pointedly ignoring the many steps adopted by the GOSL to protect the sanctity of human life, and uphold fundamental rights as enshrined in the Constitution of Sri Lanka. Throughout the report, it is observed that the approach of the USCR towards the GOSL is critical and judgmental, and such a slant undermines the objectivity and impartiality of the report.

## **2. Presidential Election**

The GOSL strongly and categorically denies the allegation of the existence of an agreement between the President and the LTTE to enforce an election boycott at the 2005 Presidential Elections. As there has been no evidence to support this allegation, and the LTTE itself has never acknowledged such an agreement, the reflection of this allegation in the USCR is highly unwarranted. In keeping with the GOSL's policy of transparency and accountability, the government initiated action to appoint a Parliamentary Select Committee to inquire into this allegation.

## **3. Claims of Arbitrary or Unlawful Deprivation of Life**

In November 2006, the President of Sri Lanka appointed a Commission of Inquiry (COI) to investigate and inquire into 15 incidents of serious violations of Human Rights.

The cases to be investigated include the killing of 17 aid workers of the international non-governmental organization - Action Contre La Faim (ACF) in early August 2006, the assassination of Mr Joseph Pararajasingham, Member of Parliament on 25<sup>th</sup> December 2005, the killing of 5 students in Trincomalee in January 2006, and the disappearance of Rev. Nihal Jim Brown of the Philip Neri's Church at Alaipidi on 28<sup>th</sup> August 2006. Subsequently, a further incident was added on 3<sup>rd</sup> November 2006, namely, the assassination of Mr. Nadarajah Raviraj, MP.

The COI has so far concluded several investigations, and two cases are at the stage of public inquiries. These are the public inquiries into the killing of 5 students in Trincomalee which commenced on 5<sup>th</sup> January 2008 and public inquiries into the ACF case which commenced on 3<sup>rd</sup> March 2008.

It is an accepted legal principle that conclusions cannot, and should not be drawn without a proper investigation and due process. In a country where the rule of law, due process and the presumption of innocence prevail, short circuiting investigations to arrive at hasty and/or preconceived conclusions would give rise to the obvious violation of the basic principles of jurisprudence, equity and justice. Two investigations that the USCR alleges as "incomplete" are in fact so, because such inquiries have reached the public inquiry stage, which is a mandatory stage in the implementation of the principles of natural justice. Therefore, it is unfortunate that the report has overlooked the present state of the investigations, and failed to appreciate the procedures followed by the law enforcement authorities in the course of investigations. The law enforcement authorities in Sri Lanka relentlessly work on the investigations to bring those who are responsible for crimes and/or excesses to justice, and in certain instances, international support has also been solicited to strengthen its own investigations.

A case in point was the assistance of Scotland Yard that had been sought in connection with the killing of Mr. Nadarajah Raviraj, MP. After conducting their own investigations, Scotland Yard has commended the manner in which the Sri Lanka Police had conducted the investigation.

As the US Government would know only too well, given its own experience in combating terrorism, investigations of this nature take considerable time and effort. It is, therefore, regrettable that the USCR has echoed sentiments similar to those voiced by anti-Sri Lankan interest groups, and by so doing, reaching the flawed conclusion that there must necessarily be a “cover up.” In this regard, the GOSL wishes to reiterate the fact that delays are sometimes inevitable in legal systems where strong legal frameworks operate within a highly independent judiciary, and delay, prima facie, should not be construed as reluctance on the part of the authorities to bring criminals to justice. Even in high profile cases such as the assassination of former Foreign Minister Lakshman Kadirgamar, which took place in August 2005, the investigation could be completed and indictment served on the accused only in March 2008.

In many instances, as seen in certain sections of the report, the USCR adopts a stance, which appears to be at variance with the declared US policy on terrorism and counter-terrorism. In that background, the US administration should be aware that inferences could be drawn that the USCR is implicitly supportive of terrorism.

The report refers to the killing of E. Kausalyan, and criticizes the lack of progress in the investigations into the killing. The GOSL confirms that investigations are underway into the killing of Kausalyan, who was the leader in the Batticaloa-Ampara District of the LTTE, a ruthless terrorist organization.

It also wishes to point out that it is extremely unlikely that a similar demand would find favour if one were to query on the progress made in the investigations into the killings of terrorist leaders around the world, including by the US in its war against terror.

The definition of “paramilitaries” in the report is also highly questionable and contentious. The Special Task Force (STF) is identified as a ‘paramilitary’, but is categorized together with the ‘Karuna’ Faction, EPRLF, etc., thereby giving the mischievous construction that the STF is a violent, ill disciplined group of fighters. This is obviously an attempt to tarnish the image of the STF, which is in fact a well trained and highly disciplined arm of the Sri Lankan Police and has fought separatist Tamil Tiger terrorists for more than two decades. Moreover, the STF handles security at key installations in Colombo and provides protection for the nation's President, Prime Minister and several Cabinet Ministers. In recognition of their specialized skills and professionalism, the advice of the STF on security matters has been sought by the Beijing Olympic organizers. The STF are due to join specialists from the US, the UK, Russia and France in this endeavour and their expertise has been particularly sought in relation to counter-terrorism measures and VIP protection. In this light, it is deeply disturbing that the USCR has attempted to discredit the STF and such an attempt is deplored by the GOSL.

In many sections of the USCR, sources, (often referred as “credible”), are highly questionable, and serve to destroy the veracity of, and challenge the integrity of, the report. Human Rights Watch (HRW), an international Non Governmental Organization has failed to acknowledge the tangible steps taken by the GOSL in protecting human rights.

