

# **LST REVIEW**

Volume 24 Issue 311 September 2013



## **A MARIONETTE OF THE STATE; SRI LANKA'S HUMAN RIGHTS COMMISSION DURING 2012**

**LAW & SOCIETY TRUST**

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*Editor's Note... ..*

The LST Review carries in this Issue, a monitoring report on Sri Lanka's Human Rights Commission (HRCSL) by *Miyuru Gunasinghe* of the Law & Society Trust's Economic, Social and Cultural (ESCR) Programme.

The report focuses on the performance of the HRCSL during 2012 as measured against its statutory mandate in regard to the protection and promotion of human rights.

On a balance, looking at the report card of this institution during the year in review, the HRCSL appears to have proactively intervened in 'soft' areas of its mandate such as infringements by state institutions of the trilingual policy. However, its reluctance to do so in 'hard' cases that involves confrontation with Sri Lanka's post-war security state is manifest.

In certain instances which fall in-between these two extremes, the HRCSL has expressed discontent but its institutional position has been undercut by the views expressed by individual Commissioners. One such example is the impeachment process of Sri Lanka's Chief Justice in 2012/2013 which the HRCSL stated quite rightly, had violated all norms of natural justice.

Yet as commented upon by *Gunasinghe*, contrary to this purported institutional position, one of the Commissioners with strong ties to the government upheld that very impeachment which the HRC as a body had condemned. The conduct of this particular Commissioner in publicly and vociferously supporting the government in other instances attracts a salient question put forward by the writer; 'Is this acceptable or ethical conduct from a Commissioner of an independent national Institution?'

This by itself, is a good reflection on the instability of the process through which the HRC carries out its statutory mandate, the public perception of the independence of the Commission and its continued lack of institutional legitimacy.

In fundamental respects, the report makes dolorous reading. It highlights manifest inadequacies in the functioning of this body. Importantly it draws attention to the disjunct prevalent when the HRC recognizes the severity of the manifold crises of the Rule of Law but engages in little proactive challenge of state action in terms of its own mandate. Instead, as is commented, it merely confined itself to issuing statements and conducting inquiries. Even this most basic task of conducting an inquiry has been

thwarted in specially controversial instances such as the killings of three civilians and the injuring of several others when the army was called out to deal with villagers protesting for clean ground-water in Weliveriya.

An interesting feature of this report is its look at the public profiles of the Commission appointees in the context of a long standing critique that the Presidential appointments of the members of the HRC were not satisfactory.

As is common knowledge, the 17<sup>th</sup> Amendment to Sri Lanka's Constitution passed by a previous administration specified the intervention of a Constitutional Council which included individuals of eminence in public life in its composition during the process of appointments to the HRCSL and other key monitoring bodies. However, this requirement was done away with under the Rajapaksa government through the 18<sup>th</sup> Amendment to the Constitution.

The resulting lack of independence in the appointment process was a primary reason as to why the Sri Lankan HRC was downgraded by the international standards enforcing body on National Human Rights Institutions worldwide. This concern has not been addressed up-to-date. The strains and tensions evident as a result of this continue; thus, a Commissioner resigned during the period under review due to 'weaknesses, inefficiencies and interferences' with the body, as this report details. Thus, while the HRCSL complains of defiance and lack of implementation by state bodies of its recommendations and proposes the strengthening of the relevant statutory provisions, it singularly fails to deal with the issue of the absence of public credibility in regard to its own independent functioning.

This monitoring report makes several recommendations for the improved functioning of what should have been Sri Lanka's premier human rights monitoring body. It draws on previous critiques of this nature engaged in by the Law & Society Trust. Correctly, the report engages in a severe critique of ostensible 'training' and material support provided by the Commonwealth and other bodies to an HRCSL which has remained deficient in carrying out its statutory mandate in the face of mounting human rights violations by state actors post-war.

The Issue also publishes, as complementary to this discussion, extracts from the Report of the Special Rapporteur on the Situation of Human Rights Defenders in regard to activities of States during 2012.

*Kishali Pinto-Jayawardena*

# MARIONETTE OF THE STATE; THE HUMAN RIGHTS COMMISSION OF SRI LANKA

Miyuru Gunasinghe\*

## I. General Overview of the Human Rights Situation in Sri Lanka

Sri Lanka in 2012 witnessed a number of people's movements against prevailing state policies, reflective of public dissention against a growing list of human rights violations;<sup>1</sup> breakdown in rule of law and impunity;<sup>2</sup> suppression of freedom of expression including violence against media personnel<sup>3</sup> and institutions;<sup>4</sup> blocking all efforts to enhance transparency of public authorities;<sup>5</sup> continued misuse of the Prevention of Terrorism Act (PTA) to repress dissenters;<sup>6</sup> arbitrary detention policies;<sup>7</sup> internal

\* The guidance received from B. Skanthakumar, the support of my colleague Anushaya Collure in the Economic, Social and Cultural Rights Programme of the Law & Society Trust and the contribution of Ruki Fernando have been of immense assistance in compiling this report and are gratefully acknowledged. 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: UN OHCHR Annual Report, *Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka*, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf), Amnesty International, *Sri Lanka's Assault on Dissent*, [http://www.amnesty.org/en/library/asset/ASA37/003/2013/en/338f9b04-097e-4381-8903-1829fd24aabf/asa370032013\\_en.pdf](http://www.amnesty.org/en/library/asset/ASA37/003/2013/en/338f9b04-097e-4381-8903-1829fd24aabf/asa370032013_en.pdf), Human Rights Watch, *Sri Lanka in 'World Report 2012*, New York, 2012, <http://www.hrw.org/world-report-2012/world-report-2012-sri-lanka> and Human Rights Watch, *Sri Lanka in 'World Report 2013*, New York 2013, <http://www.hrw.org/world-report/2013/country-chapters/sri-lanka?page=1>, Amnesty International, *Annual Report 2012*, Sri Lanka chapter, <http://www.amnesty.org/en/region/sri-lanka/report-2012>, US Department Country, *Country Reports for Human Rights Practices 2012: Sri Lanka*, Washington DC 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>,

<sup>2</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka*, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Human Rights Council 22<sup>nd</sup> Second, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf)

<sup>3</sup> 'Uthayan office attacked', *Ceylon Today*, 03 April 2013, <http://www.ceylontoday.lk/16-28923-news-detail-uthayan-office-attacked.html>

<sup>4</sup> *Sri Lanka's Assault on Dissent*, Amnesty International, 2013, <http://www.amnesty.org/en/library/asset/ASA37/003/2013/en/338f9b04-097e-4381-8903-1829fd24aabf/asa370032013en.pdf>

<sup>5</sup> A right-to information Bill presented by the main opposition party was defeated by the ruling party in June 2012 - 'Sri Lanka: Right to Information draft bill defeated by the ruling party lawmakers', *Asian Tribune*, 22 June 2012, <http://www.asiantribune.com/news/2011/06/21/sri-lanka-right-information-draft-bill-defeated-ruling-party-lawmakers>

<sup>6</sup> Publicly reported incidents of misuse of the PTA include but are not limited to: the unlawful arrest and detention of opposition parliamentarian Azath Salley - 'The arrest and release of Azath Salley', *Ceylon Today*, 12 May 2013, <http://www.ceylontoday.lk/59-32130-news-detail-the-arrest-and-release-of-azath-salley.html>; 'Sri Lanka: the arrest and detention of Azath Salley', *Asian Human Rights Commission*, 6 May 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-087-2013> and the arrest and detention of 4 Jaffna university students - 'Two Jaffna university students released on President's orders', *Colombo Page*, 13 February 2013, [http://www.colombopage.com/archive/13A/Feb13\\_1360744791CH.php](http://www.colombopage.com/archive/13A/Feb13_1360744791CH.php).

<sup>7</sup> 'The government acknowledged in November (2012) that 876 adults remained in administrative detention under the PTA; 845 were Tamil men and 18 were Tamil women. These detainees were among nearly 12,000 alleged

displacement and forced relocation due to state land acquisition for development and military occupation especially in the North and East<sup>8</sup> leading to loss of homes and livelihoods;<sup>9</sup> military mechanisms overrule local administrative structures in previously conflict affected areas and regulate civilian lives;<sup>10</sup> unresolved cases of involuntary or enforced disappearances;<sup>11</sup> repressive economic policies which penalize the poor,<sup>12</sup> leading to further protests;<sup>13</sup> anti-Muslim propaganda by the state sponsored Sinhala

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LTTE members who surrendered or were captured by the army and then detained for months or years without charge in the aftermath of the conflict.' stated Amnesty International in its *Annual Report 2012*, Sri Lanka chapter, <http://www.amnesty.org/en/region/sri-lanka/report-2012>

<sup>8</sup> For an overview of issues of post war land issues, military occupation, state development policies and politics in the Northern Province See *Land in the Northern Province: Post-War Politics, Policy and Practices*, Center for policy Alternatives (CPA), Colombo 2011, <http://www.cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>

<sup>9</sup> Jaffna landowners to file more than 1000 cases against military 'land grab', Sunday Times, 05 May 2013, <http://www.sundaytimes.lk/130505/news/jaffna-landowners-to-file-more-than-1000-cases-against-military-land-grab-43152.html>

<sup>10</sup> Security forces engage in livelihood and infrastructure development activities under the aegis of the all powerful Ministry of Defence and Urban Development and excess produce sold at local markets, prevention of locals from accessing hereditary farming and fishing areas, have deprived many of their traditional livelihoods and way of life. International Crisis Group, *Sri Lanka's north II: rebuilding under the military*, Asia Report No.220, 16 March 2012, p.15-24, [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lanka-north-ii-rebuilding-under-the-military.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/220-sri-lanka-north-ii-rebuilding-under-the-military.pdf). Further, community-based organizations and former LTTE cadres continued to complain of close surveillance of all activities including visits and interrogations by intelligence personnel – as gathered from personal interviews.

<sup>11</sup> The International Committee of the Red Cross (ICRC), *Annual Report 2011 – Sri Lanka*, Geneva 2012, p.256, <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-sri-lanka.pdf>, state that 15,780 tracing cases were still being handled by the end December 2011. 'Report of the Working Group on Enforced or Involuntary Disappearances', UN Human Right Council 22<sup>nd</sup> Session, January 2013, P98-102, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.45\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.45_English.pdf) which states that of the cases in Sri Lanka reported to the Working Group, 5,671 cases were outstanding at the start of the period under review (November 2011- November 2012) with 5,676 outstanding at the end of the review period. The HRCSL has issued a statement expressing concern against continued cases of disappearances but there is insufficient information on action taken. 'Human Rights Commission of Sri Lanka concern about disappearances', 18 April 2012, <http://hrctl.lk/english/?p=1940>

<sup>12</sup> Continuous reductions in welfare allocations in each national budget – especially in the education and health sectors – albeit Sri Lanka being a welfare state, lead to country wide protests by trade unions of university and school teachers. The national budget allocation for education in 2012 was approximately 4% of the total budget (health sector also received 4%) even as the budget allocations for defense continues to increase four years after the war and remained at 10% of the total budget for 2012 which is a clear indication of the priorities of the government. See LST website for: *ACDN Briefing Paper No 4: Budget 2013 (January 2013)* [http://www.lawandsocietytrust.org/PDF/CAFOD\\_BP\\_4\\_English.pdf](http://www.lawandsocietytrust.org/PDF/CAFOD_BP_4_English.pdf); *ACDN Briefing Paper No 3: Budget 2013 - Citizens' Proposals (September 2012)* [http://www.lawandsocietytrust.org/PDF/resource/Pre-budget%20Advocacy%20Document\\_English.pdf](http://www.lawandsocietytrust.org/PDF/resource/Pre-budget%20Advocacy%20Document_English.pdf); *ACDN Briefing Paper Paper No. 02: Budget 2011 (April 2012)* [http://www.lawandsocietytrust.org/PDF/resource/ACDN\\_Briefing\\_Paper%202\\_e.pdf](http://www.lawandsocietytrust.org/PDF/resource/ACDN_Briefing_Paper%202_e.pdf)

<sup>13</sup> Lack of access to education and health facilities marginalizes rural populations even further, increases regional gaps and denies the rural populace of equal opportunities and consequently equal rights. The Federation of University Teachers Associations (FUTA) launched a protest and public awareness campaign in July 2012, demanding that the government increase education allocations to 6% of GDP (only 1.9% of GDP had been allocated for education in 2011) in which nearly 5,000 academics stopped work for a period of 3 months from July 2012. 'Futa vows to continue strike: Mammoth rally in Colombo', *The Island*, 23 August 2012, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=59891](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=59891). This was the largest people's movement witnessed by the country in the past decade or more and consequently the President of FUTA Dr, Nirmal Ranjith Devasiri received repeated death threats - 'Death threats on FUTA President', *Ceylon Today*, 21 September 2012, <http://www.ceylontoday.lk/51-13159-news-detail-death-threats-on-futa->

Buddhist supremacists<sup>14</sup> of 'Bodu Bala Sena (BBS) (the Buddhist Army);<sup>15</sup> and continuing issues of accountability under international laws relating to the final stages of the war in 2009.

