

# **LST REVIEW**

Volume 23 Issue 298 August 2012



## **'EMBEDDED IN THE STATE': THE HUMAN RIGHTS COMMISSION OF SRI LANKA**

**LAW & SOCIETY TRUST**

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**Printed by:**

**Law & Society Trust**

3 Kynsey Terrace, Colombo 8, Sri Lanka

(+94)11-2691228, 2684845, 2684853 | fax: 2686843

lst@eureka.lk

www.lawandsocietytrust.org

## *Editor's Note ... ..*

This Issue publishes a carefully reasoned and stringently argued critique of the performance of the Human Rights Commission of Sri Lanka (HRCSL) during the period January to December 2011 by Head, Economic, Social and Cultural Rights Programme, Law & Society Trust, *B. Skanthakumar*.

Part of the 2012 review on the performance and establishment of national human rights institutions in Asia undertaken for the annual Asian NGO Network on National Human Rights Institutions (ANNI) regional report, this critique acknowledges the efforts made mostly by the regional coordinators and staff of the HRCSL to provide relief and redress to the myriad problems that are brought by Sri Lankan people to their offices. However, it continues to highlight grave systemic and institutional concerns that detracts from the independence of the HRCSL and negatively impacts on the due performance of its statutorily mandated rights and responsibilities.

The 18<sup>th</sup> Amendment's removal of the intervening authority of the Constitutional Council in the process relating to the appointment of HRCSL members, (thus putting this duty unilaterally back in the hands of the Executive President), remains a matter of tremendous concern. What is fairly highlighted in this paper is the absence of a proven record of commitment to human rights protections on the part of sitting Commissioners. Certainly a background in judicial service or academia cannot be interpreted as 'having knowledge of, or practical experience in, matters relating to human rights' (Section.3 (1), *Human Rights Commission Act*, No. 21 of 1996).

Equally troublingly is the status of a key officer of the HRCSL, namely its Additional Secretary (Legal) Nimal Punchihewa, who also functions as the Chairman of the Land Reform Commission (LRC), a state body. Such a dual role is clearly problematic in principle.

Quite apart from due process in matters of appointment which reflect on the independence of the HRCSL from government, the perception by members of the Commission in regard to their role being defenders of the Government rather than

defenders of the human rights protections of people, go to the root of a substantive misunderstanding as to their statutory role and mandate. The author traces the manner in which statements by the Commission betrays this fundamental misunderstanding, casting into suspicion, the integrity of Sri Lanka's premier human rights monitor and takes the discussion beyond the mere absence of adequate financial and human resources.

Where matters such as prisons reforms and arbitrary detentions in general are concerned, the HRCSL has endeavored to solve problems through conciliation and even determined to report non-compliance of recommendations to the Supreme Court as a matter of contempt. However, this resolute determination is not seen in matters commonly termed as 'controversial' and politically sensitive.

A remarkable example of such timidity was the HRCSL's refusal to subject former Attorney General Mohan Peiris to an inquiry following comments made by former Attorney General before the United Nations Committee on Torture (UNCAT) that he was aware of the whereabouts of 'disappeared' web journalist Prageeth Ekneligoda and that he had been informed that Ekneligoda had sought political asylum in a foreign country. Despite Sandya Ekneligoda requesting the HRCSL to question the former Attorney General on this matter, the HRCSL under the hand of its Chairman declined to do so in terms that may be described as less than polite. It may be recalled that the former Attorney General was, (notwithstanding the strenuous objections of the relevant state law officers), summoned before the Magistrate's Court hearing the *habeas corpus* application filed by Sandya Ekneligoda and compelled to admit that he did not know the truth of the claim that he had previously made before the UNCAT.

The HRCSL's renegeing of its responsibility in this case draws condemnation. Rightly, the acid test of fulfillment of its statutory role must be evidenced in matters that challenge the government rather than in innocuous cases.

As the author himself acknowledges, despite increased interactions within 2011, a chasm of deep distrust divides the HRCSL and human rights defenders;

In general, there continues to be wariness and suspicion on both sides. Critical civil society activists consider the HRCSL as embedded in the State and condescending in its dealings with them; whereas, the HRCSL probably regards

those civil society actors as inveterate adversaries of the State and malevolent detractors of their institution.

Ultimately and unfortunately, this chasm only rebounds to the detriment of many victims who, in their desperation, have no recourse but to invoke the mechanism of the HRCSL for their relief and then find that their pleas have been in vain. This is a continuing dilemma that has negated the high expectations with which the HRCSL was created and created a dangerous vacuum in human rights protections within the country.

*Kishali Pinto-Jayawardena*



# 'EMBEDDED IN THE STATE': THE HUMAN RIGHTS COMMISSION OF SRI LANKA

B. Skanthakumar<sup>\*</sup>

This annual report is a critical assessment of the effectiveness and performance of the Human Rights Commission of Sri Lanka (HRCSL) in the protection and promotion of human rights, mainly between January and December of 2011 but with reference to significant events in early 2012. It focuses on the full compliance of the HRCSL with the international standards for national human rights institutions – the 'Paris Principles' – and draws attention to selected issues of concern to human rights defenders in Sri Lanka.

## I. General Overview

In 2011, the litany of human rights violations:<sup>1</sup> were the familiar ones of extra-judicial killings; enforced disappearances and missing persons;<sup>2</sup> arbitrary detention;<sup>3</sup> custodial torture; violence against media personnel and organisations; criminal activities by pro-government paramilitaries; non-conformity of the returns and resettlement process of internally displaced persons with international standards;<sup>4</sup>

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<sup>\*</sup> The contribution of my colleagues in the Economic, Social and Cultural Rights programme, and the comments received from Ruki Fernando are gratefully acknowledged. All matters of law and fact are as at 23 July 2012. This report will be published in the *2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, coordinated by the Asian Forum for Human Rights and Development (FORUM-ASIA).

<sup>1</sup> See generally, Amnesty International, 'Sri Lanka' in *Annual Report 2012*, London 2012, pp. 314-316, [http://files.amnesty.org/air12/air\\_2012\\_countryreports\\_en.pdf](http://files.amnesty.org/air12/air_2012_countryreports_en.pdf); Human Rights Watch, 'Sri Lanka' in *World Report 2012*, New York 2012, pp. 388-393, [http://www.hrw.org/sites/default/files/related\\_material/srilanka\\_2012.pdf](http://www.hrw.org/sites/default/files/related_material/srilanka_2012.pdf); Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2012*, London 2012, pp. 142-143, <http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html>; US Department of State, *Country Reports for Human Rights Practices 2011: Sri Lanka*, Washington DC 2012, [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186475#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186475#wrapper).

<sup>2</sup> The International Committee of the Red Cross (ICRC) reported handling 15,780 cases of missing persons as at the end of 2011, see *ICRC Annual Report 2011*, Geneva 2012, p. 256, <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-asia-and-pacific.pdf>. One official source estimates that there were 4,156 'untraceable' persons in the Northern Province alone between 2005 and 2009: Department of Census and Statistics, *Enumeration of Vital Events 2011 – Northern Province*, Colombo 2011, at p. 20, [http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011\\_FinalReport.pdf](http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011_FinalReport.pdf).

<sup>3</sup> Amnesty International, *Locked Away: Sri Lanka's Security Detainees*, ASA 37/003/2012, London 2012, <http://files.amnesty.org/archives/asa370032012eng.pdf>.

<sup>4</sup> Tamil National Alliance, *The Resettlement Report (October-December 2011)*, Research Series Vol. 1.2, Colombo 2011, archived at [http://dbsjeyaraj.com/files/TNA\\_Resettlement\\_Report\\_1211.pdf](http://dbsjeyaraj.com/files/TNA_Resettlement_Report_1211.pdf).

displacement from homes, lands and livelihoods through 'high security zones';<sup>5</sup> and conflict-related accountability issues centred on the final phase of the war.<sup>6</sup>

There were also variations on these themes: the killings of suspects who allegedly tried to escape while in custody; the obstruction, harassment and temporary arrest of dozens of human rights defenders for participating in a peaceful protest that was organised in Jaffna to mark international human rights day on 10 December 2011;<sup>7</sup> and interference and curbs on the new media through the blocking of unregistered news websites.<sup>8</sup> Community-based organisations reported overt surveillance of their public activities and periodic visits and telephone calls from police intelligence. The accelerated grabbing of state and private lands by state and private actors, and forced evictions in urban and rural communities, including loss or threats to livelihoods, was an emerging issue.<sup>9</sup>

While sexual harassment and violence against women are by no means new concerns, in addition to increased reports of domestic violence and sexual assaults, there was a spate of reports of men with blackened or camouflaged faces attacking women in various parts of the island.<sup>10</sup>

These incidents also occurred in the highly militarised North and East, where the high concentration of state security personnel – one for every five civilians in the Northern Province claims one analyst<sup>11</sup> – has not reduced incidents of violent crime but rather contributed to the perception of impunity for those who wield weapons and restrictions on basic freedoms of expression, association and assembly. The

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<sup>5</sup> The government claims to be scaling back the (unknown) extent of high security zones but some areas are simply re-designated as 'cantonments', while elsewhere new areas are coming under military occupation. In the Jaffna peninsula alone, some 26,000 people displaced by forced acquisition of their lands have yet to be resettled ('26,000 not resettled due to HSZ', *BBC Sinhala.com*, 28 December 2011, [http://www.bbc.co.uk/sinhala/news/story/2011/12/111228\\_jaffna\\_hsz.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/12/111228_jaffna_hsz.shtml)). See generally, Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province: Post-War Politics, Policy and Practices*, Centre for Policy Alternatives: Colombo 2011, esp. pp. 153-157, <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>.

<sup>6</sup> Amnesty International, *Sri Lanka: The Need to Address Persistent Impunity for Violations and Abuses of International Human Rights and Humanitarian Law*, ASA 37/002/2011, 24 February 2011, <http://www.amnesty.org/en/library/asset/ASA37/002/2011/si/71979dfb-57ef-47a8-94d4-8299e33e3770/asa370022011en.pdf>.

<sup>7</sup> 'Watchdog' (pseud.), "42 Political Activists and HRDs Detained and Prevented from Participating in Peaceful Protest in Jaffna Town on Human Rights Day", *groundviews.org*, 14 December 2011, <http://groundviews.org/2011/12/14/42-political-activists-and-hrds-detained-and-prevented-from-participating-in-peaceful-protest-in-jaffna-town-on-human-rights-day/>.

<sup>8</sup> See generally, Centre for Policy Alternatives, *Freedom of Expression on the Internet in Sri Lanka*, Colombo 2011, <http://cpalanka.org/wp-content/uploads/2011/11/FOE-REPORT-NOV-2011-FINAL-CPA.pdf>.

<sup>9</sup> "Sri Lanka: Land grabbing and development induced displacement", Written statement submitted by the Asian Forum for Human Rights and Development (FORUM-ASIA) on behalf of the National Fisheries Solidarity Movement (NAFSO), the Praja Abilasha Network (PAN) and the Law & Society Trust (LST) to the 19<sup>th</sup> regular session of the UN Human Rights Council, A/HRC/19/NGO/64, 22 February 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/107/18/PDF/G1210718.pdf?OpenElement>.

<sup>10</sup> Women's Action Network, *Statement by women on the recent attacks on women, impunity and the lack of the rule of law*, 22 August 2011, archived at <http://dbsjeyaraj.com/dbsj/archives/2714>; International Crisis Group, *Sri Lanka: Women's Insecurity in the North and East*, Brussels, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>.

<sup>11</sup> 'A Correspondent' (pseud.), "Notes on the Military Presence in Sri Lanka's Northern Province", *Economic & Political Weekly* (Mumbai), Vol. XLVII, No. 28 (14 July 2012), pp. 34-40 at p. 36, <http://www.epw.in/system/files/Notes%20on%20the%20Military%20Presence%20in%20Sri%20Lanka%20Northern%20Province.pdf>.



compulsory 'leadership training' programmes conducted for state university entrants by the military in its camps gave rise to widespread concern.<sup>12</sup>

Raised expectations at the end of two and a half decades of armed conflict, two years before, of a sharp improvement in the environment for human rights protection and promotion were not to be realised. Instead there were "strong continuities between the 'war for peace' and the 'post-war' periods",<sup>13</sup> while the role of the defence ministry and the military in civil administration and in economic activities in direct competition with civilians was enhanced.<sup>14</sup>

There were three welcome developments in the course of the year: the lifting of the island-wide state of emergency in August 2011;<sup>15</sup> the public release of the final report and recommendations of the Lessons Learned and Reconciliation Commission (LLRC)<sup>16</sup> in December 2011; and cabinet approval for the National Human Rights Action Plan<sup>17</sup> in September 2011, and curiously once again in December 2011, only after which it was 'leaked' (never formally released) and haphazardly circulated.

Disappointingly, the Human Rights Commission of Sri Lanka made no public comment on any of these events; the value and actual benefit of which remain untested because of the dominant political culture of state authoritarianism, the intransigence of powerful actors, and the weakness of countervailing social and political movements.

Thus, even in the absence of the state of emergency, arbitrary arrest and prolonged detention without trial is permissible under the Prevention of Terrorism Act (PTA), while new regulations<sup>18</sup> were introduced to

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<sup>12</sup> Friday Forum, "Leadership Training for University Entrants", *The Island* (Colombo), 12 June 2011, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=27550](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=27550).

<sup>13</sup> Jonathan Goodhand, "Sri Lanka in 2011: Consolidation and Militarization of the Post-War Regime", *Asian Survey* (Berkeley, CA.), Vol. 52, No. 1 (January/February 2012), pp. 130-137 at p. 130; also see Jayadeva Uyangoda and Pradeep Peiris, "The Way We Were: Politics of Sri Lanka – 2011, Part I" and "The Way We Were: Politics of Sri Lanka – 2011, Part II" in *Polity* (Colombo), Vol. 6, No. 3 & 4 and Vol. 6, No. 5 respectively.