In fact, the annual report of the HRW for 2008, contains a chapter on Sri Lanka, which has even failed to distinguish between a democratically elected Government that has steadfastly affirmed its commitment to promote and protect human rights while combating an unprecedented challenge of terrorism, emanating from a fascist terrorist group, LTTE, recently branded as one of the worst terror groups in the world by the Federal Bureau of Investigation (FBI) of the USA.

Further, the insinuation that the USCR casts on the role of the GOSL in connection with the disappearance of Rev. Father Thiuruchelwam Nihal Jim Brown, the parish priest of the church in Allaipidi, Kayts, is reprehensible. In this regard, the USCR states, “media reports indicated that a DNA test confirmed that the body belonged to Brown, but the Government announced in June that according to its DNA test it belonged to neither Brown nor Vimalathas.” The innuendo inexplicably overlooks and ignores the fact that, when a torso said to be that of Fr. Brown was discovered, it was the GOSL that expeditiously sought to ascertain whether the body was indeed that of Fr. Brown or his pillion rider Mr. Vimalathas, through DNA testing. Belittling the DNA based determination by a trained and highly respected medical professional, while upholding the veracity of an unsubstantiated media report, underscores the strange approach adopted almost across the entirety of the report - i.e., an eagerness to discount or discredit official efforts, disregard clear facts on the ground, and justify pre-determined conclusions. The GOSL is certainly willing to share the technical details of the scientific findings with the US Government, through the regular professional channels so that this matter could be put to rest. The Government believes in adopting professional methods of forensic investigation which have been part of Sri Lanka’s long established judicial process.

It must also be pointed out that Mr. Kingsley Rajanayagam, who was considered to be a supporter of the “Karuna” faction, was forced by the LTTE to resign his seat in Parliament to which he had been elected in 2004, and was killed shortly afterwards. Further, the threat alleged by Mr. Chandra Nehru, MP has also been investigated and the report has been made available to the IPU Special Mission to Sri Lanka on the Human Rights of Parliamentarians in February 2008.

#### **4. Claims of ‘Disappearances’**

In April 2007, the US Ambassador in Sri Lanka Robert Blake handed over a list of 355 cases of disappearances to the Sri Lankan authorities. The Inter-Ministerial Committee chaired by the Secretary, Ministry of Foreign Affairs referred the list to the relevant law enforcement agencies to ascertain the veracity of this claim. The findings of these investigations to date are as follows:

- a) There were 5 names which had been duplicated.
- b) 6 persons named in the list, have left Sri Lanka or have applied for passports after the dates of their alleged disappearances.
- c) 24 persons have been traced, including a couple that had eloped! The Disappearance Investigation Unit of the Sri Lanka Police recorded statements of those who were traced, and it has transpired that some had left their homes due to family disputes, and subsequently returned.
- d) 4 persons have been found to have died. The inquiries into their deaths are continuing.
- e) 3 persons have been arrested by the law enforcement authorities.

- f) 106 cases have never been reported to the Police and the US Ambassador was requested to furnish more details. Such details have not been received to date, even though almost an year has lapsed.
- g) As for the rest, the Disappearance Investigation Unit of the Police is continuing its investigations with the assistance of the relevant local Police stations.

It is indeed strange that many of the alleged disappearances have been reported to a foreign mission situated in Colombo, instead of being made at any of the 410 Police Stations situated in every part of the country, or without even informing the police hierarchy who can be very conveniently notified by letter, fax, or telephone.

The GOSL would also state that, while there had been allegations of increased killings and abductions in the latter part of 2006 and the first quarter of 2007, an international agency, which is reputed for its impartiality and has regular access to all parts of Sri Lanka, except the uncleared areas in the North, has confirmed a distinct downward trend in disappearances and killings in government controlled areas during the second and third quarters of 2007. According to their figures, and contrary to USCR assertions, this decline was also evident in the Jaffna District. It is deeply regretted that the USCR has ignored the many improvements, but merely reiterated the claims of dubious sources which simultaneously feed the LTTE propaganda machine. It is hoped that, at least in the future, the authenticity of the information drawn from its sources is verified prior to releasing the USCR report to the public domain.

Further, contrary to misleading claims, the GOSL has mounted vigorous operations against a number of groups and criminal gangs operating in Colombo and Kandy who had been allegedly responsible for disappearances and abductions leading to the extortion of money. However, as for the exact number of those alleged to have disappeared, GOSL faces difficulty in ascertaining such number, due to the multiplicity of lists of the allegedly disappeared provided by several agencies and organizations. Such lists have often been without supporting evidence or without the basic details of those who are alleged to have disappeared, which data and information would give investigators a useful starting point in their inquiries. In such circumstances, it is clear that many of these “disappearances” are obviously politically motivated claims in order to support the aims of various political parties, and the GOSL regrets that such groups have been able to negatively influence the compilation of the USCR.

In relation to “disappearances”, the same reputed international agency has also recorded that during the second quarter of 2007 (April - June), 181 disappearances occurred in cleared areas, while of that number it has managed to clarify the fate of 63 people, thereby leaving another 118 as missing. It had however confirmed that, compared with the number of disappearances recorded in cleared areas during the first quarter of 2007, the number of people who “disappeared” during the second quarter has declined.

The USCR also refers to the criticism leveled at the Attorney General by the IIGEP. The role of the Attorney General’s office has come under criticism in the reports prepared by the Assistants to the IIGEP, as such compilers had been obviously not aware that, unlike in the UK or the US, the Attorney General is not a political appointment in Sri Lanka. It should further be noted that the COI was at liberty to choose lawyers from the official or the unofficial bar to conduct its inquiries.