Excessive use of force by police against peaceful protesters caused the death of a fisherman in February 2012 during a protest against the rising cost of fuel;<sup>16</sup> police and STF commandos conducting an operation in July 2012 to rescue three jailors held hostage by prisoners – including former LTTE cadres – in the Vavuniya prison caused injury to twenty- two prisoners and one death;<sup>17</sup> clashes between Special Task Force (STF) police commandos and prison inmates at the Welikada prison<sup>18</sup> in November 2012 left twenty- seven inmates dead and forty- three persons injured;<sup>19</sup> on 27 November 2012 Jaffna university students holding a candle lit vigil to commemorate war heroes day<sup>20</sup> were attacked by police and four students arrested by the Terrorism Investigation Division (TID);<sup>21</sup> in March 2013, police in Vavuniya

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FUTA Dr, Nirmal Ranjith Devasiri received repeated death threats - 'Death threats on FUTA President', *Ceylon Today*, 21 September 2012, <http://www.ceylontoday.lk/51-13159-news-detail-death-threats-on-futa-president.html>; 'FUTA President gets another threat', *Sunday Leader*, 24 June 2012, <http://www.thesundayleader.lk/2012/06/24/futa-president-gets-another-threat/>.

<sup>14</sup> 'Sri Lanka Muslims decry radical Buddhist mosque attack', *BBC News Asia*, 23 April 2012, <http://www.bbc.co.uk/news/world-asia-17816285> In 2013 the BBS began targeting Halal certification by the All Ceylon Jamiyyathul Ulama (ACJU) claiming it to be unnecessary and a profit making venture - 'Rumpus over Halal', *Ceylon Today*, 24 February 2013, <http://www.ceylontoday.lk/59-25159-news-detail-rumpus-over-halal.html> which swiftly grew into an anti Muslim propaganda- 'BBS's latest target – Muslim dress code', *Colombo Telegraph*, 24 March 2013, <http://www.colombotelegraph.com/index.php/bbss-latest-target-muslim-dress-code/>, and eventually resulted in Muslim shops being attacked and property damaged by mobs lead by monks, although BBS claimed not to have any part in it- 'Racially Provocative', *Ceylon Today*, 31 March 2013, <http://www.ceylontoday.lk/59-28585-news-detail-racially-provocative.html>.

<sup>15</sup> 'Gotabhaya Rajapaksa and his Bala Sena', *Colombo Telegraph*, 14 March 2013, <http://www.colombotelegraph.com/index.php/gotabhaya-rajapaksa-and-his-bala-sena/>

<sup>16</sup> A rise in fuel prices lead to a series of protests especially by local fishing communities. Police opened fire on protestors killing one and wounding others. 'Protesting fisherman shot dead', *BBC Sinhala.com*, 15 February 2012, [http://www.bbc.co.uk/sinhala/news/story/2012/02/120215\\_oil.shtml](http://www.bbc.co.uk/sinhala/news/story/2012/02/120215_oil.shtml). The incident was reminiscent of police using live ammunition in 2011 on a protest by free trade zone (FTZ) workers causing the death of one FTZ worker and wounding over two hundred protesters- 'Fear and fury', 'Aftermath of FTZ worker's killing', *The Sunday Times*, 05 June 2011, [http://sundaytimes.lk/110605/News/nws\\_i0.html](http://sundaytimes.lk/110605/News/nws_i0.html). Although a formal complaint was lodged with the HRCSL against the incident and the continued harassment of FTZ workers by security forces, and a brief inquiry conducted, no report on the findings was made public.

<sup>17</sup> 'TNA alleges Vavuniya prisoners abused', *Colombo Gazette*, 8 July 2012, <http://colombogazette.com/2012/07/08/tna-alleges-vavuniya-prisoners-abused/>; 'Vavuniya Prison Saga', *Ceylon Today*, 01 July 2012, <http://www.ceylontoday.lk/59-8808-news-detail-vavuniya-prison-saga.html>. The Vavuniya HRCSL regional coordinator revealed in an interview that although he had attempted to investigate the incident at the time, prison authorities had not allowed him access to speak to the prisoners. There is no further information on any action HRCSL may have taken subsequently.

<sup>18</sup> 'Welikada Prison Riots', *Ceylon Today*, 09 November 2012, <http://www.ceylontoday.lk/27-1929-news-detail-welikada-prisoners-riot.html>; 'Sri Lanka's prison clash a massacre', *BBC News Asia*, 11 November 2012, <http://www.bbc.co.uk/news/world-asia-20289609>

<sup>19</sup> Although two inquiries were commissioned, neither report has been made public. 'Two prison probes tackle reasons for riot', *Sunday Times*, 18 November 2012, <http://www.sundaytimes.lk/121118/news/two-prison-probes-tackle-reasons-for-riot-21052.html>

<sup>20</sup> War heroes' day was traditionally commemorated by the LTTE each year to remember fallen LTTE cadres which necessarily comprised family members of civilians in the North and East.

<sup>21</sup> On 27 November, police also made an unannounced raid on the women's hostel in Jaffna and on 28 November, hundreds of Jaffna university students undertook a protest march against these attacks. These peaceful protestors were also attacked by riot police – 'Police baton charge university students', *Daily Mirror*, 28 November 2012,

forcibly detained and prevented approximately six hundred family members of disappeared persons<sup>22</sup> from travelling to Colombo to hand over a petition to the UN Mission;<sup>23</sup> police and members of *Bodu Bala Sena (BBS)* forcibly dispersed a crowd conducting a candle-lit vigil on 12 April 2013 against BBS and arrested at least five protestors without charge.<sup>24</sup>

The breakdown in the rule of law and a culture of impunity and violence culminated in two UN Human Rights Council (UNHRC) resolutions against the GoSL at the 19<sup>th</sup> Session<sup>25</sup> in Geneva 2012 A/HRC/RES/19/<sup>26</sup> and the 22<sup>nd</sup> Session in 2013<sup>27</sup> A/HRC/22/L.1/Rev.13.<sup>28</sup> The Resolutions were viewed with some disappointment by the human rights community due to the diluted nature of the recommendations which merely urged the government to effectively implement recommendations of the

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<http://www.dailymirror.lk/caption-story/23833-police-baton-charge-jaffna-students-.html>. The four students arrested by the TID on 30 November remained in detention until 22 January when two students were released. The students had been forced to undergo 'rehabilitation' at a military camp in Welkanda and later in Vavuniya. On 12 February 2013, the President in reply to appeals by the parents of the two students in continued detention ordered their immediate release; a predictably populist action – 'Two Jaffna university students released on President's orders', *Colombo Page*, 13 February 2013, [http://www.colombopage.com/archive/13/Feb/13\\_1360744791CH.php](http://www.colombopage.com/archive/13/Feb/13_1360744791CH.php), 'President orders release of Jaffna university students', *Colombo Gazette*, 12 February 2013, <http://colombogazette.com/2013/02/12/president-orders-release-of-jaffna-students/>. There was outrage by human rights activists at the arbitrary arrest and detention over a period of several months of these students as well as their forced rehabilitation without evidence, charge or legal due process.

<sup>22</sup> 'Stopped en route', *Ceylon Today*, 10 March 2013, <http://www.ceylontoday.lk/59-26484-news-detail-stopped-en-route.html>

<sup>23</sup> The government refused to investigate this absolute violation of fundamental constitutional rights to free movement, assembly, expression and protest - 'Govt. hedges over stoppage of protestors in Vavuniya', *Daily FT*, 08 March 2013, <http://www.ft.lk/2013/03/08/govt-hedges-over-stoppage-of-protestors-in-vavuniya/>, even amidst strong protests by local and international human rights groups with the US embassy issuing a statement expressing its growing concern regarding both the incident and the lack of a genuine effort on the part of the government to implement LLRC recommendations to investigate into cases of disappearances. See - 'US alarmed by peaceful protestors' detention', *Colombo Telegraph*, 06 March 2013, <http://www.colombotelegraph.com/index.php/u-s-alarmed-by-peaceful-protestors-detention/>

<sup>24</sup> 'Video: Police and BBS block anti-BBS vigil in Colombo', *Colombo Telegraph*, 12 April 2013, <http://www.colombotelegraph.com/index.php/video-police-and-bbs-block-anti-bbs-vigil-in-colombo/>

<sup>25</sup> The Sri Lankan government delegation was accused of harassing local HRDs at the 19<sup>th</sup> session forcing the UN High Commissioner to give due warning against harassment of HRDs. 'UN High Commissioner Pillay speaks out against harassment of Sri Lankan HRDs during the Council in Geneva', *Protection Line*, 23 March 2012, <http://protectionline.org/2012/03/30/navi-pillay-un-high-commissioner-for-human-rights-speaks-out-against-harassment-of-sri-lankan-hrds-during-council-in-geneva/>

<sup>26</sup> See Office of the High Commissioner for Human Rights website - <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement> - HRC Resolution A/HRC/RES/19/2 of 2012 calls upon Sri Lanka to ensure accountability for alleged human rights violations under international law and requesting the government to implement the recommendations of the Final Report of the Lessons Learnt and Reconciliation Commission (LLRC).

<sup>27</sup> The first resolution urged the GoSL to implement the Lessons Learnt and Reconciliation Commission (LLRC) recommendations whilst the second cited inadequacy of implementation initiatives and continued concerns regarding HR violations in the country. See: UNHRC Resolution A/HRC/22/L.1/Rev.13 on 'Promoting reconciliation and accountability in Sri Lanka' <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/122/61/PDF/G1312261.pdf?OpenElement>

<sup>28</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka* [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf) and Amnesty International Annual Report 2013 on Sri Lanka, <http://www.amnesty.org/en/region/sri-lanka/report-2013>



Lessons Learnt and Reconciliation Commission (LLRC) and offered technical expertise and assistance. The GoSL developed a National Action Plan<sup>29</sup> to implement LLRC<sup>30</sup> recommendations which does not include many critical recommendations,<sup>31</sup> nor are those included being effectively implemented.<sup>32</sup> There is a severe lack of information publicly available relating to the status of implementation of recommendations by the various institutional stakeholders identified in the National Action Plan which disallows public participation in the state reconciliation process.

The controversial '*Divi Neguma Bill*'<sup>33</sup> introduced in August 2012<sup>34</sup> was vehemently opposed and twelve petitions<sup>35</sup> filed in the Supreme Court challenging its constitutionality.<sup>36</sup> The Bill amalgamates three development authorities for poverty alleviation amounting to nearly Rs.80 billion under the Ministry of Economic Development and encroaches on the powers of the Provincial Councils. The case was presided over by a three judge panel headed by then Chief Justice Dr. Shirani Bandaranayake.<sup>37</sup> The Panel determination<sup>38</sup> was viewed with public disfavor by the government. The timing of this process was markedly concurrent with the government's impeachment motion against Dr. Bandaranayake, the first female Chief Justice of Sri Lanka<sup>39</sup> to be conducted by a Parliamentary Select Committee (PSC)<sup>40</sup>

<sup>29</sup> National Action Plan to implement LLRC recommendations: [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201207/20120726national\\_plan\\_action.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm)

<sup>30</sup> See LLRC Report and Annexes at Presidential Secretariat website - [http://www.presidentsoffice.gov.lk/index.php?option=com\\_content&view=article&id=54:llrc-report&catid=53:nomenuarticles&Itemid=290](http://www.presidentsoffice.gov.lk/index.php?option=com_content&view=article&id=54:llrc-report&catid=53:nomenuarticles&Itemid=290)

<sup>31</sup> Gnaana Moonesinghe, 'Sri Lanka's national plan of action vis-a-vis Reconciliation', *Groundviews*, 12 February 2013, <http://groundviews.org/2013/02/12/sri-lankas-national-plan-of-action-vis-a-vis-reconciliation/>

<sup>32</sup> The Social Architects, 'The numbers never lie; a comprehensive assessment of Sri Lanka's LLRC progress', *Groundviews*, 14 March 2013, <http://groundviews.org/2013/03/14/the-numbers-never-lie-a-comprehensive-assessment-of-sri-lankas-llrc-progress/>

<sup>33</sup> See full text of Divi Neguma Bill at: [http://documents.gov.lk/Bills/2012/Divineguma-Bill/Divineguma\(E\).pdf](http://documents.gov.lk/Bills/2012/Divineguma-Bill/Divineguma(E).pdf)

<sup>34</sup> 'Divineguma facilitates the concentration of power', *The Sunday Times*, 30 September 2012, <http://www.sundaytimes.lk/120930/columns/divineguma-facilitates-the-concentration-of-power-14510.html> and 'What's wrong with the Divineguma Bill?', *Asian Tribune*, 18 October 2012, <http://www.asiantribune.com/news/2012/10/18/what%20s-wrong-divineguma-bill>

<sup>35</sup> 'More petitions against Divineguma Bill', *Daily FT*, 24 October 2012, <http://www.ft.lk/2012/10/24/more-petitions-against-divi-neguma-bill/>

<sup>36</sup> The petitions questioned the constitutionality of passing the Bill in the absence of a Northern Provincial Council (PC) and the authority of the Governor of the Northern Province in approving it in the absence of a Northern Provincial Council - See: 'Petition against Divineguma', *Ceylon Today*, 18 August 2012, <http://www.ceylontoday.lk/16-10944-news-detail-petition-against-divineguma.html> and <sup>36</sup> 'Petitions filed in apex court over Sri Lanka's controversial Divineguma Bill postponed', *The Colombo Page*, 15 October 2012, [http://www.colombopage.com/archive\\_12A/Oct15\\_1350314597CH.php](http://www.colombopage.com/archive_12A/Oct15_1350314597CH.php)

- 'Divineguma needs two thirds majority and referendum to be passed in present form: SC', *Daily FT*, 07 November 2012, <http://www.ft.lk/2012/11/07/divi-neguma-needs-two-thirds-majority-and-referendum-to-be-passed-in-present-form-scl>. The Ruling was based upon Constitutional provisions for amendments relating to Provincial Councils but viewed with public disfavor by the government. See: Chapter XVIIIA, Art.154 (G) 2 and 154 (G) 3, the Constitution of Sri Lanka 1978, [http://www.priu.gov.lk/Cons/1978Constitution/Chapter\\_17A\\_A.md.html](http://www.priu.gov.lk/Cons/1978Constitution/Chapter_17A_A.md.html)

<sup>38</sup> The Panel determined on 5 November 2012 that the Bill would need to be referred to all nine Provincial Councils (including the Northern PC) for approval or a two third majority obtained in Parliament to be enacted into law; the Bill was easily passed into law using the two thirds majority the government has in Parliament.

