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## **Putting the Wolf to Guard the Sheep: Sri Lanka's Witness Protection Authority**

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### **Executive Summary**

The new body set up in Sri Lanka to protect witnesses and victims of crimes, the "National Authority" includes three appointments made by the Government of President Maithripala Sirisena that give rise to grave concerns about the appropriateness of their appointments. They include an alleged perpetrator of torture named in a UN report, as well as the official in charge of "rehabilitation" camps post-war where detainees had no appeal rights and describe being severely tortured. Under these circumstances no witness or victim can rely on the state for protection if they testify against the security forces in Sri Lanka at a Truth Commission or court of law.

Witness protection is at the heart of the accountability process Sri Lanka promised its people. Appointing figures to a witness protection body who could one day find themselves on trial for serious crimes like torture, is akin to putting wolves to guard the sheep. This raises serious concerns about the good faith of the Government to deliver on its international commitments and its promises of justice to its own people.

Moreover these appointments violate Sri Lanka's commitments in the 2015 UN Resolution to strengthen witness protection and vet all public officials for their human rights record. These are not the only questionable appointments; in November 2016 the Sri Lankan Foreign Minister<sup>1</sup> approved sending the official who once run the country's most notorious torture site to Geneva as part of the government delegation to the UN Committee Against Torture<sup>2</sup>.

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<sup>1</sup> Remarks for reporting by the Minister, Chatham House, 11 January 2017 and *Sri Lanka FM has no excuse for sending spy chief to UN (Video)*, ATHULA VITHANAGE, 11 January 2017, JDS Lanka, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/658-sri-lanka-fm-has-no-excuse-for-sending-spy-chief-to-un-video>.

<sup>2</sup> *The Case Against Sisira Mendis*, 15 November 2016, ITJP at <http://www.itjpsl.com/assets/press/The-case-against-Sisira-Mendis-final.pdf>

# 1. Background

## 1.1 Witness Protection

Witness protection lies at the heart of the Government's commitment to accountability for what the UN called "system crimes" that occurred during and after the end of the war<sup>3</sup>. The Government of Sri Lanka committed itself by way of UN Resolution 30/1 at the Human Rights Council in Geneva to establish a Truth Commission, an Office of Missing People and a special court to which it is envisaged victims and witnesses would testify. Were it genuinely safe, a large number of Tamil victims of war crimes perpetrated during and after the war would want to testify at the commission or court against the Sri Lankan military, police and their paramilitary allies.

## 1.2 The Assistance to and Protection of Victims of Crime and Witnesses Act<sup>4</sup>

In 2015, the Government of Sri Lanka made a commitment to the Human Rights Council in Resolution 30/1 that it would review and strengthen its Witness Protection legislation<sup>5</sup>; to date this has not happened. This report is not a critique of the legislation per se, whose weaknesses have been amply documented, including in the recent consultation process in Sri Lanka<sup>6</sup>. This is instead an analysis of the recent appointments to the National Authority – the body that purportedly is to implement witness protection in Sri Lanka.

## 1.3 The National Authority for the Protection of Victims of Crime and Witnesses

The enabling legislation stipulates the establishment of a National Authority for the Protection of Victims of Crime and Witnesses, as well as a board of management and a Victims of Crime and Witnesses Assistance and Protection Division of the Sri Lankan Police Department<sup>7</sup>. The report of the public consultation recently conducted in Sri Lanka concluded that none of these bodies inspired confidence in their impartiality and that they were constructed to render "the investigation of public officials and police officials ineffective<sup>8</sup>". This is in spite of the stated intention of the the Act: "to give effect to appropriate international norms, standards and best practices relating to the protection of victims of crimes and witnesses".

## 1.4 Appointments to the National Authority

The National Authority was launched to mark the first anniversary of the Sirisena Government in January 2016<sup>9</sup>. It is supposed to include 7 ex officio members and 5 members appointed by the President who have, "experience in professions or fields of professional activity associated with criminology, the criminal justice system, the

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<sup>3</sup> "The sheer number of allegations, their gravity and recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all point to system crimes", 30 September 2015, Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein via videolink to the Human Rights Council, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E#sthash.xN75VUok.dpuf>.

<sup>4</sup> Available at: [http://www.srilankalaw.lk/gazette/2015\\_pdf/4%20of%202015.pdf](http://www.srilankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf)

<sup>5</sup> UN resolution A/HRC/RES/30/1 said the Human Rights Council: "Welcomes the recent passage by the Government of Sri Lanka of an updated witness and victim protection law and its commitment to review the law, and encourages the Government to strengthen these essential protections by making specific accommodations to protect effectively witnesses and victims, investigators, prosecutors and judges".

<sup>6</sup> *The Draft Bill for the Assistance and Protection of Victims of Crime and Witnesses: Critique and Recommendations*, Rosalind Sipos, [https://cpalanka.org/wp-content/uploads/2007/10/and\\_Witness\\_Protection\\_Bill.pdf](https://cpalanka.org/wp-content/uploads/2007/10/and_Witness_Protection_Bill.pdf) Also the *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, 17 November 2016, Volume 1, page 412.

<sup>7</sup> The Division for Assisting and Protecting Victims of Crime and Witnesses was established in November 2016 according to [Sri Lanka Police establishes new division to assist and protect victims of crime and witnesses](http://www.colombopage.com/archive_16B/Nov04_1478233087CH.php), 4 November 2016, Colombo Page, [http://www.colombopage.com/archive\\_16B/Nov04\\_1478233087CH.php](http://www.colombopage.com/archive_16B/Nov04_1478233087CH.php).

<sup>8</sup> *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, 17 November 2016, Volume 1, page 413.

<sup>9</sup> Police website: <http://www.police.lk/index.php/special-events-/2181-sri-lanka-police-officially-establishes-the-division-for-assisting-and-protecting-victims-of-crime-a-witnesses->, *Launch of National Authority for Protection of Victims, tomorrow*, News.lk, <http://www.news.lk/news/business/item/11659-launch-of-national-authority-for-protection-of-victims-tomorrow>

promotion and protection of human rights or medicine". According to the media, the ten members<sup>10</sup> of the National Authority are the following:



#### Members about whom there are concerns:

1. Suhada Gamlath (Chairperson)
2. Yasantha Kodagoda
3. Nandana Munasinghe
4. Ashoka Wijetilike

#### Members about whom there are no concerns:

5. Dr. M.A.D.S.J. Shiranjani Niriella – law professor<sup>11</sup>
6. Dr. Nimal Fernando
7. Sanjeewa Samaranyake – former state counsel<sup>12</sup>
8. Hamid Al Ghazali – a member of the Human Rights Commission of Sri Lanka
9. Neel Hapuhinne, Additional Secretary to the Ministry of Law and Order
10. W.U.P. Premachandra, Senior Assistant Secretary to the Ministry of Women and Child Affairs

The absence of Tamil members appointed to this body is striking given many of the victims and witnesses will be Tamil. It has only one Muslim representative and is 90% Sinhalese.