Several generic trends are also observed in relation to alleged disappearances within the body of USCR. To clarify this matter further, the following observations could be enumerated:

- a) The lists almost always overlap.
- b) In many cases, certain persons whose names are in several lists, have probably never ‘disappeared’, as was noted as per the list forwarded by the US Ambassador. Further, the GOSL has no way of tracing those who might have moved into the uncleared areas in the Vanni, or even illegally migrated from Sri Lanka.
- c) Most reports have been forwarded by a few NGOs. Some of such NGOs have been well known to obtain funding in dubious ways, and also known to exaggerate and/or conveniently “make” blatant mistakes. For example, one NGO included amongst the ‘disappeared’, six Sri Lankan security personnel who had been killed by an LTTE bomb, where their names were altered to resemble those of Tamils. Another example is the suggestion by an NGO that it was “possible” that two NGO workers killed by a bomb along with five army personnel travelling in another truck, “might” have been victims of an army attack.
- d) While the law provides the remedy of Writ of Habeas Corpus to those seeking to find a missing person alleged to be detained by any person or authority, this remedy has been hardly sought, and instead the ‘remedy’ has been mainly sought via a particular TV channel!

- e) In many of the cases of persons said to have disappeared, no complaints were made to the Police, or to other investigative authorities, including the Special Independent Mahanama Tillekerathne Commission, or the Sri Lankan Human Rights Commission.
- f) Some “complaints” have been only made to the ICRC and/or to certain diplomatic missions.
- g) In certain cases of disappearances, it has transpired that, as soon as a complaint had been made to a Western Embassy or to the ICRC, the family of the alleged victim had applied for visas to go abroad.

The USCR has described Judge Mahanama Tillekerathne who was appointed the commissioner of inquiry to inquire into any alleged abductions, disappearances, extrajudicial killings and unexplained killing, as being partial due to his appointment by the President, since the Commissioner is an “associate” of the President. By such a misleading statement, the USCR is insulting the respected judicial process in the country. Retired High Court Judge Mahanama Tillekerathne is a respected legal luminary, who is eminently suitable to hold this position. By simply insinuating that the Commission is partisan, the USCR has taken the convenient route of ignoring the report of the COI and disregarding the findings of the report. The natural inference is that the conclusions merely bear out pre-determined conclusions.

It is a well known fact that the recruitment of civilians into the terrorist cadres against their will is a common occurrence in the uncleared areas. In such instances, too, it is quite possible for the families of those who are forcefully recruited, to claim that their loved ones are 'missing.' Further, even though the GOSL takes steps to hand over the bodies of terrorist cadres who are killed in battles, to the LTTE with the assistance of the ICRC, there have been numerous occasions where the LTTE has refused to accept the bodies of their own cadres. Therefore, even in such instances, 'disappearances' could arise, as the families of those LTTE dead cadres could claim that their family members are 'missing'. It is also observed that in most cases of 'disappearances', little or no detail is submitted by the complainants to the law enforcement authorities about the circumstances, place, time and date of the alleged 'disappearance', etc., in order to enable the authorities to carry out a comprehensive investigation.

Even critics of the GOSL have to admit that according to their own statistics, the human rights situation improved in 2007 as compared to 2006. Prompt action by the law enforcement authorities which culminated in several arrests, has resulted in arresting a wave of kidnappings for ransom.

The USCR has also alleged that no investigation had been conducted into a statement made by a Member of the Opposition, that bodyguards of a Cabinet Minister had been involved in a rather confusing case of abduction or luring! Contrary to such allegation, an investigation was conducted by the CID, and arising from such investigation, several arrests were made. However, it was discovered that the bodyguards of the said Minister had no involvement whatsoever in the said matter. This allegation therefore, is yet another in the long list of innuendo that the USCR has been misled into including in its report.

Although many incidents/matters have been reported in great detail which attempts to show the authorities in a poor light, the reference to the fact that all families living in uncleared areas, have been forced to give up at least one member of the family to the terrorist cadres, seems to have been given very limited prominence in the USCR. This is surprising given the gravity of this egregious violation of human rights.

As a general response, in all matters connected to alleged “disappearances”, the GOSL wishes to caution the international community that they should be mindful of the many ruses employed by the LTTE, which pursues its terrorist agenda not only through terror, but also via political and diplomatic channels. The GOSL wishes to reiterate that it accords the highest priority to probe any cases of “disappearance” that have been brought to its notice.

## **5. Internally Displaced Persons (IDPs)**

As of 31<sup>st</sup> January 2008, the number of Internally Displaced Persons (IDPs) after 7<sup>th</sup> April 2006 has been established to be 187,863. This information is contained in a compilation published on 5<sup>th</sup> February 2008 by the Ministry of Resettlement and Disaster Relief Services, the Ministry of Nation Building and Development and the UN High Commissioner for Refugees.

The table below sets out the figures on a District-wise basis:

District	IDPs in Welfare Centres and Temporary Accommodation Centres as of 31 January 2008	IDPs with Friends and Relatives	Total
Jaffna	857	30,180	31,037
Kilinochchi	3,737	44,810	48,547
Mullativu	923	31,194	32,117
Mannar	9,669	13,907	23,576
Vavuniya	281	10,376	10,657
Trincomalee	3,760	2,151	5,911
Batticaloa	10,010	16,474	26,484
Ampara	283	5,412	5,695
Puttalam	2,371	585	2,956
Anuradhapura	-	486	486
Polonnaruwa	133	47	180
Gampaha	-	213	213
Kegalle	-	4	4
Grand Total	32,024	155,839	187,863

Out of the total, 32,024 still remain in welfare centers or temporary accommodation centers, while 155,839 are said to be with friends and relatives. However, the numbers given for Killinochchi, Mullativu and the Southern part of Jaffna cannot be verified, although the GOSL continues to send relief supplies to these areas as well.