<sup>39</sup> The impeachment contained 14 charges including corruption against Dr. Bandaranayake was tabled in Parliament on 6 November 2012 - 'Impeachment motion against CJ tabled', *Daily Mirror*, 6 November 2012, <http://www.dailymirror.lk/news/23264-impeachment-motion-against-cj-tabled.html>

comprising eleven members of parliament – seven from the ruling coalition and four from opposition parties, appointed by the Speaker.<sup>41</sup> The PSC was expected to submit a report in thirty days on all fourteen charges, automatically rendering the process superfluous.<sup>42</sup> Petitions<sup>43</sup> were filed against the constitutionality of the process<sup>44</sup> in the Court of Appeal and the Supreme Court, and the Supreme Court quashed the PSC report, ruling that the PSC had no legal authority.<sup>45</sup> Parliament however overruled the Supreme Court violating the customary structure of separation of powers and the impeachment was ratified on 13 January 2013 by the President amidst country wide protests by BASL members.<sup>46</sup>

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<sup>40</sup> The Parliamentary Select Committee comprising 11 members of parliament – with 7 from the ruling party coalition and 4 from the opposition - appointed by the Speaker under Standing Order 78A of Parliament commenced hearings on 23 November 2012 and on the 3<sup>rd</sup> hearing on 6 December, the Chief Justice walked out claiming an unfair trial.. See: 'CJ walks out of PSC', *Daily Mirror*, 6 December 2012, [http://www.dailymirror.lk/news/24066-cj-walks-out-of-psc.htm!](http://www.dailymirror.lk/news/24066-cj-walks-out-of-psc.htm!;);

<sup>41</sup> The impeachment motion was also preceded by an assault on the Secretary of the Judicial Service Commission Manjula Thilakarathna on 07 October 2012 after a statement issued by him alleging interference by the executive on judicial matters. See: 'Secretary Of The Judicial Services Commission Was Assaulted By A Group Of Unidentified Men', *Colombo Telegraph*, 07 October 2012, <http://www.colombotelegraph.com/index.php/secretary-of-the-judicial-services-commission-was-assaulted-by-a-group-of-unidentified-men/> and 'Judicial Services Commission Secretary says danger to their security', *Sri Lanka Brief*, 29 September 2012, <http://www.srilankabrief.org/2012/09/judicial-service-commission-secretary.html>. To date, no perpetrators have been arrested and there is no active investigation into the matter.

<sup>42</sup> The CJ requested an extension of time stating that she had been given inadequate time to prepare her defense and cross-examine witnesses which was refused. The CJ was in fact given 7 days to submit her written defense and following the second session, another 7 days to send further observations, documents etc. The 4 opposition MPs in the PSC also walked out of the proceedings in protest of the alleged verbal degradation and unfair treatment meted out to the CJ on the 3<sup>rd</sup> session. 'Government PSC Members insulted CJ and she walked out', *Colombo Telegraph*, 6 December 2012, <http://www.colombotelegraph.com/index.php/government-psc-members-insulted-cj-and-she-walked-out/>

<sup>43</sup> This included a petition by the CJ challenging the report of the PSC which conducted the impeachment process, citing 13 respondents including – 'Breaking News: Chief Justice Filed Action Against PSC Report: Full Text Of The Petition', *Colombo Telegraph*, 19 December 2012, <http://www.colombotelegraph.com/wp-content/uploads/2012/12/CJ-Petition-pdf.pdf>.

<sup>44</sup> Article 4(c) of the Constitution states: "*the judicial power of the people shall be exercised by Parliament through courts, tribunals and institutions... except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members...*" Therefore, the only instances in which Parliament can exercise judicial power is in regard to its own privileges, immunities and powers. Further, although Article 107 of the Constitution provides that "*Parliament shall by law or by Standing Order provide for all matters relating to an address of parliament on the removal of a judge, including investigation and proof*", this was arguably not meant to include trial by a Parliamentary Select Committee. Also, such a process would entail the Parliament acting as judge and jury of its own cause.

<sup>45</sup> The Supreme Court ruled that "the PSC has no legal power or authority to find a Judge guilty because Standing Order 78A is not a law." 'Impeachment: Full Text Of the Supreme Court Determination Today', *Colombo Telegraph*, 3 January 2013, <http://www.colombotelegraph.com/index.php/impeachment-full-text-of-the-supreme-court-determination-today/> Ruling was based on "*the sole and exclusive jurisdiction of the Supreme Court to determine questions relating to interpretation of the Constitution...*" as established in Article 125 (1) of the Constitution.

<sup>46</sup> 'Stop Debating The Impeachment' – Bar To Strike For Two Days', *Colombo Telegraph*, 09 January 2013, <http://www.colombotelegraph.com/index.php/stop-debating-the-impeachment-bar-to-strike-for-two-days/>, 'Sri Lankan lawyers go on strike over CJ's impeachment process', *The Hindu*, 12 December 2012, <http://www.thehindu.com/news/international/sri-lankan-lawyers-go-on-strike-over-cjs-impeachment-process/article4191692.ece>

Some of these violations were brought to the direct notice of the HRCSL including: acts of violence and intimidation against religious minorities by the *Bodu Bala Sena*, land grabbing especially in the North, riots in both Welikada and Vavuniya prisons. A formal complaint against the *BBS* is now under inquiry at the HRCSL but the commission has not made clear representations or recommendations to government to stop unlawful or irregular activities by *Bodu Bala Sena* or similar such groups inciting discrimination and violence against ethnic and religious minorities. The HRCSL made public recommendations on detention arrangements of prisoners in Welikada but there is no accessible report of its findings regarding the incident which left twenty- seven prisoners dead.

The HRCSL draft *Annual Report* for 2012 incorporates an overview of the status of human rights in Sri Lanka which highlights issues and makes recommendations relating to: *the need to uphold the Rule of Law*- focusing mainly on the impeachment process of the Chief Justice, which it claims 'violates all norms of natural justice' and denies the right to a fair trial, the attack on the judicial service commission and undermining of judicial authority by the executive, in contravention of the separation of powers; *the right to dissent* – the commission states that 'dissent - especially political dissent- is under siege' and even extends to judicial judgments which contradict government policy; *need for pluralism and inclusivity* – highlighting the attack on and arrest of Jaffna university students by the police and TID and the visibly large presence of the army in the North and their imposition upon civilian structures; *de-politicization of law enforcement* – the commission criticizes the politicization of the police service and recommends that the police be detached from the Ministry of Defence; *need for civilian administrators* – the HRCSL stresses that the North and East need to revert to civilian administration which it lacks at present, citing as example ex-security services commanders who have been appointed governors in the two provinces; *disappeared and missing persons* – the HRCSL highlights the lack of information relating to missing and disappeared persons, condemns extra-judicial arrests and abductions and stresses state responsibility to investigate allegations and ensure the safety of those taken into custody by governmental authorities.

Although the HRCSL has accurately, if too briefly, highlighted a few areas of human rights violations in the country and made recommendations to the state on remedial measures, it makes no mention of its own responsibilities, duties and actions in relation to investigating and addressing these violations. This observation is especially relevant to the direct role imposed upon the HRCSL to protect those arrested under the PTA, which bears no mention within this account. Further, Commissioner Mahanamahewa has in fact upheld the very process of impeachment which the HRCSL condemns in its Annual Report.<sup>47</sup> The fact that the Commission recognizes the gravity of the prevailing human rights situation in the country but continues to do nothing of significance to address these issues demonstrates a lack of will or true authority and autonomy from the state which continues to stunt the performance of the HRCSL. The ineffectiveness and lack of independence of the HRCSL<sup>48</sup> has been highlighted through its silence in the

<sup>47</sup> See 'Process is constitutional', *Daily News*, 21 November 2012, <http://www.dailynews.lk/2012/11/21/news01.asp>. He further commented that the Parliament was supreme but that the President's decision on the impeachment was final – See 'PCS has full powers to issue *ex parte* decision against CJ', *Daily News*, 08 November 2012, <http://www.dailynews.lk/2012/12/08/news11.asp>

<sup>48</sup> For a comprehensive analysis of the progress and functioning of the HRCSL 2008-2012 see: B. Skanthakumar, *Neither Restrain nor Remedy: The Human Rights Commission of Sri Lanka*, Law & Society Trust, Colombo 2011, <http://www.lawandsocietytrust.org/> containing reports on the HRCSL from 2008 to 2011.

face of ongoing human rights violations of forced disappearances, extra-judicial killings, illegal detention and torture, excessive use of police powers, mass land grabbing, hate speech and racial intolerance, and a severe breakdown in the rule of law in the country including during the period under review.<sup>49</sup> The HRCSL in addressing human rights violations of its own motion, confines itself to issuing statements regarding violations of a serious nature,<sup>50</sup> conducting inquiries into issues where its findings remain obscure,<sup>51</sup> and shows public support for certain controversial government policies with flagrant disregard for the escalating culture of impunity in the country.

## Methodology

The Sri Lanka country report for the Asian NGOs Network on National Human Rights Institutions (ANNI) regional publication is based upon the guidelines for 2013 issued by ANNI. The sources for the report include; annual reports, statements, verbal and written responses and information provided by the members and senior staff of the HRCSL in Colombo and coordinators of HRCSL regional offices in 2012; information available on the HRCSL website; newspaper articles; information provided by civil society organizations and activists; and findings in previous ANNI reports. Information was requested from the commission regarding the progress of the HRCSL in 2012 especially due to the lack of a published Annual Report for 2012 as at June 2013. Questionnaires prepared by ANNI were also sent to the commission focusing on the HRCSL work relating to the chosen thematic areas of the 2013 report. A draft annual report for 2012 was sent by the HRCSL nearly 60 days after the request was made, upon its receipt of the first draft of the ANNI Report. There was however no response to the ANNI questionnaires.

## II. Independence of the Human Rights Commission

Although National Human Rights Institutions (NHRIs) – also known as National Institutions (NIs) or Human Rights Commissions as in the case of Sri Lanka - are established and financed by the state, they are required to be independent of the state. The *Paris Principles (Principles Relating to the Status of National Institutions)*<sup>52</sup> contain provisions to establish guarantees of independence and pluralism of National Institutions (NI) through: transparent procedures for composition and appointment of members who are representative of society and independent of state; institutional structure and funding which allows autonomy from the state; a broad mandate which allows credible investigations and effective remedial measures; and sufficient immunity from persecution for its staff. Statutory or constitutional provisions establishing NIs are expected to reflect these priorities of independence and pluralism.

<sup>49</sup> "Commissioners nominated for Sri Lanka Human Rights Commission: Independence of HRC under scrutiny", *The Nation*, [www.nation.lk/2011/02/20/news1e1.htm](http://www.nation.lk/2011/02/20/news1e1.htm)

<sup>50</sup> 'The HRCSL's statement on religious tension that has arisen in the country', 25 March 2013, HRCSL website - <http://hrctl.lk/english/?p=2099>

<sup>51</sup> 'HRCSL team to probe Welikada incident', *Daily Mirror*, 13 November 2012, <http://www.dailymirror.lk/news/23429-hrcsl-team-to-probe-welikada-incident.html>: The HRCSL merely stated that prison authorities are responsible for the safety of the prisoners under their care, condemned the overcrowding of prisons and recommended that prisoners convicted of serious crimes should be held separately which is absolutely insufficient in an incident which cost the lives of 27 people.