<sup>14</sup> See for instance, M. A. Sumanthiran MP, *Situation in North-Eastern Sri Lanka: A Series of Serious Concerns* (tabled in Parliament on 21 October 2011), archived at <http://dbsjeyaraj.com/dbsj/archives/2759>.

<sup>15</sup> Political Editor, "Lapses in lifting of Emergency", *The Sunday Times* (Colombo), 4 September 2011, <http://sundaytimes.lk/110904/Columns/political.html>.

<sup>16</sup> The LLRC Report discussed: the breakdown of the ceasefire agreement; actions of the military in the final phase of the war; international humanitarian law; human rights; land; restitution; and reconciliation; see *Report of the Commission of Inquiry on Lessons Learned and Reconciliation*, November 2011, [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf).

<sup>17</sup> The Human Rights Action Plan makes recommendations on: civil and political rights; economic, social and cultural rights; prevention of torture; rights of women; labour rights; rights of migrant workers; rights of children; and rights of internally displaced persons; see *Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights (2011-2016)*, [http://www.hractionplan.gov.lk/posters/National\\_action\\_plan\\_for\\_the\\_protection\\_and\\_promotion\\_of\\_human\\_rights\\_2011\\_2016\\_English.pdf](http://www.hractionplan.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf).

<sup>18</sup> "The Government is so open about what they propose doing. Remove the Emergency but invoke PTA to continue with the Emergency", argued human rights lawyer J. C. Weliamuna, "Lifting of the Emergency: Exposing the sham exercise", *Daily FT* (Colombo), [www.ft.lk/2011/09/17/lifting-of-the-emergency-exposing-the-sham-exercise/](http://www.ft.lk/2011/09/17/lifting-of-the-emergency-exposing-the-sham-exercise/).

substitute for the end of emergency rule. In fact, as of November 2011, some 893 persons were in custody under the PTA's provisions.<sup>19</sup>

To the LLRC's own dissatisfaction in its final report, there was desultory action taken in the implementation of even its modest interim recommendations (from September 2010). The interim recommendations spanned issues of long-term ethnic Tamil detainees; the government's policy on use of private lands in the North and East; law and order in conflict-affected areas; language of administration; and livelihood issues.<sup>20</sup> Unfortunately, there is also opposition within the ruling coalition, and at the highest level, to some of the recommendations in its final report.

The Human Rights Action Plan initially suffered for want of an institutional patron (following the dropping of human rights as a ministerial subject in 2010), but after determined efforts of a few within government engaged in defending its human rights record abroad, its implementation has now been entrusted to a task force which requires political conviction or will and inter-ministerial support and coordination for progress on its mostly modest targets.

Some of the issues that were brought to the notice of the Human Rights Commission in the period under review include:<sup>21</sup> the killing of Roshen Chanaka in a workers protest against the government's proposed private sector pension scheme; detainees in long-term custody; 'grease devil' (*thel yaka/kreese potham*) attacks on women; unlawful arrest and torture of villagers in Navanthurai, Jaffna;<sup>22</sup> livelihood and social issues of ex-LTTE women combatants; deprivation of migratory fisher communities especially access to education; social ostracism of two Muslim girls by their own community;<sup>23</sup> the sale of sub-standard petrol by the state-owned Ceylon Petroleum Corporation; accessibility of public buildings to persons with physical disabilities;<sup>24</sup> monitoring of local government elections in the conflict-affected Northern province; non-implementation of Tamil as an official language;<sup>25</sup> and land-grabbing by state agencies including the security forces.<sup>26</sup>

There were also *suo moto* ('own action') inquiries conducted – including on the serial killing of elderly pavement dwellers; mobility for the visually and hearing impaired students of the Ratmalana Deaf and Blind school; and compulsory registration of Tamils in Killinochchi among others – with recommendations made to relevant state authorities.

<sup>19</sup> Saman Indrajith, "PTA detainees number 893", *The Island* (Colombo), 23 November 2011, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=39614](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=39614).

<sup>20</sup> "LLRC: Interim Report to Government", *groundviews.org*, 11 November 2010, <http://groundviews.org/2010/11/11/llrc-interim-report-to-government/>.

<sup>21</sup> For more details see Human Rights Commission of Sri Lanka website, <http://hrcls.lk/english/?cat=1>.

<sup>22</sup> 'Watchdog' (pseud.), "Jaffna: Brutal Assault of Civilians in Navanthurai", *groundviews.org*, 25 August 2011, <http://groundviews.org/2011/08/25/jaffna-brutal-assault-of-civilians-in-navanthurai/>; "Court takes up NE Citizens rights petition against Military, Police", *Sunday Times* (Colombo), 2 October 2011, [http://sundaytimes.lk/111002/News/nws\\_013.html](http://sundaytimes.lk/111002/News/nws_013.html).

<sup>23</sup> Riffhi Ali, "Two girls accused of misconduct exonerated by mosques", *Daily Mirror* (Colombo), 20 January 2012.

<sup>24</sup> "Accessibility, inherent right of everyone", *Daily News* (Colombo), 13 March 2012, <http://www.dailynews.lk/2012/03/13/news31.asp>.

<sup>25</sup> "The language of harmony", *Daily Mirror* (Colombo), 28 April 2012.

<sup>26</sup> Maryam Azwer, "Human Rights Commission to Investigate Ashraf Nagar Issue", *The Sunday Leader* (Colombo), 8 April 2012, <http://www.thesundayleader.lk/2012/04/08/human-rights-commission-to-investigate-ashraf-nagar-issue/>.

This country report is structured according to the guidelines of the 2012 ANNI regional report. It draws upon written responses and supplementary information from the HRCSL to a detailed questionnaire prepared by the Law & Society Trust; information on the website of the HRCSL; newspaper articles; interactions with HRCSL members and senior staff in Colombo and with coordinators and other staff in several regional offices visited in 2011 and 2012; international and national human rights reports; and the observations of human rights organisations and defenders in Colombo and in other districts. An advance version of this report was shared with the members and senior executive officers of the HRCSL to receive their comments, but none was forthcoming at time of publication.

## II. Independence of the Human Rights Commission

The *Human Rights Commission Act*, No. 21 of 1996, which is the legal framework for the national human rights institution and prescribes its functions and powers, has been discussed previously and found to be wanting.<sup>27</sup> The HRCSL recognises that there are deficiencies to its enabling law that have impeded its effectiveness, particularly in enforcement of its orders, and it proposes to prepare and submit suitable amendments to lobby the government. However, there was no progress on this in 2011, nor were there any initial public consultations with civil society organisations and other interested parties, specifically on this matter.

The National Action Plan for the Protection and Promotion of Human Rights (2011-2016), has promised the following amendments to the enabling act:<sup>28</sup> (i) expansion of the mandate of the HRCSL to include not only fundamental rights explicitly protected in the Constitution but also any other human rights that are justiciable under national laws;<sup>29</sup> (ii) require the HRCSL to publish an annual report within the first quarter of every year documenting the status of human rights in Sri Lanka in the preceding year, action taken on inquiries, and findings from its research; (iii) empowering HRCSL to refer non-implementation of its recommendations to the Attorney-General's department for action in the provincial high courts on behalf of the aggrieved party; (iv) all arrests to be notified to the HRCSL. The time-frame for the execution of these activities is one-year, which at most would be the end of 2012.

<sup>27</sup> B. Skanthakumar, "Window-Dressing? The National Human Rights Commission of Sri Lanka", *Law & Society Trust Review* (Colombo), No. 262 (August 2009), pp. 5-22 at pp. 6-8 and 16-19, <http://www.lawandsocietytrust.org/PDF/nhrc%20report%202009.pdf>.

<sup>28</sup> *Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights (2011-2016)*, [http://www.hrcommission.gov.lk/posters/National\\_action\\_plan\\_for\\_the\\_protection\\_and\\_promotion\\_of\\_human\\_rights\\_2011\\_2016\\_English.pdf](http://www.hrcommission.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf), at pp. 13, 14 and 20.

<sup>29</sup> While, this is an improvement, its ambition is extremely disappointing as the remit of a national human rights institution is the protection and promotion of *all* human rights, including those guaranteed in international human rights treaties and conventions ratified or acceded by the state party, but which may not be found in national laws. For example, as state party to the International Covenant on Civil and Political Rights (ICCPR), Sri Lanka recognizes the right to life; however, there is no constitutional or statutory provision to this effect in its domestic legal system including in the enactment (Act No. 56 of 2007) to give effect to "certain articles" in the ICCPR. For discussion see Rohan Edrisinha and Asanga Welikala, "GSP Plus and the ICCPR: A Critical Appraisal of the Official Position of Sri Lanka in respect of Compliance Requirements", in Centre for Policy Alternatives and Friedrich Ebert Stiftung (eds.), *GSP+ and Sri Lanka: Economic, Labour and Human Rights Issues*, Colombo 2008, [http://library.fes.de/pdf-files/bueros/sri\\_lanka/08684.pdf](http://library.fes.de/pdf-files/bueros/sri_lanka/08684.pdf).

The appointment and composition of the members of the HRCSL, with effect from 18 February 2011, followed an interregnum of almost two years. The selection process was the subject of adverse comment by the UN Committee Against Torture which, *inter alia*, observed that the “new appointment process set out by the 18<sup>th</sup> Amendment to the Sri Lankan Constitution (September 2010), which ends Parliament’s role in approving appointments, undermines the independence of the HRCSL”; and which recommended that the State Party “establish a transparent and consultative selection process to guarantee its full independence in line with the Paris Principles”.<sup>30</sup> This shortcoming was one of the main reasons for the downgrading of the HRCSL to ‘B’ status in 2007 by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

The Commissioners themselves are untroubled by the manner of their appointment and appear surprised that it is a source of controversy in certain quarters within and outside the country. The ad-hoc commissions of inquiry which have been created in abundance in post-colonial Sri Lanka are all appointed by “executive fiat”;<sup>31</sup> and the ethos of the retired public officers drawn upon as members of the Human Rights Commission is one of adaptation and not antagonism to the prevailing constitutional (and also political) culture – hence the selection process is not seen as out of the ordinary or objectionable *per se*.

Before appointment to the HRCSL, most members are unfamiliar with the unique character and normative standards of national human rights institutions. Even after their appointment, some may believe that knowledge of the enabling law that established the Commission, and of the fundamental rights chapter of the Constitution of Sri Lanka, is sufficient in the interpretation of their mandate. Although members are to be chosen from among persons “having knowledge of, or practical experience in, matters relating to human rights”,<sup>32</sup> there is no procedure in the selection process to ascertain their human rights expertise and assess their familiarity with the international human rights system.

Further, the view of the current crop of Commissioners is that their independence from the Executive is guaranteed by the legal provision<sup>33</sup> that limits the power of the President to remove them from office. However, this argument does not address the concern raised by the flawed process of nomination and appointment of members to the Human Rights Commission; and it sidesteps the fact that it is the prerogative of the President alone whether to extend or terminate their appointment at the end of their term.

<sup>30</sup> *Concluding observations of the Committee against Torture: Sri Lanka*, Forty-Seventh session (31 October – 25 November 2011), CAT/C/LKA/CO/3-4, 8 December 2011, Para 17 on p. 7, [http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf).

<sup>31</sup> Kishali Pinto-Jayawardena, *Still Seeking Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry since 1977*, International Commission of Jurists, Bangkok 2010, at p. 107, [http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2010/01/srilanka\\_impunity\\_18\\_01\\_20102.pdf](http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf).

<sup>32</sup> S. 3 (1), *Human Rights Commission Act*, No. 21 of 1996, <http://hrctl.lk/english/ACT/english.pdf>.

<sup>33</sup> The grounds for dismissal by the President as set out in s. 4 (1) (a), *Human Rights Commission of Sri Lanka Act*, No. 21 of 1996 are: insolvency; paid employment outside of the Commission that conflicts with the duties of a member; infirmity of mind or body; deemed by judicial determination to be of unsound mind; conviction of an offence involving “moral turpitude”; and absence without permission from three consecutive meetings of the Commission. Any member of the Commission may also be removed by parliamentary procedure – on the ground of “proved misbehaviour or incapacity” – that has the support of the majority of the legislature, see s. 4 (1) (b) & (2), <http://hrctl.lk/english/ACT/english.pdf>.

To be sure, members may be selected in a method that is procedurally sound, but may thereafter exhibit political bias; and conversely, though having been appointed in an unsatisfactory process, may demonstrate in the course of their duties the requisite integrity and freedom from political manipulation that is anticipated from the leadership of a national human rights institution. Therefore, the real test of independence from government is the actual performance of the members: their words and deeds or acts and omissions when confronted with concrete situations of human rights violations and concerns. Nevertheless, transparency and broad participation in the selection process, offers the best possible means to establish the competence, suitability and autonomy of Commissioners.

In February 2012, perhaps the most dynamic member of the Commission Dr. Ananda Mendis, resigned in frustration having completed 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.<sup>34</sup>

The last reference is to the Additional Secretary (Legal) Nimal Punchihewa, who was a human rights lawyer before he joined the Commission after its establishment in 1997. His lengthy association with the HRCSL and familiarity with its workings and its cadre has given him an authority, exceeding the ordinary terms of reference of his position, among past and present members of the Commission as well as its staff at the head and regional offices.

Of greatest controversy is the Additional Secretary’s concurrent appointment as Chairman of the Land Reform Commission (LRC), which is an office in the gift of the President. While there are no claims of conflict of interest, *prima facie* this dual role poses an immediate challenge to the independence of the HRCSL; as one of its senior officers is also attached – through political patronage – to the government. The LRC, no different to other state corporations or departments of state, has been used by the government of the day to reward its supporters and to harvest votes in elections.<sup>35</sup>

The vacancy created by Dr. Mendis’ resignation was promptly filled by the appointment of Dr. Prathiba Mahanamahewa who is Dean of the Faculty of Law at a military academy (Kotelawala Defence University). The new member has been associated with the HRCSL in the capacity of a human rights expert and speaker at some of its public events. However, he is a controversial choice because of his public identification with government policy in frequent television appearances on state broadcasting channels and in op-ed articles for newspapers. It should be acknowledged that he was critical of the selection process for the Human Rights Commission and sceptical of the suitability of some of its

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<sup>34</sup> Dinidu de Alwis, “I leave HRC with a clear conscience”, *Ceylon Today* (Colombo), 5 February 2012; Manori Kalugampitiya, “Why did I resign from the Human Rights Commission?” (in Sinhala), *Samabima* (Colombo), 13 February 2012 <http://www.samabima.info/?p=1949>; and “Why did he resign from the Human Rights Commission?” (in Sinhala), *Lankadeepa* (Colombo), 13 March 2012.

