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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students), a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The role of the Human Rights Commission of Sri Lanka (HRCSL) to contribute towards accountability, reconciliation and protection of Human Rights Defenders (HRDs)

Despite some public pronouncements and individual initiatives, the HRCSL appeared to be unwilling and unable to contribute towards accountability, reconciliation and protection of HRDs at risk. This submission¹ addresses some areas of concern in relation to the HRCSL's performance, focusing primarily on 2013-2014.

1. Protection of HRDs

On several occasions when HRDs were attacked (physically and verbally) and complaints made, they were dealt with very slowly, and on some occasions, there has been no response. There has also been an unwillingness to fully use the powers vested in the HRCSL against respondents, including summoning them for inquiries and taking action when summons are not responded to. Ten prominent case studies are given in footnotes².

¹ INFORM Human Rights Documentation Centre, Colombo, Sri Lanka, associates / endorses itself with this submission

² Below are ten prominent cases studies relation to HRDs and the response or lack of response of the HRCSL, updated as of January 2014 unless otherwise stated:

i. When families of disappeared persons from the North were stopped from coming to Colombo to submit a petition to the UN, they made a complaint to the head office of the HRCSL in March 2013. The Vavuniya branch summoned the complainants and respondents (Police) twice in 2013, but the Police didn't turn up and there has been no further action or information provided to the complainants.

ii. When families of disappeared persons were again stopped from going to Colombo for a human rights event in November 2013, they had complained to the Vavuniya branch of the NHRC. No action has been taken.

iii. The Centre for Policy Alternatives (CPA) and its Executive Director filed a complaint (Complaint No: HRC/3083/13) before the NHRC on 12th August 2013, against the government owned Independent Television Network of Sri Lanka (ITN) and its Chairmen. The complaint was on the basis that a [news item](#) appearing on the 7:00pm Sinhala language news broadcast of ITN on Sunday 14th July 2013 violates several fundamental rights of both CPA. An initial inquiry was held only after 6 months and the date for next inquiry was postponed by further two months.

iv. Prominent woman HRD, Dr. Nimalka Fernando, filed a complaint with the NHRC on 6th Nov. 2013 (Complaint no. HRC/4203/2013) about violating her rights as a HRD by the government owned and controlled Sri Lanka Broadcasting Corporation (SLBC). The NHRC has sent a letter to the SLBC requesting them to produce the tape and other relevant information, before 25th Nov. 2013, but to the best of the complainant's knowledge, this has not been complied with, and the NHRC has not done any follow up, and had not informed her of updates. There has been no reply to her letter asking for updates, sent on 18th December 2013. The NHRC also appeared unable or unwilling to stop the continuing attacks on her and other HRDs by the SLBC, even after the complaint.

v. The complained filed in April 2013 (Complaint no. 1548/13) by a HRD, Mr. Ruki Fernando, attached to INFORM Human Rights Documentation Centre and Chairman of the Rights Now Collective for Democracy, supported by video footage, photos and eyewitness testimonies, has also not been resolved yet. This complaint was about the disruption of a peaceful vigil by the Police.

vi. In October 2012, independent web journalist and HRD, Mr. Krishan Rajapakse was visited by persons claiming to be from the Police and questioned in an intimidating manner and threatened. When he went to the NHRC to complain on 8th October, the officer and even the head of the complaints division refused to take the complaint. When Mr. Rajapakse asked this to be given in writing, it was refused. Later, Mr. Rajapakse sent a copy of the complaint to the Chairman of the Commission by fax and registered post. Mr. Rajapakse received a reply only several months later, by which time he had already left the country due to imminent threats to his life.

2. Hotline

The HRCSL has refused to take immediate action to prevent imminent violations and respond to urgent life and death situations, when calls were made to the “hotline”³.

3. Conducting inquiries on its “own motion”

The HRCSL is vested with powers to investigate allegations of infringements through article 14 of its enabling act. Despite some occasional initiatives, many serious allegations of violations were ignored by the HRCSL, including consistent attacks against HRDs by government Ministers, MPs and state owned and controlled media. In few occasions, it did appear to use these special powers, but the results are not clear⁴.

4. Commissioners and Senior Staff⁵

In February 2012, one of the Commissioners, Dr. Ananda Mendis, had reached out to several HRDs, resigned after just one year in office. He complained of “inefficiency” in the workings of the Commission; of sub-standard crime scene investigations; and of “interference” by a senior executive officer.⁶ He was replaced by Dr. Prathiba Mahanamahewa,

vii. On 30th Nov. 2011 and again on 9th Feb. 2012, Mrs. Sandya Ekenligoda, wife of disappeared HRD and journalist / cartoonist Prageeth Ekenligoda, requested the NHRC to summon Mr. Mohan Peiris, based on a statement he had made to the UN Committee Against Torture in Nov. 2011, about whereabouts of her disappeared husband. But the NHRC refused her request, and instead of the normal practice of summoning people to appear before the NHRC for an inquiry, asked Mr. Peiris to send a written affidavit, and warned Mrs. Ekenligoda not to make such requests. Mrs. Ekenligoda has not been informed to date whether a written affidavit was submitted or not or any update on the progress of the case. The initial complaint about the disappearance was made by Mrs. Ekenligoda on 2nd Feb. 2010 (Complaint no. 369/2010). The NHRC had initially refused to accept the complaint, and only did so after Mrs. Ekenligoda’s lawyer made strong representations.