<sup>52</sup> Paris Principles (Principles Relating to the Status of National Institutions) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

The *Human Rights Commission of Sri Lanka Act No. 21 of 1996*,<sup>53</sup> an Act of Parliament established the HRCSL as a statutory institution and regulates its performance. It provides that the commission shall consist of five members from among persons 'having knowledge of or experience in matters relating to human rights' with one member nominated as Chairman. The lack of a mechanism for determining or setting the standards regarding the knowledge and experience of chosen members remains a serious inadequacy. There is a vague, broad requirement for 'minorities' to be represented within this selection but no prerequisite for gender based representation.<sup>54</sup> There is no provision for inclusion of members of civil society within the ranks of commission members. Members can hold office for a period of three years (Article 3 (5) HRCSL Act). The superseding provision<sup>55</sup> however remains that members of the commission shall be appointed by the President,<sup>56</sup> on the recommendation of the Constitutional Council<sup>57</sup> as established by the 17<sup>th</sup> Amendment to the Constitution. The 17<sup>th</sup> Amendment attempts to provide for seven independent commissions and remove the absolute discretion of the President to appoint members to specified commissions providing that persons may be appointed by the President only upon the recommendation of the Constitutional Council which was itself a more democratically elected and representative body.<sup>58</sup>

The enactment of the 18<sup>th</sup> Amendment to the Constitution in 2010 as an 'urgent bill' and passed in parliament using the two-thirds majority commanded by the government, makes such safeguards wholly redundant. The 18<sup>th</sup> Amendment abolishes the Constitutional Council and establishes a Parliamentary Council<sup>59</sup> which is primarily composed of members of the ruling coalition, with little authentic power and the President is only required to 'seek its observations' in appointing Members. Appointments are therefore politicized, unilateral and dependent on a powerful Executive President as created under the

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<sup>53</sup> Human Rights Commission of Sri Lanka Act No. 21 of 1996: <http://hrsl.lk/english/ACT/english.pdf>

<sup>54</sup> Art. 3 (3) HRCSL Act NO 21 of 1996 - <http://hrsl.lk/english/ACT/english.pdf>

<sup>55</sup> Art. 3 (2) Human Rights Commission of Sri Lanka Act No. 21 of 1996: <http://hrsl.lk/english/ACT/english.pdf>

<sup>56</sup> Article 41 (B) 17<sup>th</sup> Amendment: '*No person shall be appointed by the President as the Chairman or a member of any of the Commissions specified in the Schedule to this Article, except on a recommendations of the Council* . The persons appointed through nominations are required to be persons of eminence and integrity who have distinguished themselves, who are not members of any political party and nominated to represent minority interests.

<sup>57</sup> The Constitutional Council is composed of the Prime Minister, the Speaker, the Leader of the Opposition in Parliament, one person appointed by the President, five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition, and one person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups other than those to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President – See 17<sup>th</sup> Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html>

<sup>58</sup> Article 41B (1) 17<sup>th</sup> Amendment - No person shall be appointed by the President as the Chairman or a member of any of the Commissions specified in the Schedule to this Article, except on a recommendation of the Constitutional Council- <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html>

<sup>59</sup> The Parliamentary Council comprising primarily of members drawn from government and ruling coalition members of parliament of: the Prime Minister, the Speaker, the Leader of the Opposition, a nominee (who is an MP) of the Prime Minister, and a nominee (who is an MP) of the Leader of the Opposition - Article.41 (A) of the 18<sup>th</sup> Amendment to the Constitution of the Democratic, Socialist Republic of Sri Lanka, [http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act\(E\).pdf](http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act(E).pdf)

Constitution of 1978,<sup>60</sup> further empowered by the 18<sup>th</sup> Amendment which removes the two term limit for election and in theory secures indefinite continuity in the office.<sup>61</sup> Removal of members as per Article 4 of the HRCSL Act may be carried out by an order of the President if supported by a majority in parliament on grounds of proved misbehavior or incapacity, which in light of the impeachment of the Chief Justice of Sri Lanka becomes a mere formality.<sup>62</sup> This makes members vulnerable to arbitrary removal by an Executive President who enjoys absolute power and immunity and further diminishes the prospect of effective and independent action by the Commission.

### **Resourcing**

Resourcing of the commission is also dependent upon allocations by the Treasury with the President holding the portfolio of Minister of Finance.<sup>63</sup> The HRCSL regional offices protest inadequacy of funding, their absolute dependency on the head office for finances and the resultant delays in obtaining urgently required finances due to the bureaucratic processes in place. Regional offices also lack adequate human resources to deal with the volume of complaints received causing heavy delays in obtaining resolutions. The regional offices lack staff in cadres including investigations officers, legal officers, education officers and other administrative staff, as well as those who are adequately bilingual. Conversely however, many of the HRCSL regional offices do not appear to consider human rights organizations in their locale as resources to be utilized in their work, or as a source of information on human rights violations in the area. This is in spite of some organizations offering human resources and transport facilities to the commission.

It is understandable that regional offices which are required to cover large numbers of police stations and wide geographical areas on meager fuel allowances and inadequate numbers of investigations officers would find it difficult to conduct these visits on a regular or frequent basis. However, the visible presence of the HRCSL especially in areas which have a large military presence and regular visits to local police stations act as a deterrent against some of the more severe violations and provide some level of relief to locals. It is therefore less understandable why some of the HRCSL offices would rather neglect their duties than work with grassroots organizations and networks in ensuring the protection of the rights of people in their respective areas.

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<sup>60</sup> The Executive President has blanket immunity - 'While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity' - Art.35 (i) The Constitution of Sri Lanka 1978 - [http://www.priu.gov.lk/Cons/1978Constitution/Chapter\\_07\\_Amd.html](http://www.priu.gov.lk/Cons/1978Constitution/Chapter_07_Amd.html). The President is also not subject to any effective impeachment process

<sup>61</sup> The 18<sup>th</sup> Amendment to the Constitution removes the two-term limit on the President allowing an incumbent President to continue indefinitely, thereby enjoying greater legal immunity for actions committed while in office, which previously he/she could be subjected to upon the end of the two term period - Transparency International, *Sri Lanka Governance Report 2010*, TI, Sri Lanka, See Chapter 1, *Empowering an already all-powerful Executive: the impact of the 18<sup>th</sup> Amendment*. J.C. Weliamuna, p.19.

<sup>62</sup> Article 4 (1) (b) of the HRCSL Act <http://hrsl.lk/english/ACT/english.pdf>

<sup>63</sup> According to the draft HRCSL *Annual Report* for 2012, the total income for the year was Rs. 140,221,629 with Rs.535, 254 of the total being a foreign grant from UNFPA.

## ***HRCSL Joint Project with UNDP***

The United Nations Development Program (UNDP) in Sri Lanka has provided additional financial support to the HRCSL for at least five years to enhance capacity building and facilitate increased liaison with civil society.<sup>64</sup> However a lack of adequate, results oriented monitoring and evaluation by the UNDP has generated a situation where many of the regional offices are materially resourced by the UNDP, but without the requisite staff appointed or transferred internally and finances issued by the HRCSL head office, to implement stated objectives. According to regional staff of the HRCSL<sup>65</sup> although the UNDP has provided resources such as office equipment and vehicles, lack of human resources, inadequate fuel allowances and long delays in obtaining funding from the head office have prevented them from conducting frequent or emergency inspections of police stations, sufficient awareness raising at village level, immediate investigations of alleged infringements, or even regular consultations with local civil society.

The UNDP project office based within the HRCSL premises to coordinate and monitor joint activities, should more actively recommend the commission to; create an ongoing dialogue between HRCSL and human rights organizations especially at national level, sensitize HRCSL staff about the role and issues of human rights defenders, adequately enhance staff knowledge and understanding of international obligations. Although the UN office representing UN OHCHR in Colombo has organized a few meetings<sup>66</sup> with a select group of national level civil society organizations and activists to obtain recommendations and understand some of the obstacles relating to the HRCSL, the meetings do not include the UNDP/HRCSL project consultant. This is a considerable deficiency as any recommendations or issues raised by participants should be addressed by and information exchanged with the UNDP consultant in a transparent manner. At present, the outcomes of these meetings remain unclear. If a key purpose of the UNDP joint project with the HRCSL is to build its capacity to improve effectiveness and promote increased accessibility and mutual cooperation with civil society, its success in achieving these objectives is highly debatable.

Indeed, the Commission has failed to demonstrate any independence from the state on critical issues such as abuses committed under the Prevention of Terrorism Act (PTA) and its non-conformity with international human rights standards as well as mounting state control of right to freedom of expression, assembly and association. The HRC Chairman has in fact expressed support for state policies at international forums<sup>67</sup> whilst Commissioner Mahanamahewa is a predictable champion of the

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<sup>64</sup> HRCSL Website: *Projects – Joint Programme on Human Rights, UNDP* - [http://hrsl.lk/english/?page\\_id=232](http://hrsl.lk/english/?page_id=232)

<sup>65</sup> Between 2008 – 2012 interviews have been carried out with selected staff from all ten regional offices to obtain requisite information for the ANNI Report on the HRCSL.

<sup>66</sup> Meetings usually include a few chosen civil society organizations and activists known to both the HRCSL and the UNDP.

<sup>67</sup> “No basis for human rights violations accusations made by the international community”, *Dinamina*, 05 March 2011 (in Sinhala); “No abuse of emergency regulations: HRC Chairman”, *Daily Mirror* 11 June 2011, <http://print2.dailymirror.lk/opinion1/46603.html>

government.<sup>68</sup> Some of the members of HRCSL including the Chairman have shown willingness to liaise with civil society on selected issues such as infringements of the trilingual policy<sup>69</sup> but remain inaccessible regarding more serious violations involving state and military institutions and actors.

### **Membership and Selection Process**

HRCSL members nominated by the Parliamentary Council and appointed by the President with effect from 18 February 2011 are: retired Supreme Court judge Justice Priyantha Perera – Chair of the Commission; Mr. T.E. Anandarajah, former Inspector-General of Police; Dr. Bernard de Zoysa, private Medical Practitioner; Dr. Ananda Mendis, former Government Analyst; (*Deshabandu*) Mrs. Jezima Ismail, former Chancellor of South Eastern University. The nomination process lacked transparency, with no consultations with civil society regarding the final selection.<sup>70</sup>

The process was viewed with dismay by both the local and international human rights communities as it spells the end of a democratic process of selection through a Parliamentary committee, sets precedence for politically motivated appointments and wholly undermines the independence of the HRCSL.<sup>71</sup> The process is in direct contradiction to the standards required by the Paris Principles in the appointment of its members, "...whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces

<sup>68</sup> 'Sri Lanka's HR record improved in 2012 - Dr. Mahanama Hewa', *Sunday Observer*, 28 April 2013, <http://www.sundayobserver.lk/2013/04/28/new04.asp>

<sup>69</sup> The GoSL through the Ministry of National Languages and Social Integration declared 2012 as a 'Trilingual Year' as part of its reconciliation efforts to promote all Sri Lankan citizens to learn all three languages of Sinhala, Tamil and English – 'Sri Lanka declares 2012 as 'Trilingual Year' to unify the Nation', *Colombo Page*, 21 January 2012, [http://www.colombopage.com/archive\\_12/Jan21\\_1327158055CH.php](http://www.colombopage.com/archive_12/Jan21_1327158055CH.php). According to the Sri Lankan Constitution, Sinhala and Tamil are the National Languages, whilst 'the official language of Sri Lanka is Sinhala; and Tamil shall also be an official language.' English shall be the link language. Chapter IV - Language, The Constitution of Sri Lanka 1978, [http://www.priu.gov.lk/Cons/1978Constitution/Chapter\\_04\\_Amd.html](http://www.priu.gov.lk/Cons/1978Constitution/Chapter_04_Amd.html). The GoSL also formulated a 'Ten Year National Plan for a Trilingual Sri Lanka 2012-2021', 22 June 2012, [http://www.priu.gov.lk/news\\_update/Current\\_Affairs\\_Ten%20Year%20National%20Plan%20-%20English.pdf](http://www.priu.gov.lk/news_update/Current_Affairs_Ten%20Year%20National%20Plan%20-%20English.pdf). The trilingual policy is to be compulsorily implemented by government stakeholders in their work, information and service provision to the public in order to make goods, information and services accessible in all three languages. Breaches of this policy by public officials or institutions can be reported to the Official Languages Commission of Sri Lanka (under the Ministry of National Languages) which is mandated to address such complaints - <http://lanintegmin.gov.lk/institutions/official-languages-commission/>. However, the HRCSL was able to successfully address complaints which had been closed off by the Languages Commission without resolution when they were redirected to the HRCSL.