The GOSL is deeply committed to the facilitation of the voluntary return of all IDPs to their original homes. In the Eastern Province alone, approximately 120,000 IDPs have already returned to their homes since March 2007. However, some of those living in welfare centers or temporary accommodation or with friends and relatives have been held back due to the need for the clearance of landmines planted by the LTTE, which have claimed the lives of thousands of innocent civilians. Clearing of landmines is an on-going exercise, and as and when areas are cleared, re-settlement will be done in such areas as well.

It should be emphasized, that the re-settlement of IDPs in their homes has been a voluntary process and it has been undertaken according to international standards. This has been acknowledged by the international community including the United Nations High Commissioner for Refugees (UNHCR).

The UNHCR report in May 2007 stated that “our staff monitoring the situation on the ground say the majority of people are eager to return home, the returns are voluntary and in line with international protection standards,” thus contradicting the damaging allegations in the USCR.

Another false allegation is that in Batticaloa, the Army had forced IDPs to perform hard labour with no-pay. The Ministry of Disaster Management and Human Rights has categorically rejected this allegation in its Press Release issued on 14<sup>th</sup> March, stating that, “such a comment is totally unfounded.” Other allegations in the USCR regarding such settlements are factually incorrect and irresponsible.

The greater majority of IDPs, including Tamils flee uncleared areas to the safety of the Government controlled areas. The GOSL, being well aware of this fact is committed to providing all facilities to IDPs until their resettlement. Despite the USCR's failure to appreciate the Government's efforts in improving the situation of IDPs, the Government continues to enhance the protection of rights of those who are displaced. This is exemplified through the enactment of a comprehensive Bill on the Rights of the Internally Displaced and Returnees.

The drafting of a comprehensive Bill on the Rights of the Internally Displaced and Returnees to supplement and complement other relevant legislation such as the Resettlement Authority Act (2007) is an initiative which has been undertaken by the IDP Unit of the Human Rights Commission of Sri Lanka, with the assistance of the Office of the UNHCR under the aegis of the National Protection and Durable Solution for IDPs Project.

It should be noted that the Government has begun to deal with the problems of IDPs who have been displaced many years ago, which has been commended by the UN Special Rapporteur on the Human Rights of IDPs, Mr Walter Kaelin. Most prominent amongst such displaced persons are the Muslims who were 'ethnically cleansed' by the LTTE in 1990, by being given just 48 hours notice to vacate their homes situated in the North.

## **6. Allegations of impunity**

In Sri Lanka, there have been allegations against the Security forces while engaged in combating terrorism. It should be reiterated that Sri Lanka has a zero tolerance policy with regard to impunity. The President himself has publicly pledged to pursue action against all violators of human rights.

The following actions exemplify the steadfast stance of the GOSL:

- a) Over 150 indictments have been served against approximately 600 members of the security forces and the Sri Lanka Police as a result of their involvement in serious human rights violations prior to 2004. The alleged offences committed by them include abduction & disappearance, and illegal detention & murder.
- b) Since 2004, a total of 42 indictments against 90 persons have been forwarded to the High Courts by the Attorney General's Department as a result of investigations into allegations of torture. In addition, 31 cases have been sent to the Police to initiate action in the Magistrate's Court. There are 25 pending cases, as of now.
- c) Six members of the armed forces and Police personnel (both retired and currently serving) were arrested in June 2007, for a series of abductions for ransom and murder. After being held in custody, they have since been enlarged on bail with their passports impounded. The Attorney General will be consulted on the completion of investigations to file indictments against the suspects.
- d) Two suspects, an army corporal and a police constable, were arrested and are currently in remand custody pending indictment in the High Court of Vavuniya, on being charged for murdering five students in Thandikulam on 18<sup>th</sup> November 2006.

- e) A Wing Commander and a Flight Lieutenant of the Sri Lanka Air Force were charged in the High Court of Colombo for the violation of human rights of a prominent journalist, and after a lengthy trial, both suspects were convicted and sentenced to 7 years of rigorous imprisonment and fined Rs.10,000/- each. The appeals presented by the convicted persons are presently being argued before the Court of Appeal.

The GOSL condemns these excesses, but wishes to reiterate that in line with its zero tolerance policy with regard to impunity, investigations into these incidents have been diligently pursued by the law enforcement authorities, which have resulted in indictments. At the same time, it may be pointed out there may have been similar or even worse excesses in certain overseas prisons, where officers were found to have inflicted sustained and deliberate inhuman and degrading treatment on prisoners of war.

## **7. Access for humanitarian agencies to the conflict areas**

The GOSL acknowledges the useful work done by UN agencies, NGOs and INGOs. There are, in fact, over 3,200 registered NGOs in Sri Lanka. However, from time to time, there have been issues regarding the conduct of certain individuals attached to some INGOs. For instance, there have been occasions where UN officials have been directly involved in demonstrations orchestrated by the LTTE, and instances where relief material provided by NGOs have been found in LTTE terrorist camps. These findings have naturally caused concern in official circles, but have fortunately been amicably resolved.

