



# Tamil Information Centre

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Committed to Human Rights and Community Development

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## **Sri Lanka: National Human Rights Commission Downgraded for Failure in Human Rights Responsibilities**

The recent decision by the Sub-Committee on Accreditation of the International Co-ordinating Committee of National Human Rights Institutions (ICC) to downgrade the Sri Lanka Human Rights Commission (SLHRC) from Status A to Status B is an unequivocal message to Sri Lanka from the international community that its human rights conduct is unacceptable and if it wishes to remain part of the civilized nations, then it must respect the universal issues of human rights and democracy.

The ICC decision, a deserved blow to Sri Lankan President Mahinda Rajapakse, came amidst expression of growing concern by civil society organizations and international agencies about the human rights and humanitarian crisis and the deteriorating situation in Sri Lanka. The rule of law is non-existent and there is total disregard for international human rights and humanitarian laws in the island.

The ICC is a representative body consisting of representatives of national human rights institutions from Africa, Americas, Asia-Pacific and Europe, established for the purpose of creating and strengthening national human rights institutions which are in conformity with the Paris Principles.<sup>1</sup> It co-ordinates, at international level, the activities of national human rights institutions; supports the creation and strengthening of national institutions in conformity with the Paris Principles; liaises with the UN and other international organizations; ensures regular contacts with the Office of the UN High Commissioner for Human Rights, and follows up on, and where appropriate, implements recommendations of International Conferences of National Institutions, UN resolutions and recommendations.

The Principles Relating to the Status of National Institutions (Paris Principles) state the responsibilities of national human rights organizations. The main features of a national human rights institution are independence and pluralism. (a) It should monitor any situation of violation of human rights and it should not be limited in its access to any group or individual

<sup>1</sup> The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on 7-9 October 1991, and adopted by UN Human Rights Commission Resolution 1992/54 of 1992 and the General Assembly Resolution 48/134 of 1993.

possessing knowledge about violations or is threatened. (b) It should be able to advise the government, the Parliament and any other competent body on specific violations, on issues related to legislation and compliance with international human rights standards, and should have direct contact with these institutions. (c) It should encourage the government to ratify human rights instruments, and contribute to the reports which States are required to submit to regional and international institutions or committees. (d) It should have a mandate to educate and inform in the field of human rights and formulate educational human rights programmes and take part in their implementation. (e) It should be able to prepare and publicize reports on any human rights matter and make use of the media.

Any national human rights institution seeking membership of the ICC may make an application to the ICC Chairperson, through the ICC Secretariat, with supporting documents.<sup>2</sup> The Sub-Committee of the ICC on Accreditation meets before and during the annual meeting of the ICC and reviews new applications, reviews additional information submitted on applications presented previously, and prepares recommendations. The Chair of the Sub-Committee on Accreditation presents a report with recommendations and rationale to members of the ICC. The Chairperson of the ICC then informs applicant institutions of the decisions taken by ICC members and their rationale.<sup>3</sup>

The member national institutions accredited are classified according to the level of compliance with the Paris Principles. The accreditation classifications are as follows:<sup>4</sup>

**Status A:** The national human rights organization is in compliance with the Paris Principles;

**Status A(R):** Accreditation with reserve – Accreditation granted where preliminary analysis indicates compliance with the Principles but insufficient documentation is submitted to confer Status A;

**Status B:** Observer Status - The national human rights organization is not fully in compliance with the Paris Principles or insufficient information provided to make a determination;

**Status C:** The national human rights organization is not in compliance with the Paris Principles.

The SLHRC was created under the Human Rights Commission of Sri Lanka Act No. 21 of 1996.<sup>5</sup> The Sri Lankan Constitution specifically provides that ‘no person shall be appointed by the President as the Chairman or a member of any of the Commissions’ except on a recommendation of the Constitutional Council.<sup>6</sup>

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<sup>2</sup> Article 3 - Rules of Procedure of the ICC adopted 15 April 2000 and amended on 13 April 2002 and 24 October 2006

<sup>3</sup> Articles 4.1, 6.1 and 6.3 - Rules of Procedure of the Sub-Committee on Accreditation adopted by the members of the ICC at its 15<sup>th</sup> session, held on 14 September 2004, Seoul, Republic of Korea

<sup>4</sup> Article 5 of the Rules of Procedure of the Sub-Committee on Accreditation

<sup>5</sup> The law came into force on 21 August 1996.