<sup>70</sup> The main opposition, United National Party (UNP) rejected the nominations which were allegedly finalised without due consultation with opposition Parliamentary Council members. In protest of the 18<sup>th</sup> Amendment, both the Opposition leader Ranil Wickremasinghe and UNP parliamentarian D. M. Swaminathan who were members of the Parliamentary Council boycotted the meeting to discuss nominations of members to the HRC. 'UNP rejects SLHRC', *News Now.lk*, 14 February 2011, <http://www.newsnow.lk/latest-news/unp-rejects-slhrc>

<sup>71</sup> See Concluding Observations of the Committee Against Torture (CAT): Sri Lanka, 47<sup>th</sup> Session (31 October – 25 November 2011), CAT/C/LKA/CO/3-4, 8 December 2-11, Para 17, 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) which express concern 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.



(of civilian society) involved in the protection and promotion of human rights...".<sup>72</sup> The nominations however were drawn completely from within the ranks of retired or active government servants with the exception of Dr. de Zoysa, a private medical practitioner.

In examining the human rights expertise of elected members in accordance with the HRCSL Act, the Chairman Justice Perera beyond adjudicating in fundamental rights cases, has no known experience in addressing human rights violations. Mr. Anandarajah has no record of human rights work and has instead been a figure of some debate.<sup>73</sup> Further, the appointment of a former IGP despite the large proportion of complaints lodged against police excesses may lead to loss of public confidence. Dr. Bernard de Zoysa, a medical doctor and owner/chairman of a nursing home, has no experience in the field of human rights and has proved elusive in engaging with civil society or the media. Indeed the logic behind his appointment remains a mystery. There is no established procedure for ensuring familiarity of elected members with national and international human rights standards or set standards for practical experience in the area of human rights.

Mrs. Jezima Ismail, the only female commissioner, has some expertise as a member of civil society,<sup>74</sup> in inquiring into complaints – although there is insufficient information regarding practical on the ground experience in protecting human rights - having served as a member / chairperson on numerous government-appointed committees including those on 'serious violations of human rights'.<sup>75</sup> This makes her reticence in the face of grave human rights violations extremely disappointing. Dr. Ananda Mendis resigned a year after his appointment in February 2012 citing weaknesses, inefficiencies and interference within the HRCSL.<sup>76</sup> Dr Mendis had been visibly active in engaging with civil society and made several recommendations for improving the workings of the commission including a change of premises in order to better provide for both complainants and members of staff.

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<sup>72</sup> *Paris Principles, Composition and appointment of members* - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

<sup>73</sup> 'IGP gets extension amid row', *Front Page – Sunday Times Online*, 12 October 2003, <http://sundaytimes.lk/031012/front/igp.htm>. After the Sri Lankan Bribery Commission ceased to function from 15 December 2004, the Constitutional Council at the time recommended Mr. Anandarajah to be elected as a member of the Commission but his name was rejected by the then president, Chandrika Bandaranaike Kumaratunga presumably due to such unresolved allegations and controversies attached to his conduct - 'Bribery piling up', *Sunday Observer online*, 27 March 2005, <http://www.sundayobserver.lk/2005/03/27/new24.html> and 'CC withdraws nomination of Anandarajah to Bribery Commission', *The Island Online Edition*, <http://www.island.lk/2005/03/12/news23.html>

<sup>74</sup> Ms. Ismail is the President and Founder, of the Sri Lanka Muslim Women's Conference (SLMWC) - Sri Lanka Muslim Women's Conference (SLMWC) has a stated goal to empower Muslim women in the country - 'Sri Lanka: More power to Muslim Women – That's Jezima's Promise', *Women's Feature Service*, 18 October 2010, <http://www.faqs.org/periodicals/201010/2192414001.html#ixzz1EZQCIQmD>; She is also a founder of the Muslim Women's Research and Action Forum (MWRAF) - Muslim Women's Research and Action Forum (MWRAF) – which conducted a country-wide research study on gender based violence in the Muslim community. MWRAF also organizes capacity-building workshops for representatives of judges, in collaboration with Judicial Service Commission, the Muslim Judges Forum and the Chairman of the Board of Judges.

<sup>74</sup> 'I leave the HRC with a clear conscience', 05 February 2012, *Ceylon Today*

<sup>75</sup> The committees included those which inquired into 'serious violations of human rights' and rights of women and children and Ms. Ismail even received the *Deshabandu* – Presidential Award for National Service in 1989 for her work in the area of promoting human rights especially of women.

<sup>76</sup> 'I leave the HRC with a clear conscience', 05 February 2012, *Ceylon Today*

The vacancy was almost immediately filled by the appointment of Dr. Prathiba Mahanamahewa. There are grave concerns about the conduct of Dr. Mahanamahewa as Commissioner of HRCSL which will be given special emphasis in this year's report.

Dr. Mahanamahewa is the Dean of the Faculty of Law at General Sir John Kotelawala Defence University<sup>77</sup> and has proved a most controversial choice, frequently appearing on popular media defending government policy decisions.<sup>78</sup> His involvement in the field of human rights is primarily as a lecturer and trainer, especially for the armed forces, and is necessarily of a more academic nature than experience based on practice and practical experience of protecting human rights.<sup>79</sup> He is a senior lecturer at the University of Colombo but is also a visiting lecturer in human rights law at the Sri Lanka Police Academy, Sri Lanka Navy Academy, Sri Lanka Police Training College, and Special Task Force Training Center which creates a significant conflict of interest in investigating violations in which the alleged perpetrators are members of the police and armed forces whereby professional judgment or actions regarding one area of interest will be unduly influenced by a secondary interest.

Dr. Mahanamahewa was voluble in condemning both UNHRC Resolutions and called for a counter resolution by Sri Lanka,<sup>80</sup> accused the UNHRC of going against its basic principles<sup>81</sup> and acting contrary to the UN mandate.<sup>82</sup> He observed that the second resolution was dangerous<sup>83</sup> because it urges Sri Lanka to allow an opportunity for UN Rapporteurs to make observations regarding violations; a startling observation for a Commissioner of the HRCSL whose primary duty is to support any measures which address human rights violations and act upon relevant findings in an unbiased manner.<sup>84</sup> The Commissioner's stance indicates a conviction that the role of the HRCSL is to protect the human rights record of the government rather than act as a human rights watchdog. The HRCSL has not retracted or revised these statements, effectively rejecting the authority of the UN Office of the High Commissioner for Human Rights. As an 'independent' institution the Human Rights Commission should maintain an independent and impartial position on matters relating to state rather than defending its actions at the expense of victims of human rights abuses.

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<sup>77</sup> Kotelawala Defence University is a military academy primarily established for officer cadets to pursue graduate and post-graduate qualifications and consequently raises the issue of independence of the Commissioner from the conduct of the armed forces.

<sup>78</sup> It would be of relevance to understand whether Dr. Mahanamahewa is the official spokesperson of the HRCSL or if the role is self-appointed.

<sup>79</sup> HRCSL website on Members of the Commission - [http://hrsl.lk/english/?page\\_id=475](http://hrsl.lk/english/?page_id=475)

<sup>80</sup> 'Counter Resolution from Sri Lanka to the UNHRC', *Sri Lanka Mirror Archives*, 11 March 2012, <http://english.srilankamirror.com/2012/03/counter-resolution-from-sri-lanka-to-the-unhrc/>

<sup>81</sup> 'UNHRC goes against its basic principles - Dr. Prathibha Mahanamahewa', *Sunday Observer*, 03 March 2013, <http://www.sundayobserver.lk/2013/03/03/fea09.asp>

<sup>82</sup> 'UNHRC Resolution against SL soft but dangerous', *Daily Mirror*, 25 March 2013, <http://www.dailymirror.lk/news/27150-unhrc-resolution-on-sl-soft-but-dangerous.html>

<sup>83</sup> 'UNHRC Resolution against SL soft but dangerous', *Daily Mirror*, 25 March 2013, <http://www.dailymirror.lk/news/27150-unhrc-resolution-on-sl-soft-but-dangerous.html>

<sup>84</sup> Areas under scrutiny include : freedom of expression, independence of judiciary, abductions, disappearances and women's rights 'Resolution both toothless and dangerous: Human Rights Commissioner', *Daily FT*, 25 March 2013, <http://www.ft.lk/2013/03/25/resolution-both-toothless-and-dangerous-human-rights-commissioner/>

The Commissioner also rejected the US State Department's Human Rights Report 2012 on Sri Lanka<sup>85</sup> and avowed that Sri Lanka's human rights record had in fact improved.<sup>86</sup> This was proved to be a deliberate misstatement of affairs as he subsequently observed that most allegations of violations relate to measures taken under the Prevention of Terrorism Act - PTA (active) and Emergency Regulations (repealed).<sup>87</sup> This implies conscious acceptance by the HRCSL of the potential for impunity under these laws and its calculated inactivity. Arrests and detention under the PTA should be informed to the HRCSL<sup>88</sup> which maintains a registry of detention, but many such arrests are either not reported to the HRCSL or not communicated until later or unless the Commission specifically requests such information. The HRCSL therefore has a direct role in ensuring the rights of those arrested under the PTA. The detention of four Jaffna university students in a rehabilitation camp over a period of months – despite repeated public appeals for their release - without cause or due process is but one example of the inadequacy of the HRCSL especially in ensuring protection relating to measures taken under anti-terrorism regulations.

Commissioner Mahanamahewa was also a strong supporter of the farcical impeachment process against the Chief Justice Dr. Shirani Bandaranayake<sup>89</sup> and hailed it as constitutional even as the Supreme Court ruled it unlawful and the Bar Association of Sri Lanka (BASL) rejected it on legal grounds. A Commissioner of an independent National Institution should never have issued public statements and media interviews supporting the government - ergo rejecting a ruling of the Supreme Court of law in Sri Lanka and criticizing the Bar Association in relation to an absolutely politicized process of impeachment which deposed the separation of powers. The HRCSL should in fact have acted with diligence and urged the government to uphold the rule of law in the country and act in an ethical manner, instead of publicly supporting measures which undermined the very foundations of democracy.

Is this acceptable or ethical conduct from a Commissioner of an independent National Institution? How does the public place its faith in the impartiality of this Commission? Commissioner Mahanamahewa's statements implicitly condemn transparent mechanisms to address human rights violations, disregard Sri

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<sup>85</sup> Sri Lanka 2012 Human Rights Report, US State Department Country Reports on Human Rights Practices for 2012, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

<sup>86</sup> 'Sri Lanka's HR record improved in 2012 - Dr. Mahanama Hewa', *Sunday Observer*, 28 April 2013, <http://www.sundayobserver.lk/2013/04/28/new04.asp>

<sup>87</sup> Although the Emergency Regulations have been repealed, the PTA is very much in action and incorporates many of its provisions and is prone to abuse – especially in an environment where independent institutions such as the HRCSL have been made more dependent upon the Executive through the repeal of the 17<sup>th</sup> Amendment which sought to retain their independence. See: 'Abuse of Power under PTA?', *Colombo Gazette*, 19 May 2013, <http://colombogazette.com/2013/05/19/abuse-of-power-under-pta/>

<sup>88</sup> Arrests and detention under the PTA should be informed to the HRCSL – S. 28 (1) HRCSL Act: <http://hrctl.lk/english/ACT/english.pdf>.

<sup>89</sup> The impeachment of Sri Lankan Chief Justice Shirani Bandaranayake in January 2013 ignoring rulings by both the Supreme Court and Court of Appeal and calls by the Bar Association of Sri Lanka (BASL) to stop the impeachment process which it claimed was in violation of the Sri Lankan constitution, was upheld by commissioner Mahanamahewa whilst dismissing complaints by the Asian Human Rights Commission and other national and international bodies against the process of impeachment - See 'Process is constitutional', *Daily News*, 21 November 2012, <http://www.dailynews.lk/2012/11/21/news01.asp>. He further commented that the Parliament was supreme but that the President's decision on the impeachment was final – See 'PCS has full powers to issue ex parte decision against CJ', *Daily News*, 08 November 2012, <http://www.dailynews.lk/2012/12/08/news11.asp>

Lanka's international obligations and demonstrate an abject misapprehension of the role and mandate of the HRCSL.<sup>90</sup> The Commissioner's visible efforts to vindicate the government in relation to human rights violations in the country stemming from state policy, anti-terrorism regulations and executive misdemeanors have further damaged the reputation of the HRCSL in the public arena. Dr. Mahanamahewa for his efforts in supporting the government – reported by mainstream media as being 'known for his strong defence of the Mahinda Rajapaksa administration on its human rights record'<sup>91</sup> – was even nominated for election as Vice Chancellor of the University of Colombo.<sup>92</sup> Media reports that the (ruling) Sri Lanka Freedom Party university trade union had approached the powerful Secretary of the Ministry of Defence to lobby the election of Dr. Mahanamahewa as the VC of the University of Colombo.<sup>93</sup> The nominations which were criticized for their political overtones and the unsuitability of candidates were protested vehemently by academics and civil society alike and Dr. Mahanamahewa failed to procure the requisite number of votes.