## 2. Allegations

Allegations regarding the three appointees to the National Authority who are of great concern:

### 2.1 Nandana Munasinghe

Mr. Munasinghe is a former Terrorism Investigation Division (TID) director. He went on to become Director and then DIG of the Criminal Investigation Department (CID) in 2009 and 2010<sup>13</sup>. CID has overall oversight for TID. By October 2016 he is a Senior DIG of police<sup>14</sup>.

<sup>10</sup> From අපරාධයක සාක්ෂිකරුවන් හා වෘත්තීයයින් ආරක්ෂා කිරීමේ ජාතික අධිකාරිය පිහිටුවීම ජනවාරි 08 වැනිදා අධිකරණ අමතී අතීන් බන්ධනාගාරදෙසින්, 7 January 2016, <http://lankanews.online/index.php/localnews-sin/22-08> but with new Chairperson updated from: "NA for protecting victims and witnesses set up", 8 January 2016, Ceylon Times, no longer available online, it says the appointments include: "Hamid Ghazali Hussain, Additional Solicitor General, Yasantha Kodagoda, Additional Secretary to the Ministry of Law and Order, Neel Hapuhinne, Senior Assistant Secretary to the Ministry of Women and Child Affairs, W.U.P. Premachandra and Senior Deputy Inspector General of Police (Crimes and Motor Vehicle/Traffic) Nandana Munasinghe). The chairperson was the retired High Court Judge Wimal Nambuwasam. Other members include Senior Lecturer at the Department of Public and International Law at the Faculty of Law, the University of Colombo, Dr. M.A.D.S.J. Shiranjani Niriella, Dr. Nimal Fernando, Deputy Inspector General of Police, Ashoka Wijetilike and Attorney-at-Law Sanjeewa Samaranyake. The Chair resigned from the position within a few months of appointment and was succeeded by Solicitor General Suhada Gamlath. It was further found that there was a legal defect in the appointment of the members necessitating re-appointment several months after the body was established. The negative impact on the credibility of the Authority was considerable".

<sup>11</sup> University biography: <http://www.cmb.ac.lk/index.php/member/ms-m-a-d-s-j-s-niriella/>  
<sup>12</sup> He has been a state counsel (or public prosecutor as a part of the Attorney General's department) according to: *Petitioner interested only in clearing name of late brother — Counsel*, Chitra Weeraratne, 1 March 2003, The Island, <http://www.island.lk/2003/03/01/news08.html> and also in 2001 according to this: <http://webcache.googleusercontent.com/search?q=cache:WcMyE8aPQVQJ:www.lawnet.lk/wp-content/uploads/2016/11/037-SLLR-SLLR-2001-V-3-DIAS-v.-DIRECTOR-OF-CUSTOMS.pdf+&cd=6&hl=en&ct=clnk&gl=uk>

<sup>13</sup> *Sri Lanka releases arrested pro-JVP newspaper editor, 17 October 2009*, Tamilnet; *Several High-Ranking CID Officers Transferred*, 20 April 210, The Sunday Leader, <http://www.thesundayleader.lk/2010/04/20/several-high-ranking-cid-officers-transferred/>

<sup>14</sup> *The Police conducting special secret crime operation*, 14 October 2016, Daily Ceylon, <http://english.dailyceylon.com/the-police-conducting-special-secret-crime-operation/>

In 2007 in Colombo, Mr. Munasinghe was the officer who received the UN Special Rapporteur, Manfred Nowak, as Director of TID<sup>15</sup>. Mr. Nowak said that detainees were transferred to avoid meeting him on the orders of Nandana Munasinghe (paragraph 25) and his report goes on to describe Mr. Munasinghe as one of the alleged perpetrators of torture who merited investigation (paragraph 13, page 30)<sup>16</sup>:

*“The Special Rapporteur recommends that prompt and independent investigations of all allegations of torture and ill-treatment be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators, Inspector of Police Saman, Police Constable Perera, and the management of TID, including the Director of TID, Senior Superintendent of Police, Nandana Munasinghe, as well as the CID officers allegedly responsible for the ill-treatment of Nicholas Stephen)<sup>17</sup>”.*

There is no information publicly available to suggest that the Government of Sri Lanka ever held Mr. Munasinghe accountable as was recommended by the UN Special Rapporteur. Instead he was promoted during the Rajapaksa government to the rank of DIG and functioned as such for 10 months in 2008 and 2009.<sup>18</sup> He assumed duties as DIG (Wayamba West) in his office in Puttalam on April 27, 2010.<sup>19</sup> In 2013 he was again promoted to Senior DIG.<sup>20</sup>

Accountability in Sri Lanka and indeed witness protection has been dealt a blow by his appointment in January 2016 by President Sirisena's Government to a newly formed body purportedly intended to protect witnesses.

Under the Act, one of the National Authority's duties is: *“to take measures to sensitize public officers involved in the enforcement of the law, including officers of the Sri Lanka Police...<sup>21</sup>”*. It is hard to see how an alleged perpetrator can do that.

In addition, Mr. Munasinghe is alleged to have threatened a prominent journalist, Sittampalam Tissainayagam while he was in detention in his custody:

*“Director TID Nandana Munasinghe, while talking to Tissainayagam, referred to his friendship with the journalist Sivaram. Mr. Munasinghe specifically reminded of the way that Sivaram met his death – his body was later discovered in some bushes in close proximity to the Parliament premises. He had been alarmed at this line of questioning, as he did not understand what was meant by it.<sup>22</sup>”*

In 2009 US President Barack Obama singled out Mr. Tissainayagam's case in his World Press Freedom Day address as an emblematic example of journalists being imprisoned for doing their jobs<sup>23</sup>.

Moreover Mr Tissainayagam and another journalist and his partner, Mr. Vettival Jasikaran and Ms. Valarmarathi Vadivelu, who were also detained in 2008 by TID filed a

<sup>15</sup> A/HRC/7/3/Add.6, REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED NOWAK, ON HIS MISSION TO SRI LANKA,

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A.HRC.7.3.Add.6\\_ch.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A.HRC.7.3.Add.6_ch.pdf)

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Witness testimony on file.