<sup>6</sup> Article 41B of the Constitution introduced by the 17<sup>th</sup> Amendment

Among SLHRC's functions as defined in the Act are to

- (a) investigate complaints regarding procedures to ensure compliance with the provisions of the Constitution relating to fundamental rights and to promote respect for fundamental rights;
- (b) investigate complaints regarding infringement or imminent infringement of fundamental rights and provide resolution through conciliation and mediation;
- (c) advice and assist the government in formulating legislation and administrative directives and procedures in furtherance of the promotion and protection of human rights;<sup>7</sup>

The SLHRC has power to investigate, on its own motion, infringement of fundamental rights caused by executive or administrative action.<sup>8</sup> It also has powers, among others, to intervene in court proceedings relating the infringement or imminent infringement of fundamental rights with the permission of the court, and monitor the welfare of persons detained by judicial order or otherwise.<sup>9</sup>

The previous Commission lapsed in March 2006 and the Sri Lankan President did not appoint a new Commission until 18 May 2006. The appointment was made without any transparent consultations and in breach of the Sri Lankan Constitution, affecting SLHRC's independence and credibility. The Sub-Committee on Accreditation of the ICC emphasizes that the following factors are critically important in the selection and appointment process of the Governing Body of a national human rights institution in ensuring pluralism and independence: a) A transparent process; b) Broad consultation throughout the selection and appointment process; c) Advertising vacancies broadly d) Maximizing the number of potential candidates from a wide range of societal groups; e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.<sup>10</sup>

But these factors were not observed in the appointment of the SLHRC. Although the Human Rights Commission Act says that the five Commissioners must be 'chosen from among persons having knowledge of, or practical experience in, matters relating to human rights',<sup>11</sup> the current Commissioners have no background in human rights. The previous Commissions were criticized since the appointment of the first Commission, but the current SLHRC has completely deviated from its mandate and has become part and parcel of government machinery. After visiting Sri Lanka in October 2007 (1-8 October), the UN Special Rapporteur on Torture expressed his dissatisfaction about the SLHRC:

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<sup>7</sup> Section 10 of the Act

<sup>8</sup> Section 14 of the Act

<sup>9</sup> Section 11 of the Act

<sup>10</sup> See paragraph 4 under "General Observations adopted by the ICC in October 2006" appearing as Annex 1 to the Report and Recommendations of the Sub-Committee, 19<sup>th</sup> Session, 22 March 2007

<sup>11</sup> Section 3 (1) of the Act

*“.....a number of shortcomings remain, and most significantly, the absence of an independent and effective preventive mechanism mandated to make regular and unannounced visits to all places of detention throughout the country at any time, to conduct private interviews with detainees, and to subject them to thorough independent medical examinations. It is my conviction that this is the most effective way of preventing torture. In the case of Sri Lanka, I am not satisfied that visits undertaken by existing mechanisms, such as the NHRC, are presently fulfilling this role, or realizing this level of scrutiny.”<sup>12</sup>*

In her statement to the UN Human Rights Council in December 2007, the High Commissioner for Human Rights Louise Arbour said as follows:

*“Regrettably, the various national institutions and mechanisms that could be expected to safeguard human rights have failed to deliver adequate protection. In particular, the Human Rights Commission of Sri Lanka, which had previously enjoyed a proud reputation internationally, has had its independence compromised by the irregular appointment of its Commissioners and the credibility of its work has suffered.”<sup>13</sup>*

