

# State Practice of Asian Countries in International Law

*Sri Lanka*

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## FREEDOM TO SEEK, RECEIVE, AND IMPART INFORMATION

### *19th Amendment – 1978 Constitution of the Democratic Socialist Republic of Sri Lanka*

The 19th Amendment to the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka was adopted on 15 May 2015. By virtue of Article 14A (1) of the Amendment, right of access to information was incorporated into the Fundamental Rights Chapter of the Constitution. The enforceability of this right is dependent on whether the right of access to information is provided for by law, and whether such access paves way for the protection of a citizen's right.

Providing the right to access information is consistent with the obligations that Sri Lanka has undertaken under Article 19(2) of the International Convention on Civil and Political Rights (ICCPR) which requires State parties to grant *inter alia* the freedom to seek, receive and impart information as an integral component of the freedom of expression.

## COMMITMENT TO THE PURPOSES AND PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS AND INTERNATIONAL LAW

### *President's Duty to Act in Accordance with International Law*

Section 5 of the 19th Amendment reiterates that the President should exercise his powers and functions *inter alia* in accordance with the international law. This obligations is stated in Article 33 (2) (h) of the Constitution and is a continuation of the constitutional guarantee that was embodied in Article 33(f) of the Constitution pre-19th Amendment. This is consistent with General Assembly Resolution 66/102 (2012) which reaffirmed the commitment of the members of the United Nations General Assembly to guarantee the protection of the rule of law at national and international levels.

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UNITED NATIONS CONVENTION AGAINST CORRUPTION AND  
UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL  
ORGANIZED CRIME

*Chapter XIXA of the Constitution of Sri Lanka*

Chapter XIXA of the Constitution that was introduced by the 19th Amendment provides the legal framework for the establishment of a Commission to Investigate Allegations of Bribery or Corruption. Article 156A(c) of Chapter XIXA states that the Parliamentary law establishing such a Commission shall provide for 'measures to implement the United Nations Convention Against Corruption and any other international Convention relating to the prevention of corruption, to which Sri Lanka is a party'. Sri Lanka has ratified UN Convention against Corruption and UN Convention against Transnational Organized Crime

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL  
ORGANIZED CRIME

*Assistance to and Protection of Victims of Crime and Witnesses Act,  
No 4 of 2015*

By virtue of Articles 24 and 25, the UN Convention against Transnational Organized Crime requires State parties to provide assistance and protection to witnesses and victims of crime. The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 was certified on 7 March 2015 to give effect to obligations undertaken under the aforementioned UN Convention which was ratified by Sri Lanka on 22 September 2006.

The preamble to the Assistance to and Protection of Victims of Crime and Witnesses Act provides as follows:

An Act to provide for the setting out of rights and entitlements of victims of crime and witnesses and the protection and promotion of such rights and entitlements; *to give effect to appropriate international norms, standards and best practices relating to the protection of victims of crime and witnesses*; the establishment of the National Authority for the Protection of Victims of Crime and Witnesses; constitution of a Board of Management, the Victims of Crime and Witnesses Assistance and Protection Division of the Sri Lanka Police Department; payment of compensation to victims of crime; establishment of the Victims of Crime and Witnesses Assistance and Protection Fund and for matters connected therewith or incidental thereto. [emphasis added]

**ARBITRARY DEPRIVATION OF LIFE, TORTURE, ILL TREATMENT,  
LACK OF PROPER INVESTIGATION, RIGHT TO AN EFFECTIVE  
REMEDY, RIGHT TO LIBERTY AND SECURITY OF PERSON,  
RESPECT FOR THE INHERENT DIGNITY OF THE HUMAN PERSON**

*Misilin Nona Guneththige and Piyawathie Guneththige (represented by the Asian Legal Resource Centre and Redress) v. Sri Lanka.* Communication No. 2087/2011, Human Rights Committee, 113th Session, 16 March – 2 April 2015, CCPR/C/113/D/2087/2011, 7 May 2015.

