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Ref: HR/16 & HR/50

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and with reference to the latter's Note dated 17 December 2018, has the honour to forward herewith the inputs received from the Attorney General's Department of Sri Lanka in response to the questionnaire received from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

The Permanent Mission appreciates receiving an acknowledgement of this communication by the Special Procedures Branch.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

  
Geneva, 07 February 2019  


**Special Procedures Branch**  
Office of the High Commissioner for Human Rights

Copy: **Mr. David Kaye**  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

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## Observations

In respect of the information sought under Paragraph [A], the following is applicable: In respect of Paragraphs [A] (1) and [A] (2); Sri Lanka is not known to manufacture dual use surveillance technology, in the circumstances there are no laws in respect of the same. However, Section 12 (1) of the Customs Ordinance prohibits the import or export of prohibited items in Schedule B thereof. Section 12 (2) of the Customs Ordinance makes provision for Parliament to amend Schedule B.

The said section reads as follows;

*Parliament may from time to time, by means of a resolution duly passed at any public session, amend Schedule B by the addition thereto of any goods other than those enumerated therein or by the omission therefrom of any goods enumerated therein or otherwise, and regulate the conditions subject to which the importation or bringing in to or the exportation or taking out of Sri Lanka of any goods enumerated in the said Schedule is prohibited or restricted.*

Hence, if an issue of dual use surveillance technology manufacture or usage arises in Sri Lanka, there is provision for Parliament to amend Schedule B of the Customs Ordinance to prevent such import or export.

Section 130 of the Customs Ordinance provides for forfeiture of such goods to be exported, and for fines to be imposed.

It may be noted that Sri Lanka is not a manufacturer of dual use surveillance products and it is not a member of the Wassenaar Arrangement or the Australia Group in regard to the export of weapons or weapons technologies.

In respect of the Information required as per [A] (3); the following may be noted;

## ***Constitutional Guarantees***

The Constitution explicitly guarantees the freedom of 'Speech and Expression'. Article 14 (1) (a) provides that every citizen is entitled to "*the freedom of speech and expression including publication*".

The right to privacy too is constitutionally recognized in Article 14 A (2) which provides that the right of access to information guaranteed under Article 14 A (1) is curtailed by certain specified considerations including "*for the protection of health or morals and the reputation or rights of others, privacy... for preventing the disclosure of information communicated in confidence or for maintaining the authority and impartiality of the judiciary*".

The Right to Information Act No 12 of 16 also provides that such Right to information can be curtailed in the interest of privacy of person. Section 5 (1) (a) provides that;

*"Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where*

*(a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure"*

## ***Computer Surveillance***

The Computer Crimes Act No 24 of 2007 which was enacted to provide for the identification, investigation and prevention of computer crime, states in Section 7 that

it is an offence to “*buy, receive, retain, sell or in any manner deal with “information obtained from a computer or storage medium of a computer without lawful authority”*”.

Further, Section 8 of the Act provides that:

*“Any person, who, knowingly or without lawful authority intercepts-*

*(a) any subscriber information or traffic data or any communication., to, from or within a computer; or*

*(b) any electromagnetic emissions from a computer that carries any information, shall be guilty of an offence...”*

Section 10, 12 and 13 of the said Act provide that unauthorized disclosure of information and abetment of unauthorized acts and conspiracy are also offences.

### ***Telecommunications Regulatory Licensing Regime***

The Sri Lanka Telecommunications Act, No. 25 of 1991 as amended has provided to prevent usage of such goods by establishing a licensing regime.

In the above context, the following provisions of the said Act may be noted.

Section 17 of the Act provides that no person shall operate telecommunication System without a licence.

A “*telecommunication system*” means a system for the conveyance by the agency of *electric, magnetic, electro-magnetic, optic, electro-chemical or electromechanical energy, of*

*(a) speech, music and other sounds;*

*(b) visual Images;*

*(c) information for human comprehension that is intended for presentation in a two dimensional form, consisting of symbols, phrases or sentences in natural or artificial languages, pictures, diagrams and tables;*  
*or*

*(d) signals serving for the actuation or control of machinery or apparatus;*

Section 19 of the Act provides that it would be an offence to operate telecommunication system without licence.

Section 21 of the Act provides for the control and regulation of the manufacture, import &c. of telecommunications apparatus.

Section 22 of the Act provides for Licence for use of any radio frequency.

### ***Surveillance by Drones***

In terms of Section 80 of the Civil Aviation Act No 14 of 2010, it is necessary to obtain a permit to operate a drone. Approval would have to be obtained from the Director General of Civil Aviation and the Office of the Chief of Defense Staff. Section 103 of the Civil Aviation Act makes non-compliance an offence.

The above constitutional guarantees and legislative measures ensure that the protection afforded to persons by law in Sri Lanka is consistent with the State's Obligations under Article 19 of the ICCPR.