Thirty three Sri Lankan national organizations, including the Centre for Human Rights and Development (CHRD), submitted a petition to the ICC on 24 October 2007. In the petition the civil society organizations said that they have no confidence in the SLHRC, as it is constituted and in the way it operated, and that the SLHRC lacks independence, credibility and has been ineffective in responding to the victims of human rights abuses at a moment of severe human rights crisis. They pointed out that the Sub-Committee on Accreditation has noted that in a situation of a state of emergency, a national human rights commission should ‘conduct itself with a heightened level of vigilance and independence in the exercise of its mandate’, but the SLHRC has chosen to be silent and inactive despite the introduction of emergency and harsh emergency regulations.<sup>14</sup> They further stressed that the silence and inaction of the SLHRC violates a key responsibility as laid down in the Paris Principles and the Sri Lankan Human Rights Commission Act. They urged the ICC and the High Commissioner for Human Rights not to lend credibility and legitimacy to an institution that has failed to live up to its mandate and has been unwilling and unable to respond to the severe human rights crisis facing Sri Lanka.

The Tamil Information Centre, which has constantly argued that the international community must address the human rights crisis urgently and effectively, said in a statement in December 2007 as follows about the SLHRC:<sup>15</sup>

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<sup>12</sup> *Special Rapporteur on Torture concludes visit to Sri Lanka*, UN Press Release, 29 October 2007 – [www.unhcr.ch/hurricane.nsf](http://www.unhcr.ch/hurricane.nsf)

<sup>13</sup> Address by Ms. Louise Arbour, UN High Commissioner for Human Rights, on the occasion of the resumed 6<sup>th</sup> Session of the Human Rights Council, Geneva, 11 December 2007 – [www.unhcr.ch/hurricane/hurricane.nsf](http://www.unhcr.ch/hurricane/hurricane.nsf)

<sup>14</sup> See paragraph 6.11 under “General Observations” of the Report and Recommendations of the Sub-Committee, 19<sup>th</sup> Session, 22 March 2007

<sup>15</sup> TIC statement titled *The International Community Must Take Urgent and Effective Action to Address Human Rights Abuses and Impunity in Sri Lanka* on 10 December 2007

*“It is clear from the inaction even in the cases of serious human rights violations, the SLHRC which should be independent, is now functioning fully under the control of the Sri Lankan government and has failed to provide protection to the people in accordance with its mandate. It has failed to adequately monitor human rights violations and to investigate abuses. It lacks transparency and accountability. It has failed systematically to hold inquiries into abuses and publish reports. As a consequence, it has totally lost the confidence of the people and people’s institutions. In relation to torture and disappearances, the regional offices of the SLHRC have provided information to the SLHRC headquarters in Colombo. But the commissioners have not taken any action. The SLHRC lacks the legal basis for effective functioning. The Sri Lankan President appointed the Commission in May 2006 without the recommendation of the Constitutional Council, which is a mandatory legal requirement in terms of the 17<sup>th</sup> Amendment to the Constitution. The President has also failed thus far to appoint the Constitutional Council which recommends the appointment of all the independent commissions.*

*The SLHRC announced in June 2006 that it will not hear 2,127 cases of disappearance passed on to it from the presidential commissions appointed to investigate disappearances, ‘unless special directions are received from the government, as findings will result in payment of compensation’. This is a clear indication that the SLHRC is taking instructions from the government contrary to its purpose and mandate. In June 2007, the SLHRC introduced a three-month time-limit for investigation of complaints, although Human Rights Commission of Sri Lanka Act 1996 does not limit the time for investigations. It has also issued instructions to its regional offices to stop sharing information with NGOs Sri Lankan human rights agencies have stated that the SLHRC violates fundamental features of the Paris Principles Relating to National Institutions for Protection and Promotion of Human Rights. By failing to carry out its duties as a national institution, the SLHRC in effect, is contributing to impunity and human rights violations in Sri Lanka.”*

While issuing instructions to regional office not to share information with NGOs, the SLHRC falsely reported to the Asia Pacific Forum of National Human Rights Institutions in September 2007 that it closely collaborates with NGOs by providing information reported to the Commission.<sup>16</sup> The Sub-Committee on Accreditation recognizes that there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles, but it emphasizes the importance of national institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.<sup>17</sup>