<sup>19</sup> DIG Nandana Munasinghe transferred again – this time to NW Range, by SURESH PERERA, 2 May 2010, The Island, <http://www.island.lk/2010/05/02/news13.html>

<sup>20</sup> Police website: <http://www.police.lk/index.php/special-events-/686-passing-out-of-the-police-officers-who-were-trained-at-police-training-school--kaluthara>

<sup>21</sup> ASSISTANCE TO AND PROTECTION OF VICTIMS OF CRIME AND WITNESSES ACT, No. 4 OF 2015, 7 March 2015,

[http://www.sri.lankalaw.lk/gazette/2015\\_pdf/4%20of%202015.pdf](http://www.sri.lankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf)

<sup>22</sup> I was harassed by TID – Tissainayagam, 10 November 2007, T. Farook Thajudeen, <https://freemediasrilanka.wordpress.com/tag/tid/>

<sup>23</sup> Statement by the President in honor of World Press Freedom Day, 1 May 2009, <https://www.whitehouse.gov/the-press-office/statement-president-honor-world-press-freedom-day>

Fundamental Rights case in 2008 naming Mr. Munasinghe, among other respondents<sup>24</sup>. This is a matter of public record.

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## 2.2 Chairperson<sup>25</sup>: Solicitor General, Suhada Gamlath.

Mr. Gamlath is second in seniority only to the Attorney General himself in the department<sup>26</sup>. The Attorney General's Department is the chief legal adviser to the President and to all departments and ministries of government, including the State security forces and the police. The role of the Attorney General's staff in the protection of witnesses testifying against the State, especially the security forces, by its very nature places them in conflict of interest as far as any inquiry into the administration of justice. Mr. Gamlath was also the Secretary, Ministry of Justice and Law Reforms under the Rajapaksa Government<sup>27</sup>.

### (a) Commissioner General for Rehabilitation

In addition, Mr. Gamlath held the post of Commissioner General for Rehabilitation<sup>28</sup> from 12 September 2006 to 7 August 2009<sup>29</sup>; his specific responsibility in this role was for all surrendees in the conflict, according to the UN investigation report<sup>30</sup>. This means Mr. Gamlath was in overall charge of "rehabilitation" camps all over the country when torture was routine during interrogation of suspected former LTTE cadres. He also allegedly oversaw a system of mass detention without trial or the right of appeal.

Though he was only in charge of "rehabilitation" until 7 August 2009, ITJP has 14 witnesses who describe systematic torture during that timeframe of inmates in these camps, which were under Mr. Gamlath's responsibility at the time. Some of these sites are also named as places of torture in the UN report (OISL 2015, paragraph 547): Nellikkulam<sup>31</sup>, Omanthai Central College; Pampaimadu college, Poonthottam camp, Rambaikulam College. The UN investigation concluded that there was, "torture in multiple facilities, including army camps, police stations, "rehabilitation camps", and prisons" (paragraph 545) and said the use of torture followed "similar patterns by a range of security forces in multiple facilities" (paragraph 1129). The report concluded that:

*"..there are reasonable grounds to believe that this torture was committed on a widespread scale. This breaches the absolute prohibition of torture, and Sri Lanka's international treaty and customary obligations. If established before a court of law, these acts of torture may, depending on the circumstances, amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes if a nexus is established with the armed conflict." (paragraph 1130)*

<sup>24</sup> Tissainayagam, Jaseeharan, Valarmathi not seeking interim relief from court, 28 August 2008, Tamilnet, <https://www.tamilnet.com/art.html?catid=13&artid=26779>

<sup>25</sup> The initial chair is reported to have resigned after a few months, to be replaced by Mr. Suhada Gamlath.

<sup>26</sup> Attorney General's website, <http://www.attorneygeneral.gov.lk/index.php/the-law-officers>

<sup>27</sup> From 2007 until at least 2011, according to media reports, Suhada Gamlath took up the position of Secretary to the Justice Ministry, an appointment made by Mahinda Rajapaksa: *The confusing drama behind AG's appointment*, 24 February 2016, <http://www.sundaytimes.lk/160214/columns/the-confusing-drama-behind-ags-appointment-182829.html>

<sup>28</sup> Government website of the Rehabilitation Ministry: <http://www.bcgr.gov.lk/cgrs.php>

<sup>29</sup> According to the statement made by Mr. Suhada Gamlath, Secretary/Ministry of Justice & Commissioner General of Rehabilitation at the Meeting of the Security Council Working Group on Children and Armed Conflict held in New York on 1 July 2009, "at present most child combatants have been identified and are in a process of being sent to child rehabilitation centres...these children are being treated as victims and not as suspects in detention for their involvement in terrorist activities." From *The Implementation of certain Human Rights Conventions in Sri Lanka, Interim Report (prepared for the European Commission looking at GSP+ by 3 independent experts)*, 19 August 2009, Prepared by Françoise Hampson, Leif Sevón and Roman Wieruszewski.

<sup>30</sup> OISL (paragraph 705): "In September 2006, President Rajapaksa appointed a Commissioner General of Rehabilitation (CGR) with specific responsibilities in relation to all "surrendees" in the conflict, including children."

<sup>31</sup> This is also spelt Nelukkulam.

**(b) “Rehabilitation Camp” Victims**

ITJP has substantial and credible testimony from 14 survivors<sup>32</sup> of torture in “rehabilitation” camps during the period Mr. Gamlath was in charge.

**Rambaikulam Maha Vidyalayam:** Six male witnesses testify to being tortured here in May and June 2009. Several have ICRC certificates to prove they were held in this camp at this time though they all say they were threatened by soldiers not to tell the Red Cross about their mistreatment and did not do so.

The testimonies describe a series of structured interrogations in the camp with interrogation rooms set up for torture with electrical wires, sticks, cricket wickets, wooden batons, plastic pipes filled with sand and water barrels. Survivors describe being stripped down to their underwear or naked and tortured by men in army uniforms and intelligence officers in plain clothes until they passed out unconscious. Some witnesses describe seeing people being taken away and never coming back. Others saw fellow inmates returned by soldiers after the interrogations, badly injured, unable to walk and moaning in pain. They also allege that they were given insufficient food and they were indiscriminately beaten by soldiers while waiting to use the toilet or queueing for food.

**Nelukkulam Camp:** Two witnesses were tortured here between May and July 2009, a man and a woman, in segregated parts of the camps. The female witness described being held with 400 women and said there was certainly not any rehabilitation offered. She described being physically tortured to the point of being knocked out unconscious and bleeding and also sexually abused on several occasions. *“They touched my private parts over my clothes during interrogation and they would be laughing,”* she said of the uniformed soldiers. A male witness says he was held with two thousand men in Nelukkulam from late July 2009 and repeatedly taken to be tortured and on three times sexually violated. *“I was on crutches and they beat me with them till they broke and hit me with a rifle butt,”* he testified. In addition he was also tortured with chilli powder and beaten with palmyrah branches and forced to drink alcohol.

**Pampaimadu:** Two female witnesses described torture in this camp with other witnesses describing their ill treatment, poor food and substandard conditions inconsistent with promoting rehabilitation. One woman was interrogated four times by men in civilian clothes who said they were from the CID. She was beaten with rifle butts, burnt with cigarettes on her breast, stomach and upper hip and submerged in water until she choked. Another describes being in a group of women locked in a room, stripped naked and ordered to stand with their hands against the wall while they were beaten with a stick with great force on their buttocks. She said other women inmates received the same abuse. *“There was no rehabilitation conducted there,”* she commented, *“only further mental and physical harm”*.