<sup>35</sup> “The Land Reform Commission was (sic) organised a program to distribute 5,000 Ranbima land title deeds among landless people in the Hambantota District to mark President Mahinda Rajapaksa’s swearing-in for the second term of office, said LRC Chairman Nimal G. Punchihewa”, see “Five thousand Ranbima land deeds”, *Daily News* (Colombo), 18 November 2010, <http://www.dailynews.lk/2010/11/18/news43.asp>. Meanwhile, the Executive Director of the LRC was a general election candidate for the governing United Peoples Freedom Alliance coalition in 2010, when he was also the Colombo district electoral organiser for the Sri Lanka Freedom Party (that dominates the ruling coalition) and legal adviser to the Ministry of Defence. This example illustrates the nexus between those appointed to senior positions in the LRC and the Executive.

members and hinted at his dissatisfaction with the ramifications of the 18<sup>th</sup> Amendment to the Constitution for 'good governance'.<sup>36</sup>

Following his own appointment as a member of the HRCSL, Dr. Mahanamahewa was a virulent critic of the resolution tabled at the 19<sup>th</sup> regular session of the UN Human Rights Council in March 2012 that called upon the GoSL to begin implementing the recommendations of its own Lessons Learned and Reconciliation Commission and to avail itself of the technical assistance of the UN Office of the High Commissioner for Human Rights (OHCHR) in this regard.<sup>37</sup>

While there could be opposed views within the human rights community as to the desirability and likely consequences of that resolution, it was surely inappropriate for a member of the Human Rights Commission of Sri Lanka to publicly involve himself in the GoSL's political and media campaign, and to contribute to the disinformation propagated concerning the resolution and its effects.

### *Relationship with the State*

Within weeks of the reconstitution of the Commission in February 2011, the Chairman embarked on a series of media interviews which made clear his sympathy for the government's privileging of counter-terrorist measures over human rights standards in its handling of the secessionist campaign of the Liberation Tigers of Tamil Eelam (LTTE); and his identification with the State in its outright opposition to international demands for accountability flowing from allegations of gross violations of international humanitarian law and human rights law in the decisive conclusion of the war.

"I cannot believe that there is a basis for any of these accusations [of human rights violations from international actors]. This is a country which protects human rights and adheres to the same", said Justice (Retd.) Priyantha Perera. "The International Community and International Organisations have forgotten the fact that this country was facing a war with a fascist terrorist organisation for thirty years. The [LTTE] never gave a thought to human rights...It is surprising that some people discuss only about [LTTE leader] Prabhakaran's human rights."<sup>38</sup>

The HRCSL Chairman has refused to criticise the non-conformity of the Prevention of Terrorism Act (PTA) with Sri Lanka's international human rights obligations, claiming that since the end of the war it was a "dead letter". In fact, the PTA was strengthened after the lapse of the state of emergency in August

<sup>36</sup> Prathiba Mahanamahewa, "Should the 18<sup>th</sup> Amendment be tainted by unwanted appointments?" (in Sinhala), *Irida Lankadeepa* (Colombo), 6 March 2011.

<sup>37</sup> UN Human Rights Council, *Promoting Reconciliation and Accountability in Sri Lanka*, A/HRC/RES/19/2, 22 March 2012, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement>; Friday Forum, "The wise give up the idea of victory and defeat", *The Island* (Colombo), 16 April 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=49616](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=49616).

<sup>38</sup> Uditha Gunawardena, "No basis for Human Rights Violations accusations made by the international community", *Dinamina* (Colombo), 5 March 2011 (in Sinhala), <http://www.dinamina.lk/epaper/?id=08&tday=2011/03/05&x=x>.

2011; and continues to be invoked to detain persons without charge, as 241 persons were arrested under this law in 2011 alone.<sup>39</sup>

The former Supreme Court Justice would not be drawn on the maintenance of the island-wide state of emergency that severely restricted civil liberties and fundamental rights; pronouncing its continuance to be “a matter for the government”.<sup>40</sup> In a later interview, he went even further, when claiming that “at present there is no abuse of emergency regulations.”<sup>41</sup> It is unclear on what basis this opinion was formed. Indeed, the stock response from the Chairman to any such queries over state policy and practices is that, these are “matters that go beyond the purview of the HRCSL Act”.<sup>42</sup> To the contrary, public positions for reform or repeal of laws that violate human rights are entirely germane to the mandate of the Commission as explicitly provided in section 10<sup>43</sup> of its enabling law.

Elsewhere, in an interview granted upon his return after attending the 24<sup>th</sup> annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in May 2011, Mr. Justice (Retd.) Perera claimed that there had been heavy criticism of the island’s human rights record, but assured that he was “able to pacify the detractors and put the correct picture of Sri Lanka before them”.<sup>44</sup>

Sri Lanka was not an agenda item at ICC-24, and presumably the Chairman was referring to issues raised during bilateral discussions and in informal conversations with delegates. Nevertheless, his remarks indicate that he perceived his role there as being an ambassador for the state of Sri Lanka – engaged in defending its human rights record – rather than as the head of the institution that is supposed to monitor, chastise and correct the state when violations of human rights occur or are imminent.

In a strange episode, a circular (dated 8 March 2012) purportedly issued by the Ministry of Public Administration and Home Affairs was sent to Secretaries of Ministries and Provincial Councils, Heads of Departments and Chairmen of State Corporations and statutory agencies to the effect that recommendations of the HRCSL were without legal effect. Soon after this came to notice, the Minister concerned acted swiftly to clarify that the circular was a forgery and to order a police investigation. The

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<sup>39</sup> “There are no political prisoners in custody”, *Daily News* (Colombo), 24 May 2012, <http://www.dailynews.lk/2012/05/24/pol02.asp>.

<sup>40</sup> Wilson Gnanadass, “I will ensure impartiality, says SLHRC chief”, *The Nation* (Colombo), 6 March 2011, <http://www.nation.lk/2011/03/06/newsfe2.htm>.

<sup>41</sup> Dianne Silva, “No abuse of emergency regulations: HRC Chairman”, *Daily Mirror* (Colombo), 11 June 2011, archived at [http://sriolog.com/no-abuse-of-emergency-regulations-hrc-chairman\\_1098.html](http://sriolog.com/no-abuse-of-emergency-regulations-hrc-chairman_1098.html); also see video interview at <http://dailymirror.lk/video/11857-justice-priyantha-perera-on-hot-seat.html>.

<sup>42</sup> Chairman of the Human Rights Commission of Sri Lanka, *HRCSL Response to Law & Society Trust Letter and Discussion [at Civil Society Forum on 11 July 2011]*, 23 November 2011 (on file). The LST letter dated 2 August 2011 is online here: <http://www.lawandsocietytrust.org/PDF/ruki%20letter%20to%20hrc%20chair-02august2011-follow%20up%20to%20civil%20society%20forum.pdf>.

<sup>43</sup> S. 10 (d), *Human Rights Commission of Sri Lanka Act*, No. 21 of 1996: “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”, <http://www.hrsl.lk/PFF/HRC%20Act.pdf>.

<sup>44</sup> Sandun A. Jayasekera, “Govt. to start fresh probe on HR violations”, *Daily Mirror* (Colombo), 26 May 2011, <http://www.dailymirror.lk/news/11593-govt-to-start-fresh-probe-on-hr-violations.html>.

Secretary to the Ministry issued a circular clarifying that recommendations of the HRCSL had to be adhered to by government agencies.<sup>45</sup>

### *Resourcing*

The cramped premises of the head office have been faulted in the past for impeding the performance of the HRCSL. In 2011, spacious premises in an accessible location were identified for rent and refurbished before occupation in November of that year. There was 184 staff excluding those working on contract for donor-funded projects. Some regional offices lacked the designated number of cadre, including the crucial complement of Investigating Officers and Legal Officers. There are allegations that staff recruitment has not always been merit-based but rather through canvassing by family members or friends already employed in the Commission.

While there is a statutory requirement for pluralism in the composition of members, no such stricture exists as regards the selection of the staff that is overwhelmingly of Sinhala Buddhist background. In 2011, only one senior officer (the Secretary) was of ethnic minority origin. By necessity there are Tamil and Muslim staff in the majority Tamil-speaking North and East regional offices of the Commission. However, there is under-representation of Tamil-speakers in its offices in majority Sinhala-speaking areas, and of Sinhala-speaking officers in some regional offices in the North and East.

In 2011, many staff of the Commission, including some regional coordinators, who had been in temporary employment for as long as 10 years since their recruitment, were confirmed in their posts, that is, made permanent. Also, Commission staff in permanent service were conferred the right to a state pension by the Ministry of Public Administration and Home Affairs at the end of 2011,<sup>46</sup> which had not been previously enjoyed.

While both measures will understandably be welcomed by the employees concerned, reservations have also been voiced. It can be argued that when the differentiation between terms of employment of the national human rights institution and departments of government is blurred, that this may reinforce the already strong identification of many staff with the public administrative service and therefore the State. It is speculated that these measures may also allow the transfer of the cadre of the HRCSL elsewhere, and likewise the transfer of staff from government departments into the Commission over which it will have little control.

Some regional offices cover a large geographical area that crosses provincial boundaries. These offices complain that they lack the required number and type of vehicles as well as adequate fuel allowance for even routine police station visits, leaving aside field investigations. Also, to economise on their fuel allowance, neighbouring police stations are inspected at the same time, instead of random visits. A former

<sup>45</sup> Don Asoka Wijewardena, "Bogus Circular sent with forged signature of Public Admin Ministry Secy.", *The Island* (Colombo), 14 March 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=47399](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=47399).

<sup>46</sup> "Declaration of Posts as Pensionable Posts", *Gazette of the Democratic Socialist Republic of Sri Lanka*, No. 1741, 13 January 2012, at pp. 29-30, <http://documents.gov.lk/gazette/2012/PDF/Jan/13Jan2012/I-1%28E%292012.01.13.pdf>.



member of the Commission alleged that the shortage of transport prevented members from carrying out their duties outside of the head office as well as from visiting the regional offices.<sup>47</sup>

The HRCSL's budget in 2011, including supplementary allocations in the course of the year, was Rs.134, 644, 100. This is an increase from the 2010 allocation that was around Rs.112 million.<sup>48</sup> In addition, the Commission received higher external funding (from three UN agencies: UNDP, UNICEF and UNFPA) in comparison to the previous year when donors were averse to resourcing the Commission as it had not been properly constituted. For the 2012 financial year, the Treasury has allocated Rs.128, 394, 000 which is a reduction from the previous year. However, the HRCSL has requested additional funding of Rs.8, 900, 000 towards utility bills and building rent at its head office.<sup>49</sup>

### III. Effectiveness of the Human Rights Commission

In 2011, according to one newspaper report, the Human Rights Commission received 6,700 complaints; of which 3,428 were lodged at the head office in Colombo, while the remainder numbering 3,272 were received at its ten regional offices.<sup>50</sup> Of this number, only 1,430 complaints had been disposed in the same year; including 401 where there was no violation of human rights; 260 complaints that were referred to other institutions; 230 that were classified as "inactive"; 213 that were deemed to be irrelevant; 87 where cases were before the courts; 73 which were withdrawn by the complainant; 54 where relief was granted; 32 where settlement was reached; 23 which were conciliated; 35 which were excluded as received after the three-month time-bar; and 22 where recommendations were made.

An analysis of these statistics reveals that only a fraction of complaints (under 10 percent) were actually handled and resolved by the HRCSL, whether through mediation, conciliation or inquiry. Further, the grounds for exclusion of some complaints are quite troubling as, for example, the time-bar has no legal foundation and is entirely a policy decision of the HRCSL; while there should not be any impediment to a complainant filing cases in both the HRCSL and in the courts because the former is not a judicial body, and its remedies will differ, and a national human rights institution should have a more expansive view, more flexible procedures, cheaper and speedier process than legal tribunals.

In correspondence with the Law & Society Trust, the HRCSL reported receiving a higher number of 7,475 complaints in total in 2011: 4075 at its head office, and 3400 at its regional offices. Complaints were categorised as follows – personal liberty (torture/arrest/detention); death in custody/missing persons; inaction; employment; education (school admission and examinations); social service and state welfare; women's rights; child rights; infrastructure facilities; language rights; migrant workers rights; voting rights; land and property rights; and environmental rights.

<sup>47</sup> Dr. Ananda Mendis: "Even being the Commissioners, we did not have a vehicle when needed to make an inspection visit at the time of the Katunayake incident, or much less to inspect the locations where detainees were held" (in Sinhala), see Manori Kalugampitiya, "Why did I resign from the Human Rights Commission?", *Samabima* (Colombo), 13 February 2012 <http://www.samabima.info/?p=1949>.

<sup>48</sup> Human Rights Commission of Sri Lanka, *2010 Annual Report*, Colombo 2012, p. 16, [http://hrctl.lk/PFF/annual\\_report\\_2010/english.pdf](http://hrctl.lk/PFF/annual_report_2010/english.pdf).

<sup>49</sup> Human Rights Commission of Sri Lanka, Administration and Finance Division response to ANNI 2012 Country Report Questionnaire prepared by the Law & Society Trust, 11 June 2012 (on file).

<sup>50</sup> Ranjan Kasthuri, "Out of 6700 human rights complaints, 5270 still not resolved", (in Sinhala), *Lankadeepa* (Colombo), 7 February 2012.