The SLHRC was granted Status A in 2000 by the ICC. The Sub-Committee on Accreditation considered information relating to the SLHRC in March 2007 and the SLHRC’s Status A was placed under review<sup>18</sup>. The Report and Recommendations of the Sub-Committee were adopted

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<sup>16</sup> Report submitted by the SLHRC to the Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Sydney 2007

<sup>17</sup> See paragraph 3 under “General Observations adopted by the ICC in October 2006” appearing as Annex 1 to the Report and Recommendations of the Sub-Committee, 19<sup>th</sup> Session, 22 March 2007

<sup>18</sup> The Sub-Committee considered the matter pursuant to its functions under article 3(g) of the Rules of Procedure which states as follows: “Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions may have

during the 19<sup>th</sup> Annual Meeting of the ICC in Geneva from 21 to 23 March 2007. The Sub-Committee made the following recommendations relating to Sri Lanka:

***“Sri Lanka: Human Rights Commission***

*Pursuant to its powers under article 3 (g) of the ICC Rules of Procedure, the Sub-Committee considered information provided by the Secretariat of the ICC in relation to matters of concern involving the Sri Lanka Commission. The Sub-Committee notes that the Commission is scheduled for re-accreditation in October 2007. After consideration of the material before it, pursuant to its powers under article 3(g) of the ICC Rules of Procedure, the Sub-Committee initiates a review of the Sri Lanka Commission on the basis that:*

- a) It is not clear whether the appointment of Commissioners has been in compliance with the Law of the Commission and therefore in compliance with the Paris Principles; and*
- b) It is not clear whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006. The review will take place in October 2007.*

*The Commission is requested to provide detailed documentation regarding these concerns two months prior the next Sub-Committee meeting, and updated information two weeks prior to the meeting.*

*In relation to the re-accreditation scheduled for October 2007 the Sub-Committee refers the Commission to the General Observation on NHRIs under review and notes that the reaccreditation will be deferred until the review is completed.”*

Recently, the ICC decided to downgrade the status of the SLHRC from Status A to Status B. The reasons for the decision, as observed by the Sub-Committee are as follows:

- 1) The Paris Principles provide for the appointment of the Governing Body and other guarantees of independence. The 2006 appointment of the SLHRC was carried out without compliance to Sri Lankan law, that is, the recommendation of the Constitutional Council prescribed in the Sri Lankan Constitution was not obtained.
- 2) The SLHRC did not take measures to ensure its independent character and political objectivity, as required by the Paris Principles. Its practice was not “balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2,000 cases of disappearances in July 2006.

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*changed in any way which affects its compliance with the Paris Principles, the Chairperson or sub-committee may initiate a review of that member’s membership.”*

- 3) The SLHRC failed to issue annual reports on human rights as required by the Paris Principles.

As a result of the downgrading, the SLHRC has no right to vote in international meetings and is not eligible to stand for election to the ICC. This is an expression of the international recognition that human rights in Sri Lanka are being violated with impunity and that national human rights institutions are unable to provide protection and are acting in violation of internationally recognized principles. The Sri Lankan government's claim that national human rights institutions are strong is untenable.

The TIC reiterates the importance of maintaining the pressure to improve human rights in Sri Lanka and again calls up on the International Community to take all measures as are necessary to,

**a) ensure the presence of an international human rights monitoring body with access to all parts of Sri Lanka and access to all relevant institutions in Sri Lanka;**

**b) ensure that a mechanism for investigation of human rights violations throughout the island, which meets the requirements of independence, credibility, effectiveness and empowerment is established, with international participation, so that it contributes to public confidence, peace and stability in all parts of Sri Lanka;**

**c) tackle impunity in Sri Lanka, paying special attention to the laws and regulations that contribute to impunity by ensuring proper, adequate and impartial investigations into allegations of torture, rape, disappearances and extra-judicial executions, and prosecuting the perpetrators, irrespective of their ethnic origin, position or status.**

**:// END**