**Welikanda Rehabilitation Camp:** A male witness describes surrendering in February 2009 and being moved to a school in Vavuniya, where he was kept in a cell with 50 other captured LTTE cadres and severely tortured. He was then moved to Welikanda “rehabilitation” camp where he was tied up, slapped and beaten while questioned. *“I was given no sort of rehabilitation there – it was only detention. We were treated like hard labour and they sometimes took us for road construction and repair work. We were treated like slave labour,”* he said.

**Poonthottam Maha Vidyalayam:** A male witness describes torture during interrogation here in late May or early June 2009 and has his ICRC certificate which confirms he was in this camp at this time. He was slapped all over his body, punched and beaten on his

<sup>32</sup> It is worth noting the ITJP has interviewed many more survivors of torture from different time periods in the “rehabilitation” process.

wounds, had his head submerged in a barrel of water and was beaten severely on the soles of his feet. He says on two occasions people came from outside the rehabilitation camp in plain clothes introducing themselves as from CID.

**Omanthai Maha Vidalayam:** A witness says he was tortured on several occasions here by CID, TID and soldiers including military intelligence and has an ICRC letter to confirm that he was held in this camp in May 2009.

**Kovilkulam Maha Vidayalam:** A male witness says during his detention here he was slapped and punched, kicked with boots and beaten with sticks, batons and plastic pipes filled with sand. His head was submerged into water and he was beaten on the soles of his feet. He was also seen here by officials from the ICRC in June 2009.

### (c) Legal Framework for Rehabilitation

The Government of Sri Lanka boasted that their “rehabilitation” programme offered skills training, meditation and education with the goal of changing the mindset of former Tamil combatants:

*“Instead of taking the beaten path of retributive justice of prosecuting the LTTE cadres, the government invested in a strategy of restorative justice, where former LTTE cadres were rehabilitated and released. Imbued by a culture shaped by ‘loving-kindness’ (metta), no Sri Lankan objected to giving the former LTTE cadres a second chance in life...<sup>33</sup>”*

Also according to the Government’s proposal the plan from the outset was to have the security forces who had just defeated the LTTE assess them:

*“Four State institutions, namely the Terrorist Investigation Department (TID), Criminal Investigation Department (CID), Military Intelligence Corps (MIC), and Attorney General's Department (AGD) will be involved in the process of determining the 'degree of involvement' of those identified as ex-combatants on a case-by-case basis. The culpability or otherwise is to be determined by the AG, finally subject to the transitional justice mechanism that will be in place<sup>34</sup>.”*

The structure of the rehabilitation camps was such that it lent itself to abuse. Indeed to this date there is no comprehensive transparent list of the names of the more than 20 “rehabilitation” camps and when they operated. Nor is there clarity about the number of people who have been through this process. In 2010 the International Commission of Jurists described Sri Lanka as operating, “what may be the largest mass administrative detention anywhere in the world”. It wrote in a report on the “rehabilitation” camps under Mr. Gamlath’s purview until August 2009:

*“The ICJ is concerned that the Government’s ‘surrender’ and ‘rehabilitation’ regime fails to adhere to international law and standards, jeopardizing the rights to liberty, due process and fair trial. There are also allegations of torture and enforced disappearance. Access required for reliable and accurate monitoring by international agencies, including the International Committee of the Red Cross (ICRC), has been denied. Political expedience and secrecy have tended to take precedence over legality and accountability.<sup>35</sup>”*

The UN Panel of Experts in 2011 said:

<sup>33</sup> *Reconciliation after Terrorism: The Sri Lankan Experience*, Asanga Abeygoonasekera and Rohan Gunaratna, <http://dbsjeyaraj.com/dbsj/archives/10144>

<sup>34</sup> *National Framework Proposal for Reintegration of Ex-combatants into Civilian Life in Sri Lanka*.

<sup>35</sup> *Beyond Lawful Constraints: Sri Lanka’s Mass Detention of LTTE Suspects*, ICJ, September 2010.

*“There is virtually no information about the conditions at these separate LTTE ‘surrendee’ sites, due to a deliberate lack of transparency by the Government. The fact that interrogations and investigations as well as “rehabilitation” activities have been ongoing, without any external scrutiny for almost two years, rendered alleged LTTE cadre highly vulnerable to violations such as rape, torture or disappearances, which could be committed with impunity (paragraph 167)<sup>36</sup>”.*

The “rehabilitation” process operated under Sri Lanka’s Emergency Regulations and according to the OHCHR Investigation into Sri Lanka (OISL, 2015, paragraph 339) these “gave broad immunity from prosecution to officials in the course of implementing the regulations”. The Emergency Regulations were allowed to lapse in 2011<sup>37</sup> but it isn’t clear whether those previously involved in the “rehabilitation” process still have immunity which would make a mockery of the vetting process Sri Lanka committed to institute for its public officials under the 2015 UN Resolution.

The same UN report (OISL, paragraph 361) explains that habeus corpus rights were suspended in the “rehabilitation” process where “surrendeeds” could be detained for 12 months, which could be extended for up to two years without charge or trial. The process of deciding who was a hard-core LTTE member and how long people should be detained was completely arbitrary.

The UN further states that it:

*“received allegations that most of these places were more like detention centres, with few or no rehabilitation activities. Effectively, being held in the PARCs (“protective accommodation and rehabilitation centres”) amounted to administrative detention for the majority of ‘surrendeeds’”.*

There was also a very troubling element of corruption associated with the “rehabilitation” process, which has not yet been investigated despite being widely reported. OISL said in 2015:

*“In 16 cases documented by OISL and also in cases reported by others, release was secured upon payment of a large bribe by a family member of the detainee, often through intermediaries. The EPDP was commonly cited as one such intermediary. The acceptance of payments to grant release of detainees appears to have been widespread. This is in direct contradiction with the authorities’ claim that the individuals detained constituted a threat to national security.” (paragraph 383)*

#### **(d) Call for Investigation into Allegations of Torture in “Rehabilitation”**

##### **Programme**

More recently in December 2016 the UN Committee Against Torture said it was concerned about recent allegations from credible sources of cases of torture of persons in “rehabilitation” and recommended the programme be abolished. It also expressed concerns about the continuing use of the “rehabilitation” programme, the lack of transparency regarding the criteria for selection, the conditions for detention and the judicial oversight (paragraph 25)<sup>38</sup>. It recommended (paragraph 26) that Sri Lanka establish an independent mechanism promptly, impartially and effectively to investigate allegations of torture and sexual violence in the “rehabilitation” centres. The Government of Sri Lanka has not indicated whether it intends to do this and continues to use the discredited “rehabilitation” process.