The UN has submitted a list of 21 INGOs, who are preferred partners in providing humanitarian assistance in the conflict affected areas. These INGOs have been given approval to work with the UN and ICRC to provide assistance to IDPs and to carry out projects related to tsunami reconstruction and development. Such INGOs have been provided access to uncleared areas since November 2006, in order to carry out their humanitarian operations. It is quite possible that, there may have been instances, where some agencies may not have been able to freely work in certain limited areas due to security advisories issued by the local military commanders. Such limitation would, not only apply to such INGOs, but also to UN, ICRC, etc., as well as civilians. Such advisories, however, must not be construed as a denial of access, but as a temporary security measure in the interest of safety and security.

## **8. Victim and Witness Protection**

The Law Commission of Sri Lanka, the Attorney General and the National Centre for Victims of Crime, initiated processes aimed at developing a new law to be enacted by Parliament, to provide protection to victims of crime and witnesses. Subsequently, these three processes were consolidated, and a comprehensive new law was drafted to provide assistance and protection to victims of crime and witnesses. Initiation of this project was done prior to it being suggested by the IIGEP. Once enacted, Sri Lanka will stand unique in that it would have a single law to provide both assistance and protection to victims and witnesses of conventional crimes and human rights violations.

The proposed law would also provide assistance and protection to victims of crime as well as witnesses who have been interviewed by the police and who have to appear in courts. The law would provide assistance and protection to victims and witnesses before Commissions, such as a COI. The proposed law has been developed by paying attention to the relevant international norms and best practices. The underlying policy for the new law, as developed by the Attorney General's Department, has met with the approval of the Cabinet of Ministers, and has been subsequently drafted by the Legal Draftsman. The final Bill has now received constitutional clearance and has been recently approved by the Cabinet. The Bill will now be scrutinized by the Supreme Court for constitutionality and will be presented in Parliament as an 'urgent bill.' In the circumstances, it is likely that the new law will be enacted by Parliament shortly and will thereafter become operational.

It is strange that these major positive developments have not been reflected at all in the USCR. However, the Report has, in a highly insensitive manner, proceeded to violate witness rights by consistently disclosing witness and victim identities and the details of crimes allegedly committed against them. The classic example is the repeated disclosure in the USCR, the names and whereabouts of several victims of rape.

## 9. Media Issues

The importance that the GOSL attaches to media freedom is underscored by the fact that freedom of speech is enshrined in the Constitution as a fundamental right. Article 14(i) of Chapter III of the Constitution dealing with fundamental rights, states thus:-

*Every citizen is entitled to:*

- (a) the freedom of speech and expression including publication;*
- (b) the freedom of peaceful assembly;*
- (c) the freedom of association.*

The only restrictions placed in the exercise of these fundamental rights, are laid down in Article 15 of the Constitution itself by which restrictions may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.

The GOSL recognizes and welcomes the important role that the media plays in society, in disseminating news and information. Sri Lanka, being a vibrant multi-party democracy, has a proud record of a fiercely independent and robust press. The GOSL believes that a free media is a cornerstone of democracy, which inter alia, promotes good governance and the rule of law.

In keeping with the government policy of upholding media freedom, the mass media of Sri Lanka is dominated by private news organizations. There is only one state owned newspaper company, namely, the Associated Newspapers of Ceylon Limited, whereas the other six major newspaper companies are in private hands, which publish newspapers in Sinhala, Tamil and English.

Apart from these newspapers, approximately 25 tabloid newspapers and magazines are also published, by the private sector. Similarly, television, the media channel having the biggest impact on the public, is predominantly in private hands. Of the 10 television channels, only two are state owned.

The vast majority of radio channels are owned by private companies. There are 14 companies owning radio stations, of which only the Sri Lanka Broadcasting Corporation (SLBC) and ITN (Lakhandu service) are state owned. The SLBC operates 4 regional stations including the Palaly service in Tamil which is broadcast in the Northern Province. The private companies broadcast their programmes over 20 Sinhala, 4 Tamil and 6 English television channels.

Media freedom has been further strengthened following the repeal of the 120 year old criminal defamation provisions in the Penal Code, by the Penal Code (Amendment) Act No. 12 of 2002. Similar amendments have also been made to the Press Council Law to repeal the criminal defamation provisions therein. However, the right of aggrieved persons to seek civil remedy for defamation continues to be in force.

The Press Complaints Commission which has been established by the Editors' Guild, the Newspaper Society and the Free Media Movement, is mandated to settle disputes referred to it by persons adversely affected by any of its members' publications.

Contrary to misinformed opinion, and the valiant efforts by many vested interests to project a contrary view, the media in Sri Lanka enjoys wide freedom of expression, without government intervention or control. Notwithstanding the ongoing military operations against the LTTE, there is no press censorship, even on information pertaining to security and military matters. This exemplifies the high degree of media freedom in Sri Lanka.

There have, of course, been instances in the past where journalists have been questioned, arrested or detained on suspicion in connection with terrorist related offences. However such actions have been unrelated to their professional activities, but mainly based on their alleged involvement in aiding and abetting terrorism. Two such instances have received considerable attention in Sri Lanka and abroad and there have been attempts to suggest that these arrests are a media freedom issue, by certain interested parties.

a) Arrest and detention of Ms. Munisamy Parameshwari

Based on intelligence received by the Special Task Force of the Sri Lanka Police, Ms. Munisami Parameshwari, a journalist attached to the Maubima newspaper was arrested on 23<sup>rd</sup> November 2006, in respect of her alleged involvement in abetting a LTTE female suicide cadre named Thambirasa Susanthi, by providing her with accommodation in Colombo. Her arrest and subsequent detention was in accordance with provisions of the Emergency Regulations.