The communication was submitted on behalf of Thissera Sunil Hemachandra who was the son of Misilin Nona and nephew of Piyawathie. The authors of the communication alleged that the following provisions of the International Covenant on Civil and Political Rights were violated by the State party: Articles 2(3),<sup>1</sup> 6,<sup>2</sup> 7,<sup>3</sup> 9(1),<sup>4</sup> 9(2),<sup>5</sup> 9(4),<sup>6</sup> and 10 (1).<sup>7</sup>

The facts of the case indicate that the victim – Sunil had won a lottery worth over three million Sri Lankan rupees. A lottery sales agent and a policeman had visited Sunil's house on the following day and had attempted to compel him to visit the police. On 21 July 2003, Sunil had been requested to visit Moragaha-hena Police Station even though no reasons necessitating such a visit had been explained to him. Sunil had then been compelled to pay Rs.25,000 to cover the expenses of a procession of a temple. Although Sunil was initially released upon agreeing to make the payment, he was taken into police custody on the following day, i.e., 22 of July 2003.

Sunil had been beaten in police custody and been deprived of medical attention claiming that he was merely suffering from an epileptic fit. After this was brought to the attention of the police by the second author, Sunil had been admitted to hospital. Two police officers had recorded a statement from Sunil while he was in hospital. During this time, Sunil had only been able to utter his name and place his thumb print on the alleged 'statement' that was recorded by the police. His thumb print had so been obtained even though he was capable of placing his signature.

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1 Right to an effective remedy.

2 Inherent right to life.

3 Right to be free from torture, cruel, inhuman and degrading treatment or punishment.

4 Right to liberty and security of person, right to be free from arbitrary arrests or detention.

5 Right to be informed of the reasons for arrest and charges at the time of the arrest.

6 Entitlement to take proceedings before a court, in order that the court may decide without delay on the lawfulness of an arrested person's detention and order such person's release if the detention is not lawful.

7 Right to be treated with humanity and with respect for the inherent dignity of the human person during the period of deprivation of liberty.

On 24 July, Sunil had been transferred to the National Hospital in Colombo where he was subject to brain surgery and was treated in the Intensive Care Unit. Sunil succumbed to the injuries on the 26 July 2003. There were inconsistencies in the Judicial Medical Officer's Report. The authors of the communication filed a petition to move the Supreme Court (SC) concerning the violated fundamental rights in September 2003. Simultaneously, the possibility of raising criminal charges against alleged perpetrators were considered by the Attorney General (AG), and on 29 April 2004, the AG decided that no charges can be filed as there was no evidence of an assault against the victim. This decision was made even though the Magistrate had noted that the circumstances surrounding the victim's death were suspicious.

The authors had also filed a petition at the Human Rights Commission of Sri Lanka (HRCSL) soon after the death of the victim. This remained unanswered until 21 August 2008 and the authors were later informed that the proceedings were suspended. On the 6<sup>th</sup> August 2010, the SC dismissed the fundamental rights application on the ground that Sunil's fall was due to a fit arising from alcohol withdrawal. The SC abstained from assessing whether the victim was subject to assault in custody. The authors therefore claim that domestic remedies have been exhausted and that the State party is liable for the violation of Articles 2(3), 6(1), 7, 9 (1, 2, and 4), and 10.

The Human Rights Committee requested information from the State party in four different instances regarding the admissibility of the case. However, the committee noted with regret that the State has not cooperated and the requested information was not received. The Committee noted that Sri Lanka is obliged by virtue of Article 4(2) of the Optional Protocol to the ICCPR to examine in good faith all allegations levelled against the State party, and to make available to the Committee all information at the disposal of the State party. The Committee decided to give due weight to the allegations of the authors to the extent substantiated in the absence of a reply from the State party. The Committee declared the communication admissible due to domestic remedies being unduly prolonged and due to the absence of a response from the State party.