Prominent members of civil society have made both verbal and written submissions to the HRCSL expressing serious consternation regarding Commissioner Mahanamahewa's public expressions of support for the government. As one prominent lawyer and human rights activist Mr. Lakshan Dias appealed in an email (dated 22 November 2012) to the Chairman, "*The commission does not belong to its commissioners and staff. It belongs to the public. Therefore we expect the chairman and commissioners to behave impartially and independently and practice it visibly... It is really disturbing to see commissioners making statements on political issues...The NHRC needs to maintain an impartial position on every issue*" and requested that a code of ethics be formulated and practiced by the commissioners and staff of HRCSL.

Even though every individual has a constitutional right to freedom of expression, those holding public offices need to maintain a disciplined and impartial position in public and not allow private affiliations to affect professional judgment. The HRCSL has not contradicted or restrained Commissioner Mahanamahewa which insinuates complicity or submissiveness on its part in acquiescing to government agenda, reaffirming its lack of independence from the state, ineffectiveness in performing its duties, disregard of its mandate and abuse of its powers.

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<sup>90</sup> The appointment of Dr. Mahanamahewa clearly highlights the dangers of unsuitable appointments by the President, in a unilateral manner under the 18<sup>th</sup> Amendment and their direct negative impact and implications upon the effectiveness and independence of the HRCSL.

<sup>91</sup> 'Politicking for Colombo VC post', *Ceylon Today*, 7 April 2013, <http://www.ceylontoday.lk/27-29221-news-detail-politicking-for-colombo-vc-post.html>

<sup>92</sup> 'The collapse of institutions', *Colombo Telegraph*, 17 March 2013, <http://www.colombotelegraph.com/index.php/the-collapse-of-institutions/>

<sup>93</sup> 'A Gota loyalist to be appointed as VC of University of Colombo – university teachers to take trade union action', *Colombo Telegraph*, 4 April 2013, <http://www.colombotelegraph.com/index.php/a-gota-loyalist-to-be-appointed-as-the-vc-of-university-of-colombo-university-teachers-to-take-union-action/>

### III. Effectiveness of the Human Rights Commission

The effectiveness of the HRCSL continues to be dismal in addressing allegations of grave human rights violations. It is a silent spectator though having a broad mandate to inquire *Suo Moto* into infringements of fundamental rights,<sup>94</sup> advise government in formulating national legislation in accordance with international human rights standards, make recommendations to government on the need to accede to human rights treaties. The HRCSL rarely uses *Suo Moto* powers<sup>95</sup> to investigate violations considered politically sensitive<sup>96</sup> but instead is pleased to publicly investigate issues such as accidental deaths due to unprotected railway crossings.<sup>97</sup> Results of inquiries voluntarily undertaken by the HRCSL remain undisclosed to the public.<sup>98</sup> Further, although the Commission has submitted annual reports of its work and progress, it does not apply its mandate to make 'special or periodic reports in respect of matters referred to the Commission and any action taken by it' which would add considerable authority and value to urgently address unresolved or ongoing violations of human rights.<sup>99</sup>

According to the HRCSL draft *Annual Report* for 2012 received in response to a request by the Law & Society Trust (LST), a total provisional number of 8,482 complaints were received for 2012 with 4,726 complaints received in Colombo and 3,756 total complaints received in the regional offices of the HRCSL. This shows an increase in numbers of complaints from 2011 with a total of 7,475 complaints received at the head office and regional offices.<sup>100</sup> There has been a decline in the number of complaints regarding disappeared or missing persons from 230 cases reported in 2011 to 126 cases in 2012. There

<sup>94</sup> Article 14 HRCSL Act refers to infringement or imminent infringement of fundamental rights by executive or administrative action or as a result of an act constituting an offence under the Prevention of Terrorism Act No.48 of 1979, committed by any person - <http://hrsl.lk/english/ACT/english.pdf>. Fundamental rights are guaranteed in the Constitution of Sri Lanka (art.10 – 14) of: freedom of thought, conscience and religion, freedom from torture, right to equality, freedom from arbitrary arrest, detention and punishment, and prohibition of retro -active penal legislation, freedom of speech, assembly, association, movement etc. Right to life is however not an expressed fundamental right. Constitution of Sri Lanka 1978 - <http://www.priu.gov.lk/Cons/1978Constitution/CONTENTS.html>

<sup>95</sup> Art. 14 Human Right Commission of Sri Lanka Act No.21 of 1996, <http://hrsl.lk/english/ACT/english.pdf> states that the Commission may, on its own motion...investigate an allegation of a infringement or imminent infringement of the fundamental right of a person or group.

<sup>96</sup> The Commission continued to remain silent and ineffective in the face of even publicly vilified violations such as abusive arrests and detention under the Prevention of Terrorism Act; violence against free media; excesses by the police; state sponsored fanaticism such as Bodu Bala Sena as detailed under the country review.

<sup>97</sup> 'HRCSL to probe train accidents', *Daily Mirror*, 30 June 2013, <http://www.dailymirror.lk/news/31664-hrcsl-to-probe-train-accidents.html>. See also - HRCSL website - <http://hrsl.lk/english/?p=2156>

<sup>98</sup> For example –inquiry into the deaths of 27 inmates at Welikada prison; although Commissioner Mahanamahewa is reported in mainstream media as having expressed criticism of those in charge and made recommendations - 'HRCSL team to probe Welikada incident', *Daily Mirror*, 13 November 2012, <http://www.dailymirror.lk/news/23429-hrcsl-team-to-probe-welikada-incident.html> and inquiry into the rights of Member of Parliament Mr. Azath Salley upon his unlawful arrest and detention. See HRCSL website on the visit conducted by an HRCSL delegation lead by Dr. Mahanamahewa to meet Mr. Azath Salley in hospital <http://hrsl.lk/english/?p=2129>. However, the HRCSL does not appear to have taken any action regarding the nature of his arrest without clear charges and the HRCSL website gives no information on the findings of these inquiries.

<sup>99</sup> Art. 30, Human Right Commission of Sri Lanka Act No.21 of 1996, <http://hrsl.lk/english/ACT/english.pdf>

<sup>100</sup> *Annual Report 2011*, Human Rights Commission of Sri Lanka, Colombo 2012, p.3-4, [http://hrsl.lk/PFF/annual\\_report\\_2011/english.pdf](http://hrsl.lk/PFF/annual_report_2011/english.pdf)

has however been an increase in cases of arrest and (wrongful) detention from 581 complaints in 2011 to 675 complaints in 2012. This appears to fall in line with the findings of the commission in its visits to police stations including cases of arrest without prior investigation, lack of charges relating to persons taken into custody and assault whilst in custody.

A total of 3,372 complaints were concluded in 2012 which included 1,439 complaints relating to former years and 1,933 complaints received in 2012. The categorizations for termination of inquiries include: no. FR violation (1125); not interested (466); recommendation (141); settlement (168); relief granted (281); withdrawn (167); referred to other authorities (251); directives given (94); pending court cases (171); not within mandate (467); time barred (41). A glance at Table 1 below gives an overview of how the complaints were 'concluded' and how many actually relate to the year under review. This can hardly be extolled as an effective performance by the HRCSL for 2012.

**Table:1 – Conclusion of Complaints by HRCSL in 2012** (data extracted from the draft HRCSL Annual Report 2012)

Total complaints concluded by the HRCSL in 2012	3,372	Concluded complaints relating to 2012	1,933	Complaints relating to previous years	1,439
		Termination of inquiries without further action by HRCSL in 2012	1,804	Complaints acted upon by HRCSL in 2012	1,568
Total complaints acted upon by HRCSL in 2013	1,568	Complaints acted upon and relating to 2012	808	Complaints acted upon and relating to previous years	760

The work of the Commission is hampered to some extent due to its powers of inquiry limited to infringements of fundamental rights and the only available measure against those institutions or individuals that disregard its recommendations or inadequately implement them is for the Commission to present a report of the matter to the President who shall place it before Parliament.<sup>101</sup> This would of necessity cause considerable delays and pose practical difficulties of providing requisite information to the entire parliament in all official languages for every such occurrence and is an implausible method of ensuring swift and satisfactory resolution. However, a person who fails without reasonable cause to appear before the commission, refuses to be sworn or affirmed or having done so fails to respond to its queries, refuses or fails to comply without cause with a notice or written order/ direction issued to him by the Commission, refuses or fails to produce relevant and critical documentation, or by act or omission disrespects its authority may be considered in contempt and the matter can be referred to and punishable

<sup>101</sup> Article 15 (8) Human Right Commission of Sri Lanka Act No.21 of 1996, <http://hrctl.lk/english/ACT/english.pdf>

by the Supreme Court as though it were an offence of contempt committed against or in disrespect of the authority of the Supreme Court.<sup>102</sup>

The current Chairman – who is himself a former Supreme Court judge – has attempted to address this situation by initiating a process of summoning parties who have failed to implement recommendations for a negotiated resolution, failing which the Commission would issue an ‘order’ for the recommendation to be implemented. If the parties act in violation of the order, the commission has the authority to report this to the Supreme Court as a matter of contempt.<sup>103</sup> This option appears to have strengthened the position of the HRCSL as evidenced by the implementation of recommendations relating to approximately twenty-two instances of violations of the trilingual policy by a number of public institutions directed to the commission by a civil society organization, the Center for Policy Analysis (CPA), which continues to be monitored by the Commission.

The HRCSL is presently inquiring into a complaint<sup>104</sup> against harassment of peaceful protestors<sup>105</sup> by the *Bodu Bala Sena (BBS)* and unlawful arrests by police.<sup>106</sup> The complainant had called the HRCSL hotline at the time of the incident on 12 April 2013 but the Commission had refused to intervene; which effectively defeats the purpose of a hotline.<sup>107</sup> A formal written complaint in email form was then sent to the Chairman on 17 April 2013 detailing the incident whereby a group of peaceful protestors holding a candle-lit vigil against various discriminatory activities of the *Bodu Bala Sena* which is accused of inciting and unleashing hate speech and even violence against religious and ethnic minorities, especially Muslim communities, were accosted by a group of persons and Buddhist monks claiming to be from BBS whilst the police looked on. The police at the scene of the incident are accused of aiding the BBS members to forcibly disperse the peaceful protestors despite the fact that the officer-in-charge of the relevant police station and the police intelligence unit of Colombo had been informed of the protest beforehand. The police had in fact arrested at least 5 persons without citing charges although the Sri Lankan Constitution establishes that ‘no person may be arrested unless according to established procedure and they shall be informed of the reason for their arrest’.<sup>108</sup>

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<sup>102</sup> Art. 21 Human Right Commission of Sri Lanka Act No.21 of 1996, <http://hrsl.lk/english/ACT/english.pdf>

<sup>103</sup> “No abuse of emergency regulations: HRC Chairman”, *Daily Mirror* 11 June 2011, <http://print2.dailymirror.lk/opinion1/46603.html>

<sup>104</sup> Complaint No – HRC 1548/13 by Mr. Ruki Fernando of INFORM Human Rights Documentation Center v Inspector General of Police, Colombo.

<sup>105</sup> Article 14(1)(b) of the Sri Lankan constitution guarantees right to freedom of peaceful assembly to every person whilst article 15(3) of the constitution states that restrictions on the exercise and operation of this right can only be “as may be prescribed by law, <http://www.priu.gov.lk/Cons/1978Constitution/CONTENTS.html>

<sup>106</sup> ‘Sheep no more’, *Groundviews*, 13 April 2013, <http://groundviews.org/2013/04/13/sheep-no-more/>

<sup>107</sup> The HRCSL had refused to intervene at the time of the incident despite their mandate to inquire into allegations of *imminent* infringements of fundamental rights – article 14 HRCSL Act - <http://hrsl.lk/english/ACT/english.pdf>

<sup>108</sup> Article 13 (1) of the Sri Lankan Constitution of 1978, <http://www.priu.gov.lk/Cons/1978Constitution/CONTENTS.html>

The inquiring officer – a retired appeal court judge – had challenged the right of third parties to make complaints even though it is clearly established in the HRCSL Act.<sup>109</sup> Since his appointment, the Chairman who headed the Retired Judges Association at the time of his appointment to the HRCSL in 2011 has employed retired members of the judiciary in conducting inquiries including addressing a severe backlog from the period in which there was no properly constituted Commission. Although this has proved an easily accessible and valuable resource, it is crucial that such inquiring officers have a thorough knowledge of the mandate of the Commission and are sensitized on conducting inquiries which provide relief and redress for victims of human rights violations and put measures in place to avoid future infringements, rather than punish perpetrators. It is also important that the Commission extends the right of complainants to be represented by a lawyer or other appointee, especially as this privilege is usually provided to executive and administrative respondents.

The former Director of Inquiries and Investigations, Ms. Samantha Jayamanna is now the secretary of the HRCSL and has consequently become inaccessible to civil society, refusing to communicate without permission from the Chairman.<sup>110</sup> Although relevant questionnaires were directed to the HRCSL requesting information for the ANNI report, response is also dependent on the secretary and has not been forthcoming. The HRCSL fails to understand that engagement with civil society continues to be ineffectual due to lack of genuine information sharing, transparency regarding its work, and the cavalier attitudes of some senior staff members.