Following the completion of the investigation, the Attorney General reviewed the available material for the purpose of instituting criminal proceedings. Though there existed a volume of incriminatory material against Parameshwari, the availability of material admissible against the suspect in a court of law, was insufficient and hence the Attorney General advised the police to discharge the suspect. Accordingly, the suspect was discharged by the Magistrate on 22<sup>nd</sup> March 2007.

b) Arrest and enlargement on bail of Mr. Dushyantha Basnayake

Based on information received by the Sri Lanka Police, that Mr. Dushyantha Basnayake, Finance Director of the Maubima newspaper, along with a terrorist suspect named Anthony Lakshmi Emil had jointly engaged in an enterprise to fund terrorist activities in Sri Lanka, officers of the Terrorist Investigation Division of the Police arrested Mr. Basnayake on 26<sup>th</sup> February 2007.

Following the arrest of the suspect, he was detained in accordance with provisions of the Emergency Regulations promulgated under the Public Security Ordinance. The progress of the criminal investigation was periodically reported to the relevant Magistrate.

On 24<sup>th</sup> April 2007, based on the existence of a prima facie case of terrorist funding, the suspect was remanded in the custody of the Police by the Magistrate. On 15<sup>th</sup> May 2007, the suspect was enlarged on bail.

It is therefore clear that in both cases, there were valid reasons for detention, followed by rapid release or release on bail, depending on the outcome of the inquiries.

It is stated in the USCR that a certain media person was arrested by the CID on an ‘uncorroborated’ accusation by a Minister. It is quite amusing to note that a report which carries, inter alia, more than 100 statements based on uncorroborated evidence of highly dubious sources, has thought it fit to highlight a statement made in Parliament by a Minister regarding an incident that happened to the Minister, himself, in that manner.

The USCR has criticized the destruction of the “Voice of Tigers” (VOT) broadcasting tower by the Air Force jets. It is surprising that the USA, which is fighting its War on Terror, is lending acceptability to a terrorist broadcasting facility that was used as a communications centre by the LTTE leadership to issue directives to their cadres. It should also be noted that the VOT was a mechanism for the incitement of terrorism and was part and parcel of the LTTE military infrastructure and not a civilian installation protected under International Humanitarian Law. In this regard, the GOSL wishes to draw the attention of the US authorities, to UN Security Council Resolution 1624 of 2005 relating to terrorism, which expressly outlaws incitement of terrorism.

The VOT facility was an illegal entity that had been operated without a license issued by the Telecommunication Regulatory Commission of Sri Lanka, as required by the law of the land and international practice. Its programme content promoted and glorified terrorism. In that context, it should be clear that those employed at the VOT facility cannot be considered as ordinary “civilian” media personnel, but have to be considered as “terrorist members” of the most ruthless terrorist organization of the world. It should also be noted that the VOT facility was in contravention of all internationally accepted norms and it was surely not the objective of any international convention to facilitate the propagation of terrorism by providing protection and moral support to any illegal media station operated by a terrorist group.

## **10. Access for media to the conflict areas**

Upon receipt of requests to visit the operational areas, members of media have been provided access to the areas of conflict in the north. In July 2007, a five-day visit was undertaken by a group of journalists belonging to the BBC, Reuters, Reuters TV, AP, APTV, Al Jazeera, and the Daily Telegraph. They visited Kilinochchi and had direct access to the LTTE.

It is interesting to note that during their visit, while the LTTE publicly claimed that an Air Force attack on a Sea Tiger base had affected innocent civilians, this group of independent journalists who were already in the Vanni at the time, were not taken to the location of the alleged bombing, the most obvious action one would have expected from the LTTE, had their allegation been true.

The coverage of these foreign journalists clearly reflected the freedom with which they reported from the Vanni. The reports included a statement made by a key terrorist leader, S.P. Thamilselvan, who clearly stated to the media, that the LTTE would attack economic targets to weaken the Sri Lankan Government. The journalists were also shown women LTTE suicide bombers preparing to carry out attacks. In this context, it would be very interesting to ascertain whether any other government would have permitted media freedom to the extent where journalists were allowed to freely access terrorists who openly vow to bomb the country's economic targets, destroy its economy, kill its innocent citizens and glorify terrorism. The fact that the GOSL had allowed even this type of abhorrent and extremely provocative encounters, clearly demonstrates the GOSL's deep commitment to media freedom.

At the same time, it was indeed fortunate that, as a result of such visit, the foreign journalists saw for themselves, the yearning for peace amongst the common citizens of the North, whom they met at the market place. So too were the revealing reports by some journalists who described how youths in the Vanni were hiding in order to avoid being forcibly recruited by the LTTE and sent to fight against their will. For purposes of record, we reproduce below a Reuter report of 20<sup>th</sup> July 2007 titled; “Sri Lanka rebels forcing Tamils to join war efforts”, which stated that “Families received letters from the Tigers with names of members who must join, underlined. Most international aid agencies have to keep some local staff indoors, some of them have not been able to leave their compounds for months.... All the NGOs in the area have great concern towards recruitment policy. We do experience that staff of all the different NGOs are getting abducted or have tremendous pressure towards them because they want to recruit them.”

In the circumstances, it should be clear that other than in instances where there is an actual security threat due to ongoing operations (as prevalent at present in the operational areas in the North), the media have been provided access to the operational areas and have reported freely, and did not have to face any difficulties as a result, at least from the Government!