The Committee noted that the inherent right to life as stipulated in Article 6 of the ICCPR also means that the State party bears the responsibility to care for the life of arrested and detained individuals and that 'a death in any type of custody should be regarded *prima facie* as a summary or arbitrary execution'. The Committee further stated that 'consequently, there should be a thorough, prompt, and impartial investigation to confirm or rebut [the above] presumption especially when complaints by relatives or other reliable reports suggest unnatural death.' The very officers of the Moragahahena Police Station where the victim was detained being involved in the investigation, the

Attorney General's refusal to conduct a criminal prosecution and the seven year duration taken by the Supreme Court of Sri Lanka to make a ruling on the fundamental rights petition filed by the authors of the communication were regarded by the Committee as factors invoking State responsibility concerning its failure to protect the victim's life. The Committee considered this as resulting in the breach of Article 6(1) read alone and in conjunction with Article 2(3) of the ICCPR. The Committee further found a violation of Article 7 by the State as there was evidence of severe beatings on the head and abdomen of the victim and because the authorities failed to provide timely and effective medical assistance to the victim. The Committee further concluded that the arrest of the victim without informing of reasons for arrest deprived the victim of any possibility of seeking legal assistance and that in the absence of any rebuttal by the State party, there is sufficient evidence to conclude that the victim's rights under Article 9 have been violated by the State.

The Committee noted that despite the lapsing of nearly 12 years since the victim's death, the authors are still unaware of the circumstances surrounding the death due to the State party's inaction. The continued stress and mental anguish caused upon the authors of the communication by such inaction was considered as amounting to a breach of Article 2(3) read in conjunction with Article 7.

The Committee noted in conclusion that the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the provisions of the ICCPR and that the State has undertaken the obligation of providing an effective and enforceable remedy when a violation has been established. The State party was requested to provide information to the Committee within 180 days and to widely disseminate the views concerning this violation after having them translated into the official languages of Sri Lanka.

#### **PROMOTING RECONCILIATION, ACCOUNTABILITY AND HUMAN RIGHTS IN SRI LANKA**

##### ***Human Rights Council Resolution 30/L.29 on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, A/HRC/30/L.29, 29 September 2015***

The United Nations Human Rights Council adopted Resolution 30/1 on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka on 29 September 2015. The Human Rights Council welcomed the steps taken by the Government of Sri Lanka since 2015 to advance respect for human rights, and to strengthen good governance and democratic institutions. The Council

further welcomed the efforts of the government to investigate into allegations of bribery, corruption, fraud and abuse of power. Clause 3 of the Resolution states as follows:

Supports the commitment of the Government of Sri Lanka to strengthen and safeguard the credibility of the process of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national with the inclusion of victims and civil society, including non-governmental organizations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices.

**CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN**

*Sri Lankan State Party Report to the CEDAW Committee, Eighth  
Periodic Report of State Parties Due in 2015 (received on 30 April  
2015), CEDAW/C/LKA/8, 29 May 2015*

In this report, the absence of a Women's Right Bill and minimal female representation at elected political bodies was cited. However, the State party noted that the number of women in Sri Lanka Administrative Services has increased. Since the approval of the budget in January 2015, the State has implemented a system of paying Rs. 20,000 to pregnant women for purchase of nutritious food recommended by doctors. This was targeted at avoiding anemia, low birth weight and malnutrition affecting both mothers and babies.<sup>8</sup> This is consistent with the obligations that Sri Lanka has undertaken under Article 12(2) of CEDAW.

Section 13K of the Assistance to and Protection of Victims of Crime and Witnesses Act No 4 of 2015 seeks to lay a framework to take measures to sensitize police officers, Prison Department, government medical officers, public officers associated with probation and social services and other officers on matters concerning *inter alia* gender.<sup>9</sup> This is in line with Article 2(b) of CEDAW.

Paragraph 94 of the State Report records that the State has adopted measures to abolish the concept of "head of household" in administrative practice and recognize joint or co-ownership of land. This is consistent with the obligations that Sri Lanka has undertaken under Article 16(1)(h) of CEDAW.

<sup>8</sup> Paragraph 24.

<sup>9</sup> See also paragraph 28 and 29 of the State Report to CEDAW.