<sup>36</sup> REPORT OF THE SECRETARY-GENERAL’S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA, 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf)

<sup>37</sup> Sri Lanka: ‘Bait and Switch’ on Emergency Law, 7 September 2011, Human Rights Watch, <https://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law>.

<sup>38</sup> UNCAT Concluding Observations, December 2016.



One of the recommendations in the report on Sri Lanka by the UN Special Rapporteur on torture, Juan Mendez, was also: *“Shut down the Poonhottam rehabilitation centre programme and release unconditionally those who remain in the centre or any other rehabilitation centre”*<sup>39</sup>.

### (e) Action Contre la Faim (ACF) Killings

Media reports say it was Mr. Gamlath as Secretary to the Ministry of Justice who ordered in 2006 the transfer for the ACF preliminary judicial inquiry from the courts in Kantalai near Muttur to Anuradhapura, more than a hundred kilometres away<sup>40</sup>. Anuradhapura is a Sinhalese army garrison town; travelling there was difficult for Tamil witnesses<sup>41</sup>. Some reports even cite verbatim the journal entry of the Muttur Magistrate referencing an order from Mr Gamlath<sup>42</sup>. This was described by the lawyer for the victims’ families as blatant political interference because only the Judicial Services Commission had the authority to transfer cases, not the secretary of the ministry.

### (f) Trincomalee Five Killings

When Mr. Gamlath was Secretary to the Ministry of Justice in 2011, media reports say he acted on behalf of President Mahinda Rajapaksa, arguing he enjoyed immunity from prosecution, when he faced a legal challenge from the father of one of the Trincomalee 5 victims<sup>43</sup>. This means Mr. Gamlath has acted on behalf of the state against victims in an emblematic incident that the UN Investigation (OISL 2015) said, “highlights the systematic failure of the criminal justice system” in Sri Lanka. It is also a case in which witnesses have been threatened and forced to flee the country. The UN report (paragraph 272) said, *“there are reasonable grounds to believe that security force personnel, including STF personnel, killed the five students. This case demonstrates again the challenges in pursuing accountability for such alleged crimes at the domestic level in the context of Sri Lanka.”*

### (g) Conflicts of Interest

Several members of Civil Society in Colombo and Human Rights Commissioners participated in events<sup>44</sup> with the National Authority; media reports indicate they raised issues of conflict of interest and interestingly the chair, Mr. Gamlath, seemed to

<sup>39</sup> A/HRC/34/3/54/Add.2, Published 25 January 2017.

<sup>40</sup> *“On September 5, the preliminary judicial inquiry was shifted from the courts in Kantalai, near Muttur, to Anuradhapura, more than 100 kilometres away. Justice Ministry Secretary Suhada Gamlath ordered the transfer in breach of basic legal procedure. According to Sri Lankan law, any initial inquiry has to be conducted in the same judicial area where the crime took place”, Sri Lankan government manipulates inquiry into massacre of aid workers*, 29 September 2006, by Nanda Wickramasinghe, <https://www.wsws.org/en/articles/2006/09/sril-s29.html>

<sup>41</sup> *“The fact that the transfer was by political order (ie; Justice Secretary) shows the manner in which the court proceedings are sought to be subverted and very blatantly at that. Anuradhapura is situated in the North Central province (a predominantly Sinhala area) where the perception as well as the reality being that, given the extraordinary sensitivity of this case, witnesses will be reluctant to attend as opposed to the matter being continued in Trincomalee”, Why the State is not the LTTE and vice versa*, Kishali Pinto Jayawardena, 10 September 2006, The Sunday Times Lanka, <http://www.sundaytimes.lk/060910/Columns/Focus.html>

<sup>42</sup> *“Hon. Mr. Suhada Gamlath through phone directed me to send the file to Hon. Magistrate Anuradhapura to handle the file on the instructions of the J.S.C. I send the file to Hon. Magistrate Anuradhapura today itself (4/9/06). Mr. Jegasothy (AAL) requested certified copy of the entire proceeding. Issue certified copy. M. Ganesharajah, Magistrate, Muttur”, Sri Lanka: Subverting justice regarding the Muttur killings and repeating the legacy of immunity for gross abuses of human rights*, 11 September 2006, <http://reliefweb.int/report/sri-lanka/sri-lanka-subverting-justice-regarding-muttur-killings-and-repeating-legacy>

<sup>43</sup> *Mr. President “You Have Been Served*, 2011, Frederica Jansz, The Sunday Leader, says: *“Suhada Gamlath, Secretary to the Ministry of Justice on June 18, wrote to Rick Hamilton in the USA asserting that it would be seriously prejudicial to Sri Lanka’s sovereignty for the Central Authority to facilitate proceedings in the Manmoharan lawsuit against President Rajapaksa. This was mainly because, as Head of State of Sri Lanka, President Rajapaksa is absolutely immune from the jurisdiction of the courts of the United States. Also that the claims against President Rajapaksa for actions allegedly taken under his command responsibility as Head of State, head of Government and Commander in Chief of the Armed Forces of Sri Lanka, are in substance claims against Sri Lanka itself, for which both Sri Lanka and President Rajapaksa are entitled to sovereign immunity from suit.”*

<sup>44</sup> *New police division to be opened soon to protect crime victims and witnesses*, 11 September 2016, Namini Wijedasa, Sunday Times, <http://www.sundaytimes.lk/160911/news/new-police-division-to-be-opened-soon-to-protect-crime-victims-and-witnesses-208415.html>

acknowledge the conflicts but we can find no publicly available information that he has taken action to remedy the problem<sup>45</sup>.

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Media reports also say Mr. Gamlath led the inquiry into alleged wrongdoing at the Avant Garde private security firm that was set up by former Secretary of Defence, Gotabaya Rajapaksa<sup>46</sup>. Mr. Gamlath was accused by a minister of suppressing the investigation<sup>47</sup>.

Moreover media reports suggest Mr. Gamlath supports the death penalty even though the Sri Lankan Human Rights Commission proposed abolishing it<sup>48</sup>.

### 2.3. Yasantha Kodagoda

Mr. Kodagoda joined the Attorney General's department in 1989 and was promoted in 2005 to Deputy Solicitor General and then again in 2015 by the Sirisena Government to Additional Solicitor General<sup>49</sup>. He's also been a visiting lecturer at the Kotalawela Defence University<sup>50</sup>.

Concerns have been raised about the integrity and impartiality of Additional Solicitor General Yasantha Kodagoda who is alleged to have covered up serious human rights abuses under several different governments.