The disaggregated number of complaints (by category) received at the head office for the entirety of 2011 is not available. However, based upon the information available for the first seven months of last year, most of the complaints taken up in Colombo relate to employment cases; followed by torture; inaction (by the police and other authorities); illegal arrest and detention; education; harassment (of complainants by the police) and so on, in descending order.

Most human rights violations that are the subject of complaints, at least since 2009, are directed against the police department; followed by the education department; the armed forces; the pensions department; the University Grants Commission (higher education admissions); and the public administration ministry in that order, according to an answer to a question asked in parliament by an opposition legislator.<sup>51</sup>

It was alleged by an opposition parliamentarian<sup>52</sup> that the Human Rights Commission had mishandled its inquiry into the police killing of a twenty-two year old free trade zone worker (Roshen Chanaka),<sup>53</sup> by seeking conciliation between the family of the victim and the officers involved in his shooting, instead of recommending their prosecution.

Thirty-nine complaints of enforced disappearances were lodged with the HRCSL in the first quarter of 2012, including eighteen cases reported to its regional offices in the conflict-affected Northern and Eastern provinces. The HRCSL noted that the police authorities had made “no justifiable (sic) progress in respect of investigations” and called upon state officials to take immediate action to prevent disappearances in the future.<sup>54</sup>

A large backlog of cases had accumulated in the period of almost two years when the HRCSL was not properly constituted and its authority was in doubt;<sup>55</sup> and were inherited by the incoming members. The Chairman created an ad-hoc panel of five former senior judicial officers to expedite and clear the backlog within six months beginning in June 2011;<sup>56</sup> drawing on members of the Retired Judges Association

<sup>51</sup> Government Chief Whip replying to Hon. Dayasiri Jayasekera, “Violation of Human Rights: Complaints”, *Official Report of Parliamentary Debates (Hansard)*, 21 July 2011, Col. 1186-1193 at Col. 1190 (in Sinhala); Kelum Bandara and Yohan Perera, “2,691 HR violation complaints against police”, *Daily Mirror* (Colombo), 22 July 2011, archived at <http://www.tisirilanka.org/?p=8188>; “HRC received over 11,000 complaints from 2009 till 2011”, *The Sunday Leader* (Colombo), 24 July 2011, <http://www.thesundayleader.lk/2011/07/21/hrc-received-over-11000-complaints-from-2009-till-2011/>.

<sup>52</sup> Dayasiri Jayasekera MP: “...a recommendation has been given to find a solution, conciliation, through discussion...I would like to ask how the Human Rights Commission of this country can give a recommendation to resolve a serious issue such as murder through discussion...Roshen Chanaka was murdered and compensation of Rs1 million was paid. Is it as recompense that the Human Rights Commission recommended that this matter be subject to settlement?”, “Violation of Human Rights: Complaints”, *Official Report of Parliamentary Debates (Hansard)*, 21 July 2011, Col. 1186-1193 at Col. 1190 and 1192 (in Sinhala).

<sup>53</sup> Dinidu de Alwis, “How protests in FTZ turned into mayhem”, *The Nation* (Colombo), 5 June 2011, <http://www.nation.lk/2011/06/05/newsfe1.htm>.

<sup>54</sup> Human Rights Commission of Sri Lanka, “*The Human Rights Commission of Sri Lanka Concern About Disappearances*”, 18 April 2012, <http://hrsl.lk/english/?p=1940>.

<sup>55</sup> B. Skanthakumar, “Atrophy and Subversion: The Human Rights Commission of Sri Lanka”, *Law & Society Trust Review* (Colombo), No. 274 (August 2010), pp. 1-12 at p. 7, <http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf>.

<sup>56</sup> Sandun A. Jayasekera, “Govt. to start fresh probe on HR violations”, *Daily Mirror* (Colombo) 26 May 2011, <http://www.dailymirror.lk/news/11593-govt-to-start-fresh-probe-on-hr-violations.html>. The title of the article is misleading as this mechanism was initiated by the Human Rights Commission and not the Government of Sri Lanka.

which he also heads. Complaints originating from the conflict-affected North and East, and particularly from internally displaced persons were to be prioritised, and were estimated to be around 1,000 in number. However, in the previous year, according to the HRCSL's then Secretary, some 5,500 cases were pending.<sup>57</sup> There was no information publicly available as to how many 'old' cases had been cleared as at the end of the year, and what remedy had been recommended for complainants.

Another opposition parliamentarian Lakshman Kiriella – who has been consistently critical of the functioning and performance of the Human Rights Commission – claimed that there were around 15,000 recommendations issued since its establishment, that were ignored by state authorities.<sup>58</sup> This figure was disputed by an unidentified source in the HRCSL, who admitted however that there were a large (undisclosed) number that had not been followed.

The non-implementation of key recommendations from as long ago as 2004<sup>59</sup> – regarding the unlawful detention of women on whom no indictment has been served or who have completed their sentences but have no family or friends to be released to – is a case in point. As the HRCSL undertook to monitor the implementation of its recommendations in 2005,<sup>60</sup> and reports conducting surprise visits to the Methsevana Detention Centre for Women at least into 2010,<sup>61</sup> it is puzzling as to why it only summoned the relevant state authorities after April 2011 in response to a complaint from a non-governmental organisation.<sup>62</sup> Even since, the relevant state agencies have been uncooperative, and the human rights of women in that facility continue to be violated.

The only sanction available to the HRCSL in the event of its recommendations being disregarded or laggard or partial implementation, is for it to compile a report on the matter for the attention of the President, who "shall" place it before Parliament.<sup>63</sup> This has been done over the years but its impact appears to be negligible in terms of deterring state institutions and public officers from similar conduct. There are practical difficulties faced by the HRCSL in using this mechanism, including the human resources for preparation of the report; its translation and printing in Sinhala, Tamil and English before being tabled in parliament; the inability to compel the President to submit the report to the legislature; and the inability to ensure that parliamentarians consider such a report, leave alone take any action that may be within their power.

Since his appointment, the Chairman has applied himself to this problem of the weak enforcement authority of the Commission. Where the respondents have not cooperated with the HRCSL in its inquiries and investigations, the Commission now issues an "order" to implement the recommendation, informing

<sup>57</sup> B. M. Murshideen, "HR cases stuck", *Daily Mirror* (Colombo), 26 August 2010, <http://www.dailymirror.lk/news/6106-hr-cases-pending.html>.

<sup>58</sup> Yohan Perera, "HRC recommendations ignored – Kiriella", *Daily Mirror* (Colombo), 5 March 2011.

<sup>59</sup> Human Rights Commission of Sri Lanka, *Methsevana State House of Detention, Gangodawila*, Colombo 2004, <http://hrctl.lk/PFF/Human%20Rights%20Report%20Methsevana%20State%20House%20Detention%20Gangodawila.pdf>.

<sup>60</sup> "Discussion on Methsevana House of Detention, Gangodawila", *The Island* (Colombo), 4 July 2005, <http://www.island.lk/2005/07/04/news14.html>.

<sup>61</sup> Human Rights Commission of Sri Lanka, *Annual Report 2010*, Colombo 2012, p. 13, [http://hrctl.lk/PFF/annual\\_report\\_2010/english.pdf](http://hrctl.lk/PFF/annual_report_2010/english.pdf).

<sup>62</sup> Jeewan Thiyagarajah, "Law and Gurus of Sleep", *Daily Mirror* (Colombo), 10 July 2012, <http://www.dailymirror.lk/opinion/172-opinion/20145-law-and-gurus-of-sleep.html>.

<sup>63</sup> S. 15 (8), *Human Rights Commission of Sri Lanka*, Act No. 21 of 1996, <http://hrctl.lk/english/ACT/english.pdf>.

that action may be taken against them for an offence of contempt (identical to an offence committed against the Supreme Court).<sup>64</sup> This tactic has been successful, including in instances where officers of the Commission have been obstructed from performing their ordinary duties, for e.g. when access to injured free trade zone workers was denied by the Ragama government hospital authorities<sup>65</sup>, and when Trincomalee prison officials refused to accept a communication from the HRCSL requesting information on those incarcerated there.

Where recommendations of the Commission are ignored, the Chairman has summoned the concerned parties and sought through conciliation to secure its implementation. If there is still recalcitrance, then the Commission can “make an order—that the recommendation must be carried out, and if they act in violation of that order we can report this to the Supreme Court as a matter of contempt.”<sup>66</sup> The nature and limitations of this stratagem, including delay and frustration to the victim, underscore the urgency of legal reforms to strengthen the authority and enforcement powers of the HRCSL.

One of the core functions of the Human Rights Commission of Sri Lanka is to inspect all places of detention to ensure that the rights of inmates are respected. In addition to routine visits to police stations with remand cells, the Commission also inspected the condition of prisoners in the custody of the Terrorist Investigation Division and the Criminal Investigation Department. Issues that have been identified by the Commission include assault in custody; arrest without prior investigation; arrest on suspicion alone with no clear offence or charge; delays in production of the detention register; overcrowding of cells; and unsanitary conditions in cells.<sup>67</sup>

For example, acting on a tip-off, the HRCSL inspected the remand cells at a police-station in Mount Lavinia, south of Colombo.<sup>68</sup> Some suspects had been detained for more than seven days without having been produced before a magistrate; others showed signs of having been tortured in custody; none of the detentions had been informed to the HRCSL. Two women and several men, who had been wrongfully arrested and imprisoned, were subsequently freed.

Fifteen years since its establishment, the HRCSL began night visits and also out-of-office hours' visits to certain police stations in 2011. These are the hours when suspects are most vulnerable to inhuman or degrading treatment. In the past, the Commission has pleaded that it lacks the transportation and staff for night visits. However, its officers are still unable to freely inspect the police barracks and other out-buildings without prior notice, which if given, would defeat the point of surprise inspections. Some Officers-In-Charge of police stations are obstructive of monitoring visits.<sup>69</sup>

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<sup>64</sup> Bigun Menake Gamage, “Supreme Court informed if Human Rights Commission Recommendations not complied with” (in Sinhala), *Lankadeepa* (Colombo), 9 June 2011.

<sup>65</sup> Manopriya Gunasekera, “HRC summons Ragama Hospital directors”, *The Sunday Times* (Colombo), 05 June 2011, [http://sundaytimes.lk/110605/News/nws\\_04.html](http://sundaytimes.lk/110605/News/nws_04.html).

<sup>66</sup> Dianne Silva, “No abuse of emergency regulations: HRC Chairman”, *Daily Mirror* (Colombo), 11 June 2011, archived at [http://srilog.com/no-abuse-of-emergency-regulations-hrc-chairman\\_1098.html](http://srilog.com/no-abuse-of-emergency-regulations-hrc-chairman_1098.html).

<sup>67</sup> Human Rights Commission of Sri Lanka, *Annual Report 2009*, p. 135, [http://hrctl.lk/PFF/annual\\_report\\_2009/english.pdf](http://hrctl.lk/PFF/annual_report_2009/english.pdf).

<sup>68</sup> Human Rights Commission of Sri Lanka, “The Commission summoned the Mount Lavinia Police to Inquire into Violation of the Law Related to Arrest and Detention”, 29 August 2011, <http://hrctl.lk/english/?p=1741>.

<sup>69</sup> “Senior Jaffna cop falls foul of HRC”, *The Island* (Colombo), 9 April 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=49323](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=49323).

Officers of the HRCSL were initially denied access to the closed facilities where ex-LTTE combatants and surrendees are detained,<sup>70</sup> as the military authorities in charge claimed that the centres are not places of detention but are classified as “protective accommodation and rehabilitation centres”. The HRCSL rightly disagreed; and following discussion with the Commissioner-General of Rehabilitation, was able to commence monitoring visits to these facilities by the Anuradhapura, Jaffna and Vavuniya regional offices from February 2012.<sup>71</sup>

In its negotiations with the authorities, the Commission drew on the concluding observations of the UN Committee Against Torture that recommended the HRCSL “receives the necessary resources” to fulfil its mandate including to “initiate as well as carry out independent investigations into alleged and possible cases of torture and ill-treatment, including those concerning military premises, as well as ‘rehabilitation centres’ and other government-controlled facilities such as ‘welfare centres’, and to publish the results”.<sup>72</sup>

The UN Committee Against Torture regarded allegations of secret detention centres, run by military intelligence and paramilitary groups “where enforced disappearances, torture and extrajudicial killings” are perpetrated, as being credible.<sup>73</sup> The HRCSL has made no public comment on this matter. When a complaint was made acting on a media report<sup>74</sup> that two political activists who had been abducted were being held in the Police Welfare building in central Colombo (not a gazetted place of detention), the Commission visited the premises<sup>75</sup> and found no one there. However, the police authorities had been informed of their interest the day before, and conceivably, could have removed anyone who was in their unlawful custody there.

Any arrest or detention under the provisions of the Prevention of Terrorism Act or under the provisions of the Public Security Ordinance should be informed to the HRCSL<sup>76</sup> which maintains a registry of detention orders. In 2011, some 507 such detentions were registered by the Commission. It is more likely than not that not all detentions are informed by the relevant authorities. When detainees are transferred between remand centres and prisons, this information which must by law be disclosed to the HRCSL, has also not been immediately communicated until and unless the Commission makes direct and specific enquiries.

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<sup>70</sup> The Government of Sri Lanka in its submission during the 20<sup>th</sup> regular session of the UN Human Rights Council in June 2012, said that only 629 ex-combatants remained under ‘rehabilitation’, while 10,949 persons including 594 child soldiers had been released and reintegrated, and 403 are in remand or being investigated for prosecution, see “SL marching forward with post-conflict development”, *Daily News* (Colombo), 21 June 2012, <http://www.dailynews.lk/2012/06/21/news20.asp>.

<sup>71</sup> Human Rights Commission of Sri Lanka, “HRCSL Resumes Monitoring of Rehabilitation Centres”, 28 February 2012, <http://hrctl.lk/english/?p=1865>.