The HRCSL has however instructed all regional offices to conduct unscheduled inspections on police stations;<sup>111</sup> carried out a prisoners' rights initiative;<sup>112</sup> inquired into issues of detainees under Immigration laws;<sup>113</sup> made recommendations for implementation of the trilingual policy; established a focal point on labor migration during 2012/13.<sup>114</sup> The Monitoring and Review unit is to be commended for working closely with members of civil society on issues regarding international labor migration<sup>115</sup> and language

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<sup>109</sup> Art.14 HRCSL Act – 'The Commission may on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or group of persons investigate an allegation at the infringement or imminent infringement of a fundamental right of such person or group of persons...caused by executive or administrative action...' <http://hrctl.lk/english/ACT/english.pdf>. The HRCSL should ensure that its inquiring officers – in this case, a retired Appeal Court judge - are familiar with the provisions of the Act, its mandate and authority to prevent miscarriage of justice, especially in relation to complainants who are wholly unaware of their rights or the workings of the law.

<sup>110</sup> An acting director overlooked the work of the inquiries unit as a result, which can hardly improve the questionable effectiveness of the inquiries division.

<sup>111</sup> 'HRCSL starts unannounced checks on police abuses', *Sunday Times*, 11 November 2012, <http://www.sundaytimes.lk/121111/news/hrctl-starts-unannounced-checks-on-police-abuses-20197.html>

<sup>112</sup> In 2012 the HRCSL had inspected abusive prison conditions and FR violations of those held in detention without indictment or charges for a period of over 3 years, and called for a report from the Commissioner General of Prisons, conducted a study and shared some of the findings at a government/civil society conference.

<sup>113</sup> The HRCSL made 5 observations to improve the conditions of foreign detainees including the relocation of the center, and a consultation held with Ministry of Defence, Controller Immigration and Dept of Police to ensure implementation.

<sup>114</sup> 'HRCSL establishes a new focal point on migration', <http://hrctl.lk/english/?p=1989#>

<sup>115</sup> The HRCSL Chairman Justice Priyantha Perera issued 7 comprehensive guidelines on labour migration to the Ministry of Foreign Employment – See HRCSL website: <http://hrctl.lk/english/?p=1989>. The M&R unit under the guidance of its Directress, Ms. Thusitha Samarasekara has of its own motion inquired into issues of migrant



rights.<sup>116</sup> The HRCSL consulted government and other stakeholders on Universal Periodic Review recommendations<sup>117</sup> and submitted its own report to the UPR (second cycle) in 2012.<sup>118</sup>

The HRCSL is in the process of amending its Act to strengthen its mandate and authority and extend the tenure of the commission. The amendments will enable the commission to file contempt of court cases before High Courts against public officers who do not comply with its recommendations, blacklist such offenders and issue declaration orders against them, extend its mandate to include all human rights and not be limited to violations of fundamental rights as at present, extend the present three year tenure of the Commission to five years.<sup>119</sup> The HRCSL engaged with civil society in 2013 to obtain their recommendations through a consultative process prior to finalizing amendments to the HRCSL Act. However, although strengthening the Commission is a welcome initiative, extension of tenure of unilaterally appointed members cannot be considered a positive development. The Commission should also put in place guaranteed methods of measurement regarding the 'knowledge and practical experience in matters relating to human rights' of members, an express requirement for representation of civil society members within the Commission, prohibitions regarding Commission members or staff acting in a manner which compromises the independence of the Commission. Even with a stronger mandate, the HRCSL will continue to lack effectiveness as long as its members are appointed unilaterally, in a politicized process and act as an extension of the state.

At the time of writing, the Human Rights Commission has announced its intention to conduct a National Inquiry on the practice of human rights in the country and obtain the opinions of the general public on human rights issues.<sup>120</sup> This appears to be a direct result of a training workshop conducted for nearly fifty HRCSL staff on how to conduct national inquiries organized and funded by the Commonwealth Secretariat and has a stated goal of upgrading the HRCSL to 'A' status.<sup>121</sup> The Commonwealth Secretariat has pledged further technical, financial and oversight support to the HRCSL as part of the agreement. In light of the human rights context of Sri Lanka and ongoing violations which have resulted in successive UN Human Rights Council resolutions against the government, disastrous international relations and severe criticism by local and international human rights communities, a national inquiry on the human

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workers. The HRCSL signed an MOU with the Qatar HRC but there is insufficient liaison between the NIS– 'Qatar HRC, Lankan human rights body signs MOU', *Sunday Times*, 16 December 2012, <http://www.sundaytimes.lk/121216/business-times/qatar-hrc-lankan-human-rights-body-sign-mou-24309.html>

<sup>116</sup> The Monitoring & Review unit had also undertaken cases of language rights violations by state institutions directed to the HRCSL by the Center for Policy Alternatives (CPA) The M&R unit had identified over 22 instances of violations by state institutions and had conducted inquiries, issued recommendations and followed up on their implementation. 'Language policy implementation monitored', <http://hrsl.lk/english/?p=1897>

<sup>117</sup> United Nations Office of the High Commissioner for Human Rights – Universal Periodic Review, 13 May 2008 [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/A\\_HRC\\_8\\_46\\_SriLanka\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/A_HRC_8_46_SriLanka_E.pdf)

<sup>118</sup> B. Skanthakumar, *Neither Restraint nor Remedy: The Human Rights Commission of Sri Lanka – p.144 & 145 of Embedded in the State*, Law & Society Trust, Colombo, December 2012

<sup>119</sup> 'Human Rights Commission to amend its Act', *Daily FT*, 27 June 2013, <http://www.ft.lk/2013/06/27/human-rights-commission-to-amend-its-act/>

<sup>120</sup> 'HRCSL and rights in the national arena', *Daily News*, 20 July 2013, <http://www.dailynews.lk/?q=features/hrsl-and-rights-national-arena>

<sup>121</sup> 'Commonwealth facilitates Sri Lanka human rights training', *News.lk*, 8 July 2013, <http://news.lk/news/sri-lanka/5820-commonwealth-facilitates-sri-lanka-human-rights-training>

rights situation in the country is the most farcical measure yet to be proposed by the commission in its desperate attempts to regain 'A' status. It is also further evidence of the lack of recognition by the Human Rights Commission of existing serious human rights violations in the country as already identified by the Lessons Learnt and Reconciliation Commission and supported by credible documentation and complaints submitted by the human rights community. That the Commonwealth Secretariat should encourage and facilitate such a charade is disappointing in the extreme.

#### IV. Thematic Focus

The thematic focus of the 2013 ANNI report includes: (a) NIs as human rights defenders (HRDs) based on the report of the UN Special Rapporteur on Human Rights Defenders 2013;<sup>122</sup> and (b) Advisory Council of Jurists reference of National Institution (NI) and its efforts in Corporate Accountability. Questionnaires prepared by ANNI were sent to the HRCSL regarding its work in the chosen thematic areas but the commission failed to respond up to a month later.

The primary focus of the report of the UN Special Rapporteur (SR) on HRDs is the role of National Institutions as human rights defenders but also their role in protecting other human rights defenders. The SR observes that NIs are human rights defenders, being mandated to protect and promote human rights and recommends that they should work in tandem with other human rights defenders to assess the human rights situation on the ground, ensure accountability and prevent impunity.<sup>123</sup> The HRCSL is yet to internalize the concept of a HRD as defined in the *UN Declaration on the Rights of Human Rights Defenders* which clearly states that 'everyone has the right individually and in association with others to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels'.<sup>124</sup> The regional staff lack adequate knowledge and understanding on human rights defenders and their role which is reflected in the lack of complaints from and regarding HRDs reported in the HRCSL *Annual Report 2011*, although there were many instance of such violations<sup>125</sup> and insufficient attention given regarding threats to HRDs in 2012.<sup>126</sup> The HRCSL members and staff need to also recognize the commission as the primary human rights defender in the country which would perhaps

<sup>122</sup> *Report of the UN Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, presented to the UN Human Rights Council at the 22<sup>nd</sup> Session, 16 January 2013, UN Office of the High Commissioner for Human Rights, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/101/79/PDF/G1310179.pdf?OpenElement>

<sup>123</sup> See recommendations by the SR to member states and NHRIs, *Report of the UN Special Rapporteur on the situation of human rights defenders*, p.20-21, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/101/79/PDF/G1310179.pdf?OpenElement>

<sup>124</sup> Article 1, *Declaration on the Rights 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>125</sup> See: B. Skanthakumar, *Neither Restraint Nor Remedy, The Human Rights Commission of Sri Lanka, Law & Society Trust*, Colombo, December 2012, *Embedded in the State* p.141-144, <http://www.lawandsocietytrust.org/>. Also see – HRCSL Annual Report 2011, HRCSL website: [http://hrsl.lk/PFF/annual\\_report\\_2011/english.pdf](http://hrsl.lk/PFF/annual_report_2011/english.pdf)

<sup>126</sup> For example: death threats received by the President of FUTA Dr, Nirmal Ranjith Devasiri during the FUTA campaign for increased allocations for education: 'Death threats on FUTA President', *Ceylon Today*, 21 September 2012, <http://www.ceylontoday.lk/51-13159-news-detail-death-threats-on-futa-president.html>; 'FUTA President gets another threat', *Sunday Leader*, 24 June 2012, <http://www.thesundayleader.lk/2012/06/24/futa-president-gets-another-threat/>.

sensitize them to the common goals, risks and obstacles facing other human rights defenders and the legitimate need to protect them.<sup>127</sup>

Margaret Sekaggya recommends the following measures by any NHRIs to ensure the protection of HRDs. Protection constitutes a wide range of possible measures and interventions, including formal complaints mechanisms and protection programs; advocacy in favor of a conducive work environment for defenders; public support when violations against defenders are perpetrated; visits to defenders in detention or prison and provision of legal aid in this context; mediation when conflicts occur between defenders and other parts of society; and strengthening the capacity of defenders to ensure their own security. In tandem with the Special Rapporteur's recommendations, the HRCSL should take measures to, raise awareness and sensitize staff on HRDs and the protection afforded under international laws, disseminate the UN Declaration on HRDs in local languages, establish a focal point for HRDs who are particularly at risk and a mechanism to guarantee their protection which is widely known and easily accessible, exchange critical information and work in close collaboration with human rights defenders.

The Advisory Council of Jurists (ACJ) reference on NIs and corporate accountability issued at the 13<sup>th</sup> APF Annual Meeting in July 2008 takes into account the extent to which transnational corporations impact the political and social dimensions of a country, the basis for attributing human rights responsibilities to these corporations under international human rights law and the obligations of a state to regulate corporations regarding human rights violations by such corporations within its territorial jurisdiction and outside.<sup>128</sup>

In considering the impacts – both positive and negative – of transnational corporations, the ACJ recommends that NHRIs also have a role to play in monitoring violations by corporations, advocacy and complaints handling, and raising awareness regarding human rights obligations of the state and the business community. The ACJ recommends that NHRIs review domestic legislation regarding establishment and conduct of corporations; reviewing existing grievance mechanisms; monitoring human rights violations and assist civil society to do so; advocate to government to develop laws which reflect international best practices; developing education programs for corporations, the business community and vulnerable groups on rights and remedies. However, this area of NHRI responsibility will not be discussed in detail in the report due to non-implementation of the recommendations by the HRCSL and the more serious and urgent state policies and actions which categorically violate people's rights which need to be addressed as a priority by the Human Rights Commission of Sri Lanka.

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<sup>127</sup> *Report of the UN Special Rapporteur on the situation of human rights defender; The Role of National Human Rights Institutions in the protection of Human Rights Defenders*, p.15-19, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/101/79/PDF/G1310179.pdf?OpenElement>

<sup>128</sup> Asia Pacific Forum, See *ACJ Reference on Human Rights, Corporate Accountability and Government Responsibility*, The 13<sup>th</sup> Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Malaysia, 27-28 July 2008, p.13-19, [www.asiapacificforum.net/support/issues/acj/references/corporate-accountability](http://www.asiapacificforum.net/support/issues/acj/references/corporate-accountability)

## V. Conclusion and Recommendations

The present Human Rights Commission is due to complete its tenure in February 2014 and many of its members and staff have shown willingness to engage in dialogue with civil society, including in drafting the HRCSL report to the UPR and amending its Act; provided information on its activities through its website; established focal points on labor migration issues; issued statements on certain violations; and in general have strived to establish greater rapport with other institutions working on issues of human rights. This is however also largely attributable to their publicly expressed desire for reaccreditation as an 'A' status national institution. However, on review of the issues underlined by the International Coordinating Committee's Sub Committee on Accreditation which lead to the downgrading of the HRCSL in 2007 to status 'B' as lacking compliance with the *Paris Principles* – a decision which was reconfirmed in 2009, it becomes apparent that the Commission is yet to effectively address the Sub Committee's concerns and recommendations.