Interviewed for a newspaper article extolling the virtues of the new Witness Protection legislation passed in 2015, Mr. Kodagoda emphasized that the law could be used for victims making Fundamental Rights applications alleging torture, illegal arrest and illegal detention, as well as to protect whistleblowers. Mr. Kodagoda went on to say that, "the police will no doubt have to operate with great independence, free of political or any other interference<sup>51</sup>". Given the thousands of pending allegations of torture<sup>52</sup> and

<sup>45</sup> "Mr. Gamlath admitted that areas of possible conflict have to be addressed if the State was serious about making the system work". Ibid.

<sup>46</sup> AG To Retire On January 09: Wijeyadasa Pushing Suhada Gamlath As New AG, 30 December 2015, Asian Mirror, <http://www.asianmirror.lk/news/item/13762-ag-to-retire-on-january-09-wijeyadasa-pushing-suhada-gamlath-as-new-ag>

<sup>47</sup> (a) "Rajitha once accused that the Attorney General and Suhada Gamlath were behind the move to suppress the Avant Garde probe and allow the proprietor of Avant Garde to travel overseas. Suhada Gamlath left the AG's Department to take up the position of Secretary to the Justice Ministry, another appointment made by Mahinda. It was no secret that Mahinda ignored the Justice Minister and ran the Justice Ministry via Suhada Gamlath. During the period Yuwananjan was AG and Suhada was Acting AG, the Maithri-Ranil Government submitted 37 cases through the FCID for necessary advice. The AG's Department acted only on eight cases. The fate of the remaining 29 cases is yet unknown". Who is hiding files of Rajapaksas in AG's Department?, 17 February 2016, Upul Joseph Fernando., Sri Lanka Guardian, <http://www.slguardian.org/2016/02/who-is-hiding-files-of-rajapaksas-in-ags-department/>.

(b) Sri Lanka: Avant Garde Sordid Saga & the National Security, 13 October 2015, Sri Lanka Guardian. And: "Deputy Minister of Power Ajith P. Perera proposed that the attorney-general and the police chief are to be summoned to Parliament and questioned on their conduct over the Avant Garde case". The Avant Garde issue is not over, 9 November 2015, Daily Mirror Lanka, <http://www.dailymirror.lk/94605/the-avant-garde-issue-is-not-over#sthash.4ShWmnc.dpuf>.

(c) "The President had summoned Attorney General Yuwanjana Wanasundera to attend the meeting along with Additional Solicitor General Wasantha Navaratne Bandara. Unlike the Attorney general, his deputy Bandara had maintained there was sufficient grounds to arrest Gotabhaya Rajapaksa and prosecute Avant Garde, but his opinion had been overruled. Government sources said Bandara had been prevented from attending the meeting and instead controversial Solicitor General Suhada Gamlath had been present to answer questions about the slow pace of AG's department work", Sri Lanka to prosecute Avant Garde, revokes 'agreement', 11 November 2015, Economy Next.

(d) "At a meeting of the committee, when Anura Kumara Dissanayake, the JVP leader and Champika Ranawaka, the JHU leader raised questions, Solicitor General Suhada Gamlath could not keep quiet. He disclosed that Marapana directed him not to object when an application is made to have the passport of Senadipathi returned for him to travel to Nigeria. Gamlath said he checked with Justice Minister Rajapakshe. He had said he was asked not to object and go slow with the case". Justice Minister Wijeyadasa Corrupt Since Time Of COPE Chairmanship: Photos Reveal, 10 December 2015, Colombo Telegraph, <https://www.colombotelegraph.com/index.php/justice-minister-wijeyadasa-corrupt-since-time-of-cope-chairmanship-photos-reveal/>

<sup>48</sup> Sri Lanka considering death penalty again, The Hindu, 26 July 2009, <http://asiadeathpenalty.blogspot.co.uk/2009/08/sri-lanka-considering-death-penalty.html>; Justice Ministry Against Abolishing Death Penalty, Raisa Wickrematunge, 1 January 2012.

<sup>49</sup> Additional Solicitor General and President's Counsel, 22 February 2015, The Sunday Times Lanka, <http://www.sundaytimes.lk/150222/plus/additional-solicitor-general-and-presidents-counsel-136590.html>

<sup>50</sup> Ibid.

<sup>51</sup> Victim and witnesses protection law finally through, 28 February 2015, Randima Attygalle, Sunday Island, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=120448](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=120448)

<sup>52</sup> Referred to by the Sri Lankan Foreign Minister, Mangala Samaraweera, in London at Chatham House, Sri Lanka FM has no excuse for sending spy chief to UN (Video), 16 January, ATHULA VITHANAGE, JDS Lanka

decades of police abuse, the ITJP does not believe the police can or will act independently.

#### **(a) The All Island Commission on Disappearances of Persons (1998-2000)<sup>53</sup>**

This commission questioned Mr. Kodagoda, as a representative of the Attorney General's department, about his role in delayed and failed investigations into cases referred to the Missing Persons Unit of the AG's Department, as well the release of security force officials alleged to have been involved in the killing of Tamils.

Significantly there have been very few convictions from the 1998-2000 commissions though they identified thousands of alleged perpetrators:

*"The Zonal Commissions identified several thousand suspected perpetrators in more than 1,000 cases. In addition, the "All Island" Commission identified several hundred individuals allegedly responsible for disappearances... In 1994, the Sri Lankan Human Rights Commission started processing the 16,305 complaints referred to it by the "All Island" Commission and eventually identified 2,127 cases to be investigated further. However, in July 2006, the Human Rights Commission decided not to pursue the analysis of these cases "unless special directions are received from the Government...Of the several thousand suspected perpetrators that the commissions identified, less than 500 were indicted and even fewer were convicted."<sup>54</sup>*

It is worth noting the All Island Commission on Disappearances of Persons operated under the Government of former President Chandrika Kumaratunga who is currently chairperson of the Office for National Unity Reconciliation in the Sirisena Government<sup>55</sup>.

#### **(b) Udalagama Commission of Inquiry/IIGEP 2007-8**

The Udalagama Commission was mandated to investigate 16 cases of serious violations of human rights, among which were the ACF killings and the Trincomalee Five Killings (see above section 2.2, paragraphs (e) and (f), regarding these cases and another member of the National Authority, Mr Suhada Gamalath).

The Asian Human Rights Commission raised concerns in a public letter to the Sirisena Government in September 2016 about Mr. Kodagoda, saying:

*"His public role before the Udalagama Commission of Inquiry is well known given that Mr. Kodagoda was specifically and negatively named by members of the International Independent Group of Eminent Persons (IIGEP) monitoring that Commission. Mr. Kodagoda was the Lead Counsel for the Attorney General at the Commission even though the Commission was inquiring into actions of state officers in regard to failure to properly investigate and prosecute certain cases of gross human rights abuses in regard to which he had been himself involved at the preliminary stage of advising on the investigations. This represented a clear conflict of interest. In addition, while the role of the Attorney General's Department's officers was to assist the Commission, Mr. Kodagoda aggressively cross examined the witnesses who came before the Commission, in a vigorous attempt to protect state agents against whom these*

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<http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/658-sri-lanka-fm-has-no-excuse-for-sending-spy-chief-to-un-video> and by the UN Special Rapporteur, Juan Mendez who referenced thousands of Fundamental Rights cases.