<sup>72</sup> *Concluding Observations of the Committee Against Torture: Sri Lanka*, Forty-seventh session (31 October—25 November 2011), CAT/C/LKA/CO/3-4, 8 December 2011, [http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf), Para 17 on p. 7.

<sup>73</sup> *Concluding Observations of the Committee Against Torture: Sri Lanka*, Forty-seventh session (31 October—25 November 2011), CAT/C/LKA/CO/3-4, 8 December 2011, [http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf), Para 8, on p. 3.

<sup>74</sup> “Lalith and Kugan at the Police Welfare building”, *Lanka News Web*, 13 April 2012, [http://www.lankanewsweb.com/english/index.php?option=com\\_content&view=article&id=1714:lalith-and-kugan-at-the-police-welfare-building&catid=1:general&Itemid=29](http://www.lankanewsweb.com/english/index.php?option=com_content&view=article&id=1714:lalith-and-kugan-at-the-police-welfare-building&catid=1:general&Itemid=29). This website is blocked within Sri Lanka.

<sup>75</sup> Chris Kamalendran, “HRC officials check police building for Lalith and Kugan”, *Sunday Times* (Colombo), 15 April 2012, [http://sundaytimes.lk/120415/News/nws\\_04.html](http://sundaytimes.lk/120415/News/nws_04.html).

<sup>76</sup> S. 28(1), *Human Rights Commission of Sri Lanka Act*, No. 21 of 1996, <http://hrctl.lk/english/ACT/english.pdf>.

At the end of April 2012, there was a mass arrest of a large number of Tamil men and women in the Trincomalee district on suspicion of having past association with the banned Liberation Tigers of Tamil Eelam. The HRCSL regional office was initially not informed of the arrests and the identity of those arrested and their place of detention by the Terrorist Investigation Division. Only subsequent to making inquiries from the police, was the HRCSL sent a list with those details, but only of thirty-nine persons, whereas some media alleged that as many as between 150 and 220<sup>77</sup> were in custody.

The Human Rights Commission of Sri Lanka conducted an important study on remand prisoners awaiting trial or sentence for long periods.<sup>78</sup> It was revealed that of a total of 13,196 on remand; around 33.9% had been imprisoned for longer than six months and 15.4% of that number for longer than eighteen months. The HRCSL inquired into cases of those remanded for longer than three years and found all of them to be young men of Tamil ethnicity: including one in custody pending trial since 1996 for alleged terrorist activities.

The common cause for these violations of the right to a speedy and fair trial were the sheer disinterest of the police and the Attorney-General's department to promptly produce evidence and frame charges; delays in receiving forensic reports from the government analyst's department; regular postponement of court hearings through unpreparedness of the prosecutor; delays in translation of indictments into Tamil; and unavailability of Tamil interpreters in court.

The Commission also concluded that the conditions in prisons, including through overcrowding, failed to meet the UN Standard Minimum Rules for the Treatment of Prisoners. Other issues that have been identified in the monitoring visits to prisons include the right to health of prisoners; restricting their access to family members; and their personal security.<sup>79</sup>

#### *National Protection and Durable Solutions 'IDPs' Project*

In December 2011, the National Protection and Durable Solutions for Internally Displaced Persons (NPDS) project of the Human Rights Commission of Sri Lanka shut down. The 'IDP unit' as it was mostly known, had regional offices in Batticaloa, Jaffna, Puttalam, Trincomalee and Vavuniya in addition to its head office in Colombo.

It was well regarded for the professionalism of its management and its dynamic regional coordinators; its rapid response to complaints and protection concerns relating to IDPs; training and networking of volunteer human rights defenders in affected communities; mobile clinics to replace lost or missing

<sup>77</sup> "Fears for Tamil detainees in Sri Lanka", *BBC News*, 4 May 2012, <http://www.bbc.co.uk/news/world-asia-17958616>; and "220 Tamils arrested in SLA combing in Trincomalee", *TamilNet*, 26 April 2012, (archived at <http://www.tamilnewsnetwork.com/2012/04/26/220-tamils-arrested-in-sla-combing-in-trincomalee/>).

<sup>78</sup> Human Rights Commission of Sri Lanka, Monitoring and Review Division response to ANNI 2012 Country Report Questionnaire prepared by the Law & Society Trust, 11 June 2012 (on file).

<sup>79</sup> Human Rights Commission of Sri Lanka, *Annual Report 2010*, Colombo 2012, p. 11, [http://hrsl.lk/PFF/annual\\_report\\_2010/english.pdf](http://hrsl.lk/PFF/annual_report_2010/english.pdf).

documentation of IDPs such as birth certificates and national identity cards; research studies on health, education and property issues; and information-sharing through its web portal.<sup>80</sup>

The winding-up of the project was only known to the staff concerned one month before, with no absorption into the cadre of the Commission itself. This development was also unforeseen and unwelcome to civil society organisations working with IDPs, as despite the massive reduction in their numbers, there are many who continue to be displaced from their original homes and unable to return across the North and East regions and in adjacent districts, while there are also duties towards those who have returned or resettled elsewhere as explained in the UN *Guiding Principles on Internal Displacement*.<sup>81</sup>

The HRCSL has made no public comment on the closure of its IDP project and the desirability of its extension. The decision, it says, was that of the donors (mainly the UN High Commissioner for Refugees) and not of the HRCSL; and that the NPDS case-load has been shifted onto the Commission's regional offices in those districts.

However, silence may be interpreted as acquiescence in the government's intention to claim in the near future that there are no remaining IDPs in Sri Lanka,<sup>82</sup> not through the end of the condition of displacement and problems of the displaced, but rather through statistical subterfuge and state diktat.

The regional offices in the conflict-affected areas are often under-staffed and are coping with difficulty with their existing case-load, let-alone follow-up on old complaints. Further, the staff in the regional offices cannot be assumed to know and understand the human rights standards for internally displaced persons and lack the specialised training and knowledge of their former colleagues in the IDP unit. The closure of the unit is a serious setback to the protection and promotion of the rights of internally displaced persons.

### *Other issues*

In its annual report prepared for the Asia-Pacific Forum's 16<sup>th</sup> annual conference in September 2011, the administrative and financial systems of the Commission were reported as having been in "disarray"<sup>83</sup> in the period when no members had been appointed.

The 24-hour telephone hotline for communication of urgent complaints, such as torture, illegal arrest and detention, was out of operation between August 2010 and May 2011. One human rights organisation working with victims of torture alleged that the duty officers are not sensitive to the trauma of the victim

<sup>80</sup> National Protection and Durable Solutions for Internally Displaced Persons Project, Human Rights Commission of Sri Lanka website: <http://www.idpsrilanka.lk/index.php>.

<sup>81</sup> United Nations *Guiding Principles on Internal Displacement* online at <http://www.unhcr.org/43ce1cff2.html>.

<sup>82</sup> Mirak Raheem, "The End of Displacement in Sri Lanka?", *groundviews.org*, 10 August 2010, <http://groundviews.org/2010/08/10/the-end-of-displacement-in-sri-lanka/>.

<sup>83</sup> Human Rights Commission of Sri Lanka, *Report to the 16<sup>th</sup> annual meeting of the Asia-Pacific-Forum of National Human Rights Institutions*, Bangkok, Thailand, 6-8 September 2011, <http://www.asiapacificforum.net/about/annual-meetings/16th-thailand-2011/downloads/apf-member-reports/sri-lanka>, p. 2.

or the anxieties of the person who telephones on the victim's behalf; and seek to counsel the caller, rather than take appropriate action including giving clear information as to relief and redress and professionally handling the complaint.<sup>84</sup>

On the invitation of the Human Rights Commission of Sri Lanka, there was a joint capacity-assessment mission<sup>85</sup> coordinated by the Asia-Pacific Forum in March 2012 and including the former chair of the ICC, members of other NHRIs in the region and representatives of the UN Office of the High Commissioner for Human Rights (OHCHR). The members of the mission also received the views of some human rights defenders with experience of engagement with the HRCSL.

A fabricated and malicious news-item was planted to the effect that this was a United Nations (UN) mission engaged in clandestine information-gathering on the human rights situation in Sri Lanka in the run-up to the 19<sup>th</sup> regular session of the UN Human Rights Council in March 2012.<sup>86</sup> It was nothing of the sort, and focused entirely on identifying areas and issues for the strengthening of the Commission in accordance with the Paris Principles. The findings and recommendations of the needs assessment have since been presented to the members of the HRCSL, but have not been released by the HRCSL to the public.

#### IV. Thematic Issues

The thematic issues identified for the 2012 ANNI Report are: (a) the relationship between the Human Rights Commission of Sri Lanka and human rights defenders and women human rights defenders; (b) the interaction between the HRCSL and international human rights mechanisms; (c) the HRCSL's implementation of three references developed by the Advisory Council of Jurists; and (d) the status and function of other specialised institutions in the protection and promotion of human rights.

##### *Human Rights Defenders and Women Human Rights Defenders*

In 2011, the HRCSL claimed to have established a separate complaints desk for vulnerable groups identified as women, children, elders, persons with disabilities, human rights defenders; and for priority actions such as complaints of torture and disappearance.<sup>87</sup>

However, no complaints were recorded in 2011 as relating to human rights defenders.

<sup>84</sup> Janasansadaya, *Present Plight of the National Human Rights Commission of Sri Lanka*, Panadura, April 2012, pp. 7-8 and p. 40, <http://www.janasansadaya.org/uploads/files/HRC%20-%20REPORT.pdf>.

<sup>85</sup> For the background and methodology see APF-UNDP-OHCHR, *Capacity Assessment Project*, 15<sup>th</sup> Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Bali, Indonesia 3-5 August 2010, <http://www.asiapacificforum.net/news/support/capacityassessment/downloads/resources/apf-undp-ohchr-capacity-assessment-project-apf-15-annual-meeting-2010>.

<sup>86</sup> "UN men in mystery visit to Colombo", *The Nation* (Colombo), 11 March 2012, <http://www.nation.lk/edition/latest-top-stories/item/3780-un-men-in-mystery-visit-to-colombo.html>.

<sup>87</sup> Human Rights Commission of Sri Lanka, *Report to the 16<sup>th</sup> annual meeting of the Asia-Pacific-Forum of National Human Rights Institutions*, Bangkok, Thailand, 6-8 September 2011, <http://www.asiapacificforum.net/about/annual-meetings/16th-thailand-2011/downloads/apf-member-reports/sri-lanka>, p. 3.



This is puzzling as there were several cases in this category, including that of death threats to media freedom and democratic rights activist Dharmasiri Lankapeli (HRC Ref No: 3940/2011),<sup>88</sup> and the abduction and enforced disappearance of Lalith Weeraraj and Kugan Muruganadan in Jaffna on 9 December 2011 (HRC Ref Nos: 3852/2011 and 3934/2011).<sup>89</sup>

This indicates that the HRCSL has still not internalised the conception of a human rights defender and scope of the UN *Declaration on Human Rights Defenders*,<sup>90</sup> nor trained its investigating officers in the identification of their complaints (aside from expediting their complaints); and therefore has not made the necessary changes to its database.

Of even greater consequence is the manner in which the HRCSL handles complaints from vulnerable groups and individuals. Sandhya Eknaligoda is a woman human rights defender who has been campaigning for justice following the abduction of her husband Prageeth who was a journalist and cartoonist. When a public official claimed at the UN Committee Against Torture review on Sri Lanka, to have information on Prageeth Eknaligoda's whereabouts, Mrs. Eknaligoda wrote to the Commission requesting that this individual be summoned for an inquiry.

The HRCSL – probably deferring to the status of the official as the former Attorney-General and current Legal Adviser to the President and his Cabinet – meekly opted to invite him instead to submit an affidavit. In a firm but polite letter Mrs. Eknaligoda explained the mental trauma affecting her two sons and herself since Prageeth's disappearance and urged that the official concerned be summoned and questioned as is the usual procedure. In contrast to the non-response to previous letters to the Commission, Mrs. Eknaligoda promptly received a letter from the Chairman, which made no apology for its course of action or inaction; but rather, curtly informed her that the HRCSL does not act on advice proffered by parties to an inquiry and instructed her “to refrain from giving such advice to [the] Human Rights Commission in future”.<sup>91</sup>

The Eknaligoda case is a classic ‘high-profile’ case based upon the seriousness of the abuse (an enforced disappearance), as well as its notoriety within Sri Lanka and international visibility (most recently receiving the support of the US State Department). However, the HRCSL has never recognised this nor handled the complaint made by Sandhya Eknaligoda appropriately. Now its Chairman has rebuked when he should have sympathised with a complainant who – from being the representative of a victim – is now a woman human rights defender supporting other individuals and families across the island and at great personal cost and risk.

<sup>88</sup> Reporters without Borders, “Sri Lanka: Government-Orchestrated Threats against Exile Journalists”, 23 March 2012, [http://en.rsf.org/sri-lanka-government-orchestrated-threats-23-03-2012\\_42179.html](http://en.rsf.org/sri-lanka-government-orchestrated-threats-23-03-2012_42179.html).

<sup>89</sup> ‘Watchdog’ (pseud.), “Disappearance of Human Rights Defenders and Political Activists Lalith Kumar Weeraraj and Kugan Murugan on 9<sup>th</sup> December 2011”, [groundviews.org](http://groundviews.org), 19 December 2011, <http://groundviews.org/2011/12/19/disappearance-of-human-rights-defenders-political-activists-lalith-kumar-weeraraj-and-kugan-murugan-on-9th-december-2011/>.

<sup>90</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN GAR A/RES/53/144, 8 March 1999, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>91</sup> Chairman of the Human Rights Commission of Sri Lanka, *Letter to Ms. Sandya Eknaligoda Ref No: HRC 369/10: Inquiries under the Human Rights Commission of Sri Lanka – Act No 21 of 1996*, 15 February 2012 (on file).