In the appointment and selection of members, the 18<sup>th</sup> Amendment to the Constitution now guarantees unilateral appointments by the President in a highly politicized process without any guarantees of transparency or inclusion of civil society in the final selection – in direct contravention to the principle of independence and plural representation including human rights defenders as required by the *Paris Principles*. The Sub Committee also observed that the previous commission did not take adequate measures to ensure its independent character and political objectivity. The present Commission has in fact made public declarations of support for government policies and defended the state's human rights record both nationally and internationally. Although the Emergency Regulations have now been repealed, many of its provisions remain active through the Prevention of Terrorism Act (PTA) which does not conform to international human rights standards. The Commission has made no discernible representations, recommendations or reports to the government to address the continued implementation of draconian anti-terrorism regulations directly resulting in severe human rights abuses, even four years after the end of the civil war. The commission appears to fear confrontation with political and military institutions regarding more serious human rights abuses and subsequently there are no accessible reports by the Commission on abductions, disappearances, illegal arrests and detentions, torture and killings which have taken place since its appointment. Even in relation to those inquiries conducted by the HRCSL into public incidents of human rights violations such as the Welikada prison riots, findings have not been made public. Some public investigations instigated by the HRCSL – especially those involving military or executive actors – grind to a halt pending official reports from the same institution which committed the violation in the first place or outcomes of discussions between state and other stakeholders;<sup>129</sup> findings are

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<sup>129</sup> This was manifestly evident in the inquiry initiated by the HRCSL into the killing of three unarmed civilian protestors by the Sri Lanka army during a public protest demanding clean water in Weliwariya, Rathupaswala, (See – 'Woes of Weliwariya water war', The Sunday Times, 4 August 2013, <http://www.sundaytimes.lk/130804/news/woes-of-weliwariya-water-war-55854.html>). The HRCSL first announced its intention to carry out a probe into the incident and then announced it was halting the inquiry pending the outcome of a meeting between the President and relevant stakeholders - 'HRC temporarily halts Rathupaswala probe', Daily Mirror, 17 August 2013, <http://www.dailymirror.lk/news/33970-hrc-temporarily-halts-rathupaswala-probe.html> When there has been a clear violation of basic human rights in evidence, what reason can there possibly be for the Human Rights Commission to halt its inquiry and wait for other discussions

undisclosed to the public and results indiscernible. In fact, the HRCSL for all intents and purposes gives the impression that it is awaiting the official turn of events to complete and conclude its investigations accordingly.

The Commission has attempted to establish relations with civil society but this appears to be limited mostly to engagement at public forums organized by the Commission and has not expanded to include consultations with human rights defenders during inquiries, exchange of information in a transparent manner, and support for civil society advocacy to the government on human rights issues. The Commission has addressed the need to publish annual reports on its work and progress but the report for 2012 is yet to be published as at July 2013. Further, the absence of any complaints from human rights defenders in the *Annual Report* for 2011 illustrates gaps in knowledge and action by the HRCSL with relation to a particularly vulnerable group and leads to speculation about the accuracy of the data provided.

The Commission has shown itself to be increasingly willing to establish dialogue with civil society, address backlogs and complaints more effectively, amend the HRCSL Act to strengthen its mandate, and implement mechanisms which override certain limitations in mandate to effectively address human rights violations. However, the Human Rights Commission of Sri Lanka needs to amend not only its mandate but its internal policy and perspective to better understand and implement its role as prescribed by the *Paris Principles* which primarily emphasizes independence from the state, effectiveness and objectivity in addressing human rights violations, and consistent relations with civil society. The HRCSL cannot hope to regain its status 'A' accreditation as long as it continuously fails to fulfill these provisions. The Commission needs to make genuine, conscientious and transparent efforts to work independently of the state; address human rights violations even when they ensue from state policy or military action, which may bring the Commission into conflict with state and military institutions; make recommendations to government on amending national laws in line with international standards and the ratification of international conventions; provide special or periodic reports to Parliament on matters referred to the Commission which may be especially urgent due to the seriousness or ongoing nature of violations; instill an internalized code of ethics to be followed by all Commissioners and staff to maintain the independence and integrity of the Commission; sensitize Commission staff on the role and work of human rights defenders and acknowledge common objectives and risks and provide them adequate protection as a vulnerable group; be accessible and amenable to working with civil society as a policy rather than on a few chosen, *ad hoc* initiatives. Until it implements these changes to policy and action, the Human Rights Commission of Sri Lanka will continue to be both loyalist and marionette of the state.

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to be concluded? They have both a duty and a mandate to carry out direct and immediate investigations and make recommendations to provide relief and redress. Their blatant dependency on the final outcome or verdict of government inquiries and discussions merely proves their incapacity and lack of independence from the state even further.



**Human Rights Council**

Twenty second session

Agenda item 3

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

**Report of the Special Rapporteur on the situation of  
human rights defenders, Margaret Sekaggya**

*Summary*

In the present report, submitted pursuant to Human Rights Council resolutions 7/8 and 16/5, the Special Rapporteur provides an account of her activities during the reporting year and draws the attention of Member States to the 252 communications sent under the mandate during the past year.

The main focus of the report is the role of national human rights institutions in the promotion and protection of human rights, highlighting the fact that they can be considered as human rights defenders.

The Special Rapporteur elaborates on the potential role national institutions can play in the protection of human rights defenders. She outlines a number of measures currently in practice in institutions in various Member States which could be replicated in other contexts. She also points to a number of areas where national institutions need strengthening in order to effectively protect human rights defenders.

The Special Rapporteur provides her conclusions and recommendations.

## **Conclusions and recommendations**

### **A. Conclusions**

- **As independent public bodies, national human rights institutions are in a unique position to hold Governments accountable to their human rights obligations and international standards and principles in this regard, thereby becoming a vital actor in the fight against impunity for human rights violations.**
- **As established by the Paris Principles, national human rights institutions should have broad and solid mandates and be properly equipped to be able to operate independently. Credible national institutions are autonomous from the influence of Government and ensure pluralism in their composition and activities, particularly through effective interaction with civil society organizations working on human rights issues. Members and staff of these institutions can be considered as human rights defenders and, as such, should be supported by public authorities and protected if needed.**
- **National human rights institutions can potentially play a significant role in the protection of human rights defenders. Such a role is ensured by national institutions having a robust mandate with competence to receive complaints from individuals and associations working to defend human rights, investigate such complaints and provide a wide range of protection measures.**
- **The most common measure applied by national institutions to protect human rights defenders appears to be formal complaints mechanisms. Several institutions have established focal points and units dedicated specifically to human rights defenders in recent years. This is highly commendable, but there is a need to ensure that such entities are adequately resourced and have the capacity to act promptly when violations against defenders are reported. Their effectiveness and transparency are crucial in order to ensure such mechanisms are credible in the eyes of those they are designed to protect. To ensure this, relevant authorities must be responsive to the recommendations issued by the national human rights institution. As these rarely carry legal responsibility due to the advisory function of the national institution, Governments should find ways to implement the recommendations effectively and promptly. In this connection, it is of great importance that Government officials are sensitized to the important work of defenders and familiar with the Declaration on human rights defenders.**

## **B. Recommendations**

- **To Member States:**

- (a) **Should follow the Paris Principles and the advice provided by the Sub- Committee on Accreditation and ICC when it comes to establishing, mandating and supporting the work on national institutions in order to ensure that institutions are strong, independent and effective partners in the promotion and protection of human rights;**
- (b) **National human rights institutions should be accountable to Parliament and to the public, including through the discussion of annual reports, which should be widely disseminated and made easily available to the public;**
- (c) **Appropriate follow-up mechanisms to recommendations issued by national institutions should be established. In this connection, it is advisable that annual reports of national institutions be presented and discussed in Parliament and that adequate follow-up be entrusted to the corresponding parliamentary committees and that an interministerial task force be appointed to mainstream their recommendations and monitor their implementation;**
- (d) **Members and staff working for national institutions should be considered, in law and in practice, as human rights defenders and, as such, be publicly recognized and supported by the Government and public authorities;**
- (e) **Governments and other branches of the State should refrain from unduly interfering with the independence and autonomy of national human rights institutions. Any instance of intimidation, stigmatization, harassment or attack against members or staff of national institutions should be promptly investigated, with perpetrators brought to justice and remedy provided to victims;**
- (f) **Effective protection measures or programmes should be in place to guarantee the security of members and staff of national institutions. Both staff and members should enjoy immunity while discharging their official functions in good faith;**
- (g) **National institutions should be given the highest profile possible, beyond merely consultative or advisory bodies, and all branches of the State should be mandated to cooperate with them and implement their recommendations;**
- (h) **There should not be any limitations to the jurisdiction of national institutions and they should be able to investigate all allegations of violations by all branches of the State and all types of actors, including armed forces and private businesses;**



- (i) National human rights institutions should be provided with adequate resources, financial, material and human, as well as with the necessary autonomy to propose and manage their own budgets and recruit their own staff;**
- (j) National human rights institutions should be entrusted with adequate powers of investigation, including authorization to visit detention centres, to allow them to conduct prompt and impartial investigations into all allegations of violations and provide remedy to victims;**
- To national human rights institutions:**
  - (a) Should widely disseminate the Declaration on human rights defenders at the national level, including by making it available and by translating it into local languages;**
  - (b) Should make every effort to sensitize Government officials and other branches of the State about the provisions of the Declaration on human rights defenders to raise awareness of the important role played by human rights defenders in society and the protection they are entitled to under international law, including strengthening their capacity to deal effectively with defenders;**
  - (c) Should raise awareness among their own members and staff about the Declaration on human rights defenders and about their role as defenders, including the risks associated to this role as well as basic self-protection measures;**
  - (d) Any instance of intimidation, stigmatization, harassment or attack against members or staff of the institution should be immediately reported, documented and processed, including by taking the necessary protection measures at the institutional level;**
  - (e) Should coordinate actions with other existing national institutions whose mandates are related to human rights, including thematic commissions or institutions at the constituent unit level in federal States, in order to create synergies and avoid unnecessary duplication;**
  - (f) Should interact with defenders and civil society in a regular manner and include them in the planning and implementation of their activities;**
  - (g) Should establish a focal point or an entity dedicated to human rights defenders with specific attention to groups of defenders at particular risk such as women defenders and those working for women's rights and gender issues; those working on the rights of lesbian, gay, bisexual and transgender (LGBT) communities; defenders working on environmental and land issues; journalists; and lawyers. This entity must be adequately resourced in order to respond promptly to reported violations and to offer necessary protection;**

- (h) Should work closely with human rights defenders when setting up, implementing and evaluating programmes and policies aimed at ensuring their protection;**
- (i) Should make sure that protection mechanisms for defenders are adequately resourced and have adequate capacity to respond to and investigate complaints received in a prompt and impartial manner;**
- (j) Should ensure that the mechanisms available for protecting human rights defenders are widely known to them and easily accessible through telephone, Internet, social media and publications. It should be possible to present complaints by various means, including on the website of the institution, through a hotline and through text messaging;**
- (k) Annual reports on activities should be widely disseminated and include a specific section on the situation of defenders with a brief description of the general context, relevant references to the regulatory frameworks, main challenges and opportunities, and groups most at risk;**

**Should strengthen their interaction with regional and United Nations human rights mechanisms by actively reaching out to them, including for their protection when needed, and periodically providing reports and/or participating in their sessions;**

- To ICC and the regional networks:**

- (a) Should advocate for the consideration of national human rights institutions as defenders and disseminate knowledge about the Declaration on human rights defenders among its members;**
- (b) Should continue to publicly support those national institutions whose members and staff are intimidated, harassed, stigmatized and attacked;**
- (c) ICC should provide guidance to national institutions about risks assessment and protective measures for members and staff, including by offering relevant information on how to react depending on the specific case and context. This could be done in cooperation with OHCHR, if necessary;**
- (d) Regional networks should enhance their cooperation, ideally by setting up permanent secretariats, to reinforce the regional dimension of the work of national institutions and provide the necessary guidance at this level;**
- (e) Regional networks should be active in providing support to their members, notably when**

they are exposed to harassment or intimidation, and strengthen their capacity where needed;

(f) **Regional networks should also strengthen their interaction with regional and United Nations human rights mechanisms.**

• **To defenders and civil society:**

(a) **Continue disseminating the Declaration on Human Rights Defenders, in particular regarding the work of national human rights institutions;**

(b) **Continue supporting the work of national human rights institutions by cooperating with them, advocating for their strengthening and collaborating in the planning and implementation of their activities and programmes;**

(c) **Cooperate with national institutions in the follow-up to their recommendations, including by giving visibility to their work;**

(d) **Advocate for the establishment of a national institution fully compliant with the Paris Principles where such does not yet exist.**

• **To donors and the international community:**

(a) **Continue supporting the work of national human rights institutions, including capacity-building programmes as necessary, and mainstreaming issues related to them in their work with the main stakeholders;**

(b) **Advocate for the consideration of national human rights institutions as defenders and support their work publicly as a protective measure if needed;**

(c) **Allocate additional (emergency) resources to address instances of physical threats against members and staff working for national human rights institutions if necessary;**

(d) **Continue engaging in constructive dialogue with Governments when members or staff of national institutions are exposed to intimidation or harassment.**



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