viii. Mr. Dharmasiri Lankapeli, a HRD and the General Secretary of the Federation of Media Employees Trade Unions made a complaint to the NHRC on 20th December 2011 (Complaint no. 3940/2011) regarding the violation of his rights as a HRD by the Associated Newspapers of Ceylon Ltd, due to his activism as a Trade Union leader. He received a letter dated 11th May 2012, that the NHRC has concluded the case ex-parte. There has been no reply to a letter Mr. Lankapeli wrote to the NHRC appealing against the ex-parte closure of the case.

ix. A complaint was filed with the NHRC, regarding two HRDs who disappeared (Mr. Lalith Kumar Weeraraj and Mr. Kugan Muruganandan) by Mr. Ajith Kumara on 13th December (Complaint no: HRC/ 33852/ 2011). A further complaint was filed by Mr. Weeraraj’s father to the NHRC on 16th December 2011 (Complaint no. H.R.C.3934/11). No update has been given to the complainants.

x. There is no update about a complaint that was filed in the HRCSL head office on 17th December 2013 by Mr. M. I Rahamathullah, editor of the Tamil local newspaper “Vaarauraikal”, about sustained efforts to curtail his right to freedom of expression, including publication (Complaint no. HRC/4362/13). This was as a follow up to a meeting with the Director of Investigations and complaints made to the HRCSL by Mr. Rahamathullah previously.

³ On 12th April 2013, a HRD from INFORM Human Rights Documentation Centre called the hotline requesting the NHRC to intervene, to prevent the Police from disrupting and stopping a peaceful vigil. The NHRC refused to intervene and instead, treated this as an ordinary complaint (see 1.5 above). In April 2012, the same HRD, had called the hotline late at night, to provide information about reports that two disappeared HRDs were being held in a particular Police building, and requested that the NHRC makes an immediate unannounced visit, as per the powers vested in the NHRC. The NHRC refused, and only addressed the matter the next day morning.

⁴ See the section “Effectiveness of the Human Rights Commission” of Sri Lanka chapter, particularly footnote 98, in the ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>

⁵ See the section “Membership & Selection” of Sri Lanka chapter, in the ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570> and the section “Membership & selection process” of Sri Lanka chapter, in the ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>

⁶ See the section “Membership & Selection” of Sri Lanka chapter, in the ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570>, and in particular, footnote 34.

Dean of the Faculty of Law at a military academy (Kotelawala Defence University), which is a conflict of interest. Dr. Mahanamahewa has turned out to be a supporter of the government's campaign against UN scrutiny of its rights record.

The Additional Secretary of the HRCSL also serves as a senior government official, the Chairman of the Land Reform Commission (LRC). The LRC has been used by the government to reward its supporters to gain votes in elections⁷.

5. Defending the government

Immediately after the appointment of the Commissioners in February 2011, the Chairman of the HRCSL went on defending the human rights record of the government and criticizing international calls for accountability for allegations of war crimes and human rights violations.⁸ In 2012-2013, one of the Commissioners, Dr. Mahanamahewa, has taken on a similar role, particularly supporting the government in its efforts to campaign against the resolution on Sri Lanka passed at the UN Human Rights Council (HRC). He has publicly condemned both UNHRC Resolutions in 2012 and 2013 and accused the UNHRC of going against its basic principles and acting contrary to the UN mandate. He observed that the second resolution was dangerous because it urges Sri Lanka to allow an opportunity for UN Rapporteurs to make observations regarding violations⁹. Dr. Mahanamahewa has repeated similar sentiments in early 2014, ahead of the proposed resolution on Sri Lanka at the 25th session of the UNHRC in March 2014, saying "a fresh resolution has the long term objectives for the West as they want Sri Lanka to be taken to the ICC (International Criminal Court)"¹⁰.

Dr. Mahanamahewa also defended the impeachment process against the Chief Justice Dr. Shirani Bandaranayake and called it constitutional¹¹ even when the highest courts in Sri Lanka, the Supreme Court and the Court of Appeal, determined the process to be unconstitutional¹².

6. Refusal to fulfill its functions to advice and make recommendations to the government

The HRCSL has not urged the government to ratify treaties such as the Optional Protocol to Convention against Torture and Convention against Disappearances, despite its mandate to "make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights"¹³. The HRCSL has also not urged the government to respond favorably to pending requests for country visits by eight (8) thematic UN Special Procedures, some as far back as in 2006.

The HRCSL also has avoided making recommendations to the government to bring the Prevention of Terrorism Act (PTA) in line with the government's international commitments, despite its mandate to "make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards"¹⁴.