Several human rights defenders (HRDs) were subject to reprisals through an orchestrated smear campaign in the state media for lobbying during the March 2012 session of the Human Rights Council in Geneva. The Office of the High Commissioner for Human Rights issued a public statement commenting on the “unprecedented level of threats, harassment and intimidation” directed at those HRDs and called on the Government of Sri Lanka: to ensure their protection; disassociate itself from the hate campaign; and uphold the right of its citizens to engage in international debate on Sri Lanka’s human rights record.<sup>92</sup> Disappointingly, the Human Rights Commission of Sri Lanka made no such statement nor expressed any solidarity with Sri Lankan HRDs.

In response to one of the recommendations to the HRCSL in the 2011 ANNI Report, one of its members, Dr. Prathiba Mahanamahewa, has been nominated as its focal point for human rights defenders. There has been no public announcement to this effect as yet, nor have there been any meetings with human rights organisations to gather ideas on the operation of the mechanism. For reasons relating to this member’s public positions on certain human rights issues, as well as proximity to the state security apparatus, it is doubtful whether the most vulnerable human rights defenders will have confidence in Dr. Mahanamahewa.

### *Interaction with International Mechanisms*

In 2011, the government of Sri Lanka reported to two international treaty bodies – the Committee on the Elimination of Discrimination against Women, and the Committee against Torture. The Human Rights Commission of Sri Lanka did not participate in this process, for example through submission of information in its own name.

However, the HRCSL has made a stakeholder submission to the Universal Periodic Review (second cycle) of Sri Lanka (due in November 2012). It organised separate consultations with state agencies and with non-governmental organisations (on 18 and 19 April 2012 respectively), to receive submissions on the themes identified by the HRCSL for its report. As the deadline for submission was 23 April, there was no opportunity for public scrutiny and comments on the draft report itself.

The Chairman’s understanding of the relationship between the national legal system and international human rights obligations is a matter for concern. According to him, “as far as the international treaties are concerned, the state must cooperate with such treaties provided the provisions in the treaties do not come into conflict with the policies of the state.”<sup>93</sup>

In fact, the reverse is true, it is the responsibility of the state party to harmonise national laws and practices with the international human rights standards that bind the state through its voluntary accession and ratification of those conventions and treaties. Further, the Human Rights Commission of Sri Lanka is charged under its own enabling legislation: “to make recommendations to the Government regarding

<sup>92</sup> Office of the High Commissioner for Human Rights, *Briefing Note on Sri Lanka / Human Rights Defenders*, 23 March 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12008&LangID=E>.

<sup>93</sup> Wilson Gnanadass, “I will ensure impartiality, says SLHRC chief”, *The Nation* (Colombo), 6 March 2011, <http://www.nation.lk/2011/03/06/newsfe2.htm>.

measures which should be taken to ensure that national laws or administrative practices are in accordance with international human rights norms and standards”.<sup>94</sup>

### *Implementation of References developed by Advisory Council of Jurists*

The References of the Advisory Council of Jurists (ACJ) – the body of independent experts constituted by ‘A’ status members of the Asia-Pacific Forum – are intended to guide national human rights institutions in Asia in the interpretation and implementation of their mandates.

The HRCSL’s reception of the first three ACJ references: *Child Pornography on the Internet* (2000); *Death Penalty* (2000); and *Trafficking* (2002), was reviewed last year,<sup>95</sup> and found to range from ignorance to indifference.

However, in 2011, the HRCSL renewed its call to the government for the abolition of the death penalty,<sup>96</sup> which is timely as some 750 prisoners are now on death row. Unfortunately, there was no attention to the recommendation to advocate with the government for ratification of the 2<sup>nd</sup> Optional Protocol to the International Covenant on Civil and Political Rights; nor in taking forward recommendations contained in the other two references.

This report discusses three subsequent references – on counter-terrorism; torture; and education – and the response of the HRCSL to these expert recommendations.

*Rule of Law in Combating Terrorism* (2004): Counter-terrorism measures must be enacted and administered within a culture of legality and must comply with international human rights law and standards, is one of the central conclusions of the Advisory Council of Jurists (ACJ) reference in this area.

Almost all the general issues of concern on “unacceptable practices” by states are applicable to the Sri Lankan experience including prolonged detention without trial; over-broad definitions of terrorism; misuse of anti-terrorism legislation to suppress legitimate activities etc.<sup>97</sup> The ACJ makes three specific

<sup>94</sup> S. 10 (d), *Human Rights Commission of Sri Lanka Act*, No. 21 of 1996, <http://www.hrsl.lk/PFF/HRC%20Act.pdf>. This clause is based on one of the *Paris Principles* (‘Competence and Responsibilities’: s. 3b), wherein one of the functions of a national human rights institution is “to promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation”, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>.

<sup>95</sup> B. Skanthakumar, ‘Silent and Powerless: The Human Rights Commission of Sri Lanka in 2010’ in Edgardo P. Legaspi, Sarah Baes, Cecile Barcenas Gaa and Toru Hisada (eds.), *2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Asian Forum for Human Rights and Development (FORUM-ASIA), Bangkok 2011, pp. 234-261 at pp. 254-258, <http://forum-asia.org/documents/ANNIReport2011.pdf>.

<sup>96</sup> Pabodha Hettige, “HRC wants death sentence abolished”, *The Island* (Colombo), 30 December 2011, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=42151](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=42151).

<sup>97</sup> For critique written before emergency rule was lifted on 25 August 2011, see B. Skanthakumar, “An Unending ‘War on Terror’: Counter-Terrorism, Democracy and Human Rights in Sri Lanka” in SDMA (ed.), *War on Terror and Asian Democracy – 10 Years after 9-11: Is Asia a Safer and Better Place?*, Solidarity for Democratisation Movements in Asia: Gwangju, Korea 2011, pp. 29-39, <http://www.lawandsocietytrust.org/PDF/Counter-Terrorism,%20Democracy%20and%20Human%20Rights%20in%20Sri%20Lanka%20July%2020%202011.pdf>.

observations on the Sri Lankan legislation in line with its general concerns: (i) that derogation from constitutionally guaranteed rights “be exercised in very limited circumstances”; (ii) that the definition of ‘terrorism’ in the Prevention of Terrorism Act (PTA) may unintentionally include someone who has committed a minor offence; and (iii) that the provisions of the PTA infringe the rights of detainees and contravene the International Covenant on Civil and Political Rights as well as customary international law.<sup>98</sup>

Meanwhile, national human rights institutions are recommended:

- i. To take cognisance of unacceptable counter-terrorist measures in the performance of their functions including complaints-handling;
- ii. To report regularly to the UN Office of the High Commissioner for Human Rights (OHCHR) on the shortcomings of counter-terrorism measures against international human rights law;
- iii. To influence legislators and inform public debate on the human rights implications of counter-terrorism measures and the legal obligations of States;
- iv. To educate all sectors of the community including lawyers, judges, journalists, doctors, police, the military and legislators on the application of the international law of human rights and the general principle of the rule of law.

According to the HRCSL, it has not “studied in-depth”<sup>99</sup> the conformity of the Prevention of Terrorism Act with international human rights standards and therefore not been in communication with OHCHR. It has also not lobbied parliamentarians on this issue. However, it proposes to discuss this question within the Commission, before it begins any public engagement including with legislators.<sup>100</sup>

This is a staggering admission as the PTA has been on the statute books, and in force, for the entirety of the HRCSL’s existence.

Reference on Torture (2005): The ACJ observes that there is an “absolute prohibition on torture under international law”.

The Human Rights Commission of Sri Lanka is recommended to urge the Government of Sri Lanka, *inter alia*:

- i. To become party to the Optional Protocol to the Convention against Torture (OPCAT); the Convention relating to the Status of Refugees; the three Additional Protocols to the Geneva Convention; and the Rome Statute of the International Criminal Court;

<sup>98</sup> Advisory Council of Jurists (2004), *Reference on the Rule of Law in Combating Terrorism* at pp. 30-31, <http://www.asiapacificforum.net/support/issues/acj/references/acj-references-terrorism-and-rule-of-law/downloads/reference-on-terrorism-and-the-rule-of-law/final.pdf>.

<sup>99</sup> Human Rights Commission of Sri Lanka, LST Questionnaire for 2012 ANNI Report, 12 June 2012 (on file).

<sup>100</sup> *Ibid.*

- ii. To remove inconsistencies in the domestic legislation on torture with the Convention against Torture;
- iii. To amend section 17 of the Prevention of Terrorism Act which renders confessions extracted by torture or while in custody as admissible;
- iv. To tackle judicial delays in the Supreme Court concerning allegations of torture;
- v. To institute witness protection programmes etc.

According to the HRCSL, it has raised these issues in the drafting process of the National Action Plan for the Protection and Promotion of Human Rights (2011-2016).<sup>101</sup> However, none of the above is subject to binding commitment in the National Action Plan, beyond the evasive and dilatory undertaking of “appointing a committee to review” or “commissioning a study to recommend” etc.

In its 2009 report on the ‘Angulana case’ concerning the custodial torture and killing of two youth by the local police, the HRCSL recommended enactment of the draft 2008 Assistance and Protection to Victims of Crime and Witnesses Bill.<sup>102</sup> It is doubtful that the HRCSL has recently recommended ratification of the Rome Statute or amendments to the Prevention of Terrorism Act, considering the extreme hostility of the government to countenance such measures, and its own diffidence on these questions.

*Reference on the Right to Education (2006)*: The right to education, observes the ACJ, is a fundamental human right; and all individuals, without discrimination, are entitled to a basic education.

Among the specific recommendations to the Human Rights Commission of Sri Lanka, is to urge the Government of Sri Lanka:

- i. To address regional imbalances in school facilities and to improve the quality and availability of teachers and support staff;
- ii. To eliminate the use of corporal punishment in schools and other educational institutions and to encourage alternative non-violent forms of discipline;
- iii. To incorporate human rights education into the national curriculum;
- iv. To provide educational opportunities for working children, including young mothers;

<sup>101</sup> Human Rights Commission of Sri Lanka, LST Questionnaire for 2012 ANNI Report, 12 June 2012 (on file).

<sup>102</sup> Human Rights Commission of Sri Lanka, *Death in Custody at Angulana Police Station* (in Sinhala), Colombo 2009, p. 46, [http://hrctl.lk/PFF/Angulana\\_final\\_report\\_sin.pdf](http://hrctl.lk/PFF/Angulana_final_report_sin.pdf). The text of the 2008 draft Bill can be found in *Law & Society Trust Review* (Colombo), Vol. 18, Issue 246 & 247 (April & May 2008), pp. 1-29. For a recent discussion including critique of proposed amendments see Susan Appleyard, “Witness Assistance and Protection in Sri Lanka”, *Law & Society Trust Review* (Colombo), Vol. 21, Issue 286 & 287 (August & September 2011), pp. 1-36.

- v. To improve access to special education schools and programmes, especially for students with disabilities.

According to the HRCSL, it has asked the government to consider all of the above, excepting that of access to education for working children and young mothers.<sup>103</sup> There is no indication that any of its urgings have been taken heed of by government.

### *Other Specialised Institutions*

There are a number of specialised institutions which may directly or indirectly support the promotion and protection of human rights. However these agencies have had weak powers and limited mandates from their inception, been denied appropriate human, financial and infrastructural resources, and following the enactment of the Eighteenth Amendment to the Constitution are now beholden to the Executive for appointment of their members.

The National Child Protection Authority (NCPA) was established in 1998 and most of its members are directly appointed by the President.<sup>104</sup> One of its aims is to coordinate policy within government on promotion and protection of child rights. It is empowered to receive complaints regarding allegations of child abuse and to refer such complaints to relevant authorities. The NCPA is obliged to monitor the progress of all investigations and criminal proceedings relating to child abuse. It has its own Special Police Investigations Unit. It monitors religious and charitable organisations providing child care services.<sup>105</sup> The NCPA received 3,811 complaints via its telephone hotline in 2010 as compared to 1,391 in the previous year.<sup>106</sup>

The Commission to Investigate Allegations of Bribery and Corruption (CIAOBC) was established at the end of 1994. It was not properly constituted between March 2010 and May 2011. There was a backlog of 2,700 complaints in the intervening period. The CIAOBC has since taken action to arrest forty-eight persons, including fourteen police officers.<sup>107</sup> The Commission lacks the power to investigate on its own initiative and can only act once a complaint is received. It relies on the police department for secondment of its officers to them, who are under the effective control of their department and not the Commission.<sup>108</sup>

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<sup>103</sup> On the HRCSL's own human rights education activities see Shirani Rajapaksa, "Human Rights Commission of Sri Lanka: Human Rights Education Mandate" in Asia-Pacific Human Rights Information Centre (ed.), *Human Rights Education in Asian Schools – Volume Twelve*, Osaka 2009, pp. 17-26, <http://www.hurights.or.jp/archives/pdf/education12/hreas-12-03-srilanka.pdf>.

<sup>104</sup> For an overview of the functions and powers of the NCPA, see Charika Marasinghe, *An Independent Monitoring Mechanism for Child Rights*, pp. 47-57, Colombo 2011, [http://www.savethechildren.lk/update/images/stories/Final\\_An\\_Independent\\_Monitoring\\_Mechanisms\\_Sri\\_Lanka.pdf](http://www.savethechildren.lk/update/images/stories/Final_An_Independent_Monitoring_Mechanisms_Sri_Lanka.pdf).

<sup>105</sup> The NCPA Chairperson claims that child abuse is rampant in most homes for children: Saroj Pathirana, "Sri Lanka Children's homes should be 'shut down'", *BBC News*, 9 September 2011, <http://www.bbc.co.uk/news/world-south-asia-14857783>.

<sup>106</sup> Olindhi Jayasundere, "Complaints on NCPA hotline sees sharp increase", *Daily Mirror* (Colombo), 1 February 2012, <http://www.dailymirror.lk/news/16442-complaints-on-ncpa-hotline-sees-sharp-increase.html>.

<sup>107</sup> Ranil Wijayapala, "Crackdown on bribery and corruption intensifies", *Sunday Observer* (Colombo), 19 February 2012, <http://www.sundayobserver.lk/2012/02/19/new04.asp>.