<sup>53</sup> "On December 9, 1994, President Chandrika Bandaranaike Kumaratunga issued three Presidential Proclamations, appointing three different Commissions of Inquiry to look into the "Involuntary Removal or Disappearance of Persons" over the course of the conflict. The three Zonal Commissions were each responsible for the following provinces: i) the Central, North West, North Central and Uva Provinces; ii) the Northern and the Eastern Provinces; iii) the Western, Southern, and Sabaragamuwa Provinces. In 1998, the work of these three commissions was complemented by an "All Island" Commission, which was tasked to investigate cases that the Zonal Commissions were not able to address", Commissions of Inquiry: Sri Lanka, <http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>

<sup>54</sup> Ibid.

<sup>55</sup> ONUR website: <http://onur.gov.lk/index.php/en/about-onur>

witnesses were giving evidence. We are also aware that, regarding the detention of Tamil prisoners at Boosa camp<sup>56</sup>, he prevented discussions on the arrest and detention of Tamil prisoners without grounds for reasonable suspicion<sup>57</sup>”.

Similar concerns were raised by the International Independent Group of Eminent Persons (IIGEP) who observed the Udalgama Commission<sup>58</sup>. The international experts examined evidence in several of the cases under investigation, including the killing of five youths and the wounding of others in Trincomalee in January 2006 and the killing of the seventeen Action Contre la Faim (ACF) aid workers in Muttur in August 2006.

A confidential report to donors who funded the IGEP process outlines how at the public and also the closed hearings on 14 May 2007 into the ACF killings, Mr. Kodagoda tried to pin the killings on the LTTE by arguing whoever was in control of Muttur Town centre on that day would likely be responsible<sup>59</sup>. This report alleges that there were many pieces of evidence, including a government press release, known to Mr. Kodagoda that established that it was in fact government commandos and other security forces that controlled Muttur at the relevant time<sup>60</sup>. The later UN report corroborated this based on information from the Scandinavian ceasefire monitors, SLMM<sup>61</sup> and clearly concluded, “there are reasonable grounds to believe that members of the security forces committed the extrajudicial executions of the ACF staff”(paragraph 238).

There were serious conflicts of interest in the way the Commission was established. The warrant for the Commission of Inquiry was drafted by Yasantha Kodagoda, who previously had been an Attorney General’s advisor to the original and ongoing police investigators, in at least the ACF Case, and subsequently, became the lead counsel for the Commission, and the Government’s drafter of the amendments to the Commissions of Inquiry Act and the draft witness protection bill. IIGEP’s confidential report, which ITJP has a copy of, says none of the investigations into these cases came close to meeting international norms and standards. The 2015 UN Investigation (paragraph 236) said, “This case was not effectively investigated, illustrating the entrenched impunity enjoyed by perpetrators and the challenges met in furthering accountability at the domestic level in Sri Lanka...The Executive interfered with the inquest and shifted the case to a jurisdiction in a Sinhalese area where Tamils had difficulty attending the proceedings. The magistrate initially assigned the case was threatened.”

In their confidential report, the IIGEP experts say a senior Government minister and high-ranking officers of the security forces threatened, intimidated or attempted to influence witnesses into silence, or providing false testimony or fleeing the country. The UN Investigation later corroborated this saying:

*“Shortly after the events, the families of the killed students started receiving threats including in writing; stones were thrown at their house; electricity was turned off in their home at night-time and they were harassed by security forces at checkpoints and other public locations. ...One family member who refused to be silenced received a call from*

<sup>56</sup> These prisoners would have been held by TID where fellow National Authority member Mr. Nandana Munasinghe worked.

<sup>57</sup> SRI LANKA: AHRC writes to the Ministers of Foreign Affairs and Justice on the Torture Committee under the National Human Rights Action Plan, 13 September 2016, Asian Human Rights Centre, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2016/?searchterm=yasantha>

<sup>58</sup> Ibid.

<sup>59</sup> “With regard to the ACF killings these claims caused controversy. The Daily News of 4<sup>th</sup> morning quoted cabinet spokesman Keheliya Rambukwelle claiming (on the 3<sup>rd</sup> night) that ‘Muttur town is under the total control of the Security Forces’. But the same spokesman after the SLMM statement pointed to the security forces as the party most likely behind the ACF killings, maintained that the crime, committed around the 4<sup>th</sup> morning according to post mortem reports, was the work of the LTTE”, according to University Teachers for Human Rights (Jaffna) Sri Lanka, Special Report No.30, 1 April 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm>

<sup>60</sup> In addition cabinet spokesman Keheliya Rambukwelle told the BBC Sinhala Service that Muttur was under Government control on 3<sup>rd</sup> night.

<sup>61</sup> Paragraph 235, OISL 2015 says, “there cannot be any other armed groups than the security forces who could have been behind the act”.

a Government Minister who offered him financial rewards if he stopped talking about the case. Families of the killed students were forced to relocate and eventually left the country” (paragraph 1238).

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The Commission, with the assistance of the IIGEP, arranged for testimonies of key witnesses overseas to be obtained by video-link from abroad. However the Chair of the Commission prevented the use of the video-link statements, upon the advice of the Attorney-General. Finally in June 2008 the Sri Lankan Government not only refused funding for video conferencing but ordered the Commission not to receive evidence from witnesses located abroad.

IIGEP experts believed the only reasonable inference was that the Government knew, through the Mr Kodagoda being on the Commission’s Panel of Counsel, that the proposed evidence was harmful to the security forces. The Commission was ordered not to receive the video evidence ironically on the grounds that it was necessary to enact ‘protecting legislation’ to protect witnesses first. The fallacy of this is that the Commission and the Government, including Mr. Kodagoda, knew that these victims and witnesses were safe abroad.

IIGEP experts say it was Mr. Kodagoda who amended the draft witness protection legislation to say that a government representative approved of by the Attorney General must be present in the foreign land with the witness when he or she testifies long distance. No witness testifying against the security forces will agree to their location being known so this became a way to protect perpetrators not witnesses.

This provision remains a huge problem for the future Truth Commission and special judicial mechanism planned in Sri Lanka given thousands of mainly Tamil witnesses and victims who could give important testimony against the security forces are now in exile abroad<sup>62</sup>.

#### **(d) National Human Rights Action Plan 2016**

Given his past, it was surprising that the government also put Mr. Kodagoda in charge of the sub-committee looking at torture when drafting the new National Human Rights Action Plan for the next 5 years. This appointment was questioned in the media to no avail<sup>63</sup>.