7. Reports to the parliament

The HRCSL has not taken the initiative to submit to Parliament, reports on critical human rights issues related to media freedom, torture, disappearances, extrajudicial executions, etc., based on its power to "whenever it considers it

⁷ See <http://www.dailynews.lk/2010/11/18/news43.asp>.

⁸ See the section "Relationship with State", of Sri Lanka chapter, in the ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570> and the section "HRCSL joint project with the UNDP" of Sri Lanka chapter, in the ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>

⁹ See the section "HRCSL joint project with the UNDP" of Sri Lanka chapter, in the ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>, and footnotes 80-86

¹⁰ See an interview available at <http://www.dailynews.lk/features/unhrc-should-investigate-ltte-barbarism-dr-prathiba-mahanamahewa>

¹¹ See <http://archives.dailynews.lk/2012/11/21/news01.asp>

¹² The Bar Association of Sri Lanka (BASL), lawyers and judges associations around the world and the UN Special Rapporteur on independence of judges and lawyers had also condemned the unconstitutional impeachment process

¹³ Article 10 -e of the HRCSL Act

¹⁴ Article 10 -d of the HRCSL Act

necessary to do so, submit periodic or special reports to Parliament in respect of any particular matter or matters referred to it, and the action taken in respect thereof”¹⁵.

8. Research and awareness raising

The HRCSL also has not taken the effort to undertake serious research and awareness campaigns on critical topics such as torture, media freedom, disappearances, extrajudicial killings, despite the powers vested in the HRCSL to “undertake research ...and disseminate and distribute results of such research”¹⁶ and “to promote awareness and provide education in relation to human rights”¹⁷.

9. Delegation of powers & appointment of Provincial Committees

Although the HRCSL had often complained about the lack of human resources and HRDs have offered its services and resources, the NHRC had not embarked to delegate some of its powers and work, despite the fact that the HRCSL Act explicitly authorizes that “The Commission may delegate to any officer appointed to assist the Commission any of its powers, and the person to whom such powers are so delegated may exercise those powers subject to the direction of the Commission”¹⁸. The HRCSL is also legally empowered to “appoint such number of sub-committees at Provincial level, as it considers necessary to exercise such powers”¹⁹, but it has not done so yet.

10. Relationship with HRDs

The HRCSL, sometimes with support of the UN and in response to requests from HRDs, had held several consultations with HRDs. However, there is no report of follow up actions taken, based on concerns and recommendations made. For example, the HRCSL has not responded yet to most concerns raised by a HRD during a consultation held in July 2011 followed up by a written submission²⁰ and neither has it responded to a letter by the Free Media Movement in August 2013²¹. It appears that the cooperation and engagement with HRDs is selective and not genuine, rather based on gaining international credibility, including attracting funding and regaining “A” status at the International Coordination Committee of the NHRIs.

11. Postponement of the proposed National Inquiry on Torture

In December 2013, the HRCSL announced that a previously announced National Inquiry on Torture will be postponed due to the request of some civil society organizations and as the term of the present Commissioners will finish soon. Several Sri Lankan human rights organizations engaging with the HRCSL distanced themselves from this and questioned why there was no consultations with broader civil society including them. They also questioned why the date of the present Commissioners term was ending was not known when the initial announcement was made, particularly as a Commissioner had told the Inquiry would take 18 months. The question, why work by staffs of the HRCSL should be completed before the completion of term of present Commissioners was also raised. The HRCSL acknowledged concerns raised, but refused to respond substantially to concerns raised and declined to communicate further on the matter²².

12. Reconciliation

¹⁵ Article 30 of HRCSL Act

¹⁶ Article 11 – f of the HRCSL Act

¹⁷ Article 10-f of the HRCSL Act

¹⁸ Article 24 of the HRCSL Act

¹⁹ Article 11-b of the HRCSL Act

²⁰ See follow up letter sent to the NHRC after the consultation and response of the NHRC, available at <http://blog.srilankacampaign.org/2012/02/toothlessness.html>

²¹ See the letter at <http://www.srilankabrief.org/2013/08/fmm-calls-on-government-to-invite-he-un.html>

²² See <http://www.rightsnow.net/?p=4532> for correspondence and a summary note

The Commonwealth Secretariat has embarked on program to support the HRCSL to play a role in national reconciliation²³, but it appears that the HRCSL has steered clear of critical issues affecting national reconciliation, such as obstructions to signing the national anthem in two languages, continuing occupation of land by the military in the North and Eastern provinces, the destruction of cemeteries of Tamil militants and building of army camps over them, restrictions on commemorating dead persons and threats to those organizing such events. Some of these has been direct violations and ignoring of the government's own Lessons Learnt & Reconciliation Commission.

There is a concern on why the HRCSL is embarking on getting involved in new area of reconciliation, when it's not able or willing to perform its basic functions related to human rights protection, which in itself will directly contribute towards the reconciliation process.

²³ See <http://thecommonwealth.org/media/news/commonwealth-supporting-sri-lanka-human-rights-commission-role-national-reconciliation> and <http://thecommonwealth.org/media/news/human-rights-commission-sri-lanka-expresses-commitment-play-role-national-reconciliation>