<sup>108</sup> Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne, "Bribery and Corruption Control in Sri Lanka", *article2.org*, 29 March 2010, <http://www.article2.org/mainfile.php/0901/366/>.

The National Police Commission (NPC) was established in 2002 to inquire into complaints from the public regarding individual police officers or the police service.<sup>109</sup> The NPC was not constituted between April 2009 and February 2012, and has received 224 complaints since its new members took office.<sup>110</sup> The reconstituted Commission has admitted that its powers are limited as it cannot take direct action against errant officials.<sup>111</sup> Recently it has opened eleven provincial and district offices to improve its accessibility to the public.<sup>112</sup>

The Parliamentary Commissioner for Administration (or Ombudsman) is uniquely a constitutional office to investigate complaints of violations of fundamental rights and other injustices by public officials, employees of public corporations and local authorities among other state institutions.<sup>113</sup> The Ombudsman is appointed by the President and can continue until s/he reaches the age of 68. The scope of authority excludes members of the armed forces and the police as well as the transfer, dismissal or disciplinary control of public officers.

One thousand three hundred and eighty-six (1,386) petitions were received in 2011, of which the largest number were against the education department followed by the public administration ministry. The subject of the complaints ranged from appointments, terminations, promotions, salary anomalies, salary increments and arrears, misuse of powers, pensions, provident fund payments and illegal constructions.<sup>114</sup> The ombudsman has no power to directly compel public officials to follow her/his recommendations.

Sri Lanka lacks a specialised institution to promote and protect the rights of women. Although successive governments have assured international human rights mechanisms that the establishment of such an institution is imminent, none has ever materialised. Drafts of bills to establish such an institution have been prepared by women's organisations as well as the government. Following opposition to the creation of a gender-specific human rights institution from a woman cabinet minister, prospects for the legislative passage of the most recent Bill appear to be bleak.<sup>115</sup> However, many civil society organisations continue to advocate for an independent National Women's Commission with investigative, monitoring and research functions.<sup>116</sup>

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<sup>109</sup> J. C. Weliamuna, "The National Police Commission" in Elizabeth Nissan (ed.), *Sri Lanka: State of Human Rights 2004*, Law & Society Trust, Colombo 2004, pp. 159-184.

<sup>110</sup> Rasika Somarathna, "NPC assures public of justice", *Daily News* (Colombo), 24 May 2012, <http://www.dailynews.lk/2012/05/24/sec01.asp>.

<sup>111</sup> Madura Ranwala, "NPC a watchdog not hound", *The Island* (Colombo), 25 May 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=52809](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=52809).

<sup>112</sup> Hemantha Randunu, "Police Commission devolves its functions to provinces", *The Island* (Colombo), 14 July 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=56741](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=56741).

<sup>113</sup> Deepika Udagama, "A Case Study of the Office of the Ombudsman" in Kanagananda Dharmananda and Lisa M. Kois (eds.), *Sri Lanka: State of Human Rights 1997*, Law & Society Trust, Colombo 1997, pp. 113-37.

<sup>114</sup> "Most complaints to ombudsman regarding education", *Sri Lanka Mirror.org*, 6 April 2012, <http://english.srilankamirror.com/2012/04/most-complaints-to-ombudsman-regarding-education/>.

<sup>115</sup> "Cabinet rejects Women's Commission", *Ceylon Today* (Colombo), 28 May 2012, <http://www.ceylontoday.lk/51-6956-news-detail-cabinet-rejects-womens-commission.html>.

<sup>116</sup> Roel Raymond, "Women take last stand", *Ceylon Today* (Colombo), 14 June 2012, <http://www.ceylontoday.lk/59-7888-news-detail-women-take-last-stand.html>.

## V. Consultation and Cooperation with Civil Society Organisations

The first 'consultative forum' between the new members of the Human Rights Commission (HRC) and a diverse gathering of civil society organisations was on 11 July 2011. In the course of opening remarks, Commissioner (Mrs) Jezima Ismail spoke of their commitment to partner with civil society organisations. "Without civil society, HRC will find it very hard to function. Talking is not enough. We need a concrete mechanism and a concrete tool. HRC and CSOs could meet regularly, discuss and consult regularly, and together have an impact on whatever function has to be done."<sup>117</sup>

In September 2011, it was reported that the HRCSL "is in the process of developing a mechanism for regular consultations with civil society".<sup>118</sup> There were no further national-level consultations initiated by the Commission in 2011. More than 10 regional forums are reported to have been conducted. These forums have been funded under the UN Joint Programme on Human Rights which is supporting this activity among others towards capacity-building of the HRCSL until the end of 2012.

It is uncertain whether the HRCSL will sustain these forums especially at regional-level in the absence of donor funding. The National Human Rights Action Plan envisages the establishment of regional advisory committees of civil society members to assist the regional offices of the Commission. Members and staff of the HRCSL have been invited to, and have participated in, civil society consultations, workshops, public discussions and educational forums.<sup>119</sup>

Two non-governmental organisations, the Law & Society Trust (LST) and Rights Now – Collective for Democracy organised a dialogue between some human rights organisations that have engaged with the HRCSL, and the members and senior staff of the Commission, on 5 December 2011. The objective was to improve communication and interaction between human rights defenders and the Commission. The exchange was cordial and there was sharing of updates from the HRCSL as to its recent activities and future plans as well as of the current concerns of human rights defenders, including enhancing police station and prison visits, fast-tracking of serious and 'high profile' complaints, financial support for complainants who have to travel to Colombo for inquiries with loss of income and expense of travel; and other issues in the functioning of the HRCSL. However, it is uncertain if any of these concerns have since been followed up by the Commission.

In general, there continues to be wariness and suspicion on both sides. Critical civil society activists consider the HRCSL as embedded in the State and condescending in its dealings with them; whereas, the HRCSL probably regards those civil society actors as inveterate adversaries of the State and malevolent detractors of their institution.

<sup>117</sup> Ishara Jayawardane, "HRC assures of commitment to rights", *Daily News* (Colombo), 13 July 2011, <http://www.dailynews.lk/2011/07/13/news27.asp>.

<sup>118</sup> Human Rights Commission of Sri Lanka, *Report to the 16<sup>th</sup> annual meeting of the Asia-Pacific-Forum of National Human Rights Institutions*, Bangkok, Thailand, 6-8 September 2011, <http://www.asiapacificforum.net/about/annual-meetings/16th-thailand-2011/downloads/apf-member-reports/sri-lanka>, p. 5.

<sup>119</sup> For example, the Consultation on implementation of the 2010 Recommendations of the UN Committee on Economic, Social and Cultural Rights in November 2011, see "Minding the gap on economic, social and cultural rights", *The Island* (Colombo), 4 January 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=42442](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=42442).



## VI. Conclusion and Recommendations

When the Human Rights Commission was reconstituted in February 2011 with the appointment of its members, civil society reactions were mixed but tended towards pessimism.<sup>120</sup> The ineffectiveness of previous Commissions in halting systemic human rights abuses; its subordination to the Executive sanctified in the 18<sup>th</sup> Amendment to the Constitution; and the background of the individuals picked for its membership, inspired limited enthusiasm and even less optimism. As the present Commission reaches the half-way point of its three year term in office, is there reason to qualify or revise those opinions?

Certainly some of the new members, despite the part-time remit of their office, committed themselves to revitalising the HRCSL and rehabilitating its domestic and international reputation. However, attention to internal organisational issues ranging from oversight of staff and functions, to mobilising resources and goodwill from partners and donors, pre-occupied them over the course of 2011.

Their eagerness to regain accreditation as an 'A' status institution was evident and referred to in public. It contributed to the HRCSL's willingness to dialogue with civil society organisations. It encouraged them to cooperate with the capacity-assessment mission led by the APF in early 2012. It motivated them to publicise their activities and recommendations better including through their website. It drove them to engage more with regional networks including the meetings and projects of the APF. All of this is to be appreciated.

However, the members appeared to adopt a check-list approach to their campaign for upgrading; believing that if they tackled the stated reasons for downgrading in 2007<sup>121</sup> (and re-confirmed in 2009),<sup>122</sup> that the HRCSL would effortlessly satisfy the minimum requirements for re-accreditation. There is a fundamental unwillingness on their part to recognise that there are pervasive issues that demand root and branch institutional reform, as well as the need for a changed relationship with the State and civil society

<sup>120</sup> Wilson Gnanadass, "'Independence' of HRC under scrutiny", *The Nation* (Colombo), 20 February 2011, <http://www.nation.lk/2011/02/20/newsfe1.htm>.

<sup>121</sup> "The Sub-Committee at its current session notes the following: 1) The Paris Principles provide for the appointment of the governing body and other guarantees of independence. The 2006 appointment of the Governing Body was done without recommendation of the Constitutional Council prescribed in the Constitution. 2) The Commission did not take measures to ensure its independent character and political objectivity, as required by the Paris Principles. 3) The Commission has failed to issue annual reports on human rights as required by the Paris Principles", *Report and Recommendations of the Sub-Committee on Accreditation, International Coordinating Commission of National Institutions for the Promotion and Protection of Human Rights*, 22-26 October 2007, pp. 10-11, [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2007\\_October%20SCA%20Report.pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2007_October%20SCA%20Report.pdf).

<sup>122</sup> "The Sub-Committee ("SCA") notes the following: ... the SCA nevertheless stresses the need for a transparent and consultative selection process in practice. The SCA strongly encourages the SLHRC to engage with the government to ensure the adoption of such a process ... It expresses its concern that the SLHRC does not appear to have released regular and detailed reports or statements in relation to killings, abductions and disappearances stemming from the human rights crisis in Sri Lanka ... it re-emphasises the need for the SLHRC to carry out its core protection mandate to demonstrate its vigilance and independence during the ongoing state of emergency ... The SCA emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles ... notes that [the 2006-07 Annual Report] provides insufficient information to assess the ongoing work of the SLHRC and appears to be only available in English ... It further notes that the Tamil and Sinhala sections of the SLHRC website are not functioning", *Report and Recommendations of the Sub-Committee on Accreditation, International Coordinating Commission of National Institutions for the Promotion and Protection of Human Rights*, 26-30 March 2009, pp. 5-6, [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2009\\_March%20SCA%20REPORT.pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2009_March%20SCA%20REPORT.pdf).

organisations, rather than lapses of a minor nature that can be readily rectified through application of additional financial and human resources.

Certainly, there are well-meaning and conscientious officers and members of the HRCSL who strive to do their best for victims of human rights violations, within circumstances and constraints that are partly out of their control and partly of their own choosing. There is no doubt that for some complainants, particularly in matters of administrative injustice, that the HRCSL has been able to offer some relief through its interventions. However, it is also clear, that for other complainants particularly in matters of serious human rights abuses including threat or violation of the right to life and the right not to be tortured, that the Human Rights Commission of Sri Lanka has offered little, and has little to offer, by way of solace or support.

#### *Recommendations to the Government of Sri Lanka*

1. Adopt a clear, transparent and participatory process for the appointment of members that promotes merit-based selection and pluralism and therefore strengthens the independence and public confidence in the Commission.
2. Resource the Human Rights Commission's protection of the rights of internally displaced persons (IDPs) including after their return, resettlement or relocation, and enact the draft Bill on IDPs prepared by the Commission's NPDS project in 2008.
3. Implement the National Action Plan on the Promotion and Protection of Human Rights without delay, including proposed legal, policy and institutional reforms concerning the Human Rights Commission.

#### *Recommendations to the Human Rights Commission of Sri Lanka*

1. Re-orient its internal culture and procedure to complaints and complainants, from imitating a judicial tribunal, to one more appropriate and relevant to a non-judicial national human rights institution.
2. Constitute regional or provincial-level commissions, delegate relevant powers of inquiry and monitoring conditions in police stations and prisons, and ensure local human rights defenders are among its members.
3. Pro-actively issue constructive and critical advice to the government, including on current human rights trends, gross abuses and imminent violations, as well as on security sector reform, instead of only acting on individual cases and complaints.

[...]



# General Assembly

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## Human Rights Council

Twentieth session

Agenda item 8

Follow-up and implementation of the Vienna Declaration  
and Programme of Action

Albania\*, Algeria\*, Armenia\*, Australia\*, Azerbaijan\*, Bolivia (Plurinational State of)\*, Bosnia and Herzegovina\*, Canada\*, Colombia\*, Costa Rica, Côte d'Ivoire\*, Croatia\*, Czech Republic, Denmark\*, Djibouti, Ecuador, Egypt\*, Equatorial Guinea\*, Finland\*, France\*, Georgia\*, Germany\*, Greece\*, Guatemala, Hungary, Iceland\*, Ireland\*, Japan\*, Latvia\*, Libya, Lithuania\*, Luxembourg\*, Maldives, Mexico, Montenegro\*, Morocco\*, Namibia\*, New Zealand\*, Nigeria, Norway, Palestine\*, Peru, Poland, Portugal\*, Qatar, Republic of Korea\*, Russian Federation, Serbia\*, Slovakia\*, Slovenia\*, Somalia\*, Spain, Sudan\*, Sweden\*, Switzerland, Thailand, the former Yugoslav Republic of Macedonia\*, Timor-Leste\*, Tunisia\*, Turkey\*, Ukraine\*, United Kingdom of Great Britain and Northern Ireland\*, Uruguay, Venezuela (Bolivarian Republic of)\*: draft resolution

20/... National institutions for the promotion and protection of human rights

*The Human Rights Council,*

*Recalling* Human Rights Council resolution 17/9 of 16 June 2011, as well as relevant resolutions of the General Assembly, the most recent of which is resolution 66/169 of 19 December 2011, and those of the Commission on Human Rights concerning national institutions for the promotion and protection of human rights,

*Welcoming* the international recognition of the importance of establishing and strengthening independent, pluralistic national institutions for the promotion and protection of human rights in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights ("the Paris Principles"),

\* Non-Member State of the Human Rights Council.