## **11. Children and armed conflict**

Sri Lanka has ratified the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict. It has also adopted a zero-tolerance policy on the recruitment of children for engagement in conflict.

According to the UNICEF, the LTTE has been responsible for the systematic and persistent recruitment of children into their cadres. Since 2002, they have recruited 5,700 children. According to UNICEF, there are 1,430 outstanding cases of child recruitment by the LTTE as of 31<sup>st</sup> January 2008.

On 9<sup>th</sup> February 2007, at the 7<sup>th</sup> meeting of the UN Security Council Working Group on Children and Armed Conflict, the GOSL had conveyed that it would adopt the necessary measures to cause an independent and credible investigation into allegations made against some elements of the security forces in connection with the abduction and recruitment of children by the 'Karuna' faction. It was also confirmed that the GOSL is fully committed to the rehabilitation and reintegration of child combatants, who escaped from captivity of the armed groups and this is being done through the provision of a protective environment as well as family re-unification and vocational training. As of 31<sup>st</sup> January 2008 the number of children recruited by the 'Karuna' faction was reported as 234, which included 164 children who are yet under 18 years. Given that the Eastern Province is now cleared of the LTTE, this problem is likely to be resolved soon.

As a further measure, the Minister of Disaster Management and Human Rights, in consultation with the Secretary to the President, appointed a high level “Committee to Inquire into Allegations of Abduction and Recruitment of Children for Use in Armed Conflict” in August 2007. The Committee is headed by the Secretary to the Ministry of Justice and Law Reforms.

## **12. Freedom of Religion**

It is deeply regrettable that the report has cited an isolated incident of religious disharmony to imply that a climate of religious intolerance prevails in Sri Lanka. It should be emphasized that in Sri Lanka, freedom of religion is enshrined as a fundamental right in the Constitution.

Article 10 of Chapter III of the Constitution states as follows:

*Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.*

Sri Lanka is a multi religious society where adherents of four of the major religions of the world have co-existed peacefully for centuries and there are no special restrictions imposed by any authority against any particular community erecting a place of religious worship, and/or against any person in the practice of his/her own religion.

For purpose of record, a table of religious persons and places of worship is set out below:

### **Religious Places and Religious Personnel**

Religious Denomination	No. of religious places	No. of Clergy Members	Percentage of population	No. of religious places as a percentage of total
Buddhist	11,000 temples	32,100	70%	59%
Hindu	4,382 kovils	12,103	15%	23%
Islamic	2,100 mosques	4,784	8%	11%
Christian	1,258 churches	1,942	7%	7%

In a country where there are more than 18,000 places of worship and over 50,000 members of the clergy from 4 major religious denominations who co-exist peacefully, it is most unfortunate that the USCR has deemed it fit to portray Sri Lanka as a nation void of religious harmony.

The attack on a parish that has been described in order to portray a situation of ‘extremist Buddhists’ attacking ‘Christian places of worship’ is a distortion of an isolated incident that has been blown out of proportion to create a false impression. Needless to say, the GOSL vehemently condemns any attack on any place of worship of any religion, in any part of the country.

### **13. Allegations of torture and poor prison conditions**

Sri Lanka acceded to the Torture Convention in 1994 and immediately thereafter, the Sri Lankan Parliament passed legislation to give effect to the provisions of the Convention. The GOSL, in keeping with its deep commitment to this Convention, invited the Special Rapporteur on Torture, Professor Manfred Nowak to visit Sri Lanka. It is clear from Prof. Nowak’s report, and from the report of his predecessor, that torture is not practiced in any systemic manner in Sri Lanka. Nevertheless, the GOSL set up a working group to study all the recommendations made by Prof. Nowak, who was granted access to prisons and Police detention facilities without restrictions, including the carrying out of unannounced visits, and the conduct of private interviews with detainees. From the action of the GOSL to engage with Prof. Nowak, it has been made abundantly clear that Sri Lanka is prepared to do more than what most countries dealing with terrorists, do. In turn, it is useful to reflect on Prof. Nowak’s remarks which reads, *inter alia*, as: “Notwithstanding the difficult security situation the Government is faced with, Sri Lanka in principle, is still able to uphold its democratic principles, ensure activities of civil society organizations and media, and maintain an independent judiciary.”

In the meantime, steps have already been taken to reduce the prison overcrowding that Prof. Nowak pointed out, and which the GOSL too, has been anxious to deal with. In addition, statistics on torture cases are available on the website of the Human Rights Commission of Sri Lanka, which is not a commonly seen practice in many countries. It may also be pertinent to state that, according to information available, even in more affluent countries there are prisons where many conditions are well below standard and where torture has been found to be systemic.

The report failure of the USCR to give credit to a country that has consistently rectified its lapses is therefore regrettable, and is evidence of bias.

#### **14. Liberation of the East from the LTTE**

Despite resistance by the LTTE and the international build up of adverse claims and perceptions, the Sri Lankan security forces have been able to liberate the Eastern Province from the terror grip of the LTTE. The GOSL was able to successfully restore democracy in the East after a considerable length of time. The former LTTE area leaders, Mr. Karuna Amman and Mr. Pillaiyan, entered the mainstream of democratic politics and have set up a political party “Tamil Makkal Viduthalai Pulikal (TMVP)” which recently contested local elections. Confounding the prophets of gloom and doom, the elections were deemed free and fair by the independent monitors, PAFFREL. The elections also won recognition of the international community. The free and fair elections illustrated the yearning and the eagerness of the people of the East, including a large proportion of Tamil citizens, to re-enter the democratic process after being suppressed and victimized by the LTTE for nearly two decades.