#### **(e) War Crimes Denial**

Furthermore in public events Mr. Kodagoda has said that the Sri Lankan military recaptured the East of Sri Lanka with “near zero civilian casualties”, which was contradicted by the reports of the UN and independent human rights groups<sup>64</sup>.

## **2.4. Ashoka Wijethilake**

<sup>62</sup> Press release: *Exiled Victims Cannot Testify in Sri Lankan Embassies*, 8 July 2016, ITJP, <http://www.itjpsl.com/assets/press/8-july-2016-ITJP-press-release.pdf>

<sup>63</sup> One article said, “he has played a negative role in the prevention of torture” and added that “In addition, while the role of the Attorney General’s Department’s officers was to assist the Commission, Mr. Kodagoda aggressively cross examined the witnesses who came before the Commission, in a vigorous attempt to protect state agents against whom these witnesses were giving evidence. We are also aware that, regarding the detention of Tamil prisoners at Boosa camp, he prevented discussions on the arrest and detention of Tamil prisoners without grounds for reasonable suspicion,” AHRC said. *Govt. Asked To Review Appointment Of Deputy Solicitor General Yasantha Kodagoda As Head Of ‘Torture Prevention’ Committee*, 14 September 2016, Colombo Telegraph, <https://www.colombotelegraph.com/index.php/govt-asked-to-review-appointment-of-deputy-solicitor-general-yasantha-kodagoda-as-head-of-torture-prevention-committee/> and original article at SRI LANKA: AHRC writes to the Ministers of Foreign Affairs and Justice on the Torture Committee under the National Human Rights Action Plan, 13 September 2016, AHRC, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2016/?searchterm=kodagoda>

<sup>64</sup> *Us State Department report is an extraordinary rendition of events in Sri Lanka*, 15 March 2008, <http://federalidea.com/focus/archives/381>

Mr. Wijethilake is a very senior police official who reached the rank of Senior Deputy Inspector General<sup>65</sup>. In 2007 he was the Deputy Inspector General of the police's foreign intelligence department and the following year became DIG International Affairs. He's also headed the Special Unit of the police in 2006 investigating corruption<sup>66</sup>.

Mr. Wijethilake was promoted to Director of CID<sup>67</sup> in 2006 from SSP rank in 2002<sup>68</sup>, and has spent many years in the Criminal Investigation Department (CID)<sup>69</sup>. There are no specific allegations against Mr. Wijethilake but given the prevalence of torture in sites run by CID during and after the war, there is concern about whether this sort of senior ex CID official should be in charge of protecting witnesses. Rather the Authority should be an autonomous entity, independent of the police hierarchy and security establishment with its members carefully and fully vetted.

### 3. Conclusions

All members of the National Authority should have been subjected to a scrupulous independent vetting process, which would have resulted in at least three of the members being excluded. The nature of these appointments raise the question of whether the Government of Sri Lanka has the political commitment to building the rule of law and is serious about protecting witnesses.

The UN Committee Against Torture<sup>70</sup> has said Sri Lanka should immediately begin a vetting process to remove from office those military and security force personnel and any other public officials about whom there were reasonable grounds to believe they were involved in human rights violations. It also specifically said the witness protection division should be an autonomous entity, independent of the police hierarchy and that its members should be fully vetted (paragraphs 17,18)<sup>71</sup>. The international community should make monitoring progress on this issue a high priority.

### 4. Recommendations

#### Government of Sri Lanka

- Immediately remove Mr. Yasantha Kodagoda, Mr. Suhada Gamlath and Mr. Nandana Munasinghe from the National Authority and establish an independent vetting process to vet all remaining members of the National Authority in order to ensure that those appointed have a credible human rights record and are not named or implicated in any way in serious crimes including abductions and torture and that those who may have a conflict of interest are removed.
- Revise the Witness Protection legislation, including provisions for witnesses and victims abroad to testify safely through video links without a government official being present in the room with them.
- Ensure that appointments are made to the implementing bodies through a credible independent process so that genuinely impartial members of civil society with a

<sup>65</sup> Nalanda College website, <https://www.nalanda.sch.lk/alumni/police-officers> and Sri Lanka Police website: <http://www.police.lk/index.php/special-events-/508-entrust-lanka-to-assist-police-rugby-team>. A 2014 writ petition cites him and Mr. Sisira Mendis (who was controversially sent by the Sirisena Government to Geneva as part of their 2016 delegation to the UN Committee Against Torture) as respondents.

<sup>66</sup> SRI LANKA ANTICORRUPTION PROGRAM, FINAL PROJECT COMPLETION REPORT, December 2007, [http://pdf.usaid.gov/pdf\\_docs/Pdack636.pdf](http://pdf.usaid.gov/pdf_docs/Pdack636.pdf), page 5.

<sup>67</sup> *Attack on Uthayan Newspaper*, 2 May 2006, D B S Jeyaraj, Sangam.org, [http://www.sangam.org/taraki/articles/2006/05-06\\_Uthayan\\_Attack.php?print=sangam](http://www.sangam.org/taraki/articles/2006/05-06_Uthayan_Attack.php?print=sangam)

<sup>68</sup> *Ratwattes use courts against the law*, The Sunday Leader, 2002 <http://www.thesundayleader.lk/archive/20020106/news.htm>

<sup>69</sup> Nalanda College website as above.

<sup>70</sup> Concluding Observations on the fifth periodic report of Sri Lanka, UNCAT, December 2016, Available online at <http://www.itjpsl.com/assets/Concluding-observations-englishUNCAT-59.pdf>

<sup>71</sup> Ibid.

credible track record in protecting human rights can be appointed and safeguard witnesses and victims.

- Suspend Mr. Nandana Munasinghe from all official positions in connection with allegations of torture as recommended by the UN Special Rapporteur on Torture in 2007. Ensure an impartial body independent from the police force promptly investigates him.
- Implement all the recommendations of UNCAT59 including the one that calls for the Government of Sri Lanka to establish an independent, impartial, prompt investigation into allegations for torture in the rehabilitation camps. This should include investigation of Mr. Gamlath's role as the Commissioner General for Rehabilitation.
- Appoint Tamils and more women to the National Authority so that it is more representative.

### **Other Governments**

- Vet Sri Lankan security and public officials, including elected officials, before they become beneficiaries of publicly funded training, employment or other programmes. Be transparent in reporting on this activity and ensure the parameters are clearly established from the outset and there is no reliance on the local bodies to self-screen.
- Make vetting and screening by Sri Lanka of its security and public officials a key performance indicator for measuring adherence to UN Resolution 30/1 and for ongoing monitoring of human rights as well as in relation to trade concessions such as GSP+. Vetting does not require the full implementation of the entire transitional justice programme of activities or legislative reform; it should commence straight away.