*Reaffirming* the important role that such national institutions play and will continue to play in promoting and protecting human rights and fundamental freedoms, in strengthening participation and the rule of law, and in developing and enhancing public awareness of those rights and fundamental freedoms,

*Recalling* the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993, which reaffirmed the important and constructive role played by national human rights institutions, in particular in their advisory capacity to the competent authorities and their role in preventing and remedying human rights violations in disseminating information on human rights and in education in human rights,

*Recognizing* the important role of the Office of the United Nations High Commissioner for Human Rights in assisting the development of independent and effective national human rights institutions, in accordance with the Paris Principles, and recognizing also in this regard the potential for strengthened and complementary cooperation among the Office of the High Commissioner, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, regional coordinating committees of national institutions and those national institutions in the promotion and protection of human rights,

*Noting with interest* the twenty-fifth annual meeting of the International Coordinating Committee, held from 20 to 22 March 2012,

*Welcoming* the strengthening in all regions of regional and cross-regional cooperation among national human rights institutions, and between national human rights institutions and other regional human rights forums,

1. *Welcomes* the most recent reports of the Secretary-General submitted to the Human Rights Council on national institutions for the promotion and protection of human rights<sup>1</sup> and on the activities of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in accrediting national institutions in compliance with the Paris Principles;<sup>2</sup>

2. *Reaffirms* the importance of the establishment and strengthening of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles;

3. *Recognizes* the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level, including by contributing to follow-up actions, as appropriate, to the recommendations resulting from the international human rights mechanisms;

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<sup>1</sup>A/HRC/20/9.

<sup>2</sup>A/HRC/20/10.

4. *Welcomes* the increasingly important role of national institutions for the promotion and protection of human rights in supporting cooperation between their Governments and the United Nations in the promotion and protection of human rights;

5. *Encourages* Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all, as outlined in the Vienna Declaration and Programme of Action, and to do so in accordance with the Paris Principles;

6. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action, it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

7. *Welcomes* the growing number of Member States establishing or considering the establishment of national institutions for the promotion and protection of human rights in accordance with the Paris Principles, and welcomes in particular the growing number of States that have accepted recommendations to establish national human rights institutions through the universal periodic review and, where relevant, by treaty bodies and special procedures;

8. *Also welcomes* the growing number of national institutions seeking accreditation status through the International Coordinating Committee, and encourages national institutions, including Ombudsman institutions, to seek accreditation status;

9. *Further welcomes* the important role of the International Coordinating Committee, in close cooperation with the Office of the United Nations High Commissioner for Human Rights, in assessing conformity with the Paris Principles and in assisting Governments and national institutions, when requested, to strengthen national human rights institutions in accordance with the Paris Principles;

10. *Encourages* the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions in accordance with the Paris Principles;

11. *Encourages* national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

12. *Recognizes* the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies, in accordance with General Assembly resolution 60/251 of 15 March 2006, Human Rights

Council resolutions 5/1 and 5/2 of 18 June 2007 and Commission on Human Rights resolution 2005/74 of 20 April 2005;

13. *Welcomes* the strengthening of opportunities to contribute to the work of the Human Rights Council for national human rights institutions compliant with the Paris Principles, as stipulated by the Council review outcome document adopted by the General Assembly in its resolution 65/281 of 17 June 2011 and Council decision 19/119 of 22 March 2012, and encourages national human rights institutions to make use of these participatory opportunities;

14. *Also welcomes* the contribution of national human rights institutions to the ongoing treaty body strengthening process, and encourages national human rights institutions to continue to contribute to the process;

15. *Further welcomes* the recognition by the Secretary-General of the contributions that national human rights institutions compliant with the Paris Principles have made to the work of the Commission on the Status of Women, the Conference of States Parties to the Convention on the Rights of Persons with Disabilities and the Open-ended Working Group on Ageing, and supports and welcomes the efforts of the Secretary-General to encourage national human rights institutions to continue to interact with and advocate for independent participation in all relevant United Nations mechanisms in accordance with their respective mandates;

16. *Welcomes* the endorsement by the General Assembly of the strengthening of opportunities for national human rights institutions compliant with the Paris Principles to contribute to the work of the Human Rights Council in its resolutions 65/281 and 66/169, and recommends that the Assembly explore the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate in the Assembly based on practices and arrangements agreed upon in Assembly resolutions 60/251, Human Rights Council resolutions 5/1 and 5/2, and 16/21 of 25 March 2011, and Commission on Human Rights resolution 2005/74, while ensuring their most effective contribution;

17. *Stresses the importance* of financial and administrative independence and the stability of national human rights institutions for the promotion and protection of the human rights, and notes with satisfaction the efforts of those Member States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

18. *Commends* the high priority given by the Office of the High Commissioner to work with national institutions, including through technical cooperation, and encourages the High Commissioner, in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions, including supporting the work of the International Coordinating Committee and its regional coordinating committees, and invites Governments to contribute additional voluntary funds to that end;

19. *Welcomes* the efforts made by the High Commissioner to strengthen United Nations system-wide coordination on national human rights institutions, and encourages all United Nations human rights mechanisms, as well as its agencies, funds and programmes, to work within their respective mandates with national human rights institutions;

20. *Also welcomes* the strengthening of international cooperation among national institutions, including through the International Coordinating Committee, and encourages the Secretary-General to continue to provide the assistance necessary for holding international, regional and cross-regional meetings and conferences of national institutions, including meetings of the International Coordinating Committee, in cooperation with the Office of the High Commissioner;

21. *Takes note with interest* of the Edinburgh Declaration on Business and Human Rights<sup>3</sup> resulting from the tenth International Conference of National Human Rights Institutions from 8 to 10 November 2010, and recalls Human Rights Council resolution 17/9, in which the Council welcomed the important role of national human rights institutions established in accordance with the Paris Principles in relation to business and human rights,

22. *Welcomes* the strengthening in all regions of regional cooperation among national human rights institutions, and notes with appreciation the continuing work of the Network of African National Human Rights Institutions, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia-Pacific Forum of National Human Rights Institutions and the European Group of National Human Rights Institutions;

23. *Encourages* all States and national human rights institutions to continue to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of national institutions;

24. *Requests* the Secretary-General to report to the Human Rights Council at its twenty-third session on the implementation of the present resolution;

25. *Also requests* the Secretary-General to report to the Human Rights Council at its twenty-third session on the activities of the International Coordinating Committee in accrediting national institutions in compliance with the Paris Principles.

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<sup>3</sup>A/HRC/17/NI/1, annex.

## BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS

(Belgrade, 22–23 February 2012)

*The 2012 International Seminar on the Relationship between National Human Rights Institutions and Parliaments<sup>1</sup>, organized by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations country team in Serbia,*

*In accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the General Assembly resolutions 63/169 and 65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, 63/172 and 64/161 on national institutions for the promotion and protection of human rights and the Human Rights Council resolution 17/9 on national institutions for the promotion and protection of human rights.*

*Recognizing that the principles relating to the status of national institutions for the protection and promotion of human rights (Paris Principles) state that NHRIs shall establish "effective cooperation" with parliaments,*

*Noting that NHRIs and parliaments have much to gain from each other in performing their responsibilities for the promotion and protection of human rights,*

*And recalling the need to identify areas for strengthened interaction between NHRIs and parliaments bearing in mind that the different institutional models of NHRIs should be respected,*

*Adopts the following principles aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliament should be developed:*

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<sup>1</sup> The Conference was attended by experts from NHRIs, parliaments and universities from Ecuador, Ghana, India, Jordan, Kenya, Mexico, New Zealand, Portugal, Serbia and the United Kingdom of Great Britain and Northern Ireland.



## **I. Parliament's role in establishing a national institution for the promotion and protection of human rights and securing its functioning, independence and accountability**

### **A. Founding law**

1. Parliaments, when deliberating the draft legislation for the establishment of a national human rights institution, should consult widely with relevant stakeholders.
2. Parliaments should develop a legal framework for the national institution for the promotion and protection of human rights (NHRI) which secures its independence and its direct accountability to parliament, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and taking into account the general observations of the International Coordinating Committee of National Institutions for the promotion and protection of Human Rights and best practices.
3. Parliaments should have the exclusive competence to legislate for the establishment of a NHRI and for any amendments to the founding law.
4. Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinize such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organizations.
5. Parliaments should keep the implementation of the founding law under review.

### **B. Financial independence**

6. Parliaments should ensure the financial independence of NHRIs by including in the founding law the relevant provisions.
7. NHRIs should submit to parliaments a strategic plan and/or an annual programme of activities. Parliaments should take into account the strategic plan and/or annual programme of activities submitted by the NHRI when discussing budget proposals to ensure financial independence of the institution.
8. Parliaments should invite the members of NHRIs to debate the strategic plan and/or its annual programme of activities in relation to the annual budget.
9. Parliaments should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law.

### **C. Appointment and dismissal process**

10. Parliaments should clearly lay down in the founding law a transparent selection and appointment process, as well as for the dismissal of the members of NHRIs in case of such an eventuality, involving civil society where appropriate.
11. Parliaments should ensure the openness and transparency of the appointment process.
12. Parliaments should secure the independence of a NHRI by incorporating in the founding law a provision on immunity for actions taken in an official capacity.
13. Parliaments should clearly lay down in the founding law that, where there is a vacancy in the composition of the membership of a NHRI, the vacancy must be filled within a reasonable time. After expiration of the tenure of office of a member of a NHRI, such member should continue in office until the successor takes office.

### **D. Reporting**

14. NHRIs should report directly to parliament.
15. NHRIs should submit to parliament an annual report on activities, along with a summary of its accounts, and report on the human rights situation in the country and on any other issue that is related to human rights.
16. Parliaments should receive, review and respond to NHRI reports and ensure that they debate the priorities of the NHRI and should seek opportunities to debate the most significant reports of the NHRI promptly.
17. Parliaments should develop a principled framework for debating the activities of NHRIs consistent with respect for their independence.
18. Parliaments should hold open discussions on the recommendations issued by NHRIs.
19. Parliaments should seek information from the relevant public authorities on the extent to which the relevant public authorities have considered and responded to NHRIs recommendations.

## **II. Forms of cooperation between parliaments and NHRIs**

20. NHRIs and parliaments should agree the basis for cooperation, including by establishing a formal framework to discuss human rights issues of common interest.

21. Parliaments should identify or establish an appropriate parliamentary committee that will be the NHRI's main point of contact within parliament.
22. NHRIs should develop a strong working relationship with the relevant specialized parliamentary committee including, if appropriate, through a memorandum of understanding. NHRIs and parliamentary committees should also develop formalized relationships where relevant to their work.
23. Members of the relevant specialized parliamentary committee and NHRI should meet regularly and maintain a constant dialogue, in order to strengthen the interchange of information and identify areas of possible collaboration in the protection and promotion of human rights.
24. Parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees.
25. NHRIs should advise and/or make recommendations to parliaments on issues related to human rights, including the State's international human rights obligations.
26. NHRIs may provide information and advice to parliaments to assist in the exercise of their oversight and scrutiny functions.

### **III. Cooperation between parliaments and NHRIs in relation to legislation**

27. NHRIs should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein.
28. Parliaments should involve NHRIs in the legislative processes, including by inviting them to give evidence and advice about the human rights compatibility of proposed laws and policies.
29. NHRIs should make proposals of amendments to legislation where necessary, in order to harmonize domestic legislation with both national and international human rights standards.
30. NHRIs should work with parliaments to promote human rights by legislating to implement human rights obligations, recommendations of treaty bodies and human rights judgments of courts.
31. NHRIs should work with parliaments to develop effective human rights impact assessment processes of proposed laws and policies.

32. Parliaments should seek to be involved in the process of ratification of international human rights treaties and should consult NHRIs in this process of ratification, and in monitoring the State's compliance with all of its international human rights obligations.

#### **IV. Cooperation between NHRIs and parliaments in relation to international human rights mechanisms**

33. NHRIs should give opinions to parliaments on proposed reservations or interpretative declarations, on the adequacy of the State's implementation of human rights obligations and on its compliance with those obligations.
34. Parliaments and NHRIs should cooperate to ensure that the international treaty bodies are provided with all relevant information about the State's compliance with those obligations and to follow up recommendations of the treaty bodies.
35. NHRIs should regularly inform parliaments about the various recommendations made to the State by regional and international human rights mechanisms, including the universal periodic review, the treaty bodies and the special procedure mandate holders.
36. Parliaments and NHRIs should jointly develop a strategy to follow up systematically the recommendations made by regional and international human rights mechanisms.

#### **V. Cooperation between NHRIs and parliaments in the education, training and awareness-raising of human rights<sup>2</sup>**

37. NHRIs and parliaments should work together to encourage the development of a culture of respect for human rights.
38. NHRIs and parliaments should work together to encourage education and training about human rights being sufficiently incorporated in schools, universities and other relevant contexts, including vocational, professional and judicial training in accordance with relevant international standards.
39. NHRIs and parliaments should work together to improve their mutual capacity on human rights and parliamentary processes.
40. NHRIs, parliaments and all parliamentarians should seek to work together in public awareness, education campaigns and encourage mutual participation in conferences, events and activities organized for the promotion of human rights.

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<sup>2</sup> In relation to the United Nations Declaration on Human Rights Education and Training.

## **VI. Monitoring the Executive's response to court and other judicial and administrative bodies' judgments concerning human rights**

41. Parliaments and NHRIs as appropriate should cooperate in monitoring the Executive's response to judgments of courts (national and, where appropriate, regional and international) and other administrative tribunals or bodies regarding issues related to human rights.
42. NHRIs should monitor judgements against the State concerning human rights, by domestic, regional or international courts and, where necessary, make recommendations to parliament about the appropriate changes to law or policy.
43. Parliaments should give proper consideration to NHRIs recommendations about the response to human rights judgements.
44. Parliaments and NHRIs as appropriate should encourage the Executive to respond to human rights judgements expeditiously and effectively, so as to achieve full compliance with human rights standards.



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