Following the liberation of the Eastern Province in 2007, the Government has embarked on a massive new programme titled: ‘Nagenahira Navodaya’ (Reawakening of the East) to accelerate the development of the Eastern Province. A significant component of this programme is the resettlement of displaced persons. As a result of the strenuous efforts of the Government programme, resettlement is nearing completion and the emphasis is now shifting to economic recovery, restoration of livelihoods and development of infrastructure to enable a speedy and sustainable recovery and return to conditions of normalcy. The return to normalcy was aptly confirmed by the fact that, at the Local Authority elections conducted on 10<sup>th</sup> March 2008, voter participation was approximately 60%. The Government has now announced that Provincial Elections are to be held in May 2008 which will result in the implementation of the 13<sup>th</sup> Amendment in the Eastern Province of Sri Lanka. All these developments portray a transformation that few would have even believed possible, just about a year ago!

## **15. SLMM and the CFA**

The USCR states that: “By mid-year, although the CFA technically remained in force, the SLMM ceased citing specific violations due to a lack of any response to previous complaints.” The GOSL wishes to place on record that the reasons adduced by the SLMM were the paucity of monitors as well as an increase in violations. It should however be noted that the LTTE insisted on the withdrawal of monitors from EU Member States namely Denmark, Sweden and Finland from the SLMM, which led to the depletion of the strength and capacity of the SLMM to carry out their functions effectively. The termination of the CFA has enabled the government to introduce a political process to the North and the East as recommended by the All Party Representative Committee (APRC).

## **16. Omissions and lack of understanding of laws and facts**

The USCR has many references to state officials whose names have been linked to various baseless and obviously politically motivated allegations. Most of these allegations have been originally brought forward by Members of the Opposition, taking cover behind Parliamentary immunity. It is therefore shocking that the USCR has published names of high ranking state officials and discredited them with some wild accusations, without even having the professionalism and good sense to either verify the facts from independent sources or to apply the basic principles of justice, before heaping blame and innuendo upon them. Once again, the blatant disregard for basic standards of fair and ethical behaviour, questions the impartiality of the report.

Surprising also was the fact that the USCR, which dedicated an entire chapter to women, was silent on the glaring issue of conscription of women and school-going teenaged girls as LTTE cadres. Further, the majority of the suicide bombings which took the lives of many innocent civilians were carried out by women suicide cadres who were on occasions even disguised as pregnant women, although this fact failed to receive the attention of the USCR.

It is also very strange that the report fails to describe in any detail, the deadly atrocities committed by the LTTE against civilians including women and children. In fact, the criticism contained in the Report appears to gloss over the vast numbers of civilian deaths caused by LTTE terrorism over the years. For example, an eye witness of the Kebitigollewa bus bombing described how the LTTE terrorists calmly and systematically shot the women and children who were fleeing from the bombed bus. This fact was surprisingly omitted from the report, which has been quite liberal in quoting from largely unsubstantiated and clearly unreliable witnesses, on a large number of other matters.

Further, the attempts on the life of important government officials, including a Tamil Minister, have been conveniently ignored. The non-reference to the various incidents documented in the final SLMM reports (160 incidents involving claymore mines or small arms by the LTTE, to just 7 by the Government), is also disconcerting.

## **17. Conclusion**

All in all, it appears that the findings of the USCR have been compiled on the basis of false allegations and hearsay, emanating from ill-informed and unreliable sources. In over 100 instances, the report has failed to provide any source references and has simply covered up such shortcomings by using blanket clauses such as ‘numerous credible sources’, ‘reliable sources’, etc. It contains clear bias, innuendo and contradictions. It has failed to adhere to even basic standards and ethics of report compilation. For example, the report comments on the non-availability of legislation in all three languages in Sri Lanka, while it is public knowledge that the laws of Sri Lanka are freely available in all three languages. The report, instead of presenting properly researched and credible material, bases almost all its “findings” on the many allegations made by opposition politicians, sometimes under the cover of parliamentary privilege which provides immunity from actions for libel, and a few political tabloids.

The USCR was subject to a detailed scrutiny and the response of the GOSL has been prepared accordingly. If prior consultations had taken place with the GOSL authorities, the discrepancies and shortcomings that have been highlighted in the GOSL Response, could have been addressed before the publication of the USCR.

Sri Lanka is a vibrant multi-party democracy which accords the highest importance to the preservation and promotion of human rights, in keeping with the government's constitutional obligations and the rule of law. In recent decades, LTTE terrorism has affected Sri Lanka's economic and social progress and the welfare of its people. Nevertheless, it has been possible for the government to clear the Eastern Province last year from the LTTE presence and enable the people of the area to enjoy the fruits of democracy. The Government is determined to clear the remaining pockets in the Northern Province of the LTTE menace and restore the democratic process in those areas as well.

The GOSL is deeply appreciative of the pro-active measures taken by the US Government to stop the procurement of weapons by the LTTE as well as to curb fund raising by the LTTE and its front organizations.

Sri Lanka and the US, being thriving democracies, have a shared and abiding interest in promoting and protecting human rights. It should be the common endeavour of the two countries to engage in a constructive dialogue, which would further strengthen the existing friendly relations.

It is, therefore, hoped that the US Congress would take cognizance of the matters presented in this Response of the GOSL so that they would be able to understand the issues in a more balanced manner and also take necessary action to prevent the recurrence of such erroneous and biased reports being presented